

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Group 1A – 1B Revised Exposure Drafts

23 September 2016

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

GROUP 1A – 1B EXPOSURE DRAFTS

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1. INTRODUCTION

1. On 9 September 2016, the Fair Work Commission (**Commission**) published revised exposure drafts in respect of the group 1A – 1B exposure drafts. On that same date, parties were asked to review the revised exposure drafts and advise of any errors in the latest amendments.
2. The Australian Industry Group (Ai Group) has an interest in each of the ten exposure drafts published:
 - *Exposure Draft – Aluminium Industry Award 2015;*
 - *Exposure Draft – Ambulance and Patient Transport Industry Award 2015;*
 - *Exposure Draft – Asphalt Industry Award 2015;*
 - *Exposure Draft – Cement, Lime and Quarrying Award 2015;*
 - *Exposure Draft – Cleaning Services Award 2015;*
 - *Exposure Draft – Concrete Products Award 2015;*
 - *Exposure Draft – Cotton Ginning Award 2015;*
 - *Exposure Draft – Premixed Concrete Award 2015;*
 - *Exposure Draft – Salt Industry Award 2015; and*
 - *Exposure Draft – Security Services Industry Award 2015.*
3. This submission addresses each of the aforementioned exposure drafts pursuant to the Commission’s direction.

2. GENERAL ISSUES

4. A number of issues arising from the exposure drafts have been determined by the Commission over the course of the Review thus far. Such matters include:

- An amendment to the title of the exposure drafts by substituting ‘2014’ with ‘2015’;¹
- The terms of the commencement clause;²
- The deletion of the proposed supersession clause;³
- The removal of the absorption clause;⁴
- The retention of the take-home pay order provision;⁵
- An amendment to the provision that provides that the National Employment Standards (NES) and the relevant award provide the minimum conditions of employment;⁶
- A variation to the provision that imposes an obligation on an employer to ensure that a copy of the relevant award and NES is available to its employees;⁷
- An amendment to the text of the facilitative provisions;⁸

¹ [2015] FWCFB 4658 at [4].

² [2014] FWCFB 9412 at [11]; [2015] FWCFB 4658 at [4] and [2015] FWCFB 4658 at [8].

³ [2014] FWCFB 9412 at [9].

⁴ [2015] FWCFB 4658 at [9 – [20] and [2015] FWCFB 6656 at [74].

⁵ [2014] FWCFB 9412 at [16] and [2015] FWCFB 6656 at [81].

⁶ [2014] FWCFB 9412 at [23] – [25].

⁷ [2014] FWCFB 9412 at [29].

⁸ [2014] FWCFB 9412 at [42].

- The application of the casual loading to the minimum hourly rate or the ordinary hourly rate, which is to be determined on an award by award basis;⁹
- The deletion of the proposed clause that would list award provisions that do not apply to casual employees;¹⁰
- The inclusion of a table in the ‘minimum wages’ clause in the body of an award that contains the minimum weekly rate and minimum hourly rate;¹¹
- The consequential removal of any columns from such a table that prescribe the ‘casual hourly rate’ or ‘ordinary hourly rate’ (where relevant);¹²
- The deletion of the proposed clause that would impose obligations on an employer regarding pay slips;¹³
- The insertion of a note that refers to Regulations 3.33 and 3.46 of the *Fair Work Regulations 2009*;¹⁴
- The deletion of summaries of the NES;¹⁵
- The insertion of a note in the annual leave provision of an award that refers to ss.16 and 90 of the *Fair Work Act 2009 (Act)*;¹⁶
- The definition of ‘all purpose’;¹⁷

⁹ [2015] FWCFB 4658 at [70] – [72] and [2015] FWCFB 6656 at [109].

¹⁰ [2014] FWCFB 9412 at [69].

¹¹ [2015] FWCFB 4658 at [54].

¹² [2015] FWCFB 4658 at [54];

¹³ [2014] FWCFB 9412 at [35] – [36].

¹⁴ [2015] FWCFB 4658 at [55] – [56].

¹⁵ [2014] FWCFB 9412 at [35] – [36].

¹⁶ [2015] FWCFB 4658 at [94].

