TRANCHE 3 BACKGROUND PAPER

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards
(AM2019/17)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 23 MARCH 2020

This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.

1. Background

[1] On 29 January 2020 Exposure Drafts and draft variation determinations were published for each of the Tranche 3 modern awards.

[2] On the same day we published a decision[1] in which we expressed the *provisional* view that the variation of the modern awards in Tranche 3 in accordance with the draft variation determinations was, in respect of each of these awards, necessary to achieve the modern awards objective. In reaching that conclusion we adopted the reasons set out in the decisions at Attachment B to the 29 January 2020 decision, insofar as they were relevant to each of the awards in Tranche 3 and, in particular, to the considerations in ss.134(1)(a) to (h), which are addressed in each of those decisions.

[3] Interested parties were invited to comment on the *provisional* view we set out in the 29 January 2020 decision.

[4] Submissions have been filed by:

- Commercial Radio Australia – Submissions re the Broadcasting, Recorded Entertainment and Cinemas Award on 12 February 2020
- Maritime Industry Australia Limited (MIAL) – Submissions re the Seagoing Industry Award; Marine Towage Industry Award; Ports, Harbour and Enclosed Water Vessels Award; Marine Tourism and Charter Vessels Award on 17 February 2020

[1] [2020] FWCFB 421

- Live Performance Australia (LPA) – Submissions re the Amusement, Events and Recreation Award on 19 February 2020
- Professional Golfers Association (PGA) – Submissions re the Amusement, Events and Recreation Award on 21 February 2020
- MEAA – submissions re Journalists Published Media Award on 26 February 2020
- Australian Security Industry Association Limited (ASIAL) – Submissions re the Security Services Industry Award on 2 March 2020
- Birch Carroll & Coyle and Ors – Submissions re the Broadcasting, Recorded Entertainment and Cinemas Award on 3 March 2020
- Association of Independent Schools (A.I.S) – Submissions re Educational Services (Teachers) Award on 3 March 2020
- MIAL – Submissions re the Seagoing Industry Award; Ports, Harbour and Enclosed Water Vessels Award; Marine Towage Award on 4 March 2020
- Independent Education Union of Australia (IEU) – Submissions re Educational Services (Teachers) Award on 4 March 2020
- Private Hospital Industry Employer Associations – Submissions re Health Professionals and Support Services Award on 4 March 2020
- United Workers' Union (UWU) – Submissions re the Funeral Industry Award; Miscellaneous Award; Registered and Licensed Clubs Award; Security Services Industry Award; Wine Award on 4 March 2020
- Australian Nursing and Midwifery Federation (ANMF) – Submissions re the Nurses Award on 4 March 2020
- LPA – Submissions re the Live Performance Award on 4 March 2020
- South Australian Wine Industry Association – Submissions re the Wine Industry Award on 4 March 2020
- Club Managers' Association Australia (CMAA) – Submissions re Registered and Licensed Clubs Award on 4 March 2020
- Clubs Australia Industrial (CAI) – Submissions re Registered and Licensed Clubs Award on 4 March 2020
- APESMA – Collieries' Staff and Officials Association – Submissions re the Black Coal Mining Industry Award on 4 March 2020
- Construction, Forestry, Maritime, Mining and Energy Union – Mining And Energy Division (CFMMEU – M & E Division) – Submissions re the Black Coal Mining Industry Award on 4 March 2020
- AFEI – Submissions re the Ports, Harbours and Enclosed Water Vessels Award on 4 March 2020
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) – Submissions re the Black Coal Mining Industry Award on 5 March 2020

- AMWU – Submissions re Black Coal Mining Industry Award; Food, Beverage and Tobacco Manufacturing Award; Miscellaneous Award; Sugar Industry Award; Timber Industry Award on 5 March 2020

- Ai Group – Submissions re Black Coal Mining Industry Award; Business Equipment Award; Electrical, Electronic and Communications Contracting Award; Food, Beverage and Tobacco Manufacturing Award; Graphic Arts, Printing and Publishing Award; Horticulture Award; Miscellaneous Award; Nurses Award; Professional Employees Award; Sugar Industry Award; Telecommunications Services Award; Textile, Clothing, Footwear and Associated Industries Award; Timber Industry Award; Wine Industry Award on 6 March 2020
- Master Plumbers – Submissions re the Plumbing and Fire Sprinklers Award on 6 March 2020
- ABI & NSWBC – Submissions re Amusement, Events and Recreation Award; Black Coal Mining Industry Award; Broadcasting, Recorded Entertainment and Cinemas Award; Building and Construction General On-Site Award; Business Equipment Award; Educational Services (Teachers) Award; Electrical, Electronic and Communications Contracting Industry Award; Fitness Industry Award; Food, Beverage and Tobacco Manufacturing Award; Funeral Industry Award; General Retail Industry Award; Graphic Arts, Printing and Publishing Award; Health Professional and Support Services Award; Horticulture Award; Joinery and Building Trades Award; Journalist Published Media Award; Miscellaneous Award; Mobile Crane Hiring Award; Nurses Award; Plumbing and Fire Sprinklers Award; Professional Employees Award; Racing Clubs Events Award; Registered and Licensed Clubs Award; Security Services Award; Sugar Industry Award; Supported Employment Services Award; Telecommunications Services Award; Textile, Clothing, Footwear and Associated Industries Award; Timber Industry Award; Wine Industry Award on 6 March 2020

- AWU – Submissions re the Food, Beverage and Tobacco Manufacturing Award; Funeral Industry Award; Horse and Greyhound Training Award; Horticulture Award; Pest Control Industry Award; Racing Clubs Events Award; Sugar Industry Award; Wine Industry Award on 6 March 2020
- CFMMEU – Manufacturing Division – Submissions re the Textiles, Clothing, Footwear and Associated Industries Award on 6 March 2020
- CFMMEU – Manufacturing Division – Submissions re the Timber Award on 10 March 2020
- Qantas Group – Submissions re Aircraft Cabin Crew Award 2010 on 11 March 2020

[5] On 2 March 2020 we issued a statement[2] (March 2020 Statement) in relation to four of the Tranche 3 awards set out below;

- *Building and Construction (General) On-Site Award 2010*
- *Joinery and Building Trades Award 2010*
- *Mobile Crane Hiring Award 2010*
- *Plumbing and Fire Sprinklers Award 2010*

(collectively, the Construction awards)

[6] The March 2020 Statement said that the Exposure Drafts and draft variation determinations for the Construction awards will be re-published *after* the Full Bench in AM2016/23 has issued final variation determinations.

[7] The final variation determinations for the Construction awards were issued on 20 March 2020.[3] A statement and directions will be issued in relation to the finalisation of the Exposure Drafts and draft variation determinations in due course.

[8] A separate Statement has also been published in relation to the *Black Coal Mining Industry Award*.[4] The Statement sets out the issues in respect of this award and will be the subject of a separate conferencing process.

[9] This Background Paper summarises the submissions in respect of the remaining 34 modern awards in Tranche 3 (set out at **Attachment A**); sets out some *provisional* views and poses some questions to the interested parties.

2. Uncontentious Awards

[10] The submissions filed do not identify any issues (other than minor drafting errors[5]) with the Exposure Drafts and draft variation determination in respect of the following awards.

- *Aircraft Cabin Crew Award 2010*[6]
- *Dredging Industry Award 2010*
- *Funeral Industry Award 2010*[7]
- *General Retail Industry Award 2010*
- *Journalists Published Media Award 2010*[8]

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[2] [2020] FWCFB 1079

[3] Building PR715725, Joinery PR715726; Mobile Crane PR715727 and Plumbing PR715728

[4] [2020] FWCFB 1297

[5] We note that a number of the draft variation determinations include a reference to '20XX', this will be changed to '2020'.

[6] The Qantas Group identified two drafting errors. At clause 2 Definitions – Calendar month definition including an exception for January in the first dot point of the definition. This should be deleted. At clause 7.4 the Facilitative provisions table should be updated to include: B.2.8 Days off – regional cabin crew An individual. We note that a separate Full Bench is dealing with some substantive claims in respect of this award (AM2020/3).

[7] The AWU notes that the headings for Part 3 – Hours of Work and Part 4 – Wages and Allowances do not appear in the body of the Exposure Draft.

[8] ABI notes that the Exposure Draft and draft variation determination variously refers to payments for shiftwork as '*shift penalty rates'* (clauses 10.5, 12.4), '*shift penalties'* (clause 16.2); '*shift penalty payments'* (clause 18.8; '*penalty rates'* (clause 19) and

- *Pest Control Industry Award 2010*[9]
- *Sugar Industry Award 2010*[10]
- *Supported Employment Services Award 2010*

3. Timing issues

[11] Ai Group submit that a period of not less than three months should be allowed to lapse between the issue of a final determination by the Commission varying each Tranche 3 award to reflect the final iteration of the exposure draft and the date upon which those variations commence operation.

[12] During the finalisation of Tranche 2 awards, we issued our decision on 24 December 2019. Final variation determinations were then issued on 14 February 2020, 7 weeks after the decision. Awards that were not contested will have an operative date of 13 April 2020, which is 8 weeks after the final variation determinations were issued. Awards that were contested will have an operative date of 4 May 2020 which is 11 weeks after the final variation determinations were issued.

[13] We invite all interested parties to comment on the 'timing issue' in their reply submissions.

[14] More substantive award specific submissions have been made in relation to the remaining awards which are dealt with in section 4.

4. Award specific issues

4.1 Amusement, Events and Recreation Award 2010

[15] ABI, LPA and the PGA have made submissions in respect of the Amusement Award.

[16] ABI raise an issue in relation to the calculation of overtime for casuals.

[17] Under the current award, the casual loading provision states as follows:

> '10.4 (d) Casual employees will be paid the hourly rates prescribed for the appropriate classification in clause 14-Minimum wages, plus an ordinary time loading of 25%.'

[18] Clause 11.5 of the Exposure Draft states:

> 'For each hour worked a casual employee will be paid:

'*shift rates'* (clause 31.1). ABI suggests that the term "shift penalty rate" should be used throughout the award for the purposes of consistency. We agree and will amend the draft variation determination accordingly.

[9] The AWU points out that in cluse 4.5 the insertion of the word 'that' immediately follows the word 'the' and one of these words should be deleted.

[10] Ai Group notes that in clause 20.3(c)(i) the cross reference should be to 'clause 20.3(c)(ii)' and not 'clause 20.3(b)'. Ai Group also notes that the following corrections should be made to clause H.4.1(d)(ii) of Schedule H: (AQF Certificate Level ~~I II~~ IV traineeship) where it appears in the clause and the Table 4 heading. AWU notes that there is a cross referencing error in clause 31.3(b)(iii), the cross reference should be to clauses 31.3(b)(i) and (ii).

(a) the ordinary hourly rate for the classification in which they are employed in clause 16-Minimum rates; and

(b) a loading of 25% of the ordinary hourly rate' (emphasis added).

[19] ABI submits that the Exposure Draft changes the meaning of whether a casual loading is applied on overtime or not.

[20] The application of the casual loading under the Amusement Award is currently in dispute regarding the calculation of overtime for the casual loading in the proceedings AM2017/513.[11] In those proceedings, ABI is contending that no casual loading is payable on overtime in relation to this Award.

[21] ABI submits that until the application of the casual loading to overtime rates in the Amusement Award is determined, either:

(i) the drafting pertaining to the casual loading should be maintained in its original form (as currently appears in the Amusement Award); or

(ii) the Exposure Draft for the Amusement Award should not be determined and published in its new form.

[22] It is our *provisional* view that option (i) proposed by ABI be adopted.

[23] LPA raises two issues.

[24] First, in response to the question posed in the Exposure Draft at Schedule C – Summary of Hourly Rates of Pay – Exhibition Employees. LPA confirms that exhibition employees are employed at Grades 2, 4 or 5 only. We note that no other party has taken a different view.

[25] The second issue concerns table C.3.1 which provides as follows:

C.3.1 Casual adult employees – ordinary and penalty rates

	Ordinary hours	**Public holiday**
	% of ordinary hourly rate	
	125%	**200%**
	$	**$**
Grade 2 (General hand)	~~26.03~~27.90	~~41.64~~44.64
Grade 4 (Exhibition technician)	~~28.38~~31.30	~~45.40~~50.08
Grade 5 (Supervisory exhibition technician)	~~29.26~~33.20	~~46.82~~53.12

[26] LPA disputes the calculation of the Casual adult employees – ordinary and penalty rates in table C.3.1.

[11] 2019 FWC 8318 at [12]

[27] The comment box relating to table C.3.1 notes that the ordinary hourly rate has been calculated as follows:

> (Weekly rate ÷ 38) in clause 16.1 + (all purpose flexible loading allowance ÷ 38) in clause 18.2(b) + (all purpose supervisory loading ÷ 38, if applicable) in clause 18.2(b).

[28] In other words, the casual hourly rates in table C.3.1 have been calculated *inclusive* of the All purpose allowances provided in clause 18.2(b).

[29] The LPA contends that the All purpose allowances do *not* apply to casual employees and on that basis the amounts that have been 'struck through' are the correct casual hourly rates for casual exhibition employees.

[30] We note that clause 18.2(b) states (emphasis added):

> **(b) Special all-purpose allowances for exhibition employees** Full-time and part-time employees will be paid the following allowances for all purposes of the award:

Classification	**Flexible loading allowance**		**Supervisory loading allowance**	
	$ per week	$ per hour	$ per week	$ per hour
General hand	56.93	1.50	N/A	N/A
Exhibition technician	61.24	1.61	27.60	0.73
Supervisory exhibition technician	64.69	1.70	55.20	1.45

[31] Given the terms of clause 18.2(b) it is our *provisional* view that the casual hourly rates in table C.3.1 be amended as proposed by LPA.

[32] The PGA has filed a submission in support of its substantive claim which seeks to extend the coverage of the award to encompass 'golf facilities including but not limited to golf clubs, on-course and off course golf shops and during ranges.'

[33] The PGA's claim was referred to another Full Bench (AM2019/7)) in February 2019 and the presiding Member of that Full Bench (Deputy President Sams) has issued directions for the filing of submissions in relation to the claim.

[34] The PGA's submissions will be referred to the AM2019/7 Full Bench.

4.2 Broadcasting, Recorded Entertainment and Cinemas Award 2010

[35] ABI, Birch Carroll and Coyle Limited and other cinema industry employers (BCC and others) and Commercial Radio Australia (CRA) made submissions in relation to the Broadcasting Award.

[36] ABI raises four issues.

(i) Clause 45.3 - Penalty rates not cumulative

[37] Clause 45.3 states:

> **45.3 Penalty rates not cumulative**
>
> Extra rates prescribed in clause 45 are not cumulative so as to exceed a maximum of 300% of the minimum hourly rate.

[38] ABI submits that the drafting of clause 45.3 is 'somewhat unique' and that it 'does not appear to have any meaningful work to do and should be removed.'

[39] It is our *provisional* view that clause 45.3 be deleted.

(ii) Clause 62.2 (a) - Zone managers - additional allowances

[40] Clause 62.2(a) states:

> **(a) Zone managers—additional allowances**
>
> (i) A zone manager will, in addition to the ordinary wage, be paid the following allowance for each additional theatre supervised:

	Allowance for each additional theatre supervised	**Maximum allowance**
	$ per theatre	$ per week
Zone 1	46.40	278.50
Zone 2	32.52	196.05

> (ii) Zone 1 applies to cinemas in the central city areas of the capital cities of the States of the Commonwealth and the City of Newcastle or any cinemas regularly giving 3 or more performances daily.
>
> (iii) Zone 2 applies to drive-in theatres and all other cinemas other than those in Zone 1.

[41] ABI questions whether the wording of clause 62.2(a)(ii) offends s.154 of the *Fair Work Act 2009* on the basis that is expressed to apply to areas within capitals cities of "*the States of the Commonwealth*".

[42] ABI notes that while the Federal Court has confirmed that a modern award may contain an allowance that applied to a place within a state or territory, the current wording of the clause may still offend section 154 as it expressed to apply to the capital cities of all states, not all state *and* territories.

[43] ABI contends that such issues might be resolved by rewording clause 62.2(a)(ii) as follows:

> 'Zone 1 applies to cinemas:
>
> A. in the central city areas of:

• Sydney;
• Melbourne;
• Brisbane;
• Perth;
• Adelaide; and
• the City of Newcastle; or

B. any cinemas regularly giving 3 or more performances daily.'

[44] Interested parties are invited to comment on the issue raised by ABI and the solution proposed.

(iii) Clause A.1.1(e) - Definitions - Captioner

[45] Clause A.1.1(e)(ii) provides as follows:

'Captions are the transcription of speech, sound effects and other pertinent information which features as part of a soundtrack and would not otherwise be accessible to Deaf or hearing impaired viewers. Captions are either transmitted live-to-air or are prepared in advance and are timecoded to keep in synch with the soundtrack. Captions can also include colouring and positioning to help identify speakers.'

[46] ABI submits that the word "*Deaf*" in clause A.1.1(e) does not need to be capitalised.

[47] We agree with ABI and will amend the Exposure Draft and draft variation determination.

(iv) Clause A.1.23(d) - Definitions - Captioner/Audio Describer and Subtitlers/Subtitling Editors

[48] Clause A.1.23(d) states:

(d) Multi-Skilled Captioner/Audio Describer Skills, competencies, duties and responsibilities held and exercised

(i) Performs the duties of the lower classification

(ii) Experienced in audio description, live or file captioning

(iii) Meets a high standard of accuracy and productivity across a range of programs and output types to the required levels (iv) Capable of working independently without direct supervision and applies appropriate discretion and judgment in carrying out work

(v) Provides support and guidance to other Captioners/Audio Describers Duties may include specialised editing of own and others work, audio describing for movies and other longer more complex content and live output on a range of programs including sports and news and current affairs

[49] The sentence beginning with the words "*Duties may include specialised editing*" has been appended to subclause A.1.23(d)(v) and ABI submits that this sentence should be separated from the five subclauses (i) to (v) as in clauses A.1.23(a), (c), (e) and (h).

