



Business SA Submission

**Modern Awards 2014 Exposure
Drafts Group 1 C, D & E**

27 November 2015

Why this matter is important to South Australian businesses

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. We represent thousands of businesses through direct membership and affiliated industry associations. Whilst these businesses come from all industry sectors, ranging in size from micro-business to multi-national companies, a large proportion of Business SA's members are small business owners. One of the major reasons listed for joining Business SA is to gain access to industrial relations representation and support, and we provide a number of targeted services to support legislative and regulatory compliance.

Business SA strives to ensure small business and South Australian industries are covered by awards that meet the modern awards objective and in particular:

- promote flexible modern work practices and the efficient and productive performance of work
- provide a simple, easy to understand, stable and sustainable modern award system

We also strive to ensure that the process in particular takes into account the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.

Further information: Tyson Gherghetta, Business SA, (08) 8300 0088

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Gas Industry Award 2010

The submissions that follow relate to the Gas Industry Award 2015 (Exposure Draft), published on 30 October 2015. Business SA has identified the following issues regarding the exposure draft:

1. Clause 6.5(c) – Business SA suggests this sub-clause should be deleted as it is not in the current Gas Industry Award.
2. Clause 9.1(b), (c) and (d) should be amended to include the words “of the minimum hourly rate” after the stated percentages. This will provide further clarity for the application of these subclauses.
3. Clause 14.6(a) – Payment of accrued annual leave on termination of employment. It is Business SA’s view that all NES summaries should be removed from exposure drafts in line with previous Fair Work decisions.
4. Clause 19.2 – Notice of termination by an employee contains a drafting error. The clause should read “... the employer may withhold **from** any money due to the employee ...”
5. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Hydrocarbons Industry (Upstream) Award 2010

The submissions that follow relate to the Hydrocarbons Industry (Upstream) Award 2015 (Exposure Draft), published on 30 October 2015. Business SA has identified the following issues regarding the exposure draft:

6. Clause 5.2(a) should refer to “clause 8.2(b)” and not “clauses 0 – Spread of hours”.
7. Clause 20.2 – Notice of termination by an employee contains a drafting error. The clause should read “... the employer may withhold **from** any money due to the employee ...”
8. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.
9. Schedule H – the definition of permanent shift worker is drafted as paragraphs “(b)”, “(c)” and “(d)”, rather than “(a)”, “(b)” and “(c)” respectively.

Manufacturing and Associated Industries Award 2010

The submissions that follow relate to the Manufacturing and Associated Industries Award 2015 (Exposure Draft), published on 4 November 2015. Business SA has identified the following issues regarding the exposure draft:

10. Clause 5.3(a) refers incorrectly to clause 14.1(a) and should be 14.1(b)
11. Clause 5.4(a) refers incorrectly to clause 13.3(b) and should be 13.3(d)
12. Clause 6.3 (ii) contains a typographical error. The cross references in the last sentence should read 13.2(g), 29.2(i) and 30.6
13. Clause 14.1(a) contains a drafting error. The last sentence should be reworded to: *"...an employee must not be required to work for more than six hours without a meal break;"*
14. Clause 27.1(c)(iv) should be amended to remove the reference to Table A or B as Clause 17.6 does not contain such tables.
15. Clause 38.2 – Notice of termination by an employee contains a drafting error. The clause should read "... the employer may withhold **from** any money due to the employee ..."
16. Clause 34.6 and Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Marine Tourism and Charter Vessels Award 2010

The submissions that follow relate to the Marine Tourism and Charter Vessels Award 2015 (Exposure Draft), published on 30 October 2015. Business SA has identified the following issues regarding the exposure draft:

17. Clause 9.3 (c) and 17.3 (c): Given other amendments made to the Exposure Draft (for example, clauses 9.6 and 13.2) it appears the reference to "ordinary rate" should be amended to "minimum hourly rate".
18. Clause 19.2 – Notice of termination by an employee contains a drafting error. The clause should read "... the employer may withhold **from** any money due to the employee ..."
19. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.
20. Business SA notes that rates tables have not been included in this award. There does not appear to be any substantive reason why rates tables should be omitted for this Award.

Meat Industry Award 2010

The submissions that follow relate to the Meat Industry Award 2015 (Exposure Draft), published on 2 November 2015. Business SA has identified the following issues regarding the exposure draft:

21. Clause 1.4 and Clause 1.5 are identical and Clause 1.5 should be deleted
22. Clause 6.9 (b) should be deleted. This clause does not appear in the current Award. Business SA has concerns with such as clause in other exposure drafts and believe it is the common view of the parties that the clause should be removed.
23. Clause 25.2 – Notice of termination by an employee contains a drafting error. The clause should read "... the employer may withhold **from** any money due to the employee ..."
24. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Mining Industry Award 2010

The submissions that follow relate to the Mining Industry Award 2015 (Exposure Draft), published on 2 November 2015. Business SA has identified the following issues regarding the exposure draft:

25. Clause 20.2 – Notice of termination by an employee contains a drafting error. The clause should read "... the employer may withhold **from** any money due to the employee ..."
26. Schedule B: casual overtime rates have not been included.
27. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Poultry Processing Award 2010

The submissions that follow relate to the Poultry Processing Award 2015 (Exposure Draft), published on 2 November 2015. Business SA has identified the following issues regarding the exposure draft:

28. Clause 1.2 is incorrect and should read as follows: "This modern award, as varied, commenced operation on 1 January 2010. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the superseded award as it existed prior to that variation."
29. Clause 6.5(c)(iii) – Casual loading Clause 6.5(c)(iii) should be deleted. This provision

does not appear in the current award and is unnecessary. We understand that the parties to this and other awards, in which this provision has been inserted, have commonly agreed that they should be removed.

