DECISION

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

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

(AM2014/250 and others)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT GOSTENCNIK
COMMISSIONER LEE
COMMISSIONER CIRKOVIC MELBOURNE, 7 AUGUST 2018

4 yearly review of modern awards – award stage – exposure drafts – Group 4 awards – further decision.

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ABBREVIATIONS

ABI	Australian Business Industrial and New South Wales Business Chamber
Aboriginal Community Health Award	*Aboriginal Community Controlled Health Services Award 2010*
ADG	Australian Directors' Guild
AFAP	Australian Federation of Air Pilots
AFEI	Australian Federation of Employers and Industries
Aged Care Award	*Aged Care Award 2010*
Ai Group	Australian Industry Group
Air Pilots Award	*Air Pilots Award 2010*
Airline Operations Award	*Airline Operations–Ground Staff Award 2010*
Airport Employees Award	*Airport Employees Award 2010*
ALAEA	The Australian Licenced Aircraft Engineers Association
Amusement Award	*Amusement, Events and Recreation Award 2010*
APESMA	Association of Professional Engineers, Scientists and Managers, Australia (Professionals Australia)
Architects Award	*Architects Award 2010*
ACAA	Association of Consulting Architects - Australia
ASU	Australian Municipal, Administrative, Clerical and Services Union
AMWU	Australian Manufacturing Workers' Union
AWU	Australian Workers' Union
Book Industry Award	*Book Industry Award 2010*
Broadcasting Award	*Broadcasting and Recorded Entertainment Award 2010*
Business SA	South Australian Employers' Chamber of Commerce and Industry Inc (trading as Business SA)
Cabin Crew Award	*Aircraft Cabin Crew Award 2010*
Car Parking Award	*Car Parking Award 2010*
Cemetery Industry Award	*Cemetery Industry Award 2010*
CEPU	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
CFMEU	Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division

Children's Award	*Children's Services Award 2010*
Cinema Employers	Birch Carroll and Coyle Limited; The Hoyts Corporation Pty Limited; The Greater Union Organisation Pty Ltd; Village Cinemas Limited
Commission	Fair Work Commission
CPSU	Community and Public Sector Union
Dry Cleaning Award	*Dry Cleaning and Laundry Industry Award 2010*
Electrical Contracting Award	*Electrical, Electronic and Communications Contracting Award 2010*
ERO	Equal Remuneration Order
Fair Work Act	Fair Work Act 2009 (Cth)
Food Manufacturing Award	*Food, Beverage and Tobacco Manufacturing Award 2010*
FPAA	Fire Protection Association Australia
Funeral Award	*Funeral Industry Award 2010*
G8 Education	G8 Education Ltd
HSU	Health Services Union of Australia
Journalists Award	*Journalists Published Media Award 2010*
July 2015 decision	[2015] FWCFB 4658
LPA	Australian Entertainment Industry Association (trading as Live Performance Australia)
Live Performance Award	*Live Performance Award 2010*
Mannequins Award	*Mannequins and Models Award 2010*
March 2018 decision	[2018] FWCFB 1548
Master Plumbers Group	Master Plumbers ACT; Master Plumbers and Mechanical Services Association of Australia; Master Plumbers & Gasfitters Association of Western Australia; Master Plumbers Association of Queensland; Master Plumbers of South Australia; and Master Plumbers Association of Tasmania
MEA	Master Electricians Australia
MEAA	Media, Entertainment and Arts Alliance
NATSIHWA	National Aboriginal and Torres Strait Islander Health Worker Association
News Ltd	News Limited, Bauer Media and Pacific Magazines
Pest Control Award	*Pest Control Industry Award 2010*
Plumbing Award	*Plumbing and Fire Sprinklers Award 2010*
Professional Employees Award	*Professional Employees Award 2010*

Qantas	The Qantas Group
the Review	4 yearly review of modern awards
SCHCDSI Award	*Social, Community, Home Care and Disability Services Industry Award 2010*
September 2015 decision	[2015] FWCFB 6656
SGA	Showmen's Guild of Australasia
Support Employment Award	*Supported Employment Services Award 2010*
Surveying Award	*Surveying Award 2010*
Teachers Award	*Educational Services (Teachers) Award 2010*
TPEO	Transitional Pay Equity Order under Reg 3.03B of the *Transitional Provisions and Consequential Amendments Regulations 2009*
TWU	Transport Workers' Union of Australia
Travelling Shows Award	*Travelling Shows Award 2010*
UV	United Voice
Water Award	*Water Industry Award 2010*

1. Introduction

[1] Section 156 of the *Fair Work Act 2009* (Fair Work 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 the awards in Group 4 and should be read in conjunction with the decision issued on 21 March 2018[1] (*March 2018 decision*).

[2] The 40 awards allocated to Group 4 are listed at Attachment A to this decision.

[3] This decision should also be read in conjunction with earlier decisions and statements concerning the Review, in particular the Statement referring a number of matters to the plain language process.[2] The previous group stage decisions[3], in which the Commission dealt with a number of general drafting and technical issues common to multiple exposure drafts, are also relevant.

[4] This decision takes account of the submissions in reply to the *March 2018 decision* and the republished exposure drafts.

[5] In the *March 2018 decision* we noted that in a number of awards there were no further issues for this Full Bench to determine. These awards are:

- *Building and Construction General On-site Award 2010*
- *Fast Food Industry Award 2010*
- *General Retail Industry Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Hydrocarbons Field Geologists Award 2010*
- *Joinery and Building Trades Award 2010*
- *Mobile Crane Hiring Award 2010*
- *Racing Clubs Events Award 2010*
- *Registered and Licensed Clubs Award 2010*
- *Restaurant Industry Award 2010*

2. Consideration

2.1 *Aboriginal Community Controlled Health Services Award 2010*

[6] The exposure draft in respect of the *Aboriginal Community Controlled Health Services Award 2010*[4] (Aboriginal Community Health Award) requires further consideration. In the

March 2018 decision a number of items remained unresolved and we anticipated the need to constitute a separate Full Bench to hear and determine a number of substantive issues.

[7] In the *March 2018 decision*, we provided parties an opportunity to file further written submissions in relation to a number of outstanding issues. The following parties filed submissions:

- the National Aboriginal and Torres Strait Islander Health Worker Association (NATSIHWA)
- the Health Services Union (HSU)
- United Voice (UV).

[8] NATSIHWA submitted that there are a number of substantive matters that have been agreed between the parties. We will now consider each of these in turn.

Items S7, S8 and S9 – Allowances

[9] In the *March 2018 decision*, we noted that in the absence of any agreement between the interested parties we would not make any variations to the allowances in the Aboriginal Community Health Award.

[10] NATSIHWA submit that the introduction of the following allowances has been agreed:[5]

> "**(i)** damaged clothing allowance;
>
> **(ii)** blood check allowance;
>
> **(iii)** telephone allowance; and
>
> **(iv)** nauseous work allowance."

[11] On that basis, NATSIHWA submitted that it intends to pursue the following variations to the current award:[6]

> '**15.x Damaged Clothing Allowance**
>
> Where an employee, in the course of their employment suffers any damage to or soiling of clothing or other personal effects, the employer will be liable for the replacement, repair or cleaning of such clothing or personal effects provided, where practicable, immediate notification is given to the employer of such damage or soiling as soon as possible.
>
> This clause will not apply where the damage or soiling is caused by the negligence of the employee.
>
> **15.x Blood Check Allowance**

Any employee exposed to radiation hazards in the course of their work will be entitled to a blood count as often as is considered necessary and will be reimbursed for any out of pocket expenses arising from such test.

15.x Telephone Allowance

Where the employer requires an employee to install and/ or maintain a telephone for the purpose of being on call, the employer will refund the installation costs and subsequent rental charges on production of receipted accounts.

This clause will not apply where the employer provides the employee with a mobile telephone for the purposes of being on call.

15.x Nauseous Work Allowance

An allowance of 0.05% of the standard rate per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of and unusually dirty or offensive nature having regard to the duty normally performed by such an employee in such classification. Any employee who is entitled to be paid this allowance will be paid a minimum sum of 0.27% of the standard rate performed for work in any week.'

[12] We understand that the interested parties have reached an agreed position on these variations, however it is a substantive variation and consideration must be given to, amongst other things, the modern awards objective. A separately constituted Full Bench will consider these items along with the other substantive matters in the Aboriginal Community Health Award.

Item S24 – Progression and recognition of previous service

[13] As part of the redrafting process, the Commission asked the interested parties to provide a copy of the agreed changes to the Aboriginal Community Health Award that would demonstrate progression and recognition of previous service. The draft variation is:[7]

'**13.x Progression**

(a) At the end of each 12 months' continuous employment, an employee will be eligible for progression from one level to the next within a grade if the employee has demonstrated competency and satisfactory performance over a minimum period of 12 months at each level within the level and:

(i) the employee has acquired and satisfactorily used new or enhanced skills within the ambit of the classification, if required by the employer; or

(ii) where an employer has adopted a staff development and performance appraisal scheme and has determined that the employee has,

demonstrated satisfactory performance for the prior 12 months' employment.

(b) Movement to a higher classification will occur by way of promotion or re-classification.

13.x Recognition of previous service

(a) On appointment, an employee will be classified and placed on the appropriate level on the salary scale in clause 14—Minimum Salary, according to their qualifications and experience as an Aboriginal and/or Torres Strait Islander Health Worker.

(b) Service as a part-time Aboriginal and/or Torres Strait Islander Health Worker will normally accrue on a pro rata basis according to the percentage of a full-time Aboriginal and/or Torres Strait Islander Health Worker Load undertaken in any year; provided that where the hours are more than 90% of a full-time load, service will count as a full-time year.

(c) In the case of a casual employee, the equivalent of a full-time year of service is 200 full casual days.

13.x Evidence of qualifications

On Engagement, the employer may require that employee provide documentary evidence of qualifications and experience. If an employer considers that the employee has not provided satisfactory evidence, and advises the employee in writing to this effect, then the employer may decline to recognise the relevant qualification or experience until such evidence is provided. Provided that the employer will not unreasonably refuse to recognise the qualifications or experience of an employee.'

[14] The current *Educational Services (Teachers) Award 2010*[8] provides a similar provision to that proposed by NATSIHWA.

[15] Consistent with our comments at [12] above, a separately constituted Full Bench will consider this item along with the other substantive matters in the Aboriginal Community Health Award.

[16] NATSIHWA confirmed that it intends to pursue the substantive variations that have not been agreed.[9] These outstanding items are set out below (and at Attachment B to this decision) and a separately constituted Full Bench will be constituted to deal with these outstanding substantive matters. Further directions will be issued in due course.

Items S2A, S2B, S2C, S3 – Title, Definitions and Coverage

[17] NATSIHWA submitted that it would continue to pursue variations and additions to the definition clause. These currently appear in red in the most recent version of the exposure

draft. NATSIHWA submitted that if its claim regarding the coverage clause is successful, it would also pursue a variation to the title of the award.[10]

Items S17A and S18 – Ceremonial leave

[18] NATSIHWA continues to support the inclusion of the words "including for bereavement related ceremonies and obligations" in the ceremonial leave clause.[11]

Other substantive matters

[19] The HSU confirmed that it would pursue a number of outstanding substantive matters cited in the most recent version of the *Summary of Substantive Variations.*[12]

[20] UV made a detailed submission concerning a number of Group 4 awards.[13] Within its submission, UV submitted that the following amendment should be made to the current exposure draft:

> '**11.2** Unless otherwise stated, for each ~~ordinary~~ hour worked a casual employee will be paid:
>
> **(a)** the minimum hourly rate for the employee's classification; and
>
> **(b)** a casual loading of 25% instead of the paid leave entitlements of full-time and part-time employees.'

[21] UV has suggested this drafting amendment in a number of exposure drafts, see [158] below for further consideration. Interested parties are to file submissions in response to the UV submission outlined above. Any submission should be filed by no later than **4.00 pm on Tuesday 21 August 2018**. The matter will then be determined on the papers.

[22] There are no other outstanding issues for this Full Bench to determine with regards to the Aboriginal Community Health Award.

2.2 *Aged Care Award 2010*

[23] The exposure draft in respect of the *Aged care Award 2010*[14] (Aged Care Award) requires further consideration. In the *March 2018 decision* we expressed a number of *provisional* views and provided parties an opportunity to file further written submissions. The following parties filed submissions:

- UV
- The Australian Industry Group (Ai Group)
- HSU

[24] The outstanding items are set out below.

