Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Plain Language Re-Drafting –

Clerks – Private Sector Award 2010

(AM2016/15)

28 February 2017

4 YEARLY REVIEW OF MODERN AWARDS

AM2016/15 PLAIN LANGUAGE RE–DRAFTING

– CLERKS – PRIVATE SECTOR AWARD 2010

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1. INTRODUCTION

1. On 3 February 2017, the Fair Work Commission (**Commission**) published the *Exposure Draft – Clerks – Private Sector Award 2017* (**Exposure Draft**). We understand that it is intended to be a 'plain language' re-draft of the *Clerks – Private Sector Award 2010* (**Award**) and has been prepared in accordance with the draft 'Guidelines for Plain Language Drafting of Modern Awards' (**Guidelines**) prepared by Mr Eamon Moran QC, dated January 2017. Further and fundamentally, in a statement of the Commission dated 4 November 2016, the Full Bench as presently constituted stated:

> The objective of plain language re-drafting is to make the award simpler and easier to understand without changing its legal effect.[1]

2. On 3 February 2017, the Commission amended directions earlier issued such that interested parties were directed to file submissions regarding 'award-specific clauses' in the Award by 28 February 2017.[2] This submission is filed in accordance with that amended direction.

3. The Australian Industry Group (**Ai Group**) has a significant interest in the Award. In preparing this submission, we have undertaken a detailed comparison of each 'award specific' provision of the Exposure Draft and the Award, had regard to the aforementioned objective of plain language re-drafting and endeavoured to articulate in relation to each relevant provision:

   - Our interpretation of the current Award clause;
   - Our interpretation of the proposed clause in the Exposure Draft;
   - The manner in which the legal effect of the provision has been altered;
   - Any other complexity or difficulty arising from the Exposure Draft; and
   - The manner in which the proposed clause in the Exposure Draft should be amended for the purposes of retaining the legal effect of the current

[1] *4 yearly review of modern awards – Plain language re-drafting* [2016] FWCFB 7967 at [15].

[2] *4 yearly review of modern awards – Plain language re-drafting* [2017] FWC 743 at [2].

clause or to ensure that the provision is simple and easy to understand. These proposed changes are also reflected in a copy of the Exposure Draft **attached** to this submission.

4. As will be apparent from our submissions, we consider that the Exposure Draft contains a very significant number of instances in which the redrafting of the Award is problematic. In many cases, the effect of the redrafted clause is significantly different to the Award. In others, the redrafting runs contrary to the objective of simplifying the instrument and ensuring that it is easy to understand.

5. The plain language redrafting process is one that has been initiated by the Commission. Whilst we continue to understand its desire to simplify the modern awards system and ensure that awards are simple and easy to understand for employees and employers, the redrafting presented in the Exposure Draft is, in our respectful opinion, of serious concern.

6. It would appear to us that this process will now necessarily involve the consideration of a very significant number of issues raised here by Ai Group and those raised by any other interested parties. This may take the form of proceedings before the Commission, discussions between interested parties independent of the Commission, consideration of further iterations of the Exposure Draft, the preparation of further submissions and so forth; all of which will inevitably require our organisation to devote ongoing resources to the process given that a very significant proportion of our membership is covered by the Award.

7. As we have previously indicated to the Commission on numerous occasions, the 4 yearly review of modern awards (**Review**) has placed, and continues to place, a very serious strain on our resources. Ai Group is consistently involved in numerous concurrent Review proceedings that require attendance at the Commission and the preparation of submissions and other material for filing. The process of dealing with a draft instrument that contains such a large number of problematic provisions will further exacerbate this strain. We also note of course that the Commission has identified that three additional modern

awards will also be the subject of plain language redrafting, with the possibility of additional awards also being selected. This is in addition to the plain language redrafting of the 'standard' clauses, the 'common' clauses and the National Training Wage Schedule in which Ai Group also has a significant interest.

8. Given the vast amount of work that is imposed on employer and union representatives when an award is re-drafted in plain language, and the major problems that have arisen to date with the Commission's plain language re-drafting exercise, the Commission should not proceed to re-draft any award in plain language unless the main representatives of employers and employees in the relevant industry support the re-drafting exercise.

9. In addition, in light of the aforementioned concerns, we respectfully submit that it is essential that the Commission adopt a fair, efficient and robust process for dealing with submissions filed in relation to the Exposure Draft. In our view, this can best be achieved by undertaking the following initial steps:

    - Submissions in reply be filed by interested parties as contemplated by the Commission's Statement of 3 February 2017.

    - The Commission thereafter prepare a summary of the parties' submissions in the same form as that which has been adopted in relation to other exposure drafts published during the Review.

    - The matter be listed for conference before a member of the Commission to discuss each of the issues raised by interested parties by reference to the aforementioned summary document.

    - The Commission request that Mr Moran and/or Commission staff responsible for the drafting of the Exposure Draft attend the conference. We make this suggestion based on our experience of Mr Moran's attendance at a conference on 23 January 2017 before Commissioner Hunt regarding the plain language re-drafting of the 'standard clauses'. Mr Moran was able to assist the progress of the matter by explaining the

basis upon which certain provisions had been redrafted and respond to the submissions of the parties. Many matters were able to be resolved (subject to the Full Bench's ultimate decision) as a result.

- At the conclusion of that conference, interested parties be given an opportunity to be heard as to how the matter is to proceed thereafter.

2. PART 1 – APPLICATION AND OPERATION OF THIS AWARD

Clause 1.2 – Title and Commencement

10. Clause 2.1 of the Award states that it "commences on 1 January 2010". The Exposure Draft, however, states at clause 1.2:

> **1.2** This modern award, as varied, commenced operation on 1 January 2010.

11. The provision purports to give retrospective effect to all variations made to the Award since 1 January 2010. This is quite clearly a substantive change.

12. Whilst we would not oppose the introduction of a provision that makes clear to a reader of the instrument that it may have been varied since it commenced operation, we do not consider that the approach taken in clause 1.2 is appropriate. It has the effect of circumventing s.165(2) of the *Fair Work Act 2009* (**Act**) which establishes the very limited circumstances in which an award variation may come into operation prior to the date on which the Commission makes its determination to vary the award and in this way, gives rise to considerable uncertainty as to the rights and obligations that have applied to the relevant employers and employees since the Award was made.

13. For these reasons, the words "as varied" should be deleted from clause 1.2.

14. We note that this is a matter that has been raised by Ai Group and other interested parties in the course of the Review of other modern awards. It has arisen in the context of the exposure drafts published by the Commission, all of which contain a provision in the same terms set out above. As at the time of drafting this submission, the Commission has not made a ruling on this issue.

Clause 2 – Definitions – clerical work

15. Clause 2 of the Award contains the following definition of 'clerical work', which does not appear in the Exposure Draft:

> **clerical work** includes recording, typing, calculating, invoicing, billing, charging, checking, receiving and answering calls, cash handling, operating a telephone switchboard and attending a reception desk

16. We later deal with this issue in relation to clause 4.1, which relates to the coverage of the instrument.

Clause 2 – Definitions – shiftworker

17. Clause 2 of the Exposure Draft contains a definition for 'shiftworker'. It refers to clause 33.2, which defines a shiftworker for the purposes of the NES. Specifically, s.87(1)(b)(i) of the Act entitles an employee to five weeks of paid annual leave if the relevant award describes or defines the employee as a shiftworker for the purposes of the NES.

18. The term 'shiftworker' is also used in various other parts of the Exposure Draft. Take for instance Schedule B – Summary of Hourly Rates of Pay. Various parts of the schedule are expressed as either applying to, or excluding, 'shiftworkers'. It is of course not the case that the schedule is purporting to distinguish between employees who are 'shiftworkers' for the purposes of the NES and those who are not. Rather, the schedule distinguishes between those employees employed on shifts and those who are not so employed. This is because in various respects, the Award prescribes different rates of pay and entitlements for employees employed on shifts.

19. The insertion of a definition of 'shiftworker' in clause 2, prima facie, has the effect of attributing the meaning there prescribed to that term each time it appears in the Exposure Draft. At the very least it is confusing, as the definition redirects the reader to a provision that defines a 'shiftworker' for only the very specific purpose of an employee's annual leave entitlement.

20. For these reasons, the definition of 'shiftworker' in clause 2 should be deleted.

Clause 2 – Definitions – Table 1 – Facilitative provisions

21. We do not understand the purpose for which clause 2 refers to table 1. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 1 – Facilitative provisions' simply refers to the clause in which that table appears. The term is not used elsewhere in the

Exposure Draft. That is, 'Table 1' is not referred to in any other provision of the instrument.

22. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 2 – Entitlements to rest break(s)

23. We do not understand the purpose for which clause 2 refers to table 2. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 2 – Entitlements to rest break(s)' simply refers to the clause in which that table appears. The term is not used elsewhere in the Exposure Draft. That is, 'Table 2' is not referred to in any other provision of the instrument.

24. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 3 – Minimum wages

25. Clause 2 defines 'Table 3 – Minimum wages' as 'the Table in clause 16.1'. At clause 16.1, the table setting out the minimum weekly and hourly rates payable under the Exposure Draft is labelled 'Table 3' and is referred to in its preamble.

26. There are three other provisions of the Exposure Draft that refer to table 3:

- Clause 16.2 – Minimum wages: (emphasis added)

> **16.2** In calculating years for the purposes of Table 3, any service in the classification level, as described in Schedule A, including administrative and clerical experience with a previous employer, counts towards a year of service.

- Clause 16.4 – Junior employees: (emphasis added)

> **16.4 Junior employees**
>
> An employer must pay an employee who is aged as specified in column 1 of Table 4 – Junior rates, at least the percentage specified in column 2 of the minimum rate that would otherwise be applicable under Table 3 – Minimum rates: …

- Clause 19.3 – Higher duties allowance: (emphasis added)

> **19.3 Higher duties allowance**
>
> The employer must pay an employee required to perform any of the duties of a higher classification for more than one day at least the minimum rate applicable to the higher level under Table 3 – Minimum wages.

27. We do not consider that the approach adopted in the Exposure Draft in this regard is simple or easy to understand. In our view, it in fact renders the document more difficult to navigate. For instance, clause 19.3 (replicated above) refers to 'Table 3 – Minimum wages'. In order to understand this reference, the reader of the Exposure Draft must first turn to clause 2, which identifies the provision of the Exposure Draft in which that table appears. The reader must then turn to clause 16.1 in order to access the relevant table. This requires a far more cumbersome and unnecessarily lengthy process than that which would be necessary if the Exposure Draft were amended by simply:

- Deleting the definition of 'Table 3 – Minimum wages' in clause 2; and
- Amending the aforementioned provisions by deleting the reference to 'Table 3 – Minimum wages' and replacing it with a reference to clause 16.1, which contains the relevant table.

28. That is, the relevant clauses should read as follows:

- Clause 16.2 – Minimum wages: (emphasis added)

> **16.2** In calculating years for the purposes of ~~Table 3~~ clause 16.1 – Minimum wages, any service in the classification level, as described in Schedule A, including administrative and clerical experience with a previous employer, counts towards a year of service.

- Clause 16.4 – Junior employees: (emphasis added)

> **16.4 Junior employees**
>
> An employer must pay an employee who is aged as specified in column 1 of Table 4 – Junior rates, at least the percentage specified in column 2 of the minimum rate that would otherwise be applicable under ~~Table 3 – Minimum rates~~ clause 16.1 – Minimum wages: …

- Clause 19.3 – Higher duties allowance: (emphasis added)

> **19.3 Higher duties allowance**
>
> The employer must pay an employee required to perform any of the duties of a higher classification for more than one day at least the minimum rate applicable to the higher level under ~~Table 3 – Minimum wages~~ clause 16 – Minimum wages.

29. In our view, this is a simpler approach, which does not require a consideration of the definitions clause (clause 2) in order to identify the provision of the Exposure Draft at which the relevant minimum rate can be located. It would enable the reader of the Exposure Draft to more readily ascertain the provision of the instrument to which they need to refer. Accordingly, we submit that the approach we have here set out should be adopted in preference to that found in the Exposure Draft.

Clause 2 – Definitions – Table 4 – Junior wages

30. We do not understand the purpose for which clause 2 refers to table 4. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 4 – Junior wages' simply refers to the clause in which that table appears. The term is not used elsewhere in the Exposure Draft. That is, 'Table 4' is not referred to in any other provision of the instrument.

31. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 5 – Overtime rates for employees who are not engaged on shifts

32. We do not understand the purpose for which clause 2 refers to table 5. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 5 – Overtime rates for employees who are not engaged on shifts' simply refers to the clause in which that table appears. The term is not used elsewhere in the Exposure Draft. That is, 'Table 5' is not referred to in any other provision of the instrument.

33. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 6 – Penalty rates for shiftwork

34. We do not understand the purpose for which clause 2 refers to table 6. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 6 – Penalty rates for shiftwork' simply refers to the clause in which that table appears. The term is not used elsewhere in the Exposure Draft. That is, 'Table 6' is not referred to in any other provision of the instrument.

35. The definition does appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 7 – Overtime rates for shiftwork

36. We do not understand the purpose for which clause 2 refers to table 7. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 7 – Overtime rates for shiftwork' simply refers to the clause in which that table appears. The term is not used elsewhere in the Exposure Draft. That is, 'Table 7' is not referred to in any other provision of the instrument.

37. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 2 – Definitions – Table 8 – Period of notice

38. The 'definition' of 'Table 8 – Period of notice' refers to clause 41.2, however neither clause 41.2 nor any other provision of the Exposure Draft contains a table labelled 'table 8'. Whilst we understand that clause 41.2 is the subject of the plain language redrafting of standard clauses, and that a table has there been proposed, its inclusion is presently in contest.

39. Even if the proposed table were included, we do not understand the purpose for which clause 2 refers to table 8. The purpose of a definitions clause is to give meaning to certain terms used in the instrument. The 'definition' of 'Table 8 – Period of notice' simply refers to the clause in which that table would appear. The term is not used elsewhere in the Exposure Draft. That is, 'Table 8' is not referred to in any other provision of the instrument.

40. The definition does not appear to serve any identifiable purpose or result in the instrument being simpler or easier to understand and should therefore be deleted.

Clause 4.1 – Coverage

41. The current clause 4.1 expresses the coverage of the instrument by reference to those employers and employees that are covered by it. In essence, the Award covers:

- Employers in the private sector with respect to their employees who are engaged wholly or principally in clerical work (as defined in clause 3.1), including administrative work of a clerical nature; and

- Employees engaged wholly or principally in clerical work (as defined in clause 3.1), including administrative work of a clerical nature.

42. Clause 4.1 states:

> **4.1** This award covers employers in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and those employees. However the award does not cover:
>
> …

43. Clause 4.1 of the Exposure Draft is in the following terms:

> **4.1** This occupational award covers:
>
> **(a)** private sector employers throughout Australia who engage employees wholly or principally in clerical and administrative work described in Schedule A – Classification Structure and Definitions; and
>
> **(b)** private sector employees of employers mentioned in paragraph (a) who are wholly or principally performing clerical and administrative work described in Schedule A – Classification Structure and Definitions.

44. Various difficulties arise from the proposed clause 4.1.

45. **Firstly,** clause 4.1(a) states that the Exposure Draft covers employers of a certain group of employees, as there described. The manner in which those employees are described is not the same as the manner in which clause 4.1(b) describes the employees covered by the Exposure Draft, those being employees who are wholly or principally *performing* clerical and administrative work described in Schedule A (as opposed to employees who are *engaged* wholly or principally in clerical and administrative work). Whilst it is not immediately apparent whether a material difference arises from this, we are concerned that a deliberate decision to adopt different phraseology in clauses 4.1(a) and 4.1(b) may give rise to confusion and disputation as to whether they were in fact intended to have different application.

46. **Secondly**, clause 4.1(a) purports to have the effect of covering employers "who engage employees wholly or principally in clerical and administrative work". That is, any employer who engages employees so described is covered by the Exposure Draft. The provision does not, however, limit the coverage of the Exposure Draft to the employer with respect to its employees who are engaged wholly or principally in clerical work as per the current clause 4.1. Nor does it

confine the coverage of the Exposure Draft to those employees described by clause 4.1(b) (notwithstanding our above submission in this regard).

47. In addition, the Exposure Draft does not make clear that the extent to which it applies to the aforementioned employers is confined to their employment relationship with the relevant group of employees also covered by the instrument. On one view it covers an employer in relation to any employees engaged wholly or principally in clerical and administrative work who are not otherwise covered by the Exposure Draft (because, for instance, the relevant employees are instead covered by an industry award with clerical classifications).

48. **Thirdly**, whilst the Award is expressed to cover employees who perform clerical work as broadly defined in clause 2, the Exposure Draft is expressed to cover employees and employers by reference to Schedule A. The definition of 'clerical work' does not appear in the Exposure Draft.

49. Later in this submission we identify a range of concerns arising from the classification schedule which, in our view, require further careful consideration. This element of clause 4.1 should be revisited once the Commission expresses a view as to approach it will take in relation to the redrafting of the schedule.

50. In order to address the first and second issues identified above, we propose that clause 4.1 be amended as follows. Ai Group may seek to revisit our proposal once the Commission expresses a view as to the approach it intends to adopt in relation to Schedule A to the Exposure Draft.

> **4.1** This occupational award covers:
>
> **(a)** private sector employers throughout Australia ~~who engage~~ with respect to their employees wholly or principally engaged in clerical and administrative work described in Schedule A – Classification Structure and Definitions; and
>
> **(b)** private sector employees of employers mentioned in paragraph (a) who are wholly or principally engaged in ~~performing~~ clerical and administrative work described in Schedule A – Classification Structure and Definitions.

Clause 4.2 – Coverage

51. Clause 4.2 of the Exposure Draft excludes certain employers and employees from its coverage. Relevantly it states: (emphasis added)

> **4.2** However, this occupational award does not cover employers and employees covered by a modern award that contains clerical and administrative classifications, including any of the following modern awards:
>
> …

52. The corresponding provision of the Award is in the following terms:

> **4.1** … However the award does not cover:
>
> **(a)** an employer bound by a modern award that contains clerical classifications; or
>
> …

53. We are concerned that the addition of the reference to 'administrative classifications' in the Exposure Draft may substantively alter the legal effect of the Award clause.

54. At present, any employer covered by an award that contains clerical classifications is not covered by the Award. The Macquarie Dictionary defines 'clerical' as follows:

> **1.** relating to a clerk or to clerks
>
> …

55. The word 'clerk' is defined as follows:

> **1.** one employed in an office, shop, etc., to keep records or accounts, attend to correspondence, etc.
>
> **2.** an assistant in business, especially a retail salesperson.
>
> …

56. This is consistent with the definition of 'clerical work' that appears in clause 2 of the Award:

> **clerical work** includes recording, typing, calculating, invoicing, billing, charging, checking, receiving and answering calls, cash handling, operating a telephone switchboard and attending a reception desk

57. Clerical work and administrative work arguably differ in their nature. 'Administrative is defined by the Macquarie Dictionary as follows:

> relating to administration; executive …

58. The Macquarie Dictionary relevantly defines 'administration' as follows:

> **1.** the management or direction of any office or employment
>
> …

59. As can be seen, administrative work is potentially associated with the management functions. It arguably connotes greater seniority, skill and responsibility. Having regard to the plain meaning of the word 'administrative', it is arguably of a different nature to clerical work that is contemplated by clerical classifications, as referred to in clause 4.1(a) of the Award. The additional reference to administrative classification potentially has the effect of excluding additional employers and employees from the coverage of the Exposure Draft, who might otherwise be covered by the Award.

60. In order to prevent such an inadvertent change to the coverage of the Award, clause 4.2 of the Exposure Draft should be amended as follows:

> **4.2** However, this occupational award does not cover employers and employees covered by a modern award that contains clerical ~~and administrative~~ classifications, including any of the following modern awards:

Clause 4.2 – Coverage

61. Clause 4.6 of the Award excludes the following from its coverage:

- Employees covered by the industry awards there listed; and
- Employers of those employees in relation to those employees.

62. Clause 4.6 states:

> **4.6** Without limiting the generality of the foregoing this award does not cover employers covered by the following industry awards with respect to employees covered by the awards:
>
> **…**

63. Clause 4.2 of the Exposure Draft has a different effect. It instead excludes:

- Any employee covered by the industry awards there listed; and
- Any employer covered by the industry awards there listed in relation to any of their employees.

64. Clause 4.2 is in the following terms:

> **4.2** However, this occupational award does not cover employers and employees covered by a modern award that contains clerical and administrative classifications, including any of the following modern awards:
>
> …

65. The clause excludes from the coverage of the instrument any employer covered by any of the awards there listed in respect of any or all of its employees. The extent to which an employer is excluded from the Exposure Draft is not confined to those employees who are also covered by those awards.

66. That is, an employer and some of its employees may be covered by an industry award. To that extent, the employer is not covered by this Award. However, if that same employer also employs some employees who are not covered by the relevant industry award and are otherwise covered by this Award, clause 4.6 of the Award does not exclude them from its coverage. Clause 4.6 of the Exposure Draft would, however, exclude those employers. This is because it excludes all employers in their entirety from the coverage of the Exposure Draft if they are at all covered by one of the industry awards listed.

67. In order to retain the legal effect of the current clause 4.6, clause 4.2 of the Exposure Draft should be amended as follows (having regard also to the amended we have proposed above):

4.2 However, this occupational award does not cover employers and employees covered by a modern award that contains clerical ~~and administrative~~ classifications, including employers covered by any of the following modern awards with respect to employees covered by the awards:

Clause 4.2(i) – Coverage

68. The current clause 4.6 states that the Award does not cover employers covered by certain industry awards there identified with respect to employees covered by those awards. The *Children's Services Award 2010* is not one of the awards there listed.

69. Despite this, clause 4.2(i) of the Exposure Draft has the effect of excluding employers covered by the *Children's Services Award 2016* with respect to employees covered by it from the coverage of the Exposure Draft.

70. As we understand it, there may be some contest between interested parties regarding the coverage of the relevant group of employees. Specifically, United Voice is seeking a substantive variation to the *Children's Services Award 2010* to deal with the potential interaction between it and the Award.[3] We raise this as a matter that may be relevant to the Commission's determination as to whether clause 4.2(i) should be included in the Exposure Draft at this stage.

Clause 4.3(a) – Coverage

71. Clause 4.3(a) of the Exposure Draft is not in the same terms as the current clause 4.4. Ai Group represented the labour hire industry during the Part 10A award modernisation process and we were heavily involved in the development of the standard coverage terms for labour hire employers and employees. Ai Group has some concerns associated with the proposed re-drafting. We note, however, the following 'draft comments' regarding this clause:

> These clauses are common to other modern award exposure drafts. They will be dealt with via a separate process.

[3] See United Voice submission dated 3 March 2015.

72. Accordingly, we do not here propose to make submissions regarding clause 4.3(a), however we may seek to do so in due course.

Clause 4.3(b) – Coverage

73. Clause 4.3(b) of the Exposure Draft is not in the same terms as the current clause 4.5. Ai Group represented the group training industry during the Part 10A award modernisation process and we were heavily involved in the development of the standard coverage terms for group training employers and employees. Ai Group has some concerns associated with the proposed re-drafting. We note, however, the following 'draft comments' regarding this clause:

> These clauses are common to other modern award exposure drafts. They will be dealt with via a separate process.

74. Accordingly, we do not here propose to make submissions regarding clause 4.3(b), however we may seek to do so in due course.

Clause 4.4(d) – Coverage

75. The current clause 4.2 appears in most if not all modern awards. It is in the following terms:

> **4.2** The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

76. The effect of the clause is to exclude from the coverage of the Award those employees that are covered by a modern enterprise award or enterprise instrument, and employers *in relation to those employees*. An employer who has one or more employees covered by a modern enterprise award or enterprise instrument is not excluded from the coverage of the Award in relation to other employees who are otherwise covered by the Award.

77. Clause 4.4(b) of the Exposure Draft excludes employees covered by a modern enterprise award or an enterprise instrument, as is the case under the current Award. This element of the Exposure Draft is not, in and of itself, problematic.

78. Clause 4.4(d) of the Exposure Draft excludes "employers of employees mentioned in [clause 4.4(b)]". That is, it purports to exclude from the coverage of the Exposure Draft any employer who employs any employee who is covered by a modern enterprise award or enterprise instrument. The extent to which that employer is excluded from the coverage of the Exposure Draft is not limited to that employee. Rather, it appears to exclude the employer in relation to any or all of its employees in circumstances where any one or more of its employees are covered by a modern enterprise award or an enterprise instrument. This is quite clearly a significant substantive change to the coverage of the Award.

79. The same difficulty arises in relation to employees covered by a State reference public sector modern award or a State reference public sector transitional award, who are excluded from the coverage of the Exposure Draft by virtue of clause 4.4(c), consistent with the current clause 4.3.

80. For the reasons here set out, clause 4.4(d) should be amended as follows:

> **(d)** employers ~~of~~ in relation to employees mentioned in paragraph (a), (b) or (c).

Clause 4.5 – Coverage

81. Clause 4.5 of the Exposure Draft is not in the same terms as the current clause 4.7. Ai Group has some concerns associated with the proposed re-drafting. We note, however, the following 'drafter comments' regarding this clause:

> These clauses are common to other modern award exposure drafts. They will be dealt with via a separate process.

82. Accordingly, we do not here propose to make submissions regarding clause 4.5, however we may seek to do so in due course.

Clause 7.2 – Facilitative provisions for flexible working practices – Altering spread of hours

83. The reference to clause 13.6 (Altering the spread of hours) appears twice in the table at clause 7.2 (page 9 and page 10 of the Exposure Draft). This duplication is unnecessary and appears to be a drafting error. Either of the references should be deleted.

84. We note that this duplication does not appear in the electronic version of the Exposure Draft provided by the Commission, however it does appear in the version published on the Commission's website on 3 February 2017.

Clause 7.2 – Facilitative provisions for flexible working practices – Make-up time

85. The reference to clause 13.10 (Make-up time) appears twice in the table at clause 7.2 (page 9 and page 10 of the Exposure Draft). This duplication is unnecessary and appears to be a drafting error. Either of the references should be deleted.

86. We note that this duplication does not appear in the electronic version of the Exposure Draft provided by the Commission, however it does appear in the version published on the Commission's website on 3 February 2017.

Clause 7.2 – Facilitative provisions for flexible working practices – Monthly pay periods

87. Clause 23.1 of the Award deals with employees' pay periods. It states: (emphasis added)

> **23.1** Employees must be paid their wages weekly or fortnightly as determined by the employer or <u>monthly if mutually agreed</u>. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears.

88. We interpret clause 23.1 of the Award to enable agreement either between an employer and an individual employee, or between an employer and the majority of employees, for the employee to be paid monthly. Clause 7.2 of the Exposure Draft, however, only indicates that the provision enables agreement between an employer and the *majority* of employees.

89. Accordingly, clause 7.2 of the Exposure Draft should be amended by replacing the words "A majority of employees" with "A majority of employees or an individual" in the third column in relation to clause 17.2(b).

90. Later in this submission we deal with the drafting clause 17.2(b) of the Exposure Draft and propose an amendment consistent with that which we have here sought.

Clause 7.2 – Facilitative provisions for flexible working practices – Shiftwork – averaging ordinary hours

91. Clause 27.1 of the Exposure Draft corresponds with clause 28.3(a) and clause 28.3(b) of the Award, which states: (emphasis added)

> **(a)** The ordinary hours of work for shiftworkers are to be an average of 38 hours per week and must not exceed 152 hours in 28 consecutive days.
>
> **(b)** By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.

92. As can be seen, the provisions allow for agreement between the employer and the majority of employees concerned. The clauses do not enable agreement with an individual employee.

93. Accordingly, the third column in Table 1 in relation to clause 27.1 should be amended by deleting the words "An individual or".

94. Later in this submission we deal with clause 27.1(b) of the Exposure Draft which, in our view, does not properly reflect the Award as presently drafted. The submission we have here made is consistent with the variation we there propose to clause 27.1(b).

Clause 7.2 – Facilitative provisions for flexible working practices – Annual leave in advance

95. We do not consider that clause 33.4(a) of the Exposure Draft is a 'facilitative provision' in the sense contemplated by clause 7.1. It does not enable an employer and its employee (or employees) to agree "on how specific award provisions are to apply at the workplace". Rather, it enables an employer and employee to agree to take annual leave prior to its accrual in accordance with the NES.

96. Accordingly, the reference to clause 33.4(a) should be deleted from clause 7.2.

3. PART 2 – TYPES OF EMPLOYMENT AND CLASSIFICATIONS

Clause 10.2 – Part-time employment

97. Clause 10.2 of the Exposure Draft is in the following terms:

> **10.2** This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award.

98. The Award does not contain a provision in these terms. It appears, however, that the proposed clause is intended to replace the current clause 11.2:

> **11.2** Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.

99. It is self-evident that the proposed clause contains a very different proposition to the current clause 11.2. It requires that any given clause of the Exposure Draft is to apply "in the same way" that it applies" to a full-time employee, unless expressly stated otherwise. We here propose to outline the three material difficulties that we consider arise from the clause.

100. **Firstly**, we consider that award clauses that contain blanket propositions such as the proposed clause 10.2, can be inherently problematic. Absent an exhaustive and careful consideration as to whether each and every provision of the Award (including the schedules to the Exposure Draft) apply "in the same way" to full-time and part-time employees, clause 10.2 should not be included as it may have the effect of creating an unintended and substantive change.

101. Further, a provision of this nature does not, in our view, render the instrument any simpler or easier to understand. If the application of a particular provision to part-time employees is considered ambiguous, this may be considered in isolation, having regard to the specific terms of the clause, and the Commission may consider it appropriate to vary the provision accordingly. However, the insertion of a generalised provision at the commencement of the Exposure Draft without any apparent regard for the substantive effect that this may have for the application of each provision of the instrument is, with respect, inappropriate.

102. **Secondly**, clause 10.2 effectively inverts the requirement imposed by the current clause 11.2 and in this way, alters the legal effect of the Award. We provide the following as a practical example of this. Clause 19.6 of the Award requires the payment of a first aid allowance:

> **19.6** An employee who has been trained to render first aid, is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance Australia or a similar body and is appointed by an employer to perform first aid duty must be paid a weekly allowance of 1.5% of the standard rate.

103. Read with clause 11.2, we consider that a part-time employee is entitled to the allowance above on a pro-rata basis. That is, an employee who works full-time hours is entitled the entire quantum of the allowance. However, a part-time employee who works, for instance, 16 hours is entitled to 50% of the allowance.

104. Neither clause 10.2 nor any other provision of the Exposure Draft would have this effect. That is to say, under the Exposure Draft, it appears that a part-time employee would be entitled to the allowance in full, because pursuant to clause 10.2, the Exposure Draft applies to a part-time employee in the same way that it applies to a full-time employee. Self-evidently, this is a substantive change to the entitlement, which would have the effect of increasing the entitlement of a part-time employee to the first aid allowance.

105. **Thirdly**, whilst not abundantly clear, on one reading the provision purports to require that the Award in its entirety and/or each clause therein is to be applied to any particular part-time employee as it applies to a full-time employee.

106. For example, clause 26.1 of the Award states that "a meal period of not less than 30 minutes and not more than 60 minutes must be allowed to each employee". The precise length of the break is to be determined by the employer. Accordingly, an employer may decide to allow a full-time employee a 60 minute meal break and a part-time employee a 30 minute meal break because the number of hours to be worked by the part-time employee on the relevant engagement is fewer than the full-time employee.

107. We are concerned that clause 10.2 of the Exposure Draft may have the effect of, or at the very least give rise to the argument that, in the scenario described

above, the part-time employee must also be granted a 60 minute meal break. This is because clause 26.1 is to "apply in the same way as it applies to a full-time employee except as otherwise expressly provided by this award". Relevantly, clause 26.1 does not expressly state that an employer may exercise its discretion to apply clause 26.1 in a different manner to full-time employees as compared to part-time employees.

108. Such an interpretation would have the effect of narrowing the scope of an employer's prerogative as to how a specific provision is applied to its employees. This too would amount to an alteration to the legal effect of the clause.

109. For all of the reasons stated above, clause 10.2 should be deleted and substituted with the following:

> **10.2** A part-time employee is entitled to pay and conditions provided by this award on a pro-rata basis.

Clause 10.3 – Part-time employment

110. Clause 10.3 of the Exposure Draft is in the following terms:

> **10.3** A part-time employee is entitled to payments in respect of annual leave, personal/carer's leave, compassionate leave or public holidays on a proportionate basis.

111. The Award does not contain such a provision.

112. We do not understand the purpose or effect of the proposed clause. Payments in respect of the entitlements identified are made pursuant to the NES and/or the award. Whilst it is not clear what is contemplated by the requirement to pay an employee in respect of those entitlements "on a proportionate basis", the provision seemingly inaccurately reflects the NES and the Award in any event.

113. **Firstly**, take for instance annual leave. Pursuant to s.87(1), an employee is entitled to four weeks of paid annual leave for each year of service. That is, for a complete year of service, an employee is entitled to four weeks of annual leave. The specific amount of leave to accrue to an employee is contingent upon their ordinary hours of work. The effect of s.87(2) is to entitle a part-time

employee to a proportionate amount of leave. That is, a part-time employee will accrue, over the course of the year, an amount of annual leave that is less than 152 hours in accordance with their ordinary hours of work. Whilst this provision provides for accrual of the entitlement to annual leave on a proportionate basis, it does not purport to deal with payment for that entitlement.

