

IN THE FAIR WORK COMMISSION

FWC MATTER Nos: AM2014/283

Registered and Licenced Clubs Award 2010

PARTY: Clubs Australia Industrial

OUTLINE OF SUBMISSIONS ON BEHALF OF CLUBS AUSTRALIA INDUSTRIAL

1. This submission is made pursuant to the directions of the Full Bench of the Fair Work Commission (**FWC**) on 29 January 2020.
2. In accordance with those directions, Clubs Australia Industrial (**CAI**) makes the following submissions regarding the outstanding substantive issues in relation to the Registered and Licensed Clubs Award 2010 Exposure Draft, dated 29 January 2020.

PROPOSED SUBSTANTIVE VARIATION S2: TIME OFF INSTEAD OF PAYMENT FOR OVERTIME

3. On 14 December 2016, clause 22.8 of the Exposure Draft was inserted into the Registered and Licensed Clubs Award 2010 (**the Award**) as clause 28.6 (the **new TOIL clause**).
4. Prior to the introduction of the new TOIL clause, clauses 26.7 and 26.8 allowed staff to take time off in lieu of overtime payments for work on a rostered day off. These clauses are now at clauses 15.7 and 15.8 of the Exposure Draft.
5. CAI seeks for the award to clarify that clauses 15.7 and 15.8 apply where employees are required to work on their rostered days off and the employer and employee agree that the employee will receive time off in lieu of overtime payments, and that, the new TOIL clause applies for all other overtime work performed (ie. work not performed on a rostered day off).

6. CAI submits the new TOIL clause (being clause 22.8(a)) be titled:
“Time off instead of payment for overtime (not including on Rostered Days Off)”.
7. CAI submits that a Note should be added under the new TOIL clause (being clause 22.8(a)) to state that:

NOTE: Clause 22.8 does not apply for work performed on a Rostered Day Off. Refer to clauses 15.6 and 15.7 for arrangements for accrued time off in lieu of overtime payments when an employee works on a Rostered Day Off.
8. Finally CAI submits that clause 15.8(g) of the Exposure Draft is no longer required.

PROPOSED SUBSTANTIVE VARIATION S3: CASUAL EMPLOYEES AND PENALTY RATES

9. It is CAI’s position that maintenance and horticultural employees can be engaged on a casual basis in accordance with clauses 11.1 and 11.2 of the Exposure Draft.
10. CAI therefore proposes to amend clause 24.2 of the Exposure Draft and insert a new clause 24.3 of the Exposure Draft to state as follows:

24.2 A full time or part-time maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 18—Minimum wages for the relevant classification:

Monday to Friday and Saturday before 12 noon	Saturday after 12 noon	Sunday	Public holiday
100%	150% for the first 2 hours then 200%	200%	250%

24.3 A casual maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 18—Minimum wages for the relevant classification (inclusive of casual loading):

Monday to Friday and Saturday before 12 noon	Saturday after 12 noon	Sunday	Public holiday
125%	150% for the first 2 hours then 200%	200%	250%

11. CAI proposes that the existing clauses 24.3 (public holidays), 24.4 (late and early work penalties) and 24.5 (penalty rates not cumulative) be renumbered as clauses 24.4, 24.5 and 24.6 respectively.
12. The proposed variations are consistent with the provisions of the Bowling and Golf Clubs Employees (State) Award 2004 NAPSA, which provided for the engagement of casuals with a 15% loading. The maintenance and horticultural provisions of the Award were largely based upon those in the NSW NAPSA.
13. These proposed variations are consistent with industry practice in engaging casual maintenance and horticultural employees nationwide and Clubs were advised to transition in the higher casual loading in the Modern Award from 1 July 2010 onwards in accordance with the *Modern Awards Decision* [2009] AIRCFB 843.

PROPOSED SUBSTANTIVE VARIATION S5: DEFINITIONS- CLUB MANAGER

14. We note that this proposed variation was withdrawn during a hearing before President Ross on 10 April 2019 on the basis that Mr Chris Mossman, the former Executive Director of CAI, had “resolved” the matter with the Club Managers’ Association of Australia (**CMAA**).
15. The position of Mr Mossman was incorrect. Following discussions with the CMAA and other stakeholders, the definition of ‘club manager’ remains unresolved and ambiguous.



