
Modern Awards Review 2023-24
(AM2023/21)

Submission cover sheet

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Modern Award Review Stream:

Arts and Culture:
Job Security:
Work and Care:
Usability of awards: X

Modern Awards Review 2023-24

AM2023/21

Making Award Easier to Use

SDA SUBMISSION

Date Submitted: 19 February 2024

Submitted by: Gerard Dwyer
National Secretary-Treasurer



Introduction

1. The Shop Distributive and Allied Employees' Association (**SDA**) is providing this submission to the Fair Work Commission (**FWC**) as part of a response to the FWC Modern Awards Review 2023-24 (**Awards Review**).
2. The SDA is one of Australia's largest trade unions with some 210,000 members working in a broad range of areas including retail, warehousing, online retailing, fast-food, hairdressing, beauty, pharmacy and modelling.
3. The majority of SDA members are low income, with 60% being women. Retail and food services are two of the three lowest industries for median weekly earnings. The retail industry employs one of the largest proportions of Australian workers, accounting for approximately 10% of the nation's workforce.
4. On the 15th Of September the President issued a statement regarding the Review process that the FWC will be conducting.¹
5. This is a submission in reply to the various submissions made in the "Making Awards Easier to Use" or Usability stream.

¹<https://www.fwc.gov.au/documents/resources/presidents-statement-modern-awards-review-2023-24-2023-09-15.pdf>

The Setting

6. In the President's Statement of 15th September² the following reference was made regarding the stream considering award usability/easier to use:

[10] The consideration in the review of the issue in paragraph [4] above will not involve any open-ended reconsideration of the terms of modern awards. The recently-completed 4 yearly review of modern awards involved a holistic review of the drafting of key modern awards, model award clauses, and award clauses relating to important common issues. The 4 yearly review was conducted in a way which encouraged interested parties to participate and resulted in a significant number of variations to modern awards. The comprehensive nature of the 4 yearly review process demanded considerable time and resources from both parties and the Commission itself. It is not intended that the Commission will engage in such a wide-ranging process for a second time.

7. The majority of the issues raised in the various submissions seeking change are based on matters that have been dealt with not only in the recently completed 4 yearly review of 2014, but also in the 2012 interim review.
8. Matters such as shift length for part time and casual employees, annual leave provisions and annualised salaries to name a few were all matters that were considered by Full Benches of the FWC in the 2014 Review.³
9. Some of these matters were also pursued in the interim Award review of 2012, argued during the making of the awards and followed up with various applications to vary the awards.
10. As such, these matters are outside the scope set out in the President's Statement for making awards easier. These submissions are a rehash of previous claims that have been dealt with extensively. The focus of parties for this review should be aimed at making an award easier for the user not for relitigating substantive claims. Reagitating matters of substantive change as part of this review could impact on the intent of the review which is to make Awards easier.
11. In relation to the General Retail Industry Award (GRIA), for which the SDA has significant interest, there has been continuous criticism that the Retail Award is too complex for retailers. This is not correct, rather a convenient line for employers to use to draw sympathy and to use as a basis for change to substantive entitlements.
12. The making of the GRIA was a fresh and radical change to the industrial coverage of the retail industry nationwide.

² Ibid PN 10

³Review 2014 matters: See for example AM 2016/13 (annualised salary), AM 2014/196 and 197 (Part time and casual employment), AM2014/47 annual leave

13. Prior to the GRIA 2010, each State and Territory jurisdiction had their own awards applying to the retail industry. As a starting point, this meant there were 8 awards applying in retail across Australia. Further, in each State/Territory there were multiple awards applying to different retail establishments.
14. For example, in a supermarket there would have been the retail award, a clerical award, butchers award, bakery award and cleaning services award. The main retail award would have covered the majority of workers in the supermarket, but the other awards would have applied to small cohorts (or even a single worker).
15. Each of these various awards either between States and Territories or within a State/Territory had little or no common provisions. This meant variations in the key conditions such as rostering, span of hours, junior rates, breaks, shiftwork (if it existed), and restrictions on work.
16. The argument raised in some submissions that the GRIA is complex and 'too hard' is a fabrication compared to the previous prevailing award situation.
17. The artifice argument of complexity due to too many specific individual wage rates is also an exaggeration.
18. The only way a retailer would use all and every single wage rate would need to:
 - (a) Operate 24 hr/7 day.
 - (b) Engage shiftworkers specifically
 - (c) Engage Bakery shiftworkers specifically
 - (d) Engage apprentices at all the year levels in both the 3 year and 4 year apprentice stream.
 - (e) Engage tradespersons
 - (f) Engage Level 1 workers
 - (g) Engage Level 2 workers
 - (h) Engage Level 3 workers
 - (i) Engage Level 4 workers
 - (j) Engage Level 5 workers
 - (k) Engage Level 6 workers
 - (l) Engage Level 7 workers
 - (m) Engage Level 8 workers.
 - (n) In each level 1 -3 and in each of the 24 hours engage:
 - 15 year old
 - 16 year old
 - 17 year old
 - 18 year old
 - 19 year old
 - 20 year old with less than 6 months experience
 - (o) And finally engage multiple workers on a supported wage arrangement.
19. It is highly unlikely there is any employer in retail who would apply all the wage rates. Large supermarkets are likely to have multiple wage rates applying, but there is no longer a small group of wages clerks manually applying rates by rosters by classifications. It is centralised, automated and computer driven.

