



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – *Registered and Licensed Clubs Award 2010*

(AM2014/283)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 23 OCTOBER 2019

4 yearly review of modern awards – Registered and Licensed Clubs Award 2010 – substantive issues.

[1] Further to the hearing before the AM2019/17 Finalisation of Exposure Drafts Full Bench on 9 October 2019 a conference of the parties with an interest in the *Registered and Licensed Clubs Award 2010* (Clubs Award) was held before Commissioner Bissett on 16 October 2019. The conference was in relation to the matters raised by United Voice and Clubs Australia Industrial (CAI) in their submissions following the release of the exposure draft for the *Clubs Award* in early 2019.

[2] A report of the outcomes of that conference and proposed variations to the *Clubs Award* exposure draft is at **Attachment A**.

[3] One issue remains unresolved. The unresolved issue concerns clause 18.4(a) – Casual fitness instructor and whether the rate, currently inclusive of the 25% casual loading, should be disaggregated (see [17] of the attached report). Interested parties are invited to file a submission in relation to the unresolved issue in accordance with the directions below.

[4] Interested parties are invited to file submissions on the issue by no later than **4.00 pm on Wednesday 13 November 2019**. Submissions in reply are to be filed by no later than **4.00 pm on Wednesday 27 November 2019**. All submissions must be sent electronically to amod@fwc.gov.au. This issue will be determined on the papers unless a request for an oral hearing is filed by **4.00 pm on Friday 29 November 2019**.

PRESIDENT

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<PR713636>

ATTACHMENT A

PR713492



REPORT TO THE FULL BENCH

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 Yearly Review of Modern Awards: Registered and Licensed Clubs Award 2010—Report to the Full Bench (AM2019/17)

COMMISSIONER BISSETT

MELBOURNE, 21 OCTOBER 2019

4 yearly review of modern awards: Registered and Licensed Clubs Award 2010 - Report to the Full Bench.

Registered and Licensed Clubs Award Exposure Draft

[5] Further to the hearing before the Full Bench on 9 October 2019 a conference of the parties attending in relation to the *Registered and Licensed Clubs Award 2010* (Clubs Award) was held before me on 16 October 2019. The conference was in relation to the matters raised by United Voice and Clubs Australia Industrial (CAI) in their submissions made following the release of the exposure draft for *Clubs Award* in February and March 2019.

[6] Following is a report of the outcomes of that conference and proposed variations to the *Clubs Award* exposure draft.

1. Clause 13.1 – Junior employees

[7] United Voice and CAI agree that only junior employees actually engaged in serving liquor are entitled to be paid at the adult rate.

[8] Clause 13.1 of the exposure draft will be amended to reflect the wording in clause 15.1 of the *Restaurant Industry Award 2010* which deals with the same subject matter.

[9] Clause 13.1 of the exposure draft will therefore be amended to read:

13.1 Junior employees will be paid in accordance with clause 18.7. Where the law permits, junior employees may be employed in the bar or other places where liquor is sold. Junior employees working as liquor service employees must be paid at the adult rate of pay in clause 18.3 for the classification for the work being performed.

2. Clause 18.2 – Minimum wages

[10] The parties have agreed to an amendment to clause 18.2 in the exposure draft to add the word “ordinary” before “rate of pay” so that the clause reads:

18.2 An employee’s ordinary rate of pay is inclusive of the award rate set out in this clause and the additional allowance (where applicable) for first aid set out in clause 19.2(b).

3. Clause 18.4(a) – Casual fitness instructor

[11] Clause 18.4 of the exposure draft reads as follows:

18.4 Casual fitness instructor

- (a) Minimum hourly rate - **\$49.15ⁱ** inclusive of the **25%** casual loading in clause 11.2.
- (b) Minimum engagement – one hour.

[12] United Voice submit that the rate of \$49.15 in the clause does not include an amount in respect of penalty rates. It says that clause 24.1 in the exposure draft provides that an employee (other than a maintenance and horticultural employee) performing work on specified days is entitled to the percentage of the ordinary hourly rate specified. Clause 24.1 does not exclude casual fitness instructors from the provision and it therefore applies to them.

[13] United Voice suggest that the rate at clause 18.4(a) should be disaggregated (into the ordinary hourly rate and 25% loading) to enable easier calculation of the penalty rate payable under clause 24.1.

[14] CAI submits that the minimum hourly rate is an all inclusive rate such that no penalty or weekend payments apply and seeks to have this reflected in the clause. CAI rely on transcript in AM2012/221 where Vice President Watson dealt with the issues under the *Clubs Award* (at PN61).

[15] Following the conference the CAI has provided a further considered response to the question of whether the disaggregated rate should be included in the exposure draft and argued, based on a history of the *Clubs Award* and on considering the equivalent provision in the *Fitness Industry Award 2010* that words be added to the clause to indicate the rate is inclusive of allowances, penalties and loadings. Alternatively, CAI accepts that this may be a matter which requires more fulsome submissions or separate proceedings may be appropriate.

[16] In response to these submissions United Voice says that the “claim” of CAI is a new claim and, while argued by CAI, there is no basis on which to consider that the *Clubs Award* should replicate what was in the *Club Employees (State) Award 2004*. United Voice further says that it is clear that casual fitness instructors fall within the ambit of the penalty rates contained in clause 29 of the *Clubs Award* [clause 24 of the exposure draft].

[17] The question of whether the rate, currently inclusive of the 25% casual loading, should be disaggregated remains unresolved.

4. Clause 19.3(c) – Clothing, equipment and tools

[18] United Voice and CAI agree that clause 19.3(c)(i) deals with two distinct issues – first an allowance for a cook for the use of his or her own tools and second, a requirement to reimburse a maintenance or horticultural employee who is required to supply their own tools for the cost of the tools. The allowance for tool use is not of the same character as the reimbursement of the cost of purchase of tools.

[19] Clause 19.3(c)(ix) provides for the reimbursement to employees for the cost of purchase of towels, tools, ropes, brushes, knives, choppers, implements, utensils and materials except where those items are provided by the employer.

[20] It was agreed that the reimbursement to maintenance and horticultural employees referenced in clause 19.3(c)(i) more properly belongs elsewhere in clause 19.3(c). To avoid doubt, it is proposed to delete the words “Where a maintenance and horticultural employee is required to supply and use their own tools, the employer will reimburse the cost of such tools” where they appear in clause 19.3(c)(i) and insert a new clause 19.3(c)(x) be added as follows:

- (x) Where a maintenance and horticultural employee is required to supply and use their own tools, the employer will reimburse the cost of such tools

5. Clause 24.4 – Late and early work penalty

[21] The clause provides that a penalty is payable for late or early work as follows:

- (a) Monday to Friday, 7.00 pm to midnight: **\$2.20** per hour or any part of an hour for such time worked within the said hours; and
- (b) Monday to Friday, midnight to 7.00 am: **\$3.31** per hour or any part of an hour for such time worked within the said hours.

[22] CAI and United Voice agree that the penalty operate on a pro-rata basis where work is performed for part of an hour. To remove uncertainty the clause will be amended to read:

24.4 Late and early work penalty

- (a) Employees other than maintenance or horticultural employees will be entitled to the following additional penalty for work performed at the following times:
 - (i) Monday to Friday, 7.00 pm to midnight: \$2.27 per hour for such time worked; and
 - (ii) Monday to Friday, midnight to 7.00 am: \$3.41 per hour for such time worked.

(b) The amount payable will be paid on a pro-rata basis for a part hour.



COMMISSIONER

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¹ Post July 2019 rate.