



# Business SA Submission

4 yearly review of  
modern awards – *Plain  
language – Clerks –  
Private Sector Award*

**(AM2016/15, and  
AM2014/219)**

15 February 2018

## Introduction

Business SA is pleased to provide this submission in response to the Statement issued on 19 January 2018<sup>1</sup> in relation to the *Clerks – Private Sector Award*. All pinpoint references refer to the revised plain language exposure draft published on 1 December 2017 unless otherwise specified.

## Outstanding issues

### 1. [15] – Coverage – Excluded awards

- 1.1. In response to [15] of the Statement, Business SA submits a list of awards, as appears in clause 4.4, is preferable to a more general provision.
- 1.2. A list of modern awards expressly excluding coverage in specified circumstances provides the award reader with a much higher degree of certainty when determining which award applies to their employee(s). Without this list the reader will have to make an assessment themselves, a process which may inadvertently disadvantage the employer or the employee following an inappropriate decision. While specific exclusions, and potential addition of further exclusions, will add to the length of clause 4.4, its intent and operation remains clear.

### 2. [22] – Casual employment

- 2.1. Business SA welcomes the Commission's provisional view as expressed at [21]. We are not aware of any outstanding issue in respect of clause 11.1 at this time.

### 3. [34] – Setting ordinary hours by a different award

- 3.1. Business SA does not oppose clause 13.5 of the revised PLED.

### 4. [59] – Substitution of public holidays

- 4.1. Business SA submits clause 37.3 does not properly reflect the provisions of the current award. Clause 37.3 should allow agreement between the employer and majority of employees, and between the employer and an individual employee. Should this change be made Table 1 – Facilitative provisions should also be updated to reflect such.
- 4.2. The current award at clause 31.2 allows an agreement between 'an employer and the employees' to substitute another day for a public holiday. Reference to an agreement between the employer and the employees is distinguishable from an agreement between the employer and the majority of employees. This is because specific reference to the 'majority of employees' is made in other parts of the current award, such as clauses 25.2 and 28.2. We also note the current award allows, in the previously mentioned clauses, agreement with an individual employee in appropriate cases.
- 4.3. The revised PLED continues to state an agreement to substitute another day for a public holiday can only be made between an employer and the majority of affected employees. This threshold differs from that expressed in the current award.
- 4.4. We submit clause 37.3 of the revised PLED remains legally different from the current award clause. Clause 37.3 should allow agreement between the employer and the majority of employees, or the employer and an individual employee. We note and support the submission of Ai Group<sup>2</sup> regarding this matter.

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<sup>1</sup> [2018] FWC 411.

## Conclusion

Business SA thanks the Fair Work Commission for accepting these submissions.

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<sup>2</sup> Ai Group, AM2016/15 Plain Language Re-drafting – Clerks – Private Sector Award 2010, 16 October 2017, 4.