DECISION

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

4 yearly review of modern awards—Award stage—Group 1

(AM2014/64 and others)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESDENT BULL
COMMISSIONER BISSETT

MELBOURNE, 28 JUNE 2018

4 yearly review of modern awards – award stage – exposure drafts – technical and drafting issues – Group 1 – outstanding issues.

CONTENTS

ABBREVIATIONS

ABI	Australian Business Industrial and the New South Wales Business Chamber (jointly ABI)
ACTU	Australian Council of Trade Unions
AFEI	Australian Federation of Employers and Industry
Ai Group	Australian Industry Group
AMIC	Australian Meat Industry Council
AMIEU	The Australasian Meat Industry Employees' Union
AMMA	Australian Mines and Minerals Association
AMPTO	Association of Marine Park Tourism Operators
AMWU	Australian Manufacturing Workers' Union
APESMA	The Association of Professional Engineers, Scientists and Managers, Australia
August 2014 decision	[2014] FWCFB 5537
AWU	The Australian Workers' Union
Business SA	Business South Australia
Casual and Part-time decision	[2017] FWCFB 3541
CFMEU M&E	Construction, Forestry, Mining and Energy Union (Mining and Energy Division)
CMIEG	Coal Mining Industry Employer Group
Commission	Fair Work Commission
CBWP	Competency Based Wage Progression
December 2014 decision	[2014] FWCFB 9412
FWO	Office of the Fair Work Ombudsman
HSU	Health Services Union of Australia
July 2015 decision	[2015] FWCFB 4658
July 2017 decision	[2017] FWCFB 3433
June 2017 decision	[2017] FWCFB 3177
May 2015 decision	[2015] FWCFB 3023
MUA	Maritime Union of Australia
October 2015 decision	[2015] FWCFB 7236
October 2017 decision	[2017] FWCFB 5536
Qube	Qube Ports Pty Ltd, Qube Bulk Pty Ltd and DP World group of companies (jointly Qube)
Review	4 yearly review of modern awards under s.156 of the *Fair Work Act 2009*
September 2015 decision	[2015] FWCFB 6656
TCFUA	Textile, Clothing and Footwear Union of Australia
the Aluminium Award	*Aluminium Industry Award 2010*
the Ambulance Award	*Ambulance and Patient Transport Industry Award 2010*
the Asphalt Award	*Asphalt Industry Award 2010*
the Black Coal Award	*Black Coal Mining Industry Award 2010*
the Cement and Lime Award	*Cement and Lime Award 2010*
the Cement, Lime and	*Cement and Lime Award 2010 and the Quarrying Award 2010*

Quarrying Awards	
the Cleaning Award	*Cleaning Services Award 2010*
the Concrete Products Award	*Concrete Products Award 2010*
the Cotton Ginning Award	*Cotton Ginning Award 2010*
the Gas Award	*Gas Industry Award 2010*
the Hydrocarbons (Upstream) Award	*Hydrocarbons Industry (Upstream) Award 2010*
the Manufacturing Award	*Manufacturing and Associated Industries and Occupations Award 2010*
the Marine Tourism Award	*Marine Tourism and Charter Vessels Award 2010*
the Mining Award	*Mining Industry Award 2010*
the Oil Refining Award	*Oil Refining and Manufacturing Award 2010*
the Pharmaceutical Award	*Pharmaceutical Industry Award 2010*
the Poultry Award	*Poultry Processing Award 2010*
the Premixed Concrete Award	*Premixed Concrete Award 2010*
the Professional Diving Industrial Award	*Professional Diving Industry (Industrial) Award 2010*
the Professional Diving Recreational Award	*Professional Diving Industry (Recreational) Award 2010*
the Quarrying Award	*Quarrying Award 2010*
the Rail Award	*Rail Industry Award 2010*
the Salt Award	*Salt Industry Award 2010*
the Security Award	*Security Services Industry Award 2010*
the Stevedoring Award	*Stevedoring Industry Award 2010*
the Textile Award	*Textile, Clothing, Footwear and Associated Industries Award 2010*
the Vehicle Award	*Vehicle Manufacturing Repair, Services and Retail Award 2010*
the Wool Storage Award	*Wool Storage, Sampling and Testing Award 2010*

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 a number of outstanding technical and drafting issues arising out of Group 1 of the award stage. The 30 awards allocated to Group 1 are listed at Attachment A to this decision. The Group 1 awards are divided into five subgroups (1A, 1B, 1C, 1D and 1E).

[2] The technical and drafting issues in the Group 1A and 1B awards were considered in a decision published 23 December 2014 (*December 2014 decision*),[1] while Group 1C, 1D and 1E awards were dealt with in a decision published on 23 October 2015 (*October 2015 decision*).[2] The background in relation to the proceedings for Group 1 awards is set out in these decisions. On 9 June 2017 we published a further decision with respect to Group 1 awards (*June 2017 decision*).[3] Revised exposure drafts and summaries of submissions were republished in June 2017. The *June 2017 decision* directed parties to review the exposure draft and provide any comments on possible errors or outstanding issues they wish to press.

[3] This decision should be read in conjunction with earlier decisions and statements concerning the Review, and in particular the *December 2014 decision*, the 13 July 2015 (*July 2015 decision*)[4] and 30 September 2015 (*September 2015 decision*),[5] in which the Commission dealt with a number of general drafting and technical issues common to multiple exposure drafts.

[4] The *June 2017 decision* resolved outstanding issues in the *Manufacturing and Associated Industries and Occupations Award 2010* (the Manufacturing Award) with the exception of the changes arising from the decision to incorporate the manufacturing stream from the *Vehicle Manufacturing Repair, Services and Retail Award 2010* (the Vehicle Award) into the Manufacturing Award. The parties to the Manufacturing Award have reached an agreed position in relation to the incorporation of the vehicle manufacturing stream and an updated exposure draft was published on 17 April 2018.[6] The outstanding technical and drafting matters in the *Cleaning Services Award 2010* (the Cleaning Award) and the *Security Services Industry Award 2010* (the Security Award) will be dealt with in the second tranche of the plain language drafting process.[7]

[5] In relation to the Vehicle Award, the parties have resolved a range of technical and drafting issues. These are reflected in the revised exposure draft published on 27 June 2018. A number of matters in relation to the Vehicle Award were referred to a substantive issues Full Bench. The revised exposure draft reflects the changes arising from the substantive issues Full Bench decision on 16 August 2016[8] to remove the Vehicle Manufacturing stream from the Vehicle Award and incorporate those into the Manufacturing Award.

[6] This decision finalises the technical and drafting issues in the Group 1 awards, except for the Cleaning Award and the Security Award.

2. General issues

2.1 Additional week's leave for seven day shiftworkers—alleged NES inconsistences

[7] The Australian Industry Group (Ai Group) raised an issue in relation to the annual leave clauses in a number of awards, submitting that these awards should be varied as they provide conditions that have previously been found to be inconsistent with the National Employment Standards (NES) contained in s.87(2) of the Act.[9] This issue affects the following Group 1 awards:

- *Aluminium Industry Award 2010* (the Aluminium Award)
- *Asphalt Industry Award 2010* (the Asphalt Award)
- *Cement and Lime Award 2010* (the Cement and Lime Award) and the *Quarrying Award 2010* (the Quarrying Award)
- *Cleaning Services Award 2010* (the Cleaning Award)
- *Premixed Concrete Award 2010* (the Premixed Concrete Award)

[8] In the *December 2014 decision* the Full Bench found that a number of award clauses relating to the accrual of annual leave for shiftworkers were inconsistent with the NES, and in particular with s.87(2) of the Act, because they contained a minimum qualifying period and provided that the additional entitlement accrued on a monthly not a daily basis. In a further decision issued on 8 May 2015 (*May 2015 decision*)[10] the Full Bench determined that such clauses be deleted.

[9] The awards listed at para [7] above appear to have been omitted from the list of awards identified as containing a possible NES inconsistency in the *December 2014* and *May 2015* decisions.

[10] The following table identifies each clause reference in the relevant Exposure Draft and the current award.

Award	**Current Award clause**	**Exposure Draft clause**
Aluminium Award	22.2(c)	15.1(b)(iii)
Asphalt Award	25.2(b)	15.2(b)
Cement and Lime Award	24.2	15.2(b)
Cleaning Award	29.2(b)	15.2(b)
Quarrying Award	29.2	15.2(b)
Premixed Concrete Award	24.2	15.2(b)

[11] In relation to the Aluminium Award, Ai Group submits that clause 15.1(b)(iii) provides annual leave to shiftworkers on an incremental basis rather than progressively and is similar to a provision that was removed from the Manufacturing Award in the *May 2015 decision*.[11] It appears the drafting of the clause in the Aluminium Exposure Draft and the current award allows for incremental accrual over a period of up to a fortnight. It is our *provisional* view that this is inconsistent with s.87(2) of the Act.

[12] In relation to the Asphalt Award, the clause in question contains a qualifying period of 12 months' continuous service before an employee who works part of the year as a seven day shiftworker is entitled to additional leave. It also provides that the leave will accrue incrementally at the rate of one day's leave for each 36 shifts an employee is continuously engaged. Section 87(2) does not contain a qualifying period for this entitlement and provides that leave will be accrued progressively. It is our *provisional* view that the clause as presently drafted is inconsistent with a provision of the NES.

[13] In relation to the Cement, Lime and Quarrying Awards the clause makes provision for accrual on a periodic basis rather than progressively. It appears to be inconsistent with the NES and it is our *provisional* view that it should be deleted in accordance with our previous decisions. The clauses in the Cement and Lime Award and Quarrying Awards should be varied to read as follows:

> In addition to the leave provided for in Division 6 of the NES, shiftworkers who are rostered to work regularly on Sundays and public holidays will be allowed an additional one week's leave.

[14] In relation to the Cleaning Award, the clause in question contains a qualifying period of 12 months' continuous service before an employee who works part of the year as a seven day shiftworker is entitled to additional leave. As noted above at [11], s.87(2) does not contain a qualifying period for this entitlement and provides that leave will be accrued progressively. It is our *provisional* view that the clause as presently drafted is inconsistent with a provision of the NES.

[15] In relation to the Premixed Concrete Award, the clause contains a qualifying period of one year before an employee who works part of the year as a seven day shiftworker is entitled to additional leave. It also provides that the leave will accrue incrementally at the rate of one day's leave for each 36 shifts an employee is engaged as a seven day shiftworker. Section 87(2) does not contain a qualifying period for this entitlement and provides that leave will be accrued progressively. It is our *provisional* view that the clause is inconsistent with the NES.

[16] Interested parties who wish to comment on our *provisional* views outlined above at paragraphs [11]-[15], are to do so by no later than **4.00 pm** on **Monday 16 July 2018**. If no submissions are received, we will issue determinations varying the relevant awards and amending the Exposure Drafts accordingly.

2.2 Overtime entitlements for casual employees

[17] The issue of overtime for casuals has been identified as an outstanding issue in respect of a number of modern awards. The substantive matters of overtime entitlements for casuals in the *Sporting Organisations Award 2010* and the *Fitness Industry Award 2010* were referred

to a separately constituted Full Bench for consideration (in AM2017/51). On 4 December 2017, the Full Bench constituted to deal with the *Sporting Organisations Award 2010* and the *Fitness Industry Award 2010* published a Statement[12] identifying a number of other awards with similar issues.

[18] The following Group 1 awards contain some ambiguity about whether overtime is payable to casual employees, when such overtime commences, or the rate at which overtime is payable (or some combination of the three). These awards have been referred to the Full Bench constituted to deal with AM2017/51:

- Aluminium Award
- Ambulance Award
- Asphalt Award
- Black Coal Award
- Cement and Lime Award
- Cleaning Award
- Concrete Products Award
- Cotton Ginning Award
- Gas Award
- Hydrocarbons Award
- Manufacturing Award
- Marine Tourism Award
- Meat Award
- Mining Award
- Oil Refining Award
- Pharmaceutical Award
- Poultry Award
- Premixed Concrete Award
- Professional Diving Industrial Award
- Professional Diving Recreational Award
- Quarrying Award
- Rail Award
- Salt Award
- Security Award
- Stevedoring Award
- Textile Award
- Vehicle Award
- Wool Storage Award

2.3 Casual conversion clause

[19] We note the issue of casual conversion is currently before the Casual Employment Full Bench (AM2014/197). A number of issues relating to the casual conversion clause have been raised by the parties in relation to specific awards in Group 1. If the matter is not determined by the Casual Employment Full Bench parties have liberty to raise the issues prior to the conclusion of the Review.

[20] We will now turn to each of the Group 1 awards under review.

3. Review of group 1 awards

3.1 Aluminium Industry Award 2010

[21] A summary of submissions regarding outstanding issues for the Exposure Draft of the Aluminium Award was published on 22 March 2018. Ai Group and The Australian Workers' Union (AWU) made submissions in relation to the outstanding technical and drafting issues for this award. The summary notes that items 1-7, 9-12, 18, 22 and 23 were either confirmed as resolved by agreement or determined by a previous Full Bench decision. The variations to the Exposure Draft will be made for those items.

[22] Items 8 and 13–17 have been referred to the Plain Language Full Bench. The summary of submissions notes that item 21 is currently before the Annual leave Full Bench (AM2014/47). This item deals with a submission of Ai Group relating to the issue of payment on termination of employment.

[23] Item 20 is dealt with at paragraphs [6] – [14] above.

[24] Item 19 remains outstanding.

Item 19—Rest period after overtime

[25] Ai Group submits that clause 14.4(c) of the Exposure Draft should be amended by inserting the words 'ordinary hourly rate' after the term '200%'.[13] Currently, the Exposure Draft[14] at clause 14.4(c) provides as follows (noting that the word 'such' has been inserted by previous agreement between the parties):

> '**14.4 Rest period after overtime**
>
> . . .
>
> **(c)** If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee must be paid at the rate of 200% until the employee is released from duty for such period. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.'

[26] Ai Group asserts that the proposed change should be made '[c]onsistent with the Commission's earlier decision that penalties and loadings contained in awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)'.[15]

[27] No other party has made a submission on this issue.

[28] We agree that the clause as currently drafted is unclear as to which rate is to be used for the calculating of the 200% payment.

[29] In the *December 2014 decision* we noted that the exposure drafts have been prepared using the following principle:

> 'Where an award contains an allowance or loading that is payable for all purposes, the term 'ordinary hourly rate' has been used to express penalties and loadings (e.g. "overtime is payable at 200% of the ordinary hourly rate" in draft Premixed Concrete Award 2014).'[16]

[30] The *December 2014* decision concluded that the use of the term 'ordinary hourly rate' required further consideration and the matter was the subject of a further hearing in March 2015. In the *July 2015* decision, the Full Bench clarified that;

> '[t]he term 'ordinary hourly rate' has been used in contrast to 'minimum hourly rate' in affected awards to make it clear that all purpose allowances must be added to the minimum rate of pay before calculating any penalty rate.
>
> In affected awards, penalties and loadings are expressed as a percentage of the ordinary hourly rate, for example "overtime is paid at 150% of the ordinary hourly rate" to make it clear that an all purpose allowance to which an employee is entitled must be added to the minimum rate before calculating the loaded rate, that is, there is a *compounding* effect.'[17]

[31] The Aluminium Award contains an all purpose allowance and the term 'ordinary hourly rate' is a defined term in the Exposure Draft. Based on the reasoning in the *December 2014* and *July 2015* decisions, the penalty contained in clause 14.4(c) of the Exposure Draft should be amended to include the term 'ordinary hourly rate'. The clause will read as follows:

> **14.4 Rest period after overtime**
>
> . . .
>
> **(c)** If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee must be paid at the rate of 200% of the ordinary hourly rate until the employee is released from duty for such period. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.

3.2 Ambulance and Patient Transport Award 2010

[32] A summary of submissions regarding outstanding issues for the Exposure Draft of the *Ambulance and Patient Transport Award 2010* (the Ambulance Award) was published on 22 March 2018. Ai Group, Ambulance Victoria, Health Services Union of Australia (HSU) and United Voice made submissions in relation to the outstanding technical and drafting issues of

this award. Items 1, 2, 4, 6, 7, 11, 14 and 17 were confirmed as either resolved by agreement, determined in a previous Full Bench decision or related to minor typographical or cross-referencing errors which have been corrected. The variations to the Exposure Draft will now be made for those items. Items 9 and 15 have been referred to the Plain Language Full Bench.

[33] Items 3, 5, 8, 10, 12, 13, 16, 18 and 19 remain outstanding.

Item 3—Types of employment—part-time employees

[34] Clause 6.4 of the Exposure Draft[18] deals with provisions related to part-time employees.

[35] The HSU submits that clause 6.4 of the Exposure Draft omits a provision of the current award which should be retained. Clause 10.4(e) of the current award provides that 'the provisions of clause 31—Public holidays will apply to part time employees.'[19] The HSU 'sees no reason for this omission and is of the view that this clause should be retained in the exposure draft.'[20]

[36] It appears that clause 10.4(e) in the current award has been omitted in error and we propose to insert this clause after clause 6.4(e) of the Exposure Draft in the same terms as provided for in the current award.

Item 5—Types of employment—casual employees

[37] Clause 6.5(a) of the Exposure Draft provides that:

> '**6.5 Casual employees**
>
> **(a)** A casual employee is an employee who is engaged and paid as a casual employee.'

[38] The HSU submits that this clause omits the following phrase 'but will not include a part-time or full-time employee' as provided in clause 10.5(a) in the current award.[21]

[39] Clause 10.5(a) of the current award is set out as follows:

> **'10.5 Casual employment**
>
> A casual employee is an employee who is engaged and paid as such but will not include a part-time or full-time employee.'

[40] The HSU assert that this omission represents a significant and substantive change to the clause and that the words 'but will not include a part-time or full-time employee' should be returned to the provision.[22]

[41] In a decision relating to the plain language project, a Full Bench considered the terms of the casual employment clause in the *Pharmacy Industry Award 2010* Exposure Draft.[23] During that consideration it was noted that '…there appears to be a consensus that a person

who does not meet the defined characteristics of a full-time or a part-time employee must be engaged as a casual and paid the casual loading'.[24]

[42] Clause 6.5(a) of the Exposure Draft is a change from the wording contained in the current award and we propose to reinsert the current wording into the Exposure Draft. Clause 6.5(a) will be amended as follows:

> '**(a)** A casual employee is an employee who is engaged and paid as a casual employee and will not include a part-time or full-time employee.'

Item 8—Breaks—paid crib time

[43] Clause 9 of the Exposure Draft deals with Breaks as follows:

> **'9. Breaks**
>
> **9.1 Unpaid meal breaks**
>
> An employee is entitled to an unpaid meal break of not less than 30 minutes during each shift. The meal break will not count as time worked.
>
> **9.2 Paid crib time**
>
> (a) By mutual agreement between the employer and the employee, an employee will be allowed a period of 20 minutes crib time during each shift for the purpose of taking a meal, instead of a meal break under clause 9.1.
>
> (b) An ambulance service operational employee will be allowed a period of 20 minutes crib time during each shift for the purpose of taking a meal, instead of a meal break under clause 9.1.
>
> (c) The crib period will be counted as time worked and taken at a time and place directed by the employer.
>
> **9.3 Paid rest breaks**
>
> Where practical, employees are entitled to two 10 minute rest breaks each day, counted as time worked, as follows:
>
> (a) the first, between starting work and the usual meal break; and
> (b) the second between the usual meal break and finishing work.
>
> **9.4 Changing time**
>
> Where an employee is not permitted to wear their uniform home, a period of 10 minutes immediately preceding the end of each period of duty will be allowed for the employee to wash, shower and/or to change clothing.'

[44] United Voice submits that clause 9 provides that only '*ambulance service* operational employees' (our emphasis) are entitled to paid crib time[25] and submits that the clause 9.2

should read simply 'operational employees' to ensure that employees engaged in the private sector in the operational classifications (specified at clause 10.2 of the Exposure Draft) continue to receive paid meal breaks.[26]

[45] United Voice notes that the term *ambulance service* is not defined in the Exposure Draft and submits that there is now 'a greater density of private non-emergency patient transport providers in operation in the sector'.[27]

[46] United Voice submits that *operational employee* should be defined in the award as 'an employee engaged in a classification provided for in Schedule A – Classification Definitions, subclause A.1 Operational Classifications'.[28]

[47] The paid crib time clause in the Exposure Draft (clause 9.2) is set out in substantially the same form as that contained in the Ambulance Award at clause 23.2 (with cross references amended). The term "ambulance service operational employee" appears at clause 23.2(b) of the Ambulance Award and it is not a defined term in that award.

[48] Clause 23.2 of the Ambulance award appears to be derived from the *Ambulance Services and Patient Transport Employees Award, Victoria 2002* (Ambulance Services 2002 Award)[29] which contained an equivalent provision at clause 29, as follows:

> '**29.2.2** A MAS operational employee will be allowed a period of twenty minutes crib time during each shift for the purpose of taking a meal, in lieu of a meal break under 29.1.'

[49] MAS is defined at clause 6.17 of the Ambulance Services 2002 Award as 'the Metropolitan Ambulance Service'. The term operational employee was not defined.

[50] Our *provisional* view is that there is no reason to distinguish between private and public sector employers in terms of the breaks to be provided to operational employees and on that basis it is our *provisional* view to amend the Exposure Draft in the manner proposed by United Voice.

[51] Interested parties have until **4.00 pm** on **Monday 16 July 2018** to comment on the *provisional* views outlined above at [50].

Item 10—Wages and allowances—minimum wages

[52] The HSU submits that the Exposure Draft sets out minimum wages in three separate tables at clauses 10.2 to 10.4, rather than in one table as they appear in the current award, and suggests an introductory statement to explain the new layout.[30]

[53] We agree that the new layout requires some clarification. The tables provide minimum weekly rates and minimum hourly rates for operational classifications at years one, two and three, which is different to the layout in the current award and also differs from the layout for the clerical and administrative support classifications in the Exposure Draft at clause 10.5.

[54] We have decided to insert an introductory statement as follows:

> 'The following tables provide minimum weekly and hourly rates by year of service.'

[55] The introductory statement will be inserted at clause 10.2 of the Exposure Draft and the subsequent clauses will be renumbered.

Item 12—Penalties and overtime—penalty rates

[56] Clause 13.2 of the Exposure Draft provides that;

> '**13.2** Penalty rates are not payable for overtime hours worked by the employee.'

[57] United Voice submits that '[t]his represents a proposed cut by the Fair Work Commission in the penalty rates of workers…'[31] and that casual employees are not excluded from the entitlement to overtime nor the operation of the overtime penalty rates clause in the current award. United Voice submits that '[c]asual employees in the ambulance and patient transport sector have always received both overtime and the casual loading'[32] and that the 'Fair Work Ombudsman *Pay Guide- Ambulance and Patient Transport industry Award* 2010 [MA000098] provides for casuals to be paid both the casual and overtime penalty when working overtime.'[33]

[58] In our view United Voice have misinterpreted clause 13.2 of the Exposure Draft. The intention of clause 13.2 was to clarify that penalty rates and overtime rates are not cumulative payments, employees receive either the penalty rate or the overtime rate, but not both. Clauses of a similar nature appear in other awards. The casual loading is not a 'penalty rate'.

[59] However, to avoid any confusion we have decided to remove the clause from the Exposure Draft, as it is not a provision which exists in the current award.

[60] We note that the issue of whether casuals employees are entitled to receive overtime is being dealt with by a Full Bench in AM2017/51. A Statement[34] was issued outlining a process for parties seeking a variation to any of the modern awards identified. The Ambulance Award is one of the awards identified in that Statement.[35]

Item 13—Overtime—on call

[61] Clause 14.5 of the Exposure Draft sets out provisions for employees who are on call, in the following terms:

> **'14.5 On call**
>
> **(a)** Time on call will not be counted as time worked unless an employee is called out for duty. If called out for duty, the employee will be paid at the rate of 200% of their ordinary hourly rate for such period(s) of duty with a minimum payment of one and a half hours per call, for the time so worked in any period during which the employee is on call, provided that one and a half hours has elapsed from the commencement of the previous call.
>
> **(b)** Nothing in this clause prohibits an employee from temporarily leaving the workplace or home when rostered on call after having made arrangements satisfactory to the employer, for the proper conduct of the service.
>
> **(c)** An employee will be free from on call duty:

(i) every second weekend; and

(ii) for at least eight days in each 14 consecutive days.

