



# Business SA Submission

4 yearly review of  
modern awards –  
*General Retail Industry  
Award 2010*  
**(AM2014/270)**

## Plain Language Redraft

2 August 2017

## Introduction

Business SA is pleased to provide these submissions as part of AM2016/15 – Plain language re-drafting and AM2014/270 – General Retail Industry Award 2010. These submissions are filed by Business SA in accordance with directions issued on 21 July 2017.<sup>1</sup> Business SA has long been a participant in the plain language re-drafting process. We were involved in the drafting of the Plain Language Guidelines and drafting of common and standard clauses arising from the Pharmacy Industry Award Plain Language Pilot. We have also participated in plain language re-drafting of individual awards as their respective plain language exposure draft has been released.

This submission provides comment on the plain language exposure draft for the *General Retail Industry Award 2017 (PLED)*.<sup>2</sup> In a number of instances comparison has been made between the PLED and the current award.<sup>3</sup> All pinpoint references refer to the PLED unless otherwise specified.

## Why this matter is important to South Australian businesses

*As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:*

- South Australian businesses are impacted by any changes in the award system.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards, better enabling both parties to understand their rights and responsibilities.
- Small business owners make up a large proportion of our membership, these businesses are often not able to devote the necessary resources to fully understand Australia's complex workplace regulations.
- The modern award objective is to provide a fair and relevant minimum safety net of terms and conditions.<sup>4</sup> Modern awards must be drafted such that those using the award are able to determine what they can expect and what is expected of them.
- The Plain Language re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.

*For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at [karenv@business-sa.com](mailto:karenv@business-sa.com) or [chrisk@business-sa.com](mailto:chrisk@business-sa.com).*

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<sup>1</sup> [AM2014/270 – Directions](#).

<sup>2</sup> Plain language exposure draft – [General Retail Industry Award 2017](#), published 5 July 2017.

<sup>3</sup> *General Retail Industry Award 2010*.

<sup>4</sup> *Fair Work Act 2009* (Cth) s 134(1).

## **General Retail Industry Award 2017 Plain Language Exposure Draft**

### Submissions

#### **1. Clause 2 – Definitions**

##### **1.1. Definition of ‘shop with departments or sections’**

Business SA notes the definition of ‘departments or sections’ has been substantively changed in the PLED when compared to the current award. The current award defines ‘Shop with Departments/Sections’ as: any shop which has clearly distinguishable Departments or Sections. A department or Section will have a dedicated Department or Section Manager and at least 3 **subordinate** employees who work solely or predominantly in that section (emphasis added).

This definition differs in the PLED. The PLED definition of ‘shop with departments or sections’ as: a shop that has a clearly distinguishable department or section staffed by a manager and at least 3 **other** employees who work solely or predominantly in that department or section (emphasis added).

Under the PLED the three employees working in a department or section no longer need to be subordinate to the dedicated manager, they simply need to work in that department or section; regardless who those employees report to. This is a substantive change in the definition. Business SA submits the definition in the PLED mirror the definition in the current award.

#### **2. Clause 7 – Facilitative provisions for flexible working practices**

##### **2.1. Table 1 – Inaccuracy re clause 15.10(b)**

Business SA submits reference to clause 15.10(b) in Table 1 is inaccurate. Clause 15.10(a) is the clause which allows agreement regarding the roster of an employee who regularly works Sundays. Clauses 15.10(b)-(e) all refer to the agreement under paragraph (a). Business SA submits Table 1 refer to the specific facilitative provision, being 15.10(a).

##### **2.2. Table 1 – Missing clause 23.11(b) facilitative provision**

Business SA submits Table 1 should include reference to the facilitative provision in clause 23.11(b). Clause 23.11(b) allows an employer and an individual employee to change how the employee is paid when they are recalled to work. The key details of this provision for the purpose of Table 1 would be:

Clause: 23.11(b)

Provision: Recall allowance

Agreement between an employer and: an individual employee.

##### **2.3. Table 1 – Inaccuracy re clause 25.3**

Business SA submits reference to clause 25.3 in Table 1 is not accurate. The specific facilitative provision relating to time off instead of payment for overtime is clause 25.3(a). The rest of clause 25.3 provides guidance regarding the agreement made under clause 25.3(a). Business SA submits Table 1 refer to the specific facilitative provision, being 25.3(a).

##### **2.4. Table 1 – Missing clause 29.10 facilitative provision**

Business SA submits Table 1 should include reference to the facilitative provision in clause 29.10. Clause 29.10 allows an employer and a majority of employees at a workplace employee to agree to substitute another shift for a public holiday shift. The key details of this provision for the purpose of Table 1 would be:

Clause: 29.10

Provision: Substitution of shift for public holiday

Agreement between an employer and: a majority of employees.

