



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Ana Banksia

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Wage Buddy

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How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature:



Name:

Ana Banksia

Date:

18 February 2024

Modern Awards Review 2023-24

Introduction

- 1 I appreciate the opportunity to make a submission to the Fair Work Commission (**FWC**) on the topic: 'Making awards easier to use'.
 - 2 This submission will primarily focus on the General Retail Industry Award (**Retail Award**).
 - 3 If the opportunity arises, I'm available to contribute to any consultations or discussions on making awards more user-friendly.
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Wage Buddy

- 4 Wage Buddy automates the classification of workers and calculation of pay rates under the relevant modern Fair Work Award (**award**).
 - 5 Wage Buddy is a regtech tool that leverages a unique automated decision-making mechanism. It is currently under development. A prototype has been tested.
 - 6 I'm motivated to build Wage Buddy to help businesses and workers. I leverage my experience working with the exceptional Mark Irving QC (as his legal assistant), at Redfern, Marrickville and Westjustice community legal centres (as a volunteer lawyer and paralegal) and at my legal practice.
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Proposals

- 7 My proposals below focus on classification and associated clauses. Due to time limitations, I haven't included proposals on pay and associated clauses.

Awards as code

- 8 One way to make awards easier to use is to codify them and allowing third-party tools to allow access to facilitate interpretation.
- 9 Codifying award text wouldn't override manual interpretation.

Simplify classification

- 10 Classifications in many awards are differentiated by specific factors.
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- 11 Some factors include:
 - (a) tasks;
 - (b) responsibilities (e.g. supervisory);
 - (c) on-the-job or prior experience; and
 - (d) qualifications.
- 12 Classifying an employee involves weighing up one or more factors (within and between classifications) to approximate the most likely classification.
- 13 Some factors are more dominant than others. Sometimes factors are liminal.
- 14 Some classifications include or exclude an employee based on a specific thing – it's very matter of fact and somewhat rare to come across this.
- 15 Progression to a higher level or classification usually involves a change that's significant enough in one or more factors.
- 16 There are patterns across awards:
 - (a) Entry-level classifications usually lack supervisory and managerial responsibilities. Rather, employees are expected to follow well-established processes and directions. Tasks tend to be limited.
 - (b) As the classification level increases, employees typically gain autonomy and responsibility. The scope of tasks increases.
 - (c) At higher levels, supervision and oversight is usually a key responsibility.
- 17 Given the points made in the above paragraphs, drafting classifications can be improved by:

Recommendations	<p>Apply any or all of the following when drafting classifications:</p> <ul style="list-style-type: none">• Separate factors within a classification clause using subheadings like 'tasks' or 'supervision' so that the user knows what the subclause is about before reading it.• Order factor subclauses according to importance (if possible or relevant).• Order sentences according to strength, with the strongest language at the top and the least strong at the bottom (e.g. 'must perform', 'usually', 'may [or might] be required').• If any classifications include both factors and 'typical' job titles, separately list the job titles in a schedule.
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Benefits	<ul style="list-style-type: none">• The above recommendations make the relevant factors clear, and may make it easier to weigh up between factors and aspects of classifications.• It would make it easier to identify a relevant job title if they're listed altogether in a schedule, separated by classification subheadings.
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Group definitions

- 18 Not all defined terms are defined in clause 2 (Definitions) of the Retail Award. This makes it difficult to:
- (a) locate delinquent defined terms; and
 - (b) know whether a term is a defined term without reading the entire document or searching for the term. It doesn't help that most defined terms aren't capitalised (as they typically are in legal documents).
- 19 Situating defined terms within the clause where they're primarily used doesn't improve readability, it increases chaos within the award.
- 20 The definitions clause can be improved by implementing the below recommendations:

