STRONGER TOGETHER

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THE AUSTRALIAN WORKERS' UNION

ABN 28 853 022 982

IN THE FAIR WORK COMMISSION

AM2017/39 – APPLICATION BY CLUBS AUSTRALIA (INDUSTRIAL)

Section 156 – Fair Work Act 2009 – 4 yearly review of modern awards

SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION

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BACKGROUND

1. This outline of submissions of The Australian Workers' Union (**AWU**) is made pursuant to Directions from the Chambers of Vice President Hatcher on 7 December 2017, which directed any parties that oppose the application by Clubs Australia Industrial (**CAI**) to file witness statements, documentary materials and an outline of submissions by 11 May 2018.

2. The AWU was granted an extension to file by 18 May 2018.

3. The AWU outline of submissions is below.

ATTACHMENTS

4. The following is attached to these submissions:

   4.1. Witness statement of Blake Adair-Roberts, Organiser, AWU New South Wales Branch;
   4.2. Witness statement of Fez Riches, Organiser, AWU Victoria Branch;
   4.3. *Submissions to Australian Industrial Relations Commission,* Clubs Australia, 2008; and
   4.4. *Further Submissions to Australian Industrial Relations Commission,* Clubs Australia, 2008.

OUTLINE OF SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION

5. The AWU strongly opposes the application by CAI.

6. The AWU intends to make submissions on the impact of the application specifically in relation to the maintenance and horticultural sector of employees covered by the *Registered and Licensed Clubs Award 2010* (**Clubs Award**) and also on the application more generally.

7. The AWU notes that on the basis of the CAI outline of submissions, the application is inadequate, incomplete, and beyond the scope of the provisional view of the Full Bench of the Penalty Rates Case[1] that CAI has claimed to rely upon[2] in lodging this application.

MAINTENANCE AND HORTICULTURAL EMPLOYEES

Alteration of Overtime

8. The AWU submits that it is important to consider exactly what the provisional view of the Full Bench in the Penalty Rates Case was that CAI claims to rely upon in making this application[3] for two main reasons. Firstly, if CAI is claiming to pursue the current application on the basis of a provisional view, the

[1] [2017] FWCFB 1001
[2] [2017] FWCFB 1001 at [1000]
[3] CAI Amended Outline of Submissions 14 December 2017 at [2]

application must fall within the scope of that provisional view. Secondly, if CAI intends to rely on a number of passages in that Decision to support the present application, those passages must be relevant.

9. The Full Bench in the Penalty Rates Case stated that in respect of reviewing the weekend penalty rates in the Clubs Award[4], there was merit[5] in extending the coverage of the *Hospitality Industry (General) Award 2010* (**Hospitality Award**) and revoking the Clubs Award on the basis that it would provide greater consistency in the regulation of penalty rates in the sector[6].

10. The AWU notes that the present application extends beyond this provisional view, as the amalgamated award as proposed by CAI does not only alter employees' weekend penalty rates, but provides a novel framework for extending the ordinary hours of maintenance and horticultural employees.

11. The amalgamated award as proposed by CAI contains a new clause[7] that provides a framework to allow employers to obtain agreement from individual maintenance and horticultural employees to work ordinary hours during what is currently classified as overtime – work on Saturday in excess of four hours or after midday, and all work on Sunday[8].

12. As this proposed new clause is entirely concerned with the reclassification of overtime as ordinary hours of work, it is clearly beyond the scope of a consideration of weekend penalty rates. This is especially so when such a consideration is ostensibly based on the harmonisation of weekend penalty rates across two awards and the proposed clause does not currently exist in either award.

13. Additionally and importantly, the reclassification of overtime as ordinary hours negatively affects the rights of employees in relation to being able to refuse to work such hours should they be considered unreasonable.

14. Under the *Fair Work Act 2009* (**Act**), an employee is entitled to refuse to work unreasonable additional hours[9]. According to the Clubs Award, work undertaken by maintenance and horticultural employees after midday or in excess of four hours on Saturday and all hours on Sunday are considered overtime because they are outside the ordinary hours of work for these employees[10]. As such, these hours are considered by the Act to be additional hours[11] and employees have a statutory entitlement to refuse to work these hours if the request to work them is unreasonable having regard to the factors listed in s.62 of the Act.

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[4] [2017] FWCFB 1001 at [996]
[5] [2017] FWCFB 1001 at [1000]
[6] [2017] FWCFB 1001 at [998]
[7] Clause 29.1(e)(iv)
[8] *Registered and Licensed Clubs Award 2010, ss.26.6 & 28*
[9] *Fair Work Act 2009 (Cth), s.62*
[10] *Registered and Licensed Clubs Award 2010, s.26.6*
[11] *Fair Work Act 2009 (Cth), s.62(1)(b)(ii)*

15. However, if such work is considered as part of an employee's ordinary hours, the entitlement to refuse to work them on the basis that a request to do so is unreasonable is no longer available. This is a significant erosion of employee entitlements.

16. Another important consideration in assessing this proposed amendment is that extending a full-time employee's span of ordinary hours to include all seven days of the week necessarily results in the work he or she completes on weekends as being incorporated in his or her guaranteed 38 hours per week.

17. Currently, any work a full-time maintenance and horticultural employee covered by the Clubs Award performs after midday on Saturday or on Sunday is overtime, and is therefore *additional* to his or her guaranteed 38 ordinary hours per week.

18. An agreement reached between an employer and employee using the additional clause as proposed by CAI alters this, with significant potential detriment to the employee.

19. CAI has offered no cogent reason or even a cursory engagement with the merit of the above amendment, especially considering the significance of the impact it may have on employees. CAI has not presented a single suggestion as to why this new clause is required to meet the Modern Awards Objective.

20. The outcome CAI seeks as a result of this application is for the recently reduced weekend penalty rates in the Hospitality Award to apply to workers currently covered by the Clubs Award. Based on the outlines of submissions and evidence tendered by CAI, the AWU understands the application by CAI to merge the Clubs Award and the Hospitality Award is premised entirely on the supposed similarity of the clubs and hospitality industries.

21. However, aside from numerous and compelling arguments to the contrary, the insertion of a novel clause allowing overtime to be reclassified as ordinary hours for one discrete sector of employees falls completely outside an argument based on harmonising two awards on the basis of penalty rates.

22. The evidence presented by CAI repeatedly refers to competition between the clubs industry and the hospitality industry; CAI's belief in simple terms being that the reduced rates payable on weekends to workers covered by the Hospitality Award leaves the clubs industry at a disadvantage. What isn't considered in the evidence is why CAI considers that the statutory rights of maintenance and horticultural employees covered by the Clubs Award should be able to be reduced, and what this has to do with competition with a restaurant or bar.

23. A consideration of the particulars of what work is and is not overtime for maintenance and horticultural employees covered by the Clubs Award was not an element of the provisional view of the Full Bench in the Penalty Rates Case. That provisional view, and the evidence and submissions that led to the Decision

as published are not at all relevant to the insertion of clause 29.1(e)(iv). Accordingly, CAI cannot rely on that material to pursue this amendment.

24. The insertion of this clause is a novel claim presented with no justification and no evidence. The clause provides an opportunity for employers to not only legally reduce the rates payable to its maintenance and horticultural employees on weekends, but to remove their statutory right to refuse to work them, and possibly further entrench weekend work as it will be more cost effective for an employer to roster employees to work weekends as part of their ordinary hours: *instead of* weekdays rather than *in addition* to them.

