Fair Work Commission

Award Review 2014

General Retail Award 2010

AM2014/209

Submissions- *General Retail Industry Award* 2010 -plain language exposure draft - award specific clause

Shop Distributive and Allied Employees' Association

4 August 2017

Introduction

1. The Shop Distributive and Allied Employees' Association **('***the SDA***')** makes these submissions on the *General Retail Industry Award* 2010 – plain language exposure draft released by the Fair Work Commission ('*the Commission*') on 7 July 2017, in accordance with the Directions issued by Justice Ross, President on 21 July 2017.

2. The notes preceding the plain language exposure draft (*'the exposure draft')* of the *General Retail Industry Award* ('*the GRIA*') state that:

> This exposure draft does not seek to amend any entitlements under the General Retail Industry Award 2010. It has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques to award-specific provisions.
> and;
> The review of this award in accordance with section 156 of the Fair Work Act 2009 is being dealt with in matter AM2016/15 and AM2014/270. This draft does not represent the concluded view of the Commission in this matter.

3. Fair Work Commission Guidelines for plain language drafting of modern awards ('*Guidelines*') published on 20 June 2017, note 'that the aim of plain language re-drafting is make the award as simple and as easy to understand as possible without *unintentionally* (emphasis in the original) changing the legal effect of the award.'[1]

4. This submission will deal with issues that the SDA has identified in relation to the exposure draft particularly where the exposure draft has appeared to;

    i. *unintentionally* change the legal effect of the award; or
    ii. is contrary the purpose of the Guidelines as set out in section 2; or
    iii. is contrary a particular provision of the Guidelines; or
    iv. introduce uncertainty, ambiguity or complexity in relation to other matters being dealt with as part of the 4-yearly review of modern awards – *General Retail Industry Award* 2010 (AM2016/15, AM2014/270) or any of the clauses being dealt with as part of Plain language redrafting – Common Issues (AM2016/15).

[1] Fair Work Commission Guidelines Plain language drafting of modern award, Fair Work Commission, June 2017.

5. The SDA relies on our outline of submissions of substantive claims made as part of AM2014/270 4 yearly Review of Modern Awards – *General Retail Industry Award* 2010, filed on 30 September 2016.

Table of contents - Consultation and Dispute Resolution

6. Consultation and Dispute Resolution has been moved from Part 2 of the GRIA to Part 8 of the exposure draft.

7. Consultation and Dispute Resolution provisions clarify the rights and obligations of employees and employers in relation to disputes and consultation about matters under the GRIA. These provisions are central to the facilitation of timely discussions between employers and employees and should continue to be placed at the start rather than at the end of the GRIA. Retention of this provision in Part 2 will ensure that parties can continue to readily navigate the GRIA and understand the content in accordance with the *Guidelines*.[2]

8. The SDA does not support the 'Consultation and Dispute Resolution' being relocated from Part 2 of the GRIA to Part 8 of the exposure draft. The SDA seeks that 'Consultation and Dispute Resolution' be reinstated at Part 2.

Definitions - 'junior employee'

9. A new definition 'junior employee' has been inserted into exposure draft in clause 2.

10. The proposed definition is "**junior employee**' 'means an employee who is less than 21 years of age' is consistent with the section 12 of the *Fair Work Act* 2009 (Cth) ('*the Act*')', however it is inconsistent with the definition of 'junior employee' under the GRIA. A junior employee is an employee who is <u>less than 20 years old</u> and <u>employed by their employer for 6 months or less</u>. The junior rates scale starts to apply in the GRIA at age 20 not age 21. The insertion of a new definition for 'junior employee' represents a substantive change that is inconsistent with the GRIA and is both imprecise and incompatible with other provisions contained within it.

11. The SDA does not support the insertion of the definition for 'junior employee' into the exposure draft.

[2] Ibid, cl 1.2.

Definitions - 'long term casual employee'

12. A new definition 'long term casual' has been inserted into clause 2 of the exposure draft as follows: '***long term casual employee*** has the meaning given by section 12 of the Act.'

13. The proposed definition of 'long term casual employee' in the exposure draft is consistent with the section 12 *the Act'*, however it is inconsistent within the GRIA which does not currently contain a reference to a 'long term casual employee'**.** The application of the proposed definition can only be considered in the context of GRIA clause 19.3, Adult apprentice minimum wages which refers to;

> A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship (emphasis added).

14. A new definition 'long term casual employee' is unnecessary and would introduce a new concept into the GRIA that does not assist with the interpretation or application of any existing provision. The current language in clause 19.3 is plain and simple and the reader will not be aided by having to cross reference the definition clause.