114. Payment for annual leave is dealt with at s.90 of the Act. It states that if an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period. That is, a part-time employee who takes annual leave over a period of 7.6 ordinary hours which the employee would have otherwise worked is paid for 7.6 ordinary hours at their base rate of pay. Similarly, a part-time employee who takes annual leave over a period of 20 ordinary hours which the employee would have otherwise worked is paid for 20 ordinary hours at their base rate of pay. The notion of a "proportionate basis" does not arise.

115. The payment due for personal/carer's leave and compassionate leave is to be calculated on a similar basis, pursuant to ss.97 and 106 of the Act respectively.

116. **Secondly**, a part-time employee will be entitled to payment in respect of a public holiday pursuant to the Award if the employee works on that day in accordance with clause 31.3. That is, for the hours worked, a part-time employee is to be paid "at double time and a half". A full-time employee who works on a public holiday is to be paid on the same basis. Again, the concept of a "proportionate basis" is not relevant.

117. Accordingly, clause 10.3 of the Exposure Draft is potentially confusing and misleading. It purports to introduce a consideration of pro-rata payments where such a notion is neither necessary nor relevant, having regard to the NES or the Award.

118. In our view clause 10.3 of the Exposure Draft must, respectfully, be deleted.

Clause 10.4 – Part-time employment

119. The current clause 11.3 requires that "the employer and the part-time employee will agree in writing on a regular pattern of work", specifying certain details regarding the employee's hours and days of work. The clause contemplates the employer and employee reaching a consensus together regarding each of the relevant matters.

120. The legal effect of clause 10.4 of the Exposure Draft differs from this. It requires as follows: (emphasis added)

> **10.4** At the time of engaging a part-time employee, the employer must agree in writing with the employee to all of the following:
>
> **(a)** the number of hours to be worked each day; and
>
> **(b)** the days of the week in which the employee will work; and
>
> **(c)** the times at which the employee will start and finish work each day.

121. The above provision appears to require that an employer *must* agree with the employee. That is, it mandates that an employer is to agree with an employee regarding the relevant matters. The practical effect of the proposed clause would be to enable an employee to dictate the days and times at which they are to work and an employer would be required to consent. The change in the legal effect of the clause is self-evident.

122. Accordingly, clause 10.4 should be amended as follows:

> **10.4** At the time of engaging a part-time employee, the employer and employee must agree in writing ~~with the employee to~~ on all of the following: …

Clause 11.1 – Casual employment

123. Clause 11.1 of the Exposure Draft is in the following terms:

> **11.1** An employee who is not covered by clause 9 – Full-time employment or clause 10 – Part-time employment must be engaged and paid as a casual.

124. The provision replaces the current simple and succinct definition of "casual employee" which is contained in the very vast majority of modern awards:

> **12.1** A casual employee is an employee engaged as such.

125. We strongly oppose the substitution of the current provision with the proposed clause 11.1 for the reasons that follow.

126. **Firstly,** clause 12.1 of the Award serves a definitional purpose. That is, it effectively gives meaning to the term "casual employee" each time it is used in the instrument. There is also authority for the proposition that the definition is also relevant for the purposes of ascertaining whether an employee is a casual employee for the purposes of the NES.[4] Clause 11.1 of the Exposure Draft does not, by contrast, have this effect. It does not define or identify the meaning of the term "casual employee".

127. **Secondly**, clause 11.1 of the Exposure Draft creates an unnecessary and confusing requirement that consideration must first be given to whether an employee is "covered" by clause 9 or clause 10 of the Exposure Draft. Whilst the precise nature of the requirement imposed by the provision is not clear, it would appear to suggest that an employer must commence by determining whether an employee meets the definition of a full-time or part-time employee. For instance, an employer must consider whether the employee "is engaged to work for fewer ordinary hours than 38 per week (or the number mentioned in clause 9.2) and [their] hours of work are reasonably predictable". If so, the employee would meet the definition of a part-time employee.

128. It is not clear whether this would necessarily preclude an employer from engaging the employee on a casual basis, however we are concerned that clause 11.1 may be read to have that effect. To that extent, the provision introduces a very significant substantive variation to the current Award, which is strongly opposed by Ai Group. It would serve to limit the employer's prerogative to engage an employee as a casual employee.

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[4] *Telum Civil Construction Pty Ltd v Construction, Forestry, Mining and Energy Union* [2013] FWCFB 2434.

129. **Thirdly**, and in any event, it is not clear how an employer engaging a casual employee can make a conclusive assessment as to whether that employee will have "reasonably predictable" hours of work, as contemplated by clause 10.1 of the Exposure Draft in the context of a part-time employee. In a practical sense, casual employees are largely engaged on such a basis because there is a degree of uncertainty as to the hours that they will be required to work. This renders the assessment to be made by the employer impracticable.

130. **Fourthly**, no basis for the redrafting is apparent to us. The drafters' comments do not contain any explanation for the approach adopted. The provision is by no means simple or easier to understand. We are not aware of any confusion, disputation or ambiguity resulting from clause 12.1 of the Award. It is a definition that is well known and understood by employers and employees in a very broad range of industries, given its prevalence across the modern awards system. Clause 11.1 provides a prime example of redrafting that does not serve to advance the objective that the Commission is here seeking to achieve. Rather, we respectfully consider that it undermines it.

131. For all of the reasons here stated, clause 11.1 of the Exposure Draft should be replaced with clause 12.1 of the Award.

Clause 11.4 – Casual employment – question in Exposure Draft

132. The following question appears at clause 11.4 of the Exposure Draft:

> Parties are asked whether clause 11.4 should specify the minimum payment applies 'for on each engagement'. (sic)

133. The change proposed in the question contained in the Exposure Draft is not necessary. Clause 11.4 clearly refers to each engagement: (emphasis added)

> **11.4** An employer must pay a casual employee for a minimum of 3 hours' work <u>on each engagement</u> even if they are rostered to work for fewer than 3 consecutive hours.

Clause 12.2 – Classifications

134. Clause 12.2 of the Exposure Draft is inherently connected with Schedule A to the Exposure Draft, about which we later make submissions. For reasons that

will subsequently become apparent we do not here propose to make submissions regarding clause 12.2, but may seek an opportunity to do so in due course.

4. PART 3 – HOURS OF WORK

Clause 13.2 – Ordinary hours of work (employees not engaged on shifts)

135. Clause 13.2 of the Exposure Draft states as follows:

> **13.2** The maximum number of ordinary hours of work per week for a full-time employee is 38 or the fewer number considered full-time at the workplace by the employer.

136. No such provision appears in the corresponding clause 25 of the Award. We propose that it be deleted on the following bases.

137. **Firstly**, the clause is not necessary. Clause 9 defines a full-time employee by reference to the number of ordinary hours for which the employee is engaged to work. An employee is defined as a full-time employee by virtue of the fact that they are engaged to work 38 ordinary hours per week or a lesser number that is considered full-time at the workplace by the employer:

> **9. Full-time employment**
>
> Each of the following is a full-time employee:
>
> **9.1** an employee who is engaged to work 38 ordinary hours per week; or
>
> **9.2** an employee who is engaged to work the number of ordinary hours (fewer than 38) per week that is considered full-time at the workplace by the employer.

138. The definition of full-time employee makes clear an employee is one who is engaged to work (and as a result, in fact works) 38 ordinary hours a week. Clause 13.2 need not repeat that which is already articulated in the above provision. Such repetition serves to unnecessarily lengthen the instrument.

139. **Secondly**, clause 13.2 is not accurate. The number of hours prescribed by clause 9 are both the maximum number of ordinary hours that may be worked in a week by a full-time employee as well as the minimum number of ordinary hours that may be worked. That is, clause 9 has the effect of requiring an employer to engage the employee for at least (and at most) the relevant number of ordinary hours and the employee must perform at least (and at most) that number of ordinary hours of work. Clause 13.2 is erroneous to the extent that it states that 38 or the smaller relevant number is the *maximum* number of

ordinary hours of work per week for a full-time employee. Such a statement is inconsistent with clause 9. The number of hours prescribed is in fact *the* number of ordinary hours of work for a full-time employee.

140. Accordingly, clause 13.2 should be deleted.

Clause 13.3 – Ordinary hours of work (employees not engaged on shifts)

141. Clause 13.3 of the Exposure Draft states as follows:

> **13.3** The maximum number of ordinary hours of work per week for a part-time employee is as agreed under clause 10.

142. No such provision appears in the corresponding clause 25 of the Award. We propose that it be deleted on the following bases.

143. **Firstly**, the clause is not necessary. Clause 10.8 of the Exposure Draft makes clear that the ordinary hours of a part-time employee are those that are agreed under clause 10.4 or varied under clause 10.5 (and, for the reasons set out in our submission above, clause 10.6). Clause 10.8 (including our proposed amendments above) states:

> **10.8** All time worked in excess of the ~~number of~~ ordinary hours agreed under clause 10.4 or varied under clause 10.5 or clause 10.6 is overtime and must be paid at the overtime rate in accordance with clause 22 – Overtime.

144. Clause 13.3 need not repeat that which is already articulated in the above provision. Such repetition serves to unnecessarily lengthen the instrument.

145. **Secondly**, clause 13.3 is not accurate. The hours agreed (and varied, if relevant) under clause 10 are both the maximum number of ordinary hours that may be worked in a week by a part-time employee as well as the minimum number of ordinary hours that may be worked. That is, an agreement reached between an employer and part-time employee pursuant to clause 10 has the effect of requiring an employer to engage the employee for at least (and at most) the specified number of ordinary hours and the employee must perform at least (and at most) that number of ordinary hours of work. Clause 13.3 is erroneous to the extent that it states that the number of hours agreed under clause 10 is the *maximum* number of ordinary hours of work per week for a

part-time employee. Such a statement is inconsistent with clause 10. The number of hours agreed is in fact *the* number of ordinary hours of work for a part-time employee.

146. Accordingly, clause 13.3 should be deleted.

Clause 13.5 – Ordinary hours of work (employees not engaged on shifts)

147. Clause 25.1(b) of the Award states as follows: (emphasis added)

> **(b)** The ordinary hours of work may be worked from 7.00 am to 7.00 pm Monday to Friday and from 7.00 am to 12.30 pm Saturday. Provided that where an employee works in association with other classes of employees who work ordinary hours outside the spread prescribed by this clause, the hours during which ordinary hours may be worked are as prescribed by the modem award applying to the majority of employees in the workplace.

148. Clause 25.1(b) permits an employee to work ordinary hours commencing at 7.00 am and/or concluding at 7.00 pm Monday to Friday. Similarly, it allows an employee to work ordinary hours commencing at 7.00 am and/or concluding at 12.30 pm.

149. The legal effect of clause 13.5 of the Exposure Draft potentially deviates from this. It is in the following terms: (emphasis added)

> **13.5** Ordinary hours may be worked between:
>
> **(a)** 7.00 am and 7.00 pm Monday to Friday; and
>
> **(b)** 7.00 am and 12.30 pm on Saturday.

150. Read literally, the use of the word 'between' has the effect of permitting an employee to work ordinary hours:

- From 7.01 am Monday to Friday;
- Up to 6.59 pm Monday to Friday;
- From 7.01 am on Saturday; and
- Up to 12.29 pm on Saturday.

151. In order to restore the legal effect of the Award, clause 13.5 of the Exposure Draft should be amended as follows:

> **13.5** Ordinary hours may be worked ~~between~~:
>
> **(a)** from 7.00 am ~~and~~ to 7.00 pm Monday to Friday; and
>
> **(b)** from 7.00 am ~~and~~ to 12.30 pm on Saturday.

Clause 13.6 – Ordinary hours of work (employees not engaged on shifts)

152. Clause 25.2 of the Award permits the spread of hours to be altered in the following terms: (emphasis added)

> **25.2** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances between the employer and an individual employee.

153. Such a provision is common to many modern awards. It allows an employer and employee(s) to agree to extend or reduce the spread of hours at either end of that spread on one or more days of the week. For example, agreement may be reached to extend the spread such that ordinary hours can be worked until 8.00 pm on Monday to Friday. Alternatively, agreement may be reached to extend the spread to 6.00 am on Wednesdays.

154. Clause 13.6 of the Exposure Draft potentially deviates from this. It states: (emphasis added)

> **13.6** The spread of ordinary hours in clause 13.5 may be altered by up to one hour at either end of a day: …

155. The words "of a day" underlined above do not appear in the Award. We consider that they are problematic for the reasons that follow.

156. **Firstly**, their meaning (or intended meaning) is unclear. The words have unnecessarily been introduced in a well-known provision and are potentially confusing. On that basis alone, we submit that they should not be retained.

157. **Secondly**, we consider that it may be arguable that the words place a limitation on the scope of agreement that may be reached between an employer and

employee(s) to alter the spread by requiring that such agreement must be limited to a particular day. For instance, we are concerned that the provision may be construed as stating that an agreement can relate only to extending the spread of hours to 8.00 pm on Mondays and that a separate agreement must be reached to extend the spread of hours to 8.00 pm on each other day of the week. A single agreement could not be reached to extend the spread of hours to 8.00 pm on every day of the week. If the provision were construed to limit the scope of any agreement such that it applied only to a particular date (that is, it could relate only to Wednesday of next week but a separate agreement would be required in relation to the following Wednesday), that would cause us even greater concern.

158. Given the ambiguity introduced by the redrafted provision as compared with the current clause, we submit that clause 13.6 of the Exposure Draft be amended as follows:

> **13.6** The spread of ordinary hours in clause 13.5 may be altered by up to one hour at either end <u>of the spread</u> ~~of a day~~: …

Clause 13.6(a) – Ordinary hours of work (employees not engaged on shifts)

159. Clause 13.6(a) of the Exposure Draft is in the following terms (emphasis added)

> The spread of ordinary hours in clause 13.5 may be altered by up to one hour at either end of a day:
>
> **(a)** by agreement between the employer and the <u>majority of employees at the workplace covered by this award</u>; or …

160. Clause 13.6(a) could be read in one of two ways.

161. One view, it enables agreement between the employer and the majority of all employees employed in a workplace that is covered, at least in part, by the Exposure Draft. That is, if some employees in a workplace are covered by the instrument by virtue of which the employer is also covered by the instrument, the spread of hours in clause 13.5 may be varied if agreement is reached with the majority of *all* employees employed at the workplace, irrespective of whether they are covered by this award or another award. This is a self-evidently an absurd and illogical outcome.

162. Alternatively, clause 13.6(b) contemplates agreement between the employer and the majority of employees covered by the Exposure Draft at the workplace. This is a different proposition to the one above. It involves a consideration of only those employees covered by the instrument that are employed at the workplace.

163. In either case, the provision does not limit the relevant group of employees to those affected. That is, when assessing whether the majority of employees have agreed, consideration must be given to all employees that fall within the relevant group identified above, not just those that would be impacted by the proposed change to the spread of hours.

164. Clause 25.2 of the Award does not give rise to any of the aforementioned difficulties. It states: (emphasis added)

> **25.2** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances between the employer and an individual employee.

165. The Exposure Draft deviates from clause 25.2 of the Award in the following ways.

166. **Firstly**, under the Award, agreement must be reached with the majority of employees *concerned*. That is, the relevant group of employees to be considered are those that would be affected or for whom there would be some implication if the spread were altered. For instance, an employer may seek to extend the spread of hours on a Saturday. Under the current clause, it is not necessary to reach agreement with the majority of employees including those who work only on Monday – Friday. Rather, agreement must be reached with the majority of employees concerned; being those who are in fact required to work on Saturday and may be affected by the change.

167. **Secondly**, and by extension, agreement need only be reached with the majority of employees covered by the Award at the workplace. The obligation to reach agreement with the majority of employees does not include a consideration of

those that are not covered by the instrument; a reading that is open on the terms of clause 13.6(a) of the Exposure Draft as set out above.

168. For the reasons here set out, clause 13.6(a) should be amended as follows:

> **13.6** The spread of ordinary hours in clause 13.5 may be altered by up to one hour at either end of a day:
>
> **(a)** by agreement between the employer and the majority of employees concerned ~~at the workplace covered by this award~~; or …

Clause 13.6 – Ordinary hours of work (employees not engaged on shifts) – question in the Exposure Draft

169. Clause 13.6 of the Exposure Draft contains the following question:

> Parties are asked to confirm whether the spread of hours can be increased by one hour at both ends.

170. It is Ai Group's position that clause 13.6 of the Exposure Draft (and clause 25.2 of the Award) permits an increase to the spread of hours by one hour at both ends.

Clause 13.7 – Setting ordinary hours by a different award

171. Clause 25.1(b) of the Award has been carefully crafted to have regard to its occupational coverage, by virtue of which it covers employers and employees in a very broad range of industries. A specific flexibility has been incorporated in the Award in relation to hours of work in order to reflect this: (emphasis added)

> **(b)** The ordinary hours of work may be worked from 7.00 am to 7.00 pm Monday to Friday and from 7.00 am to 12.30 pm Saturday. Provided that where an employee works in association with other classes of employees who work ordinary hours outside the spread prescribed by this clause, the hours during which ordinary hours may be worked are as prescribed by the modem award applying to the majority of employees in the workplace.

172. Clause 25.1(b) relates to a specific individual employee. It applies where that employee works in association with other classes of employees who work ordinary hours outside the ordinary hours prescribed by clause 25.1(b). In such circumstances, the hours during which that employee may work ordinary hours

are as prescribed by the modern award applying to the majority of employees in the workplace.

173. The corresponding clause 13.7 of the Exposure Draft is in the following terms:

> **13.7 Setting ordinary hours by a different award**
>
> **(a)** Clause 13.7 applies if each of the following applies:
>
> **(i)** one or more employees covered by this award work closely with other employees covered by a different modern award; and
>
> **(ii)** the majority of employees at the workplace are covered by a modern award that sets a spread of hours other than that set out in clause 13.5.
>
> **(b)** The employer may direct employees to work the spread of ordinary hours in the modern award that covers the majority of employees at the workplace.

174. The proposed clause is problematic in various respects.

175. **Firstly**, as outlined above, clause 25.1(b) of the Award is expressed as applying to a specific employee and if the relevant criteria is met in relation to that employee, he or she is exempted from the spread of hours prescribed by the Award. The application of the clause is clear.

176. By contrast, clause 13.7(a)(i) of the Exposure Draft is expressed to apply if "one or more employees covered by this award" satisfy the requirements specified in clauses 13.7(a)(i) and 13.7(a)(ii). The clause does not then specify which employees the provision in fact applies to. Clause 13.7(b) goes on to state that the employer may direct 'employees' to work certain hours however it is again not clear which employees can be so directed. We assume that it is intended that the employer may only so direct those employees who satisfy the requirements at clauses 13.7(a)(i) and 13.7(a)(ii), however this is by no means clear.

177. **Secondly**, clause 25.1(b) of the Award provides an exemption to the application of the spread of hours stipulated by the Award where an employee works 'in association with' other classes of employees who work outside the spread of hours prescribed by it. The requirement that the employees be

working ‘in association with’ other classes of employees suggests that there must be some connection between an employee to whom the Award applies and the other classes of employees. The words suggest that the employee must be working in conjunction with another class of employees as described.

178. The Exposure Draft instead requires that the employees ‘work closely with’ other employees. We are concerned that this alters the application of the clause by narrowing its scope. The proposed clause requires not only a connection with other employees, but that the employee work ‘closely’ with the other employees. It would appear that simply working in conjunction with them is insufficient.

179. For instance, in an office environment, a clerical employee may work ‘in association with’ other employees in the sense that part of the employee’s role involves providing administrative support to those employees as and when required. However, that employee may not be deemed one who ‘works closely with’ other employees. To that extent, the legal effect of the current clause has been altered.

180. **Thirdly**, clause 25.1(b) of the Award applies in the following circumstances:

- An employee works in association with other classes of employees; and
- Those other employees work ordinary hours outside the spread prescribed by clause 25.1(b).

181. The second element above has been altered in the Exposure Draft. Clause 13.7(b) is instead expressed as applying where:

- One or more employees works closely with employees covered by a different modern award; and
- The majority of employees at the workplace are covered by a modern award that sets a spread of hours other than that set out in clause 13.5(a).

182. Unlike the Award, the Exposure Draft:

- Does not require a consideration of whether the relevant group of employees in the workplace is in fact *working* ordinary hours outside the spread of hours prescribed by clause 25.1(b). All that is required is that the majority are covered by another award that prescribes a different spread to that contained in the Exposure Draft. The employee covered by the Exposure Draft would be exempt from its spread of hours even in circumstances where the employees covered by the other award are working within the same spread of hours, notwithstanding that the award covering them contains a different spread.

- Requires a consideration of whether the *majority* of employees at the workplace are covered by a modern award that sets a spread other than that contained in the Exposure Draft. This deviates from the Award, which only requires that the employees in association with whom the clerical employee works are performing work outside the spread prescribed by clause 25.1(b). The employer's right to require the clerical employee to work ordinary hours in accordance with another award is not limited to circumstances in which the majority of employees is covered by an award that sets a different spread of hours.

183. In these respects, the application of the Exposure Draft provision is materially different to that contained in the Award.

184. **Fourthly**, clause 13.7(b) of the Exposure Draft grants an employer the right to direct employees 'to work the spread of ordinary hours' in the modern award that covers the majority of employees at the workplace.

185. The spread of hours prescribed in an award establishes certain parameters within which ordinary hours may be worked. An employee does not as such 'work the spread of ordinary hours'. Rather, an employee may perform ordinary hours of work within that spread. The expression used in the Exposure Draft is therefore erroneous.

186. For all of the reasons stated above, clause 13.7 should be replaced with the following:

> **13.7 Setting ordinary hours by a different award**
>
> **(a)** Clause 13.7 applies to an employee who works in association with other employees who work ordinary hours outside the spread of hours prescribed by clause 13.5.
>
> **(b)** The hours during which ordinary hours may be worked by the employee are as prescribed by the modern award applying to the majority of employees in the workplace.

Clause 13.7 – Setting ordinary hours by a different award – Example

187. In light of our submissions above, the example should be amended as follows to ensure that it properly reflects the operation of clause 13.7:

> EXAMPLE: ~~Employees~~ An employee covered by this award works in association with employees who ~~are covered by an award that sets ordinary hours of~~ work ordinary hours between 5.30 am and 6.30 pm Monday to Friday. The award that ~~sets ordinary hours of work between 5.30 am and 6.30 pm Monday to Friday~~ covers the majority of employees at the workplace sets ordinary hours of work between 5.30 am and 6.30 pm Monday to Friday. The employer may direct ~~that employees~~ the employee covered by this award to work ordinary hours between 5.30 am and 6.30 pm Monday to Friday (rather than the spread set out in clause 13.5).

Clause 13.8 – Ordinary hours of work (employees not engaged on shifts)

188. Clause 25.2 of the Award states that ordinary hours are to be worked continuously: (emphasis added)

> **25.2** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances between the employer and an individual employee.

189. In essence, clause 25.2 requires that ordinary hours must be worked without interruption, with the exception of meal breaks. It has the effect of precluding arrangements such as broken shifts of ordinary hours, which are expressly contemplated in some modern awards. Accordingly, ordinary hours of work must be arranged within the parameters set by clause 25 and those hours must be worked continuously.

190. Clause 13.8 of the Exposure Draft purports to express this requirement in different terms: (emphasis added)

> **13.8** Ordinary hours of work are continuous, except for rest breaks and meal breaks as specified in clause 15 – Breaks (employees not engaged on shifts).

191. Put simply, we do not consider that clause makes sense. The clause does not purport to impose an obligation or create an entitlement. It simply states that ordinary hours of work are continuous but in so doing but does not make clear that this is intended to be a reference to the ordinary hours worked by a specific employee. This is important because 'ordinary hours' as a general concept relates instead to the parameters set by the Exposure Draft within which an employee may perform ordinary hours of work.

192. In order to clarify the provision and improve its readability, we suggest that it be amended as follows:

> **13.8** Ordinary hours of work must be worked continuously ~~are continuous~~, except for rest breaks and meal breaks as specified in clause 15 – Breaks (employees not engaged on shifts).

Clause 13.8 – Ordinary hours of work (employees not engaged on shifts)

193. Clause 25.2 of the Award makes clear that ordinary hours are to be worked at the discretion of the employer. That is, ordinary hours are to be worked at the employer's prerogative, subject to any constraints imposed on that prerogative by the Award: (emphasis added)

> **25.2** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances between the employer and an individual employee.

194. Neither clause 13.8 of the Exposure Draft nor any other provision appearing under clause 13 contain the underlined words. It is essential that they be reinserted.

195. Presently, clause 25.2 creates an award derived right for an employer to direct its employees to perform ordinary hours of work at its discretion. The inclusion of these words is important for the purposes of ensuring that the Exposure Draft

is simple and easy to understand. The words make abundantly clear that it is for an employer to determine when ordinary hours of work will be performed. Similar wording is also contained in other modern awards. For instance, clause 36.2(c) of the *Manufacturing and Associated Industries and Occupations Award 2010* states: (emphasis added)

> **(c)** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.

196. Accordingly, clause 13.8 of the Exposure Draft should be amended as follows (having regard also to the change we have proposed above):

> **13.8** Ordinary hours of work must be worked continuously at the discretion of the employer ~~are continuous~~, except for rest breaks and meal breaks as specified in clause 15 – Breaks (employees not engaged on shifts).

Clause 14.2 – Rostered days off (employees not engaged on shifts)

197. Clause 14.2 of the Exposure Draft is a new provision; no corresponding clause appears in the Award. It is in the following terms:

> **14.2** An employer may roster employees according to a rostered day off system in such a way that employees:
>
> **(a)** work longer hours each day during the weekly hours of duty; and
>
> **(b)** take a day off at some later time in the cycle.

198. We consider that the provision is problematic for the reasons that follow.

199. **Firstly,** the provision may have the effect of limiting the circumstances in which an entitlement to a rostered day off may arise.

200. Clause 25.1(a) of the Award contemplates an ability to average an employee's ordinary hours and the implementation of a roster *cycle*; that is, a period of time over which ordinary hours may be averaged:

> **(a)** The ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days, or an average of 38 over the period of an agreed roster cycle.

201. The provision does not require that an employer must implement and publish a roster in respect of its employees, which specifies the days and times at which they will be required to work.

202. Clause 25.3 of the Award proceeds on the basis that an employee's ordinary hours may be structured at the discretion of the employer such that an employee may be entitled to a rostered day off during their work cycle. In such circumstances, the employee must be given four weeks' notice of the day upon which the rostered day off is to be taken:

> **25.3 Notice of rostered days off**
>
> Where an employee is entitled to a rostered day off during the employee's work cycle, the employer must give the employee four weeks' notice in advance of the weekday the employee is to take off.

203. Again, the provision does not mandate the implementation of a roster in order for an employee to be entitled to a rostered day off.

204. We are concerned that clause 14.2 may be read to limit the circumstances in which an employee may be entitled to a rostered day off such that it may only arise:

- Where an employer puts in place a physical roster of its employees working hours; and
- Where that roster has the effect of implementing a 'rostered day off *system'*.

205. We do not consider that any such limitations arise from the Award and so to that extent, its legal effect has been changed. This is because neither clause 25.3 of the Award nor any other prescribe the circumstances in which an entitlement to a rostered day off may arise or the manner in which a rostered day off may be given by an employer to its employee(s).

206. **Secondly**, the provision is ambiguous. For instance, it states that an employee may work 'longer' hours each day "during the weekly hours of duty". The

practical application of this clause is unclear as the obvious question arises: an employee may work 'longer' hours each day compared to what standard?

207. We understand that the intent of clause 14.2 is to make express that an employee's ordinary hours may be arranged such that an entitlement to a rostered day off arises. We acknowledge that the Award does not at present contain such a clause but rather includes provisions that proceed on the basis that this is so.

208. Should such a clause be included in the Exposure Draft, we submit that it ought not seek to limit the manner in which a rostered day off may be afforded to an employee. The Commission has not here undertaken any consideration of the practical operation of the current clauses and the manner in which they are applied across the very wide range of industries covered by the Award. A provision that disrupts existing arrangements should not be introduced.

209. Accordingly, we suggest that clause 14.2 of the Exposure Draft be replaced with the following:

> **14.2** An employer may give an employee a rostered day off during the employee's work cycle.

Clause 14.3 – Rostered days off (employees not engaged on shifts)

210. Clause 25.4(f) of the Award provides an entitlement to 12 rostered days off in a 12 month period where an employee works on a rostered day off basis each 20 day cycle:

> **(f)** Employees who work on a rostered day off basis <u>each 20 day cycle</u> are entitled to 12 rostered days off in a 12 month period.

211. In essence, if an employee works in a 20 day cycle 'on a rostered day off basis' (that is, in each cycle the employee's ordinary hours are arranged such that the employee is entitled to rostered days off), over the course of a 12 month period the employee is entitled to 12 rostered days off.

212. Clause 14.3 of the Exposure Draft corresponds with the above clause and is in the following terms:

> **14.3** An employee who works on a rostered day off basis over a 20 day roster cycle is entitled to 12 rostered days off over each 12 month period.

213. The provision does not make clear that the entitlement to 12 rostered days off arises only if the employee works on a rostered day off basis during each and every 20 day cycle. Rather, it appears to arise where an employee works on a rostered day off basis over just one 20 day roster cycle. Quite clearly the legal effect of the Award has been altered.

214. Accordingly, and consistent with cluse 25.4(f) of the Award, clause 14.3 of the Exposure Draft should be amended as follows:

> **14.3** An employee who works on a rostered day off basis over each ~~a~~ 20 day roster cycle is entitled to 12 rostered days off over each 12 month period.

Clause 15.2 – Breaks (employees not engaged on shifts)

215. Clause 15.2 of the Exposure Draft is in the following terms:

> **15.2** An employee who works the number of hours on any one day specified in an item of column 1 of Table 2 – Entitlements to rest break(s) is entitled to a break or breaks as specified in column 2.

216. Clauses 26.2(a) and 26.2(b) of the Award make clear that the entitlement to a rest break arises where an employee is *required* to work the specified number of ordinary hours. The entitlement to a rest break does not arise if the employee elects to work such hours voluntarily.

217. Clause 26.2(a) states: (emphasis added)

> **(a)** An employee must be allowed two 10 minute rest intervals to be counted as time worked on each day that the employee is required to work not less than eight ordinary hours. Each rest interval should be taken at a time suitable to the employer taking into account the needs of the business. If suitable to business operations, the first rest interval should be allowed between the time of commencing work and the usual meal interval and the second rest interval should be allowed between the usual meal and the time of ceasing work for the day.

218. Clause 26.2(b) states: (emphasis added)

> **(b)** An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

219. This element of the Award provisions is not reflected in clause 15.2 of the Exposure Draft, thus altering the legal effect of the clauses. An entitlement to a rest break would arise under the Exposure Draft in circumstances where such an entitlement would not arise under the Award.

220. Accordingly, clause 15.2 of the Exposure Draft should be amended as follows:

> **15.2** An employee who is required to work ~~works~~ the number of hours on any one day specified in an item of column 1 of Table 2 – Entitlements to rest break(s) is entitled to a break or breaks as specified in column 2.

Clause 15.2 – Breaks (employees not engaged on shifts)

221. Clause 15.2 of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee.

222. The clause states:

> **15.2** An employee who works the number of hours on any one day specified in an item of column 1 of Table 2 – Entitlements to rest break(s) is entitled to a break or breaks as specified in column 2.

223. The purpose of clause 15.2 is simply to create an entitlement to rest breaks in the circumstances prescribed in the table that follows. In our view, the following preamble would be a preferable and a far more effective substitute for that found in the Exposure Draft (having regard also to the amendments we have proposed above):

> **15.2** An employee is entitled to a rest break in accordance with the table below if required to work the number of hours specified on any one day:

Clause 15.2 – Breaks (employees not engaged on shifts) – Table 2

224. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1' and 'Column 2') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 15.2 – Breaks (employees not engaged on shifts) – Table 2

225. Clause 26.2(b) of the Award grants an employee an entitlement to one 10 minute rest break to an employee who is required to work more than three ordinary hours: (emphasis added)

> **(b)** An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

226. As can be seen, the entitlement to a rest break arises once an employee works for three hours and one minute. The entitlement does not arise where an employee performs exactly three hours of work.

227. Clause 15.2 of the Exposure Draft deviates from this by granting an employee who performs three hours of work to a 10 minute paid rest break. The second row of table 2 applies where an employee works:

> At least 3 but not more than 8 on Monday to Friday

228. The redrafted provision has the effect of granting an entitlement in circumstances where one does not arise under the Award.

229. Accordingly, Table 2 should be amended as follows:

> ~~At least~~ More than 3 but not more than 8 on Monday to Friday

Clause 15.2 – Breaks (employees not engaged on shifts) – Table 2

230. Clause 26.2(b) of the Award makes clear that the entitlement to one 10 minute rest break arises where an employee works the requisite number of *ordinary* hours. The provision does not apply in respect of overtime: (emphasis added)

> **(b)** An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

231. We are concerned that the absence of the underlined words in clause 15.2 of the Exposure Draft may give rise to disputation as to whether the entitlement to the breaks arise where overtime is worked. There is certainly no indication on the face of the provision that it does not. Any such interpretation would result in a change to the legal effect of the current clause.

232. Accordingly, Table 2 should be amended as follows:

> More than 3 ordinary hours but not more than 8 ordinary hours on Monday to Friday

Clause 15.2 – Breaks (employees not engaged on shifts) – Table 2

233. Clause 26.2(a) of the Award makes clear that the entitlement to two 10 minute rest breaks arises where an employee works the requisite number of *ordinary* hours. The provision does not apply in respect of overtime: (emphasis added)

> **(a)** An employee must be allowed two 10 minute rest intervals to be counted as time worked on each day that the employee is required to work not less than eight ordinary hours. Each rest interval should be taken at a time suitable to the employer taking into account the needs of the business. If suitable to business operations, the first rest interval should be allowed between the time of commencing work and the usual meal interval and the second rest interval should be allowed between the usual meal and the time of ceasing work for the day.