[50] It is our *provisional* view that clause A.1.23(d)(v) be redrafted as follows:

> (v) Provides support and guidance to other Captioners/Audio Describers
>
> Duties may include specialised editing of own and others work, audio describing for movies and other longer more complex content and live output on a range of programs including sports and news and current affairs

[51] BCC and others raise three issues.

(i) Definitions

[52] At clause 2 of the Exposure Draft, there is a definition of 'cinema'. At clause 62, at Schedule D (D.1.4(d), D.1.6, D.1.7(a) and D.1.8) and at Schedule H (H.1.1) the word 'theatre' is used. BCC and others submit that there is a clear intention in the award that, at these places in the Exposure Draft, these words have an identical meaning and contend that any possible ambiguity should be resolved. It is submitted that this could be done by changing 'theatre', each time it appears in these places, to 'cinema'.

[53] The word 'theatre' is also used in Schedule E - Actors at E.2.5. It is not suggested that there be any change to Schedule E.

[54] It is our *provisional* view that the amendment proposed by BCC and others be adopted.

(ii) Casual conversion

[55] BCC and others advance the following submission:

> 'Clause 8.2 states that Clause 11 - Casual employees will not apply to employees in cinemas. However clause 11.5(k)(ii) indicates that clauses 58.3 and 59.4, which apply to employees in cinemas, are relevant to casual conversion.
>
> The intention of the Full Bench is noted in the Decision of 21 September 2018 as it is stated in AM2014/196 and AM2014/197:
>
> > We consider the cinema industry employers' concern will be addressed if paragraph (j)(ii) of the casual conversion is modified to read:
> >
> > "(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 54.3(a), 55.1(c) and 55.2(d) in respect of cinema employees and the matters referred to in clause 10.4(c) in respect of all other employees."
>
> Current Award clause 54.3(a) is reflected in clause 57.3 of the Exposure Draft.
>
> Current Award clause 55.1 (c) is reflected in clause 58.3 of the Exposure Draft.
>
> Current Award clause 55.2(d) is reflected in clause 59.4 of the Exposure Draft.
>
> The inconsistencies in the Exposure Draft appear to be:
>
> - Clause 8.2 This states that clause 11.4 - Casual employees will not apply to employees in cinemas (see clause 57 - Types of employment).
> - Clause 11.5(k)(ii) This states that clause 10.1 applies to employees in cinemas. However clause 8.2 states that it does not apply. Clause 57.3 - Part-time

employees corresponds with clause 54.3(a) in the current award and is the provision applicable to employees in cinemas.

- Clause 11.5(k)(ii) This also refers to clauses 58.3 (55.1 (c) of the current Award) and 59.4 (55.2(d) of the current Award). No recognition is given in the Exposure Draft to the Full Bench reference to clause 57.3 (54.3(a) in the current Award).'[12]

[56] BCC and others propose to advance a 'suitable provision' before the hearing scheduled for 6 and 7 April 2020.

(iii) Minimum wages

[57] In its submission BCC and others noted that the Draft Determination attached to the Decision of 20 November 2019 (AM2018/17) has not yet been made. A decision and final variation determination were issued on 20 March 2020.[13] The Exposure Draft and variation determination will be amended to incorporate the 20 March 2020 variation.

[58] Finally, the CRA submission concerns clause 18.3(a) of the Exposure Draft, which states:

> **18.3 Annual leave loading**
>
> Before the start of the employee's annual leave the employer must pay the employee:
>
> (a) Subject to clauses 32.1(d) and 32.2(d), instead of the base rate of pay referred to in section 90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime had they not been on leave;
>
> (b) An additional loading of 17.5% of the relevant minimum wage for their classification as set out in this award.

[59] The comparable provision in the current award is at clause 23.9(a) and (b), as follows:

> **23.9** Before the start of the employee's annual leave the employer must pay the employee:
>
> (a) subject to clause 30.8, instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime had they not been on leave; and
>
> (b) an additional loading of 17.5% of the relevant minimum wage for their classification as set out in this award.

[60] CRA contends that clause 18.3(a) can be read as 'inappropriately entitling some employees … to payment of both the relevant shift loading (and potentially other amounts payable in respect of ordinary hours, but now excluding overtime) and an additional annual leave loading'. CRA proposes that:

(a) clause 18.3(a) of the Exposure Draft should be deleted and replaced with the following:

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[12] BCC and others submission 3 March 2020 at 5.2

[13] See [2020] FWCFB 1511; PR717665

'(a) Subject to clause 32.2(d), instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours had they not been on leave, but excluding overtime, shift rates, penalty rates, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred; and

(b) a new paragraph should be added to clause 18(c) of the Exposure Draft after clause 18.3 as follows:

'An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to that prescribed in clauses 16.7(a) and 16.7(b) or the shift rates prescribed by this award, whichever is the greater, but not both,'

[61] Interested parties are invited to comment on the issue raised by CRA and on the amendments proposed.

4.3 Business Equipment Award 2010

[62] Ai Group has made a submission in relation to the definition of 'minimum hourly rate' in clause 2, which states:

minimum hourly rate means the minimum weekly rate in clause 14.2 divided by 38 and rounded to the nearest cent

[63] Ai Group proposes that the words 'in clause 14.2' be replaced by 'prescribed by this award'. In support of the proposed amendment Ai Group submits:

'The definition is problematic as it requires the calculation of the minimum hourly rate by reference to the weekly rates contained in clause 14.2. This excludes employees who are not entitled to those weekly rates, such as employees to whom clause 14.3 applies (Supported Wage System) and clause 14.4 applies (National Training Wage).'[14]

[64] It is our *provisional* view that clause 14.2 be amended as proposed by Ai Group.

4.4 Educational Services (Teachers) Award 2010

[65] The IEU and the Associations of Independent Schools (the Associations) have made submissions in relation to the Teachers Award.

[66] The IEU and the Associations (the Joint parties) have agreed to the following amendments to the Exposure Draft and draft variation determinations.

(i) Meal breaks

[67] Two changes are proposed. The first is the deletion of clause 16.1(a) and inserting:

[14] Ai Group submission 6 March 2020 at para.24

'(a) An employer is required to provide an unpaid meal break of not less than 30 consecutive minutes to an employee who is engaged or rostered to work for more than 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.'

[68] The second change is to delete Schedule A.3.1(a) and replace it with the following:

'An employer is required to provide a paid meal break of between 20 and 30 consecutive minutes to an employee, who is engaged or rostered to work for more than 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.'

(ii) Payment of wages

[69] Clause 18.1 of the Exposure Draft states:

18.1 All monies payable will be paid:

(a) once each fortnight;

(b) once every ~~four~~ 4 weeks at the end of the first fortnight which includes payment for ~~two~~ 2 weeks in arrears and ~~two~~ 2 weeks in advance; or

(c) once every month with the payment being made as nearly as possible on the middle of each month which includes one half month in arrears and one half month in advance.

[70] The Joint parties submit that clause 18.1(a) should be varied to ensure payment of wages fortnightly by adding the words 'with the payment being made no later than the last working day of each fortnight.'

(iii) Redundancy notice period

[71] Clause 33.2 of the Exposure Draft states:

33.2 Employee leaving during redundancy notice period

(a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.

(b) The employee is entitled to receive the benefits and payments they would have received under clause 33 or under sections 119–123 of the Act had they remained in employment until the expiry of the notice.

(c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

[72] The Joint parties submit that clause 33.2 should be amended to be consistent with the non-standard notice period of 7 weeks applying in the award. The IEU seeks variation to clause 33.2 by deleting the words 'section 117(3) of the Act' in sub clause (a) and replacing with the words 'this award.'

[73] It is our *provisional* view that the Exposure Draft and the draft variation determination be amended as proposed by the Joint parties.

[74] The IEU raises one further issue which is not the subject of the agreement between the parties.

(i) Schedule B

[75] The IEU submits that there are errors contained in the tables located in Schedules B.1.1 and B.1.2, which do not apply the 4% loading contained in clause 17.2 of the award.

[76] Clause 17.2 of the Exposure Draft states:

> **17.2** A full-time employee who works in a children's or early childhood service which usually provides services over a period of at least ~~eight~~ 8 hours each day for 48 weeks or more (such as a long day care centre) will be paid an additional 4% on the rates set out in clause 17.1 on the basis that the employee is not covered by the provisions of clause 15—Ordinary hours of work.

[77] The IEU submits that tables B.1.1 and B.1.2 in Schedule B be amended as follows:

(i) By adding a new column in B.1.1 for teachers employed in early childhood services operating for at least 48 weeks per year who are not shift workers;

(ii) By varying the rates contained in columns 2-5 of B.1.1 to include the 4% loading; and

(iii) By adding a new column in B.1.2 for teachers employed in early childhood services operating for at least 48 weeks per year.

[78] The AIS is asked to confirm its position in reply submissions.

4.5 Electrical, Electronic and Communications Contracting Award 2010

[79] ABI and Ai Group have made submissions in relation to this award.

[80] ABI submits that the current Schedule B 'could be articulated more clearly and there are a few errors in relation to method of calculating rates, relevant percentages applied and all-purpose allowances'.

[81] ABI identifies the following issues, listed in order of appearance in Schedule B:

(a) the definition for 'ordinary hourly rate' in clause B.1.1 is different to the definition for 'ordinary hourly rate' in clause 2 of the Exposure Draft;

(b) Tables B.2.1, B.4.1, B.4.5 and B.4.9 set out 'ordinary and penalty rates' for other than shiftworkers and include a 'public holiday' column. Tables B.2.2, B.4.2, B.4.6 and B.4.10 set out 'overtime rates' for other than shiftworkers and

also include the same 'public holiday' column. Replication of the 'public holiday' column may cause confusion for users of the Electrical Award;

(c) Table B.2.4 provides for 'overtime rates' but also includes a 'public holiday' column. The comment attached to the percentage set out in this column (namely 250%) indicates that it is from clause 20.4 of the Exposure Draft, however this is the incorrect percentage for all shiftworkers. Public holiday penalties for shiftworkers are contained in clause 13.15 of the Exposure Draft. The penalty which applies on a public holiday differs depending on whether the employee is a continuous shiftworker or other than a continuous shiftworker. The applicable penalties payable on a public holiday to both categories of shiftworkers are correctly outlined in the last column of Table B.2.3;

(d) clause B.3.2 of Schedule B for 'casual shiftworkers' includes a 'day' column. This is unnecessary, as the table is for shiftworkers, and rates applicable to day workers are already provided for in Table B.3.1;

(e) reference to the calculation of apprentice hourly rates for adults and juniors underneath clause B.4 of Schedule B is somewhat confusing. The adult apprentice rates are differentiated based on whether the apprentice commenced their apprenticeship before or, on or after, 1 January 2014. The junior apprentice rates are not expressed in the same manner, despite the fact that clause 16.4(a) of the Electrical Award specifies different rates for apprentices who commenced their apprenticeship before or, on or after, 1 January 2014. There should be consistency between these clauses; and

(f) underneath Table B.4.1, footnote 1 indicates that the apprentice hourly rate includes industry allowance, tool allowance and electrician's licence allowance. However, clause 16.4(a)(iii) for junior apprentices, clause 16.4(b)(iii) and clause 16.4(b)(vi) for adult apprentice indicates that apprentices should be paid:

(i) the full amount of:

A. tool allowance in clause 18.3(g), which is an all-purpose allowance; and

B. fares allowance in clause 18.6(d); and

(ii) the percentages set out in clause 16.4 for the applicable apprentice of:
A. travel time allowance in clause 18.6(c);

B. electrician's licence allowance in clause 18.3(b), which is an all-purpose allowance; and

C. industry allowance in clause 18.3(a), which is an all-purpose allowance.

[82] To resolve these issues ABI submits that:

(a) the definition for 'ordinary hourly rate' in B.1.1 is amended to reflect the definition provided in clause 2 of the Exposure Draft; and

(b) Tables B.2.1, B.4.1, B.4.5 and B.4.9 are amended so that they only refer to 'ordinary rates' for other than shiftworkers. This requires:

  (i) the words 'and penalty' to be deleted from the heading for B.2.1, B.4.1, B.4.5 and B.4.9; and

  (ii) the 'public holiday' column be removed from the Tables in B.2.1, B.4.1, B.4.5 and B.4.9.

(c) Tables B.2.2, B.4.2, B.4.6 and B.4.10 be amended so it is 'overtime and penalty rates' for other than shiftworkers; and

(d) remove the 'public holiday' column from Table B.2.4 as the percentage provided for in this table is incorrect, and penalty rates for public holidays is already provided for in Table B.2.3; and

(e) remove the 'day' column from Table B.3.2 as this is unnecessary, as Table B.3.1 already provides for a day workers rates and Table B.3.2 is for casual shiftworkers; and

(f) remove paragraph 2 and 3 underneath Schedule B.4 Apprentice rates and replace with the following "the apprentice hourly rate for adult apprentices is calculated in accordance with clause 16.4(b)" to ensure consistency with junior apprentices; and

(g) depending on the Commission's decision in relation to the all-purpose rate for apprentices, this might involve either:

  (i) amending clauses 16.4(a)(iii), 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii) so references to fares allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) are removed; or

  (ii) amending the footnotes for 'apprentice hourly rate' in Schedule B.4 so that it includes "full amount of tool allowance and fares allowance, and the relevant percentage as set out in clause 16.4 of the travel time allowance, electrician's licence allowance and industry allowance"; and

  (iii) amending the rates in the tables in Schedule B.4 so it includes the fares allowance, and percentage of the travel time allowance.

[83] Interested parties are invited to comment on the amendments proposed by ABI. We note that in relation to [80](a), Schedule B.1.1 does not contain a definition of 'ordinary hourly rate' as such, but simply explains the basis for the calculation of the rates in the table.

[84] In the updated Exposure Draft, the Commission asked the parties to consider whether the fares allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) should be included in the all-purpose rate for apprentices.

[85] In relation to the all-purpose rate for apprentices, ABI submits that the fares allowance and travel time allowance should *not* be included, because:

(a) neither allowance falls within clause 18.3 all-purpose allowances;

(b) clause 18.6(d) clearly states that fares allowance only applies where an employee is required to start and/or cease work on a job site, which may not always be applicable;

(c) clause 18.6(c) clearly outlines the circumstances in which the travel time allowance must be paid, namely each day an employee presents to work and when an employee takes an RDO;

(d) clause 18.6(g) provides that the allowances in clause 18.6, which encompasses both the fares allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) are not to be taken into account when calculating overtime penalty rates, annual leave, personal/carer's leave, long service leave or public holiday payments; and

(e) the wording of the Exposure Draft does not indicate that clauses 18.6(c) and 18.6(d) should be applied any differently in relation to apprentices, particularly when these clauses are read in conjunction with clause 18.6(g) and clause 16.4(a).

[86] Interested parties are invited to comment on the issue raised by ABI and ABI is invited to propose an amendment to address the issue it has raised.

[87] In relation to the question posed in the Exposure Draft, Ai Group also submits that the fares allowance (in clause 18.6(d)) and the travel time allowance (in clause 18.6(c)) should not be included in the all purpose rate:

> '…An all-purpose rate is paid not only for time worked but also on certain forms of paid leave under the award (including annual leave and personal/carer's leave), on public holidays not worked and where payment is made in lieu of notice upon termination.
>
> Clause 18.6(c) clearly stipulates that the allowance is paid only on days the employee presents themselves for work and on rostered days off. It is not intended to be paid under any other circumstance. It therefore should not be included in the all-purpose rate.
>
> Clause 18.6(d) similarly is an allowance that is payable when the employee is actually working and required to start or cease work on a job site. This allowance is not intended to be paid under any other circumstance. It therefore should not be included in the all-purpose rate.'[15]

[88] Other interested parties are invited to comment on the submissions of ABI and Ai Group in respect of whether the fares allowance in clause 18.6(d) and the travel time allowance in clause 18.6(c) should be included in the all-purpose rate for apprentices.

[89] Ai Group also notes that the reference in the last sentence of clause 21.4(b) to clause 21.4 is an error and the correct reference is to clause 21.2.

[90] We agree with Ai Group in relation to the reference and will amend the Exposure Draft and draft variation determination accordingly.

4.6 Food, Beverage and Tobacco Manufacturing Award 2010

[15] Ai Group submission 6 March 2020 at paras. 29-31

[91] The AMWU and AWU made submissions in relation to this award. The AMWU raises three issues.

(i) Annual close down

[92] Clause 25.11 of the Exposure Draft provides for an employer to close down their enterprise or a part of it in certain circumstances, as follows:

> 'Notwithstanding section 88 of the Act and clause 25.5, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that…'[16]

[93] The AMWU notes that the reference to clause 25.5 is an error, and the reference should instead be to clause 25.7. We note that the AWU makes the same point.

[94] We agree with the AMWU and will amend the Exposure Draft and draft variation determination accordingly.

(ii) Casual Employees

[95] Clause 10 of the Exposure Draft deals with casual employees and clauses 10.2 and 10.3 provides as follows:

> **10.2** A casual employee working ordinary time must be paid:
>
> (a) the ordinary hourly rate prescribed in clause 14—Minimum wages and classifications for the work being performed; plus
>
> (b) a casual loading of 25% of the ordinary hourly rate.
>
> **10.3** The loading constitutes part of the casual employee's all-purpose rate.[17]

[96] The AMWU has two concerns with clause 10 as presently drafted:

(i) The clause does have an equivalent clause to clause 11.2(c) of the Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award) that clarifies that the rate resulting from the calculation required by 10.2 and 10.3 is the 'casual ordinary hourly rate'.

(ii) The clause does not clarify that where employees are entitled to a penalty rate or shift loading, that penalty or loading is to be calculated as a percentage of the casual ordinary hourly rate and not the ordinary hourly rate.

[97] To address these issues, the AMWU proposes that clause 10 be amended consistent with the equivalent clause in the Exposure Draft for the Manufacturing Award,[18] as follows:

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[16] Exposure Draft – Food, Beverage and Tobacco Manufacturing Award 20XX dated 29 January 2020 clause 25.11.

