

AM2016/36

Shop, Distributive and Allied Employees' Association

**Fair Work Commission
Four Yearly Review of Modern Awards
– Common Issues**

BLOOD DONOR LEAVE



**THE UNION FOR WORKERS IN
RETAIL.FAST FOOD.WAREHOUSING.**

In the Fair Work Commission

Four Yearly Review of Modern Awards – Common Issue

AM2016/36 – Blood Donor Leave and Bone Marrow Leave

BLOOD DONOR LEAVE

Submission by the Shop, Distributive and Allied Employees Association

Date: 2 May 2017

- [1] The Shop, Distributive and Allied Employees Association ('SDA') has over 220,000 members across Australia who predominantly work in the retail, fast food, hairdressing and beauty, mannequins and models, community pharmacy, warehousing, pharmaceutical manufacturing, warehousing and distribution industries.
- [2] As part of the 4 yearly review of modern awards, the SDA made a claim to insert new clauses of blood donor and bone marrow leave into the Pharmacy Industry Award 2010 as part of the Group 2 substantive issues process (Matter number AM2014/209)¹.
- [3] The SDA made further claims to have the new blood donor and bone marrow leave provisions inserted in the General Retail Industry Award 2010 (AM2014/270), Fast Food Industry Award 2010 (AM2014/267) and Hair and Beauty Industry Award 2010 (AM2014/271).
- [4] In correspondence to the FWC dated 2 December 2016, the SDA requested that the claim for blood donor leave and bone marrow in the Pharmacy Industry Award 2010 be deferred until the Group 4 Award Stage so that the claim could be dealt with for all four awards at the same time.
- [5] In a Statement made by the President of the Fair Work Commission ('FWC'), all SDA claims to blood donor leave and bone marrow leave were referred to one Full Bench².
- [6] A hearing was held on 16 January 2017 where further directions were issued in relation to all the claims described above in paragraphs [1] – [4].
- [7] Draft determinations were filed by the SDA on 23 January 2017 with the inclusion of the Mannequins and Models Award 2010.
- [8] The SDA subsequently revised its application by withdrawing its claim for bone marrow leave. Amended draft determinations were filed accordingly on April 5th and confirmed on April 10th by removing all reference to bone marrow leave. A final amendment, removing casuals from the entitlement to unpaid leave, to the SDA's claim to blood donor leave was filed on 27 April 2017.

¹ Paragraphs [64] – [71] in the SDA's 'Submissions on technical and drafting issues related to the Pharmacy Industry Award Exposure Draft and outline of submissions on substantive claims' dated 15 July 2015.

² [2016] FWC 9139.

[9] This submission is in support of the SDA's application as part of the four yearly review of modern awards – common issues (as amended on 5 April 2017 and further amendment on 27 April 2017) to insert paid blood donor leave ('BDL') for full time and part time employees ('BDL') in the following industry awards ('Awards'):

- General Retail Industry Award 2010 [MA00004];
- Fast Food Industry Award 2010 [MA00003];
- Pharmacy Industry Award 2010 [MA00012];
- Hair and Beauty Industry Award 2010 [MA00005];
- Mannequins and Models Award 2010 [MA00084].

[10] The proposed blood donor leave provision filed by the SDA is set out as follows:

CLAUSE X BLOOD DONOR LEAVE

X.1 A permanent employee shall be entitled to up to 2 ordinary hours' paid Blood Donor Leave, without deduction of pay, on a maximum of four occasions per year for the purposes of donating blood.

X.2 The employee shall notify his or her Employer as soon as possible of the time and date upon which he or she is requesting to be absent for the purpose of donating blood.

X.3 The employee shall arrange for his or her absence to be on a day suitable to the employer and be as close as possible to the beginning or ending of his or her ordinary working hours.

X.4 Proof of the attendance of the employee at a recognised place for the purpose of donating blood and the duration of such attendance shall be produced to the satisfaction of the employer.

[11] The BDL proposed clause is intended to operate in the manner set out below:

[11.1] Clause X.1 confines the paid entitlement of BDL to full time and part time employees, during ordinary hours of work without loss of pay for up to two hours on a maximum of 4 occasions per calendar year.

[11.2] Clauses X.2 and X.3 ensure adequate notice will be given by the employee when he/she wishes to attend a donation centre to donate blood. The employee is also required to arrange an appointment on a day suitable to the employer as close to the beginning or ending of his/her shift. These provisions ensure consultation between the employer and employee providing certainty for the employer such that any disruption or cost to the business is negligible.

[11.3] Clause X.4 places an obligation on the employee to provide proof of attendance at a recognised place where blood is donated to the satisfaction of the employer. This gives the employer reassurance that the blood donor leave requested was used for its intended purpose.

[11.4] BDL will **not** accrue from year to year like other forms of leave, such as personal or annual leave, if it is not used.

- [11.5] The Australian Red Cross Service stipulates that whole blood donors 18 years and older can donate whole blood every 12 weeks; 16 weeks between double red cell donations, and platelet apheresis donors every 7 days³. Regardless of how many times an employee donates blood, a blood donor who regularly donates blood can only do so for a maximum of 4 occasions a year, providing certainty for the employer on the applicability of the entitlement with negligible impact on the business.
- [11.6] Most importantly from the perspective of the employer, the BDL clause provides a process of consultation with the employer and is only accessible for a specific circumstance providing certainty for the employer of the legitimate use of the entitlement. Any concerns that the employer might otherwise have in the employee's use of BDL is totally removed.
- [11.7] The SDA rejects the Master Grocers Association's ('MGA') proposition that personal leave should be accessed for the purpose of donating blood⁴. Personal leave as provided by the NES would not be an appropriate form of leave to use to donate blood. Personal leave is taken because the employee is not fit for work because of a personal illness or injury affecting the employee or providing care or support of the employee's immediate family or household because of a personal illness or injury or unexpected emergency.⁵ Australia Red Cross Blood Service does not issue medical certificates for donating blood as it does not consider the activity as a treatment to the donor⁶.
- [11.8] Furthermore, allowing paid personal leave or any other leave intended to be used for longer absences from work for the purpose of donating blood makes does not make it easier for business. The MGA's proposal would add uncertainty and cost that would not otherwise exist.
- [11.9] The BDL proposed by the SDA is a fair entitlement ensuring a minimum safety net, taking into account equity, good conscience and the merits of the provision in a modern award for award-reliant employees who donate blood⁷ and the community and economy at large.

PERMITTED MATTERS

- [12] It is within the jurisdiction of the FWC to permit leave provisions in modern awards other than the leave entitlements provided by the National Employment Standards ('NES'). The main exception to the FWC's jurisdiction in this regard are terms that must not be included in modern awards as prescribed in sections 150 to 155 of the *Fair Work Act 2009 (Cth)* ('FW Act').
- [13] The SDA submits, the BDL proposed clause is a permitted term in a modern award as prescribed by section 139(1)(h) of the FW Act. Section 139(1)(h) permits terms about '*leave, leave loadings and arrangements for taking leave*' in a modern award.⁸

³ Red Cross Australia webpage <http://www.donateblood.com.au/when-can-i/blood>

⁴ Correspondence filed by Meridian Lawyers on behalf of the MGA on 16th January 2017.

⁵ Section 97 of the FW Act.

⁶ Australia Red Cross Blood Service, Request for data from the SDA (Victorian Branch), dated 28/04/2016 ('Annexure 11'), Answers to Question 5 and 6.

⁷ When the FWC is performing functions or exercising powers (including a review), s578(b) of the *Fair Work Act 2009* requires the FWC to take into account '*equity, good conscience and the merits of the matter*'.

⁸ Paragraph 538 of the Explanatory Memorandum to the Fair Work Bill 2009.

[14] Furthermore, all elements of the BDL proposed clause outlined in paragraphs [11.1] to [11.5] are permitted in a modern award by section 142(1) of the FW Act. Section 142(1) permits terms that are *'incidental to a term that is permitted or required to be in the modern award'* and *'essential for the purpose of making a particular term operate in a practical way'*.⁹

STATUTORY FRAMEWORK

[15] The FWC has broad discretion under section 156 of the FW Act as to the conduct of the four yearly review of modern awards. However, the FWC must ensure that the modern awards, together with the National Employment Standards ('NES'), provide a fair and relevant minimum safety net of terms and conditions, taking into account the Modern Awards Objective set out in section 134(1) of the FW Act.

[16] Section 138 of the FW Act emphasises the importance of the Modern Awards Objective by requiring that the FWC must be satisfied that a modern award includes only terms that are *'necessary to achieve the modern awards objective'*.

[17] The FWC needs to ensure a *'stable'* modern award system¹⁰ which means that a party seeking to vary a modern award in the context of this review must advance a merit argument accompanied by probative evidence demonstrating the facts in support of the proposed variation. The FWC will also consider the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue¹¹.

[18] The factors set out in section 134(1)(a) to (h) in the modern awards objective are *'broad considerations which the Commission must take into account in considering whether a modern award meets the objective set by s 134(1)'*.¹²

[19] No particular weight should be attached to any one consideration over another, and not all the matters identified in section 134(1) will necessarily be relevant to a particular proposal to vary a modern award.¹³

[20] To the extent there is any tension between some of the considerations in section 134(1), *'the Commission's task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions.'*¹⁴

[21] Furthermore, consistent with the Explanatory memorandum to the Fair Work Bill 2008, the FWC *'will be guided by criteria which takes into account public, social interest and economic aspects when considering whether and how to vary the content of modern awards'*.¹⁵

⁹ Paragraphs 559 and 560 of the Explanatory Memorandum to the Fair Work Bill 2009.