##### **2.5. Table 1 – Inaccuracy re clause 32.8**

Business SA submits reference to clause 32.8 in Table 1 is not accurate. The facilitative provision relating to taking annual leave in advance is clause 32.8(a). The rest of clause 32.8 gives the reader guidance

about how the agreement under clause 32.8(a) will operate. Business SA submits Table 1 refer to the specific facilitative provision, being 32.8(a).

**2.6. Table 1 – Inaccuracy re clause 32.9**

Business SA submits reference to clause 32.9 in Table 1 is not accurate. The facilitative provision relating to cashing out of annual leave is clause 32.9(c). The rest of clause 32.9 gives the reader guidance about how the agreement under clause 32.9(c) will operate. Business SA submits Table 1 refer to the specific facilitative provision, being 32.9(c).

**3. Clause 10 – Part-time employment**

- 3.1. Business SA submits the contents of clause 10.6 has been unnecessarily separated from clause 10.5, and that clause 10.5 does not fully reflect the current award provision. The current award at clause 12.2 clearly lists the minimum matters which must be agreed in writing between an employer and a part-time employee at time of first employment. One such matter is that ‘any variation will be in writing’, another such matter is that the ‘minimum daily engagement is three hours’.

The PLED, at clause 10.5, clearly lists matters which must all be agreed in writing when a part-time employee is first engaged. By stating ‘all’ matters must be included, this strongly suggests to the reader that the list is exhaustive. Clause 10.6 however, further states that the clause 10.5 agreement must state that variations must be in writing. The matters listed under clause 10.5 are not exhaustive. This is less clear than the current award as the necessary elements of a part-time agreement are split across multiple clauses.

The PLED, at clause 10.5, also does not require the part-time employment agreement to specify the daily minimum engagement. This is a requirement under the current award, per clause 12.2.

Business SA submits both issues may be addressed by deleting clause 10.6 be deleted and new paragraphs be added to clause 10.5. This will ensure all matters which must be in a part-time employment agreement are contained in a single provision. Business SA proposes the following wording as a starting point:

*10.5(e) that any of the above matters may be varied; and*

*10.5(f) that any variation under paragraph 10.5(e) will be agreed in writing between the employer and the employee; and*

*10.5(g) the daily minimum engagement is three hours.*

**4. Clause 15 – Ordinary hours of work**

**4.1. Clause 15.10(d) – Employees regularly working Sundays**

Business SA submits clause 15.10(d) of the PLED unnecessarily complicates itself compared to the current award equivalent at clause 28.13(c). The current award states ‘an employee can terminate the agreement by giving four weeks’ notice to the employer’. This is a clear statement regarding how an agreement may be terminated.

The PLED states ‘The employee may end an agreement under paragraph (a) **at any time** by giving the employer 4 weeks’ notice’ (emphasis added). Addition of the words ‘at any time’ is unnecessary given the current award provision’s clarity. The additional words do not add to the clause as, while an agreement may be terminated at any time, the termination date must still be at least four weeks away.

Business SA submits the words ‘at any time’ be removed from clause 15.10(d).

**5. Clause 16 – Breaks**

**5.1. Clause 16.2 – Table 2 – Entitlements to meal and rest break(s)**

Business SA submits the clarity of Table 2 – Entitlements to meal and rest break(s) could be enhanced. The breaks table in the current award (at clause 31.1(a)) contains a row applicable to workers who work less than 4 hours. These workers receive no rest break and no meal break for that shift. This row has been omitted from the table in the PLED.

Business SA submits Table 2 – Entitlements to meal and rest break(s) include a row which makes clear an employee who does not work more than 4 hours is not entitled to a rest break or a meal break. This would make Table 2 easier for the reader to understand and would more closely reflect the current award.

**6. Clause 25 - Overtime**

**6.1. Clause 25.1 – Payment of overtime**

Business SA submits an important element of the current award's overtime clause has not been reproduced in the PLED. Clause 29.2(d) of the current award states that overtime is calculated on a daily basis. This statement does not appear in the relevant clause of the PLED (clause 25). Business SA submits a new clause 25.1(c) be added to the PLED which makes clear that overtime is calculated on a daily basis.

**7. Clause 27 – Shiftwork – Application of this part**

**7.1. Clause 27.1**

Business SA submits clause 27.1 of the PLED is less clear than its current award equivalent at clause 30.1(a). At clause 30.1(a), the current award states 'This clause will only apply to persons **specifically** employed as shiftworkers under this award.' (emphasis added). The word 'specifically' has been omitted from clause 27.1 of the PLED.

Business SA submits the word 'specifically' be reinserted into this clause. We note clause 27 in general seeks to make clear which employees Part 6 applies to. It is our submission that the current award's wording in clause 30.1(a) does this more effectively than PLED clause 27.1.