



Fair Work Commission

Award Review 2014

General Retail Award 2010

AM2016/15, AM2014/270

**Further submissions- Plain language re-drafting - *General Retail Industry Award 2010* -
revised plain language exposure draft**

Shop Distributive and Allied Employees' Association

10 November 2017

1. The Shop Distributive and Allied Employees' Association ('SDA') makes these further submissions on the re-drafting of the *General Retail Industry Award 2010* ('GRIA') – revised plain language exposure draft in accordance with the Statement issued by Justice Ross on 27 October 2017.
2. The SDA relies on its submissions of 4 August, 17 August, 21 September and oral submissions made on 26 October 2017 in relation to this matter.
3. These further submissions will deal with the following matters:
 - a. issues that the SDA has identified in relation to the status of the matters discussed at conference
 - b. the SDA's position in respect of Items 24, 26, 34, 44, 45, 49, 62, 63 and 67; and
 - c. any other relevant matters arising from changes made to the revised plain language exposure draft '(Revised PLED)' re-published on 1 November 2017.

Item 24 – Part time employment

4. The SDA does not support the wording proposed at Revised PLED clause 10.6. This is a substantive change. The words used in the GRIA 12.2 and 12.3 clearly state that any agreement or variation to it 'will' not 'may' be in writing.
5. The SDA does not support the wording proposed at Revised PLED clause 10.7. The clause should reference clause 10.6 to read '...and any variation of it under 10.6, and give another copy to the employee' in accordance with GRIA clause 12.2 and 12.4
6. The SDA relies on its previous submissions in relation to the use of the term 'ordinary' throughout the Revised PLED, including at Revised PLED 10.1. Shift workers under the GRIA do not work ordinary hours per se and may still be part-time employees.

Item 26 & Item 30 - Part time employment

7. The SDA does not support the wording proposed at Revised PLED clause 10.10 (a) - (c). The Revised PLED is substantive change from GRIA clause 12.8 (a)- (c).

8. Revised PLED clause 10.10 (a) does not consider variations made under clause 10.6 and should be amended to ensure that the Revised PLED remains consistent with the corresponding GRIA provisions.
9. Revised PLED clause 10(b) is a substantive change that is not agreed by the SDA for the following reasons:
 - a. GRIA clauses 12.8 (b) is plain and unambiguous in its meaning and effect.
 - b. GRIA clause 12.8 (b) only contemplates 'roster' changes by 'mutual agreement' **not** 'changes to agreed hours' as proposed by Revised PLED clause 10(b); and
 - c. The proposed change increases the likelihood of disputation in relation to changes to part time contracts (hours of work) including in relation to the calculation of redundancy entitlements.
10. The SDA does not support the Revised PLED clause 10 (c) as it is a substantive change. GRIA clause 12.8 (c) should be retained in its entirety. The note referencing Revised PLED clause 15 (g) is not helpful as it has also been subject to a substantive change from GRIA clause 28.14. The SDA also does not support the Revised PLED clause 15 (g) and presses for the retention of GRIA clause 28.14.

Items 33, 34 – Casual employment

11. The SDA has further considered Revised PLED clause 11.1 and does not support it as it is a substantive change from GRIA clause 13.2. The 'hourly rate payable to a full-time employee' as stated in the GRIA is not the same as the 'minimum hourly rate' as per the Revised PLED. The wording from GRIA clause 13.2 must be retained to ensure there is no substantive change to how the casual base rate of pay is determined.
12. The SDA presses for inclusion of an additional note that sets out "Overtime applicable to casuals are set out in Table 10 Overtime Rates"

Items 40-45 – Hours of Work

13. The SDA does not support the wording proposed at Revised PLED clause 15.3. This is a substantive change. The words used in the GRIA 27.2 (c) clearly states that 'ordinary hours of work **on any day** will be continuous'. The Revised PLED omits the

words 'on any day' which changes the meaning of the provision as it may be read as contemplating the possibility of a split shift being worked on any day which the GRIA clearly does not.

14. The SDA has several concerns with the Revised PLED clause 15.7 as follows:

- a. The SDA does not support the removal from the Revised PLED of subheading in GRIA clause 28.11 "Consecutive Days off" which is an important provision both Employers and Employees need to consider when rostering work. Where consecutive days off are not rostered in accordance with this provision overtime rates may apply.
- b. Revised PLED clauses 15.7 (f), (g) (h) are unnecessarily complex and difficult to interpret when compared with the GRIA clauses 28.11 (b), 28.13 (b) and 28.13 (c). A reader of a plain language Award should not have to jump back and forth between clauses to understand their meaning of the Award and how to apply it.
- c. GRIA clauses 28.11 (b), 28.13 (b) and 28.13 (c) are clear and unambiguous in their meaning, easy to read and should be retained.
- d. Revised PLED clause 15.7 (b) and 15.7 (c) are consistent with the GRIA, however there appears to be an error Revised PLED clause 15.7 (e) should be 15.7 (d).

