Clubs Australia INDUSTRIAL

16 November 2014

The Associate to His Honour President Ross
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

BY EMAIL: chambers.ross.j@fwc.gov.au and amod@fwc.gov.au

Dear Ms Kyriakidis

4 Yearly Review of Modern Awards – Registered and Licensed Clubs Award

AM2014/283 – additional substantive variations

Clubs Australia Industrial (**CAI**) refer to the Directions issued on 2 November 2015 in relation to Group 3 and Group 4 awards in the four yearly modern award review. We apologise for the delay in filing our outline of submissions which was the result of some unexpected circumstances last week resulting in an oversight as to the due date.

In accordance with the Directions made on 2 November 2015, we note the submissions below outline the additional variations sought in the *Registered and Licensed Clubs Award* (**RLCA**).

Award coverage

There are a number of clubs that are not *"licensed under the provisions of relevant State or Commonwealth Statutes"* and hence there is an argument they are not covered by the RLCA.

The existing definition of "Club" in the RLCA is at clause 3.1 and provides:

> ***Club*** *means any club which is registered and licensed under the provisions of relevant State or Commonwealth Statutes (Liquor and/or Gaming Acts, Associations' Incorporation Acts or Corporations Acts) and which is established and operates on a not-for-profit basis for the benefit of members and the community.*

The existing award coverage clause is at 4.1 and provides:

> *This award covers employers of employees engaged in the performance of all or any work in or in connection with or for clubs registered or recognised under State, Territory or Commonwealth legislation and their employees in the classifications within Schedule C—Classification Definitions, to the exclusion of any other modern award.*

CAI propose the following amendment to the definition of Club at clause 3.1 as follows:

> ***Club*** *means any club which is registered and**/or** licensed under the provisions of relevant State or Commonwealth Statutes (Liquor and/or Gaming Acts, Associations' Incorporation Acts or Corporations Acts) and which is established and operates on a not-for-profit basis for the benefit of members and the community.*

Special provisions for accrued rostered days off

There is a significant amount of confusion in the industry with respect to overtime accrued rostered days off and we attribute this to the inconsistent interaction of clause 26.7 and clause 28.5.

CAI propose that the two clauses be unified in a manner where the terms are not in conflict with each other. CAI submits that this is best achieved with the removal of clause 26.7 and the expansion of clause 28.5 as follows:

> *Notwithstanding the rates prescribed in clause 28.2 at the instigation of the employee there may be an agreement in writing between the employee and the employer to take time off with pay equivalent to the amount for which payment would otherwise have been made.*

Such accumulated time must be taken within four weeks from the time of accrual or banked in accordance with the provisions below.

a) *Accrued overtime may, by agreement, be banked to a maximum of "five days" credit and will be taken at a time or times that are mutually agreeable to the employer and the employee.*

b) *Once the limit of "5 days" credit is reached, overtime rates shall be payable in accordance with 28.2.*

c) *Upon termination of the employee's employment for any reason, the money value for any accrued overtime will be paid to the employee at normal time rates of pay. Any accrued overtime in excess of "5 days" will be disregarded.*

Casual maintenance and horticultural employees

There is ambiguity in the RLCA as to whether maintenance and horticultural employees can be engaged as casuals.

Clause 10.5(b), the casual loading provision, of the RLCA currently provides:

> *Casual employees will be paid the percentage at the ordinary hourly rate for the classification in which they are employed as prescribed in clause 29.1, which includes a 25% casual loading. The late and early work penalty prescribed in clause 29.4 for work between Monday to Friday also applies to casual employees.*

Clause 29.1 prescribes the following:

> *An employee* ***other than a maintenance and horticultural employee*** [our emphasis] *performing work on the following days will be paid the following percentage of the minimum wage rate in clause 17—Minimum wages for the relevant classification:*

	Monday to Friday	***Saturday***	***Sunday***	***Public holiday***
	%	*%*	*%*	*%*
Full-time and part-time	*100*	*150*	*175*	*250*

	Monday to Friday	*Saturday*	*Sunday*	*Public holiday*
Casual (inclusive of the 25% casual loading)	*125*	*150*	*175*	*250*

Whilst clause 29.1 explicitly operates to the exclusion of maintenance and horticultural employees, it is CAI's view that the intention of the RLCA is that casual maintenance and horticultural employees can be engaged, and receive payment in accordance with clause 29.2. This interpretation is consistent with the *Bowling and Golf Club Employees (State) Award 2006*, under which casual maintenance and horticultural employees could be employed.