Agreement as a Threshold

25. The AWU submits that the proposed clause has been drafted to require agreement between an employer and employee as a threshold to operate in an attempt to avoid the intense scrutiny that inevitably comes with a proposal with such significant impact. This impact includes directly extending an employee's span of ordinary hours, erosion of an employee's statutory entitlements, potential introduction of major rostering changes, reduction in an employee's access to overtime rates, and affecting an employee's take home pay not just due to the lower hourly rate payable for weekend work, but the potential fewer hours worked each week by virtue of overtime work being subsumed as part of an employee's ordinary hours.

26. If in the unlikely event the Fair Work Commission considers that there is some merit in the proposal to insert clause 29.1(e)(iv) and some weight is placed on the fact that agreement must be reached between the employer and the employee for the clause to operate, the AWU submits the following.

27. Notwithstanding the significant effect of such an agreement on an employee's entitlements and take home pay, as a protection for the employee, individual agreement as a threshold is severely inadequate. This is especially so for maintenance and horticultural employees in the clubs industry.

28. Maintenance and horticultural employees of clubs typically work in small teams that make up only a fraction of a particular club's workforce. The AWU has concerns that as a small cohort, maintenance and horticultural employees are particularly susceptible to feeling pressure to agree to arrangements suggested by their employer.

29. As no basis for the inclusion of proposed clause 29.1(e)(iv) as an addition to CAI's proposed amalgamated award has been advanced by CAI, the AWU assumes that CAI's intention in doing so is to offer employers an additional opportunity to reduce wage costs.

30. At the very least, the AWU notes that the inclusion of the proposed clause is not for the purposes of flexibility in the performance of work or the application of overtime rates, as both of which are already terms that may be varied according

to the award flexibility provisions of the Clubs Award[12]. However, as with all Individual Flexibility Arrangements (**IFA**), the arrangement must result in an employee being better off overall than if no IFA had been agreed to[13].

31. The clause proposed by CAI does not make the same requirement of the agreement; the framework simply allows for maintenance and horticultural employees to work ordinary hours at times that are currently considered overtime, and for a reduced rate.

32. The AWU submits that the framework provided in the proposed clause is highly likely to facilitate agreements that are less than genuine and that will result in maintenance and horticultural employees having reduced rights, reduced hourly pay, and potentially less weekly hours, which will effect take home pay much more significantly than just the reduction in rates.

33. The AWU holds serious concerns that the agreement required by the proposed clause may be offered:

    33.1. On a 'take-it-or-leave-it' basis;
    33.2. To new employees as a 'condition' of employment (affecting the security of employment of existing employees);
    33.3. On the understanding that only employees who have agreed will be rostered to work weekends;
    33.4. Without adequate explanation of what rights the employee will lose in relation to refusing to work on weekends; and
    33.5. Without adequate explanation as to how work on weekends being classified as ordinary hours may affect the employee's overall roster.

34. Individual agreement is an entirely inappropriate safeguard for maintenance and horticultural employees to be able to protect their current rights, conditions and entitlements.

35. The AWU submits that, again owing to the small size of the maintenance and horticultural workforce in comparison to other clubs employees, agreement with the majority of affected employees would also be an inappropriate safeguard.

36. Indeed, the AWU submits that for a clause that has such potential to significantly alter an employee's employment to the employee's detriment as demonstrated above, the only appropriate safeguard is for the clause to not exist at all.

An Unwarranted Addition

37. The proposed clause 29.1(e)(iv) has the potential to create substantial change concerning maintenance and horticultural employees' take home pay, hours of work, rostering, and statutory rights to refuse to work on weekends. CAI has offered very little in justifying such a major potential change to a sector of

[12] *Registered and Licensed Clubs Award 2010, ss.7.1(a) & (b)*
[13] *Registered and Licensed Clubs Award 2010,* s.7.3(b)

employees, and the introduction of clause 29.1(e)(iv) is not at all related to CAI's main line of argument in pursuing the current application.

38. As the changes to employees' rights and conditions sought by CAI by the insertion of clause 29.1(e)(iv) are significant and potentially wide-ranging, the AWU submits that exceptionally strong, cogent, and voluminous evidence is required to justify such changes. The AWU notes that to date, none has been offered by CAI.

39. The AWU submits that CAI must tender such evidence and succeed in a merit argument as to why the proposed amalgamated award would fail to meet the Modern Awards Objective without the inclusion of proposed clause 29.1(e)(iv). The same is true even though agreement is a threshold requirement for the clause to operate. This is especially so considering the genuine concerns we have regarding the appropriateness of maintenance and horticultural employees' current conditions of employment being able to be reduced by individual agreement.

The Modern Awards Objective

40. The Fair Work Commission must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant safety net[14], taking into account the considerations set out at s.134(1) of the Act. This is the modern awards objective.

41. The AWU notes that the CAI submission regarding the insertion of proposed clause 29.1(e)(iv) does not engage with the modern awards objective in any way. The AWU however, submits the following in that regard.

Section 134(1)(a) – relative living standards and the needs of the low paid

42. The AWU submits that this consideration is of acute relevance to the CAI claim, and weighs heavily against it being granted.

43. Many award-reliant maintenance and horticultural employees in the clubs industry are low paid within the meaning determined by the Expert Panel in the 2015-16 Annual Wage Review[15] (**AWR**) and further applied in the 2016-17 AWR[16].

44. Utilising the *lower* weekly amount stated on in the 2016-17 AWR as the upper threshold[17] for low paid[18] and the hourly rates in the Clubs Award for maintenance and horticultural employees relevant to those amounts (i.e. before the 2016-17 AWR Decision took effect), **all** non-managerial maintenance and

[14] *Fair Work Act 2009* (Cth), s134(1)
[15] [2106] FWCFB 3500 at [359]
[16] [2017] FWCFB 3500 at [369]
[17] Two amounts were mentioned by the Expert Panel, $833.33 and $917.33
[18] [2017] FWCFB 3500 at [370]

horticultural employees reliant on the Clubs Award fall within the definition of 'low paid'.

45. As the claim by CAI to insert clause 29.1(e)(iv) has the potential to reduce the hourly rates, the weekly pay and statutory rights of low paid employees, this consideration clearly weighs heavily against it.

Section 134(1)(b) – The need to encourage collective bargaining

46. The AWU submits that the proposed clause 29.1(e)(iv) will likely have little impact on collective bargaining.

47. An additional award clause that reduces the conditions and rights of employees is unlikely to encourage bargaining within the sector.

Section 134(1)(c) – The need to promote social inclusion through increased workforce participation

48. This consideration does not appear relevant to the CAI claim.

Section 134(1)(d) – The need to promote flexible modern work practices and the efficient and productive performance of work

49. This consideration does not appear relevant to the CAI claim.

Section 134(1)(da) – The need to provide additional remuneration for overtime, unsocial, irregular or unpredictable hours, working on weekends or public holidays and employees working on shifts

50. The AWU submits that this consideration is of acute relevance to the CAI claim and weighs heavily against it being granted.

51. We note that proposed clause 29.1(e)(iv) operates to provide *reduced* remuneration not only for employees working on weekends[19], but also for employees working what is currently considered overtime[20].

52. The AWU additionally notes that as the proposed clause purports to permit overtime to be characterised as ordinary hours, this has real potential to increase the irregularity of hours[21] of work for maintenance and horticultural employees.

53. This is based on our observation above that once subject to this clause, the work a maintenance and horticultural employee performs on weekends will be included in that employee's guaranteed minimum ordinary weekly hours, whether the employee is part-time or full-time. This is likely to lead to such an employee being required to work more often on weekends and less often during what is widely accepted as 'regular hours'.

