



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Award stage—Group 3

(AM2014/217 and others)

JUSTICE ROSS, PRESIDENT
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT CLANCY
COMMISSIONER ROE
COMMISSIONER JOHNS

MELBOURNE, 6 JULY 2017

4 yearly review of modern awards – Award stage – exposure drafts – Group 3 awards.

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ABBREVIATIONS

ABI	Australian Business Industrial and New South Wales Business Chamber (jointly ABI)
ACTU	Australian Council of Trade Unions
AFEI	Australian Federation of Employers and Industries
Ai Group	Australian Industry Group
AIMPE	The Australian Institute of Marine and Power Engineers
AIRC	Australian Industrial Relations Commission
AMOU	The Australian Maritime Officers' Union
APESMA	The Association of Professional Engineers, Scientists and Managers, Australia
ASU	Australian Municipal, Administrative, Clerical and Services Union
AWU	The Australian Workers' Union
Business SA	South Australian Employers' Chamber of Commerce and Industry Inc trading as Business SA
CEPU	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
CFMEU	Construction, Forestry, Mining and Energy Union
Commission	Fair Work Commission
CPSU	Community and Public Sector Union
<i>December 2014 decision</i>	Full Bench decision re exposure drafts in Group 1A and 1B – General drafting – alleged inconsistencies with NES – 23 December 2014 [2014] FWCFB 9412
FW Act	<i>Fair Work Act 2009</i> (Cth)
FWO	Fair Work Ombudsman
FSU	Finance Sector Union of Australia
HSU	Health Services Union of Australia
<i>July 2015 decision</i>	Full Bench decision re exposure drafts in Group 1A and 1B – drafting and technical issues – ordinary hourly rate of pay – 13 July 2015 [2015] FWCFB 4658
MIAL	Maritime Industry Australia Ltd
MUA	Maritime Union of Australia
NES	National Employment Standards
NFF	National Farmers' Federation
QIRC	Queensland Industrial Relations Commission
Review	4 yearly review of modern awards under s.156 of the <i>Fair Work Act 2009</i>
SCAA	Shearing Contractors Association of Australia

SDA	Shop, Distributive and Allied Employees Association
<i>September 2015 decision</i>	Full Bench decision re exposure drafts in Group 1A and 1B – drafting and technical issues – Absorption clause – casual loading – 30 September 2015 [2015] FWCFB 6656
the Market Research Report	Report by Justice Ross; Four yearly Review of Modern Awards: Market and Social Research Award 2010 – 6 July 2016
the Pastoral award	<i>Pastoral Award 2010</i>
The Port Authorities award	<i>Port Authorities Award 2010</i>
The Ports award	<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>

1. Introduction

[1] Section 156 of the *Fair Work Act 2009* (the Act) requires the Fair Work Commission (the Commission) to review all modern awards every four years (the Review). In the Award stage of the Review the 122 modern awards have been divided into 4 groups. This decision deals with the technical and drafting issue issues arising out of the awards in Group 3.¹ The 33 awards allocated to Group 3 are listed at Attachment A to this decision.

[2] This decision should be read in conjunction with earlier decisions and statements concerning the Review, and in particular the decisions of 23 December 2014² (the *December 2014 decision*), 13 July 2015³ (the *July 2015 decision*) and 30 September 2015⁴ (the *September 2015 decision*) in which the Commission dealt with a number of general drafting and technical issues common to multiple exposure drafts.

[3] The *December 2014 decision*, along with an additional decision issued in May 2015⁵ dealt with alleged inconsistencies with the National Employment Standards (NES). Further decisions in relation to award flexibility (AM2014/300)⁶, annual leave (AM2014/47)⁷ and transitional provisions in relation to accident pay (AM2014/190)⁸ also have application to this group of awards.

2. Review of Group 3 awards

[4] Conferences were held on 30 March 2015 to identify the issues to be raised by interested parties during the review of each of the Group 3 awards. The Commission published summaries of proposed variations.

[5] The Fair Work Ombudsman (FWO) raised a number of issues identified through interactions with employers and employees covered by Group 3 awards. While the FWO did not participate in any proceedings during the Award stage, these issues were drawn to the attention of the parties through notes in the exposure drafts and included in summaries of submissions published.

[6] The Commission published exposure drafts for the Group 3 awards in two tranches between December 2015 and January 2016 together with comparison documents showing the changes made to the structure and language in the award. Interested parties were given an opportunity to make written submissions on the exposure drafts and to reply to the submissions of others. At the request of the parties, further conferences were held to deal with a range of award-specific matters.

[7] Mentions were held on 6 and 7 June 2016 dealing with the technical and drafting issues identified in relation to the Group 3 exposure drafts. The purpose of the mention was to:

- confirm that the published summaries of submissions were accurate and reflected the positions of the parties;
- identify any submissions or variations that were agreed or withdrawn; and

- identify any matters of a substantive nature that had not yet been referred to a specially constituted Full Bench.

[8] Further conferences were conducted by individual members in respect of particular Group 3 awards.

[9] This decision deals with the technical and drafting issues in the Group 3 awards, along with a number of changes sought by parties (other than substantive changes requiring extensive evidence). A subsequent decision will deal with the technical and drafting issues in the remaining awards in Group 3 (*Dredging Industry Award 2010, Educational Services (Post-Secondary Education) Award 2010, Educational Services (Schools) General Staff Award 2010; Horticulture Award 2010, Sugar Industry Award 2010, Clerks Private Sector Award 2010, Fitness Industry Award 2010, Gardening and Landscaping Services Award 2010, Legal Services Award 2010, Nursery Award 2010, Silviculture Award 2010, Sporting Organisations Award 2010 and Wine Industry Award 2010*).

[10] This decision also deals with a number of ‘other matters’ which are set out at Chapter 3.

[11] We now turn to the awards under Review which are dealt with in this decision.

2.1 *Banking, Finance and Insurance Award 2010*

[12] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Banking, Finance and Insurance Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the following parties:

- Australian Industry Group (Ai Group)
- South Australian Employers’ Chamber of Commerce and Industry Inc trading as Business SA (Business SA)
- Australian Federation of Employers and Industries (AFEI)
- Australian Business Industrial and New South Wales Business Chamber (jointly ABI)
- The Australian Workers’ Union (AWU)

[13] A [report](#) was published on 22 April 2016 setting out the matters dealt with at a conference held on 21 April 2016.⁹ A number of issues raised were resolved at this conference and at a further conference on 29 April 2016. A [revised exposure draft](#) was published on 27 April 2016 along with a [summary of submissions document](#). The report of 22 April 2016 called for further submissions in respect of a number of specific matters.

[14] Submissions were received from Business SA, Ai Group, AFEI, ABI and Finance Sector Union of Australia (FSU). Commissioner Roe held a conference on 26 May 2016

during which a number of further issues were resolved. In preparation for that conference a draft report was published on 12 May 2016. A [further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016 to consider the issues identified at the conference before Justice Ross.¹⁰ Business SA provided a further submission for that conference on 15 July 2016. A [further report](#) was published by Commissioner Roe on 21 July 2016.

[15] The outstanding items in respect of this award relate to the use of the terminology ‘shiftwork penalties’ and ‘shiftwork loadings’ (see Items 18 and 27 in the summary of submissions). Ai Group support the use of the term ‘shift loading’ rather than ‘shift penalty’ in two clauses in this award. Ai Group addressed these matters in their submission of 31 August 2016 (relating to general issues in exposure drafts). This issue is also raised by Ai Group in respect to a number of other Awards. This general issue is dealt with in Section 3.8 of this decision (at paragraph [363]).

[16] We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the report to the Full Bench of 21 July 2016) and that there are no outstanding technical or drafting issues in respect to the latest exposure draft of this award. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench. A revised exposure draft reflecting the agreed position of the parties’ will be published shortly and parties will be provided with a final opportunity to comment.

2.2 *Business Equipment Award 2010*

[17] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Business Equipment Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the following parties:

- Ai Group
- Business SA
- AFEI
- ABI
- the Australian Municipal, Administrative, Clerical and Services Union (ASU)
- AWU

[18] Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved at this conference and a further conference on 29 April 2016. A [revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document. The report of 22 April 2016 called for further submissions in respect to a number of specific matters.

[19] Submissions were received from Business SA, Ai Group, AFEI, ABI and ASU. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a proposal was published on 2 May 2016 and a draft report was published on 12 May 2016. A [further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016 to consider the issues identified at the conference before Justice Ross. Business SA provided a further submission for that conference on 15 July 2016. A [further report](#) was published by Commissioner Roe on 21 July 2016.

[20] The outstanding items in respect to this award were items 5, 6 and 57 in the summary of submissions report. Item 57 is a matter raised by the Ai Group concerning the Summary of Hourly Rates of pay tables and the heading concerning “ordinary hourly rates”. The Ai Group addressed this matter in their submission of 31 August 2016 relating to general issues in exposure drafts. This general issue is dealt with in Section 3.7 of this decision (at paragraph [353]).

[21] All parties at the relevant conferences agreed that Items 5 and 6 be determined on the basis of the written submission provided to date and we deal with these issues below.

(i) *Item 5 (Clause 6.4(c)(ii))*

[22] The issue is whether the terms ‘ordinary hourly rate’ or ‘minimum hourly rate’ should be used in Clause 6.4(c)(ii) of the award. It is not contested that the leading hand all-purpose allowance does apply to casual employees. What is in contest is whether the casual loading is applied to the minimum rate plus leading hand allowance. It was agreed that this matter should be determined by the Full Bench on the basis of the written submissions currently before us.

[23] Ai Group accept that the intention of the usage of ‘ordinary hourly rate’ in the exposure draft is to require that the casual loading be applied to a rate that incorporates any all purposes allowance.

[24] In its *September 2015 Decision*, the Full Bench referred to the *July 2015 Decision* in the following terms.

‘[85] However in respect of the calculation of the casual loading vis-a-vis all purpose allowances, the Commission went on to say in the *July 2015 decision*:

“[69] Some employer parties (e.g. Ai Group pp.12-13 re Cotton Ginning Award 2010 and more generally, pp.17-18) have submitted that where the current modern award states that the loading is calculated on "1/38th of the weekly award wage" or "1/38th of the minimum weekly rate", the casual loading should not be calculated based on the ordinary hourly rate that is they do not consider the all purpose allowance should be added to the minimum rate before the 25% is calculated. They submit that the casual loading is 25% of the minimum rate and added to the minimum hourly rate, then the all purpose allowance is added after that.

[70] In our view it is desirable that there be a consistent rule relating to the calculation of a casual loading which should apply across all awards. Our provisional view is that the position of certain employer parties outlined above at paragraph [69] is the preferred option that should be adopted across all awards. That is, the casual loading will not be calculated based on the ordinary hourly rate. The casual loading will be calculated as 25% of the minimum rate, with any all purpose allowance being added after that.’¹¹

[25] The conclusion of the *September 2015 Decision* was the provisional view expressed in the *July 2015 Decision* would not be followed and, relevantly, said:

‘[102] We accept the submission that the provisional decision is inconsistent with the general approach adopted in the *2008 decision*, namely that the casual loading should be applied to the ordinary time rate. Although what constituted the ordinary time rate was not the subject of express consideration in the *2008 decision*, we consider it to be well understood that an allowance which is described as all purpose in nature is one that necessarily forms part of the ordinary time rate. That being the case, any departure from that approach proposed by the provisional decision must be justified by cogent reasons.’¹²

[26] The September 2015 Decision continued:

‘[106] The obligation in s.134(1) of the FW Act to ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions carries with it a requirement (in s.134(1)(g)) to take into account “the need to ensure a simple, easy to understand, stable and sustainable modern award system ...”. We accept that the adoption of a clear and consistent approach in relation to whether the casual loading should apply to all purpose allowances is desirable in the interests of simplicity and ease of understanding, although the particular circumstances of some awards may require special consideration. The question is whether the approach proposed by the provisional decision is the one which should be preferred in this respect.

....

[109] The concern which underlay the provisional decision was whether it was appropriate for certain allowances currently expressed as all-purpose allowances to be paid at an increased level for casual employees by reason of the application of the casual loading. Ultimately however we have concluded that to deal with this concern in the manner proposed by the provisional decision is too broad-brush an approach and involves conducting the analysis from the wrong starting point. We consider that the preferable approach is to permit reconsideration, on an award-by-award basis during the course of the 4-yearly review, as to whether any existing allowance should retain its “all purpose” designation or should be payable on some different basis.’¹³

[27] The Full Bench then reached the following conclusion:

‘[110] The general approach will remain as expressed in the exposure drafts, namely that the casual loading will be expressed as 25% of the ordinary hourly rate in the case of awards which contain any all purpose allowances, and will be expressed as 25% of the minimum hourly rate in awards which do not contain any such allowances.’¹⁴

[28] The Ai Group submits that the present award requires that the all purpose payment be added to the minimum hourly rate plus the casual loading. The exposure draft requires the

casual loading to be applied to the minimum hourly rate plus the all purpose payment. Ai Group argue that this is a substantive change which may have significant cost implications and suggest that the definition of “all purpose” could be altered to exempt the casual loading in relevant awards.

[29] The definition of “all purpose” and the issue of the use of “ordinary hourly rate” in respect to the casual loading in the case of awards which contain an all purpose allowance has been determined by a Full Bench. When that Full Bench made its decision it was conscious of the fact that current awards deal with this issue differently and decided that despite this a general approach should be adopted.

[30] The expression in the current award – ‘1/38th of the weekly wage prescribed by this award for the work which the employee performs, plus 20%’ – does not necessarily exclude all purpose allowances because the terms “weekly wage” and ‘minimum weekly wage’ are not identical. It is not necessary to determine this matter.

[31] The award by award consideration referred to by the Full Bench and quoted above relates to questions “as to whether any existing allowance should retain its “all purpose” designation or should be payable on some different basis”. Ai Group is not arguing that the leading hand allowance in this award should lose its all purpose designation.

[32] We are not satisfied that we should depart from the general approach adopted by the September 2015 Full Bench. The exposure draft will not be varied.

(ii) *Item 6 (Clause 6.4(c))*

[33] The issue is whether in Clause 6.4(c) the expression “for the classification in which they are employed” should be used or the expression “for the work which the employee performs”. It was agreed that this matter should be determined by the Full Bench on the basis of the written submissions currently before us.

[34] Ai Group submit as follows:

‘The current award at clause 13.2 requires the payment of 1/38th of the weekly wage prescribed by the award “for the work which the employee performs”.’¹⁵

[35] That is, the rate at which the employee is to be paid is contingent upon the work performed. It is not based upon a pre-determination of the employee’s classification.

[36] Clause 6.4(c) of the Exposure Draft alters the effect of the current clause by associating the rate at which a casual employee is to be paid with “the classification in which they are employed”. This is despite the fact that, having regard to the relevant provisions of the award and the classification structure, a casual employee need not be *employed* at any specific classification.”¹⁶

[37] We do not consider the expression “for the classification in which they are employed” excludes the possibility that a casual employee may be engaged in work covered by different classifications from time to time. We therefore do not consider that in this context there is any significant difference between the expression “for the classification in which they are employed” and the expression “for the work which the employee performs”. In the exposure

drafts the expression “for the classification in which they are employed” has commonly been used in this context.

[38] However, we accept that the expression sought by the Ai Group provides sufficient clarity and we will vary the exposure draft accordingly. The expression “for the classification in which they are employed” will be replaced with the expression “for the work which the employee performs” in Clause 6.4(c).

[39] We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the further report to the Full Bench), and that there are no outstanding technical or drafting issues in respect to the latest exposure draft of this award. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench. A revised exposure draft reflecting this decision and the agreed position of the parties’ will be published shortly and parties will be provided with a final opportunity to comment.

2.3 *Commercial Sales Award 2010*

[40] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Commercial Sales Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the Ai Group, Business SA, AFEI, and ABI. Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved at this conference and a further conference on 29 April 2016. A [revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document. The Report of 22 April 2016 called for further submissions in respect to a number of specific matters. Submissions were received from Business SA, Ai Group, AFEI, ABI and ASU.

[41] A representative of a number of major media organisations¹⁷ attended the conferences. Their concern particularly related to variations proposed in respect to annual leave which have been referred to the annual leave Full Bench. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a proposal was published on 2 May 2016 and a draft report was published on 12 May 2016. A [further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues.

[42] We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the report to the Full Bench of 26 May 2016), and that there are no outstanding technical or drafting issues in respect to the latest exposure draft of this award. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench.

2.4 *Coal Export Terminals Award 2010*

[43] On 15 January 2016 the Commission published an [exposure draft](#) of the *Coal Export Terminals Award 2010*, together with a [comparison document](#) showing the changes to the

structure and language in the award. Interested parties were invited to file submissions about drafting or technical issues in the exposure draft. Submissions were received from the Construction, Forestry, Mining and Energy Union (CFMEU) and the Coal Terminals Group (CTG), consisting of Hay Point Services Pty Limited, Port Kembla Coal Terminal Limited and Abbott Point Bulkcoal Pty Ltd. A conference was held in Sydney on 11 May 2016 attended by representatives of both organisations. Senior Deputy President Hamberger published a [report to the Full Bench](#) on 26 May 2016 that set out a number of proposed variations to the exposure draft that were agreed to by the parties, or which were sought by the CFMEU and for which the CTG had no submission to make. A number of variations that were not agreed were also set out.

[44] A further conference was held on 5 July 2016 to deal with the outstanding issues. A second [report to the full bench](#) was made by Senior Deputy President Hamberger on 10 August 2016. This report noted that the parties had subsequently reached agreement on the outstanding matters and outlined the agreed changes. We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the two reports to the Full Bench), and that there are no outstanding technical or drafting issues in respect of the *Coal Export Terminals Award 2010*. A revised exposure draft reflecting the agreed position of the parties' will be published shortly and parties will be provided with a final opportunity to comment.

2.5 *Contract Call Centres Award 2010*

[45] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Contract Call Centres Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the Ai Group, AFEI, and ABI. The ASU and the Community and Public Sector Union (CPSU) also made proposals at the conferences. Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved at this conference and a further conference on 29 April 2016. A [revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document.

[46] Submissions in reply were received from Ai Group, AFEI and ABI. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a draft report was published on 12 May 2016. A [further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016. A [further report](#) was published by Commissioner Roe on 21 July 2016 and an [updated exposure draft](#) was published on 16 August 2016.

[47] The only outstanding matter following the publication of the 16 August 2016 draft is the proposal to vary the classification structure in this Award to clarify the classification level of employees providing and developing on the job training. The relevant parties have held discussions and following a conference held on 2 September 2016 Ai Group and the CPSU reached an agreement on the appropriate amendments to the classification structure. The agreed proposal was distributed with a report published by Commissioner Roe on 19 May

2017 and a corrected version was published on 30 May 2017. In that report the following directions were published.

“Any interested party who wishes to make a submission about this proposal must do so by no later than 2 June 2017. It is proposed to deal with this matter on the basis of the submissions received by 2 June 2017. If there is any objection to this proposed course of action it should be received by no later than 2 June 2017.”

[48] No objections or submissions were received. The first change proposed is to insert an additional aspect of the definition for a “Principal Customer Contact Specialist” as follows:

“An employee at this level may provide on the job training instead of customer contact and assist with developing training programs where they are not receiving calls.”

[49] The second change proposed is to insert an additional indicative task for the “Customer Contact Team Leader” definition as follows:

“Develop and lead on the job training”

[50] We agree that it is both necessary and appropriate to vary the classification definitions to include on the job training. A revised exposure draft will be published to incorporate this variation. We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the further report to the Full Bench), and that there are no outstanding technical or drafting issues in respect to this Award. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench.

2.6 *Electrical Power Industry Award 2010*

[51] On 15 January 2016 the Commission published an [exposure draft](#) of the *Electrical Power Industry Award 2010*, together with a [comparison document](#) showing the changes to the structure and language of the award. On 3 March 2016 a separately constituted Full Bench issued a [decision](#) rejecting the insertion of an electrical licencing allowance into the award.¹⁸ A conference was held in Sydney on 11 May 2016, attended by representatives of Ai Group, the ASU, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), the CFMEU and the AWU. A [report to the Full Bench](#) on 25 May 2016 was made by Senior Deputy President Hamberger indicating proposed variations to the exposure draft that had the support of all the parties at the conference. There were no proposed variations still pressed that did not have the support of all the interested parties.

[52] We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the report to the Full Bench), and that there are no outstanding technical or drafting issues in respect of the *Electrical Power Industry Award 2010*. A revised exposure draft reflecting the agreed position of the parties’ will be published shortly and parties will be provided with a final opportunity to comment.

2.7 *Higher Education Industry–Academic Staff–Award 2010*

[53] An [exposure draft](#) based on the *Higher Education Industry–Academic Staff–Award 2010* was published on 18 December 2015. A conference was held before Commissioner Johns on 10 May 2016 to address the outstanding technical drafting issues raised by

Australian Higher Education Industrial Association (AHEIA), National Tertiary Education Union (NTEU), and the Group of Eight Universities (Go8). Many outstanding issues were resolved at this conference. A revised exposure draft was published on 26 May 2016 reflecting parties agreed position and a [further revised exposure draft](#) published on 3 June 2016. The Commission adopts the agreed position of the parties as reflected in the further revised exposure draft of 3 June 2016.

[54] At the hearing before Justice Ross on 7 June 2016 it was acknowledged that there are some outstanding technical and drafting issues for this award. Parties were provided an opportunity to make submissions on the further revised exposure draft of 3 June 2016 to address any inaccuracies.

[55] The NTEU submitted that the second iteration of clause 9.4(a), rather than the first, of 'marking as a supervising examiner' should be deleted. The NTEU reiterated their concern regarding consistency of the public holiday provision with the NES in exposure draft clause 16.2 Public Holiday substitution.¹⁹

[56] Go8 agreed with NTEU submission regarding exposure draft clause 9.4(a) and submitted that the second issue, regarding public holiday provisions, was not inconsistent. However, it submitted that the issue needs to be addressed that it should be dealt with by this Full Bench.²⁰

[57] The NTEU is directed to respond to the Go8 submission that public holiday substitution should be dealt with by this Full Bench by **Friday 28 July 2017**.

[58] A number of substantive issues in this award were referred to a separately constituted Full Bench in AM2015/6 in October 2015.²¹ Any outstanding technical and drafting issues will be finalised after the Full Bench hands down its decision on the remaining substantive matters.²²

2.8 Higher Education Industry–General Staff–Award 2010

[59] An [exposure draft](#) based on the *Higher Education Industry–General Staff–Award 2010* was published on 18 December 2015. A conference was held before Commissioner Johns on 10 May 2016 to address the outstanding technical drafting issues raised by Australian Higher Education Industrial Association (AHEIA), National Tertiary Education Union (NTEU), and the Group of Eight Universities (Go8). Most of the outstanding issues were resolved at this conference. A revised exposure draft was published on 27 May 2016 reflecting parties agreed position and a [further revised exposure draft](#) published on 3 June 2016.

[60] At hearing before Justice Ross on 7 June 2016 the outstanding technical and drafting issues for this award were discussed. Parties were provided an opportunity to make submissions on the exposure drafts published on 3 June 2016 to address any inaccuracies.

[61] The NTEU wrote to the Commission following the hearing to reiterate its concern that the exposure draft public holiday clause 20 was inconsistent with the NES. Go8 addressed NTEU's concern regarding public holiday provisions, submitting the clause was not inconsistent NES. However, Go8 submits that if the clause is to be addressed it should be dealt with by the 4 yearly review Group 3 Full Bench.²⁴

[62] The NTEU is directed to respond to the Go8 submission that public holiday substitution should be dealt with by this 3 Full Bench by **Friday 28 July 2017**.

[63] Go8 also made submissions regarding a drafting error with clause 16.5 of the exposure draft, proposing it be amended according to its submission which reflected what was agreed at conference. We agree with the Go8 proposal in respect of clause 16.5.

[64] A number of substantive issues in this award were referred to a separately constituted Full Bench in AM2015/6 in October 2015.²⁵ Any outstanding technical and drafting issues will be finalised after that Full Bench hands down its decision on the remaining substantive matters.²⁶

2.9 *Labour Market Assistance Industry Award 2010*

[65] The Commission published an initial [exposure draft](#) based on the *Labour Market Assistance Industry Award 2010* on 18 December 2015 together with a [comparison document](#) showing the changes made to the structure and language of the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft.²⁷ Submissions were received from AFEI,²⁸ ABI,²⁹ ASU³⁰ and Jobs Australia³¹ and a [summary of submissions](#) was published on 23 May 2016. The matter was listed for mention on 6 June 2016 in order to:

- (i) confirm that the published [summary of submissions](#) was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.

[66] At the 6 June 2016 mention³² the interested parties³³ indicated that they would benefit from a conference to discuss the outstanding technical and drafting issues in relation to this award. In addition, the union parties were given seven days to clarify their positions.³⁴ On 10 June 2016, correspondence was received from the ASU, in which it confirmed that the parties would benefit from conferencing to assist in working through the outstanding issues.³⁵

[67] A [revised summary of submissions](#) was published on 27 June 2016 and on 30 June 2016 a conference was held to discuss the outstanding technical and drafting issues.³⁶ A [Report to the Full Bench](#) (the Labour Market Report) was issued on 6 July 2016 setting out the matters discussed at the 30 June 2016 conference.

[68] In respect of item 2 of the revised summary of submissions, all parties who appeared³⁷ at the conference were content with the wording of clause 6.3 of the [exposure draft](#) and AFEI (who did not appear) was given seven days to confirm their position. The Commission wrote to AFEI³⁸ on 21 October 2016 and gave a deadline of 4.00 pm on Friday 28 October 2016 by which to provide a response. No response has been received.

[69] In the Labour Market Report, the Commission directed the parties to have further discussions in respect of items 8, 10, 11, 12 and 14 of the revised summary of submissions

and to report back to the Commission within 21 days. On 25 July 2016, the parties' joint report back³⁹ was filed and is summarised below:

(i) *Items 8 and 10 (clause 11.2(b)(ii))*

[70] The parties agreed that the clause in the exposure draft reflected the current award provision and *prima facie* a provision for overtime applied. As to the circumstances in which overtime is to be paid, the parties reported as follows:

‘...provision for an 8 hour payment, facilitation of the maximum of up to 10 ordinary hours for excursion activities and the overtime obligation for work in excess of ordinary hours’.

[71] Further, the parties proposed the following words be inserted at clause 11.2(b)(ii):

‘Except where an agreement has been made in accordance with clause 14.3, where an employee is required to work in excess of 10 ordinary hours per day during excursion activities, the employee is entitled to the overtime rates at clause 14.2.’

(ii) *Items 11 and 12 (clause 14.2(c))*

[72] The parties agreed that clause 20.2 of the exposure draft should be amended for consistency with clause 14.2(c) and had no further submissions in relation to the wording proposed for that clause.

[73] It was agreed that clause 14.2(c) of the exposure draft reflected the position under the current award. In addition, the parties proposed amendments to clauses 14.2(c)(i) and 14.2(c)(ii) to clarify how the overtime provision operated as follows:

- (a) in relation to clause 14.2(c)(i) the parties proposed the following wording be inserted:

‘250% of the minimum hourly rate for work performed during the span of hours worked between 6.00 am and 8.00 pm, and not exceeding 10 hours in one day; and/or’.

- (b) the parties proposed the following wording in respect of clause 14.2(c)(ii):

‘350% of the minimum hourly rate for work performed outside the span of hours worked between 6.00 am and 8.00 pm, or in excess of 10 hours in one day.’

(iii) *Item 13 – ASU claim to clarify payment of leave loading on termination*

[74] The ASU noted that the issue of payment of annual leave entitlements on termination is being dealt with by the Annual Leave Common Issue Full Bench ([AM2014/47](#)) but nevertheless advised it is continuing discussions with the Australian Council of Trade Unions (ACTU) regarding the next steps for dealing with the claim.

(iv) *Item 14 – Jobs Australia proposal to vary the classification definitions*

[75] ASU noted its interest in the Jobs Australia proposal⁴⁰ and advised it had no concerns with the proposal, as amended, following the parties' discussions. During the parties' discussions, the proposal was amended as follows:

- (a) paragraph 8 was withdrawn and the parties agreed the exposure draft wording should be retained; and
- (b) paragraph 9 was amended such that it is now proposed that the word 'instruction' be replaced with the words 'employment services' for consistency throughout the classification schedules.

[76] Items 5, 6 and 7 of the revised summary of submissions were referred to the Part-time and Casual employment Full Bench in [AM2014/196](#) and [AM2014/197](#).

[77] Following receipt of the [parties' joint report back](#) there were no outstanding technical and drafting issues. A revised exposure draft reflecting the agreed position of the parties' will be published shortly and parties will be provided with a final opportunity to comment.

2.10 Local Government Industry Award 2010

[78] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Local Government Industry Award 2010*. A conference was held to discuss the exposure draft on 27 April 2016. The parties agreed to a number of matters and a [revised exposure draft](#) was republished on 28 April 2016 to reflect these agreed changes.

[79] A further conference was held on 18 May 2016 to discuss the agreed changes made to the revised exposure draft published 28 April 2016 as well as to discuss any outstanding matters. A number of matters were agreed between the parties and a [further revised exposure draft](#) was republished on 26 May 2016 to reflect these agreed changes. The full bench adopts the changes as reflected in the further revised exposure draft.

[80] At the mention for the matter on 7 June 2016 parties were invited to consider the [Report to the Full Bench](#) published on 6 June 2016 together with the [further revised exposure draft](#) and advise the Commission of any outstanding issues.⁴¹

[81] Local Government NSW, on behalf of various local government associations, (jointly the LGA) wrote to the Commission on [14 June 2016](#) advising that there were a few outstanding amendments to consider in relation to trading names of default superannuation funds at clause 12.4 of the [further revised exposure draft](#). On [26 May 2017](#) the Commission wrote to the LGA explaining that s.156(2)(c) of the Act provides that the Full Bench 'must not review, or make a determination to vary, a default fund term of a modern award' as part of the 4 yearly review of modern awards. The LGA [replied](#) on 31 May 2017 stating they would withdraw this claim under the Review and intend making a similar claim under s.160, Variation of modern awards to remove ambiguity or uncertainty or correct error.

[82] There are no remaining drafting and technical issues to be resolved.

2.11 *Marine Towage Award 2010*

[83] On 15 January 2016 the Commission published an initial [exposure draft](#) based on the *Marine Towage Award 2010* (the Marine Towage Award) together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft.⁴² Submissions were filed by the Maritime Union of Australia (MUA)⁴³ and Maritime Industry Australia Limited (MIAL)⁴⁴ in relation to the drafting and technical issues. Submissions concerning substantive issues were filed by The Australian Maritime Officers' Union (AMOU), MIAL, MUA and Sea Swift. A [summary of submissions](#) was published by the Commission on 30 May 2016.

[84] The substantive issues raised (items 1, 2 and 3 of the [summary of submissions](#)) were referred to a separately constituted Full Bench in matter AM2016/5 for determination.⁴⁵

[85] The Marine Towage Award was listed for mention on 6 June 2016 to:

- (i) confirm that the published [summary of submissions](#) was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.⁴⁶

[86] The Australian Institute of Marine and Power Engineers (AIMPE), MIAL and the MUA appeared at the 6 June 2016 mention.

[87] Following the 6 June 2016 mention, a [revised summary of submissions](#) was published on 24 June 2016. A further conference was held in Sydney on 4 August 2016 (the August conference) to discuss the outstanding technical and drafting issues listed in the [revised summary of submissions](#).⁴⁷ MIAL and the MUA appeared before the Commission at that conference.

[88] It was confirmed at the August conference that there were no outstanding technical and drafting issues remaining.⁴⁸

[89] Following the determination of the coverage matters by the AM2016/5 Full Bench, the Commission will publish a revised exposure draft. All questions will be removed from the revised exposure draft and the draft will be republished shortly and parties will be provided with a final opportunity to comment.

2.12 *Market and Social Research Award 2010*

[90] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Market and Social Research Award 2010* (the Market Research award) and a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft.⁴⁹ Ai Group was the only party to file material in the Commission in relation to the review of the the Market Research award.

