



BUSINESS SA

Award Stage – Groups 2A & 2B Exposure Drafts

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BusinessSA

South Australia's Chamber of
Commerce and Industry

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Introduction

Business SA is pleased to have this opportunity to respond to the Fair Work Commission's (FWC) Exposure Drafts of the Modern Awards in Groups 2A and 2B.

The streamlining and clarification of language are positive steps in addressing concerns raised about convolution and comprehension of the Modern Awards, particularly in evidence in the qualitative research conducted by Sweeney Research of small business owners' views. Business SA would like to take this opportunity in this submission to raise issues of referencing errors, undefined rounding rules and methodology in determining wage tables. We will also respond to the queries within the exposure drafts on interpretative matters.

With the exception of one withdrawal noted below, Business SA continues to pursue the proposals made in our submission 4 yearly review of modern awards: Award Stage – Group 2 Outline, dated 25 November 2014.

Exposure Drafts – Groups A and B

A. Aquaculture Industry Award 2010

	Clause	Name of Provision	Issue
1.		Removal of the items related to FWCFB 9412 decision	2.3; 5.1; 6.5(b)(ii) and (iii); 20.1; 21.1; 15.1; 16.1; and 19
2.	11.3(b)(iii)	Expense related allowances	Business SA would recommend the wording be changed to 'to work less than two hours' to clarify the interaction between (i) and (iii)
3.	11.3(d)(ii)	Travel time and allowance	A minor drafting error appears in this clause: 'spent travelling before starting and after finishing work'. Also, addition of <i>and/or</i> would be of use between dot points to clarify that trip time includes 'necessarily waiting for the means of transport'
4.	11.2(b) and 11.3(a)	Wage related allowances	The allowance provided for in 11.3(a) is not in addition to 11.2(b)
5.	11.3(d)(i)	Travel time and allowance	The ordinary rate of pay is the minimum hourly rate. Business SA would recommend including a definition of 'ordinary rates' as the minimum hourly rate in Schedule H – Definitions
6.	13.2	Penalties and Shiftwork	This clause refers to the expansion of hours at 'either end', meaning each end of ordinary hours can be expanded.
7.	13.3(a)	Shiftwork penalties	In accordance with Clause 6.5(c)(ii) Public Holidays and Clause 6.5(c)(iii) Saturday or Sunday, where casual loading is not added to the penalty rate, the table in this clause appears to be incorrect and requires the following amendments: 'Casual penalty rate (inclusive of 25% loading where applicable)' and the casual rate should be 150% for Saturday; 200% for Sunday and 200/250% for public holidays
8.	13.3(a)	Shiftwork penalties	There is only one sub clause (a) for 13.3 and therefore could be removed
9.	13.3 and Table B.1.2	Full-time and part-time shiftworkers – ordinary and penalty rates	The interaction between Table B.1.2 and Clause 13.3 is possibly problematic. Business SA recommends the title of the table be changed to say 'Continuous and Non-continuous shiftworkers' to clarify B.1.2
10.	13.4	Shiftwork on Sunday and public holiday shifts	To assist with understanding in this clause it could be broken down further. 'The time worked by an employee on a shift starting....' could become successive point (b) and the subsequent point replaced to (c).
11.	9.3(c)	Paid Breaks	Business SA recommends the following clause: <i>Paid breaks may be staggered throughout the day and taken at times which suit operational requirements.</i> A reference to an 'employer's fatigue management plan' is not required.
12.	14.8(c)	Rest period after overtime	To aid with understanding this clause could be written as follows: <i>If on the instructions of the employer an employee resumes or continues work without having had 10 consecutive hours off duty the employee must be paid 200% of the employee's ordinary hourly rate...</i> [emphasis added]