234. We are concerned that the absence of the underlined words in clause 15.2 of the Exposure Draft may give rise to disputation as to whether the entitlement to the breaks arise where overtime is worked. There is certainly no indication on the face of the provision that it does not. Any such interpretation would result in a change to the legal effect of the current clause.

235. Accordingly, Table 2 should be amended as follows:

More than 8 ordinary hours on Monday to Friday

Clause 15.4 – Breaks (employees not engaged on shifts)

236. Clause 26.1 of the Award requires the payment of a penalty rate where an employee is required to work through their meal break: (emphasis added)

> **26.1** Subject to the provisions of clause 28—Shiftwork of this award, a meal period of not less than 30 minutes and not more than 60 minutes must be allowed to each employee. Such meal period must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break. Employees required to work through meal breaks must be paid double time for all time so worked until a meal break is allowed.

237. The provision specifies the period of time during which the higher rate is payable; that is, during the meal break through which they are required to work and thereafter until the break is allowed.

238. Clause 15.4 of the Exposure Draft is in the following terms:

> **15.4** An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate until a meal break is taken.

239. The redrafted clause does not specify *when* the higher rate is payable. We are concerned that as a result it may be read to require, for instance, that the higher rate is payable for the entire duration of the shift until the meal break is taken. This would result in a change to the legal effect of the current clause.

240. Accordingly, clause 15.4 should be amended as follows:

> **15.4** An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate for time so worked until a meal break is taken.

Clause 15.4 – Breaks (employees not engaged on shifts)

241. Clause 26.1 of the Award requires the payment of a penalty rate where an employee is required to work through their meal break, until the employee is allowed such a break: (emphasis added)

> **26.1** Subject to the provisions of clause 28—Shiftwork of this award, a meal period of not less than 30 minutes and not more than 60 minutes must be allowed to

each employee. Such meal period must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break. Employees required to work through meal breaks must be paid double time for all time so worked until a meal break is allowed.

242. In effect, the provision requires an employer to pay the prescribed penalty rate until the employer allows the employee to take a meal break. This is to be distinguished from an obligation to pay the higher rate until the break is in fact *taken* by the employee, as stated in clause 15.4 of the Exposure Draft:

> **15.4** An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate until a meal break is taken.

243. There may be circumstances in which an employer allows an employee to take a meal break by indicating to the employee that they may do so at a certain point in time, however the employee chooses not to do so. Under the current clause, an employer would not there be required to continue paying the higher rate. The Exposure Draft, however, would mandate that the employer do so until the employee in fact *takes* the break. The legal effect of the provision presently found in the Award has been altered in this way.

244. Accordingly, clause 15.4 should be amended as follows:

> **15.4** An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate until a meal break is allowed ~~taken~~.

5. PART 4 – MINIMUM WAGES AND ALLOWANCES

Clause 16.1 – Minimum wages

245. Clause 16.1 of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee.

246. The clause states:

> **16.1** An employer must pay an employee who is 21 years of age or older the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 3 – Minimum rates.

247. The purpose of clause 16.1 is simply to create an entitlement or an obligation to pay certain rates. In our view, the following preamble would be a preferable and a far more effective substitute for that found in the Exposure Draft:

> **16.1** An employer must pay a full-time employee aged 21 years or older the relevant minimum weekly rate below for ordinary hours of work. A part-time or casual employee aged 21 years or older must be paid the relevant minimum hourly rate below for ordinary hours of work. Clause 16.1 does not apply to employees referred to in clause 16.5 and clause 16.6.

248. We consider that it is self-evident from the table that an employer is to pay an employee the rate prescribed in relation to the relevant classification. Indeed the Award does not presently contain any preamble at clause 16. We are not aware of any confusion, ambiguity or disputation that has arisen as a result.

249. In addition, the preamble we have proposed makes clear that the rates here prescribed are payable for ordinary hours of work; a matter that is relevant to the Commission's consideration of whether Note 2 is necessary, which we shortly come to. The proposed preamble also makes clear that the minimum rates there set out are not payable to trainees and employees who are eligible for a supported wage.

Clause 16.1 – Minimum wages

250. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1', 'Column 2' and 'Column 3') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 16.1 – Minimum wages – Note 2

251. The following note appears at clause 16.1, below the table of minimum weekly and hourly rates:

> NOTE 2: Provisions for calculating wages for casual employees are at clause 11 – Casual employment. Overtime rates are specified in clause 22 – Overtime (employees not engaged on shifts) and clause 29 – Overtime for shiftwork. Penalty rates are specified in clause 21 – Penalty rates (employees not engaged on shifts) and clause 26 – Penalty rates for shiftwork.

252. The note purports to direct the reader to various other parts of the instrument that may require the payment of other amounts. We do not consider that it is useful for the reasons that follow.

253. **Firstly**, we do not consider that the note is necessary. Such notes do not appear in most modern awards at present. Certainly no such note appears at clause 16 of the Award. We are not aware of any confusion that has arisen as a result. The Exposure Draft must necessarily be read as a whole. When ascertaining the appropriate amount payable to an employee, regard must be had to all relevant provisions of the instrument. The addition of the schedule of hourly rates (Schedule B, as referred to in Note 3) in and of itself renders this a simpler task than might otherwise have been the case. At the very least it alerts a reader of the Exposure Draft that different rates pay be payable in different circumstances.

254. **Secondly**, we think it is particularly unhelpful to insert a note that purports to direct a reader of the instrument to various other parts of the instrument that require the payment of different amounts, however it does not do so exhaustively. That is, there are various additional provisions of the Exposure Draft that require the payment of an amount other than the minimum rates prescribed by clause 16.1, such as:

- Employees eligible for a supported wage (see Schedule D);
- Employees undertaking a traineeship (see Schedule E);
- Employees remunerated by way of an annual salary (see clause 18);
- Employees eligible for any or all of the allowances prescribed by the Exposure Draft (see clause 19);
- Employees not engaged on shifts who have not had at least 10 consecutive hours off duty in accordance with clause 23.3 (see clause 23.4(a));
- Employees engaged on shifts and required to work through their meal break (see clause 28.3);
- Employees engaged on shifts who have not had at least 8 consecutive hours off duty in accordance with clause 31.2 (see clause 31.5(a)); and
- Employees entitled to transport reimbursement for shiftwork (see clause 32).

255. As can be seen, numerous provisions of the Exposure Draft must be considered in order to ascertain the amount payable to an employee in particular circumstances. This is necessarily the case with any instrument such as an award or enterprise agreement that sets out a very significant number of terms and conditions for a broad range of employees. It is inevitable that the reader will be required to consider the instrument as a whole and identify all relevant provisions. The insertion of countless notes in the instrument that purport to identify some but not all potentially relevant clauses does not circumvent this need and is, in our view, capable of misleading or confusing the reader.

256. **Thirdly**, we refer to the Guidelines, which at paragraph 3.18 state:

> Notes and Examples should not be overused as they can be disruptive to the flow of the text.

257. The Exposure Draft contains some 40 notes. With respect, in our view they have been "overused" and are "disruptive to the flow of the text". In this instance, the note is particularly unhelpful for the reasons we have here set out.

258. Accordingly, Note 2 at clause 16.1 should be deleted.

Clause 16.2 – Minimum wages

259. We refer to the submissions we have earlier made regarding clause 2 – definitions – table 3 – minimum wages. For the reasons there set out, clause 16.2 should be amended as follows:

> **16.2** In calculating years for the purposes of ~~Table 3~~ clause 16.1 – Minimum wages, any service in the classification level, as described in Schedule A, including administrative and clerical experience with a previous employer, counts towards a year of service.

Clause 16.3 – Minimum wages

260. Clause 15.3 of the Award deals with the manner in which an employee's classification is to be determined. Specifically, it prescribes the approach to be adopted in calculating the relevant number of 'years'. It states: (emphasis added)

> **15.3** 'Year' in respect to the minimum weekly wages in clause 16 shall mean any service within the classification level of clerical work, including administrative duties of a clerical nature. The onus is on the employee to provide reasonable evidence to verify their service within the industry.

261. Clause 16.3 of the Exposure Draft corresponds with the underlined portion of clause 15.3 above. It is in the following terms:

> **16.3** An employer may require an employee to provide reasonable evidence to verify their service as mentioned in clause 16.2.

262. Clause 15.3 of the Award, by its very terms, requires an employee to provide reasonable evidence to verify their prior service. That is, it imposes a requirement upon employees to provide the requisite evidence. The legal effect of clause 16.3 differs from this. It gives an employer the right to require an employee to provide reasonable evidence, however it does not require an employee who has been so requested to subsequently provide the evidence.

Unlike the Award, clause 16.3 of the Exposure Draft does not impose any obligation on an employee to in fact provide the necessary evidence.

263. For the purposes of remedying this substantive change, clause 16.3 should be amended as follows:

> **16.3** If required by their employer, ~~An employer may require~~ an employee ~~to~~ must provide reasonable evidence to verify their service as mentioned in clause 16.2.

Clause 16.4 – Junior employees

264. We refer to the submissions we have earlier made regarding clause 2 – definitions – table 3 – minimum wages. For the reasons there set out, clause 16.4 should be amended as follows:

> **16.4 Junior employees**
>
> An employer must pay an employee who is aged as specified in column 1 of Table 4 – Junior rates, at least the percentage specified in column 2 of the minimum rate that would otherwise be applicable under ~~Table 3 – Minimum rates~~ clause 16.1 – Minimum wages: …

Clause 16.4 – Junior employees

265. Clause 16.4 of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee, leaving aside junior employees (that is, employees aged 20 or under).

266. The clause states:

> **16.4** An employer must pay an employee who is aged as specified in column 1 of Table 4 – Junior rates, at least at the percentage specified in column 2 of the minimum rate that would otherwise be applicable under Table 3 – Minimum rates.

267. This is to be compared to clause 18 of the Award, which simply states as follows:

> Junior employees must be paid the following percentage of the appropriate rate in clause 16.

268. The purpose of clause 16.4 of the Exposure Draft is simply to create an entitlement or an obligation to pay certain rates to junior employees. In so doing, the clause must necessarily refer to clause 16.1, which contains the adult minimum wages of which a proportion is payable to junior employees. We refer to our submissions directly above in this regard.

269. In our view, the following succinct but clear preamble would be a preferable and far more effective substitute for that found in the Exposure Draft:

> **16.4** An employer must pay an employee aged 20 years and under the relevant percentage of the appropriate minimum hourly rate contained in clause 16.1 – Minimum wages: …

Clause 16.4 – Junior employees

270. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1' and 'Column 2') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 16.4 – Junior employees

271. The second column of the table refers to the "% of weekly rates". Given that the Exposure Draft consistently expresses amounts payable as hourly rates, and clause 16.1 contains such hourly rates (as compared to the Award which only sets out minimum weekly rates), we submit that the heading should be replaced with "% of minimum hourly rate". This is also consistent with the submission above.

272. Importantly, this would not necessitate an additional set of calculations in circumstances where an employee works less than 38 ordinary hours in a week. Rather, an employer or employee can simply calculate the relevant hourly rate and multiply it by the number of hours worked in order to ascertain the amount payable a junior employee in a given week.

Clause 17.2(b) – Pay period

273. Clause 23.1 of the Award deals with employees' pay periods. It states: (emphasis added)

> **23.1** Employees must be paid their wages weekly or fortnightly as determined by the employer or monthly if mutually agreed. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears.

274. We interpret clause 23.1 of the Award to enable agreement either between an employer and an individual employee or by agreement with the majority of employees. We refer to our submissions above regarding clause 7.2 of the Exposure Draft in this regard.

275. Clause 17.2(b) of the Exposure Draft, which corresponds with clause 23.1 of the Award, is in the following terms:

> **(b)** The employer and employees may agree to monthly pay periods on the basis of 2 weeks in advance and 2 weeks in arrears.

276. Consistent with the amendment we have proposed to clause 7.2 of the Exposure Draft, clause 17.2(b) should be amended as follows:

> **(b)** The employer ~~and employees~~ may agree to monthly pay periods with the majority of employees concerned or an individual employee on the basis of 2 weeks in advance and 2 weeks in arrears.

Clause 17.2(b) – Pay period

277. Clause 23.1 of the Award deals with employees' pay periods. It states: (emphasis added)

> **23.1** Employees must be paid their wages weekly or fortnightly as determined by the employer or monthly if mutually agreed. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears.

278. Pursuant to clause 23.1 of the Award, an employer and either the majority of employees or an individual employee may agree to monthly payments. The agreement need only extend to the timing of the payment. The Award does not require that, in reaching agreement, consideration be given to the manner in which the monthly pay cycle will be implemented; that is, it is not required to be the subject of agreement between the employer and employee. Rather the

Award mandates that if agreement to implement a monthly pay cycle is implemented, payment must be made two weeks in advance and two weeks in arrears.

279. The legal effect of clause 17.2(b) appears to deviate from this. It is in the following terms:

> **(b)** The employer and employees may agree to monthly pay periods on the basis of 2 weeks in advance and 2 weeks in arrears.

280. The drafting of the clause suggests that any agreement to implement monthly pay periods must be accompanied by agreement to implement it on the basis of two weeks in advance and two weeks in arrears. That is, in order to introduce monthly pay periods, agreement must be reached that:

- The employee will be paid monthly; and
- Payment will be made two weeks in advance and two weeks in arrears.

281. It would appear that if an employee did not agree to the second element identified above, an employer would be precluded from paying the employee on a monthly basis. The legal effect of such a provision is clearly different from clause 23.1 of the Award.

282. In order to ensure that the legal effect of the current clause is maintained, clause 17.2(b) should be amended as follows:

> **(b)** The employer and employees may agree to monthly pay periods. <u>If such agreement is reached, payment must be made</u> ~~on the basis of~~ 2 weeks in advance and 2 weeks in arrears.

Clause 17.4(a) – Payment of wages under an averaging or banking system

283. Clause 23.4 of the Award contemplates an ability to average an employee's pay in order to avoid fluctuating payments due to fluctuations in that employee's hours of work. It is a provision that was negotiated by Ai Group with multiple unions, and which was inserted into numerous awards by consent. Its redrafting gives rise to the following concerns.

284. **Firstly,** the provision is expressed to apply to all employees, including day workers and shiftworkers. It is in the following terms:

> **23.4 Absences from duty under an averaging system**
>
> Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:
>
> **(a)** The employee will accrue a credit for each day the employee works ordinary hours in excess of the daily average.
>
> **(b)** The employee will incur a debit for each day of absence from duty other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service.
>
> **(c)** An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service) will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was in attendance.

285. Despite this, the corresponding clause 17.4 of the Exposure Draft is limited in its application to day workers and in this way, alters the legal effect of the Award:

> **17.4 Payment of wages under an averaging or banking system**
>
> **(a)** Employees who work weekly hours under an averaging system in clause 13.2 or rostered day off system in clause 14 must be paid according to the average number of hours worked.

286. Both clause 13.2 and clause 14 of the Exposure Draft apply only to employees not engaged on shifts. Further, clause 13.2 does not in fact set out an 'averaging system'. It simply identifies the maximum number of ordinary hours that may be worked in a week by a full-time employee:

> **13.2** The maximum number of ordinary hours of work per week for a full-time employee is 38 or the fewer number considered full-time at the workplace by the employer.

287. We note that we have earlier submitted that this provision should be deleted for the reasons there set out.

288. For completeness we refer to clause 27.1 of the Exposure Draft, which enables the averaging of the ordinary hours of work of an employee engaged on shifts:

27.1 The maximum number of ordinary hours that can be worked in a week is:

(a) an average of 38 hours over a 4 week period; or

(b) an average of 38 hours over a roster period, not exceeding 12 months, as agreed between an employer and the employees.

289. **Secondly**, clause 23.1 of the Award does not mandate that pay be averaged. Rather, it explains how the averaging system works *if* pay is averaged. Notwithstanding this, clause 17.4(a) of the Exposure Draft is expressed to require that any employee who works weekly hours as described be paid according to the average number of hours worked.

290. For these reasons, the existing clause should replace clause 17.4(a) as follows:

17.4 Absences from duty under an averaging system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:

(a) The employee will accrue a credit for each day the employee works ordinary hours in excess of the daily average.

(b) The employee will incur a debit for each day of absence from duty other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service.

(c) An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service) will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was in attendance.

291. Clause 17.4(b) should be renumbered and appear in the following terms, consistent with the current clauses 25.4(d) and (e):

17.5 Where clause 14.6 applies:

(a) No payments or penalty payments are to be made to employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked and will apply the average pay system during the weeks when an employee elects to take a banked rostered day off.

(b) Employees terminating prior to taking any banked rostered day(s) off must receive one fifth of average weekly pay over the previous six months multiplied by the number of banked substitute days.

Clause 18.1(a) – Annual salary instead of award provisions

292. Clause 17.1(a) of the Award identifies those provisions in satisfaction of which an employer may an employee an annual salary. A similar provision appears at clause 18.1(a) of the Exposure Draft, however, due to various changes to the structure and numbering of the Award, certain clauses (or subclauses) that are identified by clause 17.1(a) do not appear in the corresponding Exposure Draft provision. This results in a change to the legal effect of the clause, as it no longer permits an employer to pay an annual salary in satisfaction of the relevant entitlements.

293. The table below sets out the relevant provisions of the Award and the Exposure Draft. We submit that each of the provisions of the Exposure Draft identified should be referred to in clause 18.1(a), with the exception of clause 32 which we later come to.

Current Clause	Exposure Draft Clause
19.1 Transport of employees – shiftworkers	32. Transport reimbursement for shiftwork
27.3 Rest period after overtime	23. Rest period after working overtime (employee not engaged on shifts)
27.5 Time off instead of payment for overtime	24. Time off instead of payment for overtime (employees not engaged on shifts)
27.6 Make-up time	13.10 Make-up time
28. Shiftwork	27. Ordinary hours of work and rostering for shiftwork
27.5 Time off instead of payment for overtime	30. Time off instead of payment for overtime for shiftwork
27.3 Rest period after overtime	31. Rest period after working overtime for shiftwork

Clause 19.1(a)(i) – First aid allowance

294. Pursuant to clause 19.6 of the Award, the first aid allowance is payable to an employee who, in addition to meeting other specified requirements, "is the current holder of appropriate first aid qualifications": (emphasis added)

> **19.6** An employee who has been trained to render first aid, is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance Australia or a similar body and is appointed by an employer to perform first aid duty must be paid a weekly allowance of 1.5% of the standard rate.

295. Clause 19.2(a) of the Exposure Draft specifies the circumstances in which an employee is entitled to the first aid allowance. Under the proposed clause, whilst the employee must have "current first aid qualifications", the provision does not make express that the qualification must be "appropriate": (emphasis added)

> **(a)** Clause 19.2 applies to an employee who:
>
> > **(i)** has current first aid qualifications and training such as a certificate from St John Ambulance Australia or a similar body; and
> >
> > **(ii)** is appointed by the employer to perform first aid duty.

296. It is our understanding that there are various forms of first aid training and qualifications available. For instance, Red Cross[5] offers three types of first aid training courses for the workplace:

- 'Occupational first aid';
- 'Provide an emergency first aid response in an education and care setting'; and
- 'Provide advanced first aid'.

297. It also facilitates various other first aid training courses that relate to specific forms of first aid. For instance, two of its training courses relate to mental health:

- 'Mental health matters'; and
- 'Mental health first aid'.

298. If an employee holds a qualification in first aid that is not "appropriate" for the purposes of rendering first aid the in the particular workplace, under the current clause that employee would not be entitled to the allowance. The legal effect of the proposed clause 19.2(a) differs from the Award to the extent that it no longer prescribes that the qualification must be appropriate. For instance, for the purposes of administering general first aid treatment in an office environment,

[5] Red Cross First Air Courses and Certificates: http://www.redcross.org.au/first-aid.aspx (accessed 12 February 2017).

it is arguable that first aid training that only included mental health matters is not appropriate. The same could be said if the employee held a first aid qualification however it was limited to 'epilepsy management'; another specific form of first aid training offered by Red Cross.

299. For the purposes of ensuring that the scope of the entitlement provided by clause 19.6 of the Award is not expanded, clause 19.2(a)(i) should be amended as follows:

> **(i)** has appropriate current first aid qualifications and training such as a certificate from St John Ambulance Australia or a similar body; and

Clause 19.3 – Higher duties allowance

300. We refer to the submissions we have earlier made regarding clause 2 – definitions – table 3 – minimum wages. For the reasons there set out, clause 19.3 should be amended as follows:

> **19.3 Higher duties allowance**
>
> The employer must pay an employee required to perform any of the duties of a higher classification for more than one day at least the minimum rate applicable to the higher level under ~~Table 3 – Minimum wages~~ clause 16 – Minimum wages.

Clause 19.6(a) – Vehicle allowance

301. Clause 19.4(a) of the Award requires that an employee be paid a vehicle allowance in the following circumstances: (emphasis added)

> **(a)** An employee required by the employer to use the employee's motor vehicle in the performance of duties must be paid the following allowances: …

302. Relevantly, the allowance is payable where the employee is required *by the employer* to use the employee's motor vehicle. The allowance would not be payable if, for instance, the employee deemed it necessary to use their vehicle in the performance of their duties and elected to do so absent a direction to that effect from their employer. That is, an employee who voluntarily elects to use their own vehicle because *they* consider that they are "required" to do so in order to perform their duties is not entitled to the allowance under the Award.

303. The legal effect of clause 19.6(a) deviates from this. This is because the express reference to the employer underlined above has been removed:

> **(a)** An employer must pay an employee who is required to use their own motor vehicle in performing their duties an allowance of:

304. Under the proposed clause, we consider that the employee would be eligible to receive the relevant allowance. Self-evidently, this represents a substantive change to the current Award.

305. Accordingly, clause 19.6(a) should be amended as follows:

> **(a)** An employer must pay an employee who is required by the employer to use their own motor vehicle in performing their duties an allowance of:

Clause 19.7(a)(i) – Living away from home allowance

306. Under clause 19.5(a) of the Award, an employee is entitled to a living away from home allowance if two conditions are met:

- The employee is required by the employer to work temporarily away from the employee's usual place of employment; and
- The employee is, as a result, required to sleep away from the employee's usual place of residence.

307. Clause 19.5(a) is in the following terms: (emphasis added)

> **(a)** An employee, required by the employer to work temporarily for the employer away from the employee's usual place of employment, and who is required thereby to sleep away from the employee's usual place of residence, is entitled to the following: …

308. Clause 19.7(a)(i) of the Exposure Draft does not make clear that the allowance is payable only where the employee is required *by the employer* to work temporarily away from the employee's usual place of employment. That is, unlike the current clause, it does not clarify that the allowance is not payable absent an express requirement or direction from the employer.

309. For instance, under the Award, the entitlement to the allowance does not arise because the employee determines that it is necessary for the employee to so

work but the employer does not require the employee to do so. Clause 19.7(a)(i) differs from the Award as it does not confine the application of the provision in this way.

310. Accordingly, clause 19.7(a)(i) should be varied as follows:

> **(i)** the employee is required by the employer to temporarily work away from their usual place of employment; and

Clause 19.7(a)(ii) – Living away from home allowance

311. Under clause 19.5(a) of the Award, an employee is entitled to a living away from home allowance if two conditions are met:

- The employee is required by the employer to work temporarily away from the employee's usual place of employment; and
- The employee is, as a result, required to sleep away from the employee's usual place of residence.

312. This is readily apparent from the text of the clause: (emphasis added)

> **(a)** An employee, required by the employer to work temporarily for the employer away from the employee's usual place of employment, and who is required thereby to sleep away from the employee's usual place of residence, is entitled to the following: …

313. The second requirement outlined above has been altered markedly in the Exposure Draft, absent any explanation as to why that is so: (emphasis added)

> **(a)** Clause 19.7 applies to an employee to whom all of the following apply:
>
> **(i)** the employee is required temporarily to work away from their usual place of employment; and
>
> **(ii)** the location at which the employee is required to work is one from which it is not reasonably possible to return to their usual place of residence after work; and
>
> **(iii)** the employee is not provided with fares, meals and accommodation by the employer.

314. It would appear unnecessary to provide a detailed explanation as to the change to the legal effect of the clause that results from the redrafting of this clause. It

is self-evident that that it fundamentally alters the criteria that must be met in order for the employee to be entitled to the allowance. The Award does not contemplate any consideration of whether the location at which the employee is required to work is one from which it is not reasonably possible to return to the employee's usual place of residence after work. All that is required that the employee is required to sleep away from the employee's usual place of residence by virtue of the fact that the employee is required by the employer to work temporarily away from their usual place of employment.

315. Accordingly, clause 19.7(b)(ii) of the Exposure Draft should be replaced with the following:

> **(ii)** the employee is, as a result, required by the employer to sleep away from the employee's usual place of residence; and

6. PART 5 – PENALTY RATES AND OVERTIME

Clause 21 – Penalty rates (employees not engaged on shifts)

316. Clauses 27.2(b) and 27.2(c) of the Award deal with all time worked on a Sunday:

> **(b)** All work done on a Sunday must be paid for at the rate of double time.
>
> **(c)** An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.

317. Where an employee performs ordinary hours of work or overtime on a Sunday, the employee is to be paid at the rate of double time. Whilst the spread of ordinary hours prescribed by the Award does not extend to Sunday, an employee may be required to work ordinary hours on Sunday by virtue of the exemption provided by clause 25.1(b) of the Award: (emphasis added)

> **(b)** The ordinary hours of work may be worked from 7.00 am to 7.00 pm Monday to Friday and from 7.00 am to 12.30 pm Saturday. Provided that where an employee works in association with other classes of employees who work ordinary hours outside the spread prescribed by this clause, the hours during which ordinary hours may be worked are as prescribed by the modern award applying to the majority of the employees in the workplace.

318. Clause 21 of the Exposure Draft, which sets out the penalty rates payable for the performance of ordinary hours at certain times, does not include a provision that deals with work on a Sunday. The Exposure Draft appears to have the effect of removing an employee entitlement where such work is performed.

319. Accordingly, a new clause 21.3 should be inserted in the following terms:

> **21.3 Sunday**
>
> **(a)** An employer must pay an employee at the rate of 200% of the minimum hourly rate for ordinary hours worked on a Sunday.
>
> **(b)** An employee required to work ordinary hours on a Sunday is entitled to at least 4 hours pay at 200% of the minimum hourly rate, provided the employee is available for work for 4 hours.

320. Clause 21.3 of the Exposure Draft should be renumbered as clause 21.4.

Clause 21.2 – Saturday

321. Clause 27.2(a) of the Award prescribes the rate payable for ordinary hours of work performed on a Saturday:

> **(a)** Work within the spread of ordinary hours on Saturday will be paid at the rate of time and a quarter.

322. The rate prescribed by the above clause is payable in the following circumstances:

- Where an employee performs ordinary hours of work on a Saturday within the spread prescribed by clause 25.1(b);
- Where an employee performs ordinary hours of work on a Saturday within the spread of hours as varied (if relevant) pursuant to clause 25.2; and
- Where an employee performs ordinary hours of work on a Saturday within the spread of hours prescribed by another modern award pursuant to clause 25.1(b).

323. Clause 21.2 of the Exposure Draft does not have regard to the third aspect identified above. It states:

> **21.2** An employer must pay an employee at the rate of 125% of the minimum hourly rate for hours worked on a Saturday that are within the spread of ordinary hours specified in clause 13.5(b), as altered under clause 13.6.

324. To this extent, the provision is erroneous. It should be amended as follows:

> **21.2** An employer must pay an employee at the rate of 125% of the minimum hourly rate for hours worked on a Saturday that are within the spread of ordinary hours ~~specified in clause 13.5(b), as altered under clause 13.6~~.

Clause 21.3(d) – Public holidays

325. Clause 31.3 of the Award provides for a minimum payment where an employee works on a public holiday in the following terms: (emphasis added)

> **31.3** Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked public holiday

penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at penalty rates provided the employee is available to work for four hours.

326. Importantly, the requirement to pay an employee for a minimum of four hours applies only if the employee is available to work for four hours. If, for instance, an employer requests an employee to perform 4 hours of work however the employee indicates that the employee is only available to perform three hours of work and the employee is accordingly so rostered, the employer is not required to make four hours of payment.

327. Clause 21.3(d) of the Exposure Draft deviates from this, as it does not contain the aforementioned qualifier. It states:

> **(d)** An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours.

328. In the circumstances described above, the employee would be entitled to a minimum four hour payment under the above clause. Quite clearly the legal effect of the clause is different to the Award provision.

329. Accordingly, clause 21.3(d) of the Exposure Draft should be amended as follows (subject to our submission below regarding the entire provision):

> **(d)** An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours, provided the employee is available to work for four hours.

Clause 21.3 – Public holidays – question in the Exposure Draft

330. The following question appears at clause 21.3 of the Exposure Draft:

> Due to lack of clarity in relation to application and operation of the clause (sic), parties are asked to confirm whether the re-drafted clause 21.3 accurately reflects the intention of current modern award clauses (sic) 31.3 and whether it is placed in the Penalty rates or Overtime clause.

331. We propose to here deal with the second element of the question.

332. Clause 31.3 of the Award is in the following terms:

> **31.3** Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked public holiday penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at penalty rates provided the employee is available to work for four hours.

333. The clause applies to the performance of ordinary hours of work and overtime on a public holiday. In either event, the same rate is payable. Other elements of the provision are also applicable during ordinary hours and overtime. Importantly, an employee's entitlement to a minimum four hour payment does not differentiate between ordinary hours and overtime. That is:

- If an employee is required to perform work on a public holiday, and all hours worked on that public holiday are ordinary hours, the employee is entitled to a minimum four hour payment.

- If an employee is required to perform work on a public holiday, and all hours worked on that public holiday are overtime, the employee is entitled to a minimum four hour payment.

- If an employee is required to perform work on a public holiday, and the hours worked constitute both ordinary hours and overtime, the employee is entitled to a minimum four hour payment. The employee is *not* entitled to a four hour minimum payment in relation to the ordinary hours worked and a separate minimum four hour payment in relation to the overtime worked.

334. Clause 22 of the Exposure Draft, which deals with overtime performed by employees not engaged on shifts, does not set out the rates payable for overtime performed on a public holiday. Their absence from that clause suggests that a higher rate is not payable for overtime so worked, which is a substantive change from the Award.

335. The relocation of clause 21.3 of the Exposure Draft to clause 22 would also be problematic. It would then suggest that a higher rate is not payable for ordinary

hours worked on a public holiday, which would also be a substantive change from the Award.

336. The replication of clause 21.3 of the Exposure Draft under clause 22 is not, however, desirable. We are concerned that it would have the effect of requiring that an employee be paid for a minimum of four hours where an employee performs ordinary hours of work on a public holiday and an additional minimum four hour payment where the employee also performs overtime on the same public holiday. This would result in a change to the legal effect of the current clause 31.3.

337. In our view, this issue can be addressed by simply reverting to the approach taken in the Award:

- Clause 21.3 of the Exposure Draft should be deleted; and
- Clause 36.2 of the Exposure Draft should be replaced with the provision we have proposed later in this submission.

Clause 22.1(a) – Overtime (employees not engaged on shifts)

338. Clause 22.1(a) of the Exposure Draft requires that overtime rates are payable in the circumstances there described:

> **22.1** An employer must pay an employee at the overtime rate for any hours worked at the discretion of the employer:
>
> **(a)** in excess of the ordinary weekly hours set in clause 13.4;
>
> …

339. The term 'ordinary weekly hours' is defined at clause 22.2:

> **22.2** For the purposes of this clause, ordinary weekly hours means the hours of work fixed in a workplace in accordance with clause 13 – Ordinary hours of work or varied in accordance with the relevant clauses of this award.

340. As can be seen, the 'ordinary weekly hours' are those set in accordance with any provision under clause 13. This includes, for instance, clause 13.7 which provides that for circumstances in which the period over which an employee can work ordinary hours may be determined by reference to an award other

than the one here before the Commission. For reasons that we later set out in relation to clause 22.2 of the Exposure Draft, clause 14, which deals with rostered days off is also relevant to the fixation of an employee's hours of work.

341. Accordingly, the reference to clause 13.4 at clause 22.1(a) of the Exposure Draft is inconsistent with that found at clause 22.2 and therefore confusing. It should be amended as follows:

> **22.1** An employer must pay an employee at the overtime rate for any hours worked at the discretion of the employer:
>
> **(a)** in excess of the ordinary weekly hours ~~set in clause 13.4~~;
>
> …

Clause 22.1(b) – Overtime (employees not engaged on shifts)

342. Clause 13.9 of the Exposure Draft states that a maximum of 10 ordinary hours may be worked on any one day:

> **13.9** The maximum number of ordinary hours that can be worked on any day is 10, excluding unpaid meal breaks.