(d) No employee will be rostered on call from the time of ceasing duty immediately before the employee's rostered day off until the time of commencing duty immediately after the rostered day off.

(e) Except on weekends, public holidays or in cases of an emergency, an employee will not be rostered on call between 9.00 am and 5.00 pm.

(f) An on call roster will not require an employee to be on call for a period of less than six hours except by mutual consent between the employer and employee concerned.

(g) An employee who is rostered to be on call is entitled to an on call allowance in accordance with clause 11.2(h).'

[62] The HSU submits that clause 14.5 should be restructured so that clause 14.5(g) (which provides for the on call allowance) appears at the front of the clause and not the end,[36] as is the case in the equivalent clause in the current award.

[63] We agree and will move clause 14.5(g) from the end of the clause to now be clause 14.5(a) and renumber the following sub clauses accordingly.

Item 16—Annual leave—payment for annual leave

[64] The HSU submits that the term "ordinary hourly rate" has been inserted incorrectly into clause 15.7(a) of the Exposure Draft.[37]

[65] Clause 15.7(a) of the Exposure Draft provides:

'**15.7 Payment for annual leave**

(a) Before the start of annual leave, the employer must pay the employee for the employee's ordinary hours of work in the period at the employee's ordinary hourly rate. This includes any allowances, loading, shift penalties or overaward payments which would have been received had the employee not been on leave.'

(emphasis added)

[66] Clause 30.4 of the current award provides as follows:

'**30.4 Payment for annual leave**

Before going on annual leave, an employee will be paid the amount of wages they would have received for ordinary time worked had they not been on leave during that period. This includes any allowances, loading, shift penalties or overaward payments which would have been received had the employee not been on leave.'

[67] The HSU asserts that the term 'ordinary hourly rate' has been used incorrectly as the clause '…provides that the rate of pay should include not only all purpose allowances, but all payments an employee would have received had they not been on leave'.[38] The HSU submits that the term 'ordinary hourly rate' should be removed and replaced with the term 'ordinary pay' or another appropriate term.[39]

[68] We agree. The proposed wording in the exposure draft may have unintended consequences. The wording provided in the current award at clause 30.4 will be reinstated. This clause would also be more appropriately placed after clause 15.2, which is consistent with the placement of the clause in the current award.

Item 18—Classification definitions—operational employees

[69] United Voice have proposed the insertion of a definition for 'operational employees'. This item is discussed above at item 8 (see paragraphs [43] – [51]).

Item 19—Classification definitions—ambulance community officer

[70] Ambulance Victoria proposes the inclusion of the classification of '*Ambulance Community Officer*', and seeks to have the classifications at Schedule A renumbered accordingly.[40] Ambulance Victoria submits that the minimum rate of pay for the Ambulance Community Officer should sit under the minimum rate of pay for Trainee Clinic Transport Officer in clause 14.1 at approximately the level of a Second Year Administrative Officer Band 1.

[71] In our *December 2014 decision*, we considered a proposal by St John Ambulance NT for the inclusion of a number of additional employee classifications in the award. [41] In that decision, we stated:

> '**[164]** In a Review the Commission may only make a determination varying modern award minimum wages if it is satisfied that the variation is justified by work value reasons (s.156(3)). Any proposed variation of modern award minimum wages must be accompanied by submissions and evidence establishing the work value reasons justifying the variation.
>
> **[165]** Very little detail accompanied the proposal. No classification definitions or rates of pay were proposed. In these circumstances we are not persuaded to vary the award in the manner proposed.'

[72] The application made by Ambulance Victoria includes a proposed definition and rate of pay for the new classification, but is not accompanied by submissions and evidence establishing the work value reasons justifying the variation.

[73] In the absence of such evidence, we are not prepared to vary the award as proposed. If Ambulance Victoria wish to press this matter, they should make a separate application to vary the award.

3.3 Asphalt Industry Award 2010

[74] A summary of submissions regarding outstanding issues for the Exposure Draft of the Asphalt Award was published on 22 March 2018. Ai Group made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 6, 11, 12 and 17 of the summary have been determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. The variations to the Exposure Draft will be made for those items. Item 5 has been referred to the Plain Language Full Bench. Items 2 and 3 relate to the issue of casual conversion and are dealt with at paragraph [17] above.

[75] Parties reached agreed positions in relation to items 4, 7-10 and 13-15. We are satisfied that the agreed positions are appropriate and will be adopted.

[76] Item 16 is dealt with above at paragraph [12] of this decision and relates to annual leave accrual for shiftworkers and the NES inconsistency.

3.4 Black Coal Mining Industry Award 2010

[77] A revised summary of submissions regarding outstanding issues for the Exposure Draft of the *Black Coal Mining Industry Award 2010* (Black Coal Award) was published on 22 March 2018. Ai Group, the Construction, Forestry, Mining and Energy Union – Mining and Energy Division (CFMEU (M&E)), Professionals Australia (APESMA) and the Coal Mining Industry Employer Group (CMIEG) made submissions in relation to the review of this award.

[78] Items 2, 4, 7, 9, 11-13, 14A, 16, 18, 22-25 and 27-29 were either confirmed as resolved by agreement, relate to minor typographical errors, or were determined by a previous Full Bench decision. The variations to the Exposure Draft will be made for those items. Items 1, 6A and 8 have been referred to separate Full Benches for determination. Items 3, 15, 17 and 21 are no longer being pressed.[42]

[79] Items 5, 6, 10, 14, 17A, 19, 20A and 26 remain outstanding.

Item 5—Paid meal break

[80] The Commission sought the parties' views as to whether the meal break in clause 9.2(a) of the Exposure Draft was to be paid at the ordinary hourly rate or at the overtime rate.[43] Clause 9.2(a) of the Exposure Draft mirrors current clause 17.8(a) of the Black Coal Award, as follows:

> '**(a)** If an employee is required to work more than one and a half hours past their rostered shift (exclusive of crib time) then the employee will, unless agreed otherwise, before starting this overtime be allowed at least 30 minutes for a meal without deduction of pay.'

[81] In a joint submission the CFMEU (M&E)[44] and CMIEG submit that the clause intends that the break would be paid at ordinary time if it occurs during ordinary hours or at the

overtime rate if it occurs during overtime hours.[45] Ai Group submit that the break should be paid at ordinary time as the break occurs 'before starting overtime'.[46]

[82] The ordinary meaning of the phrase 'without deduction of pay' is that the break will be paid at the rate that applies to an employee immediately prior to when the overtime commenced. We consider that the wording of this clause could be clarified. The clause will be amended as follows:

> '**(a)** If an employee is required to work more than one and a half hours past their rostered shift (exclusive of crib time) then the employee will, unless agreed otherwise, before starting this overtime be allowed at least 30 minutes for a paid meal break. ~~without deduction of pay.~~ This meal break is to be paid at the rate applying immediately before the meal break is taken.'

[83] The variation proposed is consistent with the joint submissions of the CFMEU (M&E) and CMIEG.

Item 6—Paid meal break

[84] Item 6 refers to clause 9.2(c) of the Exposure Draft. A question was put to parties about whether the length of the meal break referred to in the clause should be specified. Clause 9.2(c) of the Exposure Draft is identical to the provision in clause 17.8(c) of the current award, as follows:

> '**(c)** After each four hours of overtime worked after a paid meal break the employee will have a further paid meal break and either be supplied with a meal or be paid a meal allowance.'

[85] In response to that question CFMEU (M&E) and CMIEG jointly submitted that it would be convenient if the words 'of 30 minutes duration' were added after the words 'paid meal break'.[47]

[86] Ai Group oppose the proposed variation put in the joint submission. Ai Group also note that in the *October 2015 decision* the Full Bench gave parties 21 days to file an application to vary the current award and that no application has been made.

[87] We note that the phrase 'a further paid meal break' implies that it is the same as the previous meal break, which is 30 minutes. We will vary the Exposure Draft in the manner proposed by the CFMEU (M&E) and CMIEG.

Item 10—Penalty rates

[88] Item 10 relates to an apparent cross-referencing error in clause 13.3(a)(i) of the exposure draft. Clause 13.3(a)(i) of the exposure draft deals with the change of shift for permanent day shift employees and is set out as follows:

> **'13.3 Change of shift for permanent day shift employees**
>
> **(a) For at least three consecutive working days**

If an employee who normally works on day shift only is required to work afternoon or night shift on at least three consecutive working days then the employee will be paid:

(i) at overtime rates in accordance with clause 14.3 for the first afternoon or night shift so worked; and

. . .'

[89] Ai Group submit that the reference to clause 14.3 in 13.3(a)(i) should be to clause 14.2.[48] CFMEU (M&E) initially supported Ai Group's submission but later submitted that the reference should be to clauses 14.2 or 14.3.[49]

[90] Clause 14.2 of the exposure draft deals with payment for overtime and clause 14.3 sets out overtime rates for six and seven day roster employees.

[91] The corresponding clauses in the current award are clauses 22.2 and 22.3 and are set out as follows:

'**22.2 Shiftwork rates**

Rates for shiftwork are payable as follows:

Type of shift	**Shift rates**
Day shift	Ordinary time
Afternoon and rotating night shifts	
(a) Ordinary hours	(a) 115% of the ordinary time rate
(b) Overtime hours 6 or 7 day roster	(b) Overtime penalty rate plus 15% of the ordinary time rate for time worked
(c) All others	(c) Overtime penalty rate
Permanent night shift	
(a) Ordinary hours	(a) 125% of the ordinary time rate
(b) Overtime hours 6 or 7 day roster	(b) Overtime penalty rate plus 25% of the ordinary time rate for time worked
(c) All others	(c) Overtime penalty rate'

'**22.3 Change of shift for permanent day shift employees**

(a) For at least three consecutive working days

If an employee who normally works on day shift only is required to work afternoon or night shift on at least three consecutive working days then the employee will be paid at overtime rates for the first afternoon or night shift so worked and after that the employee will be paid in accordance with the provisions of clause 22.2 for any other shifts.

(b) For fewer than three consecutive working days

> If the employee is required to work afternoon or night shiftwork for a period fewer than three consecutive working days, overtime rates will be paid for any afternoon or night shiftwork. An exception to this is where the requirement is caused by the failure of any other employee to come on duty at the proper time.'

[92] We have considered the positions of the parties and acknowledge that the current wording of the Exposure Draft does not reflect the equivalent provisions in the current award. Clause 22.3(a) of the current award entitles an employee to 'overtime rates' for the first afternoon or night shift if they normally work day shift and they are required to work afternoon or night shift for more than 3 consecutive shifts. Overtime rates that may be applicable are contained in clause 14.2 and 14.3 of the Exposure Draft as submitted by CFMEU (M&E). The overtime provisions contained in clause 14.4 of the Exposure Draft may also apply. In order to reflect the current provision contained in the Black Coal Award we will make the following amendment to clause 13.3(a)(i) of the Exposure Draft:

> **(i)** at overtime rates ~~in accordance with clause 14.3~~ for the first afternoon or night shift so worked; and

Items 14 and 19—Overtime and public holidays—six or seven day roster employees

[93] Item 14 relates to overtime on six and seven day rosters when working hours in excess of or outside the ordinary hours of an afternoon or night shift (rotating or permanent) on a public holiday. Item 19 also relates to the issue of the payment of public holidays. It is convenient to deal with these items together.

[94] On 30 March 2018 the CMIEG made a submission in response to the Statement published on 21 March 2018[50] noting that there are two interlinked matters of particular significance that remain outstanding, namely those described at Items 14, 19 and 26 of the summary document. The matters concern public holiday payments. In their submission, CMIEG provide a brief summary of the issues as follows:

> '(a) **Clause 14.3(c) and (d)** (relating to six day and seven day roster employees) and **Schedules C and D – Summary of Hourly Rates of Pay**, as well as consequential amendments.
>
> The CFMEU has proposed an amendment to insert new paragraphs (c) and (d) concerning overtime worked on public holidays by six day and seven day roster employees, and also proposes consequential amendments to Schedules C and D. The CMIEG opposes amendments sought by the CFMEU, and the Ai Group also opposes the amendments. The CFMEU has confirmed that it presses its amendments, and each of the CMIEG and Ai Group maintain their opposition to those amendments.
>
> (b) **Clause 18.4** relating to an employee required to work on a recognised public holiday, previously clause 18.5 in the Exposure Draft of 26 September 2014.
>
> The CFMEU has made submissions about the interpretation of the clause, and also has sought a corresponding amendment to clause 14.3 (see above). That amendment is opposed by the CMIEG and Ai Group. Ai Group has also sought, and continues to seek, its own amendment to the clause, which is opposed by the CFMEU in relation to payment of shift allowances when ordinary hours are worked on a public holiday. The Ai Group amendment accords with the CMIEG's construction of the clause.[51]

[95] The CMIEG seeks to be heard on the outstanding matters concerning public holiday payments.[52] They suggest a brief hearing would permit the interested parties to be heard and also be of benefit in assisting the Commission in determining the matters. The CMIEG propose an interim or alternative step could be a conference convened by a delegated member of the Full Bench.[53]

[96] We propose to grant the request of the CMIEG.

[97] A conference will be convened before Vice President Hatcher in due course.

Item 26—Summary of hourly rates of pay

[98] Item 26 was raised by the CFMEU (M&E) and relates to the tables in Schedule C and Schedule D of the Exposure draft.[54] The CFMEU (M&E) submits that rates should be added for afternoon and night shiftworkers who work on Saturday or Sunday to the table in clause C.1.2, for production and engineering employees, and to clauses D.1.2 and D.2.2 for staff employees.

[99] Ai Group requested that parties be given an opportunity to comment should these rates be included.[55]

[100] We will update the Exposure Draft with rates for shiftworkers on Saturday and Sunday. Parties will have an opportunity to comment on the accuracy of the rates prior to the finalisation of the exposure draft.

[101] The CFMEU M&E also submit that rates should be added to the schedules for 6 and 7 day roster employees who work on public holidays. Rates for these workers can be included following the determination of Items 14 and 19.

Items 17A and 20A—Cross referencing the dispute resolution procedure

[102] CMIEG submit that the reference to the dispute resolution in clause 16.3(b) and 21.6 should include a cross-reference to clause 23, which sets out the dispute resolution procedure.[56] They submit that this is consistent to other references to the dispute resolution procedure throughout the award.

[103] We agree. A cross-reference to clause 23—Dispute resolution will be inserted into the Exposure Draft at clause 16.3(b) and 21.6.

3.5 Cement and Lime Award 2010 and *Quarrying Award 2010*

[104] In a Statement published on 13 August 2014,[57] the *Cement and Lime Award 2010* and the *Quarrying Award 2010* (Cement, Lime and Quarrying Awards) were identified as awards that would be amalgamated. The amalgamated Exposure Draft was first published on 11 September 2014 (and was republished on 9 October 2014).[58]

[105] A summary of submissions in relation to the Cement, Lime and Quarrying Awards was published on 22 March 2018. Ai Group, Australian Manufacturing Workers' Union (AMWU), Australian Business Industrial and the New South Wales Business Chamber (jointly ABI) made submissions in relation to the review of this award. Items 1, 7A, 10, and 16 were either confirmed as being resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. The variations to the Exposure Draft will be made for those items. Items 8, 9 and 11 were referred to the Plain Language Full Bench. Items 2 to 7 relate to the casual conversion clause.

[106] Item 15 is dealt with at paragraph [13] of this decision and relates to an alleged NES inconsistency and annual leave accrual for shiftworkers.

[107] Items 12-14, and 17 remain outstanding.

Items 12 - 14—Overtime—ordinary hourly rate

[108] Ai Group propose the insertion of the words 'of the ordinary hourly rate' following the percentage penalties provided in clauses 14.1(e) and 14.2(d) and 14.2(e) of the Exposure Draft.[59]

[109] The relevant clauses of the exposure draft are set out below. The change sought by Ai Group is highlighted in red text.

> **14. Overtime**
>
> **14.1 Overtime—cement and lime industry**
>
> . . .
>
> **(e)** All time worked by an employee who is a continuous shiftworker in excess of their ordinary working hours will be paid at the overtime rate of 200% of the ordinary hourly rate.
>
> . . .
>
> **14.2 Overtime—quarrying industry**
>
> **(d)** Subject to clauses 9.7 and 9.8, overtime must be paid at the rate of 150% of the ordinary hourly rate for the first two hours and 200% of the ordinary hourly rate thereafter. Provided that, for work done on a Sunday an employee must be paid at the rate of 200% of the ordinary hourly rate with a minimum payment for four hours' work.
>
> **(e)** The rate of 200% of the ordinary hourly rate is to continue until the completion of the overtime worked.

[110] We agree with Ai Group. The omission of the words 'of the ordinary hourly rate' is inconsistent with our general approach to the exposure drafts.

Item 17—industry allowance

[111] ABI propose two amendments to the summary of hourly rates schedule relating to all purpose allowances.[60] The first amendment concerned the reference to the 'industry

allowance' in clauses A.1.1 and B.1.1. They submit that the allowance name should be amended to 'industry disability allowance' to reflect the full title of the allowance in clause 11.2(b).

[112] The second amendment proposed relates to clauses A.1.2 and B.1.2. ABI contends that the second sentence of the note does not assist, and seek to amend the clauses to include the following words:

> 'In the event that other all purpose allowances (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d)) are applicable, these should be added to the above rates.'[61]

[113] The clauses in the Exposure Draft[62] currently read as follows (in both clauses A.1.2 and B.1.2):

> 'Where an additional allowance is payable for all purposes in accordance with clauses 11.2(c) or (d), this forms part of the employee's ordinary hourly rate and must be added to the ordinary hourly rate prior to calculating penalties and overtime.'

[114] There was consideration of the references to all purpose allowances in the notes provided in the summary of hourly rates schedules in the decision published on 6 July 2017 (*July 2017 decision*).[63] The Full Bench decided that:

> '**[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...'

[115] The wording used in the *Business Equipment Award 2010* Exposure Draft[64] is as follows:

> 'Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.'[65]

[116] The nature of all purpose allowances in the Cement, Lime and Quarrying Awards Exposure Draft is different to those in the Business Equipment Award in that the hourly rates of pay in the schedule already include the all purpose allowances that apply to *all* employees and it is only the additional all purpose allowances that apply to *some* employees that need to be added. The wording currently provided in clauses A.1.2 and B.1.2 reflects the fact that the Exposure Draft includes all purpose allowances that apply to *all* employees and those that apply to *some* employees.

[117] ABI suggest that the current wording does not assist and that the note should be clarified by using the words that they proposed.[66] The wording provided by ABI is clearer than the wording in the Exposure Draft to the extent that it includes both the relevant clause references and names the all purpose allowances that need to be added, if they are applicable, before calculating overtime and penalties.

[118] We prefer the wording in the current Exposure Draft insofar as it sets out that the additional amounts are to be added to the 'ordinary hourly rate' *prior* to calculating penalties and overtime. This wording makes it clear that these rates operate in a compounding manner. As such we will make the following amendment to clause A.1.2 and B.1.2:

> Any applicable all purpose allowance (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d)) will form part of the employee's ordinary hourly rate and must be added prior to calculating penalties and overtime.

Revocation of Quarrying Award—Title and commencement clause

[119] Given the amalgamation of the Cement, Lime and Quarrying Awards we also need to revoke at least one of these instruments. We are of the view the amalgamation would best be achieved by varying one of the existing awards and revoking the other instrument. We propose to vary the Cement and Lime Award and revoke the Quarrying Award. The revocation of the Quarrying Award enlivens s.164 of the Act.

[120] Section 164 of the Act states:

> **'164 Special criteria for revoking modern awards**
>
> The FWC must not make a determination revoking a modern award unless the FWC is satisfied that:
>
> (a) the award is obsolete or no longer capable of operating; or
>
> (b) all the employees covered by the award are covered by a different modern award (other than the miscellaneous modern award) that is appropriate for them, or will be so covered when the revocation comes into operation.'

[121] We are satisfied that all the employees that are covered by the Quarrying Award will be covered by the Cement, Lime and Quarrying Award when it is made. The Quarrying Award will be revoked at the same time that the variation of the Cement, Lime and Quarrying Award takes effect.

[122] We propose to vary clause 1.3 of the amalgamated award to ensure that the clause does not restrict rights, privileges, obligations or liabilities arising from the Quarrying Award prior to its revocation. We propose to insert the following wording in clause 1.3 of the Exposure Draft to achieve that objective:

> **1.3** A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under this award, ~~the award~~ as it existed prior to that variation. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the *Quarrying Award 2010* as it existed prior to its revocation.

[123] Parties have **until 4.00 pm** on **Monday 16 July 2018** to comment on this proposed wording, and our proposed course of action regarding the amalgamated award. A short Statement will be issued outlining the final process for the amalgamation of these two awards.

[124] There are now no outstanding technical and drafting issues relating to these two awards for this Full Bench to determine.

3.6 Concrete Products Award 2010

[125] A summary of submissions regarding outstanding issues for the Exposure Draft of the Concrete Products Award was published on 22 March 2018. Ai Group, ABI and the AWU made submissions in relation to the outstanding technical and drafting issues. The following items were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected: items 1, 2, 3, 10, 11, 14-20, 22, 28-30 and 32. The variations to the Exposure Draft will be made for those items. Items 13, 23, 26 and 27 have been referred to other Full Benches. Items 5, 7 and 8 relate to the casual conversion clause in the award. This is dealt with at paragraph [19] above.

[126] Items 4, 6, 9, 12, 21, 24, 25 and 31 remain outstanding.

Item 4—Casual conversion—facilitative provision

[127] Ai Group submits that clause 11.6(j) of the current award has not been included in the Exposure Draft, that the omission is a substantive change and that the clause should be reinserted.[67]

[128] Clause 11.6(j) of the current award provides as follows:

> '**11.6 Casual conversion to full-time or part-time employment**
>
> . . .
>
> **(j)** By agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned, the employer may apply clause 11.6(a) as if the reference to six months is a reference to 12 months, but only in respect of a currently engaged individual employee or group of employees. Any such agreement reached must be kept by the employer as a time and wages record. Any such agreement reached with an individual employee may only be reached within the two months prior to the period of six months referred to in clause 11.6(a).'

[129] The above clause was omitted from the Exposure Draft in error. We will insert the clause into the Exposure Draft as clause 6.6(f) (with corrected cross references). Given that the clause is a facilitative provision, we will include clause 6.6(f) in the table of facilitative provisions (located at clause 5.2 of the Exposure Draft).

Item 6—Casual conversion—notice provision

[130] This item deals with notice requirements relating to casual employees who wish to convert to full-time or part-time employment. Ai Group submit that the scope of information required to be provided by the employer to the employee is narrower under clause 6.6(b)(i) of the exposure draft than is currently contained in the award.[68]

[131] Clause 11.6(b) of the current award provides:

> **'11.6 Casual conversion to full-time or part-time employment**
>
> . . .
>
> (b) Every employer of such an employee must give the employee notice in writing of the provisions of clause 11.6 within four weeks of the employee having attained such period of six months. The employee retains their right of election under clause 11.6 if the employer fails to comply with clause 11.6(c).'

[132] Clause 6.6(b)(i) of the Exposure Draft provides:

> **'6.6 Casual conversion**
>
> . . .
>
> (b) Notice and election of casual conversion
>
> (i) An employer of an eligible casual employee must give the employee notice in writing of the provisions of clause 6.6(a)(ii) within four weeks of the employee having reached the six month period.'

[133] Clause 6.6(a)(ii) provides:

> '**(ii)** An eligible casual employee has the right, after six months, to elect to have their contract of employment converted to full-time or part-time employment.'

[134] Ai Group assert that this is a substantive change, one that is "particularly problematic because, for instance, an employee would not be advised that an employer has the right to refuse a request to convert on certain grounds'.[69] Ai Group submit that the reference to clause 6.6(b)(ii) should be replaced with a reference to clause 6.6 in its totality.[70]

[135] We agree that the cross reference in the Exposure Draft has changed the operation of the clause. Clause 6.6(b)(i) will be amended as follows:

> **(i)** Every employer of an eligible casual employee must give the employee notice in writing of the provisions of clause 6.6 within four weeks of the employee having attained such period of six months.

