



# DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards —Casual employment and Part-time employment**

(AM2014/196 and AM2014/197)

### **RESTAURANT INDUSTRY AWARD 2010**

[MA000119]

Restaurant industry

VICE PRESIDENT HATCHER  
SENIOR DEPUTY PRESIDENT HAMBERGER  
DEPUTY PRESIDENT KOVACIC  
DEPUTY PRESIDENT BULL

SYDNEY, 22 DECEMBER 2017

*4 yearly review of modern awards - common issue - part time employment and casual employment - Restaurant Industry Award 2010 - correction.*

A. The determination issued by the Full Bench on 12 December 2017 [[MA000119 PR598487](#)] is corrected as follows:

1. By deleting item A.1 and inserting the following:

“1. By deleting clause 12 and inserting the following:

### **12. Part-time employment**

**12.1** An employer may employ part-time employees in any classification in this award.

**12.2** A part-time employee is an employee who is employed in a classification in **Schedule B—Classification Structure and Definitions** and who:

- (a) 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) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- 12.3** At the time of engagement the employer and the part-time employee will agree in writing upon:
- (a) 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**); and
  - (b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).
- 12.4** Any change to the guaranteed hours may only occur with the written consent of the part-time employee.
- 12.5** The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with clause 31.6, provided that:
- (a) the employee may not be rostered for work for any hours outside the employee's availability;
  - (b) the employee must not be rostered to work in excess of eleven and a half or less than 3 hours in a day; and
  - (c) the employee must have two days off each week.
- 12.6** Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.
- 12.7** Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).
- 12.8** All time worked in excess of:
- (a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
  - (b) the maximum hours limitations specified in clause 31.2; or
  - (c) the employee's rostered hours;

will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**.

- 12.9** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.
- 12.10** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- 12.11** A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.”

B. This determination comes into operation from 1 January 2018. In accordance with s.166(5) of the *Fair Work Act 2009* this item does not take effect until the start of the first full pay period that starts on or after 1 January 2018.



VICE PRESIDENT

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