

Plain Language Exposure Draft — *General Retail Industry Award 2010*

Agenda for conference – 9.30 am, Monday 5 March 2018

1. Provisionally resolved items – to be confirmed
 - Item 44 – Drafting of clause 15.6 PLED; and
 - Item 45 – Drafting of clause 15.7(a) PLED.

2. Outstanding items for further discussion at conference
 - a) Part-time employment (items 24, 26, 30 and 30A)
 - Clause 10.5 – Inclusion of ‘that any variation will be in writing’;
 - Clauses 10.6 and 10.7 – Variation of regular pattern of work; and
 - Clauses 10.10 – 10.12 – Changes to rosters.

 - b) Casual employment (items 33 and 34)
 - Clauses 11.3 and 11.4 – Drafting of minimum engagement period clause.

 - c) Ordinary hours of work (items 40 and 43)
 - Clause 15 – Drafting of clause 15 PLED.

 - d) Rosters – Full-time and part-time employees (items 49 and 51)
 - Clauses 15.7(g) and 15.7(k) – Drafting of consecutive days off entitlements.
 - Clause 15.9 – location of rostering provisions.

 - e) Breaks (item 56A)
 - Clause 16.6(b) – penalty for breaks between shifts.

 - f) Allowances (items 62 and 62A)
 - Clause 23.6 – Definition of the term ‘township’.
 - Clause 23.11 – FWC question to parties re recall allowance

 - g) Overtime (items PTC1, 63 and 65)
 - Clause 25 – Drafting of ‘reasonable overtime’ clause 29.1 of current award; and
 - Clauses 25.1 and 25.2 – Drafting of overtime entitlements.

 - h) Penalty rates (item 67)
 - Clause 26.1 – Drafting of clause.

 - i) Summary of Hourly Rates of Pay (item 72)
 - Schedule B – Use of the term ‘ordinary hours’.

3. Outstanding items to be determined by the Full Bench with regard to submissions already made:
 - a) Clause 7, Table 1 – Facilitative provisions (item 13)
 - b) Clause 18.1 – Minimum rates (item 57)
 - c) Clause 27 – Shiftwork application (item 69)

SUMMARY – AGENDA ITEMS FOR CONFERENCE

This summary of submissions reflects the order of the agenda for the conference listed on 5 March 2018 – see Statement [\[2018\] FWC 702](#). This document will be used as a run sheet during the conference.

1. Partially resolved items – to be confirmed:

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
44	SDA	Sub – 04/08/17	15.6	<p>Full-time employees</p> <p>GRIA cl 28 ‘38 hour week rosters’ is varied and replaced with PLED 15.6 ‘full time employees’.</p> <p>GRIA cl 28.5 has been moved to PLED 15.7(e) under ‘Rosters (full time and part-time employees)’.</p> <p>Variation is substantive change to GRIA, as provision only has application to rostering of full time employees and not part-time employees. The phrase ‘unless specific agreement exists to the contrary between an employer and an employee’ has been removed.</p> <p>Deletion reduced flexibility for employer and employee to agree to a different arrangement.</p> <p>Wording in GRIA is precise in defining that it is 19 days ‘in each four week cycle’ rather than ‘per cycle’ in PLED cl 15.7(e).</p> <p>SDA does not support insertion of cl 15.7(e). Cl 28.5 should be reinstated under 15.6.</p> <p>SDA provide wording at para 94 of submissions.</p>	91-94	<p>See [2018] FWC 702 para [39]</p> <p>Provisionally resolved</p> <p>See transcript 26/10/17 PNs 165-179</p>

45	SDA	Sub – 04/08/17	15.7(a)	<p>Rosters (Full-time and part-time employees)</p> <p>Varying and moving GRIA cl 28.9 to 15.7(a) is a substantive change and not clear that this exception has limited application to full time employees only.</p> <p>GRIA clause is “A roster period cannot exceed 4 weeks.”</p> <p>SDA suggests redrafting clause as follows:</p> <p><i>“A roster period cannot exceed 4 weeks. A longer roster period is only permitted in accordance with clause 15.6(g(v) where the full-time employee and their employer have agreed to this arrangement”.</i></p>	Paras 104 – 107	<p>28/2/18 – no further submissions received.</p> <p>Partially resolved (in relation to clause title).</p> <p>Drafter is asked to identify the comparable provision in the current award to PLED 15.6(g)(v).</p> <p>See transcript 26/10/17 PNs 180-207</p> <p>Drafter comment:</p> <p>The exception in clause 15.7 of the PLED is clearly only applicable to full-time employees as clause 15.6 only applies to full-time employees.</p>
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2. Outstanding items for further discussion at conference:

a) Part-time employment

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
24	SDA	Sub – 04/08/17	10.5	<p>Part-time employment</p> <p>Requirement ‘that any variation will be in writing’ has been removed from cl 10.5. This should be retained as 10.5(f).</p> <p>PLED removes right of a part-time employee to be notified of the requirements for varying their regular pattern of work on securing part-time employment.</p>	Para 51	<p>28/2/18 – Further submission received.</p> <p>Further submissions received</p> <p>Transcript 26/10/17 PNs 63-71</p> <p>Drafter comment:</p> <p>See above.</p>