Item 9—Casual conversion—Re-engagement

[136] Ai Group submit that clause 6.6(e) of the Exposure Draft is a new clause which does not correspond with any clause contained in the current award.[71] Ai Group submit that it imposes a "substantive requirement" and submit that it must be deleted.[72]

[137] Clause 6.6(e) of the Exposure Draft provides as follows:

> '**(e)** An employee must not be engaged and re-engaged to avoid any obligation under this award.'

[138] We agree that the text of clause 6.6(e) of the Exposure Draft is not found in the current award. Clause 6.6(e) will be deleted from the Exposure Draft.

Item 11—Breaks—Unpaid meal breaks

[139] Clause 9.1(c) of the Exposure Draft is set out as follows:

> **'9. Breaks**
>
> **9.1 Unpaid meal breaks**
>
> . . .
>
> (c) An employee required to defer the meal break beyond the sixth hour of the shift will be paid at the rate of time and a half until the meal break is taken or the end of the shift, whichever first occurs.

[140] Ai Group submit that clause 9.1(c) of the Exposure Draft should be varied by inserting "150% of the ordinary hourly rate" in place of "time and a half".[73] Ai Group submit that this change would be consistent with the Commission's earlier decision that penalties and loadings contained in awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments).[74]

[141] We agree and will vary the reference in clause 9.1(c) of the Exposure Draft by inserting the term "150% of the ordinary hourly rate" and delete the words "time and a half".[75]

Item 21—Hours—Other than continuous work

[142] Clause 13.3(c)-(e) of the Exposure Draft is set out as follows:

> '13. Shiftwork and penalties
>
> 13.3 Hours—other than continuous work
>
> . . .
>
> (c) The rostered hours will be worked continuously except for meal breaks at the discretion of the employer.
>
> (d) An employee will not be required to work for more than six hours without a meal break.
>
> (e) The ordinary hours will be worked continuously except for meal breaks at the discretion of the employer. An employee will not be required to work for more than six hours without a meal break. Except at the regular changeover of shifts an employee will not be required to work more than one shift in each 24 hours, provided that:
>
> . . .

[143] Ai Group submit that clauses 13.3(c) and 13.3(d) are repeated at the commencement of clause 13.3(e) of the Exposure Draft, that this is unnecessary and that the first two sentences of clause 13.3(e) of the Exposure Draft should be deleted.[76]

[144] We agree. The first two sentences of clause 13.3(e) will be deleted.

Items 24 and 25—Afternoon or night shift allowance and Saturday shifts

[145] Ai Group submits that the terms "ordinary hourly rate of pay" contained in clauses 13.6(b), 13.6(c) and 13.7 of the Exposure Draft should read "ordinary hourly rate".[77] Ai Group contend that the change should be made consistent with the terminology used elsewhere in the Exposure Draft and in line with the defined term found at Schedule G.[78]

[146] We agree. Consistent with the rest of the Exposure Draft, the words "ordinary hourly rate of pay" will be replaced with the words "ordinary hourly rate", which is a defined term, found at Schedule G—Definitions.

Item 31—Expense related allowances

[147] The AWU submit that the deletion of the words "per meal" from the table in clause C.3 of the exposure draft is not necessary.[79] The AWU submit that the allowance is payable on a per meal basis and the remaining provisions in the table of allowances contain a reference to the frequency of payment.[80]

[148] C.3 of the exposure draft is set out as follows:

C.3 Expense related allowances

Allowance	**Clause**	**$**
Accommodation allowance	11.3(b)	
For the first seven days	11.3(b)(i)	79.74 per day
For any subsequent week or part thereof	11.3(b)(ii)	557.87 per week or part thereof
Boot allowance	11.3(d)	3.20 per week
Clothing allowance	11.3(e)	2.60 per week
Loss of clothing	11.3(f)	Up to 746.90 maximum
Meal allowance	11.3(a)	14.96 ~~per meal~~

[149] The words "per meal" were struck through after the Commission received correspondence from the parties indicating that the parties had agreed to the deletion of the words "per meal" from the table in clause C.3.[81]

[150] Ai Group submit that the meal allowance is payable under the current modern award for each instance upon which an employee is required to work overtime.[82] Ai Group argue that the payment of the allowance is associated with the performance of overtime not referable to the consumption of a meal, as suggested by the words "per meal".[83] Ai Group argue that the retention of the words could suggest '… that an employee would be entitled to the allowance twice if they consumed two meals upon completing two or more hours of overtime'.[84]

[151] Clause 11.3(a) of the exposure drafts outlines when a meal allowance is payable. Clause 11.3(a)(ii) outlines that "[t]he allowance is payable for the first and subsequent meals". Given the wording of clause 11.3(a)(ii) and the fact that the clause reference is included in the table, we are not persuaded that the words "per meal" should be removed from the expense related allowances table contained in Schedule C.3. The words will be reinserted into the Exposure Draft.

[152] There are no outstanding technical and drafting issues in relation to this award.

2.7 Cotton Ginning Award 2010

[153] A summary of submissions regarding outstanding issues for the Exposure Draft of the *Cotton Ginning Award 2010* (Cotton Ginning Award) was published on 22 March 2018. Ai Group, ABI and the AWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 12 and 17 were determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. The variations to the Exposure Draft will be made for those items. Item 14 has been referred to the Plain Language Full Bench for determination

[154] Parties reached an agreed position in relation to items 2, 3, 10, 11, 15 and 16. We are satisfied that the agreed positions are appropriate to be adopted into the Exposure Draft.

[155] Items 4, 5, 6, 7, 8, 9, 13 and 18 remain outstanding.

Item 4—Notice and election of casual conversion

[156] Clause 10.5(b) of the current award provides:

> **'10.5 Casual conversion**
>
> . . .
>
> (b) Every employer of a casual employee who seeks to convert to full-time or part-time employment will give the employee notice in writing of the provisions of this subclause within four weeks of the employee having attained the period of 12 months. However, the employee retains their right of election under this subclause if the employer fails to comply with this notice requirement.'

[157] Ai Group submits that 'this subclause' means clause 10.5, being the entire casual conversion clause.[85]

[158] The equivalent clause in the Exposure Draft requires an employer of an employee seeking to convert under the clause to provide the employee with written notice of 'the provisions of clause 6.6(a)(ii).' Ai Group submits that this narrows the scope of information required to be provided to the employee,[86] as clause 6.6(a)(ii) of the exposure simply provides that 'a eligible casual employee has the right, after 12 months, to elect to have their contract of employment converted to full-time or part-time employment.'[87]

[159] Ai Group submits the reference in clause 6.6(b)(i) to clause 6.6(a)(ii) should be amended to be a reference to clause 6.6 in its entirety.[88]

[160] This is similar to the issue relating to the Concrete Products Award canvassed at paragraphs [130] – [135] of this decision.

[161] We agree that the reference in the Award to 'this subclause' is intended to refer to clause 10.5 in its entirety. The reference in clause 6.6(b)(i) of the Exposure Draft will be amended so that it refers to clause 6.6 rather than clause 6.6(a)(ii).

Item 6—Full-time or part-time conversion

[162] Ai Group submits that, in clause 6.6(c)(iv) of the Exposure Draft, the second reference to clause 6.6(b)(iii) should be a reference to clause 6.6(d)(i), concerning an employer's right to refuse conversion of a casual. It is submitted that the current draft represents a drafting error.[89] Clause 6.6(c)(iv) of the Exposure Draft is as follows:

> '**(iv)** If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 6.6(b)(iii), the employer and employee must, subject to clause 6.6(b)(iii), discuss and agree on:
>
> - whether the employee will convert to full-time or part-time employment; and
> - if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 6.4—Part-time employment.'

[163] Clause 6.6(c)(iv) of the Exposure Draft is intended to reflect part of clause 10.5(f) of the current award:

> '**(f)** If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 10.5(c), the employer and employee must discuss and agree upon:
>
> **(i)** whether the employee will convert to full-time or part-time employment; and
>
> **(ii)** if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked are to be consistent with any other part-time employment provisions of this award. . .'[90]

[164] The drafting of this clause in the Cotton Ginning Award differs slightly from the drafting of the equivalent clause in the Manufacturing Award as it does not contain the second cross reference. The casual conversion provision in Cotton Ginning Award appears to have been drawn from the *Cotton Ginning & C. Employees (State) Award* (Cotton Ginning State Award).[91] The equivalent provision in the Cotton Ginning State Award is at clause 5A(b)(vi) and is as follows:

> '**(vi)** If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the

employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon. . .'

[165] The cross reference in the above clause to paragraph (b)(iii) is the equivalent of clause 10.5(c) of the Cotton Ginning Award and is as follows:

'**(b)(iii)** Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.'

[166] It appears that the phrase 'subject to clause 10.5(c)' has been omitted from clause 10.5(f) of the Cotton Ginning Award in error during the award modernisation process. We will correct this error as follows and amend the Exposure Draft as follows:

(f) If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 10.5(c), the employer and employee must, subject to clause 10.5(c), discuss and agree upon:

Item 9—Seasonal employees

[167] The AWU submits[92] that clause 6.7 of the Exposure Draft does not clearly specify that seasonal employees are entitled to receive the other entitlements prescribed for a full-time and part-time employee. Clause 6.7 of the Exposure Draft reads as follows:

'**6.7 Seasonal employees**

A **seasonal employee** means an employee who is engaged from time to time to supplement the permanent workforce. Upon termination of employment, such employees will be entitled to payment of an amount equal to the value of the pro rata accumulation of benefits of a full-time employee for the period of the seasonal employment.'

[168] The equivalent provision of the current award reads as follows:

'**10.6 Seasonal employees**

A **seasonal employee** means an employee who is engaged from time to time to supplement the permanent work force. Upon termination such employees will be entitled to payment of an amount equal to the value of the pro rata accumulation of benefits of a full-time employee for the period of the seasonal employment.'

[169] Given that the Exposure Draft contains the provisions for seasonal employees in almost identical terms to that provided in the current award, including the entitlements that a

seasonal employee would receive on a pro-rata basis on termination, it is unclear what the AWU are seeking. We do not propose to amend the Exposure Draft. The AWU will have 7 days to clarify the amendment they seek and the reasons for such an amendment.

Items 13 and 18—Special contingency payment

[170] ABI seeks the removal of clause 11.2(f) of the Exposure Draft, and part of Schedule B relating to the 'special contingency payment', as they say it is a district allowance.[93]

[171] Clause 11.2(f) of the Exposure Draft provides as follows:

'**(f) Special contingency payment**

(i) A special contingency payment will be made each week to full-time and seasonal employee as follows:

	Full-time employees	**Seasonal employees**
Location	**$ per week**	**$ per week**
Moura and Cecil Plains	46.44	13.93
Emerald and St George	67.42	20.23'

[172] The continuing operation of special contingency payments was discussed by the Full Bench in the *December 2014 Decision*:

'**[201]** The issue of district allowances is currently being considered by the Full Bench considering transitional provisions (AM2014/190). We will refer this issue of whether the award should continue to provide for special contingency payments, and if so, how they should operate, to that Full Bench, for determination.' [94]

[173] This matter will be referred to the Full Bench dealing with transitional issues.

3.8 Gas Industry Award 2010

[174] A revised summary of submissions regarding outstanding issues for the Exposure Draft of the *Gas Industry Award 2010* (Gas Award) was published on 22 March 2018. Ai Group, Business SA, the AWU and the AMWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 2, 4, 8, 9 and 10 were determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. Variations to the Exposure Draft will be made for those items. Items 4A, 5 and 6 have been referred to the Plain Language Full Bench. Item 7 is currently before the Annual Leave Full Bench.

[175] Items 3 and 10A remain outstanding.

Item 3—Meal breaks

[176] Ai Group submit that, consistent with the *July 2015 decision*, the Exposure Draft should be amended so that the words 'of the minimum hourly rate' appear after each reference

to a percentage appearing in clauses 9.1(b), 9.1(c) and 9.1(d).[95] Such an amendment would take the following form:

> **9.1 Meal breaks**
>
> **(a)** A meal break of at least 30 minutes must be allowed to employees within five hours of the start of their shift.
>
> **(b)** Employees required to work for more than five hours without a meal break as provided for in clause 9.1(a) must, for all time worked in excess of the five hours before being allowed a meal break, be paid at 200% of the minimum hourly rate.
>
> **(c)** Employees required to continue work during the meal break must be paid at 150% of the minimum hourly rate for all hours worked from the beginning of the scheduled meal break until the full meal break is given.
>
> **(d)** Employees required to resume work during the meal break must be paid at 150% of the minimum hourly rate for all hours worked from resuming work until the full meal break is given.

[177] Ai Group's submission is supported by Business SA.[96]

[178] The Full Bench's *July 2015 decision* determined that terms such as 'time and a half' should not be retained, but rather should be replaced with terms such as '150% of the minimum hourly rate'. In that decision the Full Bench noted the following:

> '**[95]** The AMWU and TCFUA, supported by a number of other unions submitted that replacing terms such as 'time and a half' and 'double time' with '150% of the minimum hourly rate' or '200% of the minimum hourly rate' (or '200% of the ordinary hourly rate' in awards where there is an all purpose payment) reduces an employee's entitlements under the award. They argue that where an employee is receiving an overaward payment, it is the higher rate that should be multiplied to calculate the amount payable.
>
> **[96]** Modern awards provide a safety net of minimum entitlements. The modern award prescribes the minimum rate an employer must pay an employee in given circumstances. Overaward payments, while permissible, are not mandatory. Further, if an employer chooses to pay an employee more than the minimum amount payable for ordinary hours worked, the employer is not required to use that higher rate when calculating penalties or loadings. We are not persuaded by the submissions advanced by union parties and do not propose to replace the terms 150% and 200% with time and a half or double time, etc.'[97]

[179] The AWU submits that in the *October 2015 decision* a similar issue arose in respect of the Manufacturing Award and the term 'applicable hourly rate' was used instead of 'minimum hourly rate'.[98] In relation to the Gas Award, the AWU submit:

> 'We suggest the term "applicable hourly rate" should instead be inserted consistent with the Full Bench's Decision on 23 October 2015 regarding the *Manufacturing and Associated Industries and Occupations Award 201*0.
>
> If this does not occur, there will be an incentive for employers to direct employees to continue or resume work during a meal break on Sundays and public holidays because they will be able

to pay 150% of the minimum hourly rate instead of 200% of the minimum hourly rate on Sundays and 250% of the minimum hourly rate on public holidays. These are the applicable rates for ordinary hours as per clause 13.7 and 13.8 of the Exposure Draft.'[99]

[180] As noted above, the Full Bench canvassed a similar issue in the *October 2015 decision*.[100] In that decision, the Full Bench said the following (in relation to the Manufacturing Award):

'Definition of ordinary hourly rate and ordinary hours

[95] The definition of the ordinary hourly rate included is included in Schedule H of the Exposure Draft. It says:

> **ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 16—Minimum wages, plus any allowances specified as being included in the employee's ordinary hourly rate.

[96] The hourly rate at clause 16 does not include any loadings or penalties.

[97] Various clauses in the award provide for the payment of penalties for the working of ordinary hours. For example clause 29 of the award provides that day workers can, by agreement, work ordinary hours on a weekend. In such circumstances they are entitled to be paid at 150% of the ordinary hourly rate.

> **29.1 Penalty rates for day workers**
>
> (a) Weekend work
>
> Where agreement is reached in accordance with clause 13.2(b):
>
> (i) The rate to be paid to a day worker for ordinary time worked between midnight on Friday and midnight on Saturday will be 150% of the ordinary hourly rate.
>
> (ii) The rate to be paid to a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday will be 200% of the ordinary hourly rate.

[98] Similarly a shift worker is paid at 115% (or higher) of the ordinary hourly rate for ordinary hours worked on shift (see clause 29.2).

[99] Clause 14.5 provides for payment when working through a meal break:

> **14.5 Working through meal breaks**
>
> (a) Subject to clause 14.1, an employee must work during meal breaks at the ordinary hourly rate whenever instructed to do so for the purpose of making good any breakdown of plant or for routine maintenance of plant which can only be done while the plant is idle.
>
> [emphasis added]

> [100] The effect of clause 14.5 in conjunction with the definition of "ordinary hourly rate" means that an employee who receives a loading or penalty for ordinary hours of work (e.g. 150% for a day worker working ordinary hours on a Saturday) will receive a *lesser* amount when working through a meal break as they are only entitled to the ordinary hourly rate during such a period.
>
> [101] The wording of the equivalent clauses in the *Manufacturing and Associated Industries and Occupations Award 2010* indicate that an employee is required to be paid the same rate when working through a meal break that they would otherwise receive for working ordinary hours.
>
> [102] We have identified similar problems with the use of the term "ordinary hourly rate" in respect of clause 30.10(c) which provides for a paid meal break at the employee's "ordinary hourly rate", clause 30.13 which provides for a stand by payment at the employee's "ordinary hourly rate", clause 27.4(e) which provides for payment of travelling time at the employee's "ordinary hourly rate" and in clause 15 'ship trials'.
>
> [103] The AMWU have submitted that this problem can be overcome by amending the definition "ordinary hourly rate". We do not agree with this course of action. Rather we propose to insert a definition of 'applicable rate of pay' in the award. The definition we propose is:
>
> > **Applicable rate of pay** means the ordinary hourly rate plus penalties and relevant loadings.
>
> [104] This expression will be used in the relevant clauses to indicate that an employee should be paid for relevant periods in the specified clause at the rate they would otherwise have received for working ordinary hours at that time."

[181] In this instance, we agree with the AWU that the effect of the use of the term 'minimum hourly rate' in the present circumstances would mean that an employee entitled to higher weekend or public holiday penalties would be entitled to a *lesser* amount under the circumstances contemplated by clause 9.1 of the Exposure Draft. The intention of the clause is to create a disincentive for employers to delay or interrupt employees' meal breaks. In order to achieve this, the rates under clause 9.1 must be in excess of that which employees are otherwise entitled.

[182] However, it is our *provisional* view that a definition of 'applicable hourly rate' not be inserted into the Exposure Draft for the Gas Award as this may cause confusion and add an unnecessary level of complexity. We propose to use the term 'minimum hourly rate' as suggested by Ai Group, and clarify this by adding the words 'plus penalties and relevant loadings,' as follows:

> **9.1 Meal breaks**
>
> **(a)** A meal break of at least 30 minutes must be allowed to employees within five hours of the start of their shift.
>
> **(b)** Employees required to work for more than five hours without a meal break as provided for in clause 9.1(a) must, for all time worked in excess of the five

hours before being allowed a meal break, be paid at 200% of the minimum hourly rate, plus penalties and relevant loadings.

(c) Employees required to continue work during the meal break must be paid at 150% of the minimum hourly rate, plus penalties and relevant loadings for all hours worked from the beginning of the scheduled meal break until the full meal break is given.

(d) Employees required to resume work during the meal break must be paid at 150% of the minimum hourly rate, plus penalties and relevant loadings for all hours worked from resuming work until the full meal break is given.

[183] Interested parties have until **4.00 pm on Monday 16 July 2018** to file a written submission regarding our *provisional* view outlined above at [182].

Item 10A—Definitions

[184] Ai Group submits that the definition of 'availability duty' which currently appears at clause 3.1 of the Award does not appear in the Exposure Draft and should be re-inserted.[101]

[185] The definition of 'availability duty' was excluded from the first version of the Exposure Draft because the term did not appear elsewhere in the Award, and therefore served no purpose. However, following a Decision of a Full Bench of the Commission a clause concerning availability duty has been inserted into the award at clause 15.4.[102] The provision takes the following form:

'**15.4 Availability duty**

(a) Where an employer requires an employee to be on availability duty, the employee will be entitled to be paid an allowance of 26% of the standard rate per week (or per day on a pro rata basis where an employee is so required for less than a week).

(b) An employee required to be on availability duty who is unavailable when requested to attend an urgent or emergency situation shall not be paid the availability duty allowance for that day.'[103]

[186] It follows that a definition of 'availability duty' would now serve a purpose and should be included in the Exposure Draft. The definition of 'availability duty' that appears in the current award is in the following terms:

'**availability duty** means that the employee is continuously available outside normal working hours to attend an urgent or emergency situation and when paged or upon receiving a telephone call must respond immediately.'[104]

[187] The current definition will be inserted in to the Exposure Draft.

3.9 Hydrocarbons Industry (Upstream) Award 2010

[188] A summary of submissions regarding outstanding issues in relation to the *Hydrocarbons Industry (Upstream) Award 2010* (Hydrocarbons Upstream Award) was published on 22 March 2018. In the summary of outstanding issues, item 4A was identified as a new issue which was raised in a submission by Ai Group. This item has been referred to the Plain Language Full Bench (AM2016/15). Items 2, 7 and 10 relate to the issue of whether the casual loading is restricted to ordinary hours. As discussed in paragraphs [17]-[18] of this decision, the matter may be dealt with by a separately constituted Full Bench in (AM2017/51).

[189] Items 1, 3, 4, 5, 6, 8, 9, 11 and 12 were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will be made for those items.

[190] There are no other outstanding matters for this Full Bench to determine in relation to the Hydrocarbons (Upstream) Award.

3.10 Marine Tourism and Charter Vessels Award 2010

[191] In the early stages of the 4 yearly review, the *Marine Tourism and Charter Vessels Award 2010* (Marine Tourism Award) and *Professional Diving Industry (Recreational) Award 2010* (Professional Diving Recreational Award) were amalgamated into a single Exposure Draft. There was little support for the proposed amalgamation. A de-merged Exposure Draft relating to the Marine Tourism Award was published on 30 October 2015.[105] The *October 2015 decision*[106] afforded parties an opportunity to make submissions in respect of the Exposure Draft, as it had not previously been issued in the de-merged form.[107] These submissions were summarised in a document published by the Commission on 13 June 2017 titled 'summary of submissions on revised Exposure Draft.' A revised Exposure Draft was also published on 13 June 2017.[108]

[192] A revised summary of submissions in relation to the Marine Tourism Award was published on 22 March 2018. Items 4, 5, 6, 8 and 9 were either confirmed as resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will be made for those items.

[193] As noted in the summary, items 1, 2, 3 and 7 remain outstanding.

Item 1—Casual employees—casual overnight charter employees

[194] The AWU submit that the wording in the exposure draft appears to remove a casual overnight charter employee's entitlement to receive their casual loading on overtime hours.[109]

[195] The AWU submit that clause 10.3(a)(iv) of the current award requires the casual loading to be paid for all hours worked whereas clause 6.4(c)(iii) of the exposure draft potentially removes this entitlement because it begins with the words: "for working ordinary hours…"

[196] Clause 10.3 of the current award is extracted below:

> '**10.3 Casual employment**
>
> **(a)** An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a casual basis. A casual employee:
>
> **(i)** is engaged to work a variety of hours if they are a Non-overnight Charter Employee or a specified trip or trips if they are an Overnight Charter Employee at the direction of the employer;
>
> **(ii)** if they are an Overnight Charter Employee, must be engaged for a minimum of one half day trip as per clause 20.3, or if they are a Non-overnight Charter Employee must be engaged for a minimum of two hours per shift and a maximum of 12 hours per shift;
>
> **(iii)** cannot be engaged for more than 38 hours per week if they are a Non-overnight Charter Employee; and
>
> **(iv)** must be paid the applicable loading as defined in clause 13—Minimum wages.'

[197] Clause 6.4 of the Exposure Draft is extracted below:

> '**6.4 Casual employees**
>
> **(a)** An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a casual basis.
>
> **(b)** For the purposes of providing potential casual employees with the written notice as stipulated in clause 6.5, the employer must also specify the likely time periods or trips the employee will be required to work.
>
> **(c) A casual Overnight Charter Employee:**
>
> **(i)** is engaged to work a specified trip or trips, at the direction of the employer;
>
> **(ii)** must be engaged for a minimum of one half day trip; and
>
> **(iii)** for working ordinary hours must be paid the ~~ordinary~~ minimum daily rate calculated in accordance with clause 10.1 for the classification in which they are employed plus a loading of **25%**.'

