

IN THE FAIR WORK COMMISSION

FWC MATTER: AM2020/103
Award Flexibility – Hospitality and retail sectors
Registered and Licenced Clubs Award 2010

APPLICANT: Clubs Australia Industrial

OUTLINE OF SUBMISSIONS ON BEHALF OF CLUBS AUSTRALIA INDUSTRIAL

- 1) This submission is in response to the Fair Work Commission Statement [2020] FWC 6636 (the **Statement**) issued on 10 December 2020 which outlined the review process for Award Flexibility in the Hospitality and Retail Sectors.
- 2) The Fair Work Commission has sought ideas regarding award variations relating to loaded rates, exemption rates or classification structures in respect of four modern awards.
- 3) In accordance with that direction, Clubs Australia Industrial (CAI) provides the following submission regarding the Registered and Licensed Clubs Award 2020 (the **Clubs Award**).

Loaded rates

- 4) CAI is supportive of having a loaded rate(s) clause included into the Clubs Award provided:
 - a) the option of offering such rates is entirely voluntary by the employer on an individual employee basis;
 - b) there are no auditing requirements or “better off overall” tests annually or otherwise;and
 - c) there are no consultation requirements with employees or unions.
- 5) CAI would seek a loaded rates for the following circumstances:
 - a) Monday to Friday
 - i) an “all-in” loaded rate including meal break and late/early work penalties

b) Saturday, Sunday and Public Holidays

- i) an “all-in” loaded rate including penalty rates and meal break penalties.

Exemption rates

6) The Clubs Award currently has three exemption salary rates:

- Managerial level 6-13 employees receiving a salary 20 per cent in excess of the minimum rate for their classification;
- Managerial level 6-13 employees receiving a salary 50 per cent in excess of the minimum rate for their classification; and
- Maintenance and Horticultural level 1-4 who agree in writing to payment of a salary of not less than 33 per cent in excess of the minimum weekly rate of pay for a level 4.

7) CAI is seeking three changes regarding salary exemption rates contained in the Clubs Award:

- a) a drafting change to clause 18.4(a) to adequately reflect the intention and practiced application of the provision;
- b) the addition of an exemption salary rate clause with application to trade qualified chefs; and
- c) the addition of an exemption salary rate clause with application to Level 1 -5 employees

Clause 18.4(a)

- 8) It is understood from the Australian Industrial Relations Commission Full Bench Decision [2009] AIRCFB 826 issued on 4 September 2009 that the exemption salary provisions set out in clause 18.4(a) includes all managerial positions contained in classification level 6 to 13 (see clause 18.3).

“[118] We have applied the exemption provisions within the exposure draft to all managerial positions, including the maintenance and horticultural managerial classifications, reflecting a two level exemption process. We have applied 20% at the first exemption level, reflecting the terms of the major federal award



for club managers. We have also included an exemption provision for maintenance and horticultural managerial classifications in the terms of the New South Wales Bowling and Golf Clubs Employees (State) Award. "

- 9) It is also evident from the title used in clause 18.4(a) of the Clubs Award, namely "Managerial classifications – levels 6-13 inclusive in clause 18.3".
- 10) This indicates that exemption salary provisions set out in clause 18.4 must include:
 - a) the maintenance and horticultural managerial classifications set out in clause 18.3 at classification levels 8 and 11. Further, it is the position of CAI that exemption salaries have been historically applied to those classifications across the clubs industry; and
 - b) the new Lead golf professional classification set out in clause 18.3 at classification level 12.
- 11) However, clause 18.4 (both sub-clauses (a) and (b)) refer to the exemption salary provisions applying to "club managers". This term is defined at clause 2 of the Clubs Award and does not apply to either Maintenance and Horticultural manager nor Lead Golf Professional classifications.
- 12) Accordingly, CAI seeks the words "club manager" in both clause 18.4(a)(i) and (ii) to be removed and replaced with "any managerial classification role level 6 to 13 inclusive as set out in clause 18.3,"
- 13) CAI does not consider this to be a substantial change to the Clubs Award rather a drafting clarification.

Trade Qualified Chefs

- 14) CAI is seeking the inclusion of exemption salary rates for trade qualified chefs in the Clubs Award.
- 15) CAI proposes an exemption salary rate which broadly mirrors the managerial exemption rates at 18.3(a) of the Clubs Award.
- 16) The Clubs Award is one of the few awards where exemption salary rates are common practice.



- 17) The Commission can include exemption salary rates clauses in modern awards provided they are necessary to achieve the modern award objectives contained in section 134(1) of the Fair Work Act 2009 (Cth) (**the Act**).
- 18) CAI submits such an exemption salary rate clause for trade qualified chefs would satisfy sections 134 (1) (a), (c), (da), (f), (g) and (h) of the Act.

Level 1-5 Employees

- 19) Prior to the introduction of the Registered and Licensed Clubs Award in 2010, Clubs and Club employees in NSW had the option of entering into a Voluntary Exemption Agreement (**VEA**). This was contained at clause 11 of the Club Employees (State) Award 2004 (**the NAPSA**).
- 20) The VEAs provided that if an employee was paid 33% above the standard rate (Level 4), the employee would no longer be covered by provisions of the NAPSA relating to hours of work, overtime, penalty rates and rostered days off.
- 21) VEAs were widely used in the industry and are still utilised in a number of club Enterprise Agreements that have been recently approved and that are still in operation including:
- Revesby Workers' Club 2018;
 - Gosford RSL Club & Galaxy Motel Enterprise Agreement 2011;
 - Richmond Registered Clubs' Enterprise Agreement 2013.
- 22) CAI submits such an exemption rate clause for Level 1-5 staff would satisfy sections 134 (1) (a), (c), (da), (f), (g) and (h) of the Act.


Clubs Australia Industrial

27 January 2021

