

Submission  
to the Productivity  
Commission's Workplace  
Relations Inquiry  
Draft Report

 **Business Council  
of Australia**

---

## Contents

<b>OVERVIEW</b>	<b>3</b>
The Productivity Commission’s final report needs to design a workplace relations system that is future oriented	3
The Commission’s draft recommendations should not be recontested, but the final report needs a much more extensive reform agenda	3
Major legislative reform needs to accompany reform of the Fair Work Commission	4
Awards need to be streamlined to the core purpose of establishing a floor of wages and conditions	4
The Business Council cannot support the Commission’s conclusion that radical change is not needed in agreement making	5
We need a clear set of rules that specifies what can be regulated, not a set that specifies what cannot be regulated	6
Workers and enterprises should be given the option to negotiate an individual agreement	6
This review is a once-in-a-generation opportunity to reform workplace relations	7
<b>INTRODUCTION</b>	<b>9</b>
<b>PART 1: CONTEXT FOR THIS REVIEW</b>	<b>10</b>
Australia’s economy, demography and workplaces are in transition	10
The workplace relations system must support growth and innovation	11
Our existing workplace relations system is holding us back	11
To be effective a workplace relations system must find balance	12
The Productivity Commission’s final report needs to be more future focused	12
<b>PART 2: RESPONSE TO DRAFT RECOMMENDATIONS</b>	<b>14</b>
<b>PART 3: THE CASE FOR ADDITIONAL REPAIR</b>	<b>28</b>
Government, not the Fair Work Commission has the most influence on the workplace relations system	28
The Productivity Commission’s conceptual framework overlooks the importance of legislation	29
Institutional reform is redundant without legislative reform	30
The legislation – the Fair Work Act – needs to be overhauled	30
A more wide-ranging and extensive repair agenda is essential	32
<b>PART 4: MODERN AWARDS</b>	<b>33</b>
The Business Council agrees with the Commission’s conclusion that awards are a safety net	33
The Commission still has the public policy task of defining the breadth of the safety net	34
A safety net is made up of a floor of wages and conditions	35
Base wages belong in the Minimum Wage Order, not awards	36
Awards should set a wage floor for each industry	38
Awards have ventured into job design and create rigidities in the labour market	39
Awards should set an industry floor of conditions building on the NES	39
Conditions should be limited to the community’s expectation of workplaces	41

To make the system future oriented the Commission should reduce the number of awards and their scope	42
<b>PART 5: AGREEMENT MAKING</b>	<b>44</b>
Agreement making fails to deliver flexibility	45
The Business Council rejects the Commission's conclusion that radical change is not needed	45
Content of agreements	48
Options for agreements	54
<b>PART 6: RESPONDING TO ISSUES RAISED AT THE BUSINESS COUNCIL'S APPEARANCE AT THE PRODUCTIVITY COMMISSION'S HEARING</b>	<b>57</b>
Transition arrangements	57
Potential for the proposed changes in enterprises agreements to create 'side deals'	61
Rationale for removing clauses from agreement making that are mutually beneficial or appear harmless	63
The intersection of remuneration clauses in agreements and organisational design	64
Length of agreements	65
<b>PART 7: RESPONSE TO THE PRODUCTIVITY COMMISSION'S INFORMATION REQUESTS</b>	<b>66</b>
Pattern bargaining	68
<b>RECOMMENDATIONS</b>	<b>70</b>
Business Council over-arching recommendations	70
Business Council technical recommendations	71
Business Council recommendations for additional repair	72
Business Council recommendations for additional repair (continued)	73

---

## OVERVIEW

### **The Productivity Commission's final report needs to design a workplace relations system that is future oriented**

The Business Council's strong view is that the workplace relations system of today does not position us well for the future.

Our current workplace relations system does not create an environment where innovation is encouraged to thrive. Instead, it discourages innovation and risk taking. As a result, the system has created a class of conservative, risk-averse managers across many industries in our economy.

The system should deliver a safety net, coupled with a focus on the unique circumstances of the enterprise and the shared interests of managers and workers in its success. The focus on the enterprise has been lost in the current system.

In its final report the Business Council would like to see the Productivity Commission demonstrate how their re-designed system positions us for the future, and will be durable in the face of the challenges Australia is confronting.

How will their proposals deliver a workplace relations system that is fit for the modern economy and modern workplaces? How will they give enterprises, large and small, the agility they need to create the conditions for the jobs of the future?

The Commission should benchmark Australia's system against the attributes and outcomes of workplace relations systems across the world that drive collaborative and highly productive enterprises.

The ultimate test the Commission should apply is whether their proposals will create a workplace relations system that drives collaboration, innovation, and ultimately, productivity – the key to job creation and wage growth.

### **The Commission's draft recommendations should not be recontested, but the final report needs a much more extensive reform agenda**

The Commission has undertaken a significant piece of work which extensively examines components of the workplace relations system.

The Business Council agrees with the Productivity Commission's finding that *'The key message of this inquiry is that repair, not replacement, should be the policy imperative.'* and supports the majority of the recommendations as they are sensible and practical changes to improve workplace agility.

However, the Business Council does not agree with the Productivity Commission's assessment of the extent of repair required. The focus on repairing institutions overlooks the urgent need to repair the primary piece of legislation and its subordinate instruments. In particular, the recommendations to repair Modern Awards and agreement making – at both an enterprise and individual level – are inadequate to repair the system.

These are the areas where the Business Council would urge the Commission to give additional substantive consideration, and build these issues into the architecture of the final report.

## **Major legislative reform needs to accompany reform of the Fair Work Commission**

The Commission has devoted a great deal of attention to the regulator and how the rules of the system are implemented. In the chairman's speech to the Committee for Economic Development of Australia he stated that, 'the workplace relations system of tomorrow is getting a restructured regulator.'

There is no doubt we need a restructured regulator. But we also need to update the rules, so we have a workplace relations system of tomorrow. Legislation is the primary policy lever for governments, and this legislation needs to be overhauled.

The legislation creates the workplace relations system. It drives the culture and the behaviour. This in turn drives innovation and productivity. This is why legislation is so important. The current rules are sub-optimal and that puts Australian workplaces at a competitive disadvantage.

The workplace relations system has many regulatory instruments. The Fair Work Act, the Minimum Wage Order, the National Employment Standards, Modern Awards, and agreement making are all forms of regulation. These do not work in isolation, and the Commission needs to examine each of these instruments, as well as the cumulative effect of all components of the legislation.

People can always cite examples of enterprises which work around the system, or succeed in spite of the system. And then they point to them to say the system is working well. It is true that enterprises can work around the system. But it is not good public policy to settle for a system that is complex and difficult to use, and needs to be worked around.

From a public policy point of view, good regulation is transparent. It's easy to understand and use. It's predictable and enforceable. This should be our aspiration for our workplace relations legislation.

## **Awards need to be streamlined to the core purpose of establishing a floor of wages and conditions**

The Business Council agrees with the Commission's conclusion that awards are part of the safety net. However, the Council does not believe the Commission has taken the next step to assess whether awards are serving this purpose of a safety net.

Awards are too broad – they create rigidities in our labour market, and there are too many awards. This is a very difficult public policy problem to grapple with, but we believe it is imperative the Commission does so in the final report.

A thorough examination of awards demonstrates they have ventured into the territory of issues that enterprises and workers should negotiate. This is not fit-for-purpose regulation.

Awards cannot have carte blanche in the employment relationship. There are always trade-offs, and good regulation cannot have the costs exceeding the benefits and be open-ended.

Awards go well beyond the safety net and delve into the employment relationship, including leave loading, when leave can be taken, pay progression, and job design. None of these issues should sit in the safety net.

Job design in particular sits outside the safety net. Moreover, restrictive job design is not how the modern workforce operates. The modern workforce is about individuals taking on broader tasks, not being confined to a pre-determined list.

Skills, and the demand for skills, will continue to change. So too, will the jobs that people do. We do not know what the jobs of the future will be. But we do know that the more rigid the system is in defining job roles, the more difficult it will be for enterprises to adapt.

The Commission talks about community norms and expectations, but awards would not pass 'the person on the street' test of setting a floor of wages and conditions.

### **The Business Council cannot support the Commission's conclusion that radical change is not needed in agreement making**

The Commission's draft report has made a number of recommendations that focus on the process during agreement making, the behaviour of participants, procedural issues and the creation of greenfields agreements.

Some of these recommendations do not go as far as the Business Council proposed, but we recognise the Commission is seeking to find balance between the parties. So we support the recommendations as sensible and practical changes.

The Council's greatest concern, however, is that the report has not considered the bigger issues in agreement making. Agreement making is the fundamental issue for the Business Council.

Agreements were brought into the system to allow for the unique circumstances of an enterprise, and they are meant to focus on the employment relationship. They fail to deliver on both of these fronts.

The negotiations for agreements are resource and time intensive. Negotiations are designed to be combative and put workers and enterprises in conflict.

An enterprise's resources need to be devoted to innovating, not negotiating an employment relationship. Perhaps most importantly, workplaces need to be collaborative, not in conflict.

When agreements are finally settled, they set the rules for three to four years. This is in direct contrast to the modern world in which enterprises operate. Business models can change overnight and enterprises cannot wait for an agreement to expire, to change how they operate.

Given their importance, the Business Council is of the firm view that the Commission needs to really agonise over how to improve agreement making – both the content and options.

### **We need a clear set of rules that specifies what can be regulated, not a set that specifies what cannot be regulated**

An enterprise agreement is a form of regulation. If the regulation was fit for purpose, all enterprise agreements would be limited to employment matters, and matters between the employer and employee representatives. This is not the case.

The current system does not define a clear set of rules about what is allowed in an agreement. Instead, it allows precedent to build and develop via common law. This fails to give all parties the certainty they need. It is also an open door for regulatory scope creep, as attested to by the breadth of inappropriate clauses in agreements today.

The Commission's report has proposed to make terms that restrict the engagement of contractors, labour hire and casual workers unlawful. The Commission has sought advice on additional clauses that should be codified as unlawful.

While the Business Council agrees these restrictions should not be permitted, the Business Council strongly cautions the Commission from taking the approach of codifying restrictions.

Regulation that prescribes all prohibited matters would not directly address the fundamental policy problem of excessive intervention in the operational management of enterprises. It may instead have the perverse outcome of encouraging continued intervention in areas not specifically identified in a list of prohibited matters.

The public policy task before the Commission is to define what **can** be included in agreements and why. The task is not to define what **cannot** be included.

### **Workers and enterprises should be given the option to negotiate an individual agreement**

The Business Council was very disappointed the Commission did not recommend allowing workers and enterprises the option to negotiate an individual agreement.

The current system can force enterprises to engage in negotiation, even where the enterprise has made the decision to operate under common law contracts. Given the lack of choice about engaging in negotiation, it is incumbent upon the authority imposing the legislation to provide options with the system.

The Business Council contends that the rejection of individual agreements is ideological. The ideology is clear in the legislation itself. The object of the Act states:

... ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system.

This review is an opportunity to move the workplace relations system away from ideology, including removing ideology from the legislation.

## **This review is a once-in-a-generation opportunity to reform workplace relations**

The Commission has requested evidence of the problems in the current system. The Business Council has reviewed a sample of 25 Modern Awards and 20 agreements and pulled out the clauses that go beyond the safety net or the employment relationship.

This sample is summarised in Appendix 1 and 2, and runs close to 100 pages. Any common sense reading of these documents illustrate that the current system is complex, confused and rigid.

The awards go beyond a safety net, the agreements go beyond the workplace relationship, and they combine to great a rigid system that will not be able to adapt to the modern world of work.

The workplace relations system needs to find a balance between creating a safety net for workers and having sufficient flexibility, so enterprises and people can innovate.

The draft report has built in the safety net, but needs to go much further to provide enterprises with flexibility, and create a system that is durable and future oriented.

Enterprises should not have to work around a complex, rigid and conflict-driven system. The system should facilitate success, not block it.

In its final report, the Commission should have the same ambitions for reform of the legislation, awards and agreement making, as it has for the Fair Work Commission. Its final report should include recommendations that overhaul these key components of the workplace relations system.

**Business Council over-arching recommendations**

These recommendations are designed to provide over-arching directions for the Commission's final report. The Business Council also makes recommendations for further repair, and technical recommendations throughout this submission.

**Business Council over-arching recommendation 1 – Whole of system**

The Commission designs a system that will be durable, and enable enterprises the agility they will need to respond to the forces of the modern economy.

The Commission demonstrates how each of its proposal will contribute to a system that drives collaboration, innovation, and ultimately, productivity.

**Business Council over-arching recommendation 2 - Benchmarking**

The Commission should benchmark Australia's system against the attributes and outcomes of workplace relations systems across the world that drive collaborative and highly productive enterprises.

**Business Council over-arching recommendation 3 – Productivity Commission recommendations**

The Commission's draft recommendations that have been largely agreed are not recontested in the final report.

**Business Council over-arching recommendation 4 – Legislation, awards, and agreements**

The bulk of the Commission's final report is devoted to a thorough examination and recommendations for repair of the areas that were not adequately covered in the draft report:

- a. The legislation, and the cumulative burden and effect of the component parts of the Fair Work Act
- b. The breadth and number of Modern Awards and the consequent rigidities in the labour market
- c. The consequences of the current agreement making system – including the combative nature, the content, and the range of agreements available to workers and enterprises – on the innovation and productivity of an enterprise.

## INTRODUCTION

The Business Council's response to the Productivity Commission's draft report on the workplace relations framework has been developed in conjunction with Business Council members across multiple sectors.

The Business Council is made up of over 130 companies across all key sectors of the economy. Collectively, Business Council members directly employ more than a million people across the entire country, of all ages, backgrounds and at all skill levels.

The Business Council is part of the broader large businesses community which employs 3.4 million people or 32 per cent of Australian workers, and contributes 44 per cent of Australia's economic output.

This submission has seven parts:

**Part 1** discusses the context for this inquiry, with a particular focus on the need for the workplace relations system to be future-oriented, and focused on the need to support innovative and collaborative workplaces.

**Part 2** considers the draft recommendations and outlines the Business Council's views and response to each recommendation.

**Part 3** considers the Productivity Commission's conceptual framework and the imperative for additional repair.

**Part 4** focuses on Modern Awards and provides significant evidence that the scope and terms of awards have gone beyond a minimum safety net. It proposes a more comprehensive repair agenda for the awards system by defining the scope of the safety net in an award.

**Part 5** focuses on agreement making and provides significant evidence of the breadth of coverage of enterprise agreements and their extension beyond the employment relationship into operational management. It proposes a more comprehensive repair agenda for agreement making – at both an enterprise and individual level.

**Part 6** responds to the queries raised by the Productivity Commission when the Business Council appeared at the Commission's hearing.

**Part 7** responds to the Productivity Commission's information requests.

The appendices summarise the additional evidence the Business Council has collated on Modern Awards and agreements.

## PART 1: CONTEXT FOR THIS REVIEW

### Key points

- Australia is facing enormous disruption, challenged by a change in global economic power, an ageing population, and the impact of technology and digitisation.
- In the face of these challenges, productivity and innovation are the keys to job creation and wage growth.
- The workplace relations system can set Australia up for innovation and growth, but the current system fails to do this.
- The Productivity Commission's final report needs to position us well for the future by designing a system that drives collaboration, innovation, and productivity.

In considering the Commission's draft report into workplace relations, the context in which this inquiry is being undertaken is crucial.

### **Australia's economy, demography and workplaces are in transition**

The Australian economy is undergoing substantial structural change in response to the largest fall in the terms of trade in 50 years, just as it begins to transition to a much older population.

Three forces of change and disruption are transforming the nature of our competitive and economic landscape, and the nature of work and workplaces.

First, there has been a seismic shift in global economic power. 70 per cent of global trade is now in intermediate goods and services and capital goods, not in finished goods.

Second, our demography is undergoing the most significant change since World War II. These changes are having a huge impact on the way people want to work, the years they will be working and our expectations of the employment relationship.

Third, digitisation and connectivity is fragmenting supply chains. Truly disruptive technologies will test the viability of established business models and challenge our competitiveness. Only a quarter of US Fortune 100 companies from 1994 are in the top 100 today.

These massive changes are putting the spotlight on Australia's productivity and competitiveness. However, our starting point is poor with our global competitiveness declining and our productivity stagnant.

As a nation we are talking about the need for a whole suite of policy changes that will help us respond to this disruption, grow our economy and preserve our living standards. In his remarks at the National Reform Summit in August, Glenn Stevens noted:

So in your deliberations today, a key question worth asking is: how do we generate more growth? Not temporary, flash-in-the-pan growth, but sustainable growth.<sup>1</sup>

## **The workplace relations system must support growth and innovation**

How we frame up the workplace relations discussion over the next six months has a real bearing on how we generate growth.

It is enterprises, in large part, that create economic activity and the vast majority of jobs. It will be enterprises that are agile, adaptive and globally oriented – be they large or small – that will create the job opportunities. This is true now and, although business models will be different, it will be true in the future.

Of course, enterprise productivity performance is influenced by many things, but the role of the workplace relations system should not be understated.

Labour productivity growth has accounted for more than 80 per cent of growth in hourly real wages over the past two decades. But our most recent quarterly wages growth was the weakest for 17 years and real wages growth has slowed.

Our future national income, and hence revenue growth, will have to come mainly from improving aggregate productivity rather than windfall gains in the terms of trade.

At the same time labour force participation rates will fall, putting pressure on growth. The Productivity Commission estimates that aggregate participation could fall from around 65 per cent in 2012–13 to 60 per cent by 2059–60, reducing hours worked per head by 4.5 per cent, with an equivalent depressing effect on GDP.<sup>2</sup>

Sustainable growth is clearly linked to productivity. Increasing productivity simply means getting more output from the same or fewer inputs. It is not about people working harder for longer hours and less pay.

## **Our existing workplace relations system is holding us back**

While no one, including the Business Council, can quantify the impact our workplace relations system has on aggregate productivity, we know that innovation is the key to productivity.

And innovation ultimately happens at an enterprise level. It is the people in an organisation who create change and drive productivity. It is managers and their teams working together to solve problems that supports risk taking and leads to success.

We need to make sure our workplace relations system encourages this. It needs to encourage workplace collaboration, rather than conflict. The current regulatory regime does not do this.

The current system extends beyond the employment relationship and loses the focus on the unique circumstances of the enterprise, and the shared interest of managers and workers in its success.

---

<sup>1</sup> Glenn Stevens, 'Reform and Economic Growth', remarks to the National Reform Summit, Sydney, 26 August 2015.

<sup>2</sup> Productivity Commission, *An ageing Australia: preparing for the future*, November 2013, p. 2.

This has significant consequences for how enterprises are managed, and stifles the potential for collaboration among teams on how to do things better.

It also stymies a manager's ability to mobilise their people. It requires them to negotiate simple decisions, and puts barriers in place to quick and responsive decision making – despite many of these decisions needing to be made in real time.

The current system discourages innovation and risk taking. When managers think they will have to undertake complex negotiations for every issue, they are discouraged from seeking, let alone putting forward, novel ideas.

Our current system has created a class of conservative, risk-averse managers in many industries. While there is no doubt the business community needs to improve our management culture, there is also no doubt that part of the problem should be attributed to the regulatory regime that establishes our workplace relations system.

Improving our workplace relations system so workers can innovate and enterprises can thrive is vital to productivity and growth.

### **To be effective a workplace relations system must find balance**

Glenn Stevens summed up the key challenge of workplace relations reform at the recent National Reform Summit:

There is no avoiding the need to have the right labour market arrangements. The question is how to have suitable rules that offer basic fairness, but with minimum adverse effects on enterprise, employment, and the scope for free agents to come together in ways that mutually suit them – and that grow the economy. Whether we have that balance right is a question you might address.<sup>3</sup>

We need to be forward, rather than backward, looking when we approach the question Glenn Stevens poses. We need to acknowledge the fact that we cannot create wealth and prosperity without successful enterprises. We also need to acknowledge the fact that we cannot create and maintain decent workplaces without rights, protections and responsibilities.

We need to think about how we can create collaborative workplaces, and move away from the current model that is combative. As our society and our economy undergo enormous transformation, we should be preparing ourselves for the jobs of the future, and preparing in a way that will offer people rewarding, continuous work, as industries change and adapt to external forces.

### **The Productivity Commission's final report needs to be more future focused**

Taking all of this into account, the question we have to ask of our workplace relations system is how well it positions us for the future. The Business Council's strong view is that the workplace relations system of today does not position us well for the future.

And while workplace relations has become a difficult and ideological topic to talk about, the Productivity Commission has a long track record of tackling difficult reform. It is the

---

<sup>3</sup> Glenn Stevens, op. cit.

right institution in Australia to consider this question as it can rise above the ideological debate, and focus on the public policy issue, rather than the politics of the issue.

The final report to this inquiry needs to go further than the recommendations in the draft report. It needs to take a long-term view, and design a system to support the creation of decent workplaces, decent jobs, and decent living standards, now and in the future. A system that positions Australia, as an economy and as a society that can adapt to change.

The test that should be applied before finalising the design of the workplace relations system is whether it will drive collaboration, innovation and, ultimately, productivity – the key to job creation and wage growth.

## PART 2: RESPONSE TO DRAFT RECOMMENDATIONS

### Key points

- The Commission has undertaken a significant piece of work which extensively examines components of the workplace relations system.
- The recommendations are sensible and practical and the Business Council supports the majority of them.
- The Business Council has provided additional technical recommendations or proposed amendments to support the Commission’s recommendations.

This section follows the structure of the Productivity Commission’s draft report and responds to recommendations by chapter.

The Business Council supports the majority of the recommendations, and in particular congratulates the Commission on its work and proposals relating to the:

- Minimum wage
- Greenfields agreements
- The suggestion of a no-disadvantage test in place of the BOOT
- The appointment process for Fair Work Commissioners,
- The focus on the behaviour of parties during the negotiation of an agreement.

### Draft recommendations, findings and information requests

Draft recommendation	Business Council response
Despite sometimes significant problems and an assortment of peculiarities, Australia’s workplace relations system is not systemically dysfunctional. It needs repair, not replacement.	Support While the Commission has made a number of practical recommendations that will improve the workplace relations system, the Business Council believes further repair is required (see Parts 3, 4 and 5).

### Chapter 3: Institutions

In its initial submission to the Productivity Commission’s inquiry, the Business Council called for governance reform to improve the support and confidence of all parties in the labour market. The Business Council therefore supports the proposed recommendations around governance.

While the Business Council supports these recommendations, it notes that governance reform can only improve the way in which the rules are applied or decisions are made. If the system is to be adequately repaired, governance reform needs to follow reform of the

rules that the institutions are implementing (see following sections for additional information on this issue).

Draft recommendation	Business Council response
<p>3.1 The Australian Government should amend the FWA to establish a Minimum Standards Division as part of the Fair Work Commission. This Division would have responsibility for minimum wages and modern awards. All other functions of the Fair Work Commission should remain in a Tribunal Division.</p>	Support
<p>3.2 The Australian Government should amend s. 629 of the FWA to stipulate that new appointments of the President, Vice Presidents, Deputy Presidents and Commissioners of the FWC be for periods of five years, with the possibility of reappointment at the end of this period, subject to a merit-based performance review undertaken jointly by an independent expert appointment panel and (excepting with regard to their own appointment) the President.</p>	Support
<p>3.3 The Australian Government should amend the FWA to change the appointment processes for Members of the FWC. This amendments would stipulate that:</p> <ul style="list-style-type: none"> <li>• an independent appointment panel would be established by the Australian Government and state and territory governments</li> <li>• members of the appointment panel should not have had previous direct roles in industrial representation or advocacy</li> <li>• the panel should make a shortlist of suitable candidates for Members of the FWC against the criteria in draft recommendation 3.4</li> <li>• the Commonwealth Minister for Employment should select Members of the FWC from the panel's shortlist, with appointments then made by the Governor General</li> </ul>	Support
<p>3.4 The Australian Government should amend the FWA to establish separate eligibility criteria for members of the two Divisions of the FWC outlined in recommendation 3.1.</p> <p>Members of the Minimum Standards Division should have well-developed analytical capabilities and experience in economics, social science, commerce or equivalent disciplines.</p> <p>Members of the Tribunal Division Membership should have a broad experience, and be drawn from a range of professions, including (for example) from ombudsman's offices, commercial dispute resolution, law, economics and other relevant professions.</p> <p>A requirement for the Panel and the Minister for Employment respectively is that they be satisfied that a person recommended for appointment would be widely seen as having an unbiased and credible framework for reaching conclusions and determinations in relation to workplace relations matters or other relevant areas.</p>	Support
<p>3.5 The Australian Government should require that the FWC publish more detailed information about conciliation outcomes and processes. In the medium term, it should also commission an independent review of the FWC conciliation processes, and the outcomes that result from these processes.</p>	Support

## Chapter 4: National Employment Standards

In its submission to the Productivity Commission's inquiry, the Business Council commented that the National Employment Standards reflect Australians' expectations of their employers and supported their continuation.

The Business Council supports the Productivity Commission's recommendations, but has some concerns about recommendation 4.3.

First, state, territory and Commonwealth governments do not have a forum in which to 'jointly examine' workplace relations.

Second, the drafting of the recommendation is open to interpretation. Is the Commission recommending governments increase the 20 days of paid annual leave, or recommending a cash out option?

If it is the former, there has not been a sufficient case made to increase paid annual leave. Additionally, the National Employment Standards are part of the safety net, and are therefore the floor of conditions. As such, if workers wish to increase their leave entitlements, this should be negotiated in agreements as part of conditions additional to the safety net.

Draft recommendation	Business Council response
4.1 The FWC should, as a part of the current four yearly review of modern awards, give effect s. 115(3) of the FWA by incorporating terms that permit an employer and an employee to agree to substitute a public holiday for an alternate day into all modern awards.	Support
4.2 The Australian Government should amend the National Employment Standards so that employers are not required to pay for leave or any additional penalty rates for any newly designated state and territory public holidays.	Support
4.3 Periodically, the Australian, state and territory governments should jointly examine whether there are any grounds for extending the existing 20 days of paid annual leave in the National Employment Standards, with a cash out option for any additional leave where that suits the employers and employee. Such an extension should not be implemented in the near future, and if ultimately implemented, should be achieved through a negotiated trade-off between wage increases and extra paid leave.	The intent of the recommendation is unclear. If the Commission is proposing governments increase the 20 days of paid annual leave, the recommendation is not supported. See commentary above.

## Chapter 5: Unfair dismissal

Draft recommendation	Business Council response
5.1 The Australian Government should either provide the FWC with greater discretion to consider unfair dismissal applications 'on the papers', prior to commencement of conciliation; or alternatively, introduce more merit focused conciliation processes.	Support
5.2 The Australian Government should change the penalty regime for unfair dismissal cases so that: <ul style="list-style-type: none"> <li>an employee can only receive compensation when they have been dismissed without reasonable evidence of persistent underperformance or serious misconduct</li> </ul>	Support

Draft recommendation	Business Council response
<ul style="list-style-type: none"> <li>procedural errors by an employer should not result in a reinstatement or compensation for a former employee, but can, at the discretion of the FWC, lead to either counselling and education of the employer, or financial penalties.</li> </ul>	
5.3 The Australian Government should remove the emphasis on reinstatement as the <i>primary</i> goal of the unfair dismissal provisions in the FWA.	Support
5.4 Conditional on implementation of the other recommended changes to the unfair dismissal system within this report, the Australian Government should remove the (partial) reliance on the Small Business Fair Dismissal Code within the FWA.	Support

## Chapter 6: The general protections

In its submission to the Productivity Commission's inquiry, the Business Council acknowledged the need for protections, but noted the implementation of some of the current protections are causing significant business issues for enterprises.

The Business Council acknowledges the Commission has sought to alleviate a number of these issues with their draft recommendations, and accordingly supports the proposed recommendations.

However, the discussion around adverse action demonstrates that the Commission has not come to terms with the challenges enterprises face with this protection. While the Council is not advocating removing the adverse action protection, it recommends the onus of proof rest with the party making the accusation. The Council also recommended the return to the former legislation where conduct was only unlawful if the sole or dominant purpose of the action was to avoid the instrument.

The Commission has argued that the onus of proof needs to rest with the party accused of taking adverse action because:

The decision maker, rather than the claimant, is in the best position to provide evidence about the reasons for his or her action. In essence, it is a tool used to tease out causal reasons for an action or actions, and to therefore consider a range of possible motives underlying such action.<sup>4</sup>

In all circumstances, the decision maker is in the best position to provide evidence about the reason for his or her action, yet this logic is only applied to adverse action. The Commission has not made the case for why the reverse onus of proof is so unique for adverse action, and the recommendations will not remove the current issues that this creates.

---

<sup>4</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 260.

**(Business Council technical recommendation 1 – Adverse action***(see Productivity Commission’s draft report Chapter 6)*

The Commission’s final report recommends that the onus of proof for adverse action is reversed onto the party making the allegation, and the reintroduction of the dominant purpose test.

In its submission to the inquiry the Business Council proposed:

‘all protections are grouped into one section of the Act and classified as Industrial Protections. This will enable workers, enterprises and representatives to understand at a glance what protection each party has.’

The Commission has not acknowledged this recommendation in its draft report, but in the interest of good regulation the Council continues to argue for this proposal and suggests the Commission include it as a recommendation in its final report.

**Business Council technical recommendation 2 – General protections***(see Productivity Commission’s draft report Chapter 6)*

The Commission’s final report recommends that all protections are grouped into one section of the Fair Work Act and classified as Industrial Protections.

Draft recommendation	Business Council response
6.1 The Australian Government should amend the FWA to formally align the discovery processes used in general protection cases with those provided in the Federal Court’s Rules and Practice Note 5 CM5.	Support
6.2 The Australian Government should modify s. 341 of the FWA which deals with the meaning and application of a workplace right. <ul style="list-style-type: none"> <li>Modified provisions should more clearly define how the exercise of a workplace right applies in instances where the complaint or inquiry is indirectly related to the person’s employment.</li> <li>The FWA should also require that complaints are made in good faith; and that the FWC must decide this via a preliminary interview with the complainant before the action can proceed and prior to the convening of any conference involving both parties.</li> </ul>	Support  The Business Council requests that the Commission, in the final report, discusses how these modifications would work in cases where an employer alleges breaches of the general protections and needs an urgent injunction.
6.3 The Australian Government should amend Part 3-1 of the FWA to introduce exclusions from complainants that are frivolous and vexatious.	Support
6.4 The Australian Government should introduce a cap on compensation for claims lodged under Part 3-1 of the FWA.	Support
6.5 The Australian Government should amend Schedule 5.2 of the <i>Fair Work Regulations</i> to require the Fair Work Commission to report more information about general protections matters. Adequate resourcing should be provided to the FWC to improve its data collection and report processes in this area.	Support

## Chapter 8: Minimum wages

Draft recommendation	Business Council response
8.1 In making its annual national wage decision, the FWC should broaden its analytical framework to systematically consider the risks of unexpected variations in economic circumstances on employment and the living standards of the low paid.	Support

## Chapter 9: Variations from uniform minimum wages

Draft recommendation	Business Council response
9.1 The Australian Government should amend the FWA so that the FWC is empowered to make temporary variations in awards in exceptional circumstances after an annual wage review has been completed.	Support
9.2 The Australian Government should commission a comprehensive review into Australia's apprenticeship and traineeship arrangements. The review should include, but not be limited to, an assessment of: <ul style="list-style-type: none"> <li>• The role of the current system within the broader set of arrangements for skill formation</li> <li>• The structure of awards for apprentices and trainees, including junior and adult training wages and the adoption of competency-based pay progression</li> <li>• The factors that affect the supply and demand for apprenticeships and traineeships, including the appropriate design and level of government, employer and employee incentives.</li> </ul>	Support

## Chapter 12: Repairing Awards

Part 4 of this submission outlines in detail the Business Council's proposals to further repair awards.

Draft recommendation	Business Council response
12.1 The Australian Government should amend the FWA to: <ul style="list-style-type: none"> <li>• Remove the requirement for the FWC to conduct four yearly reviews of modern awards</li> <li>• Add the requirement that the Minimum Standards Division of the FWC review and vary awards as necessary to meet the Modern Awards Objective.</li> </ul> <p>To achieve the goal of continuously improving awards' capability to meet the Modern Awards Objective, the legislation should require that the Minimum Standards Division:</p> <ul style="list-style-type: none"> <li>• Use robust analysis to set issues for assessment, prioritised on the basis of high yielding gains</li> <li>• Obtain public guidance on reform options</li> </ul>	Support  However, the Business Council contests the extent of repair proposed by the Productivity Commission and argues further repair is required (see Part 4).
12.2 The Australian Government should amend the FWA so that the Minimum Standards Division of the FWC has the same power to adjust minimum wages in an assessment of modern awards as the minimum wage panel currently has in annual wage reviews.	Support, noting our response to recommendation 12.1.

## Chapter 14: Regulated weekend penalty rates for selected consumer services

In its submission to the Productivity Commission inquiry, the Business Council proposed that these rates be moved to the Minimum Wage Order and be consistent rates across the economy.

The Business Council acknowledges that the Commission has taken a different approach to this issue. While the Business Council believes its proposed approach is more durable because it covers all industries and is more adaptable to change, the Commission's recommendations are practical and open a path for reform.

### Business Council technical recommendation 3 – Penalty rates

*(see Productivity Commission's draft report Chapter 14)*

The Commission's final report recommends economy-wide minimum rates for casual, overtime, penalty and shiftwork are established, and these rates are moved from awards to the Minimum Wage Order. As part of this process, request the Fair Work Commission review penalty rates and establish a definition of unsociable hours for each industry in a 24/7 economy.

Draft recommendation	Business Council response
<p>14.1 Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants, and cafe industries.</p> <p>Weekend penalty rates should be set to achieve greater consistency between the hospitality, entertainment, retail, restaurant and cafe industries, but without the expectation of a single rate across all of them.</p> <p>Unless there is a clear rationale for departing from this principle, weekend penalty rates for casuals in these industries should be set so that they provide neutral incentives to employ casuals over permanent employees.</p>	<p>Support</p> <p>However, the Business Council does not believe this is an enduring reform proposal, as it does not provide room for similar changes in other industries.</p> <p>The Productivity Commission should give further consideration to the proposal outlined by the Business Council in its original submission to this inquiry (see Recommendation 4 – Minimum Wage Order).</p>
<p>14.2 The FWC should, as part of its current award review process, introduce new regulated penalty rates as set out in draft recommendation 14.1 in one step, but with one year's advance notice.</p>	<p>Support, noting our response to recommendation 14.1</p>

## Chapter 15: Enterprise bargaining

The Business Council supports the intent of recommendation 15.4, but believes the current drafting is too broad.

### Business Council technical recommendation 4 – Bargaining

(see Productivity Commission’s draft report Chapter 15)

The Productivity Commission’s draft recommendation 15.5 is amended to read, ‘... provide written evidence that at least 5 percent of the employees to be covered by the agreement nominated them as a representative.’

The Business Council notes that agreement making has two components: the behaviour of participants while negotiations are occurring, and the content of agreements.

The Business Council supports the recommendations in this chapter. However, the recommendations are too narrowly focused on the behaviour of participants during the negotiation process. This narrow focus has come at the expense of examining the content, or permitted matters, in agreements.

Part 5 of this submission outlines the Business Council’s proposals to further repair agreement making.

Draft recommendation	Business Council response
<p>15.1 The Australian Government should amend Division 4 of Part 2-4 of the FWA to:</p> <ul style="list-style-type: none"> <li>• Allow the FWC wider discretion to approve an agreement without amendment or undertakings as long as it is satisfied that the employees were not likely to have been placed at a disadvantage because of the unmet requirement.</li> <li>• Extend the scope of this discretion to include any unmet requirements or defects relating to the issuing or content of a notice of employee representational rights.</li> </ul>	<p>Support the intent of the recommendation but propose the recommendation is broadened.</p> <p>Rather than limiting the Fair Work Commission to wider discretion, the Business Council proposes a positive obligation is placed on the Fair Work Commission to approve the agreement, as long as it is satisfied the employees were not likely to have been placed at a disadvantage.</p>
<p>15.2 The Australian Government should amend s. 203 of the FWA to require enterprise flexibility terms to permit individual flexibility arrangements to deal with all the matters listed in the model flexibility term, along with any additional matters agreed by the parties. Enterprise agreements should not be able to restrict the terms of individual flexibility agreements.</p>	<p>Support</p>
<p>15.3 The Australian Government should amend s. 186(5) of the FWA that:</p> <ul style="list-style-type: none"> <li>• Can be up to five years after the day on which the FWC approves the agreement, or</li> <li>• Matches the life of a greenfields project. The resulting enterprise</li> </ul>	<p>Support</p> <p>The Business Council emphasises the importance of</p>

Draft recommendation	Business Council response
agreement could exceed five years, but where so, the business would have to satisfy the FWC that the longer period was justified.	being able to match an enterprise agreement to the life of a greenfields project.
15.4 The Australian Government should amend the FWA to replace the better off overall test for approval of enterprise agreements with a new no-disadvantage test. The test against which a new agreement is judged should be applied across a like class (or series of classes) of employees for an enterprise agreement. The FWC should provide its members with guidelines on how the new test should be applied.	Support  The Business Council proposes the former ‘no disadvantage test’ is reintroduced in the form in which it previously operated.
15.5 The Australian Government should amend the FWA so that: <ul style="list-style-type: none"> <li>• a bargaining notice specifies a reasonable period in which nominations to be a bargaining representative must be submitted</li> <li>• a person could only be a bargaining representative if they represent a registered trade union with at least one member covered by the proposed agreement, or if they were able to indicate that at least 5 per cent of the employees to be covered by the agreement nominated them as a representative.</li> </ul>	Support, but propose the wording be amended to say: ‘...provide written evidence that at least 5 percent of the employees to be covered by the agreement nominated them as a representative.’
15.6 The Australian Government should amend the rules around greenfields agreements in the FWA so that bargaining representatives for greenfields agreements are subject to the good faith bargaining requirements.	Support
15.7 The Australian Government should amend the FWA so that if an employer and union have not reached a negotiated outcome for a greenfields agreement after three months, the employer may: <ul style="list-style-type: none"> <li>• continue negotiating with the union</li> <li>• request that the FWC undertake ‘last offer’ arbitration of an outcome by choosing between the last offers made by the employer and the union</li> <li>• submit the employer’s proposed Greenfield arrangement for approval with a 12 month nominal expiry date.</li> </ul> Regardless of the agreement-making process chosen by the employer, the ensuing greenfields arrangement must pass the proposed no-disadvantage test.	Support

## Chapter 16: Individual arrangements

In its submission to the Productivity Commission’s inquiry, the Business Council proposed that individual agreements be reintroduced into the workplace relations framework.

While the recommendations proposed around the individual flexibility arrangements (IFAs) are an improvement on the current situation, and therefore supported by the Business Council, IFAs are not a substitute for individual agreements.

Part 5 of this submission outlines the Business Council’s proposal on the need for choice and optionality in agreement making.

Draft recommendation	Business Council response
<p>16.1 The Australian Government should amend the FWA so that the flexibility term in a modern award or enterprise agreement can permit written notice of termination of an individual flexibility arrangement by either party to be a maximum of 1 year. The Act should specify that the default termination notice period should be 13 weeks, but in the negotiation of an agreement, employers and employees could agree to extend this up to the new maximum.</p>	Support
<p>16.2 The Australian Government should amend the FWA to introduce a new 'no-disadvantage test' (NDT) to replace the better off overall test for assessment of individual flexibility arrangements. The guidance in implementing the new NDT should also extend to collective agreements (as recommended in draft recommendation 15.4</p> <p>To encourage compliance the FWO should:</p> <ul style="list-style-type: none"> <li>• provide more detailed guidance for employees and employers on the characteristics of an individual flexibility arrangement that satisfies the new NDT, including template arrangements</li> <li>• examine the feasibility, benefits and costs of upgrading its website to provide a platform to assist employers and employees to assess whether the terms proposed in an individual flexibility arrangement satisfy a NDT.</li> </ul>	Support
<p>16.3 The FWO should develop an information package on individual flexibility arrangements and distribute it to employers, particularly small businesses, with the objective of increasing employer and employee awareness of individual flexibility arrangements. It should also distribute the package to the proposed Australian Small Business and Family Enterprise Ombudsman, the various state government offices of small business, major industry associations, and employee representatives.</p>	Support

## Chapter 19: Industrial disputes and right of entry

In its submission to the Productivity Commission's inquiry, the Business Council acknowledged the need for protections, but noted the way in which some of the current protections were working is causing significant business issues for enterprises.

The Business Council acknowledges the Commission has sought to alleviate a number of these issues with their draft recommendations, and generally supports the proposed recommendations.

In relation to recommendation 19.1, the Business Council notes that the test for commencement of bargaining should be defined clearly. In its submission to the inquiry, the Business Council argued that majority support determinations be obtained before protection action ballot orders can be obtained, and that this be done by a secret ballot. The Business Council believes recommendation 19.1 would benefit from this addition.

**Business Council technical recommendation 5 – Industrial disputes**

*(see Productivity Commission’s draft report Chapter 19)*

The Commission’s final report recommends that a majority support determination be obtained before a protection action ballot order can be obtained. Specify that establishing majority support, for the purposes of making a majority support determination under Section 237 of the Fair Work Act, must be by means of a secret ballot.

Recommendation 19.8 does not go to the issue of the use of communal spaces. The Business Council recommends the Commission develop an accompanying recommendation focused on this issue.

**Business Council technical recommendation 6 – Right of entry**

*(see Productivity Commission’s draft report Chapter 19)*

The Commission’s final report recommends that the Australian Government should amend the FWA so representatives are only permitted to enter communal spaces, including lunch rooms, following agreement from the enterprise, or where the enterprise refuses to offer an alternate room.

Draft recommendation	Business Council response
<p>19.1 The Australian Government should amend s. 443 of the FWA clarifying that the FWC should only grant a protected action ballot order to employees once it is satisfied that enterprise bargaining has commenced, either by mutual consent or by a Majority Support Determination.</p>	<p>Support in principle.</p> <p>While the Business Council notes this recommendation is an improvement on the current situation, it seeks clarification from the Productivity Commission on the definition of ‘commenced’ as this is important in determining whether the recommendation will have sufficient impact.</p>
<p>19.2 The Australian Government should amend s. 423(2) of the FWA such that the FWC may suspend or terminate industrial action where it is causing, or threatening to cause, significant economic harm to the employer <b>or</b> the employees who will be covered by the agreement, rather than both parties (as is currently the case).</p>	<p>Support in principle</p> <p>The Business Council supports the focus on significant economic harm, but notes the definition will be crucial to ensure effectiveness.</p>
<p>19.3 The Australian Government should amend the FWA so that where a group of employees have withdrawn notice of industrial action, employers that have implemented a reasonable contingency plan in response to the notice of industrial action may stand down the relevant employees, without pay, for the duration of the employer’s contingency</p>	<p>Support</p>

Draft recommendation	Business Council response
response.	
<p>19.4 The Australian Government should amend the FWA to grant the FWC the discretion to withhold a protected action ballot order for up to 90 days, where it is satisfied that the group of employees has previously used repeated withdrawals of protected action, without the agreement of the employer, as an industrial tactic.</p>	<p>The Business Council seeks clarification from the Productivity Commission on the outcome this recommendation is designed to achieve.</p>
<p>19.5 The Australian Government should amend the FWA so that where employees engage in brief work stoppages that last less than the shortest time increment used by their employer for payroll purposes, the employer should be permitted to choose to either:</p> <ul style="list-style-type: none"> <li>• deduct the full duration of the increment from employee wages. The maximum permissible deduction under this provision would be 15 minutes per person, or</li> <li>• pay employees for the brief period of industrial action, if the employer is willingly doing so to avoid the administrative costs of complying with prohibitions on strike pay.</li> </ul>	<p>Support</p>
<p>19.6 The Australian Government should increase the maximum ceiling of penalties for unlawful industrial action to a level that allows federal law courts the discretion to impose penalties that can better reflect the high costs that such actions can inflict on employers and the community.</p>	<p>Support</p>
<p>19.7 The Australian Government should amend s. 505A of the FWA for determining when the FWC may make an order to deal with a dispute about frequency of entry by an employee representative to:</p> <ul style="list-style-type: none"> <li>• repeal the requirement under s. 505A(4) that the frequency of entry would require an unreasonable diversion of the occupier's critical resources</li> <li>• require the FWC to take into account: <ul style="list-style-type: none"> <li>○ the combined impact on an employer's operation of entries onto the premises</li> <li>○ the likely benefit to employees of further entries onto the premises</li> <li>○ the employee representative's reason(s) for the frequency of entries.</li> </ul> </li> </ul>	<p>Support</p>
<p>19.8 The Australian Government should amend the FWA so that unions that do not have members employed at the workplace and are not covered by (or are not currently negotiating) an agreement at the workplace, would only have a right of entry for discussion purposes on up to two occasions every 90 days.</p>	<p>Support, noting the Business Council does not believe this recommendation goes far enough to prevent the problems on worksites from continuing to occur and has proposed an additional recommendation.</p>

## Chapter 20: Alternative forms of employment

The Business Council supports this proposal, but notes that agreement clauses go beyond the issue of restricting engagement, and often require consultation. The need to consult can effectively become a barrier to an enterprise engaging the workers they need. The legislative drafting will need to take this issue into consideration.

