



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language re-drafting – *General Retail Industry Award 2010* (AM2016/15)

JUSTICE ROSS, PRESIDENT

MONDAY, 23 JULY 2018

4 yearly review of modern awards – plain language re-drafting – General Retail Industry Award 2010.

[1] This statement concerns the plain language re-drafting of the *General Retail Industry Award 2010* (the current award).

[2] A Statement¹ issued on 27 October summarised the outcome of a conference held on 26 October 2017 (the October 2017 conference). Interested parties were invited to confirm their positions in respect of outstanding items. A revised plain language exposure draft (PLED) incorporating resolved items was published on the Commission's website on 1 November 2017.

[3] A Statement² was issued on 2 February 2018 setting out the parties' positions in relation to outstanding issues; the history of current award clause 12.8 and the plain language expert's (the expert) comments in relation to items 40, 44 and 45. Revised agendas and summaries of agenda items³ were published on the Commission's website on 1 March and 19 June 2018.

[4] A conference was held on 21 June 2018 (the June 2018 conference) to address the outstanding issues. A transcript⁴ of the conference is available on the 4 yearly review of modern awards webpage. The conference was attended by representatives of:

- Australian Business Industrial and NSW Business Chambers (ABI);
- Business SA; and
- Shop, Distributive and Allied Employees' Association (SDA).

[5] This statement sets out the outcome of the June 2018 conference and the next steps in finalising the plain language re-drafting of the *General Retail Industry Award 2010*.

¹ [\[2017\] FWC 5589](#)

² [\[2018\] FWC 702](#)

³ [Agenda and summary of agenda items for conference](#), 19 June 2018.

⁴ [Transcript](#), 21 June 2018.

Confirmation of provisionally resolved items

[6] The revised agenda identified two provisionally resolved items.

[7] During the June 2018 conference, the parties indicated that the following items were resolved:

- Item 44 – clauses 15.6(i) and (j) – hours of work for full-time employees; and
- Item 45 – clause 15.7 – hours of work for full-time employees – rosters.⁵

Outstanding items

[8] The revised agenda identified a number of outstanding items for further discussion at the June 2018 conference.

Items 24 and 26

[9] Items 24 and 26 relate to clauses 10.6 and 10.7 of the revised PLED. At the June 2018 conference I proposed amendments to clauses 10.6 and 10.7 as follows:

‘10.6 The employer and the employee may agree **in writing** to vary the regular patten of work agreed under clause 10.5 with effect from a future date or time. **Any such agreement must be in writing.**

10.7 The employer must keep a copy of any agreement under clause 10.5 and any variation of it **under clause 10.6** and give another copy to the employee.’⁶

[10] Interested parties are invited to file submission regarding the proposed amendments to clauses 10.6 and 10.7 by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 30

[11] Item 30 relates to the ‘changes to roster’ provisions for part-time employees at clauses 10.10(a) to (c) (changes to roster) in the revised PLED. At the June 2018 conference the parties agreed that clause 10.10(b) should be amended to read as follows:

‘(b) The roster of a part-time employee, **including but not** the number of hours agreed under clause 10.5, may be changed at any time by mutual agreement between the employer and the employee.’⁷

⁵ [Transcript, 21 June 2018](#) paragraphs 9 – 20

⁶ [Transcript, 21 June 2018](#) paragraphs 21 – 65.

⁷ [Transcript, 21 June 2018](#) paragraphs 65 – 117.

[12] Interested parties are invited to review the updated clause and confirm whether the amendment paragraph [11] resolves the issues identified with clause 10.10 by **4.00 pm, 9 August 2018**.

Item 30A

[13] Item 30A relates to the note under clause 10.10(c) of the revised PLED. At the June 2018 conference the SDA noted that if there is provisional agreement to the changes proposed to clause 10.10 they would not have an issue with the retention of Note 1.⁸

[14] If no further submissions are made in relation to clause 10.10 by **4.00 pm, 9 August 2018**, the amended wording in paragraph [11] will be taken to resolve this issue.

Items 33

[15] The outstanding issue in respect of item 33 relates to the wording of clause 11.2 and the note below it. At the June 2018 conference, the I suggested adding a note in clause 11.2 in order of tables referenced, as follows:

‘NOTE 2: Overtime rates applicable to casuals are set out in Table 10—Overtime rates.

NOTE 23: Penalty rates applicable to casuals are set out in Table 11—Penalty rates.’⁹

[16] Interested parties are invited to confirm that the additional note in paragraph [15] resolves the issue by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 34

[17] At the June 2018 conference, the SDA confirmed that they have withdrawn the issue at item 34.¹⁰

Item 40

[18] Item 40 relates to consistency of language within clause 15 of the revised PLED, provisions for ordinary hours of work and how they interact with shiftwork provisions. Following the October 2017 conference, the expert proposed an additional clause at 28.4:

‘28.4 All hours of work on a shift are continuous.’

