



IN THE FAIR WORK COMMISSION

Fair Work Act 2009
s.156 - 4 yearly review of modern awards
Registered and Licensed Clubs Award 2010
(AM2014/283)

THE CLUB MANAGERS' ASSOCIATION, AUSTRALIA

SUBMISSION IN REPLY

**IN RELATION TO
THE REGISTERED AND LICENCED CLUBS AWARD
EXPOSURE DRAFT
DATED 29 JANUARY 2020**

BACKGROUND

1. This Submission in Reply is made pursuant to the directions of the Full Bench of the Fair Work Commission (FWC) on 29 January 2020.
2. In accordance with those directions, The Club Managers' Association Australia (CMAA) makes the following submission in Reply to Clubs Australia Industrial (CAI) submission dated 12th May 2020, 14th May 2020, and 25 June 2020, in relation to outstanding substantive issues in relation to the Registered and Licenced Clubs Award 2010 Exposure Draft dated 29th January 2020. Following discussion with CAI during July 2020 on the matters listed in point two above and the CMAA submissions dated 30 April 2020.
3. The parties have reached a consent positon in relation to the following matters; and have agreed to the wording of the attached revised Draft Determinations (1 through to 7) as below;



A. Draft Determination 1: Definition of a Shiftworker

1. By amending clause 3 – **shiftworker** as follows:
2. **shiftworker** means a 7-day shiftworker who is regularly rostered to work on Sundays and public holidays (34 Sundays and 6 Public Holidays).

B. Draft Determination 2: Rostered Days off

1. By inserting the following after 22.8(a):

“NOTE: 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.”

C. Draft Determination 3: Laundry Allowance

1. By inserting the following after 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 up to the maximum value 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.

D. Draft Determination 4: Managerial Classifications

1. By inserting the following after 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; and



E. Draft Determination 5: Annual leave for a Club Manager.

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

25.1(c) A club manager who is classified at Level 6 to 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.

F. Draft Determination 6: Definition of a Club Manager

1. By amending clause 2 – **club manager** as follows:

club manager means a person who is employed and appointed as such 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 management; **and/or**
- 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.

G. Draft Determination 7: Penalty Rate Provision

1. By inserting a new clause 18.5(a)(i) the words:

- 24 – Penalty rates (other than penalty rate provisions relating to public holidays, which will be calculated on the 20% exemption rate of pay).



H. Draft Determination 8: Definitions

1. Deleting clause 2 Definitions – ordinary hourly rate, by inserting the following clauses 18.5(a)(i) the words:

Ordinary hourly rate means the minimum hourly rate for employee's classification specified in clauses 18.3 and 18.5 (a) (i) & (ii) plus any all purpose allowance to which the employee is entitled.

I. Inserting a new clause 24.3 - CAI's Draft Determination dated 12 May 2020

24.3 a Casual maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 18 – minimum wages for the relevant classification (Inclusive of casual loading);

Monday to Friday & Saturday before 12noon	125%
Saturday after 12noon	150% for the first 2 hours then 200%
Sunday	200%
Public Holiday	250%

And by renumbering the existing clauses 24.3, 24.4, and 24.5 as clauses 24.4, 24.5, and 24.6

The CMAA does not oppose CAI's position in relation to this matter

J. Casual Fitness Instructor - CAI's Submission dated 25 June 2020

The CMAA does not oppose CAI's position in relation to this matter



4. The parties have not reached a consent position and are in dispute in relation to the following matters;

[38] Inserting into clauses 18.5 (a)(i) and (ii), the words:

- 25.3 – Annual Leave Loading.

5. The CMAA does not support CAI's requested amendment to clause 18.5 of the Exposure Draft relating to Annual Leave Loading and seeks that clause 18.5 in the Exposure Draft remain unchanged.
6. The Club Managers NSW NAPSA and Pre reformed Federal Awards have always provided for a free Club meal or allowance for managers receiving a salary less than the 50% exemption salary clause 19.3 (b) and annual leave loading applying to all managers covered by the award regardless of salary received. These conditions have continued under the modernised award and in the draft exposure Award.

