



Guidelines

Plain language drafting of modern awards

About these guidelines

The guidelines for plain language drafting of modern awards (Guidelines) have been prepared by the Fair Work Commission (Commission) to assist those involved in drafting and maintaining modern awards in plain language. The Guidelines will help to achieve consistency in language and structure across modern awards.

Disclaimer

This document should be used as a general guide only.

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Background

As a part of the 4 yearly review of modern awards (the Review) the Commission has taken steps to ensure the modern award system is simple, easy to understand, stable and sustainable.¹ In a Decision of July 2015 regarding technical and drafting issues, the Full Bench noted ‘the fact that there has been so much debate about the actual entitlements of an employee under various award provisions confirms the need for such a review. An award should be able to be read by an employer or employee without needing a history lesson or paid advocate to interpret how it is to apply in the workplace’.²

As a part of the Award Stage of the Review the Commission conducted a pilot to produce a plain language exposure draft of the *Pharmacy Industry Award 2010*. Eamonn Moran PSM QC was engaged by the Commission to prepare the plain language exposure draft and guidelines for plain language drafting of modern awards. The guidelines took account of plain language drafting principles and practical insights about the needs of employers and employees generated from the user testing conducted as part of the pilot.³

In a Statement⁴ of July 2016 the Commission announced that the guidelines would be used as a reference for further plain language re-drafting undertaken as part of the Review. Draft guidelines were published for comment. The guidelines were expanded and refined based on the re-drafting of standard clauses, award-specific clauses and feedback from interested persons. In a Decision⁵ of January 2017 the Full Bench finalised the content of the guidelines. The Full Bench confirmed that the ‘aim of plain language drafting is to make the award as simple and as easy to understand as possible without *unintentionally* changing the legal effect of the award.’⁶ Revised draft guidelines incorporating changes contained in the January decision were published for comment.

In March 2017 the Commission stated the guidelines would be published in final form⁷.

¹ [\[2017\] FWCFB 344](#).

² [\[2015\] FWCFB 4658](#), para 7.

³ [Report from Plain language modern award pilot](#), April 2017.

⁴ [\[2016\] FWC 4756](#), paras 36 – 37.

⁵ [\[2017\] FWCFB 344](#).

⁶ *Ibid* at para 13.

⁷ [\[2017\] FWCFB 1612](#), para 4.

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 (NES). Employers and employees must comply with the award(s) that apply to them.
- 1.2 As employers and employees are expected to comply with the award(s) that apply to them, they are entitled to expect that awards are drafted in such a way that they can readily navigate their way around them and understand their content.
- 1.3 Plain language drafting is not just about the language used. It also covers the structure and design of a document. The Plain Language Association International has published the following definition⁸:

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.

⁸ <http://plainlanguagenetwork.org/>

2. Purpose of these Guidelines

- 2.1 The Guidelines have been prepared by the Commission to assist those involved in drafting and maintaining modern awards in plain language. The Guidelines will help to achieve consistency in language and structure across modern awards.
- 2.2 The aim of plain language drafting is to make an award as simple and easy to understand as possible, without taking away from precision or omitting necessary information or unintentionally changing the legal effect of the award.
- 2.3 Awards that are not simple and easy to understand can cost money by creating the need for employers and employees to seek professional advice.
- 2.4 The Guidelines are compatible with the modern award template currently used by the Commission, including the numbering system in that template.

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.
- 3.4 Clauses that share common subject matter may be grouped together to form a Part. Parts are numbered consecutively in Arabic numerals.
- 3.5 A clause is divided into one or more subclauses, numbered consecutively in Arabic numerals.
- 3.6 A subclause may be divided into paragraphs, identified by bracketed consecutive alphabetical letters.
- 3.7 If necessary, a paragraph may be divided into subparagraphs, identified by bracketed consecutive small Roman numerals. Subparagraphs should be used sparingly as they make the structure complicated for users, particularly where subclauses alternate between paragraphs and subparagraphs.
- 3.8 Do not use bullet points in legal instruments, as they make cross-referencing difficult.
- 3.9 The levels of the modern award template are:
- 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 awards for matters of detail or matters of a supplementary or ancillary nature to those covered in the main body of the award. They may also include related material that, while substantive in nature, can conveniently be contained in a Schedule.
- 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 Notes may be included in order to provide factual information, including information explaining how a provision or set of provisions are to be used or what their function or role is, or to point the reader to a relevant provision of the award.