[17] Exposure Draft – Food, Beverage and Tobacco Manufacturing Award 20XX dated 29 January 2020 clause 10.2 and 10.3.

[18] Manufacturing Award Exposure Draft

10.1 A casual employee is one engaged and paid as a casual employee.

10.2 A casual employee working ordinary time must be paid:

(a) the ordinary hourly rate prescribed in clause 14—Minimum wages and classifications for the work being performed; plus

(b) a casual loading of 25% of the ordinary hourly rate.

10.3 The loading constitutes part of the casual employee's all-purpose rate."

10.4 The resulting rate is the casual ordinary hourly rate.

10.5 Where this award refers to a penalty rate or shift loading as being calculated as a percentage of the ordinary hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual ordinary hourly rate if the entitlement is applicable to a casual employee.

[98] The balance of clause 10 would be renumbered as a consequence of the proposed amendments.

[99] In support of this proposed variation to the Exposure Draft, the AMWU relies on paragraphs [17]-[24] of its submission in relation to the Manufacturing Award.[19]

[100] The AWU also raises an issue about clause 10.2 and submits that the clause should read:

'A casual employee ~~working ordinary time~~ must be paid …'

[101] The AWU contends that there is no longer a dispute that the casual loading is payable on a compounding basis when overtime is worked.[20]

[102] Interested parties are invited to comment on the amendments to clause 10 proposed by the AMWU and AWU.

(iii) Schedule B.2 Casual Adult Employees

[103] Schedule B sets out tables of rates that summarise the entitlements under the award. Clause B.2 deals with casual rates. Clause B.2.1 provides:

> 'Casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification prescribed by this award, inclusive of the casual loading which is payable for all purposes. Where an additional allowance is payable for all purposes in accordance with clause 20.2(a), this forms part of the employee's casual ordinary hourly rate and must be added to the casual ordinary hourly rate prior to calculating penalties and overtime.

[104] The AMWU submits that the difficulty with the above extract is that the rates in schedule B.2.1 are better described as casual minimum hourly rates, owing to the fact that the rates don't include any all-purpose allowances other than the casual loading.

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[19] Submission of the Australian Manufacturing Workers in Union in relation to tranche 2 Exposure Drafts dated 27 November 2019.

[20] See [1.2] of this ABI correspondence: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf and [6] of this FWC Statement: https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm at [6].

[105] The AMWU proposes that clause B.2.1 be varied consistent with the equivalent clause in the current Exposure Draft for the Manufacturing Award (clause C.3.1 in schedule C) to ensure consistency between clause 10.2 and B.2.1 and also between the Manufacturing and Food Awards.

[106] This would require an amendment to the Exposure Draft as follows:

> '~~Casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification prescribed by this award, inclusive of the casual loading which is payable for all purposes. Where an additional allowance is payable for all purposes in accordance with clause 20.2(a), this forms part of the employee's casual ordinary hourly rate and must be added to the casual ordinary hourly rate prior to calculating penalties and overtime~~.'
>
> '**Casual minimum hourly rate** includes the casual loading which is payable for all purposes. Where an allowance is payable for all purposes in accordance with clause 20.2(a), this forms part of an employee's casual ordinary hourly rate and must be added to the applicable permanent minimum hourly rate in B.2. prior to the application of the 25% casual loading to form the casual employee's ordinary hourly rate. The casual ordinary hourly rate applies for all purposes and is used to calculate penalties and overtime.'

[107] We note that the cross reference in the parties' submission (to clause 30.2) appears to be incorrect. The correct cross reference is to clause 20.2(a). The variation proposed would also require all the references in B.2 to 'casual ordinary hourly rate' to be changed to 'casual minimum hourly rate'.

[108] The AWU submits that a casual overtime rates table can be inserted into Schedule B.2 in accordance with the agreed position concerning clause 10.2.

[109] Interested parties are invited to comment on the amendment proposed by the AMWU and AWU.

4.7 Graphic Arts, Printing and Publishing Award 2010

[110] The AMWU and Ai Group made submissions in relation to this award.

[111] The AMWU points to a cross referencing error in clause 13.4(c)(iii) and an error in clause 15.3.

[112] Clause 13.4(c)(iii) of the Exposure Draft states:

> 'Where agreement is reached under clause 20.4(c)(ii) to work ordinary hours on a Saturday or a Sunday, the following rates will be paid for all ordinary work done on Saturday or Sunday.'

[113] The AMWU submits that the reference to clause 20.4 c (ii) appears to be an error and should read 13.4 c (ii).

[114] We agree with the AMWU and will amend the Exposure Draft and draft variation determination accordingly.

[115] The other matter concerns clause 15.3 which states:

> **15.3** Where an employee is required to work during their usual meal break they will be paid 150% of the hourly rate for the time so worked and they will be allowed their usual meal period as soon as it can be arranged, but not later than 5 hours after commencing work each day.

[116] The AMWU submits that the expression 'hourly rate' should be amended to read 'ordinary hourly rate.'

[117] Interested parties are invited to comment on the amendment proposed by the AMWU.

[118] Ai Group raises five issues.

(i) Clause 4.3: Coverage of on-hire employers

[119] Ai Group submits that the following amendments should be made to clause 4.3 to correct an apparent error and to address the fact that the Award operates on an industry and occupational basis:

> **4.3** This award covers any employer which supplies labour on an on-hire basis in the graphic arts, printing, publishing and associated industries and occupations ~~industry~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in ~~that industry~~ those industries and occupations. Clause 4.3 operates subject to the exclusions from coverage in this award.

[120] It is our *provisional* view that clause 4.3 be amended as proposed by Ai Group.

(ii) Clause 4.4: Coverage

[121] Ai Group submits that the following amendments should be made to clause 4.4 to correct an apparent error:

> **4.5** This award covers employers which provide group training services for apprentices and/or trainees engaged in the graphic arts, printing, publishing and associated industries and occupations ~~industry~~ and/or parts of those industries or occupations and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 4.2 are being performed. ~~This subclause~~ Clause 4.5 operates subject to the exclusions from coverage in this award.

[122] It is our *provisional* view that clause 4.5 be amended as proposed by Ai Group.

(iii) Clause 7.5(a) Facilitative provisions

[123] Ai Group points to an error appears in the table. Clause 13.3(a)(ii) is not a facilitative provision and is incorrectly listed in this table. It appears that the reference to clause 13.3(a)(ii)

was intended to be a reference to clause 13.3(c)(ii). Ai Group proposes that Clause 7.5(a) should be varied to reflect this.

[124] We agree with Ai Group and will vary the Exposure Draft and draft variation determination accordingly.

(iv) Clause 32.3: Annual leave

[125] In a 9 June 2017 decision,[21] a Full Bench decided that clause 37.2 of the Graphic Arts Award should be varied as follows:

> Notwithstanding clause 33.5, employees engaged in a ~~regional~~ daily newspaper office, in circumstances where they work the prescribed public holidays, may, by agreement between the employer and an employee or employees, be credited with an extra two weeks and three days' annual leave instead of any penalty provision as provided for by clauses 41.3 or 41.4. ~~This provision does not apply to a shiftworker as defined in clause 37.4~~ Where there is an agreement between an employer and an employee under this clause 37.2, this clause 37.2 applies to the employee instead of clause 37.4.

[126] Consistent with the above decision, Ai Group submits that the final sentence of clause 32.2 should be varied as follows:

> Notwithstanding clause 29.5, employees engaged in a daily newspaper office, in circumstances where they work the prescribed public holidays, may, by agreement between the employer and an employee or employees, be credited with an extra 2 weeks and 3 days' annual leave instead of any penalty provision as provided for by clauses 37.3 or 37.4. Where there is an agreement between an employer and an employee under clause ~~32~~ 32.2, clause 32.2 applies to the employee instead of clause 32.4.

[127] We agree with Ai Group and will vary the Exposure Draft and variation determination accordingly.

(v) Clause 41: Dispute resolution leave

[128] Ai Group submits that the reference in clause 41.6 should be amended as follows, to ensure consistency with the relevant provision in the current award:

> 41.6 …For the purposes of ~~clause 41~~ clause 41.6, ordinary time earnings means the wage rate for the classification, over-award payment and shift loading which otherwise would be payable…".

[129] We note that the term 'ordinary time earnings' is only used in clause 41.6.

[130] We agree with Ai Group and will amend the Exposure Draft and draft variation determination accordingly.

4.8 Health Professionals and Support Services Award 2010

[21] [2017] FWCFB 3135

[131] The Private Hospital Industry Employer Association (PHIEA) have made a submission in relation to this award that raises an issue relating to clause 11, in particular clause 11.5.

[132] Clause 11.5 of the Exposure Draft provides as follows:

> **11.5 Casual loading**
>
> (a) For each ~~ordinary~~ hour worked, a casual employee must be paid:
>
> (i) the minimum hourly rate; and
>
> (ii) a loading of 25% of the minimum hourly rate, applicable to the classification and pay point in which they are employed.
>
> (b) The casual loading is paid instead of the paid leave entitlements of full-time employees.

[133] Clause 10.4 of the current award provides as follows:

> **10.4 Casual employment**
>
> (a) A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed-term employee, to work up to and including 38 ordinary hours per week.
>
> (b) A casual employee will be paid per hour calculated at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements of full-time employees.
>
> (c) The minimum period of engagement of a casual employee is three hours with the exception of cleaners employed in private medical practices who will be engaged for a minimum of two hours.

[134] The PHIEA submit:

> 'In applying plain language drafting, PHIEA is of the view that clause 11.5 (a) has amended the entitlements for casuals and would respectfully suggest that until such time as this issue has been determined by the Full Bench constituted in AM2107/51 no administrative change should be made in the Exposure Draft to the wording of clause 11.5 (a) – casual loading.'[22]

[135] Interested parties are invited to comment on the amendment proposed by the PHIEA.

4.9 Horse and Greyhound Training Award 2010

[136] The AWU has made a submission in relation to this award, which raises three issues.

(i) Clause 10.5(a) Casual employees

[22] PHIEA submission, 4 March 2020

[137] The AWU submits that this clause should be amended to read 'For each ordinary hour worked, a casual employee must be paid …', on the basis that there is no longer any dispute that the casual loading is payable on a compounding basis when overtime is worked.[23]

[138] Interested parties are invited to comment on the amendment proposed by the AWU.

(ii) Clause 18.3

[139] Clause 18.3 of the Exposure Draft states:

> **18.3** Payment for annual leave on termination Where an employee is entitled to a payment on termination of employment pursuant to section 90(2) of the Act, the amount is to be calculated in accordance with clause 18.2(a) above.

[140] The AWU submits:

> 'The reference at the end of the clause should be to clause 18.2, not 18.2(a). The current drafting is contrary to the NES because it does not include the annual leave loading prescribed in clause 18.2(b).'

Question for the AWU: Other than the cross-referencing change, what other amendments to clause 18.3 is the AWU proposing? The AWU is asked to expand on its NES submission in its reply submission.

[141] Interested parties are invited to comment on the issue raised by the AWU. Further, other than the cross referencing change, the AWU is to advise as to what if any other amendments it proposes be made to clause 18.3. The AWU is also asked

(iii) Schedule A.2

[142] The AWU submits that the casual overtime rates table and public holiday rates can be re-inserted in accordance with the agreed position concerning clause 10.5(a).

[143] We note that this proposed change is dependent on the resolution of the issues raised in respect of clause 10.5(a).

4.10 Horticulture Award 2010

[144] ABI, Ai Group and the AWU have made submissions in relation to this award. The only issue raised by ABI in respect of this award concerns overtime for casuals.

[145] In proceeding AM2015/17, the AWU and ABI had agreed that the casual loading in the Horticulture Award 2010 is payable during overtime on a cumulative basis. This was confirmed in correspondence filed by ABI on 10 October 2019.

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[23] See [1.2] of this ABI correspondence: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf and [6] of this FWC Statement: https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm at [6].

[146] The Exposure Draft for the Award now provides as follows:

> '**11.3 Casual loading**
>
> (a) For each hour worked, a casual employee must be paid: (i) the ordinary hourly rate; and (ii) a loading of 25% of the ~~ordinary~~ hourly rate, for the classification in which they are employed.'

[147] ABI submits that the exclusion of the word "ordinary" from clause 11.3(a) may infer that the casual loading in the Horticulture Award should be calculated on a compounding basis; which is inconsistent with the position of ABI and the AWU in proceedings AM2017/51.

[148] Interested parties are invited to comment on the issue raised by ABI and ABI is invited to propose an amendment to address the issue it has raised.

[149] Ai Group raises two issues. The first concerns clause 10.2, which states:

> **10.2** For each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate for the relevant classification in clause 0—
>
> Claim to insert annualised wage arrangements is being considered in AM2016/13. See [2019] FWCFB 8583 at [1] and see draft determination.

[150] Ai Group submits that clause 10.2 is incomplete as a cross reference has been omitted and it should be amended such that it reads as follows:

> **10.2** Subject to clause 15.2, for each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate for the classification.

[151] The proposed amendment is advanced on the following bases:

(a) The opening words (underlined) would make the interaction between clause 10.2 and clause 15.2 clear. As provided by 15.2(d), if an employee is paid a piecework rate, the employee is not entitled to the minimum rates specified at clause 15. Clause 10.2 is presently inconsistent with clause 15.2(d). The added words rectify this.

(b) Ai Group has been unable to identify an appropriate cross-reference to be inserted at the end of the clause. Ai Group does not consider that clause 15 or clause 15.1 are appropriate cross-references. Neither prescribe the 'ordinary hourly rate'. Moreover, clause 15.1 prescribes only the adult rate. In the context of, for example, a junior employee, a reference to clause 15.1 in clause 10.2 would purport to entitle such a part-time employee to a higher rate than what they would be entitled to under clause 15.3.

[152] Interested parties are invited to comment on Ai Group's proposed amendment to clause 10.2.

[153] The second issue concerns a cross referencing error in Note 2 to clause 16.3. Ai Group submits that the reference to clause 16 should be replaced by a reference to clause 16.3.

[154] We agree with Ai Group and will amend the Exposure Draft and draft variation determination accordingly.

[155] The AWU raises five issues. The first concerns clause 10.2 and is subsumed by the point raised by Ai Group. The AWU also notes that clause 10.3 currently has no content and that clauses 10.4 and 10.5 should be renumbered as 10.3 and 10.4. We consider that issue can also be addressed in determining the matter raised by Ai Group. The other points advanced by the AWU are set out below.

(i) Clause 13.2

[156] Clause 13.2 states:

> **13.2 The ordinary hours of work for casual employees other than shiftworkers will not exceed 304 ordinary hours over an eight week period provided that:**
>
> (a) Ordinary hours of work for casual employees can be worked at any time.
>
> (b) Each ordinary hour of work worked by a casual employee on any day of the week (excluding public holidays) between 5.00 am and 8.30 pm will be paid at the employee's minimum hourly wage for his or her classification plus a casual loading of 25%.
>
> (c) In a State or Territory that does not observe daylight saving time, by agreement between the employer and a majority of affected casual employees, the 5.00 am to 8.30 pm daily spread of hours can be moved forward one hour (4.00 am to 7.30 pm) for the period of daylight saving time in other States and Territories.
>
> (d) Each ordinary hour worked by a casual employee on any day of the week (excluding public holidays) between 8.31 pm and 4.59 am (or 7.31 pm and 3.59 am in accordance with clause 13.2(c)) will attract a loading of 15% of the employee's minimum hourly wage for his or her classification (in addition to the casual loading of 25%).
>
> (e) The maximum number of ordinary hours which a casual employee may work per engagement, or on any day, is 12 ordinary hours.
>
> (f) All time worked in excess of 12 hours per engagement, 12 hours in a single day or 304 ordinary hours over an eight week period will be deemed overtime.

[157] The AWU submits that 'for consistency within this award and with other exposure drafts', the references in clause 13.2(b) and (d) to the 'minimum hourly wage' should be amended to 'ordinary hourly rate'.

[158] Interested parties are invited to comment on the AWU's proposed amendment.

(ii) Clause 19.4

[159] The AWU notes that there appears to be an 'unusually large formatting gap' between clause 19.4(e) and 19.4(f).

[160] We agree with the AWU and will rectify the issue.

(iii) Clause 26.4

[161] Clause 26.4 states:

> **26.4 Public holiday rates—casual employees** All hours worked by a casual employee on a public holiday (both ordinary hours and any overtime) will be paid at a rate of 225% of the employee's minimum hourly wage for his or her classification (inclusive of the casual loading).

[162] The AWU submits that 'for consistency within this award and with other exposure drafts the reference to the 'minimum hourly wage' should be amended to 'ordinary hourly rate'. We also note that the same issue may arise in clause 20.4.

[163] Interested parties are invited to comment on the AWU's proposed amendment.

(iv) Schedule B.3

[164] The AWU submits:

> 'Given there are widespread compliance issues in this industry, a casual overtime rate tables should be inserted. There is only one rate – 175% as per clause 20.4.'

[165] Interested parties are invited to comment on the AWU's proposed amendment.

4.11 Live Performance Award 2010

[166] The LPA have raised seventeen issues with this award.

(i) Clause 2 Definitions

[167] The following definitions have been deleted from the Exposure Draft:

> **double time** means in the case of a weekly employee twice the ordinary hourly rate which is obtained by dividing the employee's applicable rate per week by 38 hours, and in the case of an employee engaged by the hour twice the employee's hourly casual rate
>
> …
>
> **time and a half** means in the case of a weekly employee, one and a half times the ordinary hourly rate which is obtained by dividing the applicable rate per week by 38 hours, and in the case of an employee engaged by the hour one and a half times the hourly casual rate

[168] The LPA disagrees with the removal of these definitions submitting that they were inserted in accordance with [2018] FWCFB 4175 at [314], and if deleted, will introduce an ambiguity regarding payment of overtime for casual employees who are entitled to overtime payments of either double the casual hourly rate or time and a half the casual hourly rate.

[169] The LPA submits that these definitions should remain.

