



Restaurant
& Catering

SAVOUR
AUSTRALIA



21 January 2020

Chambers of Justice Ross, President
Fair Work Commission
Level 4/11 Exhibition Street
Melbourne VIC 3000

By Email: amod@fwc.gov.au

Dear Associate,

RE: 4 year review of modern awards - [2019] FWCFB 8380

I refer to the above Decision (“the Decision”) issued by the Fair Work Commission (“the Commission”) on 13 December 2019. The Decision relates to an issue regarding the calculation of apprentice hourly wage rates contained in the draft variation determinations previously issued by the Commission (see: [2018] FWCFB 7263; [2019] FWCFB 6092; [2019] FWCFB 7035).

Restaurant & Catering Australia (“R&CA”) is the national industry association representing the interests of more than 47,000 restaurants, cafés and catering businesses across Australia. The café, restaurant and catering sector is vitally important to the national economy, generating over \$37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector’s operating environment. R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the restaurant experience to the public.

The R&CA has noted the substantive issues regarding the calculation of apprentice rates in the Decision. In brief, a **time-based progression** is applied as the method of calculation under the *Restaurant Industry Award 2010* (“Restaurant Award”) while a **competency-based progression** is applied in the draft variation determinations under the same Award. As such, a difference in wage rates is shown in the table below:



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Restaurant Award comparison time-based progression and competency-based progression hourly rates

Year	Hourly rate	Stage	Hourly rate	Difference
First Year (55%)	12.48	Stage 1 (55%)	12.49	+ 1 cent difference
Second Year (65%)	14.75	Stage 2 (65%)	14.76	+ 1 cent difference
Third Year (80%)	18.16	Stage 3 (80%)	18.16	No difference
Fourth Year (95%)	21.56	Stage 4 (95%)	21.57	+ 1 cent difference

Similarly, under the *Hospitality Industry (General) Award 2010* (“Hospitality Award”), there is a discrepancy in the method of calculation of wage rates for cooking apprentices. Under the Hospitality Award, the calculation is based on a **standard weekly rate** while the draft variation determination provides for a calculation by way of a **standard hourly rate**. While both the Award and the determination applies a time-based progression method of calculation, this discrepancy nevertheless results in a +1 cent difference for first, second and fourth year apprentices under the draft variation determination.

It is noted that the Commission, at [18] of the Decision, has formed a provisional view in favour of a time-based progression as the calculation method for both Awards by applying the following calculation method:

(applicable weekly rate multiplied by applicable apprentice percentage) divided by 38.

The Commission has invited any party opposing the Commission’s provisional view to file a submission by 4.00pm on 17 January 2020.

We firstly apologise for the filing of these submissions out of time.

We have reviewed the Decision and support the Commission’s provisional view to apply a time-based method of calculation (over a competency-based method of calculation) to ensure consistency in the method of calculation in both the Restaurant and Hospitality Awards. The R&CA has further noted the following:

1. The difference in pay is minimal across both Awards; and
2. A competency-based method of calculation may only be applied in certain States and Territories and, where such method of calculation is applied, it is to operate together with the time-based method of calculation.

In these circumstances, it may be of benefit to ensure that a single method of calculation is applied in the interests of consistency. This would also support the Modern Award objective, in particular s 134(1)(g) of the *Fair Work Act 2009* (Cth).

We thank the Commission for considering the recommendations outlined in this submission and we are prepared to assist the committee in whatever way is needed to assist in the preparation of recommendations to the government.

If you wish to discuss R&CA's views further, do not hesitate to contact Victor Song by email at victor@r&ca.asn.au.

We thank you again for the opportunity to make this submission.

Regards

A handwritten signature in black ink, appearing to be 'Wes Lambert', written in a cursive style.

Wes Lambert CPA FGIA MAICD

Chief Executive Officer

Restaurant and Catering Australia