

From: Phillip Ryan <legal@aha.org.au>

Sent: Friday, 1 May 2020 9:53 AM

To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Cc: Stephen.Bull@unitedvoice.org.au; victor@rca.asn.au

Subject: 4 yearly review of modern awards - Restaurant Industry Award 2010 (AM2019/17)

Dear Associate,

We refer to the above matter, in the conference held before the Fair Work Commission on Thursday, 30 April 2020.

As submitted during the course of that conference, the issue before the Commission is identical to an issue that has arisen in the review of the *Hospitality Industry (General) Award 2010*. In the Hospitality Award proceedings, there was a conference before Commissioner Lee on Monday, 30 March 2020, during which the Australian Hotels Association and the United Workers Union submitted an alternative proposal to resolve the issue as follows:

16.7 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:

(a) 5 continuous hours after an unpaid meal break; or

(b) 2 hours' overtime after the employee finishes their rostered hours.

NOTE: *The overtime worked for the purposes of clause 16.7 (b) does not compound on the break entitlements under Table 1.*

For example, a full-time employee works a rostered 7 hour shift, followed by 3 hours of overtime. The employee will receive break entitlements as follows:

- (i) For the 7 hour shift: An unpaid break of no less than 30 minutes under Table 1; and*
- (ii) For the 3 hours overtime: An additional 20 minute paid break under clause 16.7 (b).*

It was the understanding of the parties that the alternative position would then be considered by the members of the Full Bench in the Hospitality Award proceedings.

It is also the position of the parties that the outcome in relation to the Hospitality Award should be replicated in the Restaurant Industry Award, and to that end, the wording in red text above be considered being inserted at the end of clause 16.8 of the Restaurant Industry Award as follows:

16.8 Additional rest break after overtime An employer must give an employee an additional 20 minute paid rest break if the employer requires the employee to

work more than 2 hours' overtime after completion of the employee's rostered hours.

NOTE: *The overtime worked for the purposes of clause 16.8 does not compound on the break entitlements under Table 2.*

For example, a full-time employee works a rostered 7 hour shift, followed by 3 hours of overtime. ~~The employee~~ will receive break entitlements as follows:

- (i) For the 7 hour shift: An unpaid break of no less than 30 minutes under Table 2; and*
- (ii) For the 3 hours overtime: An additional 20 minute paid break under clause 16.8.*

If this proposal is acceptable to the Fair Work Commission, the parties agree that the word "ordinary" can be omitted from the heading in Column 1 of Table 2 in the Restaurant Industry Award.

Yours faithfully,

Phillip Ryan

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