

# **Guidelines for plain language drafting of modern awards**

Prepared by:

Eamonn Moran PSM QC

On behalf of:

Fair Work Commission

Updated October 2016

## Contents

1	Introduction .....	3
2	Purpose of these Guidelines .....	3
3	Organisation of information.....	3
4	Headings.....	5
5	Construction of clauses and their components .....	5
6	Language .....	7
7	Definitions .....	9
8	General matters .....	10
9	Referencing .....	11
10	Formatting and Tables .....	12

## **1 Introduction**

- 1.1 A modern award sets out minimum pay rates and conditions of employment in an industry or occupation which apply in addition to the National Employment Standards. Employers and employees must comply with the award(s) that cover them.
- 1.2 As employers and employees are expected to comply with an award, they are entitled to expect that the award is drafted in such a way that they can readily navigate their way around the award and understand what it contains.
- 1.3 Plain language drafting is not just about the language used. It also covers the structure and design of the document. The International Plain Language Federation has published the following definition:

A communication is in plain language if the language, structure and design are so clear that the intended audience can easily find what they need, understand what they find and use that information.
- 1.4 The aim of plain language drafting is to make the document as simple and easy to understand as possible without taking away from precision or omitting necessary information or changing the legal effect of the document.
- 1.5 Awards that are not as simple and easy to understand as they can be cost money by creating the need for employers and employees to seek advice from paid advocates.

## **2 Purpose of these Guidelines**

- 2.1 These Guidelines are intended to assist those involved in drafting and maintaining modern awards to do so in plain language. The guidelines will help to achieve consistency in language and structure across modern awards.
- 2.2 The guidelines are written so as to be compatible with the template currently used by the Fair Work Commission, including the numbering system dictated by that template.
- 2.3 Consequently, the Guidelines do not canvass design issues relating to choice of font, margin width, line spacing or numbering systems.

## **3 Organisation of information**

- 3.1 An award as a whole, and each clause within it, should be organised logically and in a clear and meaningful way.
- 3.2 A logical structure involves:
  - putting related material together

- placing provisions of a general nature before those of a specific nature
  - following a chronological sequence where practicable
  - generally placing more important provisions before less important ones
  - putting matters of detail, or of a supplementary or ancillary nature, in a Schedule.
- 3.3 The body of an award is divided into clauses, numbered consecutively in Arabic numerals. Each clause must be given a heading. A clause should deal with a particular subject-matter.
- 3.4 Clauses that share a common subject-matter may be grouped together to form a “Part”. Parts are numbered using consecutive Arabic numerals.
- 3.5 A clause is divided into one or more subclauses, numbered consecutively in Arabic numerals applying a decimal system such as 1.1, 1.2, etc.
- 3.6 A subclause may be divided into paragraphs, identified by bracketed consecutive alphabetical letters. If a subclause has a heading, the template design makes it necessary to divide it into one or more paragraphs without any lead-in words.
- 3.7 If necessary, a paragraph may be divided into subparagraphs, identified by bracketed consecutive small Roman numerals. Subparagraphs should be used sparingly as it makes the structure complicated for users, particularly where subclauses alternate between paragraphs and subparagraphs.
- 3.8 Bullet points should not be used in legal instruments as they make cross-referencing difficult.
- 3.9 The levels of the modern award template are summarised as follows:
- Parts (e.g. Part 3— Hours of Work)
  - Clauses (e.g. 7. Types of employment)
  - Subclauses (e.g. 7.1)
  - Paragraphs (e.g. 7.1(a))
  - Subparagraphs (e.g. 7.1(a)(i))
- 3.10 Each clause, subclause, paragraph or subparagraph should deal with only one topic.
- 3.11 Schedules are used in modern awards for matters of detail and of a supplementary or ancillary nature to that covered in the main body of the award.
- 3.12 A Schedule should be linked to the main body of the award by appropriate words in the clause that introduces the Schedule.

