

**IN THE FAIR WORK COMMISSION**

**FWC MATTER Nos: AM 2020/26 (formerly AM2014/283)**  
**Registered and Licensed Clubs Award 2010**

**PARTY: Clubs Australia Industrial**

**FURTHER OUTLINE OF SUBMISSIONS AND REPLY**

**CLUBS AUSTRALIA INDUSTRIAL**

**INTRODUCTION**

1. CAI filed on 25 June 2020 a Further Outline of Submissions in addition to the submissions previously filed in relation to the 4-year Review of the Registered and Licensed Clubs Award 2010 (the **2010 Award** or the **Award**).
2. CAI following the filing of the Further Outline (and as stated within the Outline at paragraph 39) held further discussions with the CMAA in relation to the outstanding matters concerning proposed variations to the Award with regard to employees employed as club managers.
3. As a consequence of these further discussions the matters that remain in dispute have been considerably narrowed and a number of consent variations have been able to be reached between CAI and the CMAA upon matters formerly in dispute.
4. The proposed consent variations to the Award arising from the discussions held between CAI and the CMAA are identified in paragraph 64 below and are set out in the further Draft Determinations attached to this Outline.
5. CAI has also reviewed the position advanced by the UWU in its submission dated 1 July 2020 in respect of clause 19.3 (c) of the Exposure Draft of the Award and considered that Draft Determination attached to those submissions.
6. CAI indicates its' consent to the variation of clause 19.3 (c) of the Award as proposed within the Draft Determination by the UWU.

7. The purpose of this Outline of Submissions and Reply is to address the matters that remain in issue and principally between CAI and the CMAA in relation to the terms and conditions of employees employed as club managers and to whom the Award covers and applies. This Further Outline and Reply expands upon the prior submissions previously made by CAI upon these matters.

## **MATTERS THAT REMAIN IN ISSUE**

8. CAI identifies by reference to the clauses of the Exposure Draft that the following matters remain in issue in relation to the terms and conditions of employees generally, and in particular to employees employed as club managers and which are identified within the submissions previously made to the Commission by the parties:
  - (a) Clause 25 Annual leave;
  - (b) Clause 18 Minimum rates; and,
  - (c) Clause 2 Definitions.

### Clause 25 Annual leave

9. There are three matters that remain in issue in relation to clause 25 Annual leave of the Award, namely:
  - (a) the identification of those shift workers who are entitled to an additional weeks' annual leave under the NES; and,
  - (b) the manner in which payment for annual leave is to be made to employees to whom the Award applies and in particular employees employed in club manager positions; and,
  - (c) the manner in which payment for annual leave loading is to be made to employees to whom the Award applies and in particular employees employed in club manager positions.

### Clause 18 Minimum rates

10. The matters that remain in issue in relation to clause 18 Minimum rates of the Award derive from the operation and application of the exclusionary provisions of the Award in subclause 18.5 (a) (i) and subclause 18.5 (a) (ii), and that apply to employees employed in club manager positions at Level 6 to Level 13, inclusive, within subclause 18.3 Adult employee rates of the Award.
11. The specific matters are:



- (a) whether subclause 25.3 annual leave loading is to be included as an excluded matter within subclause 18.5 (a) (i) or 18.5 (a) (ii) or both; and,
- (b) in relation to subclause 18.5 (a) (i) and in respect of the excluded matter identified as:

- *24 Penalty rates (other than penalty provisions relating to public holidays (see clause 24 Penalty rates)*

the specific matter in issue concerns how the entitlement in subclause 24.1 of the Award is to be paid, and whether subclause 24.3 also has application to “a club manager receiving a salary of 20% in excess of the minimum annual rates for the appropriate classification”.

12. CAI observes that:

- (a) within subclause 18.5 (a) (i) the following wording may better reflect to intent and define the application of the exclusionary provision, namely:

*“will not apply to a club manager receiving a salary of 20% but not 50% or more in excess of the minimum annual rates for the appropriate classification”* and that;

- (b) within subclause 18.5 (a) (ii) a similar wording be adopted, namely:

*“will not apply to a club managers receiving a salary of in excess of 50% of 50% or more in excess of the minimum annual rates for the appropriate classification”.*

in terms of the operation of the exclusionary provisions.

### Clause 2 Definitions

13. In relation to clause 2 Definitions of the Award two matters in issue have been identified in the following manner in the submissions of the identified party:

- (a) CMAA in the submissions filed 11 May 2020 seeks variation to the definition of “ordinary hourly rate” in clause 2 Definitions. CAI understands the proposed definition sought now reads:

**ordinary hourly rate** means the minimum hourly rate for an employee’s classification specified in clause 18.3 and, 18.5 (a) (i) or 18.5 (a) (ii) plus any all-purpose allowance to which an employee is entitled.



CAI opposes the proposed variation and says that the definition within the Exposure Draft is to be retained. CAI addresses this matter in paragraph 50 below.

- (b) CAI seeks variation to the definition of “shiftworker”.

CAI has proposed a variation that reads (noting that consent exists between CAI and CMAA to the insertion of a variation in relation to club managers in relation to clause 25 Annual leave):

***shiftworker** means a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays (34 Sundays and 6 public holidays)*

This definition is not opposed by the CMAA.

CAI accepts that the above definition may require the addition of further words such as “over a 52-week period” immediately after: *(34 Sundays and 6 public holidays)* in order to define the period over which the identified days by number are to be worked.

