

Fair Work Commission

s.156 – 4 yearly review of modern awards

Fast Food Industry Award 2010

AM 2014/267

Submission in response to the Fast Food Industry Award Exposure Draft



Shop Distributive and Allied Employees' Association

18 January 2017

1. The Shop Distributive and Allied Employees' Association (SDA) makes these submissions in response to the exposure draft released by the Fair Work Commission for the *Fast Food Industry Award 2010*, and in accordance with the Statement and Directions issued by Justice Ross on 26 August 2016.
2. The SDA notes from the amended Statement of Justice Ross of 21 December 2016 that "On or before 4.00pm on Wednesday 18 January 2017 each interested party is to file in the commission submissions on the technical and drafting issues related to exposure drafts in Groups 4D, 4E and 4F..."
3. The SDA notes that the use in the exposure draft of the term "minimum hourly rate" is inconsistent and could cause confusion. The SDA submits the retention of the current wording around hourly rates avoids these issues, or that where "minimum hourly rate" is used, reference be made to "the appropriate minimum hourly rate" or proper classification for the employee(s) in question. Furthermore, the use of "minimum hourly rate" creates an ambiguity where the relevant work is done outside of ordinary hours such as in times or days which attract a penalty or in overtime.
4. Please find **attached** an analysis of the exposure draft with comments.

Exposure Draft FFIA and FFIA comparison

PROVISION	EXPOSURE DRAFT FFIA	FFIA	COMMENTS
Clause 1. Title and Commencement	<p>Incorporates Title and Commencement into clause 1.1 and 1.2 respectively.</p> <p>1.3 incorporates 2.4 from the Award (savings provision).</p>	<p>2.2 allows an employer to absorb monetary obligations into over award payments. Deleted</p> <p>2.3 re transitional provisions at Schedule A. Deleted</p> <p>2.5 re FWC and transitional provisions. Deleted</p> <p>2.6 re FWC review of transitional provisions. Deleted</p>	<p>The SDA submits that the draft at 1.2 is in error as variations do not have retrospective application to 2010, except in very limited circumstances.</p>
2. Definitions	<p>At clause 2</p> <p>Bullet points under the definition of fast food industry have been replaced with letters (a) – (c).</p> <p>Standard rate has been amended to refer to the minimum hourly rate for a fast food employee Level 2.</p>	<p>At clause 3</p> <p>Deleted:</p> <p>Agreement-based transitional instrument</p> <p>Award-based transitional instrument</p> <p>Default fund employee</p> <p>Division 2B State award</p> <p>Division 2B State employment agreement</p> <p>Enterprise award-based instrument</p> <p>Transitional minimum wage instrument</p>	<p>The SDA does not oppose the pure draft changes as noted.</p> <p>Minimum hourly rate referred to in definition of standard rate. (Note reference at paragraph 3)</p>
3. NES	<p>A new clause.</p> <p>3.1 incorporates clause 6 of the Award.</p> <p>New 3.2 which states that where reference is made to the NES the NES definition</p>	-	<p>The SDA does not oppose the pure draft changes as noted.</p>

PROVISION	EXPOSURE DRAFT FFIA	FFIA	COMMENTS
	applies. 3.3 incorporates clause 5 of the Award.		
4. Coverage	Splits the current 4.1 into 4.1 and 4.2. Current 4.2, 4.3 and 4.4 incorporated into new 4.5. Current 4.5 transferred to 4.3. Current 4.6 to 4.4 Current 4.7 to 4.6.		The SDA does not oppose the pure draft changes as noted.
5. Effect of Variations made by the FWC	New clause 5 stipulates variations by FWC does not affect a right, privilege, obligation or liability acquired under the Award prior to the variation.	-	The SDA does not oppose the pure draft changes as noted.
6. Award Flexibility	At clause 6 Mirrored	At clause 7 Mirrored	The SDA does not oppose the pure draft changes as noted.
7. Facilitative provisions for flexible working practices	New clause at 7 Allows standard approach to be departed from by agreement between an employer and an individual employee or the employer and the majority of the employees in the enterprise or part of the enterprise	-	The SDA does not oppose the pure draft changes as noted.