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				Submit that reader is not aided by having to cross-reference cl 10.6 and 10.7.		
	SDA	Sub – 04/08/17	10.5 and 10.7	SDA does not support PLED cls 10.5 and 10.7. Proposes alternative at para 52 of submission.	Para 52	
	SDA	Sub – 10/11/17	10.7	SDA does not support proposed wording at Revised PLED cl 10.7. Clause should reference cl 10.6 to read “and any variation of it under 10.6, and give another copy to the employee” in accordance with GRIA cls 12.2 and 12.4.	Paras 4-6	
	Business SA	Sub – 22/02/18	10.6	Disagree with SDA position re “may” as opposed to “will”. Submits “may” in PLED relates to ability to make agreement not the form of the agreement. Requirement that an agreement be in writing is clearly expressed when 10.6 and 10.7 are read together. Does not object to SDA’s submission re 10.7 – that it should read “ <i>and any variation of it under 10.6, and give another copy to the employee</i> ”	1.1-1.4	
26	SDA	Sub – 04/08/17	10.6 and 10.7	Part-time employment 12.3 and 12.4 of GRIA have been removed and submits this is a substantive change. The ‘regular pattern of work’ is an identifying	Paras 53 – 55	28/2/18 – Further submission received. Further submissions received.

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				<p>and necessary feature of part-time employment under GRIA. The purpose of cls 12.3 and 12.4 go to an employee is engaged already as a part-time employee with a regular pattern of work. It is important that any change to a 'regular pattern of work' is agreed in writing and provided to the employee prior to and change.</p> <p>Proposes inclusion of two clauses after cl 10.5:</p> <p><i>“Any agreement to vary the regular pattern of work must be made in writing before the variation occurs.</i></p> <p><i>The agreement and variation must be retained by the employer and a copy given by the employer to the employee.”</i></p>		<p>Transcript 26/10/17 PNs 75-87</p> <p>Drafter comment:</p> <p>I suggest that the following be substituted for 10.6: “The employer and the employee may agree in writing to vary the regular pattern of work agreed under clause 10.5 with effect from a future date or time.”</p> <p>Item 21 related comment:</p> <p>I agree that “with the employee to” should be substituted for the expression “with the employee on a regular pattern of work that must include”.</p>
	SDA	<p>Sub – 10/11/17</p> <p>Sub – 21/11/17</p>		<p>SDA does not support proposed wording at Revised PLED cl 10.6. This is a substantive change. Words in GRIA 12.2 and 12.3 clearly state that any agreement or variation to it “will” not “may” be in writing.</p> <p>GRIA imposes a mutual obligation that any agreement to vary the regular pattern of work “will” be in writing and not “may” be in writing.</p> <p>PL Guidelines directs the use of the word “must” to impose an obligation, which should be preferenced over “may”.</p>	<p>Para 4</p> <p>Page 1</p>	
	Business SA	Sub – 22/02/18	10.6	Disagree with SDA position re “may” as	1.1-1.4	

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				<p>opposed to “will”.</p> <p>Submits “may” in PLED relates to ability to make agreement not the form of the agreement. Requirement that an agreement be in writing is clearly expressed when 10.6 and 10.7 are read together.</p> <p>Does not object to SDA’s submission re 10.7 – that it should read “<i>and any variation of it under 10.6, and give another copy to the employee</i>”</p>		
30	SDA	Sub – 04/08/17	10.10 – 10.12	<p>Part-time employment</p> <p>GRIA cl 12.8 heading ‘Rosters’ has been deleted and clauses moved to PLED cls 10.10 – 10.12.</p> <p>Deletion should be considered in context of other rostering provision elsewhere in PLED (including 15.7 – 15.11). A subheading ‘rosters’ assists reader to locate all rostering provisions relevant to them.</p> <p>Consider moving cls 10.10 – 10.12 to cl 15 so all rostering provisions are located together.</p>	Paras 63 – 64	<p>28/2/18 – further submissions received.</p> <p>Further submissions received.</p> <p>Transcript 26/10/17 paras 104-119</p> <p>Drafter comment:</p> <p>I suggest (1) converting 10.10 to 10.12 to paragraphs (a), (b) and (c) of a new 10.10 with the heading “Changes to roster” and (2) adding a Note at the foot of new 10.10 referring to 15.7.</p>
	SDA	Sub – 10/11/17		<p>Does not support proposed wording at revised PLED cl 10.10(a)-(c). Substantive change from GRIA cl 12.8(a)-(c).</p> <p>Revised 10.10(a) does not consider variations under 10.6 and should be amended to ensure that the Revised PLED remains consistent with</p>	Paras 7-10	