15. The SDA does not support the changes at 'Revised PLED clause 15.7 (j) which s deletes 'worked' and replaces it with 'scheduled'. 'Worked' consistently used throughout the GRIA including at clause 28.12. The phrase 'reasonable additional hours' in GRIA clause 28.12 has been deleted and replaced with 'overtime' in the Revised PLED. This is a substantive change which creates additional concerns regarding overtime. Reasonable additional hours is supposed to refer to part-time additional hours not overtime. Overtime can be worked on a 7th day.

16. The SDA does not support Revised PLED clause 15.7 (j) which deletes the GRIA phrase 'reasonable additional hours' and replaces it with overtime. The words 'reasonable additional hours' as per GRIA clause 28.12 should be reinserted. The removal of GRIA 29.1 is a further substantive change that impacts on the reading of this provision.

17. The SDA does not support Revised PLED clause 15.9 (c). For consistency with the GRIA clause 28.14 (d) and Revised PLED clause 15.9 (a), Revised PLED clause 15.9 (c) the clause should at least refer to 'completed work roster'.
18. The SDA does not support Revised PLED clause 15.9 (e). For consistency with the GRIA clause 28.14 (c) should only refer to 'permanent roster changes' or must be considered as substantive change.
19. GRIA clause 28.14 (d) has been removed in part and replaced with a note after 15.9 (e). This is substantive change which removes the obligation on parties to have discussions aimed at resolving roster disputes in accordance with the dispute resolution provision.
20. The SDA does not support Revised PLED clause 15.9 (f). This is substantive change from GRIA clause 28.14 (g) which does not and should not reference Revised PLED clause 15.9 (g). Further Revised PLED clause 15.11 is referenced in 15.9 (f) and does not exist in the Revised PLED.
21. The SDA does not support Revised PLED clause 15.9 (g). As stated above paragraph 10 of these submissions. This is a substantive change which removes the rate to be paid where rosters are changed with the intent described at 28.14 (f). GRIA clause 28.14 (f) should be retained

Item 56 - Breaks between work periods

22. Revised PLED clause 16.6 (b) should be read in the same way as GRIA clause 31.2 (b) 'that an employee will be paid double the rate they would be entitled to' which must be inclusive off all relevant penalties, overtime and loadings.

Item 57 - Minimum rates

23. The SDA relies on its previous submissions in relation to Revised PLED clause 18.1.

Item 62 – Allowances 'township' and 'appropriate rate'

24. The SDA position on 'township' as per GRIA clause 20.2 (Revised PLED 23.6) is that the provision should be read broadly to encompass a permanent or temporary change of location that requires the employee to move house.

25. The 'appropriate rate of pay' for the purposes of clause Revised PLED 21.11 should be the 'appropriate overtime rate'.

Item 63 – Reasonable overtime

26. The SDA relies on its previous submissions in relation to Revised PLED clause 29.1. In line with the provisional view of Justice Ross at conference on 19 September 2017, the clause should not have been removed. The SDA presses the reinstatement of GRIA clause 29.1. into the Revised PLED until the matter has been conclusively determined.

Item 65 - Overtime

27. The SDA does not support Revised PLED clause 25.1 (a) (i) and (ii) as it is a substantive change from GRIA clause 29.2 (a); for the following reasons:

- a. Revised PLED clause 25.1 (a) only refers only to full time employees.
- b. The GRIA clause 29.2 (a) applies to 'employees' which includes full-time, part-time and casual employees.
- c. Under the Revised PLED part-time and casual employees lose their existing entitlements to overtime that the GRIA clearly provides under clause 29.2.

28. For the reasons noted above, and as the SDA has previously submitted Revised PLED clause 25.1 (a) (i) and (ii) should be removed and GRIA clause 29.2 reinstated, subject to any determinations arising from AM/2014/196 or AM2014/197.

Item 67 – Penalty rates

29. In relation to the note under Revised PLED clause 26, the SDA's position remains that the words 'that are not required to be paid at the overtime rate mentioned in clause 25.2- Overtime rate' be deleted.