CAI submits that the definition is to be varied as proposed in order to address the issues which have been identified in relation to clause 25 Annual leave and those employees who are to be provided with an additional weeks’ leave under the NES.

This issue is addressed further below in the context of the submissions made concerning clause 25 Annual leave at paragraphs 15 to 32, inclusive below.

14. The matters in issue that remain concerning clause 25 Annual leave of the Award have an application to employees generally and not just to those employees employed as club managers and for this reason will be initially addressed by way of further submission.

#### **CLAUSE 25 ANNUAL LEAVE**

15. CAI in its Outline of Further Submissions dated 25 June 2020 under the heading Shiftworker definition and annual leave entitlements identified at paragraph 8 that the existing definition and its use within clause 25 Annual leave “to define those employees who under the NES are shiftworkers and entitled to 5 weeks annual leave” was considered by CAI to be deficient.
16. As part of the 4-Year Review of modern awards the Commission has identified repeated in a number of the reviewed awards that in order to be a shiftworker for the purposes of the NES the pattern of shift work must be a pattern of continuous shift work.



17. For example, in the Hospitality Industry (General) Award 2020 the work pattern is identified as “*in a business in which shifts are continuously rostered 24 hours a day for 7 days of the week*” (in clause 30.2 (a)).

The same form of words is utilised in clause 32.2 of the Clerks -Private Sector Award 2020.

Further examples are clause 22.2 of the Banking, Finance and Insurance Award 2020 and clause 23.2 of the Pharmacy Industry Award 2020.

18. The approach identified above in relation to the identified awards is in accord with the position put by CAI at paragraph 18 of the prior Further Outline.
19. CAI further refers to the submissions made within the prior Further Outline immediately thereafter at paragraphs 19 to 21, inclusive and which identified a need to both vary the definition of “shiftworker” in clause 2 Definitions of the Award *and consequent upon this variation* to identify both the entitlement and source of the entitlement, namely whether the entitlement is derived from the NES and is included for the purposes of the NES, or arises otherwise as a provision of the Award made pursuant to s 139 (1) (h) of the *Fair Work Act 2009* (CTH) (the **FW Act** or the **Act**).
20. CAI does not seek to remove any existing entitlement to a period of 5 weeks annual leave from any employee to whom the Award applies but does seek the clear identification of the source of the entitlement, namely whether it arises from the NES or otherwise from the Award.
21. CAI in making this submission refers to s 55 and 56 of the FW Act.
22. CAI submits that Clause 25 Annual leave and clause 25.1 of the Exposure Draft are to be varied to read as follows and is to include the introductory Note now included generally within the reviewed modern awards:

25 Annual leave

[NOTE: Where an employee is receiving over-award payments such that the employee’s base rate of pay is higher than the rate specified under this Award, the employee is entitled to receive the higher rate while on a period of paid leave (see sections 16 and 90 of the Act)].

25.1 (a) Annual leave is provided for in the NES.

Additional paid annual leave for certain shiftworkers

- (b) (i) A shiftworker for the purposes of the NES is an employee who is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week.
- (ii) A shiftworker other than a shiftworker to whom subparagraph (i) applies and who is a shiftworker as defined within clause 2 Definitions of the Award will accrue annual



leave under this Award based on an entitlement of 5 weeks of paid annual leave.

Additional paid annual leave for club managers

- (c) A club manager who is classified at Level 6 to Level 13 of clause 18.3 Minimum rates – Adult employee rates of the Award will accrue annual leave under this Award based on an entitlement of 5 weeks of paid annual leave.

23. In relation to annual leave loading (and leaving to one side at this time the argument for annual leave loading to be included as an excluded entitlement in clause 18.5 (a) (i) and (ii) for certain club managers) CAI having regard to the manner in which the entitlement is provided for within a number of the reviewed awards submits that clause 25.3 be deleted from the Exposure Draft and that the following clause be inserted in lieu thereof into the Award:

25.3 During a period of annual leave an employee will receive annual leave loading of 17.5% calculated on the rate prescribed in clause 18 – Minimum rates of this Award for the employee's ordinary hours of work in the period in addition to their minimum rate of pay. Annual leave loading payment is payable on leave accrued.

24. CAI submits that the safety net to be provided by operation of the Award should not incorporate payments made on an over-award basis which is the manner in which clause 25.3 of the clause within the Exposure Draft would operate in applying the loading on the "*payment provided for in the NES*" and "*17.5% of that payment*". There is nothing that compels the continuance of over-award payments under the Award.
25. CAI says that this approach also raises as a separate issue how payment for annual leave, including payment for untaken leave upon termination of employment is to be applied consistent with the NES given that section 56 of the FW Act provides that: *A term of a modern award or enterprise agreement has no effect to the extent that it contravenes section 55.*
26. The NES prescribes the basis for payment for annual leave. CAI refers to s 90 of the FW Act and which makes provision for payment "*at the employee's base rate of pay for the employee's ordinary hours of work*".
27. Section 147 of the FW Act reads:

147. *A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.*

A primary reason for this provision and requirement is so that the entitlements under the NES may be appropriately ascertained and thereafter complied with by employers.



28. Section 16 (1) of the FW Act defines the base rate of pay for a national system employee.
29. An employee's "base rate of pay":
- is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:*
- (a) *incentive-based payments and bonuses;*
  - (b) *loadings;*
  - (c) *overtime or penalty rates;*
  - (d) *any other separately identifiable amounts.*
30. In simple terms, for an award employee this would equate to the minimum rate in the applicable award together with any over-award payment made in relation to the working of their ordinary hours under their contract of employment, unless a higher rate is specified within the award, and which would not be contrary to s 55 (4) of the FW Act.

