



Award Stage – Groups 2C & 2D Exposure Drafts

Wednesday 4 February 2015



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 2C and 2D.

The streamlining and clarification of language are positive steps in addressing concerns raised about convoluted and incomprehensible language in 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.

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, with the addition of variations in the Racing Industry Ground Maintenance Award 20104.

Exposure Drafts – Groups C and D

A. Road Transport and Distribution Award 2014

| | Clause | Name of Provision | Issue |
|----|--------|---|--|
| 1. | | Items related to FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | 3.2 | Road Transport and Distribution Industry Definition | That the definition of the term 'Road Transport and Distribution Industry' in clause 3.2 should not be repeated in Schedule H, but should simply refer to definition in clause 3.2. |
| 3. | 13 | 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 for future variations. |

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.

B. Road Transport (Long Distance Operations) Award 2014

| | Clause | Name of Provision | Issue |
|----|------------------------|---|--|
| 1. | | FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | 3.2 | Coverage | The definition of the term 'Long Distance Operation' in clause 3.2 should not be repeated in Schedule H, but should simply refer to definition in clause 3.2. |
| 3. | 12 | 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 for when there are future variations. |
| 4. | 11.5 | Rates of Pay – Hourly Driving Method | Business SA objects to varying the method of calculating the hourly rate of pay from a divisor of 40 to 38. This would increase the hourly rate of pay and is inconsistent with the objectives of the Modern Award Review. |
| 5. | 11.6 | Loading or unloading | Business SA objects to varying the method of calculating the hourly rate of pay from a divisor of 40 to 38. This would increase the hourly rate of pay and is inconsistent with the objectives of the Modern Award Review. |
| 6. | Schedule A – Table A.1 | Full-time employees – ordinary rates, loading and unloading rates | The following wage rates contain rounding errors: <ul style="list-style-type: none"> Transport Worker Grade 1, loading or unloading (\$22.90 not \$22.89) Transport Worker Grade 3, Loading or unloading (\$23.60 not \$22.61) |
| 7. | Schedule A – Table A.2 | Casual employees – ordinary rates, loading and unloading rates | The following wage rates contain rounding errors: <ul style="list-style-type: none"> Transport Worker Grade 1, loading or unloading (\$28.62 not \$28.61) Transport Worker Grade 3, Loading or |

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| | | | <ul style="list-style-type: none"> unloading (\$29.50 not \$29.51) • Transport Worker Grade 7, Loading or unloading (\$31.68 not \$31.69) • Transport Worker Grade 8, Loading or unloading (\$32.47 not \$32.46) |
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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. Passenger Vehicles Transportation Award 2014

| | Clause | Name of Provision | Issue |
|----|--------------------------|--|---|
| 1. | | FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | 3.2 | Coverage | Definition of Passenger vehicle transportation industry is a double up from coverage |
| 3. | 11 | 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 for when there are future variations. |
| 4. | 13.2 | Employees on two-driver operations | It is Business SA view that an employee is not entitled to an “additional 8 hours” on a public holiday if the employees does not work an 8 hour shift. |
| 5. | Schedule B | B.1.1 & B.1.2 Full-time and part-time employees | Replace the reference to “ordinary and penalty rates” with “minimum and penalty rates to provide consistency and avoid ambiguity |
| 6. | Schedule B | B.1.2 Full-time and part-time employees on two drover operations | The rates of pay in the fifth column for Good Friday or Christmas Day are incorrect. The rates have been incorrectly copied from the previous column. |
| 7. | Schedule B | B.2.2 – Casual employees on two driver operations – ordinary and penalty rates | All rates of pay in this table are incorrect as they do not reflect the casual loading of 25%. In addition, the rates in the fifth column have been incorrectly copied from the previous column. |
| 8. | Schedule B and Clause 10 | Minimum Wages | Business SA has concerns over the methodology used to calculate rates of pay in the modern awards. It would be helpful for the award to include an explanation of the methodology used, including the rounding rules in order to provide consistency and avoid ambiguity. |

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.

