

IN THE FAIR WORK COMMISSION

Matter No: AM2014/283

Section 156 – Four Yearly Review of Modern Awards – Registered and Licensed Clubs Award 2010

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of the President, Justice Ross, on 10 April 2019. This submission is made in respect of the latest exposure draft of the *Registered and Licensed Clubs Award 2010* (‘the Exposure Draft’) published on 15 April 2019.
2. United Voice has made submissions on a previous version of the Exposure Draft, on 20 January 2017 and 22 February 2017. We have expanded on certain matters within this submission.
3. All references in this submission are to the exposure draft, unless otherwise specified.

Item 9 - Clause 13.1 – Junior employees

4. The Commission has asked whether clause 13.1 of Exposure Draft applies to: ‘*a junior waiter who may be required to deliver liquor to tables and/or take payment for liquor; or to a junior employee employed within the same premises as where liquor is sold but who does not him or herself sell or serve liquor (e.g. a junior kitchen hand).*’
5. Our position is that clause 13.1 applies to both the junior waiter and the junior kitchen hand in the example above.
6. Clause 12.1 of the current Award states: *Junior employees employed in the bar or other places where liquor is sold must be paid at the adult rate of pay in clause 17.2 for the classification of the work being performed.*
7. The relevant distinction is whether liquor is sold at the worksite or not. If a junior kitchen hand works at a site in which liquor is sold then that employee should be paid the adult rate. If the junior kitchen hand works at a site where liquor is not sold, then that employee should be paid the junior employee rate.

8. Further, a junior waiter delivering liquor to tables and/or taking payment for liquor is engaged in the service of alcohol. All states and territories require that employees serving, selling or supplying alcohol acquire and maintain specific qualifications and skills (such as a responsible service of alcohol qualification). These employees could also face significant penalties for breaching responsible service of alcohol requirements.
9. In the 4 yearly review of the Restaurant Award 2010, Restaurant and Catering Industrial (RCI) made a claim to vary a similar provision in that award to exclude junior employees who were wait staff from receiving adult wages. In the Decision¹, the Commission rejected the claim, noting that:

[163] It also needs to be born in mind that all employees who serve alcohol in restaurants are required to have a responsible service of alcohol qualification – regardless of the age of the employee. Further, wait staff face significant penalties under State liquor laws if they serve an alcoholic beverage to an intoxicated person. These responsibilities merit the payment of adult wages to those 18 and 19 year old wait staff who serve alcohol.

[164] In the course of his evidence Mr Bunder sought to downplay the extent of this responsibility. We find this aspect of Mr Bunder’s evidence unpersuasive. A waiter is likely to have the most direct contact and engagement with a customer in a restaurant. Consequently they are likely to be in the best position to assess whether or not a customer is intoxicated – not a barman mixing drinks some distance away.

[165] This claim lacks merit. If the Restaurant Award was varied in the manner proposed by RCI it would not provide ‘a fair and relevant minimum safety net of terms and conditions’; it would not achieve the modern awards objective. We reject the claim for those reasons.

Item 13 - Clause 18.2 Minimum wages

10. Clause 18.2 of the current Award states:

An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St John Ambulance or similar body and who is appointed by the employer as a first aid attendant must be paid an allowance, per week, equal to 1.2% of the standard weekly rate for all purposes.
11. The first aid allowance is an all purposes allowance.
12. Clause 17.1 of the current Award states ‘*An employee’s rate of pay is inclusive of the award rate set out in this clause and the additional allowance (where applicable) for first aid set out in clause 18.2.*’ The use of the term ‘*inclusive*’ here is to identify that an employee who is

¹ [2018] FWCFB 7263.

entitled to the first aid allowance in clause 18.2 receives as their ordinary rate of pay the minimum rate for their classification *and* the first aid allowance.

13. In paragraph [9] of our submission dated 20 January 2017 we proposed wording to clarify this issue. Our proposed wording would amend the final sentence of clause 18.2 of the Exposure Draft as follows:

'An employee's ordinary rate of pay is inclusive of the award rate set out in this clause and the additional allowance (where applicable) for first aid set out in clause 19.2(b).'

Item 14 - Clause 18.4 Casual fitness instructors

14. The rate in clause 18.4 of the Exposure Draft is only inclusive of the 25% casual loading. This rate does not include an amount in respect of penalty rates.
15. Clause 29.1 of the current Award provides for weekend and public holiday penalty rates for employees other than maintenance and horticultural employees and clause 29.4 provides for late and early work penalties for employees other than maintenance and horticultural employees.² Casual fitness instructors are not excluded from these provisions and therefore *are* entitled to penalty rates.
16. The minimum hourly rate of a casual fitness instructor should be disaggregated from the casual loading and stated within the Award. This would make it easier for employees and employers to calculate penalty rates for casual fitness instructors.

Item 15 -Interaction of Clause 19.3(c) (i) and 19.3(c)(ix)

17. Clause 19.3(c) (i) contains specific provisions for cooks and maintenance and horticultural employees in respect of tools only. Clause 19.3(c) (ix) refers to a wider range of equipment and would apply in circumstances in which clause 19.3(c) (i) is not relevant.

Item 16 - Clause 24.4 Late and early work penalty

18. The Commission has asked if the late and early work penalty apply on a *pro rata* basis. Our position is that this penalty is not paid on a *pro rata* basis. We refer to paragraphs [10] to [11] in our submission dated 20 January 2017 and paragraphs [6] to [8] of our submission in reply dated 22 February 2017.

**UNITED VOICE
10 May 2019**

² Separate provisions apply to maintenance and horticultural employees.