343. Correspondingly, clause 22.1(b) of the Exposure Draft requires the payment of overtime rates for any hours worked:

> **(b)** in excess of 10 hours on any one day, excluding unpaid meal breaks;

344. We consider that clause 22.1(b) should be amended to make clear that the entitlement to overtime rates arises where an employee works in excess of 10 *ordinary* hours as follows:

> **(b)** in excess of 10 <u>ordinary</u> hours on any one day, excluding unpaid meal breaks;

345. This will serve to ensure that the provision is consistent with clause 13.9 of the Exposure Draft.

Clause 22.1(c) – Overtime (employees not engaged on shifts)

346. Clause 27.1(a) requires the payment of overtime rates where an employee works overtime in the following circumstances:

> **(a)** outside the ordinary hours fixed in clause 25 of this award;

347. The overtime rate prescribed is therefore payable:

- Where an employee performs work outside the spread of hours prescribed by clause 25.1(b);
- Where an employee performs work outside the spread of hours as varied (if relevant) pursuant to clause 25.2; and
- Where an employee performs work outside the spread of hours prescribed by another modern award pursuant to clause 25.1(b).

348. Clause 22.1(c) of the Exposure Draft does not have regard to the third aspect identified above. It states that an employee must be paid at overtime rates for any hours worked:

> **(c)** outside the spread of hours in clause 13.5, as altered under clause 13.6;

349. To this extent, the provision is erroneous and amounts to a change to the legal effect of the Award. It should be amended as follows:

> **(c)** outside the spread of hours ~~in clause 13.5, as altered under clause 13.6~~;

Clause 22.2 – Overtime (employees not engaged on shifts)

350. Clause 22.1(a) of the Exposure Draft requires the payment of overtime rates in the circumstances described:

> **22.1** An employer must pay an employee at the overtime rate for any hours worked at the discretion of the employer:
>
> **(a)** in excess of the ordinary weekly hours set in clause 13.4;
>
> …

351. Clause 22.2 defines the term 'ordinary weekly hours':

> **22.2** For the purposes of this clause, ordinary weekly hours means the hours of work fixed in a workplace in accordance with clause 13 – Ordinary hours of work or varied in accordance with the relevant clauses of this award.

352. The hours of work in a workplace may be fixed in accordance with clause 13, however clause 14 may also be relevant. It deals with rostered days off, which is presently contemplated at clause 25 of the Award and accordingly captured by the corresponding definition at clause 27.1(b) of the Award: (emphasis added)

> **(b)** For the purposes of this clause hours fixed for an ordinary week's work means the hours of work fixed in an establishment in accordance with clause 25 of this award or varied in accordance with the relevant clauses of this award.

353. For the purposes of ensuring that the legal effect of the current provisions is not altered, the cross reference at clause 22.2 of the Exposure Draft should be amended as follows:

> **22.2** For the purposes of this clause, ordinary weekly hours means the hours of work fixed in a workplace in accordance with clause 13 – Ordinary hours of work and clause 14 – Rostered days off or varied in accordance with the relevant clauses of this award.

Clause 22.4(a) – Payment for working overtime

354. Clause 22.4(a) of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee.

355. The clause states:

> **(a)** The overtime rate in clause 22.1 is the relevant percentage specified in column 2 of Table 5 (depending on when the overtime was worked as specified in column 1) of the minimum hourly rate of the employee, under clause 16 – Minimum wages, calculated daily.

356. The purpose of clause 22.4(a) is simply to create an entitlement or an obligation to pay certain rates. In our view, the following preamble would be a preferable and a far more effective substitute for that found in the Exposure Draft:

> **(a)** An employer must pay an employee the relevant overtime rate prescribed below in accordance with clause 22.1, calculated daily:

357. We consider that it is self-evident from the table that an employer is to pay an employee the rate prescribed for the time at which the work is performed.

Clause 22.4(a) – Payment for working overtime – Table 5

358. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1' and 'Column 2') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 22.4(b) – Payment for working overtime

359. Clause 27.1(d) of the Award requires the payment of a minimum amount where an employee performs overtime on a Saturday in certain circumstances: (emphasis added)

> **(d)** An employee who works 38 hours Monday to Friday must be paid a minimum of three hours at overtime rates for work performed on a Saturday, <u>provided that such employee is ready, willing and available to work such overtime.</u>

360. Importantly, the requirement to pay an employee for a minimum of three hours applies only if the employee is ready, willing and available to work such overtime. If, for instance, an employer requests an employee to perform three hours of overtime however the employee refuses to work more than two hours of overtime, the employer is not required to make the minimum three hour payment prescribed.

361. Clause 22.4(b) of the Exposure Draft deviates from this, as it does not contain the aforementioned qualifier. It states:

> **(b)** An employer must pay an employee with a minimum of 3 hours at overtime rates for work performed on a Saturday where an employee has worked 38 hours or more over Monday to Friday.

362. In the circumstances described above, the employee would be entitled to a minimum three hour payment under the above clause. Quite clearly the legal effect of the clause is different to the Award provision.

363. Accordingly, clause 22.4(b) of the Exposure Draft should be amended as follows:

> **(b)** An employer must pay an employee with a minimum of 3 hours at overtime rates for work performed on a Saturday where an employee has worked 38 hours or more over Monday to Friday, provided the employee is ready, willing and available to work such overtime.

Clause 22.4(c) – Payment for working overtime

364. Clause 27.2(c) of the Award provides for a minimum payment where an employee works on a Sunday in the following terms: (emphasis added)

> **(c)** An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.

365. Importantly, the requirement to pay an employee for a minimum of four hours applies only if the employee is available to work for four hours. If, for instance, an employer requests an employee to perform 4 hours of work however the employee indicates that the employee is only available to perform three hours of work and the employee is accordingly so rostered, the employer is not required to make four hours of payment.

366. Clause 22.4(c) of the Exposure Draft deviates from this, as it does not contain the aforementioned qualifier. It states:

> **(c)** An employer must pay an employee who is required to work overtime on a Sunday for a minimum of 4 hours.

367. In the circumstances described above, the employee would be entitled to a minimum four hour payment under the above clause. Quite clearly the legal effect of the clause is different to the Award provision.

368. Accordingly, clause 22.4(c) of the Exposure Draft should be amended as follows:

> **(c)** An employer must pay an employee who is required to work overtime on a Sunday for a minimum of 4 hours, provided the employee is available to work for 4 hours.

Claus 22.4(c) – Payment for working overtime

369. Clauses 27.2(b) and 27.2(c) of the Award are in the following terms:

> **(b)** All work done on a Sunday must be paid for at the rate of double time.
>
> **(c)** An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.

370. The clause applies to the performance of ordinary hours of work and overtime on a Sunday. In either event, the same rate is payable. Further, an employee's entitlement to a minimum four hour payment does not differentiate between ordinary hours and overtime. That is:

- If an employee is required to perform work on a Sunday, and all hours worked on that Sunday are ordinary hours, the employee is entitled to a minimum four hour payment.

- If an employee is required to perform work on a Sunday, and all hours worked on that Sunday are overtime, the employee is entitled to a minimum four hour payment.

- If an employee is required to perform work on a Sunday, and the hours worked constitute both ordinary hours and overtime, the employee is entitled to a minimum four hour payment. The employee is *not* entitled to a four hour minimum payment in relation to the ordinary hours worked and a separate minimum four hour payment in relation to the overtime worked.

371. If a new clause 21.3 is inserted as we have proposed earlier, we are concerned that it, together with clause 22.4(c) of the Exposure Draft would have the effect of requiring that an employee must be paid for a minimum of four hours where

an employee performs ordinary hours of work on a Sunday and for an additional minimum four hours where the employee also performs overtime on the same Sunday. This would result in a change to the legal effect of the current clause 27.2.

372. In our view, this issue can be addressed by further amending clause 22.4(c) (having regard also to the amendment we have proposed above):

> **(c)** An employer must pay an employee who is required to work overtime on a Sunday for a minimum of 4 hours, provided the employee is available to work for 4 hours. Provided further that where clause 21.3(b) applies, an employee will not be entitled to an additional 4 hour minimum payment under this clause.

Clause 22.5(c) – Return to duty

373. Clause 27.3 of the Award provides for a minimum period of rest between the work of successive days. Where an employee works overtime between the termination of ordinary work on one day and the commencement of ordinary work on the following day such that the employee has not had 10 consecutive hours off duty, the employee is to be paid at a higher rate until the employee is released from duty.

374. Clause 27.3(d) of the Award states as follows:

> **(d)** Overtime worked in the circumstances specified in clause 27.4 must not be regarded as overtime for the purposes of this clause.

375. Clause 27.4 relates to circumstances in which an employee is required to return to duty:

> **27.4** Where an employee is required to return to duty after the usual finishing hour of work for that day the employee must be paid at the overtime rates prescribed in clause 27.1(a) but must receive a minimum payment as for three hours' work. Provided that this clause does not apply where the work is continuous (subject to a meal break of not more than one hour) with the completion or commencement of ordinary working time.

376. The effect of clause 27.3(d) is to exclude time worked pursuant to clause 27.4 for the purposes of considering whether clause 27.3 applies to an employee. That is, if an employee is required to 'return to duty' and perform work that would otherwise constitute overtime and as a result, the employee has not had 10

consecutive hours off duty, clause 27.3 does not apply. This is because clause 27.3(d) states that such overtime must not be regarded as overtime for the purposes of clause 27.3.

377. Clause 22.5(c) of the Exposure Draft – a provision that relating to 'return to duty' arrangements – is in the following terms:

> **(c)** Overtime prescribed in clause 23 – Rest period after working overtime (employees not engaged on shifts) is not regarded as overtime for the purpose of clause 22.5.

378. The intention of clause 27.5(c) is not clear. It purports to invert the position at the current clause 27.3(d) but its practical ramifications are not immediately apparent. This is because clause 23 does not "prescribe" overtime and the effect of time being "regarded as overtime for the purpose of clause 22.5" is not clear.

379. We note also that clause 23 does not contain a provision that corresponds with clause 27.3(d) of the Award. This has the effect of requiring an employer to have regard to overtime worked pursuant to clause 22.5 for the purposes of that clause.

380. For all of the reasons above:

- Clause 22.5(c) of the Exposure Draft should be deleted; and
- A new provision should be inserted in clause 23 as proposed below.

Clause 23 – Rest period after working overtime (employees not engaged on shifts)

381. We refer to our submissions above regarding clause 22.5(c). As we have there explained, the legal effect of clause 27.3 of the Award has been altered because a provision corresponding with the current clause 27.3(d) does not appear in the Exposure Draft.

382. Accordingly, clause 23 of the Exposure Draft should be amended by inserting a new clause 23.5:

> **23.5** Overtime worked in the circumstances specified in clause 22.5 must not be regarded as overtime for the purposes of this clause.

Clause 23.3 – Rest period after working overtime (employees not engaged on shifts)

383. Clause 27.3(b) of the Award applies where an employee works overtime in certain specified circumstances: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

384. As can be seen from the underlined text, the provision operates where an employee performs overtime between the termination of ordinary work on one day and the commencement of ordinary work on the following day. The provision does not apply where, for instance, an employee is required to work a rostered overtime shift that does not fall between the performance of ordinary hours on two consecutive days.

385. This element of the current clause does not appear in the Exposure Draft. Clause 23.3 states:

> **23.3** Despite clause 23.2, where an employee, due to overtime worked, would be required to start work before having had 10 consecutive hours off duty:
>
> **(a)** the employer must release the employee from duty until the employee has had 10 consecutive hours off duty; and
>
> **(b)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

386. The application of the current clause 27.3(b) has been expanded by the deletion of the relevant words. The provision would now apply where an employee is required to work a rostered overtime shift that does not fall between the

performance of ordinary work on two consecutive days. In this way, the legal effect of the Award has been altered.

387. Also, the clause does not satisfactorily deal with circumstances where an employee works overtime immediately prior to commencing ordinary hours. The current clause clearly enables the 10 hour break to occur before the overtime commences, but the re-drafted clause is far from clear in this regard

388. Accordingly, clause 23.3 of the Exposure Draft should be amended as follows:

> **23.3** Despite clause 23.2, where an employee works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day, ~~due to overtime worked, would be required to start work before having~~ that the employee has not had 10 consecutive hours off duty between those times: …

Clause 23.3(a) – Rest period after working overtime (employees not engaged on shifts)

389. Clause 27.3(b) of the Award states that in the circumstances described, the employee is to be released after the completion of the relevant period of overtime: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

390. Clause 23.3(a) of the Exposure Draft requires that the employer must release the employee from duty, however it does not make clear *when* this is to occur. That is, the point in time at which the obligation to release the employee crystallises is not apparent from the text of the clause:

> **(a)** the employer must release the employee from duty until the employee has had 10 consecutive hours off duty; and

391. Accordingly, and in the interests of ensuring that the provision is simple and easy to understand, it should be amended as follows:

> **(a)** the employer must release the employee from duty after the completion of the overtime until the employee has had 10 consecutive hours off duty; and

Clause 23.3(b) – Rest period after working overtime (employees not engaged on shifts)

392. Clause 27.3(b) of the Award requires that an employee must be released after completing the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time during such absence: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

393. That is, if any ordinary working time falls during the employee's 10 hour absence, the employee must not lose pay in relation to those hours, which the employee would otherwise have worked.

394. Clause 23.3(b) of the Exposure Draft purports to deal with this element of the current provision in the following terms:

> **(b)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

395. The provision is entirely ambiguous. It appears to state that to the extent that the employee is absent during 'ordinary hours' (which appears to be a reference to the general concept of 'ordinary hours' under the Exposure Draft, rather than the ordinary hours that the employee would otherwise have worked), the employee must not lose pay. We cannot comprehend the practical application or operation of such an entitlement.

396. For the purposes of restoring the effect of the current provision, clause 23.3(b) should be amended as follows:

> **(b)** the employee must not suffer any loss of pay for ~~an absence during ordinary hours~~ ordinary working time occurring while the employee is released from duty ~~as a result~~.

Clause 23.4 – Rest period after working overtime (employees not engaged on shifts)

397. Clause 27.3(c) of the Award applies where an employee resumes or continues work on the instructions of the employer: (emphasis added)

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

398. The entitlement prescribed by clause 27.3(c) applies only if the employee resumed or continued work without having 10 consecutive hours off duty as described in the preceding clause if the employee was so instructed by the employer.

399. Clause 23.4 of the Exposure Draft does not contain the same qualifier and as a result extends to circumstances in which an employee elects or volunteers to resume or continue work, absent such instruction from their employer:

> **23.4** Where an employee resumes or continues work without having at least 10 consecutive hours off duty in accordance with clause 23.3 all of the following apply: …

400. In this way, the legal effect of the Award has been altered.

401. Accordingly, clause 23.4 of the Exposure Draft should be amended as follows:

> **23.4** If on the instructions of the employer ~~Where~~ an employee resumes or continues work without having at least 10 consecutive hours off duty in accordance with clause 23.3 all of the following apply: …

Clause 23.4(c) – Rest period after working overtime (employees not engaged on shifts)

402. Clause 27.3(c) of the Award requires that an employee must not suffer a loss of pay for ordinary working time occurring during the relevant period of time: (emphasis added)

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

403. Clause 23.4(c) of the Exposure Draft instead refers to 'ordinary hours' generally:

> **(c)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

404. We consider that the reference to 'ordinary hours' is not clear. In particular, it does not specify that the employee is not suffer a loss of pay for those ordinary hours that the employee would otherwise have worked. Rather, it refers to 'ordinary hours' generally which, under an award, is a broader concept that relates to the parameters within which an employee may be required to perform ordinary hours of work.

405. Accordingly, consistent with clause 27.3(c) of the Award, clause 23.4(c) of the Exposure Draft should be amended as follows:

> **(c)** the employee must not suffer any loss of pay for an absence during ordinary working hours as a result.

Clause 23.4(c) – Rest period after working overtime (employees not engaged on shifts)

406. Clause 27.3(c) of the Award requires as follows:

- If an employee, on the employer's instructions, resumes or continues work without having had 10 consecutive hours off duty, the employee

must be paid at double the ordinary time rate of pay until the employee is released from duty for such period.

- Once the employee is released, the employee is entitled to be absent until the employee has had 10 consecutive hours off duty.

- The employee must not suffer a loss of pay for ordinary working time that occurs during that period of absence.

407. Clause 27.3(c) of the Award is in the following terms:

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

408. Clause 23.4 of the Exposure Draft is in the following terms:

> **23.4** Where an employee resumes or continues work without having at least 10 consecutive hours off duty in accordance with clause 23.3 all of the following apply:
>
> **(a)** the employer must pay 200% of the minimum hourly rate until the employee is released from duty; and
>
> **(b)** the employer must release the employee from duty until the employee has had 10 consecutive hours off duty; and
>
> **(c)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

409. In our view, clause 23.4(c) is unclear. Specifically, it does not properly articulate the period of time during which an employee must not suffer a loss of pay for an absence during ordinary hours. The redrafted clause does not sufficiently connect clause 23.4(c) with clause 23.4(b).

410. Accordingly, we suggest that clause 23.4(c) be amended as follows (having regard also the amendment we have proposed above):

> **(c)** the employee must not suffer any loss of pay for <u>ordinary working time occurring while the employee is so released</u> ~~an absence during ordinary hours as a result~~.

Clause 24.3(e) – Time off instead of payment for overtime (employees not engaged on shifts)

411. Clause 27.5(d) of the Award prescribes the amount of time off that an employee is entitled to take:

> **(d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

412. The provision appears as a separate clause and does not form part of the preceding clause 27.5(c), which sets out the various matters that must be included in a written agreement between an employer and employee that the employee will take time off instead of being paid overtime rates:

> **(c)** An agreement must state each of the following:
>
> **(i)** the number of overtime hours to which it applies and when those hours were worked;
>
> **(ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
>
> **(iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
>
> **(iv)** that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.
>
> Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 27.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

413. Clause 24.3(e) of the Exposure Draft alters the legal effect of the current provision. It appears as follows:

> **24.3** An agreement must state all of the following:
>
> …
>
> **(e)** the period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

414. Clause 24.3(e) requires that an agreement between an employer and employee that the employee will take time off in lieu of overtime must state that the period

of time off that the employee is entitled to take is the same as the number of overtime hours worked. This is not the case under clause 27.5(c) of the Award. Furthermore, clause 24 of the Exposure Draft does not contain a substantive provision corresponding with the current clause 27.5(d), which in fact states that the period of time off that an employee is entitled to take is the same as the number of hours worked.

415. In order to ensure that clause 24of the Exposure Draft reflects clause 27.5 of the Award, we submit that:

- Clause 24.3(e) should be renumbered as clause 24.4; and
- Clause 24.4 – clause 24.11 should be renumbered as clause 24.5 – clause 24.12.

Clause 24.11 – Time off instead of payment for overtime (employees not engaged on shifts)

416. Clause 27.5(j) of the Award deals with the interaction between the provision and s.65 of the Act in the following terms:

> **(j)** An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 27.5 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

417. This provision has been disaggregated in the Exposure Draft at clauses 24.9 and 24.10: (emphasis added)

> **24.9** An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee.
>
> **24.10** If the employer agrees to the request then clause 27.5 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

418. We are concerned that as a result of the proposed restructuring of the current provision, the reference to 'the request' in clause 24.10 of the Exposure Draft is no longer clear.

419. Consistent with clause 27.5(j) of the Award and clause 30.9 of the Exposure Draft (time off instead of payment for overtime for shiftwork) where the very same provision appears, clauses 24.9 and 24.10 of the Exposure Draft should be amalgamated.

7. PART 6 – SHIFTWORK

Clause 25.1 – Shiftwork definitions

420. Clause 25.1 of the Exposure draft provides that an employee may be employed to work ordinary hours in accordance with the shift definitions there set out: (emphasis added)

> **25.1** An employee may be employed to work ordinary hours in accordance with the following shift definitions: …

421. Read literally, clause 25.1 states that an employee may be employed for the purposes of working ordinary hours in accordance with the relevant shift definitions. This raises the question as to whether an employee who is not employed for that purpose may nonetheless be required to work ordinary hours in accordance with the shift definitions. That is, whether an employee who is not employed specifically to work such ordinary hours may nonetheless be so required at some stage during the employment relationship.

422. Clause 28.4(a) of the Award instead refers to an employee being employed on shifts:

> **(a)** Notwithstanding any other provisions of this award an employee may be employed on shifts, in which case the ordinary hours for a week's work are to be 38, and must be performed in shifts not exceeding six shifts of 10 hours each. A Sunday may be included.

423. Unlike the Exposure Draft, the Award does not refer to an employee being employed *to* work shifts, or for the purposes of working shifts. Rather, the provision enables an employer to employ an employee on shifts or put another way, to require an employee to work on shifts at its prerogative. We consider that the legal effect of this clause has been altered by clause 25.1 of the Exposure Draft.

424. Accordingly, clause 25.1 of the Exposure Draft should be amended as follows:

> **25.1** An employee may be ~~employed~~ required to work ordinary hours in accordance with the following shift definitions:

Clause 25.1 – Shiftwork definitions – Question in the Exposure Draft

425. The Exposure Draft contains the following question at clause 25.1:

> Feedback from the FWO and users indicate confusion about when and how these provisions apply. Given the different provisions for employees on shiftwork, including rostering and breaks, parties are asked to clarify when the provisions in this part apply.

426. The provisions of Part 6 of the Exposure Draft apply where an employee is employed by their employer on shifts. That is, where an employee is required to work a shift (or shifts) in accordance with the shift definitions at clause 25.1, the terms and conditions prescribed by Part 6 apply.

Clause 25.2 – Shiftwork definitions

427. Clause 28.2 of the Award enables an alteration to the span of hours over which shifts may be worked by up to one hour at either end of the span: (emphasis added)

> **28.2** By agreement between the employer and the majority of employees concerned on in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end <u>of the span</u>.

428. In essence, by agreement the spread of hours prescribed by clause 28.1 for an afternoon shift or a night shift may be altered by up to one hour at either end. Accordingly, the spread of hours over which an afternoon shift may be worked can be extended such that any shift finishing after 6.00 pm is an afternoon shift. Similarly, the spread of hours over which a night shift may be worked may be extended to include any shift that ends at or before 8.00 am.

429. Such a change to the spread of hours does not necessarily have the effect of altering the starting and commencing time of a particular *shift* worked by an employee. It may be that the spread of hours is extended by agreement and subsequently the starting/finishing time of some employee's shifts are altered but others remain unchanged.

430. Clause 25.2 of the Exposure Draft is in the following terms: (emphasis added)

> **25.2** The spread of hours in clause 25.1 may be altered by up to one hour at either end of the shift:
>
> **(a)** by agreement between the employer and the majority of employees at the workplace covered by this award; or
>
> **(b)** by individual agreement between the employer and employee.

431. The rationale for adopting a reference to a 'shift' in clause 25.2 is unclear. It renders the provision somewhat ambiguous as the ability to vary the spread of hours relates to the hours, generally, over which an employee may be required to perform ordinary hours of work. It does not in and of itself have the effect of altering the time at which a particular *shift* is commenced or completed. To this extent, the use of the word 'shift' in clause 25.2 is erroneous.

432. Accordingly, clause 25.2 should be amended as follows:

> **25.2** The spread of hours in clause 25.1 may be altered by up to one hour at either end of the spread ~~shift~~:
>
> **(a)** by agreement between the employer and the majority of employees at the workplace covered by this award; or
>
> **(b)** by individual agreement between the employer and employee.

Clause 25.2(a) – Shiftwork definitions

433. Clause 28.2 of the Award enables an employer and the majority of employees concerned to alter the span of hours over which shifts may be worked by up to one hour at either end of the span: (emphasis added)

> **28.2** By agreement between the employer and the majority of employees concerned on in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

434. The Exposure Draft, at clause 25.2(a), instead states that agreement may be reached between the employer and the majority of employees at the workplace covered by the Exposure Draft: (emphasis added)

> **25.2** The spread of hours in clause 25.1 may be altered by up to one hour at either end of the shift:
>
> **(a)** by agreement between the employer and the majority of employees at the workplace covered by this award; or
>
> **(b)** by individual agreement between the employer and employee.

435. Clause 25.2(a) could be read in one of two ways.

436. On one view, it enables agreement between the employer and the majority of all employees employed in a workplace that is covered, at least in part, by the Exposure Draft. That is, if some employees in a workplace are covered by the instrument by virtue of which the employer is also covered by the instrument, the spread of hours in clause 25.1 may be varied if agreement is reached with the majority of *all* employees employed at the workplace, irrespective of whether they are covered by this award or another award. This is a self-evidently an absurd and illogical outcome.

437. Alternatively, clause 25.2(a) contemplates agreement between the employer and the majority of employees covered by the Exposure Draft at the workplace. This is a different proposition to the one above. It involves a consideration of only those employees covered by the instrument that are employed at the workplace.

438. The Exposure Draft deviates from clause 28.2 of the Award in the following ways.

439. **Firstly**, under the Award, agreement must be reached with the majority of employees *concerned*. That is, the relevant group of employees to be considered are those that would be affected or for whom there would be some implication if the spread were altered. For instance, an employer may seek to extend the spread of hours over which an afternoon shift is worked. Under the current clause, it is not necessary to reach agreement with the majority of

employees including those who work only night shifts. Rather, agreement must be reached with the majority of employees concerned; being those who are in fact required to work afternoon shifts and may be affected by the change.

440. **Secondly**, and by extension, agreement need only be reached with the majority of employees covered by the Award at the workplace. The obligation to reach agreement with the majority of employees does not include a consideration of those that are not covered by the instrument; a reading that is open on the terms of clause 25.2(a) of the Exposure Draft as set out above.

441. For the reasons here set out, clause 25.2(a) should be amended as follows:

> **25.2** The spread of hours in clause 25.1 may be altered by up to one hour at either end of the shift:
>
> **(a)** by agreement between the employer and the majority of employees concerned ~~at the workplace covered by this award~~; or
>
> **(b)** by individual agreement between the employer and employee.

Clause 25.2 – Shiftwork definitions – Question in the Exposure Draft

442. The following question appears at clause 25.2 of the Exposure Draft:

> Parties are asked to confirm whether the spread of hours can be increased by one hour at both ends.

443. It is Ai Group's position that clause 25.2 of the Exposure Draft (and clause 28.2 of the Award) permits an increase to the spread of hours by one hour at both ends.

Clause 26.1 – Penalty rates for shiftwork

444. Clause 26.1 of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee.

445. The clause states:

> **26.1** An employer must pay an employee working ordinary hours in accordance with clause 25.1 (shiftwork definitions) the relevant percentage specified in column 2 of Table 6 (depending on when the shift was worked as specified in column 1) of the minimum hourly rate of the employee, under clause 16 – Minimum wages.

446. The purpose of clause 26.1 is simply to create an entitlement or an obligation to pay certain rates. In our view, the following preamble would be a preferable and a far more effective substitute for that found in the Exposure Draft:

> **26.1** An employer must pay an employee employed on shifts the following rates if the employee is required to perform ordinary hours of work at the relevant times:

447. We consider that it is self-evident from the table that an employer is to pay an employee the rate prescribed in relation to the relevant time worked.

Clause 26.1 – Penalty rates for shiftwork – Table 6

448. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1' and 'Column 2') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 26.3(a) – Public holidays

449. Clause 31.3 of the Award provides for a minimum payment where an employee works on a public holiday in the following terms: (emphasis added)

> **31.3** Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked public holiday penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at penalty rates <u>provided the employee is available to work for four hours</u>.

450. Importantly, the requirement to pay an employee for a minimum of four hours applies only if the employee is available to work for four hours. If, for instance, an employer requests an employee to perform 4 hours of work however the employee indicates that the employee is only available to perform three hours of work and the employee is accordingly so rostered, the employer is not required to make four hours of payment.

451. Clause 26.3(a) of the Exposure Draft deviates from this, as it does not contain the aforementioned qualifier. It states:

> **(a)** An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours.

452. In the circumstances described above, the employee would be entitled to a minimum four hour payment under the above clause. Quite clearly the legal effect of the clause is different to the Award provision.

453. Accordingly, clause 26.3(a) of the Exposure Draft should be amended as follows:

> **(a)** An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours, provided the employee is available to work for 4 hours.

Clause 27.1(b) – Ordinary hours of work and rostering for shiftwork

454. Clause 28.3(b) of the Award enables an employer and the majority of employees concerned to reach agreement regarding a roster cycle over which ordinary hours may be averaged: (emphasis added)

> **(b)** By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.

455. The provision enables an employer to reach agreement with the majority of employees concerned; that is, with the majority of employees affected. Such an agreement would allow the employer to implement the said roster system to all employees concerned. The provision operates in a manner similar to a number of facilitative provisions found in this Award and others.

456. Clause 27.1(b) of the Exposure Draft is in different terms. It states: (emphasis added)

> **27.1** The maximum number of ordinary hours that can be worked in a week is:
>
> **(a)** an average of 38 hours over a 4 week period; or
>
> **(b)** an average of 38 hours over a roster period, not exceeding 12 months, as agreed between an employer and the employees.

457. An obvious question arises from the above provision: *which* employees may the aforementioned agreement be reached with. The provision appears to have the effect of enabling agreement between the employer and any employee as a result of which the agreed roster period may be implemented in relation to only those employees. In this way, the legal effect of the Award has been changed.

458. For these reasons, clause 27.1 should be amended as follows:

> **27.1** The maximum number of ordinary hours that can be worked in a week is:
>
> **(a)** an average of 38 hours over a 4 week period; or
>
> **(b)** by agreement between an employer and the majority of employees concerned, an average of 38 hours over a roster period, not exceeding 12 months~~, as agreed between an employer and the employees~~.

Clause 27.3 – Ordinary hours of work and rostering for shiftwork

459. Clause 27.3 of the Exposure Draft purports to prescribe certain rostering arrangements that are to apply to any employee working shifts:

> **27.3** The following rostering arrangements apply to an employee who works shifts over the 4 week roster period in clause 27.1(a):
>
> **(a)** a maximum of 6 shifts of 10 hours can be worked; and
>
> **(b)** a Sunday may be included.

460. The provision corresponds with clause 28.4(a) of the Award, which is in the following terms: (emphasis added)

> **(a)** Notwithstanding any other provisions of this award an employee may be employed on shifts, in which case ordinary hours for a week's work are to be 38, and must be performed in shifts not exceeding six shifts of 10 hours each. A Sunday may be included.

461. Multiple concerns arise from the redrafted clause.

462. **Firstly,** the preamble in clause 27.3 purports to limit its application to those employees who work shifts 'over a four week roster period'. No such constraint appears in clause 28.4(a) of the Award, which instead applies to all employees engaged on shifts. As can be seen from clause 28.3(a) of the Award (and clause 27.1(b) of the Exposure Draft) the ordinary hours of an employee engaged on shifts may be averaged over a period exceeding 4 weeks by agreement. Such employees are not presently excluded from the application of clause 28.4(a) of the Award and therefore should not be excluded from the application of clause 27.3 of the Exposure Draft.

463. **Secondly**, clause 27.3(a) states that an employee who works shifts over a four week roster period can work a maximum of 6 shifts of 10 hours, however the provision does not state the period of time over which such shifts are to be worked. That is, unlike clause 28.4(a) of the Award, it does not make clear that the prescribed maximums apply to a week's work.

464. **Thirdly,** and notwithstanding the anomaly identified above, clause 27.3(a) appears to impose an upper limit on the number of shifts that can be worked and maximum duration of those shifts. Assuming that it is intended that the provision apply to a week's work (consistent with clause 28.4(a) of the Award), it appears to state that an employee engaged on shifts may work a maximum of 60 ordinary hours (that is, six shifts all of which are 10 hours in length). This is clearly inconsistent with clause 27.1 of the Exposure Draft which states that the maximum number of ordinary hours that may be worked in a week is 38.

465. Regrettably the current clause 28.4(a) is somewhat ambiguous in this regard. However we interpret the provision to effectively require that:

- An employee's ordinary hours of work must be worked over 6 shifts or less in a week;
- One of those shifts may be required to be worked on a Sunday; and

- No shift worked may exceed 10 ordinary hours in length (consistent with clause 27.2 of the Exposure Draft and clause 28.3(c) of the Award).

466. For these reasons, we submit that clause 27.3 should be replaced with the following:

> **27.3** An employee's ordinary hours may be worked over a maximum of 6 shifts per week. A Sunday may be included.

467. We do not consider that it is necessary to repeat that the maximum number of ordinary hours that may be worked per shift is 10 hours given that this is already stated at clause 27.2.

Clause 28.3 – Breaks for shiftwork

468. Clause 26.1 of the Award is in the following terms: (emphasis added)

> **26.1 Meal break**
>
> Subject to the provisions of clause 28—Shiftwork of this award, a meal period of not less than 30 minutes and not more than 60 minutes must be allowed to each employee. Such meal period must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break. Employees required to work through meal breaks must be paid double time for all time so worked until a meal break is allowed.

469. Clause 26.1 provides for a meal break and requires that a higher rate be paid where an employee is required to work through that meal break. The provision operates subject to clause 28, which provides for a meal break specifically for shiftworkers:

> **(f)** Twenty minutes must be allowed to a shiftworker for a meal during each shift before the expiration of five hours. Such meal break must be counted as time worked.

470. Neither clause 28 nor any other provision of the Award requires that an employer pay a higher rate where a shiftworker is required to work through the aforementioned shift.

471. Clause 28.3 of the Exposure Draft replicates the final sentence of the current clause 26.1 in Part 6 of the Exposure Draft, which applies to shiftworkers:

> **28.3** An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate until a meal break is taken.

472. The legal effect of the Award has been altered. We consider that the final sentence of clause 26.1 does not apply to shiftworkers. That is because the clause, in its entirety, operates subject to clause 28, which in turn deals exhaustively with meal breaks for shiftworkers. Accordingly, the requirement to pay a higher rate where an employee works through their meal break applies only to day workers and is of no application to shiftworkers.

