

IN THE FAIR WORK COMMISSION

FWC Matter No. AM2014/283

Applicant: CLUBS AUSTRALIA INDUSTRIAL (CAI)

Respondent(s): UNITED VOICE

SUBMISSIONS ON PART-TIME EMPLOYMENT

1. CAI have earlier, in these proceedings, provided written submissions which are submissions it now relies upon but does not further repeat them hereunder.
2. In these proceedings concerning the statutory four year review of modern Awards, and in particular the review of the *Registered and Licensed Clubs Award, 2010* (the Award), CAI applies to have a part-time employment provision inserted into the Award a provision which will apply throughout Australia to the employment in registered and licensed clubs of persons in a part-time capacity. During proceedings on 13th July, 2016 CAI amended its application to seek the following clause be inserted into the Award:

“10.4 Part-time employment”

(i) An employer may employ part-time employees in any classification in this award.

(ii) A part-time employee is an employee who is employed in a classification in Schedule C—Classification Definitions and who:

- *is engaged to work no less than 32 and not more than 148 hours in a 4 week cycle.*
- *has reasonably predictable hours of work; and*

- receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

(iii)-An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

(iv) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.5.

(v)-A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

(vi) the pattern of ordinary hours of work for any such employee may, , be set by a roster established in accordance with clause 25—Roster; and

(vii) any hours worked in addition to the rostered ordinary hours will be overtime and paid for at the rates prescribed in clause 28—Overtime.”

3. The principal features of the part-time employment clause sought by CAI are that it:

- Provides the employee with reasonably predictable guaranteed hours of work,
- Provides equivalent pay and conditions, on a pro-rata basis to those of full time employees
- Allows for flexibility in ordinary hours of work to the benefit of both the employee and the employer.
- Allows the employee to be employed for additional hours of work, by agreement, which additional hours would not otherwise be available to part-time employees.

The Evidence

4. A substantial amount of evidence has been provided to the Commission in support of the CAI application.
5. The evidence emphasises the following substantial matters:
 - (i.) In NSW, since January 2015, no new employee has been able to be employed under the previous flexible Part-Time provisions. This prohibition has resulted in a significant increase in the incidence of casual employment at the expense of part-time employment¹.
 - (ii.) An employee with the status of part-time employment finds the capacity to apply for loans and rental agreements easier and thus beneficial.²
 - (iii.) An employer would encourage employees to move from casual to part-time employment if part-time employment enabled flexibility in hours and days rostered to suit the needs of the business.³
 - (iv.) Employees enjoy and appreciate the security of part-time employment, which offers relatively stable income, the provision of annual leave and sick leave, not available to casual employees.⁴
 - (v.) The current provisions in the Award do not allow the flexibility required to employ or to encourage employers to employ, part-time employees.⁵
 - (vi.) Clubs require short notice changes to trading hours, these changes usually being as a result of increased trading, and the resultant need for flexible working hours for persons engaged as part-time employees.⁶
 - (vii.) In many clubs the availability of online facilities for employees to alter their availability or to bid for additional hours work has resulted in convenient and easy administration of flexible working hours for part-time employees.⁷
 - (viii.) From an employer's perspective the engagement of part-time employees creates a better employment relationship between the

¹ Exhibit 206: Transcript PN2134, 2135, 2149-2150 and 2263.

² Exhibit 218

³ Exhibit 218

⁴ Exhibit 192: Exhibit 222: Exhibit 193: Exhibit 194: Exhibit 198:

⁵ Transcript PN2057 and 2390.

⁶ Transcript PN2259.

⁷ Transcript PN2279-2287; PN2637 and 2738-2747.

employer and his or her employee⁸. It was a common theme in the evidence from witnesses both employer and employee that an employee's availability varies as do the needs of the Club. Both employees and employers attempt, usually successfully, to work together for a result that suits both parties' needs. This is easily done with flexibility which, in Victoria, is only available through casual employment.⁹

- (ix.) In Victoria, if more flexible part-time provisions were in place a Club would employ more part-time employees¹⁰
- (x.) In Victoria, and specifically at the Hampton Bowls Club, staff availability changes up to 3 times each year as a result of the engagement of university students as casual employees. Those employees' fluctuations in availability, could still be catered for if they were part-time rather than casual, provided flexible part-time arrangements were in place in the Award.¹¹
- (xi.) A key element in a Club employing persons as part-time employees rather than casual employees is the ability of the Club to offer additional hours of work to those part-time employees without the added burden of paying overtime.¹² This is because a part-time employee who works outside their roster hours in the current substantive provision of the Award would be paid at overtime rates as opposed to a casual employee being paid at a 25% loading.
- (xii.) Core working hours are often rostered to full time employees at a Club with part-time employees being rostered around those core hours to suit the anticipated needs of the Club.¹³
- (xiii.) An attraction for employees to work part-time is the stability and certainty it brings to their working life¹⁴

⁸ PN2395

⁹ PN2461 - 2476

¹⁰ PN2490

¹¹ PN2557 – 2559.

