



BUSINESS SA Submission in Reply

**Modern Award Review 2014:
Group 2 –reply to substantive and
technical/drafting issues in
Exposure Drafts**

Friday 28 August 2015



BusinessSA

**South Australia's Chamber of
Commerce and Industry**

Contents

Introduction	3
Updated Exposure Drafts Prior to Final Decision.....	3
Group 2AB Awards - Submissions in reply to Substantive Claims	3
Graphic Arts	4
Pharmacy Industry Award 2010.....	5
Seafood Processing Industry Award 2010	6
Aquaculture Industry Award 2010.....	7
Storage and Wholesale Award.....	7
Health Professionals and Support Services Award	8
Nurses Award 2010.....	11
Group 2CD Awards.....	12
Passenger Vehicle Transportation Award 2010.....	12
Transport (Cash in Transit) Award 2010	13
Road Transport (Long Distance) Award 2010	17
Road Transport (Distribution) Award 2010	17
Racing Industry Award 2010	18

Introduction

1. As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.
2. Business SA seeks to provide a written outline of submissions in reply to any substantive claims or variations being pursued, as directed by the Commission on 6 May 2015 [2015] FWC 3148. With regard to our comprehensive written submissions in reply to the technical and drafting issues related to exposure drafts in group 2, Business SA refers to its submissions of 4 March 2015 and 15 July 2015.

Updated Exposure Drafts Prior to Final Decision

3. Business SA notes that significant changes have been proposed to be made to the initial exposure drafts over the past eighteen months and that it would be advantageous to allow the parties to review a final draft prior to the Commission's approval.

Group 2AB Awards - Submissions in reply to Substantive Claims

[Graphic Arts](#)

[Pharmacy Industry Award 2010](#)

[Seafood Processing Industry Award 2010](#)

[Aquaculture Industry Award 2010](#)

[Storage and Wholesale Award](#)

[Health Professionals and Support Services Award](#)

[Nurses Award 2010](#)

Group 2CD Awards – Submissions in reply to Substantive Claims

[Passenger Vehicle Transportation Award 2010](#)

[Transport – Cash in Transit](#)

[Road Transport \(Long Distance\) Award 2010](#)

[Road Transport \(Distribution\) Award 2010](#)

[Racing Industry Award 2010](#)

Graphic Arts

4. Business SA withdrew its proposal to vary the Graphic Arts Award in submissions dated 15 July 2015.
5. Business SA notes that a number of parties have raised concerns with the drafting of the exposure draft.
6. Part 5 – Hours of Work of the current Graphics Arts Award 2010 sets out sub clauses for different categories of employees. The exposure draft departs from the traditional arrangement of the Award.
7. Whilst Business SA supports the redrafting of Modern Awards to provide simplicity and remove ambiguity, it is our position that the Exposure Draft has failed to achieve this. As such, Business SA supports the position of the Printing Industry Association of Australia (PIAA) in relation to Part 4 – Hours of Work of the exposure draft.
8. Business SA supports the proposal by PIAA to remove the word “extra” inserted into the exposure draft on the basis it would cause confusion.
9. Business SA supports the proposal by PIAA that the current wording of Clause 23 – Time provision for refreshment, should remain. It is our position that there is a difference in meaning between “short break” and “pause for refreshment”. A variation to the award to allow for a “short break” could result in loss of production and efficiency within the workplace.
10. Business SA does not object to the AMWU submission to update Schedule B to update the current ICP Training Package and support PIAA’s submission on this matter.