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				<p>the corresponding GRIA provisions.</p> <p>Revised 10.10(b) is a substantive change and not agreed to:</p> <ul style="list-style-type: none"> - GRIA 12.8(b) is plain and unambiguous in its meaning and effect. - GRIA 12.8(b) only contemplates ‘roster’ changes by ‘mutual agreement’ not ‘changes to agreed hours’ as proposed. - proposed change increases likelihood of disputation in relation to changes to part-time contract (HoW) inc. in relation to calculation of redundancy entitlements. <p>Revised 10.10(c) is a substantive change. GRIA 12.8 should be retained in its entirety. Note referencing 15(g) is not helpful and is a substantive change from GRIA 28.14.</p> <p>SDA presses for retention of GRIA 28.14.</p>		
	ABI & NSWBC	Sub – 15/11/17		Position reserved subject to the Commission’s research into the current Award clause 12.8	Page 1	
	SDA	Sub – 22/02/18		Submits that Statement history at [20]-[25] is consistent with SDA submission that GRIA does not contemplate changes to agreed hours as proposed by PLED clause 10.10(b).	Item 4	
30A	SDA	Sub – 22/02/18	10.10(c)	Submits that note under 10.10(c) is incorrect. GRIA 12.8(c) prohibits change of roster by employer to avoid award entitlements.	Items 4 – 5	

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				Entitlements not solely related to payments eg. GRIA 28.11 and GRIA 28.13. Also submits that in note under PLED 10.10(c) 'restricts' should replace 'prohibits' and 'entitlements' should replace 'payments' for consistency with GRIA 12.8(c).		

b) Casual employment

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
33	SDA	Sub – 04/08/17	11.2	Casual employment Drafting provides incomplete reference to all the rates to which casual loading is payable. Propose reinsertion of the current cl 13.2.	Paras 68 – 70	28/2/18 – further submission received. transcript 26/10/17 paras 140-147 Provisional note included at clause 11.2. Parties are invited to review.
	Business SA	Reply Sub – 22/08/17		SDA's submission is unclear – SDA has not demonstrated which rates the casual loading is payable upon currently, but which are not captured by cl 11.2. Supports wording as it appears in 11.2 of PLED.	Para 7.1	
	Business SA	Sub – 20/09/17		During conference of 19 Sept 17 Ross J proposed concern raised by SDA could be addressed by a note which directed the reader	Para 4	

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				interested in penalty rates applicable to casual employees to Table 10 in clause 26.2. Business SA does not oppose the proposed note in principle but reserves position until draft released in revised ED.		
	ABI & NSWBC	ReplySub – 22/08/17		Disagrees with SDA’s submission that wording of PLED cl 11.2 does not refer to ‘all the rates to which casual loading is payable’.	Para 4.1	
	ABI & NSWBC	Sub – 20/09/17		Do not oppose insertion of a note at cl 26.2 but reserve position until having had opportunity to review proposed note.	Page 1	
	SDA	Sub – 21/09/17		Withdraw suggestion to amend clause 11.1 [11.2]. Still press inclusion of notes at clause 18 that state the penalty rates applicable to casuals are set out in table 10 and overtime rates are set out in clause 25. Note provisions relating to overtime for casuals will be subject to casual employment full bench determinations.	Page 1	
	SDA	Sub – 10/11/17		SDA does not support Revised PLED 11.1 [11.2] as it is a substantive change from GRIA 13.2. The ‘hourly rate payable to a full-time employee’ as stated in GRIA is not the same as ‘minimum hourly rate’ as in PLED. Wording from GRIA 13.2 must be retained to	Paras 11-12	

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				ensure there is no substantive change to how the casual base rate of pay is determined. Presses for inclusion of an additional Note that sets out ‘Overtime applicable to casuals are set out in Table 10—Overtime Rates’.		
	Business SA	Sub – 22/02/18		Submits 11.2 is appropriately drafted to identify the rate upon which casual loading is based. Not sure what substantive change SDA has identified when calculating casual base rate of pay under PLED.	Para 2.1	
	SDA	Sub – 22/02/18		Presses for inclusion of an additional note that sets out “Overtime rates applicable to casuals are set out at Table 10—Overtime rates”.		
34	SDA	Sub – 04/08/17	11.3, 11.4	<p>Casual employment</p> <p>GRIA cl 13.4 has been redrafted in cls.11.3 and 11.4 of PLED. Proposed variations are substantive and reader is not aided by the PL redraft of cls 11.3 and 11.4.</p> <p>It is not clear that cls 11.3 and 11.4 should be read together.</p> <p>Reference to a minimum daily engagement of 3 hours for casual employees has been removed. Submit that this a substantive change.</p> <p>SDA do not support insertion of cls 11.3 and</p>	Paras 74 – 79	<p>See [2018] FWC 702 para [27]</p> <p>Further submissions received. Transcript 26/10/17 paras 144-149</p> <p>Drafter comment:</p> <p>Clause 11.3 of the PLED refers to “the circumstances set out in clause 11.4” which clearly indicate that they must be read together.</p> <p>Clause 11.3 covers the 3 hours minimum daily engagement.</p>

