

Annual Wage Review 2021-2022

Response to Background Paper – Copied State Awards dated 25 May 2022

Keolis Downer

1 June 2022

Background

1. We refer the Fair Work Commission (**FWC**) to the background in our submissions dated 1 April 2022 (**Initial Submissions**).
2. In short, there are two copied state awards which presently apply to Keolis Downer:
 - a. the State Transit Authority Senior and Salaried Officers Enterprise (State) Award 2021, and
 - b. the State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020 (**the Copied State Awards**).
3. Our response to the questions raised in the FWC Background Paper – Copied State Awards dated 25 May 2022 are outlined below.

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. Yes, Keolis Downer agrees.

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. Yes, Keolis Downer agrees.

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

6. Keolis Downer submits that subclauses (a) and (c) of section 284 of the *Fair Work Act (2009) (Cth)* (**FW Act**) are relevant to the application and submission made by Keolis Downer.
7. Employees covered by the Copied State Awards are paid far in excess of the applicable rate under the relevant Modern Award (see the analysis in Attachment 1 below). Accordingly, the fundamental tenet of section 284, that the FWC must establish and maintain a “safety net of fair minimum wages” has clearly been met by the Copied State

Awards. This is because the Copied State Awards already ensure beneficial living standards for the relevant employees due to the prior application of section 10 of the *Industrial Relations Act 1996* (NSW) and the awarding of “*fair and reasonable conditions of employment for employees*” with built in wage increases. These wage rates far exceed the minimum wage rates set by the FWC for comparable employees in conformity with section 284 of FW Act.

8. The aims of the FW Act¹ also include achieving productivity and fairness through an emphasis on enterprise level collective bargaining. In these circumstances, Keolis Downer submits that it would be unfair and risks de-emphasising enterprise level collective bargaining for the FWC to provide for any wage increases on top of existing “*fair and reasonable*” wage rates.
9. These considerations support the conclusion that the FWC should exercise its discretion in this matter and exempt the Copied State Awards from the annual wage review decision.

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

10. As Busways explains at paragraph [71]–[72] of its submission² and as supported by the Australian Chamber of Commerce and Industry submission in reply³, copied state awards are not in practice “minimum wages” instruments and therefore are not comparable to modern awards, which are minimum rates instruments. The applicable assessment when determining wages under the Copied States Awards is an assessment of what is “*fair and reasonable terms and conditions of employment*” (this concept is summarised at paragraph [71] of Busways submissions). As such, and as evidenced by the wage rate tables below, any increase to these instruments goes far beyond the FW Act objectives and the application of section 284 of the FW Act.
11. This means that the differential impact on employers, such as Keolis Downer, who are covered by the Copied State Awards which have travelled from the New South Wales State system with a different and more favourable (for relevant employees) wage setting regime with locked-in wage increases, to the Federal system to be faced with further wage increases pursuant to the FWC’s 2021-2022 Annual Wage Review is significant. Clearly, there exists the risk of double dipping.

¹ *Fair Work Act 2009* (Cth) section 3(f).

² [Submission by Busways North West Pty Ltd dated 1 April 2022.](#)

³ [2021-2022 Annual Wage Review, Reply Submission, Australian Chamber of Commerce and Industry, May 2022.](#)

12. In relation to the Copied State Awards, there is a vast disparity between the wages currently paid under those instruments and the rates applicable under the equivalent modern awards to the employee's significant benefit. Examples of the comparison in rates between the Copied State Awards and the applicable modern award for four separate roles are included in Attachment 1 below. These have been selected as they are four roles that are easily comparable to the applicable modern award. By way of example, in one comparable role an employee covered by the Copied State Award earns 73% more than they would under the applicable modern award.
13. With regard to the analysis in Attachment 1, Keolis Downer submits that if there is a further increase to the rates of pay in the Copied State Awards (which are already far above the rates of pay in the modern award) this will lead to a further disparity between Keolis Downer and other national system employers. This is because, in this year, Keolis Downer will be subject to the cost increases which have already been locked in and provided to employees (in January or April) and to provide further increases would not be fair as Keolis Downer employees covered by the Copied State Awards are already in receipt of a safety net of "*fair minimum wages*" in accordance with FW Act and minimum wage objectives.
14. Further, and in response to the concerns raised at paragraph [18] of the ARTBIU, AMWU and ASU Outline of Reply Submissions⁴, the FWC can be satisfied, given the significant increase in weekly wages available to employees covered under the Copied State Awards against the applicable modern award, that employees will not be disadvantaged by the fact that there is no applicable increase available to the employees after January 2023.
15. Additionally, not applying the Annual Wage Review decision to the Copied State Awards that have already had increases in this year does not mean Keolis Downer employees will miss the benefit of future Annual Wage Review decisions at which time a further analysis can be undertaken.
16. The most likely outcome in relation to impacted employees within Keolis Downer's business is that employees will be entitled to future wage increases from 2023 onwards pursuant to the enterprise agreements Keolis Downer expects to implement in the immediate future. Keolis Downer has conducted negotiations with bargaining representatives on behalf of employees covered under the Copied State Awards to develop enterprise agreements that substantially mirror the terms of the Copied State Awards and provide a mechanism for wage increases in future years.

