

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

**RESTAURANT & CATERING
INDUSTRY MODERN AWARD 2010
AM2008/1**

WITNESS STATEMENT

I, Greg Doyle, C/- of Level 1, 80 Cooper Street, SURRY HILLS, in the State of New South Wales, 2010, Restaurateur, say:

1. I am the Managing Director of The Pier Restaurant Pty Ltd (ACN **090 825 951**), the entity through which the restaurant business known as "Pier Restaurant" is conducted.
2. I began working in the restaurant industry in 1971, when I started work as an apprentice chef. In 1980 I became a partner in a restaurant called Rogues, and then opened a fine dining restaurant called Puligny's in Neutral Bay in Sydney as Owner/Chef. In 1987 I opened a bistro called Riley Street Bistro in Surry Hills, and Eastside Bar & Grill in Kings Cross in 1988. In 1991 started I set up and started Pier Restaurant.
3. I have completed a diploma in Trade Cookery at East Sydney Technical College.
4. I have been informed of the key changes present in the proposed Exposure Draft (September 2008): Hospitality Industry (General) Award 2010 ("**the Proposed Hospitality Award**").
5. Also exhibited to me at the time of signing this Witness Statement were two Excel spreadsheets. The spreadsheet annexed hereto and marked with the letter "**B**" contains the current rates of pay under the Notional Agreement Preserving Restaurant &C., Employees (State) Award ("**the Restaurant NAPSA**"). The spreadsheet annexed hereto and marked with the letter "**C**"

contains the proposed rates of pay under the Proposed Hospitality Award. From time to time in this Witness Statement I refer to both spreadsheets as required.

THE RESTAURANT

6. Pier Restaurant has been trading for over seventeen years and I am the owner-operator.
7. Pier Restaurant is located at 594 New South Head Road, Rose Bay.
8. Pier Restaurant is a fine dining restaurant specialising in the highest quality fresh seafood. It has won the following awards: 'National Restaurant of the Year' and 'Three Stars' by Australian Gourmet Traveller 2008 and has the top rating of 'Three Hats' by the Sydney Morning Herald Good Food Guide 2007/8/9. Pier is recognised as the leading seafood restaurant in Australia.
9. Pier Restaurant focuses on serving the highest quality produce available. Sydney's leading fish suppliers' supply Pier fish from the market floor and from individual producers around Australia. The la carte menu boasts the most premium in seafood available, with a daily printed seafood list that details the region in which it was caught. Sourcing Pier's fine produce is due to our stringent quality control process, we have specially trained fishermen sourcing a variety of species.
10. At Pier Restaurant main courses cost between \$49 and \$85.
11. The restaurant premise has indoor seating for about 120 patrons with outdoor balcony and reception seating for another 22 patrons at any one time. A maximum of 75 people at one sitting allows Pier to concentrate on the intimate service and delicately constructed dishes that it is famed for.
12. Pier Restaurant operates with an on premise licence. However, food sales make up 70 per cent of the average revenue of the restaurant, with liquor sales contributing about 30 per cent.

WORKFORCE

13. In my position I am responsible for the day-to-day running of the restaurant. I also oversee the administrative and financial side of the business, as well as purchasing from suppliers. When it comes to the restaurant itself, my principal functions include mentoring and supervising employees, especially the managerial staff, and working in the kitchen to keep wages costs to a reasonable percentage point.
14. No workplace agreement of any kind applies to the employees who work at the restaurant. All employees are covered by the Restaurant NAPSA.
15. Pier Restaurant currently employs 17 front of house employees and 16 back of house employees.
16. In relation to back of house, there are 15 full-time cooks, including 5 full-time apprentice chefs, and 1 full-time and 2 casual kitchen hands.
17. The back of house full-time employees are salaried employees, whose written contract of employment remunerates each full time employee with a weekly wage that is sufficient to cover what the employee would have been entitled to if all overtime and penalty rate payment obligations (including any other monetary entitlements under the Restaurant NAPSA) had been complied with.
18. The full-time employees who from time to time work beyond their normal hours a week get paid an additional amount for such work. In this way, there is a direct relationship between the award rates and the remuneration payable to the full-time, salaried staff.
19. No back of house employee is engaged on a part-time basis.
20. The casual employees in the back of house are kitchen hands. They are paid in accordance with the Restaurant NAPSA and would perform work described in the Grade 1 or Grade 2 classification.
21. In relation to front of house employees, there are 4 full-time employees: 1 restaurant manager; 2 assistant managers (floor managers); 1 Sommelier all of whom are salaried employees. Their salary is sufficient to cover what the