Example:

NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the hourly overtime rate for all employee classifications according to when overtime is worked.

- 3.15 A Note should generally appear at the end of a provision (whether a clause, subclause or paragraph) but may appear below the heading as appropriate.

Example:

22. Annual leave

NOTE: Where an employee is receiving overaward payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).

- 3.16 Examples may be included to illustrate the operation of a provision or of a set of provisions. The use of relevant and accurate examples makes it easier for users to understand an award.

Example:

EXAMPLE: An employee works 2 hours of overtime on a Tuesday that is not a public holiday. Under the award the employee is entitled to be paid at an overtime rate of 150% for those hours. With the consent of the employer, the employee chooses to take time off instead of being paid for that overtime. The employee is entitled to time off of 3 hours (2 x (150 ÷ 100)).

- 3.17 Notes and Examples are not themselves 'legislative material' but are intended to help the reader navigate the document or better understand the 'legislative material' to which they relate.
- 3.18 Notes and Examples should not be overused as they can disrupt the flow of the text.
- 3.19 The legal instrument should not include Notes that contain summaries of NES entitlements or employer or employee obligations under the *Fair Work Act 2009* or links to legislation. However, such summaries and links can be included in any annotated version of the legal instrument published administratively by the Commission.

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 must have headings.
- 4.5 Headings will also be appropriate for some subclauses, to signpost provisions that are particularly important or to inform the reader about what the clause covers. However, subclause headings should be used sparingly to avoid cluttering up the look of the document and losing impact.

5. Constructing provisions

- 5.1 A paragraph or subparagraph should flow logically and grammatically from the lead-in words.
- 5.2 If a series of paragraphs or subparagraphs is used, it needs to be 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 If a series of paragraphs or subparagraphs is cumulative, insert the conjunctive ‘**and**’ at the end of each paragraph or subparagraph, other than the final one in the series.
- 5.5 If there are 3 or more paragraphs or subparagraphs in the series, also use the expression ‘**all of the following**’, or similar, in the lead-in words.
- 5.6 If a series of paragraphs or subparagraphs is exclusive, insert the disjunctive ‘**or**’ at the end of each paragraph or subparagraph, other than the final one in the series.
- 5.7 If there are 3 or more paragraphs or subparagraphs in the series, also use the expression ‘**any of the following**’, or similar, in the lead-in words.
- 5.8 Within the same series, do not include both paragraphs or subparagraphs that are cumulative and paragraphs or subparagraphs that are exclusive.

Example of paragraphs in a subclause that are both cumulative and exclusive:

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

- that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and
- where other goods may be sold by retail.

- 5.9 The example above could be redrafted as:

community pharmacy means a business to which all of the following apply:

- (a) the business is established wholly or partly for compounding or dispensing prescriptions for, or selling medicines or drugs to, the general public from the premises on which the business is conducted, whether or not other goods are so sold from those premises; and
- (b) if required to be registered under legislation for the regulation of pharmacies in force in the place in which the premises on which the business is conducted are located, the business is so registered; and

- (c) *the business is not owned by a hospital or other public institution, or operated by government.*

5.10 Do not use 'and/or'.

5.11 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.

Example of a sandwich clause:

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.

5.12 The example above could be redrafted as:

This award does not cover employment in a pharmacy that does not sell goods or services by retail to the general public and is:

(a) *owned by a hospital or other public institution; or*

(b) *operated by government.*

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

5.14 Avoid having more than 5 lines of unbroken text in any one provision (whether a subclause, paragraph, subparagraph or definition).