[19] *Fair Work Act 2009* (Cth), s134(1)(da)(iii)
[20] *Fair Work Act 2009* (Cth), s134(1)(da)(i)
[21] *Fair Work Act 2009* (Cth), s134(1)(da)(ii)

Section 134(1)(e) – The principle of equal remuneration for work of equal or comparable value

54. The AWU submits that this consideration is not distinctly relevant to the insertion of proposed clause 29.1(e)(iv).

55. CAI claims that its application is consistent with this consideration because of the supposed similarities of the work performed in both the clubs and hospitality industries.

56. The CAI application and outlines of submissions do not, however, address how this consideration supports the insertion of proposed clause 29.1(e)(iv).

57. The AWU submits that this consideration does not support the insertion of proposed clause 29.1(e)(iv).

Section 134(1)(f) – The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

58. The AWU concedes that the CAI proposal to insert clause 29.1(e)(iv) could reduce employment costs. However, this reduction would come at the expense of low paid workers income and statutory rights.

Section 134(1)(g) – The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

59. The AWU submits that this consideration is relevant to the CAI claim to insert proposed clause 29.1(e)(iv), and weighs against it being granted.

60. CAI claims that its application is consistent with this consideration because of the supposed similarities of the work performed in both the clubs and hospitality industries.

61. The CAI application and outlines of submissions do not, however, address how this consideration supports the insertion of proposed clause 29.1(e)(iv).

62. The AWU submits that the insertion of a new clause that itself is not simple nor easy to understand is clearly inconsistent with this consideration. As has been referred to above, this proposed clause has the capacity to cause detriment to maintenance and horticultural employees in a number of ways, including by changing their statutory rights.

63. This may not be readily apparent to employees or indeed a number of employers, especially those without dedicated human resources or legal departments. The AWU understands that the majority of employers in the clubs sector would be without such resources.

64. The need to ensure a simple and easy to understand instrument weighs against the insertion of a clause that may affect a number of entitlements in its operation, despite only ostensibly being concerned with the rate payable for work performed.

Section 134(1)(h) – The likely impact of any exercise of modern award powers on employment growth, inflation and sustainability, performance and competitiveness of the national economy

65. This consideration does not appear relevant to the CAI claim.

66. The AWU submits that the CAI claim to insert proposed clause 29.1(e)(iv) is not required to meet the modern awards objective, but is a simple attempt at cost-cutting without any economic justification regarding employment or any other factors.

67. The AWU submits that in fact, a number of the considerations of the modern awards objective clearly weigh against the granting this claim.

GENERAL

68. The AWU also intends to make a number of submissions on the submissions and evidence tendered by CAI more generally.

The Inconsistent Position of Clubs Australia

69. The bulk of the evidence tendered by CAI in support of its application focuses on the similarities of the clubs and hospitality sectors. However, Clubs Australia (to which CAI belongs) was until recently a strong advocate regarding the uniqueness of the clubs industry[22]. The AWU notes that no evidence has been tendered to address this significant amendment of position, specifically if the elements that made the clubs industry unique no longer exist or are otherwise no longer applicable and why.

70. In the absence of convincing evidence to the contrary, the AWU understands that clubs are currently no more likely to have 'similar service offerings' to hotels, casinos and restaurants[23] than they did a decade ago, and therefore this is an unconvincing argument as to why the Clubs Award is required to be subsumed by the Hospitality Award in order to meet the Modern Awards Objective.

71. The AWU notes that the only change that has propelled this application is not a change to the clubs industry at all, but a change to the Hospitality Award. This is common knowledge. What the AWU raises in relation to the evidence regarding the similarities of the two industries, however, is how much weight can possibly be afforded such evidence when it is contrary to the longstanding (and arguably continued) position of the clubs industry's peak body. This is especially so

[22] See Submissions of Clubs Australia to the Australian Industrial Relations Commission, 2008 (Attached)
[23] Statement of George Addison at 63

without an explanation as to why this sudden change in overall position has occurred.

72. The AWU notes that the newfound position of Clubs Australia (which is solely evidenced in these proceedings) is arguably quite harmful to the image of clubs in Australia. By tendering evidence categorising clubs as simply 'hospitality establishments[24]', CAI is undervaluing clubs, and selling short their many and varied reasons for existence, the many and varied services they provide, the other activities they engage in, and their impact on the communities in which they operate.

73. The AWU also notes that the application by CAI does not enjoy widespread industry support, with not only employee associations but also a significant number of clubs themselves making submissions in opposition. The position that CAI has chosen to take for the purposes of this application is unsurprisingly not widely shared amongst stakeholders in the industry. The AWU submits that this is a highly relevant factor to be considered by the Full Bench, and weighs strongly against the application being granted.

74. The AWU submits that in its application, CAI has tended to artificially inflate certain elements of a typical club, such as the service of food and drink, and ignore the other elements that are just as important or even more so, such as the basis of the club's existence.

75. The AWU notes that the Clubs Australia website describes clubs in Australia as follows:

> "*Licensed and registered clubs are not-for-profit, member-based organisations that exist to provide infrastructure and services for the community, and further a core purpose, such as the promotion of sporting activities or veterans' welfare.*
>
> *Clubs contribute to their local communities through employment, cash and in-kind donations, and through the formation of social capital. In addition, clubs provide an affordable range of goods, services and facilities for local communities to enjoy, and mobilise thousands of community volunteers each year.[25]"*

76. Clearly, according to Clubs Australia, clubs are still much more than hospitality establishments despite CAI's application to the contrary. Of course, the amendment of or temporary departure from an established and consistent position – even one as significant as this – does not necessarily mean the application is invalid.

77. However, the AWU submits that an important factor that should inform any dissemination of CAI's submissions and evidence is that such submissions are ostensibly formed entirely for the purpose of pursuing the current application and

[24] Statement of George Addison at 67
[25] "About Clubs", <www.clubsaustralia.com.au/about-us/club-industry> Accessed 8 May 2018

do not seem to reflect the previous and longstanding position of Clubs Australia[26], which CAI has provided no explanation for.

78. The AWU submits that CAI appears to be taking a similar approach to this application as it did in its failed bid to reduce the penalty rates in the Clubs Award in 2017[27], in which it was criticised for taking a position based on what is "industrially feasible[28]" instead of merit.

Similarities Between the Industries

79. The AWU does not support the CAI contention that the clubs and hospitality industries are so similar that the two industries should share an award. There are a number of significant differences between the two industries, and these differences do require a separate award. For a thorough discussion regarding this, please see the submissions made by Clubs Australia to the Industrial Relations Tribunal during Award Modernisation attached to these submissions.

80. Further to those submissions, CAI's own evidence states that clubs in New South Wales provide childcare, aged care, gyms, cinemas, function rooms, museums, hairdressers, travel agents and community transport services[29] and that clubs' competitors in terms of hospitality venues do not operate and maintain sporting and recreational infrastructure[30].

81. Of course, a key difference between the clubs and hospitality industries is the purpose for which clubs are established. The AWU notes that it is generally accepted that clubs are established to further a core purpose[31]. Although there is no debate that clubs typically serve food and drink, based on the evidence tendered by CAI, there is no club that has been established with this as its core purpose (as the AWU would assume many hospitality venues are).

82. The AWU does not find the arguments tendered by CAI that attempt to align the two distinct industries at all convincing.

The Claimed Disadvantage

83. The AWU notes that the application by CAI is generally based on the premise that the clubs sector is at a disadvantage to the hospitality industry owing to the recent penalty rates cuts that have been applied in the Hospitality Award.

