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Business SA Submission

4 Yearly Review of Modern Awards – Group 4 Substantive Claims

29 September 2016

Introduction

Business SA is pleased to provide this submission on substantive claims for group 4 modern awards. In March 2015 Business SA provided a submission which outlined proposed variations for group 3 and 4 modern awards.¹ This document contained proposed variations which could be characterised as substantive claims and others properly characterised as technical and drafting matters. On 26 August 2016 the Fair Work Commission gave directions for interested persons to provide a short submission confirming the substantive claims being pursued or withdrawn for group 4 modern awards by 4:00pm Friday 30 September 2016.² This submission is provided in response to these directions.

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.
- Small business owners make up a large proportion of our membership. These businesses span a wide range of industries and a great many are covered by modern awards.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards.
- The modern awards objective is to provide a fair and relevant minimum safety net of terms and conditions, taking into account a range of factors.³
- Where the economy, industry or practice evolves substantive changes may need to be made to modern awards. Such changes should reflect the needs of employers and employees, in accordance with the modern awards objective.

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¹ Business SA, [4 yearly review of modern awards: Award Stage – Outline for Groups 3 & 4](#), 2 March 2015.

² [2016] FWCFB 6062, [6].

³ Fair Work Act 2009 (Cth) s 134(1).

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1.0 *Broadcasting and Recorded Entertainment Award 2010*

Business SA will withdraw all three of our submissions regarding this award. For specificity, these withdrawn claims regarded clause 26.3(b), clause 36.2, and clauses 41.4 and 42.1(d).

2.0 *Children's Services Award 2010*

2.1 Business SA intends to pursue a substantive claim regarding clause 10.5(b).

(i). The nature of this claim is to provide increased flexibility in engaging casual employees.

The **current award states a casual employee is “one engaged for temporary and relief purposes.”**⁴ This terminology has been carried through to the exposure draft.⁵ Business SA submits this definition should be broadened to enable casual employees **be ‘those employed as such’**. This will give employers urgently required flexibility when staffing and employees access to additional hours. We see this variation as a common sense change **which will bring the award in line with the Australian childcare sector’s need** for sufficient, and flexible, staffing patterns.

(ii). The following draft determination implements the above claim. This draft is based on the wording of the *Children's Services Award 2016* exposure draft:

11.1: A casual employee is an employee engaged as such and must be paid the ordinary hourly rate payable for a full-time employee for the relevant classification in clause 16—Minimum wages plus a casual loading of 25%.

[exposure draft clause continues from 11.3].

(iii). Business SA intends to run this case on a merits basis.

2.2 Business SA withdraws our submission regarding clause 15.2(b)—Clothing and equipment allowance.

2.3 Business SA withdraws our submission regarding clause 21.2. The *Children's Services Award 2016* exposure draft has remedied the ambiguity regarding broken shifts and ordinary hours we identified in March 2015.

2.4 While Business SA withdraws the substantive claim regarding clause 23.5(e) we maintain an ambiguity exists between the weekend/public holiday minimum engagement and minimum engagements for part-time/casual employees. This ambiguity arises as the current award provides a minimum engagement period of four hours for employees working on a Saturday, Sunday or public holiday,⁶ while the current award states part-time and casual employees have a minimum engagement period of two hours.⁷ This inconsistency has been carried over into the exposure draft.⁸

⁴ [Children's Services Award 2010](#) cl 10.5(b).

⁵ [Children's Services Award 2016 exposure draft](#) cl 11.1.

⁶ [Children's Services Award 2010](#) cl 23.5(e).

⁷ *Ibid* cl 10.4(e); cl 10.5(c).

⁸ [Children's Services Award 2016 exposure draft](#) cl 19.4(a); 10.5; 11.4.

Business SA submits this ambiguity is properly characterised as a drafting and technical matter.

While we did not raise this in our initial exposure draft submission⁹ we request this inconsistency be added to the summary of submissions for this award. A possible method of resolving this ambiguity would be to amend clauses 10.5 and 11.4 and state they operate subject to clause 19.4(a).

3.0 *Fast Food Industry Award 2010*

In March 2015 Business SA identified an issue with clause 25.5(a)(ii). This clause does not indicate when the 15% penalty for working ordinary hours after midnight ceases to apply. Business SA will not pursue our submission on this clause as a substantive claim, this matter is more appropriately dealt with as a technical and drafting issue. We will not press this technical and drafting issue if the upcoming exposure draft remedies this ambiguity.

4.0 *Food, Beverage and Tobacco Manufacturing Award 2010*

Business SA understands payment of wages upon termination is being determined by a separately constituted Full Bench. We do not intend to pursue this as a substantive claim.

5.0 *Funeral Industry Award 2010*

5.1 Business SA will not pursue our claim regarding clause 14.1 as a substantive claim, this matter is better characterised as a technical or drafting issue. The current award contains references to **'junior employees' in the schedules, but no guidance regarding who is a junior employee.** We await the exposure draft for this award to determine whether this technical and drafting ambiguity is resolved.

5.2 Business SA will not pursue a variation to the spread of ordinary hours under clauses 21.2 and 22.1 at this time.

5.3 In our March 2015 submission we flagged an ambiguity between clauses 24.4—removals and 22—shiftwork, particularly as to when overtime and shiftwork penalties apply.¹⁰ We submit this is a technical and drafting issue. We may pursue a clarification of these clauses after the exposure draft has been released.

6.0 *Hair and Beauty Industry Award 2010*

In our March 2015 **submission we noted there is no definition of 'pre-apprentice' in the award,** despite clause 19.3 setting minimum rates for these workers.¹¹ We submit this is a technical and drafting issue which should be dealt with at the exposure draft stage.

7.0 *Restaurant Industry Award 2010*

Our submission from March 2015 highlighted the inconsistency concerning minimum engagement periods in this award.¹² Business SA submits this is a technical and drafting issue which should be dealt with by the exposure draft. Should this inconsistency remain we may pursue a clarification in future.

⁹ Business SA, [Technical and Drafting issues Related to Sub-Group 4A, 4B and 4C Exposure Drafts](#), June 2016, [2].

¹⁰ Business SA, [4 yearly review of modern awards: Award Stage – Outline for Groups 3 & 4](#), 2 March 2015, p 9.

¹¹ Ibid 10.

¹² Ibid.

8.0 Conclusion

Business SA thanks the Fair Work Commission for this opportunity to clarify our substantive claims pursued and withdrawn. We look forward to further discussions once the remaining group 4 exposure drafts are released.