5.15 Split multiple sentences into separate subclauses or paragraphs, unless the sentences are so closely connected that it is more helpful to the reader to keep them together.

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 for a Latin term in common English usage.

Example:

- *memorandum / memorandums*
- *forum / forums*

- 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 negative constructions.
- 6.12 Avoid double or triple negatives.
- 6.13 Avoid using nouns derived from verbs.

Example, use:

'Mr Smith will apply to the Commission to deal with the industrial dispute tomorrow'

instead of:

'Mr Smith will make an application to the Commission to deal with the industrial dispute tomorrow'.

- 6.14 Use 'must' to impose an obligation and 'must not' to impose a prohibition instead of 'shall' or 'shall not'.

- 6.15 Use 'that' instead of 'which' unless it is necessary to avoid ending a sentence with a preposition.

Example:

'pharmacies to which this clause applies' instead of 'pharmacies that this clause applies to'

'the industry in which they work' instead of 'the industry that they work in'

- 6.16 Use 'before' or 'after' instead of 'of' when defining periods of time.
- 6.17 Where possible, write in the present tense.
- 6.18 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.

Example of a deeming provision:

Where such transfer occurs all leave entitlements accrued will be deemed to be continuous.

- 6.19 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'.

- 6.20 Do not use 'any' or 'every' or 'each', if 'a' or 'an' can be used instead.
- 6.21 Avoid 'as the case may be' or 'as the case requires' or 'as applicable' or other similar expressions, unless their use is necessary in order to avoid ambiguity.
- 6.22 Use 'end' instead of 'expiration'.
- 6.23 Use 'to avoid doubt' instead of 'for the avoidance of doubt'.
- 6.24 Do not use 'if and only if'.
- 6.25 Use 'if' instead of 'where' or 'when', unless the event is so certain that 'if' is not appropriate.
- 6.26 Use 'do not' and 'cannot' instead of 'don't' and 'can't'.
- 6.27 Use an apostrophe to indicate possession but not as a contraction.
- 6.28 Use 'for' instead of 'in the case of'.
- 6.29 Use 'despite' instead of 'notwithstanding'.

- 6.30 When stating that one clause prevails over another, indicate this in only one of the clauses, but not both.

Example:

in clause 1 only, state '*subject to clause 2*', or

in clause 2 only, state '*despite clause 1*'.

- 6.31 Use 'such' to refer back to something, 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 be grouped together in a clause at the beginning of the award.
- 7.2 A definition gives 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 that have been defined.
- 7.3 Terms that are used in only one clause may be defined in that clause only.
- 7.4 A term used in an award that has been defined in the NES should generally be defined as having the same meaning as in the NES.
- 7.5 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.

Example:

***defined benefit member** has the meaning given by the Superannuation Guarantee (Administration) Act 1992 (Cth).*

- 7.6 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.

Example:

***employee** means a national system employee as defined by section 13 of the Act.*

- 7.7 Avoid unnecessary definitions.
- 7.8 Arrange definitions in alphabetical order.
- 7.9 The term being defined should be bolded within the definition.
- 7.10 Use a full stop at the end of the definition.
- 7.11 Use the word 'means' in a definition to indicate that the definition is exhaustive.
- 7.12 Use the word 'includes' to indicate that the definition is not exhaustive.
- 7.13 Do not use the expression 'means and includes'. However, 'means ... and includes ...' or 'means ... but does not include ...' may be used in appropriate circumstances.
- 7.14 A tag-definition (a definition placed within parentheses close to the defined term or concept) may be used to define an abbreviated form of a term or concept within the clause.

Example:

*Clause 28.4 applies if an employer intends to close down its operations at all or part of a workplace for a particular period (**temporary close down period**).*

- 7.15 Use a signpost definition to refer the reader to where a term is defined elsewhere in the award.