- 3.13 Schedules are numbered using consecutive alphabetical letters. The sequence of the Schedules should reflect the order in which reference is made to them in the main body of the award.
- 3.14 Use “Notes” to provide factual information or point the reader to a relevant provision of the award. A Note should generally appear at the end of a provision (whether a clause, subclause or paragraph) but may appear after the heading in appropriate cases.
- 3.15 “Guidelines” may be included to explain how a provision or set of provisions are to be used or what their function or role is. They are not themselves “legislative material” but are intended to help the reader to better understand the “legislative material” to which they relate.

## **4 Headings**

- 4.1 The purpose of a heading is to act as a signpost for the reader, that is, as a guide to the reader as to what the text that follows the heading is about.
- 4.2 Headings help reveal the structure of the award to readers. They break up the text and help guide the reader through the award.
- 4.3 A heading:
- should describe what follows and not attempt to summarise it
  - should be both brief and accurate
  - does not need to be a complete grammatical sentence
  - may be in the form of a question.
- 4.4 Parts and clauses in the award must have headings. Headings will also be appropriate for some subclauses to signpost provisions that are particularly important or to assist in informing the reader about what the clause covers.
- 4.5 However, subclause headings should be used sparingly to avoid cluttering up the look of the document and losing impact.

## **5 Constructing provisions**

- 5.1 Make sure a paragraph or subparagraph flows logically and grammatically from the lead-in words.

- 5.2 If a series of paragraphs or subparagraphs is used, it needs to be made clear whether they are intended to be cumulative or exclusive.
- 5.3 Use a colon after the lead-in words of a provision to indicate that related paragraphs or subparagraphs follow.
- 5.4 To indicate that a series of 3 or more paragraphs or subparagraphs are cumulative, consider using the expression “**each** of the following”, or similar.
- 5.5 To indicate that a series of 3 or more paragraphs or subparagraphs are exclusive, consider using the expression “**any** of the following”, or similar.
- 5.6 Do not include both cumulative and exclusive provisions in the same series of paragraphs or subparagraphs. Do not use “and/or”.
- 5.7 The use of a “sandwich clause” should be avoided. A sandwich clause is one in which a series of paragraphs or subparagraphs is enclosed or “sandwiched” by the opening and closing lines of a sentence.

**For example:** This award does not cover employment in:

- (a) a pharmacy owned by a hospital or other public institution; or
  - (b) a pharmacy operated by government,
- where their goods or services are not sold by retail to the general public.

- 5.8 A sentence comprising 2 series of paragraphs or subparagraphs in one sentence should not be used.

**For example:** Community pharmacy means any business conducted by the employer in premises:

- (a) that are registered under the relevant State or Territory legislation for the regulation of pharmacies; or
  - (b) are located in a State or Territory where no legislation operates to provide for the registration of pharmacies;
- and
- (c) that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and
  - (d) where other goods may be sold by retail.

- 5.9 Use short well-constructed sentences (fewer than 25 words on average).

- 5.10 Aim to avoid having more than 5 lines of unbroken text in any one provision (whether a subclause, paragraph, subparagraph or definition).
- 5.11 Avoid having more than one sentence in a subclause unless the sentences are so closely connected that it is more helpful to the reader to place them together rather than split between separate subclauses or paragraphs of the subclause.

## **6 Language**

- 6.1 Be consistent in the use of words. Do not use different words or expressions to refer to the same thing.
- 6.2 Use words and expressions that are familiar to everyone.
- 6.3 Avoid unnecessary jargon.
- 6.4 Avoid acronyms unless they are familiar to everyone.
- 6.5 Follow the spelling used in the *Macquarie Dictionary*.
- 6.6 Avoid Latin and other foreign words.
- 6.7 Use the English plural form (such as memorandums) for a Latin term in common English usage.
- 6.8 Use gender-neutral language.
- 6.9 Use pronouns instead of repeating the noun if there is no risk of ambiguity. Consider using “they” as a singular pronoun.
- 6.10 Use the active voice instead of the passive voice.
- 6.11 Use positive rather than negative constructions.
- 6.12 Avoid double or triple negatives.
- 6.13 Avoid using nouns derived from verbs.
- 6.14 Do not use “shall” to impose an obligation or “shall not” to impose a prohibition. Use “must” or “must not”.
- 6.15 Use “that” instead of “which” as the relative pronoun in a defining relative clause unless the use of “which” is necessary to avoid a sentence ending with a preposition

(such as, “pharmacies to which this clause applies” instead of “pharmacies that this clause applies to”).

