

## IN FAIR WORK COMMISSION

FWC Matter No: AM2014/301

**Applicant:** CLUBS AUSTRALIA INDUSTRIAL

### Statement of Robert Cassano

I, Robert Cassano, of [REDACTED] in the state of New South Wales, Chief Executive Officer, make oath and say/affirm:

1. I am the Chief Executive Officer of the Ashfield Catholic and Community Club Limited, trading as Club Ashfield (the 'Club'). I have been employed as the Chief Executive Officer for 18 years.
2. The Club is based in Ashfield, near popular public transport and Ashfield Mall. The Club's facilities include a number of function rooms, a Bistro which is operated by contractors, and a café called 'Café on Charlotte' that operates outside the main Club premises.
3. The Club has approximately 4000 financial members, however this number fluctuates greatly from time-to-time. The Club is located in a transient area, and although there are regular patrons, and there is a similar demographic that attends the Club during the day and another demographic that attends the Club at night.
4. 'Café on Charlotte' (the 'Café') operates on the outside of the Club's premises, although it is located next to the Club. The Café is separated from the main Club and as a result, patrons that attend the Café are not required to sign in to the Café premises as they would be required to do on entry to the main Club venue.
5. It is quite likely that the patrons that attend the Café do not realise that the Café is part of the Club, as it is targeted at a different demographic than the Club, and there

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is no visible link to be drawn between the Club and the Café on sight. The demographic that attends the Café includes professionals, young families and teachers after school and local government workers. The Café provides coffee, cakes, sandwiches and light meals, which varies substantially from the typical Club offerings in the Bistro.

6. The Club employs thirty six (36) employees in total which includes three (3) part-time employees and eight (8) full-time employees. All of the Club's employees are employed under the *Registered and Licensed Clubs Award 2010* (the '**Award**').
7. Even though the Café is run separately to the Club and the Café is like any other local Café that would fall under the Hospitality or Restaurants Awards, all employees in the Café are also employed under the Clubs Award due to the coverage of the Award at clause 4.1:

**4.1** *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.*

8. The main Club operates 21 hours per day, opening at 9.00am and closing at 6.00am the following day. The Club has established a reputation as a venue that is almost always open and available to members and guests, and therefore continues to operate every day of the year except for Good Friday, as the Club is a Catholic Club and chooses to observe this religious day.
9. The Café is not open on Sundays and public holidays due to the increased rates of pay, and is closed for 2-3 weeks in January due to the decrease in trade over this period. The Café is run as a stand-alone business and the Club ultimately makes decisions in relation to the Café based on its independent finances.
10. On a typical day, the Café requires three staff as a minimum, which means that on a public holiday, the Café's wages would amount to approximately \$150.00 per hour. The Café is unable to support these penalty loaded rates of pay, and therefore the Café is closed.
11. The Club's Bistro is operated by an independent contractor. The costs of running the Bistro were extensive for the Club, and the decision was made to contract out the Bistro as a result of the high wages under the Award, and the inability to sustain

these wages based on the location of the Bistro within the Club and the competition in terms of hospitality offerings outside of the Club. The contract caterers operate the catering functions in a number of Clubs and are able to do so for a lesser cost within Club Ashfield due to this, as well as due to the owners of the catering business working on public holidays, therefore saving on public holiday wages expenditure.

12. The contractors who operate the Club's Bistro have requested that the Club allow them to close the Bistro on certain days of the year, as the public holiday rates are significant. The Club has reached an arrangement with the contractors that allows them to close on certain public holidays, as there is a significant number of public holidays that attract the 250% rate of pay, and the Club acknowledges the significant cost of this.
13. The Club's trade does not necessarily increase on a public holiday, and trade can be quite volatile. The Club is not located in a 'destination' location, therefore relies on foot traffic and its membership for day-to-day trade. The 2017 Easter long weekend provided the Club with average trade, however the Thursday before Good Friday was likely the Club's best trading day for the year.
14. The location of the Club means that it is in direct competition with a large number of local restaurants, cafes and fast food establishments. The Club finds it difficult to compete with these venues in relation to its food offering as many of the local restaurants are family run, and I believe that the family members who own and operate these venues do not always pay themselves a public holiday wage on the public holidays.
15. The expense of public holidays is significant for the Club just considering the rate of 250% that is applied for each of the public holidays. This isn't the only cost to Clubs on a public holiday however, as there is also the interaction of Clause 34.3 that applies to the full-time Club employees:

**34.3 Additional arrangements for full-time employees**

- (a)** *A full-time employee whose rostered day off falls on a public holiday must, subject to clause 29.3:*
  - (i)** *be paid an extra day's pay;*
  - (ii)** *be provided with an alternative day off within 28 days; or*
  - (iii)** *receive an additional day's annual leave.*

*(b) Clause 34.3(a) does not apply in relation to Easter Saturday, if employees have their ordinary hours rostered only on Monday to Friday.*

*(c) A full-time employee who works on a public holiday which is subject to substitution as provided for by the NES will be entitled to the benefit of the substitute day.*

16. While a few of the Club's full-time employees are engaged under an exemption rate that captures public holiday rates of pay, the Club is still required to make payments under Clause 34.3 for other full-time employees.
17. The Club is required to make payment of an extra day's pay at ordinary rates under Clause 34.3 where a full-time employee is not rostered on. As such, the Club tries as much as possible to roster these full-time employees to work on public holidays as this works out to be more economic in relation to the cost of wages.
18. The Club attempts to make the rosters more economically viable where possible, however the Club is not always able to roster all full-time employees on each public holiday as sometimes they request to be absent from work on a public holiday, and the Club does not unreasonably refuse such requests.
19. In addition to the public holiday rates and the additional payment for full-time employees under clause 34.3, the Club is also be required to make these payments to employees when there is an 'additional' public holiday gazetted when a public holiday occurs on a weekend.
20. These 'additional' public holidays occurred twice recently; an additional day for Christmas day in later 2016, and an additional day for New Year's Day in early 2017. This period was particularly costly for the Club as it resulted in there being five public holidays in a nine day period.
21. The Club's Bistro was closed for a number of the public holidays, 26<sup>th</sup> December 2016 (Boxing Day), 27<sup>th</sup> December 2016 (additional Public Holiday) and 1<sup>st</sup> January 2017 (Public Holiday) over the Christmas and New Year period due to the cost of these public holidays on the contractors who run the Bistro. It is likely that the Bistro would have been open if not for these additional public holidays. I understand the expense of the public holiday rates of pay, and the additional requirement under clause 34.3, therefore we have reached an agreement with the contractors to close at certain times when these costs arise.

22. In my opinion the operation of Clause 34.3 does not make business sense. I cannot imagine that any full-time employee in any industry would expect to be paid for a day on which they are not working, nor do they typically work, as Clause 34.3 provides. The Club's full-time and part-time employees receive payment for their absence on a public holiday where they would ordinarily work, so I am not sure why there is an additional entitlement for payment when full-time employees would not ordinarily work/are not rostered on.

23. It is my understanding that the entitlement under Clause 34.3 arose as a result of full-time employees being disadvantaged by not being able to earn public holiday rates when they were rostered around the public holidays. The Club is effectively penalised for a full-time employee not having the opportunity to work on a public holiday, and the Club is then 'penalised' by virtue of paying penalty rates for employees that are required to work on public holidays.

Signed by Robert Cassano:



Date: 27<sup>th</sup> APRIL 2017

Place: ASHFIELD, NSW

Witnessed:



Name: Tijen Salis

Qualification: Marketing Manager

Date: 27.4.2017