

From: Angelo Pardo <angelo@sda.org.au>
Sent: Thursday, 14 April 2022 12:49 PM
To: AMOD <AMOD@fwc.gov.au>
Subject: 2016/15

Dear AMOD,

In accordance with the recent Full Bench Decision in the above matter as per paragraph [228] and [229] of the abovementioned Decision, together with the email correspondence from the Chambers of Vice President Hatcher dated 5 April 2022 granting an extension to all parties until Thursday 14 April 2022, please find **attached** by way of lodgment, our submissions of even date.

We note that the submission of Ai Group referred to the variation proposed by EPI Capital Pty Ltd. It does not appear that these variations are available on the Commissions webpage for the matter.

Should you have any queries, please do not hesitate to contact the undersigned.

Yours faithfully,

Angelo Pardo

National Industrial Officer



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I understand that everyone works different days and times. If you receive this email at a time when you aren't working, please don't feel obligated to read or respond until a time when you are working again.

Fair Work Act 2009

s.156-4 yearly review of modern awards

**4 yearly review of modern awards-Plain language
project (AM2016/15)**

Fast Food PLED

Date Submitted: 14 April 2022

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INTRODUCTION

1. The SDA refers to the Decision of the Full Bench issued on 1 April 2022 together with the plain language exposure draft of the *Fast Food Industry Award 2022* dated 4 April 2022.
2. The SDA makes these submissions in reply as per paragraph [228] and [229] of the abovementioned Decision, together with the email correspondence from the Chambers of Vice President Hatcher dated 5 April 2022 granting an extension to all parties until Thursday 14 April 2022.

Item 2 - Definitions 'adult employee'

3. The SDA notes the Full Bench disagrees with its position as to the use of the term 'adult employee' and that Item 2 is now resolved but does not resile from its submissions already made.

Item 4 - Definitions 'standard rate'; Item 35 Broken Hill allowance

4. The SDA notes the resolution of items 4 and 35 but does not resile from its submissions already made.

Items 7, 8 and 9 - Coverage (industry definition)

5. The SDA notes the decision of the Full Bench to retain the current wording as to coverage.

Item 10 - Coverage (on-hire)

6. The SDA notes the resolution of item 10 but does not resile from its submissions already made.

Items 11, 12 and a new item - clause 4.4 Coverage (exclusions)

7. The SDA notes the resolutions of items 11 and 12, together with the new item but does not resile from its submissions already made.

Item 13 - clause 4.5 Coverage

8. The SDA notes the resolution of item 13 but does not resile from its submissions already made.

Item 15 - clause 10.2 Part-time employees

9. The SDA notes the resolution of item 15.

Item 17 - clause 10.3-Part-time employees

10. The SDA notes the resolution of item 17, in relation to the use of 'at the time of being employed' the SDA does not resile from its submissions already made.

Item 18 - clause 10.8-Part-time employees

11. The SDA notes the resolution of item 18.

Classifications - Item 20

12. The SDA notes the resolution of item 20 and does not resile from its previous submissions.
13. The Fast Food Industry Award and General Retail Industry Award have always been closely aligned. Many employers utilise both Awards to cover different parts of their business. The adopting of a different provision for such a fundamental term as classifications creates an anomaly between the two Awards.
14. As noted in paragraph [18] of our previous submissions

It should be noted that the General Retail Industry Award 2020 adopted wording matching the FFIA PLED provision:

14.2 The classification by the employer must be based on the skill level as determined by the employer that the employee is required to exercise in order to carry out the principal functions of the employment.

15. It continues to be the SDA's submission that such wording should also be adopted in the FFIA PLED.
16. In the alternative, were the Full Bench to still find that the settled wording adopted in the General Retail Industry Award is unsatisfactory for Fast Food Industry Award PLED, we submit that a provision similar to clause 14 of the Restaurant Industry Award 2020 would go some way to resolving the concerns of both the SDA and the Ai Group, namely: 'An employer must classify an employee covered by this award in accordance with' then either referring to or listing the relevant classifications.

Item 21, 22 and 25 - clause 12.4-Classifications

17. The SDA notes the position of the Commission regarding items 21, 22 and 25.

Item 28 - clause 13-Ordinary hours of work and rostering

18. The SDA notes the resolution of item 28.

Item 30 - clause 14.4-Breaks

19. The SDA notes the resolution of item 30 but does not resile from its submissions already made.

Items 31 and 33 - clause 15-Minimum rates

20. The SDA notes the resolution of items 31 and 33 but does not resile from its submissions already made, as well as the points raised regarding item 2 above.