Item 21 – Sleepover and Item 47 – Shiftwork

[25] The Ai Group submitted that these outstanding items should be determined following the broader consideration of terminology by the plain language redrafting process.[15] We agree.

Item 49 – Overtime – Part-time and casual employees

[26] Ai Group submitted that clause 22.2(a) should be further amended to substitute the words "who works more" with "in excess of" in accordance with the agreed position.[16] We agree and the exposure draft will be updated accordingly.

Other matters

[27] The HSU[17] and UV[18] confirmed that they will pursue the outstanding substantive matters in this award. As foreshadowed in the *March 2018 decision*, a separate Full Bench will be constituted to deal with the substantive matters. The outstanding substantive items in this award are outlined at Attachment B.

2.3 *Air Pilots Award 2010*

[28] In the *March 2018 decision* we expressed a number of *provisional* views in relation to the *Air Pilots Award 2010* (Air Pilots Award). and sought further input from the interested parties. The following parties filed further submissions:

- Australian Federation of Air Pilots (AFAP)
- The Qantas Group (Qantas)

[29] There are two outstanding technical and drafting issue to determine.

Item 34 – Summary of hourly rates of pay and Summary of monetary allowances

[30] In the *March 2018 decision* we suggested that the inclusion of an example may assist with clarifying the operation of the minimum payments clause. We provided a draft example and inserted it into the most recent version of the exposure draft.[19]

[31] Qantas supports the inclusion of the example.[20]

[32] AFAP submitted that while it supports the inclusion of an example, it has drafted an alternative,[21] as set out below.

> '**Example – Casual hourly rate for casual airlines/general aviation employees**
>
> Emma is a casual pilot paid an hourly rate derived from the minimum salaries in Schedule A of the award. Emma flies a Cessna 404 Titan (a piston engine aircraft with a maximum take-off weight of 3810kg) on commuter operations and holds, and is required to hold, a command instrument rating.
>
> The annual salary for a full-time pilot under the classification of Captain, Multi engine 3360 kg UTBNI 5660 kg is $50,960.

Emma is entitled to an addition to salary under clause A.1.3 of $1481.28 per annum and clause A.1.4 of $5925.10.

The formula to calculate her hourly casual rate under clause 9.2 and 9.3 of the award is:

(Annual salary + annual applicable additions to salary) divided by 800 = hourly rate

➘

Hourly rate x casual loading = casual hourly rate

Calculating Emma's casual hourly rate:

Step 1: (annual salary + annual applicable additions to salary) = ~~$52,441.28~~ $58,366.38

Step 2: ~~$52,441.28~~ $58,366.38/ 800 = ~~$65.55~~ $72.96 per hour (hourly rate)

Step 3: ~~$65.55~~ $72.96 x 1.25 = ~~$81.94~~ $91.20 per hour (casual hourly rate)

Emma's casual hourly rate of pay is ~~$81.94~~ $91.20* per hour.

**Emma's actual rate of pay may differ based on other allowances that may be payable under the Air Pilots Award.*'*

[33] We propose to adopt a modified example, based on the AFAP's submission. The following example uses a generic aircraft type and adopts terminology that is consistent with the source of the allowances:

'**Example – Casual hourly rate for casual airlines/general aviation employees**

Emma is a casual pilot paid an hourly rate derived from the minimum salaries in Schedule A of the award. Emma flies a piston engine aircraft with a maximum take-off weight of 3810kg on commuter operations and is required to carry out flying using a Command instrument rating.

The annual salary for a full-time pilot under the classification of Captain, Multi engine 3360 kg UTBNI 5660 kg is $50,960.

Emma is entitled to additions to salary under clause A.1.3(a) of $1481.28 per annum and clause A.1.4 of $5925.10

The formula to calculate her hourly casual rate under clause 9.2 and 9.3 of the award is:

(Annual salary + annual applicable additions to salary) divided by 800 = hourly rate

➘

Hourly rate x casual loading = casual hourly rate

Calculating Emma's casual hourly rate:

Step 1: (annual salary + annual applicable additions to salary) = $58,366.38

Step 2: $58,366.38/ 800 = $72.96 per hour (hourly rate)

Step 3: $72.96 x 1.25 = $91.20 per hour (casual hourly rate)

Emma's casual hourly rate of pay is $91.20* per hour.

**Emma's actual rate of pay may differ based on other allowances that may be payable under the Air Pilots Award.*'*

[34] The modified example will be included in a revised exposure draft and interested parties will have an opportunity to provide any comments when the revised exposure draft is published.

Other matters

[35] Qantas submitted that the exposure draft does not reflect the agreed position regarding annual leave.[22] Qantas provided a draft clause 23.5—Excessive Annual Leave Accruals.

[36] The matter raised by Qantas has not previously been considered by this Full Bench. It was raised in the context of proceedings for the *Aircraft Cabin Crew Award 2010* (Cabin Crew Award) and is given further consideration below at [40].

Substantive matters

[37] We confirm that the outstanding substantive items will be referred to a separate Full Bench for further consideration. These outstanding items are outlined at Attachment B.

[38] There are no other matters for this Full Bench to determine in relation to the Air Pilots Award.

2.4 *Aircraft Cabin Crew Award 2010*

[39] The exposure draft based on the Cabin Crew Award [23] requires further consideration. Following the *March 2018 decision*, Qantas filed a submission in relation to one outstanding issue dealing with annual leave. No other party filed a submission.

Item 9 – Annual leave

[40] In the *March 2018 decision*, Qantas were asked to provide the Commission with a copy of an agreed position reached between parties regarding the annual leave clause (the agreed clause). This issue affects both the Cabin Crew Award and the Air Pilots Award. Qantas provided a draft variation to the annual leave clause in the exposure draft.

[41] It appears the parties are seeking to insert a new provision dealing with excessive leave, and amending current clause 18.4 so it deals with annual close down only. We have set out below proposed changes to clauses 18.4 and 18.5 of the exposure draft:

18. Annual leave

18.4 Requirement to take leave notwithstanding terms of the NES

An employer may require an employee to take annual leave by giving at least four weeks' notice as part of a close down of its operations. This clause operates independently of clause 18.5, which deals with excessive annual leave. ~~in the following circumstances:~~

~~**(a)** as part of a close down of its operations; or~~

~~**(b)** where more than eight weeks' leave is accrued the employer may direct an employee member to take 25% of the accrued leave.~~

18.5 Excessive Annual Leave Accruals

This clause contains provisions additional to the NES about taking paid annual leave, to deal with excessive paid annual leave accruals.

18.5.1 Definitions

An employee has an excessive leave accrual if the employee has accrued more than 84 days of annual leave (including Saturdays, Sundays and public holidays).

18.5.2 Eliminating excessive leave accruals

(a) Dealing with excessive leave accruals by agreement

Before an employer can direct that leave be taken under subclause 18.5.2(b) or an employee can give notice of leave to be granted under subclause 18.5.2(c), the employer or employee must seek to confer and must genuinely try to agree upon steps that will be taken to reduce or eliminate the employee's excessive leave accrual.

(b) Employer may direct that leave be taken

(i) This subclause applies if an employee has an excessive leave accrual.

(ii) If agreement is not reached under subclause 18.5.2(a), the employer may give a written direction to the employee to take a period or periods of paid annual leave. Such a direction must not:

(A) result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days (inclusive of Saturdays,

Sundays and public holidays and also taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of under subclause 18.5.2(c));

(B) require the employee to take any period of leave of less than one week;

(C) require the employee to take any period of leave commencing less than eight weeks after the day the direction is given to the employee;

(D) require the employee to take any period of leave commencing more than 12 months after the day the direction is given to the employee; or

(E) be inconsistent with any leave arrangement agreed between the employer and employee.

(iii) An employee to whom a direction has been given under this subclause may make a request to take paid annual leave as if the direction had not been given.

Note: The NES state that the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

(iv) If leave is agreed after a direction is issued and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days inclusive of Saturdays, Sundays and public holidays, the direction will be deemed to have been withdrawn.

(v) The employee must take paid annual leave in accordance with a direction complying with this subclause.

(c) Employee may require that leave be granted

(i) This subclause applies if an employee has had an excessive leave accrual for more than six months and the employer has not given a direction under subclause 18.5.2(b) that will eliminate the employee's excessive leave accrual.

(ii) If agreement is not reached under subclause 18.5.2(a), the employee may give a written notice to the employer that the employee wishes to take a period or periods of paid annual leave. Such a notice must not:

(A) result in the employee's remaining accrued entitlement to paid annual leave at any time being less than 63 days (inclusive of Saturdays, Sundays and public holidays and also taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of under this subclause);

(B) provide for the employee to take any period of leave of less than one week;

(C) provide for the employee to take any period of leave commencing less than eight weeks after the day the notice is given to the employer;

(D) provide for the employee to take any period of leave commencing more than 12 months after the day the notice is given to the employer; or

(E) be inconsistent with any leave arrangement agreed between the employer and employee.

(iii) The maximum amount of leave that an employee can give notice of under this subclause is 42 days' leave in any 12 month period.

(iv) The employer must grant the employee paid annual leave in accordance with a notice complying with this subclause.

~~18.5~~ 18.6 **When annual leave can be taken**

(a) A period of leave will commence on a Monday unless otherwise mutually agreed.

(b) Normally, annual leave will be granted and will be taken within 12 months from the date on which it falls due or alternatively 15 months from the date of commencement of the preceding period of leave.

(c) Annual leave will be allocated in no more than two periods unless otherwise mutually agreed between the employee and the employer.

(d) Subject to clause 18.5 ~~18.4~~, annual leave must be taken at a time mutually agreed between the employee and employer.

[42] The Full Bench in the annual leave common issue (AM2014/47), decided to insert a model term relating to excessive leave accruals into a number of modern awards. The excessive leave model term was not inserted into the Cabin Crew Award or the Air Pilots Award.[24]

[43] The model excessive leave term that was inserted into a majority of modern awards as a result of the annual leave common issue is as follows:

1.3 Excessive leave accruals: general provision

NOTE: Clauses 1.3 to 1.5 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

(a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 1.x).

(b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

(c) Clause 1.4 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

(d) Clause 1.5 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

1.4 Excessive leave accruals: direction by employer that leave be taken

(a) If an employer has genuinely tried to reach agreement with an employee under clause 1.3(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

(b) However, a direction by the employer under paragraph (a):

> **(i)** is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 1.3, 1.4 or 1.5 or otherwise agreed by the employer and employee) are taken into account; and
>
> **(ii)** must not require the employee to take any period of paid annual leave of less than one week; and
>
> **(iii)** must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
>
> **(iv)** must not be inconsistent with any leave arrangement agreed by the employer and employee.

(c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.

(d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 1.4(b)(i).

NOTE 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

1.5 Excessive leave accruals: request by employee for leave

(a) If an employee has genuinely tried to reach agreement with an employer under clause 1.3(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

(b) However, an employee may only give a notice to the employer under paragraph (a) if:

(i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

(ii) the employee has not been given a direction under clause 1.4(a) that, when any other paid annual leave arrangements (whether made under clause 1.3, 1.4 or 1.5 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.

(c) A notice given by an employee under paragraph (a) must not:

(i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 1.3, 1.4 or 1.5 or otherwise agreed by the employer and employee) are taken into account; or

(ii) provide for the employee to take any period of paid annual leave of less than one week; or

(iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

(iv) be inconsistent with any leave arrangement agreed by the employer and employee.

(d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 1.x) in any period of 12 months.

(e) The employer must grant paid annual leave requested by a notice under paragraph (a).

[44] The agreed clause deals with excessive leave in a similar way to the model term. The main difference relates to the quantum of leave accrued that is 'excessive leave'. In the model term, an employee has an excessive leave accrual if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker). In the agreed term an employee has an excessive leave accrual if the employee has accrued more than 84 days of annual leave (including Saturdays, Sundays and public holidays).

[45] While the definition of 'excessive leave' in the agreed clause is well in excess of that in the model term, the current Cabin Crew Award provides employees with an entitlement to

42 days' annual leave, inclusive of Saturdays, Sundays and public holidays on full salary for each completed year of service. The same entitlement is set out at clause 27.2 of the Air Pilots Award. The standard entitlement to annual leave in the NES is 4 weeks' leave (5 weeks' for a shiftworker). Both the model term and the agreed term provide a quantum of 'excessive leave' that is double the relevant annual leave entitlement.