[19] The revised PLED will be *provisionally* updated to incorporate the proposed amendment. Interested parties are invited to make submissions on the new clause 28.4 set out at [18] by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

⁸ [Transcript, 21 June 2018](#) paragraphs 118 – 123.

⁹ [Transcript, 21 June 2018](#) paragraphs 118-151.

¹⁰ [Transcript, 21 June 2018](#) paragraphs 152-157.

Item 43

[20] Item 43 relates to clause 15.3 of the revised PLED and current award clause 27.2(c). At the June 2018 conference the parties agreed that clause 15.3 of the PLED should be amended to be consistent with clause 27.2(c) of the current award, as follows:

‘15.3 Ordinary hours of work **on any day** are continuous, except for rest breaks and meal breaks as specified in clause 16—Breaks.’¹¹

[21] Interested parties are invited to confirm that the amended wording at paragraph [20] resolves the issue in relation to clause 15.3 by **4.00 pm, 9 August 2018**.

Item 49

[22] Item 49 relates to clause 15.7 of the revised PLED. The PLED will be updated to reflect discussions at the October 2017 and June 2018 conferences to enable parties to assess the proposed amendments in the context of the clause.¹²

[23] Interested parties are invited to review the revised PLED clause 15.7 and make further submissions in response to the proposed amendments by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

[24] The SDA also noted a numbering issue, as revised clause 15.7(e) should be (d).¹³ This error will be corrected in the next version of the PLED, and paragraphs renumbered accordingly.

Item 51

[25] The outstanding issues related to item 51 relates to clause 15.9 of the revised PLED. The SDA raised a number of issues with clause 15.9 in their [10 November 2017 submission](#).¹⁴

[26] In the *February 2018 Statement* interested parties were invited to comment on SDA’s submission. No other party made a submission. SDA made a [further submission on 22 February 2017](#).¹⁵

[27] At the June 2018 conference the Commission indicated that the parties will be given the opportunity to review clause 15.9. The SDA’s proposed amendments will be provisionally reflected in the revised PLED to enable parties to assess the proposed amendments in the context of the clause.¹⁶

¹¹ [Transcript, 21 June 2018](#) paragraphs 158-177.

¹² [Transcript, 21 June 2018](#) paragraphs 187-197; Transcript 26 October 2017, paragraphs 239 – 243.

¹³ [SDA submission](#), 10 November 2017, paragraph 14.

¹⁴ [SDA submission](#), 10 November 2017, paragraphs 17 – 20.

¹⁵ [SDA submission](#), 22 February 2018, paragraph 10.

¹⁶ [Transcript, 21 June 2018](#) paragraphs 187-197.

[28] Interested parties are invited to review the revised PLED clause 15.9 and make further submissions in response to the proposed amendments by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 56

[29] Item 56 relates to Table 3 in clause 16—Breaks of the revised PLED. The revised Table 3 at Attachment A to a summary of submissions document dated 18 October 2017 was incorporated into the revised PLED. The words ‘a paid rest’ before ‘break’ in NOTE 1 will be inserted in the next version of the PLED.¹⁷

[30] Interested parties are invited to review the revised Table 3 and Note 1, and make submissions by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 56A

[31] Item 56A relates to a question raised by the Commission in relation to clause 16.6(b) regarding whether the rate payable under that clause compounds with other applicable penalties such as weekend penalties.

[32] SDA submits that clause 16.6(b) should read ‘that an employee will be paid double the rate they would be entitled to’ which must be inclusive of all relevant penalties, overtime and loadings.¹⁸

[33] Business SA and ABI oppose the SDA’s submission and submit that such an interpretation is not supported by the current award and would be a substantive change.¹⁹ Business SA submits where multiple penalties may be payable to an employee, the penalty which is to the greatest advantage to the employee will be paid. In the absence of further evidence from the SDA, Business SA opposes suggestions that the 200% rate compounds with other penalties.²⁰

[34] The Commission indicated that the parties will be given the opportunity to review clause 16.6(b) and make further submissions. Interested parties are invited to make further submissions in response to SDA’s submissions about clause 16.6(b) by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**. The Commission will determine the issue based on the submissions received.

Item 62

[35] Item 62 relates to clause 23.6 of the revised PLED and relates to the meaning of ‘township’. At the June 2018 conference the Commission stated that it does not intend to take

¹⁷ [\[2018\] FWC 702](#), paragraph [59].

¹⁸ [SDA submission](#), 10 November 2017, paragraph 22; [Transcript, 21 June 2018](#), paragraphs 198 – 208.

¹⁹ [Business SA submission](#), 22 February 2018, paragraph 5.1.

