

Clubs Australia Reply Submission

Modern Awards Review 2023-24

Job Security

21 February 2024



Introduction

1. This submission seeks to reply to the submissions made by other parties in relation to the job security stream of the Modern Awards Review 2023-24 (**the Review**) conducted by the Fair Work Commission (**Commission**). This submission should be read in conjunction with our initial submission made on 7 February 2024.

Casual employment

1. The Australian Council of Trade Unions (**ACTU**) has provided a number of recommendations. Clubs Australia oppose recommendations 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18 and 19.
2. Specifically, on page 4 of the ACTU submission paper, the ACTU submits that casual employees should have *“improved safety net entitlements to ensure that any remaining entitlement gaps are fairly compensated”* (per Recommendation 3).
3. To that end, the ACTU argues the relevant modern awards should be amended to increase job security and secure employment for casuals by:
 - *increasing the casual loading;*
 - *providing for additional or improved forms of paid leave; and*
 - *adjusting other conditions relevant to job security including restoring greater predictability and security to permanent work.*
4. It is difficult for Clubs Australia to submit a response to the above submissions by the ACTU as its submission paper, in our view, provides no real justification, cost analysis or evidence to support recommendation (3). In particular, ACTU has not presented



any justification or analysis that supports the submission that by increasing the entitlements for casual employees it will in turn meet the objective in creating job security and secure employment.

5. The Australian Services Union (**ASU**) has stated in their submissions on page 3 that *“casual employees should have a clear right to be absent from work when ill, caring for loved ones or experiencing bereavement without penalty. The Commission should consider further measures to improve job security for casuals, such as extending paid leave to casuals and/or increasing the casual loading”* (per Recommendation 5 (a)).
6. Clubs Australia rejects this submission on the basis that casual employees are not receiving a so called “penalty” for taking unpaid carers’ or bereavement leave. Casual employees are compensated financially via a 25% casual loading which is paid on every hour worked on top of their ordinary rate of pay, for any potential reasons to reject or cancel shifts, including due to sick/carers’ leave or bereavement leave.
7. Furthermore, Clubs Australia submits that the 25% casual loading is afforded to casual employees in lieu of receiving benefits afforded to permanent employees under the NES. This reflects the flexibility inherent in casual employment, allowing workers to have greater control over their work hours and work-life balance. The extra compensation by way of 25% loading also acknowledges the irregular nature of casual work, where individuals may not have consistent or guaranteed shifts. Overall, the loading serves as a financial recognition of the unique conditions associated with casual employment.



8. If casual employees were to receive a 25% casual loading in addition to paid leave entitlements under the NES, it would place casual employees in a more advantageous financial position than permanent employees – being employees who do not have the flexibility that casual employees have to accept or reject shift according to their preference.
9. Furthermore, providing a 25% casual loading plus paid leave entitlements under the NES to casual employees would contradict the fundamental objective of establishing secure employment for the future. It would deter casual employees from requesting conversion to permanent employment or at the very least, reduce their incentive to do so – as such casual employees would lose flexibility in their working hours (namely the ability to accept or reject shifts) and lose their 25% casual loading.
10. Accordingly, we submit Recommendation 5 (a) put forward by ASU is questionable, as there would be no real motivation for casual workers to seek permanent employment positions, given the real financial and flexibility disadvantages in doing so.
11. The ASU has not, in its submission, demonstrated how increasing the 25% casual loading meets the award objective of job security/secure employment in its submission. This appears to be a broad request from the ASU for enhanced benefits for casual employees and does not meet the objective of secure employment. Clubs Australia has not reviewed any compelling argument in any submission in this process that the casual loading of 25% should be increased.



Part-time employment

1. The United Workers Union (**UWU**) has submitted on page 7 that “[a]ward provisions that contain guaranteed number of minimum weekly hours are important in relation to job security and secure employment. The HIG Award and RI Award contain provisions guaranteeing a minimum of 8 hours per week to part-time employees”.
2. Clubs Australia supports this submission made by the UWU (per Point 10) to the extent that existing guaranteed hours provision for part-time employees in modern awards does meet the objective of fostering job security. Specifically, the Registered and Licensed Clubs Award 2020 (**Registered Clubs Award**) provides part-time employees with a minimum of eight (8) guaranteed ordinary hours per week.
3. Clubs Australia submits that by providing a guaranteed number of hours offers stability and consistency to part-time employees, as well as more security and predictability in their income. Furthermore, under the Registered Clubs Award the part-time employee and the Club agree on the days of the week and hours that the part-time employee is available to work the guaranteed hours (clause 10.4(b)). By clubs having a part-time employee’s availability to work schedule, rostering is accurate, operationally works for both parties and minimises any stress or confusion regarding ability to work on certain times and days.
4. In our view, the remaining submissions made by the unions have failed to provide any substantiated position establishing that the existing conditions for permanent employees as currently contained in the modern awards, do not align with the overarching goal of ensuring a stable and secure employment environment.