473. Accordingly, clause 28.3 of the Exposure Draft should be deleted.

Clause 28.4(a) – Paid rest break

474. Clause 26.2(b) of the Award provides an entitlement to a paid rest break where an employee is required to work the requisite number of hours: (emphasis added)

> **(b)** An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

475. Clause 28.4(a) does not make express that the entitlement to a rest break arises only where the employee is *required* to work between three and eight ordinary hours. Rather, the entitlement would appear to arise even where an employee performs such work absent a direction from their employer:

> **(a)** An employee working more than 3 hours and fewer than 8 hours is entitled to one paid 10 minute rest break.

476. This amounts to a change to the legal effect of the Award. Accordingly, clause 28.4(a) of the Exposure Draft should be amended as follows:

> **(a)** An employee required to work ~~working~~ more than 3 hours and fewer than 8 hours is entitled to one paid 10 minute rest break.

Clause 28.4(a) – Paid rest break

477. Pursuant to clause 26.2(b) of the Award, an entitlement to a paid rest break arses where an employee is required to work more than three ordinary hours but less than eight ordinary hours: (emphasis added)

> **(b)** An employee must be allowed one 10 minute rest interval to be counted as time worked on each day that the employee is required to work more than three but less than eight ordinary hours. The rest interval should be taken at a time suitable to the employer taking into account the needs of the business.

478. The entitlement is confined to the performance of ordinary hours and does not arise where an employee performs overtime.

479. The drafting of clause 28.4(a) does not limit the provision to ordinary hours of work and as a result it would appear to apply also where an employee works more than 3 hours but less than 8 hours of overtime:

> **(a)** An employee working more than 3 hours and fewer than 8 hours is entitled to one paid 10 minute rest break.

480. In this way, the legal effect of the Award has been changed.

481. Accordingly, clause 28.4(a) of the Exposure Draft should be amended as follows:

> **(a)** An employee working more than 3 ordinary hours and fewer than 8 ordinary hours is entitled to one paid 10 minute rest break.

Clause 28.4(b) – Paid rest break

482. Clause 26.2(a) of the Award provides an entitlement to a paid rest break where an employee is required to work the requisite number of hours: (emphasis added)

> **(a)** An employee must be allowed two 10 minute rest intervals to be counted as time worked on each day that the employee is required to work not less than eight ordinary hours. Each rest interval should be taken at a time suitable to the employer taking into account the needs of the business. If suitable to business operations, the first rest interval should be allowed between the time of commencing work and the usual meal interval and the second rest interval should be allowed between the usual meal and the time of ceasing work for the day.

483. Clause 28.4(b) does not make express that the entitlement to rest breaks arises only where the employee is *required* to work eight or more ordinary hours. Rather, the entitlement would appear to arise even where an employee performs such work absent a direction from their employer:

> **(b)** An employee working 8 hours or more is entitled to two paid 10 minute rest breaks.

484. This amounts to a change to the legal effect of the Award. Accordingly, clause 28.4(b) of the Exposure Draft should be amended as follows:

> **(a)** An employee required to work ~~working~~ 8 hours or more is entitled to two paid 10 minute rest breaks.

Clause 28.4(b) – Paid rest break

485. Pursuant to clause 26.2(a) of the Award, an entitlement to paid rest breaks arses where an employee is required to work eight or more ordinary hours: (emphasis added)

> **(a)** An employee must be allowed two 10 minute rest intervals to be counted as time worked on each day that the employee is required to work not less than eight ordinary hours. Each rest interval should be taken at a time suitable to the employer taking into account the needs of the business. If suitable to business operations, the first rest interval should be allowed between the time of commencing work and the usual meal interval and the second rest interval should be allowed between the usual meal and the time of ceasing work for the day.

486. The entitlement is confined to the performance of ordinary hours and does not arise where an employee performs overtime.

487. The drafting of clause 28.4(b) does not limit the provision to ordinary hours of work and as a result it would appear to apply also where an employee works 8 hours or more of overtime:

> **(b)** An employee working 8 hours or more is entitled to two paid 10 minute rest breaks.

488. In this way, the legal effect of the Award has been changed.

489. Accordingly, clause 28.4(b) of the Exposure Draft should be amended as follows:

> **(b)** An employee working 8 ordinary hours or more is entitled to two paid 10 minute rest breaks.

Clause 29.1 – Overtime for shiftwork

490. Clause 29.1 of the Exposure Draft is, with respect, by no means simple or easy to understand. We do not consider that the clause is readily comprehensible to any employer or employee.

491. The clause states:

> **29.1** An employer must pay an employee on shiftwork overtime rates at the relevant percentage specified in column 2 of Table 7 (depending on when the overtime was worked as specified in column 1) of the minimum hourly wage of the employee, under clause 16 – Minimum wages as follows:

492. The purpose of clause 29.1 is simply to create an entitlement or an obligation to pay certain rates. In our view, the following preamble would be a preferable and a far more effective substitute for that found in the Exposure Draft:

> **29.1** An employer must pay an employee employed on shifts the following relevant rates if the employee is required to work overtime:

493. We consider that it is self-evident from the table that an employer is to pay an employee the rate prescribed in relation to the relevant time worked.

Clause 29.1 – Overtime for shiftwork – Table 7

494. In light of our submissions above, we do not consider that the first set of headings that appear in each column ('Column 1' and 'Column 2') are necessary. They serve no purpose and accordingly, should be deleted.

Clause 29.1 – Overtime for shiftwork – Table 7

495. Table 7 indicates that the overtime rate is to be calculated by reference to the "minimum hourly wage". Clause 16, however, which prescribes the minimum rates payable under the Exposure Draft, refers to the hourly rates there set out as "minimum hourly rate" (see clause 16.1 of the Exposure Draft).

496. In the interests of consistency, we suggest that "minimum hourly wage" in Table 7 be replaced with "minimum hourly rate".

Clause 29.3 – Overtime for shiftwork

497. Clause 28.6 of the Award provides for a minimum payment where an employee works on a Saturday, Sunday or public holiday in the following terms: (emphasis added)

> A shiftworker whose ordinary working period does not include a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of the NES) as an ordinary working day must, if required to work on any such day be paid double time for work done with a minimum payment of four hours at double time <u>if the employee is available for work during such four hours.</u> This provision for minimum payment does not apply where the work on such day is continuous with the commencement or completion of the employee's ordinary shift.

498. Importantly, the requirement to pay an employee for a minimum of four hours applies only if the employee is available to work for those four hours. If, for instance, an employer requests an employee to perform four hours of work however the employee indicates that the employee is only available to perform three hours of work and the employee is accordingly so rostered, the employer is not required to make four hours of payment.

499. Clause 29.3 of the Exposure Draft deviates from this, as it does not contain the aforementioned qualifier. It states:

> **29.3** An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:
>
> **(a)** is required to work on a Saturday, Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and
>
> **(b)** would not have been ordinarily rostered to work that day under clause 27.3; and
>
> **(c)** the work is not continuous with the start or finish of the employee's ordinary shift.

500. In the circumstances described above, the employee would be entitled to a minimum four hour payment under the above clause. Quite clearly the legal effect of the clause is different to the Award provision.

501. Accordingly, clause 29.3 of the Exposure Draft should be amended as follows:

> **29.3** An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:
>
> **(a)** is required to work on a Saturday, Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and
>
> **(b)** would not have been ordinarily rostered to work that day under clause 27.3; and
>
> **(c)** the work is not continuous with the start or finish of the employee's ordinary shift; and
>
> **(d)** is available for work during those 4 hours.

Clause 29.3 – Public holidays

502. Clause 31.3 of the Award is in the following terms: (emphasis added)

> **31.3** Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked public holiday penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at penalty rates provided the employee is available to work for four hours.

503. The clause applies to the performance of ordinary hours of work and overtime on a public holiday. The employee's entitlement to a minimum four hour payment does not differentiate between ordinary hours and overtime. That is:

- If an employee is required to perform work on a public holiday, and all hours worked on that public holiday are ordinary hours, the employee is entitled to a minimum four hour payment.
- If an employee is required to perform work on a public holiday, and all hours worked on that public holiday are overtime, the employee is entitled to a minimum four hour payment.
- If an employee is required to perform work on a public holiday, and the hours worked constitute both ordinary hours and overtime, the employee is entitled to a minimum four hour payment. The employee is *not* entitled to a four hour minimum payment in relation to the ordinary

hours worked and a separate minimum four hour payment in relation to the overtime worked.

504. We are concerned that clause 26.3 of the Exposure Draft together with clause 29.3 would have the effect of requiring that an employee must be paid for a minimum of four hours where an employee performs ordinary hours of work on a public holiday and for an additional minimum four hours where the employee also performs overtime on the same public holiday. This would result in a change to the legal effect of the current clause 31.3.

505. In our view, this issue can be addressed by further amending clause 29.3 (having regard also to the amendment we have proposed above):

> **29.3** An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:
>
> **(a)** is required to work on a Saturday, Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and
>
> **(b)** would not have been ordinarily rostered to work that day under clause 27.3; and
>
> **(c)** the work is not continuous with the start or finish of the employee's ordinary shift; and
>
> **(d)** is available for work during those 4 hours; and
>
> **(e)** is not entitled to a minimum 4 hour payment under clause 26.3.

Clause 29.3(b) – Overtime for shiftwork

506. In light of the variation we have earlier proposed to clause 27.3 of the Exposure Draft, clause 29.3(b) also requires amendment. It states:

> **29.3** An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:
>
> **(a)** is required to work on a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and
>
> **(b)** would not have been ordinarily rostered to work that day under clause 27.3; and
>
> **(c)** the work is not continuous with the start or finish of the employee's ordinary shift.

507. For the reasons we have set out above, an employee is not required to be rostered to work under clause 27.3. Rather, the provision simply provides (or *should* simply provide) for the maximum number of shifts that may be worked in a week.

508. Accordingly, and consistent with clause 28.6 of the Award, clause 29.3(b) should be amended as follows:

> **29.3** An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:
>
> **(a)** is required to work on a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and
>
> **(b)** would not have been ordinarily rostered to work that day ~~under clause 27.3~~; and
>
> **(c)** the work is not continuous with the start or finish of the employee's ordinary shift.

Clause 30.3(e) – Time off instead of payment for overtime for shiftwork

509. Clause 27.5(d) of the Award prescribes the amount of time off that an employee is entitled to take:

> **(d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

510. The provision appears as a separate clause and does not form part of the preceding clause 27.5(c), which sets out the various matters that must be included in a written agreement between an employer and employee that the employee will take time off instead of being paid overtime rates:

> **(c)** An agreement must state each of the following:
>
> **(i)** the number of overtime hours to which it applies and when those hours were worked;
>
> **(ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
>
> **(iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;

(iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 27.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

511. Clause 30.3(e) of the Exposure Draft alters the legal effect of the current provision. It appears as follows:

30.3 An agreement must state all of the following:

…

(e) the period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

512. Clause 30.3(e) requires that an agreement between an employer and employee that the employee will take time off in lieu of overtime must state that the period of time off that the employee is entitled to take is the same as the number of overtime hours worked. This is not the case under clause 27.5(c) of the Award. Furthermore, clause 30 of the Exposure Draft does not contain a substantive provision corresponding with the current clause 27.5(d), which in fact states that the period of time off that an employee is entitled to take is the same as the number of hours worked.

513. In order to ensure that clause 30 of the Exposure Draft reflects clause 27.5 of the Award, we submit that:

- Clause 30.3(e) should be renumbered as clause 30.4; and
- Clause 30.4 – clause 30.11 should be renumbered as clause 30.5 – clause 30.12.

Clause 30.11 – Time off instead of payment for overtime for shiftwork

514. Clause 30.11 of the Exposure Draft is a note; it does not require a clause number as it is not a substantive provision.

515. Consistent with clause 27.5 of the Award, the clause number should be removed.

Clause 31.4 – Rest period after working overtime for shiftwork

516. Clause 27.3(b) of the Award applies where an employee works overtime in certain specified circumstances: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

517. As can be seen from the underlined text, the provision operates where an employee performs overtime between the termination of ordinary work on one day and the commencement of ordinary work on the following day. The provision does not apply where, for instance, an employee is required to work a rostered overtime shift that does not fall between the performance of ordinary hours on two consecutive days.

518. This element of the current clause does not appear in the Exposure Draft. Clause 31.4 states:

> **31.4** Despite clause 31.2, where an employee, due to overtime worked, would be required to start work before having had 8 consecutive hours off duty:
>
> **(a)** the employer must release the employee from duty until the employee has had 8 consecutive hours off duty; and
>
> **(b)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

519. The application of the current clause 27.3(b) has been expanded by the deletion of the relevant words. The provision would now apply where an employee is required to work a rostered overtime shift that does not fall between the

performance of ordinary work on two consecutive days. In this way, the legal effect of the Award has been altered.

520. Accordingly, clause 31.4 of the Exposure Draft should be amended as follows:

> **31.4** Despite clause 31.2, where an employee works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day, ~~due to overtime worked, would be required to start work before having~~ that the employee has not had 8 consecutive hours off duty between those times: …

Clause 31.4 – Rest period after working overtime for shiftwork

521. Clause 31.4 of the Exposure Draft states that it applies despite clause 31.2:

> **31.4** Despite clause 31.2, where an employee, due to overtime worked, would be required to start work before having had 8 consecutive hours off duty:

522. This appears to be a drafting error. Consistent with clause 23.3 of the Exposure Draft (which applies to day workers), the reference to clause 31.2 should be replaced with a reference to clause 31.3.

Clause 31.4(a) – Rest period after working overtime for shiftwork

523. Clause 27.3(b) of the Award states that in the circumstances described, the employee is to be released after the completion of the relevant period of overtime: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

524. Clause 31.4(a) of the Exposure Draft requires that the employer must release the employee from duty, however it does not make clear *when* this is to occur. That is, the point in time at which the obligation to release the employee crystallises is not apparent from the text of the clause:

> **(a)** the employer must release the employee from duty until the employee has had 8 consecutive hours off duty; and

525. Accordingly, and in the interests of ensuring that the provision is simple and easy to understand, it should be amended as follows:

> **(a)** the employer must release the employee from duty <u>after the completion of the overtime</u> until the employee has had 8 consecutive hours off duty; and

Clause 31.4(b) – Rest period after working overtime for shiftwork

526. Clause 27.3(b) of the Award requires that an employee must be released after completing the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time during such absence: (emphasis added)

> **(b)** An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty <u>without loss of pay for ordinary working time occurring during such absence</u>.

527. That is, if any ordinary working time falls during the employee's 10 hour absence, the employee must not lose pay in relation to those hours, which the employee would otherwise have worked.

528. Clause 31.4(b) of the Exposure Draft purports to deal with this element of the current provision in the following terms:

> **(b)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

529. The provision is entirely ambiguous. It appears to state that to the extent that the employee is absent during 'ordinary hours' (which appears to be a reference to the general concept of 'ordinary hours' under the Exposure Draft, rather than

the ordinary hours that the employee would otherwise have worked), the employee must not lose pay. We cannot comprehend the practical application or operation of such an entitlement.

530. For the purposes of restoring the effect of the current provision, clause 31.4(b) should be amended as follows:

> **(b)** the employee must not suffer any loss of pay for ~~an absence during ordinary hours~~ ordinary working time occurring while the employee is released from duty ~~as a result~~.

Clause 31.5 – Rest period after working overtime for shiftwork

531. Clause 27.3(c) of the Award applies where an employee resumes or continues work on the instructions of the employer: (emphasis added)

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

532. The entitlement prescribed by clause 27.3(c) applies only if the employee resumed or continued work without having 10 consecutive hours off duty as described in the preceding clause if the employee was so instructed by the employer.

533. Clause 31.5 of the Exposure Draft does not contain the same qualifier and as a result extends to circumstances in which an employee elects or volunteers to resume or continue work, absent such instruction from their employer:

> **31.5** Where an employee resumes or continues work without having at least 8 consecutive hours off duty in accordance with clause 31.2 all of the following apply: …

534. In this way, the legal effect of the Award has been altered.

535. Accordingly, clause 31.5 of the Exposure Draft should be amended as follows:

> **31.5** If on the instructions of the employer ~~Where~~ an employee resumes or continues work without having at least 8 consecutive hours off duty in accordance with clause 31.2 all of the following apply: …

Clause 31.5(c) – Rest period after working overtime for shiftwork

536. Clause 27.3(c) of the Award requires that an employee must not suffer a loss of pay for ordinary working time occurring during the relevant period of time: (emphasis added)

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

537. Clause 31.5(c) of the Exposure Draft instead refers to 'ordinary hours' generally:

> **(c)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

538. We consider that the reference to 'ordinary hours' is not clear. In particular, it does not specify that the employee is not suffer a loss of pay for those ordinary hours that the employee would otherwise have worked. Rather, it refers to 'ordinary hours' generally which, under an award, is a broader concept that relates to the parameters within which an employee may be required to perform ordinary hours of work.

539. Accordingly, consistent with clause 27.3(c) of the Award, clause 31.5(c) of the Exposure Draft should be amended as follows:

> **(c)** the employee must not suffer any loss of pay for an absence during ordinary working hours as a result.

Clause 31.5(c) – Rest period after working overtime for shiftwork

540. Clause 27.3(c) of the Award requires as follows:

- If an employee, on the employer's instructions, resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period.

- Once the employee is released, the employee is entitled to be absent until the employee has had 10 consecutive hours off duty.

- The employee must not suffer a loss of pay for ordinary working time that occurs during that period of absence.

541. Clause 27.3(c) of the Award is in the following terms:

> **(c)** If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

542. Clause 31.5 of the Exposure Draft is in the following terms:

> **31.5** Where an employee resumes or continues work without having at least 8 consecutive hours off duty in accordance with clause 312 all of the following apply:
>
> **(a)** the employer must pay 200% of the minimum hourly rate until the employee is released from duty; and
>
> **(b)** the employer must release the employee from duty until the employee has had 10 consecutive hours off duty; and
>
> **(c)** the employee must not suffer any loss of pay for an absence during ordinary hours as a result.

543. In our view, clause 31.5(c) is unclear. Specifically, it does not properly articulate the period of time during which an employee must not suffer a loss of pay for an absence during ordinary hours. The redrafted clause does not sufficiently connect clause 31.5(c) with clause 31.5(b).

544. Accordingly, we suggest that clause 31.5(c) be amended as follows (having regard also the amendment we have proposed above):

> **(c)** the employee must not suffer any loss of pay for ordinary working time occurring while the employee is so released ~~an absence during ordinary hours as a result~~.

Clause 32 – Transport reimbursement

545. Under the Award, the requirement that shiftworkers be reimbursed for the cost of transport in the prescribed circumstances is contained at clause 19, which contains all allowances payable under the Award. It appears at clause 19.1, under the heading for clause 19: 'Allowances':

> **19. Allowances**
>
> **19.1 Transport of employees – shiftworkers**
>
> When an employee working shiftwork commences or finishes work at a time other than the employee's normal time of commencing or finishing and when reasonable means of transport is not available, the employer will reimburse the employee an amount equal to the cost of any transport which allows the employee to reach the employee's home by other means of transport, unless the employer provides suitable transport.

546. The positioning of the relevant provision in the 'allowances' clause is important, as it has ramifications for other provisions of the Award. For instance:

- By virtue of clause 7.1(d) of the Award, an employer and employee may agree to vary the application of terms of the Award concerning allowances. This would necessarily include clause 19.1, which is quite clearly deemed an allowance under the Award.

- By virtue of clause 17.1(d) of the Award, an employer may pay an employee an annual salary in satisfaction of certain entitlements under the Award which includes those provisions contained at clause 19 and therefore, clause 19.1.

547. The aforementioned entitlement does not appear in the 'allowances' provision of the Exposure Draft, which is found at clause 19. Rather, it appears with the

shiftwork provisions at clause 32. The entitlement is not labelled or otherwise described as an allowance. We are concerned that as a result:

- The entitlement would not fall within the scope of matters about which an employer an employee can make an individual flexibility arrangement pursuant to clause 6.1(d) of the Exposure Draft.

- The entitlement would not fall within the scope of matters in satisfaction of which an employer can pay an annual salary pursuant to clause 18.1(a).

548. It is convenient to deal with the second issue first. We accept that this is a matter that can be remedied by simple inserting a reference to clause 32 at clause 18.1(a) of the Exposure Draft. Earlier in this submission we have proposed that this change be made.

549. The first issue, pertaining to the making of an individual flexibility arrangement, is best addressed by simply relocating clause 32 to clause 19 of the Exposure Draft with other the other allowances payable under the instrument. We do not consider that the inclusion of the clause with other shiftwork provisions renders the instrument any simpler or easier to understand. Indeed shiftworkers may also be entitled to other allowances contained at clause 19.

550. Accordingly, clause 32 should be renumbered as clause 19.8.

Clause 32(a)(iii) – Transport reimbursement for shiftwork

551. Clause 19.1 of the Award requires an employer to reimburse an employee for the cost of transport that allows the employee to reach home, unless the employee provides suitable transport that would enable the employee to do so: (emphasis added)

> When an employee working shiftwork commences or finishes work at a time other than the employee's normal time of commencing or finishing and when reasonable means of transport is not available, the employer will reimburse the employee an amount equal to the cost of any transport <u>which allows the employee to reach the employee's home</u> by other means of transport, unless the employer provides suitable transport.

552. The entitlement relates to circumstances in which an employee is travelling from work to their home.

553. Clause 32(a)(iii) of the Exposure Draft makes reference to an employer providing a suitable means of transport to and from the employee's usual place of residence:

> **(iii)** the employer does not provide, or arrange for, a suitable means of transport to and from the employee's usual place of residence at no cost to the employee.

554. The provision contained in the Exposure Draft extends the entitlement provided by the Award. It now relates not only to an employee travelling from work to their home but also from their home to work. The latter is not a feature of clause 19.1 of the Award. As a result, the legal effect of the clause has been altered.

555. Accordingly, clause 32(a)(iii) of the Exposure Draft should be amended as follows:

> **(iii)** the employer does not provide, or arrange for, a suitable means of transport to ~~and from~~ the employee's usual place of residence at no cost to the employee.

Clause 32(b) – Transport reimbursement for shiftwork

556. Clause 19.1 of the Award requires an employer to reimburse an employee for the cost of transport that allows the employee to reach home, unless the employee provides suitable transport that would enable the employee to do so: (emphasis added)

> When an employee working shiftwork commences or finishes work at a time other than the employee's normal time of commencing or finishing and when reasonable means of transport is not available, the employer will reimburse the employee an amount equal to the cost of any transport which allows the employee to reach the employee's home by other means of transport, unless the employer provides suitable transport.

557. The entitlement relates to circumstances in which an employee is travelling from work to their home. The entitlement does *not* extend to an employee travelling from their home to their place of work.

558. Clause 32(b) of the Exposure Draft significantly extends the entitlement currently provided by the Award. It states:

> **(b)** The employer must reimburse the employee the cost they reasonably incurred in taking a commercial passenger vehicle from the employee's usual place of residence to the usual place of employment or from the place of employment to the employee's usual place of residence, whichever is applicable.

559. The provision now includes costs incurred by an employee in the relevant circumstances where the employee is travelling to work from their place of residence. This is a change to the legal effect of the Award.

560. Accordingly, clause 32(b) of the Exposure Draft should be amended as follows:

> **(b)** The employer must reimburse the employee the cost they reasonably incurred in taking a commercial passenger vehicle ~~from the employee's usual place of residence to the usual place of employment or~~ from the place of employment to the employee's usual place of residence~~, whichever is applicable~~.

Clause 32 – Transport reimbursement for shiftwork – Note

561. In light of the amendment proposed above, we do not consider that the note following clause 32 is necessary. All allowances will thereafter appear at clause 19. The application of those provisions is made sufficiently clear by the terms of the provisions themselves. The note should therefore be deleted.

8. PART 7 – LEAVE AND PUBLIC HOLIDAYS

Clause 33.3(c) – Annual leave loading

562. Clause 29.3 of the Award requires the payment of annual leave loading: (emphasis added)

> **29.3 Annual leave loading**
>
> **(a)** During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16—Minimum weekly wages. Annual leave loading payment is payable on leave accrued.
>
> **(b)** The loading is as follows:
>
> **(i) Day work**
>
> Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.
>
> **(ii) Shiftwork**
>
> Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.

563. It is convenient to first deal with clause 29.3(b)(ii). It prescribes the entitlement to annual leave loading in relation to an employee who would have worked on shiftwork had they not been on annual leave. It requires a comparison between the following two amounts:

- 17.5% of the minimum wages prescribed by the award payable for the employee's ordinary hours of work during the period of annual leave; and

- The shift loading that would have been payable for the employee's ordinary hours of work during the period of annual leave. The shift loadings are prescribed at clause 28.4(c) of the Award: (emphasis added)

> **(c)** A shiftworker employed on an afternoon shift or a night shift must, for work done during the ordinary hours of any such shift, be paid ordinary

rates plus an additional 15% for afternoon or night shift, or an additional 30% for a permanent night shift.

564. In making the second calculation, the amount to be derived is the separately identifiable amount that constitutes the shift loading, to the exclusion of the minimum hourly rate that is also payable. That is, the relevant amount is 15% or 30% of the minimum hourly rate payable for ordinary hours of work during the period of annual leave, rather than 115% or 130% of the minimum hourly rate payable for ordinary hours of work during the period of annual leave.

565. Clause 33.3(c)(ii) of the Exposure Draft, which corresponds with clause 29.3(b)(ii) of the Award, is in relevantly similar terms: (emphasis added)

> **(ii) Shiftwork**
>
> Employees who would have worked on shiftwork had they not been on leave – a loading of 17.5% or the shift loading (including the relevant weekend penalty rates) whichever is the greater but not both).

566. The difficulty that now arises from the Exposure Draft is that it does not in fact prescribe a separately identifiable 'shift loading'. Rather, at clause 26.1, it prescribes the 'penalty rates' payable for ordinary hours of work performed on a defined shift. That is, the Exposure Draft expresses the amount payable for such work as a rate inclusive of the 'shift loading' rather than a separate premium that is to be paid in addition to the minimum hourly rate.

567. As a consequence, the Exposure Draft no longer identifies the quantum of the 'shift loading' which must be ascertainable for the purposes of applying clause 33.3(c)(ii) of the Exposure Draft. The instrument now only prescribes a rate that includes the shift loading, without separately identifying the proportion of that rate that constitutes the shift loading.

568. The issue we have here described arises also from clause 33.3(c)(i) of the Exposure Draft and clause 29.3(b)(i) of the Award. That is because in each instance the provision erroneously refers to 'weekend penalty rates' rather than a separately identified premium payable for ordinary hours of work performed on weekends.

569. Ai Group has previously raised this issue in the context of various other exposure drafts published by the Commission in this Review.[6] As at the time of drafting this submission, the Commission has not made a ruling in relation to it. We respectfully submit that consideration ought to be given by the Commission as to how this matter should be dealt with in the Exposure Draft.

Clause 34.2(b) – Personal/carer's leave for casual employees

570. Clause 30.2(b) of the Award allows a casual employee to be absent for up to 48 hours due to the circumstances described in clause 30.2(a) "by right". That is, the employee does not require the agreement of their employer if they are absent for up to 48 hours because of the circumstances described in clause 30.2(a): (emphasis added)

> **(b)** … A maximum of 48 hours absence is allowed by right with additional absence by agreement.

571. Clause 34.2(b) of the Exposure Draft, however, appears to give casual employees the right to be absent for 48 hours (and nothing less) if the circumstances described in clause 34.2(a) arise. Clauses 34.2(a) and 34.2(b) state: (emphasis added)

> **(a)** A casual employee is entitled to be unavailable for work or to leave work to care for a person who:
>
> > **(i)** is sick and requires care and support; or
> >
> > **(ii)** requires care due to an emergency.
>
> **(b)** 48 hours' absence is allowed by right, with additional absence by agreement.

572. The proposed clause purports to give each casual employee the right to be unavailable for work or to leave work for exactly 48 hours in order to care for a person who is sick and requires care and support or requires care due to an emergency. It does not contemplate the employee's right to take less than 48 hours of leave, as is presently the case. In this way, the legal effect of the Exposure Draft differs from the Award.

[6] Ai Group submission dated 31 August 2016.

573. Accordingly, clause 34.2(b) should be amended as follows:

> **(b)** A maximum of 48 hours absence is allowed by right, with additional absence by agreement.

Clause 36.1 – Public holidays

574. Clause 36.1 of the Exposure Draft refers to the NES: (emphasis added)

> **36.1** Public holiday entitlements are provided for in the NES.

575. The relevant provisions of the NES that deal with public holidays address matters other than simply employee entitlements. For instance, s.115 of the Act identifies the days to be considered public holidays and provides for the substitution of public holidays in certain circumstances.

576. For these reasons, and consistent with clause 31.1 of the Award, the word "entitlements" should be deleted from clause 36.1 of the Exposure Drafts.

Clause 36.2 – Public holidays

577. We refer to the submissions we have earlier made regarding the question contained in the Exposure Draft at clause 21.3. For the reasons there set out, we submit that clause 36.2 of the Exposure Draft should be replaced with the following:

> **36.2 Public holiday penalty rate (employee not engaged on shifts)**
>
> **(a)** An employer must pay an employee not engaged on shifts at the rate of 250% of the minimum hourly rate for hours worked on a public holiday or a substituted day.
>
> **(b)** Despite clause 36.2(a), if an employee works on both a public holiday and the substituted day, the employee is entitled to be paid for one of the days at the penalty rate specified in clause 36.2(a).
>
> **(c)** The employee may choose which day the penalty rate is applied to.
>
> **(d)** An employer must pay an employee not engaged on shifts who is required to work on a public holiday for a minimum of 4 hours.

578. The wording here proposed is in relevantly similar terms to that found at clause 21.3 of the Exposure Draft.

Clause 36.3 – Substitution of public holidays by agreement

579. Clause 36.3 of the Exposure Draft is in the same terms as the current clause 31.2. It is in the following terms:

> **36.3** An employer and the employees may by agreement substitute another day for a public holiday.

580. Clause 7.2 of the Exposure Draft (for which there is no corresponding clause in the Award), identifies clause 36.3 as a facilitative provision and indicates that it requires agreement between an employer and "an individual or majority of employees".

581. Whilst we do not disagree with the manner in which clause 36.3 is reflected in clause 7.2 of the Exposure Draft, we suggest that in the interests of making the instrument simpler and easier to understand, clause 36.3 should be amended to reflect that agreement may be reached by an employer with either an individual employee or a majority of employees pursuant to that provision. Arguably, the words "the employees" in the current clause are ambiguous.

582. Accordingly, clause 36.3 should be replaced with the following clause:

> **36.3** An employer and the majority of affected employees in an enterprise or part of an enterprise may by agreement substitute another day for a public holiday. Agreement may also be reached between an employer and an individual employee.

9. PART 8 – CONSULTATION AND DISPUTE RESOLUTION

583. The provisions contained in part 8 of the Exposure Draft are being considered in the context of the plain language re-drafting of 'standard' award clauses. Accordingly, we do not propose to here make submissions about the relevant provisions.

10. PART 9 – TERMINATION OF EMPLOYMENT AND REDUNDANCY

584. The provisions contained in part 8 of the Exposure Draft are being considered in the context of the plain language re-drafting of 'standard' award clauses. Accordingly, we do not propose to here make submissions about the relevant provisions.

11. SCHEDULE A – CLASSIFICATION STRUCTURE AND DEFINITIONS

585. Schedule B to the Award sets out the classification structure and definitions. In respect of each classification, it first describes the 'characteristics' attributable to an employee classified at that level. Those characteristics are intended to allow a reader of the Award to understand the competencies required by an employee at that level. That is, an employer will query whether an employee possesses the competencies necessary to satisfy the characteristics described.

586. The 'characteristics' provide a description of the nature of the work performed by employees at that level and the manner in which that work is undertaken. The Award does *not*, as such, identify the specific competencies that an employee must possess in order to be classified at a certain level. That is a matter that is to be assessed by an employer, having regard to the nature of the work to be performed in the context of the relevant workplace.

587. The characteristics are drafted broadly and in terms that are not mandatory but rather, are permissive. This enables greater flexibility in determining the appropriate classification for an employee, having regard to the classification definitions as a whole. In some instances, the classification definitions are also drafted to encapsulate employees who possess a range of skills and experience. This is particularly true of level 1, which refers expressly to 'initial recruits' as well as those who have had a greater degree of relevant experience.

588. The Exposure Draft, by contrast, fundamentally alters the nature of the classification structure and the basis upon which it operates. It instead purports to identify the specific competencies that an employee must possess in order to be classified at a certain level. That is, it seeks to identify specific skills or abilities that the employee must possess. Further, it has been drafted so as to require that an employee possesses *all* of the requisite competencies, rather than enabling the coverage of employees who may possess some but not all of the relevant competencies.

589. We here consider level 2 by way of example. The Award sets out the following characteristics for an employee classified at that level: (emphasis added)

B.2.1 Characteristics

This level caters for the employees who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction.

Employees at this level are responsible and accountable for their own work which is performed within established guidelines. In some situations detailed instructions may be necessary. This may require the employee to exercise limited judgment and initiative within the range of their skills and knowledge.

The work of these employees may be subject to final checking and as required, progress checking. Such employees may be required to check the work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level.

590. The Exposure Draft instead describes the required competencies of an employee classified at level 2 as follows:

A.3.1 Competencies

(a) The general competencies and skills required of employees at this level include:

(i) sufficient experience or training to enable them to carry out their duties under general direction;

(ii) the capacity to be responsible and accountable for their own work within established guidelines;

(iii) detailed instructions may be necessary in some situations;

(iv) the ability to exercise limited judgement and initiative within their skills and knowledge; and

(v) the ability to check work and provide guidance to other employees at a lower level.