[170] In a decision about the Live Performance Award, the Group 4 Full Bench said:

> [538] Interested parties have agreed to adopt terminology like 'time and a half' and fractions like '1/8th'. Previous Full Bench decisions have confirmed that rates of pay

will be expressed as a percentage of the minimum hourly rate. We do not intend to deviate from that provisional view. The parties' re-drafting will not be adopted.[24]

[171] We are not persuaded to depart from this earlier decision. We note also that the terms 'double time' and 'time and a half' are only used in the definitions section and not anywhere else in the award. It is our *provisional* view that the definitions should not be reinserted.

[172] The LPA submits that the following definition be inserted in alphabetical order:

> **Performers' Overtime Rate** for the purposes of the clause 32.3 (Number of Performances) and Clause 34 (Overtime and penalty rates) and shall be based on the Performer's Negotiated Weekly Rate of Pay or the Negotiated Casual Rate of Pay provided that, for the purposes of this definition, where the Performer's Negotiated Weekly Rate of Pay or Negotiated Casual Rate of Pay is in excess of 133.33% of the applicable Minimum Rate then the Performer's Negotiated Weekly Rate of Pay or Negotiated Casual Rate of Pay will, for the purposes of calculating the relevant entitlements be deemed to be 133.33% of the Minimum Rate (for avoidance of doubt 133.33% means the Minimum Rate plus an additional 33.33%).

[173] LPA submits that the inclusion of this clause reflects the provisions of the pre-reform award and provides for a cap on the amount paid for overtime and that the clause 'is essential for the better off overall test in enterprise agreements for performer's as this clause is replicated in those agreements'.

[174] The proposed definition amounts to a new claim, which we do not intend to entertain as part of finalising the technical and drafting process. If the LPA wishes to pursue this issue they can file an application to vary the award.

(ii) Clause 13.3I and (d)

[175] LPA submits that the wording of these clauses could lead to misinterpretation and ambiguity.

[176] Clause 13.3 (c) and (d) state:

> (c) **Accommodation allowance – one week (5 working days) or less** Where the employee does not accept employer-provided accommodation and the period of travel involved is one week or less the Employer shall pay an allowance of $168.51 per night.
>
> (d) **Accommodation allowance – more than one week (5 working days)** Where the employee does not accept employer provided accommodation and the period of travel involved is more than one week, the Employer shall pay an allowance of $128.56 per night up to a maximum of $642.88 per week.

[177] LPA submits that the accommodation allowance provided in clause 13.3(c) is to apply when employees are required to travel for period of less than one week, that is from 1 to 4 nights, whilst clause 13.3(d) applies when the employee is travelling for 5 nights or more. LPA submits that the clauses be amended as follows:

---

[24] [2018] FWCFB 1548

(ii) c) Accommodation allowance ~~– one week (five 5 working days) or less~~ 1 to 4 days

(ii) Where the employee does not accept employer-provided accommodation and the period of travel involved is less than one week ~~or less~~ the Employer shall pay an allowance of $168.51 per nightd) Accommodation allowance – more than one week (five 5 working days or more)

Where the employee does not accept employer provided accommodation and the period of travel involved is ~~more than~~ one week or more, the Employer shall pay an allowance of $128.56 per night up to a maximum of $642.88 per week

[178] Other interested parties are invited to comment on the amendment proposed by LPA.

(iii) Clause 14.3

[179] Clause 14.3 states:

14.3 Despite the provisions of clause 14.1(a), an employer must also make superannuation contributions to a superannuation fund on behalf of a performer younger than 18 years of age as if the performer were 18 (excluding extras, doubles and stand-ins) if:

(a) the ~~child performer~~ performer younger than 18 years of age is engaged on a 12 week contract or longer;

(b) the ~~child performer~~ performer younger than 18 years of age has been employed in the entertainment industry for a minimum of ~~six~~ 6 professional engagements; oI(c) the ~~child performer~~ performer younger than 18 years of age has been employed in the entertainment industry for a minimum of 30 days.

[180] Parties were asked to comment on the use of 'child performer' in the context of clause 14 Superannuation.

[181] LPA disagrees with the amendments proposed in the Exposure Draft and submits that the existing wording should be retained and submits:

'Performers aged 16 years and over are treated and paid as adult performers. Under the various State legislation dealing with employment of children, the legislation refers to "child employment" and such legislation specifically provides for the number of hours of work and the number of performances a child performer may do in a working week in the live performance industry.

The proposed changes will disadvantage those employees aged 16 to 18 who work full time, part time or casually and satisfy the criteria for the payment of superannuation.

In addition, clause 30.5 is still headed 'Child performers'.'

[182] Other interested parties are invited to comment on this issue and LPA's proposed amendment.

(iv) Clause 32.3(b)(i), (ii) and (iii)

[183] Clause 32.3(b) provides:

(i) in the case of additional performances of a substantially whole time production (excepting pantomimes), the employee will be paid 12.5% of their minimum weekly rate for each additional performance exceeding 8;

(ii) in the case of additional performances of pantomime exceeding 8 but not exceeding 12, the employee will be paid an additional 12.5% of their minimum weekly rate for the first performance exceeding 8 and then an additional 6.25% of their minimum weekly rate for each performance in excess of the ninth performance in any such week; and

(iii) in the case of performances up to one hour in duration, an additional payment of 10% of their minimum weekly rate for each performance exceeding 12

[184] LPA submits that the inclusion of the definition of 'performers overtime rate' requires consequential amendments as follows (in red):

(i) in the case of additional performances of a substantially whole time production (excepting pantomimes), the employee will be paid 12.5% of their overtime ~~minimum weekly~~ rate for each additional performance exceeding ~~eight~~8;

(ii) in the case of additional performances of pantomime exceeding ~~eight~~8 but not exceeding 12, the employee will be paid an additional 12.5% of their overtime ~~minimum weekly~~ rate for the first performance exceeding ~~eight~~8 and then an additional 6.25% of their overtime ~~minimum weekly rate~~ for each performance in excess of the ninth performance in any such week; and

(iii) in the case of performances up to one hour in duration, an additional payment of 10% of their overtime ~~minimum weekly~~ rate for each performance exceeding 12.

[185] As we decided not to insert the proposed definition of 'performers overtime rate' we will not make the amendments proposed to clause 32.2(b).

(v) Clause 33.3

[186] Clause 33.3 states:

~~**33.5 33.3 Breaks following rehearsal**~~

~~(a) Following a full rehearsal, employees must be provided with a 1.5 hour break before the commencement of another full rehearsal or performance.~~

~~The 1.5 hour break may be shortened to 1 hour by agreement with the majority of the cast.~~

[187] Parties were invited to comment on the deletion of clause 33.3.

[188] LPA submits that the clause does not cover the case of breaks for casual employees and proposes the following new clause 33.3:

33.3 Casual employees

No employee will be required to work continuously in excess of four hours, or by agreement with a majority of the cast involved five hours, without a substantial break for a meal, recuperation and/or refreshment

[189] It is not immediately clear to us why the proposed amendment is necessary given that the terms of clause 33 of the Exposure Draft apply to *all* employees. Interested parties are invited to comment on this issue.

(vi) Clause 33.5 Missed breaks

[190] Clause 33.5 states:

> (a) Where any of the required intervals or breaks due to an employee are curtailed or not provided, overtime ~~at time and a half~~ will be paid for at the rate of 150% for the missed period.
>
> (b) Missed break overtime will be rounded upwards, in 15 minute increments.

[191] LPA submits that clause 33.5 is repeated at clause 34.2 and that clause 33.5 be deleted.

[192] Parties are asked to comment on the amendment proposed by LPA.

(vii) Clause 34. Overtime and penalty rates

[193] LPA submits that the inclusion of the definition of the 'performers overtime rate' requires amendments to clause 34 and that the clause requires amendment to address the overtime for casuals issue. The LPA's proposed amendments are in red.

> 34.1 Performers engaged by the week or for a longer period
>
> (a) All time worked in excess of ~~eight~~8 hours on any one day will be paid for at 150% ~~of the minimum hourly rate~~ for the first ~~two~~2 hours and 200% ~~of the minimum hourly rate~~ after that at the performers overtime rate.
>
> (b) Subject to 34.1(c) all time worked in excess of 38 hours in any one week will be paid at 150% ~~of the minimum hourly rate~~ for the first ~~two~~2 hours and 200% ~~of the minimum hourly rate~~ after that at the performers overtime rate.
>
> (c) All hours worked in excess of 38 in a week as per clause 32.1(a) shall be displayed on the employee's pay slip as a negative balance and where less than 38 hours are worked in a subsequent week the difference in hours shall be added to the negative balance until this reaches zero. If at the completion of the engagement or the completion of 12 months from the first date of engagement, whichever is earlier, the balance has not reached zero, the employee will be paid at 150% at the performers overtime rate for the outstanding hours. An employee will be paid 150% ~~of the minimum hourly rate~~ at the performers overtime rate for all hours worked in excess of an average of 38 hours per week during an engagement, or during each 12 month period from the first date of engagement, whichever is the earlier. The overtime will be paid at the end of the period for which the payment is made.
>
> 34.2 General—applicable to weekly or casual engagements
>
> Where any of the intervals or breaks due to an employee are restricted or extended beyond the hours specified under this award, the employee will be paid overtime at the rate of 150% of the ~~minimum hourly rate~~ performers overtime rate for each 15 minutes or part thereof of the restriction or extension.

34.3 Performers engaged casually other than supernumeraries

(a) An employee required to work beyond the hour of 11.30 pm or who is detained for work or any other reason beyond the hour of 11.30 pm by the employer will be paid at the rate of 8.3% of the appropriate casual call rate for such employee for each half hour or part thereof beyond 11.30 pm that the employee is required to work or is detained, in addition to any other payments for overtime, etc. and the ordinary fee applicable to such employee.

(b) If the performance call is longer than three3 hours or if the employee is detained by the employer during an engagement for more than three3 hours (excluding dressing/making up and dressing/removing make-up etc.) the employee will be paid at the rate of 16.7% of the casual rate for each half hour or part thereof in excess of three3 hours that the employee is detained by the employer.

(c) The third or any subsequent call (other than short performance calls) on any day will be paid at the rate of ~~time and a half~~150%, unless a higher penalty applies.

(d) All time worked in excess of eight hours on any one day will be paid at 150% for the first two hours and 200% after that.

[194] As we have decided not to insert the proposed definition of 'performers overtime rate' we will not make the amendments proposed.

(viii) Clause 34.5

[195] Clause 34.5 states:

34.5 Sundays – Performers and Company Dancers

For any work performed on Sundays, including rehearsal, the minimum rates per performance or 3 hour rehearsal session will be as follows:

(a) Payment for employees engaged by the week or for a longer period

(i) Where the time worked is in addition to the employee's prescribed weekly hours of work, the employee will be entitled to an additional payment of an amount equivalent to 33.3% of the employee's minimum weekly rate.

(ii) Where the time worked is part of the employee's prescribed weekly hours of work, the employee will be entitled to an additional payment of an amount equivalent to 16.7% of the employee's minimum weekly rate provided that, the employee's hours of work in that week will be arranged to provide the employee with one complete day off duty in that week.

(b) A~~n~~ ~~employee~~ Company Dancer required by the employer to travel on a Sunday will be:

(i) given a day off in the following week; or

(ii) paid an additional 8.3% of the employee's minimum weekly rate for travel of up to 3 hours duration, and for each half hour or part thereof of travel in excess of 3 hours the employee will be paid an additional ~~100% of the~~ 1/38th of the minimum weekly rate.

(c) A Performer required by the employer to travel on a Sunday will be paid an additional 8.3% of the minimum weekly rate.

(d) Payment for employees engaged casually

A casual employee will be entitled to payment for work on Sundays as follows:

(i) for a performance, 200% of the prescribed minimum rate per performance; or

(ii) for a rehearsal, 200% the prescribed casual hourly rehearsal rate in clause 30.6 with a minimum payment as for 4 consecutive hours.

[196] The parties were invited to comment on the redrafted clause 34.5. LPA submits that the clause reflects the parties proposed changes.

(ix) Clause 35

[197] The note at Clause 35 of the exposure draft said:

> A Full Bench has been constituted in AM2019/3 to deal with the issue of types of employment for musicians. See Statement [2019] FWC 851.

[198] LPA submits that the note in clause 35 has been addressed and refers to the Report issued by the President on 29 November 2019 in AM2019/17.

[199] We agree with the LPA. The note will be removed from the exposure draft.

(x) Clause 40.2

[200] Clause 40.2 states:

‘**40.2 Wage-related allowances**

(a) Doubling allowance

(i) Where an employee is required to double on one or more additional instruments a doubling allowance will be paid as follows:

Instrument supplied by	Rate per additional instrument per call
Musician	14.5% of the total minimum call rate
Employer	9.5% of the total minimum call rate

(ii) Percussionists

A percussionist will receive the doubling allowance in clause 0 in respect of each of the xylophone, vibraphone, tympani, and either the marimba and glockenspiel but not both.

(b) Supply of music

An employee required to supply their own music will receive the following allowance:

(i) weekly employee—**$11.21** per week; or

(ii) casual employee—**$34.50** per call.

(c) Soloists

An employee performing solo in an orchestra will receive **$6.04** per instrument per call.

(d) Setting up time

Where a drummer or electronic instrumentalist is required by the employer to move their equipment to and from their place of employment, they will receive in addition to their normal rate an allowance equal to 15 minutes of work at the ordinary time rate of pay.

(e) Employee playing in specialty entertainments

Where an engagement customarily accepted as speciality is for more than 6 days, the rate will be the appropriate rate plus a loading of **66.7%** of that rate.

(f) Broadcast, telecast, filmed or recorded

Where an employee is broadcast, telecast, filmed or recorded from a theatre or other place of entertainment, in addition to the appropriate rate of pay the employee will receive:

(i) **$120.92** per performance for a televised performance, and:

- if a Principal, the payment in clause 0 and an additional **25%**;
- for doubling**, 25%** extra per additional instrument per call; and
- for overdubbing, an additional minimum call fee,

(ii) a minimum payment of **$130.41** per radio broadcast for a call up to 3 hours in which there can be 21 minutes of finished material, and:

- if a Principal, the payment in clause 0 and an additional **25%;**
- for doubling, **25%** extra per additional instrument per call;
- for overdubbing, an additional minimum call fee; and
- for any time worked in excess of the initial 3 hour call in respect of completion of the initial 21 minutes of finished recording, the employee will be paid **150%** of the minimum hourly rate, with a minimum payment of one hour,

(iii) **$248.57** per simulcast (radio and television, single use within Australia), and:

- if a Principal, the payment in clause 0 and an additional **25%**,

(iv) **$178.54** for each audio-visual or visual recording of a performance, and

- if a Principal, the payment in clause 0 and an additional **25%**; and
- for doubling, **25%** extra per additional instrument per call;
- for overdubbing, an additional minimum call fee,

(v) **$130.41** for each audio recording of a performance for which there can be 21 minutes of finished material, and:

- if a Principal, the payment in clause 0and an additional **25%**; and
- for doubling, **25%** extra per additional instrument per call;
- for overdubbing, an additional minimum call fee;
- to record more than 21 minutes of finished material, the employee will be paid **150%** of the minimum hourly rate for a minimum of one hour.

(vi) The provisions of clause 0 of this shall not apply to an archival and/or recording as defined.'

[201] The parties were asked whether the term 'minimum call rate' should be defined. We note the LPA submission that clauses 39.2 and 3 clarifies this issue.

[202] Clauses 39.2 and 39.3 states:

> **39.2** Except as provided in clause 39.6, ~~W~~weekly musicians will be engaged by the call. The hourly rate is calculated by dividing the appropriate minimum weekly ~~wage~~ rate in clause 11.1 by 24 with a minimum payment as for ~~three~~3 hours. The minimum weekly wage for musicians is 6 calls.
>
> **39.3** The minimum rate of pay for all casual employees as defined will be the total minimum hourly rate prescribed in clause 39.1 above plus 25% with a minimum payment for ~~three~~3 hours for each engagement.

[203] Clause 40.2(b) states:

> **(b) Supply of music**
>
> An employee required to supply their own music will receive the following allowance:
>
> (i) weekly employee—$11.21 per week; or
>
> (ii) casual employee—$34.50 per call.

[204] LPA submits that the Supply of Music allowance amounts have been unintentionally reversed to provide a greater amount paid per call than paid by the week. The clause should be amended as follows (in red):

> **40.2(b) Supply of music**
>
> An employee required to supply their own music will receive the following allowance:
>
> (i) weekly employee— ~~$11.21~~ $34.21 per week; or
>
> (ii) casual employee— ~~$34.21~~ $11.21 per call

[205] The corresponding amendment will be required in Schedule B1.1

[206] Other interested parties are invited to comment on the LPA's proposal.

(xi) Clause 43.1

[207] Clause 43.1 states:

> **43.1** All time worked on Monday to Saturday over or outside the prescribed time of any call will be paid for at 150% of the minimum rate

[208] LPA submits that in order to ensure that overtime and penalty rates apply to all employees including casual employees, clause 43.1 should be amended as follows:

43.1 All time worked by any employee on Monday to Saturday over or outside the prescribed time of any call will be paid for at 150% of the appropriate call rate. ~~minimum rate~~

[209] Other interested parties are invited to comment on this issue and the amendment proposed by LPA.

(xii) Clause 43.6

[210] Clause 43.6 states:

43.6 Sundays

(a) Except as otherwise provided in this award, all work performed on Sundays will be paid for at the following rates:

(i) Weekly employees—200% of the minimum rate with a minimum payment as for 3 hours.

(ii) Casual employees—200% of the minimum rate.

(b) An employee who is required by their employer to travel on a Sunday will be paid $11.30 in addition to the applicable allowances in clause 13.2, unless paid the Sunday rate in clause 43.6.

