



Business SA Submission

4 yearly review of modern awards - Plain Language Standard Clauses

Regarding [2017]
FWCFB 3745

11 August 2017

Introduction

As part of the modern award plain language re-drafting process, the Fair Work Commission (FWC) released a plain language draft and comparison table for standard clauses. The standard clauses of an award relate to award flexibility, consultation, dispute resolution, termination of employment, and redundancy.¹ This draft document was released on 9 August 2016. Business SA made submissions on the plain language re-drafted standard clauses arising from the 17 August 2016 FWC directions. Business SA provides these further submissions in response to the Fair Work Commission Full Bench's decision [2017] FWCFB 3745 (**the Decision**). These submissions are filed by Business SA in accordance with directions issued on 20th July within the Decision.²

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 re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.

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

¹ [Draft Standard Clauses](#).

² [AM2016/15 – Decision](#).

Clause A. Individual Flexibility

1. Business SA encourages the Full Bench to delete the Note at A.1(i) as noted as a provisional decision at [14] of the decision. This matter was raised by Business SA in our initial submissions and we noted that the phrase at A.1 (a) ‘Arrangements for when work is performed’ was identified as a phrase requiring further explanation under the plain language drafting principles.³
2. Business SA also encourages the Full Bench to make the amendments to A.1 and A.4 as provisionally decided at [26] of the decision.
3. Business SA supports the amendment of clause A.8(d) proposed at [42] of the decision.
4. Business SA does not object to the provisional view put by the Full Bench at [62] of the decision.

Clause B Consultation about major workplace change

5. Amendments were proposed by the plain language expert to the otherwise agreed draft of Clause B.1. Business SA submits that the changes proposed by the plain language expert shown at [67] of the decision are in the most part not objected to. Business SA objects to two elements of the changes proposed by the plain language expert.

Business SA submits that the proposed amendment inappropriately moves the previously agreed content of B.6 into the introductory paragraph of B.1 and introduces a new concept of ‘relevant change’; thereby changing the meaning of both B.1 and B.5. Further, Business SA also objects to the new concept ‘relevant change’ being added to paragraph B.1(a).

Business SA submits that the amendment “excluding a change in any such matter that is provided by for by the award (**relevant** change)” be removed from the introductory paragraph of B.1 and the word ‘relevant’ be removed from B.1(a).

6. Amendments were proposed by the plain language expert to the otherwise agreed draft of Clause B.5 and B.6. Business SA submits that the change proposed by the plain language expert to B.6, shown at [71] of the decision, is not appropriate. Business SA submits that moving the agreed wording at B.6 to the introductory paragraph at B.1 creates a substantive change at B.1 and at B.6 and proposes that B.6 be retained.

Clause C Consultation about changes to the rosters or hours of work

7. Business SA does not object to the changes proposed by the plain language expert shown at [78] of the decision.

³ Report from Plain Language modern award pilot April 2016.

Clause D Dispute Resolution

8. Business SA does not object to the changes proposed by the plain language expert shown at [87] of the decision.

Clause E Termination of Employment

9. During the 11 April 2017 conference for AM2016/15,⁴ on transcript at PN2903 to PN2911, it was agreed by all parties that the words ‘an amount not exceeding’ be inserted in E.1(c). Business SA submits the plain language expert’s proposal to not include these words, is not clearly explained.

Business SA submits that inserting the words ‘an amount not exceeding’ in this clause clarifies that the employer may be generous and makes the ‘award as simple and easy to understand as possible’.⁵

Clause G Transfer to lower paid job on redundancy

10. Clause G1 seeks to identify when this clause applies. The current award provision uses the phrase ‘Where an employee is transferred to lower paid duties by reason of redundancy’ to clearly identify when the clause applies. The changes proposed in the plain language version move away from this clear wording. Apart from the title of clause G, it is no longer clear on text of clause G that it applies ‘by reason of redundancy’. Business SA submits this change to the body of the clause has made its application less clear.

Business SA submits that the current wording of the award provision be retained rather than the plain language proposal. Business SA proposes the following wording be used in lieu of paragraphs G.1(a) and (b):

“G1. Clause G applies to an employee when that employee is transferred to lower paid duties by reason of redundancy.”

11. Business SA does not object to the changes proposed by the plain language expert relating to G.2(a) shown at [114] of the decision.

Clause H4(a) Job Search Entitlement

12. There appears to be a third issue arising from the decision at clause H, referred to at [133] of the decision.

Draft Clause H4 (a) allows a day off without loss of pay for every week of notice the employee receives. Business SA submits that it is appropriate that the minimum award provisions in this clause be based on the minimum notice period provided at s.117 of the Act⁶ and that this reference be added at H4(a).

⁴ AM2016/15 [Conference](#) 11 April 2017.

⁵ Plain [Language](#) Drafting of modern awards cl 2.2.

⁶ Fair Work Act 2009.