CMAA

7. Definitions

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

CAI's application to remove annual leave loading from Club Managers is yet again another attempt, in a line of many, to reduce club managers pay, conditions, and entitlements.

The annual leave loading entitlement has continually been in place for over 45 years dating back to the mid-1970's under the Club Managers awards, (The "Licensed Clubs Managers and Secretaries (Victoria) Award, 1976" – C No. 1917 of 1976 , L5 – M Print D1483). Clause 18 of this Award Titled Annual Leave Loading states "An employee shall be entitled to annual leave loading of 17.5 % of the appropriate salary rate prescribed in clause 11 – Salaries – or where applicable clause 29 (c) - Exemptions – of this award when entering upon annual leave. **NB 29 C provided for and exemption of 25% in excess of the appropriate annual salary rate prescribed in Clause 11 – Salaries at that time** and was included in the NAPSA (2006), as well as the pre-reformed federal awards, details of these award provisions were details are attached as annexure A and still is today contained in the registered and licenced clubs award to which we operate under.



The current salary Exemption rates of 20% and 50% should not be amended to include or absorb annual leave loading as this will reduce the take home pay of each manager employed under this condition in the industry.

We submit that the that the provisions of Clause 17.3 (a) (i) & (ii) current Award, and 18.5(a) (i) & (ii) where the Manager receives a salary of 20% or 50% **in excess of** their minimum annual rates for their application.

These all-inclusive salary rates are used for the purposes of payment of annual leave and annual leave loading.

Annual leave loading is also included in similar modern awards containing that contain similar provisions; these include;

Port Authorities Award 2020 – MA000051

Part 6—Leave and Public Holidays

20. Annual leave

20.1 The following provisions supplement the NES.

20.2 For the purpose of the NES a shiftworker as defined in this award and a permanent night shiftworker are entitled to 5 weeks of paid annual leave.

20.3 Subject to clause 20.4 when an employee takes a period of paid annual leave, the employee will be paid an annual leave loading of 17.5% of the minimum rate of pay for the period in addition to the payment required to be made under the NES. The annual leave loading for a shiftworker is 20%.

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 annual leave (see sections 16 and 90 of the Act).



Medical Practitioners Award AM000031

Part 6—Leave and Public Holidays

22. Annual leave

22.1 Annual leave is provided for in the NES.

22.2 Additional leave for certain shiftworkers A Medical Practitioner required to work shifts including weekends is entitled to an additional week's annual leave.

22.3 Public holidays falling during annual leave An additional day will be added to a Medical Practitioner's annual leave entitlement for any public holiday which falls during the period of annual leave.

22.4 Annual leave loading

(a) At the time of taking leave, a Medical Practitioner will be paid a loading of 17.5% of the minimum weekly rate based on a maximum of 4 weeks' annual leave.

(b) A shiftworker, in addition to their ordinary pay, will be paid the higher of: (i) the annual leave loading; or (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

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 annual leave (see sections 16 and 90 of the Act).

Part 5—Overtime and Penalty Rates

20. Overtime

20.3 On-call

(a) Medical Practitioners, except for Senior Doctors, required by the employer to be on-call will be paid an allowance equal to 10% of their daily rate for each day on-call.

(b) Senior Doctors will be available for reasonable on-call and recall duties. Wherever practicable, on-call rosters should align with rostered normal duties.

(c) Senior Doctors will remain on duty when patient needs require, notwithstanding the occurrence of normal meal breaks, conferences or the expiration of their normal hours and will be paid an allowance of 10% of their annual base salary. This allowance will be regarded as part of salary for all purposes, including leave entitlements and superannuation.



“Appendix A”

Pre-Reform Instruments.

CLUB MANAGERS’ (STATE) AWARD 2006 (NAPSA)

25. ANNUAL LEAVE

25.1 Annual leave entitlement

Five weeks paid annual leave shall be allowed to an employee after each completed year of service and an employee whose services are terminated or who leaves their employment during a twelve monthly period shall be entitled to pro rata annual leave for the period of employment served.

25.4 Annual leave loading

25.4.1 Before an employee is given and takes annual leave or, where by agreement between the employer and the employee the annual leave is given and taken in more than one separate period, then before each of such separate periods, the employer shall pay the employee a loading determined in accordance with this clause.

