

Witness statements were amended on 1  
November 2018 - see correspondence and  
reply from FWC dated 1 November 2018

**From:** Marianne Wells [<mailto:Mariannew@restaurantcater.asn.au>]  
**Sent:** Tuesday, 24 July 2018 5:38 PM  
**To:** Chambers - Ross J  
**Subject:** Four Yearly Review - Restaurant Industry Award (AM2014/284)

Dear Associate,

Please find attached documents for filing on behalf of Restaurant and Catering Industrial.

Apologies for the slight delay in filing.

Regards

**Marianne Wells** | In-house Counsel/Professional Advisory Services Manager  
**Restaurant & Catering Industry Association**

t 1300 722 878 | f 1300 722 396 | e [mariannew@restaurantcater.asn.au](mailto:mariannew@restaurantcater.asn.au)

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## IN THE FAIR WORK COMMISSION

### 4 YEARLY REVIEW OF AWARDS

#### OUTLINE OF SUBMISSIONS OF RESTAURANT & CATERING INDUSTRY ASSOCIATION (RCI)

##### MATTER NO: AM2017/59

1. To further progress the 4 yearly review of modern awards, RCI was directed to provide evidence by 24 July 2018.
2. RCI seeks three amendments to the Restaurant Industry Award 2010.
3. The three amendments are:
  - a. That breaks be the subject of an individual flexibility agreement in line with Individual Flexibility Agreement clause of the Award;
  - b. That wages be paid on any day of the week, rather than restricted;
  - c. That the award state that junior employees may deliver alcoholic beverages from a bar or dispensing point to a customer's table be paid at junior rates for all time worked.
4. The claims are detailed below.

##### **Breaks be the subject of individual flexibility agreements**

5. RCI submits that the breaks clause should be amended to include the following wording:

*The award flexibility clause can be utilised to permit variations to this clause by agreement between the employer and employees.*

6. The provision is in line with the award modernisation objective.
7. The provision is found in a like award, namely the *General Retail Industry Award*.
8. The evidence to be led by the witnesses indicates that there are sound and valid operational reasons to seek the variation, particularly the inconvenience of the break during hours of service.
9. The variation will make the break more flexible and satisfy the employees and the employer needs.

## **Pay day**

10. The plain English language draft of the Award provides that payment of wages is restricted to certain days.

*22.2 Except on termination of employment, wages may be paid on any day of the week other than a Friday, Saturday or Sunday. However, if the employer and the majority of employees at a workplace agree, wages may be paid on the Friday of a week during which there is a public holiday.*

11. RCI submits that the payment of wages should be extended to all days of the week.

12. The amendment RCI submits should be made is:

*22.2 Except on termination of employment, wages may be paid on any day of the week.*

13. The evidence from RCI witnesses is that it is restrictive to be able to only pay wages during the week days.

14. The evidence is that the payment of wages should be extended to weekends as well in order to allow for business owners to use that time to conduct the payroll.

15. The amendment will enable a business operator to manage their time across the week in a more efficient manner.

16. This amendment is in line with the modern awards objective.

17. A like award, the General Retail Industry Award 2010, does not contain a restriction on the day of payment.

## **Junior serving alcohol**

18. The plain English language draft appears to RCI to be ambiguous. The definition of liquor service employee is (at clause 2):

*liquor service employee means a person employed to sell or dispense liquor in bars, bottle departments or shops and includes a cellar employee. The Award goes on to provide at 13.5:*

*13.5 Junior employees working as liquor service employees must be paid as an adult in accordance with Table 2—Minimum rates at the classification rate for the work being performed.*

19. Putting those clauses together, the RCI witnesses give evidence that they are confused about how to pay a junior who takes alcohol from a serving or dispensing point to a table.
20. The witnesses give evidence that on their reading that the Award provides that a junior must be paid adult wages for the whole shift if they deliver alcohol to a customer.
21. That ambiguity needs to be resolved so it is clear that a junior who simply delivers liquor, and does not dispense liquor, is paid at junior rates for all time worked.
22. The amendment sought is as follows:  
*liquor service employee means a person employed to sell or dispense liquor in bars, bottle departments or shops and includes a cellar employee. This does not include employees who only deliver liquor to customers and do not sell or dispense liquor behind the bar.*
23. This amendment is in line with the modern awards objective.
24. The amendment is not designed to allow juniors to dispense alcohol but merely to be able to deliver it to the tables of customers.
25. Training opportunities will open up to young employees as well if the variation is made. Business will be encouraged through the resolution of the ambiguity to hire junior employees.
26. In addition, the evidence discloses that the liquor beverage may be only one beverage out of three or four taken to a table, and it is unreasonable to stop a junior from taking a range of beverages if one is alcoholic.
27. The evidence is persuasive that an ambiguity exists and it is submitted that the RCI proposition will remove the ambiguity.