¹⁷ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

- The definition for and use of the terms ‘minimum hourly rate’ and ‘ordinary hourly rate’;¹⁸
- The application of penalties and loadings to the minimum rate prescribed by an award to the exclusion of over-award payments;¹⁹
- The restoration of the tables containing rates of pay in the National Training Wage Schedule;²⁰
- The inclusion of tables that summarise hourly rates of pay in schedules attached to an award, noting that a ‘one size fits all’ approach may not be appropriate;²¹ and
- The insertion of a note in the schedules summarising hourly rates of pay, which states that an employer meeting their obligations under the schedule is meeting their obligations under the award.²²

5. Whilst reviewing the revised group 1A – 1B exposure drafts, we have endeavoured to identify any instances in which they do not reflect the aforementioned matters.

Inconsistent terminology for shift loadings, shift allowances and shift rates, and consequent problems

6. Inconsistent terminology is used in the exposure drafts that will lead to interpretation difficulties if not addressed. In Ai Group’s view:
- An award provision which requires that shiftworkers be paid, say, 15% extra can legitimately be called a “*loading*”, but it cannot legitimately be called a “*penalty rate*” or a “*shift rate*”.

¹⁸ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

¹⁹ [2015] FWCFB 4658 at [95] – [96].

²⁰ [2014] FWCFB 9412 at [67].

²¹ [2014] FWCFB 9412 at [58] and [2015] FWCFB 4658 at [62].

²² [2015] FWCFB 4658 at [63].

- An award provision which states that shiftworkers are to be paid, say, 115% of the ordinary time rate cannot legitimately be referred to as a “loading” or an “allowance”, but it can be referred to as a “shift rate”.
 - The annual leave clause in an award cannot legitimately refer to the “shift loadings” in the shiftwork clause if the shift loadings (e.g. 15%) have been replaced with shift rates (e.g. 115%) and the loading is not separately identified.
 - The annual leave clause in the award cannot provide that an employee is to receive a 17.5% loading or any higher “shift penalty”, if the former shift penalty of, say, 15% has been redrafted as 115%.
7. To address the above problems Ai Group proposes the following standard approach, unless the terms of a particular award warrant a different approach:
- Additional payments for shiftwork that are expressed as a percentage should be called “loadings”;
 - Additional payments for shiftwork that are expressed as a flat dollar amount should be called “allowances”;
 - “Shift rates” should identify the amount of the loading. For example:

Shift rates

An employee whilst working afternoon shift will be paid 115% of their ordinary hourly rate of pay. This rate includes a shift loading of 15%.

3. EXPOSURE DRAFT – ALUMINIUM INDUSTRY AWARD 2015

Clause 1.5 – Title and commencement

8. Consistent with the Commission’s earlier decision regarding the absorption clause,²³ clause 1.5 should be deleted.

Clause 10.1 – Adult employees

9. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
10. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
11. We acknowledge that clause 6.5(j) may be argued to provide that part-time employees are in fact only entitled to receive terms and conditions on a pro-rata basis equivalent to full-time employees. We similarly acknowledge that clause 6.6(c) could be argued to clarify that a casual employee is entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Clause 11.1(a) – All purpose allowances

12. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”,²⁴ clause 11.1(a) should be inserted by inserting the word “annual” before “leave”.

²³ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

²⁴ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

Clause 14.4 – Rest period after overtime

13. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)²⁵, clause 14.4 should be varied by inserting “ordinary hourly rate” after “200%”.

Clause 15.1(b)(iii) – Annual leave

14. Clause 15.1(b)(iii) of the exposure draft operates in a similar vein to provisions previously found in many modern awards that required the accrual of annual leave to shiftworkers on an incremental basis, rather than progressively. An example is the previous clause 41.3(b) of the *Manufacturing and Associated Industries and Occupations Award 2010*:

(b) Where an employee with 12 months continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

15. Such provisions have been removed in multiple awards, pursuant to a decision of the Commission earlier in the Review regarding NES inconsistencies.²⁶ At that time, the *Aluminium Industry Award 2010* was not identified as an award that contains such a provision.
16. Having regard to the operation of clause 15.1(b)(iii) of the exposure draft, it appears to us that the provision is similarly inconsistent with s.87(2) of the NES and should therefore be deleted.

Problems with inconsistent terminology - shiftworkers

17. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

²⁵ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

²⁶ [2015] FWCFB 3023 at [5] – [13].