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				11.4 and submit that GRIA cl 13.4 should be retained.		
	SDA	Sub – 21/09/17		Withdraw suggestion to amend clause 11.1. Still press inclusion of notes at clause 18 that state the penalty rates applicable to casuals are set out in table 10 and overtime rates are set out in clause 25. Note provisions relating to overtime for casuals will be subject to casual employment full bench determinations.	Page 1	
	Business SA	Sub – 20/09/17		SDA concern re: 11.3 and 11.4 is unwarranted. It is clear these clauses are intended to be read together based on reference to 11.4 in 11.3.	Para 5	

c) Ordinary hours of work

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
40	SDA	Sub – 04/08/17	15	Ordinary hours of work Drafting issues with use of terms ‘span of hours’, ‘spread of hours’ and ‘ordinary hours’. GRIA cl 27.2(c) states ‘hours of work on any day will be continuous’ yet PLED 15.1 changes ‘hours of work’ to ‘ordinary hours of work’ – this has a fundamental impact on the	Paras 87 – 90	28/2/18 – Further submissions received. See transcript 26/10/17 . PNs 150-157 Drafter comment: Clause 30.2(c) of the current award says that

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				<p>meaning as work inside the ‘span of hours’ or outside the ‘span of hours’ must still be continuous. Consistency of language is particularly important.</p>		<p>all time between the actual commencing time and the actual ceasing time on any shift will count and will be paid for as time worked.</p> <p>Clause 30.5 then provides that despite clause 31.1(a) (breaks during work periods), all rest pauses and meal breaks taken by shiftworkers are paid breaks and form part of the hours of work. This is covered by clause 30 of the PLED.</p> <p>Given that background, the statement in clause 27.2(c) that hours of work will be continuous, except for rest pauses and meal breaks doesn't sit particularly well with clause 31.1(a) which provides that the breaks form part of the hours of work.</p> <p>However, if the parties wish to make a statement that all hours of work by a shiftworker are continuous, so as to make it clear that there are no split shifts, I would prefer to do that in Part 6 and leave clause 15.3 to deal with ordinary hours of work.</p> <p>We could insert a new subclause before clause 28.4 as follows: "28.4 All hours of work on a shift are continuous.". Given that breaks are deemed to form part of the hours of work there would seem to be no need to specially refer to them in that subclause.</p>

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43	SDA	Sub – 04/08/17	15.3	<p>Ordinary hours of work</p> <p>‘Ordinary’ in place of ‘on any day’ in PLED cl 15.3 is a substantive change.</p> <p>Oppose insertion of clause. GRIA cl 27.2(c) should be reinstated.</p>	Paras 89-90	<p>28/2/18 – no further submissions received.</p> <p>Further submission received</p> <p>Resolved</p> <p>See transcript 26/10/17 PNs 164-165</p>
	SDA	Sub – 10/11/17		<p>Does not support Revised PLED 15.3 as it is a substantive change. GRIA 27.2(c) clearly states that “ordinary hours or work on any day will be continuous”. Revised PLED omits “on any day”, which changes the meaning of the provision – may be read as contemplating the possibility of a split shift being worked on any day. GRIA clearly does not.</p>	Para 13	<p>Drafter comment:</p> <p>Clause 27.2(c) of the GRIA appears under the heading “Ordinary hours”. It seems reasonable to interpret it as relating only to ordinary hours as has been done in clause 15.3.</p>

d) Rosters – Full-time and part-time employees

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
49	SDA	Sub – 04/08/17	15.7(g), 15.7(k)	<p>Rosters (Full-time and part-time employees) – Consecutive days off</p> <p>Does not support moving and varying GRIA cls 28.11(a)-(c) to cls 15.7(g)-(k).</p> <p>PLED clauses more difficult for reader due to amount of cross-referencing that is required to understand the rostering entitlements that full-</p>	Paras 111 – 113	<p>28/2/18 – Further submission received re [2018] FWC 702 para [46].</p> <p>No further submissions received re [2018] FWC 702 para [50].</p> <p>Further submissions received.</p>

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				<p>time and part-time employees have. This is an important provision as it ensures both employer and employee understand that time off from work must be meaningful.</p> <p>GRIA clause 28.11(a)-(c) should be retained, including the sub-heading, in cl 15.7 PLED.</p>		<p>transcript 26/10/17 PNs 239-243</p> <p>Drafter comment: Clause 15.7(g) to (k) are not difficult to read. I do suggest, however, substituting “make a request” for “agree to an arrangement” in clause 15.7(k) for greater consistency with clause 28.11(b) of the GRIA.</p>
	SDA	Sub – 10/11/17	15.7(f), (g), (h)	<p>Rosters (Full-time and part-time employees) – Consecutive days off</p> <p>SDA does not support the removal from Revised PLED 15.7 of GRIA subheading 28.11 “Consecutive Days Off” – an important provision both employers and employees need to consider when rostering work. Where consecutive days off are not rostered in accordance with this provision overtime rates may apply.</p> <p>Revised PLED 15.7(f), (g), (h) are unnecessarily complex and difficult to interpret when compared with GRIA cls 28.11(b), 28.13(b) and 28.13(c) – reader of a PL award should not have to jump back and forth between clauses to understand the meaning of the Award and how to apply it.</p> <p>GRIA 28.11(b), 28.13(b) and 28.13(c) – are clear and unambiguous in their meaning, easy to read and should be retained.</p>	Para 14(a)-(c)	
	SDA	Sub – 10/11/17	15.7(j)	<p>Rosters (Full-time and part-time employees)</p>	Para 15-	