A [summary of submissions](#) was published by the Commission on 23 May 2016 and the award was listed for mention⁵⁰ on 6 June 2016 to:

- (i) confirm that the published summary of submissions was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.

[91] Ai Group appeared at the 6 June 2016 mention and proposed that the award be listed for conference to discuss the issues listed in the [summary of submissions](#). Following the mention, a [revised summary of submissions](#) was published on 27 June 2016 and on 30 June 2016 a conference was held to discuss the outstanding technical and drafting issues.⁵¹

[92] At the conference, Ai Group withdrew its claim listed at item 10 of the revised summary of submissions.⁵² A Report to the Full Bench (the Market Research Report) was published by the Commission on 6 July 2016 setting out what was discussed at the 30 June 2016 conference.⁵³ In the Market Research Report, Ai Group was directed to file an amended submission by 4.00pm on Monday 8 July 2016 and on 4 July 2016 Ai Group filed its amended submission.⁵⁴ No submissions were filed in reply.

[93] In their submission Ai Group withdrew a number of the issues previously raised. The remaining issues relate to: (i) *Clauses 3.4 and 3.5—Coverage* and (ii) *Clause 6.5(c)(ii)—Casual loading*

[94] The first issue re coverage is a matter that affects a number of exposure drafts and is dealt with later in paragraphs [334] to [340].

- (i) *Clause 6.5(c)(ii)—Casual loading*

[95] Clause 6.5(c)(ii) of the exposure draft refers to the casual loading being paid instead of various “entitlements” of full-time or part-time employment. Ai Group submit that this is an oversimplification of the purpose of the casual loading and that the word “attributes”, which appears in the current award is more appropriate. We agree. The exposure draft will be revised to read:

‘The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and the other ~~entitlements~~ attributes of full-time or part-time employment.’

- (ii) *Clause 7.2—Classifications*

[96] Ai Group submit that the reference to Schedule B in the clause is an error. The clause should refer to Schedule A. We agree. The error will be corrected in the revised exposure draft.

(iii) *Clause 8.5—Ordinary hours of work and rostering*

[97] Clause 8.5 refers to the “casual hourly rate of pay set out in clause 9”. Ai Group submit that this cross-reference should be to clause 6.5(c). We agree. The error will be corrected in the revised exposure draft.

(iv) *Clause 10.4(b)—Expenses reimbursement*

[98] Ai Group contend that clause 10.4(b) of the exposure draft significantly broadens the scope of the expenses that must be reimbursed by the employer. Ai Group submit that the word “such” be inserted at the start of the clause to limit its application to the type of expenses referred to in clause 10.4(a). Clause 10.4(b) will be re-drafted to clarify that it only applies to the expenses in clause 10.4(a).

(v) *Clause 13.1—Out of hours penalty*

[99] In response to a question by the Commission, Ai Group submit that if the out of hours penalties were expressed as a percentage of the employees’ minimum hourly rate instead of as a percentage of the standard rate, this would significantly increase existing payroll costs. Ai Group submit that the fixed model of compensation for such working hours should remain unchanged. The corresponding penalties in the pre-reform instrument⁵⁵ were expressed as a flat dollar amount. In the absence of any opposing submission, the amounts in clause 13.1 will continue to be set and adjusted by reference to the standard rate.

(vi) *Clause 13.2—Out of hours penalty*

[100] In response to a question by the Commission, Ai Group submits that the award does not presently provide for a quantum of time off that may be taken instead of the out of hours penalty, rather this is left to the discretion of the employer. This would amount to a substantive change which is unwarranted. No submissions were received proposing a change the clause 13.2 regarding time off instead of payment for the out of hours penalty. Consistent with the approach taken in AM2014/300 re Award flexibility and reflected in the model term inserted at clause 22.2 of the current award, the current wording will be retained.

(vii) *Clause 23.1—Dispute Resolution procedure training leave*

[101] In response to a question by the Commission, Ai Group submits the reference to the *Workplace Relations Act 1996* (Cth) should be amended to the *Fair Work Act 2009* (Cth). This change will be made in the revised exposure draft.

(viii) *Schedule A.5—Door to door interviewer*

[102] The exposure draft separates ‘Executive (face-to-face) interviewer’ and ‘door-to-door interviewer’ into separate paragraphs giving the impression that they are distinct classifications. Ai Group submit that the format in the current award where they appear as one sub-clause should be retained. The combination of these two classification definitions appears to have been a drafting error in the modern award and is inconsistent with the pre-reform instrument from which the classifications were derived⁵⁶. Given the two definitions can stand alone and do not necessarily apply to the same employee we will retain the separate definitions in clauses A.4 and A.5 of the exposure draft.

[103] A revised exposure draft will be published shortly and parties will be provided with a final opportunity to comment.

2.13 *Miscellaneous Award 2010*

[104] On 18 December 2015, the Commission published an initial [exposure draft](#) based on the *Miscellaneous Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the Exposure draft.⁵⁷ Submissions were filed by ABI,⁵⁸ AFEI⁵⁹ and Ai Group⁶⁰ and on 23 May 2016 the Commission published a [summary of submissions](#). The award was listed for mention on 6 June 2016.⁶¹ The CPSU, Ai Group and ABI appeared at the mention and confirmed that there were no outstanding technical and drafting issues in relation to this award.⁶²

[105] A revised exposure draft will be published shortly and parties will be provided with a final opportunity to comment.

2.14 *Pastoral Award 2010*

[106] A separately constituted Full Bench has dealt with substantive claims in relation to this award in AM2015/23.⁶³ A large number of technical and drafting issues are before this Full Bench. Before turning to deal with the outstanding issues we set out the procedural steps taken to deal with the various technical/drafting issues.

[107] On 15 January 2016 the Commission published an initial exposure draft⁶⁴ based on the *Pastoral Award 2010* (the Pastoral award) together with a comparison document⁶⁵ showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft.⁶⁶ Submissions were received from ABI,⁶⁷ AFEI,⁶⁸ AWU,⁶⁹ Business SA,⁷⁰ and National Farmers' Federation (NFF)⁷¹ and a [summary of submissions](#) was published by the Commission on 30 May 2016 (listing some 119 items in contention).

[108] On 6 June 2016 the matter was listed for mention to:

- (i) confirm that the published summary of submissions was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.

[109] ABI, AFEI, Ai Group, AWU, Business SA and the NFF appeared at the 6 June 2016 mention.⁷²

[110] After the mention, a [revised summary of submissions](#)⁷³ was published on 4 July 2016 and a conference was held on the same date to deal with the remaining 43 outstanding

technical and drafting issues listed in the revised summary of submissions.⁷⁴ Following that conference, a Statement⁷⁵ attaching a revised exposure draft and further revised summary of submissions was issued on 17 August 2016. That Statement provided an update as to the status of the review of the award and included a list of the outstanding technical and drafting issues. A further conference⁷⁶ was held on 24 August 2016 to discuss further directions in relation to the outstanding technical and drafting matters and, following that conference, the Commission issued a Statement and directions.⁷⁷ The parties were directed to confirm the accuracy of the revised exposure draft and the revised summary of submissions set out in the attachments to the 17 August 2016 Statement and in doing so, were asked to identify:

- (i) which, if any, technical and drafting claims are being pursued;
- (ii) which, if any, technical and drafting claims are withdrawn (if not already so identified); and
- (iii) whether a party contends that a clause in the revised Exposure Draft has a different legal effect to the corresponding clause in the Pastoral award. If so, how it has been changed.

[111] In addition, draft directions setting out the process for dealing with any outstanding technical and drafting matters identified were set out at Attachment A to the Statement.⁷⁸ Parties were asked to file any comments in relation to the draft directions by Wednesday 28 September 2016 and were also asked to confirm which if any of the tasks the Commission agreed to undertake at the conference held on 4 July 2016⁷⁹ were still required. The tasks the Commission agreed to undertake were as follows:

- (i) prepare a document comparing the current coverage clause with the coverage clauses in the other agricultural awards⁸⁰ and identify any differences;⁸¹
- (ii) prepare a document identifying all inconsistencies throughout the current award in relation to the General Employment Conditions;⁸²
- (iii) prepare a short paper summarising the parties' respective positions in relation to items 30 and 62 of the revised summary of submissions and provide additional background information on the history of the provision if available;⁸³ and
- (iv) research and publish findings on the relevant award history of clause 14.4(a)(i) of the revised Exposure Draft (that is, clause 23.4 of the current award).⁸⁴

[112] Submissions were filed in response to the Statement and Directions⁸⁵ by ABI⁸⁶ and the NFF.⁸⁷ ABI confirmed it was not pursuing any claims and that it would file submissions in response to the other parties' outstanding claims if not resolved prior.⁸⁸ ABI also pointed out that the Commission had indicated it would undertake research and release its findings in relation to item 26 (relating to the payment of the first aid allowance) and item 65 (relating to payment for public holidays) of the further revised summary of submissions.

[113] Research has been undertaken relating to the payment of the first aid allowance and will be published concurrently with this decision. If any party wishes to pursue the issue they are directed to file a short written submission by no later than 4.00 pm on **Friday 28 July**

2017. The issue in relation to the payment for public holidays is dealt with at paragraph [155]-[158] of this decision.

[114] The NFF submitted that the revised exposure draft did not reflect its submissions of 16 June 2016 in relation to the facilitative provisions clause and submitted that it had previously proposed that a number of additional terms be identified as facilitative provisions.⁸⁹ The NFF pressed for the inclusion of the following terms:⁹⁰

Clause	Provision	Agreement between an employer and:
6.4(d)	Part-time employment	An individual
6.5(e)	Casual employees	An individual
30.3	Spread of ordinary hours	An individual
40.9(d)(iv)	Woolclassers and Shearing shed experts	An individual
42.1(e)	Fares and travelling allowances for expeditionary employees	An individual
43.4(a)(ii)	Special conditions regarding the hours of work of Shearers and Crutchers	An individual

[115] No further submissions have been received in relation to the facilitative provisions clause. We will include the additional terms as proposed by the NFF.

[116] The NFF also submits that several clauses of the exposure draft no longer have the same legal effect as the current award (in particular items 84, 86 and 95 in the revised summary of submissions). We return to these items later.

[117] In addition, the NFF confirmed it was pursuing some 24 items⁹¹ and that the remaining items in the revised summary of submissions that were listed as ‘not agreed’ remained outstanding to the extent that the party making the claim was still pursuing it.⁹²

[118] Final directions setting out the process for dealing with the outstanding technical and drafting matters were issued on Wednesday 5 October 2016.⁹³ The following submissions and submissions in reply were received in accordance with those directions:

- (i) Shearing Contractors Association of Australia (SCAA) – [submission in reply](#), 20 October 2016;
- (ii) NFF – [submission – outstanding claims](#), 26 October 2016;
- (iii) NFF – [submission in reply](#), 23 November 2016; and
- (iv) AWU – [submission in reply](#), 23 November 2016.

[119] The issues listed at items 3, 4 and 116 of the revised summary of submissions, and relating to coverage – specifically the definition of ‘wine industry’ – were resolved at the conference of 4 July 2016.⁹⁴

[120] Similarly, the issues in relation to full-time employment and part-time employment listed at items 11 and 13 respectively were resolved at the same conference.⁹⁵ The NFF confirmed it is not opposed to the proposed amended wording of clause 24.3 of the exposure draft in relation to the ‘with keep rate’ (item 42) and no other parties have objected.⁹⁶ The revised exposure draft published on 17 August 2016 reflects the agreed position in relation to these items.⁹⁷ The NFF has withdrawn items 41 and 66 in their entirety.⁹⁸ The issue at item 41 is linked to items 51 and 66 and was resolved in conference.⁹⁹ Further, the NFF has amended its claim concerning when overtime rates are payable for weekend work (item 49 of the revised summary of submissions) such that it has withdrawn its submissions in relation to clauses 32.2, 33.1 and schedules B.4.1 and B.4.2 to B.4.5 of the exposure draft.¹⁰⁰ We will return to item 49 shortly.

[121] The SCAA filed a submission in reply on 20 October 2016 proposing four new variations to the award that had not been canvassed at an earlier stage of the review.¹⁰¹ Both the NFF and the AWU argued that it was not appropriate to deal with the new claims at this late stage of the review of the award. The Commission wrote to the SCAA on 12 June 2017 seeking clarification of its position in relation to the additional claims and, in correspondence dated 13 June 2016 the SCAA confirmed that they no longer wished to pursue the additional matters.

[122] We now turn to the remaining issues in dispute.

Item 9: Part 2 – General employment conditions

[123] In the exposure draft the Commission asked the parties to consider whether clarification was required in circumstances where there may be a conflict between the operation of a term in Part 2 – General employment conditions - and a term in one of the particular occupation streams.

[124] On 6 October 2016, the Commission’s research area published a [document identifying potential inconsistencies](#)¹⁰² between the general employment conditions and occupation streams in the current award in relation to the following clauses in the current award:

- (i) clauses 10.3 and 30.1 – station cooks and part-time rates
- (ii) clauses 17 and 29 – provision of a saddle
- (iii) clauses 17.2 and 36.10 – overtime meal breaks for piggery attendants
- (iv) clauses 17.4 and 46 – sleeping quarters not provided for shearers
- (v) clauses 26 and 38.3 – public holidays for piggery attendants

[125] The AWU in its reply submission responds to each potential issue identified.¹⁰³ No other party commented upon the potential conflicts identified the Commission’s research document.

- (i) *clauses 10.3 and 30.1 – station cooks and part-time rates*

[126] Clause 10.3(f) of the current award states:

‘10. Types of employment

10.3 Part-time employment

- (f) All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.’

[127] Clause 30 of the current award states:

‘30 Ordinary hours of work and rostering

30.1 The average ordinary working hours for a Farm and livestock hand will be fixed by agreement between the employer and the employees but will not exceed an average of 38 hours per week over a four week period.

30.2 The ordinary hours of work of Farm and livestock hands (other than Station cooks) will not exceed 152 hours in any consecutive period of four weeks.

30.3 Station cooks

- (a) A cook who is required to work for more than five and a half days in any one week will be paid, in addition to the weekly wage of this award, the following overtime rates:
- (i) for work on six full days—an amount of 3/22nds of the appropriate weekly rate;
 - (ii) for work on six full days and one half day—an amount equal to 3/11ths of the appropriate weekly rate; or
 - (iii) for work on seven full days—an amount equal to 9/22nds of the appropriate weekly rate.
- (b) No overtime will be worked nor will an employee perform work on the employee’s day and/or half day off without the permission of or under the instructions of the employer or their authorised representative.’

[128] The following potential conflict was identified in respect of clauses 10.3(f) and 30.1:

‘Clause 10.3(f) provides that ‘all time worked in excess of mutually arranged hours will be overtime’ for a part-time employee. The overtime provision at clause 31 appears to apply to farm and livestock hand employees only. A station cook employee appears to be excluded from the overtime provisions in clause 31. Overtime rates for station cook employees are provided at clause 30.3 and are paid where the employee works for more than five and a half days in one week. It is unclear what a part-time station cook would be paid.’

[129] The AWU makes the following submissions in relation to the potential conflict between clauses 10.3 and 30.1:

‘The AWU considers a part-time station cook would be entitled to overtime as per clause 10.3 (f) and clauses 31.1 and 31.2 of the Award.

Clause 31.1 defines overtime and indicates it applies when in excess of the ordinary hours in clause 30.1 are worked. Station cooks are not excluded from clause 30.1 – they are only excluded from clause 30.2.

Given a station cook is classified as a Farm and livestock hand Level 1 – they are not prevented from accessing the overtime rates in clause 31.2. The definition of “Farm and livestock hand” in clause 3.1 of the Award also does not exclude a station cook.¹⁰⁴

[130] Our *provisional* view is to accept the AWU’s submission. We will seek further submissions in response to our *provisional* view.

(ii) *clauses 17 and 29 – provision of a saddle*

[131] Clause 17.2(a)(i) currently states:

‘17. Allowances

17.2 Expense-related allowances

(a) Tool and equipment allowance

- (i) Where the employer requires employees to supply their own tools and equipment, the employer must reimburse the employees for the cost of supplying such tools and equipment.
- (ii) The provisions of this clause do not apply where the tools and equipment are paid for by the employer.’

[132] Clause 29.1 of the current awards states:

‘29. Special allowances

29.1 Where a Station hand is required by the employer to find their own horse and/or saddle, the employee will be paid a weekly allowance of \$7.11 for the horse, and a weekly allowance of \$5.68 for the saddle.’

[133] The following potential conflict was identified in respect of clauses 17 and 29 of the current award (relating to the provision of a saddle):

‘If the employer requires the employee to purchase their own saddle for use on a horse, is the employee entitled to reimbursement pursuant to clause 17.2(a)(i) **and** to the weekly allowance of \$5.68 pursuant to clause 29.1? The interaction between clauses 17 and 29 is unclear.’

[134] The AWU submits that where an employee is required to supply their own horse and purchase their own saddle, the employee will be entitled to be reimbursed for the cost of the horse (under clause 17.2) and also paid the weekly allowances prescribed under clause 29.1.¹⁰⁵ The AWU submits:

‘Clause 17.2 is concerned with the cost of supply and clause 29.1 is concerned with the additional task of finding one’s own horse and saddle.’¹⁰⁶

[135] Our *provisional* view is that where a station hand is required by the employer to supply their own saddle, and the employee does not own a saddle and must purchase one, then the employee is to be reimbursed for the cost of purchasing the saddle (under clause 17(a)(i)). But in such circumstances the employee is *not* also entitled to receive the allowance specified in clause 29.1. It seems to us that the saddle allowance is intended to cover wear and tear and depreciation over time. It does not seem reasonable to apply such an allowance in circumstances where the employer has reimbursed the employee for the full cost of the saddle.

[136] We can see no reasonable basis for the AWU's contention that the allowance specified in clause 29.1 is for the purpose of compensating an employee for 'the additional task of finding one's own...saddle'.

[137] We will seek further submissions in response to our *provisional* view and on the question of whether an amendment is required to clause 29.1 to make clear that the allowance is not payable if a station hand has been reimbursed by the employer for the cost of purchasing a saddle (pursuant to clause 17(a)(i)).

(iii) *clauses 17.2 and 36.10 – overtime meal breaks for piggery attendants*

[138] Clause 17.2(c)(ii) of the current award states:

'17.2 Expense-related allowances

(c) Meal allowance

(i) If an employee is required to work overtime after working ordinary hours (except where the period of overtime is fewer than one and a half hours), the employee will be paid \$12.93 for the first and any subsequent meals. Alternatively, the employer may supply the employee with a meal.

(ii) An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be provided free of cost with a suitable meal, and if the work extends into a second meal break, another meal, provided that in the event of the meal not being supplied the employee is entitled to a payment of \$12.93 for each meal not supplied.'

[139] Clause 36.10 of the current award states:

'36.10 Where overtime is unplanned and not notified the day or days beforehand, a payment will be made of \$12.93 after two hours of overtime if work will continue beyond the meal break. Alternatively the employer may supply the employee with a meal.'

[140] The Commission identified the following potential conflict in respect of clauses 17.2(c)(ii) and 36.10:

'If a pig breeding and raising employee works overtime that he/she was not notified of the previous day, and the overtime extends to a second meal break, is the employee entitled to a second meal in accordance with clause 17.2(ii) or limited to one in accordance with clause 36.10?'

[141] The AWU submits that clause 36.10 is not limited to one allowance or meal. It submits that:

‘When unplanned overtime is worked, an employee receives a payment or a meal after two hours of overtime if work will continue beyond the meal break. This applies after each two hours of overtime if work will continue after the meal break.’¹⁰⁷

[142] The AWU’s submission appears to be a logical reconciliation of the two clauses and is consistent with the terms of such provisions in other modern awards (see Attachment D). However, it seems to us that the terms of clauses 17.2(c)(ii) and 36.10 are far from clear and in our view should be redrafted in plain language. It is necessary to first attempt to determine what entitlements the clauses are intended to provide.

[143] It appears that clause 17.2(c) provides that an employee is entitled to a meal allowance in the following circumstances:

- the employee is required to work overtime after their ordinary ‘ceasing time’ on a particular day;
- the employee works ‘more than two hours’ overtime
- the employee is *not* ‘provided free of cost with a suitable meal’; and
- the employee was not notified of the requirement to work overtime ‘before leaving work the previous day’.

[144] In addition, if the overtime work ‘extends into a second meal break’ then a further meal allowance would be payable (provided that the circumstances set out above have been met).

[145] But clause 17.2(c) is unclear in a number of respects. In particular, the meal allowance is payable where an employee works ‘*more* than two hours’ overtime, which simply begs the question, how much more? Nor is it clear when an employee is entitled to a second meal allowance. The clause appears to provide for the payment of a further allowance in circumstances where the overtime ‘extends into a second meal break’, but it does not specify *when* overtime can be said to extend into a ‘second meal break’. Is it after a further two hours? Or a longer period?

[146] Clause 36.10 also lacks clarity. It appears to provide for the payment of a meal allowance in circumstances where an employee is not notified of the request to work overtime (‘the day or days beforehand’) and the employer does not provide the employee with a meal. But the amount of overtime required to be worked to qualify for payment of the meal allowance is unclear. The clause states that the allowance is payable ‘after two hours of overtime if work will continue beyond the meal break’. What this means is anyone’s guess. The award is silent on when ‘the meal break’ would be required and hence one cannot determine whether the overtime ‘will continue beyond the meal break’.

[147] It seems to us that the meaning of the existing provisions needs to be clarified before we can attempt to reconcile any conflict between the provisions.

[148] A further conference will be convened in an effort to clarify the intended operation of clauses 17.2(c)(ii) and 36.10. It seems to us that these clauses need to be redrafted to clearly specify the circumstances in which an employee is entitled to a meal allowance (i.e. after a specified number of hours of overtime work, such as two hours overtime) and any further meal allowance (such as working a *further* two hours overtime). To assist the parties we have attached (at Attachment D) a table which summarises the overtime meal allowance provisions in modern awards.

(iv) *clauses 17.4 and 46 – sleeping quarters not provided for shearers*

[149] Clause 17.4(c)(iii) of the current award states:

‘17.4 All-purpose allowances

(c) Travelling allowance

(iii) Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee’s normal place of sleeping during employment), the employer will reimburse the employee for the demonstrable cost of suitable accommodation.’

[150] Clause 46.1(b) of the current award states:

‘46. Special allowances (other than Woolclassers Special allowances (other than Woolclassers and Shearing shed experts)

46.1 Allowance where sleeping quarters are not provided

Where the employee does not reside during a shearing (or crutching) at the employee’s home or usual place of residence and the employee is forced to obtain and pay for sleeping quarters away from the employer’s premises because the employer is unable to provide sleeping quarters at the premises for the employee, the employer will:

(a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer’s expense; or

(b) pay to the employee an allowance of 259.4% of the standard rate per night for each night during the employee’s employment that the employee is so forced to obtain and pay for sleeping quarters; and

(c) where the distance is one kilometre or more walking distance between the employee’s sleeping quarters and the shed, provide or pay for the transport of the employee between the sleeping quarters and the shed.’

[151] The following potential conflict was identified in respect of clauses 17.4 and 46.1(b):

Where a shearing operations employee (other than woolclasser or shearing shed expert) is required to spend the night away from home is the allowance under clause 46.1(b) payable instead of the reimbursement payable under clause 17.4(c)(iii)?

[152] The AWU submits an employee is not ordinarily entitled to the allowance in clause 46.1(b) *and* the allowance in 17.4(c)(iii), however submits there may be an exceptions where an employee is:

‘directed to travel again during the shearing or crutching meaning they cannot stay in the sleeping quarters they have obtained and paid for.’¹⁰⁸

[153] We agree with the AWU that an employee is not entitled to the benefit of both clauses, that is, employee’s cannot claim reimbursement for ‘the demonstrable cost of suitable accommodation’ (under clause 17(c)(ii)) *and* the allowance specified under clause 46.1. As to the exception referred to by the AWU it seems to us that in such circumstances the employee may be entitled to the allowance specified in clause 46.1(c) as they have been ‘forced to obtain and pay for sleeping quarters’ and hence qualify for the payment of the allowance.

[154] It is unclear whether the AWU is seeking a specific amendment to the award to deal with the exception to which it refers. We will provide the AWU with an opportunity to clarify its intentions in this regard.

(v) *clauses 26 and 38.3 – public holidays for piggery attendants*

[155] Clause 26.2 of the current award states:

‘26.2 Substitution of certain public holidays by agreement at the enterprise

(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.

(b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.’

[156] Clause 38.3 of the current award states:

‘38. Payment for public holidays

38.3 By agreement between an employer and the employees, time off instead of payment for public holidays may be accrued for public holiday work. That is, the employee will receive ordinary time payment for the hours worked on the said holiday and accrue time to be taken at a mutually agreed time.’

[157] The following potential conflict was identified in respect of clauses 26.2 and 38.3:

Clause 38.3 appears as though for an employee to accrue time off instead of payment for working on a public holiday an agreement between the majority of employees is first required (‘agreement between an employer and the employees’). The same clause appears to allow the timing of taking TOIL to be determined by the employer and individual employee (‘a mutually agreed time’). Does clause 38 wholly supersede clause 26 insofar as it applies to piggery attendants?

[158] The AWU submits there is no conflict in respect of clauses 26 and 38.3 for the following reasons:

‘Clause 26 determines when a public holiday is observed.

Clause 38 is concerned with payment for public holidays for piggery attendants.

Clause 38.3 allows a TOIL system to be applied for work on public holidays by agreement. If the TOIL system is agreed, the individual employee can then determine whether to utilise it and when to take the time off.’¹⁰⁹

[159] Our *provisional* view is to accept the AWU’s submission, the clauses are directed at different subject matters. We will seek further submissions in response to our *provisional* view.

[160] We now turn to the remaining outstanding issues requiring determination. The item numbers listed below correspond with the item numbers in the revised summary of submissions document published on 17 August 2016.

Item 10: clause 6.1 – Types of employment

[161] The NFF submits that the proposed new term at clause 6.1 of the exposure draft (types of employment) ‘duplicates existing terms and may have unintended consequences’.¹¹⁰ Clause 6.1 of the exposure draft is in the following terms:

‘6.1 Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.’

[162] The NFF submits that ‘the new term limits the categories of employment’ because the exception for casual pieceworkers in clause 10.4(c) of the current award is not replicated in the proposed clause 6.1 of the exposure draft.¹¹¹

[163] Clause 10.4(c) of the current award is in the following terms:

- ‘(c) A casual employee other than a casual pieceworker must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%.’

[164] The NFF proposes that the following amendments to clauses 6.5(a) and (b) would address its concern (changes tracked):

- ‘(a) Except in the case of pieceworkers. ~~A~~ a casual employee is an employee engaged as such and paid by the hour.
- (b) Except in the case of pieceworkers. ~~An~~ an employee who does not meet the definition of a part-time employee in clause 6.4(a) and who is not a full-time employee will be paid as a casual employee in accordance with clause 6.5.’¹¹²

[165] The AWU submits that the NFF's proposed amendments to clauses 6.5(a) and (b) would 'expand the scope of the current piecework provisions' and create ambiguity in respect of which employees may work on a piecework basis.¹¹³ Further, it emphasised that the current award and the exposure draft confine piecework arrangements to specific occupations covered by the award.¹¹⁴ It highlighted the importance of ensuring that the term 'casual pieceworker' is used in clause 6 of the exposure draft rather than 'pieceworker' as only the former term is a defined term in the award and exposure draft.¹¹⁵ The AWU submits that the purpose of having 'casual pieceworker' as a defined term is to confine piecework arrangements to shearers, crutchers and woolpressers who are engaged on a casual basis.¹¹⁶

[166] We agree with the AWU's contention that 'piecework is not a distinct type of employment but rather a method of payment for an employee engaged on a casual basis in the prescribed occupations'.¹¹⁷ It follows that we do not propose to make the changes sought by the NFF.

Item 18: clause 6.6(a) – Farm and livestock hand at shearing or crutching

[167] The NFF submits that the wording in clause 10.5 of the current award should be retained as it is 'simpler and easier to understand' than the proposed clause 6.6 of the exposure draft.¹¹⁸ In its submission of 5 May 2016, the AWU submits that the wording in the exposure draft is clearer and should be incorporated into the award. No further submissions were made in relation to this issue. The relevant clauses are set out below.

[168] Clause 10.5 of the current award is as follows:

10.5 Farm and livestock hand at shearing or crutching

Notwithstanding anything else contained in this award, Part 7—Shearing Operations of the award will not apply to any employee engaged to work on a weekly basis under Part 4—Broadacre Farming and Livestock Operations during any time the employee is employed in shearing or crutching operations of the principal employer. Provided that this clause will not apply to any Farm and livestock hand engaged by the week who works in the employer's shearing shed and who has been engaged by the employer during the period commencing one week before the actual shearing or crutching begins and who is discharged during the week after the shearing or crutching actually ends. In such case, the employee will be paid station hand rates when performing work covered by Part 4 of this award and shearing rates when performing work covered by Part 7 of this award.'

[169] Clause 6.6(a) of the exposure draft is in the following terms:

6.6 Farm and livestock hand at shearing or crutching

- (a) Subject to clause 6.6(b), during any time an employee engaged on a weekly basis under Part 5—Broadacre Farming and Livestock Operations is employed in shearing or crutching operations of the principal employer, Part 8—Shearing Operations will not apply.
- (b) **Exception**
 - (i) Clause 6.6(a) will not apply to any farm and livestock hand engaged by the week who:

- works in the employer’s shearing shed; and
- who has been engaged by the employer during the period commencing one week before the actual shearing or crutching begins; and
- who is discharged during the week after the shearing or crutching actually ends.

(ii) In this case, the employee will be paid station hand rates when performing work covered by Part 5 of this award and shearing rates when performing work covered by Part 8 of this award.’

[170] Contrary to the NFF’s submission we do not agree with the proposition that clause 10.5 of the current award is ‘simpler and easier to understand’ than clause 6.6 of the exposure draft. The proposed clause 6.6 is plainly a clearer exposition of the substance of the existing somewhat ‘text dense’ clause and there is no suggestion that the legal effect of the clause has been altered. We propose to adopt clause 6.6, with a slight variation to clause 6.6(b)(ii), to delete the words ‘this case’ and insert ‘the circumstances set out in clause 6.6(b)(i). The revised clause 6.6 will be as follows:

‘6.6 Farm and livestock hand at shearing or crutching

(a) Subject to clause 6.6(b), during any time an employee engaged on a weekly basis under Part 5—Broadacre Farming and Livestock Operations is employed in shearing or crutching operations of the principal employer, Part 8—Shearing Operations will not apply.

(b) Exception

(i) Clause 6.6(a) will not apply to any farm and livestock hand engaged by the week who:

- works in the employer’s shearing shed; and
- who has been engaged by the employer during the period commencing one week before the actual shearing or crutching begins; and
- who is discharged during the week after the shearing or crutching actually ends.

(ii) ~~In this case~~ In the circumstances set out in clause 6.6(b)(i), the employee will be paid station hand rates when performing work covered by Part 5 of this award and shearing rates when performing work covered by Part 8 of this award.’

Item 26: clause 10.1(c) – first aid allowance

[171] The AWU submits that the wording in the exposure draft ‘conveys that the employee would have to actually carry out first aid duties to receive the allowance’ and propose amending the clause.¹¹⁹ The AWU’s proposed amendments read as follows (changes tracked):

‘An employee appointed by their employer to perform first aid duty as required in addition to their usual duties, and holding a current recognised first aid qualification, such as one from St John Ambulance or similar body, must be paid an allowance of \$2.55 per day ~~to carry out such work.~~’

[172] Business SA supports the AWU’s position.¹²⁰

[173] The NFF noted the AWU’s concerns however submits that clause 10.1(a)(ii) of the exposure draft makes clear that the allowance is payable for all purposes.¹²¹

[174] No further submissions were made in relation to this issue.

[175] The relevant aspects of clause 10 – Allowances of the exposure draft are as follows:

‘10.1 Wage related allowances

(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:

...

(ii) first aid allowance (clause 10.1(b)(ii)) ...

(c) First aid allowance

An employee appointed by their employer to perform first aid in addition to their usual duties, and holding a current recognised first aid qualification, such as one from St John Ambulance or similar body, must be paid an allowance of \$2.55 per day to carry out such work.’

