



Fair Work Commission

4 yearly review of modern awards 2014

AM2017/50

Submission

Hair and Beauty Industry Award 2010

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1. The Shop Distributive and Allied Employees' Association (SDA) makes this submission in accordance with the Directions issued by the Full Bench in its decision of 28 December 2018¹.
2. The SDA makes these submissions in response to the provisional view outlined by the Full Bench in relation to:
 - 38 hour week rosters for full-time employees
 - Notification of rosters
 - Roster notification
 - Mutual change variation
 - Unilateral change variation

38-hour week rosters (averaging)

3. The SDA supports the provisional view of the Full Bench at paragraph [34] of the decision in relation to inserting the word 'ordinary' before the word 'hours' in clause 28.4(a)-(d).
4. The SDA also supports the provisional view of the Full Bench at paragraph [35] not to insert clause 28.5 into the Award.

Notification of rosters – Roster notification

5. The SDA does not oppose the provisional view of the Full Bench at paragraph [58] of its decision.
6. The SDA does note, however, that the provisional view of the Full Bench could have the effect of extending the provision to casual employees when they don't currently have an entitlement to the provisions contained in Clause 29.1
7. While the SDA agrees with the principle that casual employees should be provided with the information contained in clause 29.1(a) – (c), the variation of the wording from 'staff' to 'permanent' does not remove an existing obligation to provide the information to casuals because Clause 13.4 of the current Award excludes casuals from the provisions contained in clause 29.
8. Clause 13.4 provides that:

¹ [2018] FWCFB 7874

13.4 The following provisions of this award do not apply to casuals:

- *Clause 14—Termination of employment;*
- *Clause 15—Redundancy;*
- *Clause 21.2—Meal allowances;*
- *Clause 21.4—Excess travelling costs;*
- *Clause 21.5—Travelling time reimbursement;*
- *Clause 21.8—Transport of employees' reimbursement;*
- *Clause 28—Hours of work;*
- *Clause 29—Notification of rosters; and*
- *Clause 31.2(a)—Overtime and penalty rates.*

9. If the Full Bench were to take the view that clause 29.1(a)-(c) should apply to casuals then it would also need to amend clause 13.4 of the Award.

10. The SDA is satisfied with the amended wording for 29.1, as per the provisional view of the Full Bench contained at paragraph [58] of its decision as a roster on a notice board or through electronic means would capture the change we sought to introduce an obligation to provide the information in writing.

Notification of rosters – Mutual change variation

11. The provisional view of the Full Bench at paragraph [59] is *that 'The proposed clause limits the scope of the notice of alteration to full-time employees whereas the existing clause applies to all employees including part-time and casuals'.*

12. The SDA submits that the relevant clause which sets out the means by which a part-time employee's roster is set and varied is clause 12, not clause 29. Therefore, we don't agree that restricting this provision to full-time employees limits the scope of the clause.

13. By not including 'full-time employees' in the proposed clause 29.3 it may contradict the provisions for part-time employees contained in clause 12. Clause 12 provides the following provisions not included in clause 29:

12.3 Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.

12.4 The agreement and variation to it will be retained by the employer and a copy given by the employer to the employee.

12.8 Rosters

(a) A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of seven days' notice in writing or in the case of an emergency, 48 hours, by the employer to the employee.

14. The SDA acknowledges that on reading clause 29 in isolation of clause 12 and clause 13, it would appear that all of the provisions in clause 29 apply to all employees but this is not the case for casuals when reading in conjunction with clause 13.4 and also not the case for part-time employees when reading in conjunction with clause 12.

15. The SDA is satisfied with the wording provided at paragraph [61], however, for the above reasons submit that this provision should be for full-time employees.