[46] Another difference relates to the remaining minimum accrual entitlement to leave following a direction by an employer to take leave or a request by an employee to take leave. The model term provides the remaining accrued entitlement is to be not less than 6 weeks. The agreed term provides for not less than 63 days (inclusive of Saturday, Sundays and Public Holidays). Though the minimum accruals are different, this is because of additional annual leave entitlements in the Air Pilots and Aircraft Cabin Crew Award, compared with the majority of modern awards.

[47] The final difference relates to the amount of leave that an employee may request. The model term, provides that an employee is not entitled to request more than 4 weeks' paid annual leave (or 5 weeks' for shiftworkers) in any period of 12 months. The agreed clause provides that the maximum amount of leave for which an employee can give notice is 42 days in any 12 month period. The difference is explicable because the annual leave entitlement in the Air Pilots Award and Cabin Crew Award is higher when compared with the majority of modern awards.

[48] We will amend the exposure drafts to give effect to the agreed clause.

Other matters

[49] Qantas noted that there was a typographical error at clause A.3.3 of the recent exposure draft.[25] The next iteration of the exposure draft will correct the error.

Substantive matters

[50] There are 18 outstanding substantive items outlined in the Final Report that was published on 7 December 2017 (see items S1 – S18). These are all issues that were raised by iCabin Crew Connect. In the *March 2018 decision* we requested interested parties advise the Commission about whether they intend to pursue any substantive matters.[26] No submissions about substantive issues were received.

[51] The Commission wrote to the FAAA seeking confirmation whether it intends to press the substantive items. iCabin Crew Connect merged with the FAAA in October 2016. The FAAA responded that the matters would not be pressed.

[52] There are no other matters for this Full Bench to determine with regard to the Cabin Crew Award.

2.5 *Airline Operations—Ground Staff Award 2010*

[53] The exposure draft based on the *Airline Operations—Ground Staff Award 2010*[27] (Airline Operations Award) requires further consideration. In the *March 2018 decision* we expressed a number of *provisional* views and the following parties filed further submissions:

- Qantas
- Ai Group
- Australian Licenced Aircraft Engineer's Association (ALAEA)
- "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)
- Transport Workers' Union of Australia (TWU)
- Australian Municipal, Administrative, Clerical and Services Union (ASU)
- The Australian Workers' Union (AWU)
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical Division (CEPU)

[54] We now turn to consider each of the outstanding items in light of the submissions received.

Item 6 – Facilitative provisions – facilitation by majority or individual agreement

[55] Ai Group submitted that the parties had reached an agreed position regarding the drafting of clause 16.1(d) and 16.2(e) of the exposure draft as follows:[28]

> **'16.1(d)** An employer and the majority of affected employees in an enterprise or part of an enterprise may agree to stagger meal breaks to meet the operational requirements, instead of this provision. An employer and an individual employee may also reach agreement in this regard.
>
> **16.2(e)** An employer and the majority of affected employees in an enterprise or part of an enterprise may agree to stagger meal breaks to meet the operational requirements, instead of this provision. An employer and an individual employee may also reach agreement in this regard.'

[56] This agreed position will be incorporated into the subsequent version.

Items 10 and 11 – Casual employment

[57] In the *March 2018 decision* we decided that the casual loading in the Airline Operations Award is accurately described as being applied to the 'ordinary hourly rate' and not the minimum and that no change would be made to clause 11.2 of the exposure draft.[29]

[58] The AMWU submitted that it is concerned that the current exposure draft does not clarify that the casual loading is to be calculated on the ordinary hourly rate and not the minimum rate. The AMWU submitted the following drafting variation to clause 11.2 of the exposure draft:[30]

> 'For working ordinary time, a casual employee must be paid:
>
> **(a)** the ordinary hourly rate for the work being performed; plus
>
> **(b)** a loading of 25% of the ordinary hourly rate, for the classification in which they are employed.'

[59] The AMWU's submission is consistent with the drafting in a number of exposure drafts. However, it includes the problematic terminology of 'for working ordinary time' which may give rise to some uncertainty about whether casual employees should receive the 25% casual loading for overtime hours. This is a question to be addressed by the separate Full Bench considering overtime for casuals. On that basis we do not propose to vary the exposure draft at this time, we will await the outcome of the proceedings regarding overtime for casuals as this may result in more consistent terminology being adopted across exposure drafts.

Item 15 – Ordinary hours of work – day work

[60] In the *March 2018 decision* we expressed the *provisional* view that clause 14.2(c) of the exposure draft should be varied by inserting the following sentence: 'Any change to rosters or hours of work is subject to the consultative provisions in clause 31'.[31]

[61] The AMWU supports our *provisional* view and suggested the following further amendment to clause 14.3(b) of the exposure draft:[32]

> 'Subject to clause 14.3(c) the ordinary hours of shiftworkers are an average of 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. <u>Any changes to rosters or hours of work is subject to the consultative provisions in clause 31.</u>'
>
> (emphasis added)

[62] The ALAEA supports the *provisional* view and agrees with the AMWU submission regarding a similar provision in clause 14.3.[33] The CEPU also support the AMWU's submission.[34] The AWU supports our *provisional* view and the subsequent variation proposed by the AMWU.[35]

[63] Ai Group submitted that it does not support the *provisional* view.[36] Ai Group referred to an earlier submission regarding, amongst other things, the legislative requirements for consultation.[37] Ai Group noted that s. 145A of the Fair Work Act contemplates changes to a regular roster. Therefore, Ai Group submitted that only changes to "regular rosters or ordinary hours of work" are dealt with by the consultation clause.[38]

[64] We agree with Ai Group's submission and will amend the variation described in our *provisional* view as follows:

(c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 7.00 am and 6.00 pm. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned. Any changes to regular rosters or ordinary hours of work are subject to the consultative provisions in clause 31.

[65] We will also make a similar variation to clause 14.3(b) as follows:

(b) Subject to clause 14.3(c) the ordinary hours of shiftworkers are an average of 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Any changes to regular rosters or ordinary hours of work are subject to the consultative provisions in clause 31.

Item 41– Overtime

[66] In the *March 2018 decision*, our *provisional* view was to adopt the proposed variation suggested by Qantas.[39] The AMWU agrees with Qantas' proposed variation.[40] ALAEA submitted that it is willing to agree with Qantas' proposed variation.[41] The CEPU supports our *provisional* view.[42] The AWU does not oppose our *provisional* view.[43]

[67] We confirm our *provisional* view and will adopt the variation proposed by Qantas.

Item 48 – Overtime – shiftworkers

[68] The TWU submitted that item 48 of the technical and drafting summary, which has been referred to the substantive process, can be dealt with as a technical and drafting matter.

[69] ALAEA supports the submission of the TWU. The AWU[44] and the AMWU[45] also submit that this item should be dealt with as part of the technical and drafting process.

[70] The AWU submit the issue is technical and drafting in nature as it concerns an inconsistency between the content of two clauses in the current award. The two clauses, 30.7(a) and 32.1(a), are set out below:

30.7 Shift penalty rates—weekends and public holidays

(a) Shiftworkers must be paid the following penalty rates for work on weekends and public holidays:

Shift type	**Penalty rate**
Saturday	Time and a half
Sunday	Double time
Public holidays (except Christmas Day and Good Friday)	Double time
Christmas Day and Good Friday	Double time and a half

32.1 Payment for working overtime

> (a) All work done outside ordinary hours on any day or shift (except where the time is worked by arrangement between the employees themselves) must be paid at time and a half for the first two hours and double time thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is double time.

[71] The AWU submit there is a tension between clause 30.7(a) and 32.1(a) when clause 32.1(a) is relied upon to attempt to deny a non-continuous shift worker his or her entitlements under clause 30.7(a).

[72] The ASU submit that the comparable provision of the exposure draft (clause 17.7(a)) provides that 'a shift on a Sunday is paid at the shift penalty rate of 200%'.[46] They submit there is ambiguity between clauses 17.5, 23.1(a) of the exposure draft and the table at B.3.2 for the clerical stream of employees.

[73] ALAEA submitted that Schedule B of the exposure draft should be updated to reflect that a shiftworker working overtime on a Sunday is entitled to 200% for all hours worked.[47]

[74] In light of the substantive claim that the TWU and AMWU are pressing in relation to clause 23.1(a) (see below at [76]) we confirm that this item will be referred to a substantive Full Bench for consideration.

Substantive matters

[75] ALAEA[48] and AMWU[49] submitted that a consent position had been reached with Qantas regarding items S1 and S2 so those substantive matters will not be pursued. ALAEA also advised that it would not pursue item S3.

[76] The TWU is seeking the removal of the word 'continuous' from clause 23.1(a) of the Exposure Draft.[50] The AMWU will also be pursuing this substantive matter.[51] The ASU submitted that the word 'continuous' has been inadvertently included in clause 23.1(a) and could be addressed through the technical and drafting stage.

[77] The issue is closely linked to *Item 48 – Overtime – shiftworkers* which is discussed above at [68] – [74]. A separate Full Bench will be constituted to hear and determine both matters (see Attachment B).

[78] Qantas noted the ongoing process concerning the National Training Wage in Schedule F of the exposure draft.[52] We note that further consideration of this matter will be undertaken in the plain language redrafting process.

[79] There are no other matters for this Full Bench to determine with regards to this award.

2.6 *Airport Employees Award 2010*

[80] The exposure draft based on the *Airport Employees Award 2010*[53] (Airport Employees Award) requires further consideration. In the *March 2018 decision* we expressed a number of

provisional views and noted that no employer representatives had made submissions regarding the exposure draft or the submissions of other interested parties. The following parties filed submissions following the *March 2018 decision*:

- CEPU
- Ai Group
- CPSU, the Community and Public Sector Union (CPSU)
- AMWU

[81] We will now consider each of the outstanding items in turn.

Items 1 and 16 – standard rate

[82] In the *March 2018 decision* we expressed the *provisional* view that the definition of standard rate in clause 2 of the exposure draft should read as follows:[54]

> **standard rate** means the minimum annual rate for a Technical services officer Level 1 in clause 19.1(a) divided by 52.1666

[83] The AMWU provided a further submission in response to the *March 2018 decision*[55] supporting the *provisional* view and the necessary consequential amendments to recalibrate the rates in clause C.1.

[84] The CPSU supports the position of the AMWU.[56] No other party commented on this issue.

[85] We confirm our *provisional* view and will republish the exposure draft with the relevant consequential amendments recalibrating the rates in clause C.1:

> The wage-related allowances in this award are based on the standard rate as defined in clause 2 as the minimum annual rate for a Technical services officer Level 1 in clause 19.1(a) divided by 52.1666 ~~52~~ = **~~$811.50~~ $839.90**

Allowance	**Clause**	**% of standard rate**	**$ per annum unless stated otherwise**
Disability allowance—Technical or Ground services officers	20.2(a)(i)	0.10	0.84 per hour
Disability allowance—confined space (boiler)	20.2(a)(iii)	0.23	1.93 per hour
Disability allowance—maximum per hour	20.2(a)(iv)	0.15	1.26 per hour
Disability allowance—maximum per hour for confined space (boiler)	20.2(a)(iv)	0.23	1.93 per hour
Plumbers registration allowance	20.2(b)(i)	3.90 3.91	32.76 per week
First aid allowance	20.2(c)	~~2.00~~ 2.01	16.80 per week
District allowance—employees	20.2(d)		

Allowance	Clause	% of standard rate	$ per annum unless stated otherwise
with dependents:			
Alice Springs		359 360	3015.24
Darwin		359 360	3015.24
Mt Isa		359 360	3015.24
Tennant Creek		~~715~~ 717	6005.29
Townsville		149	1251.45
Yulara		~~359~~ 360	3015.24
District allowance—employees without dependents:	20.2(d)		
Alice Springs		196	1646.20
Darwin		196	1646.20
Mt Isa		196	1646.20
Tennant Creek		~~442~~ 443	3712.36
Townsville		75	629.93
Yulara		196	1646.20

Item 3 – Breaks

[86] In the *March 2018 decision* we dealt with an issue about whether the meal breaks in clause 18.1 of the exposure draft are paid or unpaid. We expressed the *provisional* view that we would accept the interpretation advanced by the AMWU and the CPSU that breaks for day workers are unpaid and breaks for shiftworkers are paid. We asked for any further submissions regarding clarification of the clause.

[87] The AMWU suggested the following redrafting of clause 18.1[57]:

> ‘**18.1** An employee must not be required to work for more than five hours without a break for a meal. Such meal breaks will count as time worked for shiftworkers but not for day workers.’

[88] The CPSU[58] and CEPU[59] support the position of the AMWU.

