

**IN THE FAIR WORK COMMISSION
OF AUSTRALIA**

**Applications by Transit Systems West Services Pty Ltd
Busways North West Pty Limited
Keolis Downer Pty Ltd
Transdev Australasia Pty Ltd**

ARTBIU, AMWU and ASU Response to Background Paper Questions

Question 1: Do the parties agree with the description in Sections 1.1–1.3 of the legislative framework applying to copied State awards?

1. Yes.

Question 2: Do the parties agree with the description in Section 1.5 of the statutory criteria applying to the variation of wage rates in copied State awards in an annual wage review?

2. Yes. As variation of copied state awards in an annual wage review involves an exercise of the Commission's functions and powers, ss.134(2) and 284(2) of the *Fair Work Act 2009* (Cth) means that both the modern awards and minimum wages objectives apply to this process.

Question 3: What considerations in ss.284(1)(a)-(e) are relevant to the applications and submissions made by the parties?

3. Principally s.284(1)(a) and (c).

4. In respect of s.284(1)(a), the Unions observe that as a general proposition, wage increases matching both inflation and productivity growth are sustainable without placing upward pressure on headline inflation, and allow workers to at least maintain existing living standards by meeting cost of living pressures and additionally getting a fair share of national prosperity.

5. As to s.284(1)(c), a number of classifications covered by the Copied State Awards are low paid using the metric adopted by the Commission: for example,

the *State Transit Authority Bus Operations Enterprise (State) Award 2021* prescribes a minimum rate of \$932.30 per week for Bus Cleaner Level 1 and \$926.40 for Conductors/Sign on Clerks. Other classifications in this Award, while above the \$1000/week,¹ are not far above this threshold. Classifications in the *Bus Maintenance Award* are similarly placed. As to the Salaries Award, while Senior Officers are well above the threshold, the majority of Clerk classifications are not.

6. Similarly, considerations about maintaining fair and equitable living standards for these workers tell in favour of the Unions' position in respect of an increase to these wages.
7. The Unions otherwise rely on their submissions in the Annual Wage Review generally, and those made by the ACTU.

Question 4: What other considerations are relevant to the applications and submissions made by the parties?

8. As set out above, the Modern Awards Objective applies. The Unions repeat and rely on their submissions and the submissions of the ACTU in this respect, and have otherwise addressed these considerations in the previous submissions.
9. To the extent that some of the employer parties contend that these awards should be treated differently because they are '*paid*', rather than minimum, rates, this misunderstands the nature of the NSW system.
10. It may be that the employer parties treat the Copied State Awards as 'paid rates', in the sense that they do not elect to make above-award payments² but they in fact do prescribe minimum rates. Per s.406(1) of the *Industrial Relations Act 1996* (NSW):

¹ Statistical Report 7, table 8.2

² Although it should be observed that Transit Systems made submissions in the proceedings before Rares J that this was not the case in respect of at least some employees covered by the Salaried Officers Awards.

'The conditions of employment set by an [award] are the minimum entitlements of employees.'

11. The concept of 'paid rates' awards is something of a historical anomaly, and has been an irrelevance in NSW since the referral of powers. Absent an indication that the rates in any of the Copied State Awards were actually fixed with reference to the value of the work, rather than just routinely increased in line with the NSW Government's wages cap, they cannot be said to be anything other than instruments setting minimum wages for particular workers.

Question 5: Noting the analysis at Section [1.4] of this Background Paper and in particular at [34]:

- a) ***does Transit Systems press its claim that the Commission has power to vary or revoke previous annual wage review determinations adjusting minimum wages in copied State awards?***
- b) ***if yes, what is the source of the Commission's power to do so?***

12. The Unions agree with the analysis at section 1.4. In the event that Transit Systems presses its claims, the Unions reserve their rights in reply.

Question 6: *What is the status of enterprise bargaining negotiations to replace the copied State awards applying to Transit Systems and its transferred employees derived from the 2018 Bus Operations Award and the 2018 Senior and Salaried Officers Award?*

13. Bargaining is ongoing in respect of employees covered by the 2018 Bus Operators Award. Transit Systems has not commenced bargaining with employees covered by the 2018 Senior and Salaried Officers Award.

Question 7:

- a) ***To what extent is there agreement among the parties on 'topping up' any shortfall between wage increases awarded in copied State awards and annual wage review adjustments?***

14. There is no present agreement.

b) What are the parties' positions as to how any 'top-up' should be calculated including how the timing of any wage increases under Copied State awards should be taken into account?

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15. For the reasons set out in the Unions' previous submissions, the tiered approach is inappropriate. The correct calculation is (where x reflects the amount by which the national minimum wage and modern award wages are increased) $x - 2.04$. By way of illustration, if the Commission were to award a 5.1% increase, if it were to consider that these awards should only be topped up, the appropriate course would be to increase the relevant Copied State Award rates by 3.06%.
16. The increase should be made payable on the first pay period after 1 July 2022, to align these Copied State Awards to the Federal system.
17. It should be observed that this is a highly conservative approach, rather than anything resembling an ambit claim. There is no evidence whatsoever that any of the increases previously awarded contained a component recognizing inflation going forward i.e. to preserve the real value of wages. There is a real likelihood that, since the introduction of the state government wages cap a decade ago, these workers have been moving steadily backwards. This conservatism is appropriate given the lack of clarity, and the practical reality that it will see workers' wages increase twice in a six month period, but no further reduction is warranted.

Transit Systems

18. As set out in the Unions' primary submissions, there is no basis upon which the Copied State Awards applying to Transit Systems should not be increased at the same level as all other relevant fair work instruments. Acceding to its request would do little more than reward its historical neglect of its legal obligations.

L.E.O. SAUNDERS

Greenway Chambers | 1 June 2022