



# DETERMINATION

*Fair Work Act 2009*

s.157—Application to vary a modern award to achieve the modern awards objective

## **Restaurant & Catering Industrial** (AM2021/58)

### **RESTAURANT INDUSTRY AWARD 2020** [MA000119]

Restaurants

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

MELBOURNE, 2 AUGUST 2021

*Restaurant Industry Award 2020 – Renaming of certain classification titles and COVID-19 Pandemic Recovery.*

A. Further to the decision [[2021] FWCFB 4149] issued by the Fair Work Commission on 14 July 2021, the above award is varied as follows:

1. By inserting Schedule AA as follows:

#### **Schedule AA—Classification Structure and Definitions**

Note: To avoid any doubt, for any employee at the introductory level, their duties as stipulated under the current award in Schedule A – Classification Structure and Definition will remain unchanged.

**AA.1** Schedule AA operates from 11 August 2021 until 10 August 2022. The period of operation can be extended on application to the Fair Work Commission.

#### **AA.2 Restaurant/Café Worker Grade 1**

**AA.2.1** Means an employee who is engaged in any of the following:

- (a) picking up glasses; or

- (b) providing general assistance to food and beverage attendants of a higher classification not including service to customers; or
- (c) removing food plates; or
- (d) setting or wiping down tables; or
- (e) cleaning and tidying associated areas; or
- (f) receiving money; or
- (g) cooking breakfasts and snacks, baking, pastry cooking or butchering; or
- (h) general cleaning duties within a kitchen or food preparation area and scullery, including cleaning cooking and general utensils used in a kitchen and restaurant; or
- (i) assisting employees who are cooking; or
- (j) assembling and preparing ingredients for cooking; or
- (k) general pantry duties.

**AA.2.2** In addition to the duties set out in AA.2.1, means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for food or beverages, including cleaning tables; or
- (d) receiving money; or
- (e) attending a snack bar; or
- (f) performing delivery duties; or
- (g) taking reservations and greeting and seating guests.

**AA.2.3** In addition to the duties set out in AA.2.1 and AA.2.2, means an employee who has the appropriate level of training, and who is engaged in specialised non-cooking duties in a kitchen or food preparation area.

**AA.3 Restaurant/Café Worker Grade 2**

**AA.3.1** Means an employee who has the appropriate level of training and is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for both food and liquor, including cleaning tables; or
- (d) receiving money; or
- (e) assisting in the training and supervision of food and beverage attendants of a lower classification; or
- (f) delivery duties; or
- (g) taking reservations and greeting and seating guests; or
- (h) cooking duties such as baking, pastry cooking or butchering.

**AA.3.2** In addition to the duties set out in AA.3.1, means an employee who has the appropriate level of training, which may include a supervisory course, and who has responsibility for the supervision, training and co-ordination of kitchen attendants of a lower classification.

**AA.4 Restaurant/Café Worker Grade 3**

**AA.4.1** Means an employee who has the appropriate level of training, which can include a supervisory course, who:

- (a) carries out specialised skilled duties in a fine dining room or a restaurant; or
- (b) has responsibility for the supervision, training and co-ordination of food and beverage staff or for stock control for one or more bars.

**NOTE:** To avoid any doubt, an employee classified in one of the classifications set out in this Schedule shall perform all the duties of the classification as required by the employer.

**AA.5 Chef stream**

**AA.5.1** Chef grade 1 (tradesperson) means a commi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training, and who is engaged in cooking, baking, pastry cooking or butchering duties.

**AA.5.2** Chef grade 2 (tradesperson) means a demi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties or supervises and trains other cooks and kitchen employees.

**AA.5.3** Chef grade 3 (tradesperson) means a chef de partie or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:

- (a) general and specialised duties, including supervision or training of kitchen employees; or
- (b) ordering and stock control; or
- (c) supervising other cooks and kitchen employees in a single kitchen establishment.