84. However, CAI has tendered no evidence to support this claim, relying instead on general evidence of competition between the clubs industry and the hospitality

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[26] See Submissions of Clubs Australia to the Australian Industrial Relations Commission, 2008
[27] [2017] FWCFB 1001
[28] [2017] FWCFB 1001 at [983]
[29] Statement of Anthony Trimarchi at 30
[30] Statement of Anthony Trimarchi at 23
[31] See "About Clubs", <www.clubsaustralia.com.au/about-us/club-industry>; Statement of Anthony Trimarchi at 16; KPMG Clubs Census 2015, p31

and casino industries concerning the provision of food and beverages and gambling, respectively.

85. The evidence that CAI has tendered attempts to paint a very dim picture of the future of clubs because of this competition between the industries. What CAI has failed to do, however, is explain how an amalgamated award will 'rescue' the industry from its current state of supposed intense competition with restaurants, pubs and casinos. In fact, CAI has failed to address what granting its application will result in at all.

86. Also of significant relevance is that according to evidence tendered by CAI, a significant majority of employees in the clubs industry are casual employees:

    86.1. 64% of employees in Queensland clubs[32];
    86.2. 62% of employees in Victorian clubs[33]; and
    86.3. 85% of employees at one particular Victorian club[34].

87. The AWU notes that for an outcome that CAI is ostensibly touting as a solution to the clubs industry's supposed woes, the penalty rates reduction sought will only apply to less than 40% of its employees. It seems that perhaps CAI has simply pursued the line of argument that it believes that the Fair Work Commission will find the most convincing instead of one that has enough merit to succeed.

88. The AWU also notes that of the reports tendered by CAI, including the two KPMG Census' and the *Synergies* Report [35] we were unable to find any recommendations that the clubs industry should focus on seeking a reduction in labour costs.

Conclusion

89. The application by CAI is inadequate, incomplete, and beyond the scope of the provisional view of the Full Bench of the Penalty Rates Case that CAI has claimed to rely upon in lodging this application.

90. The proposed insertion of clause 29.1(e)(iv) will have a significant and possibly wide-ranging affect on maintenance and horticultural employees, not just in terms of reduced hourly pay, but reduced statutory rights and potential rostering changes that may introduce further detriment to these employees in the form of irregular working hours and significantly reduced weekly pay. Despite this, CAI has presented no evidence at all regarding the necessity of this proposed clause, or even any significant discussion of maintenance and horticultural employees in a general sense.

91. The proposal to insert clause 29.1(e)(iv) was obviously not the result of a thorough process that considered how the clause would affect employees, or

[32] 2015 KPMG Census, p32
[33] Statement of Neil Murray at 16
[34] Statement of Neil Murray at 44
[35] Attachment to Statement of George Addison

apparently even if the proposal had any merit. The clause was an afterthought to the initial application and it shows in the complete lack of mention in submissions and evidence.

92. CAI's heavy reliance on the apparent competition between clubs and other industries is entirely misplaced as it completely irrelevant to modern award coverage.

93. CAI has failed to mount a merit-based argument to convince the Fair Work Commission that the Clubs Award is currently failing to meet the modern awards objective. Additionally, CAI has failed to do the opposite for its proposed amalgamated award.

94. The AWU submits that the proposal to insert clause 29.1(e)(iv) is completely unsupported, and the wider proposal by CAI to revoke the Clubs Award and vary the Hospitality Award is barely of a higher calibre.

18 May 2018

The Australian Workers' Union

Fair Work Act 2009
FAIR WORK COMMISSION

s. 156 - 4 yearly review of modern awards

AM2017/39

Registered and Licensed Clubs Award 2010 and the *Hospitality Industry (General) Award 2010*

WITNESS STATEMENT OF Blake Adair-Roberts

I, Blake Adair-Roberts of 16 Good St Granville, Union Organiser for The Australian Workers' Union, NSW STATE as follows:

Background

1. I have been employed as an organiser by The Australian Workers' Union, NSW Branch since 2017.

2. I am based at Granville office and have responsibility for servicing AWU members in the maintenance and horticultural sector of the clubs industry in the Sydney metro region of NSW.

Maintenance and Horticultural Employees in the Clubs industry

3. The AWU NSW branch has a number of members who work in the maintenance and horticultural sector of the clubs industry in my area including at St Michaels Golf club, Manly Golf club, and Royal Sydney Golf Course.

4. Of those above, the members at St Michaels and Manly golf club are reliant on the *Registered and Licensed Clubs Award 2010*. Members at Royal Sydney Golf Course have an Enterprise Agreement, which is different from the award regarding weekend rates which are paid at a rate of 1.5 for all hours on a Saturday and 1.75 for all hours on a Sunday.

5. My experience has been that weekend work is generally mandatory for employees working as greenskeepers. This is because horticultural work for a golf course revolves around weekend tournaments as they are busy periods for their clientele. Preparation throughout the week goes to waste if the final work is not conducted on weekends including changing of holes each day of the weekend so they're in the best possible shape for weekend play.

6. Many clients of golf clubs pay thousands or tens of thousands of dollars for yearly memberships, and if greens keepers did not work weekends then the course would not be in an acceptable state of play for the club's clients to pay such large membership fees.

7. Club greens keepers generally work weekends because the courses are required to be maintained day-after-day year-round and their busiest days are weekends. Due to the seasonal nature of the industry, in summer they can be expected to work extremely long hours over weekends, especially if there are tournaments or special events on. Furthermore, they work in small teams covering large grounds meaning they are stretched thin in order to complete all their work.

8. I understand that the changes sought by Clubs Australia Industrial for greens keeping employees covered by the Clubs Award will mean an employee may be required to work ordinary hours during time that is currently overtime and receive a reduced rate for such work.

9. I believe that individual agreement is not an effective protective measure for employees because greens keeping employees do not have sufficient bargaining power to counter any proposed reduction in overtime rates made by their employer. This is particularly so for new employees.

10. In my experience it isn't uncommon for horticulture employees on golf courses to be isolated and open to coercive action by employers that may influence whether any "agreement" was genuine or not.

11. In my experience, I believe that employers may use this new agreement to reduce operating costs. My experience has been that industry employers are not afraid to use intimidation and forceful tactics to lower labour costs, such as threatening to terminate an enterprise agreement if employees do not vote yes to a proposed enterprise agreement.

12. The employees in this industry work considerable weekend hours, particularly over busy summer periods. In one EBA limits on maximum working hours for part and full-time employees do not apply during "special events" in summer.

13. Workers are paid quite low base wages so overtime becomes an important part of their income and they are expected to provide some overtime to clubs during seasonal periods or all the time depending on the club.

14. As greenskeeper employees work in small teams they often hold little bargaining power over their pay due to them being a small part of a larger pool of employees working at the club.

15. Based on my experience in the industry, I believe that the proposed agreement between an employer and individual employees may result in non-genuine agreements being made.

16. Employers hold greater power in negotiations, especially with new employees and many current employees who will feel coerced into agreeing to the reduction in pay rates. Once this agreement is in place with some employees, other employees may either not be provided weekend work or alternatively be forced to enter into what could be a non-genuine agreement to retain hours and income.

17. Although rates in EBAs do not always mirror the award rates, such as at Royal Sydney, in my view any changes to the award would lead to employers attempting to reduce penalty rates in their agreements.

18. In my experience as an organiser in the sector, golf clubs have not shown a propensity to endorse wage increases and have generally indicated in EBA discussions that the less money spent on labour costs would be the preferred outcome.

19. It is my view that whether under the award or an EBA horticultural workers will receive less pay if employers are given the ability to form agreement with workers to reduce wage rates and have weekend work considered ordinary hours.

20. The use of individual agreement is inadequate protection for employees in this sector who for a number of reasons, including a lack of bargaining power, fear and misinformation may sign onto non-genuine agreements to receive lower rates of pay.

