

Social, Community, Home Care and Disability Services Industry Award 2010

Ai Group Response to Questions in Background Paper 3

Q1. Are there any additions or corrections to Attachment 1? Parties are also asked to advise of the evidence which they rely upon for the community language allowance claim and the 24 hour clause matter respectively. (at [15])

The table below identifies additions to the table at Attachment 1 of the Background Paper in respect of evidence relied upon by Ai Group in support of its submissions regarding certain claims. The additional entries reflect elements of the evidence that we expressly rely upon in our written submissions.

In the time available, we have not been able to complete our review of Attachment 1. We respectfully seek an opportunity to do so and file a further document that identifies all additions or corrections to Attachment 1 after the hearing listed on 11 – 12 March 2020.

Party	Exhibit No	Evidence	Date	Pinpoint Reference
ASU – recall to work overtime				
Ai Group	NA	Deborah Anderson	15 October 2019	PN991, PN1000 – PN1004, PN1011 – PN1013, PN1018
	ASU1		2 Sept 2019	Page 1396 at [23] – [24]
HSU – telephone allowance (claim withdrawn, now supports UWU claim)				
Ai Group	NA	Deon Fleming	15 October 2019	PN534 – PN537 and PN547 – PN549
	UV4		16 January 2019	Page 4483 at [27]
	HSU26	Robert Sheehy	15 February 2019	Page 2942 at [12] – [13]
	HSU27	Pamela Wilcock	15 February 2019	Page 2954 at [19]
	HSU4	Heather Waddell	15 February 2019	Page 2959 at [31]
	HSU28	Thelma Thames	15 February 2019	Page 2964 at [22]
	NA	Jeffrey Wright	17 October 2019	PN2585
	NA	Trish Stewart	15 October 2019	PN445 – PN452
	UV1		17 January 2019	Page 4605 at [20] – [22]

	UV6	Belinda Sinclair	16 January 2019	Pages 4571 – 4572 at [15] – [17]
	HSU3	William Elrick	15 February 2019	Page 2937 at [30]
	HSU27	Bernie Lobert	15 February 2019	Page 2967 at [20]
HSU – recall to work (claim withdrawn, now supports ASU claim)				
Ai Group	NA	Deborah Anderson	15 October 2019	PN991, PN1000 – PN1004, PN1011 – PN1013, PN1018
	ASU1		2 Sept 2019	Page 1396 at [23] – [24]
HSU – client cancellations				
Ai Group	HSU27	Pamela Wilcock	15 February 2019	Page 2953 at [11]
	HSU28	Thelma Thames	15 February 2019	Page 2962 at [11]
	UV4	Deon Fleming	16 January 2019	Page 4481 at [15] – [16]
	UV1	Trish Stewart	17 January 2019	Page 4603 at [10]
	HSU5	Christopher Friend	15 February 2019	Page 2947 at [30]
HSU – uniform / damaged clothing allowance				
Ai Group	UV6	Belinda Sinclair	16 January 2019	Page 4572 at [18] – [21]
	HSU27	Pamela Wilcock	15 February 2019	Page 2952 at [13]
	HSU4	Heather Waddell	15 February 2019	Page 2960 at [34]
	NA	Joyce Wang	18 October 2019	PN3608
UWU – mobile phone allowance claim				
Ai Group	UV4	Deon Fleming	16 January 2019	Page 4483 at [27]
	UV1	Trish Stewart	17 January 2019	Page 4605 at [20] – [22]
	UV6	Belinda Sinclair	16 January 2019	Page 4571 - 4572 at [15] – [17]
	HSU3	William Elrick	15 February 2019	Page 2937 at [30]
	HSU27	Bernie Lobert	15 February 2019	Page 2967 at [20]

Ai Group does not rely on any evidence in relation to the community language allowance claim.

Ai Group has not advanced any submissions in respect of the 24 hour clause.