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	<p>concerned. Covers:</p> <p>20.4 time off instead of payment</p> <p>22.4 annual leave in advance</p> <p>22.5 cashing out of annual leave</p> <p>25.2 public holidays substitution.</p>		
8. Types of employment	<p>Renamed “Types of Employment and Classifications” rather than “Types of Employment and Termination of Employment”.</p> <p>Heading at 8 changed to “Types of employment” rather than “Employment categories”.</p> <p>8.1 mirrors 10.1 in the current Award.</p> <p>Changes bullet points to (a) – (c)</p> <p>8.2 mirrors 10.2 of the current Award.</p>	Employment Categories at 10.	The SDA does not oppose the pure draft changes as noted.
9. Full-time employees	9 (full time employees) mirrors 11, with minor simplification (deletes “is an employee who”).	Full time Employees at 11.	The SDA does not oppose the pure draft changes as noted.

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10. Part-time employees	<p>10 mirrors 12 for part-time employees.</p> <p>10.1 mirrors current Award with minor simplification (deletes “is an employee who”). Adds (c) which states “receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work.”</p> <p>10.2 mirrors 12.2 although it replaces bullet points with letters (a) – (f).</p> <p>10.3-10.7 are mirrored.</p> <p>The current Award’s clause 12.7 is split, the first part of which is mirrored at 10.7 the second part renumbered at 10.8.</p> <p>10.7 refers to the minimum hourly rate rather than “1/38th of the weekly rate.”</p>	Part-time employees at 12.	<p>The SDA does not oppose the pure draft changes as noted.</p> <p>Minimum rate at 10.7. (Note reference at paragraph 3)</p>
11. Casual employees	<p>At 11.</p> <p>11.1 is reworded with the addition of “and paid as a casual employee”. The current Award’s 13.2 has been included into the draft 11.1(a) and (b). The reference at (a) is to the minimum hourly rate.</p>	Casual employees at 13.	<p>The SDA does not oppose the pure draft changes as noted.</p> <p>Minimum rate at 11.1(a). (Note reference at paragraph 3)</p>

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	<p>13.3 is mirrored at 11.2.</p> <p>13.4 is mirrored at 11.3.</p>		
12. Classifications	<p>At 12.</p> <p>Deletion of heading "Classifications and Wage Rates".</p> <p>The current Award's 16.1 has been split into 12.1 and 12.2. The reference to Schedule B has been replaced with 12.4.</p> <p>16.2 is mirrored in 12.3.</p> <p>The classification definitions at the new 12.4 mirrors those in schedule B of the current Award. A slight move at 12.4(a)(i) of "preparation".</p>	At 16.	The SDA does not oppose the pure draft changes as noted.
13. Ordinary Hours of Work	<p>At 13.</p> <p>Renamed "Hours of Work" instead of "Ordinary Hours of Work" at the draft part 3.</p> <p>Clause heading renamed "Ordinary hours of work" instead of "Hours of work" at the draft 13.</p> <p>The current Award's 25.1 is incorporated at</p>	At 25.	The SDA does not oppose the pure draft changes as noted.

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	<p>the draft 13.4.</p> <p>The draft 13.1 and 13.2 incorporate the current 25.2(a) and (b) respectively.</p> <p>25.3 is mirrored at 13.3.</p> <p>25.1 is mirrored at 13.4, with the reference being to clause 13.</p>		
14. Rostering arrangements	<p>Renamed “Rostering arrangements” instead of “38 hour week rosters”.</p> <p>Clause 14 mirrors the current 25.4 although it uses bullet points instead of letters (a) – (d).</p>	25.4 38 Hour week rosters	The SDA does not oppose the pure draft changes as noted.
15. Breaks	<p>At 15.</p> <p>Changes the current Award with slight change to wording at 15.1 saying “between” rather than “but less than”.</p> <p>Slight rewording of rest breaks at 9 hours or more with the same meaning.</p> <p>15.2 – 15.5 mirrors 27.1(b)-(d). “Commencing” replaced with “starting”.</p>	At 27.	This change could create confusion. A 4-hour shift receives one 10 minute rest break. A 5-hour shift receives one 10-minute rest break and one meal break. Proposed wording not as clear as current wording.
16. Minimum	At 16.	At 17.	The addition of “adult” to the clause

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Wage	<p>Mirrors current Award.</p> <p>New sentence at 16.1 stating “An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee.”</p> <p>Addition of hourly rates.</p> <p>Classification clauses incorporated as above at 12.1-12.2.</p>		<p>is unnecessary as an employer can choose to pay full rate to a junior or may pay in excess of the minimum rates.</p> <p>The use of the word “minimum” is inappropriate, as for example in the case of an employee working a Saturday, or at other times that attract overtime or penalty rates. A reference needs to be made to the appropriate classification.</p>
16.2 Junior Rates	<p>At 16.2.</p> <p>Mirrors current Award.</p>	At 18.	The SDA does not oppose the pure draft changes as noted.
16.3 Payment of Wages	<p>16.3 mirrors 22 in the current Award.</p> <p>An addition of a Note specifying the regulations is advantageous for clarity.</p>	At 22.	<p>The SDA notes that payment within a specific period after pay cycle is being considered in matter AM2016/6.</p> <p>The SDA does not oppose the addition of a Note specifying the regulations.</p>
16.4 Supported Wage	<p>At 16.4.</p> <p>Mirrors current Award. Adds description of</p>	At 23.	The SDA opposes the changes as noted as it could adversely impact disabled employees not on a