Draft recommendation	Business Council response
<p>20.1 Terms that restrict the engagement of independent contractors, labour hire and casual workers, or regulate the terms of their engagement should constitute unlawful terms under the FWA.</p>	<p>The Business Council has proposed changes to agreements which would limit permitted matters – an inclusive rather than exclusive list.</p> <p>If the system is not changed, the Business Council supports this recommendation, noting that drafting of this clause will be important as it will need to ensure no restrictions, such as requiring consultation, are permitted.</p>

## Chapter 21: Migrant workers

Draft recommendation	Business Council response
<p>21.1 The FWO should be given additional resources for investigation and audits of employers suspected of underpaying migrant workers (including those in breach of the <i>Migration Act 1958</i>).</p> <p>The Migration Act should be amended so that employers can be fined by at least the value of any unpaid wages and conditions to migrants working in breach of the Migration Act, in addition to the existing penalties under the Act.</p>	<p>Support</p> <p>The Business Council notes it is important for Commonwealth legislation and agencies to work in partnership and ensure alignment around these issues.</p>

## Chapter 22: Transfer of business

The Business Council supports the intent of the proposed draft recommendation, but believes it does not assist in cases where an employee genuinely wishes to be redeployed to a position with an associated entity in a redundancy situation (as this may not be at ‘his or her instigation’).

The Business Council therefore proposes that the transfer of business provisions should be amended to make it clear that the FWC has the jurisdiction to issue s.318 orders where conditional offers of employment have been made and accepted.

In its initial submission to the Productivity Commission inquiry the Business Council proposed the restoration of the 12-month ‘sunset clause’ for transferring instruments which applied under the Workplace Relations Act.

From reviewing the draft report, the Business Council cannot see an argument against

**Business Council technical recommendation 7 – Transfer of business**

*(see Productivity Commission’s draft report Chapter 22)*

The Commission’s final report recommends that the Australian Government should amend Parts 2–8 of the Fair Work Act to restore the 12-month ‘sunset clause’ for transferring instruments which applied under the Workplace Relations Act.

this proposal, and therefore requests that the Productivity Commission reconsider the recommendation.

Draft recommendation	Business Council response
22.1 The Australian Government should amend the FWA so that an employee’s terms and conditions of employment would not transfer to their new employment when the change was at his or her own instigation.	Support, noting commentary above

## PART 3: THE CASE FOR ADDITIONAL REPAIR

### Key points

- The draft report is an important piece of work that goes a long way to resolving significant issues that have plagued the economy for many years.
- The report has delivered a set of recommendations that will create a strong safety net, but has not given sufficient consideration to the adverse impact of the workplace relations system on enterprises.
- The review has overlooked the importance of the legislation, and the significant problems that result from each component of the legislation.
- The cumulative impact of legislation is significant and the Commission needs to assess the system as a whole and its cumulative burden.
- The legislation needs a thorough examination and to be overhauled – the rules of the workplace relations system need to be rewritten.
- Reform of the Fair Work Commission is needed, but will be ineffective without accompanying reform of the legislation.

The Business Council congratulates the Productivity Commission for undertaking a significant and important piece of work which extensively examines components of the workplace relations system, including the minimum wage, penalty rates and the behaviours of parties during negotiations.

The draft report by the Commission has made many practical recommendations that the Business Council supports. In considering Glenn Steven's question, the draft recommendations have a strong focus on the safety net and, if adopted, will deliver a set of rules for the workplace relations system that offers fairness.

However, the Business Council believes that the second part of Glenn Steven's question – how to have fairness while creating minimum adverse effect – requires further examination.

In particular, the Business Council believes there is a vital gap in the Commission's analysis and consideration of the legislation and the subordinate instruments. Subsequently, the draft recommendations on awards and agreement making are not sufficient to repair the system, and substantial further work is required.

### **Government, not the Fair Work Commission has the most influence on the workplace relations system**

The Productivity Commission's draft report is underpinned by what it has described as its conceptual framework. As such, the conceptual framework is the starting point for considering whether there is a case for additional repair.

The Commission argues:

An immediate observation about policy in WR is that, unlike fiscal policy, government does not control the most responsive levers directly, and by their nature, legislative changes are often slow to make.<sup>5</sup>

Governments have two choices in determining their role in public policy. They can, as they do in fiscal policy, take on the role of decision making. Or they can establish the rules by which a system is governed, or a market is regulated.

There has been a trend in public policy, both in Australia and internationally, for governments to increasingly move away from the role of decision making, to one of establishing the rules. This is the case for workplace relations, and a great number of other public policy areas like education, health and human services.

This trend however does not mean governments have no control in these fields. Legislation is the primary policy lever for governments. Legislation creates the rules of a system. Legislation also establishes the institutions that interpret and apply the rules of the system.

### **The Productivity Commission's conceptual framework overlooks the importance of legislation**

Despite being government's most powerful policy lever, legislation does not appear in the Productivity Commission's conceptual framework (Figure 1.3) which lists six policy levers:

- institutions and their decision-making processes
- minimum wages and awards
- contracting arrangements
- bargaining
- safety net/protections, and
- competition law.

Consistent with institutions and their decision-making processes being the first policy lever in their framework, the Commission has devoted a great deal of attention in their draft report to the regulator and how the rules of the system are implemented.

Through its delegated decision-making authority, the FWC does have significant influence and power in the workplace relations system. The Productivity Commission's conclusion that '*performance and governance of institutions is therefore a critical design aspect of the system*'<sup>6</sup> is a fair conclusion.

However, the FWC exists because it was created by the legislation. Consequently, it is not a fair conclusion that, '*Above all, the key decision-makers are the institutions created by*

---

<sup>5</sup> *ibid.* p. 75.

<sup>6</sup> *ibid.*

*the Australian Government ...*<sup>7</sup> The key decision-makers are the people who make the rules, not the people or institutions who implement them.

### **Institutional reform is redundant without legislative reform**

The reason for the Commission's focus on institutions is made clear in a recent speech given to the Committee for Economic Development of Australia (CEDA) by the chairman:

I have been asked since the report draft was released what is in it for the Workplace Relations system of tomorrow. And my answer is a restructured regulator. The workplace relations system needs above all else a more robust, transparent process and the expertise to apply it comprehensively across the areas it regulates – much as Productivity Commission reports have found for many policy areas with high regulatory content. It is obvious and yet so often ignored that if there is to be regulation, the regulator should be fit for purpose.

There is no doubt that a system will fail to deliver the desired outcomes if the regulator is poor. And there is no doubt we need a restructured regulator. However, if the legislation and subordinate instruments are not fit for purpose, the performance and governance of the institutions are academic. If the regulation itself is poor, the best functioning regulator still cannot deliver good outcomes.

The conceptual framework needs a much stronger focus on legislation and its efficacy. In the same speech to CEDA the chairman stated, 'So from first principles we sought to establish the fundamental basis for regulating, in order to judge its effectiveness.'

From a first principles point of view, the first step should be to assess the efficacy of the legislation and the system the legislation creates. An assessment needs to be made as to whether the legislation is delivering the desired outcome, as articulated in the objects of the Act. The drafting and construction of the legislation and its subordinate instruments also need to be assessed.

### **The legislation – the Fair Work Act – needs to be overhauled**

The Commission notes that industrial action in Australia is at low levels. While this is true, it does not mean that the legislation is working well. Industrial action represents a form of end game failure.

Low levels of industrial action could point to the fact that the system encourages employers to give in to negotiations because of the time and effort involved in getting an enterprise agreement in place.

The range of clauses currently in enterprise agreements that delve deeply into the management of organisations certainly suggests that employers will give in to demands that go well beyond the employment relationship.

People also cite examples of enterprises that work around the system, or succeed in spite of the system. And then they point to these examples to say the system is working well.

It is true that enterprises can work around the system. But it is not good public policy to settle for a system that is complex and difficult to use, and needs to be worked around.

---

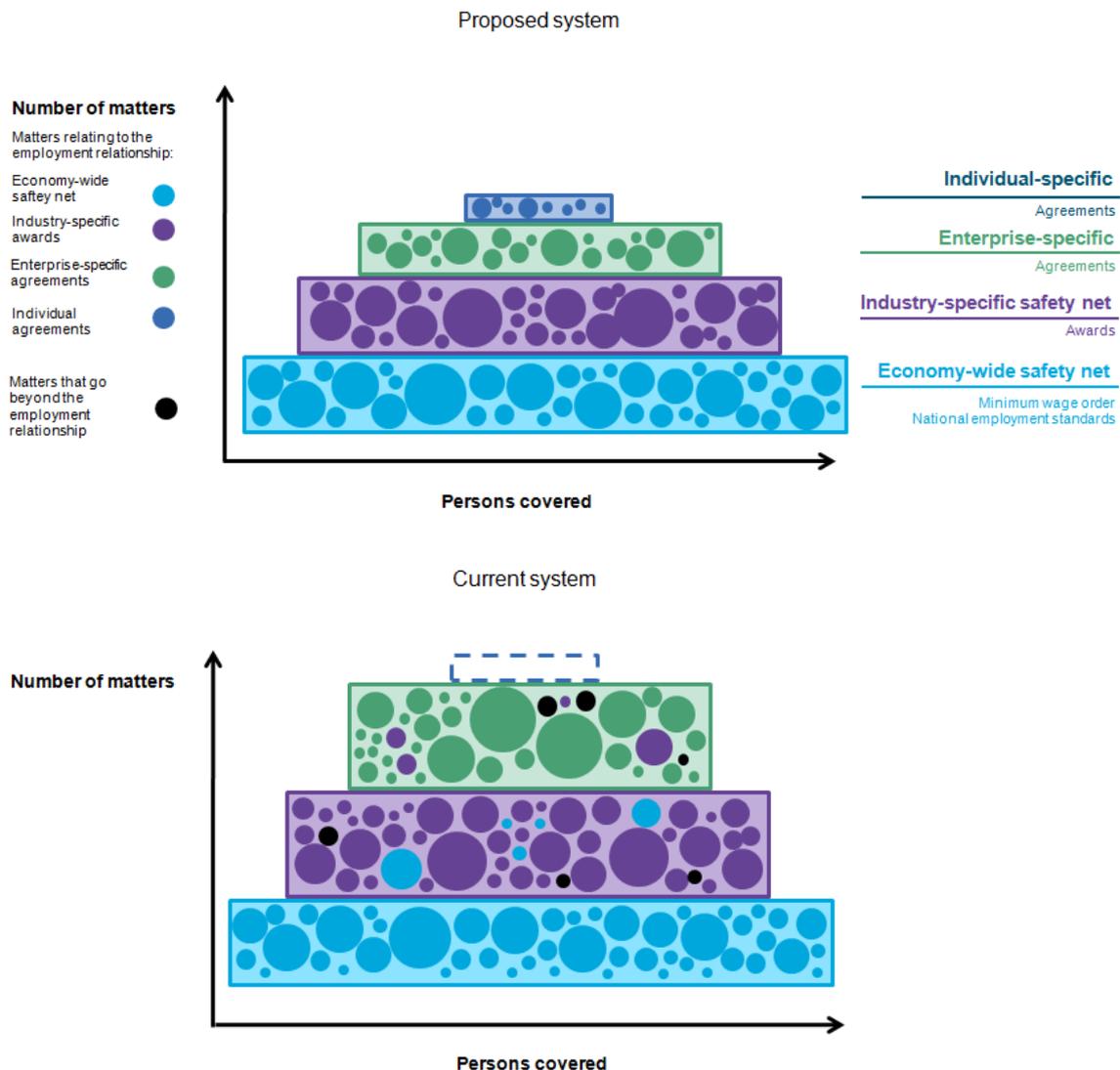
<sup>7</sup> *ibid.*

The workplace relations system has many regulatory instruments. The Fair Work Act, the Minimum Wage Order, the National Employment Standards, Modern Awards, and agreement making are all forms of regulation.

These instruments do not operate in isolation. They interact with each other and create a cumulative regulatory burden. The Commission needs to examine the cumulative adverse effect of the minimum wage, penalty rates, awards, and all the matters in agreements, on enterprises, employment and overall growth.

As illustrated in the following diagrams, the current workplace relations system has gone far beyond its role of providing a safety net, and a regulatory instrument to manage the employment relationship.

As importantly, the role of each regulatory instrument has become blurred. As demonstrated in the current system diagram, the economy-wide safety net has moved into awards; awards have taken on aspects of enterprise agreements; and matters beyond the employment relationship have become embedded in awards and enterprise agreements.



In its report the Commission notes:

... as is always the case for regulation to be warranted, it must still be 'fit for purpose', minimise adverse side-effects and be able to pass a broad benefit–cost test.

This set of tests needs to be applied evenly across all the instruments of the workplace relations system, as well as being applied to the cumulative effect of all the instruments.

### **A more wide-ranging and extensive repair agenda is essential**

Using its conceptual framework, the Commission has concluded the workplace relations system needs to be repaired rather than replaced. The Business Council supports this conclusion, but does not believe the proposed repair agenda is sufficient.

Focusing repair primarily on the institutions that interpret and apply the rules is analogous to wallpapering over a hole in the wall, rather than repairing the wall itself and then applying wallpaper. Institutional reform can only repair the workplace relations system if the rules the institutions are implementing are also repaired.

The legislation is so important because it creates the workplace relations system. It drives the culture. It drives the behaviour. Sub-optimal rules limit the ability of workers and enterprises to improve and create modern, agile workplaces.

The Commission has called for '*views on where the proposed reforms could be further improved, or where other reforms should be considered.*'<sup>8</sup>

The Business Council strongly urges the Commission to expand its scope of inquiry beyond the institutions, and give greater weight to the rules of the system, particularly for awards and agreement making. Parts 4 and 5 of this submission provide substantial evidence of where the Commission should focus its attention for further repair.

In the chairman's speech to CEDA, he observed, '*Based on history, we will not be going this comprehensive review pathway again for years.*'<sup>9</sup> The Business Council agrees, and believes this inquiry is a once-in-a-generation opportunity to reform workplace relations.

From a public policy point of view, good regulation and a good system are transparent. They are easy to understand and use. They are predictable and enforceable. That is not the workplace relations system we have today, but it should be the aspiration for our workplace relations legislation.

The Commission should seize this chance to repair the legislation so we have a system that is fit not only for today, but can be adapted to manage the changes our workplaces will face and be a workplace relations system of tomorrow.

---

<sup>8</sup> *ibid.* p. 63.

<sup>9</sup> Peter Harris, 'Workplace Relations', remarks to the Committee for Economic Development of Australia, Melbourne, 14 August 2015.

## PART 4: MODERN AWARDS

### Key points

- Awards are part of the safety net and should remain part of the safety net in the future workplace relations system.
- There are too many awards in the current system.
- A thorough examination of awards demonstrates they have ventured into the territory of issues that enterprises and workers should negotiate.
- Awards have also ventured into job design which creates unnecessary rigidities in the labour market that are not suited to the modern ways of work.
- The Commission needs to acknowledge awards have gone far beyond their core purpose of a safety net.
- The Commission should specify how awards can be returned to their core purpose of establishing a floor of wages and conditions.

### **The Business Council agrees with the Commission's conclusion that awards are a safety net**

The Commission's draft report devotes four chapters and approximately 150 pages to discussing Modern Awards and penalty rates (contained in awards) and repeatedly notes that the role of Modern Awards is to set a minimum floor, or a safety net.

The Commission notes that award application has significantly declined to only 19 per cent of the labour market.<sup>10</sup> While this is true, it overlooks the fact that awards are the starting point for negotiations of agreements. As a result, awards set a minimum floor or a safety net for at least 60 per cent of the market. Awards therefore have a significant impact on labour relations in Australia.

The Commission argues that, from a public policy perspective, the role of regulation in workplace relations is to address the imbalance of market power:

The Productivity Commission has concluded awards should be retained to provide a safety net to address the imbalance of market power.<sup>11</sup>

This proposition, and the nature and extent of the imbalance, could be argued indefinitely. To prevent academic arguments, the Business Council will not contest that this is the role of regulation in workplace relations.

But, the Council will contest how broad the regulation should be to address the imbalance. Awards cannot have carte blanche in the employment relationship. There are always trade-offs, and good regulation cannot have the costs exceeding the benefits and be open-ended.

<sup>10</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 97.

<sup>11</sup> *ibid.* p. 427.

## The Commission still has the public policy task of defining the breadth of the safety net

In his speech to CEDA, the chairman called for responders to the draft report to highlight issues of public policy, *'But if a public policy problem exists, show us.'*<sup>12</sup>

As argued in its initial submission to the Commission's inquiry, the Business Council contends that the problem of the awards system is that the construction and breadth of awards goes far beyond their purpose. Awards are meant to be a safety net, but they do not serve this purpose.

### The Productivity Commission defines awards as part of the safety net

*'Awards are the regulations that describe the minimum wages and conditions of employment for the majority of employees in Australia.'* p. 391

*'Awards are part of the safety net in Australia's workplace relations framework. Specifically, awards help to balance unequal bargaining power between employees and employers.'*  
p. 391

*'It also reflects a conscious effort by consecutive Commonwealth Governments in the 1990s and 2000s to shift the role awards play away from setting wages and conditions ... towards setting a safety net to stop wages and conditions from falling below a regulated floor ...'*  
p. 397

*'The Keating Government's Industrial Relations Reform Act 1993 (Cth) stipulated that awards should act as a safety net of minimum wages and conditions of employment underpinning direct bargaining ... By the 1990s, the award system was viewed as providing a 'floor of minimum labour standards' ... and as a safety net above which employees would receive wage increases through enterprise level bargaining.'* p. 413

*'Consequently, while the shift to a safety net signifies an important change in emphasis for awards, and for the WR system in Australia more generally, the efforts to decentralise the system have not eliminated the role awards have always played as wage setting instruments and as a floor for negotiating above award wages and conditions.'* p. 414

*'The intent of the changes introduced under the FW Act was for awards to be 'an important safety net and an effective floor for collective bargaining.'* p. 416

*'As part of the safety net in Australia's WR framework (along with the national minimum wage and the NES), the role of awards is to ensure that all employees in Australia receive reasonable wages and conditions for their work, and to counter the poor bargaining power of vulnerable employees.'* p. 419

Productivity Commission draft report

<sup>12</sup> Peter Harris, op. cit.

The Commission has not taken the next step to define what would constitute an appropriate safety net to address the imbalance of power, or assess whether awards are serving this purpose of a safety net. This is the public policy problem the Business Council would urge the Commission to examine and solve in its final report.

The Business Council believes this is a critical gap in the Commission’s draft report. If, as the Commission states, the role of awards is to provide a safety net, then the breadth of that safety net needs to be defined by the Commission. The task of then reviewing and measuring each award against that safety net could be delegated by the government to the Fair Work Commission.

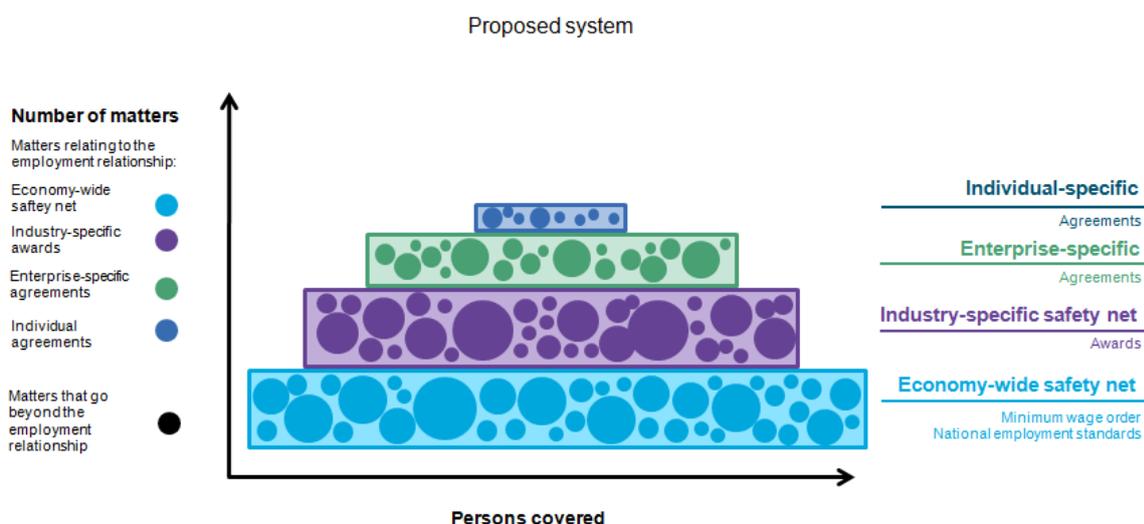
The draft report argues, ‘*Simplicity for simplicity’s sake is not a good enough reason to streamline conditions and entitlements in awards.*’<sup>13</sup> The Business Council is not arguing for simplicity, it is arguing for regulation to be fit for purpose.

The following section proposes a set of key principles to define the safety net to achieve this purpose in workplace relations.

### A safety net is made up of a floor of wages and conditions

Historically, government decision making and collective power have been the key levers used to address the imbalance. This has continued in the current workplace relations system, and the foundation for addressing the imbalance is the safety net.

As illustrated in the diagram below, in a well-designed system the safety net begins at an economy-wide level. It is made up of the Minimum Wage Order (MWO), which sets a floor for wages, and the National Employment Standards (NES), which sets a floor for workplace conditions.



The role of the MWO and NES have not been heavily contested in the current review. While not contested, the content of both are very important as they form the foundation of

<sup>13</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 456.

the safety net. The Business Council therefore proposes the first principle of the safety net be focused on these subordinate instruments.

***Principle 1: The Minimum Wage Order and National Employment Standards are the foundation of the workplace relations safety net and include any economy-wide standards.***

The MWO and NES are therefore the starting point of awards. Each award should begin with a set of standard opening clauses which establish this floor. Any additional clauses in awards should then be focused on establishing a floor of wages and conditions that are necessary to remove the imbalance of power. Awards should therefore be limited to industry-specific circumstances, and not be duplicative.

***Principle 2: Awards build upon the Minimum Wage Order and the National Employment Standards and establish a floor of wages and conditions specific to an industry.***

The next step, and far more difficult question to answer, is what areas require regulation to provide a better power balance between employees and employers, and how broad should the safety net be? The easiest approach is to break the issues down into wages and conditions, consistent with the MWO and the NES.

### **Base wages belong in the Minimum Wage Order, not awards**

The MWO includes the national minimum wage which is a base rate of pay. It also includes five other categories of special national minimum wages and a rate of casual loading.

If awards are to build upon the foundation of the MWO, they need to build on these base rates of pay, and consider if there are other wage matters that should contribute to an industry-specific safety net.

It is interesting to note that the MWO does not include economy-wide rates for overtime, unsociable hours, or shiftwork. The award objectives in the Fair Work Act require the Fair Work Commission to take into account:

- (da) the need to provide additional remuneration for:
  - (i) employees working overtime; or
  - (ii) employees working unsociable, irregular or unpredictable hours; or
  - (iii) employees working on weekends or public holidays; or
  - (iv) employees working shifts<sup>14</sup>

---

<sup>14</sup> Fair Work Act 2009, p. 184.

There is no clear rationale for why additional remuneration would sit in awards rather than the MWO. It appears to be more a result of history than design, as awards were the primary tool for establishing a floor, with Commonwealth Government intervention a relatively recent phenomenon.

The Business Council has previously argued, and will continue to argue that, in the longer term, the additional remuneration rates should be moved to the MWO. Notwithstanding this proposal, even if the MWO included additional remuneration rates, awards would still need to define if and when additional remuneration is required as part of the safety net.

*(Example of a clause that goes beyond the safety net. Further examples are listed throughout this Part.)*

### **Wine Industry Award 2010**

#### **8.1 Consultation regarding major workplace change**

##### **(a) Employer to notify**

(i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

(ii) Significant effects include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

##### **(b) Employer to discuss change**

(i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

(ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).

(iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

## Awards should set a wage floor for each industry

In many circumstances employers have greater power in setting the price they will pay for labour, particularly when the skill level of the employee is readily available and employees are easily recruited. It is therefore reasonable for awards to set a floor in each industry for both a base wage and for additional remuneration for workers to counter this power imbalance.

In considering this principle, the question that needs to be posed is: what constitutes a base wage? At what point is a wage rate going beyond the safety net and beginning to enter into what should be negotiated between an enterprise and their workers, either collectively or singularly?

The **Health Professionals and Support Services Award 2010** is a good case study. There are 31 minimum weekly wages for health professional employees specified in the award.

### Health Professional—level 4

A health professional at this level applies a high level of professional judgment and knowledge when performing a wide range of novel, complex, and critical tasks, specific to their discipline.

An employee at this level:

- has a proven record of achievement at a senior level
- has the capacity to allocate resources, set priorities and ensure budgets are met within a large and complex organisation
- may be responsible to the executive for providing effective services and ensuring budget/strategic targets are met
- supervises staff where required; and
- is expected to develop/implement and deliver strategic business plans, which increase the level of care to customers within a budget framework.

The lowest rate is a base weekly wage of \$698.40 or \$36,316.80 per annum, and the highest is \$1848.60 per week or \$96,127.20 per annum. The lowest weekly wage of \$698.40 is 6 per cent more than the national minimum wage, and the \$1848.60 weekly wage is 181 per cent more.

It is clear in this example that the minimum weekly wages in awards go beyond a safety net. While an argument could be made for weekly wages that are 6 per cent above the national minimum wage, it would be difficult to justify how or why salary floors need to be 50, 100 or 180 per cent more than the minimum wage.

## **Awards have ventured into job design and create rigidities in the labour market**

In considering the highest pay rate in the award (Health Professional – level 4) it becomes clearer that the award is not setting a floor for wages – it is venturing into the territory of job design.

Job design is not the role of the safety net. Job design is specific to an enterprise and should not form part of an award.

The breadth of wages specified in this award, and awards more broadly, lend themselves to expansion of the award into job design. If an employer is required to pay 188 per cent of the minimum wage as the base wage of an employee, then the employer will expect to demand a specific set of skills.

To return to Glenn Steven's point, awards should offer basic fairness and minimise adverse effects on enterprises. Job design is not basic fairness, nor is it the role of the safety net. Additionally, restrictive job design is not how the modern workforce operates.

The modern workforce is about individuals taking on broader tasks, not being confined to a pre-determined list. Skills, and the demand for skills, will continue to change. So too, will the jobs that people do.

We do not know what the jobs of the future will be, but we do know that the more rigid the system is in defining job roles, the more difficult it will be for enterprises to adapt. And Modern Awards need to support this changing environment.

If awards are to meet their role of setting a floor, then wage rates within awards need to be setting true floors that would establish the minimum wage for each role, rather than multiple pay points for roles.

***Principle 3: Awards should establish a floor for a base wage for each employment category (limited to 5 per award), and specify when employers are required to provide additional remuneration for workers required to work overtime, unsociable, irregular or unpredictable hours, and shifts.***

## **Awards should set an industry floor of conditions building on the NES**

The second component of the safety net is minimum conditions. The key question in constructing a safety net is: what categories are needed to establish a floor of minimum workplace conditions? This question must be linked back to the purpose of the safety net as defined by the Productivity Commission: to address the imbalance of market power.

As noted earlier, the imbalance of market power is strongest when the labour being supplied is interchangeable, and/or there is excessive market supply. In these cases, the employer could theoretically demand something of workers that was not consistent with community norms, but the worker would comply for fear of losing their role and therefore their income and livelihood.

## Vehicle Manufacturing, Service and Retail Award 2010

### 13.3 Casual conversion to full-time or part-time employment

(a) A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.

In creating the minimum conditions of the safety net, the government needs to set up rules that counter this power imbalance and ensure that the terms and conditions employers offer to all employees are consistent with 'ethical and community norms'.<sup>15</sup> At the same time, it is important that the rules established are designed to set a floor, not enter into the realm of the employment relationship.

The NES provides the starting point for minimum conditions. There are 10 minimum standards in the NES covering four categories:

1. Maximum hours per week
2. Leave, including annual; community service; long service; parental; personal/carer's and compassionate; and public holidays
3. Notice periods for termination and compensation for being made redundant; and
4. Information provision via the Fair Work Information Statement.

As the economy-wide floor of workplace conditions, these four categories can be the starting point for establishing a floor of conditions at an industry level.

The conditions in the NES are economy-wide because they have broad application. The first question to be considered is whether there are industry-specific variations from the floor established by the NES. Noting that the NES cannot be diminished, categories 1 and 4 are the only two categories where industry-specific floors could be introduced.

***Principle 4: The NES categories that can be expanded in awards to introduce an industry-wide floor are maximum hours per week, and information provision.***

<sup>15</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 3.

## Conditions should be limited to the community's expectation of workplaces

The final question in defining the safety net is what conditions of work, beyond the NES, need to be defined in awards to compensate for the power imbalance.

Returning to the Commission's point about community norms and people's expectations of workplaces, these should be used to determine the floor, beyond the NES.

When you think about the safety net from this perspective, most people would agree it covers a broad field:

1. Fair remuneration for the required work, including receiving all entitlements in a specified time period
2. Reasonable hours, including sufficient notification about when the work hours are, particularly shiftwork
3. A safe workplace, both physical and psychological, and
4. Job security.

Given that the NES provides a level of job security and awards should not be duplicative, awards should focus on the first three categories.

***Principle 5: Awards can establish industry-wide floors for workplace conditions that guarantee fair remuneration for the work required, reasonable hours and sufficient notification of rosters, and a safe workplace.***

### **Business Council additional repair recommendation – Modern Awards**

The Commission's final report recommends that the following five principles are used to define the safety net:

**Principle 1:** The Minimum Wage Order and National Employment Standards are the foundation of the workplace relations safety net and include any economy-wide standards.

**Principle 2:** Awards build upon the Minimum Wage Order and the National Employment Standards and establish a floor of wages and conditions specific to an industry.

**Principle 3:** Awards should establish a floor for a base wage for each employment category (limited to 5 per award), and specify when employers are required to provide additional remuneration for workers required to work overtime, unsociable, irregular or unpredictable hours, and shifts.

**Principle 4:** The NES categories that can be expanded in awards to introduce an industry-wide floor are maximum hours per week, and information provision.

**Principle 5:** Awards can establish industry-wide floors for workplace conditions that guarantee fair remuneration for the work required, reasonable hours and sufficient notification of rosters, and a safe workplace.

## **To make the system future oriented the Commission should reduce the number of awards and their scope**

In the Business Council's initial submission to the inquiry, the Council proposed that awards should be limited to 10 clauses.<sup>16</sup> This proposal was a contribution to the debate about what constitutes a safety net. As noted in the submission, the Council welcomed debate on the whether this list was the appropriate one.

The Council strongly believes that this list of clauses is consistent with the safety net, and urges the Commission to recommend these clauses form the basis of awards

### **Aluminium Industry Award 2010**

#### **22.6 Excessive leave**

An employer may direct an employee to take paid annual leave if the employee has accrued more than eight weeks or, in the case of continuous shiftworkers, 10 weeks, paid annual leave, and the employer and the employee are unable to reach agreement on the taking of the leave provided that the remaining balance must be not less than 8 weeks. An employer must give an employee at least 28 days' notice prior to the date the employee is required to commence the leave.

The Business Council also recommended that the 122 awards be reduced to one award per industry. This recommendation has resulted in significant consternation, and the Commission has not accepted this recommendation.

The Business Council acknowledges that reducing the number of awards would be difficult. However, given that awards are so much broader than the safety net, a return to their core purpose should result in commonality across awards. This could be the starting point for a reduction in the number of awards.

The Business Council does not believe that its proposals are the only way to resolve issues. However, the Commission has not grappled with the issue of too many awards, and the rigidities this creates in the labour market.

The Business Council would argue it is incumbent upon the Commission to resolve this public policy problem, and urges the Commission to develop a range of options to reduce the number of awards.

---

<sup>16</sup> In March 2015, accident pay was removed from a number of awards. Consequently the Business Council has removed it from its list of 10 included clauses, so the proposed list now includes 9 clauses.

**Business Council additional repair recommendation 2 – Modern Awards**

The Commission's final report recommends awards are returned to their safety net purpose with clauses limited to:

1. agreement in writing to pattern of hours of work (part-time workers)
2. allowances for travel costs/times and transport
3. apprenticeship requirements
4. employment categories, including definition of a shift-worker
5. industry specific redundancy schemes
6. national training wage, and allocation of traineeships to wage levels
7. ordinary hours of work
8. rostering issues, limited to maximum days of work, maximum hours per day, meal breaks, minimum break between times worked and minimum engagement
9. wage classifications (up to a maximum of 5 categories per award).

**Business Council additional repair recommendation 3 – Modern Awards**

The Commission's final report identifies a range of options to reduce the number of awards from 122 to a number that removes rigidities from the economy while reflecting the diversity of the Australian economy.

## PART 5: AGREEMENT MAKING

### Key points

- Agreement making is the most important issue for the Business Council.
- The Business Council rejects the Commission's conclusion that radical reform of agreement making is not required.
- The Commission's report has not given sufficient focus to the combative nature of agreement making, the scope of the content of agreement making, or the lack of options for enterprises and workers.
- The content of agreements has gone far beyond the employment relationship.
- The system should have a clear set of rules articulated in the legislation, rather than using precedent to determine the appropriateness of agreement content.
- The public policy task for the Commission is to define what should sit in agreements and codify inclusions, **not** codify exclusions.
- The current system can force enterprises to negotiate an agreement, even if that is not their preferred approach, but does not provide workers or enterprises the choice of an individual agreement.
- The rejection of individual agreements is ideological and ideology should be removed from the legislation and the workplace relations system.

The Productivity Commission's draft report has made a number of recommendations that focus on the process during agreement making, the behaviour of participants, procedural issues, and the creation of greenfields agreements.

While some of these recommendations do not go as far as the Business Council proposed in its submission to the inquiry, the Business Council recognises that the Productivity Commission is seeking to find a balance between parties. Accordingly, the Council supports the recommendations as sensible and practical changes, and has proposed some additional recommendations in these areas (see Part 2).

The Business Council acknowledges the Commission's draft recommendations will improve aspects of the workplace relations system, but is very concerned that the Commission has not sufficiently dealt with the issues of content of agreements and options for agreement making.

## Agreement making fails to deliver flexibility

Enterprise agreements were introduced into the workplace relations system to provide flexibility and allow workers and enterprises to develop agreements that were suitable for their unique circumstances.

*(Example of a clause that goes beyond employment-related matters. Further examples are listed throughout this Part.)*

### **Pacific National Bulk Rail Enterprise Agreement 2013**

#### 9. Recruitment, selection and induction

(a) The selection process for filling position vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, standard of work performance and work history of candidates, relative to the position.

(b) Pacific National Bulk Rail will advertise all vacancies for positions covered by this Agreement, unless those vacancies are filled in accordance with prevailing policy related to redeployment or transfer of Employees.

(c) All vacancies will be advertised internally within all Pacific National business divisions. At times, Pacific National may also advertise a vacancy simultaneously internally and through media advertisements, recruitment agencies and other sources. Internal advertisements will include the position level from the classification structure contained in this Agreement and the salary level.

Awards are the starting point for agreement making. This means that before the parties even begin to negotiate, a whole set of workplace arrangements have been pre-determined. This interaction between awards and agreements is another reason why awards need to be returned to their safety net purpose.

Agreements in their current form, through the breadth of their content and lack of optionality, do not deliver that flexibility.

Enterprises now face each new bargaining process with a long history of agreements that have to continue to be built upon, regardless of the current circumstances. In many ways, enterprise agreements have simply become the old awards system, rather than an agreement that reflects the unique needs of the enterprise or its workers.

## **The Business Council rejects the Commission's conclusion that radical change is not needed**

The Commission argues that:

Like so many other features of Australia's WR system, there are grounds for some important reforms of enterprise bargaining, but not for radical change. The system will never be perfect because it is too costly (or impossible) to constantly fine-tune laws to deal with any the defects that arise for some parties. If the system responds to every flaw, it either becomes

too complex (raising compliance costs), or it shifts the bargaining pendulum in the wrong direction.<sup>17</sup>

The Business Council cannot agree with the Commission's argument that radical change is not needed in agreement making. This is one of the fundamental issues for the Business Council. It is a fundamental issue because agreement making has such a significant impact.

Agreements can take a long time to negotiate and use up resources of enterprises. And the approach to negotiation puts the workers and enterprises in conflict. When agreements do finally get settled, they establish the rules for three or four years.

### **Australia Post Enterprise Agreement 2013**

#### Retail outlets

40.2.2 Australia Post is committed to the long term viability of its retail network. This network is currently and will continue to be a mix of corporately owned outlets and privately owned outlets under one of a number of arrangements. It is not intended that the overall mix will change over the term of this Agreement.

This is in direct contrast to the modern world in which enterprises operate. Business models can change overnight and enterprises cannot wait for an agreement to expire to change how they operate.

Enterprises need their workers to be focused on their business and innovation, not negotiating an employment relationship. And perhaps most importantly, workplaces need to be collaborative, not in conflict.

For these reasons, the Business Council is very firm in its view that the Commission needs to devote more time and attention to agreement making, and agonise over how to improve it.

---

<sup>17</sup>Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 589.

## Agreement making case study

### Esso Australia Gippsland Basin Joint Venture

Esso Australia Resources Pty Ltd is the operator of the Gippsland Basin Joint Venture on behalf of a 50-50 joint venture with BHP Billiton Petroleum (Bass Strait) Pty Ltd and is one of the largest suppliers of natural gas to the eastern Australia domestic market. Together its operations support the employment of almost 800 people, through Esso Australia Pty Ltd (“Esso”), and many more indirectly through contractors who work on-site.

Esso is currently conducting enterprise agreement negotiations with its workforce based offshore, and at its Longford, Long Island Point and Barry Beach Marine Terminal locations.

Around 500 Esso employees are being represented by three unions: the Australian Workers Union, the Australian Manufacturing Workers Union and the Electrical Trades Union.

Esso has been negotiating the agreement since mid-2014. This has included holding more than 30 bargaining meetings, including conciliation meetings chaired by a Fair Work Commissioner.

Esso initially offered a wage increase of 4% per annum on a four year agreement in exchange for productivity improvements which aimed to improve its competitiveness and ability to attract future investment. Key changes sought included the move away from an outdated approach to rostering and staffing levels through the introduction of a 14 day on/off roster for its offshore workforce and removal of prescribed minimum staffing numbers for its Longford Plants and Long Island Point facilities.

The employees raised a number of concerns with Esso’s offer and in response, Esso revised its offer to include a wage increase of 3% per annum on a three year agreement in exchange for the retention of the 7 day on/7 day off roster, with the option of a voluntary 14 day on/off roster for existing employees and for new employees, and concessions on the prescribed staffing levels. A majority of the employees voted against the offer in June 2015.

In July 2014, the unions proposed a large number of claims (27 in total), including a large (8%) increase in wages and allowances over the life of the agreement, increases in superannuation (move to a 12.5% contribution) and a clause that entitled workers with six weeks’ of service to receive over a year’s worth of redundancy payments. The offer did not include any productivity improvements.

The union’s offer was revised in August 2015 to include a reduced wage claim (4%); however it retained many of the other claims, and did not include any productivity improvements.

Esso maintains the offshore roster change would enhance the safety of its operations by reducing the number of employee shifts each year and therefore the number of flights and onshore commutes employees need to take, both key safety risk areas.

The unions undertook industrial action across Esso’s sites from January through to August 2015. This occurred sporadically, maximising disruption to the business. For example, the protected industrial action by the AMWU and ETU had options for up to 22 different work ban actions including stoppages of up to five hours each day and bans on some types of work, overtime and callouts.

The uncertainty caused by this made it difficult for Esso to plan and undertake a range of maintenance and preventative maintenance work.

To help overcome this problem, Esso issued some of its workforce with employer response action notices which required workers not to work for specific times during their work day. This enabled Esso to prioritise preventative maintenance work and is intended to encourage the unions to bargain in good faith.

This ongoing dispute demonstrates how not limiting the scope of enterprise agreements (to wages and conditions above the safety net) can directly impede an organisation from being able to determine how their organisation should be run or how they should organise their staff.

## Content of agreements

### Agreements go beyond the employment relationship

In its draft report, the only recommendation the Commission has made about content of agreements is around clauses about independent contractors, labour hire and casual workers. The Commission states:

Apart from the employment of labour hire and contractors, further evidence is required to assess whether particular sorts of terms should or should not be permitted.<sup>18</sup>

An enterprise agreement is a form of regulation. To meet the Commission's test that the regulation is warranted, enterprise agreements should be 'fit for purpose', minimise adverse side-effects and be able to pass a broad benefit–cost test.

According to the Act, an agreement can cover four categories. To therefore be a fit-for-purpose piece of regulation, all enterprise agreements should be limited to these matters.

#### 172 Making an enterprise agreement

(1) An agreement (an enterprise agreement) that is about one or more of the following matters (the permitted matters) may be made in accordance with this Part:

- (a) matters pertaining to the relationship between an employer that will be covered by the agreement and that employer's employees who will be covered by the agreement;
- (b) matters pertaining to the relationship between the employer or employers, and the employee organisation or employee organisations, that will be covered by the agreement
- (c) deductions from wages for any purpose authorised by an employee who will be covered by the agreement
- (d) how the agreement will operate.

Fair Work Act 2009

In its submission to the Commission's inquiry, the Business Council argued that some clauses in enterprise agreements have gone beyond the employment relationship and reflect business and managerial decision making.

Such enterprise agreements have therefore exceeded the scope of the purpose of regulation and are not fit for purpose. To solve this issue, the Business Council proposed that enterprise agreements should be limited to clauses that are employment-related matters.

---

<sup>18</sup> *ibid.* p. 566.

### **Telstra Enterprise Agreement 2012 – 2015**

#### Consultation about performance principles

Telstra will consult with the unions covered by this Agreement quarterly (or otherwise as agreed) about how the following matters apply to employees:

- Telstra’s performance management principles and practices
- performance pay arrangements (including the annual remuneration review)
- other relevant matters about performance principles Telstra will consider and respond to the issues that unions raise during the meetings.

This consultation obligation will be about organisational level performance principles and practices only, not individual performance management or pay issues. As part of this consultation, Telstra will meet with the unions to discuss Telstra’s overall performance and the distribution of pay increases for Job Family Employees at an organisational level. Telstra will consult with the unions about the pay increase distribution matrix and will, following consultation, publish the matrix on the intranet.

The Commission has not commented on this recommendation in its draft report. However, it notes that:

The FW Act deliberately moved away from the legislative prescription in previous regimes to reliance on jurisprudence about ‘matters pertaining’. This concedes that it is hard (and perhaps undesirable) to set out a list of all permitted or prohibited matters without reference to context ... There is a tradeoff between the certainty of legislative prescription, and the flexibility of allowing precedent to build and develop via the common law.<sup>19</sup>

### **An effective workplace relations system needs a clear set of rules**

As argued earlier in this submission, government has two options in public policy: it can establish the rules of a system or be a decision maker. In the context of workplace relations it has chosen to establish the rules of the system. However, by failing to clearly articulate the rules in the Act, the government has failed to develop a fit-for-purpose piece of legislation.

In its submission to the inquiry, the Business Council argued:

An effective workplace relations system is one where all parties in the labour market (workers, enterprises, and representatives) have a clear understanding of the rules that govern the relationships, and can anticipate the decisions that will be made if a dispute arises. This allows enterprises, in particular, to construct their operations and make business decisions within the rules.

---

<sup>19</sup> *ibid*, p. 564.

Unpredictability and inconsistent application of the rules stifles innovation and inhibits the enterprise's capacity to be agile in response to changing circumstances. It necessitates enterprises seeking legal opinion before making key decisions, and even independent third parties cannot guarantee consistent interpretation and advice.

Allowing precedent to build and develop via common law in place of defining a clear set of rules, fails to give all parties the certainty they need, and fails to deliver an effective workplace relations system or regulation that is fit for purpose.

It is also an open door for regulatory scope creep. The breadth of content in agreements today attests to that.

### **TAFE NSW Teachers and Related Employees Enterprise Agreement 2014**

TAFE year

24.2 Institutes shall operate for a period of 50 weeks in a calendar year. There shall be a two week close down period in Colleges/Campuses over the Christmas and New Year period. The dates of the close down period shall be determined by the Managing Director or delegate.

24.4 Teachers may not be directed to teach more than twelve consecutive weeks without taking a vacation break or may not elect to teach more than eighteen consecutive weeks without taking a vacation break.

The Commission has called for further evidence so they can assess whether particular sorts of terms should or should not be permitted. While providing the evidence as requested (see breakout boxes in this Part and Appendix 2), the Business Council urges the Commission to return to its first principles approach when considering this issue.

The Business Council agrees with the Commission that it would be difficult to create a list of all prohibited matters, but does not agree the inverse is a similarly difficult task.

### **The public policy problem to solve is what can be included in agreements, not what can be excluded**

The challenge with creating a list of prohibited matters is that, in the first instance, it requires the policy designer or parliamentary drafter to envisage all possible scenarios that should be excluded.

This is improbable on two fronts. The first is that no single person has sufficient experience across the industries that operate in Australia, and the different sizes of businesses, to predict all circumstances where clauses could be proposed that are not relevant to the employment relationship.

The second barrier is that we do not know what the workplaces of the future will be, so we cannot predict what clauses could emerge that should be excluded from agreements.

### **Pacific National Bulk Rail Enterprise Agreement 2013**

#### Attachment 1 Driver only operations compendium

2.3 Prior to any test or trial, Pacific National Bulk Rail shall obtain the appropriate written authorisation or relevant circular/Special Train Notice from either the track owner and or regulator.

2.4 Tests and trials shall only be carried out using modified locomotives which modifications have been the subject of consultation with the local Drive Only Operations committee.