CAI proposes the following variation to clause 10.5(b):

> *Casual employees will be paid the percentage at the ordinary hourly rate for the classification in which they are employed as prescribed in clause 29.1* ***and 29.2*** *which includes a 25% casual loading. The late and early work penalty prescribed in clause 29.4 for work between Monday to Friday also applies to casual employees.*

Shift workers

CAI may seek to vary the existing shift workers definition to provide greater clarity with respect to annual leave entitlements, however we have not yet finalised our position in this regard.

Definition of club manager

The current definition of club manager under clause 3.1 is ambiguous and inconsistent as on the one hand it restricts the definition to a person in the position of General Manager/CEO. In the same definition it incorporates all levels of management as particularised in clause C.11 Schedule C.

CAI proposes that the definition of club manager be amended to reflect all employees engaged in work within the classifications of clause C.11 Schedule C.

Meal breaks

Clause 24.4 of the RLCA provides a special crib break provision for clubs who employ fewer than 10 people.

CAI submit that this special provision should apply to clubs who employ fewer than 15 employees, as it is designed to assist small clubs and this figure is consistent with the *Fair Work Acts* definition of small business.

Training and staff meetings provisions

CAI propose that new provisions be inserted into the RLCA that deal specifically with minimum engagements and payments for training and staff meetings.

In particular, with respect to staff meetings, CAI submits that there ought be an exemption provision for the minimum engagement of staff attending these types of meetings.

Annualised salary arrangements for non-managerial employees

Clause 17.3 of the RLCA provides annual salary arrangements for managers and levels 1-4 maintenance and horticultural employees but not other employees.

CAI submits that an annualised salary provision is appropriate to be inserted into the Award for the benefit of all other employees, with the ability to enter into such arrangements at the time of engagement.

CAI's proposed provision is that clause 17.3(a)(i) being the 20% exemption rate provision, and clause 17.3(a)(ii) being the 50% exemption provision be extended to all employees (other than maintenance and horticultural workers).

CAI also proposes that employees who receive 50% above the award rate of pay in accordance with clause 17.3(a)(ii) should also be excluded from the operation of clause 30.3, being the 17.5% leave loading provision.

Maintenance and horticultural references

In Schedule C, maintenance and horticultural work is defined in terms of "levels" which is inconsistent with other employee classifications that are referred to as "grades". This has caused confusion in the industry, particularly when cross-checking against the wage rates in clause 17.2.

For example, a maintenance and horticultural management level 1 falls within the level 8 pay rate scale in clause 17.2 of the RLCA.

CAI proposes that maintenance and horticultural references in Schedule C be amended to reflect "grades" not "levels" to remove any ambiguity or confusion.

Other classifications

There are a number of boating clubs in the industry who engage employees as tender boat drivers or deckhands. In the current RLCA there is no appropriate classification to cover this type of work and CAI will seek the inclusion of a level 1 and potentially level 2 classification for such employees.

CAI may also seek modifications to the current clerical classifications which require modernising.

There are also a significant number of clubs who are diversifying their business into state of the art gym facilities. The current RLCA provides very little in the way of classifying the types of work performed by fitness/swim instructors, and the manner in which they perform that work. Accordingly, CAI may seek to expand the classifications and special arrangements for work in this area.

Again we apologise for any inconvenience with respect to the lateness of our reply.

Yours sincerely

Clubs Australia Industrial

Richard Tait

Executive Director