¹⁰ Section 134(1)(g) of the FW Act.

¹¹ *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* [2014] FWCB 1788 at paragraph [24].

¹² Collier, Bromberg, Katzman JJ at paragraph [109] in *National Retailers Association v Fair Work Commission* (2014) 225 FCR 154.

¹³ *Four Yearly Review of Modern Awards – Annual Leave* [2015] FWCFC 3406 at para(s) [19] – [20].

¹⁴ *Four Yearly Review of Modern Awards – Annual Leave* [2015] FWCFC 3406 at paragraph [20].

¹⁵ Paragraphs [96] and [97] of the Explanatory Memorandum to the Fair Work Bill 2008.

EVIDENCE

- [22] The SDA's application is supported by evidence from witnesses who donate blood; similar provisions existing in enterprise agreements and in a number of various predecessor awards for decades prior to the modern awards.
- [23] At a general level the SDA's submission in support of BDL as a workplace entitlement in the awards listed in paragraph [9] addresses matters that are of public and social importance and promotes an essential benefit to the community and the economy.

HISTORICAL CONTEXT OF BLOOD DONOR LEAVE IN PREDECESSOR AWARDS

- [24] Blood donor leave was a common feature in old State Awards across Victoria, South Australia, New South Wales and to a limited extent in Queensland which were predecessors to the modern awards listed in paragraph [9] of this submission¹⁶.

Victoria

- [25] In Victoria, paid BDL for permanent employees was a common feature in State awards from 1976 and continued to exist in federal awards which were predecessors to the awards listed in paragraph [9] of this submission.
- [26] Prior to the mid-1980s, State Wages Boards ('Boards') operated in Victoria to oversee Determinations made for specific industry State awards. These Boards were presided over by an independent Chairperson and were comprised of employer and employee representatives from their respective industries. Representatives on these Boards could make applications to amend awards of which the Board had coverage.
- [27] Below is a table of the State awards and details of when determinations were made by the Board to insert the entitlement of paid BDL for permanent employees into the awards (not exhaustive).

Board(s)/Award:	Date of consent by the Board to insert BDL:	BDL provision:	Date of operation of the BDL provision:
General Shops	Meetings held in Melbourne on 29 th November and 13 th December 1976	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From the 14 th December 1976
Food Shops	Meetings held in Melbourne on 29 th November and 13 th December 1976	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From the 14 th December 1976

¹⁶ The examples of the pre-modern federal awards in paragraph [25] to [30] of this submission that had BDL is not exhaustive.

Board(s):	Date of consent by the Board to insert BDL:	BDL provision:	Date of operation of the BDL provision:
Clothing and Footwear	Meetings held in Melbourne on 29 th November and 13 th December 1976	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From the 14 th December 1976
Chemists Shops	Meetings held in Melbourne on 20 th October and 10 th November 1981	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From first full pay period on or after 23 rd November 1981
Electrical, Furniture and Hardware Shops	Meetings held in Melbourne on 29 th November and 13 th December 1976	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From the 14 th December 1976
Wholesale Wine and Spirits Stores	Unable to ascertain	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	Present in the Determination in operation from the first pay period on or after 24 th December 1976
Bread Carters	Meeting held on 14 th October 1981	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	From first full pay period on or after 28 th October 1981
Wholesale Grocers	Unable to ascertain	Full time and part time employees entitled to up to 2 hours on 4 occasions per year without deduction of pay	Present in the Determination in operation from the first pay period on or after 9 th January 1981

- [28] The determinations to insert paid BDL into the State awards were as a result of Meetings held by the Board(s) and inserted into the relevant awards by consent of the representatives on the Board(s) (**'Annexures 1A, 1B, 1C, 1D, 1E, 1F, 1G, and 1H'**).
- [29] In Victoria, the entitlement to BDL described above was carried over into federal awards when the Victorian government ceded most of its industrial powers to the Commonwealth in 1996. Many employers were roped into the Victorian federal awards over a number of years (too many to list for the purposes of this submission). The awards became common rule in 2005 until they were replaced by the modern awards.

[30] The BDL provision could be found in federal awards in Victoria, such as the Hairdressing and Beauty Services – Victoria – Interim Award 1996 (**‘Annexure 2’**); the Victorian Shops Interim Award 1994 (**Annexure 3’**); the Pharmacy Assistants – Victoria – Award 1994 which was later removed from the award by the Commission in 1999 (**Annexures 4A and 4B’**)¹⁷; and SDA (Booksellers and Stationers) Interim Award 1994 (**‘Annexure 5’**). In Victoria, these awards were predecessors to the modern awards listed in paragraph [9] of this submission.

[31] At the end of 1996, a very significant number of employees covered by the federal Victorian Shops Interim Award 1994 or a collective agreement where the SDA is a party, had access to paid BDL¹⁸. In that period, ABS records 247,100 Victorian employees (full time – 130,800 and part time – 116,300) were working in retail.

[32] However, in the late 1990s, the *Industrial Relations Act 1988 (Cth)* was replaced by the *Workplace Relations Act 1996 (Cth)* (‘WR Act 1996’). Section 89A of the WR Act 1996 confined awards to twenty allowable matters. From 1 July 1998, non-allowable matters in a federal award such as BDL ceased to have effect.

[33] South Australia

[33.1] In South Australia, a number of State awards some of which were predecessors to the modern awards listed in paragraph [9] had an entitlement to BDL provision. The benefit was limited to Full time employees. These awards were the *Retail Industry (South Australia) Award; Retail Pharmaceutical Chemists Award; General Storeworkers, Packers Wholesale Sellers and Distributors Award; Cafes and Restaurants (South Australia) Award; Delicatessens, Industrial and Commercial Canteens, Unlicensed Cafes and Restaurants Etc., Award*, and *Boarding Houses, Guest Houses, Etc., Award* (**‘Annexure 5A’**).

[33.2] At the end of 2003, ABS records 37,900 South Australian full time employees working in retail. A significant proportion that were covered by the retail awards listed in paragraph [33.1] or a collective agreement where the SDA is a party, had access to paid BDL¹⁹.

[34] New South Wales

[34.1] In New South Wales, BDL could be found in State awards such as the *Shop Employees State Award (AN120499); Warehouse Employees – Drug (State) Award (AN120632); Restaurants, &c., Employees (State) Award (AN120468); Bootmakers and Heel Bar Operatives, &c. (State) Award*; and the *Tennis Strings and Sutures Industry (State) Award (AN2120548)* (**‘Annexure 6’**).

[34.2] In March 2006, ABS records 387,200 employees in New South Wales working in retail (full time – 209,600 and part time – 177,600). A significant proportion that were covered by the retail award listed in paragraph [34.1] or collective agreement where the SDA is a party, had access to paid BDL²⁰.

¹⁷ Decision by Commissioner Hingley on 4 May 1999 of the Shop, Distributive and Allied Employees Association – Victorian Pharmacy Assistants Award 1994 on ‘Allowable Matters’, clauses to be deleted from the award, at page 30 (S0539 Dec 434/99 M Print R4358).

¹⁸ November 1996 from ABS, Labour Force, Australia, Detailed, Quarterly, Nov 1996, Catalogue No. 6291.0.55.003, Victoria, Retail Trade.

¹⁹ November 2003 from ABS, Labour Force, Australia, Detailed, Quarterly, Nov 2003, Catalogue No. 6291.0.55.003, South Australia, Retail Trade.

²⁰ ABS, Labour Force, Australia, Detailed, Quarterly, March 2006, Catalogue No. 6291.0.55.003, NSW,

[35] **Queensland**

[35.1] In Queensland, BDL was found in an enterprise fast food award known as the *Quick Service Food outlets (QSFO'S) Award - State 2004* which applied to a number of fast food operators outlined in clause of 1.4 of the Award coverage²¹ (**'Annexure 7'**).

Enterprise Agreements with Blood Donor Leave as a Standard Povision

[36] BDL exists in many collective agreements across all jurisdictions in the retail and fast food industry that cover a multitude of employees. The table below lists collective agreements that contain BDL in addition to leave provisions provided by the NES (Note: BDL exists in collective agreements in industries not covered by the awards of interest in this submission, e.g. warehousing):

Enterprise Agreement:	Blood Donor Leave Clause #	F/T and P/T:	Payment:	Time and occasions
Woolworths National Supermarket Agreement 2012	8.4	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011	6.7	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Dan Murphy's Agreement 2012	27	Weekly Employee	Paid leave	Up to 2 hours on 4 occasions per year
Master Grocers Australia and Shop, Distributive Employees' Association Enterprise Agreement 2014	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year Refer to paragraph [38]
Master Grocers Australia Limited (Michael's IGA Supermarkets) and Shop, Distributive Employees' Association Enterprise Agreement 2014	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Bunnings SDA Retail Trade Agreement 2013	6.4	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year

Retail Trade.

²¹ Clause 1.4 of the award states that the award covers all employees engaged in the operations of Quick Service Food Outlets throughout Queensland, employed by Collins Restaurants Management Pty Ltd, and its franchises; Sunstate Foods Pty Ltd; McDonalds Australia Pty Ltd, and their Queensland franchises; Provided that the Award did not apply to establishments which have licence to sell alcohol and to the exclusion of the *Retail Take-Away Food Award – South-Eastern Division 2003*.

