



13 March 2015

Workplace Relations Framework
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear **Sir/Madam**,

Submission to the Commission's Review of the Workplace Relations Framework

The Terms of Reference for the Commission's Review of the Workplace Relations Framework includes assessing the impact of the workplace relations framework on matters including –

- Fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net.

The provisions of the National Employment Standards going to annual leave for shift workers presently impose an unfair burden on registered and licensed clubs in Queensland.

1. An extra week's annual leave is provided to persons defined in the Registered and Licensed Clubs Award 2010 (RLCA) as shift workers, being " a seven day shift worker who is regularly rostered to work on Sundays and public holidays, and includes a club manager."
2. The NES also states that annual leave accrues progressively.
3. Under this regime, it is difficult for clubs to forecast whether a given employee will be entitled to 4 or 5 weeks' annual leave as unlike continuous shift work in other industries, rosters in clubs commonly change from week to week depending on patron expectations and demand patterns. As well, clubs in Queensland believe there is a clear double counting situation in existence when the extra week's annual leave is provided and at the same time standard penalties are provided for work on Sundays and on Public Holidays in line with other club employees who are not shift workers.
4. If we go to the history of the development of provisions granting 5 week's leave to "shift workers" who do not work over three shifts per day seven days per week (See references in AIRC C No. 20806 of 1995 and 30067 of 1989 – AIRC 1995 AIRC 2425 (1 December 1995) - Print H9594 [T0246]), the Full Bench in the 1972 NSW Shift Workers' case (72 AR 633) established to qualify for an extra week's leave, employees would need to -
 - a. Work a roster that had them working on 35 Sundays and/or Public Holidays in a year ("regularly working Sundays");
 - b. Be receiving something less than other employees for working on Sundays and/or Public Holidays;

- c. Work to a roster that rotates over 7 days of the week.
5. Notwithstanding the expressed views of industry employers, the FW Commission, in making the Registered and Licensed Clubs Award 2010, did not see fit to include such requirements in the RLCA as a precondition to having an extra week's leave per year. As a consequence, the qualification for extra leave is unclear and potentially overly generous to many employees and results in a clear case of double counting where under the RLCA, the extra week's leave is granted, double time and double time and a-half are paid on Sundays and Public Holidays respectively and in addition, a day's pay, day off in lieu or an extra day's annual leave is provided when employees are rostered off on a public holiday. This is clearly double counting for many employees who do not work 35 or more Sundays and Public Holidays in a year. The current arrangement also places the employer in an invidious position in relation to progressively accruing leave in line with Section 87(2) of the *Fair Work Act 2009*.
6. The easiest and fairest way to address this anomaly would be to –
- Amend Section 87(1)(b) of the *Fair Work Act 2009*, by adding after the word "shift worker" in the second line "who is regularly rostered to work Sundays and/or Public Holidays on at least 35 days per year"; and
 - Amend Section 87(2) by deleting the word "An" at the start and adding the words "Except in relation to the extra week's leave for shift workers in circumstances where satisfaction of the requirements of Section 87(1)(b) is not immediately ascertainable from the projected roster, an".
7. Whilst there are a number of other issues of concern to registered and licensed Clubs in Queensland, which are being taken up through peak State and federal employer bodies in relation to this Review e.g. penalties applicable to work on Sundays and Public Holidays, rectifying the above issues will in our view, go some way towards providing fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net, whilst also being fair to club employers.

I commend the above for the consideration of the Commission in its Review of the Workplace Relations Framework within which registered and licensed clubs are required to conduct their businesses.

Of course if you have any queries or require clarification, please don't hesitate to make contact.

Yours sincerely,

Doug Flockhart
Chief Executive Officer



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Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear **Sir/Madam**,

Submission to the Commission's Review of the Workplace Relations Framework

The Terms of Reference for the Commission's Review of the Workplace Relations Framework includes assessing the impact of the workplace relations framework on matters including –

- Small businesses;
- The ability of business and the labour market to respond appropriately to changing economic conditions;
- The ability for employers to flexibly manage and engage with their employees; and
- Red tape and the compliance burden for employers.

Clubs Queensland is the peak state employer association for Registered and Licensed Clubs in Queensland. We are a registered union of employers under Queensland industrial relations legislation (Registered and Licensed Clubs Association of Queensland Union of Employers) and are transitionally registered in the national industrial relations system and seeking permanent national registration.