[211] LPA contends that Musicians are engaged by the call, a call being 3 hours, and therefore to ensure there is no ambiguity in applying the Sunday penalty, clause 43.6(a) should be amended as follows:

43.6 Sundays

(a) Except as otherwise provided in this award, all work performed on Sundays will be paid for at the following rates:

(i) Weekly employees—200% of the appropriate call rate. ~~minimum rate with a minimum payment as for three3 hours.~~

(ii) Casual employees—200% of the appropriate call rate. ~~minimum rate~~

[212] Other interested parties are invited to comment on this issue and the amendment proposed by LPA.

(xiii) Clause 62.6

[213] Clause 62.6 states:

62.6 Special overtime and penalty provisions for sound and/or lighting companies

(a) Touring sound and/or lighting employees will receive a 17.5% ~~penalty~~ loading averaging component instead of overtime and penalty provisions for all purposes of this award.

(b) Full-time factory sound and/or lighting employees will accrue time off instead of overtime at the rate of one hour for each hour worked in excess of the 152 hours over 28 consecutive days work cycle.

[214] LPA notes that the Exposure Draft has changed the wording of the 'penalty averaging component' to 'loading averaging component' and submits that the words 'averaging component' be deleted after the word 'loading'.

[215] To ensure that the loading applies to all employees engaged by sound and/or lighting companies, LPA submits that clause 62.6(a) be amended as follows (in red):

> 62.6 (a) All touring sound and/or lighting employees will receive a 17.5% ~~penalty~~loading ~~averaging component~~ instead of overtime and penalty provisions for all purposes of this award

[216] Other interested parties are invited to comment on this issue and the amendment proposed by LPA.

(xiv) Clause 62.7

[217] Clause 62.7 states:

> **62.7 Special overtime and penalty provision for crewing services employees** For all work between 11.00 pm and 6.00 am, a crewing services employee will receive a 52.5% ~~penalty~~ loading payment instead of overtime and penalty provisions for all purposes of this award.

[218] LPA submits that to ensure the special provisions applying to crewing services employees apply to all crewing services employees including casual employees, the clause heading should be amended as follows (in red):

> 62.7 Special overtime and penalty provision for all crewing services employees

[219] Other interested parties are invited to comment on this issue.

(xv) Time off in Lieu of Overtime (TOIL)

[220] As reported by the President on 29 November 2019 (AM2019/17), the parties are in discussions on the appropriate wording on a TOIL term. Those discussions are still continuing, and it is envisaged that a term will be submitted before 27 March 2020.

(xvi) Conversion from fractions to decimals

[221] LPA disagrees with the conversion of fractions to decimals especially relating to the additional payments and overtime provisions for performers:

> 'As a general rule, performers engaged by the week, work 8 performances in a 6 day week. It has been a long standing award requirement and practice, to apply additional payments or overtime payments on the basis of 1/8th if it is to do with performance work, or 1/6th if it is to do with weekly payments. This has been the case since one of the first performers' award came into effect in December 1920 and has become institutionalised in the industry.
>
> Therefore, LPA respectfully submits that the use of fractions, especially 1/6th and 1/8th relating to performers be reinstated, rather than the use of decimals.'

[222] This issue has already been considered, and rejected, by the Group 4 Full Bench in [2018] FWCFB 1548 at [538] and we are not persuaded to depart from that view.

4.12 The Maritime Awards

[223] It is also convenient to deal with four of the Maritime awards together. The four Maritime awards are:

- *Marine Towage Award 2010*
- *Marine Tourism and Charter Vessels Award 2010*
- *Ports, Harbours and Enclosed Water Vessels Award 2010*
- *Seagoing Industry Award 2010*

[224] Submissions in relation to the Maritime awards have been filed by:

- Maritime Industry Australia Limited (MIAL) – Submissions re the Seagoing Industry Award and Ports, Harbour and Enclosed Water Vessels Award on 17 February 2020 and then on 4 March 2020 -
- Australian Federation of Employers and Industries (AFEI) – Submissions re the Ports, Harbours and Enclosed Water Vessels Award on 4 March 2020

[225] In their submission of 17 February 2020, the MIAL queried whether the Exposure Drafts have been updated following more recent decisions, and by way of example referred to clause 4 of the Seagoing Award Exposure Draft which states:

> 4. Coverage
>
> | |
> |---|
> | Clause 4 is being considered in matter AM2016/5, see draft determination. Comments are due by 31 January 2020. |
> | Clauses 4.3 and 4.4 amended in accordance with [2019] FWCFB 5409 at [6] and [118]. |
> | Clause 4.5 amended in accordance with [2019] FWCFB 7854 at [7] and [2019] FWCFB 8398 at [8] |

[226] We confirm that the Exposure Draft will be updated once the substantive matters Full Bench and the Overtime for Casuals Full Bench issue final variation determinations.

[227] We have adopted the same approach to every Exposure Draft. For completeness, we identify below the outstanding matters in respect of each of the Maritime Awards.

4.12.1 Marine Towage Award 2010

[228] MIAL raises four matters in respect of this award.

(i) AM2016/5–Substantive issues full bench

[229] There are outstanding coverage issues that are before the substantive issues Full Bench. A decision and draft determination were issued by that Full Bench on 24 December 2019[25]. Comments in relation to the draft determinations were due on 31 January 2020. One submission was received from the CFMMEU–MUA[26]. No final decision or variation determination have been issued.

[230] The Exposure Draft and variation determination will be varied to reflect the final determination to be issued by the substantive issues Full Bench.

(ii) AM2017/51–Overtime for casuals

[231] In a statement issued on 6 December 2019,[27] the Overtime for Casuals Full Bench set out the process for finalising each of the matters before it. In relation to the Marine Towage Award the Full Bench confirmed that the issues would be determined on the basis of written submissions received from the parties. No final decision has been issued.

[232] The Exposure Draft and variation determination will be varied to reflect the final determination to be issued by the Overtime for Casuals Full Bench.

(iii) AM2016/8–Payment of wages

[233] The frequency of payment of wages at clause 15 remains outstanding and is before the Payment of Wages Full Bench.

[234] The payment of wages term in the draft determination published on 29 January 2020 at clause 15 is in substantially the same terms as the current Marine Towage Award clause 18. Both terms are set out below:

Current award

18.1 The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.

18.2 An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.

Draft variation determination

15.1 The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.

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[25] [2019] FWCFB 8721

[26] CFMMEU submission, 7 February 2020

[27] [2019] FWC 8318

15.2 An employer may deduct from any amount required to be paid to an employee under clause 15, the amount of any overpayment of wages or allowances.

[235] The Exposure Draft and variation determination will be varied to reflect the final determination of the Payment of Wages Full Bench.

(iv) Rates that apply to shiftworkers

[236] MIAL submit that the rates applying to shiftworkers at clause 19 of this award remain outstanding.

[237] It does not appear that this issue has been raised previously. MIAL is requested to identify the relevant submissions dealing with this issue.

4.12.2 Marine Tourism and Charter Vessels Award 2010

[238] This award is also the subject of other proceedings, namely:

- AM2017/51 – Overtime for casuals; and
- AM2016/8 – Payment of wages.

[239] The Exposure Draft and variation determination will be varied to reflect the final determinations of those Full Benches.

4.12.3 Ports, Harbours and Enclosed Water Vessels Award 2010

[240] The MIAL and AFEI made submissions in relation to the Ports Award.

[241] MIAL raises four matters, as set out below.

(a) AM2016/5–Substantive issues full bench

[242] There are outstanding coverage issues that are before the substantive issues Full Bench. A decision and draft determination were issued by that Full Bench on 24 December 2019.[28] Comments in relation to the draft determinations were due on 31 January 2020. One submission was received from the CFMMEU–MUA.[29] No final decision or variation determination have been issued.

[243] The Exposure Draft and variation determination will be varied to reflect the final determination to be issued by the Overtime for Casuals Full Bench.

(b) AM2017/51–Overtime for casuals

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[28] [2019] FWCFB 8721

[29] CFMMEU submission, 7 February 2020

[244] In a statement issued on 6 December 2019,[30] the Overtime for Casuals Full Bench set out the process for finalising each of the matters before it. In relation to the Ports Award the Full Bench confirmed that the issues would be determined on the basis of written submissions received from the parties. No final decision has been issued.

[245] The Exposure Draft and variation determination will be varied to reflect the final determination to be issued by the substantive issues Full Bench.

(c) AM2016/8–Payment of wages

[246] MIAL submit that the frequency of payment of wages at clause 15 of each award remains outstanding. This issue is currently before the Payment of Wages Full Bench.

[247] The Exposure Draft and variation determination will be varied to reflect the final determination of the Payment of Wages Full Bench.

(d) Rates that apply to shiftworkers

[248] The matter raised relates to an outstanding issue that was before the Group 3 technical and drafting Full Bench. AFEI also raised this issue in their submission.[31] This issue will be the subject of a separate Statement which will be published shortly.

[249] AFEI raises four issues in relation to the Ports Award. The first is about the rates that apply to shiftworkers, which is addressed above.

[250] AFEI raise three other issues raised about the Exposure Draft as set out below.

(i) Coverage

[251] Clauses 4.2 and 4.3 provide as follows:

> **'4.2** For the purpose of clause 4.1, ports, harbours and enclosed water vessels industry means the operation of vessels of any type wholly or substantially within a port, harbour or other body of water within the Australian coastline or at sea on activities not covered by the above awards.
>
> **4.3** The award does not cover employers and employees wholly or substantially covered by the following awards:
>
> **(a)** the *Dredging Industry Award 20XX*;
>
> **(b)** the *Maritime Offshore Oil and Gas Award 2020*;
>
> **(c)** the *Marine Tourism and Charter Vessels Award 20XX*;
>
> **(d)** the *Marine Towage Award 20XX*;
>
> **(e)** the *Port Authorities Award 2020*;

[30] [2019] FWC 8318

[31] AFEI submission, 5 March 2020

(f) the *Seagoing Industry Award 20XX*; and

(g) the *Stevedoring Industry Award 2020*.'

[252] AFEI submits that the expression 'the above awards' should be amended to read 'the awards below' as the awards in question are in clause 4.3.

[253] We agree with AFEI and will amend the Exposure Draft and variation determination accordingly.

(ii) Casual loading

[254] Clause 11.2 of the Exposure Draft states:

> **11.2 Casual loading**
>
> (a) For each ordinary hour worked, a casual employee must be paid:
>
> (i) the ordinary hourly rate; and
>
> (ii) a loading of 25% of the ordinary hourly rate, for the classification in which they are employed.
>
> (b) The casual loading incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shiftwork rates ~~allowances~~.

[255] The comparable provision in the current award is clause 10.3(a), which provides:

> **10.3** Casual employment
>
> (a) A casual employee is an employee engaged as such.
>
> (b) A casual employee working within the ordinary hours of work pursuant to clause 18 will be paid per hour for the work performed plus 25% loading which incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.

[256] AFEI submits that the Exposure Draft omits the expression 'within the ordinary hours of work pursuant to clause 18' which appears in the current clause 10.3(a). AFEI submits:

> 'This omission in the exposure draft involves a substantive change from the current Award, and if adopted, would significantly increase the overall cost of casual employment particularly for ordinary hours on shiftwork and weekends.'

[257] AFEI propose that the clause 11.2 of the Exposure Draft be amended as follows:

- in clause 11.2(a) after the words 'for each ordinary hour worked' insert the words '*pursuant to clause 12.2'*; and

- in the event that the Commission adopts the AFEI parties proposed amendment in paragraph 3.B of this submission, instead insert the words '*pursuant to clause 12.2(a)*.'

[258] Other interested parties are invited to comment on AFEI's proposed amendments.

(iii) All-purpose allowances

[259] Clause 16.2(a) of the Exposure Draft provides:

> **(a) All-purpose allowances**
>
> Allowances paid for all purposes are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:
>
> (i) dual capacity allowances (clause 16.2(d));
>
> (ii) towing allowance—towing or carrying explosives (clause 16.2(m)(i)); and
>
> (iii) towing allowance—towing non self-propelled bunker barges (clause 16.2(m)(ii)).

[260] AFEI contends that the dual capacity allowance should not be included in clause 16.2(a) as the current award does not identify dual capacity allowances as all purpose allowances AFEI submits:

> 'The inclusion of the dual capacity in clause 16.2(a) is inconsistent with clause 14.4 of the current award and clause 16.2(d) of the exposure draft which clarify that it is only treated as part of the ordinary rate in specific circumstances, that is 'for the purpose of calculating overtime, annual leave, sick leave and long service leave'.'

Question for all parties: Is the deletion of clause 16.2(a)(i) opposed by any other interested party?

4.12.4 Seagoing Industry Award 2010

[261] MIAL raises two outstanding substantive issues with the Seagoing award.

(i) AM2016/5–Substantive issues full bench

[262] There are outstanding coverage issues that are before the substantive issues Full Bench. A decision and draft determination were issued by that Full Bench on 24 December 2019.[32] Comments in relation to the draft determinations were due on 31 January 2020. One submission was received from the CFMMEU–MUA.[33] No final decision or variation determination have been issued.

[263] The Exposure Draft and variation determination will be varied to reflect the final determination to be issued by the substantive issues Full Bench.

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[32] [2019] FWCFB 8721

[33] CFMMEU submission, 7 February 2020

(ii) NES inconsistencies

[264] There is an outstanding matter before the NES inconsistencies Full Bench. The Full Bench issued a decision on 12 January 2018[34] dealing with the question of whether clause 27 of the award is inconsistent with the NES. A draft variation determination was issued with that decision. Interested parties had 28 days to comment on the draft determination. Submissions were received from MIAL[35] and the MUA[36] (as it then was). A decision[37] and final variation determination[38] were issued on 20 March 2020. The Exposure Draft and variation determination will be amended to incorporate the 20 March 2020 variation determination.

4.13 Miscellaneous Award 2010

[265] ABI has made a submission in relation to this award relating to overtime for casuals.

[266] As part of the AM2017/51 Overtime for Casuals proceedings, United Voice (now the UWU) proposed to vary the overtime clause to introduce overtime provisions for casual employees into the Miscellaneous Award 2010. The matter was subject to a hearing before the Full Bench on 29, 30 and 31 July 2019.

[267] In its decision published 8 October 2019, the Full Bench agreed with the Union stating the Miscellaneous Award is 'confusing and ambiguous' and stated a *provisional* view that a new clause be introduced into the Miscellaneous Award:

> '[52] Our provisional view is that clause 22.1 should be varied to provide as follows:
>
> 22.1 Overtime
>
> All time worked in excess of:
>
> (a) an average of 38 hours per week, or the daily hours prescribed in clause 20.2, by a full-time employee or casual employee; or
>
> (b) in excess of the agreed number of hours per week pursuant to clause 10.3(b), or the daily hours prescribed in clause 20.2, by a part-time employee;
>
> is overtime and must be paid at the rate of 150% of the relevant minimum wage for the first three hours and 200% of the relevant minimum wage thereafter.
>
> [53] A draft determination to give effect to the variation will be published in due course and interested parties will be given an opportunity to comment upon it.'

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[34] [2018] FWCFB 129

[35] MAIL submission, 12 February 2018

[36] MUA submission, 14 February 2018

[37] [2020] FWCFB 1514

[38] PR717671

[268] To date, a draft determination has not been published and parties have not been able to comment on the insertion of the proposed clause nor on whether overtime provisions should apply to the casual loading.

[269] ABI has indicated that it will be submitting in proceedings AM2017/51 that a casual loading does not apply to overtime in the Miscellaneous Award.

[270] Clause 11.2 of the Exposure Draft in the Miscellaneous Award states as follows:

> '**11.2 Casual loading**
>
> (a) For each hour worked, a casual employee must be paid:
>
> (i) the minimum hourly rate; and
>
> (ii) a loading of 25% of the minimum hourly rate,
>
> for the classification for which they are employed.
>
> (b) The casual loading is instead of the paid leave to which full-time employees are entitled under the NES and this award' (emphasis added).

[271] ABI submits that this drafting 'appears to infer that a casual loading will be payable during overtime, which departs from the existing drafting of the Miscellaneous Award and the position of ABI in proceedings 2017/51.' ABI submits that until the Full Bench has determined proceedings 2017/51 either:

(a) the drafting pertaining to the casual loading should be maintained in its original form (as currently appears in the Miscellaneous Award); or

(b) the Exposure Draft for the Miscellaneous Award should not be determined and published in its new form.

[272] It is our *provisional* view that option (a) proposed by ABI be adopted.

4.14 Nurses Award 2010

[273] ANMF and Ai Group have made submissions in relation to this award. Ai Group has filed an application (AM2020/1) to vary the Nurses Award.

[274] Regarding the quantum of the casual loading payable, the AI Group seeks 'a determination retrospectively varying' the Award so that it expressly requires, with respect to casual employees:

> (a) The Saturday and Sunday penalty rates prescribed by clause 26 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).
>
> (b) The overtime rates prescribed by clause 28 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).

(c) The public holiday penalty rates prescribed by clause 32.1 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).[39]

[275] The Ai Group application was partially in response to an ANMF submission of 13 June 2019[40] concerning the version of the Exposure Draft of the Award published on 22 February 2019.[41] The ANMF submission concerned the interpretation of the Award in light of the Full Bench decision in *Australian Nursing and Midwifery Federation v Domain Aged Care (QLD) Pty Ltd T/A Opal Aged Care*.[42]

[276] Ai Group and the ANMF submit that the Commission should defer finalisation of the Exposure Draft and draft variation determination until AM2020/1 has been determined.

[277] We note that directions have been issued in AM2020/1 and it is listed for hearing on 1 September 2020.

[278] We agree to the deferral of the finalisation of the Exposure Draft and draft variation determination until the claim in matter AM2020/1 has been determined.

[279] In doing so we note that the claim in AM2020/1 only impacts on a limited number of clauses and schedules. We see no reason why the process of resolving any issues cannot proceed in respect of the clauses in the Exposure Draft and draft variation determinations which are unrelated to AM2020/1.

[280] We propose that:

1. Ai Group and the ANMF are to file a joint note indicating the terms of the Exposure Draft and draft variation determination which are related to AM2020/1.

