



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)

Licensed and registered clubs

JUSTICE ROSS, PRESIDENT

MELBOURNE, 30 APRIL 2020

4 yearly review of modern awards—Registered and Licensed Clubs Award 2010—outstanding substantive claims.

1. Background

[1] This Statement deals with the outstanding substantive claims to vary the *Registered and Licensed Clubs Award 2010* (the Clubs Award) that arose during the award stage of the 4 yearly review of modern awards.

[2] In a decision issued on 21 March 2019 a Full Bench¹ rejected an application by Clubs Australia – Industrial (CAI) to vary the *Hospitality Industry Award 2010* so that it covered the clubs industry and to revoke the Clubs Award.

[3] A mention was held on 10 April 2019 in relation to the substantive matters in the Clubs Award and a [revised Exposure Draft](#) and an updated [summary of submissions – substantive issues](#) were published on 15 April 2019. Parties were directed to indicate whether any further substantive claims were being pursued and to file draft variation determinations.

[4] On 2 September 2019, a Full Bench (AM2019/17) issued a decision² (the September 2019 decision) providing an overview of the status of the 4 yearly review of modern awards and setting out the process for the finalisation of the exposure drafts and the consequent variation of each modern award.

[5] The September 2019 decision indicated that the Commission proposed to publish exposure drafts and draft variation determinations in three tranches. The Clubs Award was allocated to tranche 3. A number of technical and drafting matters in relation to the Clubs Award

¹ [\[2019\] FWCFB 349](#)

² [\[2019\] FWCFB 6077](#)

were discussed at a conference before Commissioner Bissett on 16 October 2019 and a [Report](#) to the Full Bench was published.³

[6] On 29 January 2020 a [draft variation determination](#) for the Clubs Award was published. Parties were invited to comment on the draft variation determination and were directed to file any submissions and submissions in reply during March 2020.

2. Outstanding substantive issues

[7] There are a number of outstanding substantive claims in relation to the Clubs Award. Those claims are outlined below. Parties are directed to review this material and confirm in writing whether the claims are still pressed and whether the list of submissions and draft determinations found at Annexure A is complete.

[8] Parties are to respond **no later than 4:00pm Monday 11 May 2020** (see section Next Steps below).

[9] References to clause numbers are those contained in the [draft variation determination](#) published on 29 January 2020. References to claim number come from the [summary of submissions – substantive issues](#) published 15 April 2019.

2.1 Clubs Australia - Industrial

(i) *Clause 2 – Definitions – “club manager” (claim number S5)*

[10] CAI submits that it is unclear whether the defined term “club manager” refers to only the Manager responsible for the general management of a club (for example the Chief Executive Officer, General Manager or Secretary Manager) or if it also encompasses all managers (Level A-G) as described and classified in Schedule A.11.2.

[11] 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. (changes underlined).

(ii) *Clause 2 – Definitions – “shift worker” (claim number S4)*

[12] In a submission filed [16 November 2015](#), the CAI foreshadowed seeking to vary the existing shift worker definition to provide greater clarity with respect to annual leave

³ [PR713492](#)

entitlements. On [Transcript 10 April 2019](#), the CAI confirmed that they were pressing this matter however no draft determination or further submissions have been filed with respect to this matter.

(iii) *Clause 15.7 and 15.8 — time off instead of payment for overtime (claim number S2)*

[13] CAI seeks 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 provision (clause 22.8) applies for all other overtime work performed (i.e. work not performed on a rostered day off).

[14] CAI submits that clause 22.8(a) should be renamed “Time off instead of payment for overtime (not including on Rostered Days Off)”. CAI also submits that a note be added under clause 22.8(a) as follows:

“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.”

(iv) *Clause 17.4 — Meal breaks (claim number S6)*

[15] CAI seeks to align the definition of a small club in the Clubs Award with the definition of a small business in section 23 of the *Fair Work Act 2009* (Cth), submitting that it would make the Clubs Award easier to interpret and apply.

[16] CAIs proposed new wording is as follows:

“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.”

