



Restaurant  
& Catering

**IN THE FAIR WORK COMMISSION**

**FOUR YEARLY REVIEW OF MODERN AWARDS  
HOSPITALITY INDUSTRY (GENERAL) AWARD 2010  
MATTER NO.: AM2014/272**

**OUTLINE OF SUBMISSIONS**

**12 OCTOBER 2016**

1. These submissions are made in response to the Fair Work Commission’s statement and directions dated 26 August 2016.
2. Restaurant & Catering Industrial (RCI) rely on its submissions filed on 2 March 2015 and confirms that it seeks to pursue the variations in the *Hospitality Industry (General) Award 2010* (“**Hospitality Award**”) as outlined in its 2 March 2015 submissions. RCI makes these submissions on behalf of its members who are employers in the catering industry.
3. Annexed herein is the proposed draft determination outlining the variations sought.
4. Restaurant & Catering Industrial is a Registered Organisation under the Fair Work (Registered Organisations) Act 2009 and represents the industrial interests of restaurants, cafes, food and catering businesses across Australia.
5. The industry turns over some twenty-four billion per annum and anticipates further employment growth of in the next twelve months. Approximately sixty-three percent of the industry earns an average two percent after tax and the overall average is only four percent. The industry has not seen an improvement in profit in recent times.
6. The restaurant industry comprises fifty-eight percent of the hospitality industry and some sixty-two percent of employment in the industry. The average number of employees per business is approximately eight.

### **Legislative Context**

7. Section 156(2)-(5) of the *Fair Work Act 2010* (**FW Act**) prescribes the steps to be followed by the Commission in conducting a 4 yearly review of modern awards, thus:

*“(2) In a 4 yearly review of modern awards, the FWC:*

*(a) must review all modern awards; and*

*(b) may make:*

*(i) one or more determinations varying modern awards; and*

*(ii) one or more modern awards; and*

(iii) one or more determinations revoking modern awards.

(c) must not review, or make a determination to vary, a default fund term of a modern award.”

Note 1: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 2: For reviews of default fund terms of modern awards, see Division 4A.

Variation of modern award minimum wages must be justified by work value reasons

(3) In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.

(4) **Work value reasons** are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

(a) the nature of the work;

(b) the level of skill or responsibility involved in doing the work;

(c) the conditions under which the work is done.

Each modern award to be reviewed in its own right

(5) A 4 yearly review of modern awards must be such that each modern award is reviewed in its own right. However, this does not prevent the FWC from reviewing 2 or more modern awards at the same time.”

8. Section 134 of the FW Act requires the Commission to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net taking into account, *inter alia*, the need to promote social inclusion through increased workforce participation (s.134(1)(c)); the need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)); the principle of equal remuneration for work of equal or comparable value (s.134(1)(e)); and the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f)); and the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards (s.134(1)(g)); and the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (s.134(1)(h)).

## Previous decisions

9. In the Commission’s decision of the 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues<sup>1</sup> the review process was outlined as follows:

*[24] In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the Workplace Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act.<sup>14</sup> In the Review the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made.’ <sup>15</sup><sup>2</sup>*

10. It is important to refer to the Minister’s request was on 28 May 2008, directing the Commission to create a separate modern award for the restaurant and catering industry:

*“27A. The Commission should create a modern award covering the restaurant and catering industry, separate from those sectors in the hospitality industry providing hotelier, accommodation or gaming services. The development of such a modern award should establish a penalty rate and overtime regime that takes account of the operational requirements of the restaurant and catering industry, including the labour intensive nature of the industry and in [sic] the industry’s core trading times.”<sup>3</sup>*

11. The Ministerial request clearly states that the catering industry should be grouped together with the restaurant industry and form one modern award. This clearly recognised that the operational requirements of the catering industry is similar to the restaurant industry, and importantly, is distinct from the hospitality sector which provides hotelier, accommodation or gaming services.

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<sup>1</sup> [\[2014\] FWCFB 1788](#).

<sup>2</sup> Ibid [24].

<sup>3</sup> [Variation of Award Modernisation Request Under Section 576C\(4\)](#).

12. RCI submits that it is necessary to amend the title of the Hospitality Award, as well as remove the inclusion of ‘caterers’ in the award to more appropriately reflect the functions and coverage of businesses and employees who are regulated by the Hospitality Award, and to place coverage of the catering industry in the *Restaurant Industry Award 2010* as amended, where it more appropriately belongs.
  
13. RCI accordingly proposes the following changes to the Hospitality Award:
  - (a) Amend the title to:  
*“Hotels, Accommodation and Casinos Award 2015”*
  - (b) Insert a new sub-clause 4.1(g) as follows:  
*"caterers covered by the Restaurant, Café and Catering Industry Award;"*
  - (c) Delete the word “caterers” in sub-clause 4.2.
  
14. RCI will adduce lay witness and expert evidence, as well as relevant information from the regulator to support its claim to amend the Hospitality Award.



FAIR WORK  
COMMISSION

# DRAFT DETERMINATION

## HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

[MA000009]

Hospitality Industry

4 YEARLY REVIEW OF MODERN AWARDS – GROUP 4

SYDNEY, 2016

- A. Further to the decision [ ] FWCFB ] issued by the Full Bench of the Fair Work Commission on , the *Hospitality Industry (General) Award 2010* is varied as follows:
1. By varying clause 1 title as follows:  
  
*This award is the *Hotels, Accommodation and Casinos Award 2015**
  2. By deleting sub clause 4.1 (g) and replacing it with the following:  
  
4.1 (g) caterers covered by the Restaurant, Café and Catering Industry Award;
  3. By deleting word “caterers” sub clause 4.2.
- B. The variations to commence on 2017.

PRESIDENT