



Restaurant
& Catering

SAVOUR
AUSTRALIA



26 October 2016

Fair Work Commission
Level 10, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011
Attention: Associate to Vice President Hatcher

By email: Chambers.Hatcher.VP@fwc.gov.au
Cc: AMOD@fwc.gov.au

Dear Associate,

4 Yearly Review of Modern Awards— Casual employment (AM2014/197) and Part-time employment (AM2014/196)

We refer to the Directions issued by the Vice President on 2 September 2016 and to submissions filed on behalf of RCI on 7 October 2016, in response to the AHA's claim to vary the part-time provision in the *Hospitality Industry (General) Award 2010*.

RCI seeks to amend a minor aspect of its submissions in response to AHA's submissions, and would also like to take this opportunity to respond to the matters raised by United Voice in its Submissions in reply filed on 13 October 2016. Accordingly, RCI respectfully request that the enclosed Amended Submissions in Reply be accepted for filing.

We note that this matter is listed for closing submissions on Thursday, 27 October 2016. Unless the Commission requires RCI to assist with any further information in addition to the matters outlined in RCI's Amended Submission in Reply, RCI will not be appearing to make oral submissions on Thursday, 27 October 2016.

Please note that RCI continues to be represented by Counsel in respect of United Voice's overtime provision claim.

Yours sincerely,

RESTAURANT & CATERING INDUSTRIAL



RESTAURANT & CATERING INDUSTRY ASSOCIATION

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HOSTPLUS

IN THE FAIR WORK COMMISSION

**FOUR YEARLY REVIEW OF MODERN AWARDS
AWARD STAGE
HOSPITALITY INUSTRY (GENERAL) AWARD 2010
RESTAURANT INDUSTRY AWARD 2010
MATTER NO.: AM2014/196 & AM2014/197**

**FINAL SUBMISSIONS IN REPLY
ON BEHALF OF RESTAURANT AND CATERING INDUSTRIAL
26 7 OCTOBER 2016**

Background

1. These submissions are made in response to the Fair Work Commission's Directions on 2 September 2016, in respect of the claim filed by the Australian Hotels Association to vary the part-time provision in the *Hospitality Industry (General) Award 2010*.
2. Restaurant & Catering Industrial (**RCI**) make these submissions on behalf of its members who are employers in the catering industry.
3. It is evident from the material brought before the Commission, in written as well as oral submissions, in the casual employment and part-time employment matters that a substantial number of employers share a common experience regarding the inflexibility of part-time provisions in their respective awards, which ultimately results in employers opting to employ

casual workers over part-time workers. RCI similarly argued this point in the ACTU Common Claims, in respect of the *Restaurant Industry Award 2010*, that a change in the parttime provision is essential, in order to make part-time employment a more attractive option for employers and employees alike.

AHA Claim

4. In respect of AHA’s claim as outlined in its submissions dated 16 September 2016 (“**AHA Submissions**”), RCI notes that the basis upon which the AHA seek to vary the part-time provision in the hospitality award accords with the reasoning outlined in paragraph 3 above, and is supported by evidence given by AHA’s witnesses.¹

5. It was also acknowledged by some of AHA’s witnesses that employers consider part-time employment to be desirable in terms of ensuring that there is better certainty in employees’ dedication to their role, availability to work agreed hours, and providing a sense of stability to employees,² but that the inflexibility of the existing part-time provision deters employers and employees from utilising this type of employment.³

6. AHA have submitted a further amended draft determination, which incorporates the Commission’s proposed part-time clause, issued on 2 September 2016.

RCI Position

7. RCI agrees with the proposition put by the AHA that an amendment of the part-time provision is necessary to achieve the modern awards objective.⁴ and in doing so, relies upon similar reasoning it adopted in its response to the ACTU’s Common Claims in respect of the *Restaurant Industry Award 2010*.⁵

¹ Paragraphs 18 to 39 of the AHA Submissions.

² Outlined in paragraph 26 of the AHA Submissions.

³ Paragraphs 19, 21, 32 and 34 of the AHA Submissions.

⁴ Paragraph 5 of AHA Submissions.

⁵ RCI Submissions dated 5 August 2016.

8. However, it is important to note that in respect of the catering industry, the need for employers in this industry to have the flexibility to engage workers to suit the operational needs of their business is even greater than the flexibility required with restaurant and cafe businesses, and hotels and accommodation businesses. In this regard, it is noted that the operational requirements of a catering business, is more similar to a restaurant or café business, due to the type of services provided, and the highly variable and seasonal demands which some restaurants and café business also succumb to.
9. In relation to the catering sector, it is commonly known that the winter months are not likely to attract a demand for catering services, save for the occasional Saturday event, compared to the warmer months, when catering businesses are likely to experience a spike in demand. By and large, catering businesses are driven by consumer demand and bookings, which is the reason there is a greater need for flexibility in the part-time provision, to make this type of employment a more attractive option for employers in this industry. This would likely achieve a healthy balance of workers employed as part-time and casual employees.
10. In response to some of the witness statements submitted by the AHA (briefly mentioned in paragraph 5 above), save for statements referring to the inflexibility of the current part-time provision and its deterrence on employers hiring part-time workers, it is important to note that other justifications provided by these witnesses (in amending the part-time provision in the hospitality award), such as the desire to provide stability to employees, would not be readily applicable to employers in the catering industry. As mentioned above, the catering industry is driven by consumer demand. As such, employers would be very limited in the stability and regularity of hours that they would be able to offer.
11. In relation to AHA's proposed further amended draft determination,⁶ RCI does not agree with the inclusion of the following sub-clauses:
 - a) First point of clause 12(b), which state:

⁶ Outlined in Annexure C of AHA Submissions.

