

From: Ruth Goonan [mailto:rgoonan@siag.com.au]
Sent: Friday, 24 March 2017 2:52 PM
To: AMOD
Subject: Submissions regarding AM2014/305

We act on behalf of RSL Victoria.

We refer to the decision of the FWFBC regarding Penalty Rates [2017] FWCFB 1001.

In accordance with paragraph [2062] of that Decision, please find attached Submissions filed on behalf of RSL Victoria.

RSL Victoria will seek to appear as an interested party at the Mention listed for Tuesday, 28 March 2017.

If you have any questions or queries regarding the attached, please do not hesitate to contact me.

Kind Regards,
Ruth

Ruth Goonan
Director - Legal Services

Service Industry Advisory Group (Legal) Pty Ltd
16/75 Lorimer Street
SOUTHBANK VIC 3006

Telephone: (03) 9644 1400
Facsimile: (03) 9644 1490



IN THE FAIR WORK COMMISSION

MATTER NUMBER: AM 2014/305

Section 156 – Four Yearly Review of Modern Awards

Penalty Rates Decision [2017] FWFCB 1001

**Short Submissions of interested parties responding to
the Commission's provisional views about the *Clubs Award***

RSL Victoria

Background

1. On 23 February 2017 the Commission handed down its decision in the 4 year review of modern awards – Penalty Rates [2017] FWFCB 1001 (the **Decision**), in which it invited interested parties to make submissions in relation to the 'review of weekend penalty rates in the *Clubs Award*.'
2. The Commission put forward two Options for further dealing with the matter:
 - **Option 1:** Make determinations revoking the *Clubs Award* and varying the coverage of the *Hospitality Award* so that it covers the class of employers and employees presently covered by the *Clubs Award*.
 - **Option 2:** Clubs Australia Industrial (CAI) and any other interested party have a further opportunity to advance a properly based merit case in support of any changes they propose in respect of weekend penalty rates.
3. The Commission expressed "a provisional view" that option 1 has merit and warrants further consideration. To that end, the Commission has provided interested parties to express a view as to the future conduct of this aspect of these proceedings and, in particular, to provide short submissions setting out their position on the two options.
4. RSL Victoria does not oppose the proposal of Clubs Australia (Industrial) (**CAI**) that this matter be referred to conciliation in the first instance.

Interested Party

5. RSL Victoria is an interested party for relevant purposes.

6. RSL Victoria is an independent, apolitical organisation run by members, for members primarily to assist current and former service men and women and their dependants when in need, whether they're RSL members or not. Its purpose is to promote the well-being and values of the serving and ex-serving men and women, while supporting its members and local communities. In Victoria alone, it has almost 300 Sub Branches. These range from large entertainment complexes to small groups of volunteers. Each RSL organisation is run by elected committees and office bearers at the Sub Branch, state and national levels. Approximately 2000 RSL employees are currently covered by the *Clubs Award*. RSL Victoria offers support services, including industrial advocacy.

Position of RSL Victoria in relation to Option 1

7. At this time, RSL Victoria is of the present position that Option 1 should not be adopted, consistent with the long standing consensus of the relevant parties for a discrete award to achieve modern award objectives.
8. As noted at para 1,000 of the FWCFB decision, consideration was given to the issue of extending the coverage of the *Hospitality Award* and subsuming the *Clubs Award* in the Award Modernisation process. It was the consent position of relevant parties at that time to retain a standalone *Clubs Award*. This argument was accepted by the Full Bench (Award Modernisation [2009] AIRCFB 45 at [101] (**2009 Decision**)) which concluded, as noted at para [913] of the Decision:

“While it might be possible to include clubs within the Hospitality Modern Award, with some sector specific arrangements, we have decided to make a separate clubs award.”

9. In making the *Clubs Award*, the 2009 Decision applied the legislative test in Part 10A, section 576B of the *Workplace Relations Act 1996* (Cth). The legislative considerations were ‘in a number of important respects, identical or similar to the modern awards objective’ (*Modern Awards Review 2012* [2012] FWA FB 5600 at [85]) now contained at section 136 of the FW Act.
10. The Commission has previously stated, in the context of the modern award review exercise:

*“However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.”*¹

¹ 4 *Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [23].

11. A revocation of a modern award would be a major change, and would warrant the application of at least the same threshold.
12. The 'merger' of these modern awards would have the effect of 'rationalising' awards applying to the hospitality sector generally and provide greater consistency in the regulation of penalty rates in that sector (as the Commission observed in the Penalty Rates Case Decision at [998]). However, it should not be assumed that this would meet the objective of '*a simple, easy to understand ... modern award system*'.
13. Without purporting to be exhaustive about this, there are a number of significant differences between the two awards that cannot readily be reconciled by a 'merger':
 - a) classifications in the *Hospitality Award* do not adequately cover the breadth of classifications in the *Clubs Award*, particularly as they relate to management levels;
 - b) although the *Hospitality Award* may be varied to include some sector specific arrangements, this variation would need to be substantial in some areas, for example, Ordinary Hours of Work;
 - c) the 'merger' to the general hospitality industry award, combined with various sector specific provisions, may place a 'regulatory burden' and/or result in additional 'employment costs' (contrary to section 134(1)(f) of the FW Act), particularly in regional areas where the use of cross-skilled employees is more likely and HR and administrative support is not strong.
14. If the Commission were to decide to continue to consider the viability of Option 1, RSL Victoria reserves its position on the matter and would seek, as an interested party, to be provided with an opportunity to make submissions (and lead evidence if necessary) on this important issue.

Position of RSL Victoria in relation to Option 2

15. It is not the intention of RSL Victoria at this stage to agitate any further arguments in support of changes to penalty rates the subject of the Clubs Australia (Industrial) (CAI) application.
16. RSL Victoria is otherwise prepared to participate in the further progress of the review of the Clubs Award.