Item 37 - clause 17.4-Meal allowance

21. The SDA notes the resolution of item 37 but does not resile from its submissions already made.
22. The SDA notes that no particular ambiguity was highlighted in the PLED process regarding the meal allowance provision as originally contained in the Award, that provision (19.1 FFIA) is 79 words long. The PLED provision 17.5 is some 114 words long without, it is submitted, being any clearer or providing any benefit. The PLED process should not facilitate the redrafting of settled provisions for no reason and less so when it results in a longer and no clearer form of words being used.

Item 38 - clause 17.5-Special clothing allowance

23. The SDA notes the resolution of item 38 but does not resile from its submissions already made. It notes that the deletion of 'dress' from the latest iteration of the exposure draft could create inadvertent issues. It is noted that provisions which have been long settled, which have not been the subject of contention before the Commission, should not be lightly changed. This is particularly so when changes or deletions draw no benefit and could impact not only the clarity of the provision but the entitlement so pursued.
24. It is noted that 'dress' is distinct from 'uniform' and may include items such as event themed clothing (for example, promotional t-shirts to be worn on top of the uniform). Its deletion does not aid the PLED process and could inadvertently change the nature of the entitlement.

Item 39 - clause 17.6(a)(ii)-Travelling time reimbursement

25. The SDA notes the resolution of item 39 but does not resile from its submissions already made.
26. The General Retail Industry Award 2020 contains the same wording the Commission has now seen fit to alter in favour of previous wording. The extensive PLED process undertaken in respect of the General Retail Industry Award, identical in several respects such as allowances to the Fast Food Industry Award, found that wording to satisfy the

PLED requirements. It is counterintuitive that the Full Bench should differ here.

27. The adopting of words different from the Retail Award inadvertently creates the impression that the entitlements differ.

Item 40 - clause 17.7(b)-Transport of employee reimbursement

28. The SDA notes the resolution of item 40.

Item 45 - clause 18.3(d)-Accident pay-entitlement to payment

29. The SDA notes the resolution of item 45 but does not resile from its submissions already made.

Items 49, 50 and 51 - clause 22.2-Additional paid annual leave for certain shiftworkers

30. The SDA notes the position outlined by the Full Bench with respect to items 49,50 and 51. The SDA does not resile from its submissions already made.

Items 52, 53, 54 and a new item - clause 22.3-Annual leave loading

31. The SDA notes the position of the Full Bench regarding items 52 and 53.
32. The SDA notes the position of the Full Bench regarding item 54 but does not resile from its submissions already made.
33. Regarding the new item 'period of leave', the SDA notes its position and submissions as already outlined and does not resile from them. The underpayments crisis by even major employers is a fact the Commission can take note of. For the Full Bench to then not only depart from settled wording accepted in the *General Retail Industry Award 2020* but to introduce even more complex language and an entirely new process of calculation is entirely counterintuitive to the aims of the PLED process.
34. It was noted by the Full Bench at [202] of their recent Decision that the proposed drafting originated in submissions made by Ai Group with respect to the plain language re-drafting of the Clerks Award. It is self-evident that the fast food industry differs fundamentally from that covered by the Clerks Award, particularly regarding work patterns. The fast food industry aligns very closely with the retail industry and for this reason the wording adopted in the *General Retail Industry Award 2020* is, in our submission, more appropriate (while maintaining our position on the advantage to the use of the term 'loading' rather than 'additional payment').
35. The fast food industry employs a disproportionate number of vulnerable Australians whether due to age or other socioeconomic factors. To place these vulnerable workers at risk of underpayment as a result of a process meant to protect them is, it is submitted,

counterproductive. The SDA presses its submissions in regards to the new item 'period of leave'.

Item 55 - clause 22.6(a)-Excessive leave accruals: general provision

36. The SDA notes the position of the Full Bench regarding item 55 but does not resile from its submissions already made.

Comments on the Exposure Draft

37. We refer to our previous submissions regarding clause 21, table 6 in the exposure draft. We note that the proposed change from 'all ordinary hours' to 'any time of day' could create confusion regarding the discrepancy between those rates and Overtime. For this reason we confirm our previous submission that 'An insertion at clause 21 to show the 150% penalty applies to ordinary time worked on Sundays is desirable.' We note that the draft should not be considered on a purely technical or linguistic basis, but on the practicable use it will serve for stakeholders with varying levels of legal comprehension.