Enterprise Agreement:	Blood Donor Leave Clause #	F/T and P/T:	Payment:	Time and occasions
Bunnings Retail Trade Victoria Agreement 2013	6.4	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011	6.7	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Dan Murphy's Agreement 2012	27	Weekly Employee	Paid leave	Up to 2 hours on 4 occasions per year
Master Grocers Australia Limited (Boundy's IGA Supermarkets) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year Refer to paragraph [40]
Master Grocers Australia Limited (King's Family Supermarkets) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Master Grocers Australia Limited (Reddrop's FoodWorks) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Country Road Retail Team Members Collective Agreement Vic, Tas & Qld 2009	Part H	A retail team member	Without deduction of pay	Up to 2 hours on 4 occasions per year
Freedom Retail Enterprise Agreement 2013-2016	39	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Kmart Australia Agreement 2012	22	F/T and P/T	Paid leave	Up to 2 hours on 4 occasions per year

Enterprise Agreement:	Blood Donor Leave Clause #	F/T and P/T:	Payment:	Time and occasions
Target Australia Retail Agreement 2012	7.7	F/T and P/T	Paid leave	Up to 2 hours on 4 occasions per year
Officeworks Agreement 2012	30	F/T and P/T	Paid Leave	Up to 2 hours on 4 occasions per year
Pizza Hut – SDA National Employee Relations Agreement 2010	22	Full time only	Without deduction in pay	Up to 2 hours on 4 occasions per year
Priceline Retail Employees Enterprise Agreement 2013	34	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Lion Retail Holdings Pty Ltd Employees Enterprise Agreement 2011 (T/A Priceline)	29	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Red Rooster Agreement 2009	22	F/T and P/T	Without deduction in pay	Up to 2 hours on 4 occasions per year
The Reject Shop Agreement 2014	43	F/T and P/T	Paid leave	Up to 2 hours on 4 occasions per year
Super Retail Group Enterprise Agreement 2015 (Supercheap Auto, BCF, GoldCross Cycles, Rays, A Mart Sports, Rebel Sport)	Section 5	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Bunnings Warehouse/Small Format Stores Agreement 2013	28	Full time only	Without deduction of pay	Up to 2 hours on 4 occasions per year
BWS Enterprise Agreement 2013	6.10	Weekly employee	Paid leave	Up to 2 hours on 4 occasions per year
Eureka Operations Fuel and Convenience Team Member Agreement 2011 (Coles Express)	23	Permanent team members	Paid leave	Up to 2 hours on 4 occasions per year
Coles Liquor Group Retail Agreement 2014 (Liquorland)	38	F/T and P/T	Paid leave	Up to 2 hours on 4 occasions per year

Enterprise Agreement:	Blood Donor Leave Clause #	F/T and P/T:	Payment:	Time and occasions
David Jones Enterprise Agreement 2012	12	Permanent employees	Paid leave	Up to 2 hours on 4 occasions per year
McDonald's Australia Enterprise Agreement 2013	38	Weekly Employee	Without deduction of pay	Up to 2 hours on 4 occasions per year
Myer Stores Agreement 2010	48	F/T and P/T	Paid leave	Up to 2 hours on 4 occasions per year
Brotherhood of St Laurence, NUW and SDA Enterprise Agreement 2013	A.10.11	All employees	Paid time off	Up to 2 hours on 4 occasions per year
Best & Less Enterprise Agreement 2013	7.6	Permanent team members	Paid time off	Up to 2 hours on 4 occasions per year
The Just Jeans Group Pty Ltd Retail Agreement 2009 (Just Jeans, Jacqui-E, Peter Alexander, Dotti, Portmans, Jay Jays, Smiggle)	31	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Harris Scarfe Agreement 2011	9.4	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Harris Scarfe Distribution Centre Agreement 2011	9.4	F/T and P/T	Without deduction of pay	Up to 2 hours on 4 occasions per year
Australian Liquor Marketers Pty Ltd Victorian Distribution Centre Enterprise Agreement 2013	6.8	Weekly Employee	Without deduction of pay	Up to 2 hours on 4 occasions per year
Woolworths Petrol Enterprise Agreement 2012	20	F/T and P/T	Absent with pay	Up to 2 hours on 4 occasions per year
Country Road Group Logistics Omni Fulfilment Centre Enterprise Agreement 2015	11	Permanent employees	Paid leave	Up to 2 hours on 4 occasions per year
Shop Distributive and Allied Employees' Association – Just Jeans Group Pty Ltd, Victorian Distribution Centres Agreement 2015	36	Weekly employees	Without deduction of pay	Up to 2 hours on 4 occasions per year

- [37] The table of enterprise agreements in paragraph [36] above cover many employers which represent a range of small to large retailers. Some represented are independent grocery and liquor stores which the MGA claim to represent in its correspondence filed 16th January 2017²².
- [38] In particular, the SDA notes the inclusion of paid BDL in the *Master Grocers Australia and Shop, Distributive Employees' Association Enterprise Agreement 2014* ('MGA Agreement 2014'). This is a multi-business agreement and the employers covered by this agreement are listed in schedule C ('**Annexure 8**'). These **49** independent grocery and liquor stores are represented by the MGA. Moreover, predated enterprise agreements which have been replaced by the 'MGA Agreement 2014' have always included paid BDL provision. For example, BDL can be found in the *Master Grocers Association of Victoria Enterprise Agreement 1999*. The **169** independent grocery and liquor stores covered by the agreement at the time are listed in schedule C of the agreement ('**Annexure 9**').
- [39] BDL has remained a common feature in all the agreements that continue to cover independent grocery and liquor retailers described in paragraph [38] and the SDA being a party to these agreements is not aware of any concerns or objections to the existence and application of BDL in these agreements. The fact that the MGA and employers listed in paragraph [35] have never raised objections to the inclusion of BDL, is evidence that BDL is considered a fair work place entitlement that can be accommodated by any size business. The cost and burden of paid BDL on any size business is negligible. Therefore, taking into account the Modern Awards Objective, paid BDL can be extended to award-reliant employees.
- [40] A further example is Boundy's IGA Supermarkets, an independent grocery and liquor Retailer operating two stores and presented by the MGA in negotiations of an Enterprise agreement approved by the Commission as recent as 2014 (**Annexure 10**'). This agreement like its predecessors provides BDL. There are other similar examples provided in the list above.
- [41] The SDA submits that regardless of the size of the business, paid BDL proposed is an entitlement that is sustainable for any business and achieves the Modern Awards Objective.
- [42] From the evidence provided by the SDA in this submission, the MGA's objections outlined in this case²³, especially concerns about affordability in providing paid BDL, are unfounded.

WITNESSES IN SUPPORT OF THE SDA's APPLICATION

- [43] The SDA relies on the following evidence provided by 13 witnesses in support of the BDL benefit proposed in this application.

²² Correspondence filed by Meridian Lawyers on behalf of the MGA on 16th January 2017.

²³ Correspondence filed by Meridian Lawyers on behalf of the MGA on 16th January 2017.

[43.1] ██████████ ('Annexure 10A')

- [43.1.1] ██████████ is employed full time by ██████████, ██████████. His terms and conditions of employment are covered by the *General Retail Industry Award 2010*. He works 39 hours per week on an alternating 4 day/ 6 day roster over a two week cycle - Monday and Tuesday – 10am to 6pm; Thursday – 10am to 6 or 7pm; Friday – 10am – 6 or 7pm in one week and 12 noon to 9pm in the second week; and every second weekend, Saturday – 11am to 6pm and Sunday – 11am to 5pm.
- [43.1.2] ██████████ lives in ██████████, approximately 54 kilometres from work, which takes him considerable time between 1 to 1 hour and 20 minutes to get to work. He accompanies his two sons to school on his way to work in the mornings. He finds it difficult to donate blood due to his family responsibilities outside work and work commitments. There is no blood donation centres in ██████████. The closest clinic is 16 kilometres away from home, but most of the hours of operation are while he is at work.
- [43.1.3] ██████████ cannot afford to take time off without pay to donate blood and it is difficult to change his roster, due to the hours he works and family commitments, for the purpose of donating blood.
- [43.1.4] In 1994, he was diagnosed with a non-malignant tumor on his arm which was removed. This was a factor in his decision to donate blood **twice a year** from about 10 years ago. He views blood donation as a benefit to the community because it saving lives.
- [43.1.5] If ██████████ had the benefit of BDL under the award, it would make it easier to donate blood in ██████████ and more often since it is walking distance from his place of work, requiring a short absence. Otherwise the closest clinic is a mobile one in Sunbury, 16km away from his home²⁴.

[43.2] ██████████ ('Annexure 10B')

- [43.2.1] ██████████ lives in ██████████. He is employed by ██████████ in ██████████. His terms and conditions of employment are covered by the *General Retail Industry Award 2010*. He works 38 hours per week: Monday 8am to 3.30pm; Tuesday – 8am to 5.30pm; Wednesday – 8am to 5.30pm; Thursday – 8am to 3pm and Friday – 8am to 3pm.
- [43.2.2] ██████████ started donating blood over 2 years ago and donates blood **twice a year**. The procedure takes up to 1 hour and 15 minutes. He was encouraged to start donating blood by a very good friend who is a police officer and his wife who is a nurse. He donates blood because it saves lives.
- [43.2.3] ██████████ has a son who is under 2 years old and requires constant supervision when his wife works night shift as a nurse. He is also a member of his local cricket club and plays for his club on weekends during the cricket season.
- [43.2.4] Due to his family and caring responsibilities and sporting commitments, ██████████ finds it difficult to donate blood as often as he would like. He cannot afford to take time off without pay to donate blood.

