



# Chefs On The Run

Australia's Best Known Supplier of Hospitality & Catering Professionals

[www.chefsontherun.com.au](http://www.chefsontherun.com.au)

4 December 2017

Fair Work Commission

Re: 4 yearly review of modern award – AM2017/51

Dear Commissioners,

I am writing with respect to the recent decision of the Full Bench Ref AM2017/51. I wish to make a submission to the Commission based on what I believe will be adverse impacts of the decision on a number of parties.

Whilst both I and my company, Chefs On The Run, are wholly supportive of initiatives that benefit employees in our Industry, I believe that the current review decision has the potential to adversely impact the rights and earning potential of casual employees, if the proposed changes are made without some caveats.

Chefs On The Run is an employment agency that I started in January 1990. We supply clients nationally and have offices in Melbourne, Sydney and Brisbane. In any year we employ up to 2000 casual hospitality personnel and they are supplied to a broad range of clients in the full spectrum of the hospitality & catering industries, including aged care and mining. We are passionate about our industry, concerned at the growing lack of (particularly) chefs available in Australia and are 100% committed to ensuring that employees' rights are upheld.

As such, and given the nearly 28 years we have been supplying industry, I believe that there may be some unintended consequences on the rights and ability to earn of employees, should the Commission's recent decision be given force, as currently drafted. Specifically –

- Casual employees who are working at a range of sites and need to work more than the 38 hours that has been set as a threshold to satisfy their requirements for income will be disadvantaged. Firstly, an organisation such as ours will be unable to offer them the hours that they need, because the penalty rates imposed on hours over 38 will (a) need to be on-charged to clients, (b) be impossible to calculate in terms of which client actually incurs the 'additional hours' and (c) this will mean we will simply have to stop offering them shifts as soon as their weekly total approaches 38 hours. To be clear, casuals working for Chefs On The Run opt in to shifts on a per-shift basis – and are under no obligation to accept any shift(s). They choose the hours they want, week-to-week or even day-to-day. Should we be unable to offer them more than 38 hours without penalty rates becoming applicable, they can, of course, work for another agency – but will be penalised due to their inability to claim the 'General Exemption' on their wages – and so receive significantly less net pay than they need, to survive.
- Indeed, it is unclear whether it would be legal for another agency to offer them additional hours – as they would then be exceeding 38 hours, but the agency would have no way of knowing the actual threshold of hours being worked by any individual. Whilst the number of casuals wishing to work more than 38 hours per week is probably only 5% of our Brigade, they are among our best workers and also among the most professional. They depend on the flexibility of working more when their kids are at school and less when the holidays are on to make ends meet.
- Casual employees working on a 'Fly In Fly Out' (FIFO) basis will be in a position where almost every variant of such arrangements that we have seen will mean they exceed the 38 hour threshold. This is likely to mean that primary industry (primarily mining in WA, Qld & NSW) will be unlikely to offer legitimate services such as ours any bookings – due to the significant increase in cost should penalties be payable for hours in excess of 38. To place this in context, we have a range of casuals who queue up when work of a FIFO nature is available. Typical work scenarios include 2 x 70 hour weeks, then 1 week off (the staff are flown in and out for each session of

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shifts) or sometimes 4 x 70 hour weeks, with 2 weeks off. The casuals who do this work enjoy the large blocks of free time when they aren't working and the very substantial money they earn when they are working. The cost of flights and accommodation means that these long weeks are necessary to make it economic for the mining companies – and the casuals who choose this type of work love the arrangement.

As mentioned above, we are strong advocates of looking after the individuals who do casual work for us – and we believe that, as drafted, the proposed changes will disadvantage a significant number of people who do want to work longer hours – because we will not be able to give it to them, given that clients will find it uneconomic to be paying penalty rates subject to the total hours worked exceeding 38 in a week (regardless of where they have been worked).

On this basis, we have thought of two possible solutions that may provide a mechanism to provide a way to address our concerns, without in any way disadvantaging the casual employees who want to exceed the 38 hour limit –

- Provide an exception for agencies such as ours – whereby if a casual is working at multiple sites and is opting in to shifts with no obligation, the 38 hour threshold can be waived; or
- Create a proforma consent/request for such casual employees to exceed the 38 hour threshold if they want to and forego penalty rates on hours in excess of 38 – but in no way impacting on the normal penalty rates applying to shifts over 12 hours, time of day or days of the week. Such statement to be sworn, placed on the employee's file and be renewed periodically.

I will gladly provide more information and would value the opportunity to enter a more detailed discussion with you on this matter, but have summarised our thinking above in the interests of getting a submission to you by the deadline. Proceeding with the currently proposed Award review will, in our opinion, disadvantage a number of employees and we would value the opportunity to address this set of circumstances.



Simon Bailey  
Chairman