As the peak employer association in Queensland for registered and licensed clubs, with around 500 as members, we have received close to 2000 telephone and email enquiries over the last 12 months from members, seeking information and assistance in dealing with the national workplace relations framework under the *Fair Work Act 2009*. Of these, around 68.6% were enquiries regarding the provisions of the Registered and Licensed Clubs Award 2010 or National Employment Standards from the *Fair Work Act 2009*, whilst 20.4% related to matters concerning the management of diminished work performance or misconduct in the light of the above, and 11.0% related to other issues including restructuring in the face of financial or operational stress. Representation was also provided in relation to 18 claims of unfair dismissal, 50% of which related to casuals, 5 general protections or anti-discrimination claims of which 40% related to casuals and 21 audits, misconduct investigations, mediations or restructure assignments were undertaken in member clubs.

After responding to the above, our Workplace Relations Team has developed a thorough understanding of the needs and issues facing registered and licensed clubs in Queensland and their concerns in relation to the workplace relations framework under which they operate.

With the benefit of that experience, our Workplace Relations Team would make the following observations as a priority for consideration and if supported, recommendation by the Commission –

1. The vast majority of Clubs Queensland's members are small to medium community club businesses, which are not-for-profit, have honorary Boards made up of lay people and in many cases rely on volunteers to provide or supplement paid staff. These organisations struggle to meet the requirements for compliance and due process inherent in the Fair Work legislation and are hamstrung, in particular by requirements in the *Fair Work Act 2009* and awards covering casual staff.
2. The ability of club businesses, particularly small community club businesses, to be able to flexibly manage and engage with their employees and to respond appropriately to changing economic conditions is of paramount concern to Clubs Queensland.
3. Of particular concern is the erosion or cancelling out of the traditional flexibilities of casual employment by the workplace relations framework established or continued by the *Fair Work Act 2009*, including –
 - a. Inclusion of casual employees in staff numbers, for the purpose of assessing what is a small business under the Act;
 - b. Bestowing of unfair dismissal rights on all casuals who have served more than the minimum employment period under the legislation; and
 - c. Imposing totally impractical requirements for consultation on changing the hours of work of all casual employees, now included in the *Fair Work Act 2009*.
4. The above restrictions need to be removed if club businesses are to have the flexibility to manage and engage with their employees and to respond to changing economic conditions. At present, these particular arrangements effectively gum up the system for clubs and make it inflexible and onerous for them to be able to respond to changing patron expectations and patterns of demand. Present arrangements also act as a disincentive to employ additional casual staff because of the ever-present risk of unfair dismissal claims when their hours are reduced or eliminated in response to significant changes in operational demand.
5. In summary the changes we ask the Productivity to seriously consider and support are –
 - a. In Section 23(1) of the *Fair Work Act 2009* –
 - i. Insert the words "full-time permanent or part-time permanent" after the words "fewer than 15" in the second line; or at the very least,
 - ii. Delete the number "15" in the second line and insert the words "25 full-time equivalent";
 - b. In Section 384 of the *Fair Work Act 2009* –
 - i. Delete the word and punctuation "unless:" in Section 384(a) and insert the punctuation "." in lieu and delete Section 384(2)(a)(i) and (ii); or at the very least,
 - ii. Delete Section 384(a)(ii) and insert the following in lieu thereof –

"(ii) During the period of service as a casual employee, the employee has been employed consistently for 35 hours or more per week on

average during the preceding 12 month period."

c. In Section 145A of the *Fair Work Act 2009* –

- i. Insert the words "full-time permanent and part-time permanent" after the words "consult employees" in Section 145A(1)(a); or at the very least,
- ii. Delete the punctuation "." From the end of Section 145A(1)(b) and insert "; and" in lieu and also add a new Section 145A(1)(c) as follows –
"(c) Excludes casual employees who have not been consistently employed for 35 hours per week or more on average during the preceding 12 month period."

6. Finally, to make it very clear in the *Fair Work Act 2009* and consistent with the above, we suggest the definition of a "long term casual employee" in Section 12 be amended to provide –

"Long term casual employee: a national system employee of a national system employer is a long term or regular casual employee at a particular time if, at that time:

- (a) the employee is a casual employee; and
- (b) the employee has been employed consistently for 35 hours or more per week on average during the preceding 12 month period.

To be clear, for casual employees other than the above, each occasion that they work is a separate contract of employment which ceases at the end of that engagement and as other than a long term casual employee, there is no guarantee of ongoing or regular work."