⁴ ARTBIU, AMWU and ASU Outline of Reply Submissions dated 6 May 2022.

17. The vote to approve the enterprise agreement covering employees under the *State Transit Authority Senior and Salaried Officers Enterprise (State) Award 2021* was successful on 30 May 2022 and will shortly be sent to the FWC for approval.
18. Negotiations with bargaining representatives for employees covered by *the State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020* are almost complete, with two final matters to be resolved. To this end, a negotiation meeting is scheduled for 3 June 2022.
19. In light of the above submissions, if exempted from the Annual Wage Review decision, Keolis Downer submits employees will not lose future increases to their safety net and will remain significantly better off than had they been covered by the relevant modern award and subject to the Annual Wage Review decision.

Question 5: Noting the analysis at Section [1.4] of this Background Paper and in particular at [34]:

a) does Transit Systems press its claim that the Commission has power to vary or revoke previous annual wage review determinations adjusting minimum wages in copied State awards?

b) if yes, what is the source of the Commission's power to do so?

20. Keolis Downer makes no submissions in relation to this question.

Question 6: What is the status of enterprise bargaining negotiations to replace the copied State awards applying to Transit Systems and its transferred employees derived from the 2018 Bus Operations Award and the 2018 Senior and Salaried Officers Award?

21. Keolis Downer makes no submission on this issue given it is directed to Transit Systems. However, it notes the information we have provided at paragraph 16-18 relating to the status of enterprise bargaining for Keolis Downer.

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?

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?

22. Keolis Downer does not agree that there is consensus in relation to the proposition put forward by the Unions that the general increase should be reduced by 2.04%. The position in paragraph 10 of Keolis Downer's Initial Submissions was put forward strictly in the alternative in the event that a party advanced an argument that the full amount under the

Annual Wage Review 2021-2022 should be carried into the Copied State Awards. As no party has put forward this argument, the position in paragraph 10 of Keolis Downers initial submissions is withdrawn.

23. Keolis Downer's submission is that the FWC should, in the case of the Copied State Awards, determine not to apply any minimum wage increase in light of the considerations outlined above.

Concluding remarks

24. On the basis of these submissions and having regard to the clear disparity between the wages within the Copied State Awards and the applicable modern award, Keolis Downer respectfully submits that the FWC should not apply any increase to the Copied State Awards.

Attachment 1

Table 1 – Example of difference between State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2021 and Manufacturing and Associated Industries and Occupations Award 2020 – Engineering Repair Tradesperson

Classification – Copied State Award	Classification – Manufacturing and Associated Industries and Occupations Award 2020	Weekly Rate – Modern Award	Weekly Rate - Copied State Award	% wage difference	Amount of weekly wage difference
ERT Level 4	V8	\$984.1	\$1430.9	45%	\$446.8
ERT Level 3	V7	\$955.9	\$1360	42%	\$404.1
ERT Level 2	V6	\$927.7	\$1293.6	39%	\$365.9
ERT Level 1	V5	\$899.5	\$1231.1	37%	\$331.6

Table 2 – Example of difference between State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2021 and Manufacturing and Associated Industries and Occupations Award 2020 – Storeperson

Classification	Classification – Manufacturing and Associated Industries and Occupations Award 2020	Weekly Rate – Modern Award	Weekly Rate - Copied State Award	% wage difference	Amount of weekly wage difference
Storeperson Level 2	V4	\$853.60	\$1213.50	42%	\$359.9
Storeperson Level 1	V3	\$825.20	\$1138.80	38%	\$313.6

Table 3 – Example of difference between State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2021 and Manufacturing and Associated Industries and Occupations Award 2020 – Repair Assistants