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	relevant employees.		supported wage.
16.5 National Training Wage	At 16.5 Mirrors current Award. Adds description of relevant employees.	At 24.	The SDA does not oppose the pure draft changes as noted.
17. Allowances	Addition of a clause stating employers must pay employees the allowances they are entitled to under the clause. Reference to Schedule B for a summary of monetary allowances and the method of adjustment.		The SDA does not oppose the pure draft changes as noted.
17.1(a) Broken Hill Allowance	At 17.1(a). The wording changes 19.9 inserting the amount of \$33.53 in lieu of 4.28% of the standard rate. Deletion of “exigencies of”.	At 19.9.	The SDA does not oppose this amended clause. Note that reference to % is included in B.1.1
17.1(b) Cold Work Disability Allowance	At 17.1(b)(i)and(ii). 17.1(b)(i) changes 19.8(a) inserting the amount of \$0.27 per hour in lieu of 1.3% of the standard rate per hour. 17.1(b)(ii) changes 19.8(b) inserting the amount of \$0.41 per hour in lieu of 2% of the standard rate per hour.	At 19.8.	The SDA does not oppose this amended clause. Note that reference to % is included in B.1.1

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17.2(a) Meal Allowance	At 17.2(a)(i)and(ii). Mirrors the current Award. Slight re-ordering of words.	At 19.1(a)and(b).	The SDA submits that the draft 17.2(a)(i) reads with some difficulty. The SDA proposes the following wording: “When an employee is required to work more than one hour of overtime after the employee’s ordinary time of ending work, without being given 24 hours’ notice, they will be either provided with a meal or paid a meal allowance of \$12.51. Where such overtime work exceeds four hours a further meal allowance of \$11.30 will be paid.”
17.2(b)(i) Special clothing	At 17.2(b)(i). Mirrors the current Award. 19.2(b)(i) and (ii) is incorporated into the draft 17.2(b)(ii).	At 19.2(a).	The SDA does not oppose the pure draft changes as noted.
17.2(b)(ii) Laundry Allowance	At 17.2(b)(ii). Mirrors the current Award. Slight change in words.	At 19.2(b).	The SDA does not oppose the pure draft changes as noted.
17.2(c) Excess	At 17.2(c).	At 19.3.	The SDA does not oppose the pure

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Travelling Costs	Changes the current Award with the replacement of the words “not exceeding three weeks” with “of up to three weeks”.		draft changes as noted.
17.2(d) Travelling Time Reimbursement	<p>At 17.2(d).</p> <p>Changes the current Award through slight wording changes.</p> <p>17.2(d)(i) re-worded from the current Award. Uses bullet points to differentiate between time travelled to and from and any fares reasonably incurred.</p> <p>17.2(d)(ii) and (iii) mirrors 19.4(b) and (c). Deletion at (ii) of “thereto” and simplification. Replacement at (iii) of time and a half with 150%.</p>	At 19.4.	The SDA does not oppose the pure draft changes as noted.
17.2(e) Transfer of employee reimbursement	<p>At 17.2(e).</p> <p>Mirrors the current Award.</p>	At 19.5.	The SDA does not oppose the pure draft changes as noted.
17.2(f) Transport Allowance	<p>At 17.2(f)(i) and (ii).</p> <p>Deletion of “Other than as provided in clause 19.6(b)”, reinserted as “except as provided in clause 17.2(f)(ii)” at the end of the sentence.</p>	At 19.6(a) and (b).	The SDA does not oppose the pure draft changes as noted.

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	17.2(f)(ii) mirrors the current Award's 19.6(b).		
17.2(g) Transport of employee reimbursement	At 17.2(g) (i) to (iii). 17.2(g)(i) changes 19.7(a) as the second part of the current Award provision becomes 17.2(g)(ii). States "Clause 17.2(g)(i) will not apply..." rather than "This will not apply..." 17.2(g)(iii) has changed the wording to "An employee may always elect to provide their own transport".	At 19.7(a) and (b).	The SDA does not oppose the pure draft changes as noted.
B.2.2 Adjustment of expense related allowances	B.2.2 mirrors the current 19.10.	19.10 This clause dealt with the adjustment of expense related allowances.	The SDA does not oppose the pure draft changes as noted.
18. Accident pay	At 18. Mirrors the current Award. 18.1(a) a reference to the Award is no longer capitalised.	At 20.	The changes proposed seem acceptable, subject to further review.
19. Superannuation	At 19. Mirrors the current Award.	At 21.	The SDA does not oppose the pure draft changes as noted.