(b) Employees may be required to provide assistance to less experienced employees at the same level.

(c) The work of employees at this level may be subject to final checking and as required, including progress checking.

591. A.3.1(a) *requires* that an employee classified at level 2 possess each of the competencies and skills there listed. The legal effect of this part of the Exposure Draft is different to the Award.

592. For instance, an employee at level 2 under the Award *may* be required to exercise limited judgement and initiative within the range of their skills and

knowledge. Whether or not they are in fact required is a matter for their employer. If they are so required, an assessment as to whether they possess the competencies necessary to exercise such judgement and initiative is to be determined by their employer having regard to the context of their role and the workplace. Importantly, an employee who does not possess the competencies necessary to exercise limited judgement and initiative within their range of skills and knowledge does not necessarily preclude them from being classified at level 2. This is because if an employer does not in fact require an employee to do so, a consideration as to whether they have the necessary competencies is not relevant to an assessment of whether they may be classified at level 2. The Award simply states that an employee at this level *may*, at the employer's discretion, be required to exercise judgement and initiative as there described.

593. The Exposure Draft, at A.3.1(a)(iv), appears to have the effect of altering this position. It now requires that an employee at level 2 *must* have the ability to exercise limited judgement and initiative within their skills and knowledge. This is a mandatory minimum requirement in order for an employee to be classified at level 2. It is self-evident that this is a different proposition to that which appears under the Award. As a result, an employee presently classified at level 2 may not be classified at level 2 under the Exposure Draft.

594. A similar example arises in relation to an employee checking the work of employees at a lower level. The Award states as follows:

> The work of these employees may be subject to final checking and as required, progress checking. Such employees may be required to check work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level.

595. In essence, the paragraph above states that:

- The work of employees classified at level 2 *may* be subject to final checking and as required progress checking. The Award does not state that this will always be so.

- Where the work of an employee classified at level 2 is subject to final checking and/or progress checking, that employee *may* be required to check work and/or provide guidance to other employees at a lower level. Not all employees classified at level 2 whose work is subject to final checking and/or progress checking will be required to so check and/or provide guidance to others.

- Where the work of an employee classified at level 2 is subject to final checking and/or progress checking, that employee *may* be required to provide assistance to less experienced employees at the same level. Not all employees classified at level 2 whose work is subject to final checking and/or progress checking will be required to so check and/or provide guidance to others.

- The provision of guidance, assistance or checking the work of other employees by those whose work is *not* the subject of final and/or progress checking is not expressly contemplated by the level 2 classification description. We note that it is however deemed a characteristic of an employee classified at level 3:

  > … Employees require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgement in carrying out their assigned duties.
  >
  > Such employees may be required to give assistance and/or guidance (including guidance in relation to quality of work and which may require some allocation of duties) to employees in Levels 1 and 2 and would be able to train such employees by means of personal instruction and demonstration.

596. A.3.1(a) of the Exposure Draft instead requires that any employee classified at level 2 must possess the following competency and skill, in addition to the others there listed:

> **(iv)** the ability to check work and provide guidance to other employees at a lower level.

597. The requirement is neither confined to those employees whose work is itself the subject of final checking and/or progress checking, nor is it expressed as a competency that *may* be required. Instead it is one that any employee classified at level 2 *must* possess, regardless of whether the employee is in fact required to check work and provide guidance to other employees at a lower level. This may have the effect of excluding from level 2 certain employees who would otherwise be classified at level 2 under the Award.

598. The issue we have here raised arises as a result of fundamental changes made to the manner in which the classification descriptions under the Award are currently applied. The concerns identified are not confined to level 2 but rather appear throughout the schedule in most if not all of the classification levels.

599. In addition, changes made to the specific form of words used or the order in which they appear are also, in many cases, problematic.

600. For instance, B.1.1 of the Award commences by describing the less experienced employees who may be classified at level 1:

> **B.1.1 Characteristics**
>
> Employees at this level may include the initial recruit who may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.
>
> Such employees perform routine clerical and office functions requiring an understanding of clear, straightforward rules or procedures and may be required to operate certain office equipment. Problems can usually be solved by reference to established practices, procedures and instructions.

601. The Exposure Draft purports to re-draft this part of the current B.1.1 as underlined below, from which several issues arise:

> **A.2.1 Competencies**
>
> **(a)** Employees at this level include initial recruits who have limited relevant experience and perform routine clerical and office functions.
>
> **(b)** Employees at this level have the competencies and skills required to:
>
> **(i)** perform work under close direction using established practices, procedures and instructions; and
>
> **(ii)** work may be subject to checking; and
>
> **(iii)** solve problems by reference to established practices, procedures and instructions; and
>
> **(iv)** operate certain office equipment; and
>
> **(v)** be responsible and accountable for their own work within established routines, methods and procedures.

602. **Firstly**, level 1 under the Award is expressed to include initial recruits 'who *may* have limited relevant experience'. That is, an initial recruit with limited relevant experience may be classified at level 1 and an initial recruit that has some relevant experience which exceeds that which would be considered 'limited' may also be covered by level 1. Level 1 is not confined to initial recruits who have only limited relevant experience.

603. Clause A.2.1(a) of the Exposure Draft, however, expresses level 1 to cover only those initial recruits who have limited relevant experience. It does not cover initial recruits who have a greater degree of experience and in this way, the legal effect of the Award has potentially been altered.

604. **Secondly**, B.1.1 states that '*initially'*, work by an initial recruit at level 1 'is performed under close direction using established practices, procedures and instructions'.

605. By contrast, A.2.1(b) states that all employees at level 1 have the competencies and skills required to:

> **(i)** perform work under close direction using established practices, procedures and instructions; and
>
> …
>
> **(v)** be responsible and accountable for their own work within established routines, methods and procedures.

606. The classification description no longer states that only initial recruits 'perform work under close direction' and that other employees classified at level 1 are 'responsible and accountable for their own work'. Rather, there is now a potential tension between A..2.1(b)(i) and (v), both of which apply to all employees classified at level 1.

607. **Thirdly**, the Award states that an initial recruit *may* be required to operate certain office equipment. However, A.2.1(b)(iv) requires that any employee classified at level 1, initial recruit or otherwise, must be able to operate certain office equipment.

> **(b)** Employees at this level have the competencies and skills required to:
>
> ...
>
> **(iv)** operate certain office equipment; and
>
> …

608. This is again a substantive change to the legal effect of the Award.

609. **Fourthly**, and in a similar vein, the Award states in relation to an initial recruit that problems can *usually* be solved by reference to established practices, procedures and instructions. It does not require that this must always be so.

610. The Exposure Draft once again alters the legal effect of the classification structure by requiring that any employee classified at level 1, initial recruits and more experienced employees, must have the competencies and skills required to solve problems in all circumstances (rather than *usually* being able to do so):

> **(b)** Employees at this level have the competencies and skills required to:
>
> …
>
> **(iii)** solve problems by reference established practices, procedures and instructions; and
>
> …

611. Our submissions provide just some examples of matters that arise from the redrafting of the level 1 classification description and are not intended to be an exhaustive consideration of the re-draft.

612. As can be seen, changes made by the draftsperson to the structure of each classification definition as well as alterations made to the text of the classification descriptors has, in many cases, altered the legal effect of the Award. Importantly, substantive changes to the classification structure can have significant ramifications for the coverage of the instrument and can inadvertently require the reclassification of employees, resulting in a consequential impact on their wage entitlements. It is therefore essential that great care is taken in any redrafting of this part of the Award.

613. In the timeframe afforded to review and file submissions in relation to the Exposure Draft, we have not been able to complete a comprehensive review of each and every element of Schedule A. Based on our consideration of the schedule thus far however, we consider it highly likely that the nature of the issues we have raised above will recur in other classification descriptions given the approach taken by the draftsperson. Additional concerns may also arise from the redrafting of the 'typical duties and skills' in relation to each level.

614. Ai Group strongly submits that in light of the numerous concerns that we have already identified and the potentially significant impact that this can have for the coverage of the instrument and/or the level at which an employee is classified

under the Award, the classification structure should not be redrafted. We are not aware of any disputation or confusion arising from the classification definitions in their present form. Indeed, we consider that they are in terms that are simple and easy to understand.

615. *Any* risk of altering the coverage of the award or of reclassifying employees unintentionally through this process should, in our view, be avoided. Therefore, we consider that the prudent course would simply be to retain the classification definitions in their present form. If the Commission or any interested parties identify a specific element or part of the schedule that warrants redrafting, it may be appropriate to consider it in isolation and ascertain whether it can carefully be redrafted without altering its legal effect, rather than a wholesale re-write of the entire classification structure.

616. Of course if the Commission decides that it will, nonetheless, proceed with a redraft of the classification structure and definitions, Ai Group will seek an opportunity in due course to make further submissions in this regard.

12. SCHEDULE B – SUMMARY OF HOURLY RATES

617. The drafter comments indicate that Schedule B is "common to other modern award exposure drafts" and that it will be "dealt with via a separate process".

618. Whilst we understand that a schedule summarising hourly rates payable under an award is common to most if not all exposure drafts published by the Commission in this Review, the terms of the schedule will necessarily vary depending upon the rates prescribed by the relevant instrument.

619. Accordingly, we have reviewed the structure of Schedule B to the Exposure Draft and here propose to make brief submissions in relation to it. We have not, at this stage, reviewed the specific rates set out and may seek an opportunity to do so in due course.

Schedule B – Note

620. In its decision of July 2015[7], the Commission decided that a note would be inserted in all exposure drafts that contain a schedule summarising the hourly rates payable under the award. It is in the following terms: (emphasis added)

> NOTE: Employers <u>who meet their obligations under this schedule</u> are meeting their obligations under the award.

621. Whilst we understand that it is the Commission's intention that the schedules attached to its exposure drafts be legally enforceable[8], we are concerned that this is not achieved by the note. The schedules do not, as such, impose any obligation on an employer. Rather, they merely summarise the rates that are payable to an employee by virtue of various clauses found in the body of the instrument including:

- The minimum wages provision that prescribes the rate of pay for each classification; and
- Any penalties, loadings, allowances or other premiums.

[7] *4 yearly review of modern awards* [2015] FWCFB 4658 at [95] – [96].

[8] *4 yearly review of modern awards* [2015] FWCFB 4658 at [63].

622. The obligation to pay an employee a particular rate arises from the terms of the instrument itself. Neither the terms of the Exposure Draft, nor Schedule B itself, imposes an obligation on an employer to pay the rates summarised in the schedule. That is, neither the Exposure Draft nor the schedule purports to require the employer to pay the rates there set out. Therefore, the reference in the proposed note to an employer meeting its "obligations under [the] schedule" appears somewhat erroneous.

623. Further, in our view, the schedule should not, and indeed cannot, provide a substitute for reading the terms of an award itself. That is, the schedule must be read in the context of the Exposure Draft. This is because it contains provisions that explain the circumstances in which a particular rate is payable. Similarly, it may provide for exceptions or caveats around the application of a particular monetary entitlement. Indeed these complexities were acknowledged by the Full Bench in its July 2015 decision: (emphasis added)

> [61] In submissions to the Review, a number of parties have raised general and specific issues about the inclusion of such detailed schedules. In their submission of 6 March 2015, Ai Group supports the inclusion of such schedules but states that the Commission's approach must be considered on an award-by-award basis and "be guided by the submissions of the parties and outcomes of the conferencing process". While most parties support the inclusion of schedules of hourly rates, there is concern about adopting a 'one size fits all' approach. <u>While rates including penalties and loadings can be clearly summarised in some awards, others are more complex due to the inter-relationship between loadings or the incidence of all purpose allowances payable to only some employees.</u>[9]

624. In our view, it would be prudent to alert a reader of the Exposure Draft of the need to make reference to the corresponding provisions of the instrument in order to ascertain the relevant entitlement. Indeed this is a practice that is often adopted by industrial organisations that provide summaries of rates of pay to their membership. The intention is to ensure that an employer and employee are aware of the need to consider the text of the relevant provisions, rather than to assume that a rate prescribed by the schedules is applicable in all circumstances.

[9] *4 yearly review of modern awards* [2015] FWCFB 4658 at [61].

625. For this reason, we propose that the note determined by the Commission be amended as follows:

> NOTE: This schedule should be read in conjunction with the terms of the award. Employers who pay the relevant rates contained in ~~meet their obligations under~~ this schedule are meeting ~~their~~ the corresponding obligations under the award.

626. This is a matter that Ai Group has previously raised in the context of other exposure drafts published by the Commission during this Review. As at the date of drafting this submission, the Commission has not yet made a ruling in relation to it.

Clause B.2.1 – Full-time and part-time adult shiftworkers – ordinary and penalty rates

627. Section B.2 of Schedule B relates to shiftworkers. The second column at B.2.1 is headed 'day', which we assume is intended to be a reference to 'day shifts'.

628. Neither the Award nor the Exposure Draft contemplate 'day shifts' as a concept. An employee is either engaged to work on a shift that meets one of the definitions set out at clause 25.1 of the Exposure Draft, or the employee is a day worker in which case section B.1 contains the relevant rates payable.

629. Accordingly, we do not consider that the column headed 'day' is necessary and may in fact lead to confusion. It should be deleted.

Clause B.3.2 – Casual adult shiftworkers – ordinary and penalty rates

630. The word 'age' appears in the top right hand corner of the table at B.3.2. This appears to be a drafting error. It should be deleted.

Clause B.3.2 – Casual adult shiftworkers – ordinary and penalty rates

631. B.3.2 relates to shiftworkers. The second column is headed ‘day’, which we assume is intended to be a reference to ‘day shifts’.

632. Neither the Award nor the Exposure Draft contemplate ‘day shifts’ as a concept. An employee is either engaged to work on a shift that meets one of the definitions set out at clause 25.1 of the Exposure Draft, or the employee is a day worker in which case B.3.1 contains the relevant rates payable.

633. Accordingly, we do not consider that the column headed ‘day’ is necessary and may in fact lead to confusion. It should be deleted.

13. SCHEDULE C – SUMMARY OF MONETARY ALLOWANCES

634. The drafter comments indicate that Schedule C is "common to other modern award exposure drafts" and that it will be "dealt with via a separate process".

635. Whilst we understand that a schedule summarising allowances payable under an award is common to most if not all exposure drafts published by the Commission in this Review, the terms of the schedule will necessarily vary depending upon the allowances prescribed by the relevant instrument.

636. Accordingly, we have reviewed Schedule C to the Exposure Draft and here propose to make brief submissions in relation to it.

Clause C.2.1 – Expense related allowances – Meal allowance – Further four hours' overtime

637. The allowance here described can be found at clause 19.5(c). Accordingly, the reference to clause 19.5(b)(ii) in the second column should be deleted and replaced with a reference to clause 19.5(c).

14. SCHEDULES D – H TO THE EXPOSURE DRAFT

638. The drafter comments indicate that Schedules D - H are “common to other modern award exposure drafts” and that they will be “dealt with via a separate process”. Accordingly, we have not reviewed those schedules and do not here propose to make any submissions in relation to them.

EXPOSURE DRAFT

Clerks—Private Sector Award 2017

This plain language exposure draft has been prepared by staff of the Fair Work Commission based on the ***Clerks—Private Sector Award 2010*** (the Clerks Award) as at 3 February 2017. This exposure draft does not seek to amend any entitlements under the Clerks Award. It has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques to award-specific provisions.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter AM2014/219. Additionally, a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

This draft does not represent the concluded view of the Commission in this matter.

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Part 1—Application and Operation of this award

1. Title and commencement

1.1 This is the *Clerks—Private Sector Award [2017]*.

1.2 This modern award~~, as varied,~~ commenced operation on 1 January 2010.

1.3 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by this award.

1.4 On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2. Definitions

In this award:

Act means the *Fair Work Act 2009* (Cth).

afternoon shift, see clause 25.1(a).

defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

employee means a national system employee as defined by section 13 of the Act.

employer means a national system employer as defined by section 14 of the Act.

enterprise instrument has the meaning given by subitem 2(1) of Schedule 6 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

Fair Work Regulations means the *Fair Work Regulations 2009* (Cth).

minimum hourly rate means the minimum hourly rate prescribed in clause 16—Minimum wages.

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

National Employment Standards, see Part 2-2 of the Act. Divisions 3 to 12 of Part 2-2 of the Act constitute the ***National Employment Standards***. An extract of section 61 of the Act is reproduced below.

The National Employment Standards are minimum standards applying to employment of employees. The minimum standards relate to the following matters:

(a) maximum weekly hours (Division 3);

(b) requests for flexible working arrangements (Division 4);

(c) parental leave and related entitlements (Division 5);

(d) annual leave (Division 6);

(e) personal/carer's leave and compassionate leave (Division 7);

(f) community service leave (Division 8);

(g) long service leave (Division 9);

(h) public holidays (Division 10);

(i) notice of termination and redundancy pay (Division 11);

(j) Fair Work Information Statement (Division 12).

night shift, see clause 25.1(b).

on-hire means the on-hire of an employee by their employer to a client, where such an employee works under the general guidance and instructions of the client or a representative of the client.

permanent night shift, see clause 25.1(c).

~~**shiftworker**, see clause 33.2.~~

standard rate means the minimum weekly wage for a **Level 2, Year 1** in clause 16.1.

State reference public sector modern award has the meaning given by subitem 3(2) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

State reference public sector transitional award has the meaning given by subitem 2(1) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

~~**Table 1—Facilitative provisions** means the Table in clause 7.2.~~

~~**Table 2—Entitlements to rest break(s)** means the Table in clause 15.1.~~

~~**Table 3—Minimum wages** means the Table in clause 16.1.~~

~~**Table 4—Junior wages** means the Table in clause 16.4.~~

~~**Table 5—Overtime rates for employees who are not engaged on shifts** means the Table in clause 22.4.~~

~~**Table 6—Penalty rates for shiftwork** means the Table in clause 26.1.~~

~~**Table 7—Overtime rates for shiftwork** means the Table in clause 29.1.~~

~~**Table 8—Period of notice** means the Table in clause **Error! Reference source not found.**.~~

3. The National Employment Standards and this award

3.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

3.3 The employer must ensure that copies of this award and of the NES are available to all employees to whom they apply, either on a notice board conveniently located at or near the workplace or through accessible electronic means.

4. Coverage

4.1 This occupational award covers:

(a) private sector employers throughout Australia ~~who engage~~ with respect to their employees wholly or principally engaged in clerical and administrative work described in Schedule A—Classification Structure and Definitions; and

(b) private sector employees of employers mentioned in paragraph (a) who are wholly or principally engaged in ~~performing~~ clerical and administrative work described in Schedule A—Classification Structure and Definitions.

4.2 However, this occupational award does not cover employers and employees covered by a modern award that contains clerical ~~and administrative~~ classifications, including employers covered by any of the following modern awards with respect to employees covered by the awards:

(a) *Aged Care Award 2016*; or

(b) *Airline Operations—Ground Staff Award 2016*; or

(c) *Airport Employees Award 2016*; or

(d) *Alpine Resorts Award 2016*; or

(e) *Animal Care and Veterinary Services Award 2016*; or

(f) *Banking, Finance and Insurance Award 2016*; or

(g) *Black Coal Mining Industry Award 2016*; or

(h) *Business Equipment Award 2016*; or

(i) *Children Services Award 2016*; or

(j) *Contract Call Centres Award 2016*; or

(k) *Educational Services (Post-Secondary Education) Award 2016*; or

(l) *Educational Services (Schools) General Staff Award 2016*; or

(m) *Fitness Industry Award 2016*; or

(n) *General Retail Industry Award 2016*; or

(o) *Health Professionals and Support Services Award 2016*; or

(p) *Higher Education Industry—General Staff—Award 2016*; or

(q) *Hospitality Industry (General) Award 2016*; or

(r) *Legal Services Award 2016*; or

(s) *Market and Social Research Award 2016*; or

(t) *Rail Industry Award 2016*; or

(u) *Restaurant Industry Award 2016*; or

(v) *Sporting Organisations Award 2016*; or

(w) *Telecommunications Services Award 2016*.

4.3 This occupational award also covers:

(a) on-hire employees working in a classification defined in Schedule A—Classification Structure and Definitions and the on-hire employers of those employees; and

(b) trainees employed by a group training employer and hosted by an employer covered by this award working in a classification defined in Schedule A—Classification Structure and Definitions and the group training employers of those trainees.

4.4 However, this occupational award does not cover any of the following:

(a) employees excluded from award coverage by the Act; or

NOTE: See section 143(7) of the Act.

(b) employees covered by a modern enterprise award or an enterprise instrument; or

(c) employees covered by a State reference public sector modern award or a State reference public sector transitional award; or

(d) employers ~~of~~ in relation to employees mentioned in paragraph (a), (b) or (c).

4.5 If an employer is covered by more than one award, an employee of the employer who is engaged wholly or principally in clerical and administrative work is covered by the award containing the classification that is most appropriate to the work performed by the employee and the industry in which they work.

5. Effect of variations made by the Fair Work Commission

A variation of this award made by the Fair Work Commission does not affect any right, privilege, obligation or liability acquired, accrued or incurred under this award.

6. Award flexibility for individual arrangements

This clause is a standard clause and is being dealt with as part of Full Bench AM2016/15.

6.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances; and

(e) leave loading.

6.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

6.3 The agreement between the employer and the individual employee must:

(a) be confined to a variation in the application of one or more of the terms listed in clause 6.1; and

(b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

6.4 The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

(b) state each term of this award that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

(e) state the date the agreement commences to operate.

6.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

6.6 Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

6.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

6.8 The agreement may be terminated:

(a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

NOTE: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the Act).

6.9 The notice provisions in clause 6.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 6.8(a), subject to four weeks' notice of termination.

6.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

7. Facilitative provisions for flexible working practices

7.1 This award contains facilitative provisions which allow agreement between an employer and an individual employee, or the majority of employees, on how specific award provisions are to apply at the workplace.

7.2 The following clauses have facilitative provisions:

Table 1—Facilitative provisions

Clause	Provision	Agreement between an employer and:
13.6	Altering spread of hours	An individual or majority of employees
13.10	Make-up time	An individual
14.5(a)	Substitution of rostered days off	An individual
14.6(a)	Banking rostered days off	An individual
17.2(b)	Monthly pay periods	An individual or a ~~A~~ majority of employees
24.1	Time off instead of payment for overtime	An individual
27.1	Shiftwork—averaging ordinary hours	~~An individual or~~ A majority of employees
27.4	Shiftwork—beginning and end of shifts	An individual
27.5	Shiftwork—make-up time	An individual
30	Shiftwork—time off instead of payment for overtime	An individual
~~33.4(a)~~	~~Annual leave in advance~~	~~An individual~~
36.3	Substitution of public holidays	An individual or majority of employees

Part 2—Types of Employment and Classifications

8. Types of employment

An employee covered by this award must be one of the following:

8.1 a full-time employee; or

8.2 a part-time employee; or

8.3 a casual employee.

9. Full-time employment

Each of the following is a full-time employee:

9.1 an employee who is engaged to work 38 ordinary hours per week; or

9.2 an employee who is engaged to work the number of ordinary hours (fewer than 38) per week that is considered full-time at the workplace by the employer.

NOTE: The number of ordinary hours worked per week by a full-time employee may be averaged over a period of up to 4 weeks or over an agreed roster period. See clause 13.4 (Ordinary hours of work).

10. Part-time employment

Part-time employment provisions may be affected by AM2014/196

10.1 An employee who is engaged to work for fewer ordinary hours than 38 per week (or the number mentioned in clause 9.2) and whose hours of work are reasonably predictable is a part-time employee.

10.2 ~~This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award.~~ A part-time employee is entitled to pay and conditions provided by this award on a pro-rata basis.

10.3 ~~A part-time employee is entitled to payments in respect of annual leave, personal/carer's leave, compassionate leave or public holidays on a proportionate basis.~~

10.4 At the time of engaging a part-time employee, the employer and employee must agree in writing ~~with the employee to~~ on all of the following:

(a) the number of hours to be worked each day; and

(b) the days of the week on which the employee will work; and

(c) the times at which the employee will start and finish work each day.

Clauses 10.5 and 10.6 have been re-drafted with reference to a submission made by the ASU during the 2008 award modernisation process (see para's 98–100). Parties are asked to confirm whether the re-drafted clauses accurately reflect the intention of current modern award clause 11.4.

10.5 Changes to the number of hours to be worked under clause 10.4(a) must be agreed in writing between the employer and employee.

10.6 The days worked under clause 10.4(b) may be changed by the employer by giving the employee 7 days' notice of the change.

10.7 An employer must roster a part-time employee on any shift for a minimum of 3 consecutive hours.

10.8 All time worked in excess of the number of ordinary hours agreed under clause 10.4 or varied under clause 10.5 is overtime and must be paid at the overtime rate in accordance with clause 22—Overtime.

11. Casual employment

Casual employment provisions may be affected by AM2014/197

11.1 ~~An employee who is not covered by clause 9—Full-time employment or clause 10—Part-time employment must be engaged and paid as a casual employee.~~ A casual employee is an employee engaged as such.

11.2 An employer must pay a casual employee for each ordinary hour worked a loading of **25%** on top of the minimum hourly rate otherwise applicable under clause 16—Minimum wages.

NOTE: The casual loading is payable instead of other entitlements (such as entitlement to paid leave) from which casuals are excluded by the terms of this award and the NES. See Part 2-2 of the Act.

11.3 An employer may determine the pay period of a casual employee as being weekly, fortnightly or at the end of each engagement.

11.4 An employer must pay a casual employee for a minimum of 3 hours' work on each engagement even if they are rostered to work for fewer than 3 consecutive hours.

Parties are asked whether clause 11.4 should specify the minimum payment applies 'for on each engagement'.

12. Classifications

12.1 An employer must classify an employee covered by this award in accordance with Schedule A—Classification Structure and Definitions.

NOTE: The minimum wages applicable to the classifications in this award are in clause 16—Minimum wages.

12.2 The classification by the employer must be based on the competencies that the employee is required to have, and skills that the employee is required to exercise, in order to carry out the principal functions of the employment.

12.3 Employers must notify employees in writing of their classification and of any change to it.

Part 3—Hours of Work

13. Ordinary hours of work (employees not engaged on shifts)

13.1 Clause 13 applies to employees who are not engaged on shifts, as defined in clause 25.

NOTE: Ordinary hours of work for employees engaged on shifts are set out in Part 6—Shiftwork.

13.2 ~~The maximum number of ordinary hours of work per week for a full-time employee is 38 or the fewer number considered full-time at the workplace by the employer.~~

13.3 ~~The maximum number of ordinary hours of work per week for a part-time employee is as agreed under clause 10.~~

13.4 The maximum number of ordinary hours that can be worked in a week by an employee is an average of:

(a) 38 hours per week over a period of up to 4 weeks; or

(b) 38 hours per week over a roster period agreed between the employer and the employee.

13.5 Ordinary hours may be worked ~~between~~:

(a) From 7.00 am ~~and~~ to 7.00 pm Monday to Friday; and

(b) From 7.00 am ~~and~~ to 12.30 pm on Saturday.

13.6 The spread of ordinary hours in clause 13.5 may be altered by up to one hour at either end ~~of a day~~ of the spread:

(a) by agreement between the employer and the majority of employees concerned ~~at the workplace covered by this award~~; or

(b) by individual agreement between the employer and the employee.

Parties are asked to confirm whether the spread of hours can be increased by one hour at both ends.

13.7 Setting ordinary hours by a different award

(a) Clause 13.7 applies to an employee who works in association with other empoyees who work ordinary hours outside the spread of hours prescribed by clause 13.5. ~~Clause 13.7 applies if each of the following applies:~~

~~**(i)** one or more employees covered by this award work closely with other employees covered by a different modern award; and~~

~~**(ii)** the majority of employees at the workplace are covered by a modern award that sets a spread of hours other than that set out in clause 13.5.~~

(b) The hours during which ordinary hours may be worked by the employee are as prescribed by the modern award applying to the majority of employees in the workplace. ~~The employer may direct employees to work the spread of ordinary hours in the modern award that covers the majority of employees at the workplace.~~

EXAMPLE: ~~Employees~~ An employee covered by this award works in association with employees who ~~are covered by an award that sets ordinary hours of~~ work ordinary hours between 5.30 am and 6.30 pm Monday to Friday. The award that ~~sets ordinary hours of work between 5.30 am and 6.30 pm Monday to Friday~~ covers the majority of employees at the workplace sets ordinary hours of work between 5.30 am and 6.30 pm Monday to Friday. The employer may direct ~~that employees~~ the employee covered by this award to work ordinary hours between 5.30 am and 6.30 pm Monday to Friday (rather than the spread set out in clause 13.5).

Clause 13.7 has been re-drafted with reference to a submission made in transcript by the AiGroup during the 2008 award modernisation process (see transcript PN2263–PN2268, 30 October 2008). Parties are asked to confirm whether the re-drafted clause accurately reflects the intention of current modern award clause 25.1(b).

13.8 Ordinary hours of work must be worked continuously at the discretion of the employer ~~are continuous~~, except for rest breaks and meal breaks as specified in clause 15—Breaks (employees not engaged on shifts).

13.9 The maximum number of ordinary hours that can be worked on any day is 10, excluding unpaid meal breaks.

13.10 The employer and an employee may agree that the employee may take time off during ordinary hours and make up that time by working at another time during ordinary hours.

14. Rostered days off (employees not engaged on shifts)

Due to lack of clarity in relation to application and operation of the clause, parties are asked to confirm whether the re-drafted clause 14 accurately reflects the intention of current modern award clauses 25.3 and 25.4.

14.1 The following rostering arrangements apply to employees who are not engaged on shifts, as defined in clause 25.

NOTE: Rostering arrangements for employees engaged to work on shifts are set out in Part 6—Shiftwork.

14.2 An employer may give an employee a rostered day off during the employee's work cycle. ~~roster employees according to a rostered day off system in such a way that employees:~~

(a) ~~work longer hours each day during the weekly hours of duty; and~~

(b) ~~take a day off at some later time in the cycle.~~

14.3 An employee who works on a rostered day off basis over ~~a~~ each 20 day roster cycle is entitled to 12 rostered days off over each 12 month period.

14.4 The employer must give the employee 4 weeks' notice of the day the employee is to take as a rostered day off.

14.5 Substitution of rostered days off

(a) With the agreement of the employer, an employee may substitute their scheduled rostered day off for another day.

(b) The employer may substitute another day for a rostered day off in any of the following circumstances:

(i) a machinery breakdown; or

(ii) an electrical power shortage or breakdown; or

(iii) an unexpected spike in the work required to be performed by the business; or

(iv) another emergency situation.

14.6 Banking rostered days off

(a) The employer and an employee may agree to an arrangement under which the employee works on their normal rostered days off and accumulates up to 5 banked rostered days off that may be taken at times that are convenient to both the employer and employee.

(b) The employer must keep a record of the employee's banked rostered days off.

(c) The employee must give at least 5 days' notice before taking a banked rostered day off.

(d) On the termination of an employee's employment, the employer must pay an employee for any banked rostered day off that has not been taken an amount equal to **20%** of the employee's average weekly wages over the period of 6 months immediately before the termination.

15. Breaks (employees not engaged on shifts)

Due to lack of clarity in relation to application and operation of the clause, parties are asked to confirm whether the re-drafted clause 15 accurately reflects the intention of current modern award clauses 26.1 and 26.2. See also new clause 28 in relation to shiftworkers.

15.1 Clause 15 applies to employees who are not engaged on shifts as defined in clause 25 and gives them an entitlement to meal breaks and rest breaks.

NOTE: Breaks for employees engaged on shifts are set out in Part 6—Shiftwork.

15.2 ~~An employee who works the number of hours on any one day specified in an item of column 1 of Table 2—Entitlements to rest break(s) is entitled to a break or breaks as specified in column 2.~~ An employee is entitled to a rest break in accordance with the table below if required to work the number of hours specified on any one day:

Table 2—Entitlements to rest break(s)

~~Column 1~~ **Hours worked**	~~Column 2~~ **Breaks**
~~At least~~ More than 3 ordinary hours but not more than 8 ordinary hours on Monday to Friday	One 10 minute paid rest break (to be taken at a time determined by the employer)
More than 8 ordinary hours on Monday to Friday	Two 10 minute paid rest breaks (to be taken at a time determined by the employer)
More than 4 hours overtime on a Saturday morning	One 10 minute paid rest break

15.3 An employee who works more than 5 hours at a time is entitled to one 30 to 60 minute unpaid meal break, to be taken within the first 5 hours of work and within 5 hours after resuming work after a meal break.

15.4 An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate for time so worked until a meal break is allowed ~~taken~~.

NOTE: Where suitable to business requirements, the employer will arrange for an employee who is entitled to 2 paid rest breaks to take one rest break before, and one rest break after, their unpaid meal break.

Part 4—Minimum Wages and Allowances

16. Minimum wages

16.1 ~~An employer must pay an employee who is 21 years of age or older the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 3—Minimum rates.~~ An employer must pay a full-time employee aged 21 years or older the relevant minimum weekly rate below for ordinary hours of work. A part-time or casual employee aged 21 or older must be paid the relevant minimum hourly rate below for ordinary hours of work. Clause 16.1 does not apply to employees referred to in clause 16.5 and clause 16.6.

NOTE 1: Provisions for calculating rates for an employee aged under 21 years are at clause 16.4.

