



Business SA
Chamber of Commerce
and Industry South Australia

ABN 000 14 725 309 328
Level 1, 136 Greenhill Road
Unley South Australia 5061
T: +61 8 8300 0000

Working for your business.
Working for South Australia

28 April 2016
Commissioner Roe
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Dear Commissioner Roe,

Re: AM2014/217 – *Banking, Finance and Insurance Award 2010*; AM2014/218 – *Business Equipment Award 2010*; and AM2014/221 – *Commercial Sales Award 2010*

Further to a conference held before you on 21 April 2016 and in response to directions arising from a Report to the Full Bench issued 22 April 2016 regarding the abovementioned matters, please find below Business SA's submissions regarding those specific matters.

1. Business Equipment Award

1.1. Clause 17.6 – Definition of 'country territory'

Business SA suggests 'country territory' could be defined with reference to the pre-reform *Country Printing and Publishing Award 2002*. In Victoria this award applied to all employers and employees in the industry, excluding those within a forty kilometre radius of the Melbourne General Post Office and those within a three kilometre radius of the main post office in the cities of Ballarat, Bendigo, Geelong and Geelong West.¹

This definition could be applied nationally as follows:

- country territory is any area outside a forty kilometre radius of the **State/Territory capital's general post office and outside a three kilometre radius of the main post office in a regional city or town.**

1.2 Clause 10.2 – Exemptions for employees in the clerical stream

The question asked by the Fair Work Commission in the exposure draft was '*Parties are asked to confirm that all clauses apart from those listed in Clause 10.2 do not apply to these exempt Clerical employees*'.

Given this is the provision in the current award there is no ability to currently apply any clause other than those identified.

Any change to this would be a substantive change, the impact of which would need to be put to our members prior to responding to the Commissioners additional queries regarding which additional clauses should be included to ensure consistency with Act and/or whether or not the clauses that do not apply should be listed rather than those which do apply.

Unfortunately, we have no response from the Union parties regarding this question.

1.3 Clause 11.4(c)(iii) – Expenses and accommodation reimbursement

¹ AP819465CAV – *Country Publishing and Printing Award 2002* clause 1.7.2.



Business SA reiterates its previous position that references to State **worker's** compensation legislation should not be maintained in the award.

Business SA is concerned the definition of “on duty” can potentially change between either the award or the State’s legislation. This potential inconsistency could lead people to incorrectly apply the definition in the award rather than the definition in the relevant State **worker’s compensation legislation.**

The *Fair Work Act 2009* (Cth)² clearly states the extent to which modern awards interact with State and Territory laws:

1. The *Fair Work Act* applies to the exclusion of all State or Territory industrial laws as far as they apply to national system employees and national system employers;³
2. Modern awards prevail over a law of a State or Territory to the extent of any inconsistency;⁴
3. Modern awards apply subject to any law of a State or Territory as far as it is covered by paragraph 27(1)(c);⁵
4. Section 27(1)(c) states that section 26 does not apply to a law of a State or Territory so far as the law deals with any non-excluded matter;⁶
 - a. Workers compensation is listed as a non-excluded matter⁷

Consequently, the *FWA* and modern awards cannot override a State or Territory's worker's compensation legislation. If reference to State worker's compensation legislation remains in the award there is a risk that employers will incorrectly apply the **definition of “on duty” where they should have applied the definition present in the relevant worker's compensation legislation.**

Yours sincerely

Karen van Gorp

Senior Policy Adviser

T 83000040

karenv@business-sa.com | www.business-sa.com

Level 1, 136 Greenhill Road, Unley. South Australia. 5061

² “*FWA*”

³ *FWA* s 26(1).

⁴ *FWA* s 29(1).

⁵ *FWA* s 29(2)(b).

⁶ *FWA* s 27(1)(c).

⁷ *FWA* s 27(2)(b).