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				<p>– Consecutive days off</p> <p>SDA does not support changes at revised PLED 15.7(j) which deletes “worked” and replaces it with “scheduled”. “Worked consistently used throughout GRIA incl. at 28.12. The phrase “reasonable additional hours” in GRIA 28.12 has been deleted and replaced with “overtime” in PLED. This is substantive change which creates additional concerns regarding overtime. Reasonable additional hors is supposed to refer to part-time additional hours not overtime. Overtime can be worked on a 7th day.</p> <p>SDA does not support 15.7(j) which deletes GRIA phrase ‘reasonable additional hours’ and replaces it with ‘overtime’. ‘Reasonable additional hours’ as per GRIA 28.12 should be reinserted.</p> <p>The removal of GRIA 29.1 is a further substantive change that impact of this provision.</p>	16	
	ABI & NSWBC	Sub – 15/11/17	15.7	<p>Rosters (Full-time and part-time employees)</p> <p>Note there are cross-referencing issues in the PLED-01/11/17 and would like opportunity to review revised PLED clause.</p>	Page 1	
	Business SA	Sub – 28/2/18	15.7(e) to (h)	Does not share SDA’s concerns re proposed 15.7(e) to (h). Submit that each para deals with a single topic, has a logical flow and	Para 4.1	

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				requirements for employer and employee are more clearly defined.		
51	SDA	Sub – 04/08/17	15.9	<p>Notification of rosters</p> <p>Does not support variation and moving of current cl 28.8 to cl 15.9. Substantive change – the clause currently has no application to part-time employees and does not and should not apply to part-time employees.</p> <p>Should be reinstated to cl 15.6 PLED.</p>	Paras 101 – 103	<p>28/2/18 – further submission received.</p> <p>Further submissions received relating to cls 15.9(c), 15.9(e), 15.9(f), 15.9(g)</p> <p>Resolved</p> <p>See transcript 26/10/17 PN 246</p>
	SDA	Sub – 10/11/17	15.9(c)	Does not support Revised PLED 15.9(c) – for consistency with GRIA 28.14(d) and Revised PLED 15.9(a), Revised PLED 15.9(c) should at least refer to ‘completed work roster’.	Para 17	<p>Drafter comment:</p> <p>If clause 28.8 of the GRIA applies only to full-time employees, then clause 15.9 of the PLED should be moved into clause 15.6.</p>
	SDA	Sub – 10/11/17	15.9(e)	<p>For consistency with GRIA 28.14(c) should only refer to “permanent roster changes” or must be considered as substantive change.</p> <p>GRIA 28.14(d) has been removed in part and replace with a note after 15.9(e) – substantive change which removes the obligation on parties to have discussions aimed at resolving roster disputes in accordance with the dispute resolution provision.</p>	Paras 18, 19	
	SDA	Sub – 10/11/17	15.9(f)	Does not support Revised PLED 15.9(f) – substantive change from GRIA 28.14(g) which does not and should not reference revised PLED 15.9(g). Further, revised PLED 15.11 is	Para 20	

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				referenced in 15.9(f) and does not exist in Revised PLED.		
	SDA	Sub – 10/11/17	15.9(g)	Does not support revised PLED 15.9(g) as stated at para 10 of submission. Substantive change which removes the rate to be paid where rosters are changed with the intent described in 28.14(f). GRIA 28.14 should be retained.	Para 21	
	SDA	Sub – 22/02/18	15.9(g)	Does not support PLED 15.9(g) – substantive change which removes the rate to be paid where rosters are changed with the intent described at GRIA 28.14(f) and removes reference to ‘other benefits applicable’. Submits GRIA 28.14(f) should be retained at PLED 15.9(g). Benefits or entitlements under GRIA are not limited to paid entitlements.		

e) Breaks

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56A	SDA	Sub – 10/11/17	16.6	Submits Revised PLED 16.6 should be read in the same way as GRIA 31.2(b) “that an employee will be paid double the rate they would be entitled to” which must be inclusive	Paras 7-10	28/2/18 – further submissions received. See [2018] FWC 702 para [61]

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				of all relevant penalties, overtime and loadings.		
	Business SA	Sub – 22/02/18	16.6(b)	<p>Disagrees with SDA’s submission that current 31.2(b) is inclusive of penalties overtime and loadings. Submits interpretation is not supported by current award and would represent significant change in legal effect.</p> <p>Submits that prevailing industrial practice is that extra rates are not cumulative but where multiple penalties may be payable, the penalty of greatest advantage to employee will be paid.</p> <p>Opposes SDA’s suggestion that 200% rate compounds with other penalties.</p>	Paras 5.1 – 5.2	

f) Allowances

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
62	SDA	Sub – 04/08/17	23.6	<p>Moving expenses</p> <p>The term ‘township’ requires a definition or replacement with a more precise expression to clarify the effect of the provision. Other Awards refer to a transfer requiring ‘change of residence’ to identify the scope of the clause.</p> <p>Support notion that transfer from one township</p>	Paras 138 – 141	<p>28/2/18 – further submission received.</p> <p>Further submissions received.</p> <p>Transcript 26/10/17 PNs 319-327</p> <p>Drafter comment:</p>