2. In July 2020 a revised Exposure Draft and draft variation determination will be published (to reflect any changes necessary as result of the Annual Wage Review decision) and a mention hearing held to set a timetable for parties to make submissions in relation to the clauses which are unrelated to AM2020/1.

[281] Interested parties are invited to comment on this proposal.

4.15 Professional Employees Award 2010

[282] Ai Group's submission in respect of this award raises three issues.

(i) Clause 2.4 -Definitions

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[39] Ai Group, Application to vary Nurses Award 2010, (14 January 2020) (AM2020/1)

[40] ANMF submission 13 June 2019

[41] Exposure Draft – Nurses Award – revised 22 February 2019

[42] [2019] FWCFB 1716

[283] Clause 2.4 has been amended to commence with the words '***Academic schedule*** *means'*, followed by a list of qualifications.

[284] Ai Group submits that the qualifications form part of the academic schedule, but do not constitute a meaning and on that basis proposed that the word 'means' is replaced with the word 'include.'

[285] It is our *provisional* view that the amendment proposed by Ai Group be adopted.

(ii) Clause 4.2(d) Coverage

[286] In the event that Ai Group's submission in respect of the Nurses Award is accepted then it submits that the reference to '20XX' should be replaced with '2020.'

[287] We agree and will amend the Exposure Draft and variation determination accordingly.

(iii) Schedule A: Classification structure and definitions

[288] A question is posed in Schedule A of the Exposure Draft about whether APESMA's claim concerning Engineering Technologists is pressed. APESMA has advised Ai Group that the claim is no longer being pressed as part of the Review.

[289] We note that APESMA's claim is no longer pressed as part of the Review.

4.16 Racing Clubs Events Award 2010

[290] The AWU submits that it has been agreed[43] that casual employees are paid their 25% casual loading on a cumulative basis when overtime is worked and on that basis a casual overtime rates table can be inserted into Schedule A.2.

[291] Other interested parties are invited to comment on the AWU's proposal.

4.17 Registered and Licensed Clubs Award 2010

[292] ABI, CAI and CMMA made submissions in relation to this award. ABI raises four issues.

(iv) Clause 4.1 - Coverage

[293] Clause 4.1 states that:

> 'This industry award covers employers of employees engaged in the performance of all or any work in or in connection with or for clubs registered or recognised under State, Territory or

[43] See [1.2] of this ABI correspondence: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf and [6] of this FWC Statement: https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm at [6].

Commonwealth legislation and their employees in the classifications within Schedule A— Classification Definitions, to the exclusion of any other modern award.'

[294] Clause 4.2 goes on to define "*club*" as:

'any club which is registered and licensed under the provisions of relevant State or Commonwealth Statutes (Liquor and/or Gaming Acts, Associations' Incorporation Acts or Corporations Acts) and which is established and operates on a not-for-profit basis for the benefit of members and the community.'

[295] ABI submits that the words "registered or recognised under State, Territory or Commonwealth legislation" in clause 4.1 are superfluous given the requirement under clause 4.2 for a club to be "registered and licensed under the provisions of relevant State or Commonwealth Statutes (Liquor and/or Gaming Acts, Associations' Incorporation Acts or Corporations Acts)".

[296] It is our *provisional* view that the words 'registered or recognised under State, Territory or Commonwealth legislation' be deleted from clause 4.1.

(v) Clauses 4.6 and 4.7 - Coverage (On-hire and Group Training)

[297] Clause 4.6 states that the "award covers any employer which supplies labour on an on-hire basis in the clubs industry" (emphasis added). Similarly, clause 4.7 states that the "*award covers employers which provide group training services for apprentices and/or trainees engaged in the clubs industry"* (emphasis added).

[298] The term "*clubs industry*" is not a defined term in the award.

[299] ABI submits that a relevant definition could be inserted by amending clause 4 as follows:

'4.1 This industry award covers employers throughout Australia who are engaged in the clubs industry in respect of work by their employees in a classification in this award and their employees engaged in the classifications within Schedule A— Classification Definitions, to the exclusion of any other modern award.

4.2 Definition of clubs industry
For the purposes of clause 4 **club industry** means the performance of all or any work in or in connection with or for clubs.

4.3 **club** means any club which is registered and licensed under the provisions of relevant State or Commonwealth Statutes (Liquor and/or Gaming Acts, Associations' Incorporation Acts or Corporations Acts) and which is established and operates on a not-for-profit basis for the benefit of members and the community.

4.4 This award covers …'

[300] Interested parties are invited to comment on ABI's proposal.

(vi) Clause 11.2 - Casual Loading

[301] Clause 11.2 refers to 'the ordinary hourly rate prescribed in clause 0' and ABI submits that this should be a reference to clause 24.1.

[302] We agree with ABI and will amend clause 11.2.

(vii) Clause 11.3 - Casual Loading

[303] Parties were asked whether a maintenance and horticultural employee may be engaged on a casual basis; and if so, do the percentages in clause 0 [24.1] or 24.2 apply.

[304] ABI submits that:

> '56. Nothing in clause 11.1 excludes maintenance and horticultural employees from the definition of a casual employee.
>
> 57. Maintenance and horticultural employees are clearly excluded from the rates in clause 24.1.
>
> 58. In Submissions filed on 18 January 2017,[44] ABI and NSWBC submitted that maintenance and horticultural employees may be engaged on a casual basis and that the rates in clause 24.2 would apply save for the fact that Monday to Friday and Saturday before noon would be paid at 125%.
>
> 59. We do not oppose the addition of a casual employee row to the table in clause 24.2 as suggested by the AWU at paragraph 3.3 of their Submissions of 20 January 2017.'[45]

[305] Interested parties are invited to comment on ABI's submission.

(viii) Clause 15.8 - Deferral of rostered days off

[306] Parties are asked whether clause 15.8(g) is still required. This clause contains a transitional provision that ceased to have effect on 1 January 2013.

[307] ABI submits that clause 15.8(g) is no longer required and should be removed.

[308] We agree with ABI and will delete clause 15.8(g).

[309] The submissions filed by CAI and CMAA are directed at some outstanding substantive issues in relation to this award.

[310] The substantive claims in respect of this award will be determined by a different Full Bench and will be listed for mention shortly.

4.18 Security Services Industry Award 2010

[44] ABI/NSWBC Submissions dated 18 January 2017

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-abinswbc-180117.pdf

[45] AWU Submissions dated 20 January 2017

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014283-sub-awu-200117.pdf

[311] Submissions have been filed by ABI and ASIAL in relation to the Security Award. Both submissions concern overtime for casuals.

[312] As part of the AM2017/51 Overtime for Casuals proceedings, United Voice (now UWU) proposed to vary the overtime clause to introduce overtime provisions for casual employees into the *Security Services Industry Award 2010*. The matter was subject to a hearing before the Full Bench on 29, 30 and 31 July 2019. In the decision,[46] the Full Bench stated:

> '[63] It is not in dispute that casual employees are not currently entitled to receive the casual loading when being paid overtime penalty rates, and the above variation is not intended to disturb that position.'

[313] ABI submits that having regard to the Full Bench decision, the casual loading is not payable during overtime.

[314] The Exposure Draft states as follows:

> '**11.2 Casual loading**
>
> (a) An employer must pay a casual employee for each hour worked a loading of 25% in addition to the minimum hourly rate otherwise applicable under Table 4-Minimum rates.
>
> (b) The casual loading is paid in addition to any penalty rates…' (emphasis added).

[315] ABI submits that clause 11.2 'appears inconsistent with the determination in decision [2019] FWCFB 6953 and should be amended'.

[316] Interested parties are invited to comment on ABI's proposal.

[317] ASIAL's submission appears to make a similar point. ASIAL seeks the retention of the word 'ordinary' on the basis that its removal would 'disturb that position' and 'would create ambiguity and lead to disputation'.

4.19 Telecommunications Services Award 2010

[318] Ai Group made a submission in relation to this award.

[319] Ai Group raises a number of minor drafting issues:

- In the title and clauses 4.5(b) and 15.6 20XX should be replaced by 2020
- Clause 17 of the Exposure Draft corresponds to clause 15 in the current award, which has been varied since the Exposure Draft was published (see PR716768) and hence the Exposure Draft requires updating

[320] We agree with Ai Group and will amend the Exposure Draft and variation determination accordingly.

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[46] [2019] FWCFB 6953

[321] Ai Group raises three other issues.

(i) Clause 2: Definitions – ordinary hourly rate

[322] The definition of 'ordinary hourly rate' states:

> **ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 15.1, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.

[323] Ai Group submits that the definition is 'problematic' as it requires the calculation of the ordinary hourly rate by reference to the rates contained in clause 15.1 which excludes employees who are not entitled to those rates, such as employees to whom clause 15.2 applies (junior employees) and clause 15.3 applies (apprentices).

[324] Ai Group proposes that the words 'clause 15.1' should be replaced with 'this award'.

[325] Interested parties are invited to comment on Ai Group's proposed amendment.

(ii) Clause B.2.4: Full-time and part-time employees - overtime

[326] The rates at B.2.3 apply to full-time and part-time employees who are not performing shiftwork when working overtime.

[327] The rates at B.2.4 are headed 'full-time and part-time employees – overtime' yet the rates set out therein appear to be the same as the rates at B.2.3. Ai Group submits that the distinction between the two sets of rates is not clear and suggests that B.2.4 is deleted. We note that the issue raised may also be resolved by amending the heading of B.2.4 to read 'Full time and part time employees – shiftworkers – overtime rates.'

[328] Interested parties are invited to comment on this issue.

(iii) Schedule B: certain classifications exempt from various entitlements

[329] Ai Group refers to footnote 1 to each of the table of rates set out in Schedule B. Footnote 1 applies to certain classifications and says:

> 'See clause 17 – Annual salary arrangements for higher classifications in relation to award provisions that do not apply to persons in these classifications.'

[330] While under the annualised salary clause that previously applied, certain employees were exempted in all circumstances from certain award entitlements, Ai Group contends that as a consequence of the introduction of new annualised wage arrangements (effective 1 March 2020), this will no longer be the case.

[331] Ai Group submits that the relevant tables and footnotes require revisiting in light of the new annualised salary clause.

[332] We agree but note that it may be sufficient to simply amend the footnote, as follows:

> [1]An employer may pay a full-time employee employed in a particular classification, an annualised wage in satisfaction of any or all of the award provisions listed in clause 15.

[333] Parties are asked to comment on the revised footnote above and whether any other changes are required.

4.20 Textile, Clothing, Footwear and Associated Industries Award 2010

[334] ABI, Ai Group and the CFMMEU (Manufacturing Division) have made submissions in relation to the TCF Award. Two issues are raised by ABI.

(i) Calculation of overtime for casuals

[335] The TCF Award is currently the subject of dispute regarding the calculation of overtime for the casual loading in the proceedings AM2017/51. The Commission invited parties to file submissions on 14 October 2019. Submissions were filed by ABI and NSWBC on 12 November 2019[47] stating that the calculation of overtime for casual employees is on a cumulative basis. The Construction, Forestry, Maritime, Mining & Energy Union - Manufacturing Division submits on 9 December 2019[48] that it is to be calculated on a compounding basis. The matter has been reserved by the Full Bench and has not been decided.

[336] Clause 11.9 of the Exposure Draft states as follows:

> '11.9 Casual loading
> For each hour worked, a casual employee must be paid:
> (a) the ordinary hourly rate; and
> (b) a loading of 25% of the ordinary hourly rate,
> prescribed for the relevant classification in which they are employed.'

[337] ABI submits that the exclusion of the word "ordinary" from 11.9(a) 'may infer that the casual loading in the TCF Award should be calculated on a compounding basis [which] is inconsistent with the position of ABI in proceedings AM2017/51'. ABI submits that until the Full Bench has determined proceedings 2017/51, either:

(a) the drafting pertaining to the casual loading should be maintained in its original form (as currently appears in the TCF Award); or

(b) the Exposure Draft for the TCF Award should not be determined and published in its new form.

[338] It is our *provisional* view that option (a) proposed by ABI be adopted.

(ii) Clause 18.4 (f) - Breaks, rests and meal allowance during overtime

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[47] ABI/NSWBC submissions dated 12 November 2019

[48] CFMMEU-MD submissions dated 9 December 2019

[339] The words "*five and a half*" have been replaced with "*51/2*". ABI submits that this appears to be an error and that "1/2" should be replaced with the "½" symbol, as it has in other Exposure Drafts.

[340] We agree with ABI and will amend the Exposure Draft and variation determination accordingly.

[341] Ai Group raises the following minor drafting issues:

- replacing 20XX with 2020 in the title and in clause 4.5 and 19.11;
- the definition of 'all purposes' has been deleted from clause 2 and should be retained as certain allowances in the award are designated as 'all purpose' allowances;
- in clause 11.1[1](g) the first reference to 'clause 11.11(c)' should be replaced with 'clause 11.11(g), consistent with the current clause 14.10(g);
- in clause 18.4(f) a space should be added between '5' and '½';
- in clauses 28.4(a) and (b) 'ordinary rate' should be replaced with 'ordinary hourly rate' which is a defined term; and
- clause C.3.3 the rates under 'Monday to Friday – 12 hour shift, first 10 hours' are incorrect and should be the same as the rates in the second column.

[342] We agree with Ai Group and will amend the Exposure Draft and variation determination to give effect to the above corrections.

[343] Ai Group raises two further issues.

(i) Clause 4.7 Coverage

[344] Clause 4.7 states:

> 'This award covers any employer which supplies labour on an on-hire basis in the textile industry, clothing industry, bag making industry, button making industry, footwear industry and allied manufacturing and fabricating industries (as defined is clause 4.2) ~~set out in clause 4.2 0~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industries. ~~This subclause~~ Clause 4.6(c) operates subject to the exclusions from coverage in this award.'

[345] Ai Group submits that clause 4.7 should be replaced by the following:

> **4.7** This award covers any employer which supplies labour on an on-hire basis in any of the industries set out in clause 4.1 (as defined in clause 4.2) in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industries. Clause 4.7 operates subject to the exclusions from coverage in this award.

[346] Ai Group submits that the proposed amendments address two concerns with the clause contained in the Exposure Draft:

(a) The clause contained in the Exposure Draft could be read such that the award applies to an employer only if they supply labour in each of the industries there listed. This is clearly not the intent and would amount to a substantive change to the current award provisions.

(b) The reference to clause 4.6(c) in the final sentence of the clause is an error. The reference should be to clause 4.7.

(c) The provision it proposes, although it requires consideration of other provisions contained in the instrument, is simpler and easier to understand than the provision contained in the Exposure Draft.

[347] It is our *provisional* view that the Exposure Draft and variation determination be amended as proposed by Ai Group.

[348] Interested parties are invited to comment on Ai Group's proposed amendments.

(ii) Clause 4.8 Coverage

[349] Clause 4.8 states:

> **4.8** This award covers employers which provide group training services for apprentices and/or trainees engaged in the textile industry, clothing industry, bag making industry, button making industry, footwear industry and allied manufacturing and fabricating industries as ~~industry and/or parts of industry set out at~~ defined in clause 4.2 ~~0~~ and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. ~~This subclause~~ Clause 4.7 operates subject to the exclusions from coverage in this award.

[350] Ai Group submits that clause 4.8 should be replaced by the following:

> **4.8** This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry and/or parts of industry set out at clause 4.1 (as defined by clause 4.2) and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.8 operates subject to the exclusions from coverage in this award.

[351] In support of the proposed amendment Ai Group advances the same argument as put in support of the proposed amendment of clause 4.7 above.

[352] Interested parties are invited to comment on Ai Group's proposed amendments.

[353] The CFMMEU (Manufacturing Division) has identified the following minor errors:

- in clause 2 (Definitions) include 'textile industry has the meaning given in clause 4.2';

- in clause 4.7, the reference to clause 4.6(c) is an error and the last sentence of clause 4.7 should be amended to read 'clause 4.7 operates subject to the exclusions from coverage in this award';
- clause 7.2(h) be amended to: '(h) substitution of public holidays or part-day public holidays by agreement';
- clause 11.11(g), the reference to 'in accordance with clause 11.1(c)' should be amended to 'in accordance with clause 11.11(g)';
- clause 28.3(c)(i), contains a typographical error in the second line, the word 'of' after the words 'ordinary hourly rate' should be deleted;
- clauses 32.3(a) and 32.5(d), delete 'Schedule H—Agreement to take Annual Leave in Advance' and insert 'clause 2 (Definitions)'; and
- clause 43.4(d) omits the entitlement to redundancy pay for employees with continuous service of 4 years and over and should be amended to include : 'At least 4 years and over—8 weeks'.

[354] We agree with the CFMMEU (Manufacturing Division) and will amend the Exposure Draft and variation determination accordingly. We note that some of the amendments proposed by the CFMMEU (Manufacturing Division) are also raised by Ai Group.

[355] The CFMMEU (Manufacturing Division) raises a number of other issues.

(i) Clause 18.2 – Meal breaks

[356] Clause 18.2 of the TCF Award Exposure Draft provides:

'**18.2 Meal breaks—shiftworkers in the textile industry**

(a) Where 2 eight hour or 3 eight hour shifts are worked, instead of the meal break provided in clause **Error! Reference source not found.,** the employer has the discretion to, as opportunity offers, provide the shiftworker a 20 minute paid crib break per shift which will be counted as time worked.

(b) 7 day continuous shiftworkers are entitled to a paid 20 minute meal break during each shift.'

[357] Clauses 38.1 and 38.2 of the TCF Award currently provide:

'**38.1 Meal break**

(a) A meal interval of not less than 30 minutes and not more than one hour must be allowed each shift or day.

(b) If the employer requires an employee (other than a maintenance employee who is required to work through a meal break to rectify a mechanical breakdown) to work through a meal break, the employee must be paid at overtime rates (clause 39) until the break is taken.

(c) No employee will be required to work for more than five hours without a meal break unless an employer and a majority of employees in an enterprise or part of an enterprise concerned agree to work in excess of five hours but less than six hours without a meal break, provided such agreement is in accordance with clause 8.3.