20. Further the rates are now set out in wage tables in Awards and published by the FWC and the Fair Work Ombudsman. The rates adjusted by the annual wage review are published by the FWC and can be accessed automatically. In fact, employers can access the various rates in various file formats from the FWC.
21. Further the number of pay rates in GRIA would be commensurate with the number of pay rates in other broad encompassing awards such as those in manufacturing or construction.
22. The development of the GRIA was aimed at providing a one stop shop for retail, with one set of employment conditions applying nationwide and covering the various workers who work in retail. It was a broad approach, far reaching and a radical overhaul of the previous regime. This has removed much of the complexity that existed before and has resulted in a simplified set of minimum wages and conditions for the industry.

Circumvention Concerns

23. The vast majority of matters raised in the various submissions are not genuinely trying to make the Award easier. They are attempts to reduce or remove worker entitlements. A wolf in sheep's clothing is still a wolf.
24. The Statement⁴ of the President was clear in confining the scope of the review to identifying what can be done to make awards easier while not resulting in any reduction in entitlements.

[4] The Minister further states that he considers it critically important that the modern award system be easy to understand, stable, and sustainable, and encourages the use of the proposed review to identify what parties believe could be done to make awards easier to use. The Minister also notes the Government's view that **the review should not result in any reduction in entitlements for award-covered employees.** [emphasis added]

25. This review is not a vehicle to be used to change the substantive terms and conditions in the Award to reduce entitlements.
26. The review process is also not a vehicle to circumvent the requirements set out under the *Fair Work Act 2009* to vary an award.
27. A party seeking to make a substantive change to a term or condition of an Award must make an application and satisfy the requirements under the Act such as providing the reason for the variation and the evidence to support that. Under the requirements to vary an Award the FWC must conduct proceedings to address and consider an application fully and appropriately. This Award Review cannot be a shortcut to seek and implement substantive changes to award conditions.

⁴ *ibid*, PN 4

Possible Areas to Improve Usability

28. Some items mentioned in submissions of other parties which appear to be aimed at making awards easier to use could be usefully discussed as part of this review. This would include a discussion about the meaning and scope of 'in writing' and electronic recording as it is a matter raised across various awards and across varied conditions of employment.

29. The following are the specific award matters raised in submissions that the SDA considers are relevant to the Award Review and should be discussed in the consultations.

30. Fast Food Industry Award

(a) AiG

- Broken Hill Allowance alignment with GRIA wording.

31. General Retail Industry Award :

(a) MGA

- Alphabetical Index
- Include note and cross reference to the higher duties clause in Schedule A – classifications
- hyperlinking defined terms
- recall allowance- it's supposed implication for PT additional hours

(b) AWCC

- Issue of RDOs banked and not taken
- Apprentice rates cl 17.3 - Pre and post 2014, cl 28.3
- Rename to 'Leave Loading'

32. The SDA would also note there seems to be some contrary views as to the assistance of 'notes' and 'examples' in the Awards. Some parties wish to remove these as they make the awards longer whilst other parties wish to add further ones.

33. The SDA is a supporter of maintaining the current notes and examples. These provide guidance to workers and employers who do not regularly engage in award provisions and clearly provide the relevant reference to various legislation that interacts with an award.

34. The other issue is that has been raised is that there should be a consideration of a basic education and training program that is needed in either the industries that the 7 Awards cover or more generally. This could capture some base concepts of award terms.

35. The SDA will participate in the various consultations as timetabled and hope to provide assistance to the FWC in progressing this section of the review.

Appendix A: Rationale for SDA policy positions

Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system has seen inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But, there has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

