

IN THE FAIR WORK COMMISSION

FWC MATTER Nos: AM2014/283

Registered and Licenced Clubs Award 2010

APPLICANT: Clubs Australia Industrial

OUTLINE OF SUBMISSIONS ON BEHALF OF CLUBS AUSTRALIA INDUSTRIAL

1. This submission is made pursuant to the direction of the President, Justice Ross, on 10 April 2019. This submission is made in respect of the latest exposure draft of the *Registered and Licensed Clubs Award 2010* ('the Exposure Draft') published on 15 April 2019.
2. In accordance with that direction, Clubs Australia Industrial provides the following responses to the Commission's questions.
3. All references in this submission are to the exposure draft, unless otherwise specified.

Parties are asked whether a maintenance and horticultural employee may be engaged on a casual basis; and if so, do the percentages in clause 24.1 or 24.2 apply?

4. Clubs Australia Industrial's position is that maintenance and horticultural employees may be engaged on a casual basis. This interpretation is consistent with the *Bowling and Golf Club Employees (State) Award 2006*, under which casual maintenance and horticultural employees could be employed.
5. It is our view that casual maintenance and horticultural employees receive payment in accordance with clause 24.2, with an additional 25% loading paid Monday to Friday and Saturday before 12 noon.

Parties are asked whether clause 13.1 applies to: a junior waiter who may be required to deliver liquor to tables and/or take payment for liquor; or to a junior employee employed within the same premises as where liquor is sold but who does not him or herself sell or serve liquor (e.g. a junior kitchen hand).

6. Our position is that the adult rate referred to in clause 13.1 only applies to the employee delivering liquor to tables in the above example.

7. The current Award clause states, '*Junior employees employed in the bar or other places where liquor is sold must be paid at the adult rate...*' Our position is that this does not mean any venue that sells liquor is required to pay adult rates for all employees. Rather, employees working in a 'bar or other place where liquor is sold' within a venue are entitled to the adult rate.
8. A requirement to pay all junior employees the adult rate in club venues where liquor is sold would create an illogical consequence as the significant majority of clubs are licensed to sell liquor and there would be no work for the junior rates provision to do.

Parties are asked whether clause 15.8(g) is still required.

9. Clubs Australia Industrial submits that this clause is no longer required.

Clause 18.2 is based on the text of clause 17.1 in the current award and states that the rates are inclusive of the first aid allowance. Parties are asked to confirm whether this is the case.

10. Clubs Australia Industrial submits that the first aid allowance, where applicable, is included within an employee's rate of pay.

Parties are asked to confirm whether the rate in clause 18.4(a) is subject to penalties in clause 24.

11. It is Clubs Australia Industrial's position that the loaded rate in clause 18.4 is an all-inclusive rate.
12. This matter was dealt with in Matter No. AM2010/221 before the Fair Work Commission, in which Vice President Watson confirmed the position that the rate encompasses all allowances (PN61).
13. To remove ambiguity, we propose the clause is reworded to the following:

(a) Minimum hourly rate—\$47.72 inclusive of the 25% casual loading in clause

11.2. No penalty or weekend payments of any type will apply.

The addition of the last sentence is consistent with the Club Employees (State) Award.

Parties are asked to clarify the interaction between clauses 19.3(c)(i) and 19.3(c)(ix).

14. Clubs Australia Industrial submits that subclause 19.3(c)(ix) can apply to employees other than cooks and maintenance and horticultural employees.

15. To remove ambiguity and reduce the risk of double-dipping, we propose the following change to subclause 19.3(c)(ix):

(ix) Where the employer requires an employee to provide and use any towels, ~~tools~~, ropes, brushes, ~~knives, choppers~~, implements, utensils and materials, the employer must reimburse the employee for the cost of purchasing such equipment. The provisions of this clause do not apply where these items are supplied by the employer, or where an employee is supplying their own tools in accordance with subclause 19.3(c)(i).

Parties are asked to comment on how the evening and night penalties in clause 24.4 apply in circumstances where an employee performs work for part of an hour. That is, whether the penalties in clause 24.4 are payable in unites of whole hours only or are payable on a pro-rata bases for part hours worked.

16. Clubs Australia Industrial's position is that the late and early work penalties are payable on a pro-rata basis. Specifically, the inclusion of 'for such time worked' within subclauses 24.4(a) and (b) allows the percentage to be calculated on only the time worked, and not an entire hour.



FILED ON BEHALF OF Clubs Australia Industrial

17 May 2019.