

FAIR WORK COMMISSION

Matter No. AM2014/305

FOUR YEARLY REVIEW OF MODERN AWARDS – PENALTY RATES

RESPONSE OF UNITED VOICE REGARDING
A CONCILIATION CONCERNING
THE CLUBS INDUSTRY AWARD 2010

1. The Commission in its decision of 23 February 2017 noted 2 options for Clubs Australia Industrial ('CAI') in '*respect of the future conduct of the penalty rate review of the Clubs Award*' in light of its failure to establish '*a merit case sufficient to warrant the variation of the Clubs Awards*'. Option 1, the Clubs Award is revoked and the coverage clause of the Hospitality Award is amended to reflect the employment that the Clubs Award currently covered. Option 2, the CAI or any other interested party could be provided with a further opportunity to advance a properly based case in support of any changes they might propose in respect of week end penalty rates. The Commission specifically sought CAI's views at [2044] to [2045] concerning further review of the Clubs Award.
2. On 24 March 2017, CAI made a written submission in accordance with the direction of the Commission. In this submission CAI requested that '*a conciliation conference with the interested parties under the Clubs Award to consider the issues arising the Decision.*' (sic) CAI did not address either option 1 or 2.
3. On 28 March 2017, at a directions hearing conducted by His Honour Justice Iain Ross, the CAI was represented by a solicitor, Mr McDonald. The following exchange occurred between Mr McDonald and the President on the CAI's request for conciliation and its attitude to the 2 options outlined by the Commission for further review of the Clubs Award. (PN28679 to PN28682)

MR McDONALD: *Your Honour, we'd prefer not to be drawn on that at this stage if the conciliation is going to occur. We see both options as being on the table. Both options raise significant issues and we'd like to canvass those and I suppose we'd be guided by our future position as to how those discussions proceed.*

JUSTICE ROSS: *Right. I think - I mean Mr Dowling makes a good point though that the discussions are likely to be a bit more productive if your position's able to be clarified. So I think you should at least go to the first conference with a pretty clear idea about where your organisation wants to go.*

MR McDONALD: *Most certainly, Your Honour. Yes.*

JUSTICE ROSS: *If there is the opportunity to do it then to foreshadow that with correspondence to the other interested parties, so that they can have some idea and it might be a more productive conference.*

MR McDONALD: *Yes.*

4. On a without prejudice basis to our view that further review of the Clubs Award should cease, United Voice agreed to abide by a direction made by His Honour [PN28791] on 28 March 2017 to wait till Friday 31 March 2017 and allow CAI to foreshadow in correspondence its reasons for requesting a conciliation conference and then United Voice would indicate its view concerning conciliation.
5. On Wednesday 29 2017, United Voice wrote to CAI and requested that CAI communicate with United Voice, if it intends to do so, by midday 31 Friday 2017 and indicate the matters the conciliation conference will discuss.
6. At 11.30am on Friday, 31 March 2017, CAI provided to United Voice, the NSW LHD of United Voice, the Australian Workers Union and the Clubs Managers Association a one page document titled '*without prejudice*' and '*private and confidential*'. United Voice was informed in a telephone conversation not to divulge the contexts of the document to the Commission.
7. The CAI has declined to express any preference on the public record for options 1 or 2 as sought by the Commission at [2045] of the Decision and at the directions hearing on 28 March 2017. A significant association that runs clubs, RSL Victoria, clearly rejects any further review of the Clubs Award. The Australian Hotels Association which is the employer association with responsibility for the Hospitality Award rejects option 1.
8. All other interested parties in relation to the Clubs Award have expressed a clear view on the public records and none have indicated a preference for a conciliation conference or further review of the Clubs Award.

The Australian Council of Trade *'We submit that allowing employer parties to immediately run their case again violates the principles of natural justice. We oppose such an*

Unions	<i>opportunity being provided.’ (in relation to the Clubs Award)</i>
Club Managers Association of Australia	<p data-bbox="512 293 1401 573"><i>‘The Association is in opposition to a proposal to revoke the <u>Registered and Licensed Clubs Award [2010]</u> and varying the coverage clause of the Hospitality Award.’ ... ‘The Award continues to meet the modern award objectives’. In relation to option 2, ‘ ... the Association believes that the award provisions in relation to Penalty Rates (Weekend days and Public Holidays) should remain.’</i></p> <p data-bbox="512 611 1401 689"><i>‘The Associations position on this matter is supported by Clubs Australia and United Voice National Office.’</i></p>
RSL Victoria	<p data-bbox="512 745 1401 875"><i>‘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.’</i></p> <p data-bbox="512 913 1401 1043">In relation to option 2 <i>‘It is not the intention of RSL Victoria at this stage to agitate for further arguments in support of changes to penalty rates the subject of the Clubs Australia (Industrial) application.’</i></p>
Australian Hotels Association (AHA) and the Accommodation Association of Australia (AAA)	<p data-bbox="512 1099 1401 1379"><i>‘The AHA/AAA submits that the HIGA’s coverage should not be varied so as to include employers and employees in the registered club industry. The hotel and accommodation industry is different to that of clubs. Clubs are membership based organisations that provide services to their members ...The business drivers in registered clubs are significantly different to that of the hotel and accommodation sector.’</i></p> <p data-bbox="512 1413 983 1447">The AHA/AAA did not address option 2</p>
Liquor & Hospitality Division, United Voice	<p data-bbox="512 1496 1401 1626"><i>‘The Union opposes any award variation beyond the Decision of 23 February 2017 as any changes will place considerable financial distress upon employees and could result in reductions to wages’</i></p> <p data-bbox="512 1664 1401 1794">At the direction hearing the representative of the LHD noted (PN28683) <i>‘I’d like to formally table my organisation’s provisional objection to the conciliation that we oppose.’</i></p>
Australian Workers Union	<p data-bbox="512 1850 1401 1928"><i>‘The AWU supports the retention of the two separate awards and rejects either course of action provisionally proposed.’</i></p> <p data-bbox="512 1966 1401 2040"><i>‘Under the Clubs Award, the AWU has a comprehensive occupational interest in Queensland and a specific interest in maintenance and</i></p>

horticultural employees nationally. We note that the CAI's case did not extend to horticulture and maintenance occupational streams. To revoke the Clubs Award without retaining the maintenance and horticulture weekend rates would have the unintended effect of reducing penalty rates for these occupations.'

9. United Voice does not consent to a conciliation conference being convened in relation to the Clubs Award within the Penalty Rates Review. It will be a waste of time and potentially an abuse of the process of this review. Such a course of action will compound our concerns about absence of finality in these proceedings.
10. The award stage review will provide CAI and interested parties an opportunity to discuss any matter concerning the Clubs Award generally. This includes some of the matters raised in the confidential document.
11. We confirm our submission of 24 March 2017: having found that CAI failed to support its proposals for variation with probative evidence and an analysis of the relevant legislative provisions, and taking into account relevant common evidence, the Full Bench should dismiss the applications for variation and enquire no further into these matters within these proceedings. The review that the Commission was required to conduct is complete.
12. Further having been provided with considerable time and prompting to consider the options provided by the Commission to continue the review of the Clubs Award, CAI should be taken to have declined to take up the invitation made at [2045].
13. No interested party has expressed any preference for either option 1 or 2 and the unanimous view of those who have made public statements is that no further review of the Clubs Award should take place within the Penalty Rate Review. We note the comments made by His Honour Justice Ross at (PN28730) concerning the '*significant practical impediments in the Commission acting on its own motion*'.

Date: 31 March 2017

United Voice