[198] In their submission, the AWU provide alternative wording to address the issue. They submit that clause 6.4(c) of the Exposure Draft be redrafted to read:[110]

> '**(c) A casual Overnight Charter Employee**
>
> **(i)** is engaged to work a specified trip or trips, at the direction of the employer;
>
> **(ii)** must be engaged for a minimum of one half day trip;

(iii) must be paid the minimum rate in clause 10.1 for the classification in which they are employed; and

(iv) must be paid a casual loading of 25%.'

[199] No other party has commented on the AWU's proposed redrafting.

[200] We agree with the AWU that the redrafting of the Exposure Draft has altered the meaning of the current award. It is our *provisional* view that the AWU's redrafted clause be incorporated into the exposure draft. Interested parties have until **4.00 pm on Monday 16 July 2018** to file a written submission regarding our *provisional* view.

Items 2 and 3—Casual employees—casual non-overnight charter employees

[201] Items 2 and 3 of the revised summary deal with casual non-overnight charter employees.

[202] Item 2 deals with hours of work conditions for these employees, which the AWU submit are difficult to understand in both the current award and the Exposure Draft.[111] The relevant clauses in both the Exposure Draft and the current award are set out below.

[203] The relevant clauses of the current award are as follows:

'**10.3 Casual employment**

(a) An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a casual basis. A casual employee:

(i) is engaged to work a variety of hours if they are a Non-overnight Charter Employee or a specified trip or trips if they are an Overnight Charter Employee at the direction of the employer;

(ii) if they are an Overnight Charter Employee, must be engaged for a minimum of one half day trip as per clause 20.3, or if they are a Non-overnight Charter Employee must be engaged for a minimum of two hours per shift and a maximum of 12 hours per shift;

(iii) cannot be engaged for more than 38 hours per week if they are a Non-overnight Charter Employee; and

(iv) must be paid the applicable loading as defined in clause 13—Minimum wages.

(b) For the purposes of providing potential casual employees with the written notice as stipulated in clause 10.4, the employer must also specify the likely time periods or trips the employee will be required to work.'

'**22 Overtime and penalty rates**

22.1 Non-overnight Charter Employees

All time worked by Non-overnight Charter Employees (other than casual employees) in excess of:

- 12 hours per day; or
- the average ordinary hours per week as per clause 20.2(a),

is overtime and must be paid at one and a half times the employee's ordinary rate for the first two hours and double time thereafter calculated hourly.'

'**20.2 Ordinary hours of work—Non-overnight Charter Employees**

For Non-overnight Charter Employees the ordinary hours:

(a) must not exceed 38 hours per week averaged over a period of 12 months;

(b) must be a minimum of two hours and a maximum of 12 hours on any one day within the spread of hours prescribed in clause 20.2(c); and

(c) may be worked on any day of the week Monday to Saturday between the hours of 6.00 am and 2.00 am the next day or during any other six day period in any week mutually agreed upon between an employer and an employee and of which period the employer has given at least 14 days' written notice to the employee.'

[204] The relevant clauses of the Exposure Draft are:

'**6.4 Casual employees**

. . .

(d) A casual Non-overnight Charter Employee:

(i) is engaged to work a variety of hours, at the direction of the employer;

(ii) must be engaged for a minimum of two hours per engagement and a maximum of 12 hours per shift;

(iii) cannot be engaged for more than 38 hours per week; and

(iv) for each ordinary hour worked must be paid the minimum hourly rate in accordance with clause 10.2 for the classification in which they are employed plus a loading of 25%.

'**8.2 Ordinary hours and roster cycles—Non-overnight Charter Employees**

For Non-overnight Charter Employees the ordinary hours:

(a) must not exceed 38 hours per week averaged over a period of 12 months;

(b) must be a minimum of two hours and a maximum of 12 hours on any one day within the spread of hours prescribed in clause 8.2(c); and

(c) may be worked on any day of the week Monday to Saturday between the hours of 6.00 am and 2.00 am the next day or during any other six day period in any week mutually agreed upon between an employer and an employee and of which period the employer has given at least 14 days' written notice to the employee.'

[205] Clause 13.1 of the Exposure Draft deals with overtime rates for Non-overnight Charter Employees and is set out below:

'**13.1 Non-overnight Charter Employees**

All time worked by Non-overnight Charter Employees (other than casual employees) in excess of:

(a) 12 hours per day;

(b) outside the span of ordinary hours; or

(c) the average ordinary hours per week as per clause 8.2(a),

is overtime and must be paid at **150%** of the employee's minimum rate for the first two hours and **200%** thereafter, calculated hourly.'

[206] The AWU submit 'the hours of work conditions for casual Non-overnight charter employees are difficult to comprehend in the Exposure Draft (and in the current award)'[112] and that the Exposure Draft currently appears to prescribe the following conditions for casual non-overnight charter employees:

'A restriction on working more than 12 hours per shift: clause 6.4 (d) (ii);

A restriction on working more than 38 hours in a week: clause 6.4 (d) (iii);

An entitlement to a minimum rate of pay and casual loading for ordinary hours (our emphasis): clause 6.4 (d) (iv) and clause 10.2;

A span of ordinary hours of 6am to 2am Monday to Saturday. This can be varied to any 6 days of the week by mutual agreement if an employer gives 14 days of written notice: clause 8.2 (c); and

No entitlement to overtime rates: clause 13.1.'[113]

[207] The AWU submit 'the main problem which arises with these provisions is the lack of certainty regarding work outside the span of ordinary hours in clause 8.2 (c). The current provisions indicate these hours would be neither ordinary hours nor overtime.'[114]

[208] The AWU further submit that 'unlike in relation to more than 12 hours per shift or more than 38 hours per week, there is no express restriction on hours outside the span in

clause 8.2(c) being worked'[115] and that the best approach to resolving the issue would be inserting the following words at the end of clause 13.1 in the Exposure Draft:

> 'A casual employee is entitled to the above overtime rates for all time worked outside the span of ordinary hours in clause 8.2 (c).'[116]

[209] The AWU further submit that to clarify that a casual employee would still receive their casual loading when overtime is worked clause 6.4(d)(iv) of the Exposure Draft be amended to read:

> 'For each ~~ordinary~~ hour worked must be paid the minimum hourly rate in accordance with clause 10.2 for the classification in which they are employed plus a loading of 25%.'[117]

[210] No other party has commented on the AWU's proposed redrafting.

[211] We agree with the AWU that both the Exposure Draft and the current award are unclear as to what these employees should be paid when working outside the span of ordinary hours.

[212] The issue of overtime for casuals has been identified as an outstanding issue in respect of a number of modern awards. As discussed in paragraph [18] of this decision the Full Bench in AM2017/51 will consider issues relating to casual overtime arising from the award stage.

[213] A conference will be convened by Vice President Hatcher to explore ways of clarifying the provisions identified by the AWU.

Item 7—Inclusion of rates tables in Schedules

[214] The AWU submit that rates tables should be included in the schedules, given this approach is being adopted for most other awards.[118] Business SA agree.[119]

[215] We agree with the AWU and Business SA. Inclusion of the rates tables in the award will assist in making the award easier to understand. The rates table will be included in a revised version of the Exposure Draft. Interested parties will have an opportunity to comment on the accuracy of the rates tables prior to the conclusion of the review.

3.11 Maritime Offshore Oil and Gas Award 2010

[216] A summary of submissions on the outstanding issues relating to the *Maritime Offshore Oil and Gas Award 2010* was published on 22 March 2018. Ai Group, Business SA, the AWU and the AMWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 4 and 5 were either agreed between the parties, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. Variations to the Exposure Draft will be made for those items.

[217] Items 2 and 3 remain outstanding.

Item 2—Ordinary hours

[218] The AMWU submits that, consistent with the *October 2015 decision*[120] clause 7.1(c) of the Exposure Draft should be amended so that the clause makes references to clause 21.2 which concerns consultation.[121] Clause 7.1(c) reads:

> '**(c)** Employees may be required to work up to eight ordinary hours per day. The employer may extend the employee's ordinary hours of duty to 12 hours per day.'[122]

[219] The AMWU submit the words 'The employer may' should be preceded by 'Subject to clause 21.2'. This is to make clear that an employer's discretion to alter an employee's roster and ordinary hours is subject to consultation requirements.[123]

[220] Ai Group opposes the proposed changes. Ai Group submits that the inclusion of unnecessary references would conflict with s.138 of the Act,[124] which provides that '[a] modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.'[125]

[221] In the *October 2015 decision*, the Full Bench found that 'the model consultation term was intended to impose an additional obligation on an employer to consult an employee in circumstances where the employer proposes to change the employee's regular roster or ordinary hours of work.'[126] Applying this proposition to clause in question, the employer may extend the employee's ordinary hours of duty, but only after having consulted with the employee prior to doing so. This consultation must be consistent with the provisions of the relevant consultation clause which, in this case, is found in clause 21.2 of the Exposure Draft.

[222] We have decided that, consistent with the *October 2015 decision*, and in order to give effect to the intention of the model term, clause 7.1(c) will be amended so that the sentence beginning 'The employer may' will be preceded by the words 'Subject to clause 21.2'.

Item 3—ordinary hours

[223] The AWU submits that clause 7.1(c) of the Exposure Draft should be amended to retain the words 'will be' in reference to the number of ordinary hours per day.[127] Clause 7.1(c) of the Exposure Draft reads as follows:

> '**7.1 Ordinary hours**
>
> . . .
>
> **(c)** Employees may be required to work up to eight ordinary hours per day. The employer may extend the employee's ordinary hours of duty to 12 hours per day.'

[224] The corresponding clause in the current award, clause 18.1, reads as follows:

> '**18.1 Ordinary hours of work**
>
> The ordinary hours of work will be eight hours per day Monday to Sunday, subject to the employer's right to extend the employee's ordinary hours of duty to 12 hours per day.'

[225] The AWU submits that the words need to be retained in order to make it 'unequivocal that the ordinary hours of work per day (are) 8 hours.'[128] The position of the AWU is supported by the AMWU.[129]

[226] Ai Group opposes the AWU's submission. It contends that '[s]uch a provision has the potential to make various flexibilities in the Award meaningless, including the flexibility to average hours over a period of up to 52 weeks… and the flexibility to work 12 hour days / shifts'.[130]

[227] We are not persuaded to make the change proposed by the AWU. The ordinary hours differ, or have the potential to differ, as between full-time, part-time, and casual employees. To state emphatically that ordinary hours are eight per day would be to ignore the potential for casual and part-time employees to work fewer than this number. The Exposure Draft will remain as it currently appears.

3.12 Meat Industry Award 2010

[228] A revised summary of submissions in relation to the *Meat Industry Award 2010* (Meat Award) was published on 22 March 2018. Ai Group, the Australian Meat Industry Council (AMIC), Business SA and the Australasian Meat Industry Employees' Union (AMIEU) made submissions in relation to the review of this Award. Items 1 to 13, 15 to 31 and 33 to 36 were either confirmed as resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will be made for those items.

[229] Items 14 and 32 remain outstanding.

Item 14—Minimum wages for apprentices

[230] AMIC made a submission regarding the minimum wages for apprentices in clause 10.3 and 10.4 of the Exposure Draft.[131] AMIC submits that the minimum rates of pay for apprentices are to be read in conjunction with the new apprenticeship provisions in clause 10.5 of the Exposure Draft (clause 21.3 of the current award). AMIC submits that the standard conditions no longer cover training by years, but rather that apprentices progress through the apprenticeship in 'stages'. The word 'year', therefore, should be replaced with the word 'stage' in the tables contained clause 10.3. Competency based wage progression (CBWP) provisions were inserted in the Meat Award on 1 January 2015.[132] The relevant provisions in the Exposure Draft are as follows:

‘**10.3 Apprentices**

(a) Minimum rates for apprentices

(i) The minimum award rates for apprentices completing a four year apprenticeship and who commenced before 1 January 2014 are the following percentages of the minimum weekly wage MI 7:

Year of apprenticeship	**% of MI 7**
1st year	50
2nd year	60
3rd year	85
4th year	95

(ii) The minimum award rates for apprentices completing a four year apprenticeship and who commenced on or after 1 January 2014 are the following percentages of the minimum weekly wage MI 7:

Year of apprenticeship	**% of MI 7 for apprentices who have not completed year 12**	**% of MI 7 for apprentices who have completed year 12**
1st year	50	55
2nd year	60	65
3rd year	85	85
4th year	95	95

. . .

10.7 Competency based progression

(a) For the purpose of competency based wage progression in clause 10.3 and 10.4 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:

(i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 10.9 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and

(ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and

(iii) either:

- the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
- the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.

(b) If the employer disagrees with the assessment of the RTO referred to in the second dot point in clause 10.7(a)(iii) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

(c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of "competency" utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.

(d) The apprentice will be paid the wage rate referred to in clause 10.7(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 10.7(a)(iii) or on a date as determined under the dispute resolution process in clause 10.7(b).

10.8 Minimum Wages

The minimum wages for an apprentice are as set out in the following table, provided that progression through the stages set out in this table is in accordance with clause 10.9.

Stage of apprenticeship	**% of M17 for apprentices who have not completed year 12**	**% of M17 for apprentices who have completed year 12**
Stage 1	50	55
Stage 2	60	65
Stage 3	85	85
Stage 4	95	95

10.9 Conditions for progression through each stage

The conditions for progression to each stage are set out in the following tables:

Stage of apprenticeship entry, exit and progression requirements

Stage 1 **Entry**

Nil entry requirements

Exit

There is no exit point at this stage

Stage 2 **Entry**

An apprentice enters Stage 2:

- on attainment of 25% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; or
- 12 months after commencing the apprenticeship, subject to clause 10.5(o);

whichever is earlier.

Exit

There is no exit point at this stage

Stage 3 **Entry**

An apprentice enters Stage 3:

- on attainment of 50% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; or
- 12 months after commencing Stage 2, subject to clause 10.5(o);

whichever is earlier.

Exit

There is no exit point at this stage

Stage 4 **Entry**

An apprentice enters Stage 4:

- on attainment of 75% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; or
- 12 months after commencing Stage 3, subject to clause 10.5(o)

whichever is earlier.

Exit

Upon the attainment of 100% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan and subject to clauses 10.5(e), 10.5(f), 10.5(g) and 10.5(o)an apprentice will exit with the relevant AQF Certificate III qualification.'

[231] The provisions are expressed in similar terms in the current award.

[232] The issue of CBWP provisions in modern awards was initially considered in the Transitional Review by the Apprentices Full Bench.[133] The Full Bench provided an overview of the purpose of a CBWP for apprentices:

> **'(iii) Competency based wage progression**
>
> **[268]** The applications by the CFMEU and AMWU seek to introduce competency based wage progression (CBWP) into the Building, Joinery, Airlines, Sugar and Graphic Arts Awards. The Commonwealth urged the Commission to facilitate the introduction of CBWP in all awards with apprenticeship provisions. The Apprenticeship Expert Panel in its report recommended that FWA should consider the removal of barriers to CBWP in modern awards.
>
> **[269]** The Commonwealth indicated that only six modern awards provide for some form of CBWP and a further three provide for some recognition of previous experience to commence at a higher wage. Four modern awards have comprehensive provisions for CBWP.
>
> **[270]** The national training system has provided for apprentices and other vocational training students to progress through courses on the basis of the acquisition of competency for several decades. Where this results in an apprentice acquiring competencies more quickly the employer has the ability to apply those additional competencies in the workplace and may gain some productivity benefits. However, this competency based training progression must be distinguished from CBWP. CBWP means that upon the acquisition of the competencies associated with a particular year or stage of the apprenticeship, the apprentice is entitled to be paid the minimum wage rate associated with the next year or stage. CBWP should also be distinguished from competency based completion. The system for regulation of apprenticeships has traditionally allowed for earlier completion and in some cases for later completion. The ability to complete an apprenticeship early where all the necessary competencies have been achieved is now more widespread and a number of awards provide for it.
>
> . . .
>
> **[295]** We are satisfied that it is consistent with the modern awards objective for the Commission to facilitate the introduction of CBWP for apprentices in awards where it is not already provided for. We agree with the submission of the Commonwealth that the adoption of CBWP in awards supports the modern awards objective of promoting flexible modern work practices and the efficient performance of work (s.134(1)(d) of the Act). We are also satisfied that such a provision will promote productivity in that it will facilitate a more skilled workforce (s.134(1)(f)).'[134]

[233] When the CBWP provisions were inserted in the five modern awards listed in the decision,[135] references to 'year' in the tables were amended to 'stage'. At the time the Australian Council of Trade Unions (ACTU) did not propose to insert the CBWP model term in all modern awards. AMIC made an application in the Review for a provision in similar terms to the CBWP model provision to be inserted in the Meat Award.[136] This application was not opposed by the AMIEU. AMIC filed draft determination proposing to insert the CBWP provisions in very similar terms to those that were adopted. They did not at the time propose to amend clauses 21.1(a) and 21.1(b) of the award (now clause 10.3 and 10.4 of the Exposure Draft).

[234] With the introduction of competency based wage progression provisions, the wage progression for apprentices at each of the four stages were provided in clause 21.6, which has been replicated at clause 10.8 of the Exposure Draft. An apprentice employed under the award can continue to complete their apprenticeship in four years in accordance with clause 21.1, or complete their apprenticeship earlier, using the competency based wage progression scale provided in clause 21.6. Clause 21.7 (10.9 of the Exposure Draft) provides the conditions that must be met in order to progress through each stage, which includes a time-based progression. The Exposure Draft is consistent with the provisions contained in the current award. While the award does now include a CBWP, the term 'year' is still relevant in cases where an apprentice progresses through each stage based on years. To ensure the provisions remain relevant while retaining the existing provisions which continue to operate, we have decided to amend clause 10.3 in similar terms to that provided in clause 16 of the *Airline Operations-Ground Staff Award 2010* (Airline Award) which uses the phrase 'Stage or year'. The amendment will be as follows:

10.3 Apprentices

(i) Minimum rates for apprentices

The minimum award rates for apprentices completing a four year apprenticeship and who commenced before 1 January 2014 are the following percentages of the minimum weekly wage MI 7:

~~**Year**~~ **Stage or year of apprenticeship**	**% of MI 7**
~~1st year~~ 1	50
~~2nd year~~ 2	60
~~3rd year~~ 3	85
~~4th year~~ 4	95

(ii) The minimum award rates for apprentices completing a four year apprenticeship and who commenced on or after 1 January 2014 are the following percentages of the minimum weekly wage MI 7:

~~**Year**~~ **Stage or year of apprenticeship**	**% of MI 7 for apprentices who have not completed year 12**	**% of MI 7 for apprentices who have completed year 12**
~~1st year~~ 1	50	55
~~2nd year~~ 2	60	65
~~3rd year~~ 3	85	85
~~4th year~~ 4	95	95

Item 32—Public holidays—full-time and part-time employees

[235] Ai Group made a submission that the rates in the table in clause B.6.1 of the Exposure Draft are incorrect.[137] Clause 22.3 of the Exposure Draft provides a penalty of 150% and 200% of the minimum rate, whereas, clause B.6.1 provides rates at 300% and 350% of the minimum hourly rate. Clause 22.3 reads as follows:

> '**22.3 Payment for work on public holidays**
>
> Employees including casuals who work on:
>
> **(a)** Christmas Day and Anzac Day will be paid at double the minimum hourly rate for all time worked;
>
> **(b)** Good Friday will be paid for all time worked at the rate of time and a half for the first four hours and double time thereafter based on the minimum hourly rate; and
>
> **(c)** any other public holiday will be paid at time and a half for the first two hours and double time thereafter based on the minimum hourly rate.
>
> For all employees other than casuals, the above payments will be in addition to the minimum weekly, daily or hourly rate of pay as appropriate, calculated by reference to the minimum hourly rate.'

[236] Clause 22.3 appears in equivalent terms in clause 40.2 of the current award.

> '**40.2 Payment for work on public holidays**
>
> Employees including casuals who work on:
>
> **(a)** Christmas Day and Anzac Day will be paid at double the ordinary hourly rate for all time worked;
>
> **(b)** Good Friday will be paid for all time worked at the rate of time and a half for the first four hours and double time thereafter based on the ordinary hourly rate; and
>
> **(c)** any other public holiday will be paid at time and a half for the first two hours and double time thereafter based on the ordinary hourly rate.
>
> For all employees other than casuals, the above payments will be in addition to the ordinary weekly, daily or hourly rate of pay as appropriate, calculated by reference to the ordinary hourly rate as defined in clause 3.2(a).' [emphasis added]

[237] Clause 40.2 of the current award was last varied on 30 March 2015. At the time the Full Bench considered a proposal by AMIEU to vary the same clause to broaden the application of the clause to not just full-time employees, but also part-time employees.[138] AMIC did not oppose AMIEU's submission.[139] While this variation does not provide

clarification on how the penalty rates for public holidays are calculated, the submission made by AMIEU did clarify the way the rates have been calculated historically.

[238] Prior to the award modernisation process in 2008−2009, the meat industry in Australia was regulated by three federal awards. Each award regulated a separate sector of the industry. Those three awards were the *Federal Meat Industry (Processing) Award 2000*, the *Federal Meat Industry (Smallgoods) Award 2000*, and the *Federal Meat Industry (Retail and Wholesale) Award 2000*.

Federal Meat Industry (Processing) Award [AP781451]

‘**31.5 Payment for work on public holidays**

31.5.1 Employees including casuals who work on:

31.5.1(a) Christmas Day, Anzac Day and Union Picnic Day will be paid at double the ordinary hourly rate for all time worked;

31.5.1(b) Good Friday will be paid for all time worked at the rate of and a half for the first four hours and double time thereafter based on the ordinary hourly rate; and,

31.5.1(c) any other public holiday will be paid at time and a half for the first two hours and double time thereafter based on the ordinary hourly rate.

31.5.2 The above payments will be in addition to the ordinary weekly, daily or hourly rate of pay as appropriate.’

Federal Meat Industry (Retail and Wholesale) Award 2000 [AP805114]

‘**32.3 Payment for work on public holidays**

31.3.1 Employees including casuals who work on:

31.3.1(a) Christmas Day or Anzac Day will be paid at double the ordinary hourly rate for all time worked;

31.3.1(b) Good Friday will be paid for all time worked at the rate of time and a half for the first four hours and double time thereafter based on the ordinary hourly rate; and

31.3.1(c) any other public holiday will be paid at time and a half for the first two hours and double time thereafter based on the ordinary hourly rate.

32.3.2 For full-time and part-time employees, the above payments will be in addition to the ordinary weekly or hourly rate of pay.’

Federal Meat Industry (Smallgoods) Award 2000 [AP805128]

‘31.3 Payment for work on public holidays

31.3.1 Employees including casuals who work on:

31.3.1(a) Christmas Day or Anzac Day will be paid at double the ordinary hourly rate for all time worked;

31.3.1(b) Good Friday will be paid for all time worked at the rate of time and a half for the first four hours and double time thereafter based on the ordinary hourly rate; and

31.3.1(c) any other public holiday will be paid at time and a half for the first two hours and double time thereafter based on the ordinary hourly rate.

31.3.2 For full-time and part-time employees, the above payments will be in addition to the ordinary weekly rate of pay.'

[239] All three pre modernisation awards provided for circumstances in which payment for work performed on a public holiday was to be paid *in addition* to their ordinary rate of pay. AMIC initially raised an issue in relation to clause B.6.1 which they later withdrew. In their final submission they confirmed that they are content with the tables as they appear in the exposure draft.[140] Clause 22.3 of the exposure draft expresses the amounts payable for a public holiday as loadings, such as time and a half and double time, rather than percentages of the minimum hourly rate. In clause B.6.1 these loadings are added to the minimum hourly rate in clause 10.1 to provide the total amount payable. The rates in Schedule B are expressed as the total percentage payable for the public holiday (100% plus the loading). Given that the rates in clause 22.3(a) to (c) for all employees other than casuals are 'in addition to the minimum weekly, daily or hourly rate of pay as appropriate, calculated by reference to the minimum hourly rate hourly rate of pay', the public holiday rates are calculated by adding the loading to 100% of the minimum hourly rate. For example, for work performed on Christmas and Anzac day in clause 22.3(a), the payment for each hour is 100% of the minimum hourly rate plus 200% (double time). This equates to 300% of the minimum hourly rate. Hence the rates in schedule B.6.1 appear to be correct.

[240] If Ai Group wishes to pursue this issue further they may make an application to vary the Meat Award.