D. Transport (Cash in Transit) Award 2014

| | Clause | Name of Provision | Issue |
|----|-------------------|--|---|
| 1. | | FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | 9.1(b) | Ordinary hours of work | Business SA suggests the removal of the words 'Subject to the other provisions of this award'. Business SA is concerned the removal of these words may have unintended consequences. |
| 3. | 9.4(b) and 23.2 | Start times and Consultation about changes to rosters or hours of work | Business SA suggests the addition of wording, 'Where an employer wants to vary or change the regular starting time of an employee, and in conjunction with Clause 23.2 , the employer must give one week's notice of such variation or change to the employee concerned.' |
| 4. | 11.1 | Minimum rates | Crew leader 'Ordinary hourly and Casual hourly rates' have been calculated incorrectly. It has been done as follows: $(\text{Industry allowance}/38)+(\text{Minimum weekly rate}/38)=\20.68 (Ordinary hourly rate) Rather than: $(\text{Industry allowance} + \text{Minimum weekly rate})/38 = \20.69 (Ordinary hourly rate) And the subsequent application of 25% casual loading then follows. As there are two possible outcomes, it would be helpful for the award to include an explanation of the methodology used, including the rounding rules. |
| 5. | 12.2(f)(i) | Travelling allowances | Business SA would agree that it is better expressed as an expense related allowance and adjusted with CPI. As noted in our other submissions, we would recommend the percentage of the standard rate remain for transparency reasons. |
| 6. | 14.4 and 14.14(a) | Shiftworkers' meal breaks | Business SA's view is that the rest break in 14.4 is additional to the meal break in 14.14(a). |
| 7. | 15.4 | Call-back | Business SA's view is that the wording in clause 15.4, indicates that the 'appropriate rate' is the overtime rate. |

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. Waste Management Award 2014

| | Clause | Name of Provision | Issue |
|----|---------|---------------------|---|
| 1. | | FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | Sched F | Definitions | 1. The exposure draft has deleted definition of "relevant minimum wage". The definition of minimum wage in the current (2010) modern award includes the industry allowance. Deleting this definition may lead to ambiguity regarding payment of industry allowance to juniors. The newly inserted definition of |

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| | | | <p>“ordinary hourly rate” rate in Schedule F does not assist to resolve the issue regarding the payment of industry allowance to juniors.</p> <p>2. The All Purpose Allowance definition refers to 11.2(b) which does not exist. At 11.2 (definition in award proper) this is also referred to. It is unclear the intent of this reference.</p> |
| 3. | 11.2 | Industry Allowance | The draft replaced allowance expressed as a % with a flat \$ figure. This may lead to differing views on the interpretation later when attempting to apply or vary this allowance. |
| 4. | 10.2 | Junior Rates | Wording changes do not recognise impact of changes to definitions |
| 5. | 6.6 | Casual Conversion | Exposure draft has omitted the provision in 15.5 “within 4 weeks of receiving such notice the employer must either consent to or refuse the election but must not unreasonably so refuse”. |
| 6. | 10.1 | Adult Rates | Wording of 19.1 clearly states industry allowance is to be added, however, 10.1 implies it has already been added to the rates in the table. |
| 7. | 11.2 | Leading hand allowance | % allowance changed to flat rate, could cause ongoing issues and additional work for all concerned regarding calculation and increases |
| 8. | 9.2 & 11.3(a)(ii) | | Moved 11.3(a) (ii) into 9.2 but have not removed it from 11.3 and by moving it adds an additional clause to be amended in the event of an allowance increase. Agree to the move but reference the amount back to 11.3. |

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.

F. Racing Industry Ground Maintenance Award 2014

| | Clause | Name of Provision | Issue |
|----|------------|----------------------------|--|
| 1. | | FWCFB 9412 decision | Ensure Award is updated in line with the FWC Full Bench Decision 9412 |
| 2. | 6.3 | Full-time employment | Business SA suggests adding the words ‘over a four week period’ to the end of this clause to clarify the applicable average, consistent with Clause 8.1(a). |
| 3. | 6.5(d) | Casual employment | This clause is incorrect and should reflect that these provisions do not apply when casual employees are on night cleaning duties. |
| 4. | 10.7 | Payment of wages | Business SA supports the current wording of this clause. |
| 5. | 11.1(b)(i) | Allowances | Table to include a column for the ‘% of standard rate’. |
| 6. | C.2 | Expense related allowances | Business SA would recommend including the same format for both the wage related and expense related allowances. This would mean the addition of the column ‘% of standard rate’ be added to the table for C.2. |

Variations sought

Whilst no variations were proposed in our submission 4 yearly review of modern awards: Award Stage – Group 2 Outline, dated 25 November 2014 for this award, we would like to suggest the following:

1. *15.4 Taking annual leave*

“Annual leave is to be taken within six months of the full four week entitlement accruing.”

The current wording would imply that annual leave is accrued on an annual basis and that an entitlement does not exist before 12 months. However, in reality annual leave is accrued progressively throughout the year, which means that the practical effect of this clause is questionable.

Hourly rates

Wage tables continue to be of concern for Business SA in this grouping of awards. Please see our previous submission Award Stage – Groups 2A & 2B Exposure Drafts for further details.

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.