



**Fair Work Commission**

**Award Review 2014**

**General Retail Award 2010**

**AM2016/15, AM2014/270**

**Further submissions - Plain language re-drafting - *General Retail Industry Award 2010*-**

**Shop Distributive and Allied Employees' Association**

**8 February 2019**

1. The Shop Distributive and Allied Employees' Association ('SDA') make these submissions on the re-drafting of the *General Retail Industry Award 2010* ('GRIA') – revised plain language exposure draft in accordance with the Decision issued by a Full Bench on 30 January 2019 ('Decision').<sup>1</sup>
2. The SDA rely on its previous submissions in relation to this matter.
3. These submissions are in relation to the provisional views of the Fair Work Commission ('Commission') expressed at paragraphs [12] and [14] of the Decision which if adopted would result in changes to the Plain Language Exposure Draft Published - 20 November 2018 ('Revised PLED').
4. These submissions also deal with matters raised in the submissions of the Newsagents Association of NSW and ACT Ltd ('Newsagents Association') and the National Retailers Associations ('NRA') dated 22 January 2019 and 29 January 2019 respectively.

#### Paragraph 12 – Clause 24.2 – Payment of overtime

5. The SDA understands the issue that has been raised in relation to Revised PLED clause 24.2 however believes the drafting change proposed by the Commission has unintended consequences that would result in a substantive change to the application of overtime to part-time employees under the GRIA.
6. Revised PLED clause 24.2 (a) applies to 'an employee' which includes both a full-time and part-time employee, not only a 'full-time employee'. GRIA clause 12.9, and Revised PLED clause 10.3, both make clear that all provisions of the GRIA relevant to full-time employees will apply to part-time employees, including hours worked in excess of the ordinary hours of work, outside the span of hours (excluding shiftwork), or outside roster conditions.

*GRIA 12.9 Award entitlements*

*..... Subject to the provisions contained in this clause all other provisions of the award relevant to full-time employees will apply to part-time employees.*

*Revised PLED 10.3*

*This award applies to a part-time employee in the same way that it applies to a full*

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<sup>1</sup> [\[2019\] FWCFB 276](#).

time employee except as otherwise expressly provided by this award.

7. GRIA clause 29.2 (a) does not distinguish between full-time and part-time employees in order to determine when overtime must be paid in relation to ordinary hours of work, the span of hours (excluding shiftwork), or roster conditions.

(a) *Hours worked in excess of the ordinary hours of work, outside the span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28 are to be paid at time and a half for the first three hours and double time thereafter.*

8. To avoid a substantive change to the application of overtime for part-time employees under the GRIA, the SDA proposes the following amendment to Revised PLED clause 24.2 as drafted under paragraph [12] of the Decision:

#### **24.2 Payment of overtime**

(a) An employer must pay **a full-time** employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15—Ordinary hours of work at the overtime rate specified in column 2 of clause 24.2(e). Table 10—Overtime rates.

(b) **An employer must pay a part-time employee;**

- i. **for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15—Ordinary hours of work at the overtime rate specified in column 2 of clause 24.2(e).**
- ii. **for hours worked in excess of the agreed hours in clause 10.5, or as varied under clause 10.6, at the overtime rate specified in column 2 of clause 24.2(e).**

(c) An employer must pay a casual employee at the rate specified in column 3 of clause 24.2(e) Table 10—Overtime rates (inclusive of the casual loading) for hours worked by the casual employee:

(i) *in excess of 38 ordinary hours per week or, if the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or*

(ii) *outside the span of ordinary hours for each day specified in clause 15.1 (Ordinary hours of work); or*

(iii) *in excess of 11 hours on one day of the week and in excess of 9 hours on any other day of the week.*

(d) *Overtime is calculated on daily basis.*

## Paragraph 14 – Clause 24.4 – Time off instead of payment for overtime

9. The SDA does not oppose the provisional view of the Commission to amend Revised PLED clause 24.4 (g) to include a reference to requests for flexible working arrangements under Revised PLED clause 6A.

## Response to submissions of the Newsagencies Association and the NRA

10. The SDA note the issues raised by the Newsagencies Association in relation to Revised PLED clause 24.2 (c) (i), (ii) and (iii) and agree that it contains no reference to Revised PLED clause 15.2.<sup>2</sup>

11. The SDA support the remedy proposed by the NRA on 29 January 2019 to amend Revised PLED clause 24.2 as follows:

*(ii) outside the span of ordinary hours for each day specified in clause 15.1 (Ordinary hours of work) subject to clause 15.2;<sup>3</sup>*

The SDA agree that the amendment proposed by the NRA would clarify the application of the overtime provision in relation to work outside the span of ordinary hours.

## Request for an oral hearing

12. As it is not clear if parties can reach a consent position on outstanding matters in the Revised PLED, the SDA respectfully request an oral hearing rather than, in absence of a request, for the matters to be determined on the papers.

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<sup>2</sup> [Newsagents Association of NSW and ACT submission, 22 January 2019.](#)

<sup>3</sup> [National Retailers Association submission, 29 January 2019.](#)