15. The SDA does not support the insertion 'long term casual employee' into the exposure draft.

Definitions - 'National Employment Standards'

16. The definition for the '**National Employment Standards'** in clause 2 of the exposure draft has been extended as follows:

> **National Employment Standards**, see Part 2-2 of the Act. Divisions 3 to 12 of Part 2-2 of the Act constitute the **National Employment Standards**. An extract of section 61 of the Act is reproduced below.
> The National Employment Standards are minimum standards applying to employment of employees. The minimum standards relate to the following matters:
> (a) maximum weekly hours (Division 3);
> (b) requests for flexible working arrangements (Division 4);
> (c) parental leave and related entitlements (Division 5);
> (d) annual leave (Division 6);
> (e) personal/carer's leave and compassionate leave (Division 7);
> (f) community service leave (Division 8);
> (g) long service leave (Division 9);

(h) public holidays (Division 10);

(i) notice of termination and redundancy pay (Division 11);

(j) Fair Work Information Statement (Division 12).

17. The current definition in the GRIA *is* 'NES means the National Employment Standards as contained in sections 59 to 131 of the Fair Work Act 2009 (Cth)'.

18. The SDA proposes the following drafting;

i. The abbreviation for National Employment standards 'NES' is retained. The abbreviation should be included in the definition, as it is used in other parts of the GRIA; and

ii. the reference to s 59 of the Act is reinstated for the definition to remain consistent with the GRIA and to provide direct reference to the purpose of the NES; and

iii. the SDA propose that following extract from s 59 is reproduced from *the Act* to precede extract from s 61 in the exposure draft:

> The National Employment Standards are minimum standards that apply to the employment of national system employees. Part 2-1 (which deals with the core provisions for this Chapter) contains the obligation for employers to comply with the National Employment Standards (see section 44).
>
> The National Employment Standards also underpin what can be included in modern awards and enterprise agreements. Part 2-1 provides that the National Employment Standards cannot be excluded by modern awards or enterprise agreements, and contains other provisions about the interaction between the National Employment Standards and modern awards.

Definitions - 'rostered day off

19. A new definition 'rostered day off' has been inserted into exposure draft in clause 2 as: 'means a continuous 24 hour period between the end of the last ordinary shift, and the start of the next ordinary shift, on which an employee is rostered for duty.'

20. Under the exposure draft the meaning of the term 'rostered day off' is inconsistent with the the GRIA, particularly in relation to clause 28.2 (d). Clause 28.2 deals with full time employees having a fixed day off in a 4-week cycle, also referred to as a 'rostered day off (RDO)'.

21. The definition of 'rostered day off' in the exposure draft is a substantive change. The introduction of this definition interferes with the operation of overtime provisions which will change the legal effect of the GRIA.

22. The SDA does not support the insertion of the definition for 'rostered day off' into the exposure draft.

Definitions - 'standard rate'

23. The definition for **'standard rate'** in the GRIA 'means the minimum weekly wage for a Retail Employee Level 4 in clause 17 Minimum Weekly Wages. Where an allowance is provided for on an hourly basis, a reference to standard rate means 1/38th of the weekly wage referred to above.'
24. The definition has been removed from the exposure draft and replaced in clause 2 with definitions for 'standard hourly rate' and standard weekly rate'.
25. The definition is inconsistent with the meaning of 'standard rate' in the GRIA. This is a substantive change as the new definitions remove reference to the method for calculating an allowance as a percentage of the weekly wage for Retail Employee Level 4.
26. The SDA propose that definition 'standard rate' is reinserted.

The National Employment Standards and this award

27. Clause 3 of the exposure draft varies existing GRIA clause 2.

28. The current award at clause 2 states; 'The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, <u>whichever makes them more accessible</u>. (emphasis added)'

29. The phrase 'whichever makes them more accessible' has been removed which has the effect of giving the employer a choice of how copies of the NES and the Award are made available to employees. The GRIA clause is constructed to ensure that the most accessible means is adopted.

30. The SDA propose that clause 3.3 is amended to include the phrase 'whichever makes them more accessible'.

Coverage

31. Clause 4.6 of the GRIA has been varied and moved to clause 4.2 (b) of the exposure draft.

32. Clause 4.2 (b) removes the phrase 'hosted by a company to perform work at a location where the activities described herein are being performed'

33. The SDA propose that the reference to 'perform at a location' be retained to ensure the definition consistent with the GRIA.

