

IN THE FAIR WORK COMMISSION Matter, No: AM2014/283

Section 156 – Four Yearly Review of Modern Awards – Registered and Licensed Clubs Award 2010

Submission

1. This submission is responsive to the directions of 28 May 2020. We apologise about the delay in lodging this submission.
2. This submission concerns the United Workers' Union ('UWU') only remaining claim in the review of the *Registered and Licensed Clubs Award 2010* ('the Award') namely a claim that the tool allowance at clause 19.3(c)(i) of the Award be amended so that it is consistent with the equivalent allowances within the *Hospitality Industry (General) Award 2020* and *Restaurant Industry Award 2020*. This submission is a restatement of previous written submissions concerning this claim. The only new matter we raise concerns the indexation factor for the allowance.
3. On 5 October 2016, we filed a draft determination concerning this claim and other claims. For the assistance of the Commission, we attach a draft determination reflecting the claim as now sought to be progressed referable to the most recent exposure draft of the Award.

The claim

4. The current tool allowance within the exposure draft of the Award reads at clause 19.3(c):

(c) Clothing, equipment and tools

(i) Where a cook is required to use their own tools, the employer must pay an allowance of \$1.55 per day or part thereof up to a maximum of \$7.60 per week.

5. This allowance is indexed to CPI factor for the '*Clothing and footwear group*'.¹
6. Clause 19.3(c)(ix) of the exposure draft provides for the general reimbursement entitlement for items '*the employer requires an employee to provide and use*' and includes '*tools*'. Tools for '*maintenance and horticultural employee*' has been separated from the tools allowances currently payable to a '*cook*' as part of the review of the Award.²
7. Our claim is that:

¹ Exposure Draft of the Award, 20 January 2020, Schedule C, item C.2.2(b).

² 4 yearly review of modern awards – *Registered and Licensed Clubs Award 2010* [2019] FWCFB 8585 at [37]-[39].

'Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum \$8.49 per week.

8. We note that the amount should shortly increase due to indexation.

Merits

9. The claim seeks to remedy the anomalous treatment of the tool allowance in the Award which excludes apprentice cooks and to align the allowance with what are now the equivalent allowances in the Hospitality Award and the Restaurant Award. The claim is consistent with the decision within the review of similar allowances in the Hospitality Award and Restaurant Award.³
10. Prior to their review, the Hospitality Award contained a tool allowance which only applied to cooks whereas the Restaurant Award only provide a tool allowance to apprentice cooks.⁴ Our claim in the review of the Hospitality Award and the Restaurant Award to make the tool allowance applicable to both cooks and apprentice cooks was successful and the Full Bench noted in its decision of 12 December 2018:

[229] There appears to be no particular reason why the tool allowance only applies to cooks (and not apprentices) in the Hospitality Award and to apprentice cooks (and not cooks) in the Restaurant Award. RCI was invited to identify any logical basis for the different approach taken in each award but did not do so.

[230] Given the similarities between these two awards, to which we have referred earlier (see [115] to [121] above) we are satisfied that the scope of the tool allowance provision should be the same in each award. We are also satisfied that the allowance should be paid 'where a cook or apprentice cook is required to use their own tools... '.

11. In relation to the amounts payable under the tool allowance, the Full Bench in the 12 December 2018 decision concluded:

[241] We agree with the Associations' submission. There is merit in aligning the tool allowances in the two awards, at \$8.49. We also agree that United Voice has failed to make a case for any increase above this level. We reject United Voice's application to increase the tool allowance in the Restaurant and Hospitality Awards to \$11.20. We will increase the quantum of the tool allowance in the Hospitality Award to \$8.49. The tool allowance provisions in each award will be adjusted by reference to movements in the Tools CPI component.

[242] The variations we propose to make to the tool allowance provisions in these awards will assist the low paid to meet their needs (s 134(1)(a)) and will have an adverse impact on employment costs (s 134(1)(f)), albeit the impact is not likely to be significant. None of the other s134 considerations are relevant to these claims. No party contended to the contrary. Taking into account the s 134 considerations (insofar as they are relevant) we are satisfied that the variations proposed are

³ 4 yearly review of modern awards – Restaurant Industry Award 2010 – Hospitality Industry (General) Award 2010 – substantive issues [2018] FWCFB 7263.

