



Business SA Submissions in reply

4 yearly review of
modern awards – Plain
language – *General
Retail Industry Award*
2010 (**AM2016/15** and
AM2014/270)

22 August 2017

Introduction

Business SA provides these submissions in reply as part of AM2016/15 – Plain language re-drafting and AM2014/270 – General Retail Industry Award. These submissions reply to submissions of the Shop, Distributive and Allied Employees' Association (**SDA**) of 4 August 2017,¹ and submissions of Australian Business Industrial and the NSW Business Chamber (**ABI**) of 3 August 2017.² The plain language exposure draft for the *General Retail Industry Award 2017 (PLED)*³ and the *General Retail Industry Award 2010 (current award)*⁴ are also considered. All pinpoint references refer to the PLED unless otherwise specified.

Why this matter is important to South Australian businesses

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:

- South Australian businesses are impacted by any changes in the award system.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards, better enabling both parties to understand their rights and responsibilities.
- Small business owners make up a large proportion of our membership, these businesses are often not able to devote the necessary resources to fully understand Australia's complex workplace regulations.
- The modern award objective is to provide a fair and relevant minimum safety net of terms and conditions.⁵ Modern awards must be drafted such that those using the award are able to determine what they can expect and what is expected of them.
- The Plain Language re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.

For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at karenv@business-sa.com or chrisk@business-sa.com.

¹ [SDA GRIA Submission](#).

² [ABI GRIA Submission](#).

³ Plain language exposure draft – [General Retail Industry Award 2017](#), published 5 July 2017.

⁴ *General Retail Industry Award 2010*.

⁵ *Fair Work Act 2009* (Cth) s 134(1).

General Retail Industry Award 2017 Plain Language Exposure Draft

Submissions

1. Table of contents

1.1. Consultation and dispute resolution

Business SA does not agree with the SDA's submission regarding the location of consultation and dispute resolution provisions in the PLED.⁶ We note guideline 3.2 of the Plain language drafting of modern award guidelines which suggests awards be organised logically, with a logical structure involving placement of clauses in a chronological sequence.⁷ The relocation of consultation and dispute resolution to Part 8 is appropriate in this context. We support the location of these provisions in the PLED.

2. Clause 2 – Definitions

2.1. National Employment Standards

Business SA does not agree with all of the SDA's submissions regarding the definition of 'National Employment Standards'. The SDA's three submissions are made at [18] of their submission.

Business SA agrees that the abbreviation for National Employment Standards should be retained⁸ as this abbreviation is used in clause 3.1 and further throughout the award. It is appropriate for the definition to contain this abbreviation.

Business SA does not agree that specific reference to section 59 of the Act needs to be reinstated.⁹ The PLED definition of 'National Employment Standards' points the reader to Part 2-2 of the Act. Section 59 is the first section in Part 2-2. Reference to the purpose of the NES is already provided by the PLED definition.

Business SA also does not agree that an extract of section 59 should be added to the PLED to precede the extract from section 61 of the Act.¹⁰ The PLED already points the reader to Part 2-2 of the Act and section 59 is the first section of that Part. Business SA submits the proposed wording does not do any work not already done by the PLED and the Act.

2.2. Standard rate

Business SA does not agree the SDA's submission that the definition of 'standard rate' in the current award should be reinserted.¹¹ The PLED contains guidance regarding calculation of allowances provided on an hourly basis. The note in clause 23.1 directs the reader to Schedule C for a summary of monetary allowances and methods of adjustment. Schedule C.1.1 specifically states that hourly wage-related allowances are based on the 'standard hourly rate as defined in clause 2 as the minimum hourly rate for a Retail Employee Level 4 in clause 18.1 (Minimum rates), divided by 38...'.¹²

3. Clause 3 – National Employment Standards and this award

3.1. The SDA has proposed an amendment to clause 3.3.¹² While Business SA is of the view that such amendment is not necessary, we will not oppose their submission.

⁶ SDA GRIA Submission, [8].

⁷ Fair Work Commission, '[Guidelines: Plain language drafting of modern awards](#)', published 20 June 2017.

⁸ SDA GRIA Submission, [18(i)]

⁹ Ibid [18(ii)].

¹⁰ Ibid [18(iii)].

¹¹ Ibid [26].

¹² Ibid [30].

4. Clause 7 – Facilitative provisions for flexible working practices

4.1. New column for Table 1

Business SA submits the SDA's proposal to insert a new column in Table 1 – Facilitative provisions¹³ is unnecessary. Table 1 points the reader to clauses which contain facilitative provisions, a reading of the relevant clause will notify the reader which category of employee the facilitative provision would apply to.

4.2. Reference to clause 15.10(b) in Table 1

Business SA supports the submission of ABI regarding reference to clause 15.10(b).¹⁴

4.3. Missing facilitative provisions clauses 23.11(b) and 29.10

Business SA supports the submissions of ABI regarding inclusion of clauses 23.11(b) and 29.10 in Table 1 – Facilitative provisions for flexible working practices.¹⁵

5. Clause 8 – Types of employment

5.1. Clause 8.3(a) – Moving between types of employment

Business SA does not support the SDA's proposed wording for clause 8.3(a),¹⁶ our preference is the PLED wording for paragraph (a).