[176] The comparable provisions in the current award are as follows:

‘17.4 All-purpose allowances

The following allowances apply for all purposes of this award:

...

(b) First aid allowance

An employee designated by the employer to render first aid in addition to his or her usual duties and who is the current holder of a recognised first aid qualification, such as one from St John Ambulance or a similar body, must be paid a daily allowance of 14% of the standard rate to carry out such work.’

[177] As mentioned earlier, some research in relation to the first aid allowance will be published concurrently with this decision.

[178] It is our *provisional* view that the AWU's proposed amendment be accepted. We will provide an opportunity for interested parties to make further submissions in respect of our *provisional* view if they wish to do so.

Items 30 and 62: clauses 10.2(d) and 32.7 – overtime meal allowance

[179] In the exposure draft, parties were asked to clarify how clauses 10.2(d)(i) and (ii) interact and specifically whether clause 10.2(d)(i) only applies when an employee has been notified that they are required to work overtime.

[180] The relevant provisions of the exposure draft and the current award are set out in the table below:

Current award	Exposure draft
<p>17.2 (c) Meal allowance</p> <p>(i) If an employee is required to work overtime after working ordinary hours (except where the period of overtime is fewer than one and a half hours), the employee will be paid \$12.93 for the first and any subsequent meals. Alternatively, the employer may supply the employee with a meal.</p>	<p>10.2 (d) Overtime meal allowance</p> <p>(i) If an employee is required to work overtime after working ordinary hours (except where the period of overtime is less than one and a half hours):</p> <ul style="list-style-type: none"> • the employee will be paid \$12.93 for the first and any subsequent meals; or • the employer will supply the employee with a meal.
<p>(ii) An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be provided free of cost with a suitable meal, and if the work extends into a second meal break, another meal, provided that in the event of the meal not being supplied the employee is entitled to a payment of \$12.93 for each meal not supplied.</p>	<p>(ii) An employee required to work overtime for more than two hours after the employee's ordinary finishing time without having been notified before leaving work on the previous day that they will be required to work overtime:</p> <ul style="list-style-type: none"> • will be provided with a suitable meal free of cost; and • if the work extends into a second meal break, another meal; or • in the event of the meal not being supplied the employee is entitled to a payment of \$12.93 for each meal not supplied.
<p>36.5 If an employee is required to work overtime after working ordinary hours on Monday to Friday (except where the period of overtime is less than one hour and a half) the employee will be paid \$12.93 for the first and any subsequent meals.</p>	<p><i>Clause 36.5 doesn't appear to have been transposed to the exposure draft.</i></p>

Current award	Exposure draft
Alternatively the employer may supply the employee with a meal.	
<p>36.10 Where overtime is unplanned and not notified the day or days beforehand, a payment will be made of \$12.93 after two hours of overtime if work will continue beyond the meal break. Alternatively the employer may supply the employee with a meal.</p>	<p>32.7 Overtime meal allowance (a) Where overtime is unplanned and not notified the day or days beforehand, a payment will be made of \$12.93 after two hours of overtime if work will continue beyond the meal break. Alternatively the employer may supply the employee with a meal.</p>

[181] The NFF submits that because ordinary hours are averaged over a four week period, the obligation to pay overtime meal allowances under clause 10.2(d)(i) of the exposure draft will only arise once in every four weeks, regardless of whether the employee was notified on the previous day that overtime would be worked.¹²² It contends that for this reason, clause 10.2(d)(ii) is only relevant in the limited circumstances where there is an ordinary finishing time and that this is not the case for the majority of farming operations.¹²³

[182] In addition, the NFF submits that the meal allowance requirements in the award should be reviewed for relevance to the pastoral industry.¹²⁴ It submits that they are not arrangements of long standing, and that they duplicate other provisions in the award that deal with the provision of board and lodging, mess and cook.¹²⁵ The NFF agree with the AWU submission (outlined below) in the sense that the two clauses ‘overlap considerably’ but do not go so far as to say, as the AWU does, that the clauses ‘conflict’. Further, the NFF submits that similar provisions in the Pastoral award provide that the entitlement to the meal allowance for overtime becomes due after an employee has worked *two* hours of overtime.¹²⁶ It submits that ‘unless there is a particular historical reason to retain the existing terms in full’ the Pastoral award should be amended such that the entitlement to the allowance is enlivened after the employee has worked *two* hours of overtime. We will return to this submission shortly.¹²⁷

[183] The AWU submits that the two clauses overlap and conflict, and propose that clause 10.2(d)(i) be amended to read as follows (changes tracked):

~~‘If an An employee is required to work overtime after working ordinary hours (except where the period of overtime is less for more than one and a half hours): after working ordinary hours~~

- ~~the employee~~ will be paid **\$12.93** for the first and any subsequent meals; or
- ~~the employer will supply the employee will be provided~~ with a suitable meal free of cost for the first and any subsequent meals.

This clause does not apply to piggery attendants who are entitled to a meal allowance in accordance with clause 32.8.¹²⁸

[184] Further, the AWU does not agree with the NFF submission that the meal allowance provision has no relevance in the industry¹²⁹ and notes that the ordinary hours of work for a farm and livestock hand are fixed by agreement,¹³⁰ albeit they can be averaged over a four week period and for this reason there would be occasions where an employee works beyond their usual finishing time and would be entitled to a meal allowance.¹³¹

[185] Business SA submits that clauses 10.2(d)(i) and (ii) operate in substantially the same way, save for the notice requirement.¹³² It submits that clause 10.2(d)(i) provides that where an employee is required to work more than 1.5 hours of overtime after finishing working ordinary hours that the employee will be paid the allowance for the first meal and any subsequent meals.¹³³ It submits that pursuant to clause 10.2(d)(ii), an employee who was not notified before leaving work the previous day that they would be required to work overtime and who works overtime for more than two hours will be entitled to the allowance for the first meal and any subsequent meals.¹³⁴

[186] We return now to the NFF's submission that the allowance should become due after two hours, irrespective of whether notice of the requirement to work overtime was given the previous day. The NFF identifies clause 32.7(a) of the exposure draft and clauses 36.5 and 36.10 of the current award as similar overtime meal allowance provisions whereby the allowance becomes due after two hours.¹³⁵ It appears that clause 36.5 of the current award may not have been replicated in the exposure draft. That clause (set out in the table above at [180]) provides that a Pig Breeding and Raising employee may receive the overtime meal allowance after working more than 1.5 hours of overtime. A comparison of the overtime meal allowance provisions in the current award and the equivalent provisions in the exposure draft indicates that the general entitlement and the entitlement which only applies to Pig Breeding and Raising employees, operate in much the same way..

[187] As mentioned earlier, a further conference is to be convened to attempt to clarify the intended operation of clauses 17.2(c)(ii) and 36.10 (which deal with the provision of a meal allowance). The same conference will also deal with the issues raised by the parties in relation to clauses 10.2 and 32.7.

Item 33: clause 14.4(a)(i) – Annual leave loading

[188] Clause 14.4(a)(i) of the exposure draft is in the following terms:

‘14.4 Annual leave loading

An employee must also be paid a loading calculated on the wages prescribed by this award. The loading must be as follows:

(a) Other than shiftworkers

(i) An employee other than a shiftworker must be paid a loading equal to 17.5% of the wages prescribed by this award for the ordinary hours of work as performed between Monday and Friday.

(ii) Where an employee is rostered to work ordinary weekly hours on days which attract penalty rates and the employee would have earned a greater amount than the amount provided in clause 14.4(a)(i) but for the period of leave then the employee will be paid the amount they would have earned for the ordinary hours worked instead of the 17.5% loading.

(b) Shiftworkers

An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed by this award or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.’

[189] The comparable provision in the current award is clause 23.5, which states the following:

‘23.5 Annual leave loading

(a) An employee must also be paid a loading calculated on the wages prescribed by this award.

(b) The loading must be as follows:

(i) Other than shiftworkers

- An employee other than a shiftworker must be paid a loading equal to 17.5% of the wages prescribed by this award for the ordinary hours of work as performed between Monday and Friday.
- Where an employee is rostered to work the ordinary weekly hours on days which attract penalty rates and the employee would have earned a greater amount than the payment for ordinary hours worked between Monday and Friday plus 17.5% but for the period of leave then the amount which the employee would have earned for the ordinary hours of work they would have worked but for the period of leave will be paid instead of the 17.5% loading.

(ii) Shiftworkers

An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed by this award or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.’

[190] The AWU submits, with the support of Business SA,¹³⁶ that the words ‘as performed between Monday and Friday’ should be deleted from clause 14.4(a)(i) of the exposure draft because farm and livestock hands and poultry workers can be required to work ordinary hours on weekends, without penalty rates.¹³⁷

[191] The AWU and the NFF agree that the exposure draft correctly transposes the terms of the current award. The AWU, acknowledges that the issue may be one of merit as opposed to translation but contends that the provision operates unfairly.¹³⁸ The AWU submits:

‘...the wording in the exposure draft seemingly could exclude payments they [poultry employees] receive for work on a Saturday and Sunday in calculating the annual leave loading’¹³⁹

[192] The Commission undertook research into this issue, and [a research document](#) was published on 14 October 2016.

[193] In their reply submission of 23 November 2016, the AWU note the words ‘worked between Monday and Friday’ appearing in the second dot point in clause 23.5(b)(i) should also be deleted. Clause 23.5(b)(i) is a reference to the current award, not the exposure draft. The words ‘Monday to Friday’ only appear in the exposure draft at clause 14.4(a)(ii).

[194] It is not in dispute that ordinary hours for farm and livestock hands and poultry workers may be worked on weekends without attracting penalty rates. The NFF notes that clause 14.4(a)(ii) ‘provides for a higher rate of pay if you work on days and hours that attract penalty rates’.¹⁴⁰

[195] The issue is that the application of clause 14.4(a)(ii) is triggered by the entitlement an employee has to be paid penalty rates for ordinary hours worked on a Saturday or Sunday and hence the interaction of clauses 14.4(a)(i) and (ii) may disadvantage some employees. A poultry employee who, for example, works Wednesday to Sunday at ordinary rates may not have their weekend work included for the purpose of calculating the annual leave loading because that employee does not receive penalty rates for weekend work and therefore clause 14.4(a)(ii) has no application. Further, under clause 14.4(a)(i) the loading would only be calculated for the ordinary hours such an employee performs on Wednesday to Friday.

[196] The NFF acknowledge that the ‘clear intention’ of the provision is that the annual leave loading is calculated on ‘base rate 38 hours or if you would ordinarily in that week get a higher rate...you get the higher rate...’ in lieu of the annual leave loading.¹⁴¹

[197] As a matter of merit an employee who regularly works on a weekend, say Wednesday through to Sunday, and does not receive penalties for the Saturday and Sunday, should be entitled to an annual leave loading based on those five days, and if that amount is greater than what the employee would have received had they worked their ordinary hours on Monday to Friday (plus 17.5 per cent), then the employee should be paid the higher amount. We will amend the exposure draft accordingly.

Item 45: clause 26.3 – Station cooks

[198] At clause 26.3 of the exposure draft the following question was put to the parties:

‘Given that cooks are classified as an FL1, should the words “appropriate weekly rate” in clause 26.3 be changed to the “FL1 ordinary hourly rate”? Should these amounts also be expressed as percentages?’

[199] Clause 26.3 of the exposure draft is in the following terms:

‘26.3 Station cooks

(a) A cook who is required to work for more than five and a half days in any one week will be paid, in addition to the weekly wage of this award, the following overtime rates:

(i) for work on six full days—an amount of 3/22nds of the appropriate weekly rate;

(ii) for work on six full days and one half day—an amount equal to 3/11ths of the appropriate weekly rate; or

(iii) for work on seven full days—an amount equal to 9/22nds of the appropriate weekly rate.

(b) No overtime will be worked nor will an employee perform work on the employee’s day and/or half day off without the permission of or under the instructions of the employer or their authorised representative.’

[200] The AWU, Business SA and NFF agree that it is not necessary to alter the existing wording in clause 26.3 of the exposure draft.¹⁴² ABI/NSWBC support the change proposed by the Commission in the exposure draft.¹⁴³

[201] Given the position of the AWU, Business SA and the NFF, namely, that it is not necessary to alter the wording in clause 26.3 of the exposure draft, the current wording will remain.

Item 49: clauses 27.2, 38.1 and Schedules B.2.2, B.5.2 and B.6.1 – Overtime and penalty rates – various

[202] Clause 27.2 of the exposure draft deals with overtime and penalty rates for broadacre farming and livestock operations and is set out below:

27.2 The rate of pay for overtime for a farm and livestock hand will be:

For overtime worked	Overtime rate % ordinary hourly rate
Monday to Saturday	150
Sunday—all hours—feeding and watering stock	150
Sunday—all hours—other than feeding and watering stock	200

[203] Clause 38.1 of the exposure draft deals with overtime and penalty rates for poultry farmers and is set out below:

38.1 Overtime

(a) All time worked by a poultry workers in excess of the ordinary hours in clause 37 will be regarded as overtime.

(b) The rate of pay for overtime for a poultry farm worker will be:

For overtime worked	Overtime rate % ordinary hourly rate
Monday to Saturday	150
Sunday—all hours—feeding and watering stock	150
Sunday—all hours—other than feeding and watering stock	200

(c) Time off instead of payment for overtime

An employee may elect to take time off duty, with pay, for a period equal to the overtime worked.

[204] Schedule B.2.2 of the exposure draft sets out overtime rates for full-time and part-time farm and livestock hand adult employees; Schedule B.5.2 deals with ordinary and penalty rates for full-time and part-time piggery attendant junior employees (shiftworkers) and B.6.1 of the exposure draft sets out ordinary and penalty rates for full-time and part-time poultry farm worker adult employees.

[205] The NFF submit that employees, other than piggery attendants, are entitled to overtime only after 152 ordinary hours have been worked in a period of four weeks.¹⁴⁴

[206] They submit that the tables in the exposure draft at clauses 27.2, 38.1 and at B.2.2, B.5.2 and B.6.1 currently ‘imply that all hours worked on weekends are overtime hours’¹⁴⁵ and that the ‘tables setting out rates of pay should accurately reflect that overtime penalties only apply once 152 ordinary hours over a four week period have been worked’.¹⁴⁶ They submit that the columns ‘setting out penalty rates should be deleted or amended’ as follows:¹⁴⁷

27.2 The rate of pay for overtime for a farm and livestock hand will be:

For overtime worked <u>For hours worked after 152 hours in any 4 week period</u>	Overtime rate % ordinary hourly rate
Monday to Saturday	150
Sunday— all hours overtime —feeding and watering stock	150
Sunday— all hours overtime —other than feeding and watering stock	200

[207] Further, the NFF submits that schedule B.2.2 (by way of example) ‘should be deleted or amended as follows’.¹⁴⁸

B.2.2 Full-time and part-time farm and livestock hand adult employees—overtime rates

	<u>Overtime: Hours in excess of 152 hours worked over a 4 week period</u>		
	Monday to Saturday = <u>Overtime hours</u>	Sunday – <u>Overtime hours</u>	
		feeding & watering stock	other than feeding & watering stock
	% of ordinary hourly rate		
	150%	150%	200%
	\$	\$	\$
FLH1	26.55	26.55	35.40
FLH2	27.32	27.32	36.42
FLH3	27.71	27.71	36.94
FLH4	28.37	28.37	37.82
FLH5	28.88	28.88	38.50
FLH6	29.34	29.34	39.12
FLH7	30.92	30.92	41.22

	<u>Overtime: Hours in excess of 152 hours worked over a 4 week period</u>		
	Monday to Saturday = <u>Overtime hours</u>	Sunday – <u>Overtime hours</u>	
		feeding & watering stock	other than feeding & watering stock
	% of ordinary hourly rate		
	150%	150%	200%
	\$	\$	\$
FLH8	33.21	33.21	44.28
With keep – \$122.53 per week is deducted where keep is provided in accordance with clause 24.3.			

[208] The AWU opposes the NFF submission and argues that ‘the inclusion of these provisions...will create confusion and ambiguity’.¹⁴⁹ The AWU submits that overtime may also be payable in the following circumstances:¹⁵⁰

- (i) ‘[w]hen a part-time employee works more than their agreed hours of work; and/or’;¹⁵¹
- (ii) ‘[w]hen an employee in the broadacre farming and livestock stream works more than the agreed ordinary hours’.¹⁵²

[209] Further, the AWU submits:

‘The current provisions are sufficient to determine when overtime rates are payable and the amendments sought by the NFF will complicate rather than clarify their operation.’¹⁵³

[210] We note that the parties were directed to file a joint paper setting out what changes they think are required and setting out a short argument in support of the changes.¹⁵⁴ The joint paper has not been filed. The parties are directed to file the joint paper by **Friday 28 July 2017**. The Commission will then determine this issue on the papers.

Items 54 and 55: clauses 31.1 and 31.5 – Shiftwork definitions

[211] The term ‘shiftworker’ is not defined in the current award. This was initially raised by the Fair Work Ombudsman (FWO) in correspondence of 2 March 2015.¹⁵⁵ Clause 35.3 of the current award defines types of shifts, and clause 35.9 provides penalty rates applying to ‘shiftworkers’. The FWO submits that without the term ‘shiftworker’ being defined, it may be unclear as to whether an employee is a shiftworker or a day worker working outside the spread of hours.¹⁵⁶

[212] In the exposure draft, the following question was put to the parties:

‘Parties are asked to comment on whether the award should include a definition of ‘shiftworker’ in order to clarify which employees are shiftworkers (for the purposes of shift loading) and which employees are dayworkers (working outside the spread of ordinary hours)’

[213] Following the 4 July 2016 conference, it was noted that two issues remained unresolved:

- (i) whether the term ‘shiftworker’ require a definition; and
- (ii) the range of issues raised in the AWU submission of 17 April 2016 at paragraphs 28 to 31 and the corresponding arrangements that it proposes.¹⁵⁷

[214] The AWU initially proposed inserting a definition for ‘shiftworker’ at clause 14.1 (in the annual leave provision) as follows:

‘For the purpose of the additional week of annual leave provided by the NES, a shiftworker means a shiftworker on continuous work as defined in this award.’¹⁵⁸

[215] The AWU later submitted that it had not encountered any issues in relation to the definition for ‘shiftworker’ and that it does not see ‘a compelling need for a definition’.¹⁵⁹ The AWU also queried whether ‘an award has to include a definition for the purpose of the extra week of annual leave or not’.¹⁶⁰

[216] The NFF submits that a definition for ‘shiftworker’ is unnecessary and contends that:

‘No issues have arisen as to the definition of shiftworker and including one may have the unintended consequence of unduly restricting or altering the current application of this clause.’¹⁶¹

[217] No further submissions were made in respect of inserting a definition for the term ‘shiftworker’.

[218] Given the views of the parties we do not propose to include a definition of ‘shiftworker’ in the award.

[219] In their submission of 17 April 2016, the AWU raised concerns relating to clause 31.1 and submits that clause 31.1 of the exposure draft (‘shiftwork definitions’) no longer has the same meaning as the corresponding clause in the current award (clause 35.3 of the current award). It submits that by inserting a definition for ‘non-continuous work’ at clause 31.1(c), the exposure draft has ‘conflated the concepts of non-continuous work and non-successive shifts’.¹⁶² Clause 31.1(c) of the exposure draft is in the following terms:

- ‘(c) **Non-continuous work** means work carried [out] by a shiftworker who works on an afternoon or night shift which does not continue:
 - (i) for at least five successive afternoons or nights on a five day site or six successive afternoons or nights on a six day site; or
 - (ii) for at least the number of ordinary hours prescribed by one of the alternative arrangements in clauses 31.1(f)(ii) or (iii) of this award;’

Note: the word ‘out’ that should appear between the words ‘means work carried’ and ‘by a shiftworker’ is missing from the most recently published exposure draft.

[220] The AWU submits:

“Non-continuous work” is referring to the system of shifts that operates at the enterprise. In contrast, “non-successive shifts” is concerned with the shifts worked by an individual employee and is specifically directed at prescribing higher rates when they perform less than a full week of afternoon or night shift.’¹⁶³

[221] The AWU contends that the shift allowances in clause 31.5 of the exposure draft ‘are related to the disability an employee experiences from working different shifts during a week’ and that the allowances may apply irrespective of whether the enterprise operates continuously.¹⁶⁴ The AWU submits that the redrafted clauses may have the unintended effect of removing the ‘entitlement to higher rates of pay for employees who perform less than a full week of shifts in a continuous enterprise’.¹⁶⁵

[222] The NFF agrees with the AWU position¹⁶⁶ and submits that the ‘issue arises from the inclusion in the exposure draft of a new definition of “non-continuous work”’, a previously undefined term.¹⁶⁷ Although the AWU and NFF agree with respect to the issue, they each propose different solutions.

[223] The NFF submits that the exposure draft should be changed to reflect the current award arrangements. It proposes deleting the ‘non-continuous work’ definition (clause 31.1(c)) and replacing clause 31.5 of the exposure draft with the current award clause 35.9.¹⁶⁸

[224] The AWU proposes replacing the term ‘non-continuous work’ in clause 31.1(c) with ‘non-successive shifts.’ The same change is consequentially proposed for the table appearing at clause 31.5—Afternoon or night shift allowances.¹⁶⁹ In addition, the AWU proposes inserting a definition for ‘non-continuous work’ at clause 31.1.¹⁷⁰ A summary of the AWU’s proposed amendments is set out below:

(i) amending clause 31.1(c) to read (changes tracked):

~~‘Non-continuous work~~ Non-successive shifts means work carried out by a shiftworker ~~who works~~ on ~~an~~ afternoon or night shift which does not continue...’;

(ii) amending clause 31.1 by inserting a new definition for ‘non-continuous work’ which reads:

‘**Non-continuous work** means shift work which does not meet the definition of “continuous work” ’; and

(iii) amending all references to ‘Non-continuous afternoon or night’ in the table at clause 31.5 to ‘Non-successive afternoon or night’.

[225] The AWU also submits that the exposure draft restricts the entitlement of a paid crib break to continuous workers¹⁷¹ and that this is contrary to the intent of the award, as demonstrated by the ‘fact that clause 35.6 (a) of the Award refers to non-continuous workers performing an average of 38 hours per week ‘inclusive of crib time’.¹⁷² The AWU proposes removing the distinction in clause 31.2(h) in respect of breaks for employees engaged in ‘continuous work’ and ‘other than continuous work’ and amending the clause as follows (changes tracked):¹⁷³

[226] The AWU submits that the distinction in clause 31.2(h) between ‘Continuous work’ and ‘Other than continuous work’ should be removed. It proposes clause 31(h) be amended as follows:

~~(h) — Breaks~~

~~(i) — Continuous work~~

~~Shiftworkers on continuous work as defined in clause 31.1(b) will be allowed a 20 minute crib break each shift, which will be counted as time worked.~~

~~(ii) — Other than continuous work~~

~~Shiftworkers who are not engaged in continuous work as defined in clause 31.1(b):~~

- ~~• will work ordinary hours continuously except for meal breaks at the discretion of the employer; and~~
- ~~• must not be required to work for more than five hours without a break for a meal.~~

(h) Shiftworkers will be allowed a 20 minute crib break each shift, which will be counted as time worked.

(i) Shiftworkers will work ordinary hours continuously except for crib breaks at the discretion of the employer.

[227] ABI ‘agree generally with the other parties that clause 31.1 of the exposure draft requires further attention’ and indicated its support for further discussion between the parties.¹⁷⁴ ABI made no further submissions in relation to these issues.

[228] We agree with ABI. These issues should be the subject of a further discussion between the parties and a conference will be convened for that purpose.

Items 102 and 104: Schedule B.4.2 – Pig Breeding and Raising – Piggery attendant employees and Schedule B.4.5 – Casual piggery attendant adult employees—shiftworkers—ordinary and penalty rates

[229] The AWU submits that the references to ‘non-continuous’ should be amended to ‘non successive’ and that footnote two should be amended and footnote three deleted.¹⁷⁵

[230] The NFF ‘do not support the introduction of a new “non-successive shift” term’.¹⁷⁶

[231] The determination of this issue is related to the resolution of the matters raised above at [219]– [228] which are to be the subject of a further conference.

Items 58 and 60: clauses 32, 32.3 and 33 – Overtime and penalty rates; Saturday and Sunday Penalty rates

[232] The AWU does not oppose the NFF’s proposed amendments to clause 32.7(b).¹⁷⁷ The proposed amendments correct typographical errors and we will make the changes in the form sought by the NFF. The AWU opposes the remaining amendments proposed by the NFF in respect of clauses 32 and 33. We discuss these below.

[233] The NFF submits that clause 32.1 of the exposure draft requires the following ‘typographical corrections’:

‘All time worked by piggery attendants before the ordinary commencing time or after the ordinary finishing time or in excess of ordinary hours ~~of work in any one day or in any one week~~ will be regarded as overtime.’¹⁷⁸

[234] The AWU opposes the NFF’s proposal and submits that the deletion of the words ‘of work in any one day or in any one week’ makes the clause less clear in respect of overtime payments in circumstances where an employee works outside the span of ordinary hours or above the maximum number of hours to be worked in a day or in a week.¹⁷⁹

[235] Clause 36.1 is the corresponding clause in the current award and is in the following terms:

‘All time worked by Piggery attendants before the ordinary commencing time or after the ordinary ceasing time or in excess of ordinary hours of work in any one day or in any one week will be regarded as overtime and will be paid for at the rate of time and a half for the first two hours and double time after that.’ [our emphasis]

[236] The NFF’s characterisation of its proposed amendment to clause 32.1 as a ‘typographical correction’ is incorrect. The words which the NFF proposes to delete appear in identical form in the current award. We agree with the AWU that to delete the words would make the provision less clear. We will not make the amendments sought by the NFF.

[237] In respect of clause 33, the NFF proposes amendments which included moving clause 32.3 of the exposure draft to clause 33.2.¹⁸⁰ The NFF submits that the clause should be moved as it ‘refers directly to Saturday and Sunday overtime rates’.¹⁸¹ The proposed clause in the NFF submission of 14 April 2016 also duplicates clause 32.4 of the exposure draft in what is clause 33.3 of its proposed clause. The clause proposed by the NFF is set out below (changes tracked):¹⁸²

‘33. Saturday and Sunday ~~penalty rates~~ work

33.1 ~~For work performed by piggery attendants on a Saturday or a Sunday, the following rates apply~~ Overtime worked on weekends will be paid at the following rates:

For time worked <u>after 152 hours in any 4 week period:</u>	Penalty rate % ordinary hourly rate
Day workers	
<u>Saturday—ordinary hours</u>	<u>150</u>
Saturday— ordinary hours worked by agreement <u>First 2</u>	150

For time worked <u>after 152 hours in any 4 week period:</u>	Penalty rate % ordinary hourly rate
<u>hours of overtime</u>	
<u>Saturday —After the first two hours of overtime</u>	<u>200</u>
Sunday— <u>all hours overtime</u>	200
Shiftworkers	
Saturday ¹	150
Sunday—continuous shifts ²	200
¹ Provision in substitution for and not cumulative upon shift allowances in clause 31.5.	
² Where the major portion of the rostered shift is on a Sunday.	

33.2 A minimum payment of three hours will apply to overtime worked on a Saturday or Sunday except for work which is continuous with ordinary duty.

33.3 In computing overtime each day's work will stand alone.'

[238] We note that the NFF's proposal in respect of clause 33.2 involves more than merely moving clause 32.3 to clause 33.2. The NFF's clause 33.2 is in slightly amended terms as depicted below (changes tracked):

~~'32.3~~ **33.2** A minimum payment of three hours' will apply to overtime worked on a Saturday or Sunday ~~is payable~~ except for work which is continuous with ordinary duty.'

[239] The AWU does not agree with any of the NFF's proposed amendments to clause 33.¹⁸³ The AWU submits that the provisions in clause 33 of the exposure draft are concerned with penalty rates for ordinary hours *only* whereas the provisions the NFF proposes to move are concerned with overtime. Further, the AWU submits that the minimum engagement provision at clause 32.3 concerns overtime worked on the weekend and those overtime rates are in clause 32 of the exposure draft. For these reasons the AWU submits the amendments proposed by the NFF 'do not make sense'.¹⁸⁴

[240] We agree with the AWU. We do not propose to make the changes proposed by the NFF. Clauses 37.1(a)(ii) and 37.2(a) of the current award are accurately reflected in clauses 32.2 and 32.3 of the exposure draft and deal with overtime. The table appearing at clause 33 of the exposure draft reflects the penalty rates for piggery attendants working Saturday and Sundays as they appear at clauses 37.1(a)(i), 37.1(b) and 37.2(b) of the current award. The remaining provisions in clause 37 of the current award are concerned with overtime payments for piggery attendants only and have been accurately transposed to clause 32 of the exposure draft. We propose amending the heading of clause 32 so that it accurately reflects that the provisions in the clause pertain to overtime entitlements only. That is, clause 32 will be headed (changes tracked) 'Overtime ~~and penalty rates~~'.

Item 59: clause 32.2 – Overtime and penalty rates

[241] The NFF submits that clause 32.2 should be amended to 'align the table with the current award terms and assist to avoid misunderstanding about when overtime rates must be paid'.¹⁸⁵ The amendments proposed are set out below (changes tracked):¹⁸⁶

32.2 Subject to clause 33, Θ overtime will be paid at the following rates:

For overtime worked <u>Overtime after</u> <u>152 hours in a 4 week period</u>	Overtime rate % ordinary hourly rate
Monday to Saturday Any day— f <u>F</u> First two hours	150
Monday to Saturday Any day— a <u>A</u> After first two hours	200
Sunday— <u>all hours overtime</u>	200

[242] The AWU submits that the words ‘all hours’ should be deleted from the table because the clause is only concerned with overtime.¹⁸⁷ Business SA agrees with the AWU position in this regard.¹⁸⁸

[243] The AWU rejects the NFF’s proposed amendments and contends that:

‘Piggery attendants can be entitled to overtime payments when they have not worked 152 ordinary hours in a 4-week period. Overtime is payable for working outside the span of ordinary hours for day workers or shift workers and for working more than the maximum daily ordinary hours.’¹⁸⁹

[244] The table in clause 32.2 of the exposure draft contains the overtime rates for piggery attendants and reflects clauses 36.1, 36.2, 37.1(a)(ii) and 37.2(a) of the current award. The clauses are set out below:

36.1 All time worked by Piggery attendants before the ordinary commencing time or after the ordinary ceasing time or in excess of ordinary hours of work in any one day or in any one week will be regarded as overtime and will be paid for at the rate of time and a half for the first two hours and double time after that.

36.2 All overtime worked on Saturday will be paid for at the rate of time and a half for the first two hours and double time after that.

37.1 Saturdays

(a) Day workers

...

(ii) The rate for overtime duty on a Saturday will be time and half for the first two hours and double time after that, with a minimum payment of three hours except for work which is continuous with ordinary duty.

37.2 Sundays

(a) The rate for overtime duty on a Sunday will be double time with a minimum payment of three hours at such rate except for work which is continuous with ordinary duty.’

[245] We do not accept the NFF’s proposed variation to the table in clause 32.2. It seems to us that the variation proposed is inconsistent with the terms of clause 32.1 which provides that Piggery attendants are paid overtime rates for all time worked ‘before the ordinary commencing time or after the ordinary ceasing time or in excess of ordinary hours of work in any one day or in any one week’.

Item 64: clause 33 – Saturday and Sunday penalty rates

[246] The AWU submits that the table at clause 33 should be amended in relation to the penalty rate for day worker piggery attendants who work ordinary hours on a Sunday. They propose three amendments to the table as detailed below.

