



IN THE FAIR WORK COMMISSION

Fair Work Act 2009
s.156 - 4 yearly review of modern awards
Registered and Licensed Clubs Award 2010
(AM2014/283)

THE CLUB MANAGERS' ASSOCIATION, AUSTRALIA

SUBMISSION IN REPLY

**IN RELATION TO
THE REGISTERED AND LICENCED CLUBS AWARD
EXPOSURE DRAFT
DATED 29 JANUARY 2020**

BACKGROUND

1. This Submission in Reply 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, The Club Managers Association Australia makes the following submission in Reply to Clubs Australia Industrial (CAI) submission dated 4th March 2020, and the collective submission of Australian Business Industrial and NSW Business Chamber dated 6th March 2020 in relation to outstanding substantive issues in relation to the Registered and Licenced Clubs Award 2010 Exposure Draft dated 29 January 2020.

CLUBS AUSTRALIA INDUSTRIAL (CAI)

Time off instead of Overtime

3. [paragraph 5] seeks to clarify if clauses 15.7 and 15.8 of the Award apply where employees are required to work on their rostered days off and the employer and the 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).
4. The CMAA supports CAI's request for clarification.



5. [paragraph 6] CAI submits the new TOIL (clause 22.8(a)) be titled: “Time off instead of payment for overtime (not including on Rostered Days Off)”.
6. The CMAA does not oppose this requested change.
7. [paragraph 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 accruing time off in lieu or overtime payments when and employee works on a rostered day off.

8. The CMAA does not oppose this requested change
9. [paragraph 8] CAI submits that clause 15.8(g) of the Exposure Draft is no longer required.
10. The CMAA does not oppose this requested change.
11. [paragraph 29] CAI proposes to amend the definition of ‘club manager’ as follows:
Club manger 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.
12. The CMAA supports this revised definition and does not oppose this requested change.
13. [paragraph 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 we in fact incorporated in the corresponding managerial salaries in clause 9.5 of the NAPSA.
14. [paragraph 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.



15. The CMAA does not support CAI's requested amendment to clause 18.5 of the Exposure Draft and seeks that clause 18.5 in the Exposure Draft remain unchanged.
16. The Club Managers NSW NAPSA and Pre reformed Federal Awards have always provided for a free Club meal or allowance for managers receiving a salary less than the 50% exemption salary (19.3 (b) and annual leave loading applying to all managers covered by the award regardless of salary received. These conditions have continued under the modernised award and in the draft exposure Award.
17. [paragraph 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.

18. CMAA support CAI's requested amendment to clause 17.4 of the Exposure Draft.

23 March 2020 – FWCFB 1539 Statement & Background Paper Tranche 3- Provisional Views

Timing issue

19. The CMAA believe that a period between 8 to 12 Weeks to finalise the Club Award to be reasonable.
20. [paragraph 296] The CMAA agrees with the provisional view in paragraph 296 deleting the words 'registered or recognised understate, Territory or Commonwealth legislation 'from clause 4.1.
21. [paragraph 300] The CMAA agrees with ABI submission at Paragraph 299 for the inclusion of a 'definition of club industry'.
22. seeks to clarify if clauses 15.7 and 15.8 of the Award apply where employees are required to work on their rostered days off and the employer and the 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).



23. In conclusion from the CMAA perspective, when the President of the Commission, Justice Ross, announced the Tranche 3 approach with a time line the Association viewed this statement in a positive light. In so far as being the end of a long travelled finalisation of the 4 yearly review of the Clubs Award. The journey since the first draft exposure award on the 22nd of November, 2016. The award has been reviewed extensively by way of common issue variations, substantives claims arbitrated and an application to revoke the award. The final matters to be dealt with at this stage should be restricted to technical and drafting issues only.

Filed by: 6 April 2020
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