²⁴ <http://www.donateblood.com.au/blood-donor-centre/sunbury-mobile-donor-centre>

- [43.2.5] There is a new blood donation centre in [REDACTED] which was recently opened and is located 10 minutes walking distance from his place of work. If [REDACTED] had an entitlement to BDL it would be a considerable benefit to him as he would use the entitlement to donate blood since the clinic is a short distance from work. This would require him to be away from work for a only relatively short time.
- [43.3] [REDACTED] (**'Annexure 10C'**)
- [43.3.1] [REDACTED] lives in [REDACTED]. She is employed full time by [REDACTED] at [REDACTED] on the registers at the front end of the store as a supervisor. Her terms and conditions of employment are covered by the *General Industry Retail Award 2010*. She works 38 hours per week Monday – 7am to 4pm; Tuesday – 9am to 5pm; Wednesday – 7am to 4pm; Thursday – 9am to 5pm; Friday – 7am to 1.30pm.
- [43.3.2] [REDACTED] has been donating blood **twice per year** for the last 3 years. She was encouraged to donate blood by her sister who is also a blood donor. [REDACTED] donates blood because it saves lives, especially kids who suffer from leukemia and need blood. She makes a special effort to donate blood during Easter when there is a high demand for blood in the community.
- [43.3.3] [REDACTED] has 2 daughters, her youngest is 3 years of age. Her husband works 42 hours per week, Monday to Friday. Outside her hours of work she has caring responsibilities and household chores. In the mornings before work she takes her 3 year old daughter to day care and 13 year old daughter to her school. [REDACTED] also collects her daughters after work on her way home. On Saturdays, [REDACTED] takes care of her 3 year old daughter and takes her 13 year old daughter to basketball games as her daughter plays for a local team. Although [REDACTED] finishes work early on Fridays, she uses her time after work to run errands and do her weekly grocery shopping before she collects her daughters.
- [43.3.4] [REDACTED] finds it very difficult in making appointments to donate blood as she needs to find someone who can supervise her youngest daughter while she donates blood. She cannot go and donate blood as often as she would like. [REDACTED] cannot afford to take time off without pay to donate blood.
- [43.3.5] [REDACTED] **believes that there would be sufficient staff to cover the registers if she was allowed paid leave for up to two hours before the end of my shift to go and donate blood.** This would allow her enough time to pick up her daughters on the way home.
- [43.3.6] [REDACTED] states that if she had an entitlement to BDL as proposed by the SDA, she could donate more often as BDL would make it easier for her to donate blood, especially during Easter and more often.
- [43.3.7] For [REDACTED], the closest mobile clinics she could attend are 6km and 12 km away. The next availability of the mobile clinics near her location are in May with restricted operating times, and the majority of the opening hours while she is at work²⁵.

²⁵ <http://www.donateblood.com.au/blood-donor-centre/narre-warren-north-mobile-donor-centre>

[43.4] ██████████ ('Annexure 10D')

- [43.4.1] ██████████ is 64 years of age and lives in ██████████. She is employed part time by ██████████ in ██████████. Her terms and conditions of employment are covered by the *General Industry Retail Award 2010*. She was employed full time until 3 years ago when she changed her hours to part time to take care of her husband who is diagnosed with dementia.
- [43.4.2] ██████████ hours of work are approximately 39 hours over a fortnight. One week her roster is Monday – 9am to 5.30pm; Tuesday – 9am to 5.30pm and in the alternate week her hours are Monday – 9am to 5.30pm; Thursday – 2pm to 7pm and Friday – 9am to 5.30pm.
- [43.4.3] ██████████ has donated blood for over 10 years until 2 years ago. She would donate on average **twice a year to a maximum of 3 times a year**. The process would take approximately one hour.
- [43.4.4] Outside work, ██████████ spends her time at home caring for her husband due to his condition. When she is at work she leaves her husband with her son who works in ██████████ not far from her place of work so she can work.
- [43.4.5] ██████████ work is approximately 37 kilometres from home and the blood centre in ██████████ where she has donated in the past is very close to her work.
- [43.4.6] ██████████ finds it difficult to donate blood outside her rostered work times before or after work because of her caring responsibilities. She cannot afford to take unpaid leave to donate blood and she cannot easily change her roster to donate blood due to her caring responsibilities of her husband.
- [43.4.4] ██████████ claims if she had an entitlement to BDL as proposed by the SDA, it would be easy for her to donate blood.
- [43.4.5] It can be reasonably concluded that ██████████ would save on travel costs to the clinic from home (37km distance one way) and access BDL while she is at work since the clinic is close to her work and hours of operation fit within her hours of work.

[43.5] ██████████ ('Annexure 10E')

- [43.5.1] ██████████ lives in ██████████. She is employed part time in ██████████. The terms and conditions of her employment are covered by the ██████████ ("the Agreement"). ██████████ hours of work are 34 hours a week from Monday through to Thursday – shift starts at 5:45am and finishes at 2:30pm each day.
- [43.5.2] ██████████ uses her BDL entitlement in the Agreement from **3 to 4 times a year**. ██████████ had a family suffer and die from cancer and as such she is conscious of the value of blood donation. She considers it an important community service.
- [43.5.3] ██████████ donates blood when the mobile blood clinic (bus) visits the car park near her place of work. She arranges to finish her shift 90 minutes earlier and attend at the bus to donate. This allows her a short time to recover and go home. Her manager is supportive of the use of the BDL entitlement in the Agreement.

- [43.5.4] Outside of work, she has family carer responsibilities. They involve collecting her children from school, taking them to sporting activities along with household maintenance. [REDACTED] also participates in fitness classes for her own health.
- [43.5.5] For [REDACTED] all available centres are mobile buses with limited times of operation²⁶. The nearest is 3.54kms away and was last there on 6 March 09:00-16:00 and 07 March 11am – 6pm and will next be there on 29 May 9am to 4pm and 30 May 11am to 6pm. The second closest is also a mobile centre and it is in [REDACTED] 4.86km away, in operation on May 1-5 from 9am to 4pm the first three days, 12pm to 7pm the Thursday and 9am to 4pm on Friday. Then at same location on Saturday 27 May 9am to 4pm. There are other options 8+ kms away that are available on different days thus increasing the options for [REDACTED] to donate, however she will need to drive further, which given her work and family commitments become an obstacle to donate blood. As a result, the times available are limited for [REDACTED]. The times of operation are largely 9am-4pm, however, [REDACTED] works until 2:30pm Monday- Thursday.
- [43.5.6] [REDACTED] claims if she did not have this entitlement to paid blood donor leave, she could not donate as regularly. For this reason, she is grateful for the entitlement to blood donor leave in the Agreement.
- [43.6] [REDACTED] (**‘Annexure 10F’**)
- [43.6.1] [REDACTED] lives in [REDACTED], [REDACTED]. She is employed part time in [REDACTED]. The terms and conditions of her employment are [REDACTED] (“the Agreement”). [REDACTED] hours of work are over 28 hours per week on Monday 9am to 3:30pm, Wednesday 6am to 3pm, Thursday 8:30am to 5:30pm, Friday 9am to 3:30pm each week.
- [43.6.2] [REDACTED] has donated blood on one occasion and intends on donating more in the future. She uses her entitlement under the Agreement to donate on this occasion and will do so again in the future.
- [43.6.3] [REDACTED] donates at the mobile clinic that regularly visits [REDACTED] and is stationed near the hospital. The process takes **1 to 2 hours including travel and recovery time**. [REDACTED] claims that so far, she has not had any difficulty using the entitlement in the Agreement to donate blood. She does not envisage this ever being a problem **because she gives her employer sufficient notice**. Using the entitlement in the Agreement to donate blood is actually encouraged in her workplace.
- [43.6.5] For [REDACTED], the nearest centre is a mobile bus 1.64km away [REDACTED]. The clinic after that is 35km away in Warragul, and then 60km away in Traralgon. The one in [REDACTED] is her only real option. The clinic in [REDACTED] comes 05-09 June and then again 13-16 June. Hours of operation are 12:30pm-17:15pm, 11:30am – 17:30 and 9am-4pm. It seemingly does not operate on weekends or public holidays.

²⁶ <http://www.donateblood.com.au/blood-donor-centre/birkdale-mobile-donor-centre>

²⁷ <http://www.donateblood.com.au/blood-donor-centre/leongatha-mobile-donor-centre>

[43.6.6] ██████ claims it would be significantly harder for her to donate blood if she did not have this entitlement in the Agreement. She has two children, they are aged 13 and 15, her family and household commitments often make it harder for extra- curricular activities such as blood donation.

[43.7] ██████ ('Annexure 10G')

[43.7.1] ██████ lives in ██████. She is employed full time in ██████. The terms and conditions of her employment are covered by the ██████ ("the Agreement"). ██████ hours of work are over 38 hours per week. She works from Monday 7am to 5:30pm, Tuesday 10am to 5:30pm, Wednesday 7am to 3pm, Friday 7am to 1:30pm and Sunday 8am to 5:30pm. Thursday and Saturday are my days off.

[43.7.2] ██████ uses the entitlement under the Agreement to donate blood in working hours. She claims there are no issues with the store when it comes to taking the entitlement.

[43.7.3] ██████ donates at the mobile blood clinic that visits ██████ regularly. It is stationed at the ██████. The length of the donation process can vary from **1 to 2 hours**.