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				to another which requires a change of residence would trigger payment of moving expenses. Use of the term ‘family’ should be in line with the NES.		I agree we need something more precise than “township”. Clause 23.6 of the PLED is in line with clause 20.5 of the GRIA including in the reference to “family”. It would be helpful to clarify who a family member is.
	SDA	Sub – 20/09/17		Moving expenses should be paid where an employee is required by their employer to transfer to another place of employment that means that the employee is required to change residence on a permanent or temporary basis.		
	Business SA	Sub – 20/09/17		Business SA has been unable to find a satisfactory definition of ‘township’ for the purpose of this clause.	Para 7	
	Business SA	Submission 2/11/17		Business SA has consulted a selection of members re “township”. No members consulted reported they had utilised GRIA cl 20.5 for an award covered employee. Where members reported an employee relocated, this was at the request of the employee, rather than being imposed by the employer. Employees had also relocated for purposes of promotion, however in those instances, not employed under Retail award. Also invited comment from members re fair interpretation of “township”. Members’ observations reflected President’s observation at PN323 of 26/10/17 transcript.	Paras 2 8	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				<p>Payment of relocation allowance based on movement to a different suburb would be impractical.</p> <p>Physical distance in kms was suggested as a method of enlivening entitlement. However, concepts of distance and associated time impact vary.</p> <p>Consultations suggest that clause is rarely, if ever, applied in the context of an employee covered by the GRIA. While definition and clarification would be preferable they have been unable to determine an appropriate basis upon which to define “township”.</p> <p>Proposes that the issue may be progressed by amending PLED 23.6(a) to clarify that the clause operates only where an employee is <u>directed by their employer</u> to relocate from one residence to another.</p> <p>Reference to “township” would be removed and replaced by the specific direction of the employer – an approach consistent with similar clauses in other awards. This will ensure that where an employee is directed to carry out an action incurring cost, such as moving house, they are reimbursed, whilst also ensuring that the term “transfer” does not extend to transfers initiated/requested by the employee. Suggest amending wording to:</p> <p><i>“clause 23.6 applies if an employer directs an</i></p>		

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				<i>employee to transfer from one residence to another.”</i>		
	SDA	Sub – 10/11/17		Re township – provisions should be read broadly to encompass a permanent or temporary change of location that requires the employee to move house. “Appropriate rate of pay” for the purposes of Revised PLED 23.11 should be the “appropriate overtime rate”.	Paras 24-25	
	ABI & NSWBC	Sub – 15/11/17		In process of consulting re commonly accepted meaning of ‘township’ and operation of provision. Will provide further response ASAP.	Page 1	
	SDA	Sub – 22/02/18		In response to Business SA’s submission submits that definition of ‘township’ should be dealt with as part of AM2014/270 – substantive issues Full Bench.		
62A	SDA	Sub – 10/11/17		“Appropriate rate of pay” for the purposes of Revised PLED 23.11 should be the “appropriate overtime rate”.	Paras 24-25	