30. Clause 14 – Overtime rates Clause 14.2 should refer to the ‘minimum hourly rate’ and these words should replace the reference to ‘overtime rate’ in the second column of the table. This should be reflected the wording used in Schedule B.
31. In response to the Commission’s question at page 16, we agree that the Exposure Draft should include a provision confirming that for the purpose of determining the applicable overtime rate ‘each day stands alone.’
32. Clause 20.2 – Notice of termination by an employee contains a drafting error. The clause should read “... the employer may withhold **from** any money due to the employee ...”
33. The relevant hourly rates contained in Schedule B are expressed as a “% of the ordinary hourly rate”, which is incorrect. In fact the amounts are all calculated on the minimum hourly rate of pay for an employee, consistent with clause B.1.2. The current wording of the tables is misleading in circumstances where an employee receives an allowance paid for all purposes of the award (for example, the leading hand allowance). The reference to “% of ordinary hourly rate” should be replaced with “% of minimum hourly rate” in each of the tables contained in Schedule B.
34. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Textile, Clothing, Footwear and Associated Industries Award 2010

The submissions that follow relate to the Textile, Clothing, Footwear and Associated Industries Award 2015 (Exposure Draft), published on 4 November 2015. Business SA has identified the following issues regarding the exposure draft:

35. Clause 3.4(c) – Coverage the reference to ‘2014’ should be replaced with ‘2015’.
36. Clause 26.3 – Notice of termination by an employee contains a drafting error. The clause should read “... the employer may withhold **from** any money due to the employee ...”
37. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Timber Industry Award 2010

The following submissions relate to the Timber Industry Award 2015 (Exposure Draft), published on 2 November 2015. Business SA has identified the following issues regarding the exposure draft.

38. Clause 7.4, Clause 12.2(e) and Schedule D3– Casual employees – It appears that significant provisions dealing with overtime work and payment for Casual employment currently in the award have been removed and not replaced by any other relevant provisions in the exposure draft.

39. Clauses 2.2 and 2.3 are a drafting error and should be replaced with a new 2.2 'The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means', to reflect the relevant Full Bench decision.
40. Casual loading Clause 7.4(c)(ii) should be deleted. This provision does not appear in the current award and is unnecessary. We understand that the parties to this and other awards, in which this provision has been inserted, have commonly agreed that it should be removed.
41. Clause 12.2(c) – Ordinary hours and roster cycles – day workers The wording included in 12.2(c) is not in the current award and should be deleted.
42. Clause 20.1 – All purpose allowances - Consistent with [2015] FWCFB 4658, the definition of 'all purpose' at clause 20.1 should be amended by inserting the word 'annual' before 'leave'.
43. Clause 30.2 – Notice of termination by an employee contains a drafting error. The clause should read "... the employer may withhold **from** any money due to the employee ..."
44. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.

Vehicle Manufacturing, Repair, Services and Retail Award 2010

Coverage

45. On 2 November 2015, a Full Bench of the Commission issued a Statement, [2015] FWCFB 7275, in which the Full Bench advised that it had provisionally formed the view that the vehicle manufacturing sector should be removed from the Vehicle Award and placed within the Manufacturing Award; and further advised that new exposure drafts of the Vehicle Award and Manufacturing Award would be issued.
46. Business SA supports the parties involved in previous debates and significant review regarding coverage of this award who are satisfied with the status quo, having worked toward this for the past eight years.

Exposure Draft

The submissions that follow relate to the Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2015. Business SA has identified the following issues regarding the exposure draft.

47. Current clause 42.2 characterises the relevant shift premiums as loadings. Exposure Draft clause 35 refers to the loadings as penalties which is incorrect and an unnecessary change. The heading to clause 35 should be amended to read 'shift loadings'; and the preamble in clause 35.1 should be amended to read 'This clause will not apply to', such that the reference to 'penalties' is removed.
48. Clause 41.3 The Exposure Draft should be amended to replace the words 'highest rate' with 'highest minimum rate' in clauses 41.3(a) and (b) to avoid the possibility of over award payment claims.

49. Clause 43.2(b) Ordinary hours of work – other than continuous work shifts, should be amended by replacing “152 days” with “152 hours”. This is inconsistent with the current clause 54.2(a).
50. Various clauses as follows, should be amended to read ‘minimum hourly rate’, such as: Clause 43.3(d) and (e) and clause 44.1(a).
51. Clause 27.2 – Notice of termination by an employee contains a drafting error. The clause should read “... the employer may withhold **from** any money due to the employee ...”
52. Schedule G – Part-day public holidays, should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015.