			This should be done in conjunction with the suggestion in item 5 and is recommended to minimise confusion as to which hourly rate applies.
13.	Tables B.1.2 and B.2.2 Footnote	Full-time and part-time shiftworkers – ordinary and penalty rates and Casual shiftworkers – ordinary and penalty rates	There appears to be a drafting error in this clause. It should be corrected to 'Non-successive afternoon or night which does not continue 'for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise or for at least 38 ordinary hours [emphasis added] (see clause 13.1(f))
14.	Table B.2.2	Casual Shiftworkers – ordinary and penalty rates	This table appears to incorrectly include loading for casuals. The percentage for 'All ordinary hours on PH for casuals' should be replaced with 250% (not 275%) and 'Major portion of shift on PH' should be replaced with 200% (not 225%)
15.	Table B.3.2	Full-time, part-time and casual shiftworkers	Appears to have the incorrect percentage applied to Continuous shiftworkers and Public Holidays. 250% needs to be replaced with 200%. The dollar amounts under Levels 1 to 4 are correct at 200%
16.	Various	Non-successive shift work	Business SA would recommend replacing all references to 'non-successive shiftwork' with 'non-continuous shiftwork' to keep it in line with other awards, and to minimise the confusion of duplicity in this award.

Variations sought

Business SA continues to propose the variation in our submission 4 yearly review of modern awards:

Award Stage – Group 2 Outline, dated 25 November 2014 for clause 23.4 – Annual leave. We withdraw our proposal for a variation to clause 17.1(a) – Payment of wages.

B. Storage Services and Wholesale Award 2010

	Clause	Name of Provision	Issue
1.		Removal of the items related to FWCFB 9412 decision	1.2; 5.1(b); 6.4(ii) and 6.4(iii); 22.1; 23.1; 17.1; 18.1; 21; 20.1 and 19
2.	5.2(a)	Facilitative Provisions	Facilitation by individual agreement with the addition at 5.2(a) (vii) Clause 20.4(a) – Rostered day off falling on a public holiday
3.	5.2(a)	Facilitative Provisions	Facilitation by individual agreement with the addition at 5.2(a) (viii) Clause 20.3 – Substitution of Public Holidays
4.	5.2(a)(vi)	Facilitative Provisions	This clause refers to 15.3 – Shiftwork – transfer to or from shiftwork. Business SA would suggest this should be 15.2 – Altering the span of hours [majority agreement]
5.	8.4(d)	Rostered days off – substitute days	Clause refers to clause 9.4(b). This appears to be incorrect and should read 8.4(b)
6.	16.5	Penalty rates for weekends and public holidays	The minimum hourly rate is the ordinary rate of pay. Business SA would recommend including a definition of 'ordinary rates' as the minimum hourly rate in Schedule G – Definitions. Business SA recommends the clause, and those similar, be reworded as follows: <i>(a)(i) All time worked on a Saturday must be paid for at 150% of the ordinary rate of pay.</i>
7.	15.1	Shiftwork definitions and penalties	The penalty rates appear to be incorrect, as per the current award's clause 25.4. The afternoon shift penalty

			should be 115 in the table, not 112.5 and Casual employee should be 140, not 137.5; Night shift penalty should be 130 for full- and part-time employees and casual employee should be 155
8.	17.4(a)	Annual close down	Business SA objects to the change of wording from 'may give one month's notice in writing' to 'must give those employees at least one month's notice in writing.'
9.	17.4(b)	Annual close down	Refers to clause 15.4(a). This should be corrected to clause 17.4(a)
10.	8.2	Spread of hours	The title of this clause should be 'Spread of ordinary hours' for clarification [emphasis added]
11.	8.2	Spread of hours	This clause refers to the expansion of hours at 'either end', meaning each end of ordinary hours can be expanded
12.	13.2	Higher duties	Business SA would support changing the wording from 'weekly' employee to full- or part-time employee for consistency with other awards

Variations sought

Whilst we have no variations to pursue at this time in the above award, we reserve our right to respond to the submissions of other interested parties and to participate in proceedings related to this award.

C. Health Professionals and Support Services Award 2010

	Clause	Name of Provision	Issue
1.	Various	Removal of the items related to FWCFB 9412 decision	1.2; 6.4(e)(ii) and (iii); 26.1; 20.1; 23.1; 21; 22; 24 and 25
2.	Schedule B	List of Common Health Professionals	Business SA supports the list as exhaustive, as 'an indicative list of examples of the type of health professionals' is, we would suggest, ambiguous and confusing for end users. We would also recommend changing the title to 'Schedule B – List of Health Professionals'
3.	6.4	Casual employment	Business SA would recommend minimum engagements as daily minimums which can be worked on two or more occasions
4.	15.2(a)(iii)	Heat allowance	Business SA would recommend the removal of the clause, unless a party is able identify its current usage
5.	18.4	Shiftwork penalties	Penalties are not cumulative
6.	19.1	Overtime	Business SA would support the inclusion of the words 'each day stands alone'
7.	15.2(b)	Wage related allowances	The exposure draft has changed the percentage to a dollar amount. Business SA argues for the inclusion of both the percentage and the dollar amount for the sake of transparency and consistency

Variations sought

Business SA continues to propose the variations in our submission 4 yearly review of modern awards: Award Stage – Group 2 Outline, dated 25 November 2014. In addition, we will be seeking further member feedback on *Schedule B – List of Common Health Professionals*, and may seek to propose variations.

D. Seafood Processing Award 2010

	Clause	Name of Provision	Issue
1.		Removal of the items related to FWCFB 9412 decision	1.2; 5.1; 6.4(b)(iii); 20.1; 21.1; 15.1; 16; 19; 18.1; 17
2.	5.2	Facilitative Provisions	The provision could specify 8.2 (c) and (f)
3.	5.2	Facilitative Provisions	Addition required of clause 8.6(a) – Methods of arranging ordinary working hours [an individual and majority of employees]
4.	5.2	Facilitative Provisions	Addition required of clause 8.6(d) – Methods of arranging ordinary working hours [an individual and majority of employees]
5.	6.3(h)	Part-time employment	Refers to clause 12.8 in the comparison document which does not exist. The references have been corrected to clause 13.2 and 13.7 in the exposure draft
6.	11.4	Extra rates not cumulative	Refers to clause 10.2(b) in the comparison document which does not exist. The reference has been corrected to clause 11.2(b) in the exposure draft
7.	8.5(c)	Ordinary hours of work – rosters	Refers to clause 12.8 in the comparison document which does not exist. The reference has been corrected to clause 13.7 in the exposure draft
8.	13.8(c)	Non-rostered shiftwork	Refers again to 12.8 in the comparison document which does not exist. The reference has been corrected to clause 13.7 in the exposure draft
9.	13.7(f)	Rates for working on Sunday and public holiday shifts	Refers to clause 12.7 in the comparison document which does not exist and is a reference to clause 13.7. Also in this clause, there is a reference to clause 12.5 which is a reference to 13.5. Both have been corrected in the exposure draft
10.	9.1(d)	Unpaid meal breaks	A reference to clause 8.1 appears incorrectly in the comparison document. The reference has been corrected to clause 9.1 in the exposure draft
11.	14.7(e)	Paid rest break	A reference to clause 10.3(a) appears incorrectly in the comparison document. The meal allowance clause to be referenced appears to be 11.3(a)

Variations sought

Whilst we have no variations to pursue at this time in the above award, we reserve our right to respond to the submissions of other interested parties and to participate in proceedings related to this award.

E. Graphic Arts, Printing and Publishing Award 2010

	Clause	Name of Provision	Issue
1.		Removal of the items related to FWCFB 9412 decision	1.2; 3.6 Note; 33.1; 34.1; 29, 30, 31, 32.1
2.	10.6	Juniors employed in screen printing	Refers to clause 10.3, where according to the Graphic Arts General Award 2000 it should be clause 10.5(c) – supervised by an adult
3.	11.1	Minimum wage rates for apprentices	This table should be consistent with those in clause 10 and include the weekly rates by a dollar amount
4.	11.3(a)	Proficiency payments	Refers incorrectly to clause D.1 – Summary of monetary

			allowances. We would suggest that the reference is clause 9 – Wage rates and classification structures.
5.	15.1	Classification and reclassification of employees	Business SA disagrees that Reclassification to an eight level classification structure clause is obsolete
6.	18.2(b)(i); (c) and (d)	Wage related allowances	These clauses have removed the percentage of the required standard weekly rate. Business SA would recommend that percentages should remain for clarity and transparency, particularly when there are future changes in wage rates
7.	18.3(a)(i) and (iv)	Meal allowance	There is no interaction between the clauses, as the 'or' situated after (iv) suggests these are alternative situations. Therefore the meal allowance is applicable in both situations
8.	Part 4	Hours of Work	Business SA agrees with the simplification of the hours of work in the exposure draft
9.	22.5	Meal break – continuous shiftworkers	Clause includes the phrase 'paid time worked'. Business SA would suggest the removal of the word 'paid' as unnecessary
10.	22.3	Meal breaks	Business SA would suggest that the word 'extra' be deleted as ambiguous, as it should only refer to 150% of the ordinary hourly rate.

Variations sought

Business SA continues to propose the variations in our submission 4 yearly review of modern awards:
Award Stage – Group 2 Outline, dated 25 November 2014.

Hourly rates

Business SA continues to have concerns regarding the methodology and rounding rules in use in the exposure drafts. This has been raised previously in our submission, Modern Awards 2014 Review – Submission in Reply, AM2014/69 and 2014/89. As noted previously:

Business SA support the inclusion of hourly rates for permanent and casual employees. However, the methodology to obtain them appears to have changed.

In its "Guide to Award Stage" the FWC outlined the following in relation to rates of pay:

"50. Currently awards may provide hourly, weekly and/or annual rates of pay. The method or formula for deriving these rates will be included in the award to improve transparency when rates of pay are adjusted in accordance with the annual wage review, particularly when a flat dollar increase is granted."¹

Further, in relation to rounding, the Guide stated the following:

¹ Fair Work Commission 2014, "4 yearly review of modern awards, Guide to Award Stage", page 9, <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/4-yearly-review-Guide-to-Award-Stage.pdf>

“51. The Commission may consider developing rounding rules to be used to calculate rates of pay and allowances in all modern awards.”²

However, appears that the Exposure Draft – Security Services Industry Award 2014 does not include any method or formula or rounding rules to obtain the casual hourly rate of pay.

To calculate the casual hourly rate for a Security Officer Level 4, Business SA has used the following methodology:

(Weekly wage / 38 hours) = unrounded permanent hourly rate x 125% = casual hourly rate rounded from third decimal

*(\$765.90/38) = \$20.155263 x 125% = \$25.1940 rounded from the third decimal
= \$25.19*

We note that this calculation is consistent with the methodology used by the Fair Work Ombudsman (FWO) to obtain the casual hourly rate for a Security Officer Level 4, as included in FWO’s online tool “PayCheck Plus” (Refer to Attachment 1) and their “Pay Guide for the Security Services Industry Award 2010 [MA000016] (refer to Attachment 2).

*However, the casual hourly rate for a Security Officer Level 4 that has been included in the table in Clause 10.1 of the Exposure Draft – Security Services Industry Award 2014 is **\$25.20**, i.e. 1 cent higher than the rate calculate above.*

It is unclear from the Exposure Draft – Security Services Industry Award 2014, whether FWC has decided to alter the methodology from what is currently being used by both the FWO and industrial parties to an alternative methodology or whether the 1 cent difference is the result of an inadvertent error.

Business SA submit that the proposals in the “Guide to Award Stage” regarding the method for deriving the casual hourly rates and the rounding to be applied has merit and would increase transparency. However, if there are changes to the calculation methods it is important that these s are clearly identified and communicated.

We would support the inclusion of the method and rounding rules in the Modern Award, either under the table in clause 10.1 or in “Schedule B – Summary of Hourly Award Rates of Pay”.³

Our concerns continue with the next group of modern award exposure drafts. Below are a range of examples. The rates below, in red, have been calculated using the rounding rules utilised by the FWO:

² Ibid, page 10

³ Modern Awards 2014 Review – Submission in Reply, AM2014/69 and 2014/89, 20 October 2014, pp. 14-5.

a) Health Professionals and Support Services Award 2010: Table C.1.2 Full-time and part-time support services employees – overtime:

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
Level 1	26.90	35.86	35.86	44.83
Level 2	28.01	37.34 37.35	37.34 37.35	46.68
Level 3	29.12	38.82	38.82	48.53

