

IN THE FAIR WORK COMMISSION

Matter No: AM2014/272, AM2014/283 and AM2014/284.

Section 156 - Four Yearly Review of Modern Awards

Hospitality Industry (General) Award 2010
Registered and Licensed Clubs Award 2010
Restaurant Industry Award 2010

SUBMISSION OF UNITED VOICE

6 October 2016

INTRODUCTION

1. This submission is pursuant to the direction of His Honour the President made on 26 August 2016.
2. The submission concerns United Voice's claims in the following Group 4 Awards:
 - a. *Hospitality Industry (General) Award 2010* ('the Hospitality Award');
 - b. *Registered and Licensed Clubs Award 2010* ('the Clubs Award'); and
 - c. *Restaurant Industry Award 2010* ('the Restaurants Award').

(Collectively: '*the Hospitality Awards*')

UNITED VOICE'S CLAIMS IN THE AWARD REVIEW

3. We refer to the claims outlined in our submission of 2 March 2015. United Voice outlined claims regarding a tool allowance, annualised salaries and an overtime entitlement for casual employees in each of the Hospitality Awards.
4. The draft variation concerning the tool allowance clarifies that the allowance applies to both qualified and apprentices. This is in substance an additional claim.
5. United Voice's claims regarding annualised salaries are being pursued in the common issue proceedings, AM2016/13 – *Annualised Salary*, and draft variations will be filed in accordance with the orders made by Vice President Hatcher on 5 September 2016.
6. United Voice's claim for an overtime entitlement for casual employees is being dealt with in the common issue proceedings, AM2014/197 – *Casual Employment*, and final oral submission will be heard for these claims and other related claims to the Hospitality Awards on 27 October 2016.

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7. United Voice intends to make the following additional substantive claims in relation to each of the Hospitality Awards.
8. First, that the minimum engagement for casual employees under each of the Hospitality Awards is increased from two to three hours.
9. Second, the maximum shift length for permanent employees is reduced to a uniform 10 hours across the Hospitality Awards.
10. The issues that underlie these variations have been raised in the AM2016/196 & 197-*Part-Time and Casual Common Issue* proceedings although they have not been the subject of explicit claims.
11. We ask that these additional matters be referred to the Full Bench currently dealing with AM2016/196 & 197. There has been adequate evidence and submission directed at these matters and we will independently of these claims urge this Full Bench to make these claims as part of its general review function under subsection 156(2) of the *Fair Work Act 2009* ('the Act').
12. We note that the Australian Council of Trade Unions has a general claim for a 4 hour minimum engagement that affects the Hospitality Awards. Our claim here for a 3 hour minimum engagement is an alternate claim and not in substitution to the claim of the ACTU. United Voice fully supports the ACTU claim. The claim for a 3 hour minimum engagement for casuals seeks to, at least, place all casual employees on an equal footing with other employees covered by the Hospitality Awards in the event that the ACTU claim is not successful in some way in relation to the Hospitality Awards. We say the differential in minimum engagements is anomalous, detrimental and provides an inappropriate cost advantage to casual employment and should be reviewed in this 4 yearly review.
13. If the claims are pursued in the award stage, United Voice envisages that each claim would be supported by some lay and expert evidence (no more than 5 witnesses). The expert evidence would be directed to fatigue associate with long shifts. We envisage that the claim for the equalisation of minimum engagements will be made principally on the basis of submissions.
14. Draft determinations for the changes that United Voice intends to pursue to the Hospitality Award are attached at **annexure A**.
15. Draft determinations for the changes that United Voice intends to pursue to the Restaurant Award are attached at **annexure B**.
16. Draft determinations for the changes that United Voice intends to pursue to the Clubs Award are attached at **annexure C**.

ANNEXURE A

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly reviews of modern awards

4 yearly review of modern awards – Award Stage

(AM2014/272)

Hospitality Industry (General) Award 2010

(MA000009)

[Full Bench] SYDNEY, XX YYY 2016

4 yearly review of modern awards

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Hospitality Industry (General) Award 2010* be varied as follows.

[1] Delete clause 13.2 and insert and new clause 13.2 as follows:

'13.2 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours' work.'

[2] Delete clause 21.1 (b) (i) and insert a new clause 21.1(b) (i) as follows:

'Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$2.25 per day or part thereof up to a maximum of \$11.20 per week.'

[3] Delete clause 29.1 (b) (i) and insert a new clause 29.1 (b) (i) as follows:

'(i) A minimum of six hours and a maximum of 10 hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals.'

[4] Delete clause 29.2(a) and insert a new clause 29.2(a) as follows:

'(a) A minimum of three hours and a maximum of 10 hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals.'

[5] Delete clause 29.2(d) and insert a new clause 29.2(d) as follows:

' (d) Where broken shifts are worked the spread of hours can be no greater than 10 hours per day.'

B. The determination comes into operation from XX Month 2016. In accordance with s.165 (3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX Month 2016.

PRESIDENT

ANNEXURE B

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly reviews of modern awards

4 yearly review of modern awards – Award Stage

(AM2014/284)

Restaurant Industry Award 2010

(MA000119)

[FULL BENCH] SYDNEY, XX YYY 2016

4 yearly review of modern awards

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Restaurant Industry Award 2010* be varied as follows.

[1] Delete clause 13.2 and insert a new clause 13.2 as follows:

'13.2 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours' work.

[2] Delete clause 24.3(a) and insert new clause 24. 3 (a) as follows:

'Where a cook or an apprentice cook is required to use their own tools, the employer must pay an allowance of \$2.25 per day or part thereof up to a maximum of \$11.20 per week.'

[3] Delete clause 31.2 (a) and insert new clause 31.2(a) as follows:

(a) A minimum of six hours and a maximum of 10 hours may be worked on any one day or continuous shift. The daily minimum and maximum hours are exclusive of meal break intervals.

B. The determination comes into operation from XX Month 2016. In accordance with s.165 (3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX Month 2016.

PRESIDENT

ANNEXURE C

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly reviews of modern awards

4 yearly review of modern awards – Award Stage (AM2014/283)

Registered and Licensed Clubs Award 2010 (MA000058)

[FULL BENCH]

SYDNEY, XX YYY 2016

4 yearly review of modern awards.

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, 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 10.5 (d) and insert new clause 10.5 (d) as follows:

'On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours work.'

[2] Delete clause 18.1 (b) (i) and insert clause 18.1(b) (i) as follows:

'Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$2.25 per day or part thereof up to a maximum of \$11.20 per week. Where a maintenance and horticultural employee is required to supply and use their own tools, the employer will reimburse the cost of such tools.'

[3]. Insert new clause 26.3 (g) as follows:

'(g) The maximum ordinary hours that may be rostered in any one day or continuous shift is 10 hours.'

B. The determination comes into operation from XX Month 2017. In accordance with s.165 (3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX Month 2017.

PRESIDENT