## **Conclusion**

28. For the foregoing reasons RCI submits that the amendments proposed by RCI be made to encourage further flexibility in the Award.

**IN THE FAIR WORK COMMISSION  
FOUR YEARLY REVIEW OF MODERN AWARDS – AWARD STAGE: GROUP 4  
(RESTAURANT INDUSTRY AWARD 2010)**

**FWC Matter No.: AM2017/59**

**SWORN STATEMENT OF FRANCIS EDMUND BRAILEY**

I, Francis Edmund Brailey, of [REDACTED] in the State of New South Wales say as follows:

**Background**

1. I am the business accountant and licensee of The Marina Café Church Point.
2. My son Jonathan Brailey, is the owner of the business through a trust structure.
3. The business opened in Church Point, NSW in January 2012.
4. The business has been a member of Restaurant and Catering Industrial since July 2012.
5. I have worked in the restaurant and café industry for 7 years.

**Staffing arrangements and operating hours**

6. The business trades 7 days a week.
7. The operating times for trade are 8:00am to 3:30pm Sunday to Thursday and 8:00am to 10:00pm Friday and Saturday.
8. The business employs 5 full-time staff, and 8 casual staff. In the kitchen generally, there is one entry level person and the balance of the staff are grades from all levels, plus a barista. On the floor, there is a manager and one or two juniors or entry level persons. The balance of the staff are grades from all levels.

9. From Monday to Friday, 3 kitchen staff and 2 floor staff are required. Friday and Saturday nights are the same. On Saturday and Sunday, there are 6 in the kitchen and 6 or more on the floor.

### **Financial information**

10. Labour costs for the financial period year end 30 June 2017 amounts to \$526,125.
11. Additional labour-related costs including superannuation, staff uniforms, staff training, staff amenities, job advertising and legal-related expenses relating to employee sponsorship \$69,425 add considerably to labour costs.

### **Modern Award issues**

12. The business operates under the *Restaurant Industry Award 2010* (Award).
13. I am aware of and understand the three changes to the Award that RCI is seeking. I will deal with the changes separately in this statement and explain the reasons I support them.
14. I support the change to clause 15.1 of the Award, relating to junior employees serving alcohol. I am aware that there is a matter before the Commission, which will affect this clause, and that the new version of the Award will define what a junior employee is and what type of employee serves liquor.
15. However, I do not think that the change is sufficient to deal with the issue facing businesses such as ours.
16. In my view, the definition of 'liquor service employee' needs to be changed, because a junior employee who delivers alcohol to a table should not be included in this definition, because it restricts the range of services that juniors can provide, making it less attractive to employers and to the juniors as well and disrupts the smooth flow of service. For example, if a customer asks a junior employee for an alcoholic beverage, the junior employee must explain that he/she cannot provide that service and that he/she must get another senior employee to come and take the order. This type of response to a service irritates customers.

wages, and explain variations that occur from time to time, due to the time restrictions of the bookkeeper.

17. I support the changes to clause 32.3 and 32.4 of the Award, which relates to meal breaks. I understand that RCI is seeking to change this clause to allow employers and employees to enter into flexible work arrangements. This would be in the form of an individual flexibility agreement. This option already exists in most awards. Typically staff do not compulsory meal breaks disrupting their shifts and having to have breaks outside of normal meal times. For example, a staff member who starts at 8am might have to have a meal break at 11am so that they are back on the floor for lunch service.

18. The clause should be changed because employers and employees should be given the option of coming to a flexible working arrangement that benefits both parties. We as employers also do not want to disrupt service by having staff on breaks when they might be needed for preparation or busy periods.

Signature of witness \_\_\_\_\_

Dated: 24/07/2018

**IN THE FAIR WORK COMMISSION  
FOUR YEARLY REVIEW OF MODERN AWARDS – AWARD STAGE: GROUP 4  
(RESTAURANT INDUSTRY AWARD 2010)**

**FWC Matter No.: AM2017/59**

**SWORN STATEMENT OF KRIS RAYMOND BUNDER**

I, Kris Bunder of [REDACTED] in the State of South Australia say as follows:

**Background**

1. I am the business owner of Café Del Giorno (café/restaurant) of Café Developments (SA) Pty Ltd (the company).
2. The business opened in March 2000 in Port Lincoln, South Australia.
3. The company has been a member of Restaurant and Catering Industrial since 2003.
4. I have worked in the (restaurant/catering/café) industry for 34 years.