Table 3—Minimum rates

~~Column 1~~ **Classification**	~~Column 2~~ **Minimum weekly rate**	~~Column 3~~ **Minimum hourly rate**
Level 1		
Year 1	$715.20	$18.82
Year 2	$750.60	$19.75
Year 3	$774.10	$20.37
Level 2		
Year 1	$783.30	$20.61
Year 2	$797.80	$20.99
Level 3	$827.30	$21.77
Call centre principal customer contact specialist	$833.10	$21.92

~~Column 1~~ Classification	~~Column 2~~ Minimum weekly rate	~~Column 3~~ Minimum hourly rate
Level 1		
Level 4	$868.70	$22.86
Level 5	$904.00	$23.79
Call centre technical associate	$990.20	$25.06

~~NOTE 2: Provisions for calculating wages for casual employees are at clause 11—Casual employment. Overtime rates are specified in clause 22—Overtime (employees not engaged on shifts) and clause 29—Overtime for shiftwork. Penalty rates are specified in clause 21—Penalty rates (employees not engaged on shifts) and clause 26—Penalty rates for shiftwork.~~

NOTE 3: See Schedule B for a summary of hourly rates of pay including casual wages, overtime, penalties and shiftwork.

16.2 In calculating years for the purposes of ~~Table 3~~ clause 16.1 – Minimum wages, any service in the classification level, as described in Schedule A, including administrative and clerical experience with a previous employer, counts towards a year of service.

16.3 ~~An employer may require~~ If required by their employer, an employee ~~to~~ must provide reasonable evidence to verify their service as mentioned in clause 16.2.

16.4 Junior employees

~~An employer must pay an employee who is aged as specified in column 1 of Table 4—Junior rates, at least at the percentage specified in column 2 of the minimum rate that would otherwise be applicable under Table 3—Minimum rates~~ An employer must pay an employee aged 20 years and under the relevant percentage of the appropriate minimum hourly rate contauned in clause 16.1 – Minimum wages:

Table 4—Junior rates

~~Column 1~~	~~Column 2~~
Age	**% of ~~weekly~~ minimum hourly rates**
Under 16 years of age	45
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

NOTE: See Schedule B.4 for a summary of hourly rates of pay for junior employees including overtime and penalties.

16.5 Supported wage system

For employees who are eligible for a supported wage, see Schedule D.

16.6 National training wage

For employees undertaking a traineeship, see Schedule E.

17. Payment of wages

17.1 The employer must pay wages by cash or by cheque or by electronic funds transfer into an account nominated by the employee.

17.2 Pay period

(a) The employer may determine the pay period of employees as being either weekly or fortnightly.

(b) The employer ~~and employees~~ may agree to monthly pay periods with the majority of employees concerned or an individual employee. If such agreement is reached, payment must be made ~~on the basis of~~ 2 weeks in advance and 2 weeks in arrears.

NOTE: The Fair Work Regulations, regulation 3.33(3) and 3.46(1)(g), set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

17.3 Day off coinciding with payday

(a) Clause 17.3 applies to an employee if:

(i) the employee is paid wages by cash or cheque; and

(ii) due to the arrangement of their ordinary hours the employee has a day off on payday.

(b) The employer must pay the employee no later than the working day immediately after payday.

NOTE: The employer may pay the employee on the day before payday if suitable arrangements can be made.

17.4 ~~Payment of wages under an averaging or banking system~~ Absences from duty under an averaging system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:

(a) The employee will accrue a credit for each day the employee works ordinary hours in excess of the daily average.

(b) The employee will incur a debit for each day of absence from duty other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service.

(c) An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave, or jury service) will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was in attendance.

(a) ~~Employees who work weekly hours under an averaging system in clause 13.2 or rostered day off system in clause 14 must be paid according to the average number of hours worked.~~

~~EXAMPLE: A full-time employee who works 8 hours per day over 20 working days and takes a regular rostered day off is entitled to be paid according to the regular 38 hour week to avoid fluctuating wage payments.~~

(b) ~~An average pay system applies to employees working under the banked rostered day off system where an employee receives:~~

~~(i) no additional penalty payments for working more than the average number of hours per week as a result of working on a rostered day off under the banking system; and~~

~~(ii) no reduction in payment for working less than the average number of hours per week for banked rostered days off taken in a roster cycle.~~

17.5 Where clause 14.6 applies:

(a) No payments or penalty payments are to be made to employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked and will apply the average pay system during the weeks when an employee elects to take a banked rostered day off.

(b) Employees terminating prior to taking any banked rostered day(s) off must receive one fifth of average weekly pay over the previous six months multiplied by the number of banked substitute days.

18. Annualised salaries

The annualised salary clause may be affected by the Full Bench common issue proceedings in matter AM2016/13.

18.1 Annual salary instead of award provisions

(a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:

(XX) clause 13.10 – Make-up time;

(i) clause 16—Minimum wages;

(ii) clause 19—Allowances;

(iii) clause 21—Penalty rates;

(iv) clause 22—Overtime;

(XX) clause 23 – Rest period after working overtime (employee not engaged on shifts)

(XX) clause 24 – Time off instead of payment for overtime (employees not engaged on shifts)

(v) clause 26—Penalty rates for shiftwork;

(XX) clause 27 – Ordinary hours of work and rostering for shiftwork

~~(vi)~~ clause 29—Overtime for shiftwork; ~~and~~

(XX) clause 30 – Time off instead of payment for overtime for shiftwork;

(XX) clause 31 – Rest period after working overtime for shiftwork; and

(vii) clause 33.3—Annual leave loading.

(b) Where an annual salary is paid, the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

18.2 Annual salary not to disadvantage employees

(a) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or, if the employment ceases earlier, over such lesser period as has been worked).

(b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions that are satisfied by the payment of the annual salary.

18.3 Base rate of pay for employees on annual salary arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 16—Minimum wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

19. Allowances

19.1 Clause 19 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances.

NOTE: Schedule C contains a summary of monetary allowances and methods of adjustment.

19.2 First aid allowance

(a) Clause 19.2 applies to an employee who:

(i) has appropriate current first aid qualifications and training such as a certificate from St John Ambulance Australia or a similar body; and

(ii) is appointed by the employer to perform first aid duty.

(b) The employer must pay the employee an allowance of **$11.75** per week.

19.3 Higher duties allowance

The employer must pay an employee required to perform any of the duties of a higher classification for more than one day at least the minimum rate applicable to the higher level under ~~Table 3—Minimum wages~~ clause 16 – Minimum wages.

NOTE: Classification levels are described in Schedule A.

19.4 Clothing and footwear allowance

(a) The employer must reimburse an employee who is required to work in conditions damaging to clothing for the cost of purchasing any uniforms and protective clothing not supplied or paid for by the employer.

(b) The employer must reimburse an employee who is constantly required to work in conditions that are wet and damaging to footwear for the cost of purchasing appropriate protective footwear not supplied or paid for by the employer.

(c) The employer must reimburse an employee who is required to wear a uniform for the cost of purchasing the uniform.

(d) If the uniform that is required to be worn by the employee needs to be laundered, the employer must pay the employee an allowance of:

(i) **$3.55** each week for a full-time employee; or

(ii) **$0.71** each shift for a part-time or casual employee.

19.5 Meal allowance

(a) Clause 19.5 applies to an employee if:

(i) the employee is required to work overtime of more than 1.5 hours after the employee's ordinary time of ending work; and

(ii) the employee was not given at least 24 hours' notice of the requirement to work overtime.

(b) The employer must:

(i) pay the employee a meal allowance of **$14.98**; or

(ii) supply the employee with a meal.

(c) If the number of hours worked under a requirement mentioned in clause 19.5(a) exceeds 4, the employer must pay a further meal allowance of **$11.99**.

19.6 Vehicle allowance

(a) An employer must pay an employee who is required by the employer to use their own motor vehicle in performing their duties an allowance of:

(i) for a **motor car**, $0.78 per kilometre; and

(ii) for a **motor cycle**, $0.26 per kilometre.

(b) The maximum allowance payable is for 400 kilometres.

(c) An employer who requires an employee to use a motor vehicle provided by the employer to perform their duties must pay all expenses for the motor vehicle including registration, running costs and maintenance.

19.7 Living away from home allowance

(a) Clause 19.7 applies to an employee to whom all of the following apply:

(i) the employee is required by the employer temporarily to work away from their usual place of employment; and

(ii) ~~the location at which the employee is required to work is one from which it is not reasonably possible to return to their usual place of residence after work;~~ the employee is, as a result, required by the employer to sleep away from the employee's usual place of residence; and

(iii) the employee is not provided with fares, meals and accommodation by the employer.

(b) The employer must pay the employee the following:

(i) an allowance to cover all fares to and from the location at which the employer requires the employee to work; and

(ii) an allowance to cover all reasonable expenses incurred for meals and accommodation.

(c) The employer must pay an employee ordinary rates of pay for time spent travelling between the employee's usual place of employment and the temporary location, to a maximum of 8 hours in 24 hours.

19.8 Transport reimbursement for shiftwork

(a) Clause 19.8 applies to an employee working shiftwork to whom all of the following apply:

(i) the employee starts or finishes work at a time other than their normal time; and

(ii) reasonable means of transport are not available to the employee; and

(iii) the employer does not provide, or arrange for, a suitable means of transport to ~~and from~~ the employee's usual place of residence at no cost to the employee.

(b) The employer must reimburse the employee the cost they reasonably incurred in taking a commercial passenger vehicle ~~from the employee's usual place of residence to the place of employment or~~ from the employment to the employee's usual place of residence~~, whichever is applicable~~.

20. Superannuation

20.1 Superannuation legislation

(a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.

(b) The rights and obligations in these clauses supplement those in superannuation legislation.

20.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

20.3 Voluntary employee contributions

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

(c) The employer must pay the amount authorised under clauses 20.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or (b) was made.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) to one of the following superannuation funds or its successor:

(a) CareSuper;

(b) AustralianSuper;

(c) SunSuper;

(d) HESTA;

(e) Statewide Superannuation;

(f) Tasplan;

(g) REI Super;

(h) MTAA Superannuation Fund;

(i) Kinetic Superannuation;

(j) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or

(k) a superannuation fund or scheme which the employee is a defined benefit member of.

20.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b):

(a) Paid leave—while the employee is on any paid leave.

(b) Work-related injury or illness—For the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and

(ii) the employee remains employed by the employer.

Part 5—Penalty Rates and Overtime

NOTE: This Part does not apply to shiftworkers. See Part 6—Shiftwork for overtime rates and penalties that apply to shiftworkers.

21. Penalty rates (employees not engaged on shifts)

21.1 Clause 21 sets out higher rates of pay (penalty rates) for ordinary hours worked at specified times and on specified days.

NOTE: Clause 22—Overtime prescribes overtime rates for hours worked in excess of, or outside, ordinary hours.

21.2 Saturday

An employer must pay an employee at the rate of **125%** of the minimum hourly rate for hours worked on a Saturday that are within the spread of ordinary hours ~~specified in clause 13.5(b), as altered under clause 13.6~~.

21.3 Sunday

(a) An employer must pay an employee at the rate of 200% of the minimum hourly rate for ordinary hours worked on a Sunday.

(b) An employee required to work ordinary hours on a Saturday is entitled to at least 4 hours pay at 200% of the minimum hourly rate, provided the employee is available for work for 4 hours.

~~**Public holidays**~~

(a) ~~An employer must pay an employee at the rate of **250%** of the minimum hourly rate for hours worked on a public holiday or a substituted day.~~

(b) ~~Despite clause 21.3(a), if an employee works on both a public holiday and the substituted day, the employee is entitled to be paid for one of the days at the penalty rate specified in clause 21.3(a).~~

(c) ~~The employee may choose which day the penalty rate is applied to.~~

(d) ~~An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours.~~

Due to lack of clarity in relation to application and operation of the clause, parties are asked to confirm whether the re-drafted clause 21.3 accurately reflects the intention of current modern award clauses 31.3 and whether it is better placed in the Penalty rates or Overtime clause.

22. Overtime (employees not engaged on shifts)

22.1 An employer must pay an employee at the overtime rate for any hours worked at the direction of the employer:

(a) in excess of the ordinary weekly hours ~~set in clause 13.4~~;

(b) in excess of 10 ordinary hours on any one day, excluding unpaid meal breaks;

(c) outside the spread of hours ~~in clause 13.5, as altered under clause 13.6~~;

(d) for overtime worked on a rostered day off that is not substituted or banked;

(e) for part-time employees, in excess of the number of hours that the employee has agreed to work under clause 10.4 or varied under clause 10.5.

22.2 For the purposes of this clause, ordinary weekly hours means the hours of work fixed in a workplace in accordance with clause 13—Ordinary hours of work and clause 14 – Rosrered days off or varied in accordance with the relevant clauses of this award.

22.3 An employee is entitled to be paid overtime when the total overtime an employee has worked in one week reaches a minimum of half an hour.

22.4 Payment for working overtime

(a) ~~The overtime rate in clause 22.1 is the relevant percentage specified in column 2 of Table 5 (depending on when the overtime was worked as specified in column 1) of the minimum hourly rate of the employee, under clause 16—Minimum wages, calculated daily.~~ An employer must pay an employee the relevant overtime rate prescribed below in accordance with clause 22.1, calculated daily:

Table 5—Overtime rates for employees who are not engaged on shifts

~~Column 1~~ **Hours of overtime worked per day**	~~Column 2~~ **Overtime rate (% of minimum hourly rate)**
Monday to Saturday—first 2 hours	150%
Monday to Saturday—after 2 hours	200%
Sunday—all day	200%

(b) An employer must pay an employee a minimum of 3 hours at overtime rates for work performed on a Saturday where an employee has worked 38 hours or more over

Monday to Friday, provided the employee is ready, willing and available to work such overtime.

(c) An employer must pay an employee who is required to work overtime on a Sunday for a minimum of 4 hours, provided the employee is available to work for 4 hours. Provided further that where clause 21.3(b) applies, an employee will not be entitled to an additional 4 hour minimum payment under this clause.

22.5 Return to duty

(a) An employer must pay an employee at the overtime rate specified in clause 22.4 where an employee is required to return to duty after the usual finishing hour of work for that day.

(b) The employer must pay an employee a minimum payment of 3 hours under a requirement in clause 22.5(a).

(c) ~~Overtime prescribed in clause 23—Rest period after working overtime (employees not engaged on shifts) is not regarded as overtime for the purpose of clause 22.5.~~

(d) Clause 22.5 does not apply where the work is continuous (subject to a meal break of not more than one hour) with the start or finish of ordinary working time.

23. Rest period after working overtime (employees not engaged on shifts)

23.1 Clause 23 applies to full-time and part-time employees who are not working shifts.

23.2 When overtime is required to be worked, employees must, wherever reasonably practical, have at least 10 consecutive hours off duty between hours worked on successive days.

23.3 Despite clause 23.2, where an employee works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day, ~~due to overtime worked, would be required to start work before having~~ that the employee has not had 10 consecutive hours off duty between those times:

(a) the employer must release the employee from duty after the completion of overtime until the employee has had 10 consecutive hours off duty; and

(b) the employee must not suffer any loss of pay for ~~an absence during ordinary hours as a result~~ ordinary working time occurring while the employee is released from duty.

23.4 ~~Where~~ If on the instructions of the employer, an employee resumes or continues work without having at least 10 consecutive hours off duty in accordance with clause 23.3 all of the following apply:

(a) the employer must pay **200%** of the minimum hourly rate until the employee is released from duty; and

(b) the employer must release the employee from duty until the employee has had 10 consecutive hours off duty; and

(c) the employee must not suffer any loss of pay for ~~an absence during~~ ordinary working time occurring while th employee is so released ~~hours as a result~~.

23.5 Overtime worked in the circumstances specified in clause 22.5 must not be regarded as overtime for the purposes of this clause.

24. Time off instead of payment for overtime (employees not engaged on shifts)

This clause was the subject of a separate Full Bench, see determination PR587147.

24.1 An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

24.2 Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 24.

24.3 An agreement must state all of the following:

(a) the number of overtime hours to which it applies and when those hours were worked; and

(b) that the employer and employee agree that the employee may take time off instead of being paid for the overtime; and

(c) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked; and

(d) that any payment mentioned in paragraph (c) must be made in the next pay period following the request; and

Note: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 24 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

(e) ~~the period of time off that an employee is entitled to take is the same as the number of overtime hours worked.~~

~~EXAMPLE: By making an agreement under clause 24 an employee who worked 2 overtime hours is entitled to 2 hours' time off.~~

24.4 The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 24 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

24.5 Time off must be taken:

(a) within the period of 6 months after the overtime is worked; and

(b) at a time or times within that period of 6 months agreed by the employee and employer.

24.6 If the employee requests at any time to be paid for overtime covered by an agreement under clause 24 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

24.7 If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 24.4, the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

24.8 The employer must keep a copy of any agreement under clause 24 as an employee record.

24.9 An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

24.10 An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request, then clause 24 will apply, including the requirement for separate written agreements under clause 24.2 for overtime that has been worked.

~~If the employer agrees to the request, then clause 24 will apply, including the requirement for separate written agreements under clause 24.2 for overtime that has been worked.~~

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

24.11 If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 24 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.

Part 6—Shiftwork

25. Shiftwork definitions

25.1 An employee may be ~~employed~~ required to work ordinary hours in accordance with the following shift definitions:

Feedback from the FWO and users indicate confusion about when and how these provisions apply. Given the different provisions for employees on shiftwork, including rostering and breaks, parties are asked to clarify when the provisions in this part apply.

(a) **afternoon shift** means any shift finishing after 7.00 pm and at or before midnight;

(b) **night shift** means any shift finishing after midnight, and at or before 7.00 am;

(c) **permanent night shift** means a night shift which does not rotate with another shift or shifts or day work and which continues for a period of 4 consecutive weeks or longer.

25.2 The spread of hours in clause 25.1 may be altered by up to one hour at either end of the spread ~~shift~~:

(a) by agreement between the employer and the majority of employees concerned ~~at the workplace covered by this award~~; or

(b) by individual agreement between the employer and employee.

Parties are asked to confirm whether the spread of hours can be increased by one hour at both ends.

26. Penalty rates for shiftwork

26.1 ~~An employer must pay an employee working ordinary hours in accordance with clause 25.1 (Shiftwork definitions) the relevant percentage specified in column 2 of Table 6 (depending on when the shift was worked as specified in column 1) of the minimum hourly rate of the employee, under clause 16—Minimum wages.~~ An employer must pay an employee employed on shifts the following rates if the employee is required to perform ordinary hours of work at the relevant times:

Table 6—Penalty rates for shiftwork

~~Column 1~~ **Shift**	~~Column 2~~ **Penalty rate** **(% of minimum hourly rate)**
Afternoon or night	115%
Permanent night	130%
Saturday, Sunday or public holiday	150%

26.2 Despite clause 26.1:

(a) an employee who starts an ordinary shift between 11.00 pm and midnight on a Sunday or public holiday that extends into the next day that is not a public holiday is not entitled to the Sunday or public holiday penalty rate for the time worked on that Sunday or public holiday; but

(b) an employee who starts an ordinary shift between 11.00 pm and midnight on the day before a Sunday or public holiday that extends into that Sunday or public holiday is entitled to the Sunday or public holiday penalty rate for the time worked on that day.

26.3 Public holidays

(a) An employer must pay an employee who is required to work on a public holiday for a minimum of 4 hours, provided the employee is available to work for 4 hours.

(b) If an employee works on both a public holiday and the substituted day, the employee is entitled to be paid for one of the days at the penalty rate specified in clause 26.1.

(c) The employee may choose which day the penalty rate is applied to.

Due to lack of clarity in relation to application and operation of the clause, parties are asked to confirm whether the re-drafted clause 26.3 accurately reflects the intention of current modern award clause 31.3 and whether it applies to shiftworkers (see also clause 29).

27. Ordinary hours of work and rostering for shiftwork

27.1 The maximum number of ordinary hours that can be worked in a week is:

(a) an average of 38 hours over a 4 week period; or

(b) by agreement between an employer and the majority of employees concerned, an average of 38 hours over a roster period, not exceeding 12 months~~, as agreed between an employer and the employees~~.

27.2 The maximum number of ordinary hours that can be worked in any day is 10, including paid breaks.

27.3 An employee's ordinary hours may be worked over a maximum of 6 shifts per week. A Sunday may be included. ~~The following rostering arrangements apply to an employee who works shifts over the 4 week roster period in clause 27.1(a):~~

(a) ~~a maximum of 6 shifts of 10 hours can be worked; and~~

(b) ~~a Sunday may be included.~~

27.4 Changes to the times at which the employee will start and finish a shift may be made:

(a) by the employer giving the employee at least 7 days' notice of the change; or

(b) at any time by the employer and employee by mutual agreement.

27.5 The employer and an employee may agree that the employee may take a period of ordinary hours as time off and make up that time off by working at another time during which the employee may work ordinary hours.

28. Breaks for shiftwork

Due to lack of clarity in relation to application and operation of the clause parties are asked to confirm whether the re-drafted clause 28 accurately reflects the intention of current modern award clauses 26.1, 26.2 and 28.4(f).

28.1 Clause 28 gives employees working shifts an entitlement to meal breaks and rest breaks.

28.2 An employee working a shift defined in clause 25.1 is entitled to one 20 minute paid meal break per shift which is to be:

(a) taken within 5 hours of starting the shift; and

(b) counted as time worked.

28.3 ~~An employer must pay an employee who is required to work through their meal break **200%** of the minimum hourly rate until a meal break is taken.~~

28.4 Paid rest break

(a) An employee ~~working~~ required to work more than 3 ordinary hours and fewer than 8 ordinary hours is entitled to one paid 10 minute rest break.

(b) An employee ~~working~~ required to work 8 ordinary hours or more is entitled to two paid 10 minute rest breaks.

(c) An employee working more than 4 hours overtime on Saturday morning must be allowed a paid 10 minute rest break.

(d) The employer is responsible for determining the suitable time for taking a rest break in accordance with paragraphs (a) and (b).

NOTE: Where suitable to business requirements, the employer will arrange for an employee who is entitled to 2 paid rest breaks to take one rest break before and one rest break after their unpaid meal break.

29. Overtime for shiftwork

29.1 ~~An employer must pay an employee on shiftwork overtime rates at the relevant percentage specified in column 2 of Table 7 (depending on when the overtime was worked as specified in column 1) of the minimum hourly wage of the employee, under clause 16 Minimum wages as follows:~~ An employer must pay an employee employed on shifts the following relevant rates if the employee is required to work overtime:

Table 7—Overtime rates for shiftwork

~~Column 1~~ **For all time worked:**	~~Column 2~~ **Overtime rate (% of minimum hourly rate ~~wage~~)**
In excess of the ordinary weekly hours fixed in clause 27.1	
first 3 hours	150%
after 3 hours	200%
In excess of ordinary daily hours on an ordinary shift	
first 2 hours	150%
after 2 hours	200%
Saturday, Sunday or public holiday that is not an ordinary working day	200%

29.2 Penalty rates for shiftwork are not cumulative on overtime rates.

29.3 An employer must pay an employee for a minimum of 4 hours at the overtime rate specified in clause 29.1 where the employee:

(a) is required to work on a Saturday, a Sunday or a public holiday (as prescribed in Division 10 of Part 2.2 of the Act); and

(b) would not have been ordinarily rostered to work that day ~~under clause 27.3~~; and

(c) the work is not continuous with the start or finish of the employee's ordinary shift; and

(d) is available for work during those 4 hours; and

(e) is not entitled to a minimum 4 hour payment under clause 26.3.

30. Time off instead of payment for overtime for shiftwork

This clause was the subject of a separate Full Bench, see determination PR587147.

30.1 An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

30.2 Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 30.

30.3 An agreement must state all of the following:

(a) the number of overtime hours to which it applies and when those hours were worked; and

(b) that the employer and employee agree that the employee may take time off instead of being paid for the overtime; and

(c) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked; and

(d) that any payment mentioned in paragraph (c) must be made in the next pay period following the request; and

NOTE: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 30 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

(e) ~~the period of time off that an employee is entitled to take is the same as the number of overtime hours worked.~~

~~EXAMPLE: By making an agreement under clause 30 an employee who worked 2 overtime hours is entitled to 2 hours' time off.~~

30.4 The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 30 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

30.5 Time off must be taken:

(a) within the period of 6 months after the overtime is worked; and

(b) at a time or times within that period of 6 months agreed by the employee and employer.

30.6 If the employee requests at any time to be paid for overtime covered by an agreement under clause 30 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

30.7 If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 30.4, the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

30.8 The employer must keep a copy of any agreement under clause 30 as an employee record.

30.9 An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

30.10 An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 30 will apply, including the requirement for separate written agreements under clause 30.2 for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

30.11 If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 30 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 30.

31. Rest period after working overtime for shiftwork

31.1 Clause 31 applies to full-time and part-time employees working shifts.

31.2 The provisions of clause 31 apply when overtime is worked in any of the following circumstances:

(a) for the purposes of changing shift rosters; or

(b) where an employee working a shift does not report for duty and another employee is required to work their shift; or

(c) where a shift is worked by arrangement between the employees themselves.

31.3 When overtime is necessary employees must, wherever reasonably practical, have at least 8 consecutive hours off duty between hours worked on successive days.

31.4 Despite clause 31.3 ~~31.2~~, where an employee works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day, ~~due to overtime worked, would be required to start work before having~~ that the employee has not had 8 consecutive hours off duty between those times:

(a) the employer must release the employee from duty after the completion of the overtime until the employee has had 8 consecutive hours off duty; and

(b) the employee must not suffer any loss of pay for ordinary working time occurring while the employee is released from duty ~~an absence during ordinary hours as a result~~.

31.5 ~~Where~~ If on the instructions of the employer, an employee resumes or continues work without having at least 8 consecutive hours off duty in accordance with clause 31.2 all of the following apply:

(a) the employer must pay **200%** of the minimum hourly rate until the employee is released from duty; and

(b) the employer must release the employee from duty until the employee has had 8 consecutive hours off duty; and

(c) the employee must not suffer any loss of pay for an absence during ordinary working time occurring while the employee is so released ~~hours as a result~~.

32. ~~Transport reimbursementfor shiftwork~~

(a) ~~Clause 32 applies to an employee working shiftwork to whom all of the following apply:~~

~~**(i)** the employee starts or finishes work at a time other than their normal time; and~~

~~(ii) reasonable means of transport are not available to the employee; and~~

~~(iii) the employer does not provide, or arrange for, a suitable means of transport to or from the employee's usual place of residence at no cost to the employee.~~

(b) ~~The employer must reimburse the employee the cost they reasonably incurred in taking a commercial passenger vehicle from the employee's usual place of residence to the place of employment or from the place of employment to the employee's usual place of residence, whichever is applicable.~~

~~NOTE: Clause 19—Allowances prescribes allowances that apply to all employees where specified.~~

Part 7—Leave and Public Holidays

33. Annual leave

The annual leave clause has been amended to incorporate PR582986

NOTE: Where an employee is receiving overaward payments resulting in the employee's base rate of pay being higher than the rate specified under this award, the employee is be entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).

33.1 Annual leave is provided for in the NES.

33.2 Definition of shiftworker

A **shiftworker,** for the purposes of the NES, is an employee who is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

33.3 Annual leave loading

(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16—Minimum wages of this award in addition to their minimum rate of pay.

(b) Annual leave loading payment is payable on leave accrued.

(c) The loading will be as follows:

(i) Day work

Employees who would have worked on day work only had they not been on leave—**17.5%** or the relevant weekend penalty rates, whichever is the greater but not both.

(ii) Shiftwork

Employees who would have worked on shiftwork had they not been on leave—a loading of **17.5%** or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.

33.4 Annual leave in advance

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

NOTE: An example of the type of agreement required by clause 33.4 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G.

(c) The employer must keep a copy of any agreement under clause 33.4 as an employee record.

(d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 33.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

33.5 Close-down

An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.

33.6 Excessive leave accruals: general provision

NOTE: Clauses 33.6 to 33.8 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

(a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 33.2).

(b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

(c) Clause 33.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

(d) Clause 33.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

33.7 Excessive leave accruals: direction by employer that leave be taken

(a) If an employer has genuinely tried to reach agreement with an employee under clause 33.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

(b) However, a direction by the employer under paragraph (a):

(i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 33.6, 33.7 or 33.8 or otherwise agreed by the employer and employee) are taken into account; and

(ii) must not require the employee to take any period of paid annual leave of less than one week; and

(iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

(iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.

(c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.

(d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 33.7(b)(i).

NOTE 2: Under section 88(2) of the Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

33.8 Excessive leave accruals: request by employee for leave

(a) Clause 33.8 comes into operation from 29 July 2017.

(b) If an employee has genuinely tried to reach agreement with an employer under clause 33.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

(c) However, an employee may only give a notice to the employer under paragraph (b) if:

(i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

(ii) the employee has not been given a direction under clause 33.7(a) that, when any other paid annual leave arrangements (whether made under clause 33.6, 33.7 or 33.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.

(d) A notice given by an employee under paragraph (b) must not:

(i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 33.6, 33.7 or 33.8 or otherwise agreed by the employer and employee) are taken into account; or

(ii) provide for the employee to take any period of paid annual leave of less than one week; or

(iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

(iv) be inconsistent with any leave arrangement agreed by the employer and employee.

(e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 33.2) in any period of 12 months.

(f) The employer must grant paid annual leave requested by a notice under paragraph (b).

33.9 Cashing out of annual leave

(a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 33.9.

(b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 33.9.

(c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.

(d) An agreement under clause 33.9 must state:

(i) the amount of leave to be cashed out and the payment to be made to the employee for it; and

(ii) the date on which the payment is to be made.

(e) An agreement under clause 33.9 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

(g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

(h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

(i) The employer must keep a copy of any agreement under clause 33.9 as an employee record.

NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 33.9.

NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 33.9.

NOTE 3: An example of the type of agreement required by clause 33.9 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H.

34. Personal/carer's leave and compassionate leave

34.1 Personal/carer's leave and compassionate leave are provided for in the NES.

34.2 Personal/carer's leave for casual employees

(a) A casual employee is entitled to be unavailable for work or to leave work to care for a person who:

(i) is sick and requires care and support; or

(ii) requires care due to an emergency.

(b) A maximum of 48 hours' absence is allowed by right, with additional absence by agreement.

(c) Casual employees are not entitled to paid leave under clause 34.2(a).

35. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the NES.

36. Public holidays

36.1 Public holidays ~~entitlements~~ are provided for in the NES.

36.2 Public holiday penalty rate (employees not engaged on shifts)

(a) An employer must pay an employee not engaged on shifts at the rate of 250% of the minimum hourly rate for hours worked on a public holiday or a substituted day.

(b) Despite clause 36.2(a), if an employee works on both a public holiday and the substituted day, the employee is entitled to be paid for one of the days at the penalty rate specified in clause 36.2(a).

(c) The employee may choose which day the penalty rate is applied to.

(d) An employer must pay an employee not engaged on shifts who is required to work on a public holiday for a minimum of 4 hours.

~~Where an employee works on a public holiday they will be paid in accordance with clause 21.3(a) (penalty rates for employees not working shifts), clause 26.1 (penalty rates for employees working shifts) or clause 29.1 (overtime for shiftwork).~~

36.3 Substitution of public holidays by agreement

~~An employer and the employees may by agreement substitute another day for a public holiday.~~ An employer and the majority of affected employees in an enterprise or part of an enterprise may by agreement substitute another day for a public holiday. Agreement may also be reached between an employer and an individual employee.

37. Community service leave

Community service leave is provided for in the NES.

Part 8—Consultation and Dispute Resolution

38. Consultation about major workplace change

This clause will be redrafted as part of Full Bench AM2016/15. The Exposure Draft clause has been reproduced here.

38.1 Employers to notify

(a) 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.

(b) **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.

(c) **Employers 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 38.1, 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 38.1.

(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.

38.2 Consultation about changes to rosters or hours of work

This clause is a standard clause and is being dealt with as part of Full Bench AM2016/15.

38.3 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.

(a) The employer must

(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);

(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

(iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

(b) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

(c) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

39. Dispute resolution

This clause is a standard clause and is being dealt with as part of Full Bench AM2016/15.

39.1 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.

39.2 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 39.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

39.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

39.4 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.

39.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

39.6 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.

Part 9—Termination of Employment and Redundancy

40. Termination of employment

This clause is a standard clause and is being dealt with as part of Full Bench AM2016/15.

40.1 Notice of termination is provided for in the NES.

40.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

40.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

41. Redundancy

This clause is a standard clause and is being dealt with as part of Full Bench AM2016/15

41.1 Redundancy pay is provided for in the NES.

41.2 Transfer to lower paid job on redundancy

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as if the employment had been terminated and the employer may, at the employer's option, make payment instead. The payment will be equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

41.3 Employee leaving during redundancy notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

41.4 Job search entitlement

(a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

(c) This entitlement applies instead of clause 40.3.

Schedule A—Classification Structure and Definitions

NOTE: Ai Group submits that Schedule A should be replaced, in its entirety, with Schedule B to the Award. Due to the substantial number of amendments that would need to be made, we have not here proposed those changes.

A.1 Classifying employees

A.1.1 This schedule sets out the classification descriptions for employees covered by this award.

A.1.2 An employer must classify an employee in accordance with the level of competency and skill required to be exercised.

A.1.3 Consideration must be given to both the competencies and typical duties and skills in order to determine the appropriate level. However, the competencies are the primary indicator of classification.

A.1.4 The competencies must be read as a whole. They describe general competencies and skills based on required knowledge, comprehension of issues and procedures as well as the necessary supervision or accountability of the level.

