



Business SA Submission

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

(AM2016/15)

7 August 2018

Introduction

Business SA provides this submission in response to [2018] FWC 4046 ('July Statement'). Reference to 'item' means the item number in the revised summary of submissions published on 19 June 2018.¹ Paragraph references refer to the July Statement unless otherwise specified. All pinpoint references refer to the Retail Award plain language exposure draft published on 25 July 2018 unless otherwise specified.

Business SA submissions

1. Items 24 and 26 – Part-time employment

1.1. In response to [10], Business SA does not oppose amendments to clauses 10.6 and 10.7.

2. Item 30 – Changes to roster

2.1. In response to [12], Business SA does not oppose the amended clause 10.10(b).

3. Item 33 – Casual employment

3.1. In response to [16], Business SA does not oppose the new note 2 at clause 11.2.

4. Item 49 – Rosters – Consecutive days off

4.1. In response to [23], Business notes what appears to be a drafting error at clause 15.7(d)(vi).

4.2. Clause 15.7(d)(vi) reads: 'The maximum number of consecutive days on which an employee may be worked (whether ordinary hours or reasonable additional hours) is 6.' (emphasis added). The phrase 'on which an employee may be worked' appears to be a drafting error.

4.3. Business SA submits clause 15.7(d)(vi) be amended to read 'The maximum number of consecutive hours on which an employee may work (whether ordinary hours or reasonable additional hours) is 6.'

5. Item 51 – Rosters – Notification of rosters

5.1. In response to [28], Business SA opposes the drafting of clause 15.9(h). The legal operation of clause 15.9(h) differs from the current award equivalent at clause 28.14(e). We submit clause 15.9(h) should clearly refer to the roster change in clause 15.9(g) or, in the alternative, should be combined with clause 15.9(g).

5.2. The relevant clause in the current award is clause 28.14(e). Clause 28.14(e) states: 'Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, **then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.**' (emphasis added).

5.3. The PLED has split clause 28.14(e) into two clauses: 15.9(g) and 15.9(h). These are reproduced below.

5.4. Clause 15.9(g) reads: 'Paragraph (i) applies to an employee whose roster is changed in a particular week for a one-off event that does not constitute an emergency and then reverts to the previous roster in the following week.'

5.5. Clause 15.9(h) reads: 'The employee must pay the employee at the overtime rate specified in **Table 10 – Overtime rates** for any extra time worked by the employee because of the roster change.' (emphasis in original). Please note for the purposes of this discussion, we assume that the first reference to 'employee' should instead refer to 'employer'.

5.6. Business SA submits the current requirement for extra time to be paid at the overtime rate is limited to the circumstances described in clause 28.14(e) of the current award. We make this submission given this

¹ Revised summary of submissions, [Plain language re-drafting – General Retail Industry Award](#), 19 June 2018.

requirement clearly flows from the same sentence in the same paragraph. It is this limitation that is not reflected in the latest exposure draft.

- 5.7. Business SA submits that clause 15.9(h) does not limit the requirement to pay overtime rates to the circumstance in clause 15.9(g). By providing the overtime rate obligation in a distinct paragraph this gives the impression that the overtime rate is payable where any extra time is worked due to a roster change. This may not always be the case however. For example, clause 15.9(d) allows the roster of an employee to be changed by mutual agreement between the employee and the employer at any time before the employee arrives at work, provided the change is due to unexpected operational requirements.
 - 5.8. Business SA provides two possible solutions for this matter. Clause 15.9(h) could be amended to refer to clause 15.9(g) as follows: 'The employee must pay the employer at the overtime rate specified in **Table 10 – Overtime rates** for any extra time worked by the employee because of the roster change *in clause 15.9(g)*.'
 - 5.9. In the alternative, clause 15.9(h) could be added as a second sentence in clause 15.9(g). We put forward the following: 'Paragraph (i) applies to an employee whose roster is changed in a particular week for a one-off event that does not constitute an emergency and then reverts to the previous roster in the following week. *The employer must pay the employee at the overtime rate specified in **Table 10 – Overtime rates** for any extra time worked by the employee because of this roster change.*'
 - 5.10. Business SA also notes two drafting errors in clause 15.9. We submit the first reference to 'employee' in clause 15.9(h) should be changed to 'employer'. We also submit reference to 'clause 10.10' in Note 1 should be amended to 'Clause 10.10'.
6. **Item 56 – Breaks**
 - 6.1. In response to [30], Business SA submits the title of Column 2 in Table 3 should be changed from 'Breaks' to 'Rest breaks'. This will more accurately indicate the entitlements listed in Column 2.
 7. **Item 56A – Breaks between work periods**
 - 7.1. In response to [34], Business SA has no further submissions to make regarding clause 16.6(b). We are content to rely on the submissions we have provided on this point previously.

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