2. By inserting Schedule R as follows:

#### **Schedule R - Award flexibility for COVID-19 Pandemic Recovery**

**R1** The provisions of Schedule R are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and do not set any precedent in relation to award entitlements after its expiry date. Schedule R operates from 11 August 2021 until 10 August 2022. The period of operation can be extended on application to the Fair Work Commission.

**R2** During the operation of Schedule R, the following provisions apply:

#### **R3 Exemption Rate**

NOTE 1: Exemption rate agreements under clause R.3 **only apply** to full time employees paid at Level 5 or 6 rates of pay. This clause does **not** apply to Level 1 to 4 employees.

NOTE 2: Under the NES (see section 62 of the Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.

**R.3.1** An employer and a full time employee (paid at the Level 5 or Level 6 rate of pay) may enter into an agreement to pay the employee no less than 170% of their relevant Level rate of pay each week as set out in clause 18—Minimum Rates of this award (the **Exemption Rate**).

**R.3.2** Where an agreement to pay the Exemption Rate has been made, the following clauses of this award shall not apply:

- (a) clauses 16.5 and 16.6 (meal break);
- (b) clause 21 (allowances);
- (c) clause 23 (overtime rates) but not clause 23.2; and
- (d) clause 24 (penalty rates).

**R.3.3** Where an agreement has been made to pay an employee the Exemption Rate the employee must be paid the Exemption Rate for each hour worked up to and including 57 hours in a week and for hours worked in excess of 57 hours in a week the employee must be paid:

- (a) 150% of the Exemption Rate for the first two hours in excess of 57 hours in the week; and then
- (b) 200% of the Exemption Rate thereafter in the week.

**R.3.4** The Exemption Rate shall be the rate for the purposes of calculating:

- (a) personal leave; and
- (b) annual leave.

**R.3.5** Clause R.3 does not apply to employees classified under the administrative and general stream (Schedule A.4).

**R4 Classification Structure and Definitions**

**R.4.1** Subject to clause R.4.2 an employer may elect to classify all relevant employees in accordance with the classifications set out in Schedule AA in substitution for classifying the employee in accordance with Schedule A.

**R.4.2** An employee who is classified in accordance with Schedule AA shall be paid the minimum rate for the relevant classification in Schedule AA as set out in the table below in substitution for the minimum rates set out in clause 18—Minimum Rates of the award that would otherwise apply:

<b>Column 1 Employee classification</b>	<b>Column 2 Employee stream and grade</b>	<b>Column 3 Minimum weekly rate (full-time employee)</b>	<b>Column 4 Minimum hourly rate</b>
		\$	\$
<b>Restaurant/Café Stream</b>			
Level 2	Grade 1 - Restaurant/Café Worker	805.10	21.19

Level 3	Grade 2 - Restaurant/Café Worker	832.80	21.92
Level 5	Grade 3 - Restaurant/Café Worker	932.60	24.54
<b>Chef stream</b>			
Level 4	Grade 1 - Chef	877.60	23.09
Level 5	Grade 2 - Chef	932.60	24.54
Level 6	Grade 3 - Chef	957.60	25.20

**R5 Substitute Allowance**

Subject to this clause:

**R.5.1** an employer and an employee may enter into an agreement to pay the employee a substitute allowance as below (the **Substitute Allowance**):

<b>Column 1 Employee level</b>	<b>Column 2 Allowance per hour (\$)</b>
	\$
Introductory	1.60
Level 1	1.60
Level 2	1.02
Level 3	0.98
Level 4	0.90
Level 5	1.01
Level 6	1.08

**R.5.2** an employer and at least 75% of the employees in the workplace concerned may agree to pay all of the employees in the workplace a Substitute Allowance as below:

<b>Column 1 Employee level</b>	<b>Column 2 Allowance per hour (\$)</b>
	\$
Introductory	1.60
Level 1	1.60
Level 2	1.02

Level 3	0.98
Level 4	0.90
Level 5	1.01
Level 6	1.08

**R.5.3** Where an agreement to pay the Substitute Allowance has been made in accordance with clause R.5, the following clauses of this award shall not apply:

- (a) clauses 16.5 and 16.6 (meal break);
- (b) clause 21.2 (meal allowance);
- (c) clause 21.3 (split shift allowance);
- (d) clause 21.4 (tool and equipment allowance);
- (e) clause 21.5 (special clothing allowance); and
- (f) clause 21.6 (distance work allowance).

