



Business SA Submission

4 yearly review of
modern awards – *Plain
language – General
Retail Industry Award*

**(AM2016/15,
AM2014/270)**

22 February 2018

Introduction

Business SA provides this submission in response to [2018] FWC 702. Reference to 'item' means the item number in the relevant revised summary of submissions.¹ All pinpoint references refer to the Retail Award plain language exposure draft unless otherwise specified.

Business SA submissions

1. Items 24 and 26 – Part-time employment

- 1.1. In response to [13], Business SA disagrees with the SDA's position regarding use of the word 'may' as opposed to 'will' in clause 10.6. The altered wording does not substantively change the award.
- 1.2. The current award, at clause 12.3 states 'Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.' Clause 10.6 states '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.' It should be noted that clause 10.7 states: 'The employer must keep a copy of any agreement under clause 10.5, and any variation of it, and give another copy to the employee.'
- 1.3. Business SA submits the word 'may' in the PLED relates to the ability to make an agreement, not the form of that agreement. The requirement that an agreement be in writing is clearly expressed when clause 10.6 and 10.7 are read together.
- 1.4. Business SA does not object to the SDA's submission regarding clause 10.7.

2. Item 34 – Casual employment

- 2.1. In response to [32], Business SA submits clause 11.2 is appropriately drafted to identify the rate upon which the casual loading is to be applied. Business SA is unsure what substantive change the SDA has identified when calculating of the casual base rate of pay under the PLED.

3. Item 40 – Hours of work

- 3.1. Business SA does not oppose the expert's proposed solution to item 40.

4. Item 49 – Rosters

- 4.1. In response to [46], Business SA does not share the SDA's concern regarding proposed clauses 15.7(e) to (h). We submit that with each paragraph dealing with a single topic and following a logical flow the requirements for the employer and employee are more clearly identified.

5. Item 56 – Breaks between work periods

- 5.1. In response to [61], Business SA disagrees with the SDA's submission regarding proposed clause 16.6(b). Business SA does not agree with the SDA that the current award provision at clause 31.2(b) is inclusive of penalties, overtime and loadings. Such an interpretation is not supported by the current award and would represent a significant change in legal effect.
- 5.2. Prevailing industrial practice is that extra rates are not cumulative.² Rather, where multiple penalties may be payable to an employee, that penalty which is to the greatest advantage of the employee will be paid. In the absence of any further evidence from the SDA to support their interpretation, Business SA opposes suggestions the 200% rate compounds with other penalties.

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 or chrisk@business-sa.com.

¹ Revised summary of submissions, [Plain language re-drafting – General Retail Industry Award](#), 13 December 2017.

² See for example, *Clerks – Private Sector Award 2010* cl 28.7; *Manufacturing and Associated Industries and Occupations Award 2010* cls 32.3(a)-(b), 33.