[43.7.4] ██████ donates blood because it is an important community service. She is fit and able to donate blood. ██████ has watched family members suffer from cancer and require blood transfusions. Some years ago, a friend of hers almost died during child birth. She required a blood transfusion to save her life.

[43.7.5] ██████ **claims she often finds it difficult to schedule an appointment that coincides after the end of her shift and the need to then attend to necessary things after work.** She can't donate blood before or during her shift because she uses her arms a lot for work and loses strength in them after donating. As a consequence, booking an appropriate time through the blood bank that coincides with her working and family commitments is the greatest obstacle for her. ██████ is married with two children, they are aged four and six. After work, she must collect them from school and day care facilities, do the shopping, prepare dinner, do the cleaning, bath the children and put them to bed.

[43.7.6] If the paid entitlement was not in the Agreement, ██████ claims she absolutely would not be able to find the time to donate blood, not even on her days off, due to her carer responsibilities and general household maintenance.

[43.7.7] The closest blood donation centre for ██████ is a mobile clinic, 1.38km from ██████ (assuming the CBD). The next closest is a permanent clinic 29km away. Due to ██████ hours of works (38 hours a week) and family carer responsibilities, the ██████ clinic is her only viable option. The mobile clinic in ██████ next visits: 20-23 June, alternating hours, 10:30am – 17:30pm one day, 12:00- 19:30 the next day, etc. The next visit after June is not until September²⁸. **The low frequency of visits, ██████ full time roster and family responsibilities significantly reduces (to virtually impossible) the ability for ██████ to donate blood, but for the entitlement in the Agreement.**

²⁸ <http://www.donateblood.com.au/blood-donor-centre/mount-barker-mobile-donor-centre>

[43.7.8] In her statement, ██████ states that she is grateful for the paid entitlement in the Agreement because it is an important workplace benefit to her which also benefits society.

[43.8] ██████ (Annexure 10H')

[43.8.1] ██████ is 61 years of age and lives in ██████. He is employed full time at ██████. The terms and conditions of his employment are covered by the ██████ ("the Agreement"). ██████ hours of work are 38 hours per week from Sunday through to Thursday. Fridays and Saturdays are his days off. He works 9am – 6pm on Sunday, 8am – 4pm on Monday, 1pm – 9pm on Tuesday, 1pm – 9pm on Wednesday and 8:30am – 4pm on Thursday.

[43.8.2] ██████ has been donating blood for 13 years. He donates blood **3 to 4 times a year** and uses his entitlement under the Agreement to do so.

[43.8.3] ██████ donates near his place of work. A travelling donation bus visits the car park near his work place. He makes an appointment in advance. **This donation may be in the middle of his shift, towards the end of his shift or overlapping with his lunch break depending on the time of day. Due to the close proximity to his place of work, the process of donating blood takes up to 45 minutes.**

[43.8.4] ██████ states that his work place is supportive of him and other employees donating blood. He has never had any difficulty using the entitlement. His store has a designated person who actively campaigns to encourage participation in blood donation. He states that if his employer didn't support blood donation he could not donate as regularly as he would like. This is because of family responsibilities and the desire to spend time with his wife, four children and seven grandchildren.

[43.8.5] ██████ donates blood because it is in the best interests of society and an essential community service. In the same process of donating blood, he uses the session at the clinic as a mini health check-up for himself because of the testing for iron levels and other things. He was raised in a small rural community where everyone helped each other out. This up-bringing instilled in him the importance of community service and a desire to be involved in worthwhile activities within the local and broader community.

[43.8.6] ██████ only has a few mobile clinic options. Since his statement, the next option arrives for one day only on May 15. Then for 2 days, May 18 and 19. It seems that the mobile clinic visits are less frequent where he resides²⁹. Being allowed to donate blood during his hours of work remedies this.

²⁹ <http://www.donateblood.com.au/blood-donor-centre/upper-coomera-mobile-donor-centre>

[43.9] ██████████ ('Annexure 10I')

[43.9.1] ██████████ lives in ██████████. She is employed by ██████████ in ██████████ as a part time employee. The terms and conditions of her employment are covered by the ██████████ ("Agreement"). ██████████ hours of work are 36 hours per week from Wednesday through to Sunday. On Wednesday, she works 8am to 6pm, Thursday, 12pm to 10pm, Friday - 11am to 9pm, Saturday - 8am to 6pm and Sunday from 8am to 6pm. Monday and Tuesday are her days off.

[43.9.2] ██████████ donates blood. I do this **3-4 times a year**. She first started donating 10 years ago and have been donating consistently for the last two years. She uses her entitlement under the Agreement to donate blood.

[43.9.3] ██████████ donates at a mobile clinic in ██████████. She makes an appointment to coincide with the commencement of my shift for the day. She donates blood and then goes to work. She states that the process usually takes her about one hour. The timing means that she usually starts her shift **1 to 2 hours** late.

[43.9.4] ██████████ always provide her work place with **sufficient notice of her intention to donate blood**. She has never had any difficulty with her employer when it comes to using her entitlement to blood donor leave.

[43.9.5] ██████████ values her entitlement to BDL in the Agreement, because if she didn't have the entitlement, she would find it very difficult to donate blood as regularly. This is because during her two days off a week, ██████████ has family carer responsibilities, which includes regularly looking after her five grandchildren, along with general household maintenance duties when she is not at work.

[43.9.6] ██████████ first started donating blood because the sporting club her children were involved in were promoting it through blood bank drives. She was involved in the push to get people to donate blood and began donating at that time. ██████████ considers donating blood a worthwhile community service that helps people in need.

[43.9.7] ██████████ **also is what is referred to as a therapeutic donor**. This is someone who needs to donate to control the high iron levels in their blood. High iron levels can result in her feeling fatigued and with body aches and pains. The blood ██████████ gives is not always able to be donated to those in need. This depends on the iron levels. If the iron levels are appropriate, the blood is used for donation purposes. If the iron levels are not appropriate, the blood is discarded.

[43.9.8] For ██████████ giving blood is not only a worthwhile community service, but also beneficial to her own health. Hence her strong support for the entitlement to BDL.

[43.9.9] For ██████████ the closest mobile blood donation clinic may be only 1.5km away, but the operation of the clinic is very limited³⁰.

³⁰ <http://www.donateblood.com.au/blood-donor-centre/wyong-mobile-donor-centre-club-wyong-rsl>

[43.10] ██████████ ('Annexure 10J')

- [43.10.1] ██████████ is 63 years old and lives in ██████████. He is employed full time by ██████████. The terms and conditions of his employment are covered by the ██████████ ██████████ ("Agreement"). ██████████ hours of work are over 38 hours per week from Sunday through to Thursday each week. He works 10am – 6pm on a Sunday, 1pm – 9pm from Monday through to Thursday. Fridays and Saturdays are his days off.
- [43.10.2] ██████████ has been donating blood on and off for 44 years. Over the course of these years, he has had intermittent periods where he did not donate blood for a variety of reasons, including not being able to do so. He accesses the entitlement to paid BDL contained in the Agreement **3 to 4 times a year**.
- [43.10.3] ██████████ donates blood primarily because of personal experiences and as a Community service. Forty-four years ago his sister gave birth to what is described a blue baby. This is a baby born with a lack of oxygen in the blood. ██████████ was 19 at the time and his sister explained to him the importance of donating blood. He states that this event had a profound impression on him and so he began donating blood regularly. He appreciates the value of donating blood to the community as a community service.
- [43.10.4] In the year 2000, ██████████ was injured when he fell off a roof. He suffered a head injury, a knee injury, lost a lot of blood and brain fluid. He required a blood transfusion to save his life. After rehab, he eventually made a full recovery. After his accident, ██████████ made attempts to donate blood, but was refused because of waiting periods associated with the transfusion he received and other health reasons. After a series of tests, he was eventually able to donate blood around 2008/2009. ██████████ has been donating blood **3 to 4 times a year** ever since.
- [43.10.5] ██████████ considers regular blood donation a community service that helps save lives and improve the quality of life. **He understands first hand, since blood donation from a donor helped save his life.**
- [43.10.6] ██████████ donates blood at a clinic in ██████████ close by to his work. This service is a clinic that visits ██████████ for one week every three months. They notify regular donors in advance when they will be visiting and encourage him to make appointments. This process enables him to **give his employer several weeks notice** and to access his entitlement under the Agreement. The process of donating blood takes him **1 to 2 hours**.
- [43.10.7] Management at the ██████████ store where ██████████ works is supportive of him donating blood and has never had any difficulty with his requests for blood donor leave. The regular visiting clinic and supportive manager makes it easier for him to donate blood.
- [43.10.8] For ██████████ since his statement, the visiting clinic arrives in ██████████ for a full week in late June. The ██████████ store will have adequate notice of when ██████████ will donate blood if he chooses to³¹. If he did not attend the mobile clinic in ██████████, his next closest clinic is in ██████████ which is 17km away from where he resides.

³¹ <http://www.donateblood.com.au/blood-donor-centre/cranbourne-mobile-donor-centre>

[43.11] [REDACTED] ('Annexure 10K')

[43.11.1] [REDACTED] lives in [REDACTED]. She is employed part time at [REDACTED]. The terms and conditions of her employment are covered by the [REDACTED] ('Agreement'). [REDACTED] hours of work over a 4 week cycle are approximately 36 to 37 hours per week and her typical roster is as follows:

Week 1: Monday – 9am to 3pm; Wednesday - 9am to 7pm;
Thursday – 9am to 3pm; Friday – 12pm to 9pm; Saturday – 9am to 7pm;

Week 2: Sunday – 10am to 7pm; Wednesday – 1pm to 7pm;
Thursday – 12pm to 9pm; Friday – 9am to 6pm;

Week 3: Sunday – 10am to 3pm; Wednesday – 9am to 7pm;
Thursday – 9am to 3pm; Friday – 3pm to 9pm; Saturday – 9am to 7pm;

Week 4: Sunday – 10am to 7pm; Wednesday – 9am to 7pm;
Thursday – 12pm to 9pm; Friday – 9am to 3pm.