g) Overtime

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
PTC-1	FWC	PR598494	Cl. 25.1	<p>Clause 25.1 updated to reflect PR598494.</p> <p>Plain language amendments to this determination have been made by the plain language expert as reflected in tracked changes.</p> <p>Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [2017] FWCFB 6884).</p>		<p>Refer to Attachment A for revised 25—Overtime clause which incorporates the Part-time and Casuals decision. We propose to insert this version into the PLED.</p> <p>Clause 26.1 amended by PR598494</p> <p>Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [2017] FWCFB 6884).</p>
63	SDA	Sub – 04/08/17	25	<p>Overtime</p> <p>Do not support varying and moving GRIA cl 29.1 to cl 25 of PLED. Relies on its submissions in AM2014/196 and AM2014/197.</p> <p>Request that current clause be reinstated.</p>	Paras 142 – 143	<p>To be determined in accordance with [2017] FWC 6884 para [7]</p> <p>Further submissions received.</p> <p>Transcript 26/10/17 PNs 328-349</p> <p>Drafter’s comment:</p>
	SDA	Sub – 10/11/17		<p>Relies on previous submissions. In line with provisional view of Bench at 19/9/17 conference, clause should not have been removed.</p> <p>Presses reinstatement of GRIA 29.1 until the matter has been conclusively determined.</p>	Paras 7-10	<p>Section 62 of the Act deals with working overtime and sets out factors to be taken into account in determining whether or not overtime may be considered unreasonable. The list is more comprehensive than in clause 29.1 of GRIA. The Note at the beginning of clause 25 of PLED points to section 62.</p>
	ABI & NSWBC	Sub – 15/11/17		<p>Remains outstanding and will provide further comment upon release of further Statement.</p>	Page 1	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
65	SDA	Sub – 04/08/17	25.1, 25.2	<p>Payment of overtime / Overtime rate</p> <p>PLED does not accurately reflect current entitlements. Must be drafted with precision to ensure the reader is clear at which points overtime rates must be paid to full-time, part-time and casual employees.</p> <p>Should be drafted after all PLED rostering provisions are determined to ensure accuracy. Should be re-drafted to include each employment type to ensure that referencing from this clause is accurate and simple for the reader. Should include reference to PLED Part 3 in relation to span of hours and any reference to ‘ordinary hours’ (see submissions under ‘Hours of work’).</p>	Paras 144 – 149	<p>28/2/18 – no further submissions received.</p> <p>Outstanding. Further submissions received.</p> <p>Drafter comment:</p> <p>Clause 25.1(a)(ii) references clause 15. A note could be added stating that ordinary hours are set out at clauses 15.1 and 15.2.</p>
	SDA	Sub – 10/11/17		<p>Does not support revised PLED 25.1(a)(i) and (ii) as it is a substantive change from GRIA clause 29.2(a):</p> <ul style="list-style-type: none"> - PLED 25.1(a) only refers to full time employees; - GRIA 29.2(a) applies to ‘employees’ which includes full-time, part-time and casual employees; - Under the PLED part-time and casual employees lose their existing entitlements to overtime that the GRIA clearly provides under clause 29.2. 	Paras 27-28	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				25.1(a)(i) and (ii) should be removed and GRIA 29.2 reinstated, subject to any determination arising from AM2014/196 and AM2014/197.		

h) Penalty rates

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
67	SDA	Sub – 04/08/17	26	<p>Penalty rates</p> <p>PLED cl 26.1 is new and introduces some ambiguity as to when overtime rather than penalty rates should apply. Wording of clause is not precise (eg an employee who works a shift outside the span of hours, but with less than a 12 hour break between starting and finishing the previous day must be paid overtime rates, under GRIA 31.12.</p> <p>Clause does not meet objectives set by PL guidelines. Penalty rates are of critical importance to retail employees.</p> <p>Do not support insertion of PLED cl 26. GRIA cl 29.4 should be reinstated.</p>	Paras 152 – 155	<p>28/2/18 – no further submissions received.</p> <p>Transcript 26/10/17 PNs 350-366</p> <p>Drafter comment:</p> <p>Clause 26 of the PLED is to the same effect as clause 29.4 of the GRIA.</p> <p>Clause 26.1 of the PLED is intended as a simple explanatory statement of what the clause is about. Given its explanatory nature, the material in it could be included in a Note and clause 26.1 omitted.</p> <p>Clause 26.1 provisionally converted to a note.</p> <p>Clause 16.6 of the PLED is to the same effect as clause 31.2 of the GRIA.</p>
	SDA	Sub – 21/09/17		SDA presses that the explanatory statement at clause 26.1 be amended to read ‘clause 26 sets out penalty rates for ordinary hours worked at	Page 2	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				specified times or on specified days.’ The following reference to overtime should be deleted ‘that are not required to be paid at the overtime rate mentioned in clause 25.2 overtime rate.’		
	Business SA	Reply Sub – 22/08/17		Does not agree with SDA’s submission. Supports drafting of PLED cl 26.2 and Table 10.	Para 13.1	
	Business SA	Sub – 20/09/17		During 19 Sept 17 conference, Ross J suggested the following amendment to clause 26.1: “Clause 26 sets out penalty rates for ordinary hours worked at specified times or on specified days.” Business SA does not oppose the proposed amendment.	Para 8	
	ABI & NSWBC	Sub – 20/09/17		Do not oppose the wording proposed by the President to amend clause 26.1.	Page 1	
	ABI & NSWBC	Sub – 15/11/17		Re Note in PLED-01/11/17 addresses concern. Note that SDA continues to press its objection to the wording.	Page 1	
	SDA	Sub – 10/11/17		Re Note in Revised PLED – position remains that the words “that are not required to be paid at the overtime rate mentioned in cl 25.2– Overtime rate” should be deleted.	Para 29	

i) Summary of hourly rates of pay

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
72	SDA	Reply Sub – 17/08/17	Sched B	<p>Summary of Hourly Rates of Pay</p> <p>Notes the use of the term ‘ordinary hours’ in PLED Sched B.</p> <p>Requests Sched B be revised to ensure ‘ordinary hours’ is used consistently and accurately across PLED.</p>	Para 7	Outstanding