2.5 Prior to the commencement of any test or trial, agreement shall be reached between the Employee and Employer representatives who are on the relevant local DOO committee, on DOO relief points, locations and sections ...

3.2 (b) On completion of successful trials within a category (e.g. Category 1), the progressive roll out across that category of operations will be by agreement between the employer and the affected Employees, subject to satisfying safety and required risk mitigation requirements.

Both of these issues would create a piece of legislation or regulation that was not durable. The legislation would constantly be lagging behind the changing circumstances of workplaces and the labour market. In addition to lacking durability, this would provide no certainty for workers or enterprises.

It is well recognised that regulation will be more effective if it takes an outcomes-based approach, rather than a prescriptive one. Outcomes-based regulation encourages clarity and efficiency, limits the potential for unintended consequences and is more fit for achieving the policy purpose.<sup>20</sup>

Conversely, regulation that would prescribe all prohibited matters would not directly address the fundamental policy problem of excessive intervention in the operational management of enterprises. It may instead have the perverse outcome of encouraging continued intervention in areas not specifically identified in a list of prohibited matters.

---

<sup>20</sup> J Black, 'Principles Based Regulation: Risks, Challenges and Opportunities', London School of Economics and Political Science, London, paper accompanying presentation 27 March 2007.

### **Murray Goulburn Co-operative Co. Limited (Victorian Sites) National Union of Workers Enterprise Agreement 2014**

#### 51. Time book and other record

(a) Every employee shall record daily his or her correct times of beginning and ending work in a book, or on time cards, or by a mechanical or electronic contrivance, which shall be furnished by the Company.

(b) An accredited representative of the National Union of Workers shall have access to the records of times recorded by employees and wages paid, provided that such inspection is made between the hours of 8am and 4.30pm on a working day by appointment with the respective site manager.

For these reasons, the Business Council is strongly opposed to a legislative regime that specifies what must be excluded from regulatory instruments.

In its place, the Business Council supports a legislative regime that specifies what can be included in regulatory instruments. Any issues that are not specified are therefore not permitted in the regulatory instruments.

If agreements are about the workplace relationship, then the matters that can be included should naturally be limited to the workplace relationship.

The public policy task is not to define what **cannot** be included. The task is to define what **can** be included and then update the legislation to reflect this.

Rather than look at what is in current agreements and determine if they are appropriate, the Business Council urges the Commission to define what constitutes the workplace relationship, and what therefore are permitted matters in agreements.

The safety net is a good starting point for defining what constitutes the employment relationship, that is, wages and conditions above what is set out in the safety net.

### **Operational decisions are not part of the employment relationship**

Decisions beyond wages and conditions are not part of an employment relationship. These are decisions that workers in enterprises make each day to maintain their business. This list of decisions is endless, but real world examples include:

- How should an enterprise alter their operations to compete with a company operating in a lower-cost labour market, say by changing their hours of operations and weeks of operation?
- When is the right time to recruit staff, and what's the best option for the company in terms of casual, permanent or contract recruitment?
- Who should get promoted, and what salary should they be offered?

- What emerging technology should the organisation incorporate into its business model and how quickly can it be put to work?
- Are there new markets the business should be exploring?
- Is the current supplier the best fit for the organisation?

These issues clearly go beyond the employment relationship and should therefore not be included in enterprise agreements.

The Council's initial submission to the inquiry proposed seven categories, which are detailed in recommendation below. The Council urges the Commission to explore this issue in detail in its final report, and adopt the Council's recommendation.

#### **Business Council additional repair recommendation 4 – Agreement making**

The Commission's final report recommends that agreement making is limited to the employment relationship, and only clauses specified in the legislation can be negotiated:

1. allowances
2. employment categories
3. leave arrangements
4. notifications
5. ordinary hours of work
6. remuneration
7. rostering issues, limited to maximum days of work, maximum hours per day, meal breaks, minimum break between times worked and minimum daily engagement.

## Options for agreements

### Individual Flexibility Arrangements are not a substitute for individual agreements

In the chapter on enterprise bargaining, the Commission notes:

The time and costs associated with striking a bargain and complying with certain unavoidable procedural requirements may outweigh any efficiency gains from negotiating and using one EA rather than many individual agreements for businesses with a smaller number of employees. This is why any WR framework must provide employees and employers with multiple mutually-beneficial contracting possibilities.<sup>21</sup>

Despite this statement, the Commission has not recommended the reintroduction of individual agreements to the workplace relations framework. Instead, the Commission has made a range of recommendations to improve the individual flexibility arrangements (IFAs).

As reported by the Commission, the take-up of IFAs has been very limited, to around two per cent of employees. The Commission argues that reform to IFAs will change this:

Nonetheless, IFAs provide flexibility and could be more widely adopted if awareness was higher and risk lower.<sup>22</sup>

The Council's member companies, which collectively employ more than one million workers in Australia, are very clear that IFAs do not provide the flexibility they need as employers. While the Commission's recommendations will reduce some of the risks that currently make IFAs unattractive, IFAs are not a replacement for individual agreements.

The Business Council, along with other business groups and enterprises, has proposed that the workplace relations system be expanded to have multiple agreement options – options for enterprise agreements, greenfield agreements, and for individual agreements.

#### **Rio Tinto (Alcan Gove) Enterprise Bargaining Agreement 2014**

##### 55(a) Classification structure changes

To this end, the parties recognise that during the life of this Agreement technical competencies contained within the classification structures may require modification or become redundant. In such cases, RTA will review the specific requirements of a role and determine the competencies required to meet the current and emergent needs of the business.

Where changes to the current competencies are proposed, RTA will follow the consultation process outlined in clause 11 of this Agreement. To ensure a 'site-wide' perspective is maintained where changes are proposed, the recommendations arising from the consultation process will be reviewed by management representatives and Senior Site Delegates. Following this review, and having considered any issues arising, any recommended changes will be made by agreement.

<sup>21</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 588.

<sup>22</sup> *ibid.*, p. 591.

## **Enterprises cannot opt out of negotiations so should have the option of offering individual agreements**

The Commission has not recommended the reintroduction of individual agreements, and the Business Council does not understand the logic behind this decision. There does not appear to be a legitimate regulatory barrier to allowing enterprises and workers a choice of agreements.

If the safety net serves as the starting point and is protected – as the Business Council proposed – there is no rationale for denying this option within the workplace relations framework.

The current workplace relations system is set up so that enterprises can be forced to engage in negotiation. If an enterprise makes a management decision to operate under common law contracts, they can still be forced to engage in negotiations by a vote from their workers.

Given the lack of choice about engaging in negotiation, it is incumbent upon the authority imposing regulation to provide options within that system. The optionality should be available for both enterprises and workers.

## **Ideology must be removed from the workplace relations system**

The Business Council contends that the rejection of individual agreements is ideological. The ideology is clear in the legislation itself. The object of the Act states:

... ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind **given that such agreements can never be part of a fair workplace relations system.**<sup>23</sup>

In his speech to CEDA, the chairman stated:

Workplace relations has long been a deeply politicised piece of public policy. And political parties acting in defence of their principles is no bad thing. But if it does not have to be politicised, it should not be.<sup>24</sup>

A piece of legislation that prevents allowing individual agreements to be a regulatory option, because they are inherently unfair, is ideological. It cannot therefore be considered 'fit-for-purpose' regulation.

The Commission has called for evidence of a public policy problem. Legislation which embeds ideology in a regulatory system is a public policy problem. Furthermore, failure to provide options is an additional public policy problem.

Multiple agreement possibilities do not exist under the current system, and amending the IFAs will not change this: 'The IFA does not change the effect of the award or enterprise agreement and is not a contract in its own right.'<sup>25</sup>

---

<sup>23</sup> Fair Work Act 2009, p. 4.

<sup>24</sup> Peter Harris, op. cit.

<sup>25</sup> Productivity Commission, *Workplace relations framework draft report*, August 2015, p. 599.

Our member companies, employers of over one million workers, have accepted a regulatory system can force them to negotiate an agreement, even when that is not their preferred option. What they have not, and should not have to accept, is a regulatory system that forces negotiation **and** provides no optionality for agreement making.

The Business Council strongly urges the Commission to consider this problem in far greater detail, and make recommendations in the final report that resolve these two public policy issues.

**Business Council additional repair recommendation 5 – Agreement making**

The Commission's final report recommends that workers and enterprises can choose to negotiate an individual or enterprise agreement.

Safety net provisions or an Enterprise Agreement should form the base for an Individual Agreement and a no-disadvantage test should be applied.

## **PART 6: RESPONDING TO ISSUES RAISED AT THE BUSINESS COUNCIL'S APPEARANCE AT THE PRODUCTIVITY COMMISSION'S HEARING**

The Chief Executive Officer and Executive Director, Human Capital appeared on behalf of the Business Council at the Commission's hearings on 11 September 2015. The Commissioners asked a number of questions about the Business Council's proposals, and requested additional information be included in the Council's response to the draft report.

The following section endeavours to provide the additional information and assist the Commission in understanding the rationale for the Business Council's proposals, and the implications of implementing the proposals.

The Business Council remains committed to providing assistance to the Commission throughout this inquiry. The Commission should not hesitate to request further information or clarification if it would be beneficial to the inquiry.

### **Transition arrangements**

The transition implications of the Business Council's proposals have been raised as a concern by the Productivity Commission. While transition can cause disruption, transition must always be factored into the implementation of new policy.

The Business Council acknowledges there is reform fatigue, but would argue the reform fatigue is a result of the marginal return that has resulted from a significant investment by the relevant parties. The four-yearly reviews of Modern Awards is a prime example of this, and the Commission has recommended changes because of the ineffectiveness of this reform.

While the Business Council's proposals would significantly re-orient the system, they do not carry a large implementation burden. Enterprises already have to renegotiate their agreements. The Business Council's proposals are not retrospective, so current agreements would stand, and the new system would only be implemented at the time agreements come up for negotiation.

The Business Council recognises that transition will need to be carefully managed, but believes the Commission is over-emphasising the impact. The Business Council's would urge the Commission to canvas this issues with enterprises, as the Council believes such a survey would demonstrate enterprises would welcome the Council's proposed reforms, regardless of the transition implications.

### **Transition costs**

While it is important that transition costs are minimised, transition costs are a one-off cost. The Business Council would argue that failed enterprises have more enduring and difficult implications for the people who invest in them, and the people who work in them. The benefits from workplace relations reform are therefore enduring.

The Business Council acknowledges that its proposals around the Minimum Wage Order, awards and agreement making will have an impact on workers and enterprises. While some of these impacts may be negative in the short-term, the Council strongly believes that the longer-term benefits will result in improvements to workplace productivity, and therefore the broader economy, benefiting all Australians.

The current regulation is not effective nor fit for purpose, and needs to be reformed. The process and time frame for reform should have regard for transition costs, but should not play a greater role than that.

### Transition timeline

Changes will need to be carefully phased in to minimise disruption and any unanticipated perverse outcomes. In the Business Council's first submission to the Productivity Commission inquiry the pathway for reform was mapped out over three horizons.

#### Horizon 2: Medium term 2016–2017

Adopt the proposed framework for the workplace relations system.

Run a national consultation process involving all parties, including the community, to reach agreement on what should be contained in each of the following categories of the framework:

- Purpose (Recommendation 1)
- Principles (Recommendation 2)
- Three tiers of regulation (Recommendation 3)
- Minimum Wage Order (Recommendation 4)
- National Employment Standards (Recommendation 5)
- Awards (Recommendation 6)
- Industrial Protections (Recommendation 7)
- Agreement making (Recommendation 8)
- Business and managerial decision making (Recommendation 9)

#### Horizon 3: Longer term 2018–2020

- Based on the feedback received in the consultative process conducted across 2016–2017 draft legislation for a new workplace relations framework. Use the Plain English Foundation, or an equivalent organisation, to assist in drafting the new framework and legislation so it is easy for an average worker or enterprise to understand and navigate (2018).
- Consult on and develop a transition plan (2018).
- Introduce legislation to implement the new framework (2019).
- Implement the new legislation and framework in stages consistent with the transition plan (2020).

The medium and longer-term horizons emphasised that widespread consultation within the community would be needed before the more ambitious reforms, such as the changes to awards and agreement making were implemented. The Business Council believes this

pathway for reform, as proposed in its initial submission, remains an appropriate time line for reform.

### **Core steps in the transition process for returning awards to their core purpose**

The Commissioners ask a number of valid questions about the impact of the Business Council's proposed reforms to awards and how the transition would work in practice.

If the Commission accepts the principle that awards should operate as a safety net, the Business Council believes the transition could take place in 8 core steps.

#### **Steps to transition to genuine safety net awards**

1. Define the breadth of awards and the safety net
  - 1.1 The Business Council proposes using its five principles detailed in the Business Council's Recommendation 7
2. Using the five principles, identify the clauses that may be included in each award (see the Business Council's proposed 9 clauses in awards as an example of what could be included in an award)
3. Review awards against the permitted clauses and collate a list of the clauses that are permitted for inclusion, and a list of clauses that need to be removed
4. Review the list of permitted clauses, and, where clauses are common, develop plain English standard clauses to be applied across all relevant awards
5. Review the pay rates in each award, and identify the five base wage rates for each employment category permitted in the award
6. Following the removal of the non-permitted clauses and the identification of the base wage rates, identify which awards have consistent clauses and merge the awards
7. Redraft each award with the assistance of the Plain English Foundation, or an equivalent organisation
8. Collate the list of excluded clauses and publish them for employers to include in operational practices.

The Commission raised a concern about enterprises that rely on the awards, and may wish to keep clauses that would fall into the excluded category. The Commission was concerned that this would disrupt these enterprises, and potentially leave them with no option but to engage in enterprise bargaining.

This is a legitimate concern, particularly as smaller enterprises are more likely to rely on awards and may not have the capacity to engage in enterprise bargaining. However, the Business Council believes this situation could be easily managed by the enterprise, and not require them to move to agreement making.

The removal of clauses from awards would not prevent an enterprise from continuing to implement the clauses in their daily operations.

It is important to remember that awards establish a floor of wages and conditions. Enterprises can manage their operations in a way that allows them to offer wages and conditions above this floor without having to engage in agreement making, or include such conditions in legislative instruments.

The only clauses that would be removed would be ones that went beyond the safety net. As such, the inclusion of these clauses in operational practices or workplace policies or guidelines would be legitimate.

### **Core steps in the transition process for streamlining agreements so they are limited to the employment relationship**

Similar to awards, the Commission asked the Business Council for advice on how the transition from current agreements to the proposed new ones with the limited clauses could take place.

If the Commission accepts the principle that agreements should be limited to the employment relationship, the Business Council believes the transition could take place in 5 core steps.

#### **Steps to transition to genuine employment relationship agreements**

1. Define the permitted clauses for agreement
  - 1.1 The Business Council proposes using its seven categories specified in Business Council Recommendation 8
2. Consistent with the drafting of the legislation, the Fair Work Commission would publish guidelines to assist with the drafting of permitted clauses
3. Agreements would be re-negotiated as they expired
  - 3.1 This would mean that there would be multiple systems running for a number of years, but some employees currently remain employed on AWAs, so this is unlikely to add significantly to the complexity of the system
4. The enterprise and relevant parties (unions, nominated employee representatives, employees) negotiate a new agreement
  - 4.1 Prior to the expiration of the current agreement, the enterprise could release a draft agreement where the permitted clauses have been adapted to their circumstances to allow review and discussion within the enterprise
5. Noting there could be an incentive for parties representing the workers to prolong negotiations (where non-permitted clauses exceed the employment relationship but workers wish to retain them) it is possible the parties cannot negotiate an agreement that is consistent with the new regime. In such cases, the negotiation process proposed by the Commission for greenfield agreements, would apply. Similar to the greenfields proposal, this would apply to the first agreement only.

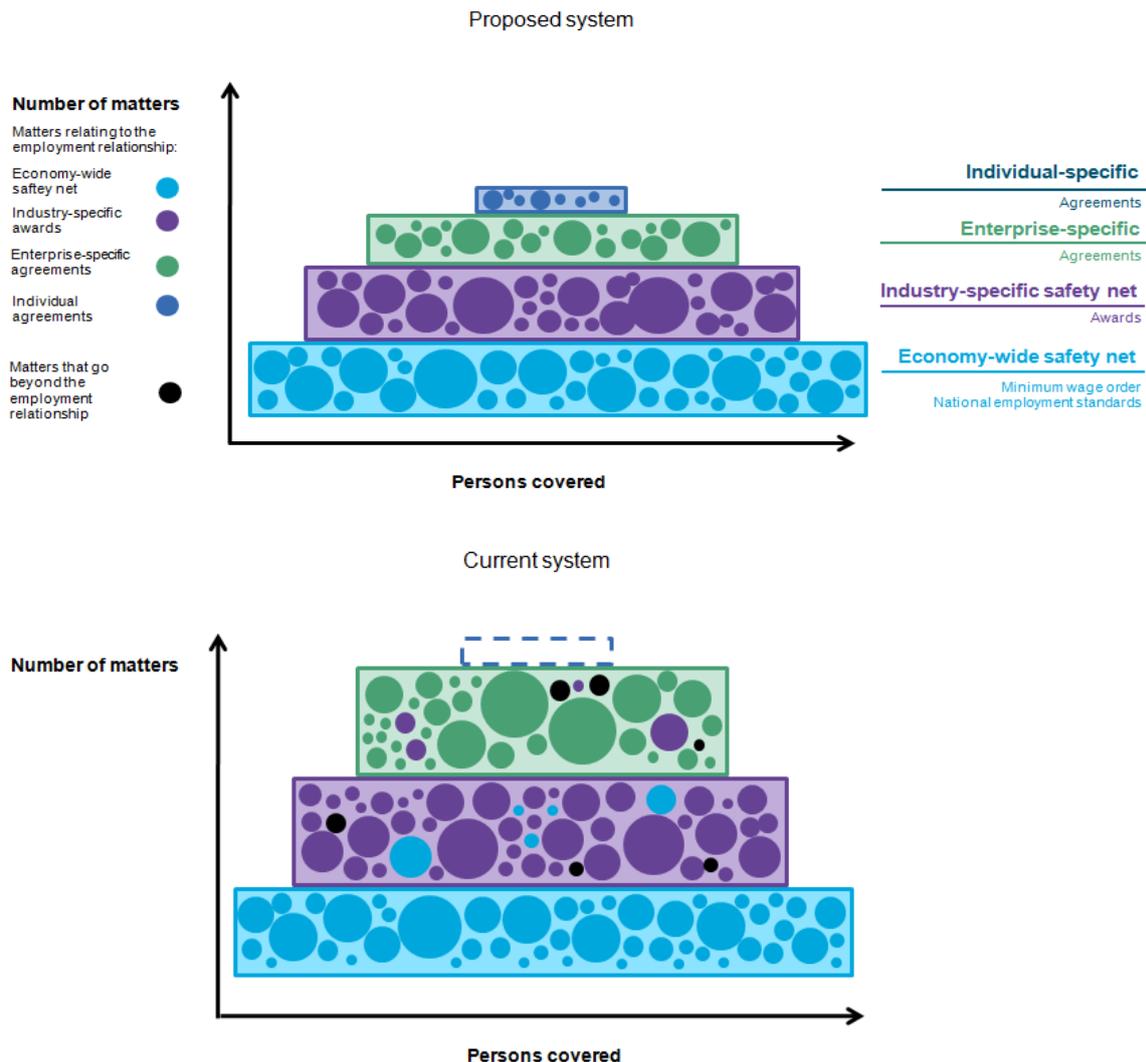
## Potential for the proposed changes in enterprises agreements to create ‘side deals’

The Commissioners commented that under the current system, where the permitted matters are extremely broad, there are still occasions where enterprises enter into ‘side-deals’ with unions or workers. The Commission queried how these side-deals would be catered for under the Business Council’s proposed system.

While the Business Council had not envisaged that side-deals would co-exist with agreements in its proposed model, the query raised by the Commission is legitimate.

In considering this issue, the Business Council has concluded that side-deals could emerge, but believes that the co-existence of them with agreements is a significant step forward from the current system.

As illustrated in the diagrams below, the current system goes far beyond the employment relationship. The current codification of issues beyond the employment relationship exposes enterprises to risk and protected industrial action. A system that reduced this regulatory creep would be infinitely superior, even with the emergence of side deals.



**The most important point to note in relation to side-deals is that they would not be regulatory instruments.**

As such, they would not be subject to the jurisdiction of the Fair Work Commission, nor would they constrain enterprises from making changes in the face of competitive pressures. The enterprise would not be subject to lengthy delays, or risking protected industrial action if it chose to negotiate issues beyond the employment relationship.

The Business Council would not want to encourage the emergence of side-deals that merely duplicated old and inappropriate clauses. However, it is important the Commission recognises that if enterprises had the choice between the current system where all clauses were in agreements, and a new system where the inappropriate clauses were confined to non-regulated side-deals, enterprises would choose the new system.

As the Business Council stated at the Commission's hearing, there are a range of clauses that currently exist in agreements that go beyond the employment relationship. These clauses specify behaviours that are often mutually beneficial, and should be pursued by both parties.

The Business Council does not contest this. The Business Council contests that these clauses are permitted to be included in a regulatory instrument, and even more importantly, a regulatory instrument that enterprises can be forced to negotiate.

Based on the Office of Best Practice Regulation guidelines, a range of options are available when seeking to solve policy problems:

1. No regulation
2. Better enforcement of existing regulation
3. Non-regulatory policy measures
4. Self-regulation
5. Quasi-regulation
6. Co-regulation
7. Regulation (whether prescriptive or principles-based)

A future-oriented workplace relations system could adopt a combination of these tools – a regulatory instrument in agreements, and non-regulatory policy measures such as organisational policies, or side-deals.

In a future-oriented workplace relations system, a more positive side-deal could emerge that was beneficial to both parties. Rather than seeing side-deals as a failure of the black-letter law of regulation, they could in fact demonstrate the success of the legislation.

It may be an acknowledgement that enterprises and their workers wish to sit down to discuss how they can work together to improve their organisation to their mutual benefit. They could use side-deals to develop a plan for the growth of the organisation, or design an agenda for innovation.

While there is the possibility that side-deals may be used by one party to pressure the other party during the negotiation of the agreement, the lack of legislative standing of the 'side-deal' makes this more manageable.

It could be argued that the open-ended nature of what can be negotiated in agreements under the current system already creates this pressure. Moving this pressure to a side-deal negotiation would likely lead to an improvement in the negotiation process of agreements.

Additionally, as the side-deals would not have the constraints inherent in agreements, they would be much lower risk for an enterprise. For example, some side-deals that exist under the current system allow enterprises to revert to standard operating procedures if new competitive pressures emerge. This reduction of risk therefore provides an opportunity for workers and enterprises to experiment with different arrangements, and it is this flexibility that leads to innovation and improved workforce productivity.

Any concerns that side-deals could disadvantage employees are unfounded, as employees would be protected by a strong safety net, and their wages and conditions would be specified in their agreement. Side-deals could not undermine these protections.

**The most important thing is to ensure that the explicit government regulation is limited to the employment relationship.**

Workplace practices are often specified in company policies, including issues such as leave, training, or travel policies. As long as the explicit government regulation – the agreement – is limited to the employment relationship, the Business Council does not believe the emergence of side-deals is problematic and, moreover, would be a significant improvement on the current regulatory regime.

### **Rationale for removing clauses from agreement making that are mutually beneficial or appear harmless**

As discussed throughout this submission, agreements are not the only form of regulatory instrument in the employment relationship.

Agreements build on the Minimum Wage Order, the National Employment Standards, and the Modern Awards. The regulatory instruments therefore cannot be looked at in isolation. They create a cumulative regulatory burden and, when combined, venture quite significantly into job design and operational management. The cumulative impact is a rigid and restricted labour market.

While the Business Council's proposed reforms to the Modern Awards would remove a number of these rigidities, each clause in an agreement is additional to all the requirements in the National Employment Standards and the awards.

While these clauses may be mutually beneficial to the workers and enterprises at the time the agreement is negotiated, they may not remain mutually beneficial to both parties throughout the life of the agreement.

As the Business Council has argued throughout this submission, the world of work is changing, and we cannot predict what the jobs of the future will be. We also cannot predict how technology will change and the training that people will need.

Clauses in enterprise agreements that go to these issues (training would be one such example), set a minimum standard and cannot be adapted to changing circumstances, or different needs of workers.

While an argument could be made that the clauses are mutually beneficial or harmless and should therefore remain in an agreement, the question that needs to be answered in response is why they should be given the standing to be included in a regulatory instrument.

Inclusion in a regulatory instrument allows room for industrial action during the negotiation process. It allows the Fair Work Commission to have jurisdiction over the implementation of the clause.

As noted by the Office of Best Practice Regulation, there should be clear objectives for explicit government regulation. 'Hard' regulation should only be used when these objectives cannot be achieved through other less burdensome regulation. The Business Council would argue that mutual benefit or harmlessness are not a robust enough rationale to allow their inclusion in regulatory instruments.

Additionally, these issues could be legitimately covered in the enterprise's operational policies, or the 'side-deals' discussed in the previous section.

## **The intersection of remuneration clauses in agreements and organisational design**

The Commissioners asked for further information on the Business Council's conceptual thinking about the intersection of remuneration clauses in agreements and organisational design. In particular, the query seemed to be focused on how enterprises would have the flexibility to manage their organisational design if remuneration was a permitted matter in agreements.

The Business Council has argued that awards have ventured into job design through the specification of high-level remuneration and commensurate tasks. The Business Council has also argued that job design is not part of the safety net and is specific to an enterprise.

As it is specific to an enterprise, an agreement can and will venture into a level of job design. However, job design and remuneration levels do not dictate the organisational design. While noting public sector agreements are not best practice in terms of their flexibility, the public sector is a good example of this.

Public sector agreements have high levels of specificity about remuneration, but these agreements do not dictate how an organisation is designed. The remuneration in agreements provides workers with a level of certainty about their income, and the skill level they are expected to operate at.

It provides a foundation of understanding between a worker and their manager about what the employer can reasonably expect in relation to skill level and output for the salary – it defines what the employer is effectively ‘buying’.

This does not however dictate the specific role the employer will play, nor does it dictate how the organisation is structured. The head of the organisation will determine how many staff they have, and at what level within the organisation. The manager of the team will then determine how to structure their team and how to allocate tasks.

It is the extensive list of clauses that go beyond remuneration, and into the territory of operational management, that can lead to determining organisational design. This is why the Business Council strongly believes these clauses need to be removed from regulatory instruments.

### **Length of agreements**

The Commission asked the Business Council what the ideal length of agreement would be.

The Business Council believes that reform to the length of agreements is a secondary issue. If the policy problems identified by the Business Council around awards and agreement making are resolved, the length of the agreement is not a significant issue.

While noting the length is not the most significant issue, it is important that the system allows for flexibility in the length of agreements, and for greenfield agreements that the agreement can be matched to the project length.

## PART 7: RESPONSE TO THE PRODUCTIVITY COMMISSION'S INFORMATION REQUESTS

PC's information request	Business Council response
<p>The Productivity Commission seeks information on whether it would be practical for casual workers to be able to exchange part of their loading for additional entitlements (for example, personal or carer's leave) if they so wish, and whether such a mechanism would be worthwhile.</p>	<p>Do not support.</p> <p>The Business Council believes this option would result in more costs than benefits.</p> <p>Currently, if a casual employee wishes to access such provisions, they can do so by 'banking' the casual loading to be used during periods of personal leave. The Business Council believes the current arrangements are sufficient to deal with the issue.</p> <p>Additionally, implementing the proposal would add to the administrative burden of business and create unnecessary 'red tape', which would result in an additional cost to business.</p>
<p>The Productivity Commission seeks further views on possible changes to lodgement fees for unfair dismissal claims.</p>	<p>No comment.</p>
<p>The Productivity Commission seeks information on whether the structure of junior pay rates should be based on a model other than age, such as experience of competency, or some combination of these criteria.</p>	<p>No comment.</p>
<p>The Productivity Commission invites participants' further input on the feasibility, merits and optimum design on an earned income tax credit in Australia, what its introduction might mean for future minimum wage determinations and employment schemes, and in what condition it would be appropriate to implement such a scheme.</p>	<p>This issue should be considered as part of the government's review of taxation.</p>
<p>The Productivity Commission seeks views on whether there is scope to include preferred hours clauses in awards beyond the current narrow arrangements, including the scope for an arrangement where an employer would be obliged to pay penalty rates when it requested an employee to work at an employee's non-preferred time in the employment contract.</p> <p>What would the risks of any such 'penalty rate' agreements be and how could these be mitigated?</p>	<p>Do not support.</p>
<p>The Productivity Commission seeks feedback on whether there is a mechanism that would restrain pattern bargaining:</p> <ul style="list-style-type: none"> <li>• where it is imposed through excessive leverage or is likely to be anticompetitive</li> <li>• while allowing it in circumstances where it is conducive to low transaction cost agreements that parties genuinely consent to.</li> </ul>	<p>See below.</p>

PC's information request	Business Council response
<p>What should be the basis for the revised form of the no-disadvantage test, including whether, and to what extent past reforms of the no-disadvantage test provide a suitable model and would be workable within the current legislative framework?</p>	<p>The no-disadvantage test that was in operation prior to the introduction of the BOOT should be re-instituted.</p>
<p>The Productivity Commission seeks information on the costs (including compliance costs) and benefits of an enterprise contract to employers, employees and to regulatory agencies. Particular areas that the Commission seeks information on are:</p> <ul style="list-style-type: none"> <li>• additional evidence on the potential gap in contract arrangements between individual arrangements (broadly defined) and enterprise agreements</li> <li>• the extent to which the enterprise contract would be a suitable addition to the current suite of employment arrangements, how it could fill the gap identified, and specific examples of where and how it could be utilised</li> <li>• clauses that could be included in the template arrangement</li> <li>• possible periods of operation and termination</li> <li>• the advantages and disadvantages of the proposed opt in and opt out arrangements.</li> </ul> <p>In addition, the Productivity Commission invites participants' views on the possible compliance and implementation arrangements suggested in this chapter (17), such as their impact on employers, employees and regulatory agencies.</p>	<p>As discussed in Part 5, the Business Council strongly supports the inclusion of individual agreements in the workplace relations framework.</p> <p>However, the individual agreements need to provide flexibility and be an option for all employees. Given that the proposed enterprise contract would only be available to new employees, and they could opt out of it after 12 months, the enterprise contract is not a substitute for an individual agreement.</p> <p>See Part 5 for further discussion on agreement making.</p>
<p>The Productivity Commission seeks further input from stakeholders on how protected action ballot procedures may be simplified to reduce compliance costs, while retaining the benefits of secret ballots. Potential simplifications include:</p> <ul style="list-style-type: none"> <li>• removing the requirement that a protected action ballot specify the type of actions to be voted on by employees, and instead simply requiring a vote in favour of any forms of protected industrial action</li> <li>• amending or removing the requirement that industrial action can be taken within 30 days of ballot results being declared</li> <li>• granting the Fair Work Commission the discretion to overlook minor procedural defects when determining if protected industrial action is authorised by a ballot.</li> </ul>	<p>No comment.</p>
<p>The Productivity Commission seeks feedback on the extent to which unpaid internships have become more commonplace across the economy, whether any growth in such arrangements has led to problems rather than opportunities, as well as the potential remedies to any specific issues.</p>	<p>No comment.</p>
<p>The Productivity Commission seeks further input from inquiry participants on whether the secondary boycott prohibitions in the Competition and Consumer Act 2010 (Cth) should be amended to:</p> <ul style="list-style-type: none"> <li>• amend or remove s. 45DD(1) and s. 45DD(2)</li> <li>• grant Fair Work Building and Construction a shared</li> </ul>	<p>No comment.</p>

PC's information request	Business Council response
jurisdiction to investigate and enforce the secondary boycott prohibitions in the building and construction industry.	
The Productivity Commission seeks data or other information on the extent to which the workplace relations system imposes unnecessary ongoing costs on unions, and how these costs are likely to be affected by draft recommendations proposed in this inquiry.	No comment.

## Pattern bargaining

Advice from Business Council members suggests that pattern bargaining is a significant issue for construction industry sub-contractors.

A number of the Commission's recommendations in the draft report will assist with the issues associated with pattern bargaining. However, the Council believes additional recommendations could ensure pattern bargaining is better regulated.

In particular, the Business Council would support mechanisms that strengthen and increase the discretion of the Fair Work Commission to restrict access to protection action and/or suspend or terminate it.

### Productivity Commission recommendation 19.1

Building on draft recommendation 19.1, the Business Council proposes that an employer can take a case to the Fair Work Commission (FWC) to establish that a pattern agreement is being sought.

The FWC could review the content of the agreement being sought and the most recent bargaining position of both parties. If the FWC determined pattern bargaining was taking place, it could limit protected action, or remove the right to protected action.

This review of the content of the agreement should also occur when the FWC is considering whether or not to approve an agreement.

### Productivity Commission recommendation 19.4

Building on recommendation 19.4, the Business Council proposes that the authority to withhold a protected action ballot for 90 days be available in all cases where pattern bargaining is established (using the test discussed in recommendation 19.1 above).

### Productivity Commission recommendation 19.6

The Business Council supports this recommendation, but suggests that the calculation should include the cost to third parties. For example, where the protected action delays other subcontractors and/or the head subcontractor.

## **Pattern agreement case study**

### **Subcontractor EBA dispute**

XYZ Contracting are a concreting contractor, working predominantly in the CBD of one of Australia's capital cities, on medium to large construction projects, employing approximately 120 wages staff.

XYZ had an enterprise agreement with their employees and a Branch of the CFMEU which had reached its nominal expiry date. The agreement was a 'pattern' agreement; a CFMEU standard agreement, common to most construction contractors working on large commercial construction projects.

XYZ attempted to negotiate a new enterprise agreement with the Union for over nine months prior to nominal expiry date and after. XYZ had a significant contract on a large CBD construction project (Summer St) where around one-third of their employees were deployed.

The new draft CFMEU 'pattern agreement' contained provisions which did not comply with the proposed new Federal Building Code 2014. Additionally, the Union sought a large (26%) and unaffordable increase in wages and allowances over the life of the agreement. Having not made concessions on their draft pattern agreement for over nine months, the CFMEU initiated the process for the taking of protected industrial action by the XYZ employees in support of a new agreement. A majority of the employees voted in favour of taking this action late 2014.

Several weeks later, once XYZ employees took strike action, the CFMEU blockaded the entrance to the Summer St project, preventing XYZ supplies and workforce from entering the site. This included other sub-contractors who had been engaged to carry out XYZ's work when they had indicated that they were not able to fulfil their contract due to industrial action by their employees. The FWC also declined to issue an order to stop the strike action on the basis that unlawful pattern bargaining was being engaged in, finding that minor differences between the proposed new XYZ agreement and other CFMEU industry agreements were sufficient for the CFMEU to satisfy the pattern bargaining exclusion in the Fair Work Act.

The CFMEU subsequently entered the site unlawfully (refusing to comply with Right of Entry requirements) and sought to coerce other construction workers not to work with any person carrying out XYZ's work.

Over three days of pickets, the Summer St project slowly ground to a halt as supplies ran out and the lack of XYZ's work stopped other trades from carrying out their work.

On the fourth day, XYZ conceded to all the CFMEU demands and agreed to sign the pattern agreement.

This dispute highlights the need for limits on protected action where the economic impact of the dispute on other businesses is significant, where pattern bargaining occurs that doesn't meet the proposed tests referred to above, as well as prohibiting the use of third party pickets in support of protected action.

## RECOMMENDATIONS

### **Business Council over-arching recommendations**

These recommendations are designed to provide over-arching directions for the Commission's final report. The Business Council also makes recommendations for further repair, and technical recommendations throughout this submission.

#### **Business Council over-arching recommendation 1 – Whole of system**

The Commission designs a system that will be durable, and enable enterprises the agility they will need to respond to the forces of the modern economy.

The Commission demonstrates how each of its proposal will contribute to a system that drives collaboration, innovation, and ultimately, productivity.

#### **Business Council over-arching recommendation 2 - Benchmarking**

The Commission should benchmark Australia's system against the attributes and outcomes of workplace relations systems across the world that drive collaborative and highly productive enterprises.

#### **Business Council over-arching recommendation 3 – Productivity Commission recommendations**

The Commission's draft recommendations that have been largely agreed are not recontested in the final report.

#### **Business Council over-arching recommendation 4 – Legislation, awards, and agreements**

The bulk of the Commission's final report is devoted to a thorough examination and recommendations for repair of the areas that were not adequately covered in the draft report:

- a. The legislation, and the cumulative burden and effect of the component parts of the Fair Work Act
- b. The breadth and number of Modern Awards and the consequent rigidities in the labour market
- c. The consequences of the current agreement making system – including the combative nature, the content, and the range of agreements available to workers and enterprises – on the innovation and productivity of an enterprise.

## **Business Council technical recommendations**

### **Business Council technical recommendation 1 – Adverse action**

*(see Productivity Commission's draft report Chapter 6)*

The Commission's final report recommends that the onus of proof for adverse action is reversed onto the party making the allegation, and the reintroduction of the dominant purpose test.

### **Business Council technical recommendation 2 – General protections**

*(see Productivity Commission's draft report Chapter 6)*

The Commission's final report recommends that all protections are grouped into one section of the Fair Work Act and classified as Industrial Protections.

### **Business Council technical recommendation 3 – Penalty rates**

*(see Productivity Commission's draft report Chapter 14)*

The Commission's final report recommends economy-wide minimum rates for casual, overtime, penalty and shiftwork are established, and these rates are moved from awards to the Minimum Wage Order. As part of this process, request the Fair Work Commission review penalty rates and establish a definition of unsociable hours for each industry in a 24/7 economy.

### **Business Council technical recommendation 4 – Bargaining**

*(see Productivity Commission's draft report Chapter 15)*

The Productivity Commission's draft recommendation 15.5 is amended to read, '... provide written evidence that at least 5 percent of the employees to be covered by the agreement nominated them as a representative.'

### **Business Council technical recommendation 5 – Industrial disputes**

*(see Productivity Commission's draft report Chapter 19)*

The Commission's final report recommends that a majority support determination be obtained before a protection action ballot order can be obtained. Specify that establishing majority support, for the purposes of making a majority support determination under Section 237 of the Fair Work Act, must be by means of a secret ballot.

### **Business Council technical recommendation 6 – Right of entry**

*(see Productivity Commission's draft report Chapter 19)*

The Commission's final report recommends that the Australian Government should amend the Fair Work Act so representatives are only permitted to enter communal spaces, including lunch rooms, following agreement from the enterprise, or where the enterprise refuses to offer an alternate room.

### **Business Council technical recommendation 7 – Transfer of business**

*(see Productivity Commission's draft report Chapter 22)*

The Commission's final report recommends that the Australian Government should amend Parts 2–8 of the Fair Work Act to restore the 12-month 'sunset clause' for transferring instruments which applied under the Workplace Relations Act.

## **Business Council recommendations for additional repair**

### **Business Council additional repair recommendation 1 – Modern Awards**

The Commission's final report recommends that the following five principles are used to define the safety net:

**Principle 1:** The Minimum Wage Order and National Employment Standards are the foundation of the workplace relations safety net and include any economy-wide standards.

**Principle 2:** Awards build upon the Minimum Wage Order and the National Employment Standards and establish a floor of wages and conditions specific to an industry.

**Principle 3:** Awards should establish a floor for a base wage for each employment category (limited to 5 per award), and specify when employers are required to provide additional remuneration for workers required to work overtime, unsociable, irregular or unpredictable hours, and shifts.

**Principle 4:** The NES categories that can be expanded in awards to introduce an industry-wide floor are maximum hours per week, and information provision.

**Principle 5:** Awards can establish industry-wide floors for workplace conditions that guarantee fair remuneration for the work required, reasonable hours and sufficient notification of rosters, and a safe workplace.

### **Business Council additional repair recommendation 2 – Modern Awards**

The Commission's final report recommends awards are returned to their safety net purpose with clauses limited to:

1. agreement in writing to pattern of hours of work (part-time workers)
2. allowances for travel costs/times and transport
3. apprenticeship requirements
4. employment categories, including definition of a shift-worker
5. industry specific redundancy schemes
6. national training wage, and allocation of traineeships to wage levels
7. ordinary hours of work
8. rostering issues, limited to maximum days of work, maximum hours per day, meal breaks, minimum break between times worked and minimum engagement
9. wage classifications (up to a maximum of 5 categories per award).

### **Business Council additional repair recommendation 3 – Modern Awards**

The Commission's final report identifies a range of options to reduce the number of awards from 122 to a number that removes rigidities from the economy while reflecting the diversity of the Australian economy.

## **Business Council recommendations for additional repair (continued)**

### **Business Council additional repair recommendation 4 – Agreement making**

The Commission's final report recommends that agreement making is limited to the employment relationship, and only clauses specified in the legislation can be negotiated:

1. allowances
2. employment categories
3. leave arrangements
4. notifications
5. ordinary hours of work
6. remuneration
7. rostering issues, limited to maximum days of work, maximum hours per day, meal breaks, minimum break between times worked and minimum daily engagement.

### **Business Council additional repair recommendation 5 – Agreement making**

The Commission's final report recommends that workers and enterprises can choose to negotiate an individual or enterprise agreement.

Safety net provisions or an Enterprise Agreement should form the base for an Individual Agreement and a no-disadvantage test should be applied.

BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 [www.bca.com.au](http://www.bca.com.au)

© Copyright September 2015 Business Council of Australia ABN 75 008 483 216

All rights reserved. No part of this publication may be reproduced or used in any way without acknowledgement to the Business Council of Australia.

The Business Council of Australia has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the BCA is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the BCA disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.

## Analysis of the scope and content of awards

In its initial submission to the Commission, the Business Council recommended the scope of awards be limited to 10 clauses. This was intended to be a starting point for discussion about the types of clauses that constitute the safety net.

The Business Council has analysed 25 awards (list at [Appendix 1A](#)) to test this proposition and gather evidence about the types of clauses that go beyond the safety net.

**Table 1** summarises the information contained in awards that relates to the 10 safety net clauses. **Table 2** outlines clauses that are broader, specifying more than floor wages and conditions.

A key finding from Table 1 is that the vast majority of awards (24 out of 25) contain more than 5 wage classifications. The Business Council has argued the number of wage classifications should be limited to 5 to help ensure the minimum weekly wages in awards do not go beyond a safety net.

The examples from Table 2 demonstrate that many awards include clauses that venture into the territory of issues employers and employees should negotiate. For example, some awards have clauses which cover issues such as leave loading, when higher duties should be paid, how occupations should be defined or restate entitlements under the NES.

The insights from Table 1 and Table 2 were used to develop the Business Council's 5 principles for defining the safety net (as per recommendation 7).

**Table 1: Safety net (as outlined in the Business Council's submission)**

Safety net clauses	Award(s)	Included in the award?
Accident pay	25/25 Awards	* Deleted from 23/25 awards on 5 March 15 and not present in the remaining 2 awards
Agreement in writing to pattern of hours of work (part-time workers)	22/25 Awards	✓
	Banking, Finance and Insurance Award 2010	* Not notified in writing. 'An employer must inform a part-time employee of the ordinary hours of work and starting and finishing times' [clause 10.2(c)]
	Architects Awards 2010	*
	Marine and Offshore Oil and Gas Award 2010	* Part-time workers are not an employment category under this award
Allowance for travel times and transport	19/25 Awards	✓
	General Retail Industry Award 2010	✓ However, 'travel and incidentals' allowance – clause 15.1 (d) provides reimbursement for expenses only (not time).
	Amusement, Events and Recreation Award 2010	*Not as defined here. However, the award has a 'transport' allowance to cover the cost of the employee using their own vehicle for travelling on the employer's business (clause 15.7)
	Broadcasting and Recorded Entertainment Award 2010	*Not as defined here. However, the award has a 'vehicle allowance' (clause 8.1) and a 'working late and work early allowance' (clause 18.3) that covers all workers and a range of travel related special allowances that are specific to occupational groups (e.g. broadcasters, journalists etc.)
	Clerks – Private Sector Award	* Not as defined here. However, the award has a 'living away from home' allowance (clause 19.5) and a 'vehicle allowance' (clause 19.4)

Safety net clauses	Award(s)	Included in the award?
Allowance for travel times and transport	Aluminium Industry Award 2010 Gas Industry Award 2010	✘
Apprenticeship requirements	13/25 awards	✓
	Aircraft Cabin Crew Award 2010 Architects Awards 2010 Cleaning Service Award 2010 Clerks – Private Sector Award 2010 Education Services (Post-Secondary Education) Award 2010 Fast Food Industry 2010 Fitness Industry Award 2010 Marine and Offshore Oil and Gas Award 2010 Nurses Award 2010	✘
	Amusement, Events and Recreation Award 2010 Banking, Finance and Insurance Award 2010	Covers school-based apprentices only
	Broadcasting and Recorded Entertainment Award 2010	✘ However, section 11 covers cadets
Employment categories, including definition of a shift worker	22/25 awards	✓ However, a number of the awards define the different types of shifts (morning/afternoon/night) rather than defining shiftworker
	Architects Awards 2010 Broadcasting and Recorded Entertainment Award 2010 Hospitality Industry (General) Award 2010	No definition of shiftworker.