Pharmacy Industry Award 2010

11. Business SA notes that considerable communication between the parties have occurred to date. The following highlights the outstanding issues in relation to the Pharmacy Industry Award 2010.
12. Business SA does not support the SDA's proposal to include definitions of 'minimum hourly rate' and 'ordinary hours'. Whilst we agree that consistent terminology should be used throughout the Award we consider the proposed changes unnecessary.
13. Business SA opposes the proposal by the SDA to retain the word "actual" in Clause 6.5(c) of the Exposure Draft. The current version of the exposure draft contains the wording "minimum" and it is our position that "minimum" is a clearer, less ambiguous term.
14. The SDA has submitted that there is an ambiguity in the overtime clause. The SDA propose that Clause 8.3(a) should also be included in the overtime clause 13.2(a). Business SA does not agree with this proposal as it is inconsistent with the current overtime clause.
15. APESMA are seeking a number of substantive changes to the Award. These changes are:
 - a. increases to the pay rates for pharmacists and pharmacy students in clause 17 in response to alleged changes in the value of work performed by those classes of employees;
 - b. the inclusion of a new allowance (a 'professional services allowance') to compensate employees for the additional duties that APESMA allege are now performed by some pharmacists;
 - c. the inclusion of a provision providing for reimbursement of work-related expenses; and (d) the inclusion of a provision providing for financial and time assistance for CPD training and study leave.
16. Business SA opposes these changes and considers the APESMA proposals to be substantial and therefore should be referred to a Full Bench.
17. The SDA have sought changes in relations to fulltime employees. These changes include the requirement that parties agree, in writing, at the time of engagement on a regular pattern of work and the inclusion of a 4 hour minimum engagement for full-time employees.
18. Business SA opposes these changes on the following basis:
 - a. The variations are substantial and the SDA have not provided evidence to substantiate the claims;

- b. The current provisions are necessary to retain the flexibility required in the pharmacy industry.
19. The SDA have proposed that junior rates should be restricted to level 1 pharmacy assistants only. Business SA opposes this claim. Again, this is a substantial variation that may have significant impact on businesses. As such, the SDA will be required to provide evidence to substantiate the claim. Business SA considers the claim to be a work value claim and therefore the SDA will be required to demonstrate changes in the nature of the work, the level of skill or responsibility involved in doing the work, and the conditions under which the work is done.
20. Business SA opposes the SDA's claim regarding Blood and Bone Marrow Donor leave. It is Business SA's view that this is a substantial change to the Award and the SDA is required to provide evidence to support the claim. Further, this matter should be referred to a Full Bench for determination.
21. The Pharmacy Guild's has proposed a rewrite of the Award to a 'plain English' version. Business SA is cautious of such a proposal as, in our experience, the meanings and definitions can be unintentionally but significantly changed with such a process. Business SA will continue to participate in such discussions however at this stage does not support the plain English version. Due to the potential ramifications of rewriting the award in a plain English version, it is Business SA's view that this is a substantive claim and should be dealt with by a Full Bench.
22. The Pharmacy Guild has proposed a provision permitting employers to direct employees to take annual leave as part of an annual close down. Business SA supports the claim in principle and waits further information from the Pharmacy Guild.
23. Business SA supports the Pharmacy Guild proposal to extend the annualised salary provisions to pharmacy assistants.

Seafood Processing Industry Award 2010

24. Business SA relies on its previous submissions from 15 July 2015 and the Agreed Matters submission of 21 July 2015.
25. It is Business SA's view that the AMWU submission regarding the coverage clause is a substantive claim which potentially results in a material change to the Award. If the AMWU wish to pursue this issue it should be treated as a substantive claim and a proper merit based argument should be advanced accompanied by evidence of a probative nature.

26. Business SA supports the submission of ABI and the NSW Chamber Ltd to include the words "Up to" in clause 8.2(a). It is Business SA's opinion that the words "up to" is necessary as part-time and casual employees may work less than 38 hours per week. Business SA supports the rationale put forward by ABI & NSW Chamber that clause 8.2(a) is not limited to full-time employees (i.e. it applies to fulltime, part-time and casual employees), and therefore should not be drafted in such a manner as to suggest that any employees who work less than 38 hours per week cannot be 'day workers' pursuant to clause 8.2.

Aquaculture Industry Award 2010

27. Business SA relies on its previous submissions from 15 July 2015 and the Agreed Matters submission of 21 July 2015.
28. There are three outstanding proposals by Australian Bluefin Tuna Association and Tassal (collectively: Austuna) as listed below:
- a. a facilitative provision to extend the **annual work cycle** to a maximum of 26 weeks for individual as well as the current majority agreement; - Don't oppose this but recognise that it is a substantial issue and
 - b. an individual agreement for possible **travel time** spent at sea (or waiting time prior to the scheduled departure time) to be paid at the minimum rate of pay but time will not count towards hours worked over the week; and
 - c. a new **classification** for tuna ranching to recognise the difference between tuna ranching and finfish farming.
29. Business notes that submissions from AUSTUNA on 28 August 2015 that the above applications have been withdrawn.