16. CAI apologises for Mr Mossman’s oversight. CAI proposes, and with the consent of the CMAA, to clarify the definition of ‘club manager’ in clause 2 of the Exposure Draft.

17. The current definition in clause 2 defines a ‘club manager’ as follows:

club manager means a person appointed as such who is responsible for the direction and overall operation of a registered and licensed club, subject to the strategic direction determined by its Board of Directors or Committee of Management. A club manager has duties and responsibilities as referred to in clause A.11 of Schedule A— Classification Definitions.

18. The definition above is unclear as to whether a ‘club manager’ is referring only to the Manager responsible for the general management of the Club (for example a Chief Executive Officer, General Manager or Secretary Manager) or if it also encompasses all managers (Level A-G) as described and classified in clause A.11.2 of Schedule A.

19. In turn, this creates doubt over whether specific clauses of the Award applies to a manager who may be classified as Level A-G, but who may not be responsible for the general management of the Club (such as a Chief Executive Officer, General Manager or Secretary Manager).

20. The definition of ‘club manager’ in Clause 2 and the duties outlined in Clause A.11.1 replicate provisions found in the Club Managers (State) Award 2006 (the **NAPSA**), which operated in New South Wales prior to 1 January 2010.

21. Furthermore, the management specific clauses in the Exposure Draft (and the Award) largely replicate those in the NAPSA and include:

- 15.8- Special Provisions for Accrued Rostered Days Off (NAPSA clause 21.6)
- 18.5- Non-application of particular provisions of this award to employees within particular classifications receiving specified salaries (NAPSA clause 9.5)
- 18.11- Management Trainees (NAPSA clause 10)



- 19.3(b)- Meal Allowance- Club Managers (NAPSA clause 20)
- 19.3(d)- Uniforms- Club Managers (NAPSA clause 35)
- 19.3(i)- Expenses- Club Managers (NAPSA clause 16)
- 23- Recall to duty- Club Managers (NAPSA clause 23)
- 25.1(b)- Annual Leave (NAPSA clause 25.1)
- 29- Professional Development Leave (NAPSA clause 30)
- 37- Accommodation- Club Managers (NAPSA clause 34)
- Schedule A11.2- Classifications (NAPSA clause 9)

22. It appears that the definition of ‘club manager’ in clause 3 of the Award (clause 2 of the Exposure Draft) was based on Clause 5 of the NAPSA, which defined a ‘club manager’ as:

“Secretary/Manager, Club Manager, Manager, General Manager, Chief Executive Officer (which classifications are in this award collectively referred to as the Club Manager) shall mean an employee who is appointed by the club’s Board of Directors or Committee of Management, or the governing body’s duly appointed representative, to undertake the duties of the general management, promotion and supervision of the Club’s activities, functions and business and the direction, supervision and control of all other staff employed therein, and without limiting the generality of the foregoing shall unless otherwise directed by the Board, include any but not necessarily all of the areas cover in Clause 6. of this award.”

23. Further, clause 5 of the NAPSA defined ‘employee’ as:

“any manager (by whatever title), or trainee manager employed by the club.”

24. Accordingly, the NAPSA as defined by ‘club manager’ and ‘employee’ covered and applied to a wide range of management levels in the club industry.

25. The NAPSA definition of ‘club manager’ above clearly only intended to cover the sole manager responsible for the general management of the Club. However, the term ‘club manager’ under the NAPSA was restricted to only minor provisions including



the club manager's powers to appoint trainee managers, special provisions for clubs where the club manager was the only paid manager at a Club in relation to Rostered Days Off, and requirements for other managers to provide the club manager with detail of all work performed on a Rostered Day Off in order to be entitled to overtime payments.

26. All other management employees (other than the General Manager/CEO/Secretary Manager who were defined as a 'club manager') were defined in clause 5 of the NAPSA as 'employees' (as defined in the NAPSA at paragraph 21 above). Further, all of the management specific provisions in the NAPSA that are now in the Award/Exposure Draft (as outlined in paragraph 19) applied to both a 'club manager' and an 'employee' under the NAPSA.