[247] It submits that the fourth row should read ‘Sunday—ordinary hours worked by agreement’ as opposed to ‘Sunday—all hours’ as it currently appears.¹⁹⁰ It also proposes that the words ‘continuous shifts’ in the seventh row of the same table should be deleted because shiftworkers perform ordinary hours on a Sunday.¹⁹¹ In this regard, the AWU note that clause 31.6 of the exposure draft ‘refers generally to shiftworkers when excluding the shift loading for work on the weekend and public holidays’. The NFF supports the AWU submission in respect of shiftworkers but does not respond to the other aspects of the AWU claim other than to refer it its own claim in relation to this clause (see under items 58 and 60 at paragraphs [232] – [240]).¹⁹²

[248] In addition, the third amendment the AWU seek is that the second footnote in the table be deleted because ‘there is no corresponding provision for Saturday night shifts or shifts on a public holiday’. ABI oppose this AWU submission ‘on the basis that this represents a substantive change rather than a drafting or technical amendment’.¹⁹³

[249] We do not propose to make any of the amendments sought by the AWU. Rather we propose to delete the fourth row of that table in its entirety. Clause 37.2(a) of the current award indicates that the rate for day workers working *overtime* on a Sunday will be paid for at double time (or rather 200 per cent of the ordinary hourly rate). There is no provision of the current award that indicates that ordinary hours worked (by agreement) on a Sunday will attract penalty rates and be paid for at 200 per cent of the ordinary hourly rate. The translation of clause 37.2 of the current award to the table at clause 32.2 (in the overtime provision) accurately reflects the terms of the current award.

Item 65: clause 34 – Payment for public holidays

[250] At clause 34 of the exposure draft, the following question was put to parties:

‘The overtime rates that apply for work in excess of rostered hours on a public holiday in accordance with clause 32.1 are less than that provided for ordinary hours on a public holiday. Is this correct?’

[251] The parties agreed that the rate for overtime worked on a public holiday is correct, although it is less than the rate for ordinary hours worked on a public holiday.¹⁹⁴ Business SA submits that the pre-reform award supports their position that the clause is correct.¹⁹⁵

[252] The AWU initially submitted that:

‘...it is illogical and unfair for overtime hours on a public holiday to be paid at a lower rate than ordinary hours. The rate should be 250% of the ordinary hourly rate for all hours worked’.¹⁹⁶

[253] In a later submission, the AWU submit that the current award and exposure draft:

‘...do currently appear to allow an employee working on a public holiday to reduce to a lower rate when they work more than the usual rostered hours on a public holiday.

The Award and Exposure Draft lack a provision stating overtime on a public holiday is paid at the rate of double time and a half.’

[254] We do not propose to change clause 34 of the exposure draft as it accurately reflects the position under the current award. However, it is unclear whether or not the AWU is seeking to vary the provision. We will provide the AWU with an opportunity to clarify their position.

Item 84: clause 41 – Special allowances (other than Woolclassers and Shearing shed experts)

[255] The NFF submits that the wording in the current award clause (clause 46.1) should be retained ‘to reduce the risk of unintentional changes to the meaning of this clause’¹⁹⁷ and that the redrafted clause has a different legal effect to the corresponding clause in the current award.¹⁹⁸ The SCAA agrees with the NFF.¹⁹⁹ The AWU ‘accepts the word “home” appears in the current award and is not opposed to it being inserted into the Exposure Draft on that basis’.²⁰⁰

[256] The current award clause is in the following terms (emphasis added):

‘46.1 Allowance where sleeping quarters are not provided

Where the employee does not reside during a shearing (or crutching) at the employee’s home or usual place of residence and the employee is forced to obtain and pay for sleeping quarters away from the employer’s premises because the employer is unable to provide sleeping quarters at the premises for the employee, the employer will:

- (a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer’s expense; or
- (b) pay to the employee an allowance of 259.4% of the standard rate per night for each night during the employee’s employment that the employee is so forced to obtain and pay for sleeping quarters; and
- (c) where the distance is one kilometre or more walking distance between the employee’s sleeping quarters and the shed, provide or pay for the transport of the employee between the sleeping quarters and the shed.’

[257] The corresponding clause in the exposure draft is as follows (emphasis added):

‘41.1 Allowance where sleeping quarters are not provided

If the employee does not reside at their usual place of residence and is forced to obtain and pay for sleeping quarters away from the employer’s premises because the employer is unable to provide sleeping quarters at the premises for the employee during a shearing or crutching, the employer will:

- (a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer’s expense; or

- (b) pay to the employee an allowance of \$47.24 per night during the employee's employment that the employee is forced to obtain and pay for sleeping quarters; and
- (c) provide or pay for the transport of the employee between the sleeping quarters and the shed where the distance is one kilometre or more walking distance between the employee's sleeping quarters and the shed.'

[258] The NFF and SCAA submit that 'the term "home" should be reinserted'.²⁰¹ The NFF makes the following submissions in support of its argument that clause 41.1 no longer has the same meaning as the corresponding clause in the current award:

'The word "home" has been removed from clause 41.1 of the Exposure Draft. The Exposure Draft clause would not apply to a circumstance where an employee returns to their home for work, which is not their usual place of residence at that time.

As outlined in our previous submission dated 28 September 2016, the legal dictionary defines residence as "personal presence at some place of abode" and indicates that "although the domicile and residence of a person are usually in the same place, and the two terms are frequently used as if they have the same meaning, domicile means living in that locality with the intent to make it a fixed and permanent home. Residence merely requires bodily presence as an inhabitant in a given place."

The term "home" was inserted into the Pastoral Industry Award 1965 by Justice Gaudron on 23 October 1975, to supplement the phrase "usual place of residence".

As was made clear in that decision, while a person's home and usual place of residence will often mean the same thing, this is not necessarily the case. Shearing is a form of employment that is traditionally associated with an expeditionary lifestyle where employees move around throughout the year for work and may establish a usual place of residence that is away from their home.

This is confirmed by the decision in *Russell Kerry Collison, Secretary, Australian Workers Union, Greater NSW Branch, On Behalf of Stewart Batey v Coachdale Pty Ltd* where a shearer, Mr Batey moved around for shearing and travelled from his home that he shared with his wife in Warwick to stay at a hotel in Walcha for the purposes of shearing over the course of the year, travelling away from here occasionally for other jobs. After he separated from his wife he moved to Seymour, spending some time there and also living in a three bedroom house in Walcha for a significant portion of the year.

In assessing whether Mr Batey was entitled to an allowance for this accommodation, the Magistrate placed weight on the distinction between suburban and expeditionary shearers stating "as a professional shearer, Mr Batey was itinerant, and thus his "usual place of residence" was wherever he was staying for work purposes."

He went on to explain:

"In any case, Clause 25.1 refers in the alternative to "home" or "usual place of residence" so even if Warwick was Mr Batey's "home" at relevant times, and Seymour was his "home" in 2001, these were certainly not "his usual place of residence". But even if "home" is all that is required for the clause to be satisfied in this case, Warwick and Seymour were not his "home" during the shearing or crutching.

What is a person's "home" or "usual place of residence" must be judged objectively, not on what they assert to be the case; the fact that they are named on the title of a property, or pay rates at a property, or have their mail sent to a particular address, does not make such a place that person's "home" or "usual place of residence".

As the word "home" was inserted into the award intentionally, the NFF is concerned that its removal would have the effect of expanding the scope of the allowances to which it relates. Accordingly, we seek to retain the term "home" in the proposed clause.' (footnotes omitted)²⁰²

[259] We propose to insert the words 'home or' in between the words 'their' and 'usual place of residence' in clause 41.1 of the exposure draft so that the clause reads: '...at their home or usual place of residence...'.²⁰²

Item 86: clause 42.3(a)(ii) – Allowance for delays for Woolclassers paid at piecework rate

[260] The phrase 'act of God' was removed when clause 47.3 of the current award was transposed to clause 42.3 of the exposure draft. The NFF expressed concern that the revised clause may no longer cover 'fires that are deliberately lit'²⁰³ and submits:

'The changes made to this clause in the exposure draft have the potential to change meaning by limiting the circumstances to which this clause applies. 'Act of God' is a legal term of art used most commonly in the insurance industry. It should be retained.'²⁰⁴

[261] The NFF, supported by the SCAA, proposes an alternative form of wording to the phrase 'act of God' that it submits will address its concern.²⁰⁵ The proposed wording is as follows (changes tracked):

'42.3 Allowance for delays for Woolclassers paid at piecework rate

(a) In the event of the employer failing to start shearing on the day fixed by the contract the employer will pay the employee for the time kept idle, a daily amount of **10%** of the appropriate guaranteed weekly minimum rate for the classification of the employee; provided:

...

(ii) the failure to start is not caused by wet weather or other unforeseen **natural** causes such as fire, flood, or earthquake.'²⁰⁶

[262] Clause 47.3 of the current award provides as follows:

47.3 Allowance for delays for Woolclassers paid at piecework rate

(a) In the event of the employer failing to start shearing on the day fixed by the contract the employer will, provided the Woolclasser is ready to start on the day fixed, pay the employee for the time kept idle, a daily amount of 1/10th of the appropriate guaranteed weekly minimum rate for the classification of the employee, unless the failure to start is caused by wet weather or other unforeseen causes such as fire, flood, earthquake or any other act of God.

(b) The number of stands to be taken into account when calculating the allowance will be the maximum number of stands actually occupied by Shearers during the shearing.

(c) The allowance set out in this clause will be in full satisfaction of all claims by the employee arising out of such failure to start on the part of the employer.

(d) The abovementioned rates will only apply where an employee is paid the piecework rate.

[263] The AWU acknowledges that it had initially expressed its agreement with the NFF position,²⁰⁷ but later expressed some concerns with the NFF proposed variation. The AWU submits that the word ‘natural’ should not be deleted for the following reasons:

‘...the proposed amendment unreasonably confines an employee’s entitlements for idle time.

The deletion of the word “natural” would mean an employer does not have to pay the 10% daily amount if there are “other unforeseen causes” for the delay in commencing work.

An unscrupulous employer could use these words to deny the 10% payment to an employee for causes largely within their control - such as failing to keep machinery properly maintained or ensuring there are adequate staffing levels – provided there is something unforeseen about the cause.

The words “such as fire, flood or earthquake” do give an indication of the intent of the provision but would not necessarily prevent a broad interpretation of the term “other unforeseen causes”.

The NFF has identified deliberately lit fires as an example of a problem with using the term “natural”. However, an employee should not forfeit the 10% daily payment because they are prevented from working by a deliberately lit fire.

Further, determining whether a fire is deliberately lit or not may take the legal system a lengthy amount of time. Having an industrial entitlement contingent on a guilty verdict in criminal proceedings is far from ideal.

It is also reasonably unlikely that an employee would subject themselves to potential criminal prosecution via deliberately lighting a fire to receive a 10% daily payment when they could otherwise have avoided exposure to prison and received a 100% payment.²⁰⁸

[264] We propose to amend clause 42.3 of the exposure draft so that the relevant expression reflects the wording in clause 47.3 if the current award, that is:

‘(ii) the failure to start is not caused by wet weather or other unforeseen causes such as fire, flood, earthquake **or any other act of God**’.

[265] The additional words (shown in red) reflect the terms of the current award, if an party seeks to depart from those terms they should file an application to vary the award.

Item 95: Schedule A.1.2 – Minimum wages

[266] The NFF submits that schedule A.1.2 ‘should clarify that the deduction is ‘per day’ and that clause 40.3(d) should be similarly amended.²⁰⁹ It also submits that a ‘further identical provision should be inserted above the proposed clause 40.3 in relation to shearing’.²¹⁰ The SCAA agree with the NFF position.²¹¹

[267] The exposure draft provides as follows:

‘A.1.2 ‘If found’ rates are calculated by deducting **\$29.85** from the ‘not found’ rate. This amount is arrived at by adding the Shearing cook’s daily rate to one fifth of the Shearers’ ration component. The Shearing cook’s daily rate is calculated in accordance with clause A.5.’

[268] Schedule A.1.2 is adapted from clause 45.1(h) of the current award which is in the following terms:

‘(h) **If found employee**—the rates prescribed above less the amount of \$29.85, which is arrived at by adding the Shearing cook’s daily rate to one fifth of the Shearers’ ration component.’

[269] Clause 40.3 of the exposure draft provides as follows:

40.3 Rates for crutching

The following rates are arrived at by the formula in clause A.2 ~~and paid in addition to the shearing rates contained in this clause.~~

(a) Piecework rates—if not found employee:

	Per 100 \$ At sheds	Per 100 \$ Other than at sheds
Full crutching: shearing the inside parts of the legs, between the legs, and around and above the tail. In addition when required: <ul style="list-style-type: none"> • removing wool that has been struck by blowfly; • lifting the bottom leg and shearing that leg prior to turning the sheep around and above the tail; and/or • giving up to two blows above the tail 	85.06	73.33
All other crutching	67.46	58.66
For wiggling or ringing	32.26	32.26
For either wiggling or ringing in addition to crutching	8.80	8.80
For wiggling and ringing	52.80	52.80
For wiggling and ringing in addition to crutching—crutching rate plus	14.67	14.67

	Per 100 \$ At sheds	Per 100 \$ Other than at sheds
For cleaning the belly of any ewe above the teats (no more than two blows of the machine or shears)—crutching rates plus	7.33	7.33

(b) Lack of amenities allowance

An allowance of **\$9.38** per person per day will be paid for the lack of amenities when crutching is performed other than at sheds in addition to the piecework rates in clause 40.3(a).

(c) Special crutching rates

- (i)** For crutching stud ewes and their lambs—one and a quarter of the rates prescribed in clause 0.
- (ii)** For crutching rams and ram stags—double the rates prescribed in clause 0.

(d) If found employee—the rates prescribed above less the amount of **\$29.85**, which is arrived at by adding the Shearing cook’s daily rate to one fifth of the Shearers’ ration component.

[270] The NFF makes the following submissions in support of its claim:

‘Historically, the Wage Rates and Ready Reckoner circular outlined clearly that the “found” deduction was “per day”.

In the current award, the “found” deduction is \$29.85. The rate for engagement by the day is:

- a. \$219.14 if not found employee;
- b. \$189.29 per day if found employee.

The difference between the two is \$29.85, supporting the proposition that the “found” deduction is “per day”.²¹²

[271] Conversely, the AWU submits there are ‘no issues with the wording of the Exposure Draft’,²¹³ but accepts that ‘the “if found” deduction is incurred daily’.²¹⁴

[272] It is not entirely clear to us what changes to the current exposure draft are being sought by the respective parties. This issue will be the subject of a further conference.

Items 101 and 103: Schedule B.4.1 – Pig Breeding and Raising – Piggery attendant employees and Schedule B.4.4 – Casual piggery attendant adult employees (all employees including shiftworkers)—ordinary and penalty rates

[273] The AWU submits that the current award is ‘ambiguous in terms of whether a day worker can work ordinary hours on a Sunday’.²¹⁵ It contends that:

‘Clause 35.1 seemingly allows an agreement to this effect but clause 37.2 does not refer to ordinary duty by day workers on a Sunday.’²¹⁶

[274] For this reason, the AWU submits:

‘... Schedule B.4.1 of the Exposure Draft should be amended to exclude shiftworkers (given their rates are comprehensively dealt with in Schedule B.4.2) and to insert a 200% Sunday column.’²¹⁷

[275] Similarly, it submits that schedule B.4.4 should be amended and that:

‘...a 225% column should be added for ordinary hours worked by agreement on Sunday and shiftworkers should be excluded rather than included given their rates are in Schedule B.4.5.’²¹⁸

[276] In the summary of submissions, the following comment was included by the Commission’s research area:

‘No ambiguity. Award does not contain provision for ordinary hours on Sundays. The Sat/Sun clause (MA cl 37) refers to a Saturday ordinary time rate, whereas Sunday rate referred to as ‘overtime’.

B.4.1 is a table of ordinary rates and penalty rates – overtime rates are in B.4.3.

[277] In light of the above comment, the AWU agreed to confirm its position in respect of its claims by 15 July 2016.²¹⁹ The AWU are yet to confirm whether it presses the claims. The AWU is asked to advise the Commission of its position in writing by no later than 4.00pm **Friday 28 July 2017.**

Item 106: Schedule B.6.2 – Full-time and part-time junior poultry farm worker employees – ordinary, penalty rates and overtime and Item 107: Schedule B.6.3 – Casual junior poultry farm worker employees – ordinary, penalty rates and overtime

[278] The NFF submits that the rates contained in Schedule B.7.2 and B.7.3 are affected by rounding errors and therefore certain rates are incorrect.²²⁰ The NFF submits that the rates for PW1 employees under 16 years of age are incorrect in both B.7.2 and B.7.3 of the exposure draft.²²¹ The amended figures proposed by the NFF (relative to the rates in the 2015–16 financial year) are set out below (changes tracked):

B.7.2 Full-time and part-time junior poultry farm worker employees—ordinary, penalty rates and overtime

Age	Junior hourly rate	Public holiday (all hours worked)	Overtime		
			Monday to Saturday	Sunday	
				Feeding or watering stock	Other than feeding or watering stock
% of junior hourly rates					
	100%	200%	150%	150%	200%
	\$	\$	\$	\$	\$
PW1					
Under 16 years	8.85 <u>8.64</u>	17.70 <u>17.28</u>	13.28 <u>12.96</u>	13.28 <u>12.96</u>	17.70 <u>17.28</u>

B.7.3 Casual junior poultry farm worker employees—ordinary, penalty rates and overtime

Age	Junior hourly rate	Casual hourly rate	Public holiday
	% of junior hourly rates		
	100%	125%	225%
	\$	\$	\$
PW1			
Under 16 years	8.85 <u>8.64</u>	11.06 <u>10.80</u>	19.91 <u>19.44</u>

[279] The disparity between the rates in the Exposure draft by the Commission and those calculated by the NFF appear to be due to the NFF's failure to round the figures at each step in the calculation. When calculating the hourly adult rate, the weekly rate is to be divided by 38. However, it appears the NFF has not rounded the hourly figure to two decimal places before proceeding with further calculations. As a result, the starting figure for the NFF calculations is the unrounded adult hourly rate. Using the rates for the 2015–16 financial year as an example, this means that instead of arriving at an hourly adult rate of \$17.29, the NFF has arrived at an hourly adult rate of \$17.286842. The NFF's method is inconsistent with the how the Commission calculates rates and that explains the discrepancy between the NFF's proposed rates and those in the exposure draft.

[280] We do not propose to amend the rates in Schedule B.7.2 and B.7.3.

[281] We note that the NFF also seeks an amendment to the table such that it is clear that 'overtime is only payable after 152 hours in any 4 week period'. For the reasons given in respect of Item 49 above, we reject the NFF's proposed amendment.

Item 108: Schedule B.8 – Shearing operations – shearers and Item 109: Schedule B.8.2 – Casual crutchers – not found – ordinary and penalty rates

[282] The NFF submits that the tables 'dealing with shearing rates are highly complex' and do not assist in understanding the applicable wage rates.²²² In addition, the NFF noted that there is no reference to crutching rates for rams and ram stags.²²³ It was also noted that some of the figures included in the table for casual crutchers were incorrect.²²⁴ The NFF reiterates this position in a later submission.²²⁵ While the AWU stated it was not opposed to the

inclusion of these rates tables, it accepts that they may require further refinement.²²⁶ The AWU agrees that rates for crutching of rams and ram stags should be included.²²⁷

[283] We propose to delete the tables containing shearing rates. Accordingly, then the second issue (concerning rates for crutching rams and ram stags) becomes moot.

Item 111: Schedule C.2.2 – Adjustment of expense related allowances

[284] Schedule C.2.2(b) of the exposure draft published by the Commission amended the applicable consumer price index (CPI) figure for a number of expense-related allowances from ‘eight capital cities weighted average’ to ‘all groups’. The NFF submits that this change should be reversed in order to avoid confusion or potential misunderstanding around what CPI groups constitute ‘all groups’.²²⁸ There was broad support amongst the parties for the NFF’s position.²²⁹

[285] The NFF later submitted that it would be content with ‘All Groups CPI’ rather than ‘All Groups’, as this is the terminology used when referring to the index.²³⁰

[286] The purpose of the table is to clarify which of the index figures published by the Australian Bureau of Statistics (ABS) is to be used to adjust a particular allowance, that is which group or sub-group as defined by the ABS. The preamble to the table states that the figure is taken from the Eight Capitals Consumer Price Index so there is no need to repeat the words ‘eight capital cities’ as initially proposed by the NFF. When the weighted average of all groups is to be used to adjust an allowance, modern awards generally use the term ‘All groups’ which is consistent with the terminology used in ABS publications. The column heading is ‘Applicable Consumer Price Index figure’ so the use of ‘All Groups CPI’ as per the NFF’s later proposal renders the term ‘CPI’ redundant. We will retain the term ‘All groups’.

Item 118: Schedule G – Definitions and interpretation

[287] At the 4 July 2016 conference, it was highlighted that the term ‘continuous service’ appears nowhere in the award other than in the definitions schedule. It was suggested by the NFF that the definition may not be required at all. On that basis, the parties were directed to give consideration to simply deleting the definitions, and the exposure draft was republished with the definition struck through, so as to indicate that the proposal was to remove it entirely.²³¹ Following the hearing, the NFF submitted that it was not opposed to the deletion of the entire definition on the basis that it served no purpose.²³²

[288] We are satisfied that deletion of the definition of ‘continuous service’ is the appropriate course as the term appears nowhere else in the award and the existing definition serves only to create confusion. We will delete the definition from the award.

2.15 Port Authorities Award 2010

[289] On 15 January 2016 the Commission published an initial [exposure draft](#) based on the *Port Authorities Award 2010* (the Port Authorities award) together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the Exposure draft.²³³ Submissions were filed by the MUA²³⁴ and Ports Australia²³⁵ and on 23 May 2016 the Commission published a

[summary of submissions](#). The Port Authorities award was listed for mention on 6 June 2016 to:

- (i) confirm that the published [summary of submissions](#) was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.²³⁶

[290] Following the 6 June 2016 mention, a [revised summary of submissions](#) was published on 24 June 2016. A further conference²³⁷ was held in Sydney on 4 August 2016 to discuss the issues listed in the revised summary of submissions. The AMOU, MUA, and Ports Australia appeared at that conference. Item 5 of the revised summary was the only outstanding matter for discussion and the interested parties confirmed that they were content for the Full Bench to determine that matter on the basis of the written submissions already filed, without the need for an oral hearing.

[291] The exposure draft, as currently drafted, provides for the following in relation to overtime worked by employees:

12.1 Overtime and penalties—Monday to Friday

- (a) Overtime is payable to employees for any time worked outside of ordinary hours on a Monday to Friday (except a public holiday) at the following rates:

- (i) **150%** of the ordinary hourly rate for the first three hours; and

- (ii) **200%** of the ordinary hourly rate after three hours.

...

12.3 Ordinary hours and overtime—Saturday

An employee will be paid **150%** of the ordinary hourly rate for all ordinary hours and overtime worked between midnight Friday and midnight Saturday.

[292] The exposure draft also invited parties to comment on the operation of the overtime provisions, given the rate payable for overtime in excess of three hours performed on Saturday is lower than the rate payable after three hours of overtime between Monday and Friday. The parties' attention was directed to two pre-reform awards that were utilised in the making of the Port Authorities award: the *Port Services Award 1998*²³⁸ and the *Port Authorities Award – State 2003*²³⁹.

[293] The MUA submitted that, as the pre-reform awards both provided for work on Saturday to be paid at 150 per cent of the ordinary hourly rate for the first three hours and 200 per cent thereafter, the exposure draft should be amended to reflect this position.²⁴⁰

[294] Ports Australia drew the Commission's attention to a draft award submitted by the MUA and AIMPE during the Award Modernisation Proceedings, which provided for payment for overtime in the manner reflected in the current award and exposure draft.²⁴¹ Ports Australia submitted that the MUA did not make any submissions on this issue during the Award Modernisation Proceedings, even after the Australian Industrial Relations Commission (AIRC) published its own exposure draft, and ultimately the final award, with the same provisions.²⁴²

[295] Ports Australia submitted that, as the Commission proceeds on the basis that, *prima facie*, the Port Authorities award achieved the modern awards objective at the time it was made, and the MUA has not addressed the relevant legislative provisions, submitted any evidence directed at demonstrating the facts supporting the proposed change, or made submissions about any previous decisions relevant to the issue, the change proposed by the MUA should not be adopted.²⁴³

[296] As Ports Australia's correctly states, the approach of the Commission is to proceed on the basis that *prima facie* the modern award being reviewed achieved the modern awards objective at the time that it was made.²⁴⁴ However, this is simply the *prima facie* position, and may be displaced in appropriate circumstances.

[297] The rationale for awarding a higher rate of payment for overtime in excess of three hours is to compensate employees for the disability associated with, not merely having to work in excess of or outside ordinary hours, but having to do so for a prolonged period of time. Hence, the rate of pay for overtime beyond three hours performed Monday to Friday is 200 per cent of the ordinary hourly rate, rather than 150 per cent.

[298] There does not appear to be any reasonable justification for the disparity between overtime rates payable on weekdays and the overtime rates payable on Saturdays. The rationale for awarding a higher overtime rate after three hours is as applicable to overtime worked on Saturdays as it is to overtime worked on Monday to Friday. To maintain the status quo would be anomalous.

[299] Further, the existence in the pre-reform awards of provisions in the same terms as those sought by the MUA leads us to conclude that the matter was not given detailed attention by the Full Bench in the Award Modernisation proceedings, no doubt because of the content of the draft award submitted by the MUA and AIMPE at that time.

[300] We are satisfied that it is appropriate to vary the award so as to provide for payment at 200 per cent of the ordinary hourly rate after the first three hours of overtime performed on Saturday, as sought by the MUA.

[301] A revised exposure draft will be published shortly and parties will be provided with a final opportunity to comment.

2.16 Ports, Harbours and Enclosed Water Vessels Award 2010

[302] On 15 January 2016 the Commission published an initial [exposure draft](#) based on the *Ports, Harbours and Enclosed Water Vessels Award 2010* (the Ports award) together with a [comparison document](#) showing the changes made to the structure and language in the award.

Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the Exposure draft.²⁴⁵ Submissions were filed by the AWU,²⁴⁶ Business SA,²⁴⁷ MIAL²⁴⁸ and the MUA.²⁴⁹ On 30 May 2016 the Commission published a [summary of submissions](#). The Ports award was listed for mention on 6 June 2016 to:

- (i) confirm that the published [summary of submissions](#) was accurate and reflected the parties' positions;
- (ii) identify any submissions or variations agreed or withdrawn; and
- (iii) identify whether any matters raised in submissions were of a substantive nature and required consideration by a specially constituted Full Bench.²⁵⁰

[303] Following the 6 June 2016 mention, a [revised summary of submissions](#) was published on 24 June 2016. A further conference was held in Sydney on 4 August 2016 (the August conference) to discuss the issues listed in the [revised summary of submissions](#).²⁵¹ The following parties appeared before the Commission at that conference:

- AIMPE;
- AMOU;
- The AWU;
- MUA; and
- Ports Australia.

[304] On 7 November 2016 the Commission issued a Statement²⁵² that attached a report setting out the issues discussed at the August conference. That Statement also included draft directions setting out the process for dealing with the outstanding technical and drafting matters for the Ports award. A revised exposure draft and a further revised summary of submissions reflecting the agreed position of the parties were also published on 7 November 2016.²⁵³ Parties were given until 14 November 2016 to file any comments on the draft directions or on the attached reports. Final directions were issued on 15 November 2016 and parties are required to file further material in December 2016.

[305] The Full Bench in matter AM2016/5 will determine the substantive issues listed at items 1, 3, 4 and 11 of the further revised summary of submissions.²⁵⁴ Items 2 and 12 of the revised summary of submissions will be addressed *after* the Full Bench has determined the coverage issues (items 1, 3 and 4) in matter AM2016/5.

[306] Item 6 of the further revised summary of submissions will be addressed after the Part-time and Casual Employees Full Bench has determined the matters in [AM2014/196](#) and [AM2014/197](#). Items 8, 24 and 25 of the revised summary of submissions are being dealt with by the Part-time and Casual employees Full Bench in [AM2014/196](#) and [AM2014/197](#).

2.17 Real Estate Industry 2010

[307] It was confirmed at the mention held on 6 June 2016²⁵⁵ that there are no outstanding technical and drafting issues in relation to the *Real Estate Industry Award 2010*. The summary of submissions and exposure draft will not be updated until substantive matters have been finalised. Substantive matters are being dealt by a Full Bench in AM2016/6.²⁵⁶

2.18 Seagoing Industry Award 2010

[308] Following the 6 June 2016 mention, a [revised summary of submissions](#) was published on 24 June 2016. A further conference was held in Sydney on 4 August 2016 (the August conference) to discuss the issues listed in the revised summary of submissions.²⁵⁷ The AMOU, MIAL, MUA and AIMPE appeared before the Commission at that conference:

[309] On 7 November 2016 the Commission issued a Statement that attached a report outlining the issues discussed at the August conference.²⁵⁸ That Statement also included draft directions setting out the process for dealing with the outstanding technical and drafting matters for the Seagoing award. A [revised exposure draft](#) and a [further revised summary of submissions](#) reflecting the agreed position of the parties were also published on 7 November 2016.²⁵⁹ Parties were given until 14 November 2016 to file any comments on the draft directions or on the attached reports. Final directions were issued on 15 November 2016 and parties are required to file further material in December 2016.

[310] Item 11 of the [further revised summary of submissions](#) is a substantive matter and was referred to the Full Bench in matter AM2016/5 for determination.²⁶⁰ Item 18 was referred to the Alleged NES Inconsistencies Full Bench ([AM2014/1](#)) and the matter will be listed for mention by a member of that Full Bench. Following the mention, directions for the filing of further submissions will be issued.

2.19 State Government Agencies Award 2010

[311] A decision²⁶¹ issued on 31 July 2015 determined the substantive issues raised in respect of the *State Government Agencies Award 2010*. An exposure draft was published on 18 December 2015 and no submissions were received. There are no outstanding issues for determination.

2.20 Telecommunications Services Award 2010

[312] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Telecommunications Services Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the Ai Group and ABI. Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved. [A revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document. The Report of 21 April 2016 called for further submissions in respect to a number of specific matters. Submissions in reply were received from Ai Group, AFEI, and ABI. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a draft report was published on

12 May 2016 and a revised summary of submissions document on 19 May 2016. [A further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft and summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016 to consider the issues identified at the conference before Justice Ross. A [further report](#) was published by Commissioner Roe on 21 July 2016 and an [updated exposure draft](#) was published on 16 August 2016.

[313] The outstanding issues in respect to this Award are items 7, 26 and 32 of the summary of submissions. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench. The proposal by the CPSU and the ASU to vary the classification structure in this Award has now been withdrawn.

(i) Item 7 (Clause 6.4(b)(ii))

[314] The Ai Group submit that the expression “minimum hourly rate of pay” should be utilised in Clause 6.4(b)(ii) rather than the expression “ordinary hourly rate of pay”.

[315] It is not contested that the all purpose allowances apply to casual employees. What is in contest is whether, in calculating the wage, the casual loading is applied to the minimum rate plus all purpose allowances. It was agreed that this matter should be determined by the Full Bench on the basis of written submissions. CPSU requested the opportunity to respond further to the Ai Group submission. Additional submissions were provided by the CPSU and the Ai Group.²⁶²

[316] This matter is identical to the matter we have earlier determined in respect to the Business Equipment Award 2010. We see no reason to reach a different conclusion in respect to this Award. The exposure draft will not be varied.

(ii) Item 26

[317] The Ai Group support the use of the term “shift loading” rather than “shift penalty” in two places in this Award. The Ai Group addressed these matters further in their submission of 31 August 2016 relating to general issues in exposure drafts. This general issue is dealt with in Section 3.8 of this decision.

(iii) Item 32

[318] This is a matter raised by the Ai Group concerning the Summary of Hourly Rates of pay tables and the heading concerning “ordinary hourly rates”. The Ai Group addressed this matter in their submission of 31 August 2016 relating to general issues in exposure drafts. This general issue is dealt with in Section 3.6 of this decision.

[319] The Full Bench is satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the reports to the Full Bench), and that there are no outstanding technical or drafting issues in respect of this Award. A revised exposure draft reflecting this decision and the agreed position of the parties’ will be published shortly and parties will be provided with a final opportunity to comment.

3. Other matters

[320] There were a number of matters discussed at the hearing on 6–7 June 2016 which have application across multiple awards.