7. In a National Club Census conducted by KPMG in 2011, 54% of employees in registered and licensed Clubs in Queensland were casuals and 43% of such clubs were regionally located. Nationally, 49% of employees in clubs are casuals and 42% are regionally located. It is also significant that 87% of registered and licensed clubs in Queensland had gaming revenue of less than \$1M per annum and average number of staff across all clubs was 15.

In a more recent report prepared for Clubs Queensland in November 2014 by Dickson Wohlsen Hospitality Specialists – "The Financial and Economic Contribution to the Queensland Economy of Club Development Projects over the Next Ten Years" the following economic activity was forecast for the registered and licensed club industry in Queensland over the next ten years –

- 82% of clubs are planning construction or renovation projects
- 696 projects are likely to be undertaken
- \$2,168.8m in value of construction/renovation projects
- 4,678 construction jobs
- 6,672 hospitality jobs (full-time)
- An additional \$201.3m in EGM and payroll tax

Should past trends continue, the above could also mean the employment of a further 6,000 or more, casual employees in registered and licensed clubs in Queensland, over the next ten years.

Standard trading hours for registered and licensed clubs in Queensland are from 10am until midnight and a number of clubs have licenses to trade prior to 10am and after midnight where sporting and/or special events are a feature. Peak trading during standard hours occurs during 12 noon to 2.00pm and 6.00pm to 8.00pm with variations around special promotions and events.

With the award restrictions on ordinary hours and applicable penalty rates, full-time staff cannot be economically employed to cover these changing demand patterns. As a result, clubs have no means of covering their changing operational demands other than by the employment of casual staff. The capacity of clubs to engage and reduce casual staff in response to these changing demand patterns is critical to the success of their businesses now and into the future. The erosion of the flexibilities historically attaching to casual employment, particularly access to unfair dismissal processes and unwieldy consultation processes required to change hours, is hampering the ability of registered and licensed clubs to be successful. This is exacerbated in circumstances where the vast majority of clubs are small businesses with a high proportion regionally located, which do not have the capacity to employ their own skilled HR staff.

Registered and licensed clubs conduct their businesses with a constant tension existing between the preparedness of casuels to make themselves available for work, and the club being able to effectively roster casuels to meet operational requirements. The availability of casuels for work is purely at their own discretion and consequently effectively rostering them to fill all necessary shifts is an ongoing challenge for clubs. For the legislation to impose obligations on club employers at the other end of this process, when casuels need to be finished up in response to operational factors, is unfair. The above proposals accept that a casual who is regularly engaged for weekly hours approaching those of a permanent full-time employee over a period of 12 months may be an exception to these arguments.

The above statistics illustrate the significance and importance of flexible casual employment arrangements to registered and licensed clubs in Queensland and we ask that the Commission consider these factors in framing recommendations.

8. Whilst there are a number of other issues of concern to registered and licensed Clubs in Queensland, which are being taken up through peak State and federal employer bodies in relation to this Review, rectifying the above issues will in our view, provide a significant and meaningful improvement in the ability of registered and licensed clubs in Queensland to –
 - a. Respond appropriately to changing economic conditions; and to
 - b. Flexibly manage and engage with their employees, to the distinct benefit of their businesses and their capacity to employ staff.

The suggested changes will also recognize the special challenges faced by small club businesses and will aid the reduction of red tape and the compliance burden for club employers generally, including regional clubs.

9. Examples of comments on the above from member Clubs are –

a. A large urban sporting club –

"The Club strongly supports the submission prepared by Clubs Queensland on behalf of registered and licensed clubs in Queensland.

The submission addressing restrictions relating to casual employment is a crucial issue for community based clubs and we appreciate your consideration to the importance of an amendment to the current *Fair Work Act 2009*";

b. A large metropolitan Services club -

"I have read the attached proposed documentation and have provided the following comments of support below.

With reference to of submission surrounding a) inclusion of casual employees b) unfair dismissal rights and c) consultation requirements, we are supportive of these recommendations and believe they will provide direct benefits. Whilst we currently have measures to deal with the current parameters of section 23, section 384 and section 145a, your proposed of amendments would provide greater flexibility to operational needs both to large and small Clubs alike"; and

c. A large coastal RSL club –

"We are in support of these recommendations and believe they will provide direct benefits as the amendments included in your proposal will offer greater flexibility and are consistent with the operational needs of all organisations".

I commend the above for the consideration of the Commission in its Review of the Workplace Relations Framework within which registered and licensed clubs are required to conduct their businesses.

Of course if you have any queries or require clarification, please don't hesitate to make contact.

Yours sincerely,

Doug/Flockhart
Chief/Executive Officer