[89] We have decided to vary clause 18.1 of the exposure draft as follows:

> **18.1** An employee must not be required to work for more than five hours without a break for a meal. Such meal breaks will not count as time worked for day workers.

[90] We do not believe the wording submitted by the AMWU is necessary as clause 17.3(d) sets the requirements for shiftworkers as follows:

> **17. Ordinary hours of work and rostering—shiftworkers**
>
> **17.3 Duration of shift**

(d) 20 minutes must be allowed to shiftworkers each shift for a meal, which must be counted as time worked.

[91] It is clear that clause 17.3(d) provides shiftworkers with a paid meal break of 20 minutes regardless of the duration of the shift. We do not consider that clause 18 applies to shiftworkers.

Item 4 – Minimum wages–Professional Engineers

[92] In the *March 2018 decision* we outlined a *provisional* view that a new clause 19.1(e) be inserted into the exposure draft. The new clause 19.1(e) sets out a definition for incremental progression for professional engineers, which appears to have been inadvertently left out of the modern award during award modernisation.

[93] The CPSU submit they 'support the *provisional* view to re-include the salary progression provisions from the pre-reform award'.[60] The AMWU also support our *provisional* view.[61] No other party commented on the *provisional* view. We confirm our *provisional* view regarding the new clause 19.1(e) in the exposure draft. The typographical error in clause 19.1(e) noted by the CPSU will also be corrected.[62]

Items 7 and 8 – Reimbursement of air conditioning expenses

[94] In the *March 2018 decision* we outlined a *provisional* view that the bottom row of the table at clause 20.3(f)(ii) of the exposure draft would be clearer if it read:

'Where a separate meter is installed which records only electricity consumption of the air conditioning system'

[95] The CPSU[63] and the AMWU[64] support our *provisional* view. No other party commented on the *provisional* view. We confirm our *provisional* view on these items. The table in clause 20.3(f)(ii) will be varied as described in the *March 2018 decision:*

	% of total charges
1 room air conditioner	50
2 room air conditioners	65
3 room air conditioners	70
Where a separate meter that only records electricity consumption of the air conditioning system is installed	85

Item 13 – Broken leave

[96] In the *March 2018 decision* we expressed a *provisional* view that the formatting of clause 24.3 of the exposure draft would be amended to match that of the current award. The

CPSU supports the variation proposed to the formatting of clause 24.3.[65] The AMWU also supports the variation.[66] No other party commented on this issue. We will adopt the *provisional* view described in the *March 2018 decision*.[67]

Item 14 – Annual leave loading

[97] Interested parties were invited to comment on our *provisional* view regarding an inconsistency between the wording of clause 24.11(a) and 24.11(b)(i) of the exposure draft. These clauses deal with the payment of annual leave loading. Clause 24.11(a) requires that an employee be paid a loading during a period of annual leave which could be taken at various times of the year. However, under clause 24.11(b)(i) the loading is to be paid once annually in December, whether or not leave is to be taken at that time. We proposed a re-drafted clause 24.11(b)(i) as follows:

> (i) Non-shiftworkers
>
> An annual leave loading of 17.5% of the minimum hourly rate in clause 24.9 must be paid once annually on the first pay day in December to employees other than shiftworkers during each period of annual leave.

[98] The AMWU[68], CPSU[69] and CEPU[70] support the variation proposed to clause 24.11(b)(i). No other party commented on this issue. We will adopt the *provisional* view.[71]

Item 15 – Rostered day off falling on public holiday

[99] In the *March 2018 decision* we accepted an interpretation that an employee whose rostered day off falls on a public holiday would receive payment for the public holiday and a separate day off. Interested parties were invited to comment on whether any variation to clause 27.8 of the exposure draft was required in order to give effect to the interpretation.[72] We also proposed an amendment to the exposure draft in the form of a new clause 27.8(d) as follows:

> **(d)** An employee whose rostered day off occurs on a public holiday will receive the payment in clause 27.8(b) and an additional day off on an alternate day.

[100] The AMWU submitted that instead of inserting the new clause 27.8(d), the following amendment should be made to clause 27.8(b):

> '**(b)** Where it is not practicable to grant an alternative rostered day off or by agreement between the employer and the employee, the employee must be paid for seven hours 36 minutes at the minimum hourly rate in addition to payment for the public holiday.'

[101] The CPSU[73] and CEPU[74] support the position of the AMWU.

[102] Ai Group submitted that clause 27.8(d) is unnecessary and should be deleted.[75] They submit that there is an important issue that has arisen regarding payments for RDOs falling on a public holiday and it is essential the Full Bench considers the issue carefully to avoid

potential adverse flow-on effects for other awards. Ai Group submit the view expressed by the unions is not correct.

[103] The relevant clause in the current Airport Employees Award is:

> **36.8 Rostered day off falling on public holiday**
>
> (a) An employee who, by the arrangement of their ordinary hours of work, is entitled to a rostered day off which falls on a holiday prescribed by this clause must, where practicable, observe the holiday and be granted an alternative rostered day off.
>
> (b) Where it is not practicable to grant an alternative rostered day off or by agreement between the employer and the employee, the employee must be paid for seven hours 36 minutes at ordinary rates.
>
> (c) Entitlement to extra payment will not arise under this clause for employees whose salary is in excess of the maximum salary for an Administrative services officer Level 5.

[104] The relevant clause in the Exposure Draft is:

> **27.8 Rostered day off falling on public holiday**
>
> (a) An employee who, by the arrangement of their ordinary hours of work, is entitled to a rostered day off which falls on a holiday prescribed by this clause must, where practicable, observe the holiday and be granted an alternative rostered day off.
>
> (b) Where it is not practicable to grant an alternative rostered day off or by agreement between the employer and the employee, the employee must be paid for seven hours 36 minutes at the minimum hourly rate.
>
> *Parties are asked to advise whether this payment is in addition to payment for the public holiday.*
>
> (c) Entitlement to extra payment will not arise under this clause for employees whose wage is in excess of the maximum rate for an Administrative services officer Level 5.

[105] In their submission Ai Group explain the way that clauses dealing with RDOs that fall on a public holiday typically operate and submit that if the new clause is incorporated into the exposure draft this would result in double dipping for employees whose ordinary hours are structured to include RDOs (and inequity for employees whose hours are structured without RDOs).

[106] Ai Group oppose the new clause and submit the issue has only arisen as a result of the question in the exposure draft.

[107] We accept that our *provisional* view may give rise to 'double dipping'. What we intended to address in clause 27.8(b) are circumstances where an employee is not able to have an alternate day off and can only be compensated by additional payment.

[108] We agree that the AMWU's draft is simpler and maintains the current entitlement. We will adopt it in the exposure draft.

Other matters

[109] No interested party commented on whether the acronym 'NOTAMS' appearing in clause A.3.7 should be written in full. In the interest of clarity we will vary the clause as follows:

- Raising of Notice to Airmen (NOTAMs) (countersigned if applicable).

[110] Interested parties have not indicated that there are any substantive variations being pursued.

[111] There are no other outstanding matters for this Full Bench to determine with regards to the Airport Employees Award.

2.7 *Amusement, Events and Recreation Award 2010*

[112] The exposure draft[76] based on the Amusement, Events and Recreation Award 2010[77] (Amusement Award) requires some further consideration. The AWU and Australian Business Industrial and the NSW Business Chamber (jointly ABI) filed submissions in response to the *March 2018 decision.*

[113] There is one outstanding technical and drafting issue in this award.

Item 18 – Sunday and public holiday work

[114] In the *March 2018 decision* we expressed a *provisional* view that that the words 'All time worked' be replaced with 'Ordinary hours' in clause 19.5(a) of the exposure draft.[78] ABI support the *provisional* view.[79] The AWU also supports our *provisional* view.[80]

[115] In the absence of any objection we will adopt the change described in our *provisional* view.

[116] There are no other outstanding matters for this Full Bench to determine with regards to the Amusement Award.

2.8 *Architects Award 2010*

[117] The exposure draft[81] based on the *Architects Award 2010*[82] (Architects Award) was republished on 23 March 2018. The following parties filed submissions in reply in relation to the exposure draft:

- The Association of Professional Engineers, Scientists and Managers, Australia (Professionals Australia) (APESMA)

- Association of Consulting Architects Australia (ACAA)

[118] Item 2 remains outstanding and is dealt with below.

Item 2 – Overtime

[119] In the *March 2018 decision*, we noted that item 2, which relates to time off instead of payment for overtime, may become a substantive issue.[83] ACAA and APESMA seek to vary clause 13 of the exposure draft. The issue to be determined with whether time off in lieu of overtime is to be granted on an 'hour for hour' basis or at overtime rates. Clause 13 is set out as follows:

> 13.1 An employer must compensate an employee for all time worked in excess of normal hours of duty by:
>
> (a) granting time off instead of payment or by making payment for such excess time within six months of it accruing. Payment for such excess time must be in accordance with clause 13.1(b);
>
> *Question posed by the Commission: Parties are asked to confirm whether time off is granted on an hour off for an hour worked basis or in accordance with penalty rates being 1.5 hours off for each hour worked?*

[120] ACAA submit that time off in lieu has always been at hour for hour. They seek to amend clause 13.1(a) to read 'granting time off instead of payment at hour for hour or by making payment for such excess time within six months of it accruing. Payment for such excess time must be in accordance with clause 13.1(b).

[121] We invited APESMA, and other interested parties, to confirm whether they intend to pursue this matter as a substantive variation. ACAA confirmed its intention to pursue this as a substantive variation. APESMA noted in their submissions they agree the matter should be dealt with as a substantive matter. This item will be referred to a separately constituted Full Bench.

[122] APESMA also confirmed that it would pursue a number of other outstanding substantive matters in the Architects Award.[84]

[123] There are no other outstanding matters for this Full Bench to determine with regards to the Architects Award.

2.9 *Book Industry Award 2010*

[124] The exposure draft based on the *Book Industry Award 2010*[85] (Book Industry Award) requires further consideration. Ai Group was the only party to file a submission in response to the *March 2018 decision.*

[125] There are two outstanding matters to be determined.

Item 5 – Exemptions for Senior editors Level 3 Grade 3 and Publicists Grade 6 and 7

[126] In the *March 2018 decision* we expressed a *provisional* view that clause 13 of the exposure draft should be varied in line with the current modern award provision.[86]

[127] The interested parties have not commented any further on this point so we will adopt the variation expressed in our *provisional* view.

Item 8 – 'Leave Public Holiday' Part heading

[128] In the *March 2018 decision* we expressed a *provisional* view that clauses 12.1(b) and (c) of the exposure draft should be varied in line with the current award provisions. Ai Group submitted that it does not oppose the *provisional* view.[87]

[129] We confirm our *provisional* view that the part heading should be altered and clauses 12.1(b) and (c) should be amended.[88]

[130] There are no other outstanding issues for this Full Bench to determine with regards to the Book Industry Award.

2.10 *Broadcasting and Recorded Entertainment Award 2010*

[131] The exposure draft based on the *Broadcasting and Recorded Entertainment Award 2010*[89] (Broadcasting Award) was republished on 23 March 2018.

[132] The following parties filed submissions:

- Australian Directors' Guild (ADG)
- ABI and NSW BC
- Media, Entertainment and Arts Alliance (MEAA)
- CPSU
- Birch Carroll and Coyle Limited; The Hoyts Corporation Pty Limited; The Greater Union Organisation Pty Ltd; and Village Cinemas Limited (Cinema Employers) and Australian Entertainment Industry Association (trading as Live Performance Australia) (LPA)

[133] In the *March 2018 decision* we expressed a number of *provisional* views. We will now consider each of the outstanding items.

Item 1 – Calculation of overtime

[134] The CPSU and ABI submitted that no additional drafting amendments were required to clause 31.1 of the exposure draft.[90]

[135] The ADG submitted that, in light of industry practice, the award, and consequently the exposure draft, are now unclear.[91] It is said that the established industry practice of working a 50 hour week is difficult to reconcile with the 38 hour week implemented under the Fair Work Act. The ADG submitted that:

> 'If the daily limit of 2 hours on scheduled overtime is maintained the maximum daily hours including both ordinary time pre-scheduled overtime are limited to 7.6 plus 2 hours or 9.6 hours per day compared to the actual accepted practice of 10 hours.'[92]

[136] The ADG's submission consistently refers to the current award clauses rather than the exposure draft, however, it appears to us that the terminology adopted in the corresponding exposure draft clauses is largely the same.