²⁰ [Business SA submission](#), 22 February 2018, paragraph 5.2.

the matter any further in these proceedings and suggested that if any party wants pursue a definition of ‘township’ they may make an application to vary the modern award.²¹

[36] An issue also arose in relation to the definition of ‘family’ in clause 23.6(b). SDA submit that the term ‘family’ should be in line with the NES definition.²² At the June 2018 conference I noted that the term ‘immediate family’ is defined in the Act and that expression may be preferable.

[37] The Commission indicated that the definition would be considered in relation to other provisions in the revised PLED to assess the impact of adding a definition to clause 2.²³

[38] The term ‘family’ is used in the standard clause 38.3(b) (Consultation about changes to rosters or hours of work). The term ‘family member’ is defined for the purposes of the model term relating to leave to deal with family and domestic violence, as follows:

‘family member means:

(a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or

(c) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.’

[39] This model term is to be inserted into the current award.

[40] The Commission’s *provisional* position is that adding a definition of ‘immediate family’ to clause 2—Definitions will not adversely affect either standard clause and suggests that a definition be added to clause 2—Definitions and clause 23.6(b) be redrafted as follows:

‘2. Definitions

Immediate family means a family member as defined by section 12 of the Act.’

23.6(b) The employer ~~is responsible for, and~~ must pay, the total cost (including fares and other transport charges) of moving the employee and member(s) of the employee’s immediate family who reside in the employee’s household, ~~including fares and other transport charges.~~’

[41] Interested parties are invited to make submission about the proposed amendments at paragraph [40] by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

²¹ [Transcript, 21 June 2018](#), paragraphs 209 - 224

²² [SDA submission](#), 4 August 2017, paragraph 141.

²³ [Transcript, 21 June 2018](#), paragraphs 225 – 229 and 243 – 297.

Item 62A

[42] Item 62A relates to clause 23.11 of the revised PLED. During the June 2018 conference parties acknowledged that the ‘appropriate rate of pay’ is ambiguous and the Commission indicated they would be given the opportunity to examine any award history in relation to clause 23.11 and make further submissions.

[43] Interested parties are invited confirm whether they want to argue a case based on the award history or leave the phrase “appropriate rate of pay” as it is in the current award, with its attendant level of ambiguity by **4.00 pm, 9 August 2018**.²⁴ Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Items PTC1 and 65

[44] Item PTC1 relates to amendments made to clause 25 (overtime) of the revised PLED as a result of the part-time and casual Full Bench proceedings.²⁵

[45] At the June 2018 conference parties sought the opportunity to review the overtime clause in the context of changes to the rostering provisions at clauses 10 and 15.²⁶ Interested parties are invited to make submissions on outstanding issues relating to clause 25 by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 67

[46] Item 67 relates to the note below the clause title of clause 26 (penalty rates). The amendment arising from the 19 September 2017 conference was not reflected in the revised PLED. At the June 2018 conference I indicated parties would have an opportunity to give further consideration to this item after the amendment is made to the revised PLED.²⁷

[47] Interested parties are invited to review the proposed amended note below the title of clause 26 and confirm any outstanding issues by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

Item 72

[48] Item 72 relates to Schedule B and the use of the term ‘ordinary hours’. This item was not dealt with at the June 2018 conference. The SDA is invited to identify specific concerns relating to the use of the term ‘ordinary hours’ in Schedule B by **4.00 pm, 9 August 2018**. Any submissions in reply are to be filed by no later than **4.00 pm, 16 August 2018**.

[49] Also, the note at the beginning of Schedule B has been amended to reflect the wording in the plain language exposure draft of the *Clerks—Private Sector Award 2017*.²⁸

²⁴ [Transcript, 21 June 2018](#), paragraphs 229 – 242.

²⁵ [PR598494](#)

²⁶ [Transcript, 21 June 2018](#), paragraphs 298 – 300.

²⁷ [Transcript, 21 June 2018](#), paragraphs 317 – 326.

²⁸ [Clerks PLED](#), published 1 December 2017.

Next steps

[50] A further revised PLED will be published on 25 July 2018.

[51] Submissions in relation to the items at [10], [12], [14], [16], [19], [21], [23], [28], [30], [34], [41], [43], [45], [47] and [48] are to be filed by 4.00 pm, Thursday 9 August 2018.

[52] Reply submissions are to be filed by 4.00 pm, Thursday 16 August 2018.

[53] On 29 August 2018 the Commission will publish a list of outstanding issues which will be determined on the papers.

[54] A final conference will be held at 10.00am on Friday, 21 September 2018 during which the parties will have a final opportunity to comment on any outstanding items before they are determined on the papers.

[55] All material should be sent to amod@fwc.gov.au.

[56] Liberty to apply.

PRESIDENT

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