38.2 Meal Breaks and Shift Workers (textile industry)

Shift workers in the textile industry are entitled to meal breaks in accordance with clause 38.1, and as follows:

(a) Where two eight hour or three eight hour shifts are worked, in lieu of the meal break provided in clause 38.1(a), the employer has the discretion to, as opportunity offers, provide the shift worker a 20 minute paid crib break per shift which shall be counted as time worked.' (emphasis added)

[358] Clause 18.2 of the Exposure Draft has deleted the opening paragraph (as highlighted above) of the current clause 38.2. The CFMMEU (Manufacturing Division) submits that the deletion constitutes a diminution of a current condition;

> 'Clause 38.1 of the TCF Award contains 3 elements – 38(a), (b) (c) including an entitlement to an unpaid meal break of not less than 30 minutes per day. The deletion in the TCF Award ED of the opening paragraph to clause 38.2 changes the effect of the provision for shiftworkers in the textile industry including with respect to (c) and has potentially unintended consequences.'[49]

[359] The Union notes that the current formulation of clause 38.2 was inserted into the award as a result of two Full Bench decisions issued in context of the previous 2012 Transitional Review and the 2014 Review of Modern Awards, as follows:

- (Transitional Review) [2013] FWCFB 5729[50]
- (4 Yearly Review) [2014] FWCFB 2831[51]

[360] The terms of the current clause 38.2 (including the opening paragraph) was part of a range of matters about which the TCFUA, ABI and AIG reached consent about and which were adopted by the Full Bench in the Transitional Review decision. That Full Bench held:

> 'The Full Bench has considered the terms of the draft determination proposed by the TCFUA, ABI and AIG in so far as it deals with the non-outwork matters and technical amendments. We are satisfied that the proposed amendments are consistent with the modern awards objective in s.134 of the Act. Further, we are satisfied the amendments proposed will allow the award to operate more effectively, without anomalies or technical problems arising from the Part 10A award modernisation process. Accordingly, we think it appropriate to amend the award consistent with the terms of the draft determination provided by the TCFUA on the 4 July 2013.'[52]

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[49] CFMMEU (Manufacturing Division) submission, 6 March 2020, at para 33.

[50] Sch. 5, Item 6 – Transitional Review of Modern Awards – Textile, Clothing, Footwear and Associated Industries Award 2010; [2013] FWCFB 5729 (4 October 2013); Hamberger SDP; Smith DP; Lee C. and Determination (PR542901) at item 24.

[51] S.156 – 4 yearly review of modern awards – Textile, Clothing, Footwear and Associated Industries Award 2010; [2015] FWCFB 2831 (11 May 2015); Watson DP; O'Callaghan DP; Cribb C and Determination (PR563434) at item 8.

[52] [2013] FWCFB 5729 at [67].

[361] The further amendment to clause 38.2 of the TCF Award was determined by the 4 yearly award Full Bench, with its reasoning contained at paragraphs [123] – [129] of that decision.[53] The Union submits that clause 18.2 be amended to include the current text (as underlined below) in clause 38.2, as follows:

> Shift workers in the textile industry are entitled to meal breaks in accordance with clause 38.1, and as follows:
>
> (a) Where 2 eight hour or 3 eight hour shifts are worked, instead of the meal break provided in clause 18.1, the employer has the discretion to, as opportunity offers, provide the shiftworker a 20 minute paid crib break per shift which will be counted as time worked.
>
> (b) 7 day continuous shiftworkers are entitled to a paid 20 minute meal break during each shift.

[362] Other interested parties are invited to comment on the CFMMEU (Manufacturing Division)'s proposed amendment.

(ii) The Outwork Schedule

[363] The CFMMEU (Manufacturing Division) opposes the change in the clause numbering of the Outwork Schedule from its current 'Schedule F' to 'Schedule E' for the reasons set out at [70] to [87] of its submission.

[364] It is our *provisional* view that the schedule numbering in the Exposure Draft should be reversed (as proposed by the CFMMEU (Manufacturing Division) from 'Schedule E—Outwork and Related Provisions' and 'Schedule F—Apprentices' to:

- Schedule E—Apprentices
- Schedule F—Outwork and Related Provisions.

[365] Consequential changes to other clauses in the Exposure Draft will also be necessary (see [90] of the CFMMEU (Manufacturing Division)'s submissions.

(iii) Other Schedules

[366] The CFMMEU (Manufacturing Division) identifies a range of issues in respect of the other Schedules (see [54] – [74]). These issues, and all of the other matters in relation to this award, will be the subject of a separate conferences. A notice of listing will be issued shortly.

4.21 Timber Industry Award 2010

[367] ABI, Ai Group and the CFMMEU (Manufacturing Division) have made submissions in respect of this award. It is convenient to deal first with the point raised by ABI.

[368] In clause D.3, parties are asked whether the public holiday penalty rate for casual workers should be limited to the General Timber Stream.

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[53] [2015] FWCFB 2831

[369] ABI submits that, based on the current wording of the Exposure Draft, casual employees are not entitled to public holiday loadings, unless they are in the General Timber Stream:

> '78. This is because, clause 27.1(d) prescribes the public holiday penalty for casual employees. This clause is clearly limited to employees in the General Timber Stream.
>
> 79. Clause 27.1(c) also prescribes a public holiday penalty, but it expressly limited to weekly employees and so does not apply to casual employees, whether in the General Timber Stream or not.
>
> 80. Further to this, the Saturday and Sunday payments prescribed in clauses 27.1(a) and (b), are also expressly limited to weekly employees and do not apply to casual employees.
>
> 81. The Saturday and Sunday rates in the table at clause D.3.1 should be amended to reflect this.'

[370] Interested parties are invited to comment on the issue raised by ABI and the solution proposed.

[371] The CFMMEU raises 12 issues in respect of the Exposure Draft.

(i) Clause 2 (Definitions)

[372] Clause 2 (Definitions) includes a definition of 'stand by' as follows:

> **stand-by** means all times between 10:00am and 6:00pm on a Saturday, Sunday or public holiday during which period a fire fighting employee will be available, either at home or at such other place as is mutually agreed between the employer and the employee, in readiness for an immediate call to work.

[373] Clause 3 of the current award does not contain a definition of 'stand-by'. Rather, the definition is found in clause 13.3(p) of the Timber Award, which states:

> **(p) Stand-by**
>
> (i) **Stand-by,** except for the times as provided in clause 13.3(p)(iii), means all times between 10.00 am and 6.00 pm on a Saturday, Sunday or public holiday during which period an employee will be available either at home or at such other place as is mutually agreed between the employer and the employee in readiness for an immediate call to work. Whenever an employee is advised that the employee is required to be on stand-by, payment for stand-by will be made unless the employee is notified by 3.00 pm on the last normal working day on which the employee worked that the employee is not required to be on stand-by. Provided that where an employee is advised that the employee is required to be on stand-by on a weekend, a minimum payment of one day stand-by will be made.
>
> (ii) An employee required by the employer to stand-by will be paid 1.0116% of the standard rate per hour. Provided that if the employee is called upon to perform fire fighting work on any day that the employee is on stand-by, the employee

will be paid for all time worked at the appropriate prescribed rate in addition to any entitlement for stand-by performed on that day.

(iii) During the period in which daylight saving is in force, an employer may on any normal weekday, Monday to Friday inclusive, which has a high fire danger rating, place an employee on stand-by at the cessation of the normal working time for that day.

(iv) Notification that an employee is required to go on stand-by will be made prior to the cessation of work for the day and/or the employee's departure from the place where the employee normally ceases work for the day. Payment will be made from the normal time of cessation of work at the rate as provided in clause 13.3(p)(ii).

[374] The CFMMEU submits that inclusion of the definition of 'stand by' in the Exposure Draft originates from clause 14 (Fire fighting employees), specifically clause 14.3(p) which provides:

> **stand-by** means all times between 10:00am and 6:00pm on a Saturday, Sunday or public holiday during which period a fire fighting employee will be available, either at home or at such other place as is mutually agreed between the employer and the employee, in readiness for an immediate call to work (except for the times as provided in clause 14.3(p)(iv)). [emphasis added]

[375] The CFMMEU submits that the definition of 'stand by' in the substantive provision is qualified by the additional sentence as outlined above.

[376] The CFMMEU submits that, for consistency, the definition of 'stand-by' in clause 2 should also contain the qualification in clause 14.3(p).

[377] Interested parties are invited to comment on the issue raised by CFMMEU and the solution proposed.

(ii) Clause 16 (Classifications)

[378] In the opening sentence of clause 16, CFMMEU submit that there is missing text after the word 'Minimum'.

> 16.1 The definitions of the classification levels in clause 20 – Minimum, are contained ….'

[379] The CFMMEU also submits clause 16 be amended as follows:

> 16.1 The definitions of the classification levels in clause 20 – Minimum Rates, are contained ….'

[380] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(iii) Clause 18 (Rostering arrangements)

[381] Clause 18.1 provides:

18.1 Rostered days, or shifts, off

(a) Notwithstanding provisions elsewhere in this award and subject to clause 34.2, the employer and the majority of affected employees may agree to establish a system of rostered days off to provide that an employee may elect, with the consent of the employer to:

(i) take a rostered day, or shift, off at any time;

(ii) take rostered days, or shifts, off in part day amounts; or

(iii) accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

(b) Once a decision has been taken to introduce a system of rostered day off flexibility, in accordance with clause 18.1, its terms must be set out in the time and wages records.

(c) An employer must record rostered day off arrangements in the time and wages record each time this provision is used.

[382] Clause 27.9 of the current award contains an essentially identical provision except for one additional term at clause 27.9(b):

27.9

(b) Clause 27.9(a) is subject to the employer informing each union which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union to participate in negotiations.

[383] The CFMMEU submits that the rationale for the removal of this term, is unclear and it may have simply been deleted in error. The CFMMEU submits that clause 27.9(b) is a substantive provision and its deletion represents a diminution of a current beneficial condition for employees covered by the award and the term should re-inserted into clause 18.1 of the Exposure Draft.

[384] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(iv) Clause 18.4 – Rostered days or shifts off – substitute days or shifts

[385] Clause 18.4(a) (Rostered day off not to coincide with public holiday) provides at 18.4(a) (i) as follows:

(a) Rostered day off not to coincide with public holiday

(i) In cases where, by virtue of the arrangement of the ordinary hours of work, the employee is entitled to a day, or shift, off during the work cycle, the weekday to be taken off must not coincide with a public holiday fixed in accordance with the NES or clause 31 – Community service leave. [emphasis added]

[386] The CFMMEU submits that the reference to '*clause 31 – Community service'* leave is incorrect and the correct reference is '*clause 33 – Public Holidays'*.

[387] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(v) Clause 19.5 – Paid crib breaks – continuous work

[388] Clause 19.5 provides:

> **19.5 Paid crib breaks – continuous work**
>
> Where a shift roster provides for continuous work, a 20 minute paid crib break will be allowed to shiftworkers each shift and will be counted as time worked. The crib break will be taken at a time and in a method agreed upon between the employer and the individual employee or majority of affected employees so as to meet the needs of the establishment. [emphasis added by the CFMMEU]

[389] The equivalent award provision is clause 29.5 of the current award which provides:

> **29.5**
>
> Where a shift roster provides for continuous shifts over 24 hours of the day a 20 minute paid crib break will be allowed to shiftworkers each shift which will be counted as time worked. Such crib will be taken at a time and in a method agreed upon between the employer and the employee or majority of employees concerned so as to meet the needs of the establishment. [emphasis added by the CFMMEU]

[390] The CFMMEU contends that there is potentially an intended consequence in the change of terminology from 'continuous shifts over 24 hours of the day' at clause 29.5 of the Timber Award, as compared to 'continuous work' at clause 19.5 of the Exposure Draft.

[391] In the Exposure Draft, the expression 'continuous work' is defined in clause 2 (Definitions) as follows:

> Continuous work means work carried on with consecutive shifts of persons throughout the 24 hours of each of at least 6 consecutive days without interruptions except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer. [emphasis added by the CFMMEU]

[392] The CFMMEU submits that in clause 19.5, the use of the term 'continuous work' (as defined in clause 2), constitutes an additional qualifier of 'at least 6 consecutive days' which currently does not exist under clause 29.5 of the Timber Award.

[393] The CFMMEU submits that the terminology in clause 19.5 should be amended to reflect the existing terminology in clause 29.5 of the Award, thus making it consistent with the current condition.

[394] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(vi) Clause 20.4 – Adult apprentices

[395] Clause 20.4(a) (Adult apprentices in the Wood and Timber Furniture Stream) at 20.4(a)(ii) provides a table of applicable adult apprentices' rates of pay for employees who commenced on or after 1 January 2014. The second column of the table has a heading *'% of Level 5 adult ordinary hourly rate'*. [emphasis added by the CFMMEU]

[396] The equivalent provision in clause 17.6(a)(ii) of the Timber Award contains a heading titled '% of level 5 minimum weekly wage'.

[397] The CFMMEU submits that it is not clear whether the change in terminology of the heading in the second column of clause 20.4(a)(ii) is intentional or an error.

[398] It appears that the change in terminology of the heading was made in error. It is our *provisional* view that the heading in the second column of clause 20.4(a)(ii) be amended to reflect that in the current modern award.

(vii) Clause 22.12 – Wet places allowance

[399] Clause 22.12 – Wet places allowances provides (in part):

> (a) All allowance of $0.52 per part of day or shift is payable to an employee who is required to work in any place where clothing or boots become saturated, whether by water, oil or otherwise, for the part of the day or shift as they are required to work in wet clothing or boots. [emphasis added by CFMMEU]

[400] Clause 22.12(a) introduces a qualification 'required to work' which currently does not exist in the equivalent provision in the current award, which provides (at clause 21.15) as follows:

> (a) An employee working in any place where clothing or boots become saturated, whether by water, oil or otherwise, will receive an allowance of 0.06% of the standard rate whilst so engaged.

[401] The CFMMEU submits that the introduction of the qualifier in clause 22.12(a) arguably changes the meaning of the clause, is not necessary and does not reflect the current, substantive provision in the award and the words 'required' should be deleted from clause 22.12(a) of the Exposure Draft.

[402] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(viii) Clause 23.7 – Protective clothing, footwear and covering allowance

[403] Clause 23.7(a) – Allowance for the supply of clothing, provides as follows:

> (i) Where an employee is required to wear protective clothing and equipment covered by this award; the employer must reimburse the employee for the cost of purchasing that clothing and equipment.

[404] The CFMMEU submits, grammatically, the use of the semicolon after the word 'award' above is unnecessary and should be replaced with a comma instead.

[405] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(ix) Clause 23.13 – Travelling allowance – bushworkers other than pieceworkers

[406] Clause 23.13 provides:

> (a) Each employee in the bush will have a fixed starting place which will be the existing starting place.
>
> (b) An employer and the employee may agree to a new starting place in the bush. Between the starting place and the work for all the time in excess of half an hour back from the work to the starting point.
>
> (c) When an employee has a fixed starting place in the bush the employee will be paid at the employee's ordinary hourly rate for all time occupied in travelling between the starting place and the work and for all time in excess of half an hour back from the work to the starting point. [emphasis added by CFMMEU]

[407] The CFMMEU submits that the terminology in clause 23.13 of the Exposure Draft is identical to the equivalent provision, clause 21.23(d) of the Timber Award, except in 2 respects.

[408] Firstly, clause 23.13(b) has substituted the word 'may' for 'will' in the award.

[409] The CFMMEU submits that the change is material and potentially affects the meaning of the substantive term. Under clause 21.23(d) of the Timber Award, 21.23(d)(ii) is explicit (in the use of the word 'will') that any change to the 'fixed starting place' must be by agreement between the employer and the employees. It contends that this is not so clear under clause 23.13(b) of the Exposure Draft.

[410] Secondly, clause 21.23(d)(ii) of the current award requires agreement of the 'employer and the employees' (i.e. majority agreement) rather than under clause 23.13(b) of the Exposure Draft which requires agreement of the 'employer and the employee'. The CFMMEU contends that this is a material change, particularly given the context and purpose of this award provision – the entitlement to a travelling allowance for bushworkers (other than pieceworkers) and submits that the existing wording in clause 21.23(d) of the Timber Award should be reinserted.

[411] It is our *provisional* view that the Exposure Draft and variation determination revert to the current award provision as proposed by the CFMMEU.

(x) Clause 26.15 – Time off instead of payment for overtime

[412] Clause 26.15 contains the (modified) model award TOIL term.

[413] The CFMMEU submits that the existing additional term in the current award – clause 32 (Make-up time) appears not have been included in the Exposure Draft.

[414] Clause 32 of the current award provides as follows:

> **32. Make-up time**
>
> 32.1 Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make-up time provided that:
>
> (a) an employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award;
>
> (b) an employee on shiftwork may elect, with the consent of their employer, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, at the shiftwork rate which would have been applicable to the hours taken off.

[415] The CFMMEU contends that the basis upon which clause 32 of the Timber Award has not been included is not apparent and at the time of the insertion of the model TOIL term in the Timber Award, both clauses (clauses 31 and 32) were intended to co-exist.

[416] Clause 32 of the Timber Award providing for make-up time currently appears under the rostering arrangements provision in clause 18.6 of the Exposure Draft. We do not propose to make any further amendments.

(xi) Clause 27.2 – Shiftwork arrangements

[417] Clause 27.2 (b) (Changes to shifts), provides (in part):

> **(b)** Changes to shifts
>
> (i) Consultation
>
> Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must comply with clause 34.2. [emphasis added]

[418] The CFMMEU submits that the formulation in clause 27.2(b)(i) is a new term which currently does not exist in the current award.

[419] The reference to 'clause 34.2' in clause 27.2(b)(i) is a reference to the '*Consultation about changes to rosters or hours of work*' model award term.

[420] However, the CFMMEU submits that:

> 'it is also apparent that clause 34.1 (Consultation regarding major workplace change) in the ED is also relevant. This is because the definition of '*Significant effects*' in clause 34.1 also includes '*the alteration of hours of work'*. As such, it would seem appropriate that in clause 27.2(b)(i) there should be a reference to both clause 34.1 and 34.2.'