Copied State Award Classification	Classification – Manufacturing and Associated Industries and Occupations Award 2020	Weekly Rate – Modern Award	Weekly Rate - Copied State Award	% wage difference	Amount of weekly wage difference
ERA Level 4	V4	\$853.60	\$1138.80	33%	\$ 285.20
ERA Level 3	V3	\$825.20	\$1076.90	31%	\$ 251.70
ERA Level 2	V2	\$794.80	\$1046.40	32%	\$ 251.60
ERA Level 1	V1	\$772.60	\$985.10	28%	\$ 212.50

Table 4 - Example of difference between State Transit Authority Senior and Salaried Officers Enterprise (State) Award 2021 and Passenger Vehicle Award 2020 – Scheduler and Supervisor

Copied State Award classification	Modern Award classification	Yearly rate – Modern Award	Yearly rate Copied State Award	% yearly wage difference	Amount of annual wage difference
Scheduler (152) - (this salary is for a 35 hour work week)					
1st year	Grade 6	\$53,539.20	\$77,067	44%	\$ 23,527.80
2nd year	Grade 6	\$53,539.20	\$79,195	48%	\$ 25,655.80
3rd year	Grade 6	\$53,539.20	\$82,187	54%	\$ 28,647.80
Clerk Grade Special – (this salary is for a 35 hour work week)					
1st year	Grade 6	\$53,539.20	\$83,664	56%	\$ 30,124.80
2nd year	Grade 6	\$53,539.20	\$88,089	65%	\$ 34,549.80
3rd year	Grade 6	\$53,539.20	\$92,563	73%	\$ 39,023.80

Notice that a person:

- (a) has a lawyer or paid agent; or
- (b) will seek permission for lawyer or paid agent to participate in a conference or hearing

Section 596 of the Fair Work Act 2009 and rules 11, 12 and 12A of the Fair Work Commission Rules 2013

This form can be used to give notice to the Fair Work Commission (Commission) that a lawyer or paid agent is acting for a party in a matter before the Commission.

This form can also be used to give notice that a party will seek permission for a lawyer or paid agent to represent the party in the matter by participating in a conference or hearing.

1. The matter before the Commission

What is the name and matter number of the matter before the Commission?

Matter name	Annual wage review 2021-22 – Copied State Awards
Matter number	C2022/1

2. The party giving notice



These are the details of the party giving notice.

If the party is an individual, provide the following details:

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the party is not an individual, provide the following details:

Legal name of party	Keolis Downer Pty Ltd
Party's ACN (if a company)	
Party's ABN (if applicable)	51 165 343 680

Form F53 – Notice that a person: (a) has a lawyer or paid agent; or
(b) will seek permission for a lawyer or paid agent to participate in a conference or hearing

Party's trading name or registered business name (if applicable)			
Contact person	Natassia Smith		
Postal address	567 Collins Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	0455 623 154	Fax number	
Email address	natassia.smith@downergroup.com		

Which party is the party giving notice?

- Applicant
- Respondent
- Other

If you answered **other**—provide details below:

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3. Notice that the party has a lawyer or paid agent

Is the party giving notice that a lawyer or paid agent acts for the party?

- Yes
- No

If you answered **Yes**—provide details of the lawyer or paid agent below:

Name of lawyer or paid agent	Stephen Price		
Firm, organisation or company	Corrs Chambers Westgarth		
Postal address	Level 9, 8 Chifley, 8-12 Chifley Square		
Suburb	Sydney		
State or territory	New South Wales	Postcode	2000
Phone number	(02) 9210 6232	Fax number	
Email address	stephen.price@corrs.com.au		

Form F53 – Notice that a person: (a) has a lawyer or paid agent; or
 (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing

Are copies of correspondence and other documents in the matter to be sent to the lawyer or paid agent?

Yes

No

4. Notice that the party will seek permission for lawyer or paid agent to participate in a conference or hearing

Is the party giving notice that the party will seek permission for a lawyer or paid agent to participate in a conference or hearing?

Yes

No

If you answered **Yes**—either provide details below of the conference(s) or hearing(s) that the party wants a lawyer or paid agent to participate in (including date and time, if known), or indicate that permission will be sought for participation in all future conferences and hearings:

All future conferences and hearings, including hearing on 3 June 2022

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Stephen Price
Date	1 June 2022
Capacity/Position	Partner, Corrs Chambers Westgarth



If you are not the party giving notice and are completing this form on the party's behalf, include an explanation of your authority to do so in the **Capacity/Position** section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS