

## **BEFORE THE FAIR WORK COMMISSION**

AM2024/24

Application by Shop, Distributive & Allied Employees' Association

*Application to vary junior rates in the Fast Food Industry Award 2020, the General Retail Industry Award 2020 and the Pharmacy Industry Award 2020*

### **RAFFWU's OUTLINE OF SUBMISSIONS**

1. The Retail and Fast Food Workers Union (**RAFFWU**) makes this submission in AM2024/24. RAFFWU represents the industrial interests of thousands of members covered by the Fast Food Industry Award 2020, the General Retail Industry Award 2020 and the Pharmacy Industry Award 2020.
2. RAFFWU has long held the view that discriminatory wages based on age ought be abolished. Child labour exploitation is a scourge which ought be called out for what it is rather than encouraged by way of massive subsidy borne on the backs of exploited children.
3. To the extent the applications propose such variations, RAFFWU supports the application.
4. However, the applications propose to maintain discriminatory age based wages for workers under the age of 18. We submit there is no basis for such continuing discrimination. We press for all age based discriminatory wages to be abolished from the three Awards.
5. RAFFWU submits the Fair Work Commission is required to eliminate the wage discrimination.

### **International Obligation**

6. Australia was a founding state in the determination of the Universal Declaration of Human Rights. Those rights set the minimum standards by which signatory states would comply in implementing national law.

7. Article 23 lays out critical rights in employment.

**Article 23**

1. Everyone has the right to work, to free choice of employment, **to just and favourable conditions of work** and to protection against unemployment.
2. **Everyone, without any discrimination, has the right to equal pay for equal work.**
3. **Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.**
4. Everyone has the right to form and to join trade unions for the protection of his interests.

8. Article 23, and in particular subsection 2, puts beyond doubt a universal principle of equal pay for equal work without any discrimination.

9. Further, the ratification of ILO Convention 111 ('C111') and later expansion of the ambit of discrimination by the Australian Government to include age reiterates the international obligations upon the Fair Work Commission.

10. In construing the Fair Work Act, the Fair Work Commission may consider any treaty or other international agreement referred to in the Act.<sup>1</sup>

11. The Objects of the Fair Work Act identify at the outset at section 3(a):

(a) providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity **and take into account Australia's international labour obligations**; and

12. We submit the international obligations upon Australia cause the Fair Work Commission to not permit wage discrimination in employment, including on the basis of age.

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<sup>1</sup> *Acts Interpretation Act (Cth)* ss 15AB (2)(d)

### **Prohibition on Discriminatory Terms Not Relevant**

13. We submit the legal fiction created at s 153(3)(a) of the Fair Work Act does not allow abrogation of the overarching principle. That fiction is clearly stipulated to overcome the prohibition at s 153(1). However, it does not override the Modern Awards Objective nor the international obligations imposed on Australia. It ‘merely’ describes that the prohibition at 153(1) does not apply to discriminatory junior rates.
14. RAFFWU is not alleging the inclusion of obviously discriminatory rates in any Award is prohibited by section 153 of the Fair Work Act. RAFFWU submits the inclusion of junior rates *at all* is inconsistent with the Universal Declaration of Human Rights and ILO C111, offends the Objects of the Fair Work Act and undermines the Modern Awards Objective.

### **Modern Awards Objective**

15. The Modern Awards Objective sets the frame for Modern Awards.
16. The Objective includes at (a) and (aa):

- (a) relative living standards and the needs of the low paid; and
- (aa) the need to improve access to secure work across the economy; and

#### *Living Standards & Needs*

17. We submit the living standards and needs of the low paid are demonstrably undermined by discriminatory junior rates. It is notorious that young workers, including those below 18 years of age, must support themselves in many circumstances. This includes in providing the necessities of life as well as contributing to households living in poverty.
18. The very existence of discriminatory wage rates not only offends foundational human rights, it causes the living standards and needs of low paid workers to be suppressed, subverted, undermined and attacked.