Safety net clauses	Award(s)	Included in the award?
Industry specific redundancy schemes	23/25 awards	✘
	Building and Construction General On-site Award 2010	✓
	Manufacturing Industries and Associated Occupations Award 2010	✓ For small furnishing employers
National Training Wage and allocation of traineeship wage levels	23/25 awards	✓
	Aircraft Cabin Crew Award 2010 Architects Awards 2010	✘
Ordinary hours of work	25/25 awards	✓
Rostering issues limited to maximum number of days of work, maximum hours per day, meal breaks between times worked and minimum engagement	21/25 awards	✓ Noting that these awards contain clauses that go beyond this level of detail (clauses noted in the non-safety net section)
	Restaurant Industry Award 2010 Fast Food Industry 2010 Marine and Offshore Oil and Gas Award 2010 Health Professionals and Support Services Award 2010	✓ No further detail
Wage classifications (to 5 categories per award)	25/25	Contain wage classification categories and 23/25 contain detailed schedules outlining typical duties/skills of each classification (Marine Offshore Oil and Gas Award 2010 and Aircraft Cabin Crew Award 2010 do not have this information)
	Wine Industry Award 2010 Clerks – Private Sector Award 2010 Cleaning Services Award Aircraft Cabin Crew Award 2010	✓ Contain 5 or less wage classification categories (not counting apprentices or junior wage classifications) (Specific examples of awards with a high number of wage classification categories are listed below)
	Hospitality Industry Award 2010	Minimum wages clauses 20.1–20.3 list 58 classifications: <ul style="list-style-type: none"> <li>• General (level 1–6) which covers: <ul style="list-style-type: none"> <li>– food and beverage stream</li> <li>– kitchen stream</li> <li>– guest services stream</li> </ul> </li> </ul>

Safety net clauses	Award(s)	Included in the award?
Wage classifications (to 5 categories per award)	Hospitality Industry Award 2010	<ul style="list-style-type: none"> <li>– administration stream</li> <li>– security stream</li> <li>– leisure activities stream</li> <li>– stores stream</li> <li>– maintenance and trades—other than the cooking trade</li> <li>• Casino gaming (introductory, level 1–3A, 4–6) which covers: <ul style="list-style-type: none"> <li>– casino table gaming stream</li> <li>– casino electronic gaming stream</li> <li>– casino finance</li> <li>– casino equipment technicians</li> <li>– casino security</li> </ul> </li> <li>• Managerial staff (Hotels) (introductory, level 1–3A, 4–6)</li> </ul> <p>(Schedule D defines each of the classifications). For example:</p> <p>D.2.1 Food and beverage stream</p> <p>Food and beverage attendant grade 1 means an employee who is engaged in any of the following:</p> <ul style="list-style-type: none"> <li>• picking up glasses</li> <li>• emptying ashtrays</li> <li>• general assistance to food and beverage attendants of a higher grade not including service to customers</li> <li>• removing food plates</li> <li>• setting and/or wiping down tables</li> <li>• cleaning and tidying of associated areas.</li> </ul>
	Broadcasting and Recorded Entertainment Award 2010	<p>Minimum wages clauses list 53 classifications:</p> <p>14.2 Common salary structure grade 1–18</p> <p>14.5 Journalists grade 1–18</p> <p>14.6 Cadets</p> <p>14.7 Actors (19 classifications based on activity e.g. ‘performer (advertising films)’</p> <p>14.8 Interviews, auditions and screen tests (2 classifications)</p> <p>14.9 Post-synchronisation or additional dialogue</p> <p>14.11 Musicians (4 classifications based on activity)</p> <ul style="list-style-type: none"> <li>• Plus junior minimum wage rates</li> </ul>
	Children’s Services Award 2010	<p>3 streams of workers totalling 40 grades:</p> <ul style="list-style-type: none"> <li>• Support Worker</li> <li>• Children’s Services Employee</li> <li>• Children’s Services Employee—Director</li> </ul> <p>Plus junior and apprenticeship minimum wage rates</p>
	Marine Offshore Oil and Gas Award 2010	8 streams totalling 96 classifications

Safety net clauses	Award(s)	Included in the award?
Wage classifications (to 5 categories per award)	Building and Construction General On-site Award 2010	2 streams totalling 13 classifications

### Non-safety net clauses included in awards

Issue	Award(s)	Examples/detail
Consultation and dispute resolution	21/25	<p>Contain information on when an employer has duty to consult/notify their employees and dispute resolution procedures.</p> <p>The Wine Industry Award is a fairly standard example of the content:</p> <p>8.1 Consultation regarding major workplace change</p> <p><i>(a) Employer to notify</i></p> <p>(i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.</p> <p>(ii) Significant effects include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.</p> <p><i>(b) Employer to discuss change</i></p> <p>(i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.</p> <p>(ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).</p> <p>(iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.</p> <p>8.2 Consultation about changes to rosters or hours of work</p> <p>(a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.</p> <p>(b) The employer must:</p> <p>(i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence)</p> <p>(ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities), and</p> <p>(iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned</p>

Issue	Award(s)	Examples/detail
Consultation and dispute resolution	21/25	<p>and/or their representatives.</p> <p>(c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.</p> <p>(d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.</p> <p>9. Dispute resolution</p> <p>9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.</p> <p>9.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.</p> <p>9.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.</p> <p>9.4 Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.</p> <p>9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.</p> <p>9.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace that is safe and appropriate for the employee to perform.</p>
	Building and Construction General On-Site Award 2010 Cleaning Services Award 2010 Manufacturing and Associated Industries Award 2010	Awards contain information broadly consistent with the Wine Industry Award 2010 but they also have an additional clause on dispute resolution training leave.
	Manufacturing and Associated Industries	Award contains information broadly consistent with the Wine Industry Award 2010 but it has an additional clause on dispute resolution training leave and has a 'facilitative procedures' section.

Issue	Award(s)	Examples/detail																						
Consultation and dispute resolution	Award 2010	<p>Facilitative procedures</p> <p>8.1 Agreement to vary award provisions</p> <p>(a) This award also contains facilitative provisions which allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or section or sections of it ...</p> <p>(b) The specific award provisions establish both the standard award condition and the framework within which agreement can be reached as to how the particular provisions should be applied in practice. Facilitative provisions are not to be used as a device to avoid award obligations, nor should they result in unfairness to an employee or employees covered by this award.</p> <p>8.2 Facilitation by individual agreement</p> <p>(a) The following facilitative provisions can be utilised by agreement between an employer and an individual employee:</p> <p>(b) The agreement reached must be kept by the employer as a time and wages record.</p> <table border="0"> <thead> <tr> <th data-bbox="608 824 778 853">Clause number</th> <th data-bbox="842 824 948 853">Provision</th> </tr> </thead> <tbody> <tr> <td data-bbox="608 869 660 898">13.2</td> <td data-bbox="842 869 1347 898">Minimum engagement for part-time employees</td> </tr> <tr> <td data-bbox="608 913 660 943">13.4</td> <td data-bbox="842 913 1305 943">Variation to hours of part-time employment</td> </tr> <tr> <td data-bbox="608 958 660 987">14.2</td> <td data-bbox="842 958 1209 987">Minimum engagement for casuals</td> </tr> <tr> <td data-bbox="608 1003 692 1032">24.1(g)</td> <td data-bbox="842 1003 1182 1032">Annualised salary arrangement</td> </tr> <tr> <td data-bbox="608 1048 724 1077">32.1(c)(iii)</td> <td data-bbox="842 1048 1007 1077">Tool allowance</td> </tr> <tr> <td data-bbox="608 1093 660 1122">36.7</td> <td data-bbox="842 1093 991 1122">Make-up time</td> </tr> <tr> <td data-bbox="608 1137 660 1167">38.5</td> <td data-bbox="842 1137 963 1167">Meal break</td> </tr> <tr> <td data-bbox="608 1182 692 1211">40.1(d)</td> <td data-bbox="842 1182 1278 1211">Time off instead of payment for overtime</td> </tr> <tr> <td data-bbox="608 1227 660 1256">40.4</td> <td data-bbox="842 1227 1123 1256">Rest period after overtime</td> </tr> <tr> <td data-bbox="608 1272 676 1301">40.10</td> <td data-bbox="842 1272 963 1301">Rest break</td> </tr> </tbody> </table> <p>Also notes which clauses are eligible for:</p> <p>8.3 Facilitation by majority or individual agreement</p> <p>8.4 Facilitation by majority agreement</p> <p>(c) Additional safeguard</p> <p>8.5 Majority vote at the initiation of the employer</p>	Clause number	Provision	13.2	Minimum engagement for part-time employees	13.4	Variation to hours of part-time employment	14.2	Minimum engagement for casuals	24.1(g)	Annualised salary arrangement	32.1(c)(iii)	Tool allowance	36.7	Make-up time	38.5	Meal break	40.1(d)	Time off instead of payment for overtime	40.4	Rest period after overtime	40.10	Rest break
Clause number	Provision																							
13.2	Minimum engagement for part-time employees																							
13.4	Variation to hours of part-time employment																							
14.2	Minimum engagement for casuals																							
24.1(g)	Annualised salary arrangement																							
32.1(c)(iii)	Tool allowance																							
36.7	Make-up time																							
38.5	Meal break																							
40.1(d)	Time off instead of payment for overtime																							
40.4	Rest period after overtime																							
40.10	Rest break																							
Termination	23/25	<p>Contain a section on termination. Standard clauses include that:</p> <ul style="list-style-type: none"> <li>• termination is provided for in the NES</li> <li>• conditions for notice of termination by the employee</li> <li>• job entitlement search</li> </ul>																						
	Aircraft Cabin Crew Award 2010	<p>Details information as outlined above and has additional clauses (for example, non-NES related notice period requirements) or employee specific information. For example:</p> <p>15.4 Termination away from home base</p> <p>(a) Where the employment of a cabin crew member is terminated by either the cabin crew member or the employer while the cabin crew member is away from base on a layover or temporary transfer, the notice period in clause 15.1 will commence on the cabin crew member's return to home base or the place of recruitment where this is mutually agreed.</p> <p>(b) Where the employment of a cabin crew member is terminated by</p>																						

Issue	Award(s)	Examples/detail
Termination	Aircraft Cabin Crew Award 2010	<p>either the cabin crew member or the employer while the cabin crew member is away from base on a layover or temporary transfer, the cabin crew member must be reimbursed for the cost of transport back to home base for the cabin crew member, their spouse or de facto partner, dependent children under 21 years of age and their possessions.</p> <p>(c) Where the cabin crew member has transferred to a new home base at the employer's direction and is subsequently terminated by the employer within 12 months, the cabin crew member must be reimbursed for the cost of transport to the previous home base for the cabin crew member, their spouse or de facto partner, dependent children under 21 years of age, and their possessions</p> <p>(d) Clauses 15.4(b) and (c) do not apply when an employer elects to provide equivalent transport.</p>
	Education Service (Post-Secondary Education) Award 2010	<p>Details information as outlined above and has additional clauses (for example, non-NES related notice period requirements) or employee specific information.</p> <p>11.2 Notice of termination – teaching staff member</p> <p>(a) The employment of a teaching staff member (other than a casual employee) will not be terminated without at least four weeks' notice (inclusive of the notice required under the NES) or the payment of four weeks' salary instead of notice.</p> <p>(b) Where a course, previously scheduled, is cancelled because of the failure of students to attend, or to notify the employer that they would not be attending, or because the employer is otherwise made aware that the course will be undersubscribed and therefore have to be cancelled, and the employer cannot give four weeks' notice of termination of a teaching staff member, notice of at least two weeks will be given.</p>
Redundancy	24/25	✓ Note that redundancy is provided for in the NES and have clauses relating to transfer to lower duties
	Building and Construction General On-Site Award 2010	✓ Note that redundancy is provided for in the NES, but does not have a clause relating to transfer to lower duties
Superannuation	25/25	<p>✓ Note:</p> <ul style="list-style-type: none"> <li>• requirement for the employer to provide a superannuation contribution</li> <li>• option for voluntary employee contributions</li> <li>• how leave from work affects superannuation payments</li> <li>• details of industry-specific funds.</li> </ul>
Leave and public holidays	25/25	<p>Have a section on leave and public holidays. Many of the awards restate NES provisions relating to:</p> <ul style="list-style-type: none"> <li>• Annual leave</li> <li>• Personal/carer's leave and compassionate leave</li> <li>• Community service leave</li> <li>• Public holidays</li> </ul>
	22/25	Contain clauses that go beyond the information listed above. Many of the clauses can be found in a number of the awards, for

Issue	Award(s)	Examples/detail
Leave and public holidays	22/25	example a number of awards have clauses on leave loading, excessive leave, annual shutdown etc. (specific examples are listed below)
	Aircraft Cabin Crew Award 2010	<p>25.5 When annual leave can be taken</p> <p>(a) A period of leave will commence on a Monday unless otherwise mutually agreed.</p> <p>(b) Normally, annual leave will be granted and will be taken within 12 months from the date on which it falls due or alternatively 15 months from the date of commencement of the preceding period of leave.</p> <p>(c) Annual leave will be allocated in no more than two periods unless otherwise mutually agreed between the employee and the employer.</p> <p>(d) Subject to clause 25.4, annual leave must be taken at a time mutually agreed between the employee and employer.</p> <p>25.6 Proportionate annual leave on termination of employment On termination of employment an employee will be paid fully instead of annual leave:</p> <p>(a) for all untaken annual leave entitlements that have fallen due in relation to any completed years of service, in accordance with clause 25.2, and the loading specified in clause 25.3 for each completed year of service; and</p> <p>(b) for the balance of the employment period, or for the whole period where it has been less than one completed year, at the rate of 1/365th of the entitlement in clause 25.3 for each completed day of employment in respect of which annual leave has not been granted; and</p> <p>(c) the annual leave loading, as specified in clause 25.3, will be paid in the case of redundancy.</p> <p>25.7 When payment will be made for annual leave An employee will be paid in full for the period of leave to be taken prior to commencing such leave unless mutually agreed between the employee and the employer.</p> <p>25.8 Recall of employee from annual leave An employer will not be entitled to recall an employee from annual leave except by mutual agreement between the employer and the employee. Where an employee is so recalled the employee will be granted two days' annual leave in place of each such day and the employee may elect to add such additional entitlements to the balance of this interrupted annual leave period.</p> <p>25.9 Illness during annual leave An employee who:</p> <p>(a) would not be fit for work during annual leave because of a personal illness, or personal injury, affecting the employee;</p> <p>(b) advises the employer as soon as practicable of such illness or injury; and</p> <p>(c) produces medical evidence of the illness or injury;</p> <p>will be allowed to take that period against personal/carer's leave credits and have the annual leave credit adjusted accordingly. The personal/carer's leave documentation must be submitted within 15 days of return to duty.</p> <p>26.4 Return from personal leave</p>

Issue	Award(s)	Examples/detail
Leave and public holidays	Aircraft Cabin Crew Award 2010	<p>An employee who has been granted paid personal leave for an injury or illness in respect of which they have consulted a medical practitioner will remain on such leave subject to their entitlements from time to time, until such time as they are deemed to be medically fit in accordance with the relevant Civil Aviation Orders (CAOs) and/or Civil Aviation Regulations (CARs) to resume flying.</p> <p>26.5 Upper Respiratory Tract Infections (URTI) leave A cabin crew member must be granted up to six working days per annum, not cumulative for sickness associated with URTI, on the production of a medical certificate if required by the employer.</p>
	Aluminium Industry Award 2010	<p>22.5 Taking of annual leave during shut-downs An employer may direct an employee to take paid annual leave during all or part of a period where the employer shuts down the business or part of the business where the employee works provided the employer gives not less than four weeks' notice of intention to do so. If an employee does not have sufficient accrued annual leave for the period of the shut down, then the employee may be required to take leave without pay for the balance of the period.</p> <p>22.6 Excessive leave An employer may direct an employee to take paid annual leave if the employee has accrued more than eight weeks or, in the case of continuous shiftworkers, 10 weeks, paid annual leave, and the employer and the employee are unable to reach agreement on the taking of the leave provided that the remaining balance must be not less than 8 weeks. An employer must give an employee at least 28 days' notice prior to the date the employee is required to commence the leave.</p> <p>22.7 Paid leave in advance of accrued entitlement By agreement between an employer and an employee, a period of annual leave may be taken in advance of the entitlement accruing. Provided that if leave is taken in advance and the employment terminates before the entitlement has accrued the employer may make a corresponding deduction from any money due to the employee on termination.</p> <p>22.8 Payment (including proportionate leave) on termination.</p> <p>26.2 Substitution of public holidays An employer and a majority of affected employees or an individual employee may reach agreement in writing to substitute a day or part of a day for a day or part of a day that would otherwise be a public holiday under the NES.</p>

Issue	Award(s)	Examples/detail
Leave and public holidays	Building and Construction General On-site Award 2010	<p>38.3 Annual close down</p> <p>(a) An employer may direct an employee to take paid annual leave during all or part of a period in conjunction with the Christmas/New Year holidays, where the employer shuts down the business, part of the business, or a site where the employee works. If an employee does not have sufficient accrued annual leave for the period of the shutdown, then the employee may be required to take leave without pay for the balance of the shutdown period for which leave is not accrued.</p> <p>(b) Where an employer decides to utilise the provisions of clause 38.3(a) in respect of the Christmas/New Year period for the purpose of giving the whole of the annual leave due to all or the majority of their employees then qualified for such leave, the employer must give at least two months' notice to the affected employees.</p>
	General Retail Industry Award 2010	<p>32.4 Paid leave in advance of accrued entitlement</p> <p>An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued. Where paid leave has been granted to an employee in excess of the employee's accrued entitlement, and the employee subsequently leaves or is discharged from the service of the employer before completing the required amount of service to account for the leave provided in advance, the employer is entitled to deduct the amount of leave in advance still owing from any remuneration payable to the employee upon termination of employment.</p> <p>32.5 Requirement to take leave notwithstanding terms of the NES</p> <p>An employer may require an employee to take annual leave by giving at least four weeks' notice in the following circumstances:</p> <p>(a) as part of a close-down of its operations; or</p> <p>(b) where more than eight weeks' leave is accrued.</p>
	Hospitality Industry Award 2010	<p>34.4 Special leave without pay arrangements in respect of catering provided for boarding schools and residential colleges</p> <p>Where an employee is employed at or in connection with catering functions in primary and secondary boarding schools or residential colleges associated with tertiary educational institutions the following provisions apply:</p> <p>(a) An employee may be required to take leave without pay during official term breaks, semester breaks and the Christmas/summer vacation (the relevant period) provided that:</p> <ul style="list-style-type: none"> <li>• an employee will be given as much notice as is practicable of the start and finish of the relevant period. Such notice must be at least one week. The notice must be provided to the employee in writing. Once the notice is provided to the employee, the period of leave without pay may be varied by agreement between the employee and employer</li> <li>• an employee may take accrued annual leave or long service leave during the relevant period</li> <li>• all periods of leave without pay will count for the purposes of accruing personal/carer's leave, annual leave and long service leave</li> <li>• if appropriate work is available for the employee to perform during the relevant period, an employee will be offered that work. For the purposes of this subclause, appropriate work is work able to be performed by the employee within the employee's skills and</li> </ul>

Issue	Award(s)	Examples/detail
Leave and public holidays	Hospitality Industry Award 2010	<p>experience, and</p> <ul style="list-style-type: none"> <li>• where an employee performs appropriate work, the employee will be paid at the rate applicable to the work performed.</li> </ul> <p>(b) No employee will have their employment terminated by reason of not being able to perform work during the relevant period.</p>
Loadings/special rates/additional allowances	25/25	Awards contain information on one or more penalty rates (weekend work rates, overtime rates, shift work rates, and public holidays rates)
(NB: there is no consistency in the way the terms 'allowance' and 'special rates' are used in awards)	12/25	Contain over 10 allowances and/or special rates (specific examples are shown below)
	Building and Construction General On-site Award 2010	<p>49 'special rates'</p> <p>NB: where a special rate has multiple rates, for example, there are 5 swing scaffolding rates, it has been counted as one rate.</p> <p>22.2 Special rates applicable to all sectors</p> <ul style="list-style-type: none"> <li>(a) Insulation</li> <li>(b) Hot work</li> <li>(c) Cold work</li> <li>(d) Confined space</li> <li>(e) Swing scaffold</li> <li>((f) Explosive powered tools</li> <li>(g) Wet work</li> <li>(h) Dirty work</li> <li>(i) Toxic substances</li> <li>(j) Fumes</li> <li>(k) Asbestos</li> <li>(l) Asbestos eradication</li> <li>(m) Furnace work</li> <li>(n) Acid work</li> <li>(o) Heavy blocks—employees laying other than standard bricks</li> <li>(p) Bitumen work</li> <li>(q) Height work</li> <li>(r) Suspended perimeter work platform</li> <li>(s) Employee carrying fuels, oils and greases</li> <li>(t) Pile driving</li> <li>(u) Dual lift allowance</li> <li>(v) Stonemasons—cutting tools</li> </ul> <p>22.3 Special rates applicable only to the general building and construction sector</p> <ul style="list-style-type: none"> <li>(a) Towers allowance</li> <li>(b) Cleaning down brickwork</li> <li>(c) Bagging</li> <li>(d) Plaster or composition spray</li> <li>(e) Slushing</li> <li>(f) Dry polishing of tiles</li> <li>(g) Cutting tiles</li> <li>(h) Second-hand timber</li> <li>(i) Roof repairs</li> <li>(j) Computing quantities</li> <li>(k) Grindstone allowance</li> <li>(l) Brewery cylinders—painters</li> <li>(m) Certificate allowance</li> </ul>

Issue	Award(s)	Examples/detail
Loadings/special rates/additional allowances	Building and Construction General On-site Award 2010	<p>(n) Spray application—painters            (o) Pneumatic tool operation            (p) Bricklayer operating cutting machine            (q) Hydraulic hammer            (r) Waste disposal</p> <p>22.4 Special rates applicable only to the civil construction sector            (a) Pipe enamelling            (b) Powdered lime dust            (c) Sand blasting            (d) Live sewer work            (e) Timbering            (f) Special work            A driver operating a tractor fitted with a blade and using such blade in breaking trail in heavy sidling country must be paid an additional 0.4% of the hourly standard rate per hour for each day or part of a day when so occupied.            (g) Compressed air work            (h) Cutting stone</p>
	Food, Beverage and Tobacco Manufacturing Award 2010	<p>26.3 Special rates            (b) Cold places            An employee who works for more than one hour in places where the temperature is reduced by artificial means below 0 degrees Celsius must be paid 2.8% of the standard rate per hour extra. In addition, where the work continues for more than two hours, the employee is entitled to 20 minutes' rest after every two hours' work without loss of pay.            (c) Hot places (different rate depending on the temperature)            (d) Wet places            (i) An employee working in any place where their clothing or boots become saturated by water, oil or another substance, must be paid 2.9% of the standard rate per hour extra. Any employee who becomes entitled to this extra rate must be paid such rate only for the part of the day or shift that they are required to work in wet clothing or boots.            (e) Confined spaces            An employee working in a confined space must be paid 3.8% of the standard rate per hour extra.            (f) Dirty or dusty work            An employee who performs work of an unusually dirty, dusty or offensive nature must be paid 2.9% of the standard rate per hour extra.            (g) Fumigation gas            An employee using methyl bromide gas in fumigation work must be paid 38.2% of the standard rate per day extra for any day on which the employee is required to use such gas.</p>
	Fast Food Industry Award 2010	<p>19.9 Broken Hill            An employee in the County of Yancowinna in New South Wales (Broken Hill) will in addition to all other payments be paid an allowance for the exigencies of working in Broken Hill of 4.28% of the standard rate.</p>
	Manufacturing Industries and Associated Occupations Award 2010	<p>32.1 All-purpose allowance            (e) Application of technical computing equipment            (i) An employee in the technical field who is required to use technical computing equipment to perform work of a complex nature must be paid 196.5% of the standard rate per week extra provided that the</p>

Issue	Award(s)	Examples/detail
Loadings/special rates/additional allowances	Manufacturing Industries and Associated Occupations Award 2010	<p>allowance is not payable for routine or repetitive functions, or where the system is used merely as an aid.</p> <p>32.2 Other allowances (e) Case hardened prescription lenses An employer who requires an employee to have their prescription lenses case hardened must pay for the cost of such case hardening.</p>
	Marine and Offshore Gas Award 2010	<p>14.4 Vessels wrecked or stranded (a) If a vessel in the course of a voyage becomes wrecked or stranded and an employee is called upon for special efforts while the vessel is still wrecked or stranded, the employee will for the time during which the employee so assists be paid at the rate of 2.94% of the standard rate per hour in addition to any other entitlement under this award.</p>
	Vehicle Manufacturing, Service and Retail Award 2010	<p>16 allowances which are similar to the Building and Construction 'special' rates</p>
	Health Professionals and Support Services Award 2010	<p>18.2 Blood check allowance Any employee exposed to radiation hazards in the course of their work will be entitled to a blood count as often as is considered necessary and will be reimbursed for any out of pocket expenses arising from such test.</p> <p>18.8 Nauseous work allowance An allowance of 0.05% of the standard rate per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid this allowance will be paid a minimum sum of 0.27% of the standard rate for work performed in any week.</p> <p>18.9 Occasional interpreting allowance An employee not employed as a full-time interpreter who is required to perform interpreting duties will receive an additional 0.11% of the standard rate on each occasion with a maximum additional payment of 1.27% of the standard rate per week.</p>
	Broadcasting and Recorded Entertainment Award 2010	<p>59 allowances across the occupational groups (e.g. actor, musician etc.). NB: A number of the allowances are common across each occupational group (e.g. meal allowance); however, as the conditions or amount of the allowance varies, the allowances have been counted individually.</p>
Additional rostering clauses	12/25	<p>Contain clauses on rostered days off. The Banking, Finance and Insurance Award 2010 provides a standard example:</p> <p>22.7 Rostered days off Notwithstanding provisions elsewhere in this award, an employer and the majority of employees at an enterprise may agree to establish a system of rostered days off to provide that:</p> <p>(a) an employee may elect, with the consent of an employer to take a rostered day off at any time; (b) an employee may elect with the consent of an employer, to take rostered days off in part day amounts; (c) an employee may elect, with the consent of an employer, to accrue</p>

Issue	Award(s)	Examples/detail
Additional rostering clauses	12/25	<p>some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by an employer, or subject to reasonable notice by the employee or an employer;</p> <p>(d) once a decision has been taken to introduce an enterprise system of rostered days off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to relevant regulations; and</p> <p>(e) an employer will record rostered days off arrangements in the time and wages book at each time this provision is used.</p> <p>Other specific examples are listed below.</p>
	Nurse Award 2010	<p>24. Accumulation and taking of accrued days off (ADOs)</p> <p>24.1 Where an employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 21 – Ordinary hours of work. ADOs will be taken within 12 months of the date on which the first full ADO accrued.</p> <p>24.2 With the consent of the employer, ADOs may be accumulated up to a maximum of five in any one year.</p> <p>24.3 An employee will be paid for any accumulated ADOs, at ordinary rates, on the termination of their employment for any reason.</p>
	Aircraft Cabin Crew 2010	<p>C.4 Rosters (from schedule C)</p> <p>C.4.1 Cabin crew member rosters will be compiled to cover 14 or 28 day periods and must be provided in writing not less than seven days prior to the commencement of the roster period.</p> <p>C.4.2 A copy of the complete roster must be displayed on the regional cabin crew member notice board prior to the commencement of the roster period.</p> <p>C.4.3 Each roster will specify the regional cabin crew member's designated days off, duty days, tours of duty flight details, periods of leave and any other form of duty as may be applicable.</p> <p>C.4.4 A rostered tour of duty must not be preceded or followed by a period of reserve duty in any one calendar day ...</p> <p>C.4.6 Exchange of rostered duty Exchange of duty between regional cabin crew members will be granted by the employer upon the request of regional cabin crew members concerned, provided that regional cabin crew members' ability to complete subsequent rostered flying is not affected.</p>
	Building and Construction General On-site Award 2010	<p>33.1 (iii) Agreement on banking of RDOs</p> <ul style="list-style-type: none"> <li>• Where employees are employed on distant work covered by clause 24.1, an employer and a majority of those employees on distant work may agree to accrue up to five rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer.</li> <li>• Where the majority of the employees request consultation with their representative(s), that consultation will take place at least five days prior to its introduction.</li> </ul>

Issue	Award(s)	Examples/detail
Additional rostering clauses	Building and Construction General On-site Award 2010	<ul style="list-style-type: none"> <li>• Any agreed arrangement must provide that 13 rostered days are taken off by an employee for 12 months' continuous service.</li> </ul> <p>(iv) Each day of paid leave taken and a public holiday occurring during any cycle of four weeks will be regarded as a day worked for accrual purposes</p> <p>(v) An employee who has not worked, or is not regarded by reason of clause 33.1(a)(iv) as having worked a complete 19-day four week cycle, will receive pro rata accrued entitlements for each day worked or regarded as having been worked in such cycle, payable for the rostered day off, or in the case of termination of employment, on termination.</p> <p>(vi) Except where agreement has been reached in accordance with clauses 33.1(a)(ii) and 33.1(a)(iii), the prescribed rostered day off or any substituted day may be worked where it is required by the employer and such work is necessary:</p> <ul style="list-style-type: none"> <li>• to allow other employees to be employed productively; or</li> <li>• to carry out out-of-hours maintenance; or</li> <li>• in the case of unforeseen delays to a particular project or a section of it or other reasons arising from unforeseen or emergency circumstances on a project;</li> </ul> <p>in which case, in addition to accrued entitlements, the employee will be paid penalty rates and provisions as prescribed for Saturday work in clause 37 – Penalty rates.</p> <p>(c) Washing time The employer will provide sufficient facilities for washing and five minutes will be allowed before lunch and before finishing time to enable employees to wash and put away gear.</p> <p>(e) Hours – underground work ... (ii) The hours of work of employees working underground and all dependent work above the ground will begin at the whistle and end at the surface. The hours of work for underground work will be 38 per week worked in accordance with the provisions of clauses 33.1(a)(i) and 33.1(a)(ii). Each day's work will include half an hour crib break and if two shifts are worked they will be worked between the hours of 6.00 am and midnight.</p> <hr/> <p>Award has clauses on inclement weather (clauses 23.1 – 23.6) in addition to: 23.13 Additional wet weather procedure (a) Remaining on site Where, because of wet weather, the employees are prevented from working:</p> <ul style="list-style-type: none"> <li>(i) for more than an accumulated total of four hours of ordinary time in any one day; or</li> <li>(ii) after the meal break, as provided in clause 35.1, for more than an accumulated total of 50% of the normal afternoon work time; or</li> <li>(iii) during the final two hours of the normal work day for more than an accumulated total of one hour;</li> </ul> <p>the employer will not be entitled to require the employees to remain on site beyond the expiration of any of the above circumstances.</p>

Issue	Award(s)	Examples/detail
Additional rostering clauses	Building and Construction General On-site Award 2010	<p>Where, by agreement between the employer and the employees, employees remain on site beyond the periods specified above, any such additional wet time will be paid for but will not be debited against the employees' hours. Wet time occurring during overtime will not be taken into account for the purposes of this subclause.</p> <p>(b) Rain at starting time Where the employees are in the sheds, because they have been rained off, or because it is at starting time, morning tea, or lunch time, and it is raining, they will not be required to go to work in a dry area or to be transferred to another site unless:</p> <p>(i) the rain stops; or (ii) a covered walkway has been provided; or (iii) the sheds are under cover and the employees can get to the dry area without going through the rain; or (iv) adequate protection is provided. Protection must, where necessary, be provided for the employees' tools.</p>
Additional clauses on employment categories	Vehicle Manufacturing, Service and Retail Award 2010	<p>13.3 Casual conversion to full-time or part-time employment</p> <p>(a) A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.</p> <p>(b) Every employer of such an employee must give the employee notice in writing of the provisions of clause 13.3 within four weeks of the employee having attained such period of six months. The employee retains their right of election under clause 13.3(a) if the employer fails to comply with clause 13.3(b).</p> <p>(c) Any such casual employee who does not within four weeks of receiving written notice elect to convert their contract of employment to full-time or part-time employment is deemed to have elected against any such conversion.</p> <p>(d) Any casual employee who has a right to elect under clause 13.3(a), on receiving notice under clause 13.3(b) or after the expiry of the time for giving such notice, may give four week's notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment, and within four weeks of receiving such notice the employer must consent to or refuse the election but must not unreasonably so refuse.</p> <p>(e) Once a casual employee has elected to become and been converted to a full-time or part-time employee, the employee may only revert to casual employment by written agreement with the employer.</p> <p>(f) If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 13.3(d), the employer and employee must, subject to clause 13.3(d), discuss and agree on:</p> <p>(i) which form of employment the employee will convert to, being full-time or part-time; and (ii) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as</p>

Issue	Award(s)	Examples/detail
Additional clauses on employment categories	Vehicle Manufacturing, Service and Retail Award 2010	<p>set out in clause 12 – Part-time employment.</p> <p>(g) An employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed on between the employer and employee.</p> <p>(h) Following such agreement being reached, the employee converts to full-time or part-time employment.</p> <p>(i) Where, in accordance with clause 13.3(d) an employer refuses an election to convert, the reasons for doing so must be fully stated and discussed with the employee concerned and a genuine attempt made to reach agreement.</p> <p>(j) Subject to agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned, the employer may apply clause 13.3(a) as if the reference to six months is a reference to 12 months, but only in respect of a currently engaged individual employee or group of employees. Any such agreement reached must be kept by the employer as a time and wages record. Any such agreement reached with an individual employee may only be reached within the two months prior to the period of six months referred to in clause 13.3(a).</p>
	Wine Industry Award 2010	Clauses on casual conversion to full-time or part-time employment (similar to clauses listed above from the Vehicle Manufacturing, Service and Retail Award 2010).
Overtime	Fitness Industry Award 2010	<p>26.4 Time off instead of payment for overtime</p> <p>An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer, provided that:</p> <p>(a) overtime taken as time off instead of payment for overtime during ordinary hours must be taken at the ordinary time rate, that is, an hour for each hour worked; and</p> <p>(b) an employer must, if requested by an employee, provide payment at the rate provided for the payment of overtime in this award for any overtime worked which has not been taken as time off instead of payment for overtime within four weeks of accrual; and</p> <p>(c) an employer sets out in the time and wages record time off instead of payment for overtime arrangements.</p>
	Fast Food Industry Award 2010	<p>26.4 Reasonable overtime</p> <p>(a) An employer may require an employee other than a casual to work reasonable overtime in accordance with the provisions of this clause.</p> <p>(b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:</p> <p>(i) any risk to employee health and safety;</p> <p>(ii) the employee's personal circumstances including any family</p>

Issue	Award(s)	Examples/detail
Overtime	Fast Food Industry Award 2010	responsibilities; (iii) the needs of the workplace or enterprise; (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and (v) any other relevant matter.
	9/25	Contain similar clauses defining 'reasonable overtime'
Higher duties	17/25	Contain a section on higher duties (usually one clause noting the minimum period of time an employee must work at a higher level before they are paid at the higher wage rate.
	Hospitality Industry (General) Award 2010 Education Services (Post-Secondary Education) Award 2010 Nurses Award 2010 Children Services Award 2010	Specific groups of employees who are not eligible to be paid at a higher rate of pay when they undertake higher duties
Payment	24/25	Contain clauses outlining payment procedures (frequency and method)

### **List of the awards that have been analysed**

1. Banking, Finance and Insurance Award 2010
2. Clerks – Private Sector Award 2010
3. Architects Award 2010
4. Fitness Industry Award 2010
5. Health Professionals and Support Services Award 2010
6. Aged Care Award 2010
7. Nurses Award 2010
8. Aircraft Cabin Crew Award 2010
9. Children’s Services Award 2010
10. Education (Post-Secondary Education) Award 2010
11. Broadcasting and Recorded Entertainment Award
12. Amusement, Events and Recreation Award 2010
13. Building and Construction General On-site 2010
14. General Retail Industry Award 2010
15. Hospitality Industry (General) Award 2010
16. Restaurant Industry Award
17. Fast Food Industry Award 2010
18. Aluminium Award 2010
19. Gas Industry Award 2010
20. Manufacturing Industries and Associated Occupations Award 2010
21. Marine and Offshore Gas and Oil Award 2010
22. Food, Beverage and Tobacco Manufacturing Award 2010
23. Vehicle Manufacturing, Service and Retail Award 2010
24. Wine Industry Award 2010
25. Cleaning Services Award 2010

## Examples of enterprise bargaining agreement clauses that go beyond the employment relationship and managerial decision making

The Business Council has analysed 20 agreements (list at [Appendix 2A](#)) to identify clauses that go beyond the employment relationship, that is, wages and conditions above the safety net (as defined in the Business Council’s recommendation 8).

The clauses have been categorised into four groups (tables 1–4 below) depending on whether they have implications for staffing decisions, how an organisation is run, information provision or the use of technology.

The examples in the tables highlight the wide range of issues covered in agreements, including: recruitment and performance management procedures, rostering arrangements, job design, work arrangements, the provision of staffing information and conditions for implementing new technology. These issues extend far beyond the employment relationship, opening the door for regulation scope creep.

A number of the clauses outline favourable conditions for employees, employers or both. For example, commitments to:

- a nominal amount of training and/or professional development
- merit based selection processes when identifying workers for redundancy
- not make workers redundant as a result of continuous improvement processes or the use of supplementary labour
- providing opportunities for a career break.

While these actions and obligations may be a good thing to do or mutually beneficial, their inclusion in an agreement is problematic because it makes them legally enforceable and subject to regulation by the Fair Work Commission. These decisions go beyond the employment relationship and delve into operational management. As such, they should be determined by the business – not a third party – or negotiated between employees and employers outside of the workplace relations system.

Table 1– Clauses that impact on staffing decisions
<b>Amcor Fibre Packaging National Enterprise Agreement 2013</b>
<p>Casual Employees</p> <p>10 (a) Prior to the engagement of any casuals there needs to be consultation with the Union/s covered by this Agreement.</p> <p>(b) Casual employees shall only be used to supplement the existing permanent workforce in accordance with the clause and will not undermine permanent employment.</p> <p>(c) Casual employees will be entitled to an additional 25% of the site classification rate prescribed for such work in this Agreement.</p> <p>(d) Casual employees shall be engaged for a continuous period up to thirteen (13) weeks. Prior to the expiration of the initial terms, the Company may opt to:</p> <ul style="list-style-type: none"> <li>(i) appoint the casual as a weekly employee upon the expiration of the 12th week, or</li> <li>(ii) terminate the engagement, or</li> <li>(iii) by agreement with the elected Union representative extend the initial term for a period (not more than thirteen weeks). This agreement will not be unreasonably withheld.</li> </ul> <p>(e) After the initial term that casual will not be re-engaged and the position will not be filled by another casual employee within the following three month period unless by agreement with the Union delegate.</p> <p>(f) A casual employee must not be engaged and re-engaged to avoid any obligation under this Agreement.</p>

Table 1– Clauses that impact on staffing decisions
<p>(g) Where an employee is absent for a known term which is greater than 26 weeks, such as parental leave, Work cover, long service leave, income protection or other long term absences, a casual employee may be engaged to fill that position for a specific period of time provided that:</p> <ul style="list-style-type: none"> <li>(i) The specific period of time shall not exceed 12 months.</li> <li>(ii) The replacement employee is advised in writing of their termination date on appointment.</li> <li>(iii) The initial term may be extended by agreement with the elected employee representative. This agreement will not be unreasonably withheld.</li> </ul>
<p><b>Contractors</b></p> <p>11.1.1 Before the Company engages contractors or labour hire companies to do work covered by this Agreement the Company must consult with the Union. For the purpose of the consultation the Company must inform the Union of: the name of the proposed contractor(s) or labour hire company or companies; the type of work proposed to be given to the contractor(s) or labour hire company or companies; the number of persons and qualifications of the persons the proposed contractor(s) or labour hire company or companies may engage; and the likely duration.</p> <p>11.1.2 The Company must consult with the Union over issues such as: safety; whether having the work done in-house will enhance or diminish job security for employees engaged under the Agreement; alterations in the working conditions for employees covered by this Agreement caused by the proposed use of contractors or labour hire companies; and inductions and facilities for contractor and labour hire employees.</p>
<p><b>11.2 Wages and Conditions of Contractors’ and Labour Hire Companies’ Employees</b></p> <p>11.2.1 The Company must ensure the wages and conditions of contractors’ and labour hire companies’ employees engaged to do work covered by this Agreement are no less favourable than the wages and conditions provided for in this Agreement for equivalent or similar work. Upon request by the Union, the Company will provide the supporting evidence.</p> <p>Clause 11.2.1 will be interpreted to mean that wages and conditions of labour hire company employees employed in accordance with clause 11 will be entitled to the same wages and conditions provided for in this Agreement for equivalent or similar work, which includes an additional 25% of the site classification rate.</p>
<p><b>11.2 Wages and Conditions of Contractors’ and Labour Hire Companies’ Employees</b></p> <p>11.2.1 The Company must ensure the wages and conditions of contractors’ and labour hire companies’ employees engaged to do work covered by this Agreement are no less favourable than the wages and conditions provided for in this Agreement for equivalent or similar work. Upon request by the Union, the Company will provide the supporting evidence.</p> <p>Clause 11.2.1 will be interpreted to mean that wages and conditions of labour hire company employees employed in accordance with clause 11 will be entitled to the same wages and conditions provided for in this Agreement for equivalent or similar work, which includes an additional 25% of the site classification rate.</p>
<p><b>Part 2 – Skills Based Pay Classification Structure</b></p> <p>It is agreed that the current Skill Based Pay Review Committee will review the operation of the existing Skill Based Pay System in line with the scope established in the Committee’s work. Where required, changes will be made to the Skill Based Pay System in line with this review.</p> <p>This working party may recommend changes to skill block weightings (as per Clause 9 of the Skill Based Pay policy) and discuss the application of Skill Based Pay at different sites. Where changes are made the parties commit to minimise the commercial impact to the Company.</p>

Table 1– Clauses that impact on staffing decisions
<p>Part 2 – skills based pay classification structure</p> <p>Appeals and Disputes</p> <p>3.5.3 Employees shall have the right to appeal to the Plant Consultative Committee if they feel aggrieved by an inability to gain access to particular training. The Committee in considering such appeals shall balance the needs of the individual with production requirements, organisational needs, equipment availability and safety. The Committee shall recognise and consider during its deliberations a number of factors which may limit individuals’ rights to access training, such as:</p> <ul style="list-style-type: none"> <li>• skill requirements of the business</li> <li>• number required with the particular skill</li> <li>• training resources available</li> <li>• cost effectiveness</li> <li>• numbers requesting training at one time.</li> </ul>
<p>Part 3 – Redundancy and Relocation Agreement</p> <p>Hardship committee</p> <p>7. A Committee comprised of Company representatives and elected Union delegates will be established for the purpose of reviewing cases of hardship that may arise from relocating to new premises or changes to conditions of employment as envisaged by this Agreement.</p>
<p>Part 3 – Redundancy and Relocation Agreement</p> <p>Job transfer</p> <p>9.1 In the event of a job transfer or the offer of a job transfer taking effect, the following provisions will apply:</p> <ol style="list-style-type: none"> <li>i. Where an employee is offered similar work in another section of the Company’s site, or at another convenient location, and refuses such an offer, the Hardship Committee will review the reasons and circumstances leading to the refusal.</li> <li>ii. As a general guideline, the Hardship Committee will review such cases during the first three (3) months of the transfer. After consideration has been given to all aspects of the refusal, the Hardship Committee will then decide whether redundancy pay is applicable.</li> </ol>
<p>Annexure 3 – Skills Based Pay Policy</p> <p>3.2 Skills Acquisition Process: New employees</p> <p>All new employees to Amcor Fibre Packaging (except those employees referred to in sub-clause 10.1 of this Part) will undertake an assessment of their skills to determine a commencement points score, pay band and personal training plan.</p> <p>[Can appeal the decision through the Plan Consultative Committee ]</p>
<p><b>Australia Post Enterprise Agreement 2013</b></p>
<p>Fixed Term Employees</p> <p>7.5.1 An employee can only be recruited on a fixed term basis when it is likely that the employee’s service will be required only for a specific period for the purposes of:</p> <ol style="list-style-type: none"> <li>(a) recruitment for a specific project or task to provide special skills which are not encompassed by current operational roles;</li> <li>(b) filling temporary resource needs resulting from specific employee circumstances;</li> <li>(c) facilitating workforce adjustment/transition strategies for implementation of change or acceptance of new business opportunities. These will be the subject of consultation in accordance with clause 33 and that consultation will include any expected need to use fixed term employees; and</li> <li>(d) other circumstances agreed between Australia Post and the relevant Union or determined by FWA.</li> </ol>

Table 1– Clauses that impact on staffing decisions
<p>7.5.2 A fixed term employee will not be held against a permanent vacant position unless the reason for employing the fixed term employee against such a position meets the requirements of clause 7.5.1.</p> <p>7.5.3 The period of continuous employment as a fixed term employee can be up to one year but can be extended beyond one year in particular circumstances for further periods.</p>
<p>Casual Employees</p> <p>7.6.3 A casual employee may be engaged for a period up to 12 weeks. Provided that at the end of a 12 week period a casual employee may be offered permanent employment or fixed term employment. Where fixed term employment is offered it must meet the requirements of clause 7.5 of this Agreement.</p> <p>7.6.4 Notwithstanding clause 7.6.3, the terms of engagement and the number of casual employees employed under the Christmas arrangements will be the subject of consultation between Australia Post and the Union. Casual employees must not be engaged before Christmas in such a manner as to pre-empt that consultation.</p>
<p>Agency Personnel</p> <p>7.8.1</p> <p>(a) Australia Post will ensure that the overall pay and conditions of remuneration paid to agency personnel will not be less than the overall pay and conditions of remuneration provided to comparable Australia Post employees by the Agreement and the relevant Australia Post awards. Australia Post will ensure that agency personnel will observe the same on the job working arrangements as apply to the comparable Australia Post employees under the Agreement; and</p> <p>(b) where agency personnel are engaged they will be utilised to cover casual and fixed term needs within the same parameters as defined in clauses 7.5 and 7.6, provided that fixed term agency personnel can only be employed in nonoperational roles.</p>
<p>Contractors</p> <p>7.9.2 Australia Post will consult with the Union regarding any new proposal involving the use of contractors allowing sufficient time (minimum of two weeks' notice) for consultation to occur at a local, state and national level. Consultation will cover matters such as:</p> <ul style="list-style-type: none"> <li>(a) the type of work proposed to be given to the contractor(s);</li> <li>(b) the likely duration of the contracting arrangement; and</li> <li>(c) the likely impact on employees covered by this Agreement.</li> </ul> <p>7.9.3 Australia Post will provide relevant information on use of contractors to the Union (at the national level) on a bi-annual basis in the manner it presently does.</p>
<p>Selection</p> <p>11.5.1 The selection of employees for positions shall be in accordance with existing procedures determined by Australia Post. Australia Post will consult with the Union in relation to any changes to existing procedures.</p>
<p>Salary Advancement Conditions</p> <p>11.9.2 Permanent employees</p> <p>Trainees will be advanced to the relevant base level salary after three months employment.</p> <p>11.9.3 Casual/Fixed term employees</p> <p>A casual or fixed term employee will commence at the Trainee level and be advanced to the base level after three months aggregate employment in any twelve-month period.</p> <p>11.9.4 Postal Delivery Officers</p>

Table 1– Clauses that impact on staffing decisions
<p>Postal Delivery Officers in Delivery Centres/Facilities will on advancement from the Trainee Postal Delivery Officer level move straight to the third salary point in the Postal Delivery Officer salary range and thereafter be subject to normal incremental advancement.</p>
<p>Postal Technical Officer Level 4 – Salary Advancement Conditions</p> <p>11.12.1 Advancement to the 4th, 5th, 6th and 7th salary points of the Postal Technical Officer 4 (PTO4) classification will be conditional on an employee obtaining a Certificate IV in Electrotechnology (Systems Electrician) or equivalent qualification as assessed by an accredited provider engaged by Australia Post for this purpose. Provided that a new PTO4 employee who possesses this qualification or equivalent qualification recognised by Australia Post will commence at the 4th salary point of the PTO4 salary range. A current PTO4 employee who obtains this qualification will advance to the 4th salary point from the date the employee obtains the qualification.</p> <p>11.12.2 An employee will require a Diploma of Electrical Engineering or equivalent qualification (as assessed by an accredited provider engaged by Australia Post for this purpose) in order to advance to the maximum (8th salary point) of the PTO4 classification range. Provided that an employee who possesses this qualification or equivalent qualification will be eligible for accelerated advancement to the maximum of the PTO4 range on and from the date of commencement of this Agreement or from the date the employee obtains the relevant qualification, whichever is the later.</p>
<p>Team Based Work – Mail and Parcel Processing</p> <p>37.1.1 The roll-out of team based work in Mail and Parcel Processing continues to be a long and complex exercise (as it has in many organisations which have gone down similar paths).</p> <p>37.1.2 It is agreed that this process will continue to be given emphasis during the life of the Agreement, with a view to:</p> <ul style="list-style-type: none"> <li>(a) continuing the progressive roll-out of the team based work model, and the team skills loading for Mail Officers, Parcel Post Officers and technical staff (where applicable), into agreed mail and parcel processing facilities;</li> <li>(b) this roll-out being completed during the life of this Agreement; and</li> <li>(c) further development of effective team-working at existing facilities with team arrangements being in place including consultation and employee involvement in relation to any changes in accordance with clause 33 – Employee Consultation, of the Agreement.</li> </ul>
<p>Sort/machine rates</p> <p>39. Managers shall not use sort or machine rates in an unreasonable and unfair manner in the management of employees' work or performance.</p>
<p><b>Coles Supermarket PTY and Bi-Lo Pty Ltd Retail Agreement 2011</b></p>
<p>Limited Tenure</p> <p>5.7.3 The minimum duration of 'limited tenure is 1 month. However, if the sole purpose of the limited tenure is to replace a team member on Annual Leave or to replace a team member on guaranteed leave under clause 5.3.6 the minimum duration is 1 week.</p> <p>5.7.4 The minimum duration of 'limited tenure is 12 months. However, this maximum shall not apply if the sole purpose of the limited tenure is to replace a team member on Parental Leave.</p>
<p><b>Esso Gippsland (Longford and Long-Island Point) Enterprise Agreement 2014</b></p>
<p>Staffing review process</p> <p>7(b) Esso recognises the importance of the Longford and Long Island Point employee work groups as a viable part of the business and is committed to an agreed Staffing Review Process at each location on an annual basis. The team responsible will be comprised of the relevant union delegates and/or their nominated</p>

**Table 1– Clauses that impact on staffing decisions**

representatives and an equal number of members from the Longford or Long Island Point Leadership Team.  
 The term of the Staffing Review Process is May to May of the following year or earlier if the business need arises.