22. The front of house also has 12-16 casual employees who perform work described in classification structure grades 2 to 3, depending on their length of service. All the casual employees are paid under the Restaurant NAPSA at the award rate.
23. The casual employees work between 20 and 50 hours per week, some work one shift a week, others up to 9 or 10 shifts. They comprise a mixture of males and females.

TRADING PERIODS

24. Pier Restaurant is open for lunch and dinner 7 days a week.
25. Lunch is available from 12pm to 3 pm, Monday to Sunday. Dinner is available from 6pm to 10pm, Monday to Saturday and 6pm to 9 pm on Sunday.
26. I know most restaurants, including Pier Restaurant, tend to find that the end of the week is busier than the earlier part of the week.
27. In relation to the weekly trade, the busiest days of the week are generally Friday, Saturday and Sunday.
28. On Sundays, Pier Restaurant is lucky to break-even for the day. The restaurant opens on Sundays to establish and maintain good customer relations.
29. Depending on the time of year, the number of covers done on Sundays is about the same as Mondays. Sunday penalty rates put enormous pressure on the business if it is not doing maximum numbers of covers.
30. Over the busy period of the week at Pier- Thursday, Friday and Saturday- trade of an evening is twice as busy as lunchtime trade. In general, evening trade nearly generates about two to four plus times more revenue than lunchtime trade.

31. The evening trade accounts for about 70 per cent of its gross daily revenue, lunch 30 per cent.
32. Public holiday trade at Pier Restaurant is usually not profitable. About ninety per cent of the time Pier Restaurant is lucky to break-even over public holidays.
33. Over the entire year, December and January is by far the busiest time period. It is approximately one and a half times busier in December and January than in any other month.
34. Local business Christmas parties generate plenty of trade. However, with the global financial crises seemingly getting worse, or at least not improving, the prospects for this year are not, in my view, looking good. I have already started to notice changes in the spending habits of our business clientele. We have also experienced a lot of company's cancelling their bookings and requesting their deposits to be returned.
35. Pier Restaurant has a very seasonal trade during the year. Trade does get much quieter in the depths of winter in June, July and August, when profit can drop. I think it has only been two or three years when Pier has generated a profit in the month of June, and generally that has amount to about \$5 to \$10,000 maximum. During winter permanent employees are asked to take their annual leave.
36. In regards to the full-time and part-time waitstaff at Pier Restaurant, even though none of them are trade qualified, I do believe they are very skilled people. They are excellent with customers. I regularly receive compliments about their attitude and service levels.
37. I have found that employees with the right amount of dedication and commitment to the industry are more inclined to be those who want to be made permanent employees (full-time or part-time) rather than casual ones.
38. A person with no experience in the industry, who is given a part-time position (front of house), about 20 to 30 hours a week, needs about six to eight months of training to meet the skill and responsibility level of a Grade 3 waitstaff under the Restaurant NAPSA.

39. The costs associated with training staff are higher in the early months than the later ones, which is why high levels of turn-over really hurt restaurant business like Pier Restaurant.
40. In my experience, casual employees tend to be far more transient than permanent ones (full-time and part-time).
41. Pier Restaurant has key performance criteria which are linked directly to the classification structure in the Restaurant NAPSA. It works really well. It makes sense to me as a professional restaurateur.
42. In general, full-time and part-time employees are able to add more value to the business than casual employees. In my view, this is because permanent employees are more likely to get better opportunities to build-up rapport with customers.
43. The difference between a good waitstaff and a basic waiter is experience and aptitude, I think. At the end of the day the waiter's job is to attempt to up-sell to each guest and exceed their expectations as much as he or she can.
44. Restaurants must provide a level of service which the customer is happy to pay for. If customers are happy, in my experience, they are generally happy to pay higher prices for their meals and give larger tips.
45. With smaller businesses like Pier Restaurant it's important for employees to be able to work on a personal basis with customers.
46. In my view, people go out for dinner and lunch and breakfast more and more these days and consequently are expecting a more professional level of service than what they were ten or fifteen years ago.
47. An experience waiter will notice when a customers wine glass is empty and will offer to top it up.
48. An experienced waiter will not service a table and then walk back to the kitchen without constantly looking across the floor to check to see if any other customer needs more service.