A.1.5 The typical duties and skills are non-exhaustive lists of those that may be required. They are a guide only and employees may be expected to undertake duties of a lower classification. Depending on the particular task, employees at a given level may perform one or more duty or skill listed.

NOTE: Some duties and skills appear in more than one level, however assigning a classification needs to be done by reference to the specific competencies of the level. For example, an employee must be classified at Level 2 when they have achieved the level of skill and competency outlined in the characteristics and perform relevant indicative duties and skills. Therefore, an employee who operates a word processor or typewriter is not automatically to be classified at Level 2 despite word processing and copy typing being first specifically mentioned at Level 2.

A.2 Level 1

A.2.1 Competencies

(a) Employees at this level include initial recruits who have limited relevant experience and perform routine clerical and office functions.

(b) Employees at this level have the competencies and skills required to:

(i) perform work under close direction using established practices, procedures and instructions; and

(ii) work may be subject to checking; and

(iii) solve problems by reference to established practices, procedures and instructions; and

(iv) operate certain office equipment; and

(v) be responsible and accountable for their own work within established routines, methods and procedures.

(c) More experienced employees may be required to assist less experienced employees in the same classification.

A.2.2 Typical duties and skills

(d) Reception and switchboard duties including:

(i) directing telephone callers to appropriate staff;

(ii) issuing and receiving standard forms;

(iii) relaying internal information; and

(iv) greeting visitors.

(b) Maintaining basic records.

(c) Filing, collating and copying documents.

(d) Handling or distributing mail including messenger service.

(e) Dealing with accounts, invoices, orders and store requisitions through recording, matching, checking and batching.

(f) Operating a keyboard and related business equipment in order to achieve the competency in Level 2.

A.2.3 Typical duties and skills—Call centre customer contact trainee

(a) Customer contact functions with direct supervision.

A.3 Level 2

A.3.1 Competencies

(a) The general competencies and skills required of employees at this level include:

(i) sufficient experience or training to enable them to carry out their duties under general direction;

(ii) the capacity to be responsible and accountable for their own work within established guidelines;

(iii) detailed instructions may be necessary in some situations;

(iv) the ability to exercise limited judgment and initiative within their skills and knowledge,; and

(v) the ability to check work and provide guidance to other employees at a lower level.

(b) Employees may be required to provide assistance to less experienced employees at the same level.

(c) The work of employees at this level may be subject to final checking and as required, including progress checking.

(d) In addition to above characteristics, call centre customer contact officer will have the ability to manage their own work under guidance.

(e) A call centre customer contact officer must be classified at this level if they hold a Certificate II in Telecommunications (Customer Contact) or equivalent and are employed to perform the duties and skills listed under subclause A.3.3.

A.3.2 Typical duties and skills

(a) In addition to reception and switchboard duties set out in Level 1:

(i) respond to enquiries consistent with the organisation's operations;

(ii) provide general advice and information about the organisation's products and services; and

(iii) presentation and interpersonal skills may be key aspect of the position.

(b) Operation of business equipment including: computerised radio and telephone equipment, computers, printing devices, dictaphone equipment and typewriters.

(c) Computer applications, including using word and excel software, to create and edit documents such as standard correspondence, business documents, graphics, accounting and payroll files.

(d) Maintenance of records and journals including initial processing and recording relating to the following:

(i) reconciliation of accounts to balance;

(ii) incoming and outgoing cheques;

(iii) invoices;

(iv) debit and credit items;

(v) payroll data;

(vi) petty cash imprest system; and

(vii) letters.

(e) Make appointments and arrange routine travel bookings and itineraries.

(f) Stenographer, shorthand and transcription, copy typing and audio typing.

A.3.3 Typical duties and skills—Call centre customer contact officer grade 1

(a) Receives calls.

(b) Uses common call centre technology.

(c) Enters and retrieves data.

(d) Works in a team.

(e) Provides at least one specialised service including:

(i) sales and advice for products and services;

(ii) complaints or fault enquiries; or

(iii) data collection surveys.

A.4 Level 3

A.4.1 Competencies

(a) The general competencies and skills required of employees at this level include:

(i) the capacity to perform specialised non-routine tasks or features of the work;

(ii) the ability to train employees in lower levels by means of personal instruction and demonstration; and

(iii) the ability to give assistance, training and guidance, including in relation to quality of work, to employees in lower levels and allocate duties.

(b) Employees at this level require general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties.

(c) In addition to above characteristics, call centre customer contact officers will have the ability to:

(i) exercise some discretion and judgment in the selection of equipment, services or contingency measures; and

(ii) work within known time constraints.

(d) An employee must be classified at this level if they hold a Certificate III (Customer Contact) or equivalent and are employed to perform the duties and skills listed under subclause A.4.2.

A.4.2 Typical duties and skills

(a) Preparing cash payment summaries, banking reports and bank statements; calculating and maintaining wage and salary records; following credit referral procedures; applying purchasing and inventory control requirements; and posting journals to ledger.

(b) Providing specialised advice and information on the organisation's products and services.

(c) Responding to clients, the public and suppliers' problems within own functional area utilising a high degree of interpersonal skills.

(d) *Applying computer software in order to:

(i) create new files and records;

(ii) maintain computer based records management systems;

(iii) identify and extract information from internal and external sources; or

(iv) use advanced word processing and keyboard functions.

(e) Arranging travel bookings and itineraries, making appointments, screening telephone calls, responding to invitations, organising internal meetings, establishing and maintaining reference lists and personal contact systems.

(f) Application of specialist terminology and processes in professional offices.

A.4.3 Typical duties and skills—Call centre customer contact officer grade 2

(a) Performing a broader range of skilled operations than grade 1.

(b) Providing multiple specialised services to customers (including complex sales, service advice for a range of products or services, and difficult complaint and fault inquiries).

(c) Deploying service staff using multiple technologies.

* Note: These typical duties and skills may be either at Level 3 or Level 4 dependent on the characteristics of that particular level.

A.5 Call centre principal customer contact specialist

A.5.1 Competencies

The general competencies and skills required of employees at this level include the ability to:

(a) perform a broad range of skilled applications;

(b) provide leadership as a coach, mentor or senior staff member, and provide guidance in the application and planning of skills;

(c) work with a high degree of autonomy with the authority to make decisions in relation to specific customer contact matters; and

(d) take responsibility for the outcomes of customer contact and resolve complex situations.

A.6 Level 4

A.6.1 Competencies

(a) The general competencies and skills required of employees at this level include:

(i) sufficient organisation or industry specific knowledge to be capable of providing advice and information in relation to specific areas of their responsibility;

(ii) the ability to work under limited guidance or direction and report to more senior staff as required;

(iii) the capacity to exercise initiative, discretion and judgment in the performance of duties; and

(iv) the ability to train employees in Levels 1–3 by personal instruction and demonstration.

(b) A principal feature, but not a requirement, of this level is supervision of employees in lower levels. Employees at this level may be required to be responsible for the allocation of duties, co-ordination of work flow, checking of progress, quality of work and resolving problems.

(c) In addition to the characteristics set out in paragraphs (a) and (b), call centre customer contact team leaders have the ability to:

(i) provide leadership in a team leader role and provide guidance to others in the application and planning of skills; and

(ii) work with a high degree of autonomy and exercise authority to take decisions in relation to specific customer contact matters.

(d) An employee must be classified at this level if they hold a Certificate IV (Customer Contact) or equivalent and are employed to perform the duties and skills under subclause A.6.3.

A.6.2 Typical duties and skills

(a) Secretarial and executive support services including:

(i) maintaining executive diary;

(ii) attending executive and organisational meetings and taking minutes;

(iii) establishing and maintaining current working and personal filing systems for executive; and

(iv) answering executive correspondence as instructed.

(b) Preparation of financial and tax schedules, calculating costings, wage and salary requirements; completing personnel and payroll data for authorisation; reconciliation of accounts to balance.

(c) Advising or providing information on one or more of the following:

(i) employment conditions;

(ii) workers compensation procedures and regulations; and

(iii) superannuation entitlements, procedures and regulations.

(d) *Applying one or more computer software packages to:

(i) create new files and records;

(ii) maintain computer based management systems;

(iii) identify and extract information from internal and external sources; or

(iv) use advanced word processing/keyboard functions.

A.6.3 Typical duties and skills—Call centre customer contact team leader

(a) Performing a broad range of skilled applications.

(b) Evaluating and analysing current practices.

(c) Developing new criteria and procedures for performing current practices.

* Note: These typical duties and skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular level.

A.7 Level 5

A.7.1 Competencies

(a) The general competencies and skills required of employees at this level include:

(i) sufficient relevant or specialist knowledge and experience to be capable of advising on a range of activities and contribute to the determination of objectives, within the relevant fields of their expertise.

(ii) the ability to work subject to broad guidance or direction and report to more senior staff as required;

(iii) the capacity to often exercise initiative, discretion and judgment in the performance of their duties;

(iv) the ability to train and to supervise employees in lower levels by means of personal instruction and demonstration; and

(v) the ability to assist in the delivery of training courses.

(b) Employees at this level will have the capacity to be responsible and accountable for their own work and may be delegated responsibility for the work under their control or supervision, including, scheduling workloads, resolving operations problems, monitoring the quality of work produced and counselling staff for performance and work related matters.

(c) Employees may possess relevant post-secondary qualifications however, this is not essential.

(d) In addition to the competencies set out in paragrphs (a) to (c), a call centre principal customer contact leader will have the ability to apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in either varied or highly specialised functions

(e) An employee must be classified at this level if they hold a Diploma—Front Line Management or equivalent and is employed to perform the duties and skills under subclause A.7.3.

A.7.2 Typical duties and skills required

(a) Appling knowledge of organisation's objectives, performance, projected areas of growth, product trends and general industry conditions.

(b) Application of computer software packages including the integration of complex word processing and desktop publishing, text and data documents.

(c) Providing reports for management in any or all of the following areas:

(i) accounts and finances;

(ii) staffing;

(iii) legislative requirements; and

(iv) other company activities.

(d) Administering individual executive salary packages, travel expenses, allowances and company transport; administer salary and payroll requirements of the organisation.

A.7.3 Typical duties and skills—Call centre principal customer contact leader

(a) Co-ordinating the work of a number of teams within a call centre environment.

(b) Has a number of specialists/supervisors reporting to them.

A.8 Call centre technical associate

A.8.1 Competencies

(a) The general competencies and skills required of employees at this level include the ability to:

(i) apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in relation to either varied or highly specialised functions;

(ii) contribute to the development of a broad plan, budget or strategy; and

(iii) work with a high degree of autonomy and be accountable and responsible for themselves and others in achieving outcomes (some supervision may be required).

A.8.2 Typical duties and skills required

(a) Involvement in the design, installation and management of telecommunications computer equipment and system development.

(b) Assessing installation requirements.

(c) Designing systems.

(d) Planning and perform installations.

(e) Installing and manage data communications equipment and find faults.

Schedule B—Summary of Hourly Rates of Pay

NOTE: This schedule must be read in conjunction with the terms of the award. Employers who pay the relevant rates contained in this schedule ~~meet their obligations under this schedule~~ are meeting ~~their~~ the corresponding obligations under the award.

B.1 Full-time and part-time adult employees other than shiftworkers

B.1.1 Full-time and part-time adult employees other than shiftworkers—ordinary and penalty rates

	Monday to Friday	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	100%	125%	200%	250%
	$	$	$	$
Level 1—Year 1	18.82	23.53	37.64	47.05
Level 1—Year 2	19.75	24.69	39.50	49.38
Level 1—Year 3	20.37	25.46	40.74	50.93
Level 2—Year 1	20.61	25.76	41.22	51.53
Level 2—Year 2	20.99	26.24	41.98	52.48
Level 3	21.77	27.21	43.54	54.43
Call centre principal customer contact specialist	21.92	27.40	43.84	54.80
Level 4	22.86	28.58	45.72	57.15
Level 5	23.79	29.74	47.58	59.48
Call centre technical associate	26.06	32.58	52.12	65.15

B.1.2 Full-time and part-time adult employees other than shiftworkers—overtime rates

	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	$	$	$	$
Level 1—Year 1	28.23	37.64	37.64	47.05
Level 1—Year 2	29.63	39.50	39.50	49.38
Level 1—Year 3	30.56	40.74	40.74	50.93
Level 2—Year 1	30.92	41.22	41.22	51.53
Level 2—Year 2	31.49	41.98	41.98	52.48
Level 3	32.66	43.54	43.54	54.43
Call centre principal customer contact specialist	32.88	43.84	43.84	54.80
Level 4	34.29	45.72	45.72	57.15
Level 5	35.69	47.58	47.58	59.48
Call centre technical associate	39.09	52.12	52.12	65.15

B.2 Full-time and part-time adult employees—shiftworkers

B.2.1 Full-time and part-time adult shiftworkers—ordinary and penalty rates

	~~Day~~	Afternoon and night	Permanent night[1]	Saturday, Sunday or public holiday
	% of minimum hourly rate			
	~~100%~~	115%	130%	150%
	~~$~~	$	$	$
Level 1—Year 1	~~18.82~~	21.64	24.47	28.23
Level 1—Year 2	~~19.75~~	22.71	25.68	29.63
Level 1—Year 3	~~20.37~~	23.43	26.48	30.56
Level 2—Year 1	~~20.61~~	23.70	26.79	30.92
Level 2—Year 2	~~20.99~~	24.14	27.29	31.49
Level 3	~~21.77~~	25.04	28.30	32.66
Call centre principal customer contact specialist	~~21.92~~	25.21	28.50	32.88
Level 4	~~22.86~~	26.29	29.72	34.29
Level 5	~~23.79~~	27.36	30.93	35.69
Call centre technical associate	~~26.06~~	29.97	33.88	39.09

[1] **Permanent night shift** is defined in clause 25.1(c).

B.2.2 Full-time and part-time adult shiftworkers—overtime

	Monday to Friday				Saturday, Sunday or Public holiday
	in excess of ordinary daily hours		in excess of ordinary weekly hours		
	first 2 hours	after 2 hours	first 3 hours	after 3 hours	
	% of minimum hourly rate				
	150%	200%	150%	200%	200%
	$	$	$	$	$
Level 1—Year 1	28.23	37.64	28.23	37.64	37.64
Level 1—Year 2	29.63	39.50	29.63	39.50	39.50
Level 1—Year 3	30.56	40.74	30.56	40.74	40.74
Level 2—Year 1	30.92	41.22	30.92	41.22	41.22
Level 2—Year 2	31.49	41.98	31.49	41.98	41.98
Level 3	32.66	43.54	32.66	43.54	43.54
Call centre principal customer contact specialist	32.88	43.84	32.88	43.84	43.84
Level 4	34.29	45.72	34.29	45.72	45.72
Level 5	35.69	47.58	35.69	47.58	47.58
Call centre technical associate	39.09	52.12	39.09	52.12	52.12

B.3 Casual adult employees

B.3.1 Casual adult employees other than shiftworkers—ordinary and penalty rates

	Monday to Friday	Saturday	Sunday	Public holiday
	% of minimum hourly rate			
	125%	150%	225%	275%
	$	$	$	$
Level 1—Year 1	23.53	28.23	42.35	51.76
Level 1—Year 2	24.69	29.63	44.44	54.31
Level 1—Year 3	25.46	30.56	45.83	56.02
Level 2—Year 1	25.76	30.92	46.37	56.68
Level 2—Year 2	26.24	31.49	47.23	57.72
Level 3	27.21	32.66	48.98	59.87
Call centre principal customer contact specialist	27.40	32.88	49.32	60.28
Level 4	27.40	32.88	49.32	60.28
Level 5	29.74	35.69	53.53	65.42
Call centre technical associate	32.58	39.09	58.64	71.67

B.3.2 Casual adult shiftworkers—ordinary and penalty rates

~~Age~~	~~Day~~	Afternoon and night	Permanent night	Saturday, Sunday or public holiday
	% of minimum hourly rate			
	~~125%~~	140%	155%	175%
	~~$~~	$	$	$
Level 1—Year 1	~~23.53~~	26.35	29.17	32.94
Level 1—Year 2	~~24.69~~	27.65	30.61	34.56
Level 1—Year 3	~~25.46~~	28.52	31.57	35.65
Level 2—Year 1	~~25.76~~	28.85	31.95	36.07
Level 2—Year 2	~~26.24~~	29.39	32.53	36.73
Level 3	~~27.21~~	30.48	33.74	38.10
Call centre principal customer contact specialist	~~27.40~~	30.69	33.98	38.36
Level 5	~~29.74~~	33.31	36.87	41.63
Call centre technical associate	~~32.58~~	36.48	40.39	45.61

B.4 Junior employees

The **junior hourly rate** is based on a percentage of the appropriate adult wage rate in accordance with clause 16.4. Adult rates apply from 21 years of age in accordance with clause 16.4.

B.4.1 Full-time and part-time junior employees other than shiftworkers—ordinary and penalty rates

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	100%	125%	200%	250%
	$	$	$	$
Level 1—Year 1				
Under 16 years	8.47	10.59	16.94	21.18
16 years	9.41	11.76	18.82	23.53
17 years	11.29	14.11	22.58	28.23
18 years	13.17	16.46	26.34	32.93
19 years	15.06	18.83	30.12	37.65
20 years	16.94	21.18	33.88	42.35
Level 1—Year 2				
Under 16 years	8.89	11.11	17.78	22.23
16 years	9.88	12.35	19.76	24.70
17 years	11.85	14.81	23.70	29.63
18 years	13.83	17.29	27.66	34.58
19 years	15.80	19.75	31.60	39.50
20 years	17.78	22.23	35.56	44.45

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	100%	125%	200%	250%
	$	$	$	$
Level 1—Year 3				
Under 16 years	9.17	11.46	18.34	22.93
16 years	10.19	12.74	20.38	25.48
17 years	12.22	15.28	24.44	30.55
18 years	14.26	17.83	28.52	35.65
19 years	16.30	20.38	32.60	40.75
20 years	18.33	22.91	36.66	45.83
Level 2—Year 1				
Under 16 years	9.27	11.59	18.54	23.18
16 years	10.31	12.89	20.62	25.78
17 years	12.37	15.46	24.74	30.93
18 years	14.43	18.04	28.86	36.08
19 years	16.49	20.61	32.98	41.23
20 years	18.55	23.19	37.10	46.38
Level 2—Year 2				
Under 16 years	9.45	11.81	18.90	23.63

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	100%	125%	200%	250%
	$	$	$	$
16 years	10.50	13.13	21.00	26.25
17 years	12.59	15.74	25.18	31.48
18 years	14.69	18.36	29.38	36.73
19 years	16.79	20.99	33.58	41.98
20 years	18.89	23.61	37.78	47.23
Level 3				
Under 16 years	9.80	12.25	19.60	24.50
16 years	10.89	13.61	21.78	27.23
17 years	13.06	16.33	26.12	32.65
18 years	15.24	19.05	30.48	38.10
19 years	17.42	21.78	34.84	43.55
20 years	19.59	24.49	39.18	48.98
Call centre principal customer contact specialist				
Under 16 years	9.86	12.33	19.72	24.65
16 years	10.96	13.70	21.92	27.40
17 years	13.15	16.44	26.30	32.88

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	100%	125%	200%	250%
	$	$	$	$
18 years	15.34	19.18	30.68	38.35
19 years	17.54	21.93	35.08	43.85
20 years	19.73	24.66	39.46	49.33
Level 4				
Under 16 years	10.29	12.86	20.58	25.73
16 years	11.43	14.29	22.86	28.58
17 years	13.72	17.15	27.44	34.30
18 years	16.00	20.00	32.00	40.00
19 years	18.29	22.86	36.58	45.73
20 years	20.57	25.71	41.14	51.43
Level 5				
Under 16 years	10.71	13.39	21.42	26.78
16 years	11.90	14.88	23.80	29.75
17 years	14.27	17.84	28.54	35.68
18 years	16.65	20.81	33.30	41.63

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	100%	125%	200%	250%
	$	$	$	$
19 years	19.03	23.79	38.06	47.58
20 years	21.41	26.76	42.82	53.53
Call centre technical associate				
Under 16 years	11.73	14.66	23.46	29.33
16 years	13.03	16.29	26.06	32.58
17 years	15.64	19.55	31.28	39.10
18 years	18.24	22.80	36.48	45.60
19 years	20.85	26.06	41.70	52.13
20 years	23.45	29.31	46.90	58.63

B.4.2 Full-time and part-time junior employees other than shiftworkers—overtime rates

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
Level 1—Year 1				
Under 16 years	12.71	16.94	16.94	21.18

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
16 years	14.12	18.82	18.82	23.53
17 years	16.94	22.58	22.58	28.23
18 years	19.76	26.34	26.34	32.93
19 years	22.59	30.12	30.12	37.65
20 years	25.41	33.88	33.88	42.35
Level 1—Year 2				
Under 16 years	13.34	17.78	17.78	22.23
16 years	14.82	19.76	19.76	24.70
17 years	17.78	23.70	23.70	29.63
18 years	20.75	27.66	27.66	34.58
19 years	23.70	31.60	31.60	39.50
20 years	26.67	35.56	35.56	44.45
Level 1—Year 3				
Under 16 years	13.76	18.34	18.34	22.93
16 years	15.29	20.38	20.38	25.48
17 years	18.33	24.44	24.44	30.55

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
18 years	21.39	28.52	28.52	35.65
19 years	24.45	32.60	32.60	40.75
20 years	27.50	36.66	36.66	45.83
Level 2—Year 1				
Under 16 years	13.91	18.54	18.54	23.18
16 years	15.47	20.62	20.62	25.78
17 years	18.56	24.74	24.74	30.93
18 years	21.65	28.86	28.86	36.08
19 years	24.74	32.98	32.98	41.23
20 years	27.83	37.10	37.10	46.38
Level 2—Year 2				
Under 16 years	14.18	18.90	18.90	23.63
16 years	15.75	21.00	21.00	26.25
17 years	18.89	25.18	25.18	31.48
18 years	22.04	29.38	29.38	36.73

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
19 years	25.19	33.58	33.58	41.98
20 years	28.34	37.78	37.78	47.23
Level 3				
Under 16 years	14.70	19.60	19.60	24.50
16 years	16.34	21.78	21.78	27.23
17 years	19.59	26.12	26.12	32.65
18 years	22.86	30.48	30.48	38.10
19 years	26.13	34.84	34.84	43.55
20 years	29.39	39.18	39.18	48.98
Call centre principal customer contact specialist				
Under 16 years	14.79	19.72	19.72	24.65
16 years	16.44	21.92	21.92	27.40
17 years	19.73	26.30	26.30	32.88
18 years	23.01	30.68	30.68	38.35
19 years	26.31	35.08	35.08	43.85
20 years	29.60	39.46	39.46	49.33

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
Level 4				
Under 16 years	15.44	20.58	20.58	25.73
16 years	17.15	22.86	22.86	28.58
17 years	20.58	27.44	27.44	34.30
18 years	24.00	32.00	32.00	40.00
19 years	27.44	36.58	36.58	45.73
20 years	30.86	41.14	41.14	51.43
Level 5				
Under 16 years	16.07	21.42	21.42	26.78
16 years	17.85	23.80	23.80	29.75
17 years	21.41	28.54	28.54	35.68
18 years	24.98	33.30	33.30	41.63
19 years	28.55	38.06	38.06	47.58
20 years	32.12	42.82	42.82	53.53
Call centre technical associate				
Under 16 years	17.60	23.46	23.46	29.33

Age	Monday to Saturday		Sunday – all day	Public holiday
	first 2 hours	after 2 hours		
	% of junior hourly rate			
	150%	200%	200%	250%
	$	$	$	$
16 years	19.55	26.06	26.06	32.58
17 years	23.46	31.28	31.28	39.10
18 years	27.36	36.48	36.48	45.60
19 years	31.28	41.70	41.70	52.13
20 years	35.18	46.90	46.90	58.63

B.4.3 Casual junior employees other than shiftworkers—ordinary and penalty rates

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
Level 1—Year 1				
Under 16 years	10.59	12.71	19.06	23.29
16 years	11.76	14.12	21.17	25.88
17 years	14.11	16.94	25.40	31.05
18 years	16.46	19.76	29.63	36.22

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
19 years	18.83	22.59	33.89	41.42
20 years	21.18	25.41	38.12	46.59
Level 1—Year 2				
Under 16 years	11.11	13.34	20.00	24.45
16 years	12.35	14.82	22.23	27.17
17 years	14.81	17.78	26.66	32.59
18 years	17.29	20.75	31.12	38.03
19 years	19.75	23.70	35.55	43.45
20 years	22.23	26.67	40.01	48.90
Level 1—Year 3				
Under 16 years	11.46	13.76	20.63	25.22
16 years	12.74	15.29	22.93	28.02
17 years	15.28	18.33	27.50	33.61
18 years	17.83	21.39	32.09	39.22
19 years	20.38	24.45	36.68	44.83
20 years	22.91	27.50	41.24	50.41

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
Level 2—Year 1				
Under 16 years	11.59	13.91	20.86	25.49
16 years	12.89	15.47	23.20	28.35
17 years	15.46	18.56	27.83	34.02
18 years	18.04	21.65	32.47	39.68
19 years	20.61	24.74	37.10	45.35
20 years	23.19	27.83	41.74	51.01
Level 2—Year 2				
Under 16 years	11.81	14.18	21.26	25.99
16 years	13.13	15.75	23.63	28.88
17 years	15.74	18.89	28.33	34.62
18 years	18.36	22.04	33.05	40.40
19 years	20.99	25.19	37.78	46.17
20 years	23.61	28.34	42.50	51.95
Level 3				
Under 16 years	12.25	14.70	22.05	26.95

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
16 years	13.61	16.34	24.50	29.95
17 years	16.33	19.59	29.39	35.92
18 years	19.05	22.86	34.29	41.91
19 years	21.78	26.13	39.20	47.91
20 years	24.49	29.39	44.08	53.87
Call centre principal customer contact specialist				
Under 16 years	12.33	14.79	22.19	27.12
16 years	13.70	16.44	24.66	30.14
17 years	16.44	19.73	29.59	36.16
18 years	19.18	23.01	34.52	42.19
19 years	21.93	26.31	39.47	48.24
20 years	24.66	29.60	44.39	54.26
Level 4				
Under 16 years	12.86	15.44	23.15	28.30
16 years	14.29	17.15	25.72	31.43
17 years	17.15	20.58	30.87	37.73

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
18 years	20.00	24.00	36.00	44.00
19 years	22.86	27.44	41.15	50.30
20 years	25.71	30.86	46.28	56.57
Level 5				
Under 16 years	13.39	16.07	24.10	29.45
16 years	14.88	17.85	26.78	32.73
17 years	17.84	21.41	32.11	39.24
18 years	20.81	24.98	37.46	45.79
19 years	23.79	28.55	42.82	52.33
20 years	26.76	32.12	48.17	58.88
Call centre technical associate				
Under 16 years	14.66	17.60	26.39	32.26
16 years	16.29	19.55	29.32	35.83
17 years	19.55	23.46	35.19	43.01
18 years	22.80	27.36	41.04	50.16

Age	Monday to Friday	Saturday	Sunday	Public holiday
	% of junior hourly rate			
	125%	150%	225%	275%
	$	$	$	$
19 years	26.06	31.28	46.91	57.34
20 years	29.31	35.18	52.76	64.49

Schedule C—Summary of Monetary Allowances

See clause 19 for full details of allowances payable under this award.

C.1 Wage related allowances

C.1.1 The following wage related allowances in this award are based on the standard rate as defined in Clause 2—Definitions as the minimum weekly wage for the Level 2, Year 1 classification in clause 16.1 = $**783.30**

Allowance	**Clause**	**% of standard rate** **$783.30**	**$** **per week**
First aid allowance	19.2	1.5%	11.75

C.1.2 Adjustment of wage related allowances

Wage related allowances are adjusted in accordance with increases to wages and are based on a percentage of the standard rate as specified.

C.2 Expense related allowances

C.2.1 The following expense related allowances will be payable to employees in accordance with clause 19—Allowances:

Allowance	**Clause**	**$**
Laundry allowance:	19.4(d)	
Full-time employee		3.55 per week
Part-time or casual employee		0.71 per shift
Meal allowance—more than one and a half hours of overtime without 24 hours' notice:		
First meal	19.5(b)(i)	14.98 per occasion
Further four hours' overtime	~~19.5(b)(ii)~~ 19.5(c)	11.99 per occasion
Vehicle allowance:		

Allowance	Clause	$
Motor car	19.6(a)(i)	0.78 per km
Motorcycle	19.6(a)(ii)	0.26 per km

C.2.2 Adjustment of expense related allowances

(a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

(b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Laundry allowance	Clothing and footwear group
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

Schedule D— Supported Wage System

D.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

D.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

D.3 Eligibility criteria

D.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

D.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause D.5) %	Relevant minimum wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

D.4.2 Provided that the minimum amount payable must be not less than **$82** per week.

D.4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

D.5 Assessment of capacity

D.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

D.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

D.6 Lodgement of SWS wage assessment agreement

D.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

D.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

D.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

D.10.3 The minimum amount payable to the employee during the trial period must be no less than **$82** per week.

D.10.4 Work trials should include induction or training as appropriate to the job being trialled.

D.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

Schedule E—National Training Wage

The National Training Wage schedule may be affected by AM2014/17

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

(a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;

(b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and

(c) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003;*

New South Wales: *Apprenticeship and Traineeship Act 2001;*

Northern Territory: *Northern Territory Employment and Training Act 1991;*

Queensland: *Vocational Education, Training and Employment Act 2000;*

South Australia: *Training and Skills Development Act 2008;*

Tasmania: *Vocational Education and Training Act 1994;*

Victoria: *Education and Training Reform Act 2006; or*

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

Year 10 includes any year before Year 10

E.3 Coverage

E.3.1 Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by clause E.7 to this schedule or by clause E.5.4 of this schedule.

E.3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause E.7 to this schedule.

E.3.3 This schedule does not apply to:

(a) the apprenticeship system;

(b) qualifications not identified in training packages; or

(c) qualifications in training packages which are not identified as appropriate for a traineeship.

Parties are asked to identify *"any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997"* that they consider should not be covered by this Schedule.

E.3.4 This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.

E.3.5 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

E.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

E.4.1 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

E.4.2 a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

E.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7.1 are:

	Highest year of schooling completed		
	Year 10	**Year 11**	**Year 12**
	per week	**per week**	**per week**
	$	**$**	**$**
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7.2 are:

	Highest year of schooling completed		
	Year 10	**Year 11**	**Year 12**
	per week	**Per week**	**per week**
	$	**$**	**$**
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) Wage Level C

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7.3 are:

	Highest year of schooling completed		
	Year 10	**Year 11**	**Year 12**
	per week	**per week**	**per week**
	$	**$**	**$**
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	$	$	$
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

(d) AQF Certificate Level IV traineeships

(i) Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	$	$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

E.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by clause E.7.1 are:

	Highest year of schooling completed		
	Year 10	**Year 11**	**Year 12**
	per hour	**per hour**	**per hour**
	$	**$**	**$**
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) Wage Level B

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by clause E.7.2 are:

	Highest year of schooling completed		
	Year 10	**Year 11**	**Year 12**
	per hour	**per hour**	**per hour**
	$	**$**	**$**
School leaver	9.94	10.96	12.70

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	$	$	$
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

(c) Wage Level C

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by clause E.7.3 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	$	$	$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95
Plus 3 years out of school	14.28	15.95	17.78
Plus 4 years out of school	15.95	17.78	

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	$	$	$
Plus 5 or more years out of school	17.78		

(d) School-based traineeships

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by clause E.7 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
$	$
9.94	10.96

(e) AQF Certificate Level IV traineeships

(i) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	$	$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(f) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

(ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.

(iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

E.5.3 Other minimum wage provisions

(a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.

(b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

E.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause E.7 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

E.6.1 A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.

E.6.2 A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

E.6.3 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause E.5.2(f)(ii) and not by this clause.

E.6.4 Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

E.7 Allocation of Traineeships to Wage Levels

Parties are asked to review the packages listed to ensure the lists are complete and up-to-date.

The wage levels applying to training packages and their AQF certificate levels are:

E.7.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I, II, III

Training package	AQF certificate level
Beauty	III
Business Services	I, II, III
Chemical, Hydrocarbons and Refining	I, II, III
Civil Construction	III
Coal Training Package	II, III
Community Services	II, III
Construction, Plumbing and Services Integrated Framework	I, II, III
Correctional Services	II, III
Drilling	II, III
Electricity Supply Industry—Generation Sector	II, III (III in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I, II, III

Training package	AQF certificate level
Laboratory Operations	II, III
Local Government (other than Operational Works Cert I and II)	I, II, III
Manufactured Mineral Products	III
Manufacturing	I, II, III
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Logistics	III

Training package	AQF certificate level
Water Industry (Utilities)	III

E.7.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II

Training package	AQF certificate level
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

E.7.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I, II, III
Conservation and Land Management	I, II, III
Funeral Services	I, II, III
Music	I, II, III
Racing Industry	I, II, III
Rural Production	I, II, III
Seafood Industry	I, II, III

Schedule F—2016 Part-day Public Holidays

The part-day public holidays schedule may be affected by AM2014/301

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

F.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.

(g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.

Schedule G—Agreement to Take Annual Leave in Advance

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: ____ hours/days

The leave in advance will commence on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule H—Agreement to Cash Out Annual Leave

Name of employee: _____

Name of employer: _____

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: ____ hours/days

The payment to be made to the employee for the leave is: $_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule I—Agreement for Time Off Instead of Payment for Overtime

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ ____ am/pm

Date and time overtime ended: ___/___/20___ ____ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___