

**SUBMISSION OF TRANSEDEV AUSTRALASIA PTY LTD IN RESPONSE TO  
BACKGROUND PAPER**

**BACKGROUND**

1. This submission is made by Transdev Australasia Pty Ltd (**Transdev**) in response to the 'Background Paper – Copied State Awards' dated 25 May 2022 (**Background Paper**) provided by the Fair Work Commission (**Commission**), and further to Transdev's Submission dated 1 April 2022 (**Initial Submission**).
2. Transdev sets out its response to questions 1 to 4 and 7 of the Background Paper below. Transdev has not responded to questions 5 or 6 in the Background Paper, noting they are not applicable to Transdev or its Initial Submission.
3. Capitalised terms which are not otherwise defined in this submission have the same meaning as in Transdev's Initial Submission.

**Question 1: Do the parties agree with the description in Sections 1.1–1.3 of the legislative framework applying to copied State awards?**

4. Transdev agrees with the description in section 1.1 to 1.3 of the Background Paper of the legislative framework applying to copied State awards.

**Question 2: Do the parties agree with the description in Section 1.5 of the statutory criteria applying to the variation of wage rates in copied State awards in an annual wage review?**

5. Transdev agrees with the description in section 1.5 of the Background Paper of the statutory criteria applying to the variation of wage rates in copied State awards in an annual wage review.

**Question 3: What considerations in ss.284(1)(a)-(e) are relevant to the applications and submissions made by the parties?**

6. Transdev submits that the approach outlined in its Initial Submission is consistent with the following minimum wages objectives in section 284(1) of the FW Act:
  - (a) The performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth (section 284(1)(a)). In particular:
    - (i) If the annual wage review decision applies to the STA Copied State Awards, it will have a direct impact on the profitability of Transdev's business. Transdev will be required to pass on two wage increases in

respect of the same period, one already contained in the STA Copied State Awards and the other as a result of the national wage review decision. The impact of that will be material, noting there are approximately 1,232 Transferring Employees employed by Transdev and covered by the STA Copied State Awards.

- (ii) Transdev notes the submissions of Australian Business Industrial (**ABI**) and NSW Business Chamber Ltd (**Business NSW**) dated 6 May 2022 at [15] in relation to the compounding effect of two wage increases in respect of the same period, and shares those concerns.
  - (iii) Of course, the impact on Transdev's profitability will likely be shared by other businesses nationally who are also covered by copied State Awards, in the event that annual wage review increases are determined to apply to copied State Awards which already contain a wage increase in respect of the same period. Transdev submits that this will have a negative impact on the performance and competitiveness of the national economy, particularly business competitiveness and viability.
  - (iv) Further, Transdev submits that this approach may disincentivise national system employers from employing State public sector employees in circumstances where there will be a transfer of business, as a result of the increased labour cost.
- (b) Relative living standards and the needs of the low paid (section 284(1)(c)). In particular, Transdev submits that the approach it has proposed in its Initial Submission is consistent with ensuring relative living standards of Transferring Employees, noting that:
- (i) Transferring Employees have or will already receive the benefit of wage increases that have made as "fair and reasonable conditions of employment" by the New South Wales Industrial Relations Commission under s 10 of the *Industrial Relations Act 1996* (NSW). It refers to and supports the submissions of Busways North West Pty Limited dated 1 April 2022 (**Busways Submissions**) at [65] to [71] in respect of the approach taken by the New South Wales Industrial Relations Commission in setting wages; and
  - (ii) Transdev's proposed approach will not deprive Transferring Employees of the benefit of annual wage review increases in the future, noting that the STA Copied State Awards do not contain future wage increases and so, if the tiered approach applied, would be subject to annual wage review increases going forward.
- (c) The principle of equal remuneration for work of equal or comparable value (section 284(1)(d)). In particular, Transdev submits that:

- (i) should any annual wage review increase apply to the STA Copied State Awards, the wage rates in the STA Copied State Awards will exceed both:
  - i. the rates for equivalent work under the equivalent modern awards, creating a difference in minimum rates for the same work. Transdev refers to the comparison rates included in the Busways Submissions at Table 1; and
  - ii. the rates for equivalent work under copied State Awards which continue to apply to State public sector employees in respect of the same work, which are subject only to the increases contained in those awards.

**Question 4: What other considerations are relevant to the applications and submissions made by the parties?**

- 7. Transdev notes that, since providing its Initial Submission, it has made an enterprise agreement with employees covered by the Operations Award, known as the *TJHB Bus Operations Agreement 2022*. However this enterprise agreement has not yet been approved by the Commission, and so the Operations Award currently continues to apply to Transferring Employees within its coverage.
- 8. Transdev has also commenced discussions with relevant unions in relation to bargaining for enterprise agreements which, if made, would replace the Engineering and Maintenance Award and Salaried Officers' Award. It does not anticipate those enterprise agreements will be made any earlier than three months from the date of this submission.

**Question 7:**

**a) To what extent is there agreement among the parties on 'topping up' any shortfall between wage increases awarded in copied State awards and annual wage review adjustments?**

- 9. Transdev maintains its primary submission that that the Commission should not apply any annual wage review increase to the STA Copied State Awards in its 2021-22 Annual Wage Review.
- 10. In the alternative, should that submission not be accepted, Transdev submits that any annual wage review increase to the STA Copied State Awards should be limited to the difference between the annual wage review increase and the increases already provided for in the STA Copied State Awards, i.e. the 'top-up' approach.

**b) What are the parties' positions as to how any 'top-up' should be calculated including how the timing of any wage increases under copied State awards should be taken into account?**

- 11. In the event the Commission determines that the annual wage review increase will apply to the STA Copied Awards on the basis of the 'top-up' approach, Transdev submits that this should

be calculated as the difference between the annual wage review increase for 2021-22, and any increase already included in the STA Copied Awards which commenced after 1 July 2021\_(i.e. which is applicable to the same period as the annual wage review). So if, for example, the annual wage increase for 2021-2022 was 3%, applicable from 1 July 2022:

- (a) the annual wage review increase to the Engineering and Maintenance Award should be 0.96%, being 3% - 2.04% (the increase applicable from 1 April 2022);
- (b) the annual wage review increase to the Operations Award should be 0.96%, being 3% - 2.04% (the increase applicable from 1 January 2022); and
- (c) the annual wage review increase to the Senior Officers Award should be 0.96%, being 3% - 2.04% (the increase applicable from 1 January 2022).

While recognising that the timing of wage increases differs between copied State awards, Transdev submits that this approach reduces complexity and is less administratively burdensome.