[137] It is still our *provisional* view that overtime should be calculated by reference to the ordinary hourly rate, not the minimum hourly rate.[93] However, we agree that in light of the practical impediments that the ADG has identified, there is merit in considering these matters further.

[138] A conference will be listed before Justice Ross to provide an opportunity for parties to discuss this issue further. The conference will be held at **10.00 am** on **Friday 17 August 2018** in Sydney. A notice of listing will be issued concurrently with this decision.

Items 3, 16, 43 – Loaded minimum hourly rate

[139] In the *March 2018 decision* we sought further clarification about how the 8% loading is calculated. There is confusion about whether this allowance is payable for all purposes or not.

[140] LPA submitted that the 8% loading forms part of the minimum rates provision and should remain in the Broadcasting Award.[94]

[141] In the *March 2018 decision* we agreed that the 8% was not payable for all purposes but noted that the interested parties had not commented on whether the amount was cumulative or compounding.

[142] The submission provided by the Cinema Employers and LPA did not address the question we posed in the *March 2018 decision* in so far as it sought clarification of how the 8% loading is calculated.[95] The submission focusses on a contention that the 8% was achieved by consent between the union and employer representatives and the quantum should not be removed or changed.

[143] The MEAA submitted that the exposure draft clause could be clarified further by making the following amendment:[96]

> '**13.4** All employees in cinemas will receive an 8% loading for all hours worked regardless of the day(s) of the week on which work is performed. This averaging

component is payable instead of Sunday penalty payments and as compensation for reduced public holiday penalties.'

[144] The MEAA further submitted that the 8% loading may no longer be fair in light of the much higher penalty rates paid in awards covering the related retail and hospitality sectors.[97]

[145] The MEAA acknowledged that a much more detailed comparison would need to be undertaken in order to determine whether there should be more alignment between the penalty rates in the Broadcasting Award and other awards such as the *Fast Food Industry Award 2010*, the *General Retail Industry Award 2010* and the *Hospitality Industry (General) Award 2010.*

[146] The MEAA noted that an alignment could have adverse consequences for cinema employees who currently only work Monday to Friday and may subsequently be denied the 8% loading component of their wage.[98]

[147] To be clear, we had no intention of changing the 8% loading as part of the technical and drafting process; we sought only to clarify the mechanism for calculation.

[148] The much broader concerns raised by the MEAA with regards to the equity of the 8% penalty rate will also be discussed at the conference before Justice Ross at **10.00 am on Friday 17 August 2018** in Sydney.

Item 38 – Overtime—Technical staff

[149] No submissions were received on this point. We confirm our *provisional* view from the *March 2018 decision* that no amendment should be made to clause 48 of the exposure draft.[99]

Item 47 – Motion Picture Production – Overtime

[150] No submissions were received on this point. We confirm our *provisional* view from the *March 2018 decision* that no amendment should be made to clause 80.3 of the exposure draft.[100]

Item 48 – Calculations of penalties and provision of rosters

[151] In the *March 2018 decision*, we expressed a view that the reference to 'gross agreed remuneration' should be replaced with 'minimum rate in clause 13' in clause 81.2 of the exposure draft. Interested parties were provided an opportunity to make a submission if they thought further redrafting was necessary. No party filed a submission on this point. No further change will be made to clause 81.2 the exposure draft.

Other matters

[152] Interested parties were asked to confirm whether the variations proposed to clause 31—Overtime of the exposure draft would be pursued. No change will be made to the exposure draft.

[153] Interested parties were asked to provide a draft definition of 'midnight to dawn shift' but no draft has been provided. No change will be made to the exposure draft.

[154] The ADG raised a concern about the operation of the Director's Loading in the context of existing facilitative provisions.[101] The Director's loading appears in clause 34.2(f) of the exposure draft. The ADG submitted that an annualised salary approach may be appropriate.

[155] It appears to us that the ADG's submission on this point is related to its overall concerns about the calculation of entitlements. This issue will also be discussed at the conference before Justice Ross at **10.00 am on Friday 17 August 2018** in Sydney. The matter may best be dealt with by a separately constituted Full Bench.

[156] A short paper highlighting the background to the issues that are to be discussed at the conference will be issued shortly.

[157] There are no other outstanding matters for this Full Bench to determine with regards to the Broadcasting Award.

2.11 *Car Parking Award 2010*

[158] While there were no outstanding technical and drafting items that required consideration by this Full Bench in the lead up to the *March 2018 decision*, UV has since suggested a variation to the casual loading clauses in a number of exposure drafts. The UV submission affects the exposure drafts for the *Car Parking Award 2010* (Car Parking Award), the Aboriginal Health Award and the *Cemetery Industry Award 2010 (*Cemetery Industry Award).

[159] UV submits that the terminology regarding the casual loading has been altered in a manner that limits the circumstances in which a casual employee receives the casual loading.[102] With respect to these awards, the terminology of 'ordinary hour' is used, which UV contends may cause confusion as ordinary hours are related to the limit within s.62 of the Fair Work Act of 38 hours as the weekly amount of 'ordinary hours'.

[160] UV further submits that this constitutes a substantive change to the awards concerned as a casual employee should be entitled to the casual loading for all hours worked. According to the current construction of the exposure drafts for these awards, a casual employee would only be entitled to the casual loading for ordinary hours of work and there is an interpretation that this is limited to 38 hours a week.

[161] UV therefore submits that clause 11.4 of the exposure draft should be varied by removing the word 'ordinary' from the phrase 'For each ~~ordinary~~ hour worked a casual employee must be paid'.[103] This variation has also been discussed above at [20].

[162] Interested parties are to file submissions in response to the UV submission outlined above. Any submission should be filed by no later than **4.00 pm on Tuesday 21 August 2018**. The matter will then be determined on the papers.

Substantive matter

[163] As part of the *March 2018 decision*, we invited parties to comment on whether they were intending to pursue the outstanding substantive matter relating to ordinary hours of work and rostering.[104] No submissions were received from parties to indicate that the substantive variation is being pursued, as such no separate Full Bench is required.

[164] There are no other outstanding matters for this Full Bench to determine in relation to the Car Parking Award.

2.12 *Cemetery Industry Award 2010*

[165] The exposure draft[105] based on the Cemetery Award[106] requires some further consideration. In the *March 2018 decision* we noted that there were no outstanding matters for this Full Bench to determine in relation to this award.

[166] UV filed one submission in relation to a proposal to vary the casual loading clause in a number of exposure drafts, including the Cemetery Award. As discussed above at [158] – [162], interested parties are to file submissions in response to the UV submission outlined above. Any submission should be filed by no later than **4.00 pm on Tuesday 21 August 2018**. The matter will then be determined on the papers.

[167] There are no other outstanding matters for this Full Bench to determine in relation to the Cemetery Award.

2.13 *Children's Services Award 2010*

[168] The exposure draft based on the *Children's Services Award 2010*[107] (Children's Services Award) requires further consideration.

[169] In the *March 2018 decision* we expressed a number of *provisional* views and sought further input from interested parties. Submissions were received from:

- ABI
- South Australian Employers' Chamber of Commerce and Industry Inc (trading as Business SA) Business SA
- An individual
- Australian Federation of Employers and Industry(AFEI)
- Group of 8 Universities
- UV

[170] The outstanding items are dealt with below.

Item 9 – Calculation of casual loading

[171] In the *March 2018 decision* we expressed a *provisional* view that the qualifications allowance in clause 15.6 of the exposure draft applies for all purposes and therefore the casual loading would be expressed as 25% of the ordinary hourly rate.[108]

[172] UV supports our *provisional* view.[109] No other interested parties commented on this item.

[173] We confirm our *provisional* view.

Substantive matters

[174] The Australian Childcare Alliance and ABI intend to pursue their substantive claims S25 and S26.[110] Business SA intends to pursue substantive claim S9.[111] An interested individual confirmed that substantive claims S3 and S4 would be pursued.[112] AFEI confirmed that it would pursue substantive claims S7A and S 11A but not S7.[113]

[175] UV confirmed that it would pursue items S14, S19, S20, S23 and S30. Additionally, it intends to reinstate items S1, S16 and S29 which were previously listed as withdrawn.[114]

[176] G8 Education confirmed that it would not pursue item S2.[115] UV confirmed that it would not pursue Items 7 or S6 regarding coverage.[116]

[177] These substantive matters will be referred to a separate Full Bench for consideration. There are no outstanding matters for this Full Bench to determine with regards to the Children's Services Award.

2.14 *Dry Cleaning and Laundry Industry Award 2010*

[178] The exposure draft based on the *Dry Cleaning and Laundry Industry Award 2010*[117] (Dry Cleaning Award) requires further consideration.

[179] In the *March 2018 decision* we expressed a number of *provisional* views. In response to these provisional views the following parties filed submissions:

- AWU
- Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (CFMEU)
- UV

[180] We will now consider each of the remaining outstanding items in turn.

Item 19 – Recall to work overtime

[181] The CFMEU confirmed that it would not pursue the substantive variation to this clause.[118] The AWU also submitted that it would not pursue this substantive variation.[119]

[182] We consider this item to be withdrawn.

Item 21 – Time off instead of payment for work on a Saturday, Sunday or public holiday

[183] UV noted that while it supported the Full Bench's *provisional* view, it proposed the following alternate new clause 23.4(e) for the exposure draft:

> '**(e)** If, on the termination of the employee's employment, time off for time worked on a Saturday, Sunday or public holiday worked by the employee to which clause 23.4 applies has not been taken, the employer must pay the employee for the time at the penalty rates applicable to the time when worked.'

[184] UV submitted that the alternate drafting is in acknowledgement of the fact that the rest of clause 23.4 does not refer to overtime, but to time worked at penalty rates on Saturdays, Sundays and public holidays.[120]

[185] The CFMEU supports the submission of UV regarding the redrafting of clause 23.4(e) of the exposure draft.[121]

[186] The AWU supports the Full Bench's *provisional* view and agrees with the UV submission that further redrafting is required.[122]

[187] We agree that the drafting suggested by UV is consistent with the existing terminology in the exposure draft. We will adopt the variation proposed by UV at [183] above.

Item 22 – Definitions

[188] The CFMEU continues to support the submission of the AWU regarding the redrafting of clause 24.1.[123] It opposed the alternate drafting suggested by the *March 2018 decision.*[124] However neither the CFMEU nor the AWU will pursue this matter as a substantive variation.[125]

[189] We consider this item to be withdrawn.

Item 31 – Full-time and Part-time adult laundry employees

[190] The CFMEU supports the interpretation we provided regarding ordinary hours of work for laundry employees and the consequential amendments required to the schedule of ordinary hourly rates of pay.[126] The AWU also supports the *provisional* view we expressed in the *March 2018 decision.*

[191] We confirm our *provisional* view that there is no scope for laundry workers to perform ordinary hours of work on a Saturday.[127] As such, the schedule of ordinary hourly rates of pay in clauses C.2.1 and C.3.2 will be amended.

[192] We acknowledge the CFMEU's submission regarding overtime rates for casuals and note that it is a matter being addressed by the separate Full Bench.

Item 9 – Ordinary hours of work—dry cleaning workplaces

[193] The CFMEU supports the variation to clause 13.1 of the exposure draft.[128] We confirm our *provisional* view in the *March 2018 decision*.[129]

[194] There are no other outstanding matters with regards to the Dry Cleaning Award.

Other matters

[195] UV confirmed its intention to pursue a number of substantive variations.[130] As such, a separate Full Bench will be constituted to consider and determine those items.

2.15 *Educational Services (Teachers) Award 2010*

[196] The exposure draft based on the *Educational Services (Teachers) Award 2010*[131] (Teachers Award) requires further consideration. The following parties filed submissions in response to the *March 2018 decision*:

- ABI
- An individual
- UV

[197] We deal with the outstanding items in relation to this award below.

Item 25 – Summary of Rates of Pay

[198] In the *March 2018 decision* we expressed a *provisional* view that the wage tables in clause B.1 should be deleted and subsequent amendments should be made to clause 17.1.[132] Those changes were adopted in the most recent version of the exposure draft.[133] In the absence of any objections to those amendments, we confirm that *provisional* view.

Substantive matters

[199] In the *March 2018 decision* we sought confirmation from interested parties regarding the outstanding substantive matters.

[200] An interested individual confirmed that substantive items S2 and S3 would be pursued.[134] UV submitted that it would pursue item S1 regarding an allowance for an educational leader which was previously withdrawn.[135] ABI submitted that it would pursue the substantive items S9 and S21.[136] A separate Full Bench will be constituted to consider those items.