¹² PN2614

¹³ PN2726

¹⁴ PN3072 – 3078 and 3131 - 3133

- (xiv.) The fluctuation in a Club's trading patterns require Club management to have the ability to vary roster hours to meet the changing needs of the Club. A flexible workforce is an essential element in a successful Club.¹⁵
- (xv.) In the case of Ryde Eastwood Rugby League Club, that Club is currently moving from employment of part-time employees to casual employees to maintain roster flexibility in light of the current Award provision. ¹⁶
Furthermore with respect to the Ryde Eastwood Rugby League Club, under the previous preserved State Award, part-time employees had the capacity to be rostered to have certainty as to what work they were required for, yet at the same time pick up extra shifts if they so desired.¹⁷
- (xvi.) At Ryde Eastwood Rugby League Club, when a part-time employee advises a change to their availability, an attempt is made to meet that desired change¹⁸
- (xvii.) The current Award substantive provision, which specifies an administrative procedure for documenting part-time employees changed rostering agreements, is onerous and thus acts to discourage part-time employment under the current Award.¹⁹
- (xviii.) The availability of an employee to work part-time has to meet the availability of work available at a Club to allow both parties to benefit from flexible part-time employment.²⁰
- (xix.) Employees change their availability dependent on, in some circumstances, the family needs and the needs of the employer.²¹
- (xx.) An employee, Ms Gardiner, if called in to work additional shifts, likes to work the additional shifts for financial gain but feels uninhibited to refuse extra shifts if the time offered her does not suit.²²
- (xi.) The substantive provision in the current Award has led to employees converting from part-time to casual employment by choice of the employee, to retain the capacity to be offered additional shifts.²³ If

¹⁵ PN3590 and 3596

¹⁶ PN3708 - 3712

¹⁷ PN3721

¹⁸ PN2808 – 3812 and 3816

¹⁹ PN3825

²⁰ PN4134

²¹ PN2451-2462

²² PN2451-2462

²³ PN2505-2507 and 2511-2514

flexibility was permitted such as to allow part-time employees to pick up additional shifts without the employer paying overtime, an employee (Ms Devine) would seek to convert her employment back to part-time employment to gain better stability in her employment.²⁴

6. The evidence, summarised above, is compelling and largely not refuted by any evidence proffered by the Unions in this case.
7. The Commission should feel comfortable that the introduction of the part-time employment clause as sought by CAI would be of benefit to both the employers and the employees concerned and would not result in any unrealistic demands placed on employees, rather the provision of flexible part-time employment is of significant benefit to employees and, on the evidence, is actively sought by employees in the Registered and Licensed Clubs Industry.

Proposed Varied Part-Time Employment Provisions from Fair Work Commission.

8. CAI has given close consideration to the draft proposed clause promulgated by the Fair Work Commission.
9. Whilst most parts of the draft clause appear to meet the general thrust of the clause proposed by CAI there is a fundamental problem with clause 12(f). That clause is in the following terms:

“12(f) The employee may alter the days and hours of the employee’s availability on 28 days notice to the employer.”

10. As shown by the extensive evidence in this case, employees who can’t work under flexible part-time arrangements work together with their employer to meet both the needs of the employee and the needs of the employer. Indeed, in areas of Australia which currently do not enjoy flexible part-time arrangements, the employers have consistently said that they would welcome part-time

²⁴ PN2511-2514 and 2529.

employment if it was flexible to meet both the needs of the employer and the employee.

11. Once an employee's guaranteed core hours and core days of availability have been set, the employer then rosters within those notified available hours and days to meet its needs in trading in its business. Whilst it is clearly understood that an employee's availability may change an employer's core needs may not.
12. For example, when a part-time employee commenced work he or she advised their employer that they were available to work every Friday, Saturday and Sunday. The employees guaranteed minimum hours are set at engagement and are to be worked within the employee's advised available hours. The employer would then only roster the employee to work within those available days or hours and may still offer the employee additional hours outside of those notified available hours. If at some future time the employee then gave the employer 28 days notice, or any notice, that they were no longer available to work on say Saturday and Sunday but was only available to work Wednesday, Thursday and Friday, the employer may not have sufficient hours of available work to employ that employee for their guaranteed hours within the available hours now advised. The employer would fall foul of the provisions of clauses 12 (c) and (d), which provide that the guaranteed quantum of hours may only be changed with the consent of the employee. The employer would be in the invidious position of either not being able to provide the employee with the guaranteed minimum hours of work or would have to take such hours from another employee, such as a full time employee, and may even have to convert that full time employee to part-time employment in order to have a surplus of hours to give to the first part-time employee within that employee's amended availability.
13. It may well be that the scenario described above is an unintended consequence of the Commission's draft clause. However, the example described above could realistically occur and would be an unworkable situation in the Club in question.

14. CAI will welcome the opportunity to address this matter further in oral submissions.

Dated: 15th September, 2016.

Frederick Jordan Chambers

R.S. WARREN

Counsel for Clubs Australia Industrial