

Annual Wage Review 2021-2022

Submission of Keolis Downer

1 April 2022

1. Established in 2009, Keolis Downer Pty Ltd (**Keolis Downer**) is a joint venture between Keolis, a public transport operator established in 15 countries, and Downer, the leading provider of integrated services in Australia and New Zealand.
2. Keolis Downer is the largest light rail operator in Australia, operating and maintaining Yarra Trams in Melbourne and G:link on the Gold Coast. Keolis Downer is also the largest private multi-modal transport operator in the Southern Hemisphere with significant bus operations in Western Australia, South Australia and Queensland, and is the operator of the new integrated public transport system in Newcastle.

Relevant background

3. In May 2021, Keolis Downer Northern Beaches Pty Ltd (a subsidiary of Keolis Downer) was awarded a contract to operate and maintain bus services on Sydney's Northern Beaches and the Lower North Shore by Transport for New South Wales for eight years, starting 31 October 2021.
4. As a result of that contract award, a *transfer of business* occurred and three State awards, transferred to Keolis Downer and became copied State awards for the purpose of the *Fair Work Act 2009* (Cth) (**Fair Work Act**).
5. Two of the copied State awards remain in force and are currently applicable to the Keolis Downer workforce:
 - a. State Transit Authority Senior and Salaried Officers' Enterprise (State) Award 2021 (SAT Senior and Salaried Officers Award); and
 - b. State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020 (SAT Bus Engineering Maintenance Award) (together, the **Copied State Awards**).
6. Relevantly, the Copied State Awards confer wage increases that took effect in the first half of 2022. Specifically:
 - a. The SAT Senior and Salaried Officers Award had a 2.04% increase that was applicable from 1 January 2022 for all employees under the Award; and

- b. The SAT Bus Engineering Maintenance Award had an increase of 2.04% on 1 April 2022 for all employees under the Award.

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7. The minimum wage objective set out in section 284(1) of the Fair Work Act requires that the Fair Work Commission establish and maintain a safety net of fair minimum wages. Keolis Downer submits that employees covered by the Copied State Awards have received and maintained a safety net of fair minimum wages for 2022 in light of the pay increases that have already been implemented. As such, the obligations under section 248 of the Fair Work Act have been satisfied in relation to these employees.
8. Given the increases provided for under the Copied State Awards, Keolis Downer submits that the Fair Work Commission should exercise its discretion to make a determination varying minimum wages in the Copied State Awards under *Item 20 in Part 5 of Schedule 9 of Fair Work Act (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)* taking into account the relevant pay increases outlined in paragraph 6 above.
9. In circumstances where the minimum wage objective has been met and employees covered by the Copied State Awards have received a pay increase, Keolis Downer submits that employees under the Copied State Awards should be excluded from the minimum wage increase in the 2021-2022 Annual Wage Review Decision to prevent a 'double-dipping' on wage entitlements.
10. In the alternative, and in the event that the Fair Work Commission does not agree with our primary submission, Keolis Downer submits that the increase applied to the Copied State Awards should only be what is required to 'top up' the increase under the Copied State Awards to match the minimum wage increase in the Annual Wage Review Decision.
11. Keolis Downer reserves its position to provide more fulsome submissions regarding this matter and to be heard before the Expert Panel in respect of the Annual Wage Review 2021-22.