3.13 Mining Industry Award 2010

[241] A summary of submissions relating to outstanding issues in relation to the *Mining Industry Award 2010* (Mining Award) was published on 22 March 2018. Ai Group, ABI, AMWU, Australian Mines and Minerals Association (AMMA), the AWU, Business SA and the CFMEU (M&E) made submissions in relation to the review of this award. Items 1A, 5, 5A, 6 -12, 14A and 15 were either confirmed as resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the exposure draft will be made for those items. Item 4A has been referred to the Plain Language Full Bench.

[242] Items 1, 2, 3, 4, 8A, 13, 14, 15A remain outstanding.

Item 1—Minimum hourly versus ordinary hourly rates—part-time employment

[243] The AWU submits that the words minimum hourly rate should be changed to ordinary hourly rate in clause 6.3(d).[141] Ai Group opposed their submission.[142] Clause 6.3(d) reads as follows:

> '**(d)** For each ordinary hour worked, a part-time employee will be paid no less than the minimum hourly rate of pay for the relevant classification in clause 9.'

[244] In the *July 2015 decision*, the Full Bench observed that the term 'ordinary hourly rate' is used in contrast to 'minimum hourly rate' in affected awards to make clear that the all purpose allowances must be added to the minimum rate of pay before calculating any penalty rate. In affected awards, penalties and loadings are expressed as a percentage of the ordinary hourly rate (for example, 'overtime is paid at 150% of the ordinary hourly rate'), to make clear that an all purpose allowance to which an employee is entitled must be added to the minimum rate before calculating the loaded rate. That is, there is a *compounding* effect.

[245] The Mining Award contains a number of all purposes allowances which are listed in clause 11.2 of the Exposure Draft. The Full Bench in the *July 2015 decision* determined that definitions of 'all purposes' and 'ordinary hourly rate' will be inserted into all affected awards. In the *October 2015 decision*, it applied this general rule to the Mining Award, stating:

> '**[141]** The issues in relation to the use of the terms 'ordinary rate of pay' and 'all purpose allowance' were dealt with in our July 2015 decision. The Exposure Draft reflects the outcome of that decision in relation to the calculation of penalty rates and overtime in that the all purpose allowance is added *before* the loading is applied.'[143]

[246] An attachment to the *July 2017 decision* contained a list of awards containing all purpose allowances.[144] This list included the allowances listed in clause 11.2 of the Exposure Draft. Parties were invited to comment on the list. Any issues as to whether a particular payment is payable for all purposes, and, in particular, whether an allowance should be added to a minimum rate before calculating a penalty or loading, was to be dealt with on an award-by-award basis. No submissions were received in relation to the all purposes allowances identified in Mining Award. On that basis we see no reason to depart from the standardised approach. In view of the fact that the Mining Award contains all purpose allowances, clause 6.4(d) of the Exposure Draft will be amended as follows:

> **(d)** For each ordinary hour worked, a part-time employee will be paid no less than the ~~minimum~~ ordinary hourly rate of pay for the relevant classification in clause 9.

Items 2 and 14—Casual employees

[247] The AWU submits that clause 6.4(c) of the Exposure Draft had not been amended in accordance[145] with the *September 2015 decision*[146]. Clauses 6.4(c) and (d) read as follows:

> '**(c)** A casual employee will be paid:

(i) an hourly rate of no less than 1/38th of the minimum weekly rate for the classification in which they are employed; plus

(ii) a casual loading of 25%.

(d) The casual loading constitutes part of the employee's all purpose rate.'

[248] The AWU argued that the loading should be expressed as 25% of the ordinary hourly rate which it submits is the general approach for the calculation of the casual loading for awards that contain all purpose allowances.[147] Ai Group initially opposed this submission,[148] however later submitted that they no longer oppose the AWU's submission.[149]

[249] The provisions in clause 10.3(b) of the current award are as follows:

'**(b)** For each hour worked, a casual employee will be paid no less than 1/38th of the minimum weekly rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 25%. The loading constitutes part of the casual employee's all purpose rate.'

[250] In the *September 2015 decision*, the Full Bench decided as follows:

'**[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.'[150]

[251] While 6.4(c) the Exposure Draft does not currently use the term ordinary hourly rate, as previously stated, the award does contain a number of all purpose allowances and therefore the term ordinary hourly rate would apply if the general approach is to be adopted. This terminology is also consistent with that used in the summary of hourly rates tables in schedule B of the Exposure Draft. In the circumstances we propose to amend the clause as follows:

(c) A casual employee will be paid:

(i) ~~an hourly rate of no less than 1/38th of the minimum weekly rate~~ the ordinary hourly rate for the classification in which they are employed; plus

(ii) a casual loading of 25%.

[252] Ai Group submit that the casual loading is not payable for overtime, shiftwork or in the case of penalties. Ai Group submit that the table in clause B.2.3 of the summary of hourly rates schedule should be amended accordingly.[151] This matter was referred to the casual and part-time employment Full Bench. However, the matter was not pursued by Ai Group in the part-time and casual employment proceedings. The AWU disagreed with Ai Group's submission, arguing the clause 6.4(d) (which reflects the second sentence of clause 10.3(b) of the current award) clearly states that casual loading forms part of the employees all purpose rate.[152] The AWU further submits that the outcome of not applying the loading would mean that a casual worker, working night shift would receive a 15% loading while a casual employee working day work would receive the 25% casual loading. We agree with the AWU. Clause 6.4(d) of the Exposure Draft (clause 10.3(b) of the current award) states:

'**(d)** The casual loading constitutes part of the employee's all purpose rate.'

[253] The rates in clause B.2.3 are consistent with clause 10.3(b) of the current award. The Exposure Draft will not be amended.

Item 3—casual employees—list of provisions that do not apply to casuals

[254] Clause 6.4(e) of the Exposure Draft is as follows:

'**(e)** The casual loading in clause 6.4(c)(ii) is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.'

[255] CFMEU (M&E) initially submitted that the clause should be redrafted to replace the term 'attributes' with 'entitlements'. This was agreed and updated in a subsequent Exposure Draft. CFMEU (M&E) subsequently submitted that upon reflection the term 'attributes' could be read more widely submit that this provision be reverted to the original drafting (and the wording of the current award) to avoid any attempts to deny entitlements to casual employees that they have always had such as shift penalties.[153]

[256] Ai Group do not oppose CFMEU (M&E) submission to revert the wording of the Exposure Draft to the current wording. The Ai Group's preferred position is however that the clause be deleted as it is misleading and refers to only some to the entitlements of full-time and part-time employment that the casual loading is in lieu of and not all of them.[154]

[257] Clauses similar to clause 6.4(e) of the Exposure Draft were proposed for a number of exposure drafts in Group 1 that did not have an equivalent existing provision. In the *December 2014 decision* the Full Bench determined that these clauses would be removed from exposure drafts.[155] Consistent with this decision the provision was removed from exposure drafts that did not already contain an existing provision. It was not removed from the exposure draft of awards that currently contain such a provision.

[258] We have considered the parties' submissions and determine that, consistent with the *December 2014 decision*, the clause should be retained as it appears in the current award. The term 'entitlements' will be replaced with 'attributes' as it appears in the current award.

Item 13—Summary of hourly rates table—casual employees—overtime rates

[259] The AWU noted that the casual overtime rates were not included in Schedule B—Summary of hourly rates.[156]

[260] There are few instances where casual overtime rates have been included in exposure drafts. This issue was discussed in the *Group 3 Decision*:[157]

'**[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.
>
> **[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, 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.'

[261] While the AWU noted that the overtime rates had not been included, it appears they were not seeking to vary the schedule to include the overtime rates tables for casuals, but rather were just making an observation. The matter was not pressed by the parties in the Casual Employment Full Bench proceedings. Accordingly, casual overtime rates will not be inserted into the Exposure Draft.

Item 8A—Ordinary hourly rate versus minimum hourly rate—penalties and overtime

[262] Ai Group raised an issue about the use of the phrase ordinary hourly rate in clause 13.2 of the Exposure Draft, which it argued was a change from the current provisions and would lead to increased costs for employers.[158] ABI submit that this issue remains outstanding and supported the Ai Group submission.[159] As discussed in paragraph [245] of this decision, the Full Bench determined this matter in the *July 2015 decision*. The all purpose allowance is added *before* calculating penalty rates and overtime.

Item 15A—Definition of ordinary hourly rate

[263] Ai Group made a submission suggesting that the cross reference used in the definition of ordinary hourly rate in Schedule H should be amended.[160] The definition currently references clause B.1.3. Ai Group notes that issues may arise in the case of calculating overtime and penalties for apprentices and junior employees given that clause B.1.3 does not include those rates.

[264] This change to the clause reference occurred after *July 2015 Decision*[161] determined that the body of the award will only contain the minimum weekly rate pay along with the minimum hourly rate. Ai Group suggested that the reference be changed to clause 9 which includes the minimum rates of pay for both adult employees and apprentices. As the minimum hourly rate does not include the all purpose allowance, it is inaccurate to refer to the rates in clause 9 as inclusive of the industry allowance.

[265] We agree with Ai Group, however, an additional amendment is necessary to make it clear that the industry allowance must be added prior to calculating penalties and overtime. The amendment will be made as follows:

> **ordinary hourly rate** means the hourly rate for an employee's classification specified in clause 9 ~~B.1.3~~ ~~inclusive of~~ plus the industry allowance. Where an employee is entitled to an additional all purpose allowance, this allowance forms part of that employee's ordinary hourly rate.

[266] A similar issue arises with the cross reference in the definition for casual ordinary hourly rates. This definition will also be amended as follows:

> **casual ordinary hourly rate** means the hourly rate for a casual employee for the employee's classification specified in clause 9 ~~, inclusive of~~ plus the casual loading and the industry allowance. Where an employee is entitled to an additional all purpose allowance, this allowance forms part of that employee's ordinary hourly rate.

Item 4—Probationary period

[267] In the *October 2015 decision*, the Full Bench expressed the *provisional* view that the probationary period provisions in clause 6.5 of the Exposure Draft (clause 10.4 of the current award) should be removed:

> '**[139]** In the Exposure Draft the Commission posed the question to the parties as to whether there is any requirement to include a clause in relation to Probation given the current legislative provisions. While Ai Group did not consider there was any inconsistency with the Act in the retention of such a clause and that "Probationary periods remain an important and relevant management tool" no party provide [sic] strong grounds for its retention. We express a provisional view that the provision will be deleted.' [162]

[268] The AWU support the *provisional* view of the Full Bench.[163] AMMA were opposed to its removal, arguing that the Full Bench must demonstrate that the variation is necessary to achieve the modern awards objective. In their view, the variation is not necessary to achieve the modern awards objective.[164] The AWU further submits that the Full Bench determined in relation to the *Rail Industry Award 2010* that the clause serves no practical purpose and does not provide for any difference in entitlements to other employees.[165] The AWU submits that the same rationale applies to the Mining Award.

[269] In light of the fact that the provisions do not provide for any difference in entitlement for probationary employees as compared to other employees there is no evidence before us that would suggest that retaining the clause is necessary to achieve the modern awards objective. We see no grounds for its retention. Clause 6.5 of the Exposure Draft will be deleted.

3.14 Oil Refining and Manufacturing Award 2010

[270] A revised summary of submissions relating to the *Oil Refining and Manufacturing Award 2010* (the Oil Refining Award) was published on 22 March 2018. Ai Group, AMMA, AWU and AMWU made submissions in relation to the review of the award. The following items were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors: items 1, 3-6, 6A, 9, 10, 11, 12, 14 and 15. Variations to the Exposure Draft will be made for those items. Item 4A is referred to the Plain Language Full Bench (AM2016/15). Item 2, 16 and 17 deal with the issue of overtime for casual employees, which is discussed earlier in this decision (see paragraphs [17] – [20]).

[271] Items 7, 8, 13 and 18 remain outstanding.

Item 7 and 8—Shiftwork definitions; and Item 18—Definitions

[272] A definition of 'permanent shift' was inserted into clause 13.1 of the Exposure Draft (published on 2 November 2015). It appeared in red text to denote that it was a change agreed to by parties. The definition reads as follows:

> '**permanent shift** means a period of shiftwork where an employee works afternoon shift only or night shift only; or remains on afternoon or night shift for longer than four consecutive weeks; or works on afternoon or night shift that does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the afternoon or night shift in each shift cycle.'

[273] AMMA submitted that the parties had not agreed to the insertion of this definition during the Exposure Drafting process.[166] It expressed the view that the term 'permanent shift' in the definition contains a typographical error and should have read 'permanent night shift'. Otherwise, according to AMMA, this would represent a substantial variation to the current award, which might impose additional costs on employers and raise uncertainty in compliance obligations.[167]

[274] AMMA also noted that there is no corresponding definition of 'permanent shift' in Schedule H—Definitions.[168]

[275] AMMA advised that if the issue were to be resolved on the papers, AMMA's preliminary position would be that the definitions in the Oil Refining Award should be varied to reflect the wording in the Exposure Draft of the Hydrocarbons (Upstream) Award.[169]

[276] Ai Group also submitted that the insertion of a definition of 'permanent shift' was not a variation agreed between the parties.[170]

[277] In support of this submission Ai Group referred to its response to the question appearing at clause 13.1 of the Exposure Draft published on 29 September 2014. The question asked whether a definition of 'permanent shift' should be included and it was accompanied by a suggested definition in the same form as that currently under consideration.[171] On 24 October 2014, Ai Group responded by stating that if an additional definition or definitions were to be included, it proposed that separate definitions be included for 'permanent afternoon shift' and 'permanent nightshift' based on the definition proposed in the Exposure Draft.[172] This was because the term 'permanent shift' was not in fact used in the Exposure Draft.[173]

[278] Ai Group also pointed to the *October 2015 decision*[174] which indicated that the Full Bench proposed to adopt a number of changes in relation to which there was broad agreement and that these were summarised in a table in Ai Group's submission dated 24 November 2014.[175] This summary did not make any reference to the issue of inclusion of a definition of 'permanent shift.' The *October 2015 decision* did not otherwise deal with the insertion of the definition in the Exposure Draft.

[279] Ai Group later called for the definition of 'permanent shift' in the Exposure Draft to be revisited, referring to the terms 'permanent afternoon shift' and 'permanent night shift' in clauses 13.3(b) and (c). It stated that if it had been decided that those terms need to be

defined, two separate definitions, specific to those terms, should be inserted.[176] Ai Group concurred with AMMA's submission that the definitions should reflect the approach adopted in the Exposure Draft of the Hydrocarbons (Upstream) Award.[177]

[280] Clauses 13.3(b) and (c) of the Oil Refining Exposure Draft provide as follows:

> '**13.3 Shiftwork penalties**
>
> **(b)** A shiftworker must be paid **120%** of the ordinary hourly rate for each ordinary hour worked on *permanent afternoon shift*.
>
> **(c)** A shiftworker or continuous shiftworker must be paid **130%** of the ordinary hourly rate for each ordinary hour worked on *permanent night shift*.' [emphasis added]

[281] The AWU opposed what it described as AMMA's suggestion that the definition of 'permanent night shift' from the Hydrocarbons (Upstream) Exposure Draft be inserted.[178] The AWU submitted that the definition of 'permanent shift' is appropriate because there are higher rates for both permanent afternoon shift (20%) and permanent night shift (30%) in clause 13.3 of the Exposure Draft. The AWU was of the view that there was no reason why a different definition of what is 'permanent' should apply for afternoon and night shift.

[282] The AWU argued that the Hydrocarbons (Upstream) Award differs from the Oil Refining Award because it does not contain a higher rate for permanent afternoon shift and so only requires a definition for permanent night shift.179

[283] The AMWU supported the position of the AWU in relation to this issue.[180]

[284] The definition for 'permanent night shift' in clause 13.1 of the Hydrocarbons (Upstream) Award reads as follows:

> **'permanent night shift** means **when an employee who:**
>
> **(a)** during a period of engagement on shiftwork works night shift only; or
>
> **(b)** remains on night shift for a longer period than four consecutive weeks; or
>
> **(c)** works on a night shift which does not rotate or alternate with another shift or with day work so as to give him or her at least one third of their working time off in each shift cycle.'

[285] We think it unlikely that the term 'permanent shift' contains a typographical error and should read 'permanent night shift' as contended by AMMA, since the definition includes reference not only to night shift, but also to afternoon shift. Further, the same definition of 'permanent shift' appeared in the Exposure Draft for the Mining Award dated 29 September 2014[181] and it was reproduced in the *October 2015 decision.*[182]

[286] We accept that there was no agreement between the parties for the insertion of a definition for 'permanent shift' into clause 13.1. At the time of the *October 2015 decision* there appeared to be agreement between AMMA and Ai Group that separate definitions be

included for 'permanent afternoon shift' and 'permanent night shift' based on the definition proposed in the Exposure Draft.

[287] It is also significant that the term 'permanent shift' does not appear anywhere in the Exposure Draft. Instead, the terms 'permanent afternoon shift' and 'permanent night shift' exist in clauses 3.3(b) and (c), without being defined.

[288] The definition of 'permanent shift' appears to be a combination of definitions for 'permanent afternoon shift' and 'permanent night shift'. The definition of 'permanent night shift' is consistent with the definition of 'permanent night shift' which we decided to include in a number of exposure drafts in our *October 2015 decision*, with some variation in wording depending on the Exposure Draft. The Exposure Draft of the Hydrocarbons (Upstream) Award was one such Exposure Draft.[183]

[289] It is our *provisional* view that for the award to operate effectively and in the interests of simplicity and clarity the definition of 'permanent shift' should be deleted and separate definitions of 'permanent afternoon shift' and 'permanent night shift' should be inserted.

[290] A conference will be convened before Senior Deputy President Hamberger for the purposes of settling the definitions of 'permanent afternoon shift' and permanent night shift' that will be inserted into the award. A listing for this conference will be issued shortly.

Item 13—Summary of hourly rates of pay

[291] In its submission of 20 November 2015[184] Ai Group noted that the Exposure Draft published on 2 November 2015 contained one all purpose allowance (namely, the industry allowance) that was payable to all employees covered by it, other than clerical employees. The ordinary hourly rate was defined to include this industry allowance.

[292] Ai Group submitted that the schedule containing a summary of hourly rates of pay should be amended to include a note making it clear that the schedule did not apply to clerical employees, since the rates were based on the ordinary hourly rate. The AWU was not opposed.[185]

[293] The Exposure Draft published on 13 June 2017 included the following note added to the tables:

> '[1]**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.'

[294] In the *July 2017 decision* it was stated:

> '**[361]** Where an award contains an all purpose allowance that applies to *all* employees <u>*and*</u> 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'.[186]

[295] As confirmed by Attachment B of the *July 2017 decision* and current clause 15.3(a), the all purpose industry allowance in the Oil Refining Award does not apply to all employees. Clerical employees are excluded.

[296] Clause 15.3(a) of the current award provides:

> '**(a)** Employees (other than clerical employees) will be paid an all-purpose industry allowance of 4% of the standard rate per week.'

[297] In addition the definition of 'ordinary hourly rate' in Schedule H of the Exposure draft is as follows:

> '**ordinary hourly rate** means the hourly rate for an employee's classification specified in clause 10—Minimum wages plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes. Note: the industry allowance does not apply to clerical employees.'

[298] In its submission of 11 July 2017, Ai Group maintained the schedule containing a summary of hourly rates of pay should be amended to include a note making it clear that it did not apply to clerical employees.

[299] We have decided that the note at the end of each table in Schedule B should be amended by inserting the phrase 'other than clerical employees' so it reads as follows:

> [1]**Ordinary hourly rate** includes the industry allowance payable to all employees, other than clerical employees, for all purposes.

[300] In addition we have decided to create separate tables of rates for the clerical classifications which will assist in ensuring the distinction between employees who receive the industry allowance and those who don't is sufficiently clear. Interested parties will have an opportunity to comment on the accuracy of the rates once they have been inserted into the exposure draft.

[301] These amendments, in conjunction with the definition of 'ordinary hourly rate' in B.1.1 which specifically excludes clerical employees, will make it clear that the industry allowance is not payable to clerical employees.

3.15 Pharmaceutical Industry Award 2010

[302] A revised summary of submissions relating to the *Pharmaceutical Industry Award 2010* (the Pharmaceutical Award) was published on 22 March 2018. Ai Group, ABI and the AWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 2, 5B, 6, 7, 8, 10, 11, 13 and 14 were either agreed between the parties, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. Variations to the Exposure Draft will be made for those items. Items 5A, 9 and 12 have been referred to other Full Benches.

[303] Items 3, 4, 5 and 11A remain outstanding.

Item 3—Ordinary hours of work and rostering

[304] Ai Group submits that clause 8.2(a) of the Exposure Draft does not satisfy s.147 of the Act in relation to casual employees. It is submitted that the Exposure Draft does not specify or provide for the determination of ordinary hours for casual employees.[187]

[305] Clause 8.2(a) of the Exposure Draft is expressed as follows:

> **'8. Ordinary hours of work and rostering**
>
> **8.2 Ordinary hours—day workers**
>
> (a) The ordinary hours of work for a day worker are an average of 38 hours per week but not exceeding 152 hours in 28 consecutive days.'

[306] Ai Group submits that the words 'up to' should appear immediately after the words 'average of' on the basis that, as currently drafted, clause 8.3(a) does not meet the requirements of s.147. The AWU are not opposed to insertion of the words 'up to'.[188]

[307] Section 147 of the Act is as follows:

> '**Ordinary hours of work**
>
> A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.'

[308] We note that clause 8.2(a) of the Exposure Draft is in the same terms as clause 23.2(a) of the current award. The issue raised by Ai Group can be resolved by inserting the words 'full time' before 'day worker' in clause 8.2(a) and we will amend the Exposure Draft accordingly.

Item 4—Part-time employee and ordinary hours—shiftworkers

[309] The AMWU points out that item 4 effectively concerns two issues. The first relates to clause 8.2(c) of the current award, concerning a perceived ambiguity relating to alteration of the spread of hours.[189] This issue was discussed in our *October 2015 decision*.[190] In that decision we deferred consideration of the issue until the conclusion of the Award stage of the Review, as the matter may have implications for other awards. We confirm our intention that this matter will be dealt with at the conclusion of the Award stage of the Review.

[310] The second issue concerns the AMWU's submission that clauses 6.3(c) and 8.2(c) of the Exposure Draft should make reference to clause 22.2, which deals with consultation.[191] In support of this submission, the AMWU directed the Commission's attention to its submissions in AM2014/75 (concerning the Manufacturing Award).[192]

[311] Clause 6.3 of the Exposure Draft provides the following:

‘**6.3 Part-time employees**

(a) A part-time employee:

(i) is engaged to work less than 38 ordinary hours per week; and

(ii) has reasonably predicable hours of work; and

(iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work on the basis that the ordinary weekly hours for a full-time employee are 38.

(b) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

(c) Any agreed variation to the regular pattern of work will be recorded in writing.

(d) On each occasion a part-time employee is required to attend work, the employee must be engaged for a minimum of three consecutive hours.’[193]

[312] Clause 8.2 of the Exposure Draft provides the following:

‘**8.2 Ordinary hours—day workers**

(a) The ordinary hours of work for a day worker are an average of 38 hours per week but not exceeding 152 hours in 28 consecutive days.

(b) Ordinary hours are worked continuously, except for meal breaks and rest pauses, between 7.45 am and 5.15 pm, Monday to Friday.

(c) Where the employer and the majority of employees in the affected plant, work section or sections agree, the spread of hours may be altered by up to one hour at either end of the spread.

(d) The ordinary hours of work for a part-time or casual employee will be in accordance with clause 6—Types of employment.’[194]

[313] ABI submits that in circumstances where the ordinary pattern of work is varied by agreement (as opposed to being varied unilaterally) the inclusion of a cross-reference to clause 22.2 is unnecessary[195] and the amendment proposed by the AMWU is opposed by ABI.[196]

[314] Ai Group also opposes the AMWU’s proposal to insert a reference to clause 22.2 in clauses 6.3(c) and 8.2(c).[197] Ai Group submits that clause 22.2 only applies where the employer proposes to change the regular roster or ordinary hours of work. It is submitted that if, for example, an employee proposed to change their regular pattern of work, and it is agreed to by the employer, clause 22.2 would not apply. Ai Group submits that it would be potentially misleading to insert a reference to clause 22.2 as it would not always apply.[198]

[315] Ai Group also submits that the inclusion of unnecessary references would conflict with s.138 of the Act.[199]

[316] We agree with the submission of Ai Group that it is potentially misleading to insert a reference to clause 22.2. Such a cross reference is unnecessary and in circumstances where the potential changes referred to in the relevant clauses can only be implemented with the agreement of the affected employee.

