



Business SA Submission

4 yearly review of
modern awards – *Plain
language – Restaurant
Industry Award;
Hospitality Industry
(General) Award*

**(AM2016/15,
AM2014/284 and
AM2014/272)**

22 September 2017

Introduction

Business SA provides this submission in response to matters arising from 12 September 2017 plain language exposure draft (PLED) conferences for the *Restaurant Industry Award 2010* (**Restaurant Award**) and the *Hospitality Industry (General) Award 2010* (**HIGA**). Business SA provided initial submissions for the Restaurant Award and HIGA plain language exposure drafts on 14 June 2017 (**June Submission**).¹ At these conferences parties were invited to provide comment on outstanding exposure draft matters by 4pm Friday 22 September. In this submission Business SA will address two items arising from the Restaurant Award² and two items arising from the HIGA.³ Reference to 'item' means the item number in the relevant revised summary of submissions.⁴ All pinpoint references refer to the relevant revised plain language exposure draft unless otherwise specified.

Restaurant Industry Award

1. Item 11 – Ordinary hours of work

- 1.1. In response to our June Submission at [19] the Drafter made a change to clause 15.1(e) to reflect current award clause 31.2(d). The Drafter then commented:

'While this change reflects the original clause, it leaves unclear what the position is if overtime is worked immediately after finishing ordinary hours on one day or immediately before working ordinary hours on the next day. Is the effective minimum break reduced by the amount of overtime worked?'
- 1.2. Business SA's position is that where an employee has worked overtime immediately after completing ordinary hours the effective minimum break will be reduced; though only by 2 hours at most. This position was reached based wording in the PLED in its reflection of the current award.
- 1.3. Clause 15.1(e) sets out that the employee must have a minimum break of 10 hours between finishing ordinary hours on one day, and starting ordinary hours on the next. For example, the employee may appropriately be rostered to finish ordinary hours at 9pm on the first day, and be rostered to begin ordinary hours at 7am on the next day. Under this arrangement, the employee will have had a minimum break of 10 hours between the periods of ordinary hours. This clause does not contemplate overtime.
- 1.4. If the employee works overtime on the first day their minimum break may be reduced, depending on the amount of overtime worked. Clause 26.2 will apply if the employee has worked overtime and, at the end of such overtime, has been rostered to start work less than 8 hours later. In such circumstances, the employee may, without loss of pay, delay the start of their next rostered shift until 8 hours after the employee finished working overtime, per clause 26.2(b).
- 1.5. In our example above, if the employee is required to work three hours of overtime (to 12am on the first day), they are entitled to an 8 hour break and may delay their actual starting time from 7am to 8am on the next day to accommodate this without loss of pay. In this circumstance, the employee has had an 8 hour break between working overtime and starting ordinary hours. If the employee was required to work 2 hours of overtime, until 11pm for example, their effective minimum break will have been reduced by 2 hours as clause 26.2(b) will not apply and delay the start of the next rostered shift. If 1 hour of overtime is required to be worked, clause 26.2(b) will not apply and the effective minimum break will be reduced by 1 hour. This

¹ Business SA, '[4 yearly review of modern awards – Hospitality Industry \(General\) Award 2010 and the Restaurant Industry Award 2010 \(AM2014/272 & AM2014/284\) Plain language redraft](#)' 14 June 2017.

² Revised plain language exposure draft – [Restaurant Industry Award 2017](#), 22 August 2017.

³ Revised plain language exposure draft - [Hospitality Industry General Award 2017](#), 22 August 2017.

⁴ Revised summary of submissions, [Plain language re-drafting – Restaurant Industry Award](#), 8 September 2017; Revised summary of submissions, [Plain language re-drafting – Hospitality Industry \(General\) Award](#), 8 September 2017.

interpretation is consistent with current award clauses dealing with hours of work (current award clause 31.2(d)) and breaks after working overtime (current award clause 33.4(a)).

- 1.6. Regarding the Drafter's query where overtime is worked immediately before working ordinary hours, Business SA submits the current award does not properly consider in this circumstance, with the PLED consequently not properly considering this circumstance either.
 - 1.7. Where there has not been mutual agreement to alter the full-time or part-time employee's rostered hours under current clause 31.6(b), and the employee works overtime immediately before starting rostered hours the employee appears have an entitlement to an 8 hour break without loss of pay before starting work. This is based on our reading of current provision 32.4 (clause 26.2 in the PLED). The current provision appears to operate even if the employee only had to work one hour of overtime before starting their rostered hours. While application of current clause 32.4 makes sense in the context of overtime after rostered hours, as indicated above it applies awkwardly in the context of overtime before rostered hours.
 - 1.8. Business SA recognises that addressing this awkward application would likely be considered a substantive change and on that basis, does not propose wording as part of this submission. We simply highlight this in response to the Drafter's query and are in the Commission's hands as to how this matter should be dealt with.
- 2. Item 11 – Allowance for distance work**
- 2.1. Parties have been asked at clause 24.6 to clarify the meaning of 'ordinary rate of pay' in clause 22.6(a) and whether this term includes applicable penalties.
 - 2.2. The current award equivalent of PLED clause 24.6(a) is clause 24.4(a). The current award clause does not provide a clear answer which supports either the inclusion or exclusion of applicable penalties. Business SA has not yet been able to locate the origin of this provision to ascertain the initial intention of this clause and as such is unable to provide a substantiated argument for either inclusion or exclusion of applicable penalties.

Hospitality Industry (General) Award

3. Item 4 – Definition – 'appropriate level of training'

- 3.1. Business SA agrees with the submissions of the Australian Hotels Association regarding exclusion of casino gaming employees from the 'appropriate level of training' definition in the HIGA PLED. We submit the definition in clause 4 should not exclude casino gaming employees, particularly when no other definitions more directly define the appropriate level of training for casino gaming employees.

4. Item 62 – Overtime

- 4.1. During the 12 September 2017 conference, Business SA undertook to advise if we identified any issue with the Drafter's proposed solution for our submission at item 62. This submission identified that the PLED had not included an equivalent for clause 33.1(a) of the current award. The Drafter proposed wording reflecting this provision be inserted into the PLED.
- 4.2. Business SA has not identified any issue with the Drafter's suggested wording nor the new location of the NOTE.

Conclusion

Business SA thanks the Fair Work Commission for accepting these submissions.

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