Award flexibility

34. Clause 6 'Individual flexibility arrangements' is renamed 'Award flexibility' and moved to clause 7 of the exposure draft. The SDA relies on its submissions made in relation to Award Flexibility as part of matter AM2016/2015 4 yearly review of modern awards – Plain language – standard clauses. Further submissions in relation to this matter are due on 9 August 2017, with a hearing set for 21 August.[3]

Facilitative provisions for flexible working practices

35. A new clause and table is inserted at clause 7 of the exposure draft:

36. The SDA propose the insertion of a new column ***'Employment category'*** in ***Table 1—Facilitative provisions*** to indicate which category of employee the facilitative provisions apply to. This proposal will enhance the readers understanding of the application of each provision.

37. It is also recommended that the following clause is added to ensure that the employee is provided with a copy of any agreement with their employer, where a variation is made.

Types of employment

38. GRIA Clause 12.10 'Conversion of existing employees' has been varied and moved to exposure draft clause 8.3.

39. The SDA propose that the clause is redrafted to align with the GRIA, which clearly sets out protective mechanisms which prevent an employee from converting to another type of employment without their consent first being obtained by the employer.

40. The SDA propose that clause 8.3 is redrafted as follows:

> 8.3 Moving between types of employment
>
> **(a)** A full-time or casual employee must not be moved to part-time employment by their employer without the employee's written consent.
>
> **(b)** Moving to part-time employment does not affect the continuity of any leave entitlements.

[3] Statement, 4 yearly review of modern awards – Plain language – standard clauses (AM201/15) [2017] FWCFB 3745

(c) A full-time employee:

(i) may request to become a part-time employee; and

(ii) if the request is granted by the employer;

(iii) may move back to full-time employment at a specified date in the future that is agreed in writing with the employer.

Part-time employment

41. GRIA clause 12.1 has been varied and moved to clause 10.1 of the exposure draft.

42. The varied clause introduces the concept of 'an average of 38 ordinary hours' which is not contained in the GRIA. This is a substantive change to the legal effect of the Award. It also unclear what period 'for fewer than an average' pertains to.

43. The insertion of the word 'ordinary hours' into the clause is also inconsistent with part-time employment for shiftworkers who work outside the span of' ordinary hours'.

44. GRIA clause 12 is simple and easy to understand and should be retained. The SDA does not support the insertion of the exposure draft clause 10.1 as it is substantive change.

45. GRIA clause 12.2 has been varied and moved to clause 10.5 and clause 10.9 of the exposure draft.

46. GRIA clause 12.2 is:

> 12.2 At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:
>
> - the hours worked each day;
> - which days of the week the employee will work;
> - the actual starting and finishing times of each day;
> - that any variation will be in writing;
> - minimum daily engagement is three hours; and
> - the times of taking and the duration of meal breaks.

47. The phrase 'regular pattern of work' has been removed from the exposure draft. This phrase is fundamental to the characteristic and nature of part-time employment, that which distinguishes it from casual employment. This change is substantive and changes the legal effect of the Award.

48. The phrase 'minimum daily engagement is three hours' has been removed from the exposure draft. This is a substantive change which removes the 'minimum daily engagement' from part-time employment which has the effect of allowing part-time employees to be engaged on more than one occasion per day. The GRIA does not permit this.

49. Clause 10.5 also removes the right of a part time employee to be notified of a 'minimum daily engagement' by the employer on securing part time employment.

50. Exposure draft clause 10.9 provides that *'An employer must roster a part-time employee on any shift for a minimum of 3 consecutive hours'.* Again, the reference to daily engagement is missing. The GRIA provides that 'minimum **daily engagement** is three hours (emphasis added)' at clause 12.2.

51. The phrase at GRIA clause 12.2, bullet point 4 'that any variation will be in writing' has been removed from the exposure draft clause 10.5. The bullet point 'that any variation will be in writing' is <u>not</u> reflected and <u>should</u> be reflected at 10.5 as a new 10.5 (f). The exposure draft clause removes the right of a part time employee to be notified of the requirements for varying their regular pattern of work on securing part time employment. It is important that an employee knows that the only way their working arrangements can be varied is in writing. The reader is not aided in understanding and applying the award by having to cross reference clause 10.6 and 10.7.