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20. Overtime	<p>At 20.</p> <p>Clause 26 has been deleted in favour of comprehensive rates at 20.2.</p> <p>20.1 mirrors 26.1.</p> <p>20.3 mirrors 26.2. Uses 200% instead of double time.</p> <p>20.4 mirrors 26.3.</p> <p>20.5 mirrors 26.4.</p>	At 26.	The SDA does not oppose the pure draft changes as noted.
<p>21.1 Penalty Rates</p> <p>Evening Work Monday to Friday</p>	<p>At 21.</p> <p>The wording has changed. Incorporates loadings as a percentage e.g. 110% rather than a loading of 10%. States casual equivalent is inclusive of the casual loading.</p> <p>21.1(a) is the equivalent of 25.5(a)(i). Changes the wording by applying 110% pay for full time and part-time employees. Gives 135% pay for casuals.</p> <p>21.1(b) is the equivalent of 25.5(a)(ii). It changes the wording by giving 115% for permanent employees and 140% for casuals.</p>	At 25.5.	The amendment changes the methodology in calculating the casual loading in penalty applicable times such as the late night shift.

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21.2 Penalty Rates Saturday Work	At 21.2. Is the equivalent of 25.5(b). Changes the wording by giving 125% for permanents and 150% for casuals.	At 25.5(b)	The amendment changes the methodology in calculating the casual loading in penalty applicable times such as Saturday work.
21.3 Penalty Rates Sunday Work	At 21.3(a) and (b). 21.3(a) is the equivalent of 25.5(c)(i). It clarifies by giving the rate of 150% for permanents. 21.3(b) is the equivalent of 25.5(c)(ii). As the current Award stipulates a 75% loading and the draft gives a rate of 175% , this serves only to clarify the meaning without the loss of any benefit . 21.4 refers those who work Public Holidays to 25.3.	At 25.5(c)(i) and (ii).	The SDA does not oppose the pure draft changes as noted. The SDA acknowledges there is an inconsistency between the overtime rate on a Sunday at 20.2(b) and the Sunday penalty rate for ordinary time at 21.3. An insertion at clause 21 to show the 150% penalty applies to ordinary time worked on Sundays is desirable.
22. Leave and Public Holidays Annual Leave	At 22. 22.1 Per the NES. 22.2 mirrors 28.2 re shiftworkers. <i>NB: there is a suggestion that as shiftworkers are not mentioned elsewhere in the Agreement that this clause be deleted.</i>	At 28. 28.1 Per the NES.	The SDA opposes the removal of the shiftworker provisions due to a possibility that this provision may apply to certain employees.

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	<p>22.3 mirrors 28.3.</p> <p>22.4 is the equivalent of 28.4 re annual leave in advance. Changes the wording initially to state “an employer may agree in writing” rather than “An employer may allow”. It breaks down the current Award provision into (a) to (d). It also adds at 22.4(b) and (c) safeguards around what such an Agreement must have.</p> <p>22.4(d) clarifies the wording, though does not change the meaning of 28.4 re advanced leave and employee termination before accrual.</p> <p>22.5 is a new clause regarding the cashing out of annual leave. It provides safeguards and notes the stipulations of the Fair Work Act.</p> <p>22.6 is a new clause regarding excessive leave accruals.</p> <p>22.7 is a new clause regarding excessive leave accruals and direction by employer that leave be taken. It gives safeguards in this regard and refers to the FWA.</p> <p>22.8 is a new clause regarding excessive</p>		

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	leave accruals and the request by employee for leave. It provides similar safeguards to the above.		
23. Personal/Carer's Leave and Compassionate Leave	At 23. Mirrors the current Award. 23.2 breaks up the current Award provision 29.2 into 23.2(a)-(c), without changing the meaning. Some slight change to wording.	At 29.	The SDA does not oppose the pure draft changes as noted.
24. Parental Leave and related entitlements	At 24. New clause. Per the NES.	-	The SDA does not oppose the pure draft changes as noted.
25. Public Holidays	At 25. 25.1 mirrors 30.1. 25.2 mirrors 30.2. 25.3 mirrors 30.3 although it splits the clause into (a) and (b). 25.4 new clause detailing rights for part-day public holidays at schedule G.	At 30.	The SDA does not oppose the pure draft changes as noted.

