



27 January 2021

IN THE FAIR WORK COMMISSION

FWC MATTER: AM2020/103
Award Flexibility - Hospitality and retail sectors
Restaurant Industry Award 2020

APPLICANT: Restaurant and Catering Industrial

OUTLINE OF PROPOSAL ON BEHALF OF RESTAURANT AND CATERING INDUSTRIAL

1. This submission is in response to the Fair Work Commission Statement [2020] FWC 6636 issued on 10 December 2020 (the “**Statement**”) in relation to the review process for the hospitality and retail sector Awards.
2. In response to that Statement, Restaurant and Catering Industrial (RCI) provides the following summary proposal in response to the Statement. RCI notes that there are two clear sectors of businesses who pay under the *Restaurant Industry Award 2020*, namely restaurant businesses and café businesses.

Exemption Rate

3. Currently, there is no provision under the *Restaurant Industry Award 2020* which allows for employers and employees to enter into an employment agreement using an exemption rate. RCI notes that exemption rates are available under the *Hospitality Industry (General) Award 2020* and the *Registered and Licenced Clubs Award 2020* at similar classification levels found under the *Restaurant Industry Award 2020*.
4. RCI submits that there is a sensible argument for the expansion of exemption rates into the *Restaurant Industry Award 2020* which would apply only to certain high income classifications, such as a restaurant manager or head chef.
5. RCI would seek the implementation of the exemption rate in the following circumstances:
 - a. An employee who is at least a Grade 3 under the current Award (for clarity, all of the new chefs stream, and a food and beverage attendant under grades 2 and 3 under the new Award) may enter into an agreement with their employer to receive an exemption rate in lieu of the following entitlements:
 - i. Meal break penalties (clauses 16.5 and 16.6);
 - ii. Annualised salary arrangements (clause 20);
 - iii. Allowances (clause 21);
 - iv. Overtime rates (clause 23); and
 - v. Penalty rates (clause 24).
 - b. RCI submits that an exemption rate would need to be paid at a significantly higher rate than an annualised salary in lieu of entitlements otherwise owing to the employee. This exemption rate would introduce a level of flexibility in agreement making between employers and employees similar to that found in other hospitality Awards.
 - c. It is proposed that any agreement between the employee and the employer must be by way of genuine agreement.
 - d. It is proposed that an employee who agrees to be paid an exemption rate must not work greater hours than what would be considered reasonable.

Classification Structure and Definitions

6. The current classification structure and definitions under the *Restaurant Industry Award 2020* fail to adequately reflect the increased need for flexibility in duties performed by staff within the restaurant and café sector, particularly in the post-COVID-19 climate.
7. The classification structure of the *Restaurant Industry Award 2020* does not reflect the varying nature of business structures which utilise the Award. Also, the Award does not make provisions for staff members who are engaged in a range of duties and tasks that are functionally at the same pay grade but found within different classification streams of the Award. This can be seen for employees in the food and beverage stream, the kitchen attendants stream and under levels 1 and 2 of the cooks stream. For instance, the Award does not cater for skillset and duties of employees whose skills and duties may regularly combine multiple streams of classifications. As such RCI submits that the classification structure should be amended to reflect current practice, and the considerable flexibility required of staff in a post-COVID-environment.
8. For the reasons mentioned above, RCI would seek to amend the current classification structure in the following proposed form:

CURRENT CLASSIFICATIONS	SIMPLIFIED CLASSIFICATIONS
Introductory	Introductory
<ul style="list-style-type: none"> Introductory level 	<ul style="list-style-type: none"> Introductory level
Grade 1	New Grade 1 - Restaurant/Cafe Worker
<ul style="list-style-type: none"> Food and beverage attendant grade 1 Kitchen attendant grade 1 	<ul style="list-style-type: none"> Grade 1 – Restaurant Worker (paid at grade 2 rates)
Grade 2	
<ul style="list-style-type: none"> Food and beverage attendant grade 2 Kitchen attendant grade 2 Cook Grade 1 (Level 2) 	
Grade 3	New Grade 2 - Restaurant/Cafe Worker
<ul style="list-style-type: none"> Food and beverage attendant grade 3 Kitchen attendant grade 3 Cook Grade 2 (Level 3) 	<ul style="list-style-type: none"> Grade 2 – Restaurant Worker (paid at grade 3 rates)
Grade 4	New Grade 3 - Restaurant/Cafe Supervisor
<ul style="list-style-type: none"> Food and beverage attendant grade 4 	<ul style="list-style-type: none"> Grade 3 – Food and Beverage attendant (paid at grade 5 rates)
Grade 5	
<ul style="list-style-type: none"> Food and beverage supervisor 	

9. RCI proposes, as a result of the changes proposed above, that the cooks stream within the current Award should be renamed the ‘chefs’ stream. This change is to reflect the separation of trade qualified chefs from the lower grades within the old cooks stream. This change would also simplify the classification structures for employers and employees.
10. RCI proposes that the positions of commi chef, demi chef and chef de partie will be re-classified as grades 1, 2 and 3 respectively under a new chefs stream, paid at levels 4, 5 and 6 under the current cooks stream.
11. RCI would not seek any amendment to either the administrative and general stream, stores stream or the securities stream.
12. RCI would not seek to vary any of the minimum rates of pay under this Award, until such time that it is varied at the Commission’s own initiative.
13. RCI notes that certain classification levels under the current Award will receive an increase in pay as a result of these changes including:
 - a. Food and beverage attendant, grade 1;
 - b. Kitchen attendant, grade 1; and

- c. Food and beverage attendant, grade 4.

All Purpose Allowance (Loaded Rate Proposal)

14. Currently, the payment of allowances under the *Restaurant Industry Award 2020* is a significant cause of confusion and error for employers. Equally, understanding when allowances should be paid is often difficult and confusing for employees. RCI does not wish in any way to reduce the 'take home' pay of any employee under the *Restaurant Industry Award 2020* currently being paid allowances as stipulated under the Award, but instead is proposing a new system that ensures appropriate monetary compensation for staff where allowances would have otherwise needed to be paid. This all purpose allowance seeks to greatly simplify the process of paying allowances, but does not impact the substantive clauses of the Award where allowances are listed.
15. RCI would seek all current allowances payable under the Award to be replaced with a single all purpose allowance paid for every hour that the employee worked at a flat rate. RCI notes that this will have no impact on current weekend and public holiday penalty rates and overtime rates.
16. RCI would implement the exemption rate in the following circumstances:
 - a. An employer and the employee may agree for the employee to receive an all-purpose allowance in lieu of the following:
 - b. Meal break penalties (clauses 16.5 and 16.6);
 - c. Meal allowance (clause 21.2);
 - d. Split shift allowance (clause 21.3);
 - e. Tool and equipment allowance (clause 21.4);
 - f. Special clothing allowance (clause 21.5);
 - g. Distance work allowance (clause 21.6); and
 - h. Late night/early morning penalty rates (clause 24).

Conclusion

17. RCI submits that the nature and operational requirements of the restaurant and cafe businesses have significantly, and in many cases permanently, changed as a result of the COVID-19 pandemic. The proposed changes in RCI's view adequately reflects the changing nature of the industry in its current form. RCI welcomes any opportunity to provide further information and/or evidence should it be requested by the Commission. RCI thanks the Commission for providing it the opportunity to file this submission.

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