49. An increase in the Sunday full-time/part-time penalty rate from 50 percent to 75 percent will increase my labour costs significantly.
50. If a new evening penalty were to be introduced from Monday to Friday my wage costs would increase markedly because most of my trade is in the evenings. However, the amount of the evening penalty set out Annexure "C" would cost more to administer than what is actually payable.
51. Labour costs are the highest expense item for Pier Restaurant, at over 33 per cent against all gross revenue. The other major expense item is rent pursuant to lease agreements. Of course, this is fixed for long periods of time.
52. The existing weekend penalty structure under the Restaurant NAPSA structure makes labour costs over the weekend quite expensive, particularly on Sundays, which is why I am forced to have a flat surcharge per head.
53. Pier Restaurant rosters most service and back of house staff in the evenings and weekends to cater for the higher demand. By doing this under the current Restaurant NAPSA, we find rostering staff on evenings simple to administer. Most people in Sydney, and indeed generally the trend across the developed world is to go out in the evenings and Sundays to enjoy a nice meal and a glass of wine. The current NAPSA recognises this by allowing me to trade in the evening without paying penalties. If the evening shift penalty were to increase by 25 percent it would be damaging, especially in the current economic situation. Most restaurants won't be able to afford any wage increases over the next few years and will have difficulty surviving.
54. The Sunday penalty is already a heavy burden, and if it were to increase by 25 percent as well, it would have detrimental effect on the financial viability of all businesses in the industry.
55. Wage costs are high enough as it is at the moment with the turmoil on global financial markets feeding into my operating costs every day of the week. Fresh farm produce does not come cheap. Nor does high quality seafood, fresh from the source. I find it hard to understand why restaurateurs should have to shoulder Hotel award type evening penalties when our businesses are nothing a like to each other. As a restaurateur it is a tough ask to maintain high level service in a fine dining environment with wage costs increasing

even more under a new Award. I have to be able to pay all my suppliers and staff on time no matter how much financial pressure my business is under.

56. I would want my hand to be pushed so far that I had to hire more junior staff with less experience, just to open my doors, because that's not what fine dining is all about. My customers expect a high level of service and this is what I strive to deliver. I roster my most experienced wait staff in peak evening and Sunday trading times to achieve this. I would not want to drop my rigorous staff selection standards and end up providing a low end service that any old restaurant in Sydney could provide. I have not worked so hard to earn my three Hat/ three star restaurant status, just to lose it because a new Award made it impossible to run my business the way I have for years.
57. The Modern Award, on its face seems to impose hotel/casino based classifications and penalties on restaurants. I do not get how this is modern or simple. It will not suit a small restaurant or a larger restaurant, like mine. Hotels and casinos provide different styles of service. They trade 24/7 and are not compelled to provide the type of personalised service a customer would expect at a fine dining restaurant. You could hardly group the roles of a room service attendant who only has to deliver meals and a waiter who is expected to be knowledgeable, attentive and friendly all at the same time. So why should they both be covered by the same Award?
58. The hospitality industry has varying levels of service from hotels, casinos to fine dining restaurants like mine. To expect all the different types of service staff to work effectively for every type of hospitality business from the large corporate hotel chains, through to small owner-operated cafes and restaurants all in one Award will only increase operating costs for those employers who don't have multiple sources of revenue – the restaurants.
59. Hotels enjoy revenues from diverse sources like from room rates, room service, day spas, and conference centres. That is one reason why they are more able to meet higher Sunday penalties and evening penalties. Hotels also benefit from being able to sell large corporate packages in bulk by bundling food and accommodation together to well-off corporate clients. Restaurants don't have any of those options to cushion their business when revenue drops.

