

MA000119 PR716106

The attached document replaces the document previously issued with the above code on 23 January 2020.

In Item 5 the number “16.4(a)” is deleted from the note at the end of 32.4 and replaced with “32.4(a)”.

Modern Awards, Economics and Research Section

On behalf of the Associate to President Ross

Dated 23 January 2020



DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2017/57)

RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurant industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT MASSON
COMMISSIONER LEE

MELBOURNE, 23 JANUARY 2020

4 yearly review of modern awards - Restaurant Industry Award 2010 - substantive issues.

A. Further to the Full Bench decisions issued by the Fair Work Commission on 12 December 2018 [\[2018\] FWCFB 7263](#), 6 September 2019 [\[2019\] FWCFB 6092](#), 23 October 2019 [\[2019\] FWCFB 7035](#), 13 December 2019 [\[2019\] FWCFB 8380](#) and 21 January 2020 [\[2020\] FWCFB 278](#), the above award is varied as follows:

1. By inserting the words “, excluding clause 32” after the word “performed” and before the word “; or” in clause 7.1(a).
2. By inserting a new clause 14.12 as follows:

14.12 Competency based progression

- (a) For the purpose of competency based wage progression in clause 20.2 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:
 - (i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 20.2 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and
 - (ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and

- (iii)** either:

 - (A)** the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
 - (B)** the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.
- (b)** If the employer disagrees with the assessment of the RTO referred to in clause 14.12(a)(iii)(B) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.
- (c)** For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d)** The apprentice will be paid the wage rate referred to in clause 14.12(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 14.12(a)(iii) or on a date as determined under the dispute resolution process in clause 14.12(b).
- (e)** If the apprentice disagrees with the assessment of the RTO referred to in clause 14.12(a), and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the apprentice may refer the matter to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

3. By deleting clause 20.2 and inserting the following:

20.2 Apprentice wages

(a) Minimum wages

- (i) A person who has completed a full apprenticeship for which there is a trade qualified classification provided for in this award, must be paid no less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.2(a)(iii) is applicable an employee will be paid in accordance with the following table:

	Percentage of the rate prescribed in clause 20.1 for a Cook grade 3	Minimum weekly wage	Minimum hourly wage
	%	\$	\$
1st year	55	474.38	12.48
2nd year	65	560.63	14.75
3rd year	80	690.00	18.16
4th year	95	819.38	21.56

(iii) Competency based wage progression

Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise, an employee apprenticed in a trade after 23 January 2020 will be paid the percentage of the standard weekly rate divided by 38 for each hour worked, in accordance with the following table:

(A) Four year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard weekly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after	65

Stage of apprenticeship	Minimum training requirements on entry	% of the standard weekly rate
	commencing the apprenticeship, whichever is the earlier	
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 2, whichever is the earlier	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 3, whichever is the earlier.	95

(b) Proficiency payments – cooking trade

(i) Application

Proficiency pay as set out in clause 20.2(b)(ii) will apply to apprentices who have successfully completed their schooling in a given year.

(ii) Payments

Apprentices must receive the rate of pay of a qualified cook during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:

(1) one occasion only:

- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;

- thereafter, the standard hourly rate.

(2) on two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(3) on all three occasions:

- for the entire fourth year, the standard hourly rate.

(c) Adult apprentices

- (i) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the rate prescribed for a Cook grade 3, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (ii) The minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 20.1, or the rate prescribed by clause 20.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (iii) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 20.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

4. By deleting clause 24.3(a) – clothing, equipment and tools allowance and inserting the following:

- (a) Where a cook or apprentice cook is required to use their own tools (and is not in receipt of a tool allowance), the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum of \$8.49 per week.

5. By deleting clause 32 – Breaks and inserting the following:

32. Breaks

32.1 Clause 32 deals with meal breaks and rest breaks and gives an employee an entitlement to them in specified circumstances.

32.2 Frequency of breaks

An employee who works the number of hours in any one shift specified in column 1 of **Table 2—Entitlements to meal and rest break(s)** is entitled to a break or breaks as specified in column 2.

Table 2—Entitlements to meal and rest break(s)

Column 1 Ordinary Hours worked per day	Column 2 Breaks
5 or more and up to 10	<p>An unpaid meal break of at least 30 minutes (to be taken after the first hour of work and within the first 6 hours of work or in accordance with clause 32.4).</p> <p>If the employee is rostered to take an unpaid meal break later than 5 hours after starting work, one additional 20 minute paid meal break (to be taken after the first 2 hours of work and within the first 5 hours of work).</p>
More than 10	<p>An unpaid meal break of at least 30 minutes (to be taken after the first hour of work and within the first 6 hours of work or in accordance with clause 32.4).</p> <p>If the employee is rostered to take an unpaid meal break later than 5 hours after starting work, one additional 20 minute paid meal break (to be taken after the first 2 hours of work and within the first 5 hours of work).</p> <p>2 additional 20 minute paid rest breaks.</p>

32.3 When the employer rosters an employee’s rest breaks, they must make all reasonable efforts to ensure that breaks are spread evenly across the employee’s shift.

32.4 Agreement as to time of unpaid meal break

- (a) An employer and an employee may agree that an unpaid meal break is to be taken after the first hour of work and within the first 6 and a half hours of work (a 'facilitation agreement').
- (b) An agreement must be made after the start of the employee's shift and within the first 5 hours of the work to which it applies.
- (c) The employee or the employer may withdraw from an agreement within the first 5 hours of the work to which it applies.

NOTE: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make an agreement under clause 32.4(a).

32.5 Employer to pay higher rate if break not allowed at rostered time

If the employer does not allow the employee to take an unpaid meal break at the rostered time (or at the time agreed under clause 32.4), then the employer must pay the employee 50% of the employee's ordinary hourly rate extra:

- (a) from when the meal break was due to be taken;
- (b) until either the employee is allowed to take the break or the shift ends.

32.6 Employer to pay higher rate if break not allowed and no rostered time

If the employer does not allow the employee to take an unpaid meal break and there is no rostered time for the break, then the employer must pay the employee 50% of the employee's ordinary hourly rate extra:

- (a) unless an agreement under clause 32.4 applies, from the end of 6 hours after starting work until either the employee is allowed to take the break or the shift ends; or
- (b) if an agreement under clause 32.4 applies, from the end of 6 and a half hours after starting work until either the employee is allowed to take the break or the shift ends.

32.7 Additional rest break

An employer must give an employee an additional paid rest break of 20 minutes if the employer requires the employee to work more than 5 continuous hours after an unpaid meal break.

32.8 Additional rest break after overtime

An employer must give an employee an additional 20 minute paid break if the employer requires the employee to work more than two hours' overtime after completion of the employee's rostered hours.

6. By deleting clause 39 and inserting the following:

39. Deductions for breakages or cashiering underings

39.1 Right to make deductions

Subject to clauses 39.2 and 39.3, an employer must not deduct any sum from the wages due to an employee under this award in respect of breakages or cashiering underings except in the case of wilful misconduct.

39.2 Deductions to be reasonable and proportionate

Any deduction made under clause 39 must be reasonable in the circumstances and proportionate to the loss suffered by the employer.

39.3 Deductions for employees under 18 years of age

Deductions must not be made under clause 39 from the wages of an employee who is under 18 years of age unless the deductions have been agreed to in writing by the employee's parent or guardian.

7. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from 23 January 2020. In accordance with s.165(3) of the Fair Work Act 2009 these items do not take effect until the start of the first full pay period on or after 23 January 2020.

PRESIDENT

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