



**Submission cover sheet**

**Name**

(Please provide the name of the person lodging the submission)

Claire Limbach

**Organisation**

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Clubs Australia

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**Modern Award Review Stream:**

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

**How to prepare a submission**

Submissions should be emailed to [awards@fwc.gov.au](mailto:awards@fwc.gov.au). Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

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Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply.

Proposals

2. Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature: *CLimbach*

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Name: Claire Limbach

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Date: 26 March 2024

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## Introduction

1. Clubs Australia welcomes the opportunity to provide submissions in reply to the Discussion Paper – Work and Care as part of the Modern Award Review 2023-24 (**the Review**).
2. We refer to our submissions filed on 12 March 2024 in which Clubs Australia supported the submissions of the Australian Chamber of Commerce and Industry.
3. In filing reply submissions, Clubs Australia should not be taken to withdraw its support for ACCI's submission. Rather Clubs Australia considers the need to file additional reply submissions due to the significance of the submissions filed by other parties.
4. Given the parties had nine (9) business days in which to file response submissions and noting the volume of submissions filed in response to the discussion paper on 12 March 2024 (being over 25 submissions), Clubs Australia has not had the opportunity to consider the entirety of the modern award variations proposed. As such, Clubs Australia has elected to focus on matters which may impact the application of the Registered and Licensed Clubs Award 2020 (**Registered Clubs Award**). Omission to respond to all submissions filed should not be taken as acceptance or support of those matters.
5. According to the discussion paper released by the Fair Work Commission (FWC) on 29 January 2024, it is acknowledged that the focus of this review relates to 25 modern awards enumerated below:
  - Aged Care Award 2010 (Aged Care Award)
  - Building and Construction General On-site Award 2020 (Building On-site Award)
  - Children's Services Award 2010 (Children's Award)
  - Cleaning Services Award 2020 (Cleaning Award)
  - Clerks - Private Sector Award 2020 (Clerks Award)
  - Educational Services (Schools) General Staff Award 2020 (Schools General Staff Award)
  - Electrical, Electronic and Communications Contracting Award 2020 (Electrical Contracting Award)
  - Fast Food Industry Award 2020 (Fast Food Award)
  - Fitness Industry Award 2020 (Fitness Award)
  - General Retail Industry Award 2020 (Retail Award)
  - Hair and Beauty Industry Award 2020 (Hair and Beauty Award)
  - Health Professionals and Support Services Award 2020 (Health Professionals Award)
  - Higher Education Industry - General Staff - Award 2020 (Higher Education General Staff Award)
  - Hospitality Industry (General) Award 2020 (Hospitality Award)
  - Local Government Industry Award 2020 (Local Government Award)
  - Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)
  - Miscellaneous Award 2020 (Miscellaneous Award)
  - Nurses Award 2020 (Nurses Award)
  - Pharmacy Industry Award 2020 (Pharmacy Award)
  - Plumbing and Fire Sprinklers Award 2020 (Plumbing Award) Modern
  - Restaurant Industry Award 2020 (Restaurant Award)



- Road Transport and Distribution Award 2020 (Road Transport and Distribution Award)
  - Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)
  - storage Services and Wholesale Award 2020 (Storage and Wholesale Award)
  - Vehicle Repair, Services and Retail Award 2020 (Vehicle Award)
6. Clubs Australia observes that while the Discussion Paper specifies that the review is limited to the 25 modern awards listed, various elements within the discussion paper suggest a broader contemplation of modern awards. For instance, the examination of standard clauses implies an intention to address issues affecting modern awards more broadly, and therefore potentially affecting any modern award.
  7. Based on this, Clubs Australia holds a general interest in this issue, particularly in understanding how the proceedings might affect the Registered Clubs Award.