19. Junior rates cause young workers, often secondary school students, to have their child labour exploited more often by profiteers. To earn enough income for a loaf of bread, for rent, for water, for electricity, for school uniforms, for medicines and for all the other necessities of life, the child must work more hours. The existence of junior rates forces more children who live in poverty to work more hours to be able to survive.
20. This child labour exploitation impacts poorer children the most. They are more likely to be put to work and for more hours. They are more likely to abandon education to feed themselves and their families. They are more likely to be forced to abandon their education because of junior rates. These facts are notorious.
21. We recognise those same children would still need to work under the capitalist state with the abolition of junior rates. However, they would work as little as 40% of the hours they current work for the same income. It is notorious that this would see more children spending more time in education, with families and in communities. There is only positive benefit from the abolition of junior rates.
22. The claim child labour exploitation provides work opportunities otherwise not afforded children has been espoused by the profiteers of child labour exploitation for centuries. Profiteers of child labour exploitation celebrate the nimble small hands of children, the vulnerability that sees children less likely to raise safety concerns, the insecurity of children that means they are less likely to complain or make demands. Profiteers of child labour exploitation kept children in coal mines and at the looms.
23. A modern democracy should not be staffing its fast food outlets or retail stores with children to send mega-profits, billions of dollars, into the coffers of the rich. To the extent that children are provided an opportunity to learn work skills and share in the community of the workplace, they ought be fairly rewarded by equal pay for equal work, to meet a fair living standard and to meet their needs.
24. While we don't concede any incentive ought be given because the need for incentive does not exist, we submit the legislated wage discrimination of no superannuation for children working less than 30 hours a week is incentive enough to those who profit on child labour exploitation. That discrimination is not the subject of this application and will manifest irrespective the outcome of the application.

*Secure Work*

25. Junior rates negatively distort job security. That has been one of their historical purposes. The other being to occasion windfall profit to certain employers.
26. However, the alleged 'positive' distortion of providing employment opportunity is a simpleton's position. No employer is engaging child labour to provide a work opportunity. They are doing so to maximise profit.
27. The result of the distortion is to cause gross job insecurity to the very children claimed to benefit. Worse, the job insecurity is inflicted on all at the employer and across sectors.
28. We note the Modern Award Objectives have changed since any deep analysis of junior rates. They now place secure work front and centre in the deliberations of the Fair Work Commission.
29. Junior rates cause employers to deliberately favour cheaper labour. To celebrate the birthday of a child in retail or fast food, an employer cuts their hours. It is the most clear reiteration of capitalist exploitation that a child has their hours cut in order for their employer to profit off the cheaper new child behind them.
30. Employers that exploit child labour and pay junior rates are not equal opportunity employers. That is a simple truism. However, those employers also employ simple and sophisticated rostering systems to deploy employees. Notoriously, McDonald's keeps 85% of its workforce in casual employment in order to de-roster employees as they get older. In AM2017/49, an application by AIG, supported by SDA, to diminish job security for fast food workers, a McDonald's franchisee admitted at PN1295 on 16 July 2018 that young employees need to remain in casual employment to avoid higher wage bills:

*So for you to be able to roster fewer hours as they get older they have to have been casual to begin with, don't they?---Yes.*

31. Kmart has employed sophisticated rostering tools to always favour a younger employee wherever possible. These are predicated on the mass casualisation of the Kmart workforce. They and many others are doing the same thing as McDonald's. These types of systems

distort the job security of all workers in retail and fast food. They offend the Modern Awards Objective.

32. Young workers are already less safe at work by virtue of their precarious employment and their age. These facts are notorious. Junior rates increase their vulnerability and precarity, and devalue the relationship with their employer. That is, an exploiter of child labour is *more likely* to view the child worker as an expendable commodity because they will not be employing them in the near future. They will be replaced with the next child.
33. In this way, junior rates cause actual harm to child workers. Employers should be encouraged to build long term relationships with the children they employ. They should be positively compelled to provide children with actual job security. They should not be actively encouraged to make windfall profits at the expense of exploited child labourers. The first step to achieve this is to abolish all junior rates.

### **Summary**

34. We acknowledge the offending of human rights was considered by past junior rates enquiries. We submit the new Act, the new Modern Award Objectives and a new concern for the safety of child labourers compels the Fair Work Commission to revisit all these issues. We submit all junior rates should and must be abolished.

RAFFWU  
6 November 2024