7(c) The Longford Staffing Review Process and the Long Island Point Staffing Review Process will consider:

- \*a proposed operational business model based on the facility modification plans e.g. home based maintenance etc.
- \* an Operations and Maintenance succession Plan
- \* a proposed staffing change proposal
- \* a table of site staffing numbers by classification
- \* employee leave requirements
- \* employee release requirements
- \* employee training requirements
- \* employee regulatory requirements
- \* a review of supplementary labour usage

7(d) The outcome resulting from the annual Longford Staffing Review Process and the annual Long Island Point Staffing Review Process provided it is agreed by the parties to this Agreement will take precedence over the Operations Technicians numbers specified in the Attachments to this agreement.

**Fairfax Media Advertising Production Unit and Newspaper Production Enterprise Agreement 2013**

6.1.2 (e) The company agrees to consult with employees over the content and implementation of competencies for the different classifications.

**Fitness First Enterprise Agreement**

Performance review

18. Employees work performance shall be reviewed annually with their Manager with any applicable pay uplift to their rate of pay, determined by your Manager, occurring from April each year. Pay uplift shall be in line with the following performance rating table:

Performance	Rating	Uplift% (including of super uplift)
Below expectations	1	0 pay uplift. Super increase only as per Clause 19.2
Partially meets expectations	2	2
Meets expectations	3	3
Exceeds expectations	4	4
Outstanding expectations	5	5

Schedule 2–wages and rates

<b>Dance Instructor</b>			
Key area	Level 1	Level 2	Level 3
Experience	New instructor, less than 2 years' industry experience	More than 3 years' industry experience	More than 5 years' industry experience

Table 1– Clauses that impact on staffing decisions

Compliance	All compliance up to date, and passed instructor assessment	All compliance up to date	All compliance up to date
Length of service *existing employees		Completed a minimum of 150 hours of teaching within Fitness First	Completed a minimum of 300 hours of teaching within Fitness First
Professional development		Regularly partakes in self-funded education and professional development	Regularly partakes in self-funded education and professional development
Team training		Mentors new instructors on a regular and ongoing basis	Mentors new instructors on a regular and ongoing basis
Employee engagement	75% attendance at Fitness First seminars, workshops and training	75% attendance at Fitness First seminars, workshops and training	75% attendance at Fitness First seminars, workshops and training

[The EBA also has a similar table for progression as a swimming instructor.]

#### **GM Holden Ltd Enterprise Agreement 2014**

##### Use of casual employment at HEO

4.3 Holden remains committed to a full-time and direct hire workforce for its permanent positions subject to the Expression of Interest clause in Attachment X. The Parties acknowledge that the wind down and subsequent closure of manufacturing and engineering will require increased flexibility.

##### Supplementary labour pool (non trade employees – excluding HEO and HSPO)

4.3.2A Holden will provide the relevant Senior Employee Representatives details of duration and number of supplementary labour employees prior to engagement.

The Parties agree that the total number of Supplementary Labour Pool employees is limited to 150 (excluding for the purposes of backfilling early release) but may be extended beyond 150 following agreement being reached with the Regional Secretary of the AMWU Vehicle Division in consultation with the relevant Vehicle Division Senior Employee Representative in South Australia. The AMWU Vehicle Division commits not to unreasonably withhold their consent to an extension to the number of Supplementary Labour Pool personnel  
...

##### Use of casual/temporary employees at HSPO (non salaried)

4.3.3 Holden may identify the need to hire casual employees where a short term increase in work load, or other unusual circumstances occurs.

When this situation arises Holden will consult and reach agreement with the Senior Employee Representatives of the relevant Union(s). In some cases this consultation and agreement will need to occur on the day that the need is identified. Engagement of the agreed number of casual personnel will be for the agreed specified tasks and the agreed specified periods. If these circumstances change then Holden will again consult and reach agreement with the relevant Union(s). The relevant Union(s) will not unreasonably withhold its/or their consent.

... Casual employees who have worked regular or systematic hours less than 38 hours per normal working

Table 1– Clauses that impact on staffing decisions

week will at 6 months be given the opportunity to remain either a casual employee, or transfer to permanent full time or part time employment depending upon the hours of engagement.

The maximum period for which a casual employee can work continuously on a full-time basis shall be 3 months.

In any case where such full-time employment extends beyond three months, the employee shall thereafter be deemed to be permanent.

(a) The relevant Peak/State Committee will monitor the application of this clause and resolve any concerns referred by Site/Senior Employee Representative Committees. In conjunction with the above, Holden may engage casual employees at HSPO when:

(i) more than 16% of a workgroup is on planned leave (being annual leave/RDOs/long service leave). The 16% rule will only be exceeded in genuinely compassionate circumstances due to unplanned events, including bereavement. Where an employee wishes to take a RDO or Annual Leave or Long Service Leave which will result in the 16% rule being exceeded, the employee through the relevant Employee Representative may request that the absence be backfilled with a casual employee. In such a case, Holden will not unreasonably withhold its consent. HSPO Management agrees to review the Work Group size and structure for the purpose of applying the 16% rule as soon as possible after the commencement date of this Agreement; or

(ii) on any shift where there are more than 3 or more unplanned absences Holden may engage one casual employee to replace each absent employee at or above this threshold; or

(iii) for outbound operations, a daily review of shift plan with employee representative(s) will be conducted to discuss labour requirements to ensure that work is completed by customer shipment schedule. HSPO may engage casuals where permanent labour and reasonable overtime is insufficient to meet customer shipment schedule. If a requirement for additional casuals is identified after the shift has commenced, an updated shift plan will be reviewed with employee representatives before additional casuals are engaged. The shift plan will include the following elements: lines to be picked by customer shipment schedule, available normal hours, overtime hours and pick rate; or

(iv) for inbound operations, HSPO's target for overseas containers is less than 20 containers (20ft equivalents) in the container yard. If the outstanding overseas containers are greater than 50 containers in the container yard the following may apply:

A. on the day/s following the overseas container yard reaching greater than 50, Holden may engage 1 casual for every container over 50 containers at the container yard up to a maximum of 10 casual employees. Where more than 10 casuals are required the parties will negotiate requirements at the daily review of the shift plan. Overtime will be offered to permanent day shift and mid shift employees prior to their shift in the first instance before casuals may be engaged; and

B. If there are greater than 50 containers at the container yard at 12 noon on Friday and casuals have been engaged through clause 4.3.3 (iv) during the same week, Saturday overtime will be offered for inbound operations, and

(v) A copy of the completed shift plan will be given to the relevant Employee Representatives daily at the commencement of each shift to confirm that the shift plan has been applied correctly. If the Employee Representatives raise a dispute regarding the application of the shift plan, then the dispute shall be dealt with in terms of the dispute resolution procedure in this clause.

(vi) A minimum of two hours of overtime will be offered to permanent employees in the first instance prior to casuals being engaged through clause 4.3.3 (iii and iv).

(vii) Casual employees engaged through clause 4.3.3 will be engaged for a minimum of four (4) hours.

(b) In addition to the circumstances in which temporary employees may be engaged at HSPO as outlined in clause 4.5, Holden may engage temporary employees on a fixed term basis at HSPO if an employee is off work for more than 15 consecutive days as a result of non-work related injury or illness. The temporary employee will continue to be employed until the injured or ill employee returns to normal duties. If the injured or ill employee ceases employment the temporary employee will no longer be engaged.

(c) The Parties agree to review matters relevant to the engagement of casual and temporary employees when appropriate at Site Committee meetings.

(d) Any disputes about the engagement of casual employees must be resolved in terms of the following

Table 1– Clauses that impact on staffing decisions

dispute resolution procedure:

- (i) the aggrieved party will advise the relevant Employee Representative/s or Group Leader (as the case may be) of the dispute and discuss the matter;
- (ii) if the matter is not resolved, the respective union official shall discuss the matter with the relevant Holden representative within one day;
- (iii) should the dispute not be resolved on that day to the satisfaction of both Parties, the matter will be referred to the Fair Work Commission for conciliation and/or arbitration; and
- (iv) the status quo must be maintained while these processes occur. For the sake of clarity the status quo means the circumstance(s) that were occurring prior to the dispute arising.

Use of Casual and Contract Labour (Salaried Areas)

4.3.4 From time to time, Holden may identify the need to hire casual employees or contract labour in salaried roles.

The Parties have agreed that when this situation arises Holden will consult with the relevant union(s) on the number of casual or contract personnel required, the task/s they are required for, and the estimated period they will be required for. If these circumstances change then Holden will again consult with the relevant union(s) ...

Contractors in salaried area

4.3.4.2 It is agreed between the Parties that the following guidelines will be followed in regard to the utilisation of contractors in the salaried areas.

(a) Holden's short and long-term projections for labour will determine the need and number of contractors that are required to support the business.

(b) Holden may engage graduates transitioning direct from university in Professional Engineering or Science roles as contractors, for a maximum period of three years or to closure. At the expiry of the contract period or closure, the individual will be either offered a permanent ongoing position or will be disengaged, depending on the circumstances at that time.

(c) A graduate employed as a contractor into Engineering or Science role will not be worse off than a Holden employee in an Engineering or Science role in reference to clause 5.6.1.8(c).

(d) Holden will advise the relevant union/association of the Contract Houses that are utilised for contractors in the salaried areas. In the event of any concerns that arise under this clause, Holden and officials of the relevant union/association agree to meet to resolve the issue.

(e) Holden will meet with the officials of the relevant union/association concerned to resolve any issues of concern that may arise with the utilisation of contractors.

(f) Holden will continue to monitor job opportunities that may enable contractors the opportunity to transition to permanent positions in Holden based on their qualifications, skills and experience and suited to the roles that become available based on the long-term requirements of core programs.

(g) Any dispute arising within the provisions of this clause will be dealt with under the provisions of the dispute resolution procedure of this Agreement.

Fixed Term Employment (Non-Trade Employees)

4.5.1 Fixed term employees will be engaged in cases of model/product launches, engineering/other programs, plant commissioning/de-commissioning, temporary volume fluctuations, coverage for leave and other circumstances where existing employee numbers cannot meet the additional work load ... Fixed term employees shall be engaged for as long as the particular requirement exists but for not more than 12 months, inclusive of an initial three month probationary period. Except if a fixed term non trades employee is extended in accordance with this clause, after 12 months of continuous employment or after employment for a cumulative period of 12 months provided that the break in employment is no longer than three months, a fixed

Table 1– Clauses that impact on staffing decisions
<p>term non trades employee will be converted to permanent. The nature of the fixed term engagement will be determined through:</p> <p>(a) The relevant Site/Senior Employee Representatives committee will examine and confirm that all proposals to engage fixed term employees are consistent with this Agreement.</p> <p>(b) The relevant Peak/State Committee will monitor the application of this Agreement and resolve any concerns referred by Site/Senior Employee Representative Committee.</p> <p>... If Holden and the relevant Senior Employee Representative agree that due to the nature of the project/program or according to a revised business need or due to unforeseen or abnormal circumstances that a fixed term employee needs to be engaged for longer than 12 months, the proposal to extend the fixed term employee will be tabled at the relevant Site/Senior Employee Representatives Committee.</p> <p>Where agreement is not reached over these needs with the relevant Employee Representatives at that committee the issue will be referred to the appropriate Peak/State Committee where outstanding issues will be addressed through the dispute resolution process of this Agreement.</p> <p>... A fixed term employee shall be given first option of permanent employment should an opportunity become available, provided they have achieved adequate performance and meet the applicable Holden recruitment benchmarks.</p>
<p>Apprentices</p> <p>4.7.1 Apprentice numbers, if any, will be determined by Holden in consultation with the relevant Trades Senior Employee Representatives by the end of September.</p>
<p>Access to level 6</p> <p>12.2.2. All trade employees will be given the opportunity to progress to Level 6 ... Where access to level 6 is not available in an employee’s work area the following will apply:</p> <p>(a) To facilitate the opportunity for progression up to and including level 6 voluntary rotation of employees into different work areas will occur in order to acquire skills.</p> <p>(b) Contractors may be used to facilitate this rotation.</p> <p>(d) An employee will be given the opportunity to rotate into an area within 3 months of successful completion of advanced certificate modules to allow Holden to allow the employee to acquire level 6 skills.</p> <p>(e) If Holden does not provide the opportunity for an employee to rotate into a new work area within 3 months of achieving their advanced certificate qualification, back pay will apply once the employee is reclassified to level 6. The back pay will apply to the timeframe between the expiration of 3 months from the completion of the required modules and the actual date of rotation.</p>
<p>Fixed Term Employment – (Professional Engineers &amp; Scientists)</p> <p>4.5.2 A fixed term professional engineer or scientist may be engaged for a maximum period of 3 years.</p> <p>The agreement of the relevant union to employment under these terms must be sought and should not be unreasonably withheld.</p> <p>Where such employment extends beyond the permissible terms above, the employee will thereafter, unless otherwise agreed with the employee and APESMA, be employed on a permanent basis with continuity of service for all purposes from the date of commencement ...</p>
<p>N33 Specialist positions</p> <p>5.1.1.5 (e) Selection process</p> <p>(e) Selection Process</p>

**Table 1– Clauses that impact on staffing decisions**

- (i) In the event that an N33 Specialist position becomes available or identified the following joint process monitored through the relevant NTSC and HR will be used to select an employee to fill the position:
- (A) A vacancy or identified position available to be filled;
  - (B) Advertisement developed;
  - (C) Applications reviewed and shortlist prepared dependent on advertised requirements;
  - (D) Interviews conducted by a combination of the following: Team Leader/Group Leader/HR/Senior Employee Representative and any other person who may be relevant to this process due to an understanding of the specialist nature of the particular work. The interview panel should be a maximum of 3 people including the Senior Employee Representative. Decisions of the interview panel must be consensus based;
  - (E) If relevant, referees contacted;
  - (F) Successful applicant notified in writing; and
  - (G) Unsuccessful applicants notified in writing.
- (ii) Any disputes arising will be resolved via the Dispute Resolution Procedure of Part 3 of this Agreement.
- (iii) In the event that an employee who is selected to fill an N33 Specialist role does not meet the required level of competency after normal training and assessment processes have been completed the following process will occur. Further retraining will be made available including one on one coaching if requested by the employee for a further one month period.
- (iv) Where satisfactory progress towards competence is not being achieved the following will apply: GM Holden Ltd Enterprise Agreement 2014 56
- (A) the employee will vacate the N33 Specialist position and the employee will return to their previous pay level; and
  - (B) the employee will be found a suitable alternative position to move to, where possible, in the same Plant/Area;
  - (C) where possible, the employee will return to the previous role that they undertook prior to being selected to undertake the N33 Specialist role.
- [EBA includes a flow chart of this process.]*

**Lend Lease Engineering Pty Ltd Engineering and Infrastructure South Australia Enterprise Agreement 2013-2016**

Clause 6 – contract of employment

e) Supplementary Labour

The parties recognise that the Company will, in addition to direct engagement of Employees under this Agreement, from time to time engage labour hire for the completion of work on the project. Work usually carried out by subcontractors is not covered by this clause.

Where an Employee of the Company has been engaged and would normally perform particular work under this Agreement, and the Company intends to engage labour through a labour hire agency to perform that work (“Supplementary Labour”) it will do so on terms in which the Employer of the supplementary labour must afford the supplementary labour terms and conditions which are no less favourable than would be available to Employees engaged under this Agreement.

Labour hire contractors and subcontractors must act in a manner consistent with the Building Code 2013, or its successor. The use of supplementary labour will be reviewed at regular Consultative Committee meetings and the Company will report the roles and numbers of supplementary labour employed at Consultative Committee meetings. The Consultative Committee will consult so that there is no Supplementary Labour on hire where retrenchment of Employees is required within the same classifications, skills and capabilities.

Table 1– Clauses that impact on staffing decisions

**Murray Goulburn Co-operative Co. Limited (Victorian Sites) National Union of Workers Enterprise Agreement 2014**

## Employment relationship

## 11.2. Temporary or seasonal employees

... Where continuous employment of a temporary employee extends beyond 12 months, that employee may be converted to fulltime except in extenuating circumstances in which case full consultation with delegates and union officials will occur. Where a temporary employee is converted to full time, his/her start date will be considered to be from the start of his/her most recent temporary engagement.

## 11.4. Direct Casual employees

(c) A casual employee, (other than an irregular casual employee – i.e. an irregular casual employee is one who has been engaged to perform work on an occasional or irregular basis) who:

- (i) has worked for the Company on a regular and/or systematic basis, the equivalent of “full time” hours for a period of at least six (6) months shall be considered, upon application, to convert to full-time employment at the end of that period, provided there is an ongoing need for that work to be performed on a regular and/or systematic basis; or
- (ii) has worked for the Company on a regular and/or systematic basis, for less than 38 hours per week for a period of at least six months shall be considered, upon application, to convert to part-time employment at the end of that period, provided there is an ongoing need for that work to be performed on a regular and/or systematic basis.

## 11.5. Indirect Casuals

(a) The Company agrees that work that is performed by persons who are a casual not employed by the Company and who:

- (i) have worked on a regular and/or systematic basis, at one of the Company sites, the equivalent of “full-time” hours for a period of at least six (6) months, the casual will be offered the option of converting their contract of employment to direct employment at the end of that period, provided there is an ongoing need for that work to be performed on a regular and/or systematic basis; or
- (ii) have worked regular and/or systematic hours of work of less than 38 hours per week for a period of at least six (6) months, the casual will be given the option, upon application, to convert their contract of employment to direct employment, on the basis of the average number of hours of work performed during the preceding 6 month period, provided there is an ongoing need for that work to be performed on a regular and/or systematic basis.

## 11.7 Review of full-time opportunities

Site management and site union delegates agree to regularly review and monitor full-time employment opportunities for casual and seasonal workers.

## Skills and classification structure

## 15.1. Dairy industry operative level 1

An employee at this level works under direct supervision performs routine duties and receives detailed instructions. No experience necessary.

## (a) Points of entry

- (i) New employee.
- (ii) Existing employees performing work within this grade.

## (b) Skills/Duties

- (i) Undertakes duties in a safe manner.
- (ii) Works in a team environment.
- (iii) Exercises minimal judgement.
- (iv) Responsible for the quality of their own work within the scope of this grade.

Table 1– Clauses that impact on staffing decisions
<p>(v) Performs basic recording functions.</p> <p>(c) Promotional Criteria</p> <p>An employee remains at this level until they are capable of effectively performing (through appropriate training certification) the tasks required of this function so as to enable them to progress to the next level as a position becomes available.</p> <p>NOTATION: This is the basic level of the classification structure and without limiting the range of tasks performed they may include stacker and packer and process worker (general hand).</p> <p>(d) A new employee engaged at level 1A may remain in this position for a maximum period of 3 months of continuous employment before being promoted to Level 1B. An employee in Level 1B may remain in this position for a maximum period of 3 months of continuous employment before being promoted to level 2.</p>
<p>Mixed functions</p> <p>20 (c) Where an employee has either been engaged continuously in work in a higher class for 3 months, or has been assessed competent the employee will be re-classified to the higher class regardless of whether the employee continues to do the higher class work or not.</p> <p>...</p> <p>(e) Clause (c) also applies to seasonal and casual employees provided any break in their engagement with the Company is less than 6 months</p>
<p><b>Pacific National Bulk Rail Enterprise Agreement 2013</b></p>
<p>9. Recruitment, selection and induction</p> <p>(a) The selection process for filling position vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, standard of work performance and work history of candidates, relative to the position.</p> <p>(b) Pacific National Bulk Rail will advertise all vacancies for positions covered by this Agreement, unless those vacancies are filled in accordance with prevailing policy related to redeployment or transfer of Employees.</p> <p>(c) All vacancies will be advertised internally within all Pacific National business divisions. At times, Pacific National may also advertise a vacancy simultaneously internally and through media advertisements, recruitment agencies and other sources. Internal advertisements will include the position level from the classification structure contained in this Agreement and the salary level.</p> <p>...</p> <p>(g) Pacific National Bulk Rail will provide training relevant to job/position requirements and Employee needs that is aligned to the Transport and Logistics Industry Training Package. Certificates and statements of attainment will be issued to Employees upon satisfying the requirements of the specific training.</p>
<p><b>Rio Tinto (Alcan Gove) Enterprise Bargaining Agreement 2014</b></p>
<p>55 Progression</p> <p>(a) Classification structure changes</p> <p>Rio Tinto Australia (RTA) will maintain the technical competencies to define the requirements of each role contained within the new classification structure.</p> <p>To this end, the parties recognise that during the life of this Agreement technical competencies contained within the classification structures may require modification or become redundant. In such cases, RTA will review the specific requirements of a role and determine the competencies required to meet the current and emergent needs of the business.</p> <p>Where changes to the current competencies are proposed, RTA will follow the consultation process outlined in</p>

**Table 1– Clauses that impact on staffing decisions**

clause 11 of this Agreement. To ensure a 'site-wide' perspective is maintained where changes are proposed, the recommendations arising from the consultation process will be reviewed by management representatives and Senior Site Delegates. Following this review, and having considered any issues arising, any recommended changes will be made by agreement.

(c) New employees

New Employees may enter the relevant classification structure at a level that matches their core competencies, as determined by RTA, even where the new Employee does not possess all of the competencies required. In order to remain at the higher level, or progress further, Employees must achieve the necessary competencies within two years of their commencement otherwise the Employee will be moved to the lower level classification after that time. Where the Employee has made themselves available to attend training but RTA has been unable to provide the necessary training within the two year period, this period will be extended until such time as the training can be provided.

(e) Performance Review and Development (PR&D)

Employees will participate in RTA's PR&D process to support the achievement of RTA's business objectives and Employee development needs. The PR&D process utilises the Key Result Area (KRA) documents for each classification and other templates for Leaders to conduct routine reviews with Employees. As with any changes to the technical competencies, proposed changes to the KRAs will be subject to the consultation process and any recommended changes will be made by agreement.

The PR&D process will be used to assist the identification of Employee development needs and the implementation of a plan to develop the required competencies. The Employee's leader is responsible for maintaining a competency profile for the workgroup, mapping each Employee to the profile, implementing plans to develop the required competencies within a reasonable timeframe and providing feedback to Employees on their development progress and overall performance.

**St Vincent's Private Hospital Melbourne and Allied Health Services Staff Agreement 2014**

15. Casual employment

(g) Casual conversion

- (i) A casual employee who has been rostered on a regular and systematic basis over a period of 6 months has the right to request conversions to permanent employment ...
- (ii) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.

**Suncorp Group Enterprise Agreements 2015**

Part 3 – Terms specific to pay bands A1 to A4

55. Will my minimum base pay be increased?

(a) During the term of this Agreement, and subject to this clause 55, You may be eligible to receive an increase to Your minimum base pay if You have been:

- (i) employed for at least 3 months prior to the date the increase is effective; and
- (ii) assessed as at least meeting the Group's performance expectations in the review period to which the increase relates.

(b) In accordance with the table below, increases can occur in two ways:

- (i) Guaranteed base pay increase – a permanent percentage increase to Your base pay; and
- (ii) Guaranteed merit pool – a guaranteed pool will be spent by the Group to increase employees' base salaries in recognition of their individual performance. This pool represents a percentage of the total base pay for all employees to whom Part 3 of this Agreement applies. Any increase to Your base pay as a result of the guaranteed merit pool distribution is at the discretion of the Group.

Table 1– Clauses that impact on staffing decisions

Effective date of increase from first full pay period in:	Guaranteed base pay increase (%)	Guaranteed merit pool (%)
October 2015	2	1
October 2016	2	1
October 2017	1.5	1.5
October 2018	1.5	1.5

**TAFE Commission of NSW Teachers and Related Employees Enterprise Agreement 2013**

Salaries

9.6 Minimum salaries on commencement of employment and maximum salaries under the common incremental salary scale in Schedule 1 are set out in the table below:

Classification	Minimum starting salary	Maximum starting salary
Teachers, Counsellors, Education Officers, Adult Literacy Officers and Assistant Outreach Coordinators	Step 10*	Step 13
Teachers in Training	Step 10	No more than one step beyond the step paid on the initial appointment

TAFE year

24.5 Staffing of courses delivered outside the Standard Educational Year shall be based on the consultative procedure set out in 24.6 below.

24.6 Managers of the relevant sections shall:

24.6.1 at the first instance, seek volunteers from within the College/Campus to teach the course. If suitably qualified full time Teachers from within the College/Campus are available and they wish to make alternative vacation arrangements, the College/Campus should introduce an equitable system of selecting volunteer Teachers on a rotation basis;

24.6.2 if no suitable full time Teachers within the College/Campus are available, then offers to teach courses may be extended to full time Teachers at other Colleges/Campuses;

24.6.3 failing the above, an offer could then be made to suitable Part time Casual Teachers;

24.6.4 in the event that all of the above avenues are exhausted, an Institute manager may direct a full time Teacher to undertake the program, provided that a Teacher directed to teach in a TAFE Year program in the midsummer vacation shall not be directed to teach a TAFE Year program in the following midsummer vacation.

Provision for Positions which Are Hard to Fill

39.2 A position will be regarded as “hard to fill” when it has been advertised once throughout TAFE and twice throughout New South Wales in the major press and no appointment has been made.

39.3 When a position has been identified as “hard to fill” in accordance with subclause 39.2, the Employer will review the position in order to ensure that the current position description and accountabilities appropriately reflect the nature of the position. Where appropriate, job redesign will follow and the new position will be advertised in the normal manner.

39.4 Where job redesign has not been deemed to be appropriate, Institute Directors and managers may offer an allowance of up to ten per cent of the maximum salary of the position when it is next advertised.

Table 1– Clauses that impact on staffing decisions
39.5 The allowance will be paid to the selected applicant for as long as they remain in the advertised position.
<b>Telstra Enterprise Agreement 2012-2015</b>
<p>Performance pay principles</p> <p>Assessment process and employee support Performance feedback will be provided to employees a minimum of twice a year. Where an employee is dissatisfied with their final performance assessment rating or the assessment process they can seek a review of the decision by following Telstra’s internal resolution process (which includes an independent review as its final stage).</p>
<p>Customer satisfaction bonus – Zing</p> <p>Telstra has recently launched Zing – the new peer-to-peer company wide recognition and reward program. Zing is intended to enable us to celebrate not just the big achievements of our people, but also the small ones that happen every day, in every area of Telstra. To demonstrate its commitment to Zing, Telstra guarantees that it will continue to fund Zing annually at the FY13 level until the nominal expiry date of this Agreement.</p>
<p>Redundancy – selection process</p> <p>Telstra will fairly and objectively rank employees in the group, using merit-based criteria. Telstra will not consider anything, other than your ranking, when deciding who will be retrenched. Telstra will ask for applications from volunteers within the group and consider any applications before selection is completed. Telstra will tell you if you have been selected for retrenchment. This will happen between 7 and 21 days after you were originally told that you may be retrenched.</p>
<b>Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2015</b>
<p>18. Continuous improvement</p> <p>... No redundancies will directly result from Continuous Improvement activities as defined in this Agreement and any excess labour that may occur will be handled by transfers and/or natural attrition.</p>
<p>23.4.1 Salaried</p> <ul style="list-style-type: none"> <li>• The Parties are committed to appropriate and effective utilisation of Contract Labour (individuals employed either through their own company or through a contracting agency).</li> <li>• TMCA is committed to a structured training plan and utilisation for current Employees to reduce the need for Contract Labour ...</li> <li>• Discussions as required will be held at either the SCG or with the Union to outline projections and operation changes which will affect labour levels or which will require the involvement of Contractors.</li> <li>• Where particular Contract Labour has been utilised on an on-going basis over more than one project, TMCA management will confirm, no later than 12 months after the initial start date, whether or not its utilisation of that Contract Labour will be permanent, and whether or not there is a need to extend the contract. Any extensions beyond 12 months will be in consultation with the Union.</li> </ul>
<p>30. Selection procedures</p> <p>30.1 Selection of Specialist Team Member (SKTM3)</p> <p><i>[EBA contains a flow chart outlining the procedures to recruit for this classification of worker. For example, it outlines that the department and employee representative will agree criteria before the position is advertised within the Department (within group only for temporary positions) and that written applications will be accepted and assessed before interviews are conducted.]</i></p>

Table 1– Clauses that impact on staffing decisions
<p>30.2.2 Selection of Permanent Team Leader Positions</p> <p><i>[See previous comment. The EBA contains a flow chart outlining the procedures to recruit for this classification of worker. It also notes which employees will be involved in each stage of the process. For example, the human resources department and management will be responsible for reference checks.]</i></p> <p>30.3 Selection of Permanent Group Leader, General Foreperson and Senior General Foreperson positions</p> <p><i>[See previous comment. The EBA contains a flow chart outlining the procedures to recruit for this classification of worker.]</i></p> <p>30.4 Selection of Acting Team Leader, Group Leader, General Foreperson and Senior General Foreperson Positions (Including Trades) (process applies for periods longer than 2 weeks)</p> <p><i>[See previous comment. The EBA contains a flow chart outlining the procedures to recruit for this classification of worker. It also lists principles that should be applied to the purpose. For example, principle 3 is 'to ensure meaningful training/development, a rotation plan to accommodate suitable applicants will be developed'.]</i></p> <p>30.6 Selection of Project (including Goshi) roles</p> <p><i>[See previous comment. The EBA contains a flow chart outlining the procedures to recruit for this classification of worker. It also notes which employees will be involved in each stage of the process. For example, the human resources department and management will be responsible for reference checks.]</i></p>
<p>62.1 Team Leader/Group Leader</p> <p>...The maximum period a position will be acting is 12 months. Acting positions will only be utilised beyond 12 months where there is a current employee that will return to the role.</p> <p>Where a position has been filled in an acting role for a period of twelve months whether on block or cumulative, the position will be advertised and filled on a permanent basis. Where a period is expected to continue for longer than 12 months, TMCA will consult with the local Employee Representative. Any Employee returning to work from leave, e.g. Maternity Leave, Annual Leave or Sick/Carer's Leave, will return to the position they held prior to commencing leave. As such the position will not be advertised and filled on a permanent basis.</p> <p>Where the Employee is acting in a role for a period of 6 months or more, and the role is advertised for filling on a permanent basis, the Employee will be treated as the preferred candidate in any selection and interview process undertaken to fill the job. The best candidate should get the vacant position.</p>
<p>101.9 Individual performance appraisals</p> <p>The Union acknowledge TMCA's objective is to introduce individual performance appraisal (IPA) for all Employees The Union proposes to support a joint review of the merits of TMCA's IPA and any specific TMCA proposals for IPA within TMCA, such as the TMUK model. Any specific proposals for the implementation of IPA will be negotiated through the Federation of Vehicle Industry Unions (FVIU).</p>
<p><b>Transgrid Employees Agreement 2013</b></p>
<p>Application and operation</p> <p>3.3 However employees who are appointed from the commencement of this Agreement to positions evaluated with a minimum Salary Point of 35 may be employed pursuant to an individual employment agreement which provides an entitlement to a salary not less than salary point 35.</p>
<p>Classification Advisory Committee</p> <p>13.1 Purpose The purpose of the Committee is to recommend appropriate salary point(s) for a position(s).</p> <p>13.2 Constitution The Committee consists of:</p>

Table 1– Clauses that impact on staffing decisions
<p>(a) a Chairperson appointed by TransGrid</p> <p>(b) two TransGrid representatives</p> <p>(c) two representatives of employees appointed from time to time by the relevant Union(s) having regard to the classification under review.</p> <p>13.3 Powers The Committee can:</p> <p>(a) consider applications for alterations of salary points on the ground of altered circumstances by:</p> <ul style="list-style-type: none"> <li>(i) unions on behalf of an employee or groups of employees</li> <li>(ii) TransGrid</li> </ul> <p>(b) consider any errors or anomalies in the salary points of:</p> <ul style="list-style-type: none"> <li>(i) an employee(s)</li> <li>(ii) any position</li> </ul> <p>(c) recommend appropriate salary points for new positions.</p> <p>13.4 Procedures The Committee proceeds by exchange of views and discussion, not by vote. It is the responsibility of the Chairperson to prepare a report, including a recommendation, to the Managing Director of TransGrid, setting out the view of the Committee. If there are differing views, the report must include them.</p>
<p>Contracting out of work</p> <p>14.3 It is not the intention of TransGrid to outsource core work. If however there is a need to do so TransGrid shall follow the consultative mechanisms established under this Agreement. Where a proposal for outsourcing of core work is considered by TransGrid, then employees covered by this Agreement will be given an opportunity to demonstrate how internal efficiencies can match external benchmark. Employee representatives who are affected by such proposals shall be give reasonable time and appropriate access to relevant information so that they can prepare their submissions. TransGrid will consider alternate proposals including whether work could be done by employees utilising their current skills and competencies</p>
<p>14.22 Fixed Term (Temporary) Employment</p> <p>The parties covered by this agreement recognise the need for TransGrid to engage employees on fixed terms of engagement from time to time to meet specific business needs. Fixed term employment shall not be used as an alternative to permanent employment.</p> <p>14.23 Fixed Term: Non-Graduates and Non-Trainees</p> <p>Fixed term appointments may be made for a period of up to 24 months.</p> <p>If prior to the expiration of the 24 month period there is a requirement to extend the arrangement Employee Relations will consult with the relevant parties as per the consultative mechanisms in this Agreement.</p> <p>Labour Hire/Agency Workers</p> <p>14.27 The parties covered by this Agreement recognise the need for TransGrid to engage labour hire workers from time to time to meet short term business needs.</p> <p>In this context, the parties covered by this Agreement recognise short term as a maximum of twelve (12) months.</p> <p>If prior to the expiration of the 12 month period there is a requirement to extend the arrangement Employee Relations will consult with the relevant parties as per the consultative mechanisms in this Agreement.</p>
<p><b>University of Melbourne Enterprise Agreement 2013</b></p>
<p>Confirmation of continuing academic staff</p> <p>17.13 The confirmation period for continuing academic staff members is a maximum of five years unless</p>

Table 1– Clauses that impact on staffing decisions

extended in accordance with clause 17.17 below.

The determinants of whether appointment should be confirmed are whether the staff member achieves the probation objectives and has established the capacity to undertake an academic career. The principles and procedures in clauses 17.6 and 17.7 apply to the confirmation process ...

17.14 The employment of the staff member may be terminated only:

- (a) on the same basis as a confirmed continuing academic staff member; or
- (b) if her or his performance is rated unsatisfactory, through an early decision not to confirm; or
- (c) at the end of the confirmation period in accordance with this clause.

17.15 A recommendation by the Head of Department to confirm or not confirm must be made six months prior to the end of the probation period. The staff member may see and comment on the recommendation of the Head.

17.16 A committee of senior academic staff will review the recommendation of the Head of Department.

17.17 The committee of senior academic staff who determine the matter, may recommend that the Provost:

- (a) confirm the appointment;
- (b) not confirm; or
- (c) extend the confirmation period by up to one year.

17.18 In the event that non-confirmation is recommended the staff member will be:

- (a) advised of the grounds for non-confirmation;
- (b) provided a minimum of six months' notice of termination of employment; or
- (c) at the discretion of the University, given payment in lieu of notice or part payment and part notice.

17.19 Within 10 working days of the receipt of advice of the recommendation not to confirm, the academic staff member may seek a review of that recommendation or decision by the Review and Appeals Committee established at clause 61.25 (the procedures in which will be adapted to this clause). The grounds for review are the outcome of the committee's deliberations was materially affected by a procedural irregularity; and in the case of early termination for unsatisfactory performance, under clause 17.14 there is insufficient evidence to support a finding of unsatisfactory performance. The Review and Appeals Committee will make recommendations to the Vice-Chancellor who will determine the matter.

17.20 Prior to the Vice-Chancellor determining the matter, the staff member may comment on the grounds for the decision. The Vice-Chancellor will take into account any submission of the staff member.

## 19. Categories of work for which fixed-term employment may be used

Effective from the date of commencement of this Agreement, the use of fixed term employment will be limited to the employment of a staff member engaged on work activity that comes within the description of one or more of the following circumstances.

19.1 Specific task or project

19.2 Research

"Research" means work activity by a person engaged on research only functions for a contract period not exceeding five years.

19.3 Externally Funded Contract Employment

19.4 New Organisational Area

... Fixed-term employment under this category may be used for up to three years from the date of commencement of a new organisational area, and fixed-term positions offered under this category may not be extended or renewed, may only be offered once and will be for a period of no more than 3 years and not less than 1 year.

Table 1– Clauses that impact on staffing decisions
<p>19.5 Sudden and Unanticipated Increase in Enrolments</p> <p>Fixed-term employment under this category may be used for up to three years from the date of the sudden and unanticipated increase in enrolments, and fixed-term positions offered under this category may not be extended or renewed, may only be offered once and will be for a period of no more than 3 years and not less than one year.</p> <p>19.6 Disestablished Area</p> <p>19.7 Measures to provide security of employment</p> <p>Fixed-term contracts may be offered for teaching and research... may be offered for a period of no more than five years and no less than 12 months (unless otherwise provided for in this Agreement).</p> <p>19.8 Melbourne Early Career Academic Fellowships</p> <p>19.9 Replacement staff member</p> <p>19.10 Recent professional practice required</p> <p>Where a curriculum in professional or vocational education requires that work be undertaken by a person to be engaged who has recent practical or commercial experience, such a person may be engaged for a fixed period not exceeding two years.</p> <p>19.12 Fixed-term contract employment subsidiary to studentship</p> <p>19.13 Apprentices or Trainees</p>
<p>Teaching specialist (periodic)</p> <p>26.3 TSP appointments will be made in accordance with the following criteria:</p> <p>(a) Appointments will be for a minimum 0.3 FTE fraction, averaged across the year, which can be worked in one or more blocks or annualised across a year...</p>
<p>Offers of performance based contracts</p> <p>40.2 Contracts entered into pursuant to this clause may be offered only if the contract involves an offer of employment to persons who are to be employed as or who are employed as:</p> <ul style="list-style-type: none"> <li>a) Academic staff in receipt of remuneration equivalent to or greater than \$179,934 per annum (indexed in accordance with salary increases paid over the nominal life of the Agreement);</li> <li>(b) Academic Heads of Department in receipt of remuneration equivalent to or greater than \$179,934 per annum (indexed in accordance with salary increases paid over the nominal life of the Agreement); or</li> <li>(c) Professional staff in receipt of remuneration equivalent to or greater than \$179,934 per annum (indexed in accordance with salary increases paid over the nominal life of the Agreement).</li> </ul>
<p>Classification – professional staff</p> <p>41.3 If a staff member considers that his or her position is incorrectly classified, the staff member may submit an application for reclassification to his or her supervisor. A staff member may only submit an application for reclassification once in every 12 month period.</p> <p>41.4 The supervisor will refer the application to the appropriate individual who has been delegated the authority to review reclassification decisions within the Budget Division by the Head of the Budget Division. The Head of Budget Division’s delegate will review the position in accordance with the Professional Staff Position Classification Standards and the principles outlined in clause. Where necessary, the Head of Budget Division’s delegate will consult with the staff member and their supervisor in relation to the position description upon which the review will be based.</p> <p>41.5 If the staff member is dissatisfied with the outcome of the review process in clause 41.4, the staff member may apply to the Professional Staff Reclassification Review Committee and the Professional Staff Reclassification Review Committee will determine whether the review processes in clause 41.3 and 41.4 have been properly applied, including proper application of the Professional Staff Position Classification Standards</p>

Table 1– Clauses that impact on staffing decisions
<p>and the principles outlined in clause 41.2.</p> <p>41.6 If the Professional Staff Reclassification Review Committee determines that the review processes have not been properly applied, the Professional Staff Reclassification Review Committee will make a recommendation to the Head of Budget Division who will determine the reclassification application.</p> <p>41.7 If the Professional Staff Reclassification Review Committee:</p> <ul style="list-style-type: none"> <li>(a) cannot make a recommendation or makes a recommendation which the Head of the Budget Division does not adopt and the staff member remains dissatisfied, then the matter may be dealt with under the disputes procedure in clause 80; or</li> <li>(b) makes a recommendation which is adopted by the Head of the Budget Division, then the reclassification application will be concluded and will not be a matter subject to the disputes procedure or grievance procedure under this Agreement.</li> </ul> <p>41.8 The Professional Staff Reclassification Review Committee will be comprised of two staff members nominated by the relevant Union and two staff members nominated by the University. The Committee will be chaired by the Executive Director (Human Resources) or nominee, who will be one of the two staff members nominated by the University. All members of the Professional Staff Reclassification Review Committee must have been trained in the interpretation and application of the Professional Staff Position Classification Standards.</p>
<p>Criteria for advancement to the higher level</p> <p>42.9 It is noted that a performance measure for supervisors will be an assessment of the extent to which they have developed the career paths of the staff members they supervise.</p>
<p>Increments</p> <p>45.2 An increment may be withheld or denied for up to one year if a staff member’s performance is being managed under clause 60 of this Agreement. An increment may also be denied for up to one year as a form of disciplinary action where a staff member is found to have engaged in misconduct under clause 61 of this Agreement.</p>

Table 2 – Sample of operation altering clauses in enterprise agreements	
<b>Amcor Fibre Packaging National Enterprise Agreement 2013</b>	
Implementation of this agreement	<p>7.2 To realize the levels of productivity required to build a successful business the parties are committed to an ongoing review of the success of the Agreement on a site by site basis.</p> <p>7.3 Such a review will be held six monthly or on an as needs basis.</p> <p>7.4 This review will involve elected employee representative/s and the site manager, and other representatives and the site manager, and other representatives of the parties as required, to ensure that the commitment of the parties set out in Clause 1 are being met at a site level and this review will be part of the consultative process over the implementation of this Agreement.</p> <p>7.5 Where there are matters of dispute these will be referred to the Dispute Resolution Procedure at clause 15 in this Agreement.</p>
Career break	<p>9.1(v) Permanent Full Time Employees with more than 12 months service will be entitled to apply for an unpaid career break leave of up to 12 months. The granting of such application is subject to the operational requirements of the business and will not be unreasonably withheld.</p>
Operational efficiency, productivity and costs of production	<p>9.2(b) 36-hour break between work periods</p> <p>(v) It is accepted that operational requirements may necessitate a change in the method of organising ordinary working hours during the life of this Agreement. If the Company seeks to make such a change, the following procedure shall be followed:</p> <p>(1) An assessment shall be made as to which method best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method.</p> <p>(2) In the absence of agreement at the plant or section level, the following procedure shall apply without delay:</p> <p>(a) Consultation shall take place within the plant.</p> <p>(b) If the matter is unable to be resolved at the plant level, the matter may, at the employee's request be referred to the relevant union/s, at which level a conference of the parties shall be convened without delay.</p> <p>(c) In the absence of agreement the Dispute Resolution clause contained within this Agreement will be followed.</p>
14(e) Induction procedures	<p>The parties commit themselves to the establishment of a Company Induction Program.</p> <p>(i) This program will outline the Company OH&amp;S Policy and procedures, particular hazards associated with the work, control measures for each hazard, identification of hazards and instigation of preventative action.</p> <p>(ii) Workplace Literacy and English Programs will include OH&amp;S issues.</p>
Occupational health and safety	<p>14 (b) Designated Work Groups</p> <p>Where practical, the parties agree to the establishment of Designated Work Groups to cover all employees in the Company and the election of Health &amp; Safety Representatives as follows:</p> <p>(i) OH&amp;S Representatives shall be elected for each designated work group, to hold office for 2 years.</p> <p>...</p> <p>(iii) Each OH&amp;S Representative will work within his/her designated work group.</p>

Table 2 – Sample of operation altering clauses in enterprise agreements

## 14 (d) Workplace Rehabilitation &amp; Return to Work

...To further facilitate the development of best practice to support return to work the Company will nominate a national co-ordinator who will work to ensure the effective operation of the Company's return to work programs. It is agreed that elected employee representatives will be trained in these procedures.