Storage and Wholesale Award

30. The SDA submitted a document of agreed matters on 10 June 2015, which Business SA supported in its submission dated 15 July 2015. The following are Business SA's responses to the outstanding substantial matters.
31. The Australian Industry Group (AiG) proposes to include **annualised salaries** for Grade 4 Storeworkers and Wholesale employees. Business SA supports this proposal on the basis it provides a more flexible working arrangement, is easier for employers to administer and provides consistent wages for employees over a 12 month period. The proposed clause contains relevant safety clauses to ensure employees are not disadvantaged.

32. The Shop, Distributive and Allied Employees' Association (SDA) proposes to uncap the 12 **rostered days off (RDO)** accrued over a 12 month period to enable those employees who do not take any annual leave for that period to accrue 13 RDOs. Business SA does not currently support this proposal at this point in time; however we are willing to be a constructive part of the proceedings when the SDA puts forward their case in accordance with the requirements of the Act.
33. AiG have proposed to vary **payment of wages** on termination to allow for EFT payments made by the next usual pay day. Business SA supports this proposal.
34. AiG propose to vary two levels of **classifications**: remove management of a defined section/department from Wholesale employee level 4 and remove the requirement for a Wholesale employee level 3 to provide supervisory assistance to a designated section manager (but maintains supervisory assistance to a team leader). Business SA supports this proposal.
35. AWU proposes the removal of 'each day stands alone' in the calculation of overtime. Business SA disagrees that this proposal reduces ambiguity and it is our opinion that the words should be retained.
36. The AWU proposes to retain the words: "on any day, or from day to day," in clause 12.3(b)(i), with such words having been removed from the current award clause 16.3. Business SA considers these words unnecessary and should not be retained.

Health Professionals and Support Services Award

37. There are a significant number of parties who have an interest in the Health Professionals and Support Services Award. As such, to date, it has not been possible to find common ground on substantial issues such as span of hours
38. The following proposals have been put forward by the relevant parties regarding span of hours (SOH):
- a. a variation to the **physiotherapy** practice SOH clause is proposed by the Australian Physiotherapy Association (APA) of Monday to Saturday ordinary hours, with M-F (7am-8pm) and Sat (7am-2pm);
 - b. a separate **chiropractic** practice clause is proposed by Chiropractors' Association of Australia (CAA) of Monday to Saturday ordinary hours (details to follow);
 - c. a variation to the **private medical imaging practice** clause is proposed by the Medical Imaging Employer Relations Group (MIERG) for six day practices of Monday -Saturday (7am-9pm);

- d. a separate clause for **private hospitals** is proposed by the Private Hospitals Industry Employer Association (PHIEA) of ordinary hours of Monday-Sunday (6am-6pm);
 - e. a variation to the **private medical, dental and pathology** clause is proposed by Tristar Medical Group for seven day practices of Monday-Sunday (7am-9pm);
 - f. a single span of hours is proposed by the Health Services Union (HSU) of ordinary hours for all practices of M-F (6am-6pm). Weekend penalties would remain 150% for full and part time employees and casuals 175% (foregoing the casual loading).
39. A number of conferences have been held in the first half of 2015 to discuss the option of one span of hours for all practices; however no agreement between employer organisations and unions was able to be reached.
40. Business SA strongly objects to the SOH proposed by the Health Services Union. This proposal would significantly reduce the current award provisions and the ability for specific practices to operate on weekends. The Health Industry is not a Monday to Friday industry and any reduction in the ordinary hours of work would have a significant impact.
41. It is Business SA's opinion that there is a real need for the expansion of SOH in this industry to accommodate the needs of the industry as well as flexibility for employees.
42. Business SA is of the opinion that the variation to the SOH is significant and should be referred to a Full Bench.
43. Following on from the span of hours submissions, there are a number of proposals to vary the definition of day worker, shiftworker and associated penalties. A summary of the proposals is as follows:
- a. HSU propose for a day worker to be defined as one engaged as such and who works between the SOH (based on their SOH wording proposed as above);
 - b. PHIEA proposes all employees receive weekend shift penalties, removing the concept of shiftworker altogether;
 - c. MIERG proposes shiftwork to be defined as 'a continuous 24/7 shift work system'.
44. It is Business SA's opinion that the definition of day worker, shiftworker and associated penalties are intrinsically linked to the SOH issues. Any decision on these definitions would rest on the outcome of the SOH matter and should be dealt with subsequently by the Full Bench.
45. The Association of Professional Engineers, Scientists and Managers (APESMA) are proposing coverage for Translators. Business SA strongly objects to this proposal.
46. The coverage would extend beyond the scope of the Health Industry and the Award is a Industry specific award. This would lead to confusion as it would not be clear to employers and employees that all translators are covered by this Award. It is therefore unlikely