⁴ As above at [213]– [215].

necessary to ensure that the Hospitality Award and the Restaurant Award achieve the modern awards objective.

12. Our amended claim for the Award seeks the amounts determined as appropriate for the Hospitality Award⁵ and Restaurant Award⁶ *i.e.* \$1.73 per day and \$8.49 per week. These amounts are less than what was initially sought by the UUU and reflect the appropriate arbitrated amounts determined by the Commission in the review of the Hospitality Award and Restaurant Award on 12 December 2018.⁷

Indexation

13. We have not made a claim concerning the indexation factor for the tools allowance in the Award but note that the indexation factor is the CPI for the clothing and footwear groups.⁸ In the decision concerning the tool allowance in the other hospitality awards, the Full Bench observed:

[222] A summary of the tool allowance provisions in various other modern awards is at Annexure A to United Voice's submission of 24 July 2018. [128](#) Almost all of the tool allowances referred to in Annexure A are varied according to movements in the 'Tools, equipment' component of the CPI. The exceptions are the *Registered and Licensed Clubs Award 2010* which is in similar terms to the Hospitality Award, and the *Building and Construction General On-site Award 2010*, which is varied in accordance with movements in the Eight Capitals CPI.

[223] In our view there is no rational justification for varying an allowance relating to kitchen tools by reference to movements in the clothing and footwear component of the CPI. We propose to grant this aspect of United Voice's claim.

14. The utility of aligning the indexation factor with the factor used in the Hospitality Award and Restaurant Award is that it is the appropriate indexation factor for tools and having the same indexation factor will ensure that the allowances in the Award retains parity with the same allowance in 2 related modern awards. Parity is consistent with consideration 134(1)(G) '*a simple, easy to understand, stable and sustainable modern award system*'.
15. We would urge the Commission to adopt the same indexation factor namely the CPI for '*tools and equipment for house and garden component of the household appliances, utensils and tools sub-group applies*' applied to the tool allowance within the Award. We attach a draft determination reflecting a change in the CPI factor for the assistance of the Commission.
16. We have also applied this CPI factor to tool allowance for maintenance and horticultural worked as it would appear inconsistent for tools for outdoor workers to remained indexed to clothing and footwear.

⁵ Clause 26.5.

⁶ Clause 21.4.

⁷ 4 yearly review of modern awards – *Restaurant Industry Award 2010 – Hospitality Industry (General) Award 2010* – substantive issues [2018] FWCFB 7263 at [241].

⁸ Exposure draft of the Award, schedule C, item C.2.2(b).

17. We trust this submission assists the Commission in finalising the review of this award.

United Workers' Union

1 July 2020.

DRAFT DETERMINATION

Fair Work Act 2009

s.156- 4 yearly reviews of modern awards

4 yearly review of modern awards - Award Stage

(AM20 14/283)

Registered and Licensed Clubs Award 2010

[MA000058]

[FULL BENCH] SYDNEY, XX YYY 2020

4 Yearly review of modern awards.

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/283, it is determined pursuant to section 156(2) (b) (i) of the *Fair Work Act 2009*, that the *Registered and Licensed Clubs Award 2010* be varied as follows.

[1] Delete clause 19.3(c) (i) and insert new clause 10.5 (d) as follows:

'Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum \$8.49 per week.'

[2] At item C.2.1 of Schedule C in the second column in relation to clause 19.5(c)(i) delete the dollar amount '\$1.55' and insert '\$1.73'.

[3] At item C.2.1 of schedule C in the second column in relation to clause 19.5(c)(i) delete the dollar amount '\$7.60' and insert '\$8.49'.

[4] At item C.2.2 of schedule C in the second column after the words '*Clothing and footwear group*' add the words '*except for the tools allowances at clauses 19.3(c)(i) and (x) where the Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group applies*'.

[4] The determination shall operate one and from XX XX 2020.

BY THE COMMISSION