- In clause 13.1, the words “Shiftwork penalties” should be placed with “Shiftwork allowances”;
- In clause 13.1(a), the words “shiftwork loading” should be replaced with “shiftwork allowance”;
- In clause 13.1(b), the words “shiftwork loading” should be replaced with “shiftwork allowance”;
- In clause 13.4, the words “Extra rates” in the heading and the first sentence should be replaced with “Extra rates and shift allowances”; and
- In clause 14.3, the words “shift penalties” should be replaced with “shiftwork allowances”.

4. EXPOSURE DRAFT – AMBULANCE AND PATIENT TRANSPORT INDUSTRY AWARD 2015

Clause 1.5 – Title and commencement

18. Consistent with the Commission’s earlier decision regarding the removal of the absorption clause²⁷, clause 1.5 should be deleted.

Clause 10 – Minimum wages

19. The same problem identified in the previous section in relation to the *Exposure Draft – Aluminum Industry Award 2015* arises in clause 10 of the *Exposure Draft – Ambulance and Patient Transport Industry Award 2015*. The preamble in clause 10.1 specifies that an employer must pay “*employees the following minimum wages for ordinary hours worked by the employee*” and the tables that follow in clauses 10.2, 10.3, 10.4 and 10.5 then set out the minimum weekly rates and minimum hourly rates for each of the classifications. As the preamble is not confined to full-time employees, on a literal reading, this could be interpreted as requiring the payment of the minimum weekly rate to all adult employees.
20. As mentioned in the previous section, this problem could be rectified by including the words “(full-time employees)” below the heading “Minimum weekly rate” in the second column of the tables in clauses 10.2, 10.3, 10.4 and 10.5 respectively. This would be consistent with the amendments that have been made in various group 3 exposure drafts in response to this issue.

Clause 11.2(a) – All purpose allowances

21. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”²⁸, clause 11.2(a) should be amended by inserting the word “annual” before “leave”.

²⁷ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

²⁸ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

Problems with inconsistent terminology - shiftworkers

22. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

- In clause 15.5(a), the reference to “shift penalties” should be deleted. In this award, a shift “allowance” is payable as set out in the Allowances clause. See clause 11.2(g) and clause 13.3.

5. EXPOSURE DRAFT – ASPHALT INDUSTRY AWARD 2015

Clause 1.5 – Title and commencement

23. Consistent with the Commission's earlier decision regarding the absorption clause,²⁹ clause 1.5 should be deleted.

Clause 10.1 – Adult employees

24. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
25. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
26. We acknowledge that clause 6.5(j) may be argued to provide that part-time employees are in fact only entitled to receive terms and conditions on a pro-rata basis equivalent to full-time employees. We similarly acknowledge that clause 6.4(d) could be argued to clarify that a casual employee is entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Clause 11.1(a) – All purpose allowances

27. Consistent with the Commission's earlier decision regarding the definition of “all purpose”³⁰, clause 11.1(a) should be inserted by inserting the word “annual” before “leave”.

²⁹ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

³⁰ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

Clause 15.2(b) – Seven day shiftworkers

28. Clause 15.2(b) of the exposure draft operates in a similar vein to provisions previously found in many modern awards that required the accrual of annual leave to shiftworkers on an incremental basis, rather than progressively. An example is the previous clause 41.3(b) of the *Manufacturing and Associated Industries and Occupations Award 2010*:

(b) Where an employee with 12 months continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

29. Such provisions have been removed in multiple awards, pursuant to a decision of the Commission earlier in the Review regarding NES inconsistencies.³¹ At that time, the *Asphalt Industry Award 2010* was not identified as an award that contains such a provision.

30. Having regard to the operation of clause 15.2(b) of the exposure draft, it appears to us that the provision is similarly inconsistent with s.87(2) of the NES and should therefore be deleted.

Schedule A.1.2 – Full-time and part-time employees

31. Clause A.1.2 is unnecessary as the industry allowance and the inclement weather allowance are the only all purposes allowances contained in this award. Both are payable to all employees. Therefore, A.1.2 should be deleted.

Problems with inconsistent terminology - shiftworkers

32. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

- In clause 13.2(b)(i), the following additional sentence should be added: “This rate includes a shift loading of 15%”.

³¹ [2015] FWCFB 3023 at [5] – [13].