(v) *Clause 18.5(a)(i) and 18.5(a)(ii) — Non-application of particular provisions of this award to employees within particular classifications receiving specified salaries*

[17] CAI proposes to include clauses “17.2 – meal breaks” and “25.3 Annual leave loading” to the list of excluded provisions.

(vi) *Clause 18.3 and Schedule A — Classification definitions — maintenance and horticultural employees (claim number S8)*

[18] CAI proposes that maintenance and horticultural employees be classified (in Schedule A) in grades as opposed to levels to avoid confusion with the pay rate levels in clause 18.3.

(vii) *Schedule A — Classification definitions — tender boat drivers or deckhands (claim number S9)*

[19] CAI seeks a number of amendments to the classification definitions schedule. CAI seeks:

- the inclusion of Level 1 and Level 2 classifications for tender boat drivers or deckhands; and
- the modification of the current clerical classifications; and
- to expand classifications to include fitness/swim instructors.

2.2 Club Managers' Association, Australia

(i) *Clause 2—Definitions—ordinary hourly rate*

[20] The Club Managers' Association, Australia (CMAA) seeks an amendment to current definition of ordinary hourly rate, proposing the following: (underlined text)

'**ordinary hourly rate** means the minimum hourly rate for an employee's classification specified in clause 18.3 and 18.5(a)(i) plus any all purpose allowance to which an employee is entitled' (changes underlined)

(ii) *Clause 19.3(d)(ii) –Laundry allowance*

[21] CMAA seeks that the laundry allowance contained in clause 19.3(d)(ii) be increased from \$10.00 to \$12.50. CMAA submits that unlike other allowances in clause 19, this provision is not linked to any CPI adjustment factor.

(iii) *Clause 25.1(b) —Annual leave*

[22] CMAA proposes that clause 25.1(b) of the Clubs Award should be varied as follows:

“For the purpose of the additional week of leave provided by the NES, a shiftworker means a seven day shiftworker who is regularly rostered to work on Sundays and public holidays., ~~and includes a club manager~~ The additional leave shall also apply to a club manager as defined in this award.” (strikethrough and underline note change sought)

(iv) *National Training Wage*

[23] CMAA in their submission of [4 March 2020](#) seek to make changes to the qualifications framework in the 15 April 2019 exposure draft.

[24] In a Statement⁴ issued 6 July 2016 the Commission proposed that the National Training Wage Schedule (NTW Schedule) be standardised and removed from all modern awards except the *Miscellaneous Award 2010* and that the NTW Schedule instead be incorporated into modern awards by reference to the *Miscellaneous Award 2010*.

⁴ [\[2016\] FWC 4495](#)

[25] By Statement⁵ issued 23 February 2017, a plain language draft of the NTW Schedule to be inserted into the *Miscellaneous Award 2010* was published and by decision⁶ issued 9 June 2017 it was determined that a reference term would be inserted into 94 modern awards (including the Clubs Award). Final determinations were issued and came into operation on 1 July 2017.

[26] The draft variation determination at clause 18.9 incorporates Schedule E to the *Miscellaneous Award 2010*.

2.3 Professional Golfers Association

(i) *Clause 2—Definitions—golf professional and golf trainee (claim number S4A)*

[27] The Professional Golfers Association (PGA) seeks to insert two definitions into clause 2, “golf professional” and “golf trainee”.

[28] PGA proposes the following definition for “golf professional”:

“**golf professional** means a qualified and current Full Member (Vocational) of the Professional Golfers Association of Australia referred to in clause C.3 of Schedule C – Classification Definitions.”

[29] PGA proposes the following definition for “golf trainee”:

“**golf trainee** means an individual formally undertaking the Professional Golfers Association’s Trainee Program, for the purposes of becoming a Full Member of the Professional Golfers Association of Australia referred to in clause C.3 of Schedule C – Classification Definitions”

(ii) *Clause 4.3 – Coverage (claim number S1A)*

[30] PGA seeks an amendment to clause 4.3 as follows:

“To avoid doubt, this award covers the work of bar attendants, golf professionals or stewards employed in a club situated on a football ground, cricket ground, golf course or sports ground and persons engaged as greenkeepers, ground attendants, gardeners, propagators, lawn mower and motor roller drivers and general labourers in the construction and maintenance of bowling greens and golf courses, golf facilities including but not limited to golf clubs, on-course and off-course golf shops and driving ranges, but does not cover...”