Training

5. Clubs Australia rejects the submission of the UUU seeking the inclusion of paid training in all modern awards. The UUU has failed to offer any adequate justification regarding how compensated training aligns with the overarching goal of ensuring secure employment. There is a notable absence of a persuasive argument outlining the connection between paid training initiatives and the achievement of the broader objective of fostering job security and secure employment.
6. There are significant financial and operational issues that require careful consideration when potentially requiring employers to implement paid training absences from the business – including cost of the training, the cost and availability of extra labour required to replace those attending training, the need for the training based on size and complexity of the operations etc.

Individual Flexibility Arrangements

7. The Unions have proposed a number of reforms to the current provisions in the relevant modern awards regarding Individual Flexibility Arrangements (**IFAs**).
8. Clubs Australia opposes the six (6) proposed reforms outlined by the ACTU on page 5 of their submission, due to a lack of sufficient nexus or evidentiary justification for how these reforms align with the overarching goal of ensuring job security/secure employment.
9. Specifically, the Unions proposed reform includes that *“an employer’s proposal for an IFA includes a draft IFA”*. We submit that this proposed reform provides no justification



as to how this would result in secure employment. Essentially, this reform would impose unnecessary complexity and administrative burden for both employers and employees. Requiring an employer to propose an IFA in a draft together with a detailed assessment of its impact on the employee's work and income would be a time-consuming and resource intensive exercise.

10. Moreover, evidence gathered by Clubs Australia from the 2024 Survey to member clubs provided that majority of IFA's are at the request of the employee in order to accommodate for their carers' responsibilities or out of work hours sporting activities. According to the Clubs Australia Survey, member club provided feedback that 46.43% of employees who requested IFAs did so due to parental responsibilities.
11. Recommendation 8 made by the ACTU proposes a reform to the relevant award IFA provisions to include *"capacity to bring disputes under the dispute resolution procedure and to the Commission's power to make conciliate, mediate, express an opinion or make a recommendation"*. Clubs Australia submits there is no nexus between this submission and the object of job security/secure employment.
12. Clubs Australia submits that explicitly referring to dispute resolution procedures and the Commission's intervention powers is more likely to lead to an acrimonious workplace relationship between employer and employee, an increase in disputes and potentially an end of the employment relationship if matters cannot be resolved.
13. The ACTU has submitted at page 19 that *"[g]iven the evidence of misuse of IFAs, often to undermine job security, we call for legislative reform to remove individual flexibility provisions from modern awards"*. Clubs Australia disputes this as a fair or accurate



characterisation of IFAs. This is particularly so given the data on which the ACTU relies is dated 2009-2012 and is therefore out of date and has no current relevance.

14. Furthermore, there is no compulsory coverage or application of an IFA for an employee. They are entered into by mutual agreement between an employer and employee. If an employee wishes to terminate an IFA at any time under the Registered Clubs Award, they can do so by mutual agreement or by giving 13 weeks' written notice. Employees and employers are not "forced" into entering IFA's and can easily amend clauses or terminate the IFA if there has been a change of circumstance or any other pressing necessity.

15. Secondly, Clubs Australia submits that 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. If this option was not available, it is likely there would be less employment in the clubs' sector – as employers would not be in a position to accommodate employee needs to vary the Registered Clubs Award.

16. Thirdly, the General Managers Report into IFAs under s.653 of the Fair Work Act 2009 that the ACTU relies upon, fails to make mention that the General Managers Report also included that:

"IFAs were more frequently initiated by employees than employers, with smaller proportions responding that an IFA had been initiated by an employer or jointly made by both employers and employees".

17. 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.

18. Clubs Australia has not observed any evidence indicating that IFAs compromise job security. Indeed, in the clubs industry, 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.

19. We further submit that the UWU's submission paper confirmed on page 5 that the union had no evidence to justify that IFA's undermine job security.

Australian Chamber of Commerce Submission (ACCI)

20. In addition to these submissions, Clubs Australia supports the submission by ACCI in reference to the following:

- the exclusion of casual employees from receiving NES entitlements and increased casual loading;
- that IFAs should remain in all modern awards and not be varied; and
- permanent employment is a form of secure work that provides of predictability of hours.