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26. Community Service Leave	At 26. Per the NES.	At 31. Per the NES.	The SDA does not oppose the pure draft changes as noted.
27. Consultation about major workplace change	At 27. Deletion of the heading as at clause 8 “Consultation”. 27.1 mirrors 8.1(a). 27.2 mirrors 8.1(b).	At 8.	The SDA does not oppose the pure draft changes as noted.
28. Consultation about changes to rosters or hours of work	At 28. Mirrors the current Award.	At 8.2.	The SDA does not oppose the pure draft changes as noted.
29. Dispute Resolution	At 29. Mirrors the current Award.	At 9.	The SDA does not oppose the pure draft changes as noted.
30. Termination of Employment	At 30. 30.1 and 30.2 mirrors the current Award at 14.1 and 14.2 respectively.	At 14.	The SDA does not oppose the pure draft changes as noted.
31. Redundancy	At 31. Mirrors the current Award, per the NES.	At 15.1	The SDA does not oppose the pure draft changes as noted.

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32. Transfer to lower paid job on redundancy	<p>At 32.</p> <p>Change to title to Transfer to lower paid job on redundancy from Transfer to lower paid duties.</p> <p>Mirrors the current Award at 15.2.</p>	At 15.2	The SDA suggests that current title “transfer to lower paid duties” is retained. The language consistent with the wording of the clause.
33. Employee leaving during notice period	<p>At 33.</p> <p>Mirrors.</p> <p>Refers to clause 31 rather than “this clause”.</p>	At 15.3	The SDA does not oppose the pure draft changes as noted.
34.1 Job Search Entitlement For notice of termination of employment	<p>At 34.1.</p> <p>Mirrors the current Award at 14.3.</p>	At 14.3.	The SDA does not oppose the pure draft changes as noted.
34.2 Job Search Entitlement Redundancy	<p>At 34.2.</p> <p>Mirrors the current Award, but deletes 15.4(c).</p> <p>Also uses headings “Time off for seeking other employment” and “Proof of attendance”.</p>	At 15.4.	The SDA does not oppose the pure draft changes as noted.

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Schedule A. Summary of Hourly Rates of Pay	At Schedule A, replacing the current Transitional Provisions.	-	The SDA does not oppose the inclusion of summary hourly rates of pay tables. However, consistent with our comments regarding penalty rates for casuals (see 21.1 and 21.2 above) the SDA does not agree with the casual rates percentages for penalty rates times (A2, A.3.3).
Schedule B. Summary of Monetary Allowances	At Schedule B, replacing the current Classifications (incorporated as noted above).	-	At B.2.1 delete "Further four hours' overtime" and replace with "Where overtime exceeds four hours an additional allowance." At B.2.1 under Transport Allowance delete "other than primarily delivery duties." Also, delete "primarily delivery duties" and replace with "Where an employee is engaged primarily to perform delivery duties."
Schedule C. Supported Wage System	At Schedule C. Mirrors the current Award.	At Schedule C.	The SDA does not oppose the pure draft changes as noted.

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<p>Schedule D. National Training Wage</p>	<p>At Schedule D.</p> <p>Mirrors the current Award.</p> <p>D3.3 replaces D.3.3 is the current Award and removes reference to “any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.” It breaks the clause into (a)-(c). With (b) and (c) being new additions (qualifications not identified in training packages and qualifications in training packages which are not identified as appropriate for a traineeship, respectively).</p> <p>D.7 is the equivalent of Appendix D.1, the formatting has changed so the AQF certificate levels read horizontally rather than vertically. Further at Electricity Supply Industry and Electrotechnology the Roman numeral III is repeated within the parenthesis to emphasise it applies in WA only. Transport and Distribution now named Transport and Logistics.</p> <p>Wage Level B Transport and Logistics now only refers to Level II.</p>	<p>At Schedule D.</p>	<p>The SDA does not oppose the pure draft changes as noted.</p>

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Schedule E. Agreement to Take Annual Leave in Advance (example of Agreement)	New clause at Schedule E.	-	The SDA does not oppose the pure draft changes as noted.
Schedule F. Agreement to Cash Out Annual leave	New clause at Schedule F.	-	The SDA does not oppose the pure draft changes as noted.
Schedule G. Part Day Public Holidays	At Schedule G. Mirrors the current Award.	At Schedule E.	The SDA does not oppose the pure draft changes as noted.