Q2. Are the findings proposed by the ASU challenged? (at [25])

Paragraph 1, penultimate sentence regarding driver's licenses	Ai Group submission dated 10 February 2020 at paragraph 41
Paragraph 1, final sentence	Ai Group submission dated 10 February 2020 at paragraphs 59 – 76
Paragraph 3, final sentence	Ai Group submission dated 10 February 2020 at paragraph 41
Paragraph 4, final sentence	Ai Group submission dated 10 February 2020 at paragraphs 42 – 46
Paragraph 5	Ai Group submission dated 10 February 2020 at paragraph 47
Paragraph 6	Ai Group submission dated 10 February 2020 at paragraphs 48 – 54
Paragraph 7	Ai Group submission dated 10 February 2020 at paragraph 33
Paragraph 8	Ai Group submission dated 10 February 2020 at paragraphs 55 – 58
Paragraph 10	Ai Group submission dated 10 February 2020 at paragraphs 55 – 58

Q3. Are the findings proposed by the UWU challenged? (at [26])

Paragraph 3, final sentence	Ai Group submission dated 10 February 2020 at paragraphs 6 – 12
Paragraph 4	The UWU has relied on the evidence of only two lay witnesses, which cannot be accepted as probative evidence as to the employment conditions of all disability support workers in Australia.
Paragraph 9, first sentence	Ai Group submission dated 10 February 2020 at paragraphs 26 – 32
Paragraph 10	The UWU relies in part on the evidence of Dr Stanford. For the reasons previously explained, this evidence should be given little weight. Apart from that, the UWU relies on the evidence of just one lay witness. The evidence cited does not enable the proposed finding to be made.
Paragraph 11	Ai Group submission dated 10 February 2020 at paragraphs 13 – 25
Paragraph 12	Ai Group submission dated 10 February 2020 at paragraphs 33
Paragraph 14	Ai Group submission dated 10 February 2020 at paragraphs 34 – 39

Q4. Are the findings proposed by the HSU challenged? (at [33])

Paragraph 1	<p>At paragraph [30] of the HSU’s submission dated 18 November 2019, the union put that “in <u>some</u> cases, the necessity to provide a currently registered and insured vehicle appears in the contract of employment” (our emphasis).</p> <p>At paragraph [83] of the same submission, the HSU put that “possession of a functioning motor vehicle is all but a pre-condition of the work of disability support and home care workers”.</p> <p>The above submissions are inconsistent. We also note that no evidence is cited in support of the second proposition and that, more generally, the evidence does not establish the finding sought. The finding should therefore not be made.</p>
Paragraph 12, last sentence	Ai Group submission dated 10 February 2020 at paragraphs 42 – 46
Paragraph 17	Ai Group submission dated 10 February 2020 at paragraphs 80 – 81
Paragraph 18	Ai Group submission dated 10 February 2020 at paragraphs 77 – 79
Paragraph 20	Ai Group submission dated 10 February 2020 at paragraphs 59 – 76

Q5. Are the findings proposed by ABI challenged? (at [40])

Final point	Ai Group submission dated 10 February 2020 at paragraph 135 in respect of paragraph (8).
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Q7. Is the alternate variation proposed by ABI opposed? (at [46])

We note that question 6 of the Background Paper invites ABI to clarify whether it is proposing an amendment in the same terms as the two pre-modern awards mentioned in its submissions. It is at this stage somewhat unclear precisely what ABI is advancing. Whilst we have attempted to consult the employers we represent in broad terms about the potential introduction of an allowance payable on a per kilometre basis, our undertakings in this regard have not been comprehensive given the absence of a specific proposal.

Nonetheless, we note that whilst an allowance of the nature contained in the relevant pre-modern awards may alleviate some of the concerns we have previously raised about the Unions’ proposals (such as the complexities associated with measuring time spent travelling and the treatment of such time as time worked), there would be many complex issues that would also arise from a provision of the nature that appears to be proposed by ABI.