- In clause 13.2(b)(ii), the following additional sentence should be added:
“This rate includes a shift loading of 50%”.
- In clause 13.2(b)(i), the following additional sentence should be added:
“This rate includes a shift loading of 100%”.
- In clause 13.2(b)(i), the following additional sentence should be added:
“This rate includes a shift loading of 30%”.
- In clause 15.6(b)(ii), the words “shift penalty” should be replaced with “shift loading”.

6. EXPOSURE DRAFT – CEMENT, LIME AND QUARRYING AWARD 2015

Clause 1.5 – Title and commencement

33. Consistent with the Commission’s earlier decision regarding the absorption clause,³² clause 1.5 should be deleted.

Clause 10.1 – Cement and lime industry wages

34. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
35. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
36. We acknowledge that clause 6.4(f) and clause 6.5(b) could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Clause 10.2 – Quarrying industry wages

37. The preamble in clause 10.2 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
38. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This

³² [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

amendment has been made in various group 3 exposure drafts in light of the issue we have identified.

39. We acknowledge that clause 6.4(f) and clause 6.5(b) could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Clause 11.2(a) – All purpose allowances

40. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”,³³ clause 11.2(a) should be inserted by inserting the word “annual” before “leave”.

Clause 14.1(e) – Overtime – cement and lime industry

41. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)³⁴, clause 14.1(e) should be varied by inserting “ordinary hourly rate” after “200%”.

Clause 14.2(d) – Overtime – quarrying industry

42. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)³⁵, clause 14.2(d) should be varied by inserting “ordinary hourly rate” after “150%”.

Clause 14.2(d) – Overtime – quarrying industry

43. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an

³³ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

³⁴ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

³⁵ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

award (to the exclusion of over-award payments)³⁶, clause 14.2(d) should be varied by inserting “ordinary hourly rate” after “200%” each time it appears.

Clause 14.2(e) – Overtime – quarrying industry

44. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)³⁷, clause 14.2(e) should be varied by inserting “ordinary hourly rate” after “200%”.

Clause 15.2(b) – Seven day shiftworkers

45. Clause 15.2(b) of the exposure draft operates in a similar vein to provisions previously found in many modern awards that required the accrual of annual leave to shiftworkers on an incremental basis, rather than progressively. An example is the previous clause 41.3(b) of the *Manufacturing and Associated Industries and Occupations Award 2010*:

(b) Where an employee with 12 months continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

46. Such provisions have been removed in multiple awards, pursuant to a decision of the Commission earlier in the Review regarding NES inconsistencies.³⁸ At that time, the *Cement and Lime Award 2010* and the *Quarrying Industry Award 2010* were not identified as awards that contain such a provision.
47. Having regard to the operation of clause 15.2(b) of the exposure draft, it appears to us that the provision is similarly inconsistent with s.87(2) of the NES and should therefore be deleted.

³⁶ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

³⁷ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

³⁸ [2015] FWCFB 3023 at [5] – [13].

Problems with inconsistent terminology - shiftworkers

48. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

- In clause 13.1, the following additional sentence should be added at the end: “These rates include a shift loading of 15%”.
- Clause 13.2(a) should be reformatted as follows and the underlined words added:
 - (a) **Night shift** means any shift finishing after midnight and at or before 8.00am.
 - (i) If the employee is rostered to work a night shift, the employee must be paid at 115% of the ordinary hourly rate for such shift. A casual employee will be paid at 140% of the ordinary hourly rate. These rates include a 15% shift loading.
 - (ii) An employee working permanent night shifts will be paid at 130% of the ordinary hourly rate. A casual employee will be paid at 155% of the ordinary hourly rate. These rates include a 30% shift loading.
- In clause 15.6(b), the words “shift penalties” should be replaced with “shift loadings”.

7. EXPOSURE DRAFT – CLEANING SERVICES AWARD 2015

Clause 1.5 – Title and commencement

49. Consistent with the Commission's earlier decision regarding the absorption clause³⁹, clause 1.5 should be deleted.

Clause 6.4(b) – Part-time employees

50. Consistent with the Commission's earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)⁴⁰, clause 6.4(b) should be varied by inserting "minimum hourly rate" after "15%". The "minimum hourly rate" is defined in Schedule G as the rate prescribed in clause 10 of the exposure draft.

