

Australian Industry Group

Application to vary the  
Fast Food Industry Award 2010

**Further Submission**  
(AM2020/20)

15 May 2020



## AM2020/20

### APPLICATION TO VARY THE FAST FOOD INDUSTRY AWARD 2010

1. The Australian Industry Group (**Ai Group**) files this submission in relation to its application to vary the *Fast Food Industry Award 2010* (**Award**), filed on 1 May 2020.
2. Ai Group also filed an amended draft determination on 5 May 2020, identifying the specific variations it seeks (**Ai Group Draft Determination**). The Ai Group Draft Determination reflected a consent position reached between Ai Group, the Shop, Distributive and Allied Employees' Association (**SDA**) and the Australian Council of Trade Unions (**ACTU**).
3. The submission is filed in response to a submission and draft determination (**SDA Draft Determination**) filed on 14 May 2020 by the SDA.
4. The SDA Draft Determination differs from the Ai Group Draft Determination in the following respects:
  - (a) The SDA Draft Determination includes a new clause at H.7.
  - (b) The SDA Draft Determination includes a new clause at H.8.3;
  - (c) The SDA Draft Determination includes a new clause at H.8.4;
  - (d) The SDA Draft Determination includes a new clause at H.9.3;
  - (e) The SDA Draft Determination includes a new clause at H.9.4;
  - (f) The SDA Draft Determination requires a one week notice period of a shut down at clause H.10.1(a) as compared to the 48 hour notice period required by clause H.9.1(a) of the Ai Group Draft Determination.
  - (g) The SDA Draft Determination includes a new clause at H.10.4(a).

5. Ai Group does not oppose the SDA Draft Determination. Indeed we adopt the SDA Draft Determination save for the proposed one week notice period in respect of a close down, at clause H.10.1(a).
6. We are instructed in response to the SDA Draft Determination that the proposed close down clause may be sought to be relied upon in circumstances that require a rapid response, such as a confirmed diagnosis of a COVID-19 case requiring that the store / restaurant be closed for a 'deep clean' and / or an investigation into relevant operational issues.
7. A one week notice period may also be impracticable in the event that Government restrictions limiting the operation of restaurants and cafes are reimplemented with limited notice. We note that submissions filed by the Commonwealth in these proceedings expressly contemplate the possibility of certain restrictions being reintroduced:
  13. Notwithstanding the staged easing of restrictions which is currently proposed, the restrictions which will remain will continue to significantly impact the capacity of employers in this industry to maintain sustainable businesses and to maintain employment. It is also possible that changed circumstances may require different responses, including potentially the delay of the easing schedule or the reintroduction of some restrictions.
8. We are concerned that a one week notice period does not afford employers the opportunity to be sufficiently agile or flexible, or to respond in a timely way to unforeseen and unpredictable changes to operational requirements in the context of the COVID-19 pandemic.
9. We also note that the close down clause includes various other safeguards and protections, including limitations on the circumstances in which the provision can be utilised. For example:
  - (a) The clause applies only if the employer has decided to close down for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19.
  - (b) An employer must provide an employee with written notice of any requirement to take paid or unpaid leave in accordance with this clause.

- (c) Unpaid leave taken pursuant to this clause cannot extend beyond 8 weeks from the date of operation of the clause.
  - (d) A requirement to take leave pursuant to the clause will not apply to an employee unless the requirement is reasonable (by virtue of clause H.7 of the SDA Draft Determination).
10. In our submission, a notice period of 48 hours, considered in the context of the COVID-19 pandemic, is appropriate and reasonable in all the circumstances.