

IN THE FAIR WORK COMMISSION

**FOUR YEARLY REVIEW OF MODERN AWARDS
AWARD STAGE
HOSPITALITY INUSTRY AWARD 2010
MATTER NO.: AM2014/196**

**FINAL SUBMISSIONS IN REPLY
ON BEHALF OF RESTAURANT AND CATERING INDUSTRIAL
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 part-time 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.

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.

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
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 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.

⁴ Paragraph 5 of AHA Submissions.

⁵ RCI Submissions dated 5 August 2016.

11. In relation to AHA’s proposed further amended draft determination⁶ which incorporates the Commission’s proposed amended part-time provision⁷ in respect of the *Hospitality Industry (General) Award 2010*, RCI submits that the proposed part-time provision, does not cure the issue of inflexibility of the 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**).*

12. RCI 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 above should read:

“(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.”

13. 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.
14. RCI considers that should the above proposal 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.

⁶ Outlined in Annexure C of AHA Submissions.

⁷ Issued by the Commission on 2 September 2016.