3.1 *Title and commencement*

[321] A number parties proposed that the words “as varied” should be removed from the reference to the commencement of the award (generally found at clause 1 of the exposure drafts).

[322] Following the December 2014 decision, which decided modern awards would be varied rather than superseded, the July 2015 decision amended and reinserted the commencement clause as:

‘X.2 This modern award, as varied, commenced operation on 1 January 2010.’

[323] The Ai Group submitted that the wording could be misinterpreted to read that the award as varied commenced on 1 January 2010, which would back date variations to apply from 1 January 2010. At the conference on 6 June 2016, Ai Group proposed rewording the clause in the *Horticulture Award 2010* as follows:

‘This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.’²⁶³

[324] Ai Group noted that this had not been previously advanced and that the proposed wording had not been fully considered, but noted that this was an issue of general relevance across all modern awards.²⁶⁴

[325] Deputy President Clancy reported to the Full Bench that the parties agree to remove “as varied” from the *Horticulture Award*²⁶⁵, *Wine Industry Award*²⁶⁶ and *Silviculture Award 2010*.²⁶⁷ The variation appears to be agreed between the parties in relation to the *Pastoral Award*.²⁶⁸ Deputy President Asbury noted that the variation to *Sugar Industry Award* was not pressed by the NFF.²⁶⁹

[326] This issue has also been considered as part of the plain language drafting of the *Pharmacy Industry Award*. In the Comparison Document to the revised exposure draft of the plain language *Pharmacy Industry Award* the drafter noted:

‘The term “as varied,” has been omitted because this would seem to give amendments made after 1 July 2010 retrospective effect.’²⁷⁰

[327] Under s.165 of the Act it is clear that variations to a modern award do not have retrospective effect, except in the circumstances provided in s.165(2). However, to avoid any ambiguity as to the intent of the commencement provision we adopt the proposal, that is:

‘This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.’

[328] The above wording will be inserted into all exposure drafts including those listed in paragraph [325].

3.2 *Definitions section*

[329] The location of the definitions section was the subject of some debate. Currently most exposure drafts in Group 3 contain definitions in a schedule to the award. There was discussion as to whether this section should appear in the body of the award. The NFF submits moving definitions to a schedule had the effect of making the award more complex.²⁷¹ Business SA submits that the definition schedule makes the award easier to understand and navigate.²⁷² Other parties are satisfied with the approach and believe no change is necessary.²⁷³ In the hearing on 6 June 2016, United Voice noted that the parties did not have a particularly strong view about this matter.²⁷⁴

[330] Following the conference before Deputy President Asbury, the Exposure Draft for *Sugar Industry Award* was revised to place the definition section in the body of the award at clause 2. The parties are in the process of considering the revised exposure draft.

[331] As part of the plain language review of modern awards, a new structure has been proposed to include the definitions within the award.²⁷⁵ The initial Plain Language Report proposed inserting a definition clause into the body of the *Pharmacy Industry Award* as follows:

‘2. Definitions

2.1 Schedule G—Definitions defines expressions used in this award.’

[332] The Shop, Distributive and Allied Employees Association (SDA), The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) and Health Services Union of Australia (HSU) submit that rather than referring to the definition schedule, the definitions should be inserted into the body of the modern award directly.²⁷⁶ This proposal was included in the revised plain language exposure draft based on the *Pharmacy Industry Award 2010* published on 22 July 2016.²⁷⁷ The structure of the revised plain language draft has been applied to Group 4 exposure drafts.²⁷⁸ This will allow parties an opportunity to comment on the propose structure as applied to variety of awards.

[333] The placement of the definitions is an issue being dealt with by the Plain language Full Bench. As foreshadowed in a Statement issued 15 July 2016, any structural changes adopted by the Group 4 exposure drafts will be applied to the Group 1–3 exposure drafts after all the technical and drafting issues of the current exposure drafts have been resolved.²⁷⁹

3.3 *Duplication of definitions in coverage clause and definition section*

[334] A number of parties have raised the duplication of industry or occupation definitions in the coverage clause and the definition of the schedule. It has been put that having definitions in two places may result in errors if one is updated and the other is not.

[335] There have been numerous approaches proposed by parties as to how this issue may be addressed. In the following awards it was agreed by parties to keep the definition in both the coverage clause and the definition schedule: *Banking Industry Award*²⁸⁰, *Legal Services*

*Award*²⁸¹, and *Real Estate Award*²⁸². The following awards parties agreed to keep definitions in the coverage clause and remove these definitions from the definition schedule: *Education Services (Post-Secondary Education) Award*²⁸³; *Horticulture Award*²⁸⁴, *Wine Industry Award*²⁸⁵, and *Silviculture Award*.²⁸⁶ In the *Nursery Award*, the industry definition was kept in the coverage clause and the definition schedule referred readers to this clause. The issue was raised in the following awards and parties have not yet reached agreement: *Higher Education Industry–Academic Staff–Award*²⁸⁷ and *Higher Education Industry–General Staff–Award*.²⁸⁸

[336] A different issue arose in the *Sugar Industry Award*. Following conferences before Deputy President Asbury, the parties agreed that they did not wish to alter the definition in the coverage clause.²⁸⁹

[337] The parties have agreed to address the issue in a number of ways, however given the extent of the interest in this issue, a consistent approach is desirable.

[338] The coverage clause exists in all awards and requires definition of the industries or occupations the award covers to give the clause substantive meaning. Additionally, the definition clause should provide a complete list of the relevant terms that require definitions within the award. The issue is summed up by Commissioner Roe in his Report to the Full Bench in relation to *Real Estate Award*:

‘In our view it’s consistent with the approach we’re taking in a number of awards to keep it [the definition] in two places, even though it is duplication and we try to avoid it in most cases but we think the definition of the industry is such an important thing for people to understand when they’re reading the award, we think it’s appropriate to have it up front as well as in the definitions.’²⁹⁰

[339] To resolve the concern of duplication and satisfy the above objectives we propose to follow the approach taken by parties in the *Nursery Award*. That is, the industry definition or definitions are to be retained in full in the coverage clause. The definition schedule will include a definition of the industry which refers readers to the coverage clause as per the following example:

3. Coverage

3.1 This industry award covers employers throughout Australia in the nursery industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other award.

3.2 **Nursery industry** means:

(a) the propagation, planting, growing, cultivation, maintenance, sale, distribution or treating of plant material and associated nursery products in plant nurseries, flower, turf and tree farms or other similar enterprises;

...

(d) the despatching and distribution of plant material and associated products in connection with work under clauses 3.2(a) to (c).

Schedule H—Definitions

nursery industry has the meaning given in clause 3.2

[340] Exposure drafts in all award stages will be updated to reflect this decision. Parties are at liberty to make submissions through the award stage process.

3.4 Coverage

[341] Ai Group raised the following issue in relation to the *Market and Social Research Award 2010* (see paragraph [94]) however the provisions are common to a number of awards and any consideration will have application across all award groups.

[342] Ai Group submit that clauses 3.4 and 3.5 in the exposure draft incorrectly refer to the ‘industry set out in clauses 3.1 and 3.2’ because the definition of the industry is contained in 3.2 only. Clauses 3.4 and 3.5 refer to coverage of on-hire employees and group training services respectively and are included in most exposure drafts in the following form:

3. Coverage

3.1 This industry award covers employers throughout Australia who are engaged in the market and social research industry in respect of work by their employees in the classifications listed in clause 9—Minimum wages to the exclusion of any other modern award.

3.2 **Market and social research industry** means all market and social research including every process, trade, business or occupation on or in relation to or in connection with market and social research and all support work engaged in or in connection with market or social research, for both public and private purposes.

...

3.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 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 that industry. This subclause operates subject to the exclusions from coverage in this award.

3.5 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 those 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 operates subject to the exclusions from coverage in this award.

[343] As stated in paragraph [339], exposure drafts will contain the full definition of an industry in the coverage clause. Many exposure drafts have been drafted in a similar format with clause 3.1 determining to whom the award applies, in this case ‘employers throughout Australia who are engaged in the market and social research industry in respect of work by their employees in the classifications listed in clause 9’, while clause 3.2 provides a detailed definition of the industry referred to in clause 3.1. Most current awards refer to clause 3.1 only.

[344] This issue will be referred to the Plain Language Full Bench (AM2016/15) for determination.

3.5 *References to the Fair Work Act*

[345] A number of submissions have been made proposing that the reference to the *Fair Work Act 2009* be amended to ‘the Act’ in the coverage clause of the exposure drafts, given that the *Fair Work Act 2009* is a defined term.

[346] We note the *Fair Work Act 2009 (Cth)* is not spelt out in full in every exposure draft.²⁹¹ Different approaches have been taken in conference between the parties: in *Wine Industry Award* the parties agreed to amend the reference to ‘the Act’,²⁹² while in the *Horticulture Award*, the claim was withdrawn in conference.²⁹³

[347] The clause is worded slightly differently in awards, but in each case refers to employees not covered by the award as consequence of the *Fair Work Act 2009 (Cth)* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

[348] An example clause is the *Miscellaneous Award* clause 3.4:

‘This award does not cover:

- (a) employees excluded from award coverage by the *Fair Work Act 2009 (Cth)* (the Act);
- (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*), or employers in relation to those employees; or
- (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*), or employers in relation to those employees.’

[349] The plain language modern award pilot recommended referring to *Fair Work Act 2009 (Cth)* as the ‘Fair Work Act’. In the plain language draft of the *Pharmacy Industry Award* (22 July 2016) references to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* were removed.²⁹⁴ The most recent plain language exposure draft was redrafted to reflect the recent Award Flexibility decision.²⁹⁵ That decision considered whether spelling out the legislation in full was necessary in the context of the time off instead of overtime provisions²⁹⁶ and the Full Bench determined it was not necessary. Following this decision the plain language exposure draft replaced reference to ‘the Fair Work Act’ with ‘the Act’.

[350] Given that every coverage clause refers to the *Fair Work Act*, whether the Act is spelt out in full or abbreviated should be consistent across awards. The impact of either option on the clause is not substantial. We have decided that when reference is made to the ‘Fair Work

Act' within the award it will be removed and replaced with 'the Act'. The definitions schedule will continue to define 'the Act' as '*Fair Work Act 2009 (Cth)*'.

3.6 *Casual overtime rates tables*

[351] A number of parties across multiple awards seek to include casual overtime rates in the summary of hourly rates of pay schedule. At the mention on 6 June 2016, there was discussion at a general level about whether casual overtime rates should be included in the pay schedules. It was put that where there is a substantive entitlement for casuals to be paid overtime rates these rates should be included. The parties present at the mention did not oppose this position, provided there was an opportunity to review the content of the tables.
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[352] There are some awards where the overtime rates of casuals are being considered by the *AM2014/197 Casual Employment Full Bench*. Unless parties have already agreed to include a casual overtime rate table,²⁹⁸ the tables will only be put in awards, where applicable, following the outcome of the *AM2014/197 Casual Employment Full Bench*. Parties will be given an opportunity to review the tables.

3.7 *Hourly rates of pay schedule – minimum hourly rate and percentage of ordinary hourly rate*

[353] Ai Group contend that the rates in the hourly rates of pay schedule to a number of awards (generally Schedule B) contain rates which are calculated based on the minimum hourly rate, however the table in which the rates are included indicates that those rates are a "percentage of the ordinary hourly rate".

[354] Based on the Ai Group submission in April 2016 it appears that in reading clause B.1.2 in isolation from B.1.1, the meaning of B.1.2 has been distorted.²⁹⁹ The issue relates to wage rate tables in modern awards where all purpose allowance(s) only apply to some employees.³⁰⁰ In such cases the capsulated rates in the tables are based on minimum weekly or hourly rates, as Ai Group correctly noted. A provision in the schedule (usually clause B.1.2) states:

'The rates in the tables below are based on the **minimum hourly rates** in accordance with clause XX.'

[355] For awards with an all purpose allowance which applies to some employees, the rates tables need to be read in context of the following clause (usually clause B.1.1):

Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause XX, this forms part of the employee's ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

[356] As determined in the July 2015 decision, any all purpose allowances which apply to an employee must be applied to the minimum rate of pay before the calculation of penalty rate.³⁰¹ This is how the employee's ordinary hourly rate is calculated. As such, the tables correctly state the penalty applying is a '% of ordinary hourly rate'.

[357] To add clarity to the clauses, the parties at a conference for the *Business Equipment Award 2010* parties proposed to insert the following to clause B.1.2:

‘Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable’³⁰²

[358] At a conference before Commissioner Roe on 20 July 2016 Ai Group noted the amendment did alleviate some of the concerns raised, however if a reader looks at the table in isolation the issue remains.³⁰³ The reader, Ai Group contended, will assume the table contains the ‘ordinary hourly rate’, which may mislead and confuse.

[359] Ai Group submitted that to address its concern requires ‘substantial changes to the approach which the Commission has taken in preparing exposure drafts’.³⁰⁴ A preferred method to resolve the issue was not outlined.

[360] We accept the proposition that to include every pay rate, particularly for awards where all purpose allowances only apply to some employees, is not practical and would amount to a substantive change in approach. However, to improve the understanding of the rates table we propose that for modern awards that contain an all purpose allowance which applies to only some employees clause X.1.2 will be amended in accordance with the approach suggested in respect of the *Business Equipment Award 2010* (see [357] above). Additionally a footnote will be marked next to ‘% of ordinary hourly rate’ in the heading row of the rates table, which states:

‘Rates in table are calculated based on the minimum hourly rate, see clauses X.1.1 and X.1.2.’

[361] Where an award contains an all purpose allowance that applies to *all* employees *and* that allowance has been incorporated in the rates in the hourly rates tables, this will be identified by a note along the following lines:

^x**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.

[362] A list of awards containing all purpose allowances is at Attachment B. Parties are to provide any objections to this proposal and/or comments on the list of applicable awards and allowances by **4.00 pm on Friday 28 July 2017**.

3.8 Reference to “allowances”, “rates”, or “loadings” as opposed to “shift penalties”

[363] Ai Group makes two main submissions in relation to what it has characterised as ‘premiums payable in awards’:

- That the characterisation of premiums payable under an award has been altered in the corresponding provision in the exposure drafts; and,
- The manner in which premiums have been expressed are incorrectly characterised.³⁰⁵

[364] Ai Group contends that in some exposure drafts the current modern award terminology in regards to “shift loadings”, “allowances”, or “rates” has been changed to “shift penalties”. Ai Group seeks to revert to the terms of current award in each affected exposure draft.³⁰⁶

[365] Ai Group cite the Group 1 Decision in relation to the *Timber Industry Award 2010* where the Full Bench found, shift loadings:

‘...are not referred to as penalty rates in the award currently, and are better characterised as shift allowances. This should be corrected’³⁰⁷

[366] The Ai Group claim is that the use of the term ‘shift penalties’ in the following exposure drafts changes the current award provisions and they seek to restore current wording:

- *Banking, Finance and Insurance Award* clause 7.7(d) and B.2.1 of exposure draft, term ‘shift penalties’ be substituted for ‘shift loadings’;³⁰⁸
- *Legal Services Award* clause 13.3(a) of exposure draft ‘shift penalties’ be substituted for ‘shift rates’;³⁰⁹
- *Legal Services Award* clause 7.7(d) exposure draft ‘shift penalties’ be substituted for ‘shift allowances’; and,³¹⁰
- *Business Equipment Award* clause 14 of exposure draft, ‘penalty rates’ be substituted for ‘allowances’.³¹¹

[367] Ai Group’s submissions highlight that the payment to compensate employees for working shiftwork, has been interchangeably called penalties, loadings, allowances, or rates in industrial awards. As part of the modern review process the Commission has sought to make the term consistent. As such the term ‘shift penalties’ has been applied to exposure drafts.

[368] The use of ‘penalty’ reflects the understanding that such payments are compensating for working outside sociable hours. In an *Inquiry into Penalty Payments by the Queensland Industrial Relations Commission (QIRC)* in 1981 the use of the term ‘penalty’ was examined:

‘The Inquiry has been told that the term “penalty payments” is “no more than a common industrial colloquialism—coined decades ago”. Information before the Inquiry suggests that penalty payments have two basic factors—compensation to employees for disability or inconvenience arising from the time of day or day of the week on which they are required to work—and a deterrent to employers who require employees to work at times or on days regarded as being outside the prescribed times of ordinary working hours or beyond what are regarded as ordinary working days.’³¹²

[369] Ai Group contend that a change of terminology may have implications for calculation of entitlements governed by State and Territory legislation, such as workers’ compensation and long service leave.³¹³ They cite the examples of *Workers Compensation Act 1987* (NSW) which defines employee’s ‘pre-injury average weekly earnings to include ‘any overtime and shift allowances’.³¹⁴

[370] We consider the clause in this instance is suitably broad ('any...shift allowance') to cover payment for shiftwork whatever terminology used. At this stage we are not convinced that there is any detrimental impact in standardising the terminology around payment to compensate shiftwork.

[371] Conversely, if shift penalties were defined as allowances or rates, there may be some confusion as to whether payments made for all purposes would be included in the calculation for the payment of shiftwork. The *July 2015 Decision* inserted the following definition of 'all purpose' in all exposure drafts, contemplating the impact on shift **penalties**:³¹⁵

'**all purposes** means the payment will be 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 leave'³¹⁶

[372] If the term were now changed to shift allowances or shift rates, this may reopen matters which have been considered, and determined, by that Full Bench.

[373] Changes that were subsequently made to the *Timber Industry Award 2010* and referred to in the Ai Group submission, did not reopen the July 2015 decision, as the relevant clauses in the *Timber Industry Award* clearly provide that shift payments are to be made on the employee's 'ordinary hourly rate', which has been included in the definitions schedule to contain all purpose allowances.

[374] However we also note Ai Group's revised position on the *Timber Industry Award* in its most recent submission which proposed the characterisation of the shift payments as rates rather than allowances:

'Clause 23.3 [of the *Timber Industry Award*] is headed "Allowances for shiftworkers", but the clause contains rates, not allowances. Clause 23.3(b)(v) refers to "shift premiums". Clause 25.5(b)(ii) refers to "shift allowances".'

[375] Throughout the exposure draft process the Commission has endeavoured to standardise terminology used in modern awards. The term 'shift penalty' is consistent with s.139 of the *Fair Work Act 2009* (Cth) which list terms that may be included in modern awards. Section 139(1)(e) provides that an awards may include a term about:

- (e) penalty rates, including for any of the following:
 - (i) employees working unsocial, irregular or unpredictable hours;
 - (ii) employees working on weekends or public holidays;
 - (iii) shift workers;

[376] In most exposure drafts overtime and shift penalties have been expressed as, for example, 150 per cent of the minimum hourly rate (or ordinary hourly rate where an award contains an all purpose allowance³¹⁷). In provisions where the reference rate may not be the minimum hourly rate, such as when a travelling time loading is applied to a Sunday penalty rate, the penalty may be expressed as an additional amount for example 'an additional 15 per cent of the applicable rate'.

[377] We are satisfied that a consistent approach on shift penalties is appropriate. While Ai Group proffers a return to existing terminology, an examination of the current award provisions shows there is no consistency between or even within modern awards. The Ai Group submissions on inconsistencies within the exposure drafts of the awards are noted and we will provide provisional views as to how these may be resolved.

[378] In addition to the claim, Ai Group put in a further submission, seeking that the Commission to address the impact of inconsistent use penalties and rates in relation to shift payments on annual leave loading provisions.³¹⁸ It appears that these submissions are new and that other parties may like an opportunity to reply prior to the Full Bench forming its views on the issues.

[379] Parties will be provided with an opportunity to respond to Ai Group's contention that the interaction between the annual leave payment clauses and shiftwork payment clauses creates issues, as identified in paragraph 10 of their 31 August 2016 submission.³¹⁹

3.9 Occupational health and safety references

[380] Uniform work health and safety laws have been adopted in all states, except Victoria and Western Australia. At the mention held 6–7 June 2016 it was proposed that the term 'occupational health and safety' used in the exposure drafts should be amended to 'work health and safety'.³²⁰ The Commission's view is that the terms can be used interchangeably; however given the model work health and safety laws have been adopted in nearly all states there is merit in updating the exposure drafts of the modern awards to reflect current terminology.

[381] The term occupational health and safety is used in the standard dispute resolution provision contained in all awards. This provision is being reviewed as part of the plain language modern award project.³²¹ Consideration will be given in that process to substituting reference 'occupational health and safety legislation' with 'work health and safety legislation'.

[382] Additionally the Commission has undertaken an audit of where 'occupational health and safety' appears elsewhere in awards and proposed variations are listed in Attachment C. Parties are to consider the attachment to ensure all relevant clauses have been considered and to comment on any proposed variation. Any comments must be sent to amod@fwc.gov.au by **4.00pm on Friday 28 July 2017**.

4. Next steps

[383] In relation to the term 'occupational health and safety' parties are directed to consider Attachment C of this decision and provide comments by no later than **4.00 pm on Friday 28 July 2017** (see paragraph [381] above).

[384] In relation to the *Higher Education Industry–Academic Staff–Award 2010* and the *Higher Education Industry–General Staff–Award 2010*, the NTEU is directed to respond to the Group of 8 submission that the public holiday substitution issue should be dealt with by this Full Bench. The NTEU is directed to respond by no later than **4.00 pm on Friday 28 July 2017** (see paragraphs [53]-[64]).

[385] Following determination of the coverage matters by the AM2016/5 Full Bench, a revised exposure draft for the *Marine Towage Award 2010* will be published and parties will be provided with an opportunity to comment. (see paragraphs [83]-[89]).

[386] Revised exposure drafts will be published shortly for the following awards and parties will be provided with a final opportunity to comment:

- *Banking, Finance and Insurance Award 2010* (see paragraphs [12]-[16])
- *Business Equipment Industry Award 2010* (see paragraphs [17]-[39])
- *Coal Export Terminals Award 2010* (see paragraphs [43]-[44])
- *Contract Call Centres Award 2010* (see paragraphs [45] – [50])
- *Electrical Power Industry Award 2010* (see paragraphs [51]-[52])
- *Labour Market Assistance Industry Award 2010* (see paragraphs [65]-[77])
- *Market and Social Research Award 2010* (see paragraphs [90]-[103])
- *Miscellaneous Award 2010* (see paragraphs [104]-[105])
- *Port Authorities Award 2010* (see paragraphs [289]-[301])
- *Telecommunications Services Award 2010* (see paragraphs [312] – [319])

[387] Comments in relation to the revised exposure drafts must be sent to amod@fwc.gov.au by **4.00pm on Friday 28 July 2017**.

[388] In relation to the *Pastoral Industry Award 2010*, a further conference will be convened on **Monday 24 July 2017**. The purpose of this conference will be to address the issues outlined at paragraph [146] of this decision, in particular the intended operation of clauses 17.2(c)(ii) and 36.10.

[389] Interested parties in the *Pastoral Industry Award 2010* are directed to undertake the following:

- file submissions regarding the payment of first aid allowance by no later than 4.00 pm on **Friday 28 July 2017** (see paragraph [[113]]);
- file the joint paper outlined at paragraph [210] by **Friday 28 July 2017**; and
- the AWU are to confirm their position regarding items 101 and 103 by no later than **4.00 pm on Friday 28 July 2017** (see paragraph [277]).



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- ¹ See also [\[2015\] FWC 7253](#); [\[2015\] FWC 618](#); [\[2014\] FWC 8985](#); [\[2014\] FWC 8575](#)
- ² [\[2014\] FWCFB 9412](#)
- ³ [\[2015\] FWCFB 4658](#)
- ⁴ [\[2015\] FWCFB 6656](#)
- ⁵ [\[2015\] FWCFB 3023](#)
- ⁶ [\[2015\] FWCFB 4466](#); [\[2015\] FWCFB 6847](#); [\[2016\] FWCFB 2602](#); [\[2016\] FWCFB 4258](#); [\[2016\] FWCFB 4579](#); and [\[2016\] FWCFB 6178](#)
- ⁷ [\[2015\] FWCFB 3406](#); [\[2015\] FWCFB 5771](#); [\[2016\] FWCFB 3177](#); [\[2016\] FWCFB 3953](#); and [\[2016\] FWCFB 6836](#)
- ⁸ [\[2015\] FWCFB 2575](#) and [\[2015\] FWCFB 3523](#)
- ⁹ [Full Bench report](#), 22 April 2016
- ¹⁰ [Transcript](#), 20 July 2016
- ¹¹ [\[2015\] FWCFB 6656](#) at [85]
- ¹² [\[2015\] FWCFB 6656](#) at [102]
- ¹³ [\[2015\] FWCFB 6656](#) at [106] and [109]
- ¹⁴ [\[2015\] FWCFB 6656](#) at [110]
- ¹⁵ Ai Group, [submission – exposure drafts](#), 14 April 2016 at para 128
- ¹⁶ Ai Group, [submission – exposure drafts](#), 14 April 2016 at para 129.
- ¹⁷ News Corp, Bauer Media Limited, Pacific Magazines Limited, Seven Network Operations Limited and its related entities, Network Ten Pty Ltd and its related entities and the Nine Network and its related entities
- ¹⁸ [\[2016\] FWCFB 1294](#)
- ¹⁹ NTEU [Correspondence](#) , 8 June 2016
- ²⁰ Go8 [Correspondence](#), 10 June 2016
- ²¹ [\[2015\] FWC 7253](#)
- ²² [Transcript](#), 7 June 2016 at PN148
- ²³ NTEU [Correspondence](#), 8 June 2016
- ²⁴ Go8 [Correspondence](#), 10 June 2016
- ²⁵ [\[2015\] FWC 7253](#)
- ²⁶ [Transcript](#), 7 June 2016 at PN148
- ²⁷ See Statement [\[2016\] FWC 1838](#) attaching Amended Directions
- ²⁸ AFEI, [submission – exposure drafts](#), 15 April 2016; [submission in reply – exposure drafts](#) , 6 May 2016
- ²⁹ ABI, [submission – exposure drafts](#), 15 April 2016; [submission in reply – exposure drafts](#), 6 May 2016
- ³⁰ ASU [submission](#), 2 March 2015
- ³¹ Jobs Australia, [submission](#), 2 March 2015; [submission – exposure draft](#), 14 April 2016
- ³² [Transcript](#), 6 June 2016
- ³³ Jobs Australia; AFEI; ABI; ASU; and CPSU appeared before the Commission
- ³⁴ [Transcript](#), 30 June 2016 at PN1602–1608
- ³⁵ ASU [correspondence](#), 10 June 2016
- ³⁶ [Transcript](#), 30 June 2016
- ³⁷ ASU, AFEI; ABI and Jobs Australia
- ³⁸ FWC [correspondence](#) to AFEI, 21 October 2016
- ³⁹ ASU [Correspondence](#), 25 July 2016
- ⁴⁰ Jobs Australia [submission – classifications](#), 29 June 2016
- ⁴¹ [Transcript](#), 7 June 2016 at PN40
- ⁴² See Statement [\[2016\] FWC 1838](#) attaching Amended Directions
- ⁴³ MUA [submission – exposure draft](#), 14 April 2016

- ⁴⁴ MIAL [submission – exposure draft](#), 14 April 2016
- ⁴⁵ See Statement [\[2016\] FWC 1838](#) and [Directions](#), 26 April 2016
- ⁴⁶ [Transcript](#), 6 June 2016
- ⁴⁷ [Transcript](#), 4 August 2016
- ⁴⁸ [Transcript](#), 4 August 2016, also see Statement [\[2016\] FWC 7768](#)
- ⁴⁹ See Statement [\[2016\] FWC 1838](#) attaching Amended Directions
- ⁵⁰ [Transcript](#), 6 June 2016
- ⁵¹ [Transcript](#), 30 June 2016
- ⁵² [Transcript](#), 30 June 2016 at PN117-182
- ⁵³ [Report to the Full Bench](#), 6 July 2016
- ⁵⁴ Ai Group [amended submission](#), 4 July 2016
- ⁵⁵ See *Market Research Industry - Consolidated Award 2003* [\[AP827717\]](#) at clause 25
- ⁵⁶ See *Market Research Industry - Consolidated Award 2003* [\[AP827717\]](#) at clause 18
- ⁵⁷ See Statement [\[2016\] FWC 1838](#) attaching Amended Directions
- ⁵⁸ ABI [submission](#), 15 April 2016
- ⁵⁹ AFEI [submission](#), 15 April 2016
- ⁶⁰ Ai Group [submission](#), 14 April 2016; and [reply submission](#), 8 May 2016
- ⁶¹ [Transcript](#), 6 June 2016
- ⁶² [Transcript](#), 6 June 2016 at PN 1660–1670
- ⁶³ Refer to decisions [\[2016\] FWCFB 4393](#), 8 July 2016 and [\[2015\] FWCFB 8810](#), 24 December 2015; and Statement [\[2016\] FWCFB 7570](#)
- ⁶⁴ [Exposure Draft](#), 15 January 2016
- ⁶⁵ [Comparison Document](#), 15 January 2016
- ⁶⁶ [\[2016\] FWC 1838](#), at Attachment B
- ⁶⁷ ABI, [submission - exposure drafts](#), 15 April 2016; and ABI, [submission in reply - exposure drafts](#), 6 May 2016
- ⁶⁸ AFEI, [submission - exposure drafts](#), 15 April 2016
- ⁶⁹ AWU, [submission - exposure draft](#), 17 April 2016; and [reply submission](#), 5 May 2016
- ⁷⁰ Business SA [submission - exposure drafts](#), 15 April 2016; and Business SA [submission in reply - exposure drafts](#), 6 May 2016; and Business SA, [correspondence – conference matters](#), 8 July 2016
- ⁷¹ NFF, [submission - exposure draft](#), 14 April 2016; NFF, [submission in reply - exposure draft](#), 5 May 2016; NFF [correspondence - exposure draft](#), 30 May 2016; [supplementary submission - exposure draft](#), 16 June 2016; and NFF, [submission](#), 8 July 2016
- ⁷² [Transcript](#), 6 June 2016
- ⁷³ [Summary of Submissions](#), 4 July 2016
- ⁷⁴ [Transcript](#), 4 July 2016
- ⁷⁵ [\[2016\] FWC 5837](#)
- ⁷⁶ [Transcript](#), 24 August 2016
- ⁷⁷ [\[2016\] FWC 6060](#)
- ⁷⁸ [\[2016\] FWC 6060](#)
- ⁷⁹ [Transcript](#), 4 July 2016
- ⁸⁰ The modern awards in this group (as identified by the parties) include: *Aquaculture Award 2010* [\[MA000114\]](#); *Horticulture Award 2010* [\[MA000028\]](#); *Pastoral Industry Award 2010* [\[MA000035\]](#); *Seafood Processing Award 2010* [\[MA000068\]](#); *Silviculture Award 2010* [\[MA000040\]](#); *Sugar Award 2010* [\[MA000087\]](#); and *Wine Industry Award 2010* [\[MA000090\]](#)
- ⁸¹ [Comparison document, 'wine industry' definition](#), 7 October 2016
- ⁸² [Potential inconsistencies between the General Employment Conditions and streams](#), 7 October 2016
- ⁸³ [Summary of parties' positions - items 30 and 62 of revised summary of submissions](#), 7 October 2016