**Staffing arrangements and operating hours**

5. The company trades Monday to Sunday each week.
6. The operating times for trade are 7:30am to 10:00pm Monday to Saturday and 8am to 10pm Sundays.
7. The company employs 7 full-time staff, and 20 casual staff. This increases to 23 casual staff for the period December to March
8. Café Del Giorno's employ's staff on the following levels as per the restaurant industry award 2010: Full time: Manager, Assistant Manager, Executive Chef, sous Chef, apprentice chefs (3)



Casual: Food & beverage level 2, Food & beverage Level 3, Food & Beverage Level 4, Cook grade 2, Cook Grade 3, Kitchen Hand level 1

**Modern Award issues**

9. The company operates under the *Restaurant Industry Award 2010* (Award).
10. I am aware of and understand the three changes to the Award that RCI is seeking. I will deal with the changes separately in this statement and explain the reasons I support them.
11. The first proposal by RCI seeks to change the definition of liquor service to exclude young people from being paid the higher adult rate when simply serving drinks to a table. The junior would not pour alcohol or dispense it from a tap.
12. At the moment I am of the understanding that the definition in the award 15. Junior employees – 15.1 allows for “all junior employees that are working as liquor service employees are to be paid at the adult rate of pay.” I take this to mean that any employee that is serving alcohol is deemed to be a liquor service employee. This would include a junior 18 year old that is only taking alcohol to the tables.
13. I am aware that there is a matter before the Commission which will affect this clause. I have read the Plain Language Draft that will define what a junior employee is, and what type of employee serves liquor.
14. However, I do not think that the change is sufficient to deal with the issue facing businesses such as ours.
15. The definition of ‘liquor service employee’ needs to be changed, because a junior employee that engages in the delivery of food and beverage should not be included in this definition because they are not the employee that is responsible for the sale of liquor to the customer, only the delivery to the table. The employee that mixes and pours the liquor behind the bar is the person responsible for the responsible service of alcohol. “Liquor service employees” should in my opinion be defined as the employees that pour and mix the liquor behind the bar.

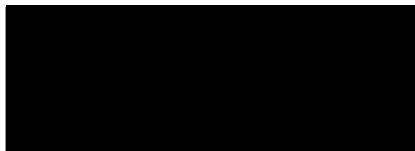
The current proviso in the award is not working for my business because I am not able to utilise junior employees in the table service of beverages. Because we are a fully licensed restaurant we require all of our floor staff to assist in all aspects of table service to the customer. Therefore it is not beneficial to employ juniors at this time as they can only serve food and clear tables. We have avoided employing junior staff for this reason.

We anticipate that if the definition were to be changed it would allow us to employ a number of junior staff. This would not only benefit our business but also allow us to take on more staff and give employment to young members of our community that are driven to be a success and asset to their own community.

16. I support the change to clause 27 of the Award, which would allow our business to pay employees on any day of the week.
17. At the moment, the Award provides for an employer to pay on week days only.
18. My business pays employees on Mondays. However, the restaurant industry in Australia is a 7 day week business and treats each day the same. It is important in my opinion to allow individual employers to process and pay employee's on any particular day. Allowing only week days restricts the employer and the time that they spend behind the scenes working on their business.
19. I support a change that would allow employers to process payroll on any day of the week. This would allow the employer to work on their business at any time. Currently this is restricted to week days only.
20. I support the changes proposed by RCI to clause 32.3 and 32.4 of the Award, which relates to meal breaks. I understand that RCI is seeking to vary the clause to allow employers and employees alike to enter into flexible work arrangements. This would be in the form of an individual flexibility agreement, which is allowed in most awards.

21. The current meal break provisions mean for my business that breaks are at times taken at inconvenient times.
22. The clause should be changed because meal breaks can create problems particularly in the kitchen environment. When the kitchen is busy we have employees that would rather work through their break to get home earlier. If their shift becomes greater because of extra customers I believe that the employee should have the right to make a decision as to whether he or she is to take a break or work through. Protection needs to be put in place so that this definition is not taken advantage of by us the employer so that employees are not exploited. That is why it is important to have a mutual agreement in place, like an individual flexibility agreement.
23. I believe that this would help business like ours reduce our overall wage cost allowing for all employees to finish earlier without impacting on their wage. Working a shift without a 30 minute break would in turn allow them to finish 30 minutes earlier than previously. This would also allow for the staff closing the restaurant to finish at the same time.

Signature of witness



Dated: 24.7.2018