SIGNED:

DATE: 17/5/2018

Fair Work Act 2009
FAIR WORK COMMISSION

s. 156 - 4 yearly review of modern awards

AM2017/39

Registered and Licensed Clubs Award 2010 and the *Hospitality Industry (General) Award 2010*

WITNESS STATEMENT OF FEZ RICHES

I, Fez Riches, of 685 Spencer St, West Melbourne, Union Organiser for The Australian Workers' Union, Victoria STATE as follows:

Background

1. I have been employed as an organiser by The Australian Workers' Union, Victoria since 2016.

2. I am based at Melbourne and have responsibility for servicing AWU members in the maintenance and horticultural sector of the clubs industry in the Metro and country regions of Victoria.

Maintenance and Horticultural Employees in the Clubs industry

3. The AWU Victoria has a number of members who work in the maintenance and horticultural sector of the clubs industry in my area including at Royal Melbourne, Rosebud, Latrobe, Churchill, Gisborne, Melbourne Airport, Heritage, Cranbourne, Peninsula Kingswood and Hidden Valley.

4. Of those above, the members of all but Rosebud and Royal Melbourne are reliant on the *Registered and Licensed Clubs Award 2010*. Members at Rosebud and Royal Melbourne have an Enterprise Agreement.

5. My experience has been that most people in this industry work weekends, especially during the hotter months.

6. I understand that the changes sought by Clubs Australia Industrial for maintenance and horticultural employees covered by the *Registered and Licensed Clubs Award 2010* means that the employer will be able to get agreement from an employee to work ordinary hours instead of overtime on Saturdays after midday and/or in excess of 4 hours and all hours on Sunday and be paid a lower rate for this work.

7. This will bring down the weekly or fortnightly income which is already low as the majority of club workers are on minimum wage as it is. Making it harder to make ends meet.

8. The golf clubs are under pressure as many other industries are to keep running costs down. I believe that clubs would use this new agreement to reduce wages taking way income from the lowest paid staff.

9. Weekend work and public holiday work is vital to a clubs upkeep as is overtime. All clubs that I have visited do overtime and weekend work.

10. The greenkeepers and maintenance workers are a small work group that is usually comprised of 3 to 8 workers. There are few clubs with more than 8.

11. The overtime rates in our EAs reflect those of the *Registered and Licensed Clubs Award* and would more than likely be reduced the next time the EA expires and bargained.

12. To ask one of the lowest paid groups of workers to give up their penalty rates which were hard fought for over the years is unconscionable. The industry will struggle to attract new young workers if the conditions and pay of work are so poor. This is a dangerous trend that will only see the most vulnerable of employees lose income and conditions as the profits of their hard labour stay at the top of the pay chain.

SIGNED:

Fez Riches
Metro Organiser AWU

DATE: 09/05/18

Submissions to Australian Industrial Relations Commission By ClubsAustralia

Re: Award Modernisation Process

(AM2008/01)

Introduction

These submissions are made in this matter pursuant to s.576E of the *Workplace Relations Act 1996* (**WR Act**) and pursuant to the Award Modernisation Statement of the Australian Industrial Relations Commission dated 29 April 2008.

Whilst ClubsAustralia is not a registered organisation under the *WR Act*, it does nationally represent the all State and territory Clubs industry employer bodies most of which are registered organisations via the transitional registration provisions contained in the *Workplace Relations Act 1996*. These submissions therefore reflect the views and position of ClubsNSW; ClubsQld; ClubsWA; ClubsSA; ClubsTas; ClubsACT and ClubsNT.

Representatives from all of the State and Territory Club bodies have met and conferred in relation to our position in respect to the Award rationalisation process. All aforementioned State and Territory bodies support the position that we outline in these submissions. Representatives have been present at the consultation proceedings that were listed throughout the country during the week commencing 26 May 2008, either in a capacity of "watching brief" or have made submissions consistent with these formal written submissions.

The Club Industry

Clubs are groups of people sharing a common interest, who combine to provide facilities to promote and pursue that interest. Clubs provide popular venues for socialising, inexpensive forms of entertainment, sports and activities and are major economic contributors to local communities, particularly in regional Australia. Apart from the capital

investment in the community, Clubs employ over 65,000 employees, making it one the largest employers in the tourism and hospitality sector.

Clubs range in size from small, often regional establishments that are often the only form or source of entertainment in a community, to the larger Clubs that are normally found in metropolitan areas in the capital cities. The number of employees may range from 2 or 3 employees in a single establishment, who may perform duties across a wide variety of callings to 500 or 600 employees employed by the larger Clubs which may operate a number of different sites.

Clubs are non profit making organisations, which means their income cannot by law be distributed to members, corporations or any individual. Any profits made are returned to members in the form of improved club facilities or services, such as low-cost holiday accommodation; subsidies and support for sub-clubs; and donations to local community groups and charities.

Clubs respond to community needs rather than corporate return, and are often the source of key investment in local capital expenditures such as golf courses and bowling greens. Without such club investment the economic and social needs of many communities, especially in regional areas, would not be met.

At least 90% of registered and licensed clubs throughout the country are constitutional corporations are therefore subject to the Federal industrial jurisdiction

Award Modernisation

S 576A of WR Act requires, amongst other things, that modern awards:

- are simple to understand and easy to apply and reduce the regulatory burden on employers,
- provide, in conjunction with any legislated standards, a fair minimum safety net of enforceable terms and conditions,
- promote flexible modern work practices.

The requirement that modern awards are simple and easy to apply is emphasised by S 576W(2)(c) of WR Act which requires that a modern award must be expressed in plain English and be easy to understand in structure and content.

S 576J provides that modern awards may include terms about any of the matters identified at s 576J(1) together with any other matter which is specified in the Award Modernisation Request which gives rise to the modern award [s 576J(2)]. Matters identified at 576J(1) include:

- type of employment (such as full-time, part-time and casual employment) and the facilitation of flexible working arrangements particularly for employees with family responsibilities [s 576J(1)(b)];
- arrangements for when work is performed including variations to working hours [s 576J(1)(c)];
- overtime and penalty rates [s 576J(1)(d) and (e)];
- leave including arrangements for taking leave [s 576J(1)(h)];
- procedures for consultation and representation [s 576J(1)(j)].

The Award Modernisation Request provides that the aim of the award modernisation process is to create a comprehensive set of modern awards and these must be consistent with the requirements of s 576A.

Interestingly, the Award Modernisation Request states at 2 (c) and (d) that the creation of modern awards is not intended to disadvantage employees or increase costs for employers.

The Award Modernisation process also requires the Commission to have regard to the representational rights of organisations and transitionally registered associations under the WR Act (S 576 (2) (j) and 3 (j) of the Award Modernisation Request). The Award Modernisation Request at points 8 and 9 state that in identifying the type of work, industry and/or occupations to be covered in a modern award the Commission is to have regard to avoid overlapping awards and minimising the number of awards that apply to a particular employee or employer.

Club Industry Position

It is the view of the Clubs Australia that an Award should be made as part of this process, to encompass all registered and licensed Clubs nationally. That is to say that it is our position that a national Club industry Award should be made, that is separate and distinct from any other rationalised hospitality industry Award that may be made as part of this process.

We submit that any such rationalised industrial instrument having application to all Clubs nationally should have application to all employees employed by Clubs. This includes all employees employed in the hospitality operations of Clubs as well as greenkeepers and gardening staff, maintenance staff, clerical and administrative employees. The Club Industry would be concerned if occupational awards such as greenkeepers and clerks would cover those occupations within the club industry.