31. Accordingly, it would not be contrary to the NES or detrimental to an employee to whom the Award applied if clause 25.2 of the Exposure Draft was varied to provide:
- 25.2 Subject to the provisions of the NES the basis for the payment of annual leave, including payment for untaken leave upon the termination of the employment, is calculated on the rate prescribed in clause 18 – Minimum rates of this Award for the employee's ordinary hours of work in the period of the leave accrued and taken.

and which would maintain a consistency as between payment for the period of the annual leave and the payment of annual leave loading upon the leave taken in the period or upon termination but subject to the NES based on minimum rates.

Under the existing Award provisions annual leave and annual leave loading are not paid on the ordinary hourly rate as defined within the Award.

32. CAI submits that the variations proposed to clause 25.1, clause 25.2 and clause 25.3 of the Exposure Draft are appropriate for inclusion within the reviewed Award and provides for consistency subject to the provisions of the NES.

### **CLAUSE 18 MINIMUM RATES – CLUB MANAGERS**

33. Club managers, namely those employees who are employed at Level 6 to Level 13, inclusive of the Award and where an annual rate is identified in clause 18.3 Adult employee rates in terms of the entitlements arising under the terms and conditions of the Award are in no different position to wages employees





classified in Levels 1 to Level 6, inclusive, in that the Award applies to all employees however so classified “in full”.

34. The position differs for those club managers to whom clause 18.5 (a) applies and operates as an exclusionary provision.
35. CAI refers to the prior Further Outline dated 25 June 2020 and the submissions made at paragraphs 44 to 55, inclusive under the heading Exclusionary provisions of the Award at clause 18.5 (a).
36. CAI identified within those submissions at paragraph 46 two instances of what was described as a “partial” exclusion of Award entitlements to club managers to whom the provision in clause 18.5 (a) (i) applied.
37. The first in relation to clause 15 Ordinary hours of work and, specifically clause 15.8 Special provisions for accrued rostered days off – club managers, has been resolved by way of the consent variation that would be applied to a full-time club manager to whom clause 18.5 (a) does not have any application.
38. The second, in relation to clause 24 Penalty rates (other than penalty rate provisions relating to public holidays) is addressed below at paragraphs 60 to 63, inclusive. However, as a matter of principle no different position should apply to that identified above in paragraph 37.

A club manager to whom clause 18.5 (a) (i) applies should receive the same entitlement as applied to a club manager to whom clause 18.5 (a) does not have any application in terms of the payment received for work performed on a public holiday.

39. Club managers to whom clause 18.5 (a) of the Award has application are paid “salaries” that are made referable to the “Annual rate” in clause 18.3 Adult employee rates of the Award.
40. Clause 18.5 (a) of the Award does not establish a rate of pay for those club managers. The rate of pay for all club managers is established by the operation of clause 18.3 Adult employee rates.
41. Clause 18.5 (a) operates to create an exclusory provision from certain identified Award entitlements dependent upon the salary paid to a club manager by a club employer, and does not give rise to any additional Award entitlements by way of the amount of the payment that is received from the employer.

The base rate or minimum rate remains that for the classification as provided for in clause 18.3 Adult employee rates.





42. As part of the award modernisation process undertaken under the provisions of the FW Act and creating the modern awards operative from 1 January 2010 the approach adopted by the former tribunal was informed by the provisions contained within the Act.
43. The provisions of the FW Act had in certain respects a quite different operation, and established a different regime to that which applied under the former Act, the *Workplace Relations Act 1996* (CTH) (the **WR Act** or **1996 Act**).
44. A significant provision was that establishing the high-income threshold under s 329 of the FW Act based on an employee's annual earnings.

In one respect this provided a delineation as between employees to whom a safety net by way of a modern award was to be extended as opposed to those employees who would remain "award/agreement free employees" when coupled with the further proscription in s 143A (8) of the FW Act concerning award coverage.

45. CAI does not propose within this Outline to address at length the issues that arose in relation to the exemption provisions that were incorporated and preserved within the modern awards and thereafter removed following ministerial direction in respect of the *Clerks -Private Sector Award 2010* (the **Clerks Award 2010**) and the *Banking, Finance and Insurance Award 2010* (the **Banking Award 2010**) but may do so orally at hearing, if appropriate, and reserves its right to do so.
46. CAI similarly does not propose within this Outline to address and identify the exemptions that existed within the club industry under the various transitional instruments that applied to club managers prior to the making of the modern Award, or the fact that a number of such club managers absent the making of the modern Award were otherwise "award/agreement free employees" as defined under the FW Act.
47. CAI considers that it suffices at this time to observe that in relation to the Clerks Award 2010 and the Banking Award 2010 when the exemption rates were removed following ministerial direction the former tribunal in both of the modern awards introduced "annualised wage arrangements" under which one of the identified matters incorporated within those arrangements was annual leave loading.
48. The reviewed Clerks Award 2020 and Banking Award 2020 continue this approach and both have included within the annualised wage arrangements a provision which reads:



Base rate of pay for employees on annualised wage arrangements

*For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause X – Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.*

49. As a matter of principle, there is no reason a similar position cannot be applied to club managers under the Award based on the “Annual rate” identified in clause 18.3 Adult employee rates and which derives from the base rate of pay for work on ordinary hours, including those club managers to whom the provisions in clause 18.5 (a) apply.
50. Viewed in this way the proposed variation to the definition of “ordinary hourly rate” in clause 2 Definitions as sought by the CMAA is misconceived and appropriately falls to be rejected by the Full Bench in that it seeks to establish an “ordinary hourly rate” where clearly penalty rates and more importantly overtime rates have been included within the salary.