**R.5.4** The Substitute Allowance shall be paid for all purposes of this award.

**R.5.5** The Substitute Allowance is adjusted in accordance with increases to wages.

## **R6 Manner of Application**

**R.6.1** To avoid any doubt, clauses R.3 to R.5 inclusive operate on the following basis:

- (a) **Exemption Rate (R.3):** individual employer and full time employee agreement;
- (b) **Classification Structure and Definitions (R.4):** employer election to apply to all relevant employees in the workplace; and
- (c) **Substitute Allowance (R.5):** individual employer and employee agreement or all employees in the workplace collectively, if at least 75% of the employees agree.

## **R7. Agreement to be recorded in writing**

### **R.7.1 Individual agreements**

Where an employer and employee enter into an agreement under clause Schedule R.3 or R.5 it must:

- (a) be in writing;

- (b) specify, in writing, that either party may withdraw from the agreement by giving 4 weeks' notice;
- (c) be signed by the employer and the employee; and
- (d) state the date the agreement commences operation.

**R7.2 Agreements with at least 75 per cent of employees**

Where an employer and 75% of their employees enter into an agreement under clause R.5.2 it must:

- (a) be in writing;
- (b) be signed by at least one of the employees; and
- (c) state the date the agreement commences operation.

**R8 Termination of Agreement**

**R.8.1** Where an employer and individual employee enter into an agreement under clause R.3, either party may terminate that agreement by giving the other party no less than 4 weeks' notice in writing.

**R.8.2** Where an employer and individual employee enter into an agreement under clause R.5.1 either party may terminate that agreement by giving the other party no less than 4 weeks' notice in writing.

**R.8.3** Agreements made under clause R.5.2 can be terminated by 50% plus one of the employees being covered by the agreement serving 4 weeks' notice on the employer in writing.

**R9 Consultation**

**R.9.1** Prior to initiating any of the provisions in clauses R.3 to R.5, the employer must consult with all employees affected by the proposed change and their representatives (if any).

**R.9.2** For the purpose of the consultation, the employer must:

- (a) Provide to the employees and their representatives (if any) information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) Invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also their representative (if any) to give their views about that impact.

**R.9.3** The employer must consider any views given under clause R.9.2(b).

**R.10 Consent Arbitration**

**R.10.1** An employer who enters into an agreement under the provisions of Schedule R provides consent to a dispute being settled by the Fair Work Commission through arbitration in accordance with clause 34—Dispute resolution and section 739(4) of the Act.

**R.10.2** In arbitrating a dispute, the Fair Work Commission may:

- (a) terminate an agreement made under Schedule R if it determines that it was not entered into genuinely;
- (b) terminate an agreement made under Schedule R if it determines that the employer failed to consult as required by clause R.9;
- (c) require an employer to pay an employee the difference between what they were paid under this Schedule and what they would otherwise have received under this award if the Fair Work Commission determines that any agreement entered into under this Schedule was unfair for an employee (including in circumstances where it is shown that an employee would have earned more if an agreement under this Schedule had not been entered into and the employee had been paid in accordance with the terms of the award); and
- (d) terminate an agreement made under Schedule R if the Fair Work Commission determines that any agreement entered into under this Schedule was unfair for the employee.

3. By updating the table of contents in the award accordingly.

B. This determination comes into operation on 11 August 2021. In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 11 August 2021.

PRESIDENT

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