Apart from the historical fact that these occupations have been covered in their respective industry awards (NAPSAs) the Award Modernisation Request, as stated above, is aimed at avoiding overlapping awards and minimising the number of awards that apply to a particular employee or employer. If the Commission allowed an occupational award which covered such employees employed by Clubs it would be in direct conflict with this stated aim.

Further, to make an award based upon occupational lines that would impact on clubs would mean that an individual club would be covered by a plethora of differing occupational Awards which would have no impact upon the reduction in the number of Awards applying to a particular enterprise, and would reduce the ability of employees and employers to multi-skill across occupations. For example, many clubs, especially small clubs will have either clerical or greenkeepers who will supplement their hours in those specialties by working behind the bar or in some other business center of the club.

We make this submission and have reached this position, as we believe that the Club industry in Australia is a separate and distinct industry from most other industries in the hospitality sector. We make this submission based upon the following reasons:

- Clubs are not-for-profit organisations
- Clubs are community based and community run organisations
- Clubs are established on the basis of interest mutuality
- Clubs are subject to separate and distinct regulations and regulatory framework
- They are required to adopt a set of rules (a constitution) subject to the provisions of the applicable regulatory framework.
- They are subject to control by members and only members and bona-fide visitors can avail themselves of the facilities;
- They do not pay a dividend to their members so any excess funds are channeled back into the community;
- Each club is committed to maximizing local support and offering affordable social opportunities in a fun, safe and friendly environment in order to raise funds in furtherance of their community objectives.
- Employees of Clubs provide a service to their members which goes beyond the service provided in a commercial establishment.
- In many Regional Areas employees of Community Clubs are multi-skilled in that they perform work across a range of functions such as Clerical, greenkeeping and counter service.
- Clubs offer a variety of sports, activities and entertainment for its patrons and members that are not normally offered and other hospitality venues.

It is submitted that based on the above facts, there are good and cogent reasons for the Club Industry to be considered as an industry in its own right and to be dealt with separately in the award modernisation process.

ClubsAustralia is confident that it will be able to negotiate successfully with the appropriate Unions to develop an industrial instrument that will be rationalised, modernised and simplified that will have application nationally and hopefully be able to provide benefits for all parties concerned.

To that end, we submit that the LHMU has provided 'in-principle" support to the position as outlined in these submissions. At the consultative hearing in Sydney on 28 May 2008, Mr. Swancott of the LHMU stated as follows:

"The sector has been delineated by the LHMU because of the interrelationship of a combination of services, food and beverage services and gaming. The LHMU also supports the making of future national modern awards to operate discretely for restaurants and catering and secondly, for clubs."

This position is consistent with the ACTU's position as outlined on Monday 26 May 2008 in Melbourne, by indicating that Clubs are not included or encompassed in the first round of the hospitality award rationalisation process.

Further, and significantly, this position has the support of the Australian Hotels Association. The AHA also stated on 28 May 2008 in the consultative hearings in Sydney:
"…….. we support the proposition that the hospitality industry be split into what is effectively three separate awards which is the Hospitality Award which we say is the primary award if the split doesn't occur covering pubs, taverns, casinos and accommodation and a Restaurant and Catering Award and a Clubs Award ……..."

The Club Industry supports the goal of rationalising the number of awards especially in line the President's Statement on 29 April 2008 that "industries" might be grouped where appropriate although the grouping does not mean that there might be only one modern award. This is the position of the Club Industry and the other 'major' associations and unions within this wider hospitality sector.

Award Flexibility Provisions

The requirement to develop a model award flexibility clause arises from the Award Modernisation Request. The request directs the Commission to prepare a model clause to enable an employer and an individual employee to agree on arrangements to meet the genuine individual needs of the employer and the employee

It is the position of ClubsAustralia that we support the Award Flexibility model of the Australian Chamber of Commerce and Industry. We believe that this model best provides for both employees and employers entering an arrangement, which is

genuinely related to their individual needs and not an arrangement that disadvantages the employee.

ClubsAustralia opposes the ACTU approach due to its complexity which places too many constraints and hence seems to be in direct opposition to the Award Modernisation Request, and accordingly make individual agreements unlikely. The services sector in which we operate needs and requires flexibility to be able to provide high levels of service to our patrons, and the need for clubs to be able to adapt promptly to varying levels of customer demands.

Timetable for Completion of Award Modernisation

ClubsAustralia notes the tight timetable required by the AIRC and although not opposing the timetable would submit that the AIRC gives consideration to the following:

- For the process to work it requires the continuance of thorough consultation with stakeholders;
- The process would be helped by the AIRC creating guidelines as to how the process is to move forward – for example, how they deem to resolve disputes between stakeholders in regard the wording of individual clauses.
- The need for the AIRC to provide a contact mechanism for stakeholders in each modern award.

Awards and NAPSAs Currently having Application in the Club Industry

For the information of the Commission we provide the following list of Awards and NAPSA's that currently have application in the Club industry:

New South Wales

- Club Employees Award
- Bowling and Golf Club Employees Award
- Club Managers Award
- Club Industry (Variety Artists) Award
- Musicians (Live Performance) Award

Queensland

- Club Employees Award (Excluding SE Qld) 2003
- Club Etc Employees Award – SE Qld 2003
- Clerical Award – Registered and Licensed Clubs 2003
- Liquor and Accommodation Industry – Licensed Clubs – Managers and Secretaries Award 2002 (has application in Queensland and Victoria)

Victoria

- Licensed Clubs (Victoria) Award 1998
- Liquor and Accommodation Industry – Licensed Clubs – Managers and Secretaries – Award 2002
- Sportsground and Maintenance and Venue Presentation (Victoria) Award 2001
- Entertainment and Broadcasting Industry (Recreation Grounds Etc – Victoria) Award 2000
- Shop, Distributive and Allied Employees Association - Victorian Shops Interim Award 2000;
- Fitness Industry (Victoria) Interim Award 2000

Western Australia

- Club Workers Award
- Clerks (Hotels, Motels and Clubs) Award
- Golf Link and Bowling Green Award

South Australia

- Hotels, Clubs Etc Award
- Greenkeepers Award

Tasmania

- Licensed Clubs Award
- Horticulturists Award

Northern Territory

- Hotels, Motels, Wine saloons, Catering, Accommodation, Clubs and Casino Employees (Northern Territory) Award
- Gardening, Nurseries and Greenkeeping (Northern Territory) Award 1998

Australian Capital Territory

- Liquor Industries, Hotels, Hostels, Clubs and Boarding Establishments etc (Australian Capital Territory)

- Liquor and Accommodation Industry – Licensed Clubs – Managers and Secretaries Award 2003
- Liquor and Accommodation Industry – Club Industry (Australian Capital Territory) Superannuation Award

Further Submissions to Australian Industrial Relations Commission
By ClubsAustralia

Re: Award Modernisation Process

(AM2008/01)

Introduction

These further submissions are made in this matter pursuant to s.576E of the *Workplace Relations Act 1996* (**WR Act**) and pursuant to the Award Modernisation Decision of the Australian Industrial Relations Commission dated 20 June 2008.

ClubsAustralia maintains its position and further presses its previous submission that a separate Clubs Industry Award be created. It is submitted that such an award cover all persons employed by registered and licensed Clubs nationally.

Representatives from all of the State and Territory Club bodies have met and conferred in relation to our continued position in respect to the Award rationalisation process.

Club Industry Position – The Case for a Single National Clubs Industry Award

The Uniqueness of the Club Industry

We submit that our continued position is consistent with objective and intent of Sections 576A and 576B of the WR Act dealing with Award modernisation. We maintain our submission that the Club industry in Australia should be viewed as a separate and distinct industry from the hospitality industry. While Clubs do provide hospitality services the scope of the industry extends beyond the provision of such services.

