

IN THE FAIR WORK COMMISSION

Matter No: AM2023/21

**Modern Awards Review 2023 – 2024: Making Awards Easier to Use**

**UNITED WORKERS UNION – SUPPLEMENTARY SUBMISSION ON THE *HOSPITALITY  
INDUSTRY (GENERAL) AWARD 2020***

**Introduction**

1. The United Workers Union (“**UWU**”) refers to the consultation conference on the *Hospitality Industry (General) Award 2020* (“**HIGA**”) that took place on Tuesday 19 March 2024. The UWU makes the following supplementary submissions in relation to proposed variations discussed at that conference relating to the payment of wages, meal allowance, tool and equipment allowance, and public holidays.

**Clauses 23.2 – 23.5 of the HIGA – Payment of wages**

2. The AHA has proposed that clauses 23.2 – 23.5 of HIGA should be removed, and replaced with clause 16.1 of the *Miscellaneous Award 2010*, which provides, “*Payment of wages is dealt with in s 323 of the Act*”. This proposed variation would result in:
  - 2.1. Employees losing the right to be paid on a day other than Friday, Saturday, or Sunday (at clause 23.2).
  - 2.2. Employees losing the right to be paid overtime in circumstances where they have had to wait at work to be paid by cash or cheque for more than fifteen minutes (at clause 23.4).

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<b>Lodged by</b>	Telephone:	0409 579 826
The United Workers Union		
<b>Address for service:</b>	Fax:	N/A
19-37 Greek St, Glebe NSW 2037	Email:	annette.vangent@unitedworkers.org.au

- 2.3. Employees losing the right to be paid prior to taking an accrued or rostered day off, when they are being paid by cash or cheque, and when their pay day falls on their accrued or rostered day off (at clause 23.5).
3. The UWU understands that part of the rationale for the proposed variation was that payment of wages by cash and by cheque is anachronistic. The UWU acknowledges that electronic forms of payment have become increasingly commonplace over recent years, particularly since the COVID-19 pandemic. However, the UWU also recognises that payment of wages by cash is still a practice that occurs across the hospitality industry. Employees who are being paid in cash need the protections provided by clauses 23.2 – 23.5 of the HIGA, which exceed the protections in s 323 of the *Fair Work Act 2009* (Cth). These protections are important for ensuring that employees are not required to attend work on a weekend to collect their wages in cash, that they do not have to spend excessive amounts of non-work time waiting back after a shift to receive their wages in cash, and that they do not have to return to work on a rostered or accrued day off to collect their payment in cash.
4. To the extent that the proposed variation reduces existing entitlements under clause 23 of the HIGA – entitlements which are still relevant to workers in the hospitality industry - the UWU says that it is outside of the scope of the matters to be considered in the Making Awards Easier to Use Stream of the Modern Awards Review 2023 – 2024. Furthermore, the UWU also says that clauses 23.2 – 23.5 are not difficult to understand, or to implement, and that the proposed variation is therefore not required to make the HIGA easier to use.

#### **Clause 26.4(c) - Meal allowance**

5. The AHA has proposed that clause 26.4(c) of the HIGA should be removed.

6. Clause 26.4(c) provides, in summary, that employees are entitled to be paid a meal allowance where they have been advised of a requirement to work overtime, have provided a meal, and have subsequently been informed that the overtime is cancelled.
7. The effect of the proposed variation is that, while employees who work overtime would still be entitled to either a paid meal or a meal allowance, employees who have purchased their own meal in anticipation of working overtime but who have had their overtime cancelled would lose their entitlement to be compensated through the payment of the meal allowance. As this is a reduction in entitlements, it is outside the scope of the Making Awards Easier to Use stream of the Modern Awards Review.
8. Furthermore, the proposed variation is not necessary to make the HIGA easier to use. Clause 26.4(c) is not unclear, ambiguous or difficult to understand, nor is the payment of a meal allowance in the limited circumstances envisaged by clause 26.4(c) difficult to implement.

#### **Clause 26.5 – Tool and equipment allowance**

9. The AHA has proposed that clause 26.5 of the HIGA should be varied so that:
  - 9.1. The entitlement to be paid a tool and equipment allowance of \$1.73 per day (in clause 26.5(a)) would be expanded to cover all employees in the hospitality industry, rather than just cooks and apprentice cooks.
  - 9.2. The entitlement to be reimbursed for equipment which the employee has purchased (at clause 26.5(b)) would be removed.
10. The removal of the right to be reimbursed for equipment which the employee has purchased is a significant reduction in entitlements, and as such, is beyond the scope

of this stream of the Modern Awards review. The tool and equipment allowance for cooks and apprentice cooks in clause 26.5(a) is appropriate for the needs of those employees, who (more often than other hospitality employees) purchase their own equipment. Clause 26.5(a) is not difficult to understand or implement. It does not require amendment in order to make the HIGA easier to use.

### **Clause 35.3 – Public holidays**

11. The AHA has proposed that clause 35.3 of the HIGA should be varied to provide that full-time employees whose ADO or RDO falls on a public holiday are entitled to be paid for that day at their usual rate of pay. The UWU does not consider that clause 35.3 of the HIGA is difficult to understand or to implement in its current form, and therefore does not consider that the variation proposed by the AHA is necessary to make the HIGA easier to use.

### **Classification structure**

12. The UWU notes that the AHA was invited to provide further submissions on the classification structure in the HIGA within fourteen days of the consultation conference (i.e. by 2 April 2024). The UWU proposes to comment on those submissions when they become available.

**Filed on behalf of the**

**United Workers Union**

**26 March 2024**