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by Email

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.

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 leveraging my business and legal 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.

Proposals

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

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 would let [manual interpretation]... overrid...

Simplify classification

10. Classifications in many awards are differentiated by specific factors.

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 ± L W ¶ V Y H U \ P Drd/ sWomeKhaR tareELoRFcWme across this.

15 3 U R J U H V V L R Q W R D K L J K H U O H Y H O R U F O D V V L I L F D W L R Q 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	Apply any or all of the following when drafting classifications:
	x Separate factors within a classification clause using V X E K H D G L Q J V O L N H µ W D V N V ¶ R U µ V knows what the subclause is about before reading it.
	x Order factor subclauses according to importance (if possible or relevant).
	x Order sentences according to strength, with the strongest language at the top and the least strong at the bottom (e.g. µ P X V W S H U I R U P ¶ µ X V X D O O \ ¶ µ P D \
	x , I D Q \ F O D V V L I L F D W L R Q V L Q F O X G H titles, separately list the job titles in a schedule.

Benefits	x	The above recommendations make the relevant factors clear, and may make it easier to weigh up between factors and aspects of classifications.
	x	It would make it easier to identify a relevant job title if they're listed altogether in classification subheadings.

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 defined terms aren't capitalised (as they typically are in legal documents).

19   Situating defined terms within the clause where they are used may improve readability, it increases chaos within the award.

20   The definitions clause can be improved by implementing the below recommendations:

Recommendation s	x	Ensure that the defined terms in Parts 1-9 are both listed and defined in the definitions clause.
	x	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 defined elsewhere.
		For example:
		Classification means a description of a job role that is associated with a minimum pay rate. The classifications this award are:
		(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;

	(g) Retail Employee Level 7;
	(h) Retail Employee Level 8;
	(i) Clerical Assistant Level 1;
	(j) Clerical Assistant Level 2;
	(k) Clerical Assistant Level 3;
	(l) Clerical Assistant Level 4; and
	(m) Clerical Assistant Level 5.
	«
	Clerical Assistant Level 1 is defined in Schedule A, claus A.1.4.
	«
	Retail Employee Level 1 is defined in Schedule A, claus A.1.1.
	« U H S H D W I R U R W K H U F O D V V L I L
Benefits	Award navigation and readability is enhanced.
Specific examples	All below examples can be relocated to clause 2: x µ U H W D L O This defined term is listed in clause 2 and V W D W H V W K D W L W ¶ V G H I L Q H G L Q F (x µ V S H F L D O 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. x µ E D N L Q J S U R G X F W This is 'employee' in which is treated as one in clauses 24.2 and 25.2(a)-(b). x µ V K L I W 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 D V   L I   W K H \ ¶ Y H   D O U H D G \   E H H (
        7 K H   L V V X H   L V   W K D W   W K D \   K D Y H Q ¶ W   E H H Q   G H I L Q H G   V R   W

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	x 'baking production' separate work definitions can be drafted for 'shiftwork', 'shiftwork employees', 'specifically excluding shiftwork employees within the production' and baking production shiftwork employees.'
	x 'stand alone' - is not clear 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).
	x 'retail complex' - a map may help to define these.
	x 'higher skill level' - In Retail Employee Level 1, an employee has to perform 'within the .... 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 a (Employee Level 2 classification skill level' would be beneficial rather than relies on simply one's interpretation rather than any other factor.
	x 'night work' - Reference the ordinary hours of work in the definition.

Separate Retail and Clerical classifications

23   Clerical Officer class as the relevant Retail Employee 'job title classification refers to them as.

24   It's helpful to step back and consider the purpose would it be possible to consider a Clerical Officer to be a Retail Employee if they don't perform (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. Clerical Officer Level '

Benefits	x 6 L P S O H U W R L G H Q W L I \ Z K H U H D & O clause is and understand what the role involves. x 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,

Ana Banksia
Founder
Wage Buddy

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