5.2. Clause 8.3(c) – Moving between types of employment

Business SA does not oppose the SDA's submission regarding clause 8.3(c),¹⁷ though we propose alternative wording if change is to be made to the PLED. Our alternative wording is as follows:

- (c) A full-time employee:
 - (i) may request to become a part-time employee; and
 - (ii) if that request is granted by the employer, may revert to full-time employment on a specified future date that is agreed in writing with the employer.

5.3. Subparagraph 8.3(c)(ii)

Business SA supports the submission of ABI regarding missing reference to 'on a specified future date' in subparagraph 8.3(c)(ii).¹⁸

6. Clause 10 – Part-time employment

6.1. Current award clause 12.6

Business SA does not support the SDA's submission regarding clause 12.6 of the current award.¹⁹ Business SA submits the SDA's concern is addressed by clause 11.1 of the PLED.

7. Clause 11 – Casual employment

7.1. Casual loading

Business SA submits the SDA's submission regarding clause 11.2 is unclear.²⁰ The SDA has not demonstrated which rates the casual loading is payable upon currently, but which are not captured by clause 11.2 of the PLED. Business SA supports the wording as it appears in clause 11.2 of the PLED.

¹³ Ibid [36].

¹⁴ ABI GRIA Submission, [3.1].

¹⁵ Ibid [3.2].

¹⁶ SDA GRIA Submission [40].

¹⁷ Ibid.

¹⁸ ABI GRIA Submission, [4.1].

¹⁹ SDA GRIA Submission, [56]-[58].

²⁰ Ibid [70].

8. Clause 14 – Classifications

8.1. Business SA agrees with the submissions of the SDA²¹ and ABI²² regarding clause 14.2.

9. Clause 15 – Ordinary hours of work

9.1. Clause 15.1 – Ordinary hours of work

Business SA agrees with the submissions of ABI regarding clause 15.1 and the table in the current award at clause 27.2(a).²³ We agree that the table contained in the current award is clearer than the PLED.

9.2. Clause 15.10 – Employees regularly working Sundays

Business SA does not support the SDA's submission regarding clause 15.10.²⁴

Business SA submits the obligation on employers to roster an employee who regularly works Sundays in such a way that they have 3 consecutive days off to which include Saturday and Sunday is adequately expressed in the clause 15.10 PLED at paragraph (a). This paragraph states: 'Unless otherwise agreed between the employer and the employee, the employer **must** roster an employee who regularly works Sundays in such a way that they have 3 consecutive days off (including Saturday and Sunday) per 4 week cycle.' (emphasis added).

9.3. Clause 15.11 – Notification of rosters

Business SA supports ABI's submission regarding clause 15.11(e).²⁵

10. Clause 16 – Breaks

10.1. Business SA supports ABI's submission regarding Table 2 in clause 16.²⁶

11. Clause 19 – Higher duties

11.1. Business SA does not support the SDA's submission regarding clause 19.²⁷ Business SA submits reference to 'minimum hourly rate' in subclauses 19.1 and 19.2 appropriately links these provisions to the rates provided for each classification level in Table 3 – Minimum rates.

12. Clause 23 - Allowances

12.1. Clause 23.2 – Meal allowance

Business SA agrees with the submissions of the SDA and ABI regarding provision of notice within the meal allowance subclause.²⁸

12.2. Clause 23.3 – Special clothing allowance

While Business SA submits 'special clothing' which an employer requires an employee to wear would include a uniform, we do not oppose the SDA's submission regarding reference to 'uniform' in clause 23.3.²⁹ However, we submit the drafting of this clause in the PLED is preferable to the drafting in the current award. We submit if change is to be made it, it simply be that 'uniform' be inserted into in paragraph (a) of subclause 23.3 as part of 'special clothing', as proposed by ABI.³⁰

²¹ Ibid [86].

²² ABI GRIA Submission, [6.1].

²³ Ibid [7.1].

²⁴ SDA GRIA Submission, [116].

²⁵ ABI GRIA Submission, [7.2].

²⁶ Ibid [8.1].

²⁷ SDA GRIA Submission, [133].

²⁸ Ibid [135]; ABI GRIA Submission, [9.1].

²⁹ SDA GRIA Submission [137].

³⁰ ABI GRIA Submission, [9.2].

13. Clause 26 – Penalty rates

13.1. Business SA does not agree with the SDA's submission regarding subclause 26.2.³¹ We submit subclause 26.2 and Table 10 – Penalty rates clearly expresses when a penalty rate may apply and what penalty rate applies at that time. We support the drafting of the PLED regarding subclause 26.2.

Conclusion

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

³¹ Ibid [155].