More importantly, an employee who is paid a salary suffers no reduction in earnings when taking a period of annual leave and on that basis alone there exists no justification for any annual leave loading.

It was the reduction in earnings that arose when an employee was on a period of annual leave and paid at the rate for ordinary hours that first prompted the making of annual leave loading in an arbitrated case (see ***Annual Leave Case 1971 144 CAR 530***. See also in relation to NSW the ***Annual Leave Loading Case 1974 AILR Rep 160***).

Finally, it is to be observed that the commencement point of the exclusionary provision in clause 18.5 (a) (i) is 20% above or “in excess” of the “Annual rate” for the classification. The relevant percentage for annual leave loading is 17½% on the minimum rate in clause 18.3 of the Award.

Put simply, a club manager of the same classification and paid at the minimum rate when on annual leave would be paid an additional loading of 17½% whilst any club manager of the same classification to whom the provisions in clause 18.5 (a) applied would be paid whilst on annual leave not less than 20% above the minimum rate and incur no reduction in earnings over the period of the annual leave.

51. In addition, and based on the submissions made in paragraphs 49 and 50, above, the inclusion of annual leave loading as an excluded entitlement within both clause 18.5 (a) (i) and clause 18.5 (a) (ii) removes an obvious anomaly created at the time of the making of the modern Award.



52. It is possible to “buyout” annual leave loading for a club manager to whom either of the respective provisions in clause 18.5 (a) (i) or clause 18.5 (a) (ii) do not apply either by way of an individual flexibility arrangement under clause 5 of the Award, or alternatively, by way of a common law contract subject to the application of the principles in ***Ray v Radano [1967] AR (NSW) 471*** and ***Poletti v Ecob (No 2) (1989) 31 IR 321***.
53. However, this approach would not be possible in relation to a club manager to whom either of the respective provisions in clause 18.5 (a) applied as it is not an excluded Award matter.
54. No matter how great the amount of salary paid beyond the 20% excess above the “Annual rate” in clause 18.3 those club managers would retain an entitlement under the Award as opposed to any common law contract to have annual leave loading extended on a rate above the base rate of pay established by the Award, and under the NES.
55. CAI submits that this position cannot be permitted to continue and that for a consistency of approach in providing an Award safety net Clause 25.3 Annual leave and which makes provision for the payment of annual leave loading must become an excluded award entitlement for all club managers to whom clause 18.5 (a) has application.
56. This position becomes more appropriate when it is considered that the identified amounts in excess of the “Annual rate” as specified within clause 18.5 (a) result in the exclusion of the application of entitlement provisions that otherwise could not possibly constitute or form part of the base rate of pay under the NES, including overtime and penalty rates.
57. The present situation becomes even more perverse when the level of salaries paid to club managers and evidenced by the salary survey relied upon by CAI in support of its’ position is appropriately considered given those reported salaries exceed in a significant way the then, and currently applied high income threshold established under the FW Act.
58. Finally, were the Full Bench to accede to the position advanced by CAI and include annual leave loading as an excluded entitlement within clause 18.5 (a) it would not obviate or negate the ability of a club employer to include within a contract of a club manager an entitlement to annual leave loading in any manner and in any amount as is seen fit.
59. The payment of an annual leave loading on accrued annual leave should not form a part of the safety net conditions provided by the Award other than in respect of those employees to whom the minimum rates in clause 18.3 apply and as is recognised in clause 18.5 (a) (iii).



The entitlement should not continue to be extended to club managers to whom the provisions in clause 18.5 (a) have application.

60. On a similar basis a club manager to whom clause 18.5 (a) (i) applies should not when working on a public holiday under clause 25.1 receive other than the “*ordinary hourly rate for the relevant classification*” consistent with the current definition of “*ordinary hourly rate*” in clause 2 Definitions of the Award.
61. If the Full Bench were to accept the variation proposed by the CMAA to the definition of “*ordinary hourly rate*” in clause 2 Definitions of the Award club managers at the same classification level would be paid at different rates when performing an identical period of work.
62. CAI views this position as diametrically opposed to the identified objective within the FW Act at s 3 (b) to provide a minimum guaranteed safety net and derives not from a provision of the Award made to achieve such objective but from the largesse extended by the particular club manager’s employer.
63. If any such largesse is to be extended it should be by way of over-award payment and common law contract quite separate from the Award.

## CONSENT TO VARIATIONS

64. As identified in paragraphs 3 and 4 above, in discussions between CAI and CMAA consent was reached in relation to the proposed variations to be made to the following Award clauses as contained in the Exposure Draft:
  - Clause 2 Definitions (club manager)
  - Clause 2 Definitions (shiftworker)
  - Clause 17.4 Meal breaks (fewer than 15 people)
  - Clause 18.3 Adult employee rates (insert “Annual rate” for Level 6 club manager)
  - Clause 18.5 (a) Minimum rates (heading “Levels 6 to 13, inclusive”)
  - Clauses 18.5 (a) (i) and (18.5 (a) (ii) (inclusion of 17.2 Meal Breaks as an excluded Award entitlement)
  - Clause 19.3 (d) (ii) Uniforms - club managers



- Clause 22.8 Time off instead of payment for overtime (not including on a Rostered Day Off) (refer to clause 15.8 Special provisions for accrued rostered day off -club managers which is to apply)
  - Clause 25.1 Annual leave (new clause 25.1 (c) to be inserted for club managers)
65. CAI further accepts the proposed variation by the UWU to clause 19.3 (c) (i) Clothing, equipment and tools.