For example:

- (a) On what basis has the quantum of the allowance been selected?
- (b) In what circumstances would the allowance be payable? For example, is the allowance payable where the employee does not travel directly from one client to the next? If yes, how is the allowance to be calculated in such circumstances?
- (c) Should the employee be required by the Award to provide a written record of the number of kilometres travelled to an employer? Should the Award make the payment of any allowance contingent upon the provision of such a record? Should the Award also make the payment of any allowance contingent upon verification of the record by the employer? How would an employer verify such a record?

We also note that our preliminary consultation with employers has revealed that significant costs associated with the implementation of payroll software and / or processes may be incurred if a payment per kilometre was required. This is consistent with our experience in other industries where payment is to be made to employees on a similar basis.

If the Full Bench forms a view that a clause similar to that identified by ABI may be appropriate for inclusion in the Award, parties should be given a further opportunity to consider and address it before a final determination is made by the Commission.

Q9. Are the findings proposed by the HSU challenged? (at [53])

Paragraph 1	The HSU has cited only the evidence of three lay witnesses. The evidence does not establish that “working in a face to face contact role with clients with disability requiring assistance due to their age, is <u>likely</u> to be physically <u>and</u> mentally taxing work” (our emphasis) though we accept that it may in <u>some</u> cases be physically and / or mentally taxing. Tasks such as the provision of medication or preparation of a meal may not be physically and / or mentally taxing.
Paragraph 4	Ai Group submission dated 10 February 2020 at paragraphs 93 – 95
Paragraph 7	The submission is made in the context of the extant award provisions but we note that the HSU has also advanced a claim to require the payment of overtime rates for time worked in addition to agreed hours by part-time employees, which would significantly reduce existing flexibility available under the award.

Q10. Are the findings proposed AFEI challenged? (at [57])

No.

Q12. Are the findings proposed by ABI challenged? (at [60])

No.

Q14. Are the findings proposed by the HSU challenged? (at [65])

Paragraph 2	Ai Group submission dated 10 February 2020 at paragraphs 85 – 86
Paragraph 3	Ai Group submission dated 26 February 2020 at paragraphs 71 – 74
Paragraph 4	Ai Group submission dated 10 February 2020 at paragraph 87
Paragraph 5	<p>The HSU submits that “it is difficult to imagine that” an approach of ‘breaking’ the minimum engagement period “could have been envisaged when the Award was made”. The meaning of the proposition advanced is somewhat unclear. We note though that the union does not appear to be alleging that when the Award was made, it was intended that minimum engagement periods could <i>not</i> be broken. Its submission appears to stop short of this.</p> <p>The union then submits that the practice of ‘breaking’ the minimum engagement periods “departs radically from the common understanding of the operation of such shifts. It is not clear what ‘common understanding’ is being referred to, apart from a reference to a recent decision of the Commission concerning the <i>Aged Care Award 2010</i>. However, in the extract cited, the Commission determined an HSU claim to increase minimum engagement periods on its merits, in the context of the aged care industry and the material there advanced. The decision does not deal with or consider what the ‘common understanding’ of the operation of minimum engagements is.</p>
Paragraph 8	Ai Group submission dated 26 February 2020 at paragraphs 55 – 56.
Paragraph 9	Ai Group submission dated 26 February 2020 at paragraphs 85 – 86

Paragraph 14	Ai Group submission dated 10 February 2020 at paragraphs 88 - 89
Paragraph 15	Ai Group submission dated 26 February 2020 at paragraphs 81 – 82

Q15. Are the findings proposed by the NDS challenged? (at [66])

No.

Q16. Are the findings proposed by the AFEI challenged? (at [67])

No.

Q17. Are the findings proposed by ABI challenged? (at [69])

Paragraph 4	The cited evidence does not establish that such a practice is “very common”.
Paragraph 5	The evidence cited can ground the findings proposed only in respect of the practices of those employers.

