



Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSIONS IN REPLY

**GENERAL RETAIL INDUSTRY AWARD 2017
PLAIN LANGUAGE AWARD SPECIFIC CLAUSES
(AM2014/270)**

22 AUGUST 2017

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

1. BACKGROUND

- 1.1 These submissions in reply are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the submissions filed by Business SA dated 2 August 2017 and the Shop Distributive and Allied Employees' Association (**SDA**) dated 4 August 2017 with respect to the plain language exposure draft of the *General Retail Industry Award 2017 (Award)* published on 5 July 2017.
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth). NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth).
- 1.3 ABI and NSWBC have a material interest in the Four Yearly Review of the Award given that both entities represent numerous employers who are covered by the Award.
- 1.4 The same numbering as the revised plain language Exposure Draft or used by other parties in their submissions has been used throughout these submissions, except where otherwise indicated.

2. CLAUSE 2 - DEFINITIONS

- 2.1 Our clients agree with [1.1] of Business SA's submissions.
- 2.2 At [9]-[11], the SDA submits that the definition of 'junior employee' in clause 2 is inconsistent with the application of junior rates of pay otherwise in the Award.
- 2.3 Our clients disagree with this submission. The definition in clause 2 of the Exposure Draft states that a junior employee is one who is less than 21 years of age. The rates of pay at clause 18.2 apply to employees who are aged less than 21 years of age. The fact that an employee who is 20 years of age and employed by the employer for more than 6 months is paid 100% of the adult rate under the Award does not affect the fact that they still fall under the definition of a junior employee for the purpose of section 12 of the *Fair Work Act 2009* (Cth) (**FW Act**).
- 2.4 Our clients oppose the SDA's submission at [18] that an extract from section 59 be reproduced in the Act. Our clients also oppose inclusion of a specific reference to section 59, due to the fact this is already adequately captured by the reference to Part 2-2 of the FW Act.
- 2.5 However, we do not oppose the inclusion of a reference to the abbreviation 'NES' in clause 2.
- 2.6 Our clients agree with the SDA's submissions at [19]-[22] that the new definition of rostered day off in clause 2 is inconsistent with the use of the term in Award generally.
- 2.7 The SDA submits at [23]-[26] that the definition of 'standard rate' be reinserted into the Award. Our clients note that there is no longer any requirement for the Exposure Draft to include this term for the purpose of calculating the amount payable with respect to various allowances, due to those allowances now being expressed as monetary amounts.

3. CLAUSE 10 - PART-TIME EMPLOYMENT

- 3.1 Our clients agree with Business SA and the SDA to the extent that a number of operative provisions of the current Award have been omitted from this clause. We submit there may be scope for further review by the Drafter in advance of further discussion between the parties.

4. CLAUSE 11 - CASUAL EMPLOYMENT

4.1 Our clients disagree with the SDA submission at [69] that the wording of clause 11.2 does not refer to 'all the rates to which a casual loading is payable'.

4.2 Our clients agree with the submission of the SDA at [72] regarding pay arrangements.

5. CLAUSE 15 - FULL TIME EMPLOYEES

5.1 Our clients agree with the SDA that the changes to this clause may have inadvertently extended its operation in a way not intended in the current Award; i.e. to employees other than full-time employees.

5.2 Our clients consider there to be scope for the parties to discuss re-ordering of its provisions for the consideration of the Drafter, though note our clients reserve their rights with respect to the other submission made by the SDA at [87]-[125].

6. OTHER MATTERS

6.1 With respect to the other matters raised by the SDA and BusinessSA not addressed in these submissions, our clients reserve their rights and would welcome the opportunity to either review an amended Exposure Draft in advance of a conference or proceed directly to a conference.

7. CONCLUSION

7.1 If you have any questions in relation to these submissions, please contact Kate Thomson on (02) 4989 1003.

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On behalf of Australian Business Industrial and the NSW Business Chamber Ltd