



DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Restaurant & Catering Industry Association of Australia T/A Restaurant & Catering Australia

(AM2020/11)

RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurant industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 31 MARCH 2020

Application to vary the Restaurant Industry Award 2010.

A. Further to decision [[\[2020\] FWCFB 1741](#)] issued by the Full Bench on 31 March 2020, the above award is varied as follows:

1. By inserting Schedule I as follows:

Schedule I—Award Flexibility During the COVID-19 Pandemic

I.1 Schedule I operates from 31 March 2020 until 30 June 2020. The period of operation can be extended on application.

I.2 During the operation of Schedule I, the following provisions apply:

I.2.1 Classifications and duties

- (a) As directed by their employer, where necessary employees will perform any duties that are within their skill and competency regardless of their classification under clause 19—Classifications and Schedule B—Classification Structure and Definitions, provided that the duties are safe and the employee is licensed and qualified to perform them.
- (b) Clause 29—Higher duties will apply to employees engaged on duties carrying a higher rate than their ordinary classification.

I.2.2 Hours of work—full-time and part-time employees

- (a) Subject to clause I.2.2(c), and despite clause 11—Full-time employment and requirements for notice in clause 31.6 (Roster), an employer may direct a full-time employee to work an average of between 22.8 and 38 ordinary hours per week. The employee will be paid on a pro-rata basis. The arrangements for working ordinary hours in clause 31—Hours of work will apply on a pro-rata basis.
- (b) Subject to clause I.2.2(c), and despite clause 12.3(a) (Part-time employment), and the requirements for notice in clause 31.6 (Roster), an employer may direct a part-time employee to work an average of between 60% and 100% of their guaranteed hours per week, or an average of between 60% and 100% of the guaranteed hours per week over the roster cycle.
- (c) Prior to any employer issuing any direction under clause I.2.2(a) or (b) an employer must:
 - (i) consult with the affected employee/s in accordance with clause 8A— Consultation about changes to rosters or hours of work and provide as much notice as practicable; and
 - (ii) if the affected employee/s are members of the United Workers Union, notify the United Workers Union of its intention to implement these arrangements.
- (d) An employee given a direction under clause I.2.2(a) or (b) will continue to accrue annual leave and personal leave, and any other applicable accruals under this award, based on each full-time or part-time employee’s ordinary hours of work prior to the commencement of Schedule I.
- (e) If an employee given a direction under clause I.2.2(a) or (b) takes a period of paid annual leave or personal leave, the payment for that leave will be based on the full-time or part-time employee’s ordinary hours of work prior to the commencement of Schedule I.

I.2.3 Annual leave

- (a) Despite clauses 35.4, 35.5 and 35.6 (Annual leave), an employer may, subject to considering an employee’s personal circumstances, direct the employee to take annual leave with 24 hours’ notice.
- (b) Clause I.2.3(a) does not prevent an employer and an employee agreeing to the employee taking annual leave at any time.
- (c) During the period of operation of Schedule I, instead of taking paid annual leave at the rate of pay required by s.90 of the *Fair Work Act 2009 (Cth)*, an employer and an employee may agree to the employee taking twice as much annual leave at half the rate of pay for all or part of any period of annual leave.

I.2.4 Close-down

- (a) Instead of clause 35.3 (Annual leave), and subject to clause I.2.4(b), an employer may:
 - (i) require an employee to take annual leave as part of a close-down of its operations, or part of its operations, by giving at least one week's notice, or any shorter period of notice that may be agreed; and
 - (ii) where an employee has not accrued sufficient leave to cover part or all of the close-down, the employee is to be allowed paid annual leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.
- (b) Clause I.2.4(a) does not permit an employer to require an employee to take leave for a period beyond the period of operation of Schedule I.
- (c) Where an employee is placed on unpaid leave pursuant to clause I.2.4(a), the period of unpaid leave will count as service for the purposes of relevant award and NES entitlements.

I.2.5 Dispute resolution

Any dispute regarding the operation of Schedule I may be referred to the Fair Work Commission in accordance with Clause 9—Dispute Resolution.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into effect on 31 March 2020. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after 31 March 2020.

PRESIDENT

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