employers would look in a health industry award for provisions covering translators (outside the health industry)

47. The Modern Award Objective contained in s.134(1)(g) of the Fair Work Act requires *“the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.”* It is Business SA’s view that covering all translators in this award would not provide a simple and easy to understand award system.
48. APESMA have proposed that “interpreter (unqualified)” is removed the award. This would have the effect of removing employees currently covered by the Award system and making them award free. Business SA notes that APESMA do not have coverage in their Rules for unqualified interpreters and objects to this variation.
49. The Australian Industry Group (AIG) is proposing an employee who works not more than 6 hours may elect to forgo their meal break (with the employer’s agreement). Business SA supports this proposal.
50. AiG is proposing annualised salaries for Health Professional employees of all levels and Support Services employees at levels 8 and 9, CAA are proposing annualised salaries for all classifications. Business SA supports this proposal.
51. Aged Care Employers (ACE) are seeking agreement for the option of roster changes to be less than 7 days’ notice. Business SA supports this proposal.
52. MIERG is proposing a number of variations including:
 - a. a definition of job sharing and part time employee rostering arrangement
 - b. create a probationary review clause;
 - c. rostering can be amended with ‘nominal start and finishing times’ and hours for full time averaged over 4 week periods. i.e average of 152 hours /4 weeks
 - d. Allow for two or more starts per day for casual employees
 - e. Provide specific wage and allowance payment provisions for Private Medical Imaging (PMI)
 - f. One for one time off in lieu provisions for PMI part time up to 30 min after hours, no overtime if time worked by agreement, job share no overtime if within span of hours for the job, casual overtime only after 38 hours.
 - g. Specific recall to work and rest break in overtime provisions for PMI
 - h. Specific dispute resolution provisions for PMI
53. It is Business SA’s position that additional provisions for job sharing would be prohibitive on businesses and counterproductive. The proposal increases the amount of paperwork and red tape required.

54. The Fair Work Act 2009 provides that an employee cannot lodge an unfair dismissal claim in the first 6 months of employment. This clause renders a probationary clause unnecessary. It is Business SA's opinion that Modern Awards should be simplified and not contain unnecessary provisions.
55. Whilst Business SA does not oppose the other proposals of MIERG, we note that the proposals are substantial in nature and therefore should be referred to a Full Bench.

Nurses Award 2010

56. The following is Business SA's response to the substantive changes to the Nurses Award 2010. Whilst Business SA has not proposed any changes to the Award, we wish to be involved in future consultation and conciliation.
57. The Australian Nursing and Midwifery Federation (ANMF) proposed an extension of the full-time employee entitlements to payment of an ordinary day's pay for a public holiday that falls on an employee's rostered day off to some part-time employees. Business SA notes that this issue will be dealt with by the Full Bench in accordance with AM2014/301
58. ANMF proposes a potential variation for minimum shifts in all types of employees. Business SA notes that this issue will be dealt with by the Full Bench in accordance with AM2014/196 and 2014/197
59. AiGroup has proposed to vary Clause 27.1 – Meal Breaks to enable an employee to work a shift of six hours or less, without taking a break, subject to the employer agreement. Business SA supports this proposal as there are clear benefits to both employers and employees.
60. ANMF proposes an overtime penalty for breach of the rest break entitlement. Business SA opposes this submission on the grounds that it provides a significant penalty to employers in circumstances beyond the employer's control.
61. ANMF proposes unpaid meal breaks to be taken between 4 and 6 hours, unless otherwise agreed to by a majority of staff. Business SA opposes this application. Workplace practices and flexibility may require an employer to negotiate with a single employee or a group of employees without discussions with all staff. As mentioned in paragraph 44, Business SA supports the meal break clause proposed by AiGroup.
62. ACE proposes to provide flexibility in rostering where there is agreement between employers and employees. This would allow changes to rosters with less than 7 days' notice, regardless of illness or emergencies. Business SA supports this proposal as it will provide

