



Business SA Submission

4 yearly review of
modern awards – Plain
language re-drafting –
*Restaurant Industry
Award and Hospitality
Industry (General) Award*

**(AM2016/15,
AM2014/272 and
AM2014/284)**

5 September 2017

Introduction

Business SA is pleased to provide this submission in response to the Statement issued by the Fair Work Commission Full Bench on 22 August 2017 (**the Statement**).¹ The Statement set out the next steps for the plain language re-drafting of AM2014/284 - *Restaurant Industry Award 2010 (Restaurant Award)* and AM2014/272 - *Hospitality Industry (General) Award 2010 (Hospitality Award)*. Business SA filed submissions regarding these awards on 14 June 2017 (**June Submission**).² This submission responds to the Full Bench's invitations for comment. All pinpoint references refer to the respective plain language exposure draft (**PLED**) unless otherwise specified.

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¹ [2017] FWCFB 4118.

² Business SA '[4 yearly review of modern awards – Hospitality Industry \(General\) Award 2010 and the Restaurant Industry Award 2010 \(AM2014/272 & AM2014/284\) – Plain language redraft](#)' 14 June 2017.

AM2014/284 - Restaurant Industry Award - plain language exposure draft

1. Response to [6] of the Statement – Summary of submissions

- 1.1. Business SA is satisfied the summary of submissions accurately characterises our submissions.
- 1.2. We note a minor drafting error in the summary document at Item 10. Item 10 contains Business SA's submission regarding clause 13.4 – Junior employees. The summary document however suggests this clause deals with ordinary hours of work.

2. Response to [11] of the Statement – Temporary close down

- 2.1. Business SA was invited at [11] of the Statement to provide detail about how PLED clause 26.4 is unnecessarily long and repetitive.
- 2.2. We submit the current award at clause 35.3 deals with this matter in one sentence, whereas clause 26.4 of the PLED ostensibly deals with the same matter in three sentences spread across five paragraphs and sub-paragraphs. This is why we described the current award provision as 'clear and concise' and the PLED clause as 'unnecessarily long and repetitive' in our June Submission.³
- 2.3. We describe the PLED clause above as 'ostensibly' dealing with the same matter as clause 35.3 of the current award as, upon further reflection, the PLED clause expands the legal obligations of the close-down clause, particularly provision of notice. The current award clause sets out no more than that the employer must give an employee at least four weeks' notice where they require that employee to take annual leave as part of a close down of operations. The current award does not require notice be given where the business will temporarily close down and the employee will not be required to take annual leave. No other matters are dealt with by the current award clause.
- 2.4. The PLED clause sets out that it applies if the employer intends to close down all or part of a workplace for a particular period and the employer wishes to require affected employees to take leave during that period. The type of leave is not specified in subparagraph 26.4(a)(ii), for example there is no distinction between annual leave or unpaid leave. The PLED clause states the employer must provide four weeks' notice of the close down period to affected employees. Finally, the PLED allows an employer to require an affected employee to take a period of annual leave during the close down period.
- 2.5. The PLED has changed what notice must be provided to affected employees under clause 26.4. Under the PLED, four weeks' notice is required where an employee will be affected by a temporary close down period, rather than of the requirement to take annual leave during this period. As noted above, the current award solely requires an employer give an employee four weeks' notice if they will be required to take annual leave during a close down period. As subparagraph 26.4(a)(ii) does not specify what type of leave an affected employee may be required to take, clause 26.4 does not distinguish between those taking annual leave or some other form of leave during a close down period; all must be provided four weeks' notice of the close down period. This is a clear difference of legal application between clause 35.3 of the current award and clause 26.4 of the PLED.
- 2.6. Business SA is not making a submission on the merits or otherwise of this substantive. We simply identify this issue as there has been a change to the legal effect of this clause, and such changes are contrary to the plain language drafting Guidelines.⁴

³ June Submission, [24.1].

⁴ Fair Work Commission 'Guidelines, Plain language drafting of modern awards' 20 June 2017, [2.2].

AM2014/272 – Hospitality Industry (General) Award - plain language exposure draft

3. Response to [16] of the Statement – Summary of submissions

3.1. Business SA is satisfied the summary of submissions accurately characterises our submissions.

4. Response to [20] of the Statement– Casual employment

4.1. Business SA was invited at [20] of the Statement to explain how clause 11.1 has altered the intention of casual employment.

4.2. In response Business SA refers to our submissions discussing this issue in relation to the *Pharmacy Industry Award*⁵ and the *Clerks – Private Sector Award*.⁶ Currently a casual employee must be specifically engaged as such. The PLED changes this approach, an employee will only be a casual employee if they are not a full-time or part-time employee under the award. The PLED no longer makes clear who a casual employee is; instead it requires comparison of the individual's employment circumstances against two other clauses in the award, with an employee 'defaulting' to a casual employee if they are not covered by either of these two clauses. We maintain the changes to clause 11.1 are unnecessary and should be reversed.

4.3. We respectfully disagree with the Drafter's comment in relation to Item 15 that '[t]here is no advantage in saying that a casual employee is an employee engaged as such. It leaves open that an employee could be engaged as other than as full-time, part-time or casual.' The current award at clause 10.1, and the PLED at clause 8.1, specifies the three types of employment allowable under the award. These employment types are distinct and exhaustive. There is no ability for an employee to be engaged under this award other than as a full-time, part-time or casual employee.

5. Response to [23] of the Statement – Definition of 'remote location'

5.1. Business SA has been invited to propose a definition of "remote location" for the purposes of clause 15.2 – Catering in remote locations (clause 29.3 in the current award).

5.2. Business SA is unfortunately unable to propose a definition of "remote location" to the Full. We are undertaking research to ascertain the history and context of this provision in relation to the Hospitality Award. Business SA is unprepared to propose a definition without the benefit of this term's history and context.

Conclusion

Business SA thanks the Fair Work Commission for accepting these submissions.

⁵ Business SA '[4 yearly review of modern awards – Plain language – Pharmacy Industry Award 2010](#)' 2 September 2016, [1.6].

⁶ Business SA '[4 yearly review of modern awards – Clerks - Private Sector Award 2010 – Plain Language Exposure Draft](#)' 28 February 2017, [5.1].