- (i) Where practicable the OH&S committee should oversee programs, develop and implement policy.
- (ii) The committee will establish mechanisms and procedures for the regular monitoring and review of rehabilitation and return to work plans for all employees.

## 16.1 Consultation on major changes in the business

(a) When the Company has made a definite decision regarding the introduction of major changes in production, program, organisation, structure or technology that are likely to have significant effects on employee(s), the Company will notify and consult with the employees and the Union/s as soon as practicable, with regard to the introduction of such changes, the effects they are likely to have on employees, and measures the Company is taking for averting or mitigating the adverse effects of such changes on the employee.

(b) For the sake of clarity, the consultative provisions outlined in this clause apply to Part three (3) of this Agreement (Redundancy and Relocation Agreement).

(c) To enable the Union/s to participate effectively in the consultations referred to in clause 16.1 (a), the Company will provide in writing to the union, information on the major changes proposed and the expected effects of the change on the employees, and any other matters that are likely to have an effect on the employees.

(d) "Significant effects" include termination of employment, redundancy, major changes in the composition, operation or size of the Company's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work (except as already provided for in this Agreement); the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

## Annexure 2 – Plan Consultative Committees (PCC)

## 1. Scope

The PCC will provide an opportunity for employees to express their point of view based on their knowledge and experience and to participate in the formation of recommendations affecting the quality of working life for employees, and the business performance of Amcor Fibre Packaging.

## 2. Purpose

The purpose of the PCC is to ensure the most effective consultative processes are in place for Amcor Fibre Packaging to achieve Continuous Improvement.

## 3. Broad objectives

Without limiting the scope of consultation, matters which may be dealt with by the PCC include:

- 3.1 Measures to improve customer service, quality, productivity, efficiency and flexibility
- 3.2 Implementation of change, including new technology
- 3.3 Training and multi-skilling
- 3.4 Measures to improve conversion costs
- 3.5 Communication
- 3.6 Problem solving
- 3.7 Equal employment opportunity

**Table 2 – Sample of operation altering clauses in enterprise agreements**

3.8 Initiatives to encourage and support Continuous Improvement

4. Specific objectives

As a general guideline, the PCC will deal with the following:

4.1 Skill Based Pay Classification Structure

4.1.1 Education and Awareness Program

4.1.2 Act as an Appeals Committee

4.1.3 Help Desk

4.1.4 Monitoring/Evaluation and recommendations to the Parties (e.g., New Technology)

4.2 Enterprise Agreement

4.2.1 Implementation (Education and Awareness)

4.2.2 Monitor Performance

4.2.3 Advisory/Recommendations to the Parties

4.3 Amcor Fibre Packaging Mission

4.3.1 Recommend Continuous Improvement processes

4.4 Literacy and Numeracy

4.4.1 Make Training Recommendations

4.4.2 Monitor Progress

4.5 Training Recommendations regarding:

4.5.1 Training Priorities

4.5.2 Participants

4.5.3 Scheduling

4.5.4 Appeals

4.6 Employment Law Equal Opportunity/Affirmative Action/Sexual Harassment

4.6.1 Recommend Processes for Implementing Change and Policy

4.6.2 Monitor Effectiveness of Policy Implementation

4.7 Business Improvement Initiatives

4.7.1 Recommend ways of achieving sustainable and measurable improvements

4.7.2 Develop the most effective way to implement business improvement initiatives.

Annexure 3 – skills based pay policy

5.2 Training Delivery

**Table 2 – Sample of operation altering clauses in enterprise agreements**

5.2.2 Where possible, training should be limited to a single skill block at any one time. Nevertheless, recognition should be given to the efficiencies possible through linking the training of a number of skill blocks.

5.2.3 Where practical, employees should have applied a new skill for a minimum of three (3) months prior to being eligible for training in further skill blocks. Application of the three-month period need not apply to skill blocks with short training times.

5.2.4 For all Control and Operate Skill Blocks, Amcor Fibre Packaging will provide training to cover different machines that have identical processes, e.g. different Flexo Folder Gluers.

### **Australia Post Enterprise Agreement 2013**

#### Maximising Full-time Work

7.4.1 Australia Post and the Union commit to working together during the life of the Agreement to develop a model of work that will allow greater opportunity for a greater proportion of Australia Post employees, particularly those engaged in the Postal Service Strategic Business Unit, to be engaged as full-time employees. The model will also explore opportunities to review work arrangements and increase flexibility by amalgamating functions and where possible, improve production and create further full-time opportunities for full-time work or for additional income for our employees.

7.4.2 Australia Post and the Union commit to commencing discussions immediately to address the impact of this commitment. It is envisaged that the discussions will encompass

- (a) development of appropriate work level standards for Postal Worker classifications
- (b) job design issues that apply to all classifications
- (c) considering ways to maximise the number of small packets and small parcels delivered by Australia Post employees
- (d) consideration of annualised hours, or other flexible distribution of hours as agreed, and salaries
- (e) ensuring the Community Service Obligations are achieved in the most efficient way possible; and
- (f) consideration of the application of penalty rates.

7.4.3 The model developed and agreed to by Australia Post and the Union for maximising full-time work will be handed up to FWA for the purpose of placing it on the EA2013 file so that it can be referred to at any relevant conciliation or arbitration by the FWA.

#### Tea Break

6.10.1 Australia Post commits to maintaining tea break arrangements. Australia Post may also vary the length of a tea break at a workplace where the length of the break at that workplace is inconsistent with tea break arrangements applicable at other workplaces within the same operational stream in Australia Post and where current arrangements are not based on operational considerations limited to that particular facility. Provided that ongoing changes to the length of tea breaks would be regarded as significant change for the purposes of clause 33 – Employee Consultation, and would involve a process to determine the view of staff.

#### Work level standards

11.1 Work Level Standards Employees are to be classified in accordance with relevant Work Level or Classification Standards where such standards exist. Where such Work Level Standards do not exist the Union and Australia Post agree to develop such Standards during the life of the Agreement.

11.2 Transport Structure Australia Post and the Union agree to finalise and implement agreed recommendations of the Joint Working Party established in accordance with EBA6 to review Australia Post's Transport Structure. This will involve implementation of agreed changes to the current Work Level Standards for transport, agreed changes to the transport classification structure and agreed gradings for transport depots and hubs. Australia Post and the Union aim to conclude discussions and commence implementation of agreed outcomes within 6 months from the commencement of this Agreement.

Table 2 – Sample of operation altering clauses in enterprise agreements

#### Dirty Cleaning Work Allowance

14.1 An employee required to perform cleaning work which in the opinion of the person in charge is of an unusually dirty or offensive nature will be paid an allowance whilst so employed at the relevant rate specified in the Australia Post Human Resources Manual Rates of Pay Booklet.

#### Consultation where changes impact shift penalties generally

19.9.1 ... Where any workplace changes are proposed, that may have an impact on shift penalty rates, it is agreed that consultation will occur in a timely manner between relevant senior management and the Union (this also includes transfer requests by employees on compassionate grounds).

#### Uniforms

32.1 Australia Post will hold a national uniform forum annually at which general discussion can occur on issues relating to the national management of uniforms. This national forum may occur as two separate meetings to ensure issues specific to Postal Services uniforms and Retail Services uniforms are properly addressed. The national forum will be made up of national representatives with no more than four participants from Australia Post, and four participants from the Union.

32.2 Australia Post is of the view that a good method of assessing the suitability and wearability of uniforms is through the use of focus groups. Focus groups will be established on an “as needs” basis to assess the suitability and functionality of new uniform items. The Union covering the relevant employee classifications to utilise the uniforms being tested may nominate up to 30% of the employee participants in any uniform focus group established. For example, if a uniform focus group is to involve 60 employee participants, then the relevant Union/s may nominate collectively up to 18 employees to participate in that uniform focus group.

32.3 Australia Post intends to conduct a review of the current Clothing Manual during the life of this Agreement. The Clothing Manual has not been reviewed for many years and is in need of redrafting. Australia Post commits to consulting with the Union on any changes proposed to the Clothing Manual.

#### Employee consultation

33.4 Australia Post will, prior to making any significant change for reasons including economic, technological, structural reasons or similar nature, commit to the following actions:

- (a) as soon as practicable before making changes which directly affect employees, inform the affected employees (including any representative appointed by the affected employee) and the Union about the details of the proposed changes. The information provided to the Union will include the nature of and reasons for the proposed change; the number and categories of employees likely to be affected and the time when, or the period over which, the employer intended to carry out the proposed change; and
- (b) as soon as practicable after deciding and before changing an employee’s employment subject to the decision, Australia Post will give the affected employees (including any representative appointed by the affected employee) an opportunity to consult on measures to avert and/or mitigate the effects on employees including adverse effects on job security, reduction in income, change of working hours for individuals, change of worksite, change to skill requirements, adverse impact on equal employment opportunity or occupational health and safety.

#### Retail outlets

40.2.2 Australia Post is committed to the long term viability of its retail network. This network is currently and will continue to be a mix of corporately owned outlets and privately owned outlets under one of a number of arrangements. It is not intended that the overall mix will change over the term of this Agreement.

40.2.3 Australia Post commits to applying the Retail Post Conversion Policy as revised and agreed between

**Table 2 – Sample of operation altering clauses in enterprise agreements**

Australia Post and the Union, for the term of the Agreement. The Parties recognise that Australia Post may seek to change the policy during the term of the Agreement. In such circumstances Australia Post commits to a joint review of the policy with the Union six months before making any changes to the policy. Australia Post has no intention of changing this policy within the first six months of this Agreement being approved by FWA.

Retail forum

40.3.1 Australia Post commits to holding a joint retail forum with the Union and Australia Post management to consider new opportunities, work practices, products, amenities, safety and other issues of mutual interest in the lead up to the business cycle.

**Coles Supermarkets Australia PTY LTD and Bi-Lo PTY LTD Retail Agreement 2011**

Employee consultation

2.1.1.Introduction of major change

(a) Where the Company has made a definite decision to introduce major change in production, program, organisation, structure or technology that are likely to have significant effects on team members, the Company shall notify the team members who may be affected by the proposed changes and the union

(b) Significant effects” include termination of employment, redundancy, major changes in the composition, operation or size of the Company’s workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that the Agreement makes provision for the alteration of any of the referred matters herein, an alternation shall be deemed not to have significant effect.

2.1.2.Duty to discuss

(a) The Company shall discuss with the team members affected and their Union inter alia, the introduction of the changes described above, the effects the changes are likely to have on team members, measures to avert or mitigate the adverse effects of such changes on team members and shall give prompt consideration to matters raised by the team members and/or the Union in relation to the changes.

(b) The discussions shall commence as early as practical after a definite decision has been made ...

Workplace safety

9.1.6. Renovations

(a) ... Where the renovation involves more than one department in store, or where the renovations may reasonably be expected to affect the safety and health of team members, the State branch of the Union shall be notified.

(b) The Company shall take appropriate action to minimise or where possible eliminate any risks to team member health and safety during renovations. Team members shall co-operate with Company directions during renovations to minimise risks within the workplace.

(c) Where an issues or disagreement arises regarding the renovations, such issue or disagreement shall be resolved by taking the matter through the Agreement Dispute Resolution.

**Esso Gippsland (Longford and Long–Island Point) Enterprise Agreement 2014**

Continuous improvement

6(a) For Esso Australia Pty Ltd to remain an internationally competitive enterprise and an industry leader, the parties have committed to implementing continuous improvements at Esso sites, by consultation and agreement.

...

The parties recognise that successful implementation of the continuous improvement principle requires

**Table 2 – Sample of operation altering clauses in enterprise agreements**

agreement to changes that will impact employees. In this context it is not the company’s intention to de skill or disadvantage employees.

Every reasonable effort will be made to secure agreement to such changes notwithstanding that both parties retain their existing rights under this agreement and relevant awards. This includes access by, either party to the dispute resolution/grievance procedures.

The parties also commit to a joint review of the operation of continuous improvement during the life of the agreement. A living document on the structural implementation of continuous improvement exists outside the EBA.

**Interest based problem solving**

6 (b) The parties commit to utilise interest based problem solving (IBPS) with all best endeavours as an additional tool to deliver mutually agreed beneficial outcomes to the parties. IBPS does not replace existing processes and forums.

The parties will meet at least once per annum at each Site to jointly identify, prioritise and agree Site business and work environment improvement matters to be addressed through IBPS as part of the business planning process.

An essential requirement of this process will be for the parties to be able to reach documented agreement on the scope of the issue to be worked through the mps process. Without such agreement the issue cannot be addressed as an mps matter.

For those matters that are agreed at local level to be worked via mps the IBPS Steering Group is authorised to review suitability for inclusion in the IBPS work plan and if agreed then approve inclusion in the mps work plan and monitor execution. The Steering Group will be expected to provide assistance in resolving any difficulties at local work group level, ensure effective execution and approve any outcome agreed by the work group.

This process does not prevent parties from bringing forward issues to be addressed at any other time under separate processes or for consideration as a potential IBPS matter.

... Should the parties fail to reach agreement on an outcome from the application of the IBPS process to a matter or issue that had been agreed jointly to be addressed via this process then notwithstanding the Disputes Procedure set out in Clause 21 either party may elect to seek the assistance of Fair Work Australia at first for conciliation, and if unsuccessful, arbitration but with all parties retaining their rights of appeal under the Fair Work Act.

Any such arbitration will be limited to a determination on whatever item within the matter remained in dispute after the IBPS and conciliation processes had failed to achieve an agreed outcome. The mps matters that fall within the scope of this clause are those that are identified in the site workplans and endorsed by the mps Steering Group. It is agreed further that for those matters being worked via mps, but unresolved prior to the commencement date of this Agreement, it will be necessary for the parties to agree the items within the matter that may fall within the scope of any future arbitration.

**Shift work**

10 (iv) Variation of method of working shifts

(1) The method of working shifts may be varied by agreement between the Company and the accredited site Union representative to suit the circumstances of the Site.

(2) The Shift times may be varied by agreement between the company and accredited site Union representative concerned to suit the circumstances of the site or, in the absence of agreement, by seven days’ notice of alteration given by the Company to the employees.

**Employee consultation**

25 Introduction of change

**Table 2 – Sample of operation altering clauses in enterprise agreements**

(a) Employer’s duty to notify

(i) Where the Employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant affects on employees, the Employer shall notify the employees who may be affected by the proposed changes and the employee representatives.

(ii) “Significant effects” include termination of employment, major changes in the composition, operation or size of the Employer’s workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provisions for alterations of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(b) Employer’s duty to discuss change

(i) The Employer shall discuss with the employees affected and their representatives, the introduction of the changes referred to in paragraph 25(a)(i) hereof, the affects the changes are likely to have on employees, measures to avert or mitigate the adverse affects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

(ii) The discussions with employees affected and their representatives shall commence as early as practicable after the activities referred to in clause 25(a)(ii) hereof.

(iii) For the purposes of such discussion, the Employer shall provide in writing to the employees concerned and their representatives, all relevant information about the changes including the nature of the changes proposed; expected affects of the changes on employees and any other matters likely to affect employees provided that the Employer shall not be required to disclose confidential information the disclosure of which would be inimical to the Employer’s interests.

Attachment 1– Longford operations

Panel/process rotations

The functioning of the rotations will be reviewed by the Longford Consultative Committee from time to time to ensure that the system meets the business needs.

Attachment 3 – Long Island Point maintenance

Spread of hours

During shutdown the spread of hours changes from 6:30am–5:30pm to 6:00am–8:00pm. These shutdowns include MDEA, A, B, and C Train or other work activities by mutual agreement. As part of this staggered start will be undertaken as business needs require between 6:00–8:00pm by mutual agreement.

Tankers will be connected and disconnected on overtime on weekdays between 6:00am–7:30am and between 3:37pm–6:00pm. Outside these times a call-out will apply.

Incorporate afternoon work break

Incorporate the afternoon work break into a morning and lunch break. This change will result in three work periods instead of four as worked now ... Employees will meet and decided how the three work periods will be applied.

Attachment 4 – Long Island Point operations

Area team flexibility system

The flexibilities to be implemented in this agreement are as follows:

Continue with the five shift system as currently worked. There will be 35 Operations Technicians, 7 allocated to each shift.

What this means is 7 persons are allocated each shift ... Operations Technicians will continue to be rostered to designated areas, however, the flexibility to move personnel around during the shift to cover workloads will be based on the business need and decided by the Plant Supervisor. An inter area movement where a

**Table 2 – Sample of operation altering clauses in enterprise agreements**

Technician covers another area will require a handover system conducted in accordance with our OIMS requirements. Full flexibility arrangements and inter area flexibility will only be based within the shift operations.

... It may be necessary to transfer a Technician from one shift to another to ensure that adequate coverage can be provided to cover requirements and all workload conditions.

To facilitate shift alterations of this nature we will continue to use the process of consultation with employees. Should such agreement not be available then any shift transfer will be carried out in accordance with the provisions of this Agreement.

... There will be a minimum of six Technicians on shift and if there is a ship scheduled the sixth Technician will be the Pier Technician. This mode of operation will be dependent on the plant business needs at the time. The Plant Supervisor will assess the need to increase the Technician numbers from the minimum of six to cover the workload as required.

#### Ship connections/disconnections

Operations Technicians agree to assist the Maintenance person as required for each out of hours connection/disconnection, for vessels loading at Long Island Point. In most cases that Operations Technician assistance is required, there will be the need to have two Operations Technicians at the jetty, i.e. one to assist the Maintenance person onboard the ship and the other to operate the loading arms. As the number of ship arrivals decline in the future and as we become more experienced in this mode of operation the connection practices may be modified by negotiation.

#### Appendix B – Longford and Long Island Point

##### B1 Site consultation

(a) A Site Consultative Committee will be formed at both Longford and Long Island Point consisting of management and the employees at the Site, and may, by agreement, vary the work arrangements referred to in this Agreement as applicable to their site. Should the Site Consultative Committee fail to agree to any proposal made under this clause, then this clause shall cease to have effect for that proposal.

##### (b) Site Consultative Committee Charter

(i) The Site Consultative Committee will provide a forum to review all award and non award matters applicable with a view to eliminating all potential problems, possible sources of confrontation, and provide input to management to assist in the decision making process. It will further provide ongoing communication on all matters arising.

(ii) The Site Consultative Committee will consist of elected representatives of all workgroups covered by this Agreement at the Site, and representatives from Supervision and Management as nominated by the Site Manager. Elected wages employees shall form at least 50% of the Committee members.

(iii) The committee will be empowered to delegate sub committees to address specific workgroup issues.

(iv) The matters that the Site Consultative Committee may deal with require that the workgroups potentially affected by its decisions must be adequately represented. The determination of a mathematical quorum is not appropriate. The committee will meet at times and on dates which are mutually agreed and will of their own motion determine the adequacy of representation to deal with particular agenda items, or defer them, as they see fit. The basic principle is that no matter should be dealt with unless the committee is satisfied that any party affected is properly represented. The committee may invite Union officials, Company representatives and other such persons as may assist the consultative process.

##### (h) Variation of method of working shifts

The method of working shifts may be varied by agreement between the Company and the accredited site representative of the Union to suit the circumstances of the establishment. The time of commencing and finishing of shifts, once having been determined, may be varied by agreement between the Company and the accredited site representative of the Union to suit the circumstances of the Site or in the absence of agreement by seven days' notice of alteration given by the Company to the employees.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

**B15 Acting Supervisor – Longford**

Acting Supervisors will be appointed from work groups subject to the following conditions:

(a) Operations

- (i) Plant Supervisors will approach all Operations Technicians 2 and Senior Operations Technician employees to identify those interested in undertaking an acting Supervisor assignment.
- (ii) Selection of Acting Supervisors will be based upon an individual’s job knowledge, people skills, initiative and overall job performance.
- (iii) Candidates deemed unsuitable will be advised of the reasons for non selection.
- (iv) The number of acting Supervisors will not exceed one per shift.
- (v) An Acting Supervisor can only be supplied by a Shift if their overtime requirement does not exceed three Operations Technicians including the Acting Supervisor. Exceptions may be made for callouts providing the extra personnel offered overtime are made aware at the time of offer, that an Acting Supervisor is being used.
- (vi) When an Operations Technician acts as a Supervisor, the Acting Supervisor Allowance shall be paid.

(contains similar clauses on the maintenance acting supervisors)

**B16 Long Island Point – Senior Operations Technicians**

(a)(v) There will be 10 Senior Operations Technician positions at Long Island Point, with two being allocated to each of the five shifts. When a Senior Operations Technician position becomes vacant then the position will be offered within four months. If there are no suitable candidates for filling the position, management will provide coaching for unsuccessful candidates and will seek follow up applications within three months in order to maintain these numbers. All offers under this provision can only occur if the applicants are suitably qualified.

(c) Senior Operations Technician Step up to Designated Position. Senior Operations Technicians will step-up to cover Plant Supervisors’ absence through illness, training, leave, temporary assignments and lieu days. If a Plant Supervisor and a Senior Operations Technician on a particular shift are concurrently unavailable then a Senior Operations Technician or a Plant Supervisor may be temporarily transferred across shifts. Any employee stepping – up will retain their place on the overtime roster and should they be transferred to another shift they will be placed at the bottom of that shift’s overtime roster.

- (i) The maximum period before a supervisor replacement is appointed will be six months when one of the five shift Plant Supervisors is permanently reassigned or leaves employment.
- (ii) Senior Operations Technicians will not be required to step-up for more than 30 shifts per year. A shift shall be defined as any period where the “designated position” acting supervisor allowance will apply.
- (iii) Senior Operations technicians will only step-up where there is normal shift coverage. Normal shift coverage is to be determined through a site based consultative process and recorded as the shift overtime rules.
- (iv) Plant Supervisors’ and Senior Operations Technicians’ leave rosters shall remain independent of each other.

**B21 Absence from area/duty**

(a) Hot Work

- (i) A shift Operations Technician may be used to cover the position of Hot Work Inspector in the employees operating area, providing the duration of the time spent carrying out the task does not exceed two hours of any working day.
- (ii) If Hot Work necessitating the use of a Shift Operations Technician is to exceed two hours, a Day Operations Technician or a contract Inspector will be supplied, or if none available an overtime or spare Operations Technician, if available, may be used.

**Fairfax Media Advertising Production Unit and Newspaper Production Enterprise Agreement 2013**

Employee consultation

4.1.1 This term applies if:

- a) the Company has made a definite decision, or where commercially practical, is in the process of making a decision to introduce a major change to production, program, organisation, structure, or technology in

Table 2 – Sample of operation altering clauses in enterprise agreements
<p>relation to its enterprise; and</p> <p>b) the change is likely to have a significant effect on employees of the enterprise.</p> <p>4.1.2 The Company must notify the relevant Employees of the decision to introduce the major change. Where commercially practical, the Company will provide the opportunity for the employees to respond to the decision and where possible have this response considered.</p> <p>4.1. 7 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.</p>
<p>6.1.2 (e) The company agrees to consult with employees over the content and implementation of competencies for the different classifications.</p>
<p><b>Fitness First Enterprise Agreement</b></p>
<p>Consultation Terms</p> <p>26</p> <p>a) This term applies if the employer:</p> <ul style="list-style-type: none"> <li>i. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or</li> <li>ii. proposes to introduce a change to the regular roster or ordinary hours of work of employees.</li> </ul> <p>b) Major change For a major change referred to in paragraph (a)i.:</p> <ul style="list-style-type: none"> <li>i. the employer must notify the relevant employees of the decision to introduce the major change; and</li> <li>ii. subclauses (c) to (i) apply.</li> </ul> <p>c) The relevant employees may appoint a representative for the purposes of the procedures in this term, if:</p> <ul style="list-style-type: none"> <li>i. A relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and</li> <li>ii. the employee or employees advise the employer of the identity of the representative the employer must recognise the representative.</li> </ul> <p>d) As soon as practicable after making its decision, the employer must:</p> <ul style="list-style-type: none"> <li>i. discuss with the relevant employees: <ul style="list-style-type: none"> <li>a. the introduction of the change; and</li> <li>b. the effect the change is likely to have on the employees; and</li> <li>c. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and</li> </ul> </li> <li>ii. for the purposes of the discussion-provide, in writing, to the relevant employees: <ul style="list-style-type: none"> <li>a. all relevant information about the change including the nature of the change proposed; and</li> <li>b. information about the expected effects of the change on the employees; and</li> <li>c. any other matters likely to affect the employees</li> </ul> </li> </ul> <p>e) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.</p> <p>f) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.</p>
<p><b>GM Holden LTD Enterprise Agreement 2014</b></p>
<p>Allowances</p> <p>2.2.15 Mechanical Flexibility Allowance (South Australia) An all-purpose allowance will be paid to mechanical trades employees in South Australia in recognition of flexibilities resulting from the agreed work released to</p>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

non-trade employees and work practices implemented by the mechanical trades. The extent to which the flexibilities are used, and the number used, will vary from area to area and employee to employee. The allowance is paid to all mechanical trade employees. The allowance does not apply to apprentices. Actual flexibilities comprehended by this clause will be documented in each plant/area. The application of this allowance and the flexibilities it covers may be reviewed on an ongoing basis through discussion with the relevant Unions.

#### 2.2.16 Trades Skills Allowance (Victoria) (known in SA as the Inter Trades Flexibility Allowance (Victoria))

The Parties have defined Electrical/Mechanical flexibilities. These flexibilities shall only be used in the course of rectifying faults where the majority of the work is in the diagnosing of the fault.

The Parties agree that the content of any industrial agreement which arises from this process will include, but not be limited to, an ongoing acceptance and use of existing, and new, technology as it is introduced. This is based on the understanding that training will be supplied prior to and during the introduction, where required. An example of this may be communication devices, data transmission devices and advanced computer based diagnostic systems.

Holden is committed to sustaining a robust trades' workforce. To this end, Holden will work with the relevant Unions in identifying opportunities for trades' employees and apprentices along current trade streams. Trades manning levels will not be reduced as a result of this clause. The Parties will participate in the formulation and implementation of an agreed future maintenance trades utilisation strategy in line with world's best practice. Holden gives a commitment that it will not introduce dual trades during the life of this Agreement.

An allowance amount applies and is designated as the Trade Flexibility Allowance.

#### Market Response Mechanism

Holden at all times will determine the most appropriate action to reduce or avoid the build up of inventory in regard to reducing the number of scheduled production days in a calendar year.

##### 4.13.1 Market Response Definition

(a) When demand for Holden's product has reduced to the extent that unexpected excess inventory of product exists or are accumulating then, if the employees in a shop or shift cannot be gainfully employed, Holden may, after consultation with the relevant Senior Employee Representatives, revise the production calendar to minimise the disruption and financial impact to employees on the provision of two weeks' notice which can be shortened by agreement with the relevant Senior Employee Representatives. This may include the use or rescheduling of PDOs/RDOs.

(b) The Market Response process does not apply when:

- (i) Stand downs due to any industrial action by a union or unions covered by this Agreement (EBA) or work stoppage caused by sabotage of equipment or parts.
- (ii) The Reduced Inventory Payment provision under clause 4.12 of this Agreement does not constitute a Market Response situation.
- (iii) Arrangements to address anticipated periods of reduced demand, that are advised with at least six-months' notice.
- (iv) Capital works and Plant and Equipment projects which necessitate periods of Plant Closedown and/or non-production.
- (v) A PDO or ROO is moved within the month in which it was originally programmed.
- (vi) There is a build-up of inventory due to building over the monthly customer driven production schedule.

(c) Management will consult and reach agreement and document with the relevant Site/Senior Employee Representatives committee in regards to the applicability of these provisions and to discuss other alternatives in order to revise the production calendar and minimise the disruption and financial impact to employees. The consultation will include the consideration of the use of accrued untaken PDOs/RDOs, outstanding annual leave, long service leave and pro-rata long service leave. Once agreement is reached there will be no necessity for the market response provisions to apply.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

**Market Response Process**

4.13.2 When there is a need for a reduction in Plant working days, as designated per the Site Calendar, it is agreed that one or both of the options outlined in sub-clauses (a) and (b) below can be used in any order to reduce the number of working days. The relevant Senior Employee Representatives Committee shall meet to discuss how sub clauses (a) and (b) below can be best utilised in the circumstances.

**(a) 2 Days PDOs or RDOs**

The relevant Consultative Committee as defined shall meet to determine how these two days can be best utilised in the circumstances.

**(b) Market Response Days**

After the full provisions of sub clause (a) has been utilised in any one calendar year, and there is a further requirement for a reduction of working days:

- (i) three (3) days training will be scheduled at full pay (or other alternative work within the appropriate classification), with all following days paid at 60%; or
- (ii) all following days will be scheduled as Market Response days and employees shall be paid at 65%.

...

Areas that have been declared subject to Market Response (which could include without limitation, a shift, section, shop, line, plant or team, or part thereof) may still have work available for some employees. In such circumstances, preference will be given to volunteers, in the first instance, who have the appropriate skills to undertake available work. Should there be insufficient volunteers to undertake the available work, Holden will roster employees who have the necessary skills and experience to undertake the work required, and employees so rostered will be required to work

...

**Job security**

4.15 No redundancies will directly result from continuous improvement activities as defined in this Agreement and any excess labour that may occur will be handled by the process set out in Attachment X cl3(b), (c), the first sentence in (d) and (e) and/or natural attrition.

Continuous improvement will not be used in a narrow job shedding way but more as a means of involving employees in the search for a better way of performing work through up-skilling and job re-design.

**Emergency Situations/Supplier Failure**

4.5.3 In the event of a total/partial supplier failure, and Holden deems it appropriate to have the work (previously performed by the supplier) performed directly by Holden employees, it may redeploy (on a voluntary basis) existing Holden employees, engage casual employees and/or fixed-term employees for a period of up to three years. The terms and conditions of this Agreement, as applicable, including wage rates will apply for Casual and Fixed-Term employees. Clause 4.16, Clause 4.17 and Attachment X will not apply to these fixed term employees.

Non-permanent employees will be released in order to allow a Holden employee whose position becomes involuntarily redundant to transfer over to continue the supplier work as a voluntary alternative to their redundancy. Clause 10.5 would not apply to any work covered by this clause.

**Hours of work – day work (excluding Professional Engineers and Scientists)**

6.1.2 Prior to any change to the spread of hours for trade and non-trade employees, Holden will advise the reason for the changes, the number of employees involved, the plants and sections involved, the timing of the changes and how employees are to be informed and ensuring mutual acceptance of the changes.

Table 2 – Sample of operation altering clauses in enterprise agreements

## Alternative Shift Arrangements (except SA Trades and HSPO)

6.6 (a) Holden may schedule shifts on a 7-days per week, 24-hours per day basis including shifts which are longer than 8-hours (Alternative Shift Arrangement). If Holden proposes to introduce a new shift arrangement determined by the needs of the business that is not comprehended by this Agreement, consultation and implementation in regard to shift arrangements will be facilitated by Holden and the relevant Senior Employee Representatives. This working group will have regard to business requirements, and optimising OH&S and employee preferences. In order to ensure the fair and consistent application of any Alternative Shift Arrangements, the following process will be utilised:

- (i) After the shift roster model, to meet the business requirements outlined by Holden, has been designed and agreed by Holden and the relevant Senior Employee Representatives, all employees of the affected area will be thoroughly briefed on the details of the proposal.
- (ii) After Holden and the relevant Senior Employee Representatives are satisfied that there is a sufficient level of understanding by employees of the affected area of the proposal, Holden and the relevant Senior Employee Representatives will run a ballot in the affected area to establish if a majority of these employees consider the proposed shift arrangements acceptable. If more than 60% of these employees indicate their acceptance, Holden may direct the required number of employees with seven days' notice, to work the new shift arrangements. Volunteers may be considered from other areas of the business to deal with particular or personal difficulties.
- (iii) It is the intent of the Parties that this process would be completed within a 4 week timeframe.
- (iv) Six months after the new shift roster is implemented, Holden and the relevant Senior Employee Representatives will review the arrangement.
- (v) If within six months an employee has particular or personal difficulties with the new shift roster arrangement, Holden will consider those issues and may offer alternative duties/shifts for that employee.
- (vi) Should steps (i) through (v) above fail, and Holden in its view has no business alternative but to implement the proposed arrangement, the matter may be referred to the Fair Work Commission for conciliation and determination.

## Alternative Shift Arrangements – South Australia Trades Employees

6.6.1 The Parties recognise that in order to provide a best practice maintenance system it is imperative that the necessary Holden trade employees are available to cover maintenance requirements over the core hours which may include Saturdays.

In order to achieve this, the Parties commit to developing and implementing a shift pattern or roster which may incorporate Saturday for the South Australian Trades groups. Unless agreed otherwise, overtime rates for Saturdays will be as per status quo. The Parties will follow the procedure outlined in this Agreement. This process will not include Sunday as a core work day.

If at the end of that process it is agreed that an alternative shift or roster model is not practicable, the Parties will meet to determine an alternative strategy to ensure that sufficient trades are available to provide the required coverage. This process will be completed within one month of the completion of discussions around alternative shift patterns. If the Parties are unable to reach agreement on an alternative shift pattern or an alternative strategy for coverage, either party may seek the assistance of the Fair Work Commission for conciliation which will continue until a recommendation is reached. This will take no longer than six weeks from the completion of the consultative process. If at the completion of this period there is no agreed recommendation the Parties will abide by the recommendation made by the Fair Work Commission at which point it will become the agreed recommendation and form part of this Agreement.

## HSPO Employees

6.7.7.1 Employees are generally able to take RDOs and Annual Leave at a time of their choice provided there is no more than 16% of a member of the workgroup on RDOs, Annual leave and Long Service leave on any given day.

The 16% rule will only be exceeded in genuinely compassionate circumstances due to unplanned events, including bereavement. However, where an employee wishes to take an ROO or annual leave which will result

**Table 2 – Sample of operation altering clauses in enterprise agreements**

in the 16% rule being exceeded; such an employee or the relevant Employee Representative may request that their absence be backfilled with a casual employee. In such a case, Holden will not unreasonably withhold its consent.

#### Services (all categories)

6.8.1(a) Holden will ensure employees have access to quality food onsite or delivered to site (excluding vending machines or similar). Holden will consult and reach agreement with the relevant Senior Employee Representatives if changes are required. Agreement will not be unreasonably withheld. Should the matter not be able to be resolved by agreement, the matter will be referred to the Fair Work Commission for determination.

#### Relief breaks

6.9 (e) Relief time is provided so that employees can cater to their personal needs and includes the patronising of vending machines, and an allowance of \$1.00 per week at the Fishermen's Bend site shall be paid.

#### Annual leave and Christmas closedown arrangements

7.1.1. Holden will schedule a plant closedown at Christmas comprising no less than 21 Days including 12 days annual leave 3 Public Holidays and in Victoria the January and December PDOs. The Christmas Closedown will commence no later than 23 December each year (i.e. 23 December is last day of work).

The Parties recognise however that in order to meet customer requirements and secure the long-term future of Holden in Australia, a shorter Christmas closedown may be required. The following will apply in these circumstances.

- (a) In the first instance Holden will determine whether the customer requirements can be met through the use of volunteers.
- (b) Holden will advise the Federation of Vehicle Industry Unions (National, State and Local representatives of employees) of the need for a shorter Christmas closedown.
- (c) The customer requirements will be discussed through the relevant State/Peak Committee with the aim of reaching agreement over the duration of the Christmas closedown. The Parties will give the customer and business requirements their full consideration in reaching agreement over the Christmas closedown duration.
- (d) Subject to agreement being reached at the State/Peak Committee employees will be advised of any changes in the standard Christmas closedown by no later than November 1st; and
- (e) The shorter closedown may be applied differently across and within plants should there be a need.

#### 7.1.13 Close-down arrangements

Where Holden closes down its plant or a section or sections for the purpose of allowing annual leave to all or the bulk of the employees in the plant or section or sections concerned, the following provisions shall apply:

- (a) It may by giving not less than three months' notice of its intention so to do stand off for the duration of the close-down all employees in the plant or section or sections concerned and allow to those who are not then qualified for a full entitlement to annual leave for twelve months' continuous service pursuant to sub-clause 7.1.1 hereof, paid leave at the appropriate rate of wage prescribed in accordance with the Agreement for 2.923 hours for each five ordinary working days worked.
- (b) An employee who has then qualified for a full entitlement to annual leave for twelve months' continuous service pursuant to sub-clause 7.1.1 hereof, and has also completed a further week or more of continuous service shall be allowed his/her leave, and shall be paid at the appropriate rate of wage as prescribed by the Agreement for 2.923 hours for each five ordinary working days worked since the close of the employee's last twelve-monthly qualifying period

...

- (d) If in the first year of his/her service with Holden an employee is allowed proportionate annual leave under paragraph (a) hereof and subsequently within such year lawfully leaves his/her employment or his/her

**Table 2 – Sample of operation altering clauses in enterprise agreements**

employment is terminated by Holden through no fault of the employee, he/she shall be entitled to the benefit of sub-clause (a) hereof, subject to adjustment for any proportionate leave which he/she may have been allowed as aforesaid.

(e) Holden may close down its plant for one or two separate periods for the purpose of granting annual leave in accordance with this sub-clause. If Holden closes down its plant in two separate periods one of those periods shall be for a period of at least 21 consecutive days.

Provided that where the majority of the employees in the plant or section or sections concerned agree Holden may close down its plant in accordance with this sub-clause in two separate periods neither of which are of at least 21 consecutive days or in three separate periods. In such cases Holden shall advise the employees concerned of the proposed dates of each close-down before asking them for their agreement.

Provided that in the case of clerical employees where the majority of the employees in the plant or section or sections concerned agree Holden may close down its plant in accordance with this subclause in two separate periods. In such cases Holden shall advise the employees concerned of the proposed dates of each close down before asking them for their agreement

...

(g) Holden may close down its plant or a section or sections thereof for a period of less than 21 consecutive days and allow the balance of the annual leave due to an employee in accordance with a roster.

In such cases involving technical and supervisory employees the granting and taking of annual leave shall be subject to the agreement of Holden and the majority of employees in the plant, or a section or sections thereof respectively, and before asking the employees concerned for their agreement Holden shall advise them of the proposed date of the close-down or close-downs and the details of the annual leave roster.

#### Flexibility (HEO employees)

9.2.3 Holden and the Unions agree that to assist in improving workplace efficiency with trades and production employees, the following flexibilities for general plant application are agreed. Holden commits to provide an assurance that all AMWU – Vehicle Division employees will be given the appropriate level of training and recognition for work performed as a result of accepting workplace flexibility.

- (a) Tradespersons to assist in cleaning of machines/dismantling guarding prior to repair work commencing on equipment and assist in cleaning up/replacing guarding after completion of work provided that it is incidental to their work.
- (b) Tradespersons to operate equipment in a continuous productive mode to validate repair work incidental to their work.
- (c) Foundry non-trades employees to assist trades employees with pouring basin changeover.
- (d) Non-trade employees to replace leak test type seals as previously agreed.
- (e) Non-trades employees to drain water from compressed air lines and filters.
- (f) Non-trades employees to assemble in-house trolleys, benches, storage racks using Rodwell or other kit type material.
- (g) Non-trades Foundry employees to assist trades employees (if required) with flask pin and bush changeovers.
- (h) Tradespersons to carry out own checks of components on pre-programmed computerised measurement equipment. (example: Checking for rise error on camshafts using Adcole; Checking dimensions on Hommelwerke or Browne & Sharpe CMM's etc.)
- (i) The following items will be examined after the equipment is commissioned.
  - (i) Non-trades Foundry employees to visually check patterns and change date codes on Disamatic.
  - (ii) Non-trades Foundry employees to clean Disamatic patterns after use.
  - (iii) Non-trades employees to replace all new leak test type seals.
- (j) The following items will be examined by a joint Vehicle Division and Company Working Party.
  - (i) Non-trades to carry out routine/standardised checks on pre-programmed computerised measurement equipment.

Table 2 – Sample of operation altering clauses in enterprise agreements

(ii) Transfer of complete full tool changes on CNC Tool Carousels (tool heads and adaptors).

#### Consultation Arrangements

9.4.3 To facilitate the most appropriate change program in relation to alternative working arrangements and the respective production systems, consultation will continue to occur as currently agreed in South Australia and Victoria. The HVO Peak and Victorian Site Committees will be made up with membership as defined in Part 17 of this Agreement. The role of these committees is to discuss and agree upon, an ongoing basis, implementation activities that best serve to promptly and effectively implement agreed strategies.

The framework in which the GMS System will be introduced and implemented is supported by the following:

- (a) No employee will be directly retrenched during the life of this agreement as a result of the implementation of the GMS System.
- (b) Holden is committed to consultation prior to the implementation of workplace change through the above site committees.
- (c) There will be joint involvement in the implementation of workplace change through the above committees.
- (d) All employees are to be given adequate information in order to understand the need for change, which will be co-ordinated, through the site committees.
- (e) If a site committee is unable to reach agreement, its implementation and any subsequent matters will be dealt with through the Disputes Prevention Clause of this Agreement.
- (f) Consultation and implementation in regard to Work Organisation matters will be processed through the appropriate Site Committee, or such specific area Committee as may be created to address a particular issue e.g. Alternative Shift Committee.

All negotiations on this Agreement, its overall implementation and any subsequent matters, will be conducted through a single bargaining unit comprising the FVIU and Holden.

#### Implementation of Change

10.2.2 The Parties recognise that Holden will continue to change. The impetus for change may be the result of strategic decisions, customer requirements, or new technology, amongst others. The change that Holden needs to make is important to provide for an organisation that is both nationally and internationally competitive and provides for efficiency, productivity and cost reduction improvements.

The Union(s) recognise and accept the right of Holden Management to make decisions with respect to change whilst Holden recognise and accept the right of the Union(s) to be consulted and negotiate the mechanisms of change prior to implementation.

“Significant change” includes major changes to the composition, operation or size of the employer’s workforce or major change that includes the displacement of employees that would require the permanent transfer of employees to other work or locations other than in the ordinary course of business. Examples of significant change could be outsourcing, permanent contracting out of existing work, direct delivery to line, impact of Supplier Parks, and in some circumstances, acquisition of new major technology and others matters identified by the State/Peak Committee.