[43.11.2] [REDACTED] access her entitlement to BDL under the Agreement **3 to 4 times a year**. She has donated blood at a blood donation centre in [REDACTED] which is approximately five minutes walking distance from her workplace. Since her last donation, the blood donation centre has moved to another location in the CBD which is a further walking distance.

[43.11.3] [REDACTED] takes public transport to and from work on days she is rostered. She does not have the time to visit a blood donor centre on her way to work before she starts her shift or after her shift ends due to my family responsibilities and chores at home.

[43.11.4] [REDACTED] is the primary carer of my mother who is 83 years of age and has had major brain surgery a couple of years ago. She also minds 2 grandchildren of 1 and 3 years of age, on one day a week when she is not rostered to work. This is in addition to caring for my mother and doing household chores.

[43.11.5] [REDACTED] makes appointments to donate blood at the blood donor centre **days or Weeks in advance providing sufficient notice** to my employer. [REDACTED] **always make sure that her absence can be covered by another staff member while she is donating blood**. She is not absent from work for more than 2 hours at a time. **Usually she is absent from work for approximately 1.5 hours** and she always schedules her appointments in the morning so that **she incorporates her rest break of 20 minutes** as part of the 1.5 to 2 hours required to donate blood.

[43.11.6] [REDACTED] has been donating blood since the age of 19. She donates blood because of the importance to the community as blood donation saves lives. She is also aware of the importance of blood donation due to her own personal experience. [REDACTED] had a niece who died of leukemia approximately 20 years ago and a nephew who died of cancer approximately 10 years ago. They both needed blood transfusions. She also has a family friend who is diagnosed with thalassemia major and is in regular need of blood transfusion. [REDACTED] blood type is 'O negative' and she is aware that her blood type can be transfused to almost any patient without suffering rejection.

[43.11.7] ██████ appreciates that she has an entitlement to paid BDL since without she could not donate blood as easily and regularly as she does. For ██████ her closest blood donor clinic is 5 km away from where she resides. Having the ability to donate in the CBD walking distance from her work removes any obstacles from her donating when she can³².

[43.12] ██████ ('Annexure 10L')

[43.12.1] ██████ resides in ██████ He is employed full time by ██████

██████ The terms and conditions of his employment are covered by the ██████ (‘agreement’). ██████ hours of work are 76 hours over a 2 week cycle and hours of work in one week are Monday – 6.30am to 3pm; Tuesday – 8.30am to 5pm; Wednesday 8.30am to 3pm; Thursday – day off; Friday – 1pm to 9pm; Saturday – 8am to 5pm and Sunday – 9am to 6pm. The hours of work in the alternate week are Monday – 6.30 to 3pm, Tuesday – Day off; Wednesday – 1pm to 9pm; Thursday – 7am to 3pm; Friday – 6.30am to 3pm’ and Saturday and Sunday – days off.

[43.12.2] ██████ acknowledges he hasn’t donated blood for a couple of years. However, he donates blood because it is an essential community service. He has personal experience of the importance of how donations saves lives. His sister needed corneal transplant in the past and he is thankful of donations of others which allowed her sister to be treated for her medical condition.

[43.12.2] ██████ **recounts when for about 5 years until 2015, management would arrange for the Australian Red Cross to provide a driver and car to transport team members to donate blood at ██████ on 4 occasions a year.** On each occasion, the activity would commence about 8am until 12 noon. He recalls that he would only be away from work between 1 and ½ hours to no more than 2 hours on each occasion. There would be 2 to 4 people transported together to the blood donation centre at a given time. ██████ recalls the entire process of donating blood would not take more than **approximately 2 hours**. During each occasion management would ensure that the work place was adequately staffed while a team member in a particular department was absent to donate blood.

[43.12.3] ██████ **viewed the activity arranged by management as an important service to the community and a team building exercise for the team members in the store who took part on the day.** It allowed staff who participated to get to know each other at a more personal level. Team members would talk about their experience on the return trip from donating blood and how good they felt for taking part in the process. This promoted a sense of comradery between the team members. The whole experience of donating blood collectively in his workplace made him feel happy and more productive at work.

³² <http://www.donateblood.com.au/blood-donor-centre/airport-west-donor-centre>

[43.13] [REDACTED] ('Annexure 10M')

[43.13.1] [REDACTED] 58 years of age and lives in [REDACTED]. She is employed by [REDACTED] trading as [REDACTED] located on [REDACTED]. The terms and conditions of her employment are covered by the [REDACTED] ('Agreement'). [REDACTED] is a shop assistant predominantly on registers at the front of the store. She works 38 hours a week being Monday – 7am to 4pm; Tuesday – 7am to 4pm; Wednesday – 7am to 4pm, Thursday – 9am to 3pm and Friday – 7am to 4pm.

[43.13.2] [REDACTED] has been donating blood approximately for over 5 years. She accesses the entitlement to paid blood donor leave under the agreement **4 occasions a year**. The entire process to donate whole blood takes about **one hour and 20 minutes**.

[43.13.3] [REDACTED] provides **sufficient notice when she chooses to donate blood and arranges her appointments so that she is permitted to leave up to two hours prior to the end of her shift**. This allows her time to donate blood and arrive home to attend to household chores and have dinner with her husband around 6pm. He is a shift worker and two nights a week he commences work from 7pm. [REDACTED] does not work weekends, but she uses that time to complete household chores and spend time with her husband who works night shift during the week, her son and daughter and 3 grandchildren who range from 3, 2 and 1 year of age.

[43.13.4] The blood donor centre [REDACTED] attends is located in [REDACTED] and is approximately 50 km away from my home. It is easier to attend the blood donor centre on her way home from work if she can leave a short time before the end of her shift, attend the clinic and arrive home to care for her husband.

[43.13.5] [REDACTED] donates blood because it saves lives and is therefore an essential community service. Her mother died of cancer and she needed blood donation while she was alive. Having 3 grandchildren and another on the way makes her appreciate the value of donating blood if her family members ever need blood transfusion.

[43.13.6] [REDACTED] recounts that after her last donation of blood occurred early March of this year she received a text message from the blood bank which advised her that her blood was used to save a life of an individual involved in an accident in Victoria. [REDACTED] was delighted by the message and **very fortunate that she works for an employer who allows her to donate blood near work as regularly as she can without loss of pay**. She could not afford to take unpaid leave to donate blood or donate blood outside my rostered shifts as regularly as she does.

[43.14] [REDACTED] ('Annexure 10N')

[43.14.1] [REDACTED] is 57 years of age and lives in [REDACTED]

[43.14.2] [REDACTED] works two jobs. She is employed part time by [REDACTED] in [REDACTED] and [REDACTED] on days she is not rostered to work at [REDACTED]

- [43.14.3] The terms and conditions of [REDACTED] employment at [REDACTED] are covered by the [REDACTED] (“Agreement”).
- [43.14.4] Over a fortnightly cycle, her total hours of work are approximately 37.5 hours one week and 30 hours in the second week. Mondays [REDACTED] – 7am to 5pm; Tuesdays [REDACTED] – 7am to 1.30pm; Wednesdays [REDACTED] – 5am to 3.30pm; Thursdays [REDACTED] – 7am to 5.30pm; Fridays [REDACTED] – 7am to 5.30pm and Sunday (for [REDACTED] - Week 1 only) – 9am to 5.30pm.
- [43.14.5] Until only 12 months ago, [REDACTED] son and 2 grandchildren, 1 and 3 years of age, lived with her for over 3 years.
- [43.14.6] [REDACTED] has donated blood **twice a year** for the last 3 years. She uses her entitlement under the [REDACTED] to donate blood. Her husband is also a blood donor.
- [43.14.7] When [REDACTED] has donated blood, she has done so after lunch at about 1.30 in the afternoon near work at a mobile clinic located approximately 4 km away from work in [REDACTED]. [REDACTED] is usually only **away from work from about 45 minutes to 1 hour**. She gives [REDACTED] **sufficient notice of her appointment** to donate blood at the clinic. This allows the store to easily accommodate her short absence away from work when she is donating blood.
- [43.14.8] [REDACTED] donates blood because it is an essential community service. It was the birth of her eldest grandchild of 3 years of age that motivated her to be a regular blood donor.
- [43.14.9] Due to [REDACTED] total hours at work between two jobs each week and her family and household responsibilities, she is very grateful and appreciative of the benefit of paid BDL she can access at [REDACTED]. Without this benefit, she would find it extremely difficult to donate blood on a regular basis as she would like. Moreover, the hours of operation of the mobile blood donation centre she attends near work coincides with her hours of work at [REDACTED] which makes it easily accessible during those times.

The statements from 13 witnesses adequately address the concerns about the burden on business providing BDL, which is usually the main focus by the parties opposing the SDA’s claim. Furthermore, the statements in support of this submission also illustrate the benefits of BDL as a term and condition of employment for an employee who donates blood within the context of achieving the Modern Awards Objective.