6.16 Use “before” or “after” instead of “of” in defining periods of time for clarity.

6.17 Where possible, write in the present tense.

6.18 An apostrophe may be used to indicate possession.

6.19 Terms such as “is taken to be” or “is to be regarded as” or “is deemed” may be used to create a legal fiction. However, avoid unnecessary “deeming” provisions.

**For example:** Where such transfer occurs all leave entitlements accrued will be deemed to be continuous”

6.20 Do not use archaic language such as:

- “the abovementioned”, “the aforementioned”, “the aforesaid”, “the said”
- “herein”, “hereinafter”, “hereinbefore”
- “hereby”, “hereof”, “hereto”, “herewith”
- “thereby”, “therefor”, “therefrom”
- “therein”, “thereof”, “thereon”, “thereto”
- “thereupon”, “thereunder”, “thereunto”, “therewith”
- “whatsoever”, “whomsoever”, “whosoever”.

6.21 Do not use “any” or “every” or “each”, if “a” or “an” can be used instead.

6.22 Avoid “as the case may be” or “as the case requires” or “as applicable” or other similar expressions unless their use is necessary in the circumstances to avoid ambiguity.

6.23 Use “end” instead of “expiration”.

6.24 Use “to avoid doubt” instead of “for the avoidance of doubt”.

6.25 Do not use “if and only if”.

6.26 Use “if” instead of “where” or “when” unless the event is so certain that “if” is inappropriate.

6.27 Avoid contractions such as “don’t” and “can’t”.

6.28 Consider using “for” instead of “in the case of”.

6.29 Use “despite” instead of “notwithstanding”.

- 6.30 To show that one clause prevails over another it is sufficient to indicate that in only one of the clauses so do not make clause A subject to clause B and then in clause B say “despite clause A”. Either technique on its own is sufficient to show that clause B prevails over clause A.
- 6.31 Only use “such” to refer back to something and not as a substitute for “the” or “that” or “any”.
- 6.32 Use “on” instead of “upon”.
- 6.33 Use “without limiting ...” instead of “without limiting the generality of...”.

## **7 Definitions**

- 7.1 Definitions that apply generally within an award should preferably be grouped together in a clause at the beginning of the award.
- 7.2 The purpose of a definition is to give certainty to the meaning of a word or expression used in an award. Using a definition can also shorten provisions by avoiding the need to repeat the terms comprised in the definition.
- 7.3 Definitions that are used in only one clause may be defined in that clause.
- 7.4 An expression used in an award that is defined in the National Employment Standards should be defined as having the same meaning as it has there.
- 7.5 Do not include unnecessary definitions.
- 7.6 Definitions should be arranged in alphabetical order.
- 7.7 The defined term should be bolded within the definition.
- 7.8 There should be a full stop at the end of the definition.
- 7.9 The word “means” is used in a definition to indicate that the definition is exhaustive while the word “includes” is used to indicate that the definition is not exhaustive. Do not use “means and includes”. However, in appropriate circumstances the form “means ....and includes...” or “means...but does not include...” may be used.
- 7.10 Use the expression “has the meaning given by” to define a term by reference to an existing definition of that term in an Act or other instrument.