Clause 10.1 – Minimum wages

51. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
52. In order to rectify this, it may be sufficient to include the words "(full-time employees)" below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
53. We acknowledge that clause 6.4(a)(iii) and clause 6.5 could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

³⁹ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁴⁰ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

Clause 13.3 – Penalty rates

54. The table at clause 13.3 does not specify the rate upon which the ‘penalties’ identified are to be calculated. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)⁴¹, 13.3 should be varied by inserting a reference to the “minimum hourly rate”.

Clause 15.2(b) – Definition of shiftworkers

55. Clause 15.2(b) of the exposure draft operates in a similar vein to provisions previously found in many modern awards that required the accrual of annual leave to shiftworkers on an incremental basis, rather than progressively. An example is the previous clause 41.3(b) of the *Manufacturing and Associated Industries and Occupations Award 2010*:

(b) Where an employee with 12 months continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

56. Such provisions have been removed in multiple awards, pursuant to a decision of the Commission earlier in the Review regarding NES inconsistencies.⁴² At that time, the *Cleaning Services Award 2010* was not identified as an award that contains such a provision.
57. Having regard to the operation of clause 15.2(b) of the exposure draft, it appears to us that the provision is similarly inconsistent with s.87(2) of the NES and should therefore be deleted.

⁴¹ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

⁴² [2015] FWCFB 3023 at [5] – [13].

Clauses 15.6 and 15.7 – Payment for annual leave

58. As identified in Commissioner Cribb's report of 7 May 2015, in principle agreement was reached between various interested parties regarding a proposed amendment to the current clauses 29.3 and 29.4. Regrettably, the precise wording that would give effect to that agreement was not subsequently filed by the parties. This appears to have been an oversight. As a result, the exposure draft does not contain the necessary amendment.
59. We respectfully request that parties be afforded an opportunity to discuss and develop a draft variation for the Commission's consideration.

8. EXPOSURE DRAFT – CONCRETE PRODUCTS AWARD 2015

Clause 1.5 – Title and commencement

61. Consistent with the Commission’s earlier decision regarding the absorption clause⁴³, clause 1.5 should be deleted.

Clause 9.1(c) – Unpaid meal breaks

62. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)⁴⁴, clause 9.1(c) should be varied by inserting “150% of the ordinary hourly rate” instead of “time and a half”.

Clause 10.2 – Minimum wages

63. The preamble in clause 10.2 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
64. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
65. We acknowledge that clause 6.4(b) and clause 6.5(e) could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

⁴³ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁴⁴ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

Clause 10.2(a) – Minimum wages

66. Given that the fourth and fifth columns have been deleted, the footnote should also be deleted.

Clause 10.2(b) – Minimum wages

67. Given that the fourth and fifth columns have been deleted, the footnote should also be deleted.

Clause 11.1 – Allowances

68. The “0” should be replaced with “Schedule G”. This appears to be a drafting error.

Clause 11.2(a) – All purpose allowances

69. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”⁴⁵, clause 11.2(a) should be inserted by inserting the word “annual” before “leave”.

Clauses 13.3(c) and 13.3(d) – Hours – other than continuous work

70. Clauses 13.3(c) and (d) should be deleted as they are repeated at clause 13.3(e).

Schedule G – Definitions – all purpose

71. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”⁴⁶, the definition in Schedule G should be varied by inserting the word “annual” before “leave”.

⁴⁵ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

⁴⁶ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

Problems with inconsistent terminology - shiftworkers

72. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

- In clause 13.6, the heading “Afternoon and night shift allowances” should be replaced with “Afternoon and night shift rates”;
- In clause 13.6(a), the following additional sentence should be added at the end: “This rate includes a shift loading of 15%”.
- In clause 13.6(b), the following additional sentence should be added at the end: “These rates include shift loadings of 50% and 100% respectively”.
- In clause 13.6(c), the following additional sentence should be added at the end: “This rate includes a shift loading of 25%”.
- In clause 13.10, the words “shift allowances” should be replaced with “shift loadings”.
- In clause 15.8(b)(ii), the words “shift penalty” should be replaced with “shift loading”.

9. EXPOSURE DRAFT – COTTON GINNING AWARD 2015

Clause 1.5 – Title and commencement

73. Consistent with the Commission's earlier decision regarding the absorption clause⁴⁷, clause 1.5 should be deleted.

Schedule 11.2(a) – All purpose allowances

74. Consistent with the Commission's earlier decision regarding the definition of "all purpose"⁴⁸, the definition in clause 11.2(a) should be varied by inserting the word "annual" before "leave".