#### **OTHER PROPOSED VARIATIONS**

66. CAI refers to the prior Further Outline dated 25 June 2020.
67. CAI continues to press the variation to the Award in relation to the Casual Fitness Instructor and the consequential variations as identified within the prior Further Outline at paragraphs 88 to 104, inclusive and in relation to which consent has not to date been obtained and relies on the submissions previously made in relation to the proposed variations.
68. CAI reserves its right to supplement any submission previously made by way of further oral submission at hearing.

Raymond Moore

Of Counsel, Frederick Jordan Chambers

On behalf of

**Clubs Australia Industrial**

**23 July 2020**



**BEFORE THE FAIR WORK COMMISSION**

**FWC Matter:** AM2020/26, *Fair Work Act 2009* (Cth), s.156- 4 yearly review of modern awards- Registered and Licensed Clubs Award 2010

**Filed on behalf of:** Clubs Australia Industrial

**WITNESS STATEMENT OF MIKHAIL USHAKOFF**

**Filed on behalf of Clubs Australia Industrial**

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I, Mikhail Ushakoff of [REDACTED]

[REDACTED] say:

1. I am a Legal Counsel- Workplace Relations at the Registered Clubs Association of NSW (**ClubsNSW**) and Clubs Australia Industrial (**CAI**). I worked for both entities in Workplace Relations roles from 2011-2016 and again from September 2019 until present. From 2008-2011 I was employed by Pigott Stinson Lawyers, who provide legal services to the Registered Club Industry and they are a Gold Corporate Partner of ClubsNSW and CAI.
2. In late 2018, consulting firm Tully Heard was engaged by ClubsNSW to conduct a club manager remuneration survey across the industry in New South Wales and which is the most recent survey conducted within the industry by ClubsNSW. Attached to this statement is a copy of the topline report for survey participants (Annexure A).
3. The topline report indicates the highest salary, the lowest salary and the average across 11 categories of management. The 11 categories are as follows:
  - i) CEO/Club Manager;
  - ii) Operations Manager;
  - iii) CFO/Finance Manager;
  - iv) CIO/IT Manager;
  - v) Gaming Manager;
  - vi) HR Manager;
  - vii) Marketing Manager;
  - viii) Executive Chef;
  - ix) Food & Beverage Manager;
  - x) Facilities/Maintenance Manager;
  - xi) Entertainment Digital A/V Manager.

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4. The received survey responses indicated that the highest management salary recorded in 2018-19 was \$770,500 per annum, and the lowest management salary recorded was \$49,500 per annum.
5. As a separate exercise I calculated the median salary of the recorded responses (based on the raw data from Tully Heard) as follows:
  - i) CEO/Club Manager= \$151,705.10
  - ii) Operations Manager= \$126,587.50
  - iii) CFO/Finance Manager= \$112,000
  - iv) CIO/IT Manager= \$136,544
  - v) Gaming Manager= \$93,944.50
  - vi) HR Manager= \$94,588
  - vii) Marketing Manager= \$91,485
  - viii) Executive Chef= \$98,500
  - ix) Food & Beverage Manager= \$84,315
  - x) Facilities/Maintenance Manager= \$124,117.50
  - xi) Entertainment Digital A/V Manager= \$88,678.
6. The “exemption rates” in clause 17.3 (a) of the Registered and Licensed Clubs Award 2010 (the **Modern Award**) that applied during the survey period from 1 July 2018 until 1 July 2019 were as follows:

	Weekly Rate - 20% Exemption	Weekly Rate - 50% Exemption	Annual Salary - 20% Exemption	Annual Salary - 50% Exemption
<i>Level A Modern Award</i>	\$1,124.04	\$1,405.05	\$58,610.40	\$73,263.00
<i>Level B Modern Award M &amp; H Management L1</i>	\$1,171.56	\$1,464.45	\$61,088.40	\$76,360.50
<i>Level C Modern Award</i>	\$1,187.16	\$1,483.95	\$61,902.00	\$77,377.50
<i>Level D Modern Award</i>	\$1,230.72	\$1,538.40	\$64,173.60	\$80,217.00
<i>Level E Modern Award M &amp; H Management L2</i>	\$1,275.60	\$1,594.50	\$66,513.60	\$83,142.00
<i>Level F Modern Award</i>	\$1,356.36	\$1,695.45	\$70,724.40	\$88,405.50
<i>Level G Modern Award</i>	\$1,382.88	\$1,728.60	\$72,106.80	\$90,133.50