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- ⁸⁴ [Comparison document - annual leave loading provision](#), 7 October 2016
- ⁸⁵ [\[2016\] FWC 6060](#)
- ⁸⁶ ABI, [submission – revised exposure draft and summary of submissions](#), 27 September 2016
- ⁸⁷ NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016
- ⁸⁸ ABI, [submission – revised exposure draft and summary of submissions](#), 27 September 2016
- ⁸⁹ NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016 at para 5
- ⁹⁰ NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016 at para 5 and Attachment A; and NFF, [supplementary submission - exposure draft](#), 16 June 2016, at Attachment A
- ⁹¹ NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016 see table at para 6
- ⁹² NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016 at para 7
- ⁹³ [Directions](#), 5 October 2016
- ⁹⁴ See [Transcript](#), 4 July 2016 at paras 127–163; NFF, [submission – revised exposure draft and summary of submissions](#), 28 September 2016, line one of table at para 9; and NFF, [submission - outstanding claims](#), 26 October 2016, at paras 75–76
- ⁹⁵ See [Transcript](#), 4 July 2016, at PN184–237
- ⁹⁶ NFF, [submission - outstanding claims](#), 26 October 2016, at para 36
- ⁹⁷ NFF, [submission - outstanding claims](#), 26 October 2016, at para 30
- ⁹⁸ NFF, [submission - outstanding claims](#), 26 October 2016, at paras 35 and 53
- ⁹⁹ See [Transcript](#), 4 July 2016, at PN 184-237
- ¹⁰⁰ NFF, [submission - exposure draft](#), 14 April 2016, at para 68
- ¹⁰¹ SCAA, [submission in reply](#), 20 October 2016
- ¹⁰² [Potential inconsistencies between the General Employment Conditions and streams](#), 6 October 2016
- ¹⁰³ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 66–79
- ¹⁰⁴ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 66–68
- ¹⁰⁵ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 69
- ¹⁰⁶ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 70
- ¹⁰⁷ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 71–72
- ¹⁰⁸ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 73–74
- ¹⁰⁹ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 75–79
- ¹¹⁰ NFF, [submission - outstanding claims](#), 26 October 2016, at para 25
- ¹¹¹ NFF, [submission - outstanding claims](#), 26 October 2016, paras 27–28
- ¹¹² NFF, [submission - outstanding claims](#), 26 October 2016, at para 29
- ¹¹³ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 13 and 15
- ¹¹⁴ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 14
- ¹¹⁵ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 16
- ¹¹⁶ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 17
- ¹¹⁷ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 18
- ¹¹⁸ NFF, [submission - exposure draft](#), 14 April 2016, at para 35; and NFF, [submission - outstanding claims](#), 26 October 2016, at para 31
- ¹¹⁹ AWU, [submission - exposure draft](#), 17 April 2016, at para 13
- ¹²⁰ Business SA, [submission in reply - exposure draft](#), 6 May 2016, at para 11.11
- ¹²¹ NFF, [submission in reply - exposure draft](#), 5 May 2016, at para. 17
- ¹²² NFF, [submission - exposure draft](#), 14 April 2016, at para 47; NFF, [submission - outstanding claims](#), 26 October 2016, at para 32
- ¹²³ NFF, [submission - exposure draft](#), 14 April 2016, at para 48
- ¹²⁴ NFF, [submission - exposure draft](#), 14 April 2016, at para 49
- ¹²⁵ NFF, [submission - exposure draft](#), 14 April 2016, at para 49

- ¹²⁶ See clause 32.7(a) of the revised exposure draft and clauses 36.5 and 36.10 of the *Pastoral Industry Award 2010* [\[MA000035\]](#)
- ¹²⁷ NFF, [submission - outstanding claims](#), 26 October 2016, at para 34
- ¹²⁸ AWU, [submission - exposure draft](#), 17 April 2016, at para 14
- ¹²⁹ AWU, [submission in reply - exposure draft](#), 5 May 2016, at para 25
- ¹³⁰ See clause 26.1 of Pastoral award Exposure draft; clause 30.1 of *Pastoral Industry Award 2010* [\[MA000035\]](#)
- ¹³¹ AWU, [submission in reply - exposure draft](#), 5 May 2016, at para 26
- ¹³² Business SA, [submission - exposure drafts](#), 15 April 2016, at para 11.2.5
- ¹³³ Business SA, [submission - exposure drafts](#), 15 April 2016, at para 11.2.5
- ¹³⁴ Business SA, [submission - exposure drafts](#), 15 April 2016, at para 11.2.5
- ¹³⁵ NFF, [submission - outstanding claims](#), 26 October 2016, at para 34
- ¹³⁶ Business SA, [submission in reply - exposure draft](#), 6 May 2016, at para 11.13
- ¹³⁷ AWU, [submission - exposure draft](#), 17 April 2016, at para 16
- ¹³⁸ [Transcript](#), 4 July 2016, at paras 302–306
- ¹³⁹ [Transcript](#), 4 July 2016, at para 301
- ¹⁴⁰ [Transcript](#), 4 July 2016, at PN312
- ¹⁴¹ [Transcript](#), 4 July 2016, at PN324
- ¹⁴² AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 20; AWU, [submission - exposure draft](#), 17 April 2016, at para 23; AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 33; Business SA, [submission - exposure drafts](#), 15 April 2016, at 11.2.9; NFF, [submission - exposure draft](#), 14 April 2016, at paras 61–63; and NFF, [submission - outstanding claims](#), 26 October 2016, at paras 37–39
- ¹⁴³ ABI, [submission - exposure drafts](#), 15 April 2016, at para 19.7
- ¹⁴⁴ NFF, [submission - outstanding claims](#), 26 October 2016, at para 40; and NFF, [submission - exposure draft](#), 14 April 2016, at paras 66–67
- ¹⁴⁵ NFF, [submission - outstanding claims](#), 26 October 2016, at para 40
- ¹⁴⁶ NFF, [submission - outstanding claims](#), 26 October 2016, at para 42
- ¹⁴⁷ NFF, [submission - exposure draft](#), 14 April 2016, at para 69
- ¹⁴⁸ NFF, [submission - exposure draft](#), 14 April 2016, at para 70
- ¹⁴⁹ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 10
- ¹⁵⁰ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 11
- ¹⁵¹ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 11, (submission referring to clause 6.4(d) of exposure draft)
- ¹⁵² AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 11, (submission referring to clause 26.1 of exposure draft)
- ¹⁵³ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 12
- ¹⁵⁴ [Transcript](#), 4 July 2016, at PN 424-426
- ¹⁵⁵ FWO, [correspondence](#), 2 March 2015, at item 29
- ¹⁵⁶ FWO, [correspondence](#), 2 March 2015, at item 29
- ¹⁵⁷ [Transcript](#), 4 July 2016, at PN 498
- ¹⁵⁸ AWU, [submission - exposure draft](#), 17 April 2016, at para 31
- ¹⁵⁹ [Transcript](#), 4 July 2016, at PN 497 and see more generally discussion at PN 488–498
- ¹⁶⁰ [Transcript](#), 4 July 2016, at PN 489
- ¹⁶¹ NFF, [submission - exposure draft](#), 14 April 2016, at para 74; and [Transcript](#), 4 July 2016, at PN 482
- ¹⁶² AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 24
- ¹⁶³ AWU, [submission - exposure draft](#), 17 April 2016, at para 28
- ¹⁶⁴ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 26
- ¹⁶⁵ AWU, [submission - exposure draft](#), 17 April 2016, at para 29

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- ¹⁶⁶ NFF, [submission - outstanding claims](#), 26 October 2016, at para 44; and AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 23
- ¹⁶⁷ NFF, [submission - outstanding claims](#), 26 October 2016, at para 44
- ¹⁶⁸ NFF, [submission - outstanding claims](#), 26 October 2016, at para 45
- ¹⁶⁹ AWU, [submission - exposure draft](#), 17 April 2016, at para 31; and AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 27
- ¹⁷⁰ AWU, [submission - exposure draft](#), 17 April 2016, at para 31
- ¹⁷¹ AWU, [submission - exposure draft](#), 17 April 2016, at para 30
- ¹⁷² AWU, [submission - exposure draft](#), 17 April 2016, at para 30
- ¹⁷³ AWU, [submission - exposure draft](#), 17 April 2016, at para 31
- ¹⁷⁴ ABI, [submission in reply - exposure drafts](#), 6 May 2016, at para 19.5
- ¹⁷⁵ AWU, [submission - exposure draft](#), 17 April 2016, at paras 50 and 52
- ¹⁷⁶ NFF, [submission in reply - exposure draft](#), 5 May 2016, at para 42
- ¹⁷⁷ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 29; and NFF, [submission - exposure draft](#), 14 April 2016, at paras 80–81
- ¹⁷⁸ NFF, [submission - exposure draft](#), 14 April 2016, at para 81; and NFF, [submission - outstanding claims](#), 26 October 2016, at para 46
- ¹⁷⁹ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 28
- ¹⁸⁰ NFF, [submission - outstanding claims](#), 26 October 2016, at para 49; and NFF, [submission - exposure draft](#), 14 April 2016, at para 81 on pp. 14–15
- ¹⁸¹ NFF, [submission - outstanding claims](#), 26 October 2016, at para 49
- ¹⁸² NFF, [submission - exposure draft](#), 14 April 2016, at para 81 on pp 14–15; and NFF, [submission - outstanding claims](#), 26 October 2016, at para 46 on p.7
- ¹⁸³ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 29-30
- ¹⁸⁴ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 30–31
- ¹⁸⁵ NFF, [submission - outstanding claims](#), 26 October 2016, at para 48
- ¹⁸⁶ NFF, [submission - exposure draft](#), 14 April 2016, at para 81; and NFF, [submission - outstanding claims](#), 26 October 2016, at para 47
- ¹⁸⁷ AWU, [submission - exposure draft](#), 17 April 2016, at para 33
- ¹⁸⁸ Business SA, [submission in reply - exposure drafts](#), 6 May 2016, at 11.23
- ¹⁸⁹ AWU, [submission in reply - exposure draft](#), 23 November 2016, at paras 30–34
- ¹⁹⁰ AWU, [submission - exposure draft](#), 17 April 2016, at para 36
- ¹⁹¹ AWU, [submission - exposure draft](#), 17 April 2016, at para 37
- ¹⁹² NFF, [submission in reply - exposure draft](#), 5 May 2016, at para 33
- ¹⁹³ ABI, [submission in reply - exposure draft](#), 6 May 2016, at 19.7
- ¹⁹⁴ Business SA, [submission – exposure drafts](#), 15 April 2016, at para 11.2.11; and NFF, [submission - exposure draft](#), 14 April 2016, at para 82
- ¹⁹⁵ Business SA, [submission – exposure drafts](#), 15 April 2016, at 11.2.11; see *Pig Breeding and Raising (AWU) Award* at cl.15.3.8 and cl.14.1
- ¹⁹⁶ AWU, [submission in reply - exposure draft](#), 5 May 2016, at paras 42 and 89
- ¹⁹⁷ NFF, [submission - exposure draft](#), 14 April 2016, at para 98
- ¹⁹⁸ NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8
- ¹⁹⁹ SCAA, [submission in reply](#), 20 October 2016, summary table at para 22
- ²⁰⁰ AWU, [submission in reply - exposure draft](#), 23 November 2016, at para 38
- ²⁰¹ NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8, and SCAA, [submission in reply](#), 20 October 2016, summary table at para 22
- ²⁰² NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8, and NFF, [submission - outstanding claims](#), 26 October 2016, at paras 54–61

- ²⁰³ NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8
- ²⁰⁴ NFF, [submission - exposure draft](#), 14 April 2016, at para 99
- ²⁰⁵ NFF, [submission - outstanding claims](#), 26 October 2016, at para 62
- ²⁰⁶ NFF, [submission - outstanding claims](#), 26 October 2016, at para 62; and NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8
- ²⁰⁷ AWU, [submission in reply](#), 23 November 2016, at para 39; and AWU, [submission in reply - exposure draft](#), 5 May 2016, at para 52
- ²⁰⁸ AWU, [submission in reply](#), 23 November 2016, at paras 39–46
- ²⁰⁹ NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8
- ²¹⁰ NFF, [submission - revised exposure draft and summary of submission](#), 28 September 2016, at para 8
- ²¹¹ SCAA, [submission in reply](#), 20 October 2016, summary table at para 22
- ²¹² NFF, [submission - outstanding claims](#), 26 October 2016, at paras 66–68
- ²¹³ AWU, [submission in reply - exposure draft](#), 5 May 2016, at para 61
- ²¹⁴ AWU, [submission in reply](#), 23 November 2016, at para 47
- ²¹⁵ AWU, [submission - exposure draft](#), 17 April 2016, at para 48
- ²¹⁶ AWU, [submission - exposure draft](#), 17 April 2016, at para 48
- ²¹⁷ AWU, [submission - exposure draft](#), 17 April 2016, at para 49
- ²¹⁸ AWU, [submission - exposure draft](#), 17 April 2016, at para 51
- ²¹⁹ [Transcript](#), 4 July 106 at PN 52–53
- ²²⁰ NFF, [submission - exposure draft](#), 14 April 2016, at paras 118–119
- ²²¹ NFF, [submission - exposure draft](#), 14 April 2016, at paras 118–119
- ²²² NFF, [submission - exposure draft](#), 14 April 2016, at para 120
- ²²³ NFF, [submission - exposure draft](#), 14 April 2016, at para 120
- ²²⁴ NFF, [submission - exposure draft](#), 14 April 2016, at paras 120–122
- ²²⁵ NFF, [submission - outstanding claims](#), 26 October 2016, at paras 71–73
- ²²⁶ AWU, [submission in reply - exposure draft](#), 5 May 2016 at para 68
- ²²⁷ AWU, [submission in reply - exposure draft](#), 5 May 2016 at para 68
- ²²⁸ NFF, [submission - exposure draft](#), 14 April 2016, at paras 124–125
- ²²⁹ See AWU, [submission in reply - exposure draft](#), 5 May 2016 at para 68; and Business SA, [submission in reply - exposure drafts](#), 6 May 2016, at para 11.37
- ²³⁰ NFF, [submission - outstanding claims](#), 26 October 2016, at para 74
- ²³¹ [Transcript](#), 4 July 2016, at PN 610–614
- ²³² NFF, [submission](#), 8 July 2016, at p. 3
- ²³³ See Statement [\[2016\] FWC 1838](#) attaching Amended Directions
- ²³⁴ MUA [submission](#), 14 April 2016
- ²³⁵ Ports Australia [reply submission](#), 18 May 2016
- ²³⁶ [Transcript](#), 6 June 2016
- ²³⁷ [Transcript](#), 4 August 2016
- ²³⁸ *Port Services Award 1998* [[AP792489](#)]
- ²³⁹ *Port Authorities Award – State 2003* [[AN140213](#)]
- ²⁴⁰ Maritime Union of Australia [Submission](#) – 14 April 2016
- ²⁴¹ Maritime Union of Australia and The Australian Institute of Marine and Power Engineers – [Parties’ draft award—Maritime Industry Port Authorities & Construction Award 2010](#)
- ²⁴² [Ports Australia submissions in reply](#) – 18 May 2016
- ²⁴³ [Ports Australia submissions in reply](#) – 18 May 2016
- ²⁴⁴ See Decision [\[2014\] FWCFB 1788](#) at [24] and [60]
- ²⁴⁵ See Statement [\[2016\] FWC 1838](#) attaching Amended Directions

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- ²⁴⁶ AWU [submission](#) – 18 April 2016; and [reply submission](#) – 5 May 2016
- ²⁴⁷ Business SA [submission](#) – 15 April 2016
- ²⁴⁸ MIAL [submission](#) – 14 April 2016; and [reply submission](#) – 5 May 2016
- ²⁴⁹ MUA [submission](#) – 28 May 2016; [submission](#) – 14 April 2016
- ²⁵⁰ [Transcript](#) – 6 June 2016
- ²⁵¹ [Transcript](#) – 4 August 2016
- ²⁵² [\[2016\] FWC 7768](#)
- ²⁵³ See [Transcript](#) – 4 August 2016 at PN405–602
- ²⁵⁴ Statement [\[2016\] FWC 1838](#)
- ²⁵⁵ [Transcript](#), 6 June 2016 at PN915–941
- ²⁵⁶ Statement [\[2016\] FWC 1838](#)
- ²⁵⁷ [Transcript](#), 4 August 2016
- ²⁵⁸ [\[2016\] FWC 7768](#)
- ²⁵⁹ See [Transcript](#), 4 August 2016 at PN405–602
- ²⁶⁰ Statement [\[2016\] FWC 1838](#), [Transcript](#), 4 August 2016 at PN685
- ²⁶¹ [\[2015\] FWCFB 4960](#)
- ²⁶² Ai Group [submission – report to the full bench](#), 5 August 2016; CEPU, [Submission – report to the full bench](#), 28 July 2016
- ²⁶³ [Transcript](#) 6 June 2016 at PN 452
- ²⁶⁴ [Transcript](#) 6 June 2016 at PN 452
- ²⁶⁵ Report to the Full Bench, 3 June 2016 at para 3, see Attachment A item 1
- ²⁶⁶ [Transcript](#), 1 June 2016 PN 458
- ²⁶⁷ [Report to the Full Bench](#), 25 August 2016, see Attachment A item 1
- ²⁶⁸ National Farmers Federation [submission](#) 16 July 2016 at paragraph 3
- ²⁶⁹ Report to the Full Bench, 3 June 2016, Annexure G – Summary of Proposed Variation (amended), item 1
- ²⁷⁰ Comparison document to the revised exposure draft of the plain language *Pharmacy Industry Award*, 22 July 2016, page 3
- ²⁷¹ See [NFF Submission](#) 14 April 2016 at paragraph 12
- ²⁷² [Business SA Submission](#) 6 May 2016 at paragraph 8.26
- ²⁷³ AWU [submission](#) 5 May 2016 at page 2
- ²⁷⁴ [Transcript](#), 6 June 2016 at PN 60
- ²⁷⁵ [\[2016\] FWC 4756](#)
- ²⁷⁶ SDA, APESMA, HSU [Joint submission: Revised plain language draft of 21 April 2016](#), 24 April 2016 paragraph 16
- ²⁷⁷ [\[2016\] FWCFB 5621](#) at [10]
- ²⁷⁸ [\[2016\] FWC 4756](#) at [39]
- ²⁷⁹ [\[2016\] FWC 4756](#) at [40]
- ²⁸⁰ [Transcript](#) 21 April 2016 at PN877
- ²⁸¹ Matter withdrawn at conference retaining definition in both coverage clause and definition clause, Report to the Full Bench, 3 June 2016 at paragraph 4 (see reference to item 22)
- ²⁸² [Transcript](#) 21 April 2016 at PN972
- ²⁸³ Agreed in conference before Johns C, ‘Education Services (Post-Secondary Education) Award’ Summary of Submissions 1 June 2016, see item 2
- ²⁸⁴ Report to the Full Bench 3 June 2016 paragraph 3, see attachment A reference to item 5, and item 57
- ²⁸⁵ Report to the Full Bench 3 June 2016 paragraph 3, see attachment A reference to item 6
- ²⁸⁶ Report to the Full Bench, 25 August 2016 paragraph 3, see attachment A reference to item 3
- ²⁸⁷ Higher Education Industry–Academic Staff–Award, Summary of submissions (31 May 2016), Item 8
- ²⁸⁸ Higher Education Industry–General Staff–Award, Summary of submissions (1 June 2016), Item 4

- ²⁸⁹ Asbury DP, ‘Sugar Industry Award’ Statement 1 June 2016; see also Sugar Industry Award Exposure Draft revised 3 June 2016, clause 2 and 4.2
- ²⁹⁰ [Transcript](#) 21 April 2016 [PN972]
- ²⁹¹ For Group 3 see: *Banking, Finance and Insurance Award 2010; Marketing and Social Research Award 2010; Real Estate Industry Award 2010; Telecommunications Services Award 2010; Electrical Power Industry Award 2010; Seagoing Industry Award 2010*
- ²⁹² Report to the Full Bench, 3 June 2016, paragraph 3, at attachment A, reference to item 9
- ²⁹³ Report to the Full Bench, 3 June 2016, paragraph 7, see reference to item 6
- ²⁹⁴ Fair Work Commission, Report from the plain language modern award pilot, April 2016, page 23
- ²⁹⁵ [Comparison document - Revised exposure draft](#), 22 July 2016, page 3
- ²⁹⁶ [\[2016\] FWCFB 4258](#) at [55]
- ²⁹⁷ [Transcript](#), 6 June 2016 PN 246-267
- ²⁹⁸ See for example *Telecommunication Services Award*, Report to the Full Bench, 26 May 2016 see *Telecommunication Services Award* at p. 5 para 6
- ²⁹⁹ Ai Group, [Submission- exposure drafts](#), 14 April 2016, at paras 175-176 and 334-335. Claim made in respect of *Business Equipment Award, Horticulture Award*
- ³⁰⁰ [\[2015\] FWCFB 4658](#) see definitions of ‘all purpose’ at [42]
- ³⁰¹ [\[2015\] FWCFB 4658](#) [44]
- ³⁰² Report to the Full Bench, 2 May 2016, at p.2 para 6
- ³⁰³ [Transcript](#) 20 July 2016 at PN803
- ³⁰⁴ Ai Group [Submission](#), 31 August 2016 at para 6
- ³⁰⁵ Ai Group [Submission](#), 31 August 2016 at paras 3-4
- ³⁰⁶ Ai Group Submission, 14 April 2016 at para 7-15
- ³⁰⁷ [\[2015\] FWCFB 7236](#) at [299]
- ³⁰⁸ Ai Group Submission, 14 April 2016 at para 115
- ³⁰⁹ Ai Group Submission, 14 April 2016 at para 350
- ³¹⁰ Ai Group Submission, 14 April 2016 at para 349
- ³¹¹ Ai Group Submission, 14 April 2016 at para 158
- ³¹² *Report of the Full Bench into Inquiry into Penalty Payments* (Case No. B274 of 1979) [QGIG, vol 108](#), 213
- ³¹³ Ai Group [Submission](#), 14 April 2016 at para 9
- ³¹⁴ *Workers Compensation Act 1987* (NSW) s.44C
- ³¹⁵ [\[2015\] FWCFB 4658](#) [35]-[47]
- ³¹⁶ [\[2015\] FWCFB 4658](#) [35]
- ³¹⁷ [\[2015\] FWCFB 4658](#) at [47]
- ³¹⁸ Ai Group [Submission](#), 31 August 2016 at para 6-48
- ³¹⁹ Ai Group [Submission](#), 31 August 2016 at paras 10
- ³²⁰ [Transcript](#), 6 June 2016 at PN 410-415
- ³²¹ [\[2016\] FWC 4756](#) at [5]

Attachment A — List of Group 3 awards by subgroup

Award code	Award title	Matter No.
Sub-group 3A		
MA000019	<i>Banking, Finance and Insurance Award 2010</i>	AM2014/217
MA000021	<i>Business Equipment Award 2010</i>	AM2014/218
MA000002	<i>Clerks Private Sector Award 2010</i>	AM2014/219
MA000083	<i>Commercial Sales Award 2010</i>	AM2014/221
MA000023	<i>Contract Call Centres Award 2010</i>	AM2014/222
MA000094	<i>Fitness Industry Award 2010</i>	AM2014/227
MA000099	<i>Labour Market Assistance Industry Award 2010</i>	AM2014/232
MA000116	<i>Legal Services Award 2010</i>	AM2014/233
MA000030	<i>Market and Social Research Award 2010</i>	AM2014/236
MA000104	<i>Miscellaneous Award 2010</i>	AM2014/237
MA000106	<i>Real Estate Industry 2010</i>	AM2014/242
MA000082	<i>Sporting Organisations Award 2010</i>	AM2014/245
MA000041	<i>Telecommunications Services Award 2010</i>	AM2014/248
Sub-group 3B		
MA000075	<i>Educational Services (Post-Secondary Education) Award 2010</i>	AM2014/224
MA000076	<i>Educational Services (Schools) General Staff Award 2010</i>	AM2014/225
MA000006	<i>Higher Education Industry–Academic Staff–Award 2010</i>	AM2014/229
MA000007	<i>Higher Education Industry–General Staff–Award 2010</i>	AM2014/230
MA000112	<i>Local Government Industry Award 2010</i>	AM2014/234
MA000121	<i>State Government Agencies Administration Award 2010</i>	AM2014/246
Sub-group 3C		
MA000045	<i>Coal Export Terminals Award 2010</i>	AM2014/220
MA000085	<i>Dredging Industry Award 2010</i>	AM2014/223
MA000088	<i>Electrical Power Industry Award 2010</i>	AM2014/226
MA000050	<i>Marine Towage Award 2010</i>	AM2014/235
MA000051	<i>Port Authorities Award 2010</i>	AM2014/240
MA000052	<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	AM2014/241
MA000122	<i>Seagoing Industry Award 2010</i>	AM2014/243

Award code	Award title	Matter No.
Sub-group 3D		
MA000101	<i>Gardening and Landscaping Services Award 2010</i>	AM2014/228
MA000028	<i>Horticulture Award 2010</i>	AM2014/231
MA000033	<i>Nursery Award 2010</i>	AM2014/238
MA000035	<i>Pastoral Award 2010</i>	AM2014/239
MA000040	<i>Silviculture Award 2010</i>	AM2014/244
MA000087	<i>Sugar Industry Award 2010</i>	AM2014/247
MA000090	<i>Wine Industry Award 2010</i>	AM2014/249

Attachment B —List of modern awards containing all purpose allowances (see paragraph [362])

Award ID	Award title	All purpose allowances	Applies to:
MA000018	<i>Aged Care Award 2010</i>	Leading hand allowance (cl.15.3(b))	some employees
MA000046	<i>Air Pilots Award 2010</i>	Off-shore helicopter operations (cl.E.6.3)	some employees
MA000048	<i>Airline Operations–Ground Staff Award 2010</i>	Tool allowance–tradesperson (cl.21.20)	some employees
		Full Category Aircraft Type Rating Endorsement payment (cl.21.21)	some employees
		Transitional Category Aircraft Type Rating Endorsement payment (cl.21.22)	some employees
		Special appointments–additional payments in maintenance and engineering stream (cl.21.24)	some employees
		Category A Licence Holder (cl.21.25)	some employees
		Category C Licence Holder (cl.21.26)	some employees
		Maintenance and engineering stream–leading hand allowance (cl.21.27)	some employees
MA000060	<i>Aluminium Industry Award 2010</i>	Work conditions and disability allowance (cl.15.3)	all employees
MA000098	<i>Ambulance and Patient Transport Industry Award 2010</i>	Qualifications allowance (cl.14.2)	some employees
		Paramedic skills allowance–Ambulance service Level 1 (cl.15.4(a)(i))	some employees
		Paramedic skills allowance–Ambulance service Level 2 (cl.15.4(a)(ii))	some employees
		Paramedic skills allowance–all other employees (cl.15.4(b))	some employees
MA000080	<i>Amusement, Events and Recreation Award 2010</i>	Special all purpose allowances for exhibition employees (cl.15.11)	some employees
MA000054	<i>Asphalt Industry Award 2010¹</i>	Industry allowance (cl.15.3(a))	all employees
		Inclement weather (cl.15.3(b))	all employees
MA000091	<i>Broadcasting and Recorded Entertainment Award 2010</i>	Maintenance allowance (cl.32.2)	some employees
		Broadcast Operator’s Certificate of Proficiency allowance (cl.32.5)	some employees
		Television Operator’s Certificate of Proficiency allowance (cl.32.6)	some employees
		Properties allowance (cl.32.7)	some employees
		Director’s loading (cl.32.15(c))	some employees
		Videotape post-production allowance (cl.32.16)	some employees
		Videotape editing allowance (cl.32.17)	some employees
MA000021	<i>Business Equipment Award 2010</i>	Leading hand allowance (cl.22.1(a))	some employees
MA000055	<i>Cement and Lime Award 2010</i>	Industry disability allowance (cl.15.1)	all employees
		Leading hand allowance (cl.15.2)	some employees

Award ID	Award title	All purpose allowances	Applies to:
		First aid allowance (cl.15.3)	some employees
MA000070	<i>Cemetery Industry Award 2010</i>	Industry allowance (cl.15.8)	all employees
MA000120	<i>Children's Services Award 2010</i>	Qualifications allowance (cl.15.6)	some employees
MA000056	<i>Concrete Products Award 2010¹</i>	Industry allowance—employees other than those working in factories whose sole purpose is the manufacture of tiles (cl.16.1(a))	some employees
		Industry allowance—employees working in factories whose sole purpose is the manufacture of tiles (cl.16.1(a))	some employees
MA000024	<i>Cotton Ginning Award 2010</i>	Leading hand allowance (cl. 17.3) ^A	some employees
		Disabilities allowance (cl.17.4))	all employees
MA000085	<i>Dredging Industry Award 2010</i>	Dual certificate allowance—vessel laid up (cl.15.8(a))	some employees
		Dual certificate allowance—fully operational vessel (cl.15.8(b))	some employees
MA000025	<i>Electrical, Electronic and Communications Contracting Award 2010</i>	Industry allowance (cl.17.2(a))	all employees
		Tool allowance (cl.17.2(b))	some employees
		Electrician's licence allowance (cl.17.2(c))	some employees
		Leading hands allowance (cl.17.2(d))	some employees
		Nominee allowance (cl.17.2(e))	some employees
		Electrical distribution line maintenance and tree clearing allowance (cl.17.2(f))	some employees
		Rate for ordering materials—allowance for employees engaged in the building and construction industry in specified circumstances (cl.17.2(g))	some employees
MA000111	<i>Fire Fighting Industry Award 2010</i>	Availability allowance (cl.17.8(a))	some employees
MA000073	<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	Leading hands allowance (cl.26.1(a))	some employees
		Heavy vehicle driving allowance (cl.26.1(b))	some employees
		Boiler attendants allowance (cl.26.1(c))	some employees
MA000101	<i>Gardening and Landscaping Services Award 2010</i>	Leading hand allowance (cl.15.1) ^A	some employees
		Tool allowance—tradespersons (cl.15.3(a))	some employees
MA000026	<i>Graphic Arts, Printing and Publishing Award 2010</i>	Visual display terminal allowance (cl.25.1(a))	some employees
		Inserting allowance (cl.25.1(b))	some employees
MA000028	<i>Horticulture Award 2010</i>	Leading hand allowance (cl.17.1(a))	some employees
		Wet work allowance (cl.17.1(b))	some employees
		First aid allowance (cl.17.1(d))	some employees

Award ID	Award title	All purpose allowances	Applies to:
MA000009	<i>Hospitality Industry (General) Award 2010</i>	Fork lift driver allowance (cl.21.2(a))	some employees
		Fork lift driver allowance—part-time or casual employees (cl.21.2(a))	some employees
MA000062	<i>Hydrocarbons Industry (Upstream) Award 2010</i>	Licence allowance—electricians (cl.15.2(b))	some employees
		Industry allowance (cl.15.3(a))	all employees
MA000029	<i>Joinery and Building Trades Award 2010</i>	Leading hand allowance (cl.24.1(a))	some employees
		Industry allowance—employee engaged on joinery work, shopfitting, stonemasonry or outside work (cl.24.1(b)(i))	some employees
		Industry allowance—glazier or apprentice glazier, engaged other than on factory glazing (cl.24.1(b)(ii))	some employees
		Tool allowance (cl.24.1(c))	some employees
		Stonemasonry tools and equipment allowance (cl.24.1(d)(i))	some employees
MA000067	<i>Journalists Published Media Award 2010</i>	Sub-editing allowance (cl.15.5(b))	some employees
MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	Leading hand allowance (cl.32.1(a))	some employees
		Ship repairing allowance (cl.32.1(b))	some employees
		Tool allowance—tradespersons and apprentices (cl.32.1(c))	some employees
		Tool allowance—carpenter or joiner or shipwright/boat builder (cl.32.1(d))	some employees
		Application of technical computing equipment allowance (cl.32.1(e))	some employees
		Artificial fertilizers and chemicals allowance (cl.32.1(g))	some employees
MA000031	<i>Medical Practitioners Award 2010</i>	On call allowance: Senior Doctors (cl.24.2(c))	some employees
MA000011	<i>Mining Industry Award 2010</i>	Licence allowance—electricians (cl.14.2(c))	some employees
		Industry allowance (cl.14.3(a))	all employees
		Drilling, prospecting and exploration allowance—cooks and cooks assistants (cl.14.3(c)(ii))	some employees
MA000032	<i>Mobile Crane Hiring Award 2010</i>	All-purpose industry allowance (cl.13.2)	all employees
MA000033	<i>Nursery Award 2010</i>	First Aid allowance (cl.20.1(a))	some employees
		Meal allowance (cl.20.1(b)) ^B	some employees
MA000072	<i>Oil Refining and Manufacturing Award 2010</i>	Industry allowance—other than clerical employees (cl.15.3(a))	some employees
MA000035	<i>Pastoral Award 2010</i>	Leading hand allowance (cl.17.4(a))	some employees
		First aid allowance (cl.17.4(b))	some employees
MA000036	<i>Plumbing and Fire</i>	Industry allowance (cl.21.1(b))	some employees

Award ID	Award title	All purpose allowances	Applies to:
	<i>Sprinklers Award 2010</i>	Plumbing trade allowance (cl.21.1(c))	some employees
		Registration allowance (cl.21.1(d))	some employees
		Special fixed allowance (cl.21.1(e))	some employees
		Fire sprinkler fitting trade allowance (cl.21.1(f))	some employees
		Industry disability allowance and space, height and dirt money allowance—Fire sprinkler fitter employees (cl.21.1(g))	some employees
		Sprinkler fitters adjustment (cl.21.1(h))	some employees
		Daily hire employees—lost time loading allowance (cl.21.1(j))	some employees
		Leading hand allowance (cl.21.1(k))	some employees
MA000051	<i>Port Authorities Award 2010</i>	Electrician's licence allowance (cl.14.1(d))	some employees
MA000052	<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	Dual capacity allowance (cl.14.4)	some employees
		Towing allowance—towing or carrying explosives (cl.14.20(a))	some employees
		Towing allowance—masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tonnes or more (cl.14.20(b))	some employees
MA000074	<i>Poultry Processing Award 2010</i>	Leading hand allowance (cl.20.1)	some employees
MA000057	<i>Premixed Concrete Award 2010</i> ¹	Industry disability allowance (cl.15.1)	all employees
		Leading hand allowance (cl.15.2)	some employees
		First aid allowance (cl.15.3)	some employees
MA000037	<i>Quarrying Award 2010</i>	Industry allowance (cl.18.1)	all employees
		Leading hand allowance (cl.18.2)	some employees
		First aid allowance (cl.18.4)	some employees
MA000014	<i>Racing Industry Ground Maintenance Award 2010</i>	Tool allowance—tradesperson (other than carpenter) (cl.15.3(a))	some employees
		Tool allowance—carpenter (cl.15.3(a))	some employees
MA000058	<i>Registered and Licensed Clubs Award 2010</i>	First aid allowance (cl.18.2)	some employees
MA000038	<i>Road Transport and Distribution Award 2010</i>	Transport worker grade 7—Driver of low loader with GCM exceeding 43 tonnes—for each additional complete tonne over 43 tonnes GCM (Schedule C)	some employees

Award ID	Award title	All purpose allowances	Applies to:
		Transport worker grade 10–Driver of multi-axle platform trailing equipment with specified carrying capacities: <ul style="list-style-type: none"> • up to 150 tonnes • over 150 and up to 200 tonnes • exceeding 200 tonnes (Schedule C)	some employees
MA000107	<i>Salt Industry Award 2010</i>	Industry allowance (cl.15.3(a))	all employees
MA000040	<i>Silviculture Award 2010</i>	Special allowance (cl.14.2)	all employees
		Industry allowance (cl.18.2)	all employees
MA000053	<i>Stevedoring Industry Award 2010</i>	Specialist functions allowance (cl.14.1)	some employees
		Electrician’s licence allowance (cl.14.13)	some employees
MA000103	<i>Supported Employment Services Award 2010</i>	Leading hand allowance (cl.15.7)	some employees
MA000041	<i>Telecommunications Services Award 2010</i>	Technical stream–Team leader/leading hand allowance (cl.17.2(a))	some employees
MA000017	<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	Instructor allowance (cl.26.1) ^C	some employees
		Cards allowance (cl.26.3)	some employees
MA000071	<i>Timber Industry Award 2010</i>	Forest work (cl.21.19)	some employees ^D
		Driving low loader–for each additional complete tonne over 43 tonnes GCM (cl.21.25)	some employees
MA000042	<i>Transport (Cash in Transit) Award 2010</i>	Mobile cash unit allowance (cl.16.1(b))	some employees
		Industry allowance (cl.16.1(c))	all employees
MA000043	<i>Waste Management Award 2010</i>	Industry allowance (cl.20.6)	all employees

¹ The hourly rates in the tables in the schedules to this award incorporate the all purpose allowance(s) which are payable to all employees (see paragraph [361]).