flexibility in the workplace and maintain the requirement that agreement is reached between the employer and employee.

63. ANMF proposes to introduce additional rates for supervisory functions as an in-charge allowance for registered nurses and a leading hand allowance for enrolled nurses and nursing assistants. Business SA opposed this application on the grounds that it is a significant variation to the Award. It is Business SA's position that this matter should be referred to a full bench as it is a substantial variation.
64. The Health Services Union (HSU) proposes to pay shift allowances to employees when on afternoon or night shift, and in addition to the loading paid to casuals for all days of the week (currently only M-F). It is Business SA's position that this matter should be referred to a full bench as it is a substantial variation.
65. HSU proposes overtime stands alone on each shift, day, week or averaged roster period; all work beyond 10 hours is paid as overtime; and overtime is applicable to all employees. Business SA opposes this submission on the grounds that it is a significant variation to the Award and this matter should be referred to a full bench as it is a substantial variation.
66. ANMF proposes to increase the on call allowance. They also propose to increase annual leave accrual when a particular amount of on-call duty is performed per year (ie 10 or more times equals 1 day additional annual leave accrual through to 50 or more times equals 5 days additional annual leave accruals). Business SA objects to this proposal and it is our position that this matter should be referred to a full bench as it is a substantial variation.
67. Business SA is still seeking feedback from Members on a number of the proposals and wishes to be involved in future consultation and conferences for this Award.

Group 2CD Awards

Passenger Vehicle Transportation Award 2010

In addition to our previous submissions, we note:

68. Minimum Engagement for Casual Employees Clause 6.5(d) (current award 10.5(d)): Business SA supports the submissions of the Australian Federation of Employers and Industries (AFEI) and APTIA, where a minimum engagement can be split over broken shifts. A broken shift is defined in Schedule G of the Exposure draft and the current award as: *".....a shift with a spread of hours permitted under the relevant State or Territory driving hour's legislation and with an unpaid break of greater than 60 minutes between the two portions of work"*.

69. This definition indicates a worker who is engaged to work the morning and afternoon school drop off is working a single split shift and therefore provided a 2 hour minimum engagement for the entire shift.
70. Specifically Business SA supports the APTIA submissions and opposes the substantive application by the TWU to vary the award to provide for 'where a casual employee solely engaged for the purpose of transportation of school children works a split shift arrangement, the two hour minimum shall apply to each portion of the shift'. Business SA does not oppose the application by APTIA regarding minimum hours flexibilities.
71. Business SA supports the submissions of Ai Group in relation to the insertion of the words 'up to 38 hours a week' for Ordinary hours and roster cycles (Clause 8.1(a) - 21.1 current award). Further, Business SA opposes the TWU alternative proposal to amend that clause to specify that ordinary hours are to be worked between 6am and 7pm. Business SA supports the arguments put by the APTIA in this matter.
72. Overtime and penalty rates 13.1(a) (23.5 current award) – Currently, in the absence of a specified span of hours, employees who work before 6.00 am and after 7.00 pm must be paid an additional 15% of their base rate of pay for each hour worked. The TWU seeks to vary the clause to make provision for the payment of 15% to be paid on the base rate of pay for all ordinary hours worked in a shift. Business SA opposes the variation proposed by the TWU on the basis that such variations are unnecessary. Business SA supports the proposal by several employer parties that current award provisions in clause 23.5 be reinserted in 13.1(a).
73. Medical Allowance 15.2 (e) (11.3(g) exposure draft) Business SA supports APTIA's arguments opposing TWU proposal to amend this clause and furthermore supports the proposed wording change to this clause which will ensure that the medical exam will be restricted to the employees ability to perform the inherent abilities to perform the job.