Recommendations	<ul style="list-style-type: none">• Ensure that the defined terms in Parts 1-9 are both listed and defined in the definitions clause.• Any defined term in a schedule should be listed, but not defined, in the definitions clause. This includes the defined term classifications in Schedule A and the defined terms in Schedule E, clause E.2. An existing example of how this looks is 'retail industry', which is listed in clause 2 but defined elsewhere. <p>For example:</p> <p>Classification means a description of a job role that is associated with a minimum pay rate. The classifications in this award are:</p> <ul style="list-style-type: none">(a) Retail Employee Level 1;(b) Retail Employee Level 2;(c) Retail Employee Level 3;(d) Retail Employee Level 4;(e) Retail Employee Level 5;(f) Retail Employee Level 6;
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	<p>(g) Retail Employee Level 7;</p> <p>(h) Retail Employee Level 8;</p> <p>(i) Clerical Assistant Level 1;</p> <p>(j) Clerical Assistant Level 2;</p> <p>(k) Clerical Assistant Level 3;</p> <p>(l) Clerical Assistant Level 4; and</p> <p>(m) Clerical Assistant Level 5.</p> <p>...</p> <p>Clerical Assistant Level 1 is defined in Schedule A, clause A.1.4.</p> <p>...</p> <p>Retail Employee Level 1 is defined in Schedule A, clause A.1.1.</p> <p>... (repeat for other classifications)</p>
Benefits	Award navigation and readability is enhanced.
Specific examples	<p>All below examples can be relocated to clause 2:</p> <ul style="list-style-type: none"> • ‘retail industry’: This defined term is listed in clause 2 and states that it’s defined in clause 4.2. • ‘special clothing’: Clause 19.3 states that this defined term is used in clause 19.3. This implies that this defined term has an alternate meaning elsewhere in the Retail Award. • ‘baking production employee’: This isn’t a defined term but is treated as one in clauses 24.2 and 25.2(a)-(b). • ‘shiftwork’: This term is misused to specify the ordinary hours for non-baking production and baking production shiftwork employees in clauses 24.1 and 24.2.

Define appropriate terms

- 21 Some key terms in the Retail Award are used as if they’ve already been defined. The issue is that they haven’t been defined so their meaning is ambiguous.
- 22 Implementing the below recommendation may ensure that key terms have the intended meaning:

Recommendations	Define key terms within the definitions clause.
Benefits	Will help a person decide whether a term is relevant.
Specific examples	<ul style="list-style-type: none"> • ‘baking production shiftwork employees’: Separate definitions can be drafted for ‘shiftwork’, ‘shiftwork employees’ (specifically excluding baking production shiftwork employees within the definition), ‘baking production’ and ‘baking production shiftwork employees’. • ‘stand-alone’: It’s not clear whether stand-alone, when used in the Retail Award, includes franchises or just when a business sells other things (e.g. a butcher and a deli operating under the same business would be excluded here). • ‘retail complex’ and ‘shopping centre’: It may be helpful to define these. • ‘higher skill level’: In Retail Employee Level 1, an employee has to perform ‘within the limits of their ... skills’. Keeping this in mind, what would performing at a ‘higher skill level’ entail for a Retail Employee Level 2? Could this mean an employee that is more efficient, attentive, able to supervise others but doesn’t (because doing so might trigger a Retail Employee Level 3 classification)? A defined term for ‘higher skill level’ would be beneficial if moving a classification up relies on simply one’s interpretation of this term rather than any other factor. • ‘nightfill’: Reference the ordinary hours of work in the definition.

Separate Retail and Clerical classifications

- 23 Clerical Officer classifications aren’t ‘job titles’ as the relevant Retail Employee classification refers to them as.
- 24 It’s helpful to step back and consider the purpose of classifications. Is it possible for a Clerical Officer to be a Retail Employee if they don’t perform the tasks (or align with other defining factors) of a Retail Employee?
- 25 The following recommendation is made to enhance readability:

Recommendations	Separate each Retail Employee and Clerical Officer classification clause, so that the subheading reads, for example: ‘A.9 Clerical Officer Level 1’.
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Benefits	<ul style="list-style-type: none">• Simpler to identify where a Clerical Officer's classification clause is and understand what the role involves.• Less confusion about whether a Clerical Officer should perform the tasks of a Retail Employee as well.
Examples	N/A – self-evident

26 Once again, thank you for allowing me to make this submission. This is a great initiative that will hopefully result in positive change.

Kind regards,



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