(iii) *Clause 4.4(d) — Coverage (claim number S1C)*

[31] PGA seeks to amend exclusions provision to refer to “contracted Golf professional” rather than employer as follows:

⁵ [\[2017\] FWCFB 1095](#)

⁶ [\[2017\] FWCFB 3176](#)

“4.4 This award does not cover:

(d) employees employed by ~~an employer~~ a contracted Golf Professional other than the club, where the employer operates a golf pro shop, driving range or other golfing facility, or provides golf coaching or other similar services, which are accessible to the general public

(iv) *Clause 4.5 – Coverage (claim number SIC)*

[32] PGA seeks to add the *Amusements, Events and Recreations Award 2010* to list of excluded awards in the coverage clause.

(v) *Clause 18 — Minimum wages (claim number S9A)*

[33] PGA seeks to insert the following classifications into the minimum wages tables at clause 18:

- Golf Trainee Year 1 (at Level 1)
- Golf Trainees Years 2 and 3 (at Level 2)
- Assistant or Teaching Professional (at Level 5)
- Lead Golf Professional (at Level 12)

(vi) *Schedule A — Classification definitions (claim number S9A)*

[34] Accompanying the claim to amend the minimum wages table at clause 18 is a claim to insert classification definitions into Schedule A as follows:

“C. 3 Golf Professionals

C.3 Professional Golfers

C.3.1 1 Golf Trainee Year 1 means a first year Golf Trainee with the Professional Golfers of Australia.

C.3.1 Golf Trainee Level 2 means an employee who has satisfactorily completed the appropriate level of training to be considered a Year 2 or 3 Trainee by the Professional Golfers Association of Australia.

C.3.2 Assistant or Teaching Professional Level 5 means an employee who has completed the appropriate level of training and is engaged in the following activities:

- (a) Assist in the operation of a golf professional shop including retail sales, service, stock-control and club-repair.
- (b) Deliver golf coaching and club-fitting programs.

(c) Assist in the operation and delivery of club events, time sheets and competition fields.

(d) Assist in the operation of cart fleets.

C.3.3 Lead Golf Professional Level 12 means an employee who has completed the appropriate level or training and is engaged in the following activities:

(a) Manage an appropriately stocked golf professional shop, providing retail sales and advice, customer service and golf club repair.

(b) Manage, develop and deliver golf coaching and club-fitting programs to club members and guests.

(c) Manage golf professional shop staff including recruitment and rostering, while ensuring club procedures and employee relations policies and implemented.

(d) Establish and maintain a safe working environment, ensuring WH&S procedures comply with up to date legislation.

(e) Manage time sheets, competition fields and the handicap system, including the calculation and processing of competition results.

(f) Manage and maintain the cart fleet and other rental equipment.

(g) Attend scheduled management meetings and other club meetings as required.”

(vii) *Schedule A — Classification Definitions (claim number S9B)*

[35] PGA seeks to amend the classification definition for Leisure attendant grade 1 as follows:

“**Leisure attendant grade 1** means a person who:

(a) attends a shop associated with the club’s activities, ~~for example a golf pro shop owned and operated by the club;~~ or (strickethrough indicates proposed change).”

2.4 United Workers’ Union

Clause 19.3(c)(i) — tool allowance (claim number S12B)

[36] The United Workers’ Union (UWU) proposes to amend the tool allowance to include apprentice cooks and also seeks to have the quantum of the allowance increased as follows:

“19.3(c)(i) Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of ~~\$1.55~~ \$2.25 per day or part thereof up to a maximum of ~~\$7.60~~ \$11.20 per week.