27. It appears that during the Award modernisation process, the definition of 'club manager' was inserted (clause 2 of the Exposure Draft) to differentiate staff who would previously have been employed under the NAPSA from those who would be covered by the:

- a. Club Employees (State) Award 2004 – defined as 'employees'; and
- b. Bowling and Golf Clubs Employees (State) Award 2005 - defined as maintenance and horticultural employees,

28. However, by copying the 'club manager' definition from clause 5 of the NAPSA into the Award and not including the 'employee' definition from clause 5 of the NAPSA (which was a reference to lower level management underneath 'club manager') into the Award, it is open to interpretation that the all of the management specific provisions in the Award only apply to the sole manager responsible for the general management of the club (ie. General Manager/CEO/Secretary Manager) as opposed to all management employees as intended, and as was the case under the NAPSA.

29. As a result, CAI proposes to amend the definition of 'club manager' as follows:

club manager means:

- a. a person appointed as such who is responsible for the direction and **operation** of a registered and licensed club, subject to the strategic direction determined by its Board of Directors, Committee of Management or **more senior management**; and/or
- b. has duties and responsibilities as referred to in clause A.11.1 of Schedule A—Classification Definitions **and will be classified according to Clause A.11.2 of Schedule A—Classification Definitions.**

30. CAI also proposes that clause 18.5 be amended so that the managerial salaries therein incorporate award entitlements that were intended to be incorporated and were in fact incorporated in the corresponding managerial salaries in clause 9.5 of the NAPSA.

31. CAI therefore proposes that clause 18.5 be amended as follows:

18.5 Non-application of particular provisions of this award to employees within particular classifications receiving specified salaries

(a) Managerial classifications—levels 7–13 inclusive in clause 18.3

(i) Subject to the requirements of the NES, the provisions of clauses:

- 15- Ordinary hours of work (other than clause 15.8- Special provisions for accrued rostered days off- club managers);
- **17.2—Meal Breaks;**
- 18.12 Higher duties;
- 19.2(c) —Broken periods of work allowance;
- 22—Overtime;
- 23—Recall to duty—club managers;
- 24—Penalty rates (other than penalty rate provisions relating to public holidays (see clause 24—Penalty Rates)); and
- **25.3—Annual Leave Loading**

will not apply to a club manager receiving a salary of 20% in excess of the minimum annual salary rates for the appropriate classification prescribed in Schedule C—Classification Definitions.



(ii) Subject to the requirements of the NES, the provisions of clauses:

- 15—Ordinary hours of work;
- 17.2—Meal Breaks;
- 18.12—Higher duties;
- 19.2(c) —Broken periods of work allowance;
- 19.3(b)—Meal allowance—club managers;
- 19.3(d)—Uniforms—club managers;
- 19.3(e)—Vehicle allowance;
- 18.3—Broken shifts;
- 22—Overtime;
- 23—Recall to duty—club managers;
- 24—Penalty rates;
- 25.3—Annual Leave Loading; and
- 31.4—Additional arrangements for full-time employees

will not apply to club managers receiving a salary in excess of 50% above the minimum annual salary rate for the appropriate classification prescribed in Schedule C—Classification Definitions.

(iii) To avoid doubt, where a club manager is not paid in accordance with either clause 18.5(a)(i) or clause 18.5(a)(ii) above, the club manager will be entitled to the benefits of all relevant provisions of this Award.

PROPOSED SUBSTANTIVE VARIATION S6: MEAL BREAKS

32. CAI proposes that clause 17.4 of the Exposure Draft is amended to read:

17.4 *Where the club employs fewer than 15 people covered by this award, then the break prescribed by clause 17.2 can be substituted by a paid 20 minute crib break, which can be taken, as trade permits, at any time within that day's shift, and the penalty prescribed by clause 17.2 will not apply.*



33. The proposed variation aligns the definition of a small club in the Award with the definition of a small business in section 23 of the *Fair Work Act 2009* (Cth) making the Award easier to interpret and apply.

PROPOSED SUBSTANTIVE VARIATION S8: CLASSIFICATION DEFINITIONS

34. CAI proposes that Maintenance and Horticultural Employees be classified in grades as opposed to levels to avoid confusion with the pay rate levels in clause 18.3 of the Exposure Draft.

35. All other employees covered by the Award are classified in grades as opposed to levels and this will ensure consistency and make the Award easier to interpret and apply.



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Clubs Australia Industrial

4 March 2020