60. If there was an increase in labour costs like the proposed 75 per cent for Sundays for permanent employees, reducing the number of hours of employees is not an option. I can't just raise my menu prices either, there is a certain price that customers will not be willing to pay. I would have to review our surcharge policy, but it has been in place for some time, so a sudden change could provoke complaints from even my most regular customers.
61. The surcharge at Pier Restaurant is only payable on Sundays and public holidays. A 10 dollars per person surcharge on Sundays and 12.50 dollars per person on public holidays, respectively, per guest doesn't go anywhere near covering the relevant penalty rates, but if I removed it, Sundays could become financially unsustainable. The Modern Award could make the things even more expensive, and, honestly, I would have to take a serious look at whether it would be worthwhile. The big issue would be looking at reducing staff and this does not appeal to a person like myself that prides itself on running an upmarket business which is offering something unique to overseas tourism.

DATED this day

17 OCTOBER 2008

GREG DOYLE

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

**RESTAURANT & CATERING
INDUSTRY MODERN AWARD 2010
AM2008/1**

WITNESS STATEMENT

I, Marilyn Anecchini, C/- of Level 1, 80 Cooper Street, SURRY HILLS, in the State of New South Wales, 2010, Restaurateur, say:

1. I am the Managing Director of Pilu at Freshwater Pty Ltd (ACN 078073462), the entity through which the restaurant business known as “Pilu at Freshwater” is conducted.
62. I began working in the restaurant industry in 1989 when I started at Il Piemonte Restaurant, Terry Hills. Later in 1998, we opened Cala Luna at The Spit, Mosman, and then Pilu at Freshwater, Harbord.
63. I have completed a Bachelor of Arts, Leisure Studies degree at the University of Technology Sydney.
64. I have been informed of the key changes present in the proposed Exposure Draft (September 2008): Hospitality Industry (General) Award 2010 (“**the Proposed Hospitality Award**”).
65. Also exhibited to me at the time of signing this Witness Statement were two Excel spreadsheets. The spreadsheet annexed hereto and marked with the letter “**B**” contains the current rates of pay under the Notional Agreement Preserving Restaurant &C., Employees (State) Award (“**the Restaurant NAPSA**”). The spreadsheet annexed hereto and marked with the letter “**C**” contains the proposed rates of pay under the Proposed Hospitality Award. From time to time in this Witness Statement I refer to both spreadsheets as required.

THE RESTAURANT

66. Pilu at Freshwater Restaurant has been trading for 4 years; it is a family-owned business.

67. Pilu at Freshwater Restaurant is located at: 'On the Beach', End of Moore Road, Harbord NSW 2096.
68. Pilu at Freshwater Restaurant is a fine dining Italian restaurant specialising in Sardinian cuisine. It has won the following awards: "Two Hats" by the Sydney Morning Herald Good Food Guide 2006, 2007, 2008 and 2009, and the 2009 NSW Restaurant & Catering Award for Best Italian – Formal.
69. Pilu at Freshwater is a heritage listed beach house restaurant overlooking the northern beaches of Sydney. Its speciality lies in the delicious Sardinian flavours created by Chef and owner, Giovanni Pilu.
70. At Pilu at Freshwater main courses cost between \$37 and \$44.
71. The restaurant premises occupies about 150 square metres, with indoor seating for about 110 patrons and outdoor seating for 50 patrons at any one time. A maximum of 100 people at one sitting allows Pilu at Freshwater to concentrate on providing personalised and professional service.
72. Pilu at Freshwater operates with an 'on premise – dine and drink liquor license. However, food sales make up 70 per cent of the average revenue of the restaurant, with liquor sales contributing about 30 per cent.

WORKFORCE

73. In my position I am not responsible for the day-to-day running of the restaurant. I am responsible for the administrative and financial side of the business, as well as purchasing from suppliers. When it comes to the restaurant itself, my principal functions include mentoring and supervising employees, especially the managerial staff.
74. No workplace agreement of any kind applies to the employees who work at the restaurant. All employees in the restaurant are covered by the Restaurant NAPSA.
75. Pilu at Freshwater currently employs 18 front of house employees and 16 back of house employees.
76. In relation to back of house, there are 6 full-time cooks (all of whom are trade qualified), 5 full-time apprentice chefs, and 5 casual kitchen hands.
77. The back of house full-time employees are salaried employees whose written contract of employment remunerates each full time employee with a weekly wage that is sufficient to cover what the employee would have been entitled to if all overtime and penalty rate payment obligations (including any other monetary entitlements under the Restaurant NAPSA) had been complied with.