## Background of the Club Industry

8. Clubs Australia serves as the representative body for over 6,000 not-for-profit licensed clubs, collectively employing over 140,000 individuals nationwide. These clubs, owned by their members, come in diverse forms and sizes, encompassing sporting, returned service, and bowling clubs. According to Clubs Australia's latest survey (**Clubs Australia 2024 Survey**), 53% of the direct employment positions in clubs across Australia were occupied by women. The fact that the clubs' industry workforce is constituted by a majority of women is important when considering the flexibilities already contained in the Registered Clubs Award (discussed further below).
9. Clubs have a diverse occupational workforce which includes hospitality workers, such as bar attendants and chefs, as well as those working in areas ancillary to the hospitality operations, such as greenkeepers, leisure attendants, fitness instructors and childcare workers.
10. The majority of employees who work in clubs fall under the provisions of the Registered Clubs Award, and numerous clubs have established their own enterprise bargaining agreements (**EBA's**).
11. Compared to other hospitality establishments, clubs exhibit a higher reliance on permanent employees and have a lower proportion of casual workers. Across the industry, clubs have a workforce comprising 54% permanent staff, in contrast to the 35% permanent staff employed in other segments of the hospitality sector.
12. A comparison between a large club group in New South Wales and a national hospitality group shows that clubs employ 10.3 permanent employees per \$1 million in revenue. This is relative to a figure of 2.8 permanent employees per \$1million in revenue for the non-club hospitality group. This means the large club group is employing a multiple of 3.7 times more permanent employees per revenue level than the large hospitality group.



13. Clubs across Australia provide multiple career pathways for workers and often employ workers on a medium to long tenure, which provides the opportunity for career progression and the promotion of job security. For instance, a selection of large regional clubs in New South Wales have reported that the tenure of their employees is on average 6.4 years and within metropolitan clubs, the average tenure is 6 years.
14. Clubs Australia submits that the Registered Clubs Award already provides appropriate flexibility to employees balancing work and care responsibilities through the existing statutory framework.

## Scope of this review

15. It has been proposed by the Australian Council of Trade Unions (ACTU) that this review should include all awards, and further that the ACTU recommendations should apply to all awards where applicable.
16. If the FWC is minded to accept this recommendation of the ACTU, Clubs Australia respectfully seeks an opportunity to provide further submissions in reply given the potential consequence on our industry, where the Registered Clubs Award was not initially intended to form part of this review.

## Question 2: Flexibility

17. To the extent that parties have suggested variations with the below effect:
  - a) deleting or varying the modern award clause with respect to IFA's;
  - b) the widening of the definition of 'carer';
  - c) the ability for workers to bring collective flexibility requests;
  - d) limiting employers' ability to refuse a flexible work request.

Clubs Australia respectfully disagrees.

## Individual Flexibility Agreements

18. As noted in our submissions made in the Secure Work stream, with respect to the Registered Clubs Award and data collected within our industry, the operation of IFAs is effective and appropriately used by both parties. The current flexibility permitted by the Registered Clubs Award allows employees with carer responsibility to achieve a necessary balance between work and care. Each employee's desire or need for flexibility is based on their context and circumstances. It is difficult to envisage a collective group of employees with the exact same need for flexibility simply because they all have carer responsibilities. The below is relied upon as evidence of this submission.
19. The Clubs Australia Survey revealed that it is typically club employees that initiate Individual Flexibility Arrangements (**IFAs**) to accommodate flexibility needs in their employment – such as parental or caregiving responsibilities. This flexibility is perceived as a valuable and attractive employment benefit for employees.



20. As with any modern award, the Registered Clubs Award is not a “one size fits all” employment arrangement. IFAs allow club employers and employees to negotiate terms that suit their specific needs and circumstances. This flexibility enables a more customised employment arrangement that aligns with the employee’s skills, preferences and life circumstances. According to the Clubs Australia Survey, a large proportion of employees seek IFAs for parental responsibilities, indeed 46.43% of employees surveyed requested IFAs due to parental responsibilities.
21. By club employers having the ability to offer and accept an employee’s request for an IFA, clubs can retain skilled and experienced employees who might otherwise seek alternative employment, or indeed choose to not work at all, due to personal constraints and limited work schedule flexibility.
22. Clubs Australia has not observed any evidence indicating that IFAs compromise job security. Indeed, IFAs are predominantly utilised at the request of employees seeking specific flexibilities permitted under the Registered Clubs Award. As noted above, this often occurs in situations such as accommodating study commitments or meeting parental/caregiver responsibilities.
23. By embracing IFAs, the clubs’ industry throughout Australia acknowledges that striking a balance between work and care is not always easy as individual needs must always be considered, however the IFA system is fostering and encouraging this balance.