52. The SDA does not support exposure draft clause 10.5 and clause 10.7. The SDA propose the following:

> 10.5 At the time of engagement, the employer must agree in writing with the employee on a regular pattern of work, that includes all of the following:
>
> (a) the number of hours to be worked each day; and
> (b) the days of the week on which the employee will work; and
> (c) the times at which the employee will start and finish work each day; and
> (d) that the minimum daily engagement is 3 hours; and
> (e) when meal breaks may be taken and their duration; and
> (f) any variation agreed by the employer and the employee to any of the matters mentioned in this clause 10.5(a) to 10.5(e) must be in writing and may be of a temporary or permanent nature; and
> (g) The employer must keep a copy of any agreement under this clause, and any variation of it, and give another copy to the employee

53. GRIA clause 12.3 and 12.4 have been removed and varied from the exposure draft.

54. The 'regular pattern of work', as discussed at paragraph 47 is an identifying and necessary feature of part time employment under the GRIA. The deletion of GRIA clause 12.3 and 12.4 is a substantive change. The clauses differ from GRIA 12.2 which deals with the point of engagement of a part-time employee. The purposes of GRIA clause 12.3 and 12.4 go to an employee is engaged already as a part-time employee with a regular pattern of work. Part-

time retail workers covered by this award include women and students who have other responsibilities and commitments to manage outside of work. For example, a variation to a 'regular pattern of work' from days to evenings may necessitate a change to an employee's childcare arrangements which can cause significant disruption to the lives of that employee and their family. It is important that any change to a 'regular pattern of work' is agreed in writing and provided to the employee prior to any change.

55. The SDA does not support the removal of clause 12.3 and 12.4 and proposes that the following clause is re-inserted after exposure draft clause 10.5

> Any agreement to vary the regular pattern of work must be made in writing before the variation occurs.
>
> The agreement and variation must be retained by the employer and a copy given by the employer to the employee.

56. GRIA clause 12.6 has been has been removed from the exposure draft:

> 12.6 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.

57. Clause 12.6 clearly prescribes how an employee who does not meet criteria set out under full time or part time employment, is deemed to be casual employee and paid at the rate. GRIA clause 12.6 operates as a mechanism to safeguard employees from being underpaid in circumstances where they are working on an hourly basis, without a regular and agreed pattern of work, and not receiving casual wages. This provision provides clarity as to the categories of employment upon which an employee can be engaged, i.e. they are either a full-time, part-time or casual employee

58. The SDA does not support the removal of clause 12.6 and seek that it be reinstated as 'An employee who does not meet the definition of a part-time employee and who is not a full-time employee must be paid by the employer as a casual employee under clause XX'

59. GRIA clause 12.7 has been varied and moved to clause 10.8 of the exposure draft.

60. Exposure draft clause 10.8 removes important information which provides instruction for the employer on how a part-time employee must be paid by reference to the weekly wage rate.

61. The variation to the second sentence of clause 10.8 changes the legal effect of when overtime would be paid, as the GRIA states overtime must be paid for 'All time worked in excess of the hours as agreed' rather than 'For each hour worked in excess of the number of

ordinary hours agreed' at clause 10.8. Under draft clause 10.8 a part-time employee's entitlement to overtime may be reduced to 'for each hour' rather than the greater 'for all time'. This variation maybe read as reduction in a part-time employee's entitlement to be paid overtime if they have worked less than an hour in excess of agreed hours.

62. Clause 10.8 also adds the term 'ordinary hours' for which there is no explicit definition under the GRIA or the exposure draft. The reference to 'ordinary hours' also introduces confusion as to how the provision may apply to part-time shiftworkers who work outside the span of hours.

63. The heading for GRIA clause 12.8 "Rosters' has been deleted and the sub clauses has been moved to clauses 10.10, 10.11 and 10.12 of the exposure draft.

64. The deletion of the subheading 'Rosters' needs to be looked at in the context of other rostering provisions located elsewhere in the award, including in the exposure draft at 15.7, 15.8, 15.9, 15.10 and 15.11. A subheading 'Rosters' assists the reader easily locate all rostering provisions relevant to them. Consideration should be given to the merits of relocating clauses 10.10, 10.11 and 10.12 to sit under clause 15 within the exposure draft. This would locate all rostering provisions together.

65. Clause 10.11 includes the term 'mutual agreement' which is also contained in clause 15.11 but drafted as 'may be changed by mutual agreement by the employer and employee', rather than 'may be changed… by the employer and employee by mutual agreement', which is consistent with the wording in clause 12.8 (b). The GRIA wording is preferred as it is clearer.

66. Clause 12.8 (a) is a substantive change in relation to the frequency of roster changes permitted under the GRIA, The GRIA states rosters must not be changed from week to week or fortnight to fortnight, not linked to pay periods. The effect of this variation means that an employee with a fortnightly pay period may still be subject to a change from week to week, which is not permitted.