^A This allowance was identified as being payable for all purposes in the exposure draft process

^B This allowance was identified as not being payable for all purposes in the exposure draft process

^C This allowance is payable for all purposes except for incentive payments

^D This allowance is payable for to all employees except pieceworkers

Attachment C — Awards using term “occupational health and safety”

Stage	Matter	Award code	Award	Proposed amendment
4B	AM2014/254	MA000048	<i>Airline Operations—Ground Staff Award 2010</i>	<p>A.3 Maintenance and engineering stream</p> <p>A.3.1 Aircraft Worker 1 is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, enterprise layout, work and documentary procedures, occupational-work health and safety, equal employment opportunity, and quality control/assurance procedures.</p> <p>...</p>
4B	AM2014/255	MA000049	<i>Airport Employees Award 2010</i>	<p>A.1 Technical services officers</p> <p>A.1.10 Technical services officer Level 9</p> <p>(c) Example of duties undertaken:</p> <p>...</p> <p>(x) Have an understanding of personnel, occupational-work health and safety and industrial relations matters and be able to act in accordance with relevant policies and procedures.</p> <p>A.3.6 Ground services officer level 6</p> <p>Employment at this level requires an employee to be proficient in duties ranging to and including Level 6 duties as specified by local agreement.</p> <p>(a) Typical Level 6 duties:</p> <ul style="list-style-type: none"> • Have a good working knowledge of rules, regulations pertaining to work duties (e.g. RPA’s, airport technical manual, Civil Aviation Orders (CAO’s) and Occupational Work Health and Safety (OH&S-WH&S)).
4D	AM2014/256	MA000080	<i>Amusement, Events and Recreation Award 2010</i>	<p>A.10.1 An employee appointed to this level undertakes three or more of the following duties:</p> <p>...</p> <p>(e) Responsible for all occupational-work health and safety management in outdoor areas.</p>

Stage	Matter	Award code	Award	Proposed amendment
2B	AM2014/199	MA000118	<i>Animal Care and Veterinary Services Award 2010</i>	<p>A.2.3 Level 2 A Level 2 employee will use limited discretion and initiative. Knowledge relating to the care of animals will be necessary. Level of responsibility, skills and knowledge An employee at this level will: (a) following Occupational Work Health and Safety procedures in an animal care environment; ...</p>
1D	AM2014/67	MA000001	<i>Black Coal Mining Industry Award 2010</i>	<p>A.5.1 Open cut mines The following lists are not exhaustive, but rather are indicative of the types of competencies utilised in open cut mines. INDUCTION Induction (Generic, Minesite); Interpersonal; First Aid; Fire Fighting; Occupational Work Health and Safety.</p> <p>A.5.2 Underground mines The following lists are not exhaustive, but rather are indicative of the types of competencies utilised in underground mines. INDUCTION Induction (Generic, Minesite); Interpersonal; First Aid; Fire Fighting; Occupational Work Health and Safety.</p>
4D	AM2014/259	MA000091	<i>Broadcasting and Recorded Entertainment Award 2010</i>	<p>61.4 All cinema employees—break between shifts (a) Employees must have at least 10 consecutive hours off duty between the end of each shift and starting ordinary work on the next day or shift. Where the employer is satisfied that occupational-work health and safety standards will be met, an employee may request and the employer may agree that a break of at least eight hours be substituted for the 10 hour break.</p> <p>A.1.16 Make-up and Hairdresser</p>

Stage	Matter	Award code	Award	Proposed amendment
				<p>...</p> <p>(e) Assistant Hairdresser or Make-up Artist Skills, competencies, duties and responsibilities held and exercised</p> <p>(i) Assistant Hairdresser</p> <ul style="list-style-type: none"> • Assists the hairdresser in the course of the hairdresser’s duties by ensuring that hairdressing devices are prepared in accordance with occupational work health and safety standards and station policy. <p>(ii) Assistant Make-up Artist</p> <ul style="list-style-type: none"> • Assists the make-up artist in the course of the make-up artist’s duties by ensuring that make-up materials and devices are prepared in accordance with occupational work health and safety standards and station policy. Responsible for quality of own work under supervision of Hairdresser/Make-Up Artist. <p>...</p> <p>A.1.20 Set Design</p> <p>...</p> <p>(b) Senior Set Designer Skills, competencies, duties and responsibilities held and exercised</p> <p>...</p> <p>(iii) Skilled in occupational work health and safety (OH&S WH&S) regulations for construction, weights and manual handling.</p> <p>...</p> <p>A.1.22 Properties</p> <p>(a) Property Person/Senior Studio Hand</p> <p>...</p> <p>(x) Understands all OH&S WH&S regulations for manual handling procedures.</p> <p>...</p> <p>(c) Property Assistant/Studio Hand/Prop and Scenery Storeperson/Set Dresser Skills, competencies, duties and responsibilities held and exercised</p> <p>(xiv) Works under broad guidelines and OH&S WH&S regulations.</p>

Stage	Matter	Award code	Award	Proposed amendment
4C	AM2014/260	MA000020	<i>Building and Construction General On-site Award 2010</i>	<p>21.10 First aid allowance</p> <p>...</p> <p>(b) The first aid allowance will be paid at the following additional rates:</p> <p>(i) an employee who holds the minimum qualifications recognised under the relevant State or Territory Occupational Work Health and Safety legislation (or, in Western Australia, a Senior First Aid certificate of Industrial First Aid certificate or equivalent qualification from the St John Ambulance Association or similar body)—\$2.75 per day; or</p> <p>...</p> <p>21.10 First aid allowance</p> <p>(b) The first aid allowance will be paid at the following additional rates:</p> <p>(ii) an employee who holds a higher first aid certificate recognised under the relevant State or Territory Occupational Work Health and Safety legislation (or, in Western Australia, a Senior First Aid certificate or Industrial First Aid certificate or equivalent qualification from the St John Ambulance Association or similar body)—\$4.36 per day.</p> <p>...</p> <p>22. Special rates</p> <p>(k) Asbestos</p> <p>Employees required to wear protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) as part of the necessary safeguards as required by the appropriate occupational-work health authority for the use of materials containing asbestos or to work in close proximity to employees using such materials, must be paid an additional \$0.81 per hour whilst wearing such equipment.</p>
4E	AM2014/261	MA000095	<i>Car Parking Award 2010</i>	<p>12.5 Car Parking Officer Level 2</p> <p>(c) Tasks an employee at this level may be required to perform include:</p> <p>...</p> <ul style="list-style-type: none"> • observing basic occupational-work health and safety; <p>...</p>
1B	AM2014/68	MA000055	<i>Cement and Lime Award 2010</i>	<p>Now a part of the Cement, Lime and Quarrying Award. See Quarrying Award 2010 above.</p>
4A	AM2014/263	MA000120	<i>Children's Services Award 2010</i>	<p>A.1.8 Level 5</p> <p>Indicative duties</p> <ul style="list-style-type: none"> • Co-ordinate centre or service operations including Occupational-Work Health and Safety, program planning, staff training.

Stage	Matter	Award code	Award	Proposed amendment
1B	AM2014/70	MA000056	<i>Concrete Products Award 2010</i>	<p>A.1.1 Undertaking the employer’s induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, occupational-work health and safety and quality assurance.</p>
3A	AM2014/222	MA000023	<i>Contract Call Centre Award 2010</i>	<p>A.2 Classification definitions</p> <p>A.2.1 Customer contact stream—classifications</p> <p>(b) Customer Contact Officer Level 1</p> <p>(ii) Indicative tasks</p> <p>An employee at this level would normally perform the following indicative tasks:</p> <ul style="list-style-type: none"> • follow occupational-work health and safety policy and procedures; <p>...</p> <p>(c) Customer Contact Officer Level 2</p> <p>(iii) Indicative tasks</p> <p>An employee at this level would normally perform the following indicative tasks:</p> <ul style="list-style-type: none"> • follow occupational-work health and safety policy and procedures; <p>...</p> <p>(e) Customer Contact Team Leader</p> <p>(iv) Indicative tasks</p> <p>An employee at this level would normally perform the following indicative tasks:</p> <ul style="list-style-type: none"> • follow occupational-work health and safety policy and procedures; <p>...</p>

Stage	Matter	Award code	Award	Proposed amendment
2D	AM2014/201	MA000110	<i>Corrections and Detention (Private Sector) Award 2010</i>	<p>A.2.4 Indicative tasks of a Correctional Officer are to:</p> <ul style="list-style-type: none"> • Comply with Occupational-Work Health and Safety and Equal Employment Opportunity (EEO)/Affirmative Action requirements in accordance with relevant legislative requirements and contribute to the maintenance and improvement of safety and equity in the workplace. <p>...</p> <p>A.3.4 Indicative tasks of a Correctional Officer—Perimeter/Security are to:</p> <ul style="list-style-type: none"> • Comply with Occupational-Work Health and Safety and EEO/Affirmative Action requirements in accordance with relevant legislative requirements and contribute to the maintenance and improvement of safety and equity in the workplace. <p>...</p> <p>A.4.5 Indicative tasks of a Correctional Supervisor are to:</p> <ul style="list-style-type: none"> • Comply with Occupational-Work Health and Safety and EEO/Affirmative Action requirements in accordance with relevant legislation and contribute to the maintenance and improvement of safety and equity in the workplace. <p>...</p> <p>A.5.3 Indicative tasks for a Court Security Officer are to:</p> <ul style="list-style-type: none"> • Comply with the Occupational-Work Health and Safety legislation, other relevant legislation and EEO/EOWA requirements and contribute to the maintenance and improvement of safety and equity in the workplace. <p>A.7.3 Indicative tasks for a Custody Officer are to:</p> <ul style="list-style-type: none"> • Comply with Occupational-Work Health and Safety legislation, other relevant legislation and EEO/EOWA requirements and contribute to the maintenance and improvement of safety and equity in the workplace.
1A	AM2014/71	MA000024	<i>Cotton Ginning Award 2010</i>	<p>7. Classifications</p> <p>7.2 Cotton ginning employee level 2 (CG2)</p> <p>Employees at this level:</p> <p>(a) are workers who are in charge of operating a piece of machinery (mobile plant or gin machinery) where greater OH&S work health and safety considerations exist compared with CG1 roles; and</p>

Stage	Matter	Award code	Award	Proposed amendment
3B	AM2014/225	MA000076	<i>Educational Services (Schools) General Staff Award 2010</i>	<p>A.2.6 Level 6 An employee at this level performs work above and beyond the skills of an employee at Level 5.</p> <p>...</p> <p>(e) Typical activities</p> <p>(i) Preschool/childcare services grade 5</p> <ul style="list-style-type: none"> • Co-ordinating operations, occupational-work health and safety, program planning, staff training
4E	AM2014/267	MA000073	<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	<p>A.2.1 Level 1 (78% relativity to the tradesperson) (b) Competencies An employee at Level 1 performs general duties essentially of a manual nature, and:</p> <p>...</p> <p>(iii) is undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational-work health and safety, equal employment opportunity and quality control/assurance.</p>
3D	AM2014/228	MA000101	<i>Gardening and Landscaping Services Award 2010</i>	<p>A.1.2 An employee at this level is undertaking training for a period of not more than three months which may include information on the workplace, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, workplace layout, work and documentation procedures, work health and safety occupational health and safety, equal employment opportunity and quality control/assurances.</p>

Stage	Matter	Award code	Award	Proposed amendment
2A	AM2014/203	MA000026	<i>Graphic Arts, Printing and Publishing Award 2010</i>	<p>23. Refreshment entitlement</p> <p>23.1 A reasonable opportunity is to be provided by the employer for each employee to pause to acquire a refreshment during the first half of the day or shift, at a time specified by the employer, subject to:</p> <p>...</p> <p>(d) maintenance of high standards of occupational-work health and safety; and</p> <p>...</p> <p>Schedule A—Classification Definitions</p> <p>A.2 Level 2</p> <p>Employees at this level perform work above the skills of an employee at level 1 to the level of their competence, skill and training.</p> <ul style="list-style-type: none"> • understanding and applying occupational-work health and safety (OH&S) practices and existing procedures applying in their work area at their level of training; <p>...</p> <p>Schedule A—Classification Definitions</p> <p>A.8 Level 8</p> <p>Employees at this level perform work above the skills of an employee at level 7 to the level of their competence, skill and training. An employee at this level may have completed a trade certificate, AQF Certificate Level IV or equivalent training.</p> <ul style="list-style-type: none"> • participating in, developing and implementing appropriate occupational-work health and safety practices in the area of work; encouraging staff under their supervision to accept and enforce safety requirements; <p>...</p>
3B	AM2014/229	MA000007	<i>Higher Education Industry—General Staff—Award 2010</i>	<p>A.2.1 Higher Education Worker Level 1 (HEW 1)</p> <p>(a) Training level or qualifications</p> <p>Employees at the base of this level would not be required to have formal qualifications or work experience upon engagement.</p> <p>Employees engaged at the base of this level will be provided with structured on the job training in addition to up to 38 hours of induction which must provide information on the higher education institution, conditions of employment, training to be made available and consequent career path opportunities, physical layout of the institution/work areas, introduction to fellow workers and supervisors, work and documentation procedures, occupational-work health and safety, equal opportunity practices and extended basic literacy and numeracy skills training where required/necessary to enable career path progression.</p>

Stage	Matter	Award code	Award	Proposed amendment
3D	AM2014/231	MA000028	<i>Horticulture Award 2010</i>	<p>Schedule A—Classification Definitions</p> <p>A.1 Level 1</p> <p>A.1.2 General description</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> • undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, occupational work health and safety, equal employment opportunity and quality control/assurance; <p>...</p> <p>A.2 Level 2 employee</p> <p>A.2.2 General description</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> • receives training in occupational work health and safety standards and practices relevant to the site; <p>...</p> <p>A.3 Level 3 employee</p> <p>A.3.2 General description</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> • receives training in occupational work health and safety standards and practices in work areas relevant to the site and appropriate to this award; <p>...</p> <p>A.4 Level 4 employee</p> <p>A.4.2 General description</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> • monitors the application of occupational work health and safety standards in work areas relevant to the site and appropriate to this level; <p>...</p>
4C	AM2014/274	MA000029	<i>Joinery and Building Trades Award 2010</i>	<p>A.1.1 Level 1 [relativity to Level 5—78%]</p> <p>(a) An employee at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational work health and safety, equal employment opportunity and quality control/assurance.</p> <p>...</p>

Stage	Matter	Award code	Award	Proposed amendment
4D	AM2014/276	MA000081	<i>Live Performance Award 2010</i>	<p>A.1.1 Production and Support Staff Level 1</p> <p>...</p> <p>(b) The induction training may include information on the enterprise or production, conditions of employment, introduction of supervisors and fellow workers, training and career path opportunities, venue/workshop/plant layout, work and documentation procedures, basic theatre terminology and etiquette, occupational work health and safety, equal employment opportunity and quality control/assurance.</p>
1C	AM2014/75	MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	<p>A.3.3 Wage Group: C14</p> <p>(a) Engineering/Manufacturing Employee—Level I</p> <p>(i) An Engineering/Manufacturing Employee—Level I is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational work health and safety, equal employment opportunity and quality control/assurance.</p> <p>...</p> <p>A.3.13 Wage Group: C4</p> <p>(a) Engineering Associate/Laboratory Technical Officer—Level I</p> <p>(i) An Engineering Associate/Laboratory Technical Officer —Level I means an employee who works above and beyond a technician at the C5 level and who has completed the minimum training requirements specified in clause A.2.1 of Schedule A or equivalent and is engaged in:</p> <ul style="list-style-type: none"> • making of major design drawings or graphics or performing technical duties in a specific field of engineering, laboratory or scientific practice such as research design, testing, manufacture, assembly, construction, operation, diagnostics and maintenance of equipment facilities or products, including computer software, quality processes, occupational work health and safety and/or standards and plant and material security processes and like work and/or developing test procedures or manuals from test standards and like work; or <p>...</p> <p>A.3.15 Wage Group: C2</p>

Stage	Matter	Award code	Award	Proposed amendment
				<p>(b) Principal Engineering Supervisor/Trainer/Coordinator</p> <p>(i) A Principal Engineering Supervisor/Trainer/Coordinator means a Supervisor/Trainer/Coordinator who has completed a national advanced diploma or equivalent of which at least 50% of the competencies are in supervision/training and who when engaged at this level:</p> <ul style="list-style-type: none"> possesses a sound knowledge of occupational work health and safety, industrial relations, and communications processes and is able to use this knowledge in training and leading the work of others;
3D	AM2014/238	MA000033	<i>Nursery Award 2010</i>	<p>9.2 Ordinary hours of work</p> <p>(c) The ordinary hours of work will not exceed eight hours on any day, provided that by arrangement between an employer and an employee ordinary working hours greater than eight but not exceeding 10 on any day may be worked subject to:</p> <p>(i) the employer and employee concerned being guided by relevant occupational work health and safety provisions;</p> <p>...</p>
3D	AM2014/239	MA000035	<i>Pastoral Award 2010</i>	<p>28.2 Piggery attendant level 1 (PA1)</p> <p>(a) A piggery attendant level 1 (PA1) is:</p> <ul style="list-style-type: none"> an employee undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, farm layout, production program, work and record keeping procedures and occupational-work health and safety; or <p>...</p> <p><i>Parties have already agreed to following changes, these changes made been made to the latest exposure draft:</i></p> <p>23.2 Farm and livestock hand level 2 (FLH2) An employee at this level includes:</p> <p>(b) Feedlot employee grade 1 with more than three months' experience in the industry who:</p> <ul style="list-style-type: none"> carry out workplace OH&S <u>WH&S</u> procedures. <p>23.4 Farm and livestock hand level 4 (FLH4)</p>

Stage	Matter	Award code	Award	Proposed amendment
				<p>An employee at this level includes:</p> <p>(a) Feedlot employee level 2 who:</p> <ul style="list-style-type: none"> • carry out workplace OH&S <u>WH&S</u> procedures. <p>23.6 Farm and livestock hand level 6 (FLH6)</p> <ul style="list-style-type: none"> • carry out workplace OH&S <u>WH&S</u> procedures. <p>23.7 Farm and livestock hand level 7 (FLH7)</p> <ul style="list-style-type: none"> • carry out workplace OH&S <u>WH&S</u> procedures.
4C	AM2014/280	MA000036	<i>Plumbing and Fire Sprinklers Award 2010</i>	<p>20.6 Wage-related allowances—Conditions for payment of allowances and additional payments required</p> <p>...</p> <p>(d) Asbestos materials</p> <p>Employees required to wear protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) as part of the necessary safeguards required by the appropriate occupational work health authority for the use of materials containing asbestos or to work in close proximity to employees using such materials must be paid an additional \$0.81 per hour whilst wearing such equipment.</p> <p>A.3.1 Work levels</p> <p>...</p> <p>(g) Plumbing and mechanical services tradesperson/Sprinkler fitter tradesperson Level 2</p> <p>...</p> <ul style="list-style-type: none"> • has knowledge of occupational work, health and safety requirements subject to the level of their training; and

Stage	Matter	Award code	Award	Proposed amendment
1B	AM2014/86	MA000037	<i>Quarrying Award 2010</i>	<p>Please note: this exposure draft is renamed as the Cement, Lime & Quarrying award</p> <p>D.2 Core competencies—cement and lime industry (g) Basic Elements: (i) working safely and follow occupational-work health and safety policies and procedures; ...</p>
2D	AM2014/210	MA000014	<i>Racing Industry Ground Maintenance Award 2010</i>	<p>A.5 Trackwork and Pool Supervisor ... (c) ensuring the observance of the training track rules and regulations, with particular emphasis on occupational work health and safety and ensuring observance of safe practices by trainers and track riders, including the wearing of protective clothing; ... A.7 Management Employee Level 2 An employee appointed to this level reports directly to the Committee of Management and undertakes three or more of the following duties: ... (e) responsible for all occupational-work health and safety management in outdoor areas;</p>
4F	AM2014/283	MA000058	<i>Registered and Licensed Clubs Award 2010</i>	<p>A.9.6 Maintenance and horticultural management level 2 means employee appointed to this level who reports directly to the Committee of Management and undertakes three or more of the following duties: ... (e) responsible for all occupational-Work Health and Safety management in outdoor areas;</p>
2C	AM2014/212	MA000038	<i>Road Transport and Distribution Award 2010</i>	<p>A.3.1 Skills/Duties ... (g) In addition to the above, may be responsible for the proper application and maintenance of appropriate occupational-work health and safety standards.</p>

Stage	Matter	Award code	Award	Proposed amendment
4A	AM2014/285	MA000100	<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	<p>A.5 Social and community services employee level 5</p> <p>A.5.2 Responsibilities</p> <p>To contribute to the operational objectives of the work area, a position at this level may include some of the following:</p> <p>(i) monitor and interpret legislation, regulations and other agreements relating to occupational-work health and safety, workers compensation and rehabilitation;</p> <p>B.3 Crisis accommodation employee level 3</p> <p>B.3.2 Responsibilities</p> <p>To contribute to the operational objectives of the work area, a position at this level may include some of the following:</p> <p>...</p> <p>(h) monitor and interpret legislation, regulations and other agreements relating to occupational-work health and safety, workers compensation and rehabilitation;</p> <p>D.5 Home care employee level 5</p> <p>D.5.1 Accountability and extent of authority</p> <p>...</p> <p>(d) Employees with co-ordination responsibilities are also required to ensure that all employees under their direction are trained in safe working practices and in the safe operation of equipment and are made aware of all occupational-work health and safety policies and procedures.</p> <p>...</p> <p>D.5.4 Management skills</p> <p>(b) The position requires an understanding of and ability to implement basic personnel policies and practices including those related to equal employment opportunity, occupational-work health and safety and employees' training and development.</p>

Stage	Matter	Award code	Award	Proposed amendment
3D	AM2014/247	MA000087	<i>Sugar Industry Award 2010</i>	<p>B.4.2 Wage Group: C14</p> <p>(a) Engineering/production employee level I</p> <p>(i) An engineering/production employee level I is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational-work health and safety, equal employment opportunity and quality control/assurance.</p>
4A	AM2014/286	MA000103	<i>Supported Employment Services Award 2010</i>	<p>A.1.1 An employee engaged in this grade will undertake up to 38 hours induction training which may include information on the employer’s business, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, worksite layout, work and documentation procedures, occupational-work health and safety, equal employment opportunity and quality control/assurances.</p>
3A	AM2014/248	MA000041	<i>Telecommunications Services Award 2010</i>	<p>A.4.2 Telecommunications Technical Employee</p> <p>...</p> <p>(c) Telecommunications Technical Employee (Customer Access Network)</p> <p>(ii) Indicative tasks</p> <p>The following tasks are indicative of those performed by an employee at this level:</p> <ul style="list-style-type: none"> • follow occupational-work health and safety policy and procedures; <p>...</p> <p>A.4.4 Advanced Telecommunications Technician</p> <p>...</p> <p>(c) Advanced Telecommunications Technician (Engineering)</p> <p>(ii) Indicative tasks</p> <p>The following tasks are indicative of those performed by an employee at this level:</p> <ul style="list-style-type: none"> • follow occupational-work health and safety policy and procedures; <p>...</p>

Stage	Matter	Award code	Award	Proposed amendment
1C	AM2014/91	MA000017	<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	<p>A.1 Trainee Training for new entrants will be determined in accordance with the needs of the enterprise, but will involve instruction aimed at assisting trainees to achieve the range of competencies required at Skill Level 1, including:</p> <ul style="list-style-type: none"> • the knowledge and skills required to apply relevant Occupational Work Health and Safety practices and procedures; <p>...</p> <p>A.6 Skill Level 5 Employees at this level exercise the skills necessary to be graded at Skill Level 4 and have a comprehensive knowledge of enterprise products and processes and are principally engaged in specialist tasks.</p> <ul style="list-style-type: none"> • exercise the skills associated with Skill Level 4 and perform one or more of the following Team Leader activities: implement and monitor occupational-work health and safety policies and procedures; <p>...</p>
1C	AM2014/92	MA000071	<i>Timber Industry Award 2010</i>	<p>A.1 Level 1 (relativity 78%) A.1.1 General ... (d) Induction training Induction training will include the following: (i) basic occupational-work health and safety;</p> <p>A.2.1 General An employee at this level performs work above and beyond the skills of a Level 1 employee and is competent to perform work within the scope of this level. ... (d) General description of knowledge required in addition to that outlined in Level 1: (iv) awareness of occupational-work health and safety procedures for pre-set cutting equipment, and other health and safety procedures; and</p> <p>A.5.3 Harvesting, milling and processing, Manufacturing or Merchandising</p>

Stage	Matter	Award code	Award	Proposed amendment
				<p>employee Level 5</p> <p>...</p> <p>(d) General description of knowledge required</p> <p>(vi) knowledge of occupational-work health, safety techniques and legislation for work undertaken at this level;</p> <p>B.1 Timber furniture production employee, Level 1 (relativity 78%) A Timber furniture production employee, Level 1 is an employee new to the industry who is undertaking up to three months' induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.</p> <p>The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees, machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic occupational-work health and safety instruction and quality assurance.</p> <p>C.1 Indicative tasks/skills Employees engaged in the classifications contained in this Schedule will work to the level of their skills, competence and training and will perform work within the scope of their level as follows:</p> <p>C.1.1 Level 1 (relativity 85%) Employee undertakes induction training sufficient to allow the employee to participate in work training. Can undertake tasks under direct supervision and to the level provided in the induction training.</p> <p>...</p> <ul style="list-style-type: none"> • occupational-work health and safety <p>...</p> <p>C.1.6 Level 6 (relativity 105%)</p> <p>...</p> <ul style="list-style-type: none"> • Observes occupational-work health and safety and environmental policies, supervises other employees in safe working practices <p>...</p> <p>C.1.7 Level 7 (relativity 110%)</p> <p>...</p>

Stage	Matter	Award code	Award	Proposed amendment
				<ul style="list-style-type: none"> • Carries out risk assessments, rectifies identified hazards, applies occupational work health and safety and environmental policies, and ensures safe working practices are followed ... C.1.8 Level 8 (relativity 115%) ... • Applies occupational-work health and safety and environmental policies and/or legislation and ensures safe working practices are followed ... C.1.9 Level 9 (relativity 120%) ... • Can establish safe working procedures and systems and participates in the establishment of occupational-work health and safety and environmental policies
1C	AM2014/93	MA000089	<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	<p>This award is subject to amendments as provided in Full Bench Decision [2016] FWCFCB 4418 , which may impact the award in which the following changes are made.</p> <p>A.1 Vehicle industry RS&R—employee—Level 1 R1 (entry) An employee at Level 1 is an employee who has undertaken little or no formal or informal training. A Level 1 employee may be undertaking up to 38 hours of induction training. The induction training may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational-work health and safety, equal employment opportunity and quality control/assurance.</p> <p>B.1 V1—Vehicle industry/production employee Level 1 B.1.1 A Vehicle industry/production employee—Level 1 is an employee undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational-work health and safety, equal employment opportunity and quality control/assurance.</p> <p>...</p> <p>B.11 V11—Vehicle industry engineering associate—Level I B.11.1 A Vehicle industry engineering associate—Level I means an employee who works above and beyond a technician at Level V10 and has successfully completed third</p>

Stage	Matter	Award code	Award	Proposed amendment
				<p>year part-time (or 22 modules) of an Advanced Diploma or equivalent and is engaged in:</p> <p>(a) making of major design drawings or graphics or performing technical duties in a specific field of engineering, laboratory or scientific practice such as research design, testing, manufacture, assembly, construction, operation, diagnostics and maintenance or equipment facilities or products, including computer software, quality processes, occupational-work health and safety and/or standards and plant and material security processes and like work; or</p> <p>...</p> <p>B.13 V13—Vehicle industry leading technical officer & Principal engineering trainer/supervisor/co-ordinator</p> <p>B.13.1</p> <p>(a) Principal engineering trainer/supervisor/co-ordinator</p> <p>(i) A Vehicle industry principal trainer/supervisor/co-ordinator means a trainer/supervisor/co-ordinator who has completed an Advanced Diploma of which 15 modules are supervision/training modules or equivalent and who when engaged in this level:</p> <ul style="list-style-type: none"> • possesses a sound knowledge of occupational-work health and safety, industrial relations, and communications processes and is able to use this knowledge in training and leading work of others; and <p>...</p>

Attachment D — Overtime meal allowance provisions

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Aboriginal Community Controlled Health Services Award 2010</i>	MA000115	15.6(a)	Meal allowance	Beyond 1 hour after usual finishing hour	Yes - when overtime work exceeds four hours	Will not apply when an employee could reasonably return home for a meal within the meal break.
<i>Aged Care Award 2010</i>	MA000018	15.4(a)	Meal—first	Beyond 1 hour after usual finishing hour	Yes – when work exceeds four hours	Will not apply when an employee could reasonably return home for a meal within the meal break.
<i>Airline Operations – Ground Staff Award 2010</i>	MA000048	29.4(a) – (e)	Meal	Required to work in excess of 1 hour before normal starting time or in excess of 1 hour after usual finishing time. Recalled to duty or required to work on RDO and works more than 4 hours.	Yes – for each period of 4 hours overtime worked.	If recalled to duty or required to work on RDO, employee must do 4 or more hours of actual work.
<i>Airport Employees Award 2010</i>	MA000049	30.10	Meal	Required to work a minimum of 2 hours overtime.	Yes – for each period of 5 hours continuous period of overtime worked. Except where overtime worked on Sat, Sun, PH, RDO is planned and equals standard day/shift – only one meal allowance paid.	Only payable if a meal is not provided by employer and employee works overtime continuous with ordinary duty without a break for a meal; works continuous with ordinary duty; or works overtime on Sat, Sun, PH or RDO and is granted an unpaid meal break.