[201] There are no other outstanding issues for this Full Bench to determine with regards to the Teachers Award.

2.16 *Electrical, Electronic and Communications Contracting Award 2010*

[202] The exposure draft based on the *Electrical, Electronic and Communications Contracting Award 2010*[137] (Electrical Contracting Award) requires further consideration. Submissions in response to the *March 2018 decision* were filed by the following parties:

- ABI
- CEPU
- Master Electricians Australia (MEA)

[203] We will now consider each of the outstanding items in turn.

Item 42 – Proposed new shiftwork clause

[204] The Fire Protection Association Australia (FPAA) made a submission in the early stages of the Review in relation to the Hours of Work clause in the exposure draft. Following conferences before Deputy President Gostencnik the FPAA filed a draft determination outlining the variations it seeks.[138]

[205] The FPAA contends that its proposed variations were not substantive, ABI and Ai Group disagree. In the *March 2018 decision* we expressed a *provisional* view that the matter be determined by a separate Full Bench given it appeared to be closely aligned with item 15A. We indicated that parties were to advise the Commission if the matter could be resolved as part of the technical and drafting stage (as per FPAA's draft determination) or otherwise.

[206] In response to the *provisional* view MEA submits that the proposed clause is not 'new' and they submit the clause 'is to clarify technical and drafting issues currently causing confusion within the industry.' It contends that 'given reluctance of the parties to reach a consensus the issue should be considered by a separate Full Bench. .[139]

[207] ABI submitted that the variation would be significant should be dealt with as a substantive matter.[140]

[208] The CEPU supports the draft determination proposed by the FPAA subject to correcting a spelling error.[141] The CEPU noted that as there is no consent position the matter should be referred to a separate Full Bench for consideration.

[209] We note that the FPAA did not file a submission in response to *the March 2018 decision*. This matter will be listed for Mention before Justice Ross at **9.00 am on Friday 17 August 2018**. The purpose of the Mention will be to ascertain how the FPAA wish to proceed.

Items 47 – 65 – various matters in Schedule B

[210] MEA submitted that Schedule B will result in confusion and underpayments because of the "all-purpose rate" contained in it.[142] MEA suggests two potential solutions: either remove Schedule B in its entirety or develop a new format for the schedule. MEA suggested adopting a format similar to that utilised by the Fair Work Ombudsman.

[211] We understand that we are introducing a new format for wages in the exposure draft Schedule B and it may cause some initial confusion. However, all exposure drafts provide rates of pay and allowances in schedules. The schedules to the exposure draft of the Electrical Contracting Award adopts consistent formatting. We are not persuaded that we deviate from that uniform approach.

Other matters

[212] In response to a question by the Commission, the MEA submitted that:[143]

> 'Clause 12.14 as currently worded does not allow for Junior rates for non- electrical activities and classifications such as Level 1 to 2 that address labouring and non-electrical work that is not deemed to be an apprentice trade.'

[213] MEA submitted that the clause may need to be redrafted further in order to provide clarity about the circumstances in which a junior employee may be engaged, while safeguarding the position of apprenticeships.

[214] Clause 12.14 of the exposure draft currently provides:

> **12.14 Employment of minors**
>
> **(a)** An employer must not employ minors in any trade covered by the classifications of this award where the relevant State apprenticeship authority has prescribed such classifications as an apprenticeship trade.
>
> **(b)** A minor may be taken on as a probationary apprentice for three months and, if apprenticed, such three months will count as part of their period of apprenticeship.[144]

[215] Clause 12.14 of the exposure draft reflects the wording of the clause in the current award. Therefore, any re-drafting would amount to a substantive variation.

[216] Accordingly, this matter will be referred to a separate Full Bench.

[217] A separate Full Bench will be constituted to address these outstanding items.

2.17 *Food, Beverage and Tobacco Manufacturing Award 2010*

[218] The exposure draft based on the *Food, Beverage and Tobacco Manufacturing Award 2010*[145] (Food Manufacturing Award) requires further consideration. The following interested parties filed further submissions in relation to this exposure draft:

- AMWU
- AWU
- Ai Group
- UV

[219] We will now consider each of the outstanding items in turn.

Item 3 – Definitions – applicable rate of pay

[220] Ai Group provided a detailed submission regarding the outstanding matter surrounding the "applicable rate of pay".[146] This matter was given detailed consideration as part of the Group 1 award stage process by reference to the *Manufacturing and Associated Industries and Occupations Award 2010*[147](Manufacturing award).[148]

[221] The AMWU submitted that it would like more time to consider the Ai Group's submission on this point.[149]

[222] Given the close relationship between the Food Manufacturing Award and the Manufacturing Award, we agree with Ai Group's submission that the same approach should be adopted with regards to the existing terminology of "applicable rate of pay". If the AMWU or any other party seeks to deviate from that established approach it may be pursued as a substantive variation. If any party intends to pursue a substantive variation they are to notify the Commission in writing (to amod@fwc.gov.au) no later than **4.00 pm on Tuesday 21 August 2018**.

[223] On that basis, the following amendments will be made to the exposure draft of the Food Manufacturing Award:

[224] Clause 2 – The definition of "applicable rate of pay" will be deleted.

[225] Clause 13.1(b) will be redrafted as follows:

> **(b)** by agreement between an employer and an individual employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours ~~at the applicable rate of pay~~ without a meal break. Employees will be paid for the fifth hour at the rate applying immediately prior to the end of the fourth hour.

[226] Clause 13.4 will be redrafted as follows:

> **13.4** Subject to clause 13.1, an employee must work during meal breaks at the ~~applicable rate of pay~~ rate of pay applying to the employee immediately prior to the scheduled meal break 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.

[227] Clause 13.5 will be redrafted as follows:

> **13.5** Except as otherwise provided in clause 13—Meal breaks and except where any alternative arrangement is entered into by agreement between the employer and the employee concerned, employees ~~the rate of **150%** of the applicable rate of pay~~ must

be paid as follows for all work done during meal hours and thereafter until a meal break is taken:

(a) except in the circumstances referred to in clauses 13.5(b), (c) and (d): 150% of the ordinary hourly rate;

(b) where the unpaid meal break is during ordinary time on a Saturday or Sunday: 200% of the ordinary hourly rate;

(c) where the unpaid meal break is during ordinary time on a shift on which the employee is entitled to a 12.5% loading: 162.5% of the ordinary hourly rate;

(d) where the unpaid meal break is during ordinary time on a shift on which the employee is entitled to a 15% loading: 165% of the ordinary hourly rate;

(e) where the unpaid meal break is during ordinary time on a shift on which the employee is entitled to a 30% loading: 180% of the ordinary hourly rate.

[228] Clause 20.2(f)(iv) will be redrafted as follows:

(iv) Travelling time payment

The rate of pay for travelling time is:

- the ~~applicable rate of pay~~ ordinary hourly rate on Monday to Saturday, and
- 150% of the ~~applicable rate of pay~~ ordinary hourly rate on Sundays and public holidays.

The maximum travelling time to be paid for is 12 hours out of every 24 hours or, when a sleeping berth is provided by the employer for all-night travel, eight hours out of every 24 hours.

[229] Clause 21 will be redrafted as follows:

21. Extra rates not cumulative

The extra rates in this award, except rates prescribed in clause 20.1(f)—Special rates and rates for work on public holidays, are not cumulative so as to exceed the maximum of double the ~~applicable rate of pay~~ ordinary hourly rate.

[230] Clause 23.9(b) will be redrafted as follows:

(b) Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break must be paid at the employee's ~~applicable rate of pay~~ ordinary hourly rate.

[231] Clause 23.9(c) will be redrafted as follows:

(c) Where overtime is to be worked immediately after the completion of ordinary hours on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the employee's ~~applicable rate of pay~~ ordinary hourly rate.

[232] Clause 23.12 will be redrafted as follows:

23.12 Standing by

Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's ~~applicable rate of pay~~ ordinary hourly rate for the time they are standing by.

[233] Clause 28.5(a)(i) will be redrafted as follows:

(i) 7.6 hours of pay at the ~~applicable rate of pay~~ employee's ordinary hourly rate; or

[234] Ai Group also noted that the current exposure draft clause 35—Transfer to lower paid job on redundancy contains references to the "applicable rate of pay". Ai Group submitted that the clause should be updated according to the standard clauses developed in the plain language redrafting process.[150]

[235] The plain language redrafting is ongoing and until all the remaining standard clauses are finalised we do not propose to make further amendments to the exposure drafts. In the interim, we will not amend clause 35 of the exposure draft.

Item 4 – Definitions – "standard rate" and "ordinary hourly rate"

[236] Ai Group submitted that the broken cross reference in the clause 2 definition of "ordinary hourly rate" should be replaced with the words "this award" instead of a specific clause reference.[151] Ai Group further submitted that clause 10.2 of the exposure draft should similarly refer to "this award" rather than clause 14.[152]

[237] We note that a related issue arises in the definition of "casual ordinary hourly rate" and "standard rate".

[238] We agree with the Ai Group's submission that clause 14.1 is not the only place where a minimum wage may be found in the award. However, the two clauses that relevantly prescribe minimum rates of pay are clause 14 and clause 15. Clause 14 provides general minimum rates of pay and clause 15 provides apprentice minimum wages.

[239] We note that apprentices can only be engaged on a part-time or full-time basis. Therefore there is no interaction between the apprentice provisions and the casual ordinary hourly rate.

[240] We understand that the interested parties reached an agreed position about redrafting the definitions at a conference on 12 April 2017 with Commissioner Lee.[153] However, the

definitions of "ordinary hourly rate" and "casual ordinary hourly rate" are standard clauses in exposure drafts. Furthermore, if no clause reference is provided in the definition, the definition itself adds little value in assisting a reader to locate the source of the entitlement defined.

[241] Therefore, we will vary the definitions as follows:

> **casual ordinary hourly rate** means the hourly rate for a casual employee for the employee's classification specified in clause 14, inclusive of the casual loading which is payable for all purposes. Where an employee is entitled to an additional all-purpose allowance, this allowance forms part of that employee's casual ordinary hourly rate
>
> **ordinary hourly rate** means the hourly rate for the employee's classification specified in clauses 14 and 15, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes
>
> **standard rate** means the minimum hourly wage prescribed for the Level 5 classification in clause 14.1(a)

[242] The other broken cross-references to "clause 0" currently appearing in clauses 14.1(b), (c), (d) and C.1 will be updated to "clause 14.1(a)".

[243] The broken cross-reference to "clause 0" currently appearing in clause 16.1 will be updated to "clause 14".

[244] We will not vary the cross reference in clause 10.2 because it is considered further at [246] below.

Item 25 – Casual employment

[245] In a Report dated 7 June 2017 the Commission expressed a preliminary view that clause 10.2 of the exposure draft be varied by substituting the word 'ordinary' with the word 'minimum'. This was in line with the Ai Group proposal. The parties agreed to this variation.

[246] Following the *March 2018 decision* the agreed position was inserted into the exposure draft. Clause 10.2 was re-drafted as follows:[154]

> '**10.2** A casual employee working ordinary time must be paid:
>
> **(a)** the ~~ordinary~~ minimum hourly rate prescribed in clause 14 for the work being performed; plus
>
> **(b)** a casual loading of 25% of the ~~ordinary~~ minimum hourly rate.'

[247] The AWU submit that they no longer support Ai Group's earlier submission. They submit the variation may result in a casual employee being paid less than what they are currently entitled to if they are entitled to an all-purpose allowance.[155] The AWU also

submitted that the use of the term "minimum" is not appropriate in this clause because of the all-purpose allowances in the award.[156]

[248] The AMWU advised that it has reconsidered its position on this matter and proposed the following variation:[157]

> '**10.2** A casual employee working ordinary time must be paid:
>
> **(a)** the ordinary hourly rate prescribed in this award for the work being performed; plus'

[249] We agree that clause 14 only prescribes minimum hourly rates, not ordinary hourly rates so it would be inaccurate to simply substitute the word "ordinary" for the word "minimum". However, if an all-purpose allowance applies it should be added to that minimum rate to form the applicable ordinary hourly rate. The 25% loading should then be calculated based on the ordinary hourly rate, not the minimum hourly rate. It is our *provisional* view that clause 10.2 be varied as follows:

> '**10.2** A casual employee working ordinary time must be paid:
>
> **(a)** the ordinary hourly rate for the work being performed; plus
>
> **(b)** a casual loading of 25% of the ordinary hourly rate.'