67. The SDA position in relation to exposure draft clause 12.8 is as follows:

    i. The subheading 'Rosters' should be reinstated to precede 10.10, 10.11 and 10.12 if they are retained within clause 10; or

    ii. The exposure draft should be varied to relocate clauses 10.10, 10.11 and 10.12 to sit under clause 15, under subheading 'Rosters – part-time employees' providing this of variation is an improvement to the overall structure of the Award.

iii. The SDA does not support the drafting of the clause 10.11 and propose the following variation:

> 10.11 The roster of a part-time employee, including the number of hours agreed under clause 10.5, may be changed at any time by the employer and employee by mutual agreement'

iv. The SDA does not support the drafting of the clause 10.12 and propose the following variation:

> 10.12 However, the roster of a part-time employee must not be changed:
> (a) from week to week, or fortnight to fortnight; or
> (b) so as to avoid any award entitlement.

Casual employment

68. GRIA clause 13.2 has been varied and moved to exposure draft clause 11.2.

69. The wording of draft clause 11.2 provides an incomplete reference to all the rates to which a casual loading is payable.

70. The SDA propose reinsertion of GRIA clause 13.2.

71. GRIA clause 13.3 has been varied and moved to exposure draft clause 11.5.

72. Exposure draft clause 11.5 states that 'unless the employer and the employee have agreed that the pay period of the employee is either weekly or fortnightly' compared with the GRIA which stipulates that casual pay arrangements are in accordance 'with pay arrangements for full-time and part-time employees. The draft clauses introduces pay arrangements by individual agreement between a casual employee and the employer, which is not contemplated by the GRIA which prescribes default pay arrangements.

73. The SDA proposes the following:

> 11.5 An employer must pay a casual employee at the end of each engagement or weekly or fortnightly in accordance with pay arrangements for full-time and part-time employees.

74. GRIA clause 13.4 has been varied and replaced with exposure draft clause 11.3 and 11.4:

> 11.3 An employer must pay a casual employee for a minimum of 3 hours' work, or 1.5 hours' work in the circumstances set out in clause 11.4, on each occasion on which the casual employee is rostered to attend work even if the employee works for a shorter time.
>
> 11.4 The circumstances are:
>
> (a) the employee is a full-time secondary school student; and

(b) the employee is engaged to work between 3:00 pm and 6:30 pm on a day on which the employee is required to attend school; and

(c) the employee, with the approval of the employee's parent or guardian, agrees to work for fewer than 3 hours; and

(d) employment for a longer period than the agreed period is not possible either because of the operational requirements of the employer or the unavailability of the employee.

75. GRIA clause 13.4 is:

> 13.4 The minimum daily engagement of a casual is three hours, provided that the minimum engagement period for an employee will be one hour and 30 minutes if all of the following circumstances apply:
> (a) the employee is a full-time secondary school student; and
> (b) the employee is engaged to work between the hours of 3.00 pm and 6.30 pm on a day which they are required to attend school; and
> (c) the employee agrees to work, and a parent or guardian of the employee agrees to allow the employee to work, a shorter period than three hours; and
> (d) employment for a longer period than the period of the engagement is not possible either because of the operational requirements of the employer or the unavailability of the employee.

76. The proposed variations to GRIA clause 13.4 are substantive and the reader is not aided by the plain language redraft of clause 11.3 and 11.4.

77. It is not made clear that the clauses 11.3 and 11.4 should be read together.

78. The reference to a minimum daily engagement of 3 hours for casual employees has been removed. As stated at paragraph 47 in relation to part-time employment, this is a substantive change.

79. The SDA does not support the insertion of clauses 11.3 and 11.4. GRIA clause 13.4 should be retained.

Junior employees

80. A new note is inserted at exposure draft clause 13: 'NOTE: Junior employee is defined in clause 2—Definitions.'

81. For reasons stated in paragraph 10 of this submission the SDA does not support the insertion of the definition for 'junior employee' and the corresponding 'note' under clause 13.

82. A new clause is inserted at exposure draft clause 13.3:

13.3 An employer may at any time demand that a junior employee produce a birth certificate or other satisfactory proof of age. If the employer demands a birth certificate, the employer must pay the cost of obtaining the certificate.

83. Clause 13.3 is a substantive change to GRIA. It is not contemplated in the *Guidelines* that an entirely new clause be introduced into an award as part of the drafting process which in this instance, would change the legal effect of the GRIA. For example, it is unclear what rights an employee has where they have already provided proof of age to their employer at the point of engagement and, upon a subsequent request for proof of age, they refuse on reasonable grounds to produce it again. This is a substantive change.