Transport (Cash in Transit) Award 2010

74. Business SA relies on its previous submissions of 15 July 2015 which outlines the technical and drafting issues.
75. Business SA has not made submission for substantial variation to this Award. Business SA makes the following submissions regarding the substantial claims of the other parties.
76. The TWU have proposed substantive changes to Clause 3.1 Definitions to vary the definition of armoured and non-armoured vehicles.

77. The TWU have proposed the armoured vehicle definition amended to include the words as highlighted:

*“armoured vehicle means a vehicle especially designed for payroll services, transportation of cash, bullion and valuables. The design will include armour plate windscreens and windows **to a minimum G2 specification in accordance with the Australian Standard (AS/NZS2343:1007)** and the body specifications will be constructed to withstand armed attack from ordinary hand held weapons. An armoured vehicle will be fitted with air-conditioning or other temperature control system.”*

78. The TWU are also seeking the variation to ‘reflect necessary minimum ballistic proof requirements to ensure worker safety’ in the CIT sector¹ and to vary the non-armoured (soft skin) vehicle to stipulate the vehicle is required to be provided by the employer².

79. Business SA opposes these proposals on the basis they vary the coverage of the award. The TWU will be required to provide substantial evidence to support this claim and it is Business SA’s view that this matter should be referred to a Full Bench.

80. The TWU have proposed the deletion of the existing **Clause 4.4 Coverage** and replace it with a variation to extend coverage to security guards and couriers undertaking cash in transit services (entire clause):

“Where employees carrying out cash in transit work as a minor or incidental part of other security and/or courier work covered by another modern award, modern enterprise award, or an enterprise instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth), the employer will ensure that those employees completing such work are remunerated, at a minimum, in accordance with this award and that those employees related conditions are no less than those set out in this award.”

81. Further, TWU are proposing a variation to Clause 4.8 (in bold):

*“4.8 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work. **Such a determination must be made having regard to the requirements set out in clause 4.4 of this award.**”*

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.”

¹ TWU AM2014/215: 4 yearly review of modern awards – Transport (Cash in Transit) Award 2010 (MA000042), 24 November 2014, Schedule A.

² Ibid.

82. It is Business SA's view that the Transport Workers (Cash in Transit) Award is industry based. This proposed variation goes against the modernisation process and the modern awards objective.

83. The extension of award coverage of this nature was not supported by the Fair Work Commission Full Bench in Security Services Industry Award decision [2015] FWCFB 620 where the applicant sought for coverage to be converted to a vocational award. The intent of the proposal was to extend coverage of the Security Services Industry Award 2010 to cover employers who engage security guards as an incidental part of their business. In the Decision, the return to vocational coverage was found contrary to the modernisation process objective to

"create modern awards primarily along industry lines, but may also create modern awards along occupational lines as it considers appropriate."

And:

"The Commission is to have regard to the desirability of avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer. Where there is any overlap or potential overlap in the coverage of modern awards, the Commission will as far as possible include clear rules that identify which award applies".³

84. In addition the Full Bench noted the modern awards objective – the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoid unnecessary overlap of modern awards⁴ – could not be met, as it

"[r]equir[ed] a small number of employers in a separate industry to comply with an additional award, for what will usually be a small proportion of its employees, conflicts with this objective."⁵

The Full Bench outlined that a work value case was necessary if there was a problem with different wage rates in awards, and that it could be proved that this met the modern awards objective.

85. In Business SA's view, the extension of coverage claim by the TWU is a similar exercise to the variation pursued in the Security Services Industry Award. Cash in transit services provided by couriers and security guards remains to be proven to be anything beyond an incidental part of their work.

86. **Clause 19 Higher Duties.** The TWU have proposed that employees may elect to be remunerated at a higher classification when that employee regularly works at that higher classification as per the following:

³ Ibid, paragraph 11.

⁴ FW Act 2009, S.134(g).

⁵ Ibid, paragraph 16.

“19.1 Where an employee performs two or more classes of work on any one day, for the purpose of assessing the rate of wages to be paid, the employee will be regarded as having worked throughout the whole of their working time on that day at the class of work for which the highest rate of wages is prescribed.