[250] Parties have until **4.00 pm on Tuesday 21 August 2018** to comment on our *provisional* view. If no submission is received from any party, we will adopt our *provisional* view.

Other drafting errors

[251] Ai Group noted that an error has arisen in the numbering of clause 20.1 from the allowance titled "Hot places" onwards.[158] We agree and will update that numbering consistent with the previous exposure draft.[159]

[252] Ai Group submitted that the variation agreed to clause 23.4 has not been incorporated into the exposure draft as agreed at the conference.[160] We agree and will vary the clause according to Ai Group's submission to be consistent with clause 33.6 of the current award as follows:

> **23.4 Saturday work—day worker**
>
> A day worker required to work overtime on a Saturday must be paid 150% of the ordinary hourly rate for the first three hours and 200% of the ordinary hourly rate thereafter with a minimum payment of four hours, except where the overtime is continuous with overtime commenced on the previous day.

[253] Ai Group submitted that clause 23.11 should be redrafted to specify "ordinary hourly rate" instead of "ordinary rate".[161] We agree and will make that amendment to the exposure draft.

[254] The AMWU submitted that clause 24.2 requires further consideration along with similar clauses facilitating variations to the span of hours provisions.[162] Clause 24.2 is currently drafted as follows:

> **24.2** By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

[255] We acknowledge that since the decision in October 2015, there have been some award-specific decisions made regarding this issue.[163] In order to establish a consistent approach we will refer this matter to the plain language redrafting process for consideration.

[256] Ai Group submitted that the definition of "ordinary hourly rate" in clause B.1.1 should be updated consistently with their submission about clause 2. Given the conclusions we have reached about the definitions we will vary clause B.1.1 as follows:

> **B.1.1 Ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 14, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes. Where an allowance is payable for all purposes in accordance with clause 20.1(a), this forms part of the employee's ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

Substantive matters

[257] UV confirmed that it will pursue a number of substantive variations in the Food Manufacturing Award.[164] AMWU confirmed that it will pursue the substantive matter regarding the applicable payment for shift workers rotating between afternoon and night shifts.[165] A separate Full Bench will be constituted to consider those items.

2.18 *Funeral Industry Award 2010*

[258] The exposure draft[166] based on the *Funeral Industry Award 2010*[167] (Funeral Award) was republished on 26 March 2018. Submissions were received from the following parties:

- AWU
- ABI and NSW BC
- Business SA
- UV

[259] In the *March 2018 decision* we expressed a number of *provisional* views, which are dealt with below.

Item 12 – Calculation of overtime for shiftworkers

[260] Item 12 relates to a query posed in the exposure draft asking whether the 'applicable rate' contained in the overtime for shiftworkers clause refers to the shift penalty in clause 18.5 of the exposure draft, or the minimum hourly rate. The issue was dealt with at length in the *March 2018 decision*.[168] AFEI and ABI made submissions that the 'applicable rate' should be read as applicable *minimum* rate, while the AWU and UV submitted that the rate refers to the shift penalty.

[261] In the *March 2018 decision*, we outlined the following provisional view:

> '**[453]** . . . Our *provisional* view is that the shift penalty for employees working on an afternoon shift would be calculated on the employees' minimum hourly rate as would the overtime rate. The resultant amounts would be added together. We will include words to this effect in the exposure draft and update Schedule A.'

[262] The redrafted clauses of the exposure draft (clauses 18.5 and 18.6) are as follows:

> **18.5 Afternoon shift penalties**
>
> **(a)** A shiftworker whilst on afternoon shift will be paid 120% of the minimum hourly rate.
>
> **(b)** A shiftworker on a non-continuing afternoon shift will be paid 150% of the minimum hourly rate for all ordinary hours worked during the shift.
>
> **18.6 Overtime for shiftworkers**
>
> **(a)** All time worked in excess of, or outside the ordinary working hours in clause 18.2, or on a shift other than a rostered shift, will be paid for at 150% of the applicable rate for the first three hours and 200% thereafter.
>
> **(b)** When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue to work on the employee's rostered day off, the unrelieved employee will be paid 200% of the applicable rate.

[263] The parties were invited to comment on the *provisional* view and to propose any re-drafting to the clause. Submissions were received from the AWU and UV; the AWU opposed the *provisional* view; while UV noted that clause 18.6 of the exposure draft had not been amended correctly and did not reflect the *provisional* view. Neither party's submissions advanced any re-drafting solutions. No other party commented on this issue.

[264] The two possible methods of calculations are outlined below. The first method would occur if we adopted the AWU's submission. The second method results if we adopt our *provisional* view.

Compounding calculation method

[265] If the term 'applicable rate' were to remain in clause 18.6, a new base rate of pay would effectively be created for a shiftworker (inclusive of their shift penalty). A shiftworker would therefore calculate their entitlement to overtime using a compounding method. In that scenario, an afternoon shiftworker would be entitled to base rate of 120% of the minimum hourly rate under clause 18.5(a), as well as an overtime rate of 150% of the minimum hourly rate for the first three hours and an overtime rate of 200% thereafter under clause 18.6(a). Consequently, the shiftworker working overtime will be entitled to 150% or 200% of their base rate of pay. In practice, that would mean that the shiftworker would receive 150% or 200% of the loaded hourly rate, resulting in a higher hourly rate.

[266] For example, if a shiftworker's minimum rate is $18.93 per hour, that shiftworker would be entitled to a loaded hourly rate of 120%, being $22.72 per hour (the 'applicable rate'). Using this interpretation, if that shiftworker's afternoon shift also constitutes overtime, they would be entitled to receive either 150% or 200% of that 'applicable rate', amounting to $34.08 or $45.44 per hour.

Cumulative calculation method

[267] Alternatively, if clauses 18.6(a) and (b) of the exposure draft were amended by substituting the word 'applicable rate' with 'minimum hourly rate', then a shiftworker's rate would be cumulative with their overtime rate. In effect, when a shiftworker is working overtime, they will be entitled to a shift work rate and an overtime rate, both of which are added to the minimum hourly rate.

[268] For example, if a shiftworker's minimum rate is $18.93 per hour, and they are performing overtime during an afternoon shift, they would be entitled to an hourly penalty of either 170% or 220% of $18.29 in accordance with clauses 18.5(a) and 18.6(a), amounting to $32.18 and $41.65 per hour.

[269] We consider that the cumulative calculation method is the correct approach to the calculation. Adopting the compounding method of calculation would unduly result in an increase to the minimum overtime rates for afternoon shiftworkers.

[270] In accordance with our view in the *March 2018 decision* we will amend clauses 18.6(a) and (b) of the exposure draft by substituting the word 'applicable rate' with 'minimum hourly rate' to ensure that the calculation of overtime for shiftworkers is clearly payable at the minimum rate of pay for the applicable classification.

Aggregation issue

[271] A further issue regarding compounding calculations arises in relation to the interaction between the aggregated rates in clause 18.5 and clause 18.6 of the exposure draft. Effectively, the clauses could be interpreted as duplicating the minimum hourly rate found in both those clauses when calculating an afternoon shiftworker's overtime entitlement.

[272] Using this approach, an afternoon shiftworker would calculate their entitlement to overtime on a compounding basis, by adding together the 120% of the minimum hourly rate

in clause 18.5(a) and the 150% or 200% of the applicable rate in clause 18.6(a). In practice, that would mean that that an afternoon shiftworker would receive 270% or 320% of the minimum hourly rate, resulting in a significantly higher calculation (i.e. they add the 100% twice).

[273] For example, if a shiftworker's minimum rate is $18.93 per hour, they would be entitled to receive 270% or 320% of their minimum hourly rate, being $51.11 and $60.58 when working overtime during an afternoon shift.

[274] The method of calculating overtime for shiftworkers should not be to combine a shiftworker's afternoon shift penalty in clause 18.5, being 120% or 150% of their minimum hourly rate, with the overtime loading in clause 18.6, being 150% or 200% of their minimum hourly rate nor should it be to compensate an shiftworker for 150% or 200% of their loaded shiftworker rate. This would unduly result in shiftworkers receiving double the intended compensation for the inconvenience of working unsocial hours by virtue of being a shiftworker. Rather, a shiftworker should only be entitled to 20% or 50% of the minimum hourly rate in clause 18.5 in addition to the overtime rate in clause 18.6, or otherwise described as either 170% or 220% of the minimum hourly rate.

[275] It is our *provisional* view that clause 18.6 of the exposure draft be drafted in the following way:

18.6 Overtime for shiftworkers—Afternoon shiftworker

(a) All time worked in excess of, or outside the ordinary working hours in clause 18.2 by a shiftworker, or on a shift other than a rostered shift, will be paid at **170%** of the minimum hourly rate for the first three hours and **220%** thereafter.

(b) When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue to work on the employee's rostered day off, the unrelieved employee will be paid **220%** of the minimum hourly rate.

(c) This clause operates to the exclusion of clause 18.5

18.7 Overtime for shiftworkers—Non-continuing afternoon shiftworker

(a) All time worked in excess of, or outside the ordinary working hours in clause 18.2 by a shiftworker on a non-continuing afternoon shift, or on a shift other than a rostered shift, will be paid at **200%** of the minimum hourly rate for the first three hours and **250%** thereafter.

(b) When less than 7 hours 36 minutes' notice has been given to the employer by a relief employee that they will be absent from work, and the employee whom the relief employee should relieve is not relieved and is required to continue

to work on the employee's rostered day off, the unrelieved employee will be paid **250%** of the minimum hourly rate.

(c) This clause operates to the exclusion of clause 18.5.

[276] In addition to the amending clause 18.6 of the exposure draft, as discussed above, it is our *provisional* view that the table below be inserted into Schedule A to clearly set out the hourly rates applicable for shiftworkers while working overtime on an afternoon shift.

[277] This table removes the duplication of the minimum hourly rate found in clauses 18.5 and 18.6.

A.1.1 Full-time and part-time shiftworkers—overtime from midnight Friday until midnight Sunday

	Day shift	**Afternoon shift – Saturday and Sunday**		**Non-continuing afternoon shift[x] – Saturday and Sunday**	
		First 3 hours	**After 3 hours**	**First 3 hours**	**After 3 hours**
	% of minimum hourly rate				
	100%	**170%**	**220%**	**200%**	**250%**
	$	**$**	**$**	**$**	**$**
Grade 1	18.93	32.18	41.65	37.86	47.33
Grade 2	19.47	33.10	42.83	38.94	48.68
Grade 3	20.22	34.37	44.48	40.44	50.55
Grade 4	20.91	35.55	46.00	41.82	52.28
Grade 5	22.04	37.47	48.49	44.08	55.10
Grade 6	22.73	38.64	50.01	45.46	56.83

[x] **Non-continuing afternoon shift** means any afternoon shift which does not continue for at least five successive afternoons or for at least the number of ordinary hours prescribed by one of the alternative arrangements in clause 18.2 (see clause 18.5(b))

[278] The Funeral Award does not currently provide a summary of hourly rates of pay for full-time and part-time shiftworkers while working overtime on Saturdays and Sundays. The insertion of this table will address that deficiency.

[279] Interested parties are requested to file submissions relating to our *provisional* view above by no later than **4.00 pm on Tuesday 21 August 2018**. If no submission is received, we will adopt our *provisional* view.

Items 15 and 16 – Overtime

[280] These items concern the interaction between the clauses relating to recalls, removals and the clauses providing minimum periods of engagement for part-time and casual employees. In the *March 2018 decision,* the Full Bench *provisionally* held that where a part-time employee is recalled to work overtime, the employee is to be paid the minimum of one hour's pay at the applicable overtime or penalty rate at clause 19.1(b) of the exposure draft.[169]

[281] In its submission, the AWU objected to this *provisional* view, submitting that the minimum engagement provisions specific to recalls and removals provide protection for full-time employees only, as full-time employees do not have a general minimum engagement provision in the Funeral Award.[170]

[282] AWU further noted that part-time and casual employees, however, do have general minimum engagement provisions in the Funeral Award which are intended to be observed for all purposes, including recalls and removals. AWU submitted that the *provisional* view of the Full Bench regarding the application of the minimum engagement provision for part-time employee introduces an inconsistency in respect to part-time employees' minimum engagements under the Funeral Award.

[283] The relevant clauses are set out below.