84. The SDA does not support introduction of new exposure draft clause 13.3.

Classifications

85. GRIA clause 14.2 has been varied and moved to exposure draft clause 16.2.

86. The phrase 'as determined by the employer' has been removed from exposure draft, the SDA propose that it is reinserted.

Hours of work

87. GRIA clause 27.2 has been varied and moved to exposure draft clauses 15.1, 15.2, and 15.3.

88. There is an issue with the drafting in relation to the use of terms such as 'span of hours', 'spread of hours' and 'ordinary hours'. This issue is highlighted in GRIA clause 27.2 (c) 'hours of work of on any day will be continuous…'. Yet, exposure clause 15.1 changes 'hours of work' to 'ordinary hours of work', this has a fundamental impact on the meaning as work inside the 'span of hours' or outside the 'span of hours 'must still be continuous. Consistency of terminology is particularly important.

89. The word 'ordinary' has been added and the phrase 'on any day' has been removed from exposure draft clause 15.3, which replaces GRIA clause 27.2(c). This is a substantive change as the GRIA does not contemplate more than one continuous shift on any day.

90. The SDA propose the following:

i. That there is consistency of language adopted through the draft in relation to 'spread of hours', 'span of hours', 'hours of work' and 'ordinary hours'; and

ii. The SDA oppose the insertion of exposure draft clause 15.3. Clause 27.2 (c) should be reinstated as follows:

> 15.3 Hours of work on any day will be continuous, except for rest pauses and meal breaks as specified in clause 16—Breaks.

Full time employees

91. GRIA clause 28, '38 Hour week rosters' is varied and replaced with exposure draft clause 15.6 'Full-time employees'.

92. GRIA clause 28.5 has been moved to exposure draft clause 15.7 (e) under 'Rosters (Full-time and part-time employees)'.
93. The variation is a substantive change to the GRIA, as the provision only has application to rostering of full time employees and not part-time employees. The phrase 'unless specific agreement exists to the contrary between an employer and an employee' has been removed. This deletion reduces the flexibility for the employer and employee to agree to a different arrangement. The wording in the GRIA is also precise in defining that it is 19 days 'in each four week cycle' rather than 'per cycle' in clause 15.7 (e).
94. The SDA does not support the insertion of clause 15.7 (e). Clause 28.5 should be reinstated under 15.6 *Full-time employees* as follows:

> In an establishment at which at least 15 employees are employed per week on a regular basis, the employee will not be required to work ordinary hours on more than 19 days in each 4 week cycle, unless specific agreement exists to the contrary between an employer and an employee.

95. GRIA clause 28.6 has been moved to exposure draft clause 15.7 (b) under Rosters (Full-time and part-time employees).
96. The variation is a substantive change to the GRIA, as the provision only has application to rostering of full time employees and not part-time employees .
97. The SDA does not support the insertion of clause 15.7 (b). Clause 28.6 should be reinstated under 15.6 Full-time employees.

Substitute rostered days off

98. GRIA clause 28.7 has been varied and moved from under clause 28 ;38 Hour Week Rosters; to exposure draft clause 15.8.
99. The variation to GRIA clause 28.7 is substantive as the GRIA clause has no application at present to part time employees, and it should sit directly under clause 28 '38 Hour Week Rosters'. Further, the exposure draft introduces confusion in relation to the concepts of non-working or non-rostered days for a part time employee and a rostered day off (RDO), An RDO is a well-established method of working a 38 hour week which enables a full-

time employee to take a fixed or rotating day off each in a 4 week cycle or an accumulating day off in a 4 week cycle as per GRIA clause 28.2.

100. The SDA does not support the insertion of exposure draft clause 15.8. GRIA clause 28.7 'Substitute rostered days off (RDOs)' should be reinstated under provisions for full time employees in clause 15.6 of the exposure draft.

Accumulation of RDO's

101. GRIA clause 28.8 has been varied and moved from under clause 28 '38 Hour Week Rosters' to exposure draft clause 15.9

102. The variation to GRIA clause 28.8 is substantive as currently it has no application to part time employees. This clause does not and should not have application to part-time employment.

103. The SDA does not support the insertion of exposure draft clause 15.9. GRIA clause 28.7 Substitute rostered days off (RDOs) should be reinstated under provisions for full time employees in clause 15.6 of the exposure draft.

104. GRIA clause 28.9 has been varied and moved to exposure draft clause cl 15.7 (a) under **"**Rosters (Full-time and part-time employees)'.

105. GRIA clause 28.9 is: 'A roster period cannot exceed 4 weeks.'

106. While this clause sits more relevantly under clause 15.7 it is a substantive change. as it is not clear that this exception has limited application to full time employees only.