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Alpine Resorts Award 2010</i>	MA000092	17.1	Meal	Required to work more than 2 hours overtime.		Must not have been notified previous day or earlier.
<i>Aluminium Industry Award 2010</i>	MA000060	15.4	Meal	For each occasion employee is entitled to a rest break during overtime work.		Not paid if employer provides meal/meal making facilities; or employee was not notified the previous day/shift.
<i>Ambulance and Patient Transport Industry Award 2010</i>	MA000098	15.11(d)	Meal	More than two hours beyond normal finishing time.		
<i>Animal Care and Veterinary Services Award 2010</i>	MA000118	16.2(a)(i)-(ii)	Meal—first	Required to work more than 1.5 hours overtime.	Yes - For each period of 4 hours overtime worked.	Is not notified prior to completion of work on the previous day that overtime is to be worked. Not payable if an employer provides a “substantial meal”. Second and subsequent meal allowances not payable when employee notified by the previous day that the overtime to be worked would require a second or subsequent meal.
<i>Amusement, Events and Recreation Award 2010</i>	MA000080	15.4	Meal	Required to work for 2 or more hours immediately after completion of ordinary hours.		Not to be paid if employer provides a meal.
<i>Aquaculture Industry Award 2010</i>	MA000114	15.2	Meal	Required to work overtime for more than more than 2 hours.	Yes – but only if the employee is not notified that a subsequent meal may be required.	

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Asphalt Industry Award 2010</i>	MA000137	15.4	Meal	Required to work more than 1.5 hours after usual ceasing time.	Yes – first allowance 5.5 hrs after usual ceasing time and then each 4 hours thereafter.	Must not have received notification the previous day or earlier. Not payable if employer provides meal.
<i>Banking, Finance and Insurance Award 2010</i>	MA000019	18.3(a)	Meal—first	Required to work 1.5 hours overtime.	Yes - If overtime exceeds 5.5 hours.	Period of overtime extends beyond 6.00 pm.
<i>Black Coal Mining Industry Award 2010</i>	MA000001	17.8	Meal	Required to work more than 1.5 hours past rostered shift. Where overtime worked is not continuous with rostered hours.	Yes – after each 4 hours of overtime worked after crib break. Yes – after each 5 hours worked.	Only payable if not notified previous day.
<i>Broadcasting and Recorded Entertainment Award 2010</i>	MA000091	43.1(b)	Meal—technical staff	Required to work more than 2 hours overtime.		Is not notified on the previous day or earlier that they are required to work.
		62.1(a)	Meal—artists	Required to work not less than 2 hours after employee has completed 8 hrs work. Employee entitled to 2 nd meal break.		Meal break to commence no later than 10 hours from commencement of day's work.
		63(e) 75.4	Meal—Actors Meal – Motion Picture	When overtime duty is performed beyond midnight.		
<i>Building and Construction General On-site Award 2010</i>	MA000020	20.2	Meal	Required to work overtime for at least 1.5 hours after ordinary hours.		Not payable to employee provided with board/lodging or is receiving distant job allowance and is

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
						provided with meal.
		20.2(c)	Meal	Operator employee after completion of each 4 hours from the commencement of overtime.	Yes- after each 4 hours	
<i>Business Equipment Award 2010</i>	MA000021	22.1(d)	Meal	Receive allowance for each rest break described in 30.3(d).	Yes – after each 4 hours.	Not payable if employer provides meal or employee lives in the same locality and can return home for a meal.
		30.3(d)(i)		Required to work overtime.		
		30.3(d)(ii)		Required to work 2 or more hours after completion of ordinary working hours.		
<i>Car Parking Award 2010</i>	MA000095	15.3	Meal	Required to work more than 2 hours overtime.	No	Not payable if notified previous day or earlier.
<i>Cement and Lime Award 2010</i>	MA000055	15.7	Meal	Required to work 2 or more hours after normal finishing time.	Yes – 6 or more hours after normal finishing time and then every 4 hours thereafter.	

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Cemetery Industry Award 2010</i>	MA000070	15.6	Meal	Required to work more than 2 hours after ordinary ceasing time.	Payable for each meal	Not payable if advised previous day.
<i>Children's Services Award 2010</i>	MA000120	15.5	Meal	Required to work overtime for more than 2 hours.	No	Not payable if notified the previous day or earlier; or where meal is provided by employer; or where employee could return home.
<i>Cleaning Services Award 2010</i>	MA000022	17.6	Meal	Required to work an additional 2 hours.		Not payable if notified the previous day.
<i>Clerks—Private Sector Award 2010</i>	MA000002	19.3(a)	Meal allowance	If required to work for more than 1.5 hours of overtime after the employee's ordinary time of ending work	Yes – further payment when overtime exceeds 4 hours	Not payable if given 24 hours' notice
<i>Coal Export Terminals Award 2010</i>	MA000045	14.4	Meal	On each occasion the employee is entitled to a rest break during overtime work	Yes – each time employee is entitled to a rest break.	Not payable if notified previous day/shift; or Employee could return home; or Meal is provided by employer.
<i>Concrete Products Award 2010</i>	MA000056	16.7	Meal	Required to work more than 2 hours.	Yes – payment for subsequent meals.	Not payable if notified on previous day or earlier.
<i>Contract Call Centres Award 2010</i>	MA000083	20.4	Meal	Each occasion that the employee is entitled to a rest break	Yes – payment for subsequent meals.	Not payable if notified the previous day/shift; or Employee lives in same locality and could return home.
<i>Corrections and Detention (Private Sector) Award 2010</i>	MA000110	15.1	Meal allowance	If required to perform more than two hours overtime duty	No	Not payable if employer provides meal
<i>Cotton Ginning Award 2010</i>	MA000024	17.2	Meal	Required to work overtime for more than 1 hour after ordinary ceasing time.		Not payable if notified the day before.

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Dredging Industry Award 2010</i>	MA000085	15.12	Meal allowance	If required to work overtime for more than 1.5 hours after ordinary finishing time	Yes – if owing to amount of overtime	Not payable if employer provides meal
<i>Dry Cleaning and Laundry Industry Award 2010</i>	MA000096	15.2	Meal	Required to work more than 1 hour after usual ceasing time.		Not payable if notified the day prior; or Employer provides meal.
<i>Educational Services (Post-Secondary Education) Award 2010</i>	MA000075	15.4	Meal allowance	General staff required to work more than 1.5 hours of overtime after ordinary time of ending work without being given 24 hours' notice	Yes –where overtime exceeds 4 hours	Not payable if employer provides meal
	MA000075	15.4	Meal allowance	General staff who work approved overtime for more than five hours on a Saturday or Sunday	Yes –where overtime exceeds 4 hours	Not payable if employer provides meal
<i>Educational Services (Schools) General Staff Award 2010</i>	MA000076	16.3	Meal	Required to work more than 2 hours overtime after the completion of a full day of work.		Not payable if employee could return home; or be entitled to meal provided to boarding students.
<i>Electrical, Electronic and Communications Contracting Award 2010</i>	MA000025	17.3	Meal allowance	If required to work overtime for 2 or more hours	Yes unless the employer advises on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal	Not payable if employer provides meal Not payable if notified the previous day or earlier Not payable if employee could reasonably return home for meals.
<i>Electrical Power Industry Award 2010</i>	MA000088	18.1	Meal	Required to work not less than 2 hours but not more than 4 hours	Yes – after 4 hours and each	

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				before or after ordinary rostered hours. (25.4)	subsequent 4 hours.	
<i>Fast Food Industry Award 2010</i>	MA000003	19.1(a)	Meal allowance	If required to work more than 1 hour of overtime after the employee's ordinary time of ending work	Yes- if overtime exceeds 4 hours	Will not apply if the employee is given 24 hours' notice Not payable where an employee could reasonably return home for a meal within the period allowed
<i>Fire Fighting Industry Award 2010</i>	MA000111	17.2(a)	Meal allowance	Overtime worked more than 2 hours before or after rostered shift, on salvage duty, recalled to work or retained on duty	Yes - every 4 hours	Not payable if employer provides a meal
<i>Fitness Industry Award 2010</i>	MA000094	18.2	Meal allowance	If required to work overtime for more than 1.5 hours immediately after their ordinary hours of work	No	Not payable if employer provides a meal
<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	MA000073	33.10(a)	Meal allowance	4 hours after commencing overtime; or at the commencement of overtime if working overtime of 1.5 hours or more after completion of ordinary hours	Every 4 hours	Will not apply if notified no later than the previous day or shift, lives locally and could reasonably return home or provided with an adequate meal by employer
<i>Funeral Industry Award 2010</i>	MA000105	15.1	Meal allowance	Overtime of more than 2 hours after normal ceasing time	Paid allowance for each meal	Will not apply if notified the previous day or supplied meal by employer
<i>Gardening and Landscaping Services Award 2010</i>	MA000101	15.7	Meal allowance	If required to work overtime for 1.5 hours or more immediately after the completion of ordinary hours of work on an ordinary working day or immediately after the completion of eight hours of work on a Saturday, Sunday or public holiday	No	None

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Gas Industry Award 2010</i>	MA000061	15.2	Meal allowance	If required to work 2 hours or more of overtime If required to work overtime on Saturday, Sunday or a public holiday and such overtime is worked in excess of four hours	Where overtime continues for each additional consecutive 4 hours worked	Not payable if a meal is provided for overtime on Saturday, Sunday, a public holiday or where overtime continues for each additional consecutive 4 hours
<i>General Retail Industry Award 2010</i>	MA000004	20.1(a)	Meal allowance	Overtime of more than 1 hour after ordinary finishing time	After 4 hours	Not payable if 24 hours' notice given Will not apply if employee could reasonably return home
<i>Graphic Arts, Printing and Publishing Award 2010</i>	MA000026	25.2(b)(i)	Meal allowance	If employee or adult apprentice (other than a junior or an apprentice) is required to work overtime for more than 1.5 hours	Yes – subsequent meal break in accordance with cl 32	Not payable if notified on the previous day or earlier.
		25.2(b)(ii)		If employee or an adult apprentice (other than a junior or an apprentice) has been so notified of such overtime and then is not required to work such overtime.	Yes – subsequent meal break in accordance with cl 32	
		25.2(b)(iii)		If a junior or an apprentice (other than an adult apprentice) is required to work overtime for more than 1.5 hours.	Yes – subsequent meal break in accordance with cl 32	
		25.2(b)(iv)		If an employee works overtime for 3 hours after ordinary finishing time and does not take a meal break	Yes – subsequent meal break in accordance with cl	

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				in accordance with clause 32	32	
<i>Hair and Beauty Industry Award 2010</i>	MA000005	21.2	Meal allowances	If required to work more than 1 hour of overtime after the employee's ordinary time of ending work	Yes - where overtime work exceeds 4 hours a further meal allowance will be paid	Not payable if employee is given 24 hours' notice. Not payable if employer provides meal or where any employee could reasonably return home for a meal within the period allowed
<i>Health Professionals and Support Services Award 2010</i>	MA000027	18.7(a)	Meal allowance	Overtime of more than 1 hour after ordinary finishing time or where the overtime on a shift for a shiftworker exceeds one hour	After 4 hours	Will not apply if employer supplies meal or could reasonably return home
<i>Higher Education Industry—(General Staff)—Award 2010</i>	MA000007	Schedule C	Overtime meal allowance	If work approved overtime beyond the ordinary hours of work for more than 2 hours on weekday or for more than 5 hours on Saturday and Sunday		Will not be paid if the employee can reasonably return home for a meal and then resume duty or a meal is provided by the employer
<i>Horse and Greyhound Training Award 2010</i>	MA000008	14.3(b)	Meal—overtime	Overtime of more than 1.5 hours If notified the previous day that they are to work overtime but are then not required to work overtime they will receive the allowance	No mention	Not payable if notified the previous day or earlier
<i>Horticulture Award 2010</i>	MA000028	24.3	Meal allowance	If required to work overtime for more than 2 hours after employee's ordinary ceasing time	Yes - If work extends into a second or subsequent meal break	Not payable if employee notified before leaving work on the previous day Not payable if provided a suitable meal without cost

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Hospitality Industry (General) Award 2010</i>	MA000009	21.1	Meal allowance	If required to work overtime for more than 2 hours If given notice of a requirement to work overtime and employee has provided a meal and is not required to work overtime or is required to work less than the amount advised		Not payable if employee is notified on the previous day or earlier Not payable if employer supplies meal
<i>Hydrocarbons Industry (Upstream) Award 2010</i>	MA000062	15.4(a)	Meal allowance for overtime work	On each occasion that the employee is entitled to a rest break during overtime work	Yes - on each occasion that the employee is entitled to a rest break during overtime work	Not payable if employer provides a meal or meal-making facilities, notified the employee no later than the previous day or shift that the employee would be required to work the overtime, or employee is entitled to receive a living away from home allowance.
<i>Joinery and Building Trades Award 2010</i>	MA000029	24.2(b)	Meal allowance	If required to work overtime for at least 1.5 hours after working ordinary hours		Not payable in circumstances where provided for in clause 24.5(a) - Living away from home for a distant job
<i>Labour Market Assistance Industry Award 2010</i>	MA000099	16.1	Meal allowance	Where the employee works overtime in excess of 2 hours on any of the days upon which ordinary hours are worked or where the employee works 5 hours or more on a day which is not an ordinary working day	No	None

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Legal Services Award 2010</i>	MA000116	19.1(a)	Meal—overtime (Monday – Fri)	Payable when required to work not less than 1 hour of overtime and such overtime finishes 1.5hrs after the normal finishing time or 5 hours after the preceding meal break, whichever first occurs first. Or in the case of a shiftworker, when the overtime on a shift exceeds one hour	Yes - when overtime work exceeds four hours	Will not apply when where the employer provides a suitable meal
	MA000116	19.1(b)	Meal—overtime on Sat/Sun or RDO for a shiftworker	5 hours	Yes – after 9 hours	Does not apply where an employee could reasonably return home for a meal within the period allowed
<i>Live Performance Award 2010</i>	MA000081	46.4(a) & (b)	Meal	Where the employee has worked between 12 midnight and 8.00 am and who continues to work beyond 8.00 am. Or where the employee is required to work two performances back to back Not payable where the employee commences work at or after 5.00 am.	No	Does not apply when where the employer provides a suitable meal
<i>Local Government Industry Award 2010</i>	MA000112	15.1	Meal allowance in relation to overtime	Employees who work more than 2 hours' overtime in a minimum of 10 hours on duty	Yes - where the employer requires the employee to continue working	A meal allowance is not payable where the employee has been notified at least 24 hours in advance of the requirement to work

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
					for a further 4 hours of continuous overtime work	overtime, the employee is only required to work less than the time prescribed; or a meal is provided by the employer.
<i>Mannequins and Models Award 2010</i>	MA000117	14.2(c)(i)	Meal—1 hour overtime	Not less than one hour of overtime (Monday to Saturday inclusive) after their ordinary time of ending work	Yes – 4 hours	Will not apply when where the employer provides a suitable meal (by agreement with employee)
	MA000117	14.2(c)(iii)	Meal—overtime on Sunday	4 hours	Yes – 8 hours	Will not apply when where the employer provides a suitable meal (by agreement with employee)
<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	MA000010	32.4(f)(ii) and 40.11(a)	Meal	On each occasion that the employee is entitled to a rest break	Yes – after each 4 hour period	Not payable when employee notified no later than the previous day Not payable if the employee could reasonably return home Not payable if the employer provides an adequate meal.
<i>Marine Tourism and Charter Vessels Award 2010</i>	MA000093	14.2	Meals on overtime	When an employee, including a casual, is required to work overtime in excess of 1.5 hours before or after the usual commencing time	Yes – every 4 hours while overtime continues	Not payable if employee provided with a suitable meal free of cost
<i>Meat Industry Award 2010</i>	MA000059	26.2	Meal allowance	If required to work overtime for 1.5 hours or more after rostered finishing time	No	None
<i>Miscellaneous Award 2010</i>	MA000104	15.4	Meal—first	more than one hour of overtime after the employee's ordinary time of ending work	Yes – 4 hours	Doesn't apply if given more than 24 hours notice

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<i>Mining Industry Award 2010</i>	MA000011	14.4	Meal allowance for overtime work	On each occasion that the employee is entitled to a rest break during overtime work		Not payable if the employer provides a meal or meal-making facilities or if the employee was notified no later than the previous day or shift that the employee would be required to work the overtime
<i>Miscellaneous Award 2010</i>	MA000104	15.4	Meal allowance	If required to work more than 1 hour of overtime after the employee's ordinary time of ending work	Yes - If overtime exceeds 4 hours a further meal allowance payable	Not payable if employee is given 24 hours' notice of the overtime Not payable if meal provided
<i>Nursery Award 2010</i>	MA000033	20.1(b)	Meal	More than two hours after the employee's ordinary ceasing time	Yes – 5 hours (in accordance with second meal break)	Not payable if employee given more than 24 hours notice or if provided with a suitable meal
<i>Nurses Award 2010</i>	MA000034	16.3(a)	Meal	After one hour of usual finishing time. For shiftworkers, when the overtime work on any shift exceeds one hour.	Yes – 4 hours	Not payable if the employer provides a meal or when an employee could reasonably return home for a meal within the meal break.
<i>Oil Refining and Manufacturing Award 2010</i>	MA000072	15.4(a)	Meal	On each occasion that the employee is entitled to a rest break during overtime work	Yes- on each occasion entitlement to a rest break arises	Not payable if employee notified on the previous day or shift. Not payable if the employer provides a meal or meal making facilities.
<i>Passenger Vehicle Transportation Award 2010</i>	MA000063	15.2(f)	Meal allowance	Work more than 2 hours' overtime beyond ordinary finishing time	No	None
<i>Pastoral Award 2010</i>	MA000035	17.3(g)(i) & 17.3(g)(ii) and 36.5; 36.10	Meal	Required to work overtime more than 1.5hrs after normal finishing time Or if required to work more than	Yes – 4 hours	Not payable if the employer provides a meal or notifies the employee 1 day prior

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				two hours after ordinary ceasing time (without being notified before leaving work on previous day)		
<i>Pest Control Industry Award 2010</i>	MA000097	15.5	Meal—overtime	Required to work overtime for more than two hours		Not payable if notified on the previous day or earlier they are required to work overtime or if supplied with a meal
<i>Pharmaceutical Industry Award 2010</i>	MA000069	19.6	Meal allowance	If required to work overtime for any period in excess of 1.5 hours after the usual hour of ceasing duty or after 5.45 pm, whichever is the earlier When employee is notified the previous day of the intention to work overtime and overtime is not worked they must also be paid the meal allowance.		Not payable if supplied with an adequate meal from the employer's canteen
<i>Pharmacy Industry Award 2010</i>	MA000012	19.1(a)	Meal—first	6 or more ordinary hours worked then required to work overtime or 1.5 hours after normal finishing time	Yes – 4 hours	Not payable where employee notified on the previous day. Not payable if the employer provides a meal
<i>Plumbing and Fire Sprinklers Award 2010</i>	MA000036	21.2(b)	Meals	If required to work overtime for at least 1.5 hours after working ordinary hours	Yes – allowance payable for each subsequent 4 hours	The employer may provide a meal or meals instead of paying any such allowance
<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	MA000052	14.17	Meal allowances	If required to work overtime in excess of 1.5 hours after the usual ceasing time	Yes- overtime work continue for a further 4 hours	Not payable when employee notified the previous day Not payable if provided with

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
						provided with a suitable meal
<i>Poultry Processing Award 2010</i>	MA000074	20.2(b)	Meal allowance	If required to work overtime for at least 1.5 hours after working ordinary hours		Not payable where a meal is provided by the employer
<i>Premixed Concrete Award 2010</i>	MA000057	15.7	Meal allowance for overtime	If required to work overtime for 2 hours or more after their normal ceasing time If employee is notified of the requirement to work overtime but the employee is not called upon to work that overtime	Yes – employee entitled after six hours or more after their normal ceasing time and every four hours thereafter	
<i>Professional Diving Industry (Industrial) Award 2010</i>	MA000108	15.5	Meal allowance – inshore divers	If required to work overtime for more than 2 hours on any day after the usual finishing time Where employees are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified they will be paid the meal allowance		Not payable if employees are notified the previous day that their services are required or a hot meal is provided by the employer.
<i>Quarrying Award 2010</i>	MA000037	18.9	Meal allowance for overtime	If required to work overtime for 2 hours or more after normal ceasing time If employee notified of requirement to work overtime but employee is	Yes - entitled to meal allowance again 6 hours or more after their normal ceasing time	

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				not called upon to work that overtime	and every 4 hours thereafter	
<i>Racing Clubs Events Award 2010</i>	MA000013	20.6	Meal allowance	If required to work overtime for 1.5 hours or more immediately after the completion of ordinary hours of work on an ordinary working day or immediately after the completion of 8 hours of work on a Saturday, Sunday or public holiday	No	Not payable if employer provides a meal
<i>Racing Industry Ground Maintenance Award 2010</i>	MA000014	15.7	Meal allowance	If required to work overtime for 1.5 hours or more immediately after completion of ordinary hours of work on an ordinary working day or immediately after the completion of 8 hours of work on a Saturday, Sunday or public holiday	No	None
<i>Rail Industry Award 2010</i>	MA000015	15.1(a)	Meal allowance	If work more than 2 hours' overtime in a minimum of 10 hours on duty	No	None
<i>Registered and Licensed Clubs Award 2010</i>	MA000058	18.1	Meal allowance	Club employees (other than club managers) – if required to work overtime for more than 2 hours Where employee given notice of a requirement to work overtime has provided a meal and is not required to work overtime or is required to work less than the amount advised, the employee must be paid as for		Club employees (other than club managers) – Not payable when employee notified on the previous day or earlier or where a meal is supplied

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				the meal which they have provided		
<i>Restaurant Industry Award 2010</i>	MA000119	24.1	Meal allowance	A full-time or part-time employee required to work overtime for more than 2 hours If employee provides meal and is not required to work overtime or is required to work less than the amount advised, the employee will be paid for the meal which the employee has provided but which is surplus		Not payable when employee is notified on the previous day or earlier
<i>Road Transport and Distribution Award 2010</i>	MA000038	26.3 & 16.4(e)	26.3 Meal allowance	If required to work overtime for 2 continuous hours or more If required to commence work 2 hours or more prior to the normal starting time		Not payable if employer supplies a meal
<i>Salt Industry Award 2010</i>	MA000107	15.4(b)	Meal allowance for overtime work	If required to work more than 2 hours overtime		Not payable if employer provides a meal or meal-making facilities or if the employee was notified no later than the previous day or shift that the employee would be required to work the overtime
<i>Seafood Processing Award 2010</i>	MA000068	26.8	Meal allowance	On each occasion the employee is entitled to a rest break in accordance with clause 26.7 (employee entitled to rest break after each 4 hours of overtime)	Yes - after each 4 hours	Not payable if employee is a day worker and was notified no later than the previous day that they would be required to work such overtime,

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				If employee has provided a meal or meals on the basis that they have been given notice to work overtime and is not required to work overtime or work less than the amount advised, employee must be paid the meal allowance for the meal or meals which they have provided		employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work overtime, employee lives in the same locality as the enterprise and could reasonably return home for meals or if the employee is provided with an adequate meal by the employer
<i>Security Services Industry Award 2010</i>	MA000016	15.3	Meal allowance	If required to work more than 1 hour beyond the completion of the employee's ordinary shift.		Not payable if employee was notified the previous day of the requirement to work additional time
<i>Silviculture Award 2010</i>	MA000040	18.4	Meal allowance	If required to work in excess of 1.5 hours' overtime after working ordinary hours		Not payable if employer provides a suitable meal
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	MA000100	28.5 & 20.3	Meal allowances	If required to work more than 1 hour after the usual finishing hour of work or for shiftworkers, when the overtime work on any shift exceeds one hour.	Yes - where overtime work exceeds 4 hours	Not payable if employee supplied with an adequate meal where an employer has adequate cooking and dining facilities or if employee could reasonably return home for a meal within the meal break
<i>Sporting Organisations Award 2010</i>	MA000082	18.4	Overtime meal allowance— clerical and administrative staff	Where an employee is required to work overtime after 7.00 pm		Not payable when the employer supplies to the employee a substantial meal
<i>State Government Agencies Award 2010</i>	MA000121	15.3	Overtime meal allowance	If required to work overtime which: <ul style="list-style-type: none"> • immediately follows or 		If an employee purchases a meal of two or more courses at a canteen,

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				<p>immediately precedes a scheduled period of ordinary duty and is not less than 2 hours;</p> <ul style="list-style-type: none"> • does not immediately follow or immediately precede a scheduled period of ordinary duty • includes a meal break of not less than 20 minutes taken prior to the completion and not less than four hours after the commencement of the overtime, or • where the taking of a meal break is precluded by reason of safety requirements, is not less than 4 hours 		cafeteria, mess room or dining room conducted by the employer which is less than the allowance, the employee must be reimbursed the actual cost of such a meal instead of the allowance
<i>Stevedoring Industry Award 2010</i>	MA000053	17.3(e)	Meal – day workers	If required to work overtime on a Saturday or Sunday or a public holiday		Not payable if the employer provides a meal
<i>Stevedoring Industry Award 2010</i>	MA000053	18.13(b)	Meal – shiftworkers	If required to work more than an hour after or before their normal finishing or starting time including where a double header is worked or required to work overtime on a day shift on a Saturday or any shift on a Sunday or public holiday		

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
<i>Storage Services and Wholesale Award 2010</i>	MA000084	16.1	Meal allowance	If required to work overtime in excess of 1 hour after the usual finishing time		Meal allowance will not be payable to an employee who can reasonably return home for a meal.
<i>Sugar Industry Award 2010</i>	MA000087	23.2	Meal—bulk sugar terminal employees	If required to work for more than one hour after the fixed ceasing time	Yes- each further 4 hours	If employee not notified of requirement to work overtime in sufficient time to arrange a meal, one must be provided free of charge
<i>Sugar Industry Award 2010</i>	MA000087	22.23	Meal—milling, distillery, refinery and maintenance employees	If required to work for more than one hour after the fixed ceasing time	Yes- each further 4 hours	If employee not notified of requirement to work overtime in sufficient time to arrange a meal, one must be provided free of charge
<i>Supported Employment Services Award</i>	MA000103	21.4 & 15.3	Meal allowance	An employee working beyond 6.00 pm	Yes - if overtime continues beyond 10.00 pm	Not payable if provided with suitable meal
<i>Surveying Award 2010</i>	MA000066	16.1	Meal— Sunday or public holiday	After 4 hours	Yes –4 hours	Not payable if the employer provides an adequate meal
<i>Surveying Award 2010</i>	MA000066	23.7, 23.8	Meal	Beyond 2 hours after the usual finishing time	Yes –4 hours	Not payable if the employer provides an adequate meal
<i>Telecommunications Services Award 2010</i>	MA000041	17.1(d)	Meal	After 4 hours	Yes –4 hours	Not payable if notified no later than the previous day/previous rostered shift that they would be required to work overtime
<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	MA000017	40.1	Meal breaks	If required to work in excess of 1.5 hours overtime If notice of overtime is given and then not worked (except as a result of a breakdown in machinery or plant) the meal allowance provided	Yes- no later than four hours after each meal break during overtime	Meal allowance does not apply if the employer provides an adequate meal. Subsequent meal allowance not payable if employer notified employee on the previous day or

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				must still be paid.		<p>earlier, that such second or subsequent meal will also be required</p> <p>employee will not be entitled to the meal break (and meal allowance) if the overtime is worked on a day where there is an early finishing time, except where a total of five and a half hours will be worked (inclusive of overtime) following the midday meal break</p>
<i>Timber Industry Award 2010</i>	MA000071	21.6	Meal allowance	<p>If required to work overtime for 2 hours or more without being notified the day before that the employee will be so required to work</p> <p>If employee provides meal and is not required to work overtime or is required to work less than the amount advised the employee will be paid as for the meal provided.</p>	Yes – after further 4 hours’ overtime	<p>Not payable if employer supplies meal or employees live in the same locality as their place of employment and can reasonably return home for meal</p> <p>Subsequent allowance not payable if employer advises an employee on the previous day that the amount of overtime to be worked will necessitate a second or subsequent meal</p>
<i>Transport (Cash in Transit) Award 2010</i>	MA000042	16.2(d)	Meal allowance	If required to continue working after 6.00 pm on Monday to Friday inclusive or after 1.00 pm on		Not payable if employee continues working because of the employee’s own default or delay

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				Saturday		
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	MA000089	19.5(b)	Meal	If required to work overtime for more than one and a half hours		<p>Does not apply to employees principally employed to perform vehicle sales related duties.</p> <p>Not payable when employee notified on the previous day or earlier that overtime would be required.</p> <p>Second or subsequent meal only payable if the employee not notified that the overtime would necessitate the taking of a second or subsequent meal.</p> <p>Not payable to an employee who could reasonably return home.</p>
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	MA000089	44.7(b)	Meal	Applicable where vehicle industry RS&R employees are required to work for more than 2 hours after 6pm		<p>Not payable when employee notified on previous day or earlier</p> <p>Not payable if the employee could reasonably return home.</p>
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	MA000089	61.4	Meal—overtime	Applicable where drafting, planning and technical employees are required to work more than one and a half hours overtime after working	Yes –4 hours	Not payable if the employer provides a meal

Award title	Award code	Clause number	Allowance	Qualifying conditions	Subsequent payment or conditions (Y/N)	Restrictions
				ordinary hours		
<i>Waste Management Award 2010</i>	MA000043	29.9(c)	Meal–overtime	Required to work 2 hours or more of overtime		Not payable if prior notification given
<i>Waste Management Award 2010</i>	MA000043	29.9(d)	Meal–overtime	Required to commence work two hours or more prior to the normal agreed starting time	No	None
<i>Water Industry Award 2010</i>	MA000113	19.2(a)	Meal—first	When required to work more than 2 hours of overtime or more than 10 continuous hours on any one day (exclusive of unpaid meal breaks)	Yes –4 hours	Not payable where the employee has been notified in advance of the requirement to work overtime or where a meal is provided by the employer
<i>Wine Industry Award 2010</i>	MA000090	24.3	Meal allowance	On each occasion they work overtime in excess of 2 hours following their ordinary day or shift.		Meal allowance need not be made to an employee who can reasonably return home for a meal or who has been notified the day before that they will be required to work overtime or where the employee is provided with an adequate meal by the employer.
<i>Wool Storage, Sampling and Testing Award 2010</i>	MA000044	17.3	Meal allowance for overtime work	On each occasion that the employee is entitled to a rest break during overtime work	Yes – on each occasion entitled to rest break.	Allowance is not required to be paid if the employer provides a meal or meal-making facilities or if the employee was notified no later than the previous day or shift that they would be required to work the overtime