##### 10.2.2.2 Duty to Discuss

Holden will prior to any implementation of change, enter into discussions which will include but may not be necessarily limited to:

- (a) Reason(s) for the change from existing technology, system(s), practice or organisation;
- (b) The measures taken (or to be taken) by Holden to avert or mitigate the possible adverse effects the changes may have on employees;
- (c) Training, retraining, skill or qualification requirements;
- (d) Assessment of the availability of required skills;
- (e) Consideration of other alternatives, if any;
- (f) Occupational health and safety implications, if any;
- (g) Facilities implications, if any;

**Table 2 – Sample of operation altering clauses in enterprise agreements**

<p>(h) The capacity of any proposed technology or system to monitor employees' work performance, or to have an impact on an employee's privacy, if any;</p> <p>(i) Job classification changes, if any;</p> <p>(j) Trialling and evaluation procedures, if necessary;</p> <p>(k) Schedule for implementation; and the impact, if any, on areas which may be indirectly affected by the change.</p> <p>10.2.2.3 Provision of Information</p> <p>... In accordance with this clause the Union(s) may submit alternative proposals through the relevant Consultative Committees....If such a proposal is made, Holden must give a written reason to the relevant Consultative Committees if Holden does not accept its proposals.</p> <p>Any issue(s) which cannot be resolved by the relevant Consultative Committee shall be referred to the Fair Work Commission in accordance with the Holden Enterprise Agreement.</p> <p>10.2.2.4 State Consultative Committee</p> <p>The operation of this Implementation of Change clause is subject to oversight by a Joint Union and Management Consultative Committee. This shall be called the State Consultative Committee/Peak Committee.</p> <p>The State Consultative Committee will comprise equal representatives of Holden and equal union representatives nominated by the FVIU. Members of the Committee must have authority as a decision maker within their organisation ...</p>
<p>10.5.1 Outsourcing</p> <p>In respect of any decision of Holden to outsource, the relevant Parties will be required to consult and reach agreement. If agreement cannot be reached, the issue will be resolved utilising the dispute and grievance resolution procedure of Part 3 in this Agreement. In the event that any employees are to be displaced as a consequence of outsourcing, the employer shall:</p> <ul style="list-style-type: none"> <li>(a) provide such employees with alternative work which is suitable to the employees' skills and physical wellbeing;</li> <li>(b) provide such employees with the opportunity to trial work in several alternative areas so as to best accommodate the employees' skills and wellbeing;</li> <li>(c) ensure that there is no loss of continuity of service of such employees;</li> <li>(d) where employees are unable to be placed in suitable alternative duties, the provisions of clause 4.16 (as applicable) will apply.</li> </ul>
<p>Trade Contractors</p> <p>10.6 At the beginning of January each year, the Trades Senior Employee Representatives will present to Holden a list of their preferred contractors. Holden will ensure that the list is provided to the World Wide Purchasing (WWP) department.</p> <p>WWP will include the Trades contractor list in the process of determining the allocation of contracts, but Holden cannot guarantee that the Trades preferred contractors will be successful.</p>
<p>Salaried Workload</p> <p>13.2 Where an individual or a group of employees believe that there is an unreasonable allocation of work leading to staff being overloaded with work, the individual or the group concerned can seek to have the allocation reviewed, in the first instance by the departmental manager to address the staff concerns.</p> <p>Where appropriate a consultative process will be established to address any concerns raised which will involve representatives from the relevant union.</p> <p>It is agreed the Parties will review Supervisor workloads through a joint committee, which will include Group</p>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

Leaders from each major area or plant. This will ensure appropriate support, training and assistance is available to Group Leaders. Part of this review will consider the current Group Leader workload requirements to ensure these requirements are fair and reasonable. Ongoing reviews of Group Leader workloads will be completed at 12 monthly intervals for the life of the Agreement for the purposes of reviewing workloads to ensure they remain fair and reasonable. If there is a dispute about workloads which is not resolved the dispute resolution process in the agreement will be applied.

#### Clerical Structure Review

13.8 During the life of the Agreement and at the Union's instigation, the Parties agree to establish a Clerical Working party comprised of Holden and four Salaried Union representatives to address any agreed issues in relation to the clerical structural efficiency agreement.

#### **Lend Lease Engineering PTY LTD Engineering and Infrastructure South Australia Enterprise Agreement 2013–2016**

#### Hours of work

##### 4a) General

It is recognised that productivity is maximised when the need to work available daylight hours is balanced with safety considerations and the need to maintain a high quality of life for Employees.

...

iii. All parties agree to pursue via consultation and agreement, where practical, alternative arrangements for hours worked. This includes a process for staggering the hours that Employees work in order to maximise the use of manpower and equipment over the available daylight hours, and to limit excessive overtime.

##### b) Rostered days off

ii. Programming of Rostered Days Off Where the Company and Employees agree, an alternative day may be substituted for any scheduled rostered day off. In this case, the Employees will be consulted prior to the close of business on the Thursday prior to the RDO, unless otherwise mutually agreed. Such work will be paid at ordinary rates and Employees involved will be entitled to take their accrued RDO at a later time as provided in this Agreement. Where consultation does not occur by close of business on the Thursday prior to an RDO and an Employee agrees to work that RDO at the request of the Company, provision of Clause 7(f), Emergency Work in the Defined Zone, will apply in relation to remuneration. The Employee will be entitled to take their RDO at a later time as provided for in this Agreement. To maintain service delivery, resources from another Project and/or labour hire may be used.

iii. RDO Calendars The Consultative Committee will convene annually in November to agree a RDO schedule for 19 of the RDOs. The remaining 7 RDOs will be taken at times that are mutually acceptable to the Company and the Employees maintaining agreed flexibility around the programming of RDOs. The working Calendars for 2014 is attached at Appendix 3 for the applicable Defined Zone.

[South Australian RDO calendar is included as Attachment 3 to the EBA].

...

##### i) Offer and acceptance of weekend overtime

Offers of weekend overtime will be made to Employees prior to the normal meal break on Thursday and will be offered on a work required basis only. A system will be established to ensure that overtime is shared equitably amongst Employees possessing required skills and competencies in the event that less than full work teams are required. Employees who accept an offer of weekend overtime will be obliged to attend.

#### Leave and income security

##### 5a) Annual Leave

... The Company will generally close-down projects for a defined period over the Christmas–New Year period and will require Employees to take some annual leave at this time. The actual close down and resumption

**Table 2 – Sample of operation altering clauses in enterprise agreements**

dates for each Project will be agreed between the Company and the affected Employees.

Contract of employment

6(i) Stand Down

Following consultation with Employees the Company may stand down any Employees who cannot be usefully employed due to any strike, stoppage of work (other than approved inclement weather), or breakdown of machinery or other cause beyond the Company's control.

Contract of employment

6(l) Consultation

i. The Company will consult with the Employee's if:

- The Company is considering introducing a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- The change is likely to have a significant effect on Employees of the enterprise.

ii. The Company must notify the Parties of the intention to introduce the major change.

iii. The relevant Employees may appoint a representative for the purposes of the procedures in this term.

iv. If:

- A relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- The Employee or Employees advise the Company of the identity of the representative; The Company must recognise the representative.

v. As soon as practicable after making its decision, the Company must:

- Discuss with the relevant Employees:
  - The introduction of the change; and
  - The effect the change is likely to have on the Employees; and Measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees.

vi. The Company must give prompt and genuine consideration to matters raised about the major change by the Parties to this Agreement.

**McDonald's Australia Enterprise Agreement 2013**

Consultation

8.1 This term applies if:

8.1.1 an Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to a McDonald's restaurant; and 3

8.1.2 the change is likely to have a significant effect on employees of the Employer.

8.2 The Employer must notify the relevant employees of the decision to introduce the major change.

8.3 The Employer must notify and discuss with the SDA its decision to introduce the major change.

8.4 The relevant employees may appoint a representative for the purposes of the procedures in this term.

8.5 If:

8.5.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

8.5.2 the employee or employees advise the Employer of the identity of the representative; the Employer must recognise the representative.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

8.6 As soon as practicable after making its decision, the Employer must:

8.6.1 discuss with the relevant employees:

- (i) the introduction of the change; and
- (ii) the effect the change is likely to have on the employees; and
- (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the employees.

8.6.2 for the purposes of the discussion – provide, in writing, to the relevant employees:

- (i) all relevant information about the change including the nature of the change proposed; and
- (ii) information about the expected effects of the change on the employees; and
- (iii) any other matters likely to affect the employees.

However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

8.7 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

**38-hour Week Rosters**

27.4.5 an Employer may with the agreement of the majority of employees in a restaurant or with the individual employee concerned substitute the day or part of the day that the employees are or the individual employee is to take off. Such substituted day or part-day is to be arranged and taken as soon as practicable and in any event prior to the next rostered day or part-day off.

**Murray Goulburn Co-operative Co. Limited (Victorian Sites) National Union of Workers Enterprise Agreement 2014**

**Consultation and measures to improve efficiency of the enterprise**

**8.1 Consultation**

(a) It is agreed between the parties that all employees, at all levels and sites, will continue to cooperate through the established Joint Consultative Committee forum to pursue efficiency and productivity improvements for the betterment of the Company, its employees and its farmers. It is agreed that the JCC will continue to be developed and utilised.

**8.2 Performance improvements**

Performance indicators shall be developed by Joint Consultative Committees taking into account international best practices. These are to include, but not be limited to, work quality, wastage, reliability, cost effectiveness, output, occupational health and safety, environment measures, correct tool usage, costs and co-ordination of activities as to minimise time on particular tasks or jobs. Performance targets and indicators will be set against agreed benchmarks.

**8.3. Labour Flexibility**

(c) Full consultation will take place at the site level.

(d) Production personnel may take instruction from other site personnel, consistent with agreements reached through consultative committee process, and likewise may give training and instruction, consistent with the properly constituted consultative forum.

(e) Any technical related issue that may arise shall be resolved jointly with other employees, site management or through the consultative process mechanism set down on a site by site basis.

**8.4. Restrictive Work Practices**

The parties to this Agreement will continue to monitor all restrictive work practices that may occur at each site

Table 2 – Sample of operation altering clauses in enterprise agreements

and discuss ways to remove them through the properly constituted Site Joint Consultative Committee forums at each site.

#### Introduction of change

##### 9.1. Company's duty to notify

(a) Where the Company has made a definite decision to:

- (i) introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees; or
- (ii) change the regular roster or ordinary hours of work of any employees under this Agreement, the Company shall notify the employees who may be affected by the proposed changes and their union or any other representative.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the Company's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

##### 9.2. Company's duty to discuss change

(a) The Company shall discuss with the employees affected and their union, inter alia, the introduction of the changes referred to in clause 9.1(a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes. The Company will invite the relevant employees and their union to give their views about the impact of the change (including any impact in relation to the employees' family or caring responsibilities).

(b) The discussions shall commence as early as practicable after a definite decision has been made by the Company to make the changes referred to in subclause 9.2(a) hereof.

(c) For the purpose of such discussion, the Company shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that the Company shall not be required to disclose confidential information the disclosure of which would be inimical to the employee's interests.

#### Skills and classification structure

##### 15.7. Skills and Classification Review

(a) The parties to this Agreement commit to updating and modernising the skills and classification structure.

(b) The parties agree to undertake a joint review of the skills and classification structure during the first six months of operation of this Agreement.

(c) A committee comprising management, union delegates and NUW officials shall have responsibility for the review. Once the parties have reached agreement on the amended skills and classification structure the new structure will be implemented.

(d) It is agreed that no employee will be moved to a lower classification level or wage rate.

(e) It is agreed that there will be no de-skilling of employees arising from the review process.

#### Shift workers

##### 28 Shift workers

(e) For a single period not exceeding 12 weeks in any year, shift workers may be rostered off on more than two Saturdays or Sundays in seven, provided that during any such period an allowance per shift shall be paid in lieu of the shift allowance provided in subclause 28(a) hereof. The Company shall give one week's notice prior to the commencement and finish of such arrangement.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

(j) Shift structures will be established by site management to reflect operational needs of the business to meet either seasonal or market requirements.

(iv) For the purpose of this clause the relaxation of the hours of work and greater flexibility of rostering must be by mutual agreement between management and employees on a site by department basis through the appropriate consultative process.

33. 12 hour shifts

(a) 12 hour shifts shall be worked in accordance with Schedule A.

(b) As at the commencement of this Agreement, where existing 24 hours by seven day coverage (on a work group basis) is being performed by 12 hour roster (4 days on 4 days off, eight week cycle, refer Schedule A) such roster shall be the preferred method for such work, however, when the Company or a department or work group therein is confronted with conditions that dictate a lack of need for 24 hour seven day coverage, alternate roster arrangements can be made following consultation and provision of required notice.

Schedule A – conditions of engagement on 12 hour shifts

Preamble

(a) Where it is established that work is required on a continuing 24 hour, 7 day per week basis, the following conditions shall be followed.

(b) The introduction of a twelve hour shift roster is subject to endorsement by the majority of employees concerned. Employees unable to work twelve hour shifts shall, wherever possible, be offered alternative suitable employment.

**Pacific National Bulk Rail Enterprise Agreement 2013**

12. Stand down

(a) Pacific National Bulk Rail may stand down Employees without pay for any time during which they cannot usefully be employed in their normal position because of any cause for which Pacific National Bulk Rail cannot reasonably be held responsible.

(c) As soon as practicable and prior to the Stand down commencing, Pacific National Bulk Rail will consult with the affected Employees and the Union. In this regard, the performance of useful work shall be discussed together with the performance of any training and reaccreditation that may be required by Pacific National Bulk Rail.

30 Consultation and Change Consultation

(a) The parties are committed to pursue all opportunities to adopt the world’s best practices through modern technology and continuous improvement to all aspects of Pacific National Bulk Rail operations.

(b) Levels of staffing, equipment and methods of operation may be varied from time to time by Pacific Bulk Rail to reflect the need for safe work practices, improved technology, and new types of machinery or systems, customer service needs or for any other reason

...

(d) (i) Pacific National Bulk Rail shall allow the Employee, their representative and the Union, an opportunity to express their view or concerns. Pacific National Bulk Rail will allow Employees, their representative and their Union to actively participate in the consultative process. That is, allow for the reasonable release and payment of Employees to attend meetings and access to entitlements as provided for in this Agreement.

(ii) Pacific National Bulk Rail shall genuinely consult and consider any views or advice from the Employees, their representative and their Union in relation to the proposed change and provide written reasons addressing concerns raised by Employees and or Employee representatives.

(e) This consultative process must be completed within a period of fourteen (14) days from the date of

**Table 2 – Sample of operation altering clauses in enterprise agreements**

notification by Pacific National Bulk Rail as set out in Clause 30 (c) above, subject to the provisions of Clause 30 (d) being complied with. Failure to comply with the provisions of Clause 30 (d) will delay and or extend the fourteen (14) day period accordingly.

(f) (i) Should Pacific National Bulk Rail fail to provide the notification as required in Clause 30 (c) above Pacific National Bulk Rail shall not implement any of the proposed changes until such time that the proper notification of change has been provided and the consultation process set out in Clause 30 (d) has been complied with.

(ii) Further, where Pacific National Bulk Rail has failed to engage in any consultation what so ever with the affected Employees, their representative or their Union, may issue Pacific National Bulk Rail, within seven (7) days of the non compliance, with a notice of dispute, in writing, setting out the reasons for the dispute in the form set out in Schedule 1 of this Agreement. Upon receiving such notice of dispute Pacific National Bulk Rail will not implement the change and or cease the change should it have been already implemented.

(g) It is agreed between the Parties that after the above notification and consultation process has satisfactorily taken place, Pacific National Bulk Rail, may implement change after a further fourteen (14) days.

(h) Significant Change For the purposes of this clause and without limiting the generality thereof, significant change includes changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of Employees to other work or locations and the restructuring of jobs.

(i) Right to Conciliation

Notwithstanding the above, once the notification has been provided or consultation has commenced in accordance with this clause, either party may notify FWC of a dispute, in accordance with Clause 31, with respect of the proposed change. In such circumstances, Clauses 31(b)(i) to (iv) need not be followed.

(j) Right to Arbitration

(i) Either party shall have the right to have FWA arbitrate a dispute arising under this clause in circumstance where a party has failed to follow the notification and or the consultation process outlined in Sub-Clauses (c) and (d) above.

(ii) The Employees with their representatives shall have a further right to arbitrate a dispute where Pacific National Bulk Rail have introduced the change and the provisions of Sub-Clause (f)(i) have been enacted.

**32.1 Relocation**

(a) Pacific National Bulk Rail proposals that may require an Employee to relocate will be subject to the consultative provisions outlined in Clause 30 of this Agreement. With any final decision regarding the individual Employee the relocation will be made on assessment of the individual’s circumstances with regard to reasonableness.

**33 Temporary Transfer**

(b) Temporary transfers will also be used to support commercial activities affected by variable demand and traffic volumes and/or temporary staff shortages.

(c) In the first instance, volunteers will be called for temporary transfer. In the event that insufficient Employees volunteer, Employees may be selected for temporary transfer. Employees will be temporarily transferred away from their Home Base for a period of not more than six (6) weeks in any twelve (12) month period, unless mutually agreed. Any decision regarding individual Employee temporary transfer will be made on assessment of the individual’s circumstances with regard to reasonableness.

**Part B – Train crew and terminal operators**

**Home base and sign-on/sign-off Provision**

(a) ... Home Base sign on points will contain the following:

(i) Car parking – Consultation will occur at each location where new car parking is proposed.

(b) Sign on and sign off points within a home base may be varied following consultation with the affected employees.

(c) Remote sign on/off Provision

**Table 2 – Sample of operation altering clauses in enterprise agreements**

<p>(i) Remote sign-on/off points may be determined at the discretion of the company in consultation with the respective depot.</p>
<p>Part B – Train crew and terminal operators</p> <p>6 Rostering guidelines</p> <p>(a) Master rosters</p> <p>(iii) The number of Pacific National Bulk Rail initiated master roster changes shall not exceed four (4) in any twelve (12) month period, unless there is a specific business requirement. Where there is a business requirement to exceed 4 changes formal consultation will occur with the depot.</p> <p>(iv) Where a change to a master roster is proposed, formal consultation will commence at least 28 days prior to the intended implementation date of the new master roster.</p> <p>(v) Following the consultation, the final master roster is to be posted 14 days in advance of its introduction.</p> <p>(vi) Any changes to the master roster which do not impact on an Employee’s RDO will not constitute a master roster change.</p> <p>(viii) Rosters shall be arranged to provide the maximum number of complete weekends rostered off duty which shall be at least one weekend off in four unless altered by way of agreement.</p> <p>...</p> <p>(c) Working rosters</p> <p>Where variations to any master roster, not impacting on RDOs is required, a working roster is developed. Working Rosters must be posted weekly at least nine (9) days in advance of the Sunday on which the roster is to commence.</p> <p>(d) Daily work plan</p> <p>Pacific National Bulk Rail Enterprise Agreement 2013 page 60 A daily work plan may also be used to provide specific details of sign on times, barracks working and return and any other relevant information requirements.</p> <p>(e) All Employees will be allocated to a permanent line, rotate through lines in their roster and as far as practicable, hours are to be equalised out over duty cycle.</p>
<p>Rostering guidelines for terminal operators</p> <p>18.1 Consultation</p> <p>(a) Employees may elect to form a rostering committee. Where formed, Pacific National Bulk Rail will consult with the committee as part of the consultative process. Where no rostering committee is formed, consultation will occur in accordance with the provisions outlined in Clause 30 of this Agreement.</p> <p>(b) Pacific National Bulk Rail, in consultation with the local rostering committee (where formed), will develop and modify rosters consistent with operational requirements.</p> <p>18.2 Roster development</p> <p>(b) Where a change to a master roster is proposed, consultation, as outlined in Clause 30 of this Agreement, will commence at least 28 days prior to the intended implementation date of the new roster.</p> <p>(c) Following consultation, the final Master Roster is to be posted at least fourteen (14) days in advance of its implementation ...</p> <p>(f) Rosters should be arranged to provide the maximum number of complete weekends rostered off duty. Employees will not be required to work more than three (3) weekends in a row ...</p> <p>(h) Rosters in place at the time of certification of this Agreement will only be changed or varied in accordance with the roster consultation process provided for in this Agreement ...</p>
<p>Part C – Support staff</p> <p>5. Home base sign on/sign off provisions</p>

Table 2 – Sample of operation altering clauses in enterprise agreements

(c) Each Home Base must contain the following:

- (i) Secure car parking Exception. The “Jesse Street,” Building at Parramatta. At this location Secure parking may be made available to Shiftworkers between the hours of 1730 to 0630. Any available parking spaces during business hours may be made available to Shiftworkers;
- (ii) Air conditioned and heated office amenities to the required regulatory standard including, Individual secure lockers, showers and toilets;
- (iii) Air conditioned meal room that includes at least a refrigerator, toaster, cooker, microwave oven, kettle, and drinkable water. Tea Coffee and Milk will be provided free of charge to Employees;
- (iv) Communication equipment such as, telephones, radios and email; Pacific National Bulk Rail Enterprise Agreement 2013 page 82;
- (v) Provision for the transport of any safety or maintenance equipment; and
- (vi) Union Notice Boards.

(e) Sign on/off points outside a Home Base

- (i) Where Pacific National Bulk Rail proposes a new sign on/off point consultation shall apply as per this enterprise agreement.
- (ii) Each sign on/off point outside a Home Base must contain the following: (a) Car Parking; (b) Amenities to the same standard as the Home Base; (c) Communications such as telephones or radios or emails as required; (d) Operational documentation; (e) Provision for the transport of any safety or maintenance equipment; and (f) Notice board.
- (iii) For Parramatta Employee’s the current operation back up site during periods where the Home Base is unsafe is the Enfield Train Crew depot, consultation will take place if this needs to be altered.

Part C – Support staff

6. Roster Development

(d) Employees may elect to form a rostering committee. Pacific National Bulk Rail will consult with the committee. Where no rostering committee is formed, consultation will take place with all affected Employees. Consultation will be in a manner of inclusion and involvement.

(e) Pacific National Bulk Rail, in consultation with the local rostering committee (where formed), will develop and modify rosters consistent with operational requirements.

(f) In developing rosters, Pacific National Bulk Rail must take into account the following:

- (i) Family, social and work commitments; Pacific National Bulk Rail Enterprise Agreement 2013 page 83
- (ii) Occupational Health and Safety and specifically Fatigue management principles;
- (iii) Maintenance of qualifications;
- (iv) Quality of work;
- (v) Relevant conditions of employment;
- (vi) Duty of care obligations;
- (vii) Optimal staff productivity; and
- (viii) Fair working for the Employees.

(g) Rosters in place at the time of lodgement of this Agreement will only be changed or varied in accordance with the roster consultation process provided for in this Agreement.

(h) Where a change to a master roster is proposed, consultation, as outlined in clause of this Agreement, will commence at least twenty eight (28) days prior to the intended implementation date of the new roster. Any change will be made mindful of balancing the business demands and the needs of Employees.

(i) The number of changes to master rosters, where such a change impacts on a RDO, shall not exceed four (4) per annum, unless by consultation and agreement at each affected worksite. Where a variation to the Master Roster is proposed which does not impact on an RDO, but is only:

- (i) A variation to existing rostered working; or

Table 2 – Sample of operation altering clauses in enterprise agreements
<p>(ii) The placement of additional RDOs, then such change will not constitute one of the four master roster changes.</p> <p>(j) Rosters should be arranged to provide the maximum number of complete weekends rostered off duty. Employees will not be required to work more than three (3) weekends in a row.</p> <p>(k) The Master roster shall display:</p> <ul style="list-style-type: none"> <li>(i) Sign on and Sign off Times;</li> <li>(ii) All Roster Days off (RDO);</li> <li>(iii) All Known Work.</li> </ul> <p>(l) Following consultation, the final Master Roster is to be posted at least fourteen (14) days in advance of its implementation.</p>
<p>Attachment 1– Drive only operations compendium</p> <p>Driver only operations (DOO)</p> <p>4.1 Pacific National Bulk Rail shall consult with Employees and their representatives at a national, state and depot level where Pacific National Bulk Rail proposes to introduce Driver Only Operations. Pacific National Bulk Rail shall report back to Employees and their representatives at depots affected by Mainline DOO outcomes of such consultation.</p> <p>4.2 Mainline work</p> <p>(e) A maximum rostered shift limit of 9 hours from sign on to sign off will apply to mainline DOO. In the event of train delays, a driver may elect to cease DOO 9 hours from sign on and shall be relieved. The driver shall be entitled to a 30 minutes paid personal needs break between the third and fifth hour as arranged in consultation with the Track Access Supplier on the day of operation.</p> <p>(f) Rostering committees shall ensure that the maximum DOO component in the rosters is 30% of mainline work.</p>
<p><b>Rio Tinto (Alcan Cove) Enterprise Bargaining Agreement 2014</b></p>
<p>10) Consultation Process</p> <p>The Parties acknowledge that Employees make valuable contributions to safe, efficient, effective and productive operations through application of their skills, knowledge and experience. Employees are encouraged to provide their views to RTA. In the first instance, Employees should provide their feedback directly through their immediate leader. RTA will consult with Employees and the Unions about workplace changes, including policy amendments and rosters as per clause 28, 29, Appendix 4. that are likely to have a significant effect on Employees. The form of consultation will depend on the nature of the change, and will include:</p> <ul style="list-style-type: none"> <li>a) providing, as far as practicable, all relevant information about impending changes or decisions; and the likely effect the change is to have on the Employees (including the measures RTA is taking to avert or mitigate the adverse effect of the change on the Employees);</li> <li>b) providing an opportunity to put forward views, comments and suggestions on those matters;</li> <li>c) genuine consideration of the views, comments and suggestions submitted; and</li> <li>d) advising Employees and the Unions of the final decisions; Employees may appoint a fellow RTA Employee as a representative for the purposes of the procedures in this term.</li> </ul>
<p>18) Temporary Assignment</p> <p>As part of providing Employees with development opportunities and ensuring continuity of crew leadership, they may be given the opportunity to undertake a temporary assignment in a staff position or other role. It is expected that Employees classified at the Advanced level would undertake a temporary assignment following discussion with their leader concerning their suitability for the required role. Training and support will be provided to Employees undertaking temporary assignments</p>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

....

For temporary assignments of a duration exceeding one month, RTA may choose to backfill the position after considering current workload, resourcing and operational requirements. In such cases, the workgroup will be consulted.

29) Roster and Shift Changes

RTA may require an Employee to (i) change from one roster to another as defined in Appendix 4 – Rosters; (ii) change to another crew; or (iii) to change shift arrangements such as substituting a day shift for a night shift or vice versa.

...

The following guidelines are to be applied when considering a temporary change to roster or shift arrangements as defined in clause 29(b) above:

1. A change of roster or shifts must only be used on infrequent and irregular occasions or in exceptional circumstances and is not to be used to circumvent the normal roster patterns outlined in Appendix 4 – Rosters.
2. Leaders should carefully consider the utilisation of which shift crew to best meet operational requirements when considering a change in rosters or shifts. The utilisation of overtime may provide a better option.
3. The starting time of any shift in a block of shifts can only be moved to commence 12 hours earlier.

...

**St Vincent de Paul Society Queensland Employee Agreement 2014**

Consultation regarding major workplace change

9.1 This Clause applies if:

- (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (b) the change is likely to have a significant effect on employees of the enterprise.

9.2 The employer must notify the relevant employees of the decision to introduce the major change.

9.3 The relevant employees may appoint a representative for the purposes of the procedures in this Clause...

9.4 If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

9.5 As soon as practicable after making its decision, the employer must:

(a) discuss with the relevant employees:

- (i) the introduction of the change; and
- (ii) the effect the change is likely to have on the employees; and
- (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and St Vincent de Paul Society Queensland Employee Agreement 2014

(b) for the purposes of the discussion – provide, in writing, to the relevant employees:

- (i) all relevant information about the change including the nature of the change proposed; and
- (ii) information about the expected effects of the change on the employees; and
- (iii) any other matters likely to affect the employees...

9.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

**Table 2 – Sample of operation altering clauses in enterprise agreements****13. Productivity improvements**

The parties have a goal, through the processes outlined below, to achieve identifiable savings to fund increases in this Agreement. This process will be agreed and monitored in consultation with employees, an employee representative if appointed and/or Union/s concerned.

The parties agree to joint and proactive participation in a work reform program to promote new and effective methods of work that deliver increasingly efficient and effective work practices. This includes matters such as:

- (a) The review and development of simplified rostering arrangements and employment contractual hours for Disability Support Workers that are, as a total, cost effective to St Vincent de Paul, including a commitment to work towards an equitable arrangement which allows for staff to project their rosters in advance and in addition, allow the company flexibility when required by one or both parties. The parties acknowledge that the intention of this process is not for job reduction to occur within this process;
- (b) The review of scheduled training with the view of developing a projected training calendar that compliments the development of a simplified rostering arrangement that will seek savings in time worked that will maximise productivity and efficiency over the life of the agreement;
- (c) The development of improved communication strategies for shiftworkers with the view of implementing identifiable savings on time allocated for training and meeting with shiftworkers;
- (d) The review of workloads of Senior Support Workers to deliver a more effective and increasingly efficient work role and provide ongoing support where necessary;
- (e) The review of site specific enterprise flexibility arrangements which would allow for adoption of site specific conditions that promote better work outcomes for St Vincent de Paul and staff. Such arrangements will be made in conjunction with the Human Resource Department, have formal approval from the Employer and will require majority employee agreement within the designated workgroup and consultation with the employee representatives if appointed or the relevant union, where applicable, noting that nothing detracts from the rights of either party to access existing dispute settlement process.

**St Vincent's Private Hospital Melbourne and Health and Allied Services Staff Agreement 2014****8. Consultation regarding change**

(a) Term applies if the employer has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise; and the change is likely to have a significant effect on the employees of the employer.

(b) The employer must consult the employees to whom the agreement applies about:

- (i) major workplace change that is likely to have a significant effect on employees; or
- (ii) change to their regular roster or ordinary hours of work.

(c) The relevant employees may appoint a representative, which may be a union representative from HSU for the purpose of procedures in this term.

(d) If:

- (i) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (ii) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

(e) As soon as practicable after the decision, the employer must

- (i) discuss with the relevant employees:
  - (1) the introduction of the change
  - (2) the effect the change is likely to have on employees; and
  - (3) measures the employer is taking to advert or mitigate the adverse effect of the change on the employees.
- (ii) for the purposes of the discussion – provide, in writing, to the relevant employees:
  - (1) all relevant information about the change including the nature of the change proposed; and
  - (2) information about the expected effects of the change on the employees; and
  - (3) any other matters likely to affect the employees.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

(iii) subject to (e)(i) and (ii), for a change to the employees’ regular roster or ordinary hours of work, the employer is required to:

- (1) provide information to the employees about the change; and
- (2) invite the employee to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
- (3) consider any view given by the employees about the impact of the change.

...

- (g) Employer must give genuine consideration to matters raised about the major change by employees.
- (h) If a term in the EA provides for major change to production, program organisation, structure or technology in relation to the employer, the requirements set out in subclauses (b),(c) do not apply.
- (i) In this term, a major change is likely to have a significant effect on employees if it results in the termination of the employment of employees; or major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or the alteration of hours of work; or the need to retrain employees; or the need to relocate employees to another workplace; or the restructuring of jobs.

**16. Roster of hours**

- (e) An employee, by making a request in writing to the employer, may have their roster fixed by the provision of (d), in lieu of (a) to (d).
- (f) Roster shall be fixed by mutual agreement, subject to the provisions of this agreement.
- (g) An employee may reject the request referred to in (e) at any time, by giving written notice to the employer. In such a case the roster for the employee shall be fixed according to the provisions of (a) to (d), from the commencement of the next full roster period being no less than five clear days after such rejection is received in writing by the employer.
- (j) In the event of any dispute arising as to whether a roster arrangement has been adopted with the mean of intent of (e), (f) and (g) above, it shall be referred to the Fair Work Commission for resolution.

**31. Professional development**

- (b) The Hospital further agrees that full-time and part-time (four shifts or more per fortnight) employees will be entitled to 3 days professional development/conference leave per year. To access the benefits of this provision it is the responsibility of the employee to make an application for this leave. This leave is to be taken within the calendar year and is not cumulative.
- (c) An application for this leave, nominating the preferred date(s) will be made in writing providing a brief description of the nature of the professional development activity to be undertaken. The application may be made for research, attendance at seminars and conferences.
- (d) This application shall be made six weeks’ prior to the requested date(s) and shall be approved by the relevant manager. The application shall not be unreasonably refused.
- (e) The employee will be required to report on seminar/conference to the relevant manager.

**Suncorp Group Enterprise Agreement 2015**

Part 1 – introduction

**11. Consultation**

- (a) This clause sets out the procedure for consultation with employees if a definite decision is made to introduce a major workplace change that is likely to have a significant effect on employees to whom this Agreement applies.
- (b) Definitions For the purposes of this clause:

**Table 2 – Sample of operation altering clauses in enterprise agreements**

'major workplace change' means a substantial/significant change in systems, organisation, structure, or technology, other than changes which are specifically contemplated by, or permitted under, this Agreement; 'likely to have a significant effect on the employees' means where the change is likely to result in:

- (i) a reduction in the number of employees to be employed;
- (ii) change to the places at which work is performed;
- (iii) change to the hours to be worked;
- (iv) change to the composition, operation or size of the Group's workforce; or
- (v) change to the skills required of employees and the need to retrain employees; 'relevant employee' means an employee who is likely to be significantly affected by the major workplace change.

(c) Consultation procedure

Step 1

As soon as practicable after making a definite decision to introduce a major workplace change that is likely to have a significant effect on employees to whom this Agreement applies, relevant employees will be notified of that decision and will be provided, in writing, with information about the change including the nature of the change proposed and the expected effects of the change on the employees.

Step 2

As soon as practicable after notifying the relevant employees (Step 1), consultation with the relevant employees will occur about:

- the introduction of the major workplace change;
- the effect the major workplace change is likely to have on the relevant employees; and
- any measures that may be taken to avert or mitigate any adverse effect that the major workplace change may have on the relevant employees.

During the consultation, the relevant employees will have a reasonable opportunity to express their views about the proposed changes. Confidential or commercially sensitive information will not be disclosed by the Group during consultation.

(d) Representation during consultation You may appoint a representative to participate in the consultation. Your representative could include another employee, the Suncorp Group Employee Council, an official of a union, a legal representative or any other person of Your choosing. However, any such representative shall keep all information about the change confidential and shall participate in the consultation in a respectful, professional and appropriate manner.

Part 2.1 – Your employment

14.5 Consultation about changes to hours of work

(a) The Group may change the times at which, or days on which, You work Your ordinary hours or Your regular roster.

(b) In relation to any such change to Your ordinary hours or Your regular roster, prior to the change taking effect:

- (i) Your Leader will provide information to You and consult with You about the change;
- (ii) You may provide your views about the impact of the change, including raising any personal arrangements You may have which might be affected by the change;
- (iii) Your Leader will give consideration to all relevant factors, including operational requirements, Your views about the impact of the change and any personal arrangements You may raise.

Part 2.1 – Your employment

25 Performance targets

(a) The determination of performance targets and assessing an employee's rating against such targets are within the discretion of the Group, taking into account the requirements of this clause.

Table 2 – Sample of operation altering clauses in enterprise agreements

(b) The performance target setting and assessment process will be fair and transparent.

(c) Performance targets will:

- (i) be reflective of the Group's objectives and values;
- (ii) be relevant and measurable (quantitatively and/or qualitatively); and
- (iii) reflect the work being undertaken during the relevant period.

(d) You will be advised of any changes to Your performance targets.

#### Part 2.3 – Leave

##### 31.5 Cashing out accrued annual leave

(a) You may elect to cash out Your accrued annual leave in accordance with this clause.

(b) To be eligible to cash out an amount of annual leave You must:

- (i) make an election in writing; and
- (ii) retain at least 20 days (150 hours) accrued annual leave (or the equivalent pro rata amount for part-time employees (engaged on any basis)) after the leave is cashed out.

(c) If You exercise an election to cash out an amount of annual leave in accordance with the above conditions:

- (i) the cashing out of the leave in accordance with Your election will be recorded in a separate agreement in writing; and
- (ii) You will receive payment of the amount that would have been payable to You, had You taken that leave (subject to the deduction of tax in the normal way).

#### Part 2.3 – Leave

##### 39. Career break

##### 39.1 Your entitlement

(a) The Group offers unpaid career breaks with the intention of providing permanent full-time and part-time employees (engaged on any basis) who are at least meeting the Group's performance expectations, with an opportunity to take a break from their career and to return to the Group.

(b) You may, after 12 months' continuous service with the Group, apply for an unpaid career break of between 3 months and up to 12 months in duration.

##### 39.2 Taking a career break

(a) Some examples of reasons for taking a career break can be, but are not limited to:

- (i) study;
- (ii) full-time care for a family member who is seriously/terminally ill;
- (iii) travel;
- (iv) military service;
- (v) volunteering activities; or
- (vi) religious reasons.

A career break may also be granted for other reasons at a Leader's discretion.

(b) If You wish to apply to take a career break:

- (i) You must apply in writing to Your Leader;
- (ii) Your written application must be made at least 12 weeks prior to the intended commencement of the break (however, a shorter period may be acceptable at the discretion of Your Leader, subject to operational and business requirements); and
- (iii) Your written application must be supported by such evidence and other materials as Your Leader may reasonably require.

(c) Your application may be approved subject to Your overall performance, length of service, the purpose for

**Table 2 – Sample of operation altering clauses in enterprise agreements**

which You intend to take the break, and the Group's operational and business requirements.

(d) Annual and/or long service leave may be taken in conjunction with a career break, however Your total absence from work (including any period of paid leave) cannot exceed 12 months.

(e) Upon Your return from Your career break, You will be entitled to a comparable role (as defined in clause 45.3(d) below) at Your previous base pay or fixed salary, but not necessarily the same role. (0 A career break cannot be used to extend a period of parental leave.

#### Part 2.3 – Leave

##### 40 Career day

(a) The Group provides permanent full-time and part-time employees (engaged on any basis) who have at least 12 months' continuous service, with the opportunity to experience 1 day each financial year in the life of another role in the Group's business.

(b) This initiative is designed to encourage:

- (i) You to obtain an insight into the many alternative career opportunities within the Group;
- (ii) discussion between You and Your Leader about Your career aspirations and opportunities within the Group; and
- (iii) co-operation between business units.

(c) You must apply in writing to Your Leader if You wish to take a career day, and Your application must specify the goals You hope to achieve during Your career day. Your Leader may approve the career day at their discretion, taking into account the operational needs of the business, including the appropriate timing and viability of undertaking a career day

#### Part 3 – Terms specific to pay bands A1 to A4

##### 51.1 Your roster

(a) If working on a roster, Your scheduled hours will be rostered over a 4 week period and will be made available to You at least 4 weeks in advance.

(b) Special roster requests must be provided at least 2 weeks prior to the rosters being released and must be approved by Your Leader.

(c) You will be provided with 2 weeks' notice of changes to Your roster except in emergency and unforeseen circumstances.

(d) You will be given at least 8 weeks' notice of any requirement that You work on the Christmas and Easter period public holidays and at least 4 weeks' notice of the actual times to be worked on those days, subject to the operation of subclause 16.2.

(e) You will be rostered off duty for at least 4 days per fortnight:

- (i) in 2 blocks of 2 consecutive days off; or
- (ii) 3 consecutive days on 1 occasion and 1 day on another. (0 You must be ready to commence work at Your rostered start time.

#### Part 3 – Terms specific to pay bands A1 to A4

##### 52 How can my working arrangements be changed temporarily?

(a) Temporary changes may be made to Your working arrangements and/or the Group may request You to work overtime at short notice as a result of unforeseen circumstances affecting business requirements or a major natural event (Unforeseen Event). Examples of an Unforeseen Event include:

- (i) a flood, cyclone, or severe storm; or
- (ii) a distinct event that increases work volumes above normal work patterns.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

(b) In determining who will work in these circumstances:

- (i) in the first instance, volunteers will be called from the business area affected by the Unforeseen Event;
- (ii) if there are not enough volunteers, Your Leader will attempt to reach agreement with You to vary Your hours in a way that suits You and the business, taking into account such matters as personal commitments, spreading overtime fairly and the operational needs of the business; and
- (iii) where agreement cannot be reached, Your Leader may temporarily change Your hours of work to meet the operational needs of the business. The operation of this subclause is subject to subclause 14.3.

(c) Full-time and part-time employees (engaged on any basis) who perform work outside their ordinary hours in accordance with this clause 52, will receive overtime rates for the period they are required to work in accordance with subclause 57.2 below.

(d) Where loadings apply to the work that You perform under this subclause, You will be paid either the loading or overtime rates for that period, whichever is the greater.

(e) If Your Leader agrees, reasonable travel costs incurred in travelling to and from work under this clause 52 may be reimbursed. Arrangements under clauses 27 and 28 may also apply.

### **TAFE Commission of NSW Teachers and Related Employees Enterprise Agreement 2013**

#### 8.1 Consultation term

This term applies if:

- (a) the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (b) the change is likely to have a significant effect on Employees of the enterprise.

8.2 The Employer must notify the relevant Employees and/or their representatives, including the Union, of the decision to introduce the major change.

...

8.4 As soon as practicable after making its decision, the Employer must within a reasonable timeframe:

(a) discuss with the relevant Employees and/or their representatives, including the Union:

- (i) the introduction of the change; and
- (ii) the effect the change is likely to have on the Employees; and
- (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and

(b) for the purposes of the discussion – provide, in writing, to the relevant Employees and/or their representatives, including the Union:

- (i) all relevant information about the change including the nature of the change proposed; and
- (ii) information about the expected effects of the change on the Employees; and
- (iii) any other matters likely to affect the Employees ...

8.6 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees and their representatives.

8.7 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in subclauses 8.2, 8.3 and 8.5 are taken not to apply.

8.8 In this term, a major change is likely to have a significant effect on Employees if it results in:

- (a) the termination of the employment of Employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of Employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or

**Table 2 – Sample of operation altering clauses in enterprise agreements**

- (e) the need to retrain Employees; or  
 (f) the need to relocate Employees to another workplace; or  
 (g) the restructuring of jobs.

#### Approved program

21.2 All Teachers, Head Teachers (excluding Head Teacher Band 3), Adult Literacy Officers and Special Program Coordinators will have an Approved Program to meet the Institute's needs. The Approved Program will comprise the total annual hours as detailed in the following table:

Classification	Direct teaching	Duties related to teaching, professional development, and coordination duties	Head Teacher 1 and 2. administrative, leadership and management duties	Duties related to teaching, during the five non-teaching weeks	Total annual hours
Teachers	720	540		175	1435
Adult literacy officers	324	936	-	175	1435
Special program coordinators, other than consultants for students with a disability, assistant outreach coordinators	216	1079	-	175	1470
Special program coordinators for students with a disability	216	1044	-	175	1435
Head teacher band 1	504	432	324	175	1435
Head teacher band 2(*)	360	360	540	175	1435

\* Includes head teacher band 1 supervising > 150 weighted hours per week.

21.3 Within the Approved Program, Teachers, Head Teachers, Adult Literacy Officers and Special Program Coordinators may flexibly undertake their direct teaching and the non-teaching components provided under sub-clause 21.2 over a period of up to twelve months. Managers will, in consultation with teachers, determine the duties related to teaching that shall be conducted as part of an Approved Program. An Approved Program developed under this sub-clause shall be reviewed on a semester basis.

#### Administrative duties

22.1 The administrative component of a Head Teacher (excluding Head Teacher Band 3) shall be:

- 22.1.1 nine hours per week for a Head Teacher band 1 supervising up to 150 weighted teaching hours per week;  
 22.1.2 fifteen hours per week for a Head Teacher band 1 supervising more than 150 weighted teaching hours per week; and  
 22.1.3 fifteen hours per week for a Head Teacher band 2.

#### Professional development

23. An Approved Program for all teachers shall include professional development on the following basis:

**Table 2 – Sample of operation altering clauses in enterprise agreements**

<p>23.3.1 Teachers undertaking teacher training shall have 72 hours per annum professional development in their first two years of service;</p> <p>23.3.2 Teachers who are teacher trained on recruitment shall have 72 hours professional development per annum in their first year of service; and</p> <p>23.3.3 all other Teachers shall have 20 hours of professional development per annum to undertake activities related to their current and medium term individual development needs as identified in consultation with their line manager. This does not preclude access to other professional development opportunities provided by the employer.</p>
<p>24. TAFE year</p> <p>24.2 Institutes shall operate for a period of 50 weeks in a calendar year. There shall be a two week close down period in Colleges/Campuses over the Christmas and New Year period. The dates of the close down period shall be determined by the Managing Director or delegate.</p> <p>24.3 Teachers working TAFE Year programs shall undertake teaching duties for 36 weeks, non-teaching duties for five weeks and are to receive the same number of public holidays and vacation days in the TAFE Year as Teachers who are working the Standard Educational Year.</p> <p>24.4 Teachers may not be directed to teach more than twelve consecutive weeks without taking a vacation break or may not elect to teach more than eighteen consecutive weeks without taking a vacation break.</p>
<p>Additional one week</p> <p>25.2 By agreement between Teachers and their immediate manager, Teachers may elect to attend up to one week of their agreed non attendance period to meet TAFE's needs ...</p> <p>25.9 Teachers may only attend one additional week per TAFE Year, whether the provisions of the said clause 24, TAFE Year, or this clause are applied.</p>
<p>Trial of new education support and leadership roles</p> <p>41.2 To support TAFE NSW's growth and future success, during the life of this agreement the parties will support a trial of new roles in line with the Trial of new education support and leadership roles in TAFE NSW Procedures.</p> <p>41.3 The roles included in the trial will be:</p> <p>41.3.1 Assessor – this role includes the design, validation and implementation of assessments and moderations suited to a range of modes and locations. The assessor supports teachers and head teachers in meeting ASQA compliance functions. An assessor does not undertake training or teaching.</p> <p>41.3.2 Education Support Officer – this role works as part of a team and engages in a range of activities which directly and indirectly support learning and enhance educational outcomes for students, as required by the teacher.</p> <p>41.3.3 Head Teacher Band 3 – this role provides educational leadership for a teaching department or departments, college, campus or Institute. The position does not have specific teaching duties allocated, but may take on direct teaching from time to time as needed.</p> <p>41.4 During the life of this Agreement any disputes that may arise in relation to trial proposals being considered or implemented will, in the first instance, be dealt with consistent with Section 8 of the Trial of new education support and leadership roles in TAFE NSW Procedures, prior to notifying a dispute under Clause 4.Dispute Resolution Procedures of this Agreement.</p> <p>41.5 The summative evaluation of the trial will conclude three months before the conclusion of the agreement and the parties will enter into negotiations about future arrangements.</p>
<p>Bradfield College – college year</p> <p>23.1 Bradfield College will operate for a period of 50 weeks in a calendar year, during which the College may</p>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

be open and utilised to conduct educational programs, and have a two-week close-down period surrounding Christmas and the New Year. The dates of the close-down period will be determined annually by the Director.