107. The SDA propose the clause is redrafted as follows as follows:

> 'A roster period cannot exceed 4 weeks. A longer roster period is only permitted in accordance with clause 15.6 (g) (v) where the full-time employee and their employer have agreed to this arrangement.'

108. GRIA clause 28.10 has been moved to exposure draft clause 15.7 (c) and (d) and is varied.

109. The varied clauses do not make clear there is a default rostering arrangements of 5 days in each week. Further, the cross referencing between clauses in section 15.7 makes the document less accessible to the reader as they are constantly required to navigate back and forth.

110. The SDA does not support the insertion of clauses 15.7 (c) and (d) and suggests that the exposure draft clause 15.7 (a) is redrafted as follows:

> 'Ordinary hours must be worked over no more than 5 days in each week, provided that if ordinary hours are worked over 6 days in one week, ordinary hours in the following week will be worked over no more than 4 days.'

Consecutive days off

111. GRIA clause 28.11 (a) – (c) has been varied and moved to exposure draft clause 15.7 (g) -(k).

112. The exposure draft clauses make the provision more difficult for the reader due to the amount of cross referencing that is required to understand the entitlement for full time and part-time employees have to be rostered off. This is an important provision as it ensures both the employer and employee understand that time off from work must be given in a meaningful way to allow employees to time to recover, rest and enjoy recreational or other pursuits outside of work.

113. The SDA does not support the insertion of exposure draft clause 15.7 (g) -(k). GRIA clause *28.11 Consecutive days off (a) – (c)* should be retained including the sub-heading, under exposure clause 15.7.

Employees regularly working Sundays

114. GRIA clause 28.13 (a) – (c) has been varied and moved to exposure draft clause 15.10(a)-(e).

115. The exposure draft clause is a substantive change to the GRIA provision as the ability to vary the agreement is given more weight rather than the absolute obligation of an employer to roster days of to include a Saturday and Sunday.

116. The SDA does not support the insertion of exposure draft clause 15.10. GRIA clause 28.13 should be reinstated.

Notification of rosters

117. GRIA clause 28.14 (a) has been varied and moved to exposure draft clause 15.11.

118. Variations made to the exposure draft clause have the effect of changing the meaning and application of the current provision. At 15.11 (a) The phrase 'will exhibit' has been replaced with 'is available' which is less accessible to an employee when GRIA clause 28.11 (a). The GRIA clause is constructed to oblige employers to exhibit the rosters and ensure it is available to all employees. Additions have been made to the exposure draft not currently contemplated in the GRIA 'either on a notice board which is conveniently located at or near the workplace or through accessible electronic means'

119. The SDA does not support the insertion of exposure draft clause 15.11 (a). GRIA clause 28.11(a) should be reinstated.

120. GRIA clause 28.14 (d) has been moved to exposure draft clause 15.11 (d) and is varied.

121. The GRIA clause obliges both parties to have discussions aimed at resolving any dispute in regards to a roster change. The removal of this mutual obligation changes the effect of the clause.

122. The SDA does not support the insertion of exposure draft clause and note at 15.11 (d). GRIA clause 28.14 (d) should be reinstated.

123. GRIA clause 28.14 (f) has been removed from the exposure draft; the clause is:

> An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.

124. This clause provides significant protection for employees in the event their roster is changed in such a way as to avoid them receiving or enjoying a benefit under this award. The SDA note that while exposure draft clause 10.12 does provide a similar protection in for part time employees, it excludes full time employees.

125. The SDA oppose the deletion of cause GRIA clause 28.14 (f). The clause should be reinstated in the exposure draft under clause 15.

Breaks

126. GRIA clause 31) has been moved to exposure draft clause 16.

127. It is suggested that the table would be improved if a third column is added so the entitlement to both rest breaks and meal breaks per shift is easier to reference.

Minimum weekly wages

128. The Minimum weekly wages table in GRIA clause 18 has been varied and moved to exposure draft clause 17.

129. The SDA suggests that the following amendments ensure the table provides a complete, precise and accurate summary of the minimum rates that may apply:

i. Insert the phrase 'at least' in clause 18.1 so the clause will read

> An employer must pay an adult employee (other than an apprentice) **'at least'** the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 3—Minimum rates.

ii. NOTE 1: Adult employee is defined in clause 2—Definitions. As per submissions at paragraph 10 and 11, The SDA does not support the use of the definition as provided at exposure draft clause 2.

130. Insert additional notes:

NOTE 4 cl x Overtime sets out rates of pay for overtime when overtime applies.