## Flexible Work Arrangements

24. In response to Recommendation 7 of the ACTU Submission suggesting the need to limit employers' ability to decline flexible work arrangements based on the proposal that the nature of some industries makes the granting of flexibility ‘almost impossible’, Clubs Australia disagrees. We note the case of *Ambulance Victoria v Natasha Fyfe* [2023] FWCFB 104. In this case, the employer ultimately failed to discharge its onus of establishing that it had reasonable business grounds to refuse the employee's request. The decision of the Full Bench demonstrates that the current framework of requiring employers to only refuse a request based on reasonable business grounds is effective in supporting an employee's right to seek flexible work arrangements, and it need not be varied.
25. Ultimately, a more rigid flexibility framework may have an unintended consequence of allowing fewer flexibility arrangements, or result in clubs not offering employment that they would otherwise due to constrictions on flexibility in the Registered Clubs Award that does not work operationally or from a costs perspective.

## Question 4 - Working from home

26. In response to the ACTU's recommendation 10, that awards should be varied to provide workers with the right to request work from home arrangements on an individual and collective basis, Clubs Australia respectfully opposes this recommendation.



27. The impact of such a variation on our industry has not been considered, nor assessed. Our industry is not one which naturally lends itself to working from home arrangements given the necessary work and duties required for a club to function, including patron safety and supervision. Imposing an overarching, broad right to work from home clause in the Registered Clubs Award would be operationally unviable and concerning.

## **Question 6 – Minimum engagement periods**

28. In response to the ACTU's recommendation 11, Clubs Australia opposes a minimum 4-hour minimum engagement period.
29. We submit that the Registered Clubs Award already provides for minimum engagement periods for employees that are appropriate and operationally viable within the clubs' industry and need not be varied.
30. A part-time employee has a minimum engagement period of 3 hours.
31. A casual employee (other than a casual employee engaged solely as a bingo caller, assistant bingo caller or fitness instructor) is entitled to a minimum payment for 2 hours' work on each occasion that they are required to attend work.
32. Furthermore, a casual employee engaged solely as a bingo caller, or an assistant bingo caller is entitled to a minimum payment for 3 hours' work. A casual employee engaged as a fitness instructor is entitled to a minimum payment for 1 hour of work.
33. An employee other than a casual employee working on a public holiday will be paid for a minimum of 4 hours' work.
34. The variance in agreed minimum engagement periods within the Registered Clubs award demonstrates the history and assessment that has been applied in balancing the need of both parties to the employment relationships. Applying a blanket minimum 4-hour engagement period would have the potential of causing significant financial hardship to many clubs and may reduce the number of people clubs can afford to employ and/or the services they can provide.

## **Question 8 - Rostering**

35. The Work and Care Interim Report recommended that rostering practices should be predictable, stable and focused on fixed shift scheduling. The Work and Care Final Report recommended that employers should be required to give advance notice of at least two weeks' of rosters and roster changes (except in exceptional circumstances); that there should be genuine consultation with employees on roster changes to accommodate their needs; and that employees have a right to say no to extra hours with protection from negative consequences.
36. A recent survey undertaken by Clubs Australia demonstrated that over 75% of clubs provide consistent rosters to all permanent staff. Accordingly, it is clear that the current award framework is creating a roster system which provides predictability and stability for employees. It is our submission that further variations



to the Registered Clubs Award are not required to meet the above recommendation of the Work and Care Interim Report.