Next Steps

[37] Parties are directed to confirm in writing which of the above claims are still pressed. Parties are also asked to identify any claims which remain outstanding which have not been listed in this Statement.

[38] Parties are directed to review Annexure A to this Statement and advise of any draft determinations, submissions or submissions in reply which have been filed with the Commission but have been omitted from the table.

[39] Where Annexure A notes that a draft determination has not been filed, the party pressing that claim is directed to file a draft determination. The draft determination must reference the clause numbers and text of the [draft variation determination](#) published on 29 January 2020.

[40] Parties are directed to file a response to the above points by no later than **4:00pm** on **Monday 11 May 2020**. Documents are to be filed in Word format and sent electronically to amod@fwc.gov.au.

PRESIDENT

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Annexure A:

Claim	Draft determination	Submissions filed	Reply submissions filed
Clubs Australia - Industrial			
<i>Clause 2 - Definitions – “club manager” (claim number S5)</i>			
	None identified	CAI Submission – 4 March 2020 CAI Submission – 16 November 2015	CMAA – Submission – 6 April 2020
<i>Clause 2 – Definitions – “shift worker” (claim number S4)</i>			
	None identified	CAI Submission – 16 November 2015	None identified
<i>Clause 15.7 and 15.8 – time off instead of payment for overtime (claim number S2)</i>			
	None identified	CAI Submission – 4 March 2020	CMAA – Submission – 6 April 2020
<i>Clause 17.4 – Meal breaks (claim number S6)</i>			
	Draft determination number 2 filed 29 April 2019	CAI Submission – 4 March 2020 CAI Submission – 16 November 2015	CMAA – Submission – 6 April 2020
<i>Clause 18.5(a)(i) and 18.5(a)(ii) – Non-application of particular provisions of this award to employees within particular classifications receiving specified salaries</i>			
	None identified	CAI Submission – 4 March 2020	CMAA – Submission – 6 April 2020
<i>Clause 18.3 and Schedule A – Classification definitions – maintenance and horticultural employees (claim number S8)</i>			
	Draft determination number 1 filed 29 April 2019	CAI Submission – 4 March 2020 CAI Submission – 16 November 2015	None identified

Claim	Draft determination	Submissions filed	Reply submissions filed
<i>Schedule A — Classification definitions — tender boat drivers or deckhands (claim number S9)</i>			
	Draft determination number 5 filed 29 April 2019	CAI Submission – 16 November 2015	None identified
Club Managers' Association, Australia			
<i>Clause 2—Definitions—ordinary hourly rate</i>			
	None identified	CMAA Submission – 4 March 2020 CMAA Submission – 26 April 2019	None identified
<i>Clause 19.3(d)(ii) –Laundry allowance</i>			
	None identified	CMAA Submission – 4 March 2020 CMAA Submission – 26 April 2019	None identified
<i>Clause 25.1(b) —Annual leave</i>			
	None identified	CMAA Submission – 4 March 2020 CMAA Submission – 26 April 2019	None identified

Claim	Draft determination	Submissions filed	Reply submissions filed
Professional Golfers Association			
<i>Clause 2—Definitions—golf professional and golf trainee (claim number S4A)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
<i>Clause 4.3 – Coverage (claim number S1A)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
<i>Clause 4.4(d) – Coverage (claim number SIC)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
<i>Clause 4.5— Coverage (claim number SIC)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
<i>Clause 18 – Minimum wages (claim number S9A)</i>			
	None identified	PGA Submission – 7 April 2020	None identified

Claim	Draft determination	Submissions filed	Reply submissions filed
		PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	
<i>Schedule A — Classification definitions (claim number S9A)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
<i>Schedule A — Classification definitions (claim number S9B)</i>			
	None identified	PGA Submission – 7 April 2020 PGA Submission – 16 April 2019 PGA Submission – 6 October 2017	None identified
United Voice			
<i>Clause 19.3(c)(i) — tool allowance (claim number S12B)</i>			
	Draft determination (Annexure C) – filed 5 October 2016	UWU Submission – 29 April 2019 UWU Submissions – 5 October 2016	None identified

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