

Fair Work Act 2009
s.156—4 yearly review of modern awards
4 yearly review of modern awards—Plain language
project (AM2016/15)
Hair and Beauty PLED

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INTRODUCTION

1. The Shop, Distributive and Allied Employees' Association (SDA) makes these submissions in accordance with the next steps identified in paragraph 28 of the Statement of Justice Ross on 28 October 2020.
2. The SDA also makes these submissions in line with the extension granted by the Fair Work Commission until 1 December 2020.

PLED Clause 2 – Definitions – 'standard weekly rate'

3. The SDA notes that the reference to the allowance in the definition of "standard rate" in the Award has been deleted in the PLED definition of "standard weekly rate." The SDA objects to the deletion of the reference to the allowance in the PLED definition of "standard weekly rate."
4. The allowances have been included in monetary amounts, but a reference should be maintained to ensure there is a clear understanding of how allowances are adjusted.

PLED Clause 3.1 – The National Employment Standards and this award

5. The SDA notes that the words "whichever makes them more accessible" has been deleted from clause 5 of the Award. The SDA objects to the deletion of those words as they ensure that the means by which they are made available are fit for purpose.

PLED Clause 9– Full-time employees

6. The SDA notes the inclusion of the words "over a period of no more than 4 weeks." This suggests that employees may work hours in excess of 38 hours in any given week. Clause 22.2 of the PLED is as follows:
22.2 An employer must pay a full-time employee at the overtime rate in clause 22.5 for any hours worked at the direction of the employer in excess of 38 ordinary hours per week.
7. The SDA submits that it is unclear how the PLED clause 9 and PLED clause 22.2 interact, and that clarification is necessary.
8. The SDA also notes that the award and the PLED have an issue on whether overtime can be paid for work outside the rostering provisions. If overtime cannot be

paid then any such work is a breach of the award and employers are liable to be prosecuted.

PLED Clause 10.3(a) – Part-time employees

9. The SDA notes the inclusion of the word “ordinary” before “hours”. The SDA submits that the word “ordinary” should be deleted, and that the agreement should include all hours to be worked by the employee.
10. This approach is consistent with Awards such as the *General Retail Industry Award 2020*.¹

PLED Clause 11.5 – Casual employees

11. The reference to clause 22.2 appears to be incorrect. It should refer to clause 22.4 instead.

PLED Clause 12.5 – Apprentices

12. The SDA submits that the wording in the current Award clause 19.5(i) should be retained. In particular, the phrase “...*work* or be required to work”. The PLED clause omits the italicised “work”.

PLED Clause 13.2 – Classifications

13. The SDA notes that the words “as determined by the employer” has been deleted in the Award clause 16.2. The SDA supports this deletion. It is sufficiently clear that it is the employer who assesses the competencies of employees before assigning them to a classification – and that making this assessment necessarily requires determining what the “principal functions of the employment” are.

PLED Clause 14.4 – Span of hours

14. The SDA notes that there appears to be an error in the Sunday span of ordinary hours listed in “Table 2 – Span of ordinary hours”. The span should be altered to reflect the Sunday span of “10.00 am – 5.00 pm”.

¹ See clause 10.5(a) *General Retail Industry Award 2020*.

PLED Clause 17.5 – Special clothing

15. The SDA submits that the term 'special clothing' should be included in the list so that it reads, 'If an employer requires an employee to wear any article of clothing, such as a uniform, dress, protective, special or other clothing, then the employer must:...'

PLED Clause 20.4 – Broken Hill allowance

16. The SDA does not object to the changes as marked, however, for the sake of a clarity, an explanatory note giving the quantum as a percentage (that is, 4.28% of the standard hourly rate) would provide greater clarity.

PLED Clause 20.9(a) – Travelling time reimbursement

17. The SDA notes that the PLED restricts the reimbursement to full-time or part-time employees. The SDA submits that the clause should begin: "If an employer requires *an employee* to work..." This would capture any employee who is required to work somewhere other than their usual place of work.

PLED Clause 24.4(b) – Temporary close-down

18. The SDA notes the inclusion of the sub-clause:

24.4(b) The employer may require any affected employee to take a period of paid annual leave during a temporary close-down period.

19. The SDA objects to the inclusion of clause 24.4(b) as it is not in the current Award and should be deleted.

Junior rates question

20. In response to the question posed in paragraph 27 in the Statement dated 28 October 2020, on junior rates, the SDA submits that junior rates should be limited to Level 1 and Level 2 employees.