- 7.11 Use the expression “as defined by” to define a term by reference to an existing definition of a different term in an Act or other instrument (for example, **employee** means a national system employee as defined by section 13 of the Act).
- 7.12 A tag-definition (a term placed within parentheses close to the defined term or concept) may be used so as to facilitate a shortened subsequent reference to the defined term or concept within the clause.
- 7.13 Use a signpost definition to refer the reader to where a term is defined elsewhere in the award (for example, **community pharmacy**, see Clause 4.1).
- 7.14 Do not include substantive material in a definition, such as a provision conferring a power.
- 7.15 Do not define something to be what it obviously is not.
- 7.16 Check the final draft to make sure that each defined term is still used in the award before the award is made.

## 8 General matters

- 8.1 Use an application clause to help streamline a provision. An application clause is a subclause at the beginning of a clause that states to whom, or in what circumstances, the clause applies. For example, it may describe a class of employee as the employees covered by the clause. This then would allow the remainder of the clause to refer only to “an employee”.
- 8.2 A purpose subclause may be used at the beginning of a clause to give the reader a statement of what the clause does.
- 8.3 Omit unnecessary detail that does not have legal effect and does not serve to assist the reader. Helpful material that does not have legal effect may be included in a Note.
- 8.4 A proviso (that is, a provision that starts “provided that...”) should not be used.
- 8.5 Do not place multiple conditions before the main clause.
- 8.6 Avoid embedded clauses that contain too much information.
- 8.7 Do not include more than one embedded clause within a provision.
- 8.8 Write numbers as figures instead of words, with the exception of “1”.

- 8.9 Do not begin a sentence or a heading with a number written as a figure.
- 8.10 Amounts less than one dollar should be expressed as “\$0.50” rather than “50 cents”.
- 8.11 Use the symbol “%” to express a percentage after an amount expressed in figures rather than “per cent”.
- 8.12 For dates use the format “4 December 2013”.
- 8.13 In expressions of time use “am” and “pm” rather than “a.m.” and “p.m.” and show minutes past the hour as “7.00 am”.
- 8.14 12 noon should be expressed as “noon” and 12 midnight as “midnight” rather than “12 noon” and “12 midnight”.

## 9 Referencing

- 9.1 Minimise cross-referencing within an award and rely on the award being read as a whole. A “Note” could be included to point the reader to the relevant provision (see paragraph 3.14 above).
- 9.2 If a provision is reasonably short and self-contained, reproducing it instead of merely cross-referring to it is helpful to the reader as the reader does not then have to access another document or go to another part of the award. However, if a provision is frequently referred to in an award, it would be disruptive to the flow of the text to reproduce it each time.
- 9.3 If referring within a paragraph to another paragraph of the same subclause, refer to the lowest unit in the reference only (e.g. paragraph (b) rather than clause 1.1(b)).
- 9.4 If referring within a subparagraph to another subparagraph of the same paragraph, refer to the lowest unit in the reference only (e.g. subparagraph (ii) rather than clause 1.1(a)(ii)).
- 9.5 ***In all other cases*** when referring to a provision, refer to the provision by the highest unit in the reference (e.g. clause 19.3 rather than subclause 19.3).
- 9.6 If referring to a provision in another clause, include the name of the clause or subclause in the reference (e.g. Clause 1—Title).
- 9.7 A Note may be inserted to alert the reader to the relevance of a referenced provision and its effect on the clause being read.

- 9.8 If referring to provisions contained in a Table, refer to the clause that the table is in unless there is a definition of the Table that may be relied on.
- 9.9 If referring to a provision of the Fair Work Act 2009 or any other Act (whether Commonwealth, State or Territory), refer to the provision by the highest unit in the reference (such as section 19(3)).
- 9.10 A Schedule should be referred to as a Schedule **to** the award and not as a Schedule of the award.
- 9.11 “Schedule” should be written with a capital S.

## **10 Formatting and Tables (online and hard copy)**

- 10.1 Bold key information in provisions such as dollar amounts and terms that are defined within the award.
- 10.2 If using a Table, give it a unique number to assist the making of subsequent references to it.
- 10.3 Number the columns of the Table to assist with referencing. Label the columns.
- 10.4 In a Table displaying numbers, place the dollar sign or percentage sign against each number rather than in the header to the column(s).