NOTE 5 Cl x Penalty rates sets out rates of pay when penalty should apply

NOTE 6 Cl x Public Holidays sets out rates of pay for work on Public Holidays

Junior rates

131. In line with SDA earlier submissions regarding the definition of junior employee and the impact this definition has on clause 18, the reference should be removed.

Higher duties

132. GRIA clause 20.12 has been varied and moved to exposure draft clause 19 'Higher duties',

133. The SDA propose the following variations to clause 19 to ensure consistency with the GRIA;

i. that the word 'minimum' is deleted from clauses 19.1 and 19.2; and

ii. in line with submissions at paragraph 128-130 the Minimum rates table is updated to include references to all rates that may apply, including penalty rates.

Allowances

134. GRIA clause 20.1 Meal allowance has been varied and moved to exposure draft clause 23.2.

135. Exposure draft clause 23.2 (ii) includes the following provision 'the employee was not advised of that requirement on or before the previous day' compared with the GRIA which refers to the notice period 'without being given 24 hours' notice.' The SDA substantive does not support this substantive change as it reduces the notice period from 24 hours, to the night before.

136. GRIA clause 20.2 Special clothing has been varied and moved to exposure draft clause 23.3.

137. The SDA does not support this substantive change which limits the definition of special clothing by removing any reference to uniform. The GRIA clause 20.2 should be reinstated.

138. GRIA clause 20.6 'Transfer of employee reimbursement' has been moved to exposure draft clause 23.6, and varied.

139. The exposure draft notes that 'The term 'township' in clause 23.6 requires a definition or replacement with a more precise expression to clarify the effect of the provision.' The use of the term township is common to Awards that cover employees in the industries where the SDA has members. Other Awards such as the Manufacturing

Award and the Cement and Lime Award refer to a transfer requiring 'change of residence' to identify the scope of the clause.

140. The SDA supports the notion that a transfer from one township to another which requires a change in the residence of the employee would trigger the payment of moving expenses.

141. In relation to the use of the term 'family'. The SDA submits that this should be in line with the NES, including members of the employee's household.

Overtime

142. GRIA clause 29.1 Overtime has been varied and moved to exposure draft clause 25.

143. The SDA relies on its submissions in relation to matters AM2014/196 and AM2014/197. The SDA does not support the proposed variation and requests the current GRIA clause is reinstated in the exposure draft.

144. GRIA clause 29.2 *Overtime* has been moved to exposure draft clause 25.1 and 25.2 and varied.

145. The Overtime provision must be drafted with precision to ensure the reader is clear at which points overtime rates must be paid to full time, part -time and casual employees.

146. The exposure draft clause does not accurately reflect the current entitlements to overtime payments contained in the GRIA, including but not limited to clause 27.3 Maximum hours on a day, clause 27.2 (c) Continuous hours, clause 28.11 Consecutive days clause 31.2 Break between work periods or the entitlements.

147. The clause should be drafted after all exposure draft rostering provisions are determined to ensure that referencing from this clause is accurate.

148. The clause should be e-drafted to include each employment type, full time, part -time and casual employees to ensure that referencing from this clause is accurate and simple for the reader, particularly employers and employees.

149. The clause should include a reference to exposure draft 'Part 3 Hours of Work', in relation to the 'span of hours', and any reference to 'ordinary hours' as per submissions under 'Hours of work'.

150. GRIA clause 29.2 (d) has also been removed which is a substantive change which impacts on how overtime is calculated under the Award which currently is 'on a daily basis'.

151. The SDA does not support the insertion of the exposure draft clause 25.2, the GRIA clause should be reinstated.

Penalty rates

152. GRIA clause 29.4 'Penalty payments' has been varied and moved to exposure draft clause 26 'Penalty rates'.

153. The exposure draft in clause 26.1 is new, and introduces some ambiguity as to when overtime rather than penalty rates should apply. The statement 'Clause 26 sets out penalty rates for hours worked at specified times or on specified days that are not required to be paid at the overtime rate mentioned in clause 25.2—Overtime rate.' is not precises, as, for example an employee who works a shift outside the span of hours, but with less than a 12 hour break between starting and finishing work the previous day, under GRIA clause 31.2 must be paid overtime rates.

154. This clause does not meet the objectives set by the Guidelines to make the Award simple and easy to understand. Penalty rates are of critical importance to retail employees.

155. The SDA does not support the insertion of exposure draft clause 26 Penalty rates. GRIA clause should be reinstated.

156. In relation to Public Holidays, the SDA do not support the exposure draft provision and rely on our submissions in AM2014/301.