37. In respect to the ACTU's recommendation 13 that all awards should require 28 days' notice of rosters, except in exceptional circumstances, Clubs Australia opposes this recommendation.
38. Firstly, it goes beyond the requirements of providing predictable, stable and fixed shift scheduling.
39. Secondly, it does not give consideration to the manner in which specific industries operate. Hospitality industries require dynamic and nimble rostering such that if there are unforeseen circumstances requiring an uplift in staffing due to high demand, or a decrease in staffing due to low demand, a 28-day notice of roster requirement is entirely unworkable and inefficient.
40. Thirdly, a roster provided 28 days in advance, that cannot be varied unless mutually agreed would appear to create a scenario entirely incompatible with affording flexibility to individual employees based on their carer needs. There are often instances where an employee does not have fixed flexibility requests and as such, a shorter roster notice period allows for more short notice requests for flexibility to be facilitated and accommodated by the club.
41. Again, creating rigidity around the system which currently supports flexible work arrangements may have the opposite effect of stifling flexibility, reducing operational capacity and opportunities for work.

#### **Questions 14 and 15 – personal/carer's leave**

42. With respect to the ACTU's recommendation 22 that the number of dedicated carers' leave should be increased by 10 days, Clubs Australia opposes this recommendation.
43. Firstly, the time frame of nine (9) business days in which these submissions were required to be prepared has not permitted a financial impact analysis of this proposed change.
44. Secondly, in our view, this matter would be more appropriately addressed by legislative reform not a modern award review given it relates to an NES entitlement.

#### **Question 16 – unpaid carer's leave**

45. With respect to the ACTU's recommendation 23 that awards should provide an additional entitlement to unlimited unpaid personal and carer's leave where paid personal and carer's leave has been exhausted, Clubs Australia opposes this recommendation.
46. In our view, this matter would be more appropriately addressed by legislative reform not a modern award review. As a practical matter, it would be fraught with legal risk for a club to terminate an employee who – for example - is unable to work due to caring for a long term illness or injury family member, which could extend over years, yet refuses to resign, if the employee has an entitlement to take unlimited carer's leave.





**Question 19 – other variations**

47. The ACTU has submitted a vast number of additional variations including:
- A) Variation providing for additional support for breastfeeding and lactation including paid breaks and appropriate facilities. This is raised in the discussion paper, with reference to Article 10(1) of the Maternity Protection Convention which provides that 'A woman shall be provided with the right to one or more daily breaks or a daily reduction in hours of work to breastfeed her child.' Australia is an outlier in this respect and one of only a few countries without statutory entitlements to breastfeeding breaks at work or facilities. The absence of a clear entitlement, as in Australia, may deter parents from taking these breaks, particularly where they are unpaid.
  - B) Variation providing entitlements to paid leave to attend appointments associated with pregnancy, adoption, surrogacy and permanent care orders (including attending pre-natal appointments with a partner who is pregnant).
  - C) Variation requiring an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy is for an employee during or returning from a period of parental leave.
  - D) Variation recognising periods of unpaid parental leave as active service to ensure the accrual of all entitlements and payment of public holidays during periods of paid and unpaid parental leave.
  - E) Variation providing for access to safe, secure and dedicated facilities/equipment for women in male dominated industries e.g. bathrooms, changerooms, personal protective equipment (PPE)/clothing/uniforms and so on.
  - F) Variation providing for additional pay on termination for those with parenting responsibilities. International Labour Organisation, Maternity Protection Convention, R183, 88th sess, (15 June 2000) 124 Senate Select Committee on Work and Care, Final Report (March 2023) xxiv, xxvii.
  - G) Variation providing for paid community service leave and paid disaster management leave for employees who are volunteers with emergency management organisations, to acknowledge the significant work done in caring for people in the community.
  - H) Variation providing for grandparental leave, which would provide an eligible employee access to 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday, with 12 weeks paid.
48. Clubs Australia respectfully requests the right to file submissions in response to the above, should the commission be minded to consider making any such variation to the Registered Clubs Award.