Problems with inconsistent terminology - shiftworkers

75. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:

- In clause 13.1, the following additional sentence should be inserted underneath the table: "The 115% penalty rate in the above table includes a shift loading of 15%".
- In clause 15.2, the words "night work loading" should be replaced with "shift loading".

⁴⁷ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁴⁸ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

10. EXPOSURE DRAFT – PREMIXED CONCRETE AWARD 2015

Clause 1.5 – Title and commencement

76. Consistent with the Commission’s earlier decision regarding the absorption clause⁴⁹, clause 1.5 should be deleted.

Clause 10.1 – Minimum wages

77. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.

78. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.

79. We acknowledge that clause 6.4(f) and clause 6.5(b) could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Schedule 11.2(a) – All purpose allowances

80. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”⁵⁰, the definition in clause 11.2(a) should be varied by inserting the word “annual” before “leave”.

Clause 15.2(b) – Seven day shiftworkers

81. Clause 15.2(b) of the exposure draft operates in a similar vein to provisions previously found in many modern awards that required the accrual of annual

⁴⁹ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁵⁰ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

leave to shiftworkers on an incremental basis, rather than progressively. An example is the previous clause 41.3(b) of the *Manufacturing and Associated Industries and Occupations Award 2010*:

(b) Where an employee with 12 months continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

82. Such provisions have been removed in multiple awards, pursuant to a decision of the Commission earlier in the Review regarding NES inconsistencies.⁵¹ At that time, the *Premixed Concrete Award 2010* was not identified as an award that contains such a provision.
83. Having regard to the operation of clause 15.2(b) of the exposure draft, it appears to us that the provision is similarly inconsistent with s.87(2) of the NES and should therefore be deleted.

Problems with inconsistent terminology - shiftworkers

84. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:
- In clause 13.1, the following sentence should be added under the table: “The rates for afternoon shiftworkers, night shiftworkers and permanent night shiftworkers include shift loadings of 15%, 15% and 30% respectively.”
 - In clause 15.6(a)(ii), the words “shift penalties” should be replaced with “shift loadings”.

⁵¹ [2015] FWCFB 3023 at [5] – [13].

11. EXPOSURE DRAFT – SALT INDUSTRY AWARD 2015

Clause 1.5 – Title and commencement

85. Consistent with the Commission’s earlier decision regarding the removal of the absorption clause⁵², clause 1.5 should be deleted.

Clause 10.1 – Adult employees

86. The same problem identified in previous sections of this submission in relation to other Group 1A-1B Revised Exposure Drafts arises in clause 10.1 of the *Exposure Draft – Salt Industry Award 2015*. That is, as the preamble in clause 10.1 is not confined to full-time employees, a literal reading of the clause appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees.
87. In order to rectify the issue, the words “(full-time employees)” should be included below the heading “Minimum weekly rate” in the second column of the table. This would be consistent with the amendments that have been made in various group 3 exposure drafts in response to this issue.

Clause 10.2 – Junior employees

88. Consistent with the approach taken in clause 10.1, the rates expressed in clause 10.2 should be the minimum weekly rate and the minimum hourly rate (rather than rates that incorporate the all purpose allowances). This is also consistent with the Commission’s earlier decision⁵³ in this regard.

Clause 11.3(a) – All purpose allowances

89. Consistent with the Commission’s earlier decision regarding the definition of “all purpose”⁵⁴, clause 11.3(a) should be amended by inserting the word “annual” before “leave”.

⁵² [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁵³ [2015] FWCFB 4658 at [54].

⁵⁴ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [91].

Clause 13.1(a) – Shiftwork penalties

90. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
91. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁵⁵ of the Commission in this regard.

Clause 13.1(b) – Shiftwork penalties

92. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
93. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁵⁶ of the Commission in this regard.

Clause 13.2(a) – Weekend work

94. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
95. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁵⁷ of the Commission in this regard.

⁵⁵ [2015] FWCFB 4658 at [95] – [96].

⁵⁶ [2015] FWCFB 4658 at [95] – [96].

⁵⁷ [2015] FWCFB 4658 at [95] – [96].

Clause 13.2(b) – Weekend work

96. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
97. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁵⁸ of the Commission in this regard.

Clause 13.3 – Public holidays

98. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
99. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁵⁹ of the Commission in this regard.

