



# Business SA Submission

4 yearly review of  
modern awards –

*Hospitality Industry  
(General) Award 2010*

(AM2014/272)

8 February 2018

## Introduction

These submissions are filed by Business SA and relate to the Statement<sup>1</sup> released by the Full Bench of the Fair Work Commission (Commission) on 22 January 2018. This Statement relates to the plain language re-drafting of the *Hospitality Industry (General) Award 2010* (Hospitality Award). This submission responds to the directions given at [28] and [29] of the Statement.

Accompanying the Statement was a revised summary of submissions and two plain language exposure drafts for the Hospitality Award (PLED). Unless otherwise stated, all pinpoint references refer to the PLED published on 22 January 2018.

## Why this matter is important to South Australian businesses

*As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:*

- South Australian businesses are impacted by any changes in the award system.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards, better enabling both parties to understand their rights and responsibilities.
- Small business owners make up a large proportion of our membership, these businesses are often not able to devote the necessary resources to fully understand Australia's complex workplace regulations.
- The modern award objective is to provide a fair and relevant minimum safety net of terms and conditions. Modern awards must be drafted such that those using the award are able to determine what they can expect and what is expected of them.
- The Plain Language re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.
- Whilst the Pharmacy Industry Award 2010 was selected as the pilot award for this project the parties are obliged to consider the impact on other Awards.

*For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at [karenv@business-sa.com](mailto:karenv@business-sa.com) or [chrisk@business-sa.com](mailto:chrisk@business-sa.com).*

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<sup>1</sup> [2018] FWCFB 449.

## ***Hospitality Industry (General) Award 2017 Plain Language Exposure Draft***

### Items that overlap with substantive proceedings

#### **1. Item 34**

- 1.1. Business SA notes the direction issued at [28] of the Statement. This direction requires Business SA to confer with the parties and elect whether our respective claim should be addressed under the substantive or the technical and drafting matters for this award.
- 1.2. Business SA's claim is contained at item 34 of the revised summary of submissions published 22 January 2018. At [25] the Full Bench indicated their intention to deal with this matter as part of the plain language technical and drafting process unless otherwise requested.
- 1.3. We elect that our claim be addressed under the technical and drafting proceedings. Prior to making this election we have consulted with other parties. The parties did not suggest they opposed Business SA's intended election.

### Review of revised exposure draft – Part-time and casual employment matters

#### **2. General comment**

- 2.1. Prior to making providing these submissions, Business SA notes two versions of the exposure draft were published to accompany the revised summary of submissions. One version of the exposure draft was a 'tracked' version and the other was an 'untracked' version. However, both of these documents track changes made to the exposure draft. As a consequence, it has been difficult for Business SA to ascertain whether apparent drafting errors were limited to the 'tracked' version of the document or are indeed present in the 'untracked' document.
- 2.2. For the purposes of this submission, Business SA will comment on changes to the tracked exposure draft on the assumption that it reflects the untracked exposure draft.

#### **3. PTC-1 – Part-time employment**

- 3.1. **Clause 10.2.** Business SA notes what appears to be a drafting error in clause 10.2. Clause 10.2 of previous exposure drafts stated elements which defined a part-time employee, this intention was clear by use of the phrase "a part-time employee **is an employee who...**" (emphasis added). This definition is lost in the latest exposure draft.
- 3.2. The latest exposure draft begins clause 10.2 as follows: 'A part-time employee ~~is an employee who is employed in a classification in **Schedule D – Classification Definitions** and who:~~' with the clause then continuing to the three subsequent paragraphs. As expressed in the latest exposure drafts clause 10.2 does not read clearly. The strikethrough has removed too much of clause 10.2.
- 3.3. Business SA submits clause 10.2 should be amended to read: 'A part-time employee is an employee ~~who is employed in a classification in **Schedule D – Classification definitions** and who:~~'
- 3.4. **Clause 10.3(a).** Business SA notes a drafting error in the exposure draft. Clause 10.3(a), after the 'number of hours work which is guaranteed to be provided and paid to the employee' strikethrough there appears to be an 'o' added to the paragraph.
- 3.5. **Clause 10.5.** Business SA submits clause 10.5 should not remove reference to the employee's specific guaranteed hours. The exposure draft reads 'The employer may roster the employee to work ~~working of the employee's~~ the guaranteed hours...'. We recognise 'guaranteed hours' is defined in clause 10.3(a), however the PLED is less clear than the Determination that the employer may roster the employee to work the employee's guaranteed hours.

- 3.6. Business SA submits clause 10.5 should be amended to read: 'The employer may roster the employee to work the *employee's* guaranteed hours and...' (addition *emphasised*).
- 3.7. **Clauses 10.8 and 10.9.** Business SA notes minor drafting errors in clauses 10.8 and 10.9. The second instance of the word 'clause' in clause 10.8 is not spelled correctly. The same error exists in clause 10.9.
- 3.8. **Clause 10.14.** Business SA questions the value of clause 10.14 given amendments to clause 11.1 when identifying who is a casual employee.
4. **PTC-2 – Casual employment**
  - 4.1. **Clause 11.1.** Business SA supports the amended wording in clause 11.1. This wording better reflects the current award.
  - 4.2. Item 15 of the summary of submissions contained Business SA's submission regarding clause 11.1. Given we are satisfied with the wording of the revised exposure draft we will not be pressing item 15.
5. **PTC-5 – Overtime**
  - 5.1. **Clause 28.2(c).** Business SA notes a cross-referencing error in clause 28.2(c). This clause sets out that an employer must pay a casual employee at overtime rates in the circumstances specified in clause 11.6. Clause 11.6 covers frequency of payment. The cross reference in clause 28.2(c) should refer to clause 11.5.