78. I would have to review the grade levels of my salaried staff if the draft Modern award came into place. Some salaries will rise and others will fall as the Restaurant NAPSA provides for trade qualified cooks to be classified at either grade 5 or 7 depending on whether they supervise other trade qualified cooks. However, the Modern Award has titles like ‘commi chef’, ‘demi chef’ and ‘chef de partie’ which is not how our kitchen operates.
79. The full-time employees who from time to time work beyond 40 hours a week get paid an additional amount for such work. In this way, there is a direct relationship between the award rates and the remuneration payable to the full-time, salaried staff.
80. Pilu at Freshwater does not engage any restaurant staff on a part-time basis.
81. The casual employees in the back of house are kitchen hands. They are paid in accordance with the Restaurant NAPSA and would perform work described in the Grade 1 or Grade 2 classification.
82. In relation to front of house employees, there are 6 full-time employees: 1 restaurant manager; 2 assistant managers (floor managers); and 3 senior waitstaff, all of whom are salaried employees. Their salary is sufficient to cover what the employee would have been entitled to if all overtime and penalty rate payment obligations including any other monetary entitlements under the Restaurant NAPSA had been complied with.
83. The 6 full-time and 13 casual waitstaff are not trade qualified. They are paid in accordance with the Restaurant NAPSA. As senior waitstaff they would perform work described in the Grade 4 classification.
84. Full-time waitstaff work about 38 hours per week, which includes at least one weekend day, usually Sundays.
85. Males and females work as full-time waitstaff.
86. The front of house also has 13 casual employees who perform work described in classification structure grades 1 to 3, depending on their length of service. All the casual employees are paid under the Restaurant NAPSA at the award rate.
87. The casual employees work between 5 and 35 hours per week, some work one shift a week, others up to 5 or 6 shifts. They comprise a mixture of males and females.

TRADING PERIODS

88. Pilu at Freshwater Restaurant is open for lunch and dinner. Lunch is available from 12 to 4.30 pm, Monday to Sunday. On Sundays, lunch is available from 12pm to 5.30pm. Dinner is available from 6pm to 12pm, Monday to Saturday.

89. Friday, Saturday and Sunday are the busiest trading days. Saturday evenings and Sunday lunch service are the peak dining periods.
90. Pilu at Freshwater Restaurant use to have a Sunday surcharge due to the high cost of opening for lunch trade, but were forced to remove it recently because our customers did not like it. The draft Modern Award as I understand it is going to make Sunday trading more difficult by increasing the penalty rate to 175%.
91. In general, evening trade nearly generates about two times more revenue than lunchtime trade. The evening trade accounts for 70 per cent of its gross daily revenue and lunch 30 per cent. The fact that I am able to open on nights and pay the ordinary rate for the day is financially beneficial for my business.
92. Pilu is not located in the Sydney CBD, so we don't benefit from a constant stream of corporate lunch crowds from midday to 2pm. Our lunch service from Tuesday to Friday is much less busy. Our beachside location, away from the city centre means we miss out on one more source of additional revenue.
93. Profits are low on public holidays because of the sizable impact of the penalty rate.
94. Over the entire year, December and January (the following year) is by far the busiest time period. It is one and a half times busier in December and January (the following year) than in any other month. We are a seasonal business located by the beach and find that winter brings down our revenues significantly.
95. Pilu at Freshwater Restaurant has a steady trade during the year. During winter, in July and August, profits can drop to 2 or 3 per cent, especially during school holidays. During winter permanent employees are asked to take their annual leave.
96. Over some shifts each week, the broken shift allowance pursuant to the Restaurant NAPSA is payable to employees.

THE HOSPITALITY DRAFT EXPOSURE AWARD

97. Our casual and full time waitstaff may not be not trade qualified, but they do have a passion for providing warm and personable service. My casual staff work fairly regular hours during the week.
98. The draft Modern Award seems to be modelled on jobs and conditions that would better suit a hotel or motel, not a restaurant.
99. The front of house staff constantly provides a high level of service to suit our clientele. These staff are classified as either grade two or three in the Restaurant NAPSA. The classification suits their job roles quite well. It seems designed for a Restaurant.