Item 5—Unpaid meal breaks

[317] The AWU submits that the change from 'ordinary time rate', where it appears at clause 24.1(b) of the current Pharmaceutical Award, to 'ordinary hourly rates', which appears at clause 9.1(b) of the Exposure Draft, may have adverse consequences for non-continuous shiftworkers. Specifically, it is submitted that the change in terminology may result in non-continuous shiftworkers losing their shift loading if they work for more than five hours without a meal break, as the definitions of 'ordinary hourly rate' and 'minimum hourly rate' proposed by the Full Bench do not include shift allowances.[200]

[318] Clause 9.1 provides that:

> '**9.1 Unpaid meal breaks**
>
> Subject to clause 9.3:
>
> **(a)** no employee is required to work for a longer period than five hours without an unpaid meal break of at least half an hour;
>
> **(b)** the employer and an employee or the majority of affected employees in the plant, work section or sections concerned may agree that employees work in excess of five hours, but not more than six hours, at ordinary hourly rates without a meal break;
>
> **(c)** if an employer has adopted a system of ordinary working hours in which employees do not work for more than six hours per day or shift, and they do not work in excess of their ordinary hours on that day or shift, then the employer and the majority of those employees may agree that those employees do not have a meal break on that day or shift.'[201]

[319] The AWU submits that, when a similar issue arose in the Exposure Draft of the Manufacturing Award, the Full Bench developed and inserted a definition of 'applicable rate of pay' in order to remedy the situation.[202] The Full Bench defined applicable rate of pay as 'the ordinary hourly rate plus penalties and relevant loadings.'[203] The AWU submits that 'this same definition of "Applicable rate of pay" could be inserted into the Exposure Draft and clause 9.1 (b) amended accordingly or alternatively the current reference to "ordinary time rates" could be retained.'[204]

[320] The position of the AWU is supported by ABI.[205]

[321] Ai Group 'strongly oppose the insertion of the term 'applicable rate of pay' and accompanying definition as sought by the AWU.'[206] The alternative proposition—the retention of the words 'ordinary time rates'—is not opposed.[207]

[322] A similar issue arose in relation to the Manufacturing Award, and Ai Group has directed the Commission to its submissions in relation to that award.[208] In that matter, the Exposure Draft of the Manufacturing Award included a number of clauses where this issue arose. Clause 14.1(b) of that Exposure Draft is drafted in similar terms to clause 9.1(b), above. Prior to being amended, clause 14.1(b) of the Exposure Draft of the Manufacturing Award reads:

> '**(b)** where an employer and the majority of employees in an enterprise or part of an enterprise (or the employer and an individual employees) agree that the employees (or individual employee) may be required to work in excess of five hours but not more than six hours at the ordinary hourly rate without a meal break.'[209]

[323] The matter was considered by the Full Bench in its *June 2017 decision*.[210] In that matter it was determined that the wording proposed by the relevant parties should be adopted, and that the clause should include the following new sentence: 'Employees will be paid for the sixth hour at the rate applying immediately prior to the end of the fifth hour.'[211] Ai Group submits that it would not oppose an amendment in similar terms, such that clause 9.1(b) of the Exposure Draft of the Pharmaceutical Award would read:

> **(b)** the employer and an employee or the majority of affected employees in the plant, work section or sections concerned may agree that employees work in excess of five hours, but not more than six hours, without a meal break. Employees will be paid for the sixth hour at the rate applying immediately prior to the end of the fifth hour of work;[212]

[324] Given our approach to this same issue as it arose in connection with the Manufacturing Award, we are satisfied that the approach proposed by Ai Group resolves the issue and maintains consistency with our approach in relation to other awards. The Exposure Draft of the Pharmaceutical Award will be amended to incorporate the additional sentence proposed by Ai Group.

Item 11A—Overtime

[325] Ai Group submits that the table appearing at clause 14.2 of the Exposure Draft 'identifies the various rates payable however does not prescribe the amount by reference to which the overtime rate is to be calculated.'[213] Ai Group proposes that table heading be amended so that it appears as follows:

For overtime worked on	**Overtime rate (% minimum hourly rate)**	**Minimum payment**
Day workers		
…	…	…

[326] No other submissions were received on this issue.

[327] We agree with Ai Group that the table should specify that each figure is a percentage of the minimum hourly rate. We will amend the table to include such a reference.

Drafting error—clause 6.2

[328] In reviewing the provisions of clause 10 of the current award comparing them to clause 6.2 of the Exposure Draft we have noticed a drafting error. Clause 10 of the current award provides as follows:

> '**10 Full-time employment**
>
> An employee not specifically engaged as a part-time or casual employee is for all purposes of this award a full-time employee.'

[329] Clause 6.2 of the Exposure Draft provides as follows:

> '**6.2 Full-time employees**
>
> A full-time employee is engaged to work an average of 38 ordinary hours per week.'

[330] Clause 6.2 of the Exposure Draft is materially different to clause 10 of the current award. In order to avoid unintended consequences on the operation of the award we propose that the wording of the current provision should be retained and will amend the Exposure Draft accordingly.

3.16 Poultry Processing Award 2010

[331] A revised summary of submissions relating to the *Poultry Processing Award 2010* (Poultry Award) was published on 22 March 2018. Business SA, Ai Group, the AWU, AMWU and Australian Federation of Employers and Industry (AFEI) made submissions in relation to the outstanding technical and drafting issues for this award. Items 1, 2, 6, 7, 8, 9, 10 and 11 were either agreed between the parties, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. Variations to the Exposure Draft will be made for those items. Item 4A has been referred to the Plain Language Full Bench. Item 5 will be determined by the Payment of Wages Full Bench in AM2016/8.

[332] Items 3, 3A, 4 and 5 remain outstanding.

Item 3—Ordinary hours

[333] Ai Group submits that clause 8.1(b)(i) of the Exposure Draft does not satisfy s.147 of the Act in relation to casual employees. It is submitted that the Exposure Draft does not specify or provide for the determination of ordinary hours for casual employees.[214]

[334] Clause 8.1(b)(i) of the Exposure Draft is currently expressed as follows:

> '**(i)** the ordinary hours of work for an employee are an average of 38 per week; and'

[335] Ai Group submits that the words 'up to' should appear immediately after the words 'average of' on the basis that, as currently drafted, clause 8.1(b)(i) does not meet the requirements of s.147. The AWU are not opposed to insertion of the words 'up to'.[215]

[336] Section 147 of the Act is as follows:

> **'Ordinary hours of work**
>
> A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.'

[337] We note that clause 8.1(b)(i) is in the same terms as clause 24.2 of the current award. The issue raised by Ai group can be resolved by inserting the words 'a full time' before 'employee' and deleting the word 'an' that appears before 'employee' in clause 8.1(b)(i). The typographical error in clause 8.1(b)(i) will also be corrected.

Item 3A—Ordinary hours—day workers

[338] This issue is the same as that which was raised in relation to the Pharmaceutical Award, which was discussed in the *October 2015 decision*.[216] In that Decision we deferred consideration of the issue until the conclusion of the Award stage of the Review, as the matter may have implications for other awards.

Item 4—Ordinary hours—day workers

[339] In submissions filed in November 2015, the AMWU submitted that the Exposure Draft should be amended to include a reference to the consultation clause in clause 8.2(b), which concerns ordinary hours for day workers. In support of this submission, the AMWU directed the Commission's attention to its submissions in AM2014/75 (concerning the Manufacturing Award).[217]

[340] Clause 8.2(b) of the Exposure Draft provides the following:

> '**(b)** Ordinary hours of work are to be worked continuously, except for meal and rest breaks, at the discretion of the employer, between the hours of 5.00 am and 5.00 pm. The spread of hours (5.00 am to 5.00 pm) may be altered by up to one hour at either or both ends of the spread, by agreement between an employer and the majority of affected employees, or in appropriate circumstances, between the employer and an individual employee.'[218]

[341] The submission referred to by the AMWU (insofar as it relates to clause 8.2(b) of the Poultry Award Exposure Draft) seeks the inclusion of a reference to the award's consultation provisions in the clause that permits an employer to set rosters or hours or work.[219] The AMWU submits that the *October 2015 decision* of the Full Bench (concerning exposure drafts in Groups 1C, 1D and 1E)[220] 'confirms that an employer's right to change an employee's regular roster or ordinary working hours is subject to consultation requirements.'[221]

[342] Ai Group opposes the proposal of the AMWU to vary the Exposure Draft of the Poultry Award for the same reasons it opposed the AWMU's proposal to vary the Manufacturing Award.[222] In that matter, Ai Group submitted that the proposed changes:

> '…are inconsistent with the approach taken by the Commission throughout the modern award system whereby it has generally decided not to include references to the consultation clause in the very large number of award clauses dealing with hours of work and rosters. Such references are unnecessary and hence conflict with s.138 of the Act. A similar approach has been taken by the Commission in relation to dispute settling. Even though parties have access to the dispute settling clause in the relevant award, if a dispute arises in relation to the operation of any award clauses, it is unnecessary to include a reference to the dispute settling clause under each provision.'[223]

[343] We dealt with this issue in the *June 2017 decision*.[224] In that decision we noted that the interaction between the consultation provisions and the clauses that related to the setting of hours of work was considered in the *Consultation Clause Test Case*[225] where the Full Bench made the following observations:

> '**[46]** We now turn to the relationship between the obligation to consult required by the relevant term and other provisions within a modern award.
>
> **[47]** A number of parties contended that the obligation to consult set out in the relevant term should be read subject to other provisions of the modern award such that the other provisions displaced the obligation to consult. An example serves to illustrate the proposition. If a modern award contained a provision which allowed an employer to vary an employee's regular roster on the giving of a specified period of notice (say 7 days) then the obligation to consult imposed by the relevant term would not apply.
>
> **[48]** We are not persuaded that the relevant term was intended to operate in the manner contended. As mentioned earlier, s.145A is not a source of power in that it does not confer a right on an employer to change an employee's regular roster or ordinary hours of work. The source of such a power must be found elsewhere - either in the contract of employment or in an industrial instrument, such as a modern award. It is significant that s.145A was enacted against the background of existing provisions in modern awards which provide employers with the right to change an employee's regular roster or ordinary hours of work. It is also significant that s.145A does not state that the obligation to consult is subject to any other provisions in a modern award.
>
> **[49]** If the proposition advanced were accepted it would, to a significant extent, effectively render s.145A nugatory. The obligation to consult would have no operation in circumstances where the modern award entitled an employer to change an employee's regular roster or ordinary hours of work. We are not persuaded that such a proposition is consistent with the terms of s.145A or its legislative purpose.
>
> **[50]** Section 145A is intended to impose a new, additional obligation to consult employees in circumstances where their employer proposes to change their regular roster or ordinary hours of work. There is no conflict between the imposition of such an obligation and existing modern award provisions permitting the variation of a regular roster or ordinary hours of work on the giving of a specified period of notice or pursuant to a facilitative provision. There is no impediment to the employer complying with both provisions. The employer may still implement the proposed change on the giving of the requisite notice, but will now be required to consult the employees affected before implementing such a change. As we have mentioned

such consultation must provide the affected employees with a genuine opportunity to attempt to persuade the employer to adopt a different course of action. For these reasons the relevant term will make it clear that it is to be read in conjunction with other award provisions concerning the scheduling of work and notice provisions.'

[344] In the *June 2017 decision* we were satisfied that the inclusion of a reference to the consultation provision that otherwise suggests the employer retains sole discretion to alter hours of work avoids confusion. We amended the clause in the Manufacturing Award by inserting an additional sentence at the end of the clause reading 'Any change to rosters or hours of work is subject to the consultative provisions in clause 41.2.'[226]

[345] The same reasoning is applicable in the current case concerning the Poultry Award. We are satisfied that the inclusion of a reference to the award's consultation provisions will help avoid confusion amongst the Poultry Award's readers. We will amend clause 8.2(b) by adding an additional sentence to the end of the clause that reads 'Any change to rosters or hours of work is subject to the consultative provisions in clause 22.2.'

3.17 Premixed Concrete Award 2010

[346] Ai Group and ABI made submissions in relation to the review of the Premixed Concrete Award. A summary of submissions for the Exposure Draft was published on 22 March 2018. Items 1, 2, 5, 6, 8, 9, 10, 11, 13, 14 and 16 were either confirmed as resolved by agreement or determined in a previous Full Bench decision. Variations to the Exposure Draft will be made for those items. Item 7 is referred to the Plain language Full Bench in AM2016/15 for determination. Items 3 and 4 are dealt with above at paragraph [17] of this decision. Item 12 is dealt with above at paragraphs [6] – [14].

[347] Items 6 and 15 remain outstanding.

Item 6—Ordinary hours for part-time employees

[348] In a joint submission Ai Group, ABI, AFEI and AWU,[227] agreed to amend a clause reference in clause 8.1(d) as follows:

> '**(d)** The ordinary hours of work for a part-time employee will be in accordance with clause~~s~~ 6—Types of employment ~~and 8.1(a)~~.'

[349] Clause 8.1(a) reads as follows:

> '**(a)** Ordinary hours for employees other than shiftworkers are worked between 6.00 am and 6.00 pm, Monday to Friday. The employer and the majority of the employees in the section or sections of the operation may agree to vary the spread of hours in this subclause.'

[350] We have decided to adopt this change.

Item 15—All purpose allowances

[351] Item 15 contains two issues. The first concerns the terminology used for 'industry allowance'. ABI submit references to 'industry allowance' contained in the note (footnote 1) of the tables at Schedule A—Summary of Hourly Rates of Pay should be varied to 'industry disability allowance' to reflect the current Premixed Concrete Award.[228]

[352] We have decided to make the change as suggested by ABI. We note the current Premixed Concrete Award (with the exception of the Transitional Provisions Schedule) refers only to 'industry disability allowance'. Adopting ABI's proposal reflects the current Premixed Concrete Award and will result in consistency of language.

[353] The second issue in item 15 relates to Schedule A—Summary of Hourly Rates of Pay. ABI submit the second sentence of the note (footnote 1) contained in the tables does not assist.[229] The second sentence of the note currently provides:

> 'Any additional all purpose allowances applicable need to be added to these rates.'

[354] ABI submits the sentence should be amended to:

> 'In the event that other all purpose allowances (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d)) are applicable, these should be added to the above rates.'

[355] The purpose of the wage tables in the schedules of awards is to ensure awards are simple and easy to understand as was noted in the *July 2015 decision*.[230] Earlier in this decision we deal with a similar submission from ABI in relation to Cement, Lime and Quarrying Exposure Draft.

[356] For the reasons given above at paragraph [116] we will amend the second sentence of the table as follows:

> Any applicable all purpose allowance (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d)) will form part of the employee's ordinary hourly rate and must be added prior to calculating penalties and overtime.

3.18 Professional Diving Industry (Industrial) Award 2010

[357] A revised summary of submissions in relation to the *Professional Diving Industry (Industrial) Award 2010* (Professional Diving Industrial Award) was published on 22 March 2018. No submissions were received following the *June 2017 decision*. In the *June 2017 decision* the Full Bench determined the outstanding matter in relation to the hours of work for Inshore divers.[231] Following that decision a Statement[232] was published on 3 November 2017 outlining some issues raised by the Maritime Union of Australia (MUA) regarding the decision to vary the hours of work clause. A separate Full Bench (a subset of this Full Bench) has been constituted to consider the issues raised by the MUA regarding the variation to the hours of work clause.[233] Items 3 and 4 of the summary relate to drafting errors, which have been resolved by corrections to the Exposure Draft.

[358] Items 1 and 2 remain outstanding.

Item 1—Full-time employees ordinary hours

[359] In 2015 the AWU submitted that a cross reference should be inserted in clause 6.2(a) of the Exposure Draft to the industry specific ordinary hours of work provisions in clause 19, which apply to inshore divers and clause 24, which relate to offshore divers.[234]

[360] Clause 6.2 of the Exposure Draft reads as follows:

> '**6.2 Full-time employees**
>
> (a) A full-time employee is engaged to work an average of 38 ordinary hours per week.
>
> (b) Where employment is of less than four weeks' duration, employees will be paid casual rates.
>
> (c) Inshore divers must be employed by the week.
>
> (d) For offshore divers, employment for the first four weeks will be on a weekly basis and thereafter will be on a calendar month basis.'

[361] In June 2017, this Full Bench issued a determination varying the hours of work clause for inshore divers in the current award to 38 hours per week (clause 21.1).[235] Given that the variation to the current award resolved any inconsistency regarding the hours of work for offshore and inshore divers, the cross reference proposed by AMWU in 2015 is no longer necessary. The provisions in clause 6.2 are in similar terms to that provided in clause 10.2 of the current award. We see no reason to depart from the current provisions.

Item 2—Casual loading

[362] The AWU submit that clause 6.3(c) of the Exposure Draft be amended to simplify the provision and point to the appropriate full-time hourly rate for inshore and offshore divers, plus 25%.[236]

[363] Clause 6.3(c) provides the following:

> '**(c) Casual loading**
>
> For each ordinary hour worked, a casual employee must be paid:
>
> (i) 1/38th of the minimum weekly rate; and
>
> (ii) a loading of 25% of the minimum hourly rate,
>
> for the classification in which they are employed.'

[364] Following the *June 2017 decision*[237] and the subsequent variation of the hours of work clause[238] in the current award, the Exposure Draft was revised and republished on 13 June

2017,[239] clarifying that the minimum hourly rate for inshore divers was based on 38 hours per week. The minimum wages for inshore divers are provided in clause 21 and the minimum wages for offshore divers are provided in clause 25 of the Exposure Draft. Given that both clauses specify a minimum hourly rate for each classification, which is based on a 38 hour week, we have decided to amend clause 6.3(c) as follows:

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

[365] This amendment is consistent with casual loading clauses contained in other exposure drafts.

3.19 Professional Diving Industry (Recreational) Award 2010

[366] A revised summary of submissions relating to the Professional Diving Recreational Award was published on 22 March 2018. Association of Marine Park Tourism Operators (AMPTO), AFEI and the AWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 2, 2A, 2B, 3, 3A, 4, 5, 6 were either agreed between the parties, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors which have been corrected. Variations to the Exposure Draft will be made for those items.

[367] Item 1 remains outstanding.

Item 1—Casual loading

[368] Clause 6.7(a) of the Exposure Draft of the Professional Diving (Recreational) Award reads as follows:

> '**(a)** For each ordinary hour worked, a casual employee must be paid:
>
> **(i)** the minimum hourly rate; and
>
> **(ii)** a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.'[240]

[369] The AWU submits that the word 'ordinary' should be removed from clause 6.7(a), on the basis that the word 'ordinary' does not appear in the corresponding clause of the current award and that, as the loading is not confined to work performed during ordinary hours.[241]

[370] It is correct that the loading is not confined to work performed during ordinary hours in the current award. It appears that the drafting of the clause 6.7(a) of the Exposure Draft has

inadvertently changed the operation of this provision. The word 'ordinary' will be deleted and the clause will be redrafted as follows:

> **(a)** For each ~~ordinary~~ hour worked, a casual employee must be paid:
>
> **(i)** the minimum hourly rate; and
>
> **(ii)** a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.'[242]

3.20 Rail Industry Award 2010

[371] A revised summary of submissions in relation to the *Rail Industry Award 2010* (Rail Award) was published on 22 March 2018. Ai Group, the AWU, the AMWU and Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Metro Trains Melbourne, Sydney Trains and V/Line Passenger Pty Ltd made submissions in relation to the review of this award. Items 1, 2, 4, 4A, 5, 6, 11, 13, 18, 22 to 25 were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will now be made for those items. Items 7 and 8, 12, 14, 15, 16, 17, 21 have been referred to other Full Benches.

[372] Item 3 remains outstanding.

Item 3—Part-time employment—use of minimum hourly versus ordinary hourly rate

[373] The AWU submits that the reference to 'minimum hourly rate' in clause 6.3(b) should be amended to read 'ordinary hourly rate' as the award contains all purpose allowances.[243] The AWU's submission is opposed by Ai Group, which argues that the tool allowance in the award is not characterised as an all purpose allowance.[244] The tool allowance in the Rail Award provides as follows:

> '**(b) Tool allowance**
>
> A tradesperson required to provide and maintain the tools ordinarily required by that trade in the performance of work as a tradesperson must be paid a tool allowance of $17.82 per week which must be included in and form part of the employee's ordinary rate of pay.' [emphasis added]

[374] The tool allowance in the Exposure Draft is defined in clause 11.4(a) as an all purpose allowance because the allowance is expressed as being included in and forming part of the employee's 'ordinary rate of pay'.

[375] In the *July 2015 decision* the Full Bench observed that the term 'ordinary hourly rate' is used in contrast to 'minimum hourly rate' in affected awards to make clear that all purpose allowances must be added to the minimum rate of pay *before* calculating any penalty rate. In affected awards, penalties and loadings are expressed as a percentage of the ordinary hourly rate (for example, 'overtime is paid at 150% of the ordinary hourly rate'), 'to make clear that an all purpose allowance to which an employee is entitled must be added to the minimum rate before calculating the loaded rate that is, there is a *compounding* effect.'[245]

[376] The *July 2015 decision* determined that definitions of 'all purposes' and 'ordinary hourly rate' will be inserted into all affected awards. In relation to the casual loading in the Rail Award, the Full Bench in the *October 2015 decision* said the following:

> '**[241]** The ARA and Ai Group submit that the reference in clause 6.4(c) to the 25% casual loading being payable on the "ordinary hourly rate" was incorrect, and that it should be changed to the "minimum hourly rate". The RTBU and The AWU disagreed. The difference is that the minimum hourly rate does not include any all-purpose allowances, whereas the ordinary hourly rate does. The only allowance in the award described as an all-purpose allowance is the tool allowance (see clause 11.4(a) of the Exposure Draft). The ARA made a related submission that clause 11.4(b)(ii) of the Exposure Draft, which requires that the tool allowance form part of an employee's ordinary rate of pay (so that overtime and penalty rates provisions operate upon it), was incorrect and should be deleted.
>
> **[242]** This issue was determined in the September 2015 decision. The casual loading will be expressed as 25% of the ordinary hourly rate (that is, inclusive of any all purpose allowances).'[246]

[377] Ai Group's submission that the tool allowance is not an all purpose allowance lacks merit and focuses on the form rather than the substance of the entitlement. While the tool allowance in the Rail Award is not described as an all purpose allowance the practical effect of an allowance that is "included in and form(s) part of the employee's ordinary rate of pay" is that it operates as an all purpose allowance. The tool allowance has been correctly identified as an all purpose allowance in the Exposure Draft.

[378] Consistent with both the *July 2015* and the *October 2015 decisions*, the term ordinary hourly rate should be used. In view of the fact that the Rail Award contains all purpose allowances, clause 6.3(b) will be amended as follows:

> **(b)** For each ordinary hour worked, a part-time employee will be paid the ~~minimum~~ ordinary hourly rate of pay for their classification.

3.21 Salt Industry Award 2010

[379] A summary of submissions regarding outstanding issues for the Exposure Draft of the *Salt Industry Award 2010* (Salt Award) was published on 22 March 2018. Ai Group and ABI made submissions in relation to the outstanding technical and drafting issues for this award. Items 1 and 4 were determined in a previous Full Bench decision, or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will now be made for those items. Items 2 and 9 have been referred to other Full Benches.

[380] Items 3, 5, 6, 7, 8 and 10 remain outstanding.