3. Outstanding Items – to be determined by Full Bench:

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
13	Business SA	Sub – 02/08/17	7, Table 1	<p>Facilitative provisions</p> <p>Reference to 25.3 is not accurate. The specific provision relating to TOIOPFO is cl.25.3(a). The rest of cl.25.3 provides guidance regarding the agreement made under cl.25.3(a).</p>	Para 2.3	Full Bench to determine with regard to submissions put. See report of 19/09/17.
	SDA	Reply Sub – 17/08/17		<p>Does not support Business SA’s submission that table should reference specific clauses.</p> <p>SDA submits reader must be guided about how clause is operative by reading entire provision in context and should be directed to the full</p>	Para 6	

				provision rather than a specific clause.		
57	SDA	Sub – 04/08/17	18.1	<p>Minimum rates</p> <p>Table could be improved to ensure it provides a complete, precise and accurate summary.</p> <p>Proposes to insert ‘at least’ before ‘the minimum hourly rate’ in cl 18.1.</p> <p>oes not support definition of adult employee – see submissions at item 2.</p> <p>Submits three additional notes should be inserted:</p> <p>“NOTE 4: Clause X—Overtime sets out rates of pay when overtime applies.</p> <p>NOTE 5: Clause X—Penalty rates sets out rates of pay when penalties should apply.</p> <p>NOTE 6: Clause X—Public holidays sets out rates of pay for work on Public holidays.”</p>	Paras 128 – 130	<p>Full Bench to determine with regard to submissions put.</p> <p>Transcript 26/10/17 PNs 310-318</p> <p>Submission references cl 17 – appears to be in relation to cl 18.</p> <p>Submission to add words ‘at least’ withdrawn – 21/09/17</p>
	SDA	Sub – 21/09/17		Press items in relation to insertion of additional notes in relation to penalty rates, overtime and public holidays. The additional notes would better inform the reader about all rates that must be considered in relation to payment of wages under this award.	Page 2	
	Business SA	Sub – 20/09/17		<p>Understands SDA will not press submission to insert ‘at least’ before ‘minimum hourly rate’.</p> <p>Business SA is not aware of a similar approach being taken in other awards. The 3 notes already in clause assist the reader in calculating the minimum rate payable to an employee.</p>	Para 6	

				Proposed notes are unnecessary and go beyond assisting minimum rate calculations.		
	ABI & NSWBC	Sub – 20/09/17		Our clients oppose the insertion of the three notes proposed by SDA.	Page 1	
	SDA	Sub – 10/11/17		Relies on previous submissions.	Para 22	
69	Business SA	Sub – 02/08/17	27	<p>Shiftwork – application</p> <p>Notes that GRIA cl 27 in general seeks to make clear which employees Part 6 applies to. The wording in GRIA cl 30.1(a) does this more effectively than PLED cl 27.1.</p> <p>Submits 27.1 is less clear than GRIA cl 30.1(a), which states <i>‘This clause will only apply to persons specifically employed as shiftworkers under this award.’</i> The word <i>‘specifically’</i> should be inserted into the PLED for clarity.</p>	Para 7.1	Full Bench to determine with regard to submissions put. See report of 19/09/17.

ATTACHMENT A:**PLED Clause 25.1 and 25.2 including determination [PR598494](#) with plain language amendments incorporated:****25. Overtime**

Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [\[2017\] FWCFB 6884](#)).

Clause 25.1 has been updated to reflect [PR598494](#). Plain language amendments to this determination have been made by the plain language expert as reflected in tracked changes

NOTE: Under the NES (see section 62 of the Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.

25.1 Payment of overtime

- (a) An employer must pay an employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or roster conditions prescribed in clause 15—Ordinary hours of work at the overtime rate specified in column 2 of Table 10—Overtime rates.
- (b) An employer must pay a part-time employee for hours worked in excess of the agreed hours in clause 10.5 or as varied under clause 10.6 at the overtime rate specified in column 3 of Table 10—Overtime rates.
- (c) An employer must pay a casual employee at the rate specified in column 3 of Table 10—Overtime rates (inclusive of the casual loading) for hours worked by the casual employee:
 - (i) in excess of 38 ordinary hours per week or, if the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or
 - (ii) outside the span of ordinary hours for each day specified in clause 15.1 (Ordinary hours of work); or
 - (iii) in excess of 11 hours on one day of the week and in excess of 9 hours on any other day of the week.
- (d) Overtime is calculated on daily basis.

25.2 Overtime rate

- (a) The overtime rate mentioned in clause 25.1 for a full-time or part-time employee is the relevant percentage specified in column 2 of Table 10—Overtime rates (depending on when the overtime was worked as specified in column 1) of the employee's minimum hourly rate of pay.
- (b) The overtime rate mentioned in clause 25.1 for a casual employee is the relevant percentage specified in column 3 of Table 10—Overtime rates (depending on when

Published 1 March 2018

the overtime was worked as specified in column 1) of the employee's minimum hourly rate of pay (inclusive of casual loading).

Table 10—Overtime rates

Column 1 For overtime worked on	Column 2 Overtime rate Full-time and part-time employees (% of minimum hourly rate of pay)	Column 3 Overtime rate Casual employees (% of minimum hourly rate of pay)
Monday to Saturday—first 3 hours	150%	175%
Monday to Saturday—after 3 hours	200%	225%
Sunday	200%	225%
Public holiday	250%	275%

NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the hourly overtime rate for all employee classifications according to when overtime is worked.