7. Out of the approximately 211 Manager's identified salaries received as part of the remuneration survey, only 6 of these were at a level below the 20% exemption under clause 17.3 (a) of the Modern Award during 2018-19. The equivalent clause in the Exposure Draft is clause 18.5 (a).
8. The high-income threshold for 2018-19 was \$145,400 per annum (it is now \$153,600 per annum). On the basis of the data and responses received as part of the remuneration survey 74 out of the 211 Manager's salaries surveyed were above the high-income threshold in 2018-19, totaling 35% of all identified salaries.
9. Below is the percentage per class (or category) of manager who were paid above the then high-income threshold in 2019-19 based on the survey responses with the number of managers above the threshold as against total managers in the class (or category) in brackets:
  - i) CEO/Club Manager: 57.5% (46/82)
  - ii) Operations Manager: 41.6% (10/24)
  - iii) CFO/Finance Manager: 14% (3/21)
  - iv) CIO/IT Manager: 20% (1/5)
  - v) Gaming Manager: 30% (3/10)
  - vi) HR Manager: 30% (3/10)
  - vii) Marketing Manager: 33% (4/12)
  - viii) Executive Chef: 6.6% (1/15)
  - ix) Food & Beverage Manager: 6.25% (1/16)
  - x) Facilities/Maintenance Manager: 12.5% (1/8)
  - xi) Entertainment Digital A/V Manager: 0% (0/8)
10. The current exemption rates from 1 July 2019 and which are to apply until 1 February 2021 are in clause 17.3 (a) of the Registered and Licensed Clubs Award 2010 (the Modern Award) and are as follows:

	Weekly Rate - 20% Exemption	Weekly Rate - 50% Exemption	Annual Salary - 20% Exemption	Annual Salary - 50% Exemption
<i>Level A Modern Award</i>	\$1,157.76	\$1,447.20	\$60,368.40	\$75,460.50
<i>Level B Modern Award M &amp; H Management L1</i>	\$1,206.72	\$1,508.40	\$62,922.00	\$78,652.50
<i>Level C Modern Award</i>	\$1,222.80	\$1,528.50	\$63,760.80	\$79,701.00
<i>Level D Modern Award</i>	\$1,267.68	\$1,584.60	\$66,100.80	\$82,626.00

<i>Level E Modern Award M &amp; H Management L2</i>	\$1,313.88	\$1,642.35	\$68,509.20	\$85,636.50
<i>Level F Modern Award</i>	\$1,397.04	\$1,746.30	\$72,846.00	\$91,057.50
<i>Level G Modern Award</i>	\$1,424.40	\$1,780.50	\$74,272.80	\$92,841.00

**SIGNED** at Sydney in the

STATE OF NEW SOUTH WALES

by the Deponent:

[Redacted Signature]

**Mikhail Ushakoff**

Witness

[Redacted Witness Signature]

Print Name: LENA BERTUCCIO



# NSW CLUB REMUNERATION SURVEY 2018 YEAR – TOPLINE REPORT FOR SURVEY PARTICIPANTS

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## EXECUTIVE SUMMARY

In 2018 Tully Heard Consulting received a number of enquiries from Club Boards keen to understand fair market remuneration for senior management positions. NSW Clubs are cognisant of the need for an independently validated assessment of market based senior management remuneration that provides a level of transparency and helps ensure market equity and competitiveness.

Tully Heard is an experienced provider of specialist advice to the hospitality and leisure industries and is able to create tailored reports to address specific concerns and areas of interest.

Tully Heard set about gathering market based data to provide a benchmark for Club Boards and CEOs to determine a competitive and fair level of remuneration for senior management staff.

The 2018 survey addressed Business Confidence, Base remuneration levels, Benefits paid and Incentives.

All participants in the study were promised a top line view in return for the provision of their data.

The response level for the 2018 survey was excellent with 196 Clubs taking part either fully or partially in the provision of business confidence and salary data.

The Club/Group Revenue of those clubs participating was over \$1.082million and the combined membership of those clubs participating was in excess of 1.1m members.

## METHODOLOGY

In total, the survey was delivered to 1052 email addresses in late December, 2018. The survey instrument was based on previous studies undertaken by Tully Heard with the addition of questions relating to business confidence and plans for the near term.

517 (49%) invitations were unopened and 10 'bounced' and a further 23 respondents opted out of completing the survey.

196 responses were received from the 502 opened survey invitations. Though not all participants fully completed the questionnaire by answering every single question, all data entered was included in the results. This response rate of almost 40% of opened survey invitations is quite extraordinary in business to business survey research (where response rates are often less than 5%) and it is indicative of the importance of the findings to the Industry.

In view of the timing of the survey and the busy time of year for Clubs, the survey was left open until February 12th, 2019. Two reminders were issued to those Clubs that had not opened the survey or had opened but only partially submitted their results. These reminders were issued on 7th January and 4th February, 2019

## RESULTS

### BUSINESS CONFIDENCE

All participants in the study were asked to provide an indication of their revenue and profitability expectations as well as plans for capital works and human resources. The results show clearly that expectations for the year ahead among the majority of clubs is expected to improve or remain stable. Less than 15% expect a drop in Revenues and EBITDARD and this is despite 51% expecting that on a like for like basis, wages will increase.

86% of Clubs expect that revenues for the current year will be stable or improve

Do you expect that in 2018/2019 your Revenues will:		
No of Respondents	192	
Increase	92	47.9%
Decrease	27	14.1%
Remain about the same	73	38.0%

85% of Clubs expect that their EBITDARD performance for the current year will be stable or improve

Do you expect that in 2018/2019 your EBITDARD will:		
No of Respondents	193	
Increase	89	46.1%
Decrease	28	14.5%
Remain about the same	76	39.4%

51% of Clubs expect to see an increase in their wages bill...