MODERN AWARDS OBJECTIVE

- [44] The requirement in section 138 of the FW Act that a term be ‘necessary’ to achieve the modern awards objective requires the FWC to form ‘a *value judgment*’ based on the considerations set out in section 134(1).³³ The Full Bench in the *Four Yearly Review of Modern Awards – Penalty Rates*³⁴ explained the approach in respect of Section 138, that although the FWC ‘*may have regard to the terms of any proposed variation, the focal point of the Commission’s consideration is upon the terms of the modern award, as varied*’³⁵.
- [45] In *AMWU v ABI*, the Full Bench observed that the overall judgement required in considering whether an Award meets the Modern Awards Objective (‘MOA’) is a ‘*very broad*’ one³⁶.

Section 134(1)(a) – Needs of the low paid

- [46] The Full bench decision in the Modern Awards Review 2012 – Penalty Rates³⁷, agreed that employees in the accommodation and food services and retail industries are low paid³⁸ by comparison to employees generally³⁹.
- [47] Impact of the Penalty Rates Case 2014 will exacerbate the financial stress of the award reliant employees who typically work weekends and are covered by those awards that are of interest in this submission. The Full Bench acknowledged the impact of a reduction in income from a reduction of penalty rates on the earnings of retail workers⁴⁰.
- [48] Using the threshold adopted by the Full bench in successive Annual Wage Reviews, the key finding of the Full Bench in the *Four Yearly Modern Award Review 2014 – Penalty Rates*⁴¹ (‘Penalty Rates Case 2014’) is that retail employees are likely to be characterised as a higher proportion of award reliant relative to all industries⁴², female, part time and casual workers, and lower paid. Furthermore, the financial resources of retail households are more limited than those of other industry households⁴³.
- [49] The Full Bench in the *Annual Wage Review 2015-16* accepted, as in the past, that the relative living standards of award-reliant employees are equally affected by the hours of work and the circumstances of the households in which they live as well as by the level of wages that they earn⁴⁴.

³³ *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* [2014] FWCB 1788 at paragraph [36]; *Four Yearly Review of Modern Awards – Annual Leave* [2016] FWCFB 3177 at paragraphs [23] – [26].

³⁴ [2017] FWCFB 1001.

³⁵ [2017] FWCFB 1001 at paragraph [141].

³⁶ [2013] FWCFB 580 at paragraph [9].

³⁷ [2013] FWCFB 1635.

³⁸ [2013] FWCFB 1635 at paragraph [208].

³⁹ [2013] FWCFB 1635 at paragraph [212].

⁴⁰ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraph [1660].

⁴¹ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [166] - [169], [1454].

⁴² *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [1424].

⁴³ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [1424] – [1425], [1464] - [1465], [1495].

⁴⁴ *Annual Wage Review 2015-16* [2016] FWCFB 3500 at paragraph [409].

General Retail Industry

[50.1] The August 2011 Census data showed that over half (56.2%) of general retail Industry employees are employed on a part time or casual basis (less than 35 hours per week) and 50.7% of employees working between 25 and 48 hours per week.⁴⁵ Almost 20% of employees are 15 – 19 years of age (and 1.5% over 65 years of age).

[50.2] Moreover, research conducted by the FWC in 2014 shows that the most common shift work arrangements used in the retail sector were set rosters and eight-hour shifts.⁴⁶

Fast Food Industry

[51.1] The Full Bench in the Penalty Rates Case 2014, also dealt with the profile of a fast food employee relative to other industries. Just over 88% worked 1 to 24 hours per week; likely to be aged between 14 to 24 years (14 to 19 years - 81.6% and 14 – 24 years – 91.5%) and most likely to be employed on a casual or part time basis (94.9%) with only 5.1% employed full time⁴⁷.

[51.2] The Full Bench in the Penalty Rates case 2014 also agreed that a substantial proportion of fast food industry employees are ‘low paid’; are more likely to reside in lower income households and are more likely to experience financial difficulties⁴⁸.

Pharmacy Industry

[52.1] The Full Bench in the Penalty Rates Case 2014 also summarised the profile of the pharmaceutical, cosmetic and toiletry goods retailing employees (‘Pharmacy Industry employees’) as overwhelmingly female (84.8%); over half are employed on a part time or casual basis less than 35 hours per week (57.4% and full time – 42.6%); just over 41% worked 1 to 24 hours per week (25 to 34 hours – 16% and 35 to 48 hours – 38.5%); over 17% are aged between 15 and 19 years of age (20 to 24 years - 20.1% and 25 to 65 years – 60.8% and 65 years and over 1.9%).⁴⁹

[53] The SDA witnesses illustrate how the absence of BDL for an employee who donates blood can impact adversely on a donor’s level of income. The impact can be the result of costs associated with travel which is greater for a blood donor residing in regional areas who need to travel to a clinic that is further away from home compared to the distance of a mobile clinic near his/her place of work while they are at work⁵⁰. This is further exacerbated by the restricted operating times of mobile clinics in isolated areas available to an employee who regularly donates blood. There is also a potential added cost of child care or costs associated with caring for a family member with a disability⁵¹, if the donor cannot make alternative arrangements while donating blood. This is so regardless of the hours of operation of the clinic. However, in such cases the donor will mostly likely not donate if not for the provision of BDL.

⁴⁵ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [1495] – [1496], referring to data extracted from ABS, *Census of Population and Housing*, 2011.

⁴⁶ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraph [1444], data extracted from the Fair Work Commission, *Australian Workplace Relations Study*, 2014.

⁴⁷ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [1273] – [1275], referring to data extracted from *Labour Force, Australia, Detailed, Electronically Delivery Aug 2016*, Catalogue No. 6291.0.55.001; ABS, *Labour Force, Australia, Detailed, Quarterly, Aug 2016*, Catalogue No. 6291.0.55.003.

⁴⁸ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraph [1356].

⁴⁹ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraphs [1748] – [1749], referring to data extracted from ABS, *Census of Population and Housing*, 2011.

⁵⁰ Affidavit of [REDACTED]

⁵¹ Affidavits of [REDACTED]

[54] Alternatively, changing set rosters for an employee with caring and family responsibilities outside work who chooses to donate blood can be just as problematic for the employee as well as impose an unnecessary cost to the business. Whereas the cost on business of providing BDL to an employee who chooses to donate blood near work, requiring only a relatively short absence from work is negligible.

Section 134(1)(b) – The need to encourage collective bargaining

[55] The SDA submits that inclusion of BDL in an award will not be a disincentive to collective bargaining. This is evidenced by the existence of BDL in enterprise agreements that operate in the same industries in which the pre-modern industry awards existed that also contained BDL.

[56] The entitlement of BDL is so ‘small’ in quantitative terms that the entitlement in an award will not remove the impetus to bargain around the issue and therefore will not discourage collective bargaining.

Section 134(1)(c) – Social inclusion

[57] Section 134(1)(c) requires the FWC to ensure that the modern awards, together with the NES, promote social inclusion through increased workforce participation.

[58] In the *Annual Wage Review 2010-2011*, the FWC expressed the broad view that pay and conditions of employment are an important aspect of social inclusion because they impact on the employee’s capacity to engage in community life and the ‘*extent of their social participation*’⁵².

[59] In the *Annual Wage Review 2015-2016*, the FWC accepted that ‘social inclusion’ requires more than simply having a job. The FWC has adopted a broader understanding of the relationship between workforce participation and social inclusion, such that *a job with inadequate pay can create social exclusion if the level of income limit’s a person’s capacity to engage in cultural, economic, political and social aspects of life*⁵³.

[60] A job with adequate safety net protections will ensure that an employee’s level of income and standard of living is maintained. The absence of BDL can be a detriment to the living standards in a broad sense for the regular blood donor who cannot participate in a social activity that is viewed as an essential community benefit. In many circumstances, blood donation is encouraged by other family members, friends and on some occasions encouraged at work⁵⁴.

⁵² *Annual Wage Review 2010-2011* [2011] FWA FB 3400 at paragraph [210].

⁵³ *Annual Wage Review 2015-16* [2016] FWCFB 3500 at paragraphs [466] – [467].

⁵⁴ Affidavits of [REDACTED] and [REDACTED]

[61] BDL assists the employee who chooses to be a regular donor to participate in an activity of high social utility and in a broad sense improve the living standards of an employee than otherwise the case where BDL is not provided⁵⁵. As a consequence, the employee has an appreciation for his/her employer that supports his/her own sense of self-worth along with the high social utility that blood donation provides to the community. This point is reaffirmed by SDA witnesses. The extraordinary example of this appreciation of self-worth along with the high social utility came from SDA witness [REDACTED] (**'Annexure 10M'**), when she received a text from the Australian Red Cross informing her that her last donation had saved a life. This was a result of her blood donation because she was able to access BDL at work. Further examples of text messages sent to blood donors provided in this submission (**'Annexure 14'**).

[62] Jobs where paid BDL exists can also be attractive to regular blood donors, increasing their workforce participation. SDA witness, [REDACTED] (**'Annexure 10N'**), is an example of where an employee who works two jobs is able to donate blood due to BDL provided by one employer without affecting her second employment and overall weekly take home pay.⁵⁶

[63] BDL promotes social inclusion and therefore achieves the Modern Awards Objective.

Section 134(1)(d) – The need to promote flexible modern work practices and the efficient and productive performance of work

[64] The SDA submits that BDL proposed does not adversely impact on flexible, efficient and productive performance of work in the business.