In continuing and reiterating our previous submissions, Clubs are groups of people sharing a common interest, who combine to provide facilities to promote and pursue

that interest. Clubs provide popular venues for socialising, inexpensive forms of entertainment, sports and activities and are major economic contributors to local communities, particularly in regional Australia.

It is the Clubs that provide for continual funding to the affiliated sporting teams to provide and maintain the necessary facilities and equipment to allow them to play; the Clubs provide facilities and equipment and fund the surf clubs to continue to provide a public service of safety on the beaches; Clubs provide many services to the elderly and returned services personnel, including aged care homes and other facilities. These are just examples of the community funding that Clubs provide throughout Australia.

Apart from the capital investment in the community, Clubs employ over 90,000 employees in nearly 5000 establishments throughout Australia, making it one the largest employers in the tourism and hospitality sector. The Club industry is, we submit, a large, significant, vibrant and self-sufficient industry in its own right.

Clubs range in size from small, often regional establishments that are often the only form or source of entertainment in a community, to the larger Clubs that are normally found in metropolitan areas in the capital cities. The number of employees may range from 2 or 3 employees in a single establishment, who may perform duties across a wide variety of callings to 500 or 600 employees employed by the larger Clubs which may operate a number of different sites. This is illustrated by the diversity of two examples; Penrith Panthers Leagues Club (Panthers Entertainment Group) which operates 14 sites in NSW and employs in excess of 1000 employs; in contrast to the Williams District Club in WA which employs just 2 employees.

The types of Clubs that form the Club industry in Australia are as diverse as the size and employment numbers. They include:

- Sporting (all codes of football, yachting and sailing, cricket, golf, bowls, racing)
- Services (RSL, church, union, political etc)
- Cultural (Italian, Croatian, etc)
- Regional (District Clubs etc)
- Recreational (surf clubs)
- Social (bridge club)

The Club industry in Australia is a separate and distinct industry that can be distinguished from the Hospitality Industry on the following grounds:

1. **Clubs are not-for-profit organisations** – unlike enterprises in the hospitality sector clubs are not run as profit based enterprises. It is for these reasons that most Clubs operate differently and are run differently to other enterprises in the hospitality sector.

2. **In many Regional Areas employees of Community Clubs are multi-skilled in that they perform work across a range of functions such as Clerical, greenkeeping and counter service** – In many Clubs, clerical and greenkeeping staff also perform work in the hospitality operations of the Club. This is not a situation that is likely to occur in other establishments in the hospitality sector.

3. **Clubs offer a variety of sports, activities and entertainment for its patrons and members that are not normally offered and other hospitality venues** – other establishments within the hospitality sector do not offer the same level of activities and entertainment. In that respect there are many tasks and positions not normally found in other enterprises and establishments in the hospitality sector.

4. **Clubs are community based and community run organisations** – this is not the case in other industries in the hospitality sector. They do not pay a dividend based upon profits made and excess funds are channeled back into the community. Additionally, there exists the concept and role of stewardship whereby staff and management recognise that the Club's resources belong to the whole club and must be used and preserved for the benefit of its members

5. **Clubs are established on the basis of interest mutuality** – no other industry or enterprise in the hospitality sector is established on this basis. It is for this reason that volunteers are often found working along side full-time, part-time and casual employees. This particularly the case in small and medium sized Clubs.

6. **Clubs are subject to separate and distinct regulations and regulatory framework** – this regulatory framework requires different staffing arrangements to those in other industries in the hospitality sector

7. **Clubs are required to adopt a set of rules (a constitution) subject to the provisions of the applicable regulatory framework. Such regulatory framework means that the Clubs are subject to control by members and only members and bona-fide visitors can avail themselves of the facilities;**

8. **Each club is committed to maximizing local support and offering affordable social opportunities in a fun, safe and friendly environment in order to raise funds in furtherance of their community objectives.**

9. **Employees of Clubs provide a service to their members which goes beyond the service provided in a commercial establishment.**

ANZIC Codes

The Award Review Taskforce noted the ANZIC codes would be a starting point for award rationalization. The club industry falls under ANZIC class 5740 and consists of associations that are licensed and provide a wide range of services to their members that include gambling, sporting or other social or entertainment facilities.

The accommodation industry consists of hotels, motels and similar units engaged in providing short term accommodation (see ANZIC class 4400).

Pubs, bars and taverns are mainly engaged in selling alcoholic beverages for consumption on and off the premises (see ANZIC class 5720).

Cafes, Restaurants and Catering Services are mainly engaged in café operation, catering service operation and restaurant operation providing meals for consumption on the premises (see ANZIC class 5730).

Accordingly we note the ANZIC codes show cub industry is distinct and separate to the other sectors.

Differences in Trading Operations

The most recent data from the Australian Bureau of Statistics is published in Accommodation Services 2006-07 (8695.0) and Clubs, Pubs Taverns and Bars 2005-2005 (8687.0) and Cafes, Restaurants and Catering Services, Australia 2006-2007 (8655.0) . This data highlights the significant differences between trading operations in these industries. The figures cited below are taken from those catalogues.

1. Labour costs and other expenditure

1.1 Labour costs represented the single largest expense item in the club industry incurring $2,121.6m (31.4% of total expenses) at an average cost per employee of $33,000.00. Other major expense items included gambling taxes and levies ($1,104m) and purchases of liquor and other beverages ($731.2m).

1.2 In contrast, pub, bar and tavern services' highest expense item was the purchase of liquor and other beverages, accounting for 36.7% of total expenditure. Labour costs accounted for only 21.9% of expenses and gambling levies accounted for 9.1%. The average cost per employee was $28,000.00.

1.3 Labour costs in the accommodation industry represented 35.7% of total expenditure ($3,160.7m) at an average cost per employee of $34,000.00.

1.4 Labour costs were the most significant expense for catering businesses accounting for 43.1% ($1,617.7m) of total expenses. Purchases were the largest expense for cafés and restaurants accounting for 38.7% ($3,618m) of total expenses, closely followed by labour costs at 33.8% (3,160m). The average labour cost per employee across café, restaurant and catering services was $25,900.00.

2. Sources of Income

2.1 The main source of income for clubs was from gambling which generated $4,305.1m (58.4%). Other major sources of income are sales of liquor and other beverages at $1,600.8m (21.7%) and takings from meals and food at $726.4m (9.9%).

2.2 Dissimilarly, the main source of income for pubs, taverns and bars was from sales of liquor and other beverages which generated $6,706.1m (60.3% of total income). Gambling income accounted for 24.3% ($2,703.1m) of all income, and takings from meals and food sales, which accounted for 10.8% ($1,200.6m).

2.3 The main source of income for accommodation business was takings from accommodation which accounted for two-thirds (66% or $6,519.6m) of total income, followed by takings from meals (14.1% or $1,388.1m).

2.4 The main source of income for café, restaurant and catering services was takings from meals consumed on the premises which constituted just under half of total income (47% or $6,428m). Takings from catering services amounted just under a quarter (24.1% or $3,291.3m) while sale of liquor and other beverages amounted to 19.9% ($2,724m) of total income.

3. Types of Employees

3.1 The same data also highlights the difference in the types of Employees engaged in the industries. In the club industry, casual employees accounted for 48.5% of employees (30,897 people). 33% of employees (21,060 people) were permanent full time and 18.5% (11,777) were permanent part-time.

3.2 In pubs, taverns and bars, 57,262 persons (70.1%) were casual employees. Permanent full-time employees accounted for 23% of employees and there were 5.6% part-time employees.

