



Restaurant
& Catering

4 YEARLY REVIEW OF MODERN AWARDS

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

MATTER NO.: AM2014/272

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1. This submission is filed in response to the statement issued by the Commission on 2 November 2017.
 2. RCI confirms that it seeks to continue to pursue its substantive claims in respect of the *Hospitality Industry (General) Award 2010*, as noted in paragraph 9 of the Commission's statement, and as outlined in RCI's previous submission dated 12 October 2016.
 3. RCI submits that given that the Hospitality Award is currently the subject of plain language re-drafting proceedings, it is timely that changes, such as changes proposed by RCI, relating to the title of the award and its coverage, be given careful consideration.
 4. In addition, RCI's claim seeking to amend the title of the Hospitality Award, coincides with the claim filed by Clubs Australia Industrial (CAI) dated 28 July 2017 (matter number 2017/39), seeking to incorporate the *Registered and Licensed Clubs Award 2010* into the Hospitality Award, which, if successful, will result in the title of the Hospitality Award being amended to *Hospitality Industry and Clubs Award*. In this regard, RCI agrees with the similarities between the two awards, identified as the grounds relied upon by CAI in paragraph 6 of its application. This supports RCI's previous submission that the hotel accommodation, and casino functions has very little in common with catering services, which is more closely aligned with the restaurant and café sector.
 5. RCI's discrete claim seeking to amend the coverage provision by removing the term 'caterers', is in line with its proposal to amend the title of the Hospitality Award. Currently, the coverage clauses in the *Restaurant Industry Award 2010* and the

Hospitality Award have some overlap and results in uncertainty and confusion for employers who operate under these awards. It would greatly assist employers in the industry to comply with their award obligations if these uncertainties were removed.

6. The issue of uncertainty in the coverage clause of the Restaurant and Hospitality Awards were raised by the Fair Work Ombudsman (FWO) at the commencement of the award stage review matter in 2014.¹ This submission identified issues with coverage clauses in certain modern awards.
7. RCI notes that the matters raised by the FWO in its previous submission were precipitated and supported by its direct interactions with employers and employees in the relevant industries, who experienced difficulties in interpreting the coverage provisions in these awards. RCI agrees with the observations of the FWO in this regard. We reproduce below an excerpt from Appendix A of the FWO’s submission, which outlines the issues concerning the coverage clauses in the Restaurant and Hospitality awards:

Ref	Awards / clauses	Issue	Example scenario	Exclusion Clause
			then once it is established offers a sit down service.	
B.4	<p>Restaurant Industry Award [MA000119]</p> <ul style="list-style-type: none"> • Clause 3.1 • Clause 4.8 <p>Hospitality Industry (General) Award [MA000009]</p> <ul style="list-style-type: none"> • Clause 3.1 • Clause 4.1(g) • Clause 4.1(j) • Clause 4.2 	<p>The interaction of Exclusion Clauses and references to catering, restaurants and functions centres within the Restaurant and Hospitality awards can give rise to uncertainty about coverage.</p> <p>Restaurant Award:</p> <ul style="list-style-type: none"> • clause 3.1 of the Restaurant Award defines: <ul style="list-style-type: none"> – <u>catering by a restaurant business</u> as ‘the provision by a restaurant of catering services... where such services are incidental to the major business of the restaurant...’; and – <u>restaurant industry</u> as ‘restaurants, reception centres, night clubs, cafes and roadhouses, and includes any tea room, café, and catering by a restaurant business’; • clause 3.1 excludes from coverage a restaurant operated in or in connection with premises owned or operated by employers covered by the Hospitality Award; and • clause 4.8 excludes from coverage contract caterers whose principal and substantial business activity is providing catering services and/or accommodation services on a contract or fee-for-service basis. <p>Hospitality Award:</p> <ul style="list-style-type: none"> • clause 3.1 defines a restaurant as a restaurant, reception centre, night club, licensed cafe and licensed roadhouse and includes any tea room or café; • clause 4.1 states that the award does not cover employers in the following industries: <ul style="list-style-type: none"> – catering by a restaurant business (catering services for functions where such services are incidental to the major business of the restaurant (clause 3.1); and – restaurants covered by the Restaurant Award; and • clause 4.2 states that the hospitality industry includes caterers, restaurants operated in or in connection with premises owned or operated by employers otherwise covered by the award and function areas and convention or like facilities operating in association with the aforementioned. 	<p>An employer operates a facility which has a:</p> <ul style="list-style-type: none"> • restaurant component, open to members of the public; • function/reception centre component, available for hire by members of the public; and • large commercial kitchen, from which catering is provided to customers hiring the function space as well as external customers on different premises. <p>A range of staff are employed across the facility, including food and beverage attendants, cooks, clerical staff and security staff.</p> <p>Whilst it appears that the Hospitality Award would cover the business described, there are exclusions for:</p> <ul style="list-style-type: none"> • catering by a restaurant business; and • restaurants covered by the Restaurant Award. 	<p>Both awards contain the Multiple Coverage Clause.</p> <p>The Restaurant Award excludes:</p> <ul style="list-style-type: none"> • restaurants operated in premises owned and operated by employers covered by the Hospitality Award; and • contract caterers. <p>The Hospitality Award excludes:</p> <ul style="list-style-type: none"> • catering by a restaurant business; and • restaurants covered by the Restaurant Award (clause 4.1).

¹ Fair Work Ombudsman submission dated 20 May 2014.

APPENDIX C: Name of award and definitions not reflecting common understanding of industries/occupations

Ref	Awards	Description	Uncertainty
C.1	<p>Restaurant Industry Award 2010 [MA000119]</p> <p>Hospitality Industry (General) Award 2010 [MA000009]</p>	<p>Restaurant Award:</p> <ul style="list-style-type: none"> • Clause 3.1 states that the restaurant industry means restaurants, reception centres, night clubs, cafes and roadhouses, and includes any tea room, café, and catering by a restaurant business. <p>Hospitality Industry Award:</p> <ul style="list-style-type: none"> • Clause 4.2 defines the hospitality industry as including hotels; motor inns and motels; boarding establishments; condominiums and establishments of a like nature; health or recreational farms; private hotels, guest houses, serviced apartments; caravan parks; ski lodges; holiday flats or units, ranches or farms; hostels, or any other type of residential or tourist accommodation; wine saloons, wine bars or taverns; liquor booths; resorts; caterers; restaurants operated in or in connection with premises owned or operated by employers otherwise covered by this award; casinos; and function areas and convention or like facilities operating in association with the aforementioned. 	<p>Uncertainty can arise in relation to these two awards because the award titles and industry definitions do not necessarily reflect the commonly held understanding of the industry the awards are intended to cover. For example:</p> <ul style="list-style-type: none"> • the Restaurant Award covers cafes, however this is not referred to in the award's title. Further, cafes are commonly referred to as being in 'hospitality' or the 'hospitality industry'. This may cause confusion about the appropriate award to apply for cafes; • the Hospitality Award covers 'pubs' however there is no reference to this type of business in the industry definition. Clause 4.2 refers to wine saloons, wine bars, taverns and liquor booths. The reference to these specific venues might indicate that 'pubs' are not intended to be covered; and • the Restaurant Award covers 'restaurants' and 'night clubs' which may cause uncertainty about which award covers a pub, given that a pub may also operate a restaurant and/or night club.

RESTAURANT AND CATERING INDUSTRIAL