



30 May 2018

The Honourable Justice Ross AO, President  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [Chambers.Ross.j@fwc.gov.au](mailto:Chambers.Ross.j@fwc.gov.au); [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Associate,

**AM2016/15, AM2014/284 Restaurant Industry Award 2010 and AM2014/272 Hospitality Industry (General) Award 2010- Plain language Re-Drafting**

We write in response to the Decisions<sup>1</sup> made 21 May 2018 in relation to the plain language redrafting of the *Restaurant Industry Award 2010* ('Restaurant Award') and the *Hospitality Industry (General) Award 2010* ('Hospitality Award').

References within this letter are to the relevant Exposure Drafts dated 22 May 2018, unless otherwise indicated.

Restaurant Award

Parties were invited to comment on changes to clauses 10, 11, 24, 26 and 18 of the Revised Plain Language Exposure Draft by 30 May 2018.

United Voice makes the following comments:

**Clause 10 –Part time employment**

Clause 12.3(a) of the Restaurant Award states: "*The number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (the guaranteed hours).*"

Clause 10.4(a) states: "*The number of hours of work guaranteed to the employee each week (or, if the employer operates a roster, over the roster cycle) (the guaranteed hours).*"

The reference to an employer ensuring an employee is paid for their guaranteed hours has been removed. The reference is important in ensuring that an employer is aware that the guaranteed hours are the minimum number of hours that the employee will be paid each week or roster cycle.

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<sup>1</sup> [2018] FWCFB 2559, [2018] FWCFB 2710

We propose that clause 10.4(a) is amended as follows: *“The number of hours of work guaranteed and to be paid to the employee each week (or, if the employer operates a roster, over the roster cycle) (the guaranteed hours).”*

## **Clause 11 –Casual employment**

Clause 13.3 of the Restaurant Award states: *“On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours’ work.”*

Clause 11.4 states: *“The minimum daily engagement for a casual employee is 2 consecutive hours.”*

The current clause ensures a casual employee will be paid for a minimum of 2 hours in a situation in which they are required to attend work for a 2 hour shift, but then are requested to leave work early at the initiative of the employer. Clause 11.4 states that the minimum daily engagement is 2 consecutive hours but is ambiguous as how a casual employee would be paid if the employer required them to leave work early. The current wording should be retained.

## Hospitality Award

Parties were invited to comment on changes to clauses 23.5, 30.5, 10 and 16 of the Revised Plain Language Exposure Draft by 30 May 2018.

United Voice makes the following comments:

## **Clause 16 – Breaks**

### Clause 16.2

Under clauses 31.2(a), (b) and(c) of the Hospitality Award, employees are entitled to an unpaid break of *‘no less than 30 minutes’* in the given situations.

Clause 16.2 has reduced the employee entitlement to a meal break, by stating that employees who work more than 6 hours and up to 8 hours, more than 8 hours and up to 10 hours and more than 10 hours are entitled to *‘30 minute unpaid meal break’*. Some employees may prefer to take a longer break, and the current award facilitates this by stating that the break will be *‘no less than 30 minutes’*. The wording in clause 16.2 does not indicate that there is scope for a longer break to be arranged.

We propose that clause 16.2 is amended to state *‘An unpaid meal break of no less than 30 minutes’* in rows 2-4 of Table 2.

### Clause 16.3

Under clauses 31.2(b) and (c) of the current award, it is stated that *‘breaks should be spread evenly across the shift.’*

Clause 16.3 states that *‘When the employer rosters an employee’s breaks, they must make all reasonable efforts to ensure that the breaks are spread evenly across the employee’s shift.’*

Clause 16.3 alters the entitlement to evenly spread breaks and introduces a new concept of *'reasonable effort'* on part of the employer to the clause. Having an even spread of breaks across a shift is important in ensuring employees have a proper opportunity to rest and recover. Under clauses 31.2(b) and (c) of the current award, there is an obligation on employers to spread breaks evenly across the shift. The concept of an employer making *'reasonable effort'* introduces a level of subjectivity and uncertainty that dilutes an employee's entitlement to have breaks spread evenly across a shift.

We propose clause 16.3 is amended to state *'When the employer rosters an employee's breaks, they must ensure that the breaks are spread evenly across the employee's shift.'*

We also refer to our comments in relation to clause 10 and 11 of the Restaurant Award and note that the same issues arise in respect of the Hospitality Award.

If you have any questions regarding this matter, please feel free to contact me.

Regards,

Natalie Dabarera  
**Industrial Officer**  
United Voice National Office  
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