



**BUSINESS SA**

# 4 yearly review of modern awards: Award Stage – Group 2 Outline

Tuesday 25 November 2014



**BusinessSA**

South Australia's Chamber of  
Commerce and Industry

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## Introduction

Business SA is pleased to have this opportunity to make a submission in response to the Fair Work Commission's (the Commission) statement of 30 October 2014. This submission will outline our variations in the Group 2 awards. We have an interest in the following modern awards:

### Sub-group A

- Aquaculture Industry Award 2010
- Graphic Arts, Printing and Publishing Award 2010
- Storage Services and Wholesale Award 2010
- Seafood Processing Award 2010

### Sub-group B

- Animal Care and Veterinary Services Award 2010
- Nurses Award 2010
- Health Professionals and Support Services Award 2010
- Pharmacy Industry Award 2010

### Sub-group C

- Passenger Vehicle Transportation Award 2010
- Road Transport (Long Distance Operations) Award 2010
- Road Transport and Distribution Award 2010
- Transport (Cash in Transit) Award 2010
- Waste Management Award 2010

### Sub-group D

- Racing Industry Ground Maintenance Award 2010

## Outline of Variations

### Sub-group A

#### Aquaculture Industry Award 2010

##### Clause 17.1(a) – Payment of wages

Clause 17.1(a) allows for weekly and fortnightly pay only. There was an opportunity for the payment of wages on a monthly basis prior to 1 January 2010, as employees were award-free. By contrast, the Seafood Processing Award 2010 Clause 21.1(b) states:

*"By agreement between the employer and the majority of employees in the relevant enterprise, wages may be paid three weekly, four weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee."*

Business SA is seeking to replace Clause 17.1(a) with the above wording from the Seafood Processing Award 2010. By doing so, it provides the opportunity for employers to manage their payment schedules, and would be facilitative in nature only.

##### Clause 23.4 – Annual Leave

The current wording of this clause is misleading. According to clause 23.4 annual leave is to be taken within 18 months of the entitlement accruing. This would imply that annual leave is accrued on an annual basis and that no entitlement exists 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.

We would seek to replace 23.4 with the following wording:

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

The outcome of the Common issue – Annual leave will determine whether we pursue this particular variation.

#### Graphic Arts, Printing and Publishing Award 2010

##### Clause 12.4(c) – Casual Employment

The current clause states that:

*"an employer must not fail to re-engage a casual employee because the employee accessed the entitlements under the NES concerning carer's leave and/or compassionate leave for a casual employee".*

Should an employer fail to re-engage a casual as a result of exercising a workplace right, such as accessing an entitlement under the NES, there could potentially be a breach of the Fair Work Act (the Act) under section 342 – Meaning of adverse action, under subsection (1), items 1 and 2. We seek to remove the clause to be removed as the point made in the above clause is already adequately covered by the Act.

#### Clause 24 – Higher duties

The current subclause states that an employee undertaking duties at a higher classification level must be paid for the day at the highest rate. This does not take into consideration when an employee may undertake less than a day's work at the higher classification level. We would recommend the clause more accurately reflect the realities of the working environment, and be replaced with the following from the Manufacturing and Associated Industries Award 2010 (Clause 24.2):

*“An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. If engaged for two hours or less during one day or shift, they must be paid the higher minimum wage for the time so worked.”*

#### Clause 37.10 – Proportionate leave on termination of employment

The current heading of this clause refers to proportionate leave on termination. Given that there is no proportionate leave, and that leave is either accrued or it is not, the heading is confusing. We would suggest the heading be replaced with "Annual leave on termination".

The outcome of the Common issue – Annual leave will determine whether we pursue this particular variation.

#### **Seafood Processing Award 2010**

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.

#### **Storage Services and Wholesale Award 2010**

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.

### **Sub-group B**

#### **Animal Care and Veterinary Services Award 2010**

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.

#### **Health Professionals and Support Services Award 2010**

#### Clause 26.2 – Saturday and Sunday work (casuals)

The intention of this clause is not clearly reflected in the current wording, and we are seeking a variation to remove this ambiguity. The casual rates on Saturday and Sunday, outlined in Clause 26.2, refer to an entitlement to 75% in place of Clause 10.4(b), where the casual loading is 25%. In addition, the award prescribes the Saturday and Sunday 75% loading is paid to casual employees for *all time worked* on weekends. This does not take into account Clauses 24.2, 24.3, 24.4 (Span of hours) and 28.1 (Overtime rates), which refer to the ordinary hours of employees, and Clause 29 (Shiftwork). In principle, shiftwork provisions do not apply to day workers.

The clause should be reworded to read:

*“A casual employee who works on a Saturday or Sunday will be paid a loading of 75% for all time worked **outside of ordinary hours**. **The extra rate is in substitution for and not cumulative upon the casual loading prescribed in clauses 10.4(b) and 29.**”*

#### Clause 29 (Shiftwork)

A shiftworker is defined in Clause 3.1 as “an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker as defined in clause 24.” Clause 29 states:

*“Where the ordinary rostered hours of work of a shiftworker finish between 6.00pm and 8.00am or commence between 6.00pm and 6.00am, the employee will be paid an additional of 15% of their ordinary rate of pay.”*

Clause 24 identifies the span of hours for the various types of practices covered by this award. For example, clause 24.2 notes the span of ordinary hours for a day worker will be worked between 7.30am and 9.00pm, Monday to Friday. Clause 24.3(a) notes the ordinary hours for Monday to Friday will be worked between 7.00am and 9.00pm. Clause 24.3(b) notes ordinary hours for Monday to Sunday will be worked between 7.00am and 9.00pm. The above spans of ordinary hours for day workers overlap with Shiftwork in relation to finishing times. This means that it is unclear whether the hours worked should be treated as ordinary hours for a day worker or shift hours.

Clause 29 should be reworded to read:

*“Where the ordinary rostered hours of a shiftworker, **as defined in Clause 3.1**, finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid an additional 15% of their ordinary rate of pay.”*

#### **Nurses Award 2010**

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.

#### **Pharmacy Industry Award 2010**

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.

#### **Sub-group C**

##### **Passenger Vehicle Transportation Award 2010**

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.

### **Road Transport (Long Distance Operations) Award 2010**

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.

### **Road Transport and Distribution Award 2010**

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.

### **Transport (Cash in Transit) Award 2010**

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.

### **Waste Management Award 2010**

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.

## **Sub-group D**

### **Racing Industry Ground Maintenance Award 2010**

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.

## **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.