25.4.2 The loading is payable in addition to the employee's salary for the period of annual leave given and taken.

25.4.3 Prior to commencing a period of annual leave, the employee shall receive a loading of 17.5 per cent calculated at the appropriate ordinary time rate of salary, prescribed in clause 9.2.1 - Classifications and wage rates, for the classification in which the employee was employed immediately before commencing annual leave or where applicable the salary rate payable as prescribed in clause 9.5. - Salaries exemptions - shall be deemed to be the gross salary for the purpose of this clause.



**LIQUOR AND ACCOMMODATION INDUSTRY - LICENSED CLUBS –
MANAGERS AND SECRETARIES - AWARD 1996 (Queensland & Victoria)**

21. ANNUAL LEAVE

21.1 Annual leave entitlement

Five weeks paid annual leave shall be allowed to an employee after each completed year of service and an employee whose services are terminated or who leaves their employment during a twelve monthly period shall be entitled to pro rata annual leave for the period of employment served.

21.2 Annual leave exclusive of public holidays

The annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 28 - Public holidays and, if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

21.3 Annual leave loading

21.3.1 Before an employee is given and takes annual leave or, where by agreement between the employer and the employee the annual leave is given and taken in more than one separate period, then before each of such separate periods, the employer shall pay the employee a loading determined in accordance with this clause.

21.3.2 The loading is payable in addition to the employee's salary for the period of annual leave given and taken.

21.3.3 Prior to commencing a period of annual leave, the employee shall receive a loading of 17.5 per cent calculated at the appropriate ordinary time rate of salary, prescribed in clause 13.2.1 - Classifications and wage rates, for the classification in which the employee was employed immediately before commencing annual leave or where applicable the salary rate payable as prescribed in clause 13.5.1 - Salaries exemptions, shall be deemed to be the gross salary for the purpose of this clause.



**LIQUOR AND ACCOMMODATION INDUSTRY – LICENSED CLUBS - MANAGERS AND SECRETARIES
(AUSTRALIAN CAPITAL TERRITORY) AWARD 2003**

22. ANNUAL LEAVE

22.1 Annual leave entitlement

Five weeks paid annual leave shall be allowed to an employee after each completed year of service and an employee whose services are terminated or who leaves their employment during a twelve monthly period shall be entitled to pro rata annual leave for the period of employment served.

22.4 Annual leave loading

22.4.1 Prior to commencing a period of annual leave, the employee shall receive a loading of 17.5 per cent calculated at the appropriate ordinary time rate of salary, prescribed in clause 9.2.1 - Classifications and wage rates, for the classification in which the employee was employed immediately before commencing annual leave or where applicable the salary rate payable as prescribed in clause 9.5. - Salaries exemptions - shall be deemed to be the gross salary for the purpose of this clause.

22.4.2 The loading is payable in addition to the employee's salary for the period of annual leave given and taken.

Filed by: 23 July 2020

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No. 1

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FAIR WORK 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* (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

No.2

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FAIR WORK COMMISSION

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 AM2020/6, 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):

“NOTE: 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

No.3

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FAIR WORK 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 AM2020/6, 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 up to the maximum value 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

No.4

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FAIR WORK 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

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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; and

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

BY THE COMMISSION

No.5

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FAIR WORK 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 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

No.6

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FAIR WORK 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

No.7

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FAIR WORK 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 inserting into clauses 18.5(a)(i) the words:

- 24—Penalty rates (other than penalty rate provisions relating to public holidays, which will be calculated on the 20% exemption rate of pay).

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

BY THE COMMISSION

No.8 (CMAA)

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FAIR WORK 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 deleting clause 2 Definitions – ordinary hourly rate, by inserting the following into clauses 18.5(a)(i) the words:

ordinary hourly rate means the minimum hourly rate for employee’s classification specified in clauses 18.3 and 18.5 (a) (i) & (ii) plus any all purpose allowance to which the employee is entitled.

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

BY THE COMMISSION

No. 9 – in Dispute

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FAIR WORK 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 inserting into clauses 18.5(a)(i) and (ii) the words:

- 25.3—Annual Leave Loading.

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

BY THE COMMISSION