

Fair Work Act 2009

s. 156 – 4 yearly review of modern awards

Casual Employment and Part-time Employment

General Retail Industry Award 2010

Fast Food Industry Award 2010

Hair and Beauty Industry Award 2010

FURTHER SUBMISSIONS OF THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION

REGARDING DRAFT DETERMINATIONS

1. The Shop, Distributive and Allied Employees' Association ('SDA') refers to the decision [2017] FWCFB 6181 published on 24 November 2017 concerning casual and part-time employment issues and the Draft Determinations issued giving effect to the principal decision published on 5 July 2017 [2017] FWCFB 3541.
2. Pursuant to paragraph 20 of the decision the SDA makes the following further submissions concerning the form in which the Draft Determinations issued in respect of the *General Retail Industry Award 2010*, the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010* have been drafted.

General Retail Industry Award 2010

3. The SDA has reviewed the Draft Determination and supports the form in which it has been drafted with the two following exceptions / observations.
4. We suggest that paragraphs (f), (g) and (h) be renumbered (d), (e) and (f) accordingly.
5. We suggest that paragraph 29.2(c)(ii) be redrafted as follows:

“(ii) outside of the span of ordinary hours for each day specified in clause 27.2”

The effect of this amendment is to delete the reference to paragraph (a) and for the overtime entitlement to apply in all circumstances under clause 27.2.

6. On review, it would appear to the SDA that the proposed draft would currently have the effect of requiring the payment of overtime penalty rates of pay for casuals working outside the span of hours for most retail shops, i.e. those covered by paragraph 27.2(a) of the Award but would not take into account the 'wider' spread of hours for those covered by paragraph 27.2(b)(i) newsagencies (with an earlier start), paragraph 27.2(b)(ii) video shops (with a later finish) and paragraph 27.2(b)(iii) retailers whose trading hours extend beyond 9.00pm Monday to Friday or 6.00pm on Saturday or Sunday (which are entitled to a later finish).
7. The relevant clause 27.2 currently appears as follows:

27.2 Ordinary hours

(a) Except as provided in clause 27.2(b), ordinary hours may be worked, within the following spread of hours:

<i>Days</i>	<i>Spread of hours</i>
<i>Monday to Friday, inclusive</i>	<i>7.00 am–9.00 pm</i>
<i>Saturday</i>	<i>7.00 am–6.00 pm</i>
<i>Sunday</i>	<i>9.00 am–6.00 pm</i>

(b) Provided that:

- (i) the commencement time for ordinary hours of work for newsagencies on each day may be from 5.00 am;*
- (ii) the finishing time for ordinary hours for video shops may be until 12 midnight; and*
- (iii) (iii) in the case of retailers whose trading hours extend beyond 9.00 pm Monday to Friday or 6.00 pm on Saturday or Sunday, the finishing time for ordinary hours on all days of the week will be 11.00 pm.*

(c) Hours of work on any day will be continuous, except for rest pauses and meal breaks.

8. Without amendment we suggest that those specified retailers, which are entitled to these exceptions / 'wider' spans of ordinary hours, would be required to pay overtime penalty rates of pay at times when ordinary hours penalty rates would otherwise apply.
9. The SDA submits that this recommendation is a common sense amendment which will at a minimum eliminate confusion or at most remove the unintended consequence of some retailers, which meet the qualification criteria, paying overtime rates of pay to casuals when the Award currently provides for relevant penalties within the ordinary spread of hours.

Fast Food Industry Award 2010

10. The SDA has reviewed the Draft Determination and supports the form in which it has been drafted with the following exception.

11. We suggest that the proposed new clause 26.3(a) be redrafted as follows:

“(a) 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle;”

12. The effect of this amendment is to ensure that overtime rates of pay shall apply for work performed in excess of 38 hours on a weekly basis, unless the employer roster system in place for casuals which extends beyond the week, i.e. a two, three or four week cycle.

13. The SDA submits that this amendment is not only consistent with paragraph 676 of the principal decision, which provided:

“[676] For these reasons, we conclude that it is necessary to vary the awards to provide for overtime penalty rates to apply to casuals in order to meet the modern awards objective. In reaching this conclusion, we have taken into account all the matters specified in s.134(1), but we have placed particular weight on s.134(1)(da)(i), and we have also considered the effect of casual overtime rates on employment costs and the operation of businesses generally pursuant to s.134(1)(f). Each award should provide that casual employees should

*receive the same overtime penalty rates as full-time and part-time employees performed **in excess of 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle.** In respect of daily hours, the position should be as follows:*

(1) In the Retail Award, overtime penalty rates hours should apply to hours worked outside the span of hours for each day specified in clause 27.2(a), or for hours worked by in excess of 9 hours per day, provided that one day per week a casual employee may work 11 hours without attracting overtime penalty rates (consistent with clause 27.3).

(2) In the Fast Food Award, a casual employee should receive overtime penalty rates for hours worked in excess of 11 hours in a day, consistent with clause 25.3.

(3) In the Hair and Beauty Award, hours worked in excess of 10½ hours in a day should attract overtime penalty rates consistent with clause 28.3.” (emphasis added)

but it is also consistent with the approach adopted in the Draft Determination for the General Retail Industry Award 2010.

Hair and Beauty Industry Award 2010

14. The SDA has reviewed the Draft Determination and supports the form in which it has been drafted.