Do you expect that in 2018/2019 your wages on a like for like basis will:		
No of Respondents	194	
Increase	99	51.0%
Decrease	9	4.6%
Remain about the same	86	44.3%

The outlook for employment is positive with less than 10% of Clubs looking to reduce staff numbers

Do you expect that in 2018/2019 you Club/Group will employ:		
No of Respondents	194	
More staff	47	24.2%
Less staff	18	9.3%
About the same number	129	66.5%



## CAPITAL WORKS

Major capital works (\$500k +) are planned for almost 35% of Clubs and minor works <\$500k for 62%.

In the 2018/2019 does your Club/Group intend to undertake major capital works (more than \$500k)?		
No of Respondents	194	
Yes	67	34.5%
No	122	62.9%
Unsure	5	2.6%

In the 2018/2019 does your Club/Group intend to undertake minor renovations/works (less than \$500k)?		
No of Respondents	194	
Yes	120	61.9%
No	53	27.3%
Unsure	21	10.8%

## REMUNERATION

The 2018 survey assesses the current remuneration practices of New South Wales Clubs in relation to salaries, bonuses, benefits and remuneration practices.

Whilst many of these Clubs have similar positions there are clearly some significant variations in organisational structures, job functions and job descriptions between Clubs.

The survey was designed around this and the survey findings have been divided into three groups – Executive, Higher Management and Line Management. However, it needs to be kept in mind that some positions could fall into two groups.

Human Resources managers fall into two groups - Strategic HR highly skilled professionals driving new cultures and organisational structures within the club and therefore deriving the higher levels of remuneration; and Operational HR addressing the many HR related operational issues and thus deriving lower levels of remuneration.

Marketing managers also fell into two groups - Strategic Marketing highly skilled professionals driving new customer service and marketing strategies and therefore deriving higher levels of remuneration; and Operational Marketing addressing the many related operational issues in marketing a club and therefore deriving lower levels of remuneration.

The same applies to Facility managers. A Building Activities facility manager might be addressing preventative maintenance but might also cover consent authority-related approvals and may even project manage building works and therefore commanding higher levels of remuneration. A Maintenance Activities manager might simply be addressing maintenance issues in a club and therefore derive lower levels of remuneration. The Horticultural Management function tends to revolve around the maintenance of golf courses, sporting facilities and club grounds but might be more or less extensive depending on the nature of the Club's business.

The position descriptions of the administration management team are largely dependent upon the scale of the Club and management structure. For example the larger Clubs have quite extensive IT systems with multiple venues and hence there is an IT Manager involved in the development of multi-venue IT strategies for the group. Likewise some Clubs have centralised the procurement function in order to streamline operations and maximise potential procurement savings.

One of the interesting characteristics of the CEO position in the Club Industry is that the industry is heavily regulated. There are significant personal obligations placed on the CEO under various Acts. For example, the Liquor Act, the Registered Clubs Act, the Gaming Machines Act and a number of others. A breach of these could result in the CEO being fined or even jailed in extreme circumstances. The remuneration levels of CEOs will therefore tend to reflect this based on the risk profile of the Club.

Remuneration is defined as the total cost to the Club of the remuneration package of a head of department. The remuneration package includes base salary, superannuation, motor vehicles and benefits and includes any performance bonus arrangements.

This Summary report provides the total remuneration, sample size, mean (or average) remuneration in addition to the highest and lowest in the sample.

EXECUTIVE TEAM REMUNERATION

Executive	CEO Club Manager	Operations Manager	CFO/Finance Manager	CIO/IT Manager
Highest	770,500	388,375	328,525	207,384
Lowest	49,500	55,000	51,000	109,500
Average	193,671	158,923	134,081	142,924

HIGHER MANAGEMENT POSITIONS

Higher Management	Gaming Manager	HR Manager	Marketing Manager
Highest	179,490	190,557	281,082
Lowest	72,600	71,175	57,488
Average	114,691	119,334	121,149

Line Management	Executive Chef	Food & Beverage Manager	Facilities/Maint Manager	Entertainment Digital A/V
Highest	213,976	205,222	235,968	114,593
Lowest	65,000	58,932	63,128	66,000
Average	110,347	96,104	105,501	87,984

## **BESPOKE ANALYSIS**

Further analysis of the results can be provided to any Club wishing to engage Tully Heard.

While it is not possible to identify individual clubs in this report, it is possible to undertake analysis on a <Insert Club Name> vs total industry or further broken down on the basis of Revenue, EGMs or any other data point.

Note that the finer the break for analysis, the smaller the sample size and that has implications for statistical significance of the results.

## APPENDIX – SURVEY INVITATION

### INITIAL INVITATION



Tully Heard Consulting has recently received a number of enquiries from Club Boards as to what is fair market remuneration for various senior management positions. In particular, many directors are cognisant of the need for an independently validated assessment of market based senior management remuneration that provides a level of transparency and helps ensure market equity and competitiveness.

It has been some time since our last series of **Club Industry Remuneration Survey** and we are now commissioning our 2018 Remuneration Survey and invite you to take part.

The 2018 survey will address Business Confidence, Base remuneration levels, Benefits paid and Incentives.

This new study is critical in assisting Club Boards and CEOs determine a competitive and fair level of remuneration for senior management staff rather than utilise anecdotal information which is often quite vague in nature and is not consistent throughout the industry.

All remuneration data provided will be kept strictly confidential and no individual or individual club remuneration data will be released; all data will be aggregated and stratified as required.