19.2 Where an employee is required to perform two or more classes of work on a regular occasion then the employee’s classification will be reviewed by the employer.

19.3 Any disputes arising from this clause will be dealt with in accordance with clause 9 of this Award.”

87. Business SA does not support the wording proposed by the TWU. We note that Prosegur and ASIAL have sought wording that includes a time frame and definition of ‘regular’. Business SA would look forward to the TWU providing such wording for consideration.
88. The TWU will be required to provide substantial evidence to support this claim and it is Business SA’s view that this matter should be referred to a Full Bench.
89. The TWU have proposed a new clause 29 - Chain of Responsibility. The TWU submission outlines this claim is to *‘ensure that those employees in the CIT sector who are exposed to high levels of risk due to the work they complete are afforded conditions that ensure safe working conditions.’*⁶
90. ASIAL support the inclusion of a provision for the chain of responsibility’s inclusion in the award, with the exception of proposed Clause 29.8(c): *‘The written agreement provides for conditions that are no less favourable than those prescribed in this award.’*
91. The TWU’s proposal extends to contractors:
- “29.7 If an employer contracts with another person or persons who alone will carry out the work (as provided in paragraph 29.1(d) or subclause 29.1 of this clause), the employer shall contract to provide and shall provide conditions that are the same as those prescribed by this award.”*
92. Under the proposal, the contract or arrangement would be required to have a written agreement between the second person and the person actually performing the work, inclusive of the provisions above and the written agreement provides for conditions that are the same prescribed in the Transport (Cash in Transit) Award 2010. It is noted that ASIAL objects to this clause in TWU’s proposal.

⁶ TWU Submissions on Technical and Drafting Issues etc Matter No: AM2014/215, 23 July 2015, page 8.

⁷ ASIAL, Transport (Cash in Transit) Award 2010, 3 February 2015, Schedule A.

93. Business SA objects to this substantive proposal by the TWU on the basis that this provides a red tape and administrative burden to small business and the Chain of Responsibility is already legislated comprehensively elsewhere in the Heavy Vehicle National Law (HVNL).
94. Further, the TWU is taking the opportunity to extend industrial concepts to the chain of responsibility that do not currently exist.
95. Business SA has significant concerns this provision has jurisdictional issues in that it compels parties not covered by the Award to comply with its provisions. This raises serious concerns regarding coverage issues for the Award.
96. S.163(3) of the Fair Work Act 2009 states that coverage of an award cannot be changed to cover organisations who are not currently covered, unless the organisation is entitled to be covered by the award.
97. Business SA submits that the Fair Work Commission should also consider the concurrent inquiry underway the Road Safety Remuneration Tribunal (RSRT) into the Cash in Transit Industry and the released Draft Order (yet to be finalised by the RSRT)). The terminology ‘participant in the supply chain’ is used, referring to any participant in the supply chain in relation to a road transport driver, such as a consignor, consignee, intermediary or operator of premises for loading and unloading⁸. Whilst the RSRT is required to ensure there is no crossover of legislation⁹, including with modern awards, it is plainly evident that this multitude of references to parties involved in the road transport industry will cause confusion and difficulties for any employer, whether large or small.

Road Transport (Long Distance) Award 2010

98. Business SA continues to support the submissions of the Australian industry Group in both the matters pertaining to the exposure draft and substantive claims. Specifically, including the claims enlivened recently by the TWU regarding the insertion of an Accident Pay provision (similar to the provisions of pre modernised awards) into the award.

Road Transport (Distribution) Award 2010

99. Business SA continues to support the submissions of the Australian industry Group in both the matters pertaining to the exposure draft and substantive claims. Specifically, including the claims enlivened recently by the TWU regarding the insertion of an Accident Pay provision (similar to the provisions of pre modernised awards) into the award.

⁸ Draft Transport (Cash in Transit) Road Safety Remuneration Order 2015, Part 1(3).

⁹ Road Safety Remuneration Act 2012, Div.3, Subdivision A(10)-(14).

Racing Industry Award 2010

100. Business SA relies on previous submissions regarding the exposure draft and are of the opinion that there are not substantive matters to be addressed in this award.