Item 3—Junior employees

[381] Ai Group submits that, consistent with the approach taken concerning clause 10.1, the rates expressed in clause in 10.2 of the Exposure Draft should be the minimum weekly rate and minimum hourly rate, rather than rates that incorporate all-purpose allowances.[247]

[382] In the *July 2015 decision* the Full Bench made the following statement:

> 'In our view, the inclusion of hourly rates of pay in the body of the award is appropriate to ensure that awards are simple and easy to understand. The body of the award will contain the weekly rate of pay along with the minimum hourly rate. Where employees are entitled to other payments, these will be included in the schedule to the award. For example, if an award contains an all purpose allowance, the minimum rate will be included in the body of the award, with the ordinary hourly rate outlined in the schedule to the award.'[248]

[383] We are persuaded that the rates contained in clause 10.2 of the Exposure Draft should reflect the minimum rates, not ordinary rates, consistent with the *July 2015 decision*. The table appearing at clause 10.2 will be amended in the following manner:

Age	**% of Level 2 adult rate %**	**Junior ~~ordinary~~ minimum weekly rate[1] $**	**Junior ~~ordinary~~ minimum hourly rate[2] $**
16 years or less	65	~~490.96~~ 471.38	~~12.92~~ 12.40
At 17 years	80	~~599.74~~ 580.16	~~15.79~~ 15.27
At 18 years	90	~~672.26~~ 652.68	~~17.70~~ 17.18
At 19 years	100	~~744.78~~ 725.20	~~19.30~~ 19.08
[1] **Junior ~~ordinary~~ minimum weekly rate** is based on a percentage of the minimum weekly rate~~ and includes the full industry allowance~~. [2] **Junior ~~ordinary~~ minimum hourly rate** is the junior ~~ordinary~~ minimum weekly rate divided by 38.			

Items 5, 6, 7, 8, 10—ordinary hourly base rate of pay

[384] A number of clauses in the Exposure Draft refer to the 'ordinary hourly base rate of pay.' This term can be found in clauses:

- 13.1(a) and 13.1(b)—Shiftwork penalties;
- 13.2(a) and 13.2(b)—Weekend work;
- 13.3—Public holidays;
- 14.2(a)(i), 14.2(a)(ii) and 14.2(a)(iii)—Overtime payments—employees other than continuous shiftworkers;
- 14.3—Overtime payments—continuous shiftworkers; and
- 14.5(b)—Time off instead of overtime payment.

[385] It is submitted by the Ai Group that the references in the Exposure Draft to 'ordinary hourly base rate of pay' should be replaced with references to 'minimum hourly rate'.[249] The Ai Group notes that:

> '…"base rate of pay" is [sic] defined term in the exposure draft as per s.16 of the Act. This would exclude separately identifiable amounts. It would also include overaward payments, the effect of which would be inconsistent with an earlier decision of the Commission in this regard.'[250]

[386] The Ai Group had previously submitted that replacing the phrase 'base rate of pay' with the phrase 'ordinary hourly rate' increased the amount payable to employees and sought to have the phrase 'base hourly rate' reinserted.[251] The AWU opposed the submission.[252]

[387] In the *December 2014 decision*, the Full Bench considered the use of ordinary hourly rate versus ordinary hourly base rate of pay in the Salt Award:

> '**[212]** The exposure draft at clause 13—Penalty rates and clause 14—Overtime provide that penalty rates and overtime are to be calculated on the "*ordinary hourly rate of pay"*. The existing award refers to the "*ordinary hourly base rate of pay".* The employers submitted that this wording change will increase the amount payable under these clauses. As there is no intention to alter the penalty or overtime rate calculations in the current award, the exposure draft will be amended to refer to the *ordinary hourly base rate of pay* when calculating the rates payable. On this basis the rates in Schedule B will also need to be amended.'[253]

[388] The Exposure Draft was, therefore, amended on 2 February 2015 to reinsert the term ordinary hourly base rate of pay, to reflect the terminology used in the current award. *December 2014 decision.*

[389] In the *July 2015 decision*, the Full Bench addressed the issue of the appropriate reference rates for awards that contain all purpose allowance. The Full Bench determined that the appropriate phrase to be used is 'ordinary hourly rate'.[254]

[390] After further consideration and consistent with the *July 2015 decision* we have decided to amend the Exposure Draft and change all references to 'ordinary base hourly rate of pay' to 'ordinary hourly rate'.

3.22 Stevedoring Industry Award 2010

[391] A revised summary of submissions relating to the *Stevedoring Industry Award 2010* (the Stevedoring Award) was published on 22 March 2018. The submissions of the Ai Group and Qube Ports Pty Ltd, Qube Bulk Pty Ltd and DP World group of companies (jointly Qube) were summarised and included. Items 1, 2, 3, 3A 4, 5, 7, 8, 9, 10, 11, 12 and 13 were identified as having been resolved by agreement or determined in a previous Full Bench decision. Variations to the Exposure Draft will now be made for those items. Item 6 is referred to the Plain Language Full Bench (AM2016/15).

[392] Items 14 and 14A remain outstanding.

Item 14—Classification Definitions; Definitions

[393] Qube consider it unnecessary for there to be duplication of the definition of 'maintenance tradesperson' in the definitions schedule and clause A.4.2 and submit that the most appropriate location for the definition is in the definition schedule.[255] Ai Group has not opposed this.[256]

[394] The issue of duplication of definitions was considered in the *July 2017 decision*[257] where a number of parties raised the duplication of industry or occupation definitions in the coverage clause and the definition schedule. It was argued that having definitions in two

places may result in errors if one is updated and the other is not. The Full Bench determined that:

> '**[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…'

[395] In the case of the Stevedoring Award, we propose to adopt a similar approach. The definition of 'maintenance tradesperson' will remain in the definitions schedule, as preferred by Qube and Ai Group. Clause A.4.2 will include a cross reference to the definitions schedule for 'maintenance tradesperson' as follows:

> **A.4.2 Maintenance tradesperson**
>
> A maintenance tradesperson is defined in Schedule G—Definitions

[396] Qube have stated that they do not press for reinstatement of clause A.6.2.[258] Since the definition of 'maintenance tradesperson special class' also appears in the definition clause, we propose that clause A.6.2 include a cross reference to the definitions schedule for 'maintenance tradesperson special class' as follows:

> **A.6.2 Maintenance tradesperson special class**
>
> A maintenance tradesperson special class is defined in Schedule G—Definitions

Item 14A—Definitions

[397] Qube have submitted that the definition of 'maintenance tradesperson special class' which is in the definition schedule should be amended to refer to an engineering tradesperson – special class level II being 'as defined in the *Manufacturing and Associated Industries and Occupations Award [year]*.'[259] This would be consistent with the definition of 'maintenance tradesperson special class' in clause B.8 of the current award, the definition of 'maintenance tradesperson' in the definition schedule and the deleted clause A.6.2 of previous exposure drafts.

[398] No other party commented on the submissions by Qube.

[399] We agree that the proposed amendment would be appropriate for clarity and consistency.

[400] The definition in Schedule G will be amended as follows:

> **maintenance tradesperson special class** means an employee who is a maintenance tradesperson who has completed additional training to the level of an engineering/manufacturing tradesperson—special class level II as defined in the *Manufacturing and Associated Industries and Occupations Award 2015*, and who exercises the skills and knowledge required of an engineering/manufacturing tradesperson—special class level II

3.23 *Textile, Clothing, Footwear and Associated Industries Award 2010*

[401] A revised summary of submissions in relation to the *Textile, Clothing, Footwear and Associated Industries Award 2010* (Textile Award) was published on 22 March 2018. Ai Group, ABI, Business SA, the AMWU, the AWU and the Textile, Clothing and Footwear Union of Australia (TCFUA) made submissions in relation to the review of this award. The following items were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors: items 1A, 1, 3 - 7, 9, 10, 10A, 12, 13, 15, 16, 18, 19, 21, 22A, 23, 24, 24A, 25, 26, 27, 27A, 28, 30, 31, 32, 32A, 34, 35, 36, 36A, 37, 38, 39, 41, 42A. Variations to the Exposure Draft will be made for those items. Items 2 and 22 are referred to other Full Benches. Items 10A and 11 are dealt with above at paragraph [17].

[402] Items 8, 14, 17, 20, 29, 33, 34A, 40, 42B remain outstanding.

Item 8—Part-time employment

[403] Ai Group raised a cross referencing error in clause 6.3(h).[260] Clause 6.3 reads as follows:

> ‘**6.3 Part-time employees**
>
> **(a)** A part-time employee is a day worker or shiftworker who:
>
> **(i)** is engaged to work less than 38 ordinary hours per week;
>
> **(ii)** has predictable hours of work; and
>
> **(iii)** receives, on a pro rata basis, equivalent pay and conditions of those full-time employees who do the same kind of work.
>
> **(b)** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee.
>
> **(c)** A part-time employee may be employed in any skill level of this award.
>
> **(d)** At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
>
> **(e)** Any variation to the regular pattern of work must be agreed and recorded in writing in accordance with clause 5.2.
>
> **(f)** An employer is required to roster a part-time employee for a minimum of three consecutive hours on any day or any shift.
>
> **(g)** An employer must not require a part-time employee to attend for duty more than once on any one day.

(h) All time worked in excess of the hours mutually agreed in accordance with clause 6.3(d) will be overtime and paid for at the rates prescribed in clause 20—Overtime.'

[404] The equivalent provision to clause 6.3(h) in the current award is clause 13.6:

'**13.6** All time worked in excess of the hours mutually agreed will be overtime and paid for at the rates prescribed in clause 39—Overtime rates.'

[405] The Exposure Draft is seeking to clarify what constitutes a mutual agreement for the purposes of payment for overtime for part-time employees. Ai Group submits that a mutual agreement can be made under both 6.3(d) and (e).[261] The AWU submits that the cross-reference should be 6.3(d),[262] but they do not oppose the inclusion of clause 6.3(e). Ai Group submits that if the reference only referred to clause 6.3(d), this may expand the circumstances in which overtime rates are payable.[263] The TCFUA submits that the clause should not cross reference any clauses within the types of employment clause.[264]

[406] There is utility in seeking to clarify what constitutes a mutual agreement for the purposes of overtime. Clauses 6.3(c) and (d) both refer to circumstances under which the hours of work for part-time employees are mutually agreed and therefore it is appropriate for clause 6.3(h) to cross reference both 6.3(c) and (d). The Exposure Draft will be amended to cross reference both 6.3(c) and (d).

Item 14—Changes to hours

[407] The AWU raised a punctuation issue regarding clause 8.3 of the exposure draft, where a semi colon and the word 'or' was used at the end of clause 8.3(a)(i). They submit this should be a full stop.[265] The other parties do not oppose the AWU submission.[266] The Exposure Draft published in 13 June 2017[267] was amended to reflect the agreed position of the parties:

'**8.3 Changes to hours**

(a) Where the employer and a majority of employees agree, in accordance with clause 5.4:

(i) ~~s~~Starting and finishing times may be altered by up to one hour at either end of the spread of hours.~~; or~~

(ii) ~~t~~The number of hours in a day that may be worked without the payment of overtime may be changed.

(b) However, the ordinary hours of work must not exceed ten hours on any day.'

[408] Subsequent to this agreement, the TCFUA proposed an alternative amendment to address this punctuation error[268] by adding clause 8.3(b) to the end of 8.3(a)(ii) as follows:

'**(a)** Where the employer and a majority of employees agree, in accordance with clause 5.4:

(i) Starting and finishing times may be altered by up to one hour at either end of the spread of hours.

(ii) The number of hours in a day that may be worked without the payment of overtime may be changed. However, the ordinary hours of work must not exceed ten hours on any day.'

[409] Clause 8.3(a) and (b) of the Exposure Draft mirrors part of the provisions contained in clause 31 of the current Textile Award which provides as follows:

'**31 Changes to hours**

Starting and finishing times may be altered by up to one hour at either end of the spread by agreement between the employer, and a majority of employees in accordance with clause 8.3. The number of hours in a day that may be worked without the payment of overtime may be changed by agreement between the employer, and a majority of employees in accordance with clause 8.3 however the ordinary hours of work must not exceed 10 hours on any day…'

[410] It appears the proposed amendment by the TCFUA reflects the clause in the Textile Award. The sentence beginning 'However, the ordinary hours of work…' was originally part of the provision that allowed for the variation by agreement of the number of hours worked without payment of overtime. As the clause is currently drafted, it acts as a limitation solely on that provision. Clause 8.3(b) of the Exposure Draft acts as a limitation on agreement to vary both the number of hours *and* the span. This is an unintended change and we will adopt the proposal made by the TCFUA in order to rectify this.

Item 17—Substitution of rosters day off

[411] The TCFUA raised a concern that the insertion of the word 'affected' in clause 8.5(b) of the Exposure Draft had altered the application of this clause.[269] The relevant clause in the Exposure Draft reads as follows:

'8.5 Substitution of rostered day off

. . .

(b) The employer and a majority of affected employees may agree, in accordance with clause 5.4, to substitute the rostered day off agreed to for another day.' [emphasis added]

[412] The clause in the current award reads as follows:

'33. Substitution of rostered day off'

33.1 In the case of:

(a) breakdown in machinery, or failure or shortage of electric power; or

(b) requirements of the business in the event of rush orders; or

(c) some other emergency situation,

> an employer may, by agreement with the majority of employees concerned, substitute the rostered day off agreed to for another day.' [emphasis added]

[413] ABI do not agree with the TCFUA's submission.[270] Ai Group is not opposed to the TCFUA proposal to retain the wording contained in the current award, although they do not consider the variation necessary.[271] We have decided to make this change and retain the wording provided in the current award.

Item 20—Part 4—Wages and Allowances

[414] The TCFUA made a submission that the Part 4 heading should be amended to include 'Superannuation' to assist useability of the award. If their submission is adopted the Part 4 heading (which currently reads 'Wages and Allowances') would read 'Wages, Allowances and Superannuation'. The Superannuation clause is included in this part.[272] ABI did not feel that the change was necessary.[273] Ai Group similarly viewed the proposed change as unnecessary, but was not opposed to the change.[274] The TCFUA submits that the change is necessary given the special nature of the industry and the widespread under- or non-payment of superannuation.[275]

[415] We do not think it necessary to make the change proposed.

Item 29, 33 and 34A—Summary of hourly rates of pay

[416] Ai Group submits that Schedule C—Summary of hourly rates of pay should be amended to include the word 'general' to clarify that wage rates for wool and basil employees or storeworker employees have not been included in the schedule. Ai Group suggested that a note should also be inserted stating that 'this schedule only contains hourly rates of pay for employees to who clause 10.1 applies.[276] The TCFUA opposed the amendment, arguing that Schedule C deals with more than just the general classifications in clause 10.1.[277] We agree with the TCFUA. The note proposed by Ai Group will not be inserted into Schedule C, nor will the word 'general'.

[417] The TCFUA submits that the overtime and public holiday rates for casual employees in Schedule C were calculated cumulatively and they in fact should be based on a compounding method.[278] ABI and Ai Group opposed the TCFUA submission.[279]

[418] We do not agree with the submission of the TCFUA. The application of the casual loading in the Textile Award is specified in clause 14 of the current award.

> '**14.3** A casual employee will be paid per hour 1/38th of the weekly award wage prescribed for the relevant classification plus a loading of 25%.'

[419] This clause has been reproduced in the Exposure draft in similar terms. Nowhere in the current award does it stipulate that the casual loading applies for all purposes. In such cases the loading should be applied using a cumulative method rather than compounding. The Exposure Draft applies such a method, consistent with the general rule. We see no reason to depart from this general approach in this instance.

Item 40—Appendix to Schedule F—information given to outworkers

[420] The TCFUA raise an issue with the superannuation section in Appendix to Schedule F.[280] They submit the clause had not been updated to reflect current wage rates and compulsory superannuation amount. The wage rate in the Appendix has now been updated in accordance with the annual wage review decision. The Commission also proposed to amend the superannuation contribution from 9.25% to 9.5% to reflect current superannuation guarantee requirements. The TCFUA was supportive of the proposed amendment[281]. No submissions opposing the amendment were received. The Exposure Draft will now be amended as proposed.

Item 42B—Definition for junior employees

[421] The TCFUA questioned the necessity of including a definition of junior employee in both the definitions schedule and the types of employment clause (clause 6.6)[282]. A similar point was considered in the *July 2017 decision*[283] where a number of parties raised the duplication of industry or occupation definitions in the coverage clause and the definition schedule. It was argued that having definitions in two places may result in errors if one is updated and the other is not. The Full Bench determined that:

> '**[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…'

[422] In the case of the Textile Award, we will adopt a similar approach. The definition will remain in clause 6.6 and a cross reference to clause 6.6 will be added to the definitions clause.

3.24 Timber Industry Award 2010

[423] A revised summary of submissions in relation to the *Timber Industry Award 2010* was published on 22 March 2018. Ai Group, ABI, Business SA, the AMWU and the AWU made submissions in relation to the Review of this award. Item 5 was withdrawn. Items 1, 3, 4, 6, 7 and 9 were confirmed as either resolved by agreement, determined in a previous Full Bench decision or relate to minor typographical or cross-referencing errors. Variations to the Exposure Draft will be made for those items. Items 6A, 8 and 11 are referred to the Plain Language Full Bench.

[424] Item 2 remains outstanding.

Item 2—casual employees

[425] The AWU submits that the wording in clause 7.4(c) should be amended from 'for each ordinary hour worked to 'for each hour worked' because the casual loading for this award is paid for all hours worked.[284] ABI reserved the right of reply to this submission should the AWU press their submission[285]. The relevant provisions of the current award appear at clause 12.2(a) and (b) and read as follows:

'**(a)** A casual employee will be paid per hour 1/38th of the award rate applicable for the work performed plus a loading of 25% of the applicable rate of pay.

(b) A casual employee who works in excess of the ordinary hours fixed for weekly employees on any day will be paid at the appropriate overtime rate provided in clause 30—Overtime, Saturday, Sunday and public holiday payments—day work and shiftwork based on their ordinary rate of pay (including the loading provided for in clause 12.2(a)).'

[426] Clause 7.4(c) and (d) of the Exposure Draft read as follows:

'**(c) Casual loading**

For each ordinary hour worked, a casual employee must be paid:

- the ordinary hourly rate; and
- a loading of 25% of the ordinary hourly rate,

for the classification in which they are employed.

(d) A casual employee who works in excess of the ordinary hours fixed for day workers in clause 12.2 will be paid at the appropriate overtime rate provided in clause 24—Overtime based on their ordinary rate of pay (including the loading provided for in clause 7.4(c)).'

[427] It is correct that the loading is not confined to work performed during ordinary hours in the current award. It appears that the drafting of the clause 7.4(c) of the Exposure Draft has inadvertently changed the operation of this provision. On that basis our *provisional* view is that the word 'ordinary' be deleted from the phrase 'for each ordinary hour worked'. Interested parties have until **4.00 pm on Monday 16 July 2018** to comment on our *provisional* view.

Special transport of injured allowance

[428] In reviewing the Exposure Draft, we have identified an error that was made in the redrafting of the special transport of injured allowance, clause 21.22(e) of the current award. The clause reads as follows:

'**(e) Special transport of injured**

In the event of an injury to an employee requiring medical attention that cannot be provided by the employer or on the employer's premises, the employer will reimburse the employee the cost of transporting such employee to the nearest hospital or doctor at which or by whom the employee is to be treated, <u>if such transport is not provided by the employer</u>.' [emphasis added]

[429] The allowance appears in the Exposure Draft at clause 21.6(e) and reads as follows:

> ‘**(e) Special transport of injured allowance**
>
> In the event of an injury to an employee requiring medical attention that cannot be provided by the employer or on the employer’s premises, the employer will reimburse the employee the cost of transporting such employee to the nearest hospital or doctor at which or by whom the employee is to be treated, except where such transport is not provided by the employer.’ [emphasis added]

[430] It appears that the redrafting of the clause in the Exposure Draft has altered the meaning of the provision. This change is a substantive change and is an unintended consequence of the drafting process. The Exposure Draft will be amended to insert the wording provided in the current award, by deleting the words ‘except where’ and replacing them with ‘if’.

3.25 Wool Storage, Sampling and Testing Award 2010

[431] A revised summary of submissions regarding outstanding issues for the Exposure Draft of the *Wool Storage, Sampling and Testing Award 2010* (Wool Storage Award) was published on 22 March 2018. Ai Group and the AWU made submissions in relation to the outstanding technical and drafting issues for this award. Items 5, 7 and 8 were either confirmed as resolved by agreement or relate to minor typographical errors. Variations to the Exposure Draft will be made for those items. Item 3A has been referred to the plain language re-drafting Full Bench in matter AM2016/15 for determination.

[432] Items 1-4 and 6 remain outstanding.

Item 1—Part-time employees

[433] The AWU submit that that the wording of the current clause 10.2(b) should be retained.[286] Clause 10.2(b) of the current award is as follows:

> ‘**(b)** For each ordinary hour worked, a part-time employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification in clause 13—Classifications and minimum wage rates.’

[434] The equivalent provision is clause 6.3(b) of the Exposure Draft and is as follows:

> ‘**(b)** For each ordinary hour worked, a part-time employee must be paid the minimum hourly rate.’

[435] Ai Group submit that there is no material difference between the wording of the current award and the wording of the Exposure Draft and submit that the wording in the Exposure Draft is clearer should be retained.[287]

[436] We agree with Ai Group that the wording of the Exposure Draft is clearer than the current award, however the Exposure Draft as it is currently drafted omits the cross reference to the relevant classification. We will reinsert this cross reference. The following wording will be inserted into the exposure draft:

> **(b)** For each ordinary hour worked, a part-time employee must be paid the minimum hourly rate for the employee's classification in clause 10—Minimum wages.

Items 2, 4 and 6—Overtime for part-time employees

[437] Ai Group submit that the wording of clause 14.1(a) of the Exposure Draft changes the operation of overtime.[288] Ai Group submit that the Exposure Draft introduces notions of "rostered hours on any shift" and the total ordinary hours in the work cycle" which may amount to a substantive change in the application of the overtime provision.[289] In particular Ai Group submit that provisions of the Exposure Draft may entitle an employee to overtime rates when they perform work outside of rostered hours. Ai Group also submit that the current award does not require an employer to implement a roster system for ordinary hours of work.

[438] The AWU submit that the drafting of 14.1(a) of the Exposure Draft limits the clause to full-time and part-time employees which the AWU submit is not consistent with the current award.[290] The AWU proposes deleting the words 'for a full-time or casual employee' from clause 14.1(a).

[439] The AWU further submit that clause 14.1(b) of the Exposure Draft, which sets out the overtime provisions for part-time employees replicates clause 6.3(d) and proposes deleting clause 14.1(b).[291] Ai Group is not opposed to deleting clause 14.1(b).[292] In the Exposure Draft published 13 June 2017 an alternative approach was suggested to replace the wording of clause 14.1(b) with the following:

> '**(b)** For a part-time employee, see clause 6.3(d).'

[440] The issues raised by the parties in relation to clause 14.1 appear to have arisen as the Exposure Draft seeks to separately define when overtime applies for each type of employment. Clause 25.1 of the current award defines overtime for employees other than shiftworkers as 'work done in addition to ordinary hours'. Similarly overtime for continuous shiftworkers in clause 25.3 is defined as 'work done in addition to ordinary hours' while providing a separate overtime rate for those workers. The Exposure Draft changes the operation by providing that overtime for full-time and casual employees is 'any time worked in addition to rostered hours on any shift, or in excess of the total ordinary hours in the work cycle'. This change is a substantive change and is an unintended consequence of the drafting process.

[441] We have decided to delete clauses 14.1(a) and (b) of the Exposure Draft, renumber clause 14.2 as 14.1 and insert the following to replace the preamble to the table:

> An employee will be paid the following overtime rates for all work done in addition to their ordinary hours:

Item 3—Casual employees—list of provisions that do not apply to casuals

[442] The AWU submit that clause 6.4(d) of the Exposure Draft omits the words 'provided in this award' that appears in the equivalent clause 10.3(d) in the current award and should be reinserted. Ai Group submit that the clause itself is unnecessary and should be deleted. Ai Group further submit that the clause is inaccurate as it appears to exhaustively list the

factors compensated by the casual loading. Ai Group submit that should the provision be retained, they do not oppose the inclusion of the phrase 'provided in this award.'

[443] In the *December 2014 decision* the Full Bench considered the proposal to insert clauses similar to clause 6.4(d) in exposure drafts for awards that did not contain that type of provision.[293] The Full Bench noted that the inclusion of that provision generated considerable controversy and decided to remove the provision from the exposure drafts. The decision did not extend to removing the clause from awards that currently contain a similar provision. We are not presently persuaded to delete the provision however we will re-insert the phrase 'provided in this award.' The clause will be re-drafted as follows:

> **(d)** The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other conditions of full-time or part-time employment provided in this award.