#### Positions Included in Survey

The positions included in the survey are as follows:

CEO	Group Operations Manager
Chief Financial Officer	Chief Information Officer/IT Manager
Hotel General Manager (assumes one hotel)	Hotel Manager (reporting to Hotel General Manager)
Fitness Centre Manager	Gaming Manager
Compliance Manager	HR Manager
Marketing Manager	Customer Relations Manager
Executive Chef	Catering Manager
F & B Manager	Security Manager
Facilities (Maintenance) Manager	Horticultural Manager

It will be helpful if you have the remuneration data for each employee category before you begin the survey. Of course you only need provide data for those positions relevant to your organisation and if the title is not exact, that's not as important. We will rely on your judgement call because you know the roles at your club best.

#### Club Performance Data

We also require some general financial data (turnover, EBITDARD, etc) on the club/group which relate to Business Outlook and Performance of the Club so it will also be helpful if you have the most recent annual financial data for your Club before you begin the survey.

#### Survey Output

All participants taking part in the study will receive a top-line summary of results at no cost.

Should any Club require a more detailed summary, benchmarking, remuneration stratification or a detailed report for your Club we can provide this for an additional cost.

#### **Inquiries**

Should you have any questions or concerns, please contact Catherine Eddy, (Qualified Practising Researcher) by email @ [ceddy@tullyheard.com.au](mailto:ceddy@tullyheard.com.au) or mobile [0432-702117](tel:0432-702117)

All the best for a wonderful Christmas and a prosperous 2019.

Tully Heard



Web: [www.tullyheard.com.au](http://www.tullyheard.com.au)

## **SURVEY REMINDER**

Good morning,

You might have recently seen a message in the February **ClubsNSW Club Bulletin** about the current Remuneration Survey being conducted by Tully Heard. We're leaving the survey open for another week as we know that many of you and your teams have taken a well-earned break in January.

We would therefore ask that if you are able to take part, that you do so before 11<sup>th</sup> February. All data is held in strictest confidence and no club will be identified in reporting.

#### **Survey Output**

All participants taking part in the study will receive a top-line summary of results at no cost.

Should any Club require a more detailed summary, benchmarking, remuneration stratification or a detailed report for your Club we can provide this for an additional cost.

#### **Inquiries**

Should you have any questions or concerns, please contact Catherine Eddy, (Qualified Practising Researcher) by email @ [ceddy@tullyheard.com.au](mailto:ceddy@tullyheard.com.au) or mobile [0432-702117](tel:0432-702117)

Many thanks in advance

Catherine Eddy

Tully Heard Consulting

Web: [www.tullyheard.com.au](http://www.tullyheard.com.au)

# DRAFT DETERMINATION

*Fair Work Act 2009*  
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

## **Registered and Licensed Clubs Award 2010** [MA000058]

Registered and licensed clubs industry

COMMISSION MEMBER

SYDNEY, XX YYY 2020

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/26, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009*, that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By inserting a new clause 25.1(c) as follows:

25.1 (c) A club manager who is classified at Level 6 to Level 13 of clause 18.3 Minimum rates – Adult employee rates of the Award will accrue annual leave based on an entitlement of 5 weeks of paid annual leave.

[2] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION



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Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/26, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009* (Cth), that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By amending clause 2- **shiftworker** as follows:

**shiftworker** means a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays (34 Sundays and 6 Public Holidays).

[2] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION

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COMMISSION MEMBER

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*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/6, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009*, that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By inserting the following after 22.8(a):

*“This Clause 22.8 does not apply to work performed on a Rostered Day Off. Refer to clauses 15.7 and 15.8 for arrangements for accrued time off in lieu of overtime payments when an employee works on a Rostered Day Off.”*

[2] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION

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Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/6, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009*, that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By inserting a new clause 19.3(d)(ii) as follows:

**19.(3)(d)(ii)** Where the employer requires a manager to wear a uniform, the employer must pay to the employee a laundry allowance of \$10.00 per week, or the demonstrable cost of laundering the uniform (to a maximum of \$15.00 per week). The provisions of this clause do not apply where the employer arranges for the uniform to be laundered without cost to the manager.

[2] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION

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*Fair Work Act 2009*  
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## **Registered and Licensed Clubs Award 2010** [MA000058]

Registered and licensed clubs industry

COMMISSION MEMBER SYDNEY, XX YYY 2020

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/26, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009*, that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By inserting into clause 18.5(a) the words:

18.5 (a) Managerial classifications—levels 6–13 inclusive in clause 18.3.

[2] By inserting into clauses 18.5(a)(i) and (ii) the words:

- 17.2—Meal Breaks;

[3] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION

# DRAFT DETERMINATION

*Fair Work Act 2009*  
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

## **Registered and Licensed Clubs Award 2010** [MA000058]

Registered and licensed clubs industry

COMMISSION MEMBER SYDNEY, XX YYY 2020

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2020/26, it is determined pursuant to section 157(2)(b)(i) of the *Fair Work Act 2009*, that the Registered and Licensed Clubs Award 2010 be varied as follows:

[1] By amending clause 2- **club manager** as follows:

**club manager** means a person who is employed and appointed as such and who:

- a. is responsible for the direction and operation of a registered and licensed club, subject to the strategic direction determined by its Board of Directors, Committee of Management or more senior managers; and
- b. is classified as a club manager according to Clause A.11.2 of Schedule A— Classification Definitions based upon any or all of the duties and responsibilities as referred to in Clause A.11.1 of Schedule A.

[2] The determination shall operate on and from XX YYY 2020.

BY THE COMMISSION