100. The grade 1 to 7 classification structure in the Restaurant NAPSA is highly appropriate to our industry. The categories of employment and the skills and duties described in each cascade in a gradual way to provide staff with a clear career path, should they want one. It is easy to grade employees using the Restaurant NAPSA. Even my office administration staff who do not have any formal qualifications find the classifications and things like the broken shift and uniform allowance simple to apply and understand.
101. Most of my waitstaff are rostered to work evenings and weekends.
102. Hotels can afford to have a lot more employees doing many different jobs as it becomes busier because they have more revenue streams to draw upon. Our staff have to greet customers as they come through the door, and then take their orders, serve them meals and look after a customer for an entire evening. This is what makes for a special dining experience.
103. Casual employees suit my business because it provides me with the flexibility that I need, particularly in the winter months. At the same time, they prefer the higher rate of pay and the ability to have a say in their rostering from week to week.
104. To add to that, if a staff member ever questions their rate of pay or their job title, I find it easy to show them the NAPSA and explain the differences between the grades and why some workers get certain allowances and loadings and others don't.
105. My casual waiters are highly experienced, but still benefit from on-the-job training, from time to time. My customers are generally very happy with the style and quality of service provided.
106. Pulu at Freshwater is only a small business, and any increases in the costs of labour are hard to absorb. The increased Sunday penalty in the proposed Modern Award is of a concern because it would place even more stress on our financial position. I might even have to reduce my staffing levels. Bad word of mouth can really hurt a small restaurant, and I feel if I had to reduce my staff, service would suffer.
107. People expect superior service at a fine dining establishment. This is a hard ask when Sunday wage costs will go up and new evening penalties are part of the draft Modern Award.

IMPACT OF THE PROPOSED HOSPITALITY AWARD

108. The introduction of a higher penalty on Sundays could have a negative impact on my lunch time trade. I may have to introduce a surcharge for Sundays, which my customers have considered unpalatable in the past, so I removed it. I know that my customers would not wear an even higher surcharge, which would be a strong possibility should there be a 175% Sunday penalty.

109. The introduction of an evening penalty, Monday to Friday, would increase costs. However, the amount of the evening penalty set out in Annexure “C” would be a burden to administer.
110. Labour costs are the second highest expense item for Pilu at Freshwater Restaurant, at 30 per cent against all gross revenue, followed by purchases (beverage and food) at 35 per cent. The other major expense item is rent pursuant to our lease.
111. The Restaurant NAPSA does not have evening loadings, which means I can serve my customers in the peak periods without being penalised. The evening loadings in the Modern Award draft would make doing business even tougher. It basically means I am being penalised for catering to peak period trade.
112. Pilu at Freshwater’s profitability depends on being able to open for dinner Monday to Saturday and not having to pay extra evening loadings.
113. The high level of service demanded by customers of Pilu at Freshwater and the personal philosophy of the chef and owner Giovanni Pilu, means that service is at the heart of our business. Giovanni strongly believes in the maintaining the integrity of Italian cuisine and this is why he established the Council of Italian Restaurants in Australia (CIRA). Giovanni is passionate about Italian culinary culture, and would find it hard to reconcile cutting back on service because of labour costs rising during our peak trading times under the Modern Award.
114. It is a very tough industry, and to win two chef hats is a highly coveted prize and an honour. I don’t think a restaurant critic would understand if I lost a ‘Hat’ because I had little choice but to reduce my service and kitchen staff because of the higher costs in the evenings and Sundays.
115. On top of that, I already put in about 60 hours a week into the business to keep it running smoothly. If I cut back on service staff to cut back on costs, my family life would come under tremendous stress. It is hard enough to juggle picking up the kids from school and keeping them happy while running a fine dining establishment like Pilu.
116. We are not in a position to cut back anyone’s hours, front or back of house, because our service would suffer. It’s not as simple as it sounds to let go a casual waiter or reduce our kitchen staff, because in a restaurant environment, you may have saved on your wage costs, but someone else is forced to shoulder the extra workload. This is what would happen under the draft Modern Award.

DATED this day 17 OCTOBER 2008

MARILYN ANNECCHINI