23.2 Employees covered by this section of this Schedule shall not be required to be in attendance during the close-down period.

#### Bradfield College – hours of work

24.9 Employees may not be directed to undertake teaching duties for more than 14 consecutive weeks without taking a break of at least one week, or may not elect to undertake such duties for more than 18 consecutive weeks without taking a break of at least one week from teaching duties. During the break Employees may, for example: take annual leave or other leave to credit; undertake professional development; undertake duties incidental to teaching; undertake administrative duties; or undertake other duties as assigned by the Director.

#### **Telstra Enterprise Agreement 2012-2015**

##### Section 1 – about this agreement

Future arrangements The Parties have had significant discussions during negotiations for this Agreement about the possibility of moving to one work model. The Parties commit to continuing these discussions during the life of this Agreement with a view, if agreement can be reached, to moving to one work model when this Agreement is replaced.

##### Consultation about major changes

If Telstra proposes to introduce major changes which have a demonstrable impact on employees Telstra will consult with employees who may be affected and their union(s) as early as practicable. Examples of situations where Telstra will consult include:

- the introduction of significant new technology which has an impact on the way work is done
- significant outsourcing proposals, including offshoring of work
- major change to the composition, operation or size of Telstra's workforce
- a proposal that is likely to result in 10 or more redundancies
- where a proposal would significantly diminish job opportunities
- changes to Telstra policy that have a demonstrable effect on employment conditions
- significant need to retrain employees
- the relocation of a group of employees more than 10km from their current workplace
- significant local proposals which may have a demonstrable effect on employees, e.g. significant changes to duties.

Telstra will consult about:

- the introduction of the major change
- the effect the major change is likely to have, and
- the measures that Telstra will take to avoid or reduce the adverse effects of the major change to employees.

Telstra will consider any matters raised by employees and their unions about a major change and give reasons for Telstra's final decision.

##### Appendix D – workstream principles

Workstream principles Telstra will allocate a Workstream Employee to a Workstream (see the Dictionary for Workstream definitions). The following principles apply:

- Work in each Workstream will be evaluated in accordance with the Telstra Job Evaluation and Classification System (a copy of which will be lodged with FWA) and these principles.
- Each Band, within a Workstream, will have agreed representative Core Job Descriptions which form part of this Agreement. There may be more than one Core Job Description for each Band.

**Table 2 – Sample of operation altering clauses in enterprise agreements**

- As part of the Telstra Job Evaluation and Classification process, managers will design any new jobs that will go into a Workstream. If Telstra and any new employee to whom the new job applies cannot reach agreement on the grading of the new job, the matter will be referred to a review team comprising:
  - an external consultant expert in Telstra’s Job Evaluation and Classification System
  - a Telstra representative
  - the employee (who may be represented, including by a Telstra union)
- A majority of the three person team will determine the outcome and this outcome will be binding on the Parties to this Agreement without recourse to further review or appeal.
- Telstra and the Telstra Unions may agree to change the current Core Job Descriptions during the life of the Agreement. However, they will not be changed without such agreement.

**Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2015****13. Performance of duties**

... TMCA has no intention of replacing the duties of Supervisors with a view to intruding upon the normal manual duties of Employees, however The Parties are of the view that circumstances do arise from time to time where the strict observance between Employees and Supervisors duties disadvantage both groups.

To this end, The Parties are agreeable to the performance by Supervisors of manual duties in assisting Employees, except on production situations, with the verbal agreement of the particular Employee, i.e. assistance in performance of heavy/awkward lifting or stock relocation or in the performance of minor adjustments to equipment to overcome malfunctions.

... It is understood between The Parties that any manual task performed by a Supervisor will involve a very limited time period.

Notwithstanding the above, in situations of high absenteeism, supervisors may be required to work on improving productivity, but it is agreed that before the utilisation of supervisors in this case, all practical measures to meet labour requirements will be undertaken.

... Flexible work practices will be adopted to improve performance in efficiency, cost reduction, productivity and profit performance to enhance returns to TMCA and Employees. Flexibility means practices can change when required, taking account of the need to consult with those Employees who are required to implement a change and with others who are immediately affected by the change.

**15. Business structure changes**

1. TMCA will notify and consult with the relevant Union/Divisions on any proposals where consideration is being given to introduce significant organisational change including restructuring and outsourcing, but not including operational and Kaizen related matters covered elsewhere in this Agreement unless they have significant adverse affects on Employees covered by this Agreement.

2. The Status Quo will be maintained throughout this process.

3. Full written advice will be given to the SCG and relevant Union/divisions including reasons for the proposed change in order to reach agreement on implementation.

4. All affected Employees and Employee Representatives will be consulted.

5. Negotiations will be conducted with Employees through their Union/divisions.

6. Consultation and agreement will be reached with the relevant Union/divisions.

7. In these circumstances agreement will not be unreasonable withheld.

8. The following process and timeline will be followed:

- TMCA will notify The Parties of the proposed Business Structure Change as per 3. above;
- The Parties will review the proposal, and seek agreement on implementation issues over a period of no more than 10 weeks from date of notification;

**Table 2 – Sample of operation altering clauses in enterprise agreements**

- The Parties may agree through the SCG to extend the review period;
- At the expiry of the review period The Parties will determine whether agreement has been reached.

9. In relation to resolving conflicts which may arise The Parties agree:

- Either party may refer the issue in dispute to Fair Work Australia (FWC) for conciliation and/or mediation;
- In the event Employees take industrial action in relation to the change proposal, these procedures will lapse and TMCA can immediately refer all matters to FWC for conciliation and arbitration; Toyota Australia Workplace Agreement (Altona) 2015 20
- Where The Parties review the proposal and seek agreement on implementation issues, but agreement on such issues is not reached, and where either party decides agreement cannot be reached, The Parties will establish a Board of Reference for the purpose of determining matters not agreed. The membership of the Board of Reference will comprise one Employee Representative, one TMCA representative, and an independent Chairperson. The Parties will confer and reach agreement on the membership and Chairperson of the Board of Reference. Should The Parties not reach agreement on the membership or Chairperson of the Board of Reference, either party may refer the dispute to the President of FWC, who will have the power to determine the membership and Chairperson.

Senior Consultative Group (SCG)

16.3 Issues Dealt with by the SCG The issues to be referred to the SCG for consultation can include:

- Work environment and employment conditions
- TMCA business plans
- TMCA sales and operating performance
- TMCA operating efficiencies
- TMCA employment policy initiatives
- Training and development
- Employees’ facilities and services; and
- Social and community involvement
- Practices for applying this Agreement

16.4 Membership The SCG will comprise TMCA management and Union occupational group representatives.

21. Warehouse

21.1 Communication and Consultation

The Parties agree to a consistent approach across all TPCs in respect to communication and consultation between management and Employees, to ensure all Employee issues are understood and addressed in an appropriate and timely manner.

In accordance with this objective, The Parties agree to a monthly communication meeting to be held for each TPC, for local management to address and inform Employees of TMCA issues, and for Employees to raise any concerns with the appropriate Manager, Supervisor and Employee Representative.

In addition, a Local Consultative Group (LCG) comprising local Management and Employee Representatives from each TPC will meet locally on a monthly basis, to discuss and address relevant Employee issues.

Any issues that cannot be appropriately addressed by local management, and are not in the process of going through the Disputes Avoidance and Problem Resolution Process, will be escalated to the Pre-SCG for Sales & Marketing held monthly in Sydney. Further, a meeting between the TPC Managers and all Employee Representatives will be held every quarter. These meetings will be for the purpose of reviewing TMCA performance and relevant issues, and Employee Problems. Two of these meetings each year will be

**Table 2 – Sample of operation altering clauses in enterprise agreements**

conducted face-to-face, in the one location.

#### 21.2 TPC reform

The parties acknowledge that, following Project Alpha announcement, TMCA will undertake a number of reform activities in the TPCs during the life of this Agreement. Reform activities are designed to ensure that the TPCs become a globally competitive distribution business. Reform activities may impact;

1. Current business practices including but not limited to, TPS, standardised work, 4S and Company KPIs. These will be subject to consultation.
2. Terms & Conditions outlined in this WPA. These will be subject to consultation and agreement. The parties are committed to supporting TPC reform activities.

A consultative committee will be established to oversee, monitor and review the reform activities. The Committee will be comprised equally of employee and company representatives who will actively seek input from all affected employees. The Committee will consult to develop and implement where practicable pilot programs or trials of reform activities prior to roll out to all TPCs.

In the event of a dispute, the Parties will refer the matter to the Fair Work Commission for conciliation and/or arbitration.

#### 26. Group leaders span of control

The ideal span of control for groups is 22-24 team members (based on team size of 5-7 team members and 3-4 team leaders per group). While this is not a prescriptive formula, both Parties agree that the objective is to obtain the ideal team size. Where the size of groups in the production area is greater than 24, a review will be conducted in the workplace. This will be conducted by the manager and group leader (including Employee Representative) concerned and will identify the cause and countermeasures.

#### 27. General Foreperson (GF) span of control

TMCA has established an average span of control ratio for group leaders to general foreperson of 4:1. As such, these ratios will vary from department-to-department.

If any Party wishes to vary existing departmental ratios, they shall present their case for discussion and agreement by the other party.

Where agreement cannot be reached on the proposed variation, a review will be conducted in the workplace by the relevant manager and Employee Representative/s to identify cause and agree on the appropriate countermeasure/s.

While the review is being undertaken, existing ratios in the relevant department/s will be maintained.

Such a review will consider, but will not be limited to, the following factors:

- complexity
- standardisation
- geographical requirements
- departmental objectives
- workload In all cases, agreement will not be unreasonably withheld.

#### 28. Senior GF positions

The Parties commit to the following in relation to Senior General Foreperson (SGF) positions.

TMCA confirms the commitment that, where appropriate; the position of SGF will be maintained based on business requirements. Where it is proposed not to maintain an SGF position (including promotions), TMCA will consult with the Senior Employee Representative. Where there is no agreement, the Problem Resolution Procedure will be followed.

There may be cases where prior Union consultation is not appropriate for confidentiality reasons. In these

Table 2 – Sample of operation altering clauses in enterprise agreements
<p>instances, TMCA and Senior Employee Representative will reach agreement where any deviation to the process outlined above is required. In this case, as above, the Problem Resolution Procedure will be followed where there is no agreement.</p>
<p>29. Job interviews (Admin and technical classifications)</p> <p>An Employee Representative will be present during the job interview as an independent observer. If for any reason the Employee does not want the Employee Representative to be present, the Employee Representative will not attend the interview.</p> <p>The sole purpose of the independent observer is to observe the interview as the relevant Employee’s Representative. He/she will not have any involvement in the selection process or decision, nor will he/she be in a position to make any assessment of the selection process undertaken by the relevant TMCA Representatives.</p> <p>As part of the recruitment process, Human Resources will ensure the procedure reflects the involvement of the Employee Representative as an observer. The process will ensure requests by Employees to have or not to have their Employee Representative will not be detrimental to their job application/interview.</p> <p>In respect to any Grievances resulting from selection processes undertaken by TMCA (including job interviews), an appeals mechanism is to be developed by The Parties within three months of agreement certification, and incorporated into the process (in accordance with any other identified process improvements – e.g. method to advise Employees of interview arrangements).</p>
<p>31. Shift area transfers – TMCA initiated</p> <p>31.1 When there is an imbalance of labour between shifts and departments, TMCA will need employee’s flexibility to support a transfer process to meet legitimate business needs. The Shift Area Transfers process will be transparent, fair, and have minimised impact on permanent Employees and will be used to implement flexibility objectives in this Agreement.</p> <ul style="list-style-type: none"> <li>• It is the intention of the TMCA that TFTs and volunteers will be transferred before any permanent employee is forcibly transferred</li> <li>• The Shift Area Transfer process will not apply to TFTs.</li> <li>• TFTs will transfer between Departments and/or shifts at the direction and timing of TMCA. Prior to transferring TFTs, TMCA will also consider any volunteers that express a desire to transfer (including the shop transfer list)</li> <li>• TFTs and volunteers will be provided one weeks’ notice for permanent transfers (does not apply to daily transfers or labour rebalancing)</li> </ul> <p>In selecting TFTs for transfer TMCA will consider skills and first in last off.</p>
<p>31.2 The transfer process – TMCA initiated</p> <p><i>[EBA contains of flow chart of the transfer process for TMCA initiated shift transfers. For example, it outlines that once the business need has been identified a facilitation group will be established to discuss the business need. If the facilitation group agrees the business need, the position requirements are identified. If the facilitation group does not agree the business need, a problem resolution procedure commences.]</i></p>
<p>31.3 Facilitation Group</p> <ul style="list-style-type: none"> <li>• Facilitation Group consists of local Employee Representative and/or Senior Employee Representative and/or senior site co-ordinator and manager.</li> <li>• Selection will be based on like classification: e.g. electrical trades, mechanical trades, production TL and TM, GL, GF etc. TMCA will put in place the training support to ensure smooth change over and to protect</li> </ul>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

production, e.g. on or off the job training.

- Rotations within the same shift and same shop are not restricted by this process and are conducted within the flexibility in the work place clauses of this Agreement. 31.4.

The Role of the Facilitation Group

- Ensure the job is advertised Business need identified Identify position requirements and training needs Communicate to all Employees – asking for volunteers Facilitation group established to discuss business needs Consider candidates with appropriate skills and based on first in/last off principle – genuine consideration for individual concerns Select candidate for transfer – 14 days notice period Employee transfers Problem Resolution Procedure No Volunteers Employee does not agree to transfer Volunteers Group does not agree on business need Group agrees on business need
- Identify training needs
- Consider incentives
- Establish timeframe
- Consider legitimate business needs.

31.5 The transfer process – employee initiated

The following process is designed to provide a transparent process to facilitate this transfer in order to balance business needs and personal needs. TMCA’s principles in addressing this issue:

- Fair treatment for all Employees
- Respect for people
- Transparent/consistent employment practices
- Ensure each shift’s operational efficiency and resources capability to meet business needs The process will only occur under the following conditions:
  - Shift operation not significantly interrupted
  - Subject to the ability to attract/recruit onto PM or night shift
  - Maximum of one recruit/group/month unless otherwise agreed
  - Transfers between shifts will occur within own department unless otherwise agreed
  - All Employees (including team members, team leaders and specialist team members) will be prioritised based on “first on list – first off list”. No exceptions to this rule will apply unless mutual agreement is reached between all parties concerned
  - Employees transferred to a new shift on non-voluntary basis will automatically be placed to the head of the list
  - Special hardship cases will be considered on a case by case basis.
  - Where there is a three shift operation the process of transfer will be stepped i.e. (night to afternoon and then today). This process may be altered by agreement between TMCA and the Union.

*[EBA contains of flow chart of the transfer process for employee initiated shift transfers. For example, it outlines that the first step an employee must undertake is to register on the department transfer list. The list is then prioritised based on ‘first on list- first off list’. ]*

37. Time and attendance management

2. In recognition of the above commitment TMCA affirms that for the duration of this Agreement, it will continue the practice of working 5 hours per shift on the day of the annual plant shutdown before Christmas (or last Working Day before Christmas for the Warehouse).

Table 2 – Sample of operation altering clauses in enterprise agreements

3. Group leaders will maintain a daily attendance record and ensure that an accurate record of time and Overtime worked is kept. This will require the co-operation of Employees in ensuring that their team leader or group leader is kept informed of any work arrival or departure times that are at variance to standard daily working times.

4. Where it is proposed to alter time recording systems, TMCA will consult with affected Employees and Employee Representatives.

5. The group leaders will conduct daily, weekly, monthly reviews on performance including visual display of attendance management within the group areas ...

11. Any changes to the “swipe” system will only be implemented after consultation and agreement with all relevant Parties

### 38. Flexible working patterns

To achieve required utilisation, Employees will be flexible with their working patterns. However, aggregate Employee hours will not increase without the agreement of the Union. Working pattern variations will be discussed with affected Employees at least 14 days prior to the variation being implemented ... When TMCA seeks to introduce staggered start and finish times it will do so through the consultative arrangements detailed in Clause 12.1.1.

### 39. PDO/RDO flexibility

In the event that TMCA is required to change the Plant Operating Days (either increase or decrease) through the conversion of PDOs to RDOs and vice versa, the following process will apply:

- Changes with less than 2 months notice will be subject to consultation and agreement between TMCA and Employees through the nominated senior Employee Representatives and the Union.
- Changes with greater than 2 months notice will be subject to consultation between TMCA and its Employees through the nominated senior Employee Representatives and the senior site co-ordinator.
- If TMCA converts an RDO to a PDO, the PDO will be scheduled on either a Monday, Friday or attached to a public holiday.

### 41.2 Transfer to preferred shifts

... As a way to facilitate transfers, new Employees including Fixed Term Employees (TFT) will be employed equally on both shifts. Initially dayshift TFT employees will be employed for a period of 6 months. At the conclusion of 6 months, TFT employees will be required to transfer to Afternoon Shift where a permanent Afternoon Shift employee requests a transfer to Dayshift.

Permanent Afternoon Shift employees will always be given preference over TFT employees for placement into dayshift vacancies.

### 47.7 Public Holiday Work – Warehousing

*[EBA contains of flow chart of a national standardised process for public holiday work (warehousing) recruitment, including timeframes for each step. For example, it notes the first step advertising public holiday work is ‘one month before a public holiday, the advertisement will be posted for expressions of interest.]*

### 54.1 Process for off cycle payments

*[EBA contains of flow chart of off-cycle payment process, including who is responsible for each step. For example, it notes the second step (‘raise pay query on computer specifying off cycle payment’ is the employees responsibility.)*

### 67. Operational shutdown

TMCA may schedule up to 2 separate close downs in a year, one of which will be of 21 consecutive days

**Table 2 – Sample of operation altering clauses in enterprise agreements**

duration ... Where TMCA experiences an increase in customer demand requiring an increase to the Plant Operating Days Calendar by decreasing the 21 day Christmas shutdown, TMCA will:

1. Make clear what arrangements over the shutdown period are required. Preferred operational condition is for two (2) shifts (am & pm).
2. Ask Employees to vote on changing the shutdown period and acceptance will be based on 50% + 1 majority.
3. In the event that a majority of Employees do not vote in favour of the revised shutdown period, TMCA will call for volunteers to run a combined shift (am and pm) appropriately supported by shops, group and process for the additional days:
  - a) TMCA will confirm the combined shift arrangement including whether enough employees with the skills required have volunteered
  - b) Where insufficient numbers of Employees have volunteered to ensure coverage of required processes, TMCA will request TFT employees to work through the revised shutdown.
  - c) Where insufficient numbers of Employees to ensure coverage of required processes continues a selection criteria will be jointly developed and agreed by TMCA and the Union to assist in determining which employees will be requested to work the combined shift arrangement.

72. Compassionate leave

*[The EBA has a table outlining the permissible occasions and number of days a worker is entitled by relationship. For example, an employee can have up to 2 days of paid leave if a brother-in-law dies or has a life threatening illness or injury but they are entitled to 5 days of paid leave if their father dies.]*

Classification and progression review

96.1 Development cycle

The Parties agree to jointly examine the development of global standards. A working party will be established consisting of equal numbers of management and Union representatives from each of the affected FVIU divisions. All decisions by the working party will be consensed and agreed prior to any rollout.

The working party will seek to establish a development system consistent with the following basic development concepts:

- A development cycle that incorporates:
  - Clarification of expectations of the role and identifies development requirements
  - Establishment and implementation of a development plan aligned to the identified needs
  - Two-way feedback process designed to measure application of learning against the development plan and current application of role.
- A structured and integrated development model, detailing the core development programs for each level.

96.2 Structure Working Parties will be established consisting of equal numbers of management and Union representatives from each of the affected FVIU divisions.

1.01.8 Process for identifying, planning and offering opportunities to demonstrate competency/skills

1.01.8 Process for identifying, planning and offering opportunities to demonstrate competency/skills

*[The EBA contains a flow chart outlining the procedures to identify, plan and offer opportunities to demonstrate competency/skills and associated escalation procedures. For example, the flow chart outlines that the first step is that the 'direct supervisor/manager meets with Employee at the commencement of each year to identify and plan opportunities for the Employee to demonstrate a competency/skill, and to identify opportunities for development and growth. The objective of the meeting is to agree on a plan for projects/activities that result in a competency/skill payment.']*

Table 2 – Sample of operation altering clauses in enterprise agreements
<p>111. Accommodation and conveniences</p> <p>111.1 Milk &amp; Cordial</p> <p>TMCA agrees to supply full cream and reduced fat milk to Group Rooms. Cordial concentrate will also be made available in Group Rooms during the summer months. This clause will not act to the detriment of superior arrangements elsewhere within TMCA's operations.</p> <p>111.2 Canteen TMCA will ensure that the canteen will offer fresh food to all its Employees.</p>
<p><b>Transgrid Employee Agreement 2013</b></p>
<p>5. Consultative Mechanism</p> <p>a. Consultation Regarding Workplace Change</p> <p>In the event that TransGrid plans to introduce a change to production, program, organisation, structure or technology that is likely to affect employees, TransGrid will consult with the employees who may be affected by the changes and their representatives. The consultation provisions are directed toward the development of a relationship of inclusion, involvement and mutual trust between the parties.</p> <p>b. Consultation mechanisms</p> <p>TransGrid will form a two tiered consultative committee structure comprising of relevant TransGrid management, and nominated employee representatives to enable ongoing discussion and information sharing on relevant matters at the workplace.</p> <p>To ensure appropriate consideration of all relevant matters the committees should be reflective of all workgroups at the relevant location.</p> <p>The committees shall be:</p> <ul style="list-style-type: none"> <li>• Level 1 Committee which will meet on a quarterly basis, or as required, and will consider matters of a strategic organisational nature that are likely to impact on employees. The committee will consist of senior management representatives, union officials and a representative from each Level 2 committee.</li> <li>• Level 2 Committees which will be established at each major location/workplace to review matters relevant to employees in that local area. These Committees will meet at least every quarter and provide updates to the Level 1 Committee. The committee will consist of local management and employee elected representatives covering all relevant workgroups at the site.</li> </ul> <p>Additionally, where required, TransGrid Executive members will meet with relevant unions, their nominated representative and employee representatives to discuss industry related issues. These meetings will be held as required, depending on current issues and developments.</p>
<p>39.4 Skills Development Programs</p> <p>(b) All Power Workers and Tradespersons will have an agreed Skills Development Program ...</p> <p>(d) Power Workers and Tradespersons who are requested by TransGrid to utilise skills which are additional to their individual agreed Skills Development Programs are to be advanced to the Salary Point applicable to the duties. This does not include circumstances involving Acting in Higher Grade or carrying out duties associated with a special project.</p>
<p><b>University of Melbourne Enterprise Agreement 2013</b></p>
<p>Environmental sustainability</p> <p>12.4 A staff representative may be nominated by the Unions to sit as the Union representative on the University's sustainability advisory committee.</p>
<p>The workload management framework – academic workloads</p>

**Table 2 – Sample of operation altering clauses in enterprise agreements**

50.6 In relation to the management of academic workloads, the following guidelines will apply.

(b) Academic work is a combination of assigned tasks and “self-determined” work. Assigned tasks include teaching and preparation for teaching, assessment, supervision and the necessary administrative and engagement activities associated with teaching and research at the University. The remainder of an academic staff member’s working time is time in which the staff member conducts research or other scholarly activity as appropriate to their appointment to the University. While such work may be directed by the University, the staff member will determine how such work is performed (“self determined” work) ...

(d) In accordance with clause 50.3, each academic Budget Division will develop its own academic discipline-specific workload model. The workload model will be developed in consultation with the academic cohort within that Budget Division. Each workload model will include a notional proportionate breakdown of the components of academic work as they apply to the particular discipline or Budget Division and may include an appropriate means of comparing allocated workloads.

(e) Prior to each teaching period, an academic staff member and their supervisor will discuss:

- the number of teaching contact hours per week required during that teaching period; and
- the proportion of research, teaching, engagement and/or leadership and service activities expected of the individual staff member within the Budget Division’s notional proportional allocations.

(f) An academic staff member may have one standard teaching period per calendar year free of teaching (other than post-graduate supervision), provided that the academic staff member uses that time for research relevant to the discipline area and that the operational requirements of the Budget Division can reasonably be met.

(g) For the purposes of this clause, “teaching period” is a defined period of time during which students may be enrolled and available for attendance at specified teaching and learning activities. A “standard teaching period” is limited to standard semesters (being the defined standard teaching periods, Semester 1 and Semester 2, of an academic year, approved by Academic Board annually) and summer term (being the formally approved six week teaching period and one week assessment period that takes place before Semester 1 commences).

#### 51. Workload review process- individual complaints

51.1 When there is a change in circumstances which has led, or is likely to lead, to a demonstrable increase or decrease in the workload of a staff member (for example the employment of additional staff), that staff member’s workload should be reviewed as soon as possible by the supervisor.

51.2 Individual workload complaints should be discussed with the staff member’s supervisor or Head of Department and, if necessary, his or her Head of Budget Division.

51.3 If an individual workload complaint relating to research or teaching load is not resolved under clause 51.2, an academic staff member may make a written application to the Dean for a peer review. The Dean will assemble a panel of three academic peers, at least one of whom will be familiar with the staff member’s academic discipline or specific work area. The panel will investigate the complaint taking into account:

- (a) the provisions of the Budget Division’s workload model;
- (b) the staff member’s academic work obligations (including his or her agreed proportional allocations);
- (c) the staff member’s individual circumstances (including, relevant applications, schedules or deadlines for research); and
- (d) the operational requirements of the Budget Division (including, teaching timetables and the numbers of students enrolled in courses). The peer review panel will provide a recommendation to the Dean regarding the complaint and the Dean may take whatever action he or she considers appropriate.

51.4 Should the above processes fail to resolve such matters, a staff member may access the Review of Actions provisions outlined in Part N of this Agreement.

Monitoring and evaluation

**Table 2 – Sample of operation altering clauses in enterprise agreements**

52.1 A Consultative Committee consisting of the Chair of the OH&S Committee (or nominee), two representatives nominated by the University, of which at least one shall be an academic and one a professional staff member; two Union representatives, of which at least one shall be an academic and one a professional staff member, will meet to monitor Student Staff Ratio's (SSR) annually.

52.2 The Consultative Committee will assist Faculties to continue to monitor and review workload management practices and to develop strategies to assist in the management of workloads.

Review of Central ITS infrastructure support/span of hours and operations

57.9 During the life of this Agreement the University, in consultation with staff and their representatives, which may include Union representatives, will review the spread of work hours, ordinary working days, shift work and overtime applicable to central Information Technology Services staff to ensure that the critical infrastructure support is available.

57.10 Where the proposed changes will require alteration to current clauses, or new clauses to be inserted in this Agreement, such changes will be agreed and subject to a formal variation of this Agreement.

Table 3 – Sample of clauses related to the provision of information in enterprise agreements
<p><b>Amcor Fibre Packaging National Enterprise Agreement 2013</b></p> <p>Union Meetings</p> <p>17.5.1. Each month, the Union may convene a meeting of union members of up to 30 minutes duration per shift during working hours.</p> <p>(i) this monthly meeting is a regular meeting, and will not be seen to substitute any meetings that are required during enterprise bargaining negotiations (refer to clause (17.3.1)(vii)).</p>
<p><b>Australia Post Enterprise Agreement 2013</b></p> <p>Agency Personnel</p> <p>7.8.2 Australia Post will provide the Union with information on how agency personnel have been used and will also consult on the operations of these arrangements. Information will be provided nationally to the Union on a quarterly basis. This clause does not require Australia Post to provide information about individual employees to the Union.</p> <p>Contractors</p> <p>7.9.3 Australia Post will provide relevant information on use of contractors to the Union (at the national level) on a bi-annual basis in the manner it presently does.</p> <p>Implementation arrangements</p> <p>8.1 Australia Post will provide relevant statistical information on the use of employment categories to the Union. The information will be provided to the Union at the national level on a quarterly basis and will be information that relates only to categories of employees that the Union has coverage of under their rules.</p> <p>8.2 In accordance with clause 8.1, Australia Post will also provide statistical information to the Union on the number and work locations of any Flexibility Agreements (as defined in clause 5) that are in place and the number of fixed term arrangements in place.</p> <p>Attachment D – Process for reviewing standard trip times</p> <p>5.1 Australia Post will monitor trip times for interstate linehaul runs as recorded by on-board truck computers.</p> <p>5.2 Australia Post will provide the Union with details of trip time summaries recorded under 5.1 on a monthly basis or as otherwise agreed by the parties.</p> <p>Assessment process</p> <p>35.7 ... Where there is a roll out of any assessment processes Australia Post will enter into discussions with the relevant Union to establish a skills training program to ensure that over time internal assessors are available in Australia Post.</p>
<p><b>GM Holden LTD Enterprise Agreement 2014</b></p> <p>Information Sharing</p> <p>10.4 Management updates for Union Officials (4 times per year covering the following):</p> <ul style="list-style-type: none"> <li>(a) Business Plan</li> <li>(b) Business Plan Performance</li> <li>(c) Key forward activities and events</li> <li>(d) Continuous improvement activities</li> <li>(e) Management updates for Senior Employee Representatives (quarterly or as necessary)</li> <li>(f) Formation of, and ongoing meeting of State Committees</li> <li>(g) Continuation of local plant based Management, Senior Employee Representative and Employee</li> </ul>

Table 3 – Sample of clauses related to the provision of information in enterprise agreements
Representative meetings as currently applies in each facility
<b>Murray Goulburn Co-operative Co. Limited (Victorian Sites) National Union of Workers Enterprise Agreement 2014</b>
<p>Compliance and other matters</p> <p>51. Time book and other record</p> <p>(a) Every employee shall record daily his or her correct times of beginning and ending work in a book, or on time cards, or by a mechanical or electronic contrivance, which shall be furnished by the Company.</p> <p>(b) An accredited representative of the National Union of Workers shall have access to the records of times recorded by employees and wages paid, provided that such inspection is made between the hours of 8am and 4.30pm on a working day by appointment with the respective site manager.</p>
<p>53. compliance related matters</p> <p>In order to facilitate the operation of and for the process of clauses 9 and 10 the Company will upon written request supply to the Union a list of the names, work areas, and classifications of the employees whose employment is covered by this Agreement. The Company is not required to supply this list more frequently than once every three months.</p>
<b>Telstra Enterprise Agreement 2012–2015</b>
<p>Consultation about performance principles</p> <p>Telstra will consult with the unions covered by this Agreement quarterly (or otherwise as agreed) about how the following matters apply to employees:</p> <ul style="list-style-type: none"> <li>• Telstra’s performance management principles and practices</li> <li>• performance pay arrangements (including the annual remuneration review)</li> <li>• other relevant matters about performance principles Telstra will consider and respond to the issues that unions raise during the meetings.</li> </ul> <p>This consultation obligation will be about organisational level performance principles and practices only, not individual performance management or pay issues. As part of this consultation, Telstra will meet with the unions to discuss Telstra’s overall performance and the distribution of pay increases for Job Family Employees at an organisational level. Telstra will consult with the unions about the pay increase distribution matrix and will, following consultation, publish the matrix on the intranet.</p>
<b>University of Melbourne Enterprise Agreement 2013</b>
<p>Student Staff Ratios (SSRs)</p> <p>52.4 On 30 June each year, the University will provide the Consultative Committee at clause 52.1 above with the SSRs by disciplinary cluster. The Consultative Committee will monitor these SSRs on an annual basis, identify any University disciplinary cluster in which SSRs have increased and any increase in the University-wide SSR and report to the Occupational Health and Safety Committee as a first step.</p>

**Table 4 – Sample of clauses relating to technology in enterprise agreements****Australia Post Enterprise Agreement 2013**

## Technical maintenance

38.1 There is a shared commitment to pro-actively maximise the efficiency, reliability and cost effectiveness of all equipment and as such consistently ensure peak operational outcomes. In recognition of, and subject to such commitment, it is agreed that:

- (a) Australia Post technical staff will continue to undertake the maintenance of core mail processing equipment in the network, with the support of operational staff performing operator care functions as appropriate; and
- (b) non-core, first in maintenance requiring minor fault rectification, will continue to be provided by Australia Post technicians at retained facilities on a site basis subject to Australia Post's right to extend the single building services maintenance contract arrangements at Strathfield and Dandenong to other facilities. Any such extensions would be subject to practical and efficiency considerations and involve detailed consultation with employees and the Union.

**Pacific National Bulk Rail Enterprise Agreement 2013**

## Attachment 1 Driver only operations compendium

## 2 Procedures for tests and trials of driver only operated trains

2.1 Pacific National Bulk Rail shall establish at each relevant depot a Driver Only Operations (DOO) Committee [Local DOO Committee] consisting of three drivers elected from the drivers attached to the depots concerned and three employer representatives appointed by Pacific National Bulk Rail. In addition, clause 30 of the Pacific National Enterprise Agreement, 2005 shall apply.

- (a) DOO tests shall be conducted by taking a normal train, with its full crew, and picking a location and time where a fault is simulated in order to test a specific procedure. For the test the train goes to DOO mode, and one crew member carries out the procedure being tested. When concluded the train reverts to normal operation.
- (b) Corridor DOO Tests shall be conducted by running a normal train under DOO conditions through a corridor or nominated section(s). The local DOO committee shall determine that, when the test is conducted, the second person accompanies the test driver in the leading cab, trailing cab or following the test train in a motor vehicle. Should any operational incident arise the trial shall be cancelled and the working reverts to (normal) two driver operation.

2.2 At all time during the test and trials, the train driver must have full and uninterrupted [i.e. 100%] access to communication with Train Control, whether the driver is on or off the train.

2.3 Prior to any test or trial, Pacific National Bulk Rail shall obtain the appropriate written authorisation or relevant circular/Special Train Notice from either the track owner and or regulator.

2.4 Tests and trials shall only be carried out using modified locomotives which modifications have been the subject of consultation with the local Drive Only Operations committee.

2.5 Prior to the commencement of any test or trial, agreement shall be reached between the Employee and Employer representatives who are on the relevant local DOO committee, on DOO relief points, locations and sections ...

2.7 There shall also be established at each relevant depot, a signal sighting committee consisting of the Employee representatives on the local DOO Committee (or their nominees from other depot Employees) and Employer representatives. The terms of reference for each such Committee are as follows;

- (a) To ensure all signals can be clearly seen from only the driving seat.
- (b) To ensure all speed limits can be clearly seen from only the driving seat.
- (c) To ensure all level crossings can be clearly seen from on the driving seat.
- (d) To ensure no obstructions (such as branches, awnings, cuttings, curves etc.) restrict the view of the driver.

2.8 Upon the completion of a test and trial procedure, and prior to any DOO implementation, Pacific National Bulk Rail shall conduct further tests utilizing the 'AWARE' communication system and the End of Train

**Table 4 – Sample of clauses relating to technology in enterprise agreements**

Monitoring devices.

### 3.2 Procedure/equipment tests and operational trials

(b) On completion of successful trials within a category (e.g. Category 1), the progressive roll out across that category of operations will be by agreement between the employer and the affected Employees, subject to satisfying safety and required risk mitigation requirements.

(e) The DOO trial program will be conducted and commenced specifically as follows:

#### Category 1 Operation

(i) Priority shall be to ensure locomotives for these services and associated operational protocols are prepared to support an on-time commencement of the trials. A reserve of locomotives shall be allocated to meet contingency requirements;

(ii) A review and validation of trial results shall be conducted by the relevant local DOO committee;

(iii) Adjustment to the schedule may be necessary to enable engineering production timeframes for locomotive risk mitigation and other coordination issues to be met.

(f) Pacific National Bulk Rail shall ensure that any technical modifications required to be made to locomotives are completed and confirmation of the completed modifications shall be provided to the local DOO committee. The confirmation of the necessary modifications having been completed shall ensure their suitability for use in DOO.

### 3.3 The trialling of DOO will be subject to the following four (4) Phases:

(a) Phase 1 – Preliminary Trial Preparation Pacific National Bulk Rail shall, in consultation with the local DOO committee shall:

(i) identify the aim, scope, objectives and performance criteria of the trial.

(ii) confirm the priority and timing for the completion of the trial.

(iii) confirm the services to be trialled.

(iv) validate all pre-requisites for the trial, including the following:

(A) Risk mitigations plans are completed and equipment for the trial available.

(B) Paths are confirmed by the relevant track access provider and circulars issued to affected Employees. (C) Relevant Employees are briefed and rostered and trains are tasked for the trials. (

(D) Customer liaison, business group liaison and other stakeholders are advised and/or involved or invited to participate (where appropriate).

(v) The local DOO Committee shall participate in validating the trial if successful. The validation shall include assessing the performance criteria, feedback and evaluation of information.

(vi) The trial instruction shall be issued not less than two (2) weeks prior to the trial date.

(b) Phase 2 – Conduct Procedure and Equipment Tests

(i) The trial tests shall be based on a methodology discussed with the local DOO committee.

(ii) Trial tests may require retesting to occur, as necessary.

(iii) The local DOO committee shall review outcomes, as required.

(iv) Additional testing of safe working procedures, etc. may be required. Such additional tests shall occur in circumstance where the local DOO committee identifies the need, and shall be agreed by the committee, the Employer and affected Employees or their representatives.

(c) Phase 3 – Formal Testing Validation & Evaluation

(i) The local DOO committee shall develop a post-test report.

(ii) The local DOO committee shall confirm concurrence of all relevant parties to the trials.

(iii) Pacific National Bulk Rail shall provide the local DOO committee with details of the formal approval to vary rail safety accreditation.

(d) Phase 4 – Operational Trials

(i) DOO trials shall be conducted over a timeframe in consultation with the local DOO committee.

(ii) The local DOO committee shall review and validate the trials.

**Table 4 – Sample of clauses relating to technology in enterprise agreements**

<p>(iii) The local DOO committee shall be consulted on the confirmation of the trial results.</p> <p>(iv) Implementation of DOO trains shall be conducted on a timetable after consultation between Pacific National Bulk Rail and the affected Employees.</p>
<p>Attachment 1 Driver only operations compendium</p> <p>4.3 DOO Implementation</p> <p>(a) Where a decision to implement DOO is taken, Pacific National Bulk Rail shall do so by a staged implementation of DOO mainline on the network. Employees at local driver depots shall be involved in all aspects of the implementation.</p>
<p>Attachment 1 Driver only operations compendium</p> <p>Cab standards</p> <p>5.1 The following minimum standards shall apply to all Locomotive Cabs operating in DOO mode, whether in tests and trials or in full implementation:</p> <p>5.2 Vision – the locomotive must have a lower profile nose with at least 180 degrees visibility.</p> <p>5.3 Windscreens/Side Windows – The windscreens shall comply with the latest U.S Standard for high impact windscreens with respect to the large objects impact test and ballistic test. They shall also be fitted with an in built demister. All side windows shall comply with the latest US Standard for high impact ATTACHMENT 1 – Driver Only Operations Compendium page 91 windscreens. All side windows shall be tinted with a minimum light/heat transmission of 35%.</p> <p>5.4 Noise levels in all locomotive cabs operating in DOO mode shall not exceed 81db where the locomotive is of the non vestibule type. Where the locomotive is of a vestibule type, noise levels shall not exceed 75db. Noise level readings shall be taken at the driver’s ear position with all equipment operating in the cab, windows closed and the main horn operating.</p> <p>5.5 All locomotive cabs shall be fitted with:</p> <ul style="list-style-type: none"> <li>(a) Coupler lights which shall be fitted on both the ‘A’ and ‘B’ ends of the locomotive with a switch mounted on either corner of the locomotive.</li> <li>(b) New seating of the type: – Bremshy Grammer FA 416 AW.</li> <li>(c) Rear vision mirrors with built in demisters.</li> <li>(d) Air conditioning. The air conditioner controls shall be located adjacent to the driver.</li> <li>(e) A refrigerator.</li> <li>(f) Fluorescent cab lighting.</li> <li>(g) Positive notching type blinds fitted to all windows and silver backing.</li> <li>(h) A shadow board and DOO equipment box is to be provided.</li> <li>(i) Ditch lights (low visibility lights).</li> <li>(j) AM and FM radio and CD Player.</li> <li>(k) Hot plate and toaster.</li> <li>(l) Dynamic brake cut out switch.</li> <li>(m) A circuit breaker for the Dynamic Brake Rheostat.</li> <li>(n) Toggle joystick type train whistle.</li> <li>(o) 350 watt headlights.</li> <li>(p) LED type headlight/ditch light failure indicator lights.</li> <li>(q) Windscreen wipers controls so that all forward wipers/washers can be operated simultaneously by the driver.</li> <li>(r) Internal and external door locking with wedge type door handles, which allow all locomotive cabs to be locked when left unattended.</li> <li>(s) Fuel level indicator.</li> <li>(t) Handrails on the catwalks of all narrow car body type locomotives.</li> <li>(u) Train countdown device set at 10 meter increments for the length of the train.</li> </ul>

**Table 4 – Sample of clauses relating to technology in enterprise agreements**

- (v) Marker lights that can be changed from within the cab.
- (w) A dash panel located in front of the driver so as to ensure the driver can maintain 180 degrees visibility.
- (x) Cab heaters which shall be a minimum of a 100 watt, fan assisted with switching for low, medium and high.
- (y) A kettle, to be located in a secure location.
- (z) Timetable clip and light.
- (aa) Quick response throttles (on DOO shunt locomotives).
- (bb) A sonar alert.

5.6 All locomotive cabs shall have the vigilance control timing cycle set at 60 seconds before a penalty brake application occurs. The vigilance control shall only be cancelled through the vigilance button, operation of the throttle or dynamic brake or operation of the air brakes.

- (a) The timing cycle shall consist of 50 seconds, plus 5 seconds of the flashing lights, plus 5 seconds of the flashing lights and alarm. At the conclusion of the 60 seconds the penalty application will occur.
- (b) The change over switch shall be positioned adjacent to the driver.
- (c) If the penalty brake is applied and is not reset in two (2) minutes, an automatic emergency call shall be programmed on the radio to be made to Train Control.

5.7 Jumper cables are to be semi permanently mounted at each end of the locomotive.

5.8 End of train monitoring is to be provided.

5.9 A traction motor cutout switch is to be provided on man line locomotives.

5.10 Nothing in Clause 5 shall be required to be fitted or continued to be fitted to any locomotive in the event that the item becomes technologically redundant or some alternative piece of equipment or technology can be utilised as a substitute. Where this is the case, equipment will meet the equivalent levels of safety, security and/or comfort.

### **List of Agreements the Business Council has analysed**

1. Amcor Fibre Packaging National Enterprise Agreement 2014
2. Australia Post Enterprise Agreement 2013
3. Coles Supermarkets PTY and Bi-Lo PTY LDS Retail Agreement 2011
4. Esso Gippsland (Longford and Long Island Point) Enterprise Agreement 2011
5. Fairfax Media Advertising Production Unit and Newspaper Production EEnterprise Agreement 2013
6. Fitness First Enterprise Agreement
7. GM Holden LTD Enterprise Agreement 2014
8. Lend Lease Engineering PTY PTD Engineering and Infrastructure South Australia Enterprise Agreement 2013-2016
9. McDonald's Australia Enterprise Agreement 2013
10. Murray Goulburn Co-operative Co. Limited (Victorian Sites) and Union of National Workers Enterprise Agreements 2014,
11. Pacific National Bulk Rail Enterprise Agreement 2013
12. Rio Tinto Alcan Gove Enterprise Bargaining Agreement 2014
13. St Vincent de Paul Queensland Employment Agreement 2014
14. St Vincent's Private Hospital Melbourne and Health and Allied Services Staff Agreement 2014
15. Suncorp Group Enterprise Agreement 2015
16. TAFE Commission NSW Teachers and Related Employees Enterprise Agreement 2013
17. Telstra Enterprise Agreement 2012-2015
18. Toyota Motor Corporation Australia (TMCA) Agreement (Altona) 3015
19. Transgrid Employees Agreement 2013
20. University of Melbourne Enterprise Agreement 2013