[421] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(xii) Clause 28.11 – Annual leave in advance

[422] The Note under clause 28.11(b) provides:

> NOTE: An example of the type of agreement required by clause 28.11 is set out at Schedule I – Piece Rates for Workers in Specified Districts. There is no requirement to use the form of agreement set out at Schedule I – Piece Rates for Workers in Specified Districts. [emphasis added]

[423] The CFMMEU submits that the references to Schedule I in clause 28.11(b) would appear to be an error and the correct references should be to 'Schedule J – Agreement to take annual leave in advance.'

[424] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(xiii) Clause 29.3 – Cashing out of personal/carer's leave

[425] Clause 29.3 reflects the terms of clause 34.4(a)(i) and (ii) of the current award which deal with the subject matter of cashing out of personal/carer's leave for the 'General Timber Stream' and the 'Wood and Timber Furniture Stream.'

[426] However, the existing clause 34.4(b) which deals with the payment of accrued personal/carer's leave for the 'Pulp and Paper stream' (in circumstances when an employee's employment ceases) has not been included in the Exposure Draft. Clause 34.4(b) provides as follows:

> **34.4**
>
> (b) In the Pulp and Paper stream, payment of excess accrued sick leave will be made to an employee, of a deceased employee's estate, in respect of accumulated entitlement upon:
>
> (i) retirement due to age or incapacity;
>
> (ii) termination of employment after ten years continuous service for other reasonable cause; or
>
> (iii) death whilst an employee of the business.

[427] The CFMMEU submits that clause 34.4(b) is a substantive provision; its non-inclusion in the Timber Award represents a significant diminution of an existing award entitlement and that it should be included in the Exposure Draft.

[428] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

(xiv) Schedules

[429] Clause 37 of the current award provides as follows:

> **37. Principles relating to the schedules to this award**

> 37.1 The schedules to this award describe special rates and conditions for employees working in various industry sectors. The schedules describe conditions and arrangements for each sector that are unique to each sector.
>
> 37.2 The main body of the award describes conditions and arrangements that are common for all sectors.
>
> 37.3 The provisions of the main body of this award, as varied, will apply to persons performing work provided for in these schedules unless such provisions are inconsistent with the provisions of this clause.

[430] Clause 37 has not been replicated in the Exposure Draft.

[431] Whilst the CFMMEU acknowledges that clause 37 may no longer be relevant (in its totality) its complete deletion may have unintended consequences.

[432] In a decision issued on 23 October 2015[54] a Full Bench decided to remove clause 37 from the award and we do not propose to reinsert it into the Exposure Draft.

[433] Schedule E (Piece Rates for Workers in Specified Districts) from the current award has been included in the Exposure Draft, renamed as Schedule H and remains essentially unchanged. Schedule H provides piece rates for workers (fallers) in the specified districts as follows:

- Bass District, Tasmania – faller's rate table;
- Eastern District of Tasmania – faller's rate table;
- Eastern and Bass Districts - softwood falling table; and
- Eastern and Bass Districts – cull falling rates

[434] Clause 37 of the current award, inter alia, makes clear that the provisions of the award apply to these categories of employees 'unless such provisions are inconsistent'.

[435] The CFMMEU submits that the Exposure Draft remains an important provision and in principle, a term to this effect should be included in the Exposure Draft for the avoidance of doubt.

[436] We agree with the CFMMEU and will amend the Exposure Draft and draft variation determination accordingly.

[437] We note that on 20 March 2020 the Overtime and Casual Employment Full Bench issued a decision[55] and variation determination[56] finalising the casual conversion clause in the Timber Award. We confirm that the Exposure Draft and variation determination will be updated to incorporate the casual conversion determination.

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[54] [2015] FWCFB 7236 at [306] – [307]

[55] [2020] FWCFB 1515

[56] PR717674

4.22 Wine Industry Award 2010

[438] Ai Group, the SA Wine Industry Association and the AWU filed submissions in relation to this award.

[439] Ai Group raises the following drafting errors:

- Replacing 20XX with 2020 in the title and in clauses 14.6 [15.9], 17.6(c) and (d)
- Clause 20.1(b) is a duplicate of clause 20.1(a) and should be deleted.

[440] We agree with Ai Group and will amend the Exposure Draft and variation determination accordingly.

[441] Ai Group raises two other issues.

(i) Clause 17.4 Piecework rates

[442] Clause 17.4 states:

> **17.4** The following clauses of this award do not apply to an employee on a piecework rate:
>
> (a) clause 13—Ordinary hours of work and rostering;
>
> (b) clause 19.3(c)—Meal allowance;
>
> (c) clause 23.3—Shiftworkers;
>
> (d) clause 23.1—Day workers; and
>
> (e) clause 22—Overtime.

[443] Clause 23.4 of the current award states:

> **23.4** The following clauses of this award do not apply to an employee on a piecework rate:
>
> (a) clause 24.3 – Meal allowance; and
>
> (b) clause 28 – Ordinary hours of work and rostering; and
>
> (c) clause 30 – Overtime and penalty rates

[444] Ai Group notes that clause 17.4 omits any reference to public holiday penalty rates and as a result, the Exposure Draft deviates substantially from the current clause 23.4. Ai Group proposes that this issue be resolved by deleting clause 17.4(d) and amending clause 17.4(c) so that it reads 'clause 23 – Penalty rates'.

[445] We agree with Ai Group and will amend the Exposure Draft and variation determination accordingly.

(ii) Clause 17.6(d) Piecework rate

[446] Ai Group submits that a similar issue arises in relation to clause 17.6(d) in that the clause omits any reference to public holiday penalty rates and as a consequence deviates substantially from the current clause 23.6. Ai Group proposes that this issue be resolved by deleting clause 17.6(d)(iv) and amending clause 17.6(d)(iii) so that it reads 'Clause 23 – Penalty rates'.

[447] We agree with Ai Group and will amend the Exposure Draft and variation determination accordingly.

[448] The SA Wine Industry Association raises five matters set out below.

(i) Clause 15 Minimum rates

[449] The matter raised concerns clause 15.3. To provide some context we set out clauses 15.1 to 15.3:

15.1 An employer must pay adult employees, other than those listed in clause 15.3, the following minimum ~~wages~~ rates for ordinary hours worked by the employee:

Employee classification	**Minimum weekly ~~wage~~ rate (full-time employees)**	**Minimum hourly rate**
	$	**$**
Grade 1	751.50	19.78
Grade 2	784.00	20.63
Grade 3	816.60	21.49
Grade 4	862.50	22.70
Grade 5	916.60	24.12

NOTE: See Schedule B – Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and ~~penalties~~penalty rates.

~~See Schedule B – Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties.~~

15.2 For the purpose of clause 15.1, any entitlement to a minimum ~~wage~~ rate expressed to be by the week means any entitlement which an employee would receive for performing 385 ordinary hours of work.

15.3 The following adult employees are not entitlement to the minimum ~~wages~~ rates set out in the table at clause 15.1:

(a) an adult apprentice (see clause 16 – Apprentice rates~~Apprentice rates~~); or
(b) a trainee (see clause 15.9 – National training wage~~Schedule E~~); or
(c) an employee receiving a supported wage (see Schedule E – Supported Wage System).

[450] The Association proposes that for 'the purposes of clarity' an additional paragraph be added to clause 15.3, as follows:

'(d) an employee that has agreed to a piecework rate in accordance with clause 17.'

[451] Clause 17 sets out the circumstances in which an employer and employee may enter into an agreement for the employee to be paid a piecework rate. The clause also deals with the content of such an agreement. For present purposes clauses 17.3 and 17.10 are particularly relevant:

> 17.3 An agreed piecework rate is paid instead of the minimum rates ~~wages~~ specified in clause 15—Minimum rates~~Minimum rates~~.
>
> …
>
> 17.10 Nothing in this award guarantees an employee on a piecework rate will earn at least the minimum weekly or hourly rate in this award for the type of employment and the classification level of the employee, as the employee's earnings are contingent on their productivity.

[452] Given the terms of clauses 17.3 and 17.10 it is our *provisional* view that clause 15.3 be amended as proposed by the Association.

> *(ii) Pieceworker public holiday rates (clauses 17.4(c)-(d) and 17.6(d)(iii)-(iv))*

[453] Clause 23 of the current awards deals with 'Piecework rates' and clause 23.4 provides:

> 23.4 The following clauses of this award do not apply to an employee on a piecework rates:
> (a) clause 24.3 – Meal allowance; and
> (b) clause 28 – Overtime hours of work and rostering; and
> (c) clause 30 – Overtime and penalty rates.

[454] The comparable provision in the Exposure Draft, clause 17.4, provides:

> 17.4 The following clauses of this award do not apply to an employee on a piecework rate:
>
> (a) clause 13—Ordinary hours of work and rostering;
> (b) clause 19.3(c)—Meal allowance;
> (c) clause 23.3—Shiftworkers;
> (d) clause 23.1—Day workers; and
> (e) clause 22—Overtime.

[455] The Association submits that there is a substantive difference between the Exposure Draft and the current award provision. Under the Exposure Draft public holiday penalties would apply to pieceworkers, whereas under the current award public holiday penalties are set out in clause 30 (which do not apply to pieceworkers because of the exclusion in clause 23.4(c)). In the Exposure Draft public holiday penalties for day workers are prescribed in clause 23.2, which is *not* one of the excluded clauses in clause 17.4.

[456] The Association submits that to bring the Exposure Draft into line with the current award clauses 17.4(c) and (d) should be replaced with 'clause 23 – Penalty rates' such that clause 17.4 would be amended as follows:

> 17.4 The following clauses of this award do not apply to an employee on a piecework rate:
>
> (a) clause 13—Ordinary hours of work and rostering;
> (b) clause 19.3(c)—Meal allowance;
> (c) clause 22 – Overtime
> (d) clause 23 – Penalty Rates
> ~~(c) clause 23.3 Shiftworkers;~~
> ~~(d) clause 23.1 Day workers; and~~
> ~~(e) clause 22 Overtime.~~

[457] Similar amendments would be made to clause 17.6 (d).

[458] It is our *provisional* view that clauses 17.4 and 17.6 (d) be amended as proposed by the Association.

(iii) Clause 20 Accident pay

[459] Clause 20.1 Definitions provides:

> **20.1 Definitions**
>
> For the purposes of ~~this~~ clause 20, the following definitions will apply:
>
> (a) Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
>
> (b) Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.
>
> (c) Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

[460] The Association notes that clause 20.1(b) simply duplicates clause 20.1(a) and proposes that clause 20.1(b) be deleted and clause 20.1(c) be renumbered 20.1(b).

[461] We agree and will delete clause 20.1(b).

(iv) Clause 22.1(b) Overtime for part time employees

[462] Clause 22.1(b) provides:

> (b) A part-time employee must be paid overtime rates in accordance with clause 22.2—Overtime rates for all time worked:
>
> (i) outside of the spread of ordinary hours in clause 13.6; and/or
>
> (ii) in excess of 38 ordinary hours per week; and/or
>
> (iii) in excess of the ordinary hours provided for in clause 13—Ordinary hours of work and rostering. (Emphasis added)

[463] Clause 13.6 states:

> **13.6 Ordinary hours of work—day workers**
>
> (a) Ordinary hours are worked between the hours of 6.00 am and 6.00 pm, Monday to Friday, subject to the following exceptions:
>
> (i) ordinary hours for an employee rostered to perform work in the cellar door are to be worked between 6.00 am and 6.00 pm, Monday to Friday, and 8.00 am and 6.00 pm on Saturday and Sunday; and
>
> (ii) ordinary hours for an employee rostered to perform work in the vineyard are to be worked between 5.00 am and 6.00 pm, Monday to Saturday, during the period of the vintage.
>
> (b) Vineyard employees during the vintage
>
> (i) For the purposes of clause 13.6, vintage means a period not exceeding ~~six~~6 months between November and June inclusive, which starts on the date when the harvest of wine grapes begins at a particular vineyard and ends on the date the last wine grapes are harvested at that vineyard.
>
> (ii) The employer must make and retain a record of the beginning and end of each vintage in conjunction with relevant time and wages records.
>
> (c) The spread of hours may be varied by agreement between an employer and the majority of employees in the relevant workplace or the section or sections of it.

[464] The comparable provision in the current award is clause 12.4(a), which states:

> **12.4** A part-time employee must be paid overtime rates in accordance with clause 30—Overtime and penalty rates for all time worked:
>
> (a) outside of the spread of ordinary hours; and/or
>
> …

[465] The Association submits:

> ‘The wording in the exposure clause is tighter than in the existing clause, which reads that overtime would apply to any hours worked outside of day work hours. This could be incorrectly interpreted to mean that any hours, including shiftwork ordinary hours, would attract overtime

rates. Remove 'in clause 13.6.' This would allow for shift work and associated shift penalty rates to be paid.'[57]

[466] Interested parties are invited to comment on the Association's submissions and proposed amendment.

(v) Clause 22.1(c) Overtime for casual employees

[467] Clause 22.1(c) provides:

> (c) A casual employee must be paid overtime rates in accordance with clause 22.2—Overtime rates for all time worked:
>
> (i) outside of the spread of ordinary hours in clause 13.6; and/or
>
> (ii) in excess of 38 ordinary hours per week; and/or
>
> (iii) in excess of the ordinary hours provided for in clause 13—Ordinary hours of work and rostering.

[468] The comparable provision in the current award is clause 13.4(a) which states:

> **13.4 Overtime**
>
> (a) A casual employee must be paid overtime rates in accordance with clause 30—Overtime and penalty rates for all time worked:
>
> (i) outside of the spread of ordinary hours; and/or
>
> (ii) in excess of 38 ordinary hours per week; and/or
>
> (iii) in excess of the ordinary hours provided for in clause 28—Ordinary hours of work and rostering.

[469] The Association submits:

> 'The wording in the exposure clause is tighter than in the existing clause, which reads that overtime would apply to any hours worked outside of day work hours. This could be incorrectly interpreted to mean that any hours, including shiftwork ordinary hours, would attract overtime rates. Remove 'in clause 13.6'. This would allow for shift work and associated shift penalty rates to be paid.'[58]

[470] Interested parties are invited to comment on the Association's submissions and proposed amendment.

[471] The AWU raises two issues.

(i) Clause 24.4

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[57] Association submission, 4 March 2020 at paragraph 4

[58] Ibid, at paragraph 5

[472] Clause 24.4 provides:

> **24.4 Annual leave loading**
>
> During a period of annual leave an employee must be paid a shift penalty, in addition to their base rate of pay as referred to in section 90(1) of the Act, as follows:
>
> **(a) Day work**
>
> An employee who would have worked on day work only had they not been on leave must be paid a loading equal to 17.5% of their base rate of pay as referred to in section 90(1) of the Act or the relevant weekend penalty rates, whichever is the greater but not both.
>
> **(b) Shiftwork**
>
> An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of their base rate of pay as referred to in section 90(1) of the Act or the shift penalty including relevant weekend penalty rates, whichever is the greater but not both.
>
> **(c) Piecework**
>
> An employee on a piecework rate must be paid a loading equal to 20% of their base rate of pay.

[473] Clause 31.4 of the current award provides:

> **31.4 Annual leave loading**
>
> During a period of annual leave an employee must be paid a loading, in addition to their base rate of pay as referred to in s.90(1) of the Act, as follows:
>
> (a) Day work
>
> An employee who would have worked on day work only had they not been on leave must be paid a loading equal to 17.5% of their base rate of pay as referred to in s.90(1) of the Act or the relevant weekend penalty rates, whichever is the greater but not both.
>
> (b) Shiftwork
>
> An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of their base rate of pay as referred to in s.90(1) of the Act or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.
>
> (c) Piecework
> An employee on a piecework rate must be paid a loading equal to 20% of their base rate of pay.

[474] The AWU submits that it is unclear why the leave loading has been referred to as a 'shift penalty' in clause 24.4 of the Exposure Draft when it is referred to as a 'loading' in clause 31.4 of the current award.

[475] The reference to the 'shift loading' in clause 24.4 has been amended to 'shift penalty' to reflect changes in terminology throughout the exposure draft. All references to 'shift loadings' in the exposure draft have been changed to 'shift penalties' and clause 24.4 has been amended so that the terminology is used consistently. We do not propose to make any amendment to clause 24.4.

(ii) Schedule B.2.3

[476] The AWU submits that there is 'no dispute'[59] that the 25% casual loading is only paid when overtime is worked on a Sunday or public holiday, as per clause 22.1(d) and on that basis the rates table that had been deleted can be re-inserted.

PRESIDENT

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[59] See [1.2] of this ABI correspondence: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf and [6] of this FWC Statement: https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm at [6].

ATTACHMENT A– Awards in Tranche 3

Aircraft Cabin Crew Award 2010
Amusement, Events and Recreation Award 2010
Broadcasting, Recorded Entertainment and Cinemas Award 2010
Business Equipment Award 2010
Dredging Industry Award 2010
Educational Services (Teachers) Award 2010
Electrical, Electronic and Communications Contracting Award 2010
Fitness Industry Award 2010
Food, Beverage and Tobacco Manufacturing Award 2010
Funeral Industry Award 2010
General Retail Industry Award 2010
Graphic Arts, Printing and Publishing Award
Health Professionals and Support Services Award 2010
Horse and Greyhound Training Award 2010
Horticulture Award 2010
Journalists Published Media Award 2010
Live Performance Award 2010
Nurses Award 2010
Marine Towage Award 2010
Marine Tourism and Charter Vessels Award 2010
Miscellaneous Award 2010
Pest Control Industry Award 2010
Ports, Harbours and Enclosed Water Vessels Award 2010
Professional Employees Award 2010
Racing Clubs Events Award 2010
Registered and Licensed Clubs Award 2010
Seagoing Industry Award 2010
Security Services Industry Award 2010
Sugar Industry Award 2010

Supported Employment Services Award 2010
Telecommunications Services Award 2010
Textile, Clothing, Footwear and Associated Industries Award 2010
Timber Industry Award 2010
Wine Industry Award 2010