[65] The application of the BDL provision proposed by the SDA should not create any rostering difficulty arising from the employee's absence for the short amount of time to donate blood. The provision affords employers a substantial amount of discretion to manage the taking of the leave by the employee. The leave is taken with adequate notice taking into account the employee's personal circumstances and the needs of the business.

[66] BDL proposed by the SDA is predictable since the entitlement is taken on a day suitable to the business and at a time during the shift with minimal disruption to the business⁵⁷. This means that efficiency and productivity of work is unaffected, since it would be relatively easy to find replacement staff with the necessary skills, knowledge and experience to undertake the work or work can be easily reorganised during the blood donor's short absence⁵⁸. Moreover, there would be no disruption to the operation of the business.

[67] BDL can be used as a tool for many businesses to promote blood donation for the benefit of the Community at no cost or disruption to the business and at the same time incorporate the paid leave to a work place activity that promotes team building amongst staff improving productive performance within in its own business. This is not unusual as was clearly the case experienced by SDA witness, [REDACTED] (**'Annexure 10L'**)⁵⁹.

⁵⁵ Affidavit of [REDACTED]

⁵⁶ Affidavit of [REDACTED]

⁵⁷ Affidavits of [REDACTED]

⁵⁸ Affidavits of [REDACTED]

⁵⁹ Affidavit of [REDACTED]

[68] This work place activity is an extension of a program initiated by the Australian Red Cross Blood Service ('Australian Red Cross')– Red25 – Group Donation Program to unite workplaces and other organisations around Australia to save lives through blood donation⁶⁰. The program requires the support of an organisation to register with the program and promote group blood drives in their work place with the assistance of the Australian Red Cross. Many business across the country are registered and can track their donations. In response to data requested by the SDA, the Red Cross has provided the following information ('**Annexure 11**'). It is estimated that in 2016, the program has saved nearly 1 million lives. The number of organisations registered in the program in retail, pharmacy and hair and beauty are as follows (including the collections):

Industry:	Collections for 2016:	# of organisations:
Retail	8051	266
Pharmacy	750	49
Hair and Beauty	21	22

Albeit the program is voluntary, the principle is the same - BDL can promote flexible modern work practices and the efficient and productive performance of work at no cost or disruption to the business.

Section 134(1)(da) – The need to provide additional remuneration

[69] Section 134(1)(da) is not relevant to this application.

Section 134(1)(e) – The principle of equal remuneration for work of equal or comparable value

[70] Section 134(1)(e) is not relevant to this application.

Sections 134(f) – Likely impact on business, including productivity, employment and regulatory burden

[71] In the Penalty Rates Case 2014, the Full Bench held that section 134(1)(f) *is not confined with impact of the exercise of modern award powers on 'productivity, employment costs and the regulatory burden. It is concerned with the impact of these powers 'on business'.*⁶¹

[72] The application of the entitlement to the SDA's claim of BDL has been clearly outlined in paragraphs [10] and [11.1] to [11.6] of this submission. BDL is only accessible to full time and part time employees for up to 2 hours on 4 separate occasions per year (equivalent to a maximum of 8 hours per year).

[73] The SDA submits that BDL imposes no regulatory burden on the business and no negative impact on employment.

⁶⁰ www.donateblood.com.au/red25

⁶¹ *Four Yearly Review of Modern Award 2014 – Penalty Rates* [2017] FWCFB 1001 at paragraph [1935].

[74] The SDA submits that the ‘take up rate’ of BDL proposed will be considerably low so that the cost or disruption to any business is negligible when weighed against the significant benefit to a blood donor who requires to access the entitlement. This is on the basis that:

- Paid BDL proposed only applies to full time and part time employees;
- it is reasonable to expect that not all full time and part time employees will access the benefit, since there are those who cannot give blood or choose not to give blood⁶² or accessibility of a clinic⁶³;
- from the evidence provided by witnesses supporting the SDA’s application, BDL will not necessarily be accessed 4 times a year by a blood donor (even if a person attends a clinic on average more than 4 occasions per year, the business will only provide BDL to a maximum of 4 occasions)⁶⁴; and
- blood donor may not always require 2 hours absence from work on each occasion (the average donation time is not more than approximately 40 minutes)⁶⁵.

[75] More than 460,000 blood donors donated blood in 2015/2016⁶⁶. During the same period the total labour force was approximately 11,861,200 employed people⁶⁷. Taken together, the potential ‘take up rate’ of BDL in any business is **3.9%**. However, this assumes all blood donors are employed as permanent employees. Considering that not all blood donors are in the workforce and those that are employed are not all permanent employees, the ‘take up’ rate of BDL proposed would be much less than 3.9%.

[76] Information provided by the Australian Red Cross shows that the middle of the week are busiest days for blood donations⁶⁸. However, BDL proposed is accessed on a day suitable to the employer and the employee who chooses to access the entitlement gives sufficient notice (supported by evidence)⁶⁹. Overall, the disruption to the business is negligible with no negative effect on productivity.

[77] BDL proposed by the SDA ensures an open, transparent and cooperative approach which provides certainty for large and small business (supported by evidence from SDA witnesses)⁷⁰.

⁶² Affidavit of [REDACTED]; www.donateblood.com.au/faq-list; Assessment also endorsed by the Full Bench in *Duncan Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited T/A Coles and Bi Lo* [2016 FWCFB 2887 at paragraph [20] – Coles’ estimate of 50% of its workforce covered by the agreement accesses the benefit of BDL was considered by the Full Bench as ‘too high an estimate’.

⁶³ Affidavits of [REDACTED]

⁶⁴ Data provided on average donation count by Australia Red Cross Blood Service, Request for data from the SDA (Victorian Branch), dated, 28/04/2016 (‘Annexure 11’)- Answers to Questions 2(a) and 2(b).

⁶⁵ Highlighted in Australia Red Cross Blood Service, Request for data from the SDA (Victorian Branch), dated 28/04/2016 (‘Annexure 11’)- Answer to Question 1(a).

⁶⁶ http://www.redcross.org.au/annualreport_2016/year-in-review/our-people/our-people-nav/our-people-and-supporters.html

⁶⁷ November 2015 figure provided by ABS, *Labour Force, detailed, quarterly, February 2016*, Catalogue No. 1292.0

⁶⁸ Highlighted in Australia Red Cross Blood Service, Request for data from the SDA (Victorian Branch), dated 28/04/2016 (‘Annexure 11’)- Answer to Question 2(e).

⁶⁹ Affidavits of [REDACTED]

⁷⁰ Affidavits of [REDACTED]

Section 134(1)(g) – The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

[78] The application of the BDL provision proposed provides certainty, is simple, easy to understand and sustainable for an award. Therefore, BDL proposed is consistent with Section 134(1)(g) and therefore achieves the Modern Awards Objective.

Section 134(1)(h) – The likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

[79] The SDA submits and supported by evidence that the cost of BDL proposed on business is negligible. It then follows that BDL has no detrimental effect on inflation, employment growth and the sustainability, performance and competitiveness of the national economy.

Community Necessity

[80] BDL promotes blood donation. Blood donation is essential to ensure adequate supply of blood and blood products to meet clinical demand and save lives. The Australian Red Cross estimates that 1 in 3 Australians will need blood in their lifetime and that a single blood donation can save 3 lives⁷¹. Almost 1.3 million blood donations were made across Australia in 2015/2016⁷².

[81] The importance of blood donation is highlighted by the media campaign leading up to this year's Easter period, at a time of the year, where there is a considerable drop in blood donations⁷³. A fall in blood donations puts at risk the level of blood products needed to treat cancer patients, accident victims and women giving birth (**'Annexure 12'**). Blood products are also needed for vital medical research and blood donors are regularly encouraged to donate blood to help medical research in the treatment of diseases (**'Annexure 13'**).

[82] BDL encourages regular blood donation which has a high social utility with negligible cost on the business.

⁷¹ http://www.redcross.org.au/annualreport_2016/year-in-review/our-people/our-people-nav/our-people-and-supporters.html

⁷² http://www.redcross.org.au/annualreport_2016/year-in-review/our-people/our-people-nav/our-people-and-supporters.html

⁷³ Highlighted in Australia Red Cross Blood Service, Request for data from the SDA (Victorian Branch), dated 28/04/2016 ('Annexure 11'), Answer to Question 2(c).

CONCLUSION

- [83] BDL plays an important part in encouraging regular blood donation, an important activity which is essential to the community.
- [84] BDL assists the employee in engaging in a social activity that is necessary for the community because it saves lives along with the employer supporting the employee where the cost and disruption to the business is negligible.
- [85] The BDL provision sought by the SDA was a common feature in old State Awards across Victoria (which continued onto federal awards), New South Wales and to a limited extent in Queensland which were predecessors to the modern awards in this submission. Similar provisions apply to many collective agreements that cover a multitude of employees across the country. Moreover, these collective agreements apply in industries which the modern awards in this submission cover.
- [86] The BDL sought by the SDA is permitted within the statutory framework of modern Awards. Sufficient probative evidence has been provided to satisfy the FWC that BDL will ensure a stable modern award system. The variation sought in the awards listed in this submission is necessary to achieve the Modern Awards Objective.

Annexures

[Annexures 1A – 1H](#)

[Annexure 2](#)

[Annexure 3](#)

[Annexures 4A and 4B](#)

[Annexures 5 and 5A](#)

[Annexure 6](#)

[Annexure 7](#)

[Annexures 8 and 9](#)

[Annexures 10A – 10N](#)

[Annexure 11](#)

[Annexures 12 – 14](#)