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
Level 4	29.46	39.28 39.27	39.28 39.27	
	49.10 49.09			
Level 5	30.45	40.60	40.60	50.75
Level 6	32.09	42.78 42.79	42.78 42.79	53.48
	53.49			
Level 7	32.67	43.56	43.56	54.45
Level 8				
Pay point 1	33.78	45.04	45.04	56.30
Pay point 2	34.67	46.22	46.22	57.78
Pay point 3	37.11	49.48 49.47	49.48 49.47	61.85
Level 9				
Pay point 1	37.77	50.36	50.36	62.95
Pay point 2	39.11	52.14	52.14	65.18
Pay point 3	39.42 39.41	52.56 52.55	52.56 52.55	65.70
	65.69			

b) Health Professionals and Support Services Award 2010: Table C.1.3 Casual support service employees – ordinary and penalty rates:

	Ordinary hours	Other than 7 day private medical imaging practice	7 day private medical imaging practice		Public holiday	Shiftwork ¹
		Saturday and Sunday	Saturday	Sunday		
	125%	175%	150%	175%	275%	
	140%					
Level 1	22.41	31.38	26.90	31.38	49.31	
25.10						
Level 2	23.34	32.67 32.68	28.01	32.67 32.68	51.34 51.35	26.14
Level 3	24.26	33.97	29.12	33.97	53.38	27.17
Level 4	24.55	34.37 34.36	29.46	34.37 34.36	54.01 54.00	27.50
27.49						
Level 5	25.38	35.53	30.45	35.53	55.83	28.42
Level 6	26.74	37.43 37.44	32.09	37.43 37.44	58.82 58.84	29.95
Level 7	27.23 27.22	38.12 38.11	32.67	38.12 38.11	59.90 59.89	30.49
Level 8						
Pay point 1	28.15	39.41	33.78	39.41	61.93	31.53
Pay point 2	28.89	40.44	34.67	40.44	63.55	32.35
Pay point 3	30.93 30.92	43.30 43.29	37.11	43.30 43.29	68.04 68.03	34.64
34.63						
Level 9						
Pay point 1	31.48 31.47	44.07 44.06	37.77	44.07 44.06	69.25 69.24	35.25
Pay point 2	32.59	45.62	39.11	45.62	71.69 71.70	36.50
Pay point 3	32.85	45.99 45.98	39.42 39.41	45.99 45.98	72.27	36.79

c) The Graphic Arts, Printing and Publishing Award 2010 wage table for a Junior artist and/or designer (including junior commercial artist), clause 10.2(a):

Age	% of level 4 rate	
Minimum weekly rate		
\$		
Under 17 years	37.5	265.62 58
17 years	47.5	336.30 40
18 years	60.0	424.84 92

19 years	72.5	513.38 44
20 years	87.5	619.78 68

This extends to the tables in clauses 10.3 and 10.4, which show considerable variation:

Clause 10.3

Age	% of Level 3 rate	
	Minimum weekly rate	
	\$	
Under 16 years	30	205.58 205.41
16 years	40	281.19 273.88
17 years	50	342.38 342.35
18 years	60	421.59 410.82
19 years	75	513.76 513.53
20 years	90	632.58 616.23

Clause 10.4

Age	% of Level 2 rate	
	Minimum weekly rate	
	\$	
Under 16 years	30	197.98 197.82
16 years	40	270.66 263.76
17 years	50	329.84 329.70
18 years	60	405.99 395.64
19 years	75	494.38 494.35
20 years	90	609.18 593.46

It appears that the FWC's methodology, as shown in the examples above, round the hourly rate to the nearest cent, and then calculate any subsequent wage rates by adding to this rounded hourly rate. This has the effect of compounding the wage rate on a rounded figure. In other words the FWC has utilised the following methodology (continuing with the Security Guard Level 4 example):

$$\begin{aligned}
 (\$765.90/38) &= \$20.155263 \\
 &= \$20.16 \text{ (rounded from the third decimal)} \\
 \$20.16 \times 125\% &= \$25.20
 \end{aligned}$$

All awards covered in detail in this submission have been found to have errors in most tables. Should the rounding rules utilised by the FWO be the preferred methodology and rounding rules utilised by the FWC, then Business SA would recommend a check of all tables in the Group 2 exposure drafts.

Conclusion

Business SA is seeking for the FWC to clarify the methodology and rounding rules utilised and the inclusion of these rules in the modern awards.

Who we are

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.