



Business SA Submission

4 yearly review of
modern awards –
Pastoral Award 2010

(AM2014/239)

4 April 2018

Introduction

Business SA provides this brief submission in response to the 15 March 2018 Statement¹ (**the Statement**) concerning the *Pastoral Award 2010* (**the Award**). The Statement invited interested parties to review the plain language re-draft of clause 35 of the Award. Attached to the Statement was the plain language expert's re-drafted clause 35 (**PLED**).

Business SA is interested in the plain language re-drafting of the Award given the pastoral industry's importance to South Australia. Business SA has been an active contributor to the plain language re-drafting process for a number of awards and we welcome the opportunity to contribute to the application of plain language principles to the *Pastoral Award*. In this submission all pinpoint references refer to the PLED unless otherwise specified.

Submissions

1. Clause 31.2 – Definitions of “Continuous work”

- 1.1. Business SA submits this clause should be amended for consistency with clause 35.3(b) of the Award. Clause 35.3(b) of the current award defines continuous work as follows:

Continuous work means work carried on with consecutive shifts of employees throughout the 24 hours of each day, of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employers. (emphasis added)

- 1.2. In the PLED clause 31.2 defines continuous work as follows:

Continuous work means work carried on with consecutive shifts for 24 hours on each day for 6 days in a row without interruption (other than for breakdowns, for meal breaks, or due to unavoidable causes beyond the employer's control).

- 1.3. The clause 31.2 definition of continuous work omits reference to 'at least' as appears in the current award at clause 35.3(b). Removal of 'at least' changes the operation of the definition. The definition is made up of two components: work being carried on with consecutive shifts for 24 hours on each day, and that work being conducted continuously for at least six consecutive days.
- 1.4. By removing 'at least' from the definition it appears the second aspect of the definition now requires the reader to determine if work has been conducted consecutively for each six day period; a troublesome approach for workplaces where continuous work is carried out seven days a week. This introduces a complexity to the definition which is not present currently. Through the words 'at least' the current definition clearly applies to workplaces where continuous work is carried out seven days a week.

¹ [2018] FWC 1558.

1.5. Business SA submits clause 31.2 – Definition of “Continuous work” be amended to read ‘...on each day for at least six days in a row without interruption...’.

2. Clause 31.6 – Crib time for shiftworkers

2.1. Business SA submits the second element of clause 31.6 is less clearly expressed than at clause 35.5(iv) of the current award.

2.2. Clause 35.5(iv) of the current award reads: [A shift will consist of not more than 10 hours inclusive of crib time. Provided that] 20 minutes will be allowed to shiftworkers each shift for crib, which will be counted as time worked. Comparatively, Clause 31.6 of the PLED reads: ‘A continuous hours shiftworker is allowed 20 minutes crib time on each shift, that time is counted as work.’

2.3. We further note the expression used in the revised plain language exposure draft of the *Clerks – Private Sector Award 2017 (Clerks PLED)* published on 1 December 2017. Clause 30 of the Clerks PLED deals with breaks for shiftwork. Clause 30.2 is reproduced below:

30.2 An employee working on a shift defined in clause 27.1 is entitled to one 20 minute paid meal break per shift which is to be:

- (a) taken within 5 hours of starting the shift; and
- (b) counted as time worked.

2.4. Business SA submits the wording ‘that time is counted as work’ is a less preferable expression than ‘which will be counted as time worked.’ Given this approach has been adopted in other plain language exposure drafts we submit clause 31.6 should be amended to read: ‘A continuous hours shiftworker is allowed 20 minutes crib time on each shift, which will be counted as time worked.’

3. Clause 33.3 – Varying method of working shifts by agreement

3.1. Business SA submits clause 33.3(b)(ii) contains a drafting error. Clause 33.3(a) sets out the ability for an employer and the majority of employees concerned to agree to vary the method of working shifts. Clause 33.3(b) states: The start and finish time of each shift may be varied to suit the circumstances of the establishment: (i) by the employer and the majority of employees concerned agreeing to a variation; or (ii) if there is no agreement, by the employer giving the employee 5 days’ notice.

3.2. Reference to ‘the employee’ as opposed to ‘the employees’ in clause 33.3(b)(ii) appears to be a drafting error given the ability to make such a variation requires agreement between the employer and the majority of employees concerned. The requirement that 5 days’ notice be given to the employees is also stated in the current award at clause 35.8(b).

3.3. Business SA submits clause 33.3(b)(ii) be amended to read ‘if there is no agreement, by the employer giving the employees 5 days’ notice.’

4. Clause 34.2 – Rates set in table

- 4.1. Business SA also notes a minor drafting error in clause 34.2. This clause states ‘An employer must pay an employee working ordinary hours on shifts in accordance with clauses 0 – Continuous work hours – Ordinary hours and roster cycles for shiftworkers and clause 32 – Other than continuous work hours – Ordinary hours and roster cycles for shiftworkers...’. It appears ‘clause 0’ should instead be a reference to clause 31.

Conclusion

Business SA thanks the Fair Work Commission for accepting these submissions.

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