“• is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;”

b) Sub-clause 12(c)(ii):

“(ii) the days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed hours (the employee’s availability).”

12. RCI does not agree with the inclusion of the above clause on the basis that it is in fact more restrictive. The above creates a more onerous obligation on the part of employers, and seeks to include a new requirement to roster a part-time employee for a minimum of eight hours per week, whereas the current provision defines a part-time employee as someone who works less than 38 hours per week. Accordingly, RCI respectfully seek that the current sub-clause 12.2(a) be maintained, which states:

“(a) works less than full-time hours of 38 per week;”

13. In relation to AHA’s proposed further amended draft determination,⁷ which incorporates the Commission’s proposed amended part-time provision⁸ in respect of the *Hospitality Industry (General) Award 2010*, RCI submits that the AHA’s proposed part-time provision, does not cure the issue of inflexibility of the current part-time provision. In particular, the requirement in sub-clause 12(c)(ii):

~~“(c) At the time of engagement the employer and the part-time employee will agree in writing upon:~~

~~(ii) the days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed hours (the employee’s availability).~~

14. RCI further submits that the above does not remove the strict requirements of a ‘contracted roster’, relating to specificity of working hours. In this regard, RCI recommends that a more appropriate alternative to the proposed sub-clause 12(c)(ii) above should read:

⁷ Outlined in Annexure C of AHA Submissions.

⁸ Issued by the Commission on 2 September 2016.

“(c) At the time of engagement, the employer and employee will agree on the employee’s availability of hours and will specify in writing atleast the hours of availability for each day of the week.”

15. RCI confirms that it does not otherwise raise any issues in respect of the remainder of the proposed further amended draft determination filed by the AHA.
16. In response to the Submissions in reply filed by United Voice on 13 October 2016 in these proceedings, RCI submits that the proposed part-time provision contained in Annexure A of its submissions further exacerbates the inflexibility of the current part-time provision in the hospitality award. Instead of the eight hour minimum engagement of a part-time employee per week, as proposed by the Commission and the AHA, United Voice seeks to increase this to a ten hour minimum engagement per week.
17. Further, the proposed changes by United Voice, contained in paragraphs 12(d)-(g) would create unnecessary administrative burden for employers who are largely small business owners, in an industry that is labour intensive, and does not have the luxury of sophisticated administrative processes.
18. RCI respectfully request that in considering the AHA’s claim to amend the part-time provision in the hospitality award, as well as the proposed alternative provision by United Voice, the Commission should have regard to the various factors contained in sub-section 134(1), in particular, the likely impact of any variation on business, including on productivity, employment costs and the regulatory burden (s134(1)(f)), and the impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (s134(1)(h). The imposition on employers which would result from the changes proposed by the Commission, the AHA and United Voice would have impacts upon business, and may have broader implications.
19. RCI considers that should its the above proposal contained in paragraph 14 above be adopted, this would address the difficulties currently faced by employers in deciding to employ

workers on a part-time arrangement. This would lead to employers being open to employ workers on a part-time basis, which would even out the number of part-time and casual employees in the workforce. For this reason, we urge the Commission to consider the proposal advanced by RCI on behalf of its members.

20. Finally, RCI objects to the new claim by United Voice as outlined in paragraphs 28 and 29 of their submissions dated 13 October 2016 (initially raised in their submissions dated 6 October 2016) to increase the minimum engagement of casual employees from two hours to three hours in the hospitality awards, in particular the *Restaurant Industry Award*, in the event that the ACTU is not ultimately successful in its claim to increase minimum engagement to four hours. In making their claim, United Voice seeks to rely on the existing body of evidence provided in these proceedings.

21. Parties were directed by the Commission to file initial notice of their claims by way of submissions in March 2015. Countless procedural steps have been undertaken, together with materials filed by the Commission and interested parties since that time. To say that United Voice is out of time in raising its new claim is a gross understatement. RCI submits that it would be entirely inappropriate for the Commission to give any consideration to this new claim. If the Commission is minded to allow United Voice to pursue its claims at this late stage, such an opportunity should similarly be provided to all parties who would have otherwise pursued claims in their respective awards, but for lack of time. To not do so would be a denial of procedural fairness to what would likely be a large number of interested parties across various industry sectors.