5. Next steps

Additional week's leave for seven day shiftworkers—alleged NES inconsistences

[444] A per paragraphs [6] – [14] of this decision, interested parties who wish to make a written submission on the proposal to remove the relevant clauses from the awards that appear to be inconsistent with s.87(2) of the NES, are to do so by no later than **4.00 pm** on **Monday 16 July 2018**.

Ambulance Award

[445] As per paragraphs [50] – [51] of this decision, interested parties have until **4.00 pm on Monday 16 July 2018** to comment on our provisional views relating to clause 9 of the Exposure Draft (which deals with Breaks).

Black Coal Award Industry Award 2010

[446] As per paragraph [97] of this decision, a conference will be convened before Vice President Hatcher to provide the parties an opportunity to be heard on outstanding matters regarding public holiday payments.

Cement, Lime and Quarrying Award

[447] As per paragraphs [119] – [123] of this decision, interested parties have until **4.00 pm on Monday 16 July 2018** to comment on the proposed wording of clause 1.3, and our proposed course of action regarding the amalgamated award.

Gas Award

[448] As per paragraph [182] of this decision, interested parties have until, **4.00 pm on Monday 16 July 2018** to file a written submission regarding our *provisional* view in relation to the insertion of the term 'minimum hourly rate' into clause 9.1 of the Exposure Draft.

Marine Tourism Award

[449] As per paragraphs [198] – [200] of this decision, interested parties have until, **4.00 pm on Monday 16 July 2018** to file a written submission regarding our *provisional* view in relation to clause 6.4(c) of the Exposure Draft.

[450] As per paragraph [213] of this decision, a conference will be convened before Vice President Hatcher to explore ways of clarifying the provisions identified by the AWU. A listing for this conference will be issued shortly.

Oil Refining Award

[451] As per paragraph [290] of this decision, a conference will be convened before Senior Deputy President Hamberger for the purposes of settling the definitions of 'permanent afternoon shift' and permanent night shift' that will be inserted into the award. A listing for this conference will be issued shortly.

Timber Award

[452] As per paragraph [427] of this decision, interested parties have until **4.00 pm on Monday 16 July 2018** to comment on the *provisional* view relating to the deletion of the word 'ordinary' from clause 7.4(c) of the Exposure Draft.

[453] All written submissions are to be sent via email to amod@fwc.gov.au.

Next Steps

[454] Each exposure draft will be updated and republished. Each Exposure Draft will be made consistent with the *July 2015 decision.* Parties will be provided with one final opportunity to comment on the technical and drafting aspects of the exposure drafts in Group 1 at the conclusion of the review. This will not be an opportunity to raise further technical and drafting issues, parties will be limited to comments regarding the incorporation of our existing decisions into the exposure drafts only.

[455] A Statement regarding the process for finalising the exposure drafts and concluding the award stage of the review will be issued in due course.

PRESIDENT

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Attachment A—List of Group 1A and 1B awards

Extract from Attachment A to Full Bench Decision of 17 March 2014 [2014] FWCFB 1788; subgroups as per Attachment A of Decision on 23 October 2015 [2015] FWCFB 7236.

Group 1A & 1B (11 awards)

Award code	Award title	Subgroup
MA000060	Aluminium Industry Award 2010	1B
MA000098	Ambulance and Patient Transport Industry Award 2010	1A
MA000054	Asphalt Industry Award 2010	1B
MA000055	Cement and Lime Award 2010 [1]	1B
MA000022	Cleaning Services Award 2010	1A
MA000056	Concrete Products Award 2010	1B
MA000024	Cotton Ginning Award 2010	1A
MA000057	Premixed Concrete Award 2010	1B
MA000037	Quarrying Award 2010 [1]	1B
MA000107	Salt Industry Award 2010	1B
MA000016	Security Services Industry Award 2010	1A

[1] The Full Bench proposes amalgamating these two awards – see [2014] FWCFB 9412 at [172]

Group 1C, 1D & 1E (19 awards)

Award code	Award title	Subgroup
MA000001	Black Coal Mining Industry Award 2010	1D
MA000061	Gas Industry Award 2010	1E
MA000062	Hydrocarbons Industry (Upstream) Award 2010	1E
MA000010	Manufacturing and Associated Industries and Occupations Award 2010	1C
MA000093	Marine Tourism and Charter Vessels Award 2010	1E
MA000086	Maritime Offshore Oil and Gas Award 2010	1E
MA000059	Meat Industry Award 2010	1C
MA000011	Mining Industry Award 2010	1D
MA000072	Oil Refining and Manufacturing Award 2010	1D
MA000069	Pharmaceutical Industry Award 2010	1C
MA000074	Poultry Processing Award 2010	1C
MA000108	Professional Diving Industry (Industrial) Award 2010	1E
MA000109	Professional Diving Industry (Recreational) Award 2010	1E
MA000015	Rail Industry Award 2010	1D
MA000053	Stevedoring Industry Award 2010	1D
MA000017	Textile, Clothing, Footwear and Associated Industries Award 2010	1C
MA000071	Timber Industry Award 2010	1C
MA000089	Vehicle Manufacturing, Repair, Services and Retail Award 2010	1C
MA000044	Wool Storage, Sampling and Testing Award 2010	1C

[1] [2014] FWCFB 9412

[2] [2015] FWCFB 7236

[3] [2017] FWCFB 3177

[4] [2015] FWCFB 4658

[5] [2015] FWCFB 6656

[6] Exposure draft – Manufacturing and Associate Industries and Occupations Award 2016, 17 April 2018

[7] [2017] FWCFB 4447

[8] [2016] FWCFB 4418 at [49]-[50]

[9] Ai Group submission, 23 September 2016 at 14-16; 28-30; 45-47; 55-57; 81-83; Ai Group submission, 11July 2017 at 22-23; 48-49; 88-89; 102-103;189-190

[10] [2015] FWCFB 3023 at [13]

[11] [2015] FWCFB 3023 at [13]

[12] [2017] FWCFB 6417

[13] Ai Group submission , 11 July 2017 at para 20

[14] Exposure draft – Aluminium Industry Award 2015, 13 June 2017

[15] Ai Group submission, 11 July 2017 at para 20

[16] [2014] FWCFB 9412 at [44]

[17] [2015] FWCFB 4658 at [43] – [44]

[18] Exposure draft – Ambulance and Patient Transport Industry Award 2015, 13 June 2017

[19] HSU submission, 23 September 2016, para 2

[20] HSU submission, 23 September 2016, para 2

[21] HSU submission, 23 September 2016, at para 3

[22] HSU submission, 23 September 2016 at para 3

[23] [2017] FWCFB 344

[24] [2017] FWCFB 344, at [128]

[25] United Voice submission, 30 July 2017, at para 4

[26] United Voice submission, 30 July 2017, at para 4

[27] United Voice submission, 30 July 2017, at para 5

[28] United Voice, submission, 30 July 2017, at para 6

[29] AP817765CRV

[30] HSU submission, 23 September 2016 at para 4

[31] United Voice submission, 30 July 2017 at para 7

[32] United Voice submission, 30 July 2017, para 8-10

[33] United Voice submission, 30 July 2017, para 11

[34] [2017] FWCFB 6417

[35] See Attachment A to [2017] FWCFB 6417

[36] HSU submission, 23 September 2016 at para 5

[37] HSU submissions, 23 September 2016 at para 7 (Note HSU submissions refer to clause 15.5(a) –however this clause has been renumbered in the 13 June 2017 exposure draft as clause 15.7(a))

[38] HSU submission, 23 September 2016 at para 10

[39] HSU submission, 23 September 2016 at para 10

[40] Ambulance Victoria correspondence, 7 October 2016 at p.1

[41] [2014] FWCFB 9412

[42] Ai Group submission, 11 July 2017 at para 235, 247-248, 250

[43] Exposure draft, Black Coal Mining Award 2014, 26 September 2014, at clause 9.2(a)

[44] CFMEU is now known as the CFMMEU

[45] CFMEU (M&E) and CMIEG submission, 20 October 2014 at para 3.4

[46] Ai Group submission, 24 October 2014 at para 10

[47] CFMEU (M&E) and CMIEG submission, 20 October 2014 at para 3.4

[48] Ai Group submission, 20 November 2015 at para 92

[49] CFMEU (M&E) submission, 21 December 2015 para 16; CFMEU submission, 16 June 2016, pp.3 – 4

[50] [2018] FWC 1631

[51] CMIEG submission, 20 March 2018 at para 3

[52] CMIEG submission, 20 March 2018 at para 4

[53] CMIEG submission, 20 March 2018 at para 5

[54] CFMEU submission, 3 December 2015 at paras 10-14

[55] Ai Group submission, 7 December 2015 at para 25

[56] CMIEG submission, 30 June 2017 at p 6

[57] [2014] FWCFB 5537 at [4]

[58] Exposure draft – Cement, Lime and Quarrying Award 2014, 9 October 2014.

[59] Ai Group submission, 23 September 2016 at paras 41-44 and Ai Group submission,11 July 2017 at paras 80-87

[60] ABI submission, 7 July 2017 at paras 29-30

[61] ABI submission, 7 July 2017 at para 30

[62] Exposure draft – Cement, Lime and Quarrying Award 2014, 13 June 2017

[63] [2017] FWCFB 3433

[64] Exposure draft – Business Equipment Award 2015, 17 July 2017

[65] [2017] FWCFB 3433 at [357]; see also Report to the Full Bench, 2 May 2016, at p2 para 6

[66] ABI submission,7 July 2017 at para 30

[67] Ai Group submission, 11 July 2017 at para 126 – 127

[68] Ai Group submission, 11 July 2017 at para 116 – 119

[69] Ai Group submission, 11 July 2017 at para 118

[70] Ai Group submission, 11 July 2017 at para 119

[71] Ai Group submission, 11 July 2017 at para 124

[72] Ai Group submission, 11 July 2017 at paras 124 – 125

[73] Ai Group submission, 23 September 2016 at para 62; Ai Group submission, 11 July 2017 at para 129

[74] Ai Group submission, 23 September 2016 at para 62; Ai Group submission, 11 July 2017 at para 129

[75] [2015] FWCFB 4658, see [97]

[76] Ai Group submission, 11 July 2017 at para 142

[77] Ai Group submission, 11 July 2017 at paras 143-145

[78] Ai Group submission, 11 July 2017 at paras 143-145

[79] AWU submission, 23 September 2016 at para 8

[80] AWU submission, 23 September 2016 at para 8

[81] See Joint Report filed on behalf of Ai Group ABI, AFEI and the AWU, 25 April 2015 at para 16

[82] Ai Group submission, 6 March 2015, at para 197

[83] Ai Group submission, 6 March 2015, at para 197

[84] Ai Group submission, 6 March 2015, at para 197

[85] Ai Group submission, 11 July 2017 at para 161

[86] Ai Group submission, 11 July 2017 at paras 162-163

[87] Exposure Draft – Cotton Ginning Award 2015, 13 June 2017 at clause 6.6(a)(ii)

[88] Ai Group submission, 11 July 2017 at para 164

[89] Ai Group submission, 11 July 2017, at para 168

[90] *Cotton Ginning Award 2010*, clause 10.5(f)

[91] AN120160 – Cotton Ginning & C. Employees (State) Award, C2706, at clause 5A.

[92] AWU submission, 23 September 2017 at para 9

[93] ABI submission, 7 July 2017 at para 13

[94] [2014] FWCFB 9412

[95] Ai Group submission, 20 November 2015 at paras 107-109

[96] Business SA, submission, 27 November 2015, at page 4

[97] [2015] FWCFB 4658 at [95]-[96]

[98] AWU submission, 4 December 2015, at para 6

[99] AWU submission, 4 December 2015, at paras 6- 7

[100] [2015] FWCFB 7236 at [103]

[101] Ai Group submission, 11 July 2017, at para 262

[102] [2016] FWCFB 5941; PR584535

[103] *Gas Industry Award 2010*, clause 15.4

[104] *Gas Industry Award 2010*, clause 3.1

[105] Exposure draft – Marine Tourism and Charter Vessels Award 2010, 30 October 2015

[106] [2015] FWCFB 7236

[107] [2015] FWCFB 7236 at para 116

[108] Exposure draft – Marine Tourism and Charter Vessels Award 2010, 13 June 2017

[109] AWU submission, 24 November 2015 at para 4

[110] AWU submission, 24 November 2015 at para 5

[111] AWU submission, 24 November 2015 at para 6

[112] AWU submission, 24 November 2015 at para 6

[113] AWU submission, 24 November 2015 at para 7

[114] AWU submission, 24 November 2015 at para 8

[115] AWU submission, 24 November 2015 at para 9

[116] AWU submission, 24 November 2015 at para 10

[117] AWU submission, 24 November 2015 at para 11

[118] AWU submission, 24 November 2015 at para 14; AWU submission, 4 December 2015 at para 6

[119] Business SA submission, 27 November 2015 at para 20

[120] [2015] FWCFB 7236

[121] AMWU submission, 20 November 2015, at para 11

[122] Exposure Draft – Maritime Offshore Oil and Gas Award 2017, clause 7.1(c)

[123] AMWU submission, 20 November 2015, at paras 11-14

[124] Ai Group submission, 7 December 2015, at para 119

[125] *Fair Work Act 2009* (Cth), s138

[126] [2015] FWCFB 7236 at [18]

[127] AWU submission, 23 November 2015, at paras 1-3

[128] AWU submission, 23 November 2015, at para 3

[129] AMWU submission, 30 June 2017, at para 20

[130] Ai Group submission, 7 December 2015, at para 118

[131] AMIC submission, 20 November 2015, at paras 29 – 33

[132] PR559287

[133] [2013] FWCFB 5411

[134] Ibid, [268]-[270], [295]

[135] *Building and Construction General On-site Award 2010*, *Joinery and Building Trades Award 2010*, *Airline Operations—Ground Staff Award 2010*, *Sugar Industry Award 2010* and *Graphic Arts, Printing and Publishing Award 2010*

[136] AMIC submission, 9 May 2014 at para 15

[137] Ai Group submission, 20 November 2015 at paras 255 – 257

[138] AMIC submission, 20 June 2014 at pp5-7; AMIC submission, 12 November 2014 at paras 11 – 12

[139] AMIC submission, 9 July 2014, at para 4

[140] AMIC submission, 7 July 2017, at paras 7-8

[141] AWU submission, 20 November 2015 at para 4

[142] Ai Group submission, 7 December 2015 at paras 124-125; Ai Group submission, 11 July 2017 at paras 307 – 308
[143] [2015] FWCFB 7236
[144] [2017] FWCFB 3433 at paras 360-361 and Attachment B
[145] AWU submission, 20 November 2015, at para 5
[146] [2015] FWCFB 6656 at [110]
[147] Ibid
[148] Ai Group submission, 7 December 2015 at paras 126-133
[149] Ai Group submission, 11 July 2017 at para 309
[150] [2015] FWCFB 6656
[151] Ai Group submission, 20 November 2015 at paras 262-265
[152] AWU submission, 4 December 2015, paras 9-14
[153] CFMEU M&E submission, 20 November 2015 at para 2
[154] Ai Group submission, 7 December 2015 at paras 134-135
[155] [2014] FWCFB 9412 at [68]-[69]
[156] AWU submission, 20 November 2015 at para 11
[157] [2017] FWCFB 3433 at [351]-[352]
[158] Ai Group submission, 24 October 2014 at para 135
[159] ABI submission, 7 July 2017 at para 19
[160] Ai Group submission, 11 July 2017, at para 318
[161] [2015] FWCFB 4658 at [54]
[162] [2015] FWCFB 7236
[163] AWU submission, 20 November 2015 at para 6
[164] AMMA submission, 25 November 2015 at p. 1
[165] AWU submission, 4 December 2015 at para 4; see also [2015] FWCFB 7236 at [245]
[166] AMMA submission, 25 November 2015 at p. 2
[167] AMMA submission, 25 November 2015 at p. 2
[168] AMMA submission, 25 November 2015 at p. 3
[169] AMMA submission, 25 November 2015 at page 2
[170] Ai Group submission, 7 December 2015 at paras 146 – 151
[171] Exposure draft – Oil Refining and Manufacturing Award 2014, 29 September 2014 at clause 13.1
[172] Ai Group, submission, 24 October 2014 at para 149
[173] Ai Group submission, 7 December 2015 at para 148
[174] [2015] FWCFB 7236 at [145]
[175] Ai Group submission in reply, 24 November 2014 at para 4
[176] Ai Group submission, 7 December 2015 at paras 150 and 151
[177] Ai Group submission, 7 December 2015 at para 151
[178] AWU submission, 4 December 2015 at para 4
[179] AWU submission, 4 December 2015 at para 5
[180] AMWU submission, 30 June 2017 at para 17
[181] Exposure Draft – Mining Industry Award 2014, 29 September 2014 at clause 13.2
[182] [2015] FWCFB 7236 at [137]
[183] See [2015] FWCFB 7236 at [46] – [50]
[184] Ai Group submission, 20 November 2015 at paras 282 – 283
[185] AWU submission, 4 December 2015 at para 12
[186] [2017] FWCFB 3433 at [361] – [362]

[187] Ai Group submission, 20 November 2015 at paras 30-33, 290

[188] Ai Group submission, 20 November 2015 at paras 290 and AWU submission, 4 December 2015 at para 6

[189] AMWU submission, 30 June 2017 at paras 8-9

[190] [2015] FWCFB 7236 at [154]-[159]

[191] AMWU submission, 30 June 2017 at para 10

[192] AMWU submission, 19 November 2015 at para 6

[193] Exposure Draft – Pharmaceutical Industry Award 2015, 13 June 2017 at clause 6.3

[194] Exposure Draft – Pharmaceutical Industry Award 2015, 13 June 2017 at clause 8.2

[195] ABI submission, 7 December 2015 at para 3.1

[196] ABI submission, 7 July 2017 at para 22

[197] Ai Group submission, 11 July 2017 at para 336

[198] Ai Group submission, 7 December 2015 at para 164

[199] Ai Group submission, 7 December 2015 at para 165

[200] AWU submission, 23 November 2015 at para 4-5

[201] Exposure Draft – Pharmaceutical Industry Award 2017, 13 June 2017 at clause 9.1

[202] AWU submission, 23 November 2015 at para 6

[203] [2015] FWCFB 7236 at [103]

[204] AWU submission, 23 November 2015, at para 7

[205] ABI, submission, 7 December 2015, at para 32

[206] Ai Group submission, 7 December 2015, at para 174

[207] Ai Group submission, 7 December 2015, at para 175

[208] Ai Group submission, 7 December 2015, at para 174

[209] Exposure Draft – Manufacturing and Associated Industries and Occupations Award 2014, 25 September 2014 at clause 14.1(b)

[210] [2017] FWCFB 3177 at [41]-[44]

[211] [2017] FWCFB 3177 at [44]

[212] Ai Group submission, 11 July 2017 at para 341

[213] Ai Group submission, 11 July 2017 at para 347

[214] Ai Group submission, 23 November 2015 at paras 30-33, 300

[215] AWU submission in reply, 4 December 2015 at para 5

[216] [2015] FWCFB 7236 at [154]-[159]

[217] AMWU submission, 19 November 2015, at para 6

[218] Exposure draft – Poultry Processing Award 2015, 13 June 2017 at clause 8.2(b)

[219] AMWU submission, 20 November 2015, at paras 10-14

[220] [2015] FWCFB 7236

[221] AMWU submission, 20 November 2015, at para 10

[222] Ai Group submission, 7 December 2015, at para 182

[223] Ai Group submission, 7 December 2015, at para 81

[224] [2017] FWCFB 3177

[225] [2013] FWCFB 10165

[226] [2017] FWCFB 3177 at [11]-[12]

[227] Ai Group, ABI, AFEI and AWU submission, 25 April 2015 at para 11

[228] ABI submission, 7 July 2017 at paras 25-26

[229] ABI submission, 7 July 2017 at paras 25-26

[230] [2015] FWCFB 4658 at paras [52]-[54]

[231] [2017] FWCFB 3177 at [114]
[232] [2017] FWCFB 5749
[233] [2017] FWCFB 5749 at [14]
[234] AWU submission, 24 November 2015 at para 7
[235] PR593699, see also [2017] FWCFB 3177 at [102]-[114]
[236] AWU submission, 24 November 2015 at para 7
[237] [2017] FWCFB 3177 at [102]-[114]
[238] PR593699
[239] Exposure draft – Professional Diving (Industrial) Award 2015, 13 June 2017
[240] Exposure draft – Professional Diving Industry (Recreational) Award 2015, 30 October 2015 at clause 6.7(a)
[241] AWU submission, 24 November 2015, at para 4
[242] Exposure draft – Professional Diving Industry (Recreational) Award 2015, 30 October 2015 at clause 6.7(a)
[243] AWU submission, 24 November 2015 at para 5
[244] Ai Group submission, 7 December 2015 para 190-95
[245] [2015] FWCFB 4658 at [42]–[44]
[246] [2015] FWCFB 7236
[247] Ai Group submission, 11 July 2017, at paras 197-198; Ai Group submission, 23 September 2016 at para 88
[248] [2015] FWCFB 4658 at [54]
[249] Ai Group submission, 11 July 2017, at paras 201-220
[250] Ai Group submission, 23 September 2016, at paras, 91, 93, 95, 97, 99, 101, 103, 105, 107, 109
[251] Ai Group submission, 26 September 2014 at para 187
[252] AWU submission, 15 October 2014 at paras 3, 5
[253] [2014] FWCFB 9412
[254] [2015] FWCFB 4658 at [42]–[44]
[255] Qube Submission, 24 November 2015 at para 6
[256] Ai Group submission, 7 December 2015 at para 206
[257] [2017] FWCFB 3433 at [334] – [340].
[258]Qube Submission, 26 June 2017 at p.1
[259] Qube Submission, 26 June 2017 at p.1
[260] Ai Group submission, 20 November 2015 at para 367
[261] Ai Group submission, 20 November 2015 at para 367
[262] AWU submission, 20 November 2015 at para 4
[263] Ai Group submission, 7 December 2015 at para 212-213
[264] TCFUA submission, 7 July 2017 at para 22
[265] AWU submission, 20 November 2017 at para 7
[266] TCFUA submission, 24 November 2015 at p 6; Ai Group submission, 7 December 2015 at para 218
[267] Exposure draft – Textile, Clothing, Footwear and Associated Industries Award 2015, 13 June 2017
[268] TCFUA submission, 7 July 2017 at paras 38-39
[269] TCFUA submission, 24 November 2015 at p.6
[270] ABI submission, 7 December 2015 at para 4.6
[271] Ai Group submission, 7 December 2015 at para 219
[272] TCFUA submission, 24 November 2015 p.1
[273] ABI submission, 7 December 2015 at para 41
[274] Ai Group submission, 7 December 2015 at para 222
[275] TCFUA submission, 7 July 2017 at paras 12-17 and 57

[276] Ai Group submission, 20 November 2015 at paras 386-388

[277] TCFUA submission, 7 December 2015 at p 6

[278] TCFUA submission, 24 November 2015 at p 8 - 14 and TCFUA submission, 7 July 2017 at para 66

[279] ABI submission, 7 December 2015 at para 4.10; Ai Group submission, 7 December 2015 at paras 227-237; Ai Group submission, 11 July 2017 at para 399

[280] TCFUA submission, 24 November 2015 at p16

[281] TCFUA submission, 7 July 2017 at paras 100-104

[282] TCFUA submission, 7 July 2017 at para 106

[283] [2017] FWCFB 3433 at [334] – [340]

[284] AWU submission, 20 November 2015 at paras 8-9

[285] ABI submission, 7 July 2017 at para 37

[286] AWU submission, 20 November 2015 at paras 12-14

[287] Ai Group submission, 7 December 2015 at paras 289-292

[288] Ai Group submission, 20 November 2015 at para 444

[289] Ai Group submission, 20 November 2015 at para 444

[290] AWU submission, 20 November 2015 at paras 17 and 21

[291] AWU submission, 20 November 2015 at paras 16-21

[292] Ai Group submission, 7 December 2015 at paras 297

[293] [2014] FWCFB 9412 at para [69]