3.3 In the accommodation industry, casual employees accounted for 44.1% (42,285 people). Permanent full-time employees accounted for 37%

(35,515 people) of total employment. Permanent part-time employees accounted for 12.2% (11,741 people) of total employment.

3.4 Just over half (50.2% or 98,324 people) of those employed in café, restaurant and catering services were casual employees. Permanent full time employees accounted for 22.9% (44,851), while part-time employees accounted for 15.5% (30,384) of all employees. 2.1% of employees held a Working Holiday visa

Multi-skilling

The factor of multi-skilling coupled with the diversity of services offered by Clubs as noted in points 2 and 3 above are worthy of further noting and comment. Predominantly due to the large and diverse range of services offered to members and patrons of Clubs, there is often a need for staff to work across a wide variety of tasks within the enterprise.

It should be emphasised that multi-skilling in the Clubs Industry is not solely due to the need for this diversity and flexibility, particularly with small clubs, but also comes at the behest of employees who wish to become skilled and proficient at performing a number of tasks relevant to the Clubs operations.

There are countless examples of multi-skilling and countless reasons why this multi-skilling has come about. There have been many occasions where greenkeepers have been requested by the employer, or the request has emanated from the employee to, at times perform bar, cellar or catering tasks. This may be to provide a degree of flexibility and eliminate the need to search externally for additional staff, or for the employee to have the availability to earn additional wages. Additionally, there have been just as many cases where fitness instructors have worked the same arrangements, or clerical or reception staff have been asked or have asked to work additional shifts in the bar, cellar or food service areas.

This flexibility through multi-skilling is beneficial to both the employees and the employer. It is therefore vital that this flexibility through and from occupation to occupation be able to be maintained and made easier and simpler. There should be no barrier to this kind of flexibility and efficiency within the modernised Award system.

Staffing Requirements

Point 6 above is also worthy of further comment The very nature of regulatory framework governing clubs requires certain distinctive staffing arrangements to be put in place.

Unlike other establishments, Clubs are not “public” establishments – entry to Clubs is restricted to members and in some circumstances to bona-fide visitors and guests. Both members and bona-fide guests are required to undertake certain protocol pursuant to the relevant State legislation prior to entry and partaking of the Clubs facilities and services. It is therefore necessary for Clubs to establish and maintain, whilst open, reception and at times security staff to administer this area of their operations.

Further, it is not uncommon for tourist buses to arrive at Clubs, often unannounced for passengers to partake of meals and refreshments etc.. This is not uncommon amongst elderly tourist excursions and trips where the patrons enjoy the facilities of Services, Bowls or Golf Clubs. It is for these reasons that flexibility is required in respect to staffing numbers. It is often the case in these circumstances where clerical staff and Managers are called upon to assist in the bar or in restaurant and catering areas. This sort of occasion is not, we submit, common to the hospitality industry.

Club Managers

A further distinctive area of Clubs is the industrial relations situation in respect to Club managers. Club managers have Award coverage in the major States and are represented by the Club Managers Association of Australia (CMAA). The CMAA has a high level of membership coverage particularly throughout the Eastern States of Australia and whilst they are a professional organisation, they act industrially as a Union of employees and are registered as such. The CMAA is very active and appropriately represents their members in industrial tribunals and in negotiations with employers in the Club industry.

This we submit is also another factor which distinguishes itself from the hospitality industry. To this end, Club Managers classifications and wage rates are included in the industry draft Award referred to later in these submissions.

We continue to submit that based on the above facts, we submit that there are good and cogent reasons for the Club Industry should be considered as an industry in its own right and to be dealt with separately in the award modernisation process. Moreover, we submit that treating the Clubs Industry as an industry in its own right is consistent with the objectives and intent of the Award Modernisation process and would address the concerns of duplication and overlapping identified in the Full Bench's modernisation decision dated 20 June 2008.

A Simple and Practical Approach - the Club Industry Award

S 576A of WR Act requires, amongst other things, that modern awards:

- are simple to understand and easy to apply and reduce the regulatory burden on employers,
- provide, in conjunction with any legislated standards, a fair minimum safety net of enforceable terms and conditions,
- promote flexible modern work practices.

The requirement that modern awards are simple to understand and easy to apply is emphasised by S 576W(2)(c) of WR Act which requires that a modern award must be expressed in plain English and be easy to understand in structure and content.

It is for the aforementioned reasons that we submit that to make an Award that is specific to the Club industry in Australia is a common-sense, practical and appropriate approach that is consistent with these provisions of the WR Act.

It is our strong submission that to make the Clubs industry part of a more broader hospitality industry award would result in the clubs industry being part of a larger more cumbersome Award than that advocated in these submissions.

To place the Club Industry as part of a larger hospitality Award would, in our submissions, create an industrial instrument which would be complex, cumbersome and difficult to interpret and apply. Assuming that it will be necessary to develop various and numerous schedules or appendices having application to the various sectors of the hospitality industry in a broader hospitality Award, the lay reader would be required to continually make references to schedules, appendices or addendums and marry such

information with the main body of the Award. This would be inconsistent with the legislative requirement to make Awards easy to understand in structure and content.

We further submit that the on-going modernisation process will be assisted by the development of a single Club Industry Award. We submit that the rationalisation process, including the removal of the inter-state differences will be a far more expeditious, simpler and less cumbersome process if a distinct Club Industry Award is established. We are confident that the parties to this Award will be able to work closely and expeditiously to achieve a quality outcome. By contrast the numerous parties involved with a broad Hospitality Award would face greater difficulties in gaining attendance, consensus and common ground in the on-going rationalisation process

Development of Draft Club Industry Award

To assist and continue progress in the process ClubsAustralia has developed a draft Award which would apply to all Clubs and their employees in Australia including greenkeepers, clerical employees, managers and food and beverage staff. It is hoped that this Award will provide the industry with one Award, one document to which all Clubs in Australia will be able to more simply and efficiently apply without complexity and confusion.

At this stage the proposed draft is a skeleton of a modernised award document designed to assist the Commission and the parties to draft a modern award applicable to Clubs as an input to the stage 1 of the Award modernisation process.

Consequently, subject to the Commission's acceptance of clubs as a second stage industry in its announcement on 10 October 2008, a more comprehensive modernised award proposal for the club industry, also incorporating relevant clerical and gardening/sports ground maintenance staff and management staff employed in clubs, will be prepared and submitted to the Commission prior to 3 April 2009 (the final date for making second stage modern awards)

ClubsAustralia continues to raise concerns about making an award based upon occupational lines. The impact on clubs would mean that an individual club would be covered by a plethora of differing occupational Awards which would have no impact

upon the reduction in the number of Awards applying to a particular enterprise, and would reduce the ability of employees and employers to multi-skill across occupations

We note the full bench's concerns regarding duplication and overlapping and submit that our proposal would not result in any such over-lap. Rather it allows for simple and relevant modern awards to be prepared for both the clubs industry and the hospitality industry.

Conclusion

In summary we respectfully submit that we reiterate our previous submissions that strongly indicate that the Club industry in Australia is a distinct industry.

There are compelling reasons why the Club industry should be distinguished from the hospitality industry. The differences that exist between the clubs industry and the hospitality industry cannot be ignored when considering the appropriate method by which to create a simplified and less complex industrial instrument.

To create one Award to apply to all parts of the hospitality industry and to envelope the Clubs industry into that document would be to create an industrial instrument that will be complex, cumbersome and difficult to interpret and apply in any simple form; this we respectfully submit would be contrary to the stated aims of the Award Modernisation process. These submissions and the position taken by ClubsAustralia are consistent with the WR Act, in particular Sections 576A, 576B and 576W.

Our position continues to be supported by the Unions and employer bodies in the hospitality sector.

If the Commissions pleases.