Clause 14.2(a)(i) – Overtime payments – employees other than continuous shiftworkers

100. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
101. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁶⁰ of the Commission in this regard.

⁵⁸ [2015] FWCFB 4658 at [95] – [96].

⁵⁹ [2015] FWCFB 4658 at [95] – [96].

⁶⁰ [2015] FWCFB 4658 at [95] – [96].

Clause 14.2(a)(ii) – Overtime payments – employees other than continuous shiftworkers

102. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.

103. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁶¹ of the Commission in this regard.

Clause 14.2(a)(iii) – Overtime payments – employees other than continuous shiftworkers

104. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.

105. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁶² of the Commission in this regard.

Clause 14.3 – Overtime payments – employees other than continuous shiftworkers

106. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.

107. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁶³ of the Commission in this regard.

⁶¹ [2015] FWCFB 4658 at [95] – [96].

⁶² [2015] FWCFB 4658 at [95] – [96].

⁶³ [2015] FWCFB 4658 at [95] – [96].

Clause 14.5(b) – Time off instead of overtime payment

108. The words “ordinary hourly base rate of pay should be replaced with “minimum hourly rate”.
109. We note that “base rate of pay” is defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision⁶⁴ of the Commission in this regard.

Problems with inconsistent terminology - shiftworkers

110. The problems referred to in paragraphs 6 and 7 of this submission exist in this exposure draft. To address the problems, the following amendments should be made:
- In clause 13.1(a), the following additional sentence should be added at the end: “This rate includes a shift loading of 15%”.
 - In clause 13.1(b), the following additional sentence should be added at the end: “This rate includes a shift loading of 30%”.
 - In clause 13.2, replace the word “loadings” with “penalty rates”.

⁶⁴ [2015] FWCFB 4658 at [95] – [96].

12. EXPOSURE DRAFT – SECURITY SERVICES INDUSTRY AWARD 2015

Clause 1.5 – Title and commencement

111. Consistent with the Commission’s earlier decision regarding the absorption clause⁶⁵, clause 1.5 should be deleted.

Clause 3.7 – Coverage

112. In the ‘note’ following clause 3.7, “2014” should be replaced with “2015”.

Clause 6.5(c)(ii) – Casual loading

113. The words “base rate” should be replaced with “minimum hourly rate”, consistent with the approach adopted by the Commission elsewhere in the exposure draft, including the preceding subclause.

114. We note that “base rate” is not a defined term in the exposure draft. If it were read to adopt the meaning of “base rate of pay” in s.16 of the Act, this would include overaward payments, the effect of which would be inconsistent with an earlier decision⁶⁶ of the Commission in this regard.

Clause 9.3(c) – Minimum break – overtime

115. The reference to “200% ordinary time” should be replaced with “200% of the minimum hourly rate”, consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments).⁶⁷

⁶⁵ [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74].

⁶⁶ [2015] FWCFB 4658 at [95] – [96].

⁶⁷ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

Clause 10.1 – Minimum wages

116. The preamble in clause 10.1 is not confined to full-time employees. As a result, a literal reading of it appears to require the payment of the minimum weekly rate to all adult employees, including part-time and casual employees. We proceed on the basis that this is not the intended effect of the provision.
117. In order to rectify this, it may be sufficient to include the words “(full-time employees)” below the heading of the second column of the table. This amendment has been made in various group 3 exposure drafts in light of the issue we have identified.
118. We acknowledge that clause 6.4(a)(iii) and clause 6.5(c) could be argued to clarify that part-time and casual employees are entitled to the hourly rate. Nonetheless, the change we have proposed should be made in the interests of ensuring that the exposure draft is simple and easy to understand.

Clause 13 – Penalty rates

119. The table at clause 13 does not specify the rate by reference to which the penalty rates are to be calculated. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)⁶⁸, clause 13 should be varied by inserting a reference to the “minimum hourly rate”.

Clause 14.3 – Penalty rates

120. The table at clause 14.3 does not specify the rate by reference to which the penalty rates are to be calculated. Consistent with the Commission’s earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award

⁶⁸ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

payments)⁶⁹, clause 14.3 should be varied by inserting a reference to the “minimum hourly rate”.

Schedule B.4 – Casual employee – overtime rates

121. The heading at B.4 should be deleted. This appears to be a drafting error.

⁶⁹ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].