Example:

Community pharmacy, see clause 4.1 (Coverage).

- 7.16 Do not include substantive material in a definition, e.g. a provision conferring a power.
- 7.17 Do not define something to be what it obviously is not.
- 7.18 Check the final draft to make sure that each defined term is 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. It may describe a class of employee as the employees covered by the clause. This allows the drafter to refer only to 'an employee' in the remainder of the clause.

Example use:

Clause 18.3 applies to a pharmacist who is required to take a meal break on the premises so as to attend to urgent matters requiring the involvement of a pharmacist.

- 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 Helpful material that does not have legal effect should be included in a Note. Omit unnecessary detail that does not have legal effect and does not serve to assist the reader.
- 8.4 Do not start a provision with 'provided that'.
- 8.5 Do not place multiple conditions before the main clause.
- 8.6 Avoid embedded clauses that contain too much information. An embedded clause is a clause within a main clause, usually marked by commas.
- 8.7 Do not include more than one embedded clause within a provision.
- 8.8 Write numbers as figures instead of words; however, the figure '1' is always written as 'one'.
- 8.9 Do not begin a sentence or a heading with a number written as a figure.
- 8.10 Express amounts of less than one dollar as '\$0.50' instead of '50 cents'.
- 8.11 Use '%' to express a percentage after figures instead of 'per cent'.
- 8.12 Use the Australian date format of day month year eg. '4 December 2013'.
- 8.13 Use 'am' and 'pm' to express time instead of 'a.m.' and 'p.m.'. Express minutes past the hour as '7.02 am'.
- 8.14 Use 'noon' and 'midnight' instead of '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.

Example:

NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the overtime rate hourly wage for all employee classifications according to when overtime is worked.

- 9.2 If a provision is reasonably short and self-contained, it may be helpful to reproduce it instead of cross-referencing it, as the reader does not then have to go to another document or another part of the award. However, if a provision is frequently referred to in an award, it will disrupt the flow of the text to reproduce it each time.
- 9.3 If referring to a provision in another clause, include the name of the clause or subclause in the reference.

Examples:

An employee who is not covered by clause 9—Full-time employment or clause 10—Part-time employment must be engaged and paid as a casual employee.

If an employee is classified as a pharmacy assistant and aged under 21, see also clause 16.2—Junior wages (Pharmacy Assistants only).

Casual employees are not entitled to paid leave under clause 16.3(a) (Pharmacy students).

- 9.4 If referring to another subclause within the same clause, refer to the provision by the highest unit in the reference (e.g. clause 19.3(b) rather than paragraph 19.3(b)).
- 9.5 If referring within a paragraph to another paragraph of the same subclause, use the lowest unit in the reference (i.e. 'paragraph (b)' rather than 'clause 1.1(b)').

Example:

(b) *The employer must pay the pharmacist at the penalty rate for the period of the meal break, regardless of other penalty rates to which the pharmacist is entitled.*

(c) *In paragraph (b), the penalty rate means 150% of the minimum hourly wage of the pharmacist.*

- 9.6 If referring within a subparagraph to another subparagraph of the same paragraph, use the lowest unit in the reference (e.g. 'subparagraph (ii)' rather than 'clause 1.1(a)(ii)' or 'paragraph (a)(i)').
- 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.

Example:

NOTE: If the employer directs a part-time employee to work a reasonable number of hours in excess of the number of ordinary hours they are required to work per week, the employer must pay the employee at the overtime rate specified in clause 20 for those hours.

- 9.8 If referring to provisions in a Table, refer to the Table by number and its title.
- 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

- 10.1 Bold dollar amounts and percentages throughout the award.
- 10.2 Bold defined terms in the Definitions clause.
- 10.3 If using a Table, give it a unique number to assist with referencing.
- 10.4 Number and label the columns of the Table to assist with referencing.
- 10.5 In a Table displaying amounts or percentages, place the dollar sign or percentage sign against each figure rather than in the header of the columns.