[284] Clause 19.1 is currently drafted as follows:

> **19.1 Payment for overtime—other than shiftworkers**
>
> **(a)** For work performed outside the hours fixed as the times for starting and finishing work in clause 13.2, an employee will be paid **150%** of the minimum hourly rate for the first three hours worked and **200%** of the minimum hourly rate thereafter.
>
> **(b)** Where an employee is recalled to work before 7.00 am or after 7.00 pm for other than arranged overtime, the employee will be paid a minimum of one hour's pay at the applicable overtime or penalty rate specified in either clause 19.1(a) or clause 20.1 on each occasion the employee is recalled to work overtime.
>
> **(c**) The base hourly rate for calculating overtime will be the employee's minimum hourly rate in clause 15.1 ~~16.1~~.

[285] Clause 19.4 relates to removals and states:

> **19.4 Removals**
>
> **(a)** Where an employee is called to undertake removals between the hours of 7.00 pm and midnight and work is completed at or prior to midnight, the employee will be paid 150% of the minimum hourly rate for the first three hours of work and 200% of the minimum hourly rate thereafter with a minimum payment of two hours.
>
> **(b)** Where an employee is called to undertake a removal, any portion of which occurs between the hours of midnight and 7.00 am, the employee will be paid 200% of the minimum hourly rate with a minimum payment of two hours.

(c) If a removal starts between the starting and finishing times as prescribed in clause 13.2, the employee will be paid at the rate prescribed in clause 19.1. If a subsequent removal is requested after 7.00 pm, although the original removal started before that time, the employee will be paid at the rate as prescribed in clause 19.4, for the subsequent removal.

[286] Clause 20.1 deals with penalty rates and is as follows:

20. Penalty rates

20.1 Work on Saturday, Sunday or public holidays

With the exception of removals, payment for work performed on a Saturday, Sunday or public holiday (or day substituted for a public holiday) will be as follows:

(a) Saturday

(i) For work performed on a Saturday, employees will be paid **150%** of the minimum hourly rate for the first three hours worked, and **200%** of the minimum hourly rate thereafter, with a minimum of two hours' pay.

(ii) Where an employee is engaged in the carrying out of a funeral on a Saturday, the employee will receive a minimum of four hours' pay at the following rates:

- if the work is completed in three hours or less, the total minimum payment will be paid at **150%** of the minimum hourly rate; and/or
- if the work exceeds three hours, all additional time will be paid at **200%** of the minimum hourly rate.

(b) Sunday

For all time worked on a Sunday an employee will be paid 200% of the minimum hourly rate, with a minimum payment of two hours' pay.

(c) Public holidays

(i) 200% of the employee's minimum hourly rate will be paid for all work performed on a public holiday.

(ii) The rates prescribed in clause 20.1(c) for shiftworkers are in substitution for, and not cumulative on, the shift penalty prescribed in clause 18.5.

(d) Work performed by part-time and casual employees, as prescribed in clauses 20.1(a)-(c), is subject to the applicable minimum engagement periods prescribed at clauses 10.5 and 11.3.

[287] Clause 20.1(d) was provisionally inserted following the March 2018 decision and is dealt with at [294] below.

[288] Clause 10.5 deals with minimum engagement for part-time employees and states:

> **10.5** A part-time employee must be rostered for a minimum of three consecutive hours on any shift.

[289] Clause 11.3 deals with minimum engagement for casual employees and states:

> **11.3** A casual employee must be paid for a minimum of four hours' work each time the employee is required to attend work, including when engaged more than once in any day.

[290] Upon reflection, it appears that our *provisional* view set out in the *March 2018 decision* is incorrect and the AWU submission has merit. We agree that the specific minimum engagement provisions relating to part-time and casual employees (clauses 10.5 and 11.3) are applied for these types of employees instead of the minimum engagement provisions set out at clauses 19.4 and 20.1.

[291] This issue is closely related to the item discussed below (Item S8 – Penalty rates for work on a Saturday or Sunday) at para [294].

[292] This issue will be referred to a substantive Full Bench. In the interim, a conference will be convened before Justice Ross at **2.00 pm** on **Friday 17 August 2018** in Sydney. A short paper will be issued prior to this conference outlining the background to the issue. The issue outlined below at [294] will also be dealt with at the conference.

Items 10 and S7 – Uniform allowance

[293] UV confirmed its intention to pursue this item as a substantive variation. [171] As such, a separate Full Bench will be constituted to consider and determine this item.

Item S8 – Penalty rates for work on a Saturday or Sunday

[294] Item S8 concerns the interaction between the provisions for work performed on Saturdays and Sundays in clauses 20.1(a)(i) and 20.1(b) of the exposure draft and the minimum periods of engagement for part-time and casual employees in clauses 10.5 and 11.3.

[295] In the *2018 March decision* we *provisionally* held that the minimum engagement periods in clauses 10.5 and 11.3 are intended to operate to the exclusion of those provided for in clauses 20.1(a) and (b), such that part-time and casual employees will have a minimum engagement period of three and four hours respectively. This Full Bench *provisionally* adopted the AWU's proposal to insert a clause 20.1(d).[172]

[296] UV noted its support for the *provisional* view expressed by this Full Bench, submitting that the addition of clause 20.1(d) will ensure that part-time and casual employees have certainty regarding their minimum engagement periods.[173] The AWU is also supportive of the *provisional* view.[174]

[297] On the other hand, ABI opposed the *provisional* view and the insertion of the wording proposed by the AWU. [175] They submitted that the *provisional* view effectively allows casuals to be paid double of what a full or part-time employee would receive for performing removal work after hours even though the work being performed by either a full-time, part-time or casual employee is identical. [176] They submitted that this variation will have a significant financial impact on the funeral industry which is inconsistent with the modern awards objective. They further contended that is likely that the cost of increasing the minimum engagement from two to four hours (particularly when that work is already paid for at overtime rates) for casuals undertaking weekend or removal work will be passed on to mourning families, particularly by smaller operators who cannot employ or will have limited numbers of permanent employees available to perform the same work for a lesser rate of pay.

[298] This issue will be referred to a substantive Full Bench. In the interim, a conference will be convened before Justice Ross at **2.00 pm** on **Friday 17 August 2018** in Sydney. A short paper will be issued prior to this conference outlining the background to the issue.

Item S9 – Overtime

[299] Item S9 concerns the AWU's proposal to insert a minimum payment for time worked on public holidays. In the *March 2018 decision*, we considered that the AWU's amendment would constitute a substantive change to the Funeral Award.[177] The AWU confirmed its intention to pursue this matter as a substantive change and submits that this item only require a minor variation that can be determined on the papers.[178]

Item 16A – Removals and shift work

[300] Item 16A relates to a query posed by Business SA concerning whether overtime and shiftwork penalties apply to removal work. In the March 2018 decision we outlined a provisional view that clause 19.4 of the exposure draft does not operate to the exclusion of 18.6. In their submissions, Business SA, UV and AWU noted their agreement with our *provisional* view. [179] We will adopt the provisional view.

[301] There are no other outstanding matters for this Full Bench to determine in relation to the Funeral Award.

2.19 *Journalists Published Media Award 2010*

[302] The exposure draft based on the *Journalists Published Media Award 2010*[180] (Journalists Award) requires further consideration. ABI and the MEAA filed submissions in response to the *March 2018 decision.*

[303] There remains one outstanding item in relation to the Journalists Award.

Item 25 – Public Holidays

[304] In the *March 2018 decision* we noted that the interested parties had achieved a consensus on redrafting clause 25.3 of the exposure draft as set out in the Report to the Full

Bench.[181] The agreed position referred to was set out in a submission from News Limited, Bauer Media and Pacific Magazines in the following terms:[182]

> '**25.3 Employees receiving additional annual leave**
>
> **(a)** Clauses 25.1, 25.2, 22.4 and 22.5 do~~es~~ not apply to any employee receiving additional annual leave under clause 22.2(a).'

[305] The variation we agreed to make was based on that agreed position, however we outlined that we were not prepared to exclude clause 25.1 as it states that 'Public holiday entitlements are provided for in the NES.' We outlined that we were concerned that the clause 25.1 exclusion would have the appearance of excluding the application of the NES entitlements from the provision relating to additional annual leave in clause 25.3.[183] Clause 25.3 of the updated exposure draft is currently expressed in the following terms:[184]

> '**25.3 Employees receiving additional annual leave**
>
> **(a)** Clauses 22.3, 22.4 and 25.2 do not apply to any employee receiving additional annual leave under clause 22.2(a).'

[306] In response to the *March 2018 decision* and the updated exposure draft, MEAA submitted that the variation to clause 25.3(a) would result in an unjust outcome for editorial employees presently entitled to additional annual leave.[185] MEAA's submission sets out the following concerns:[186]

> 'The practical effect of this decision, if incorporated into the JPMA, would be to eliminate:
>
> > A substitute annual leave day or payment at double time where Christmas Day or Good Friday fall within an eligible employee's period annual leave under clause 22.4; and
> >
> > Eligible employees' access annual leave loading under clause 22.5.
>
> Although the Full Bench has decided not to delete clause 22.3 in clause 25.3, it appears to have gone further than the Exposure Draft by removing mention of clause 22.5 (annual leave loading) from clause 25.3.
>
> Notwithstanding the loss of existing entitlements, if the variations set out above stand, there will be inconsistency between clauses 22 and 25.3. This would lead to differing interpretations across relevant media workplaces.'

[307] MEAA submitted that it is engaged in further discussions with the representatives for News Ltd regarding this issue.

[308] We confirm our *provisional* view regarding the redrafting of clause 25.3.

Substantive matters

[309] MEAA provided submissions regarding the outstanding substantive matters. These items will be referred to a separate Full Bench for consideration. See attachment B to this decision.

[310] ABI confirmed that they would not pursue any substantive claims.[187]

[311] There are no other issues for this Full Bench to determine in relation to the Journalists Award.

2.20 *Live Performance Award 2010*

[312] The exposure draft based on the *Live Performance Award 2010*[188] (Live Performance Award) requires further consideration. In the *March 2018 decision* we expressed a number of *provisional* views and sought further input from interested parties. LPA was the only party to file a submission.

Item 16 – Substantially whole time nature performances (Definition and Payment)

[313] LPA submitted[189] that, following discussions with the MEAA, they both support our *provisional* view regarding the new definition of "substantially whole time nature".[190]

[314] We will adopt the variations discussed in the *March 2018 decision* and reflected in the most recent version of the exposure draft.[191]

[315] There has been no response from interested parties regarding whether the outstanding substantive items will be pursued. On that basis, we do not intend to constitute a separate Full Bench at this time. Interested parties will have until **4.00 pm on Tuesday 21 August 2018** to advise whether any party intends to pursue any substantive items. If no such advice is received we will proceed on the basis that no substantive items are being pursued.

[316] There are no other outstanding issues for this Full Bench to determine with regards to the Live Performance Award.

2.21 *Mannequins and Models Award 2010*

[317] The exposure draft based on the *Mannequins and Models Award 2010*[192] (Mannequins Award) requires further consideration. In the *March 2018 decision* we expressed a number of *provisional* views and noted that there had been no submissions provided by interested parties. Since the *March 2018 decision*, there have still been no submissions about the Mannequins Award.

[318] We confirm the *provisional* views we set out in the *March 2018 decision* regarding clauses 16.2(b) and 16.2(k) of the exposure draft.[193] No submissions were received on these points. In the absence of any feedback from interested parties we will not make any further amendments to the exposure draft.

[319] There are no other outstanding issues for this Full Bench to determine with regards to the Mannequins Award.

2.22 *Pest Control Industry Award 2010*

[320] The exposure draft[194] based on the *Pest Control Industry Award 2010*[195] (Pest Control Award) requires some further consideration. In the *March 2018* decision we expressed a number of *provisional* views. The AWU filed a submission in response to the *March 2018 decision*. No other submissions were received.

[321] The three outstanding items are set out below.

Item 2 – Meal allowance – country work

[322] In the *March 2018 decision* we expressed a *provisional* view that clause 17.3(c)(iv), which provides an allowance of $8.54 per meal to an employee when they are travelling to or between country work locations, has no practical application given the overlapping allowances in clauses 17.3(a)(i) and 17.3(c)(ii). The relevant clauses are set out below.

[323] Clause 17.3(a)(i) is set out as follows:

> **17.3 Expense-related allowances**
>
> **(a) Meal allowance**
>
> **(i)** The employer will either supply a meal or pay a meal allowance of $13.81 for the first and subsequent meals to an employee where the employee is required to work overtime for more than two hours without being notified on the previous day or earlier that they will be required to work.

[324] Clause 17.3(c)(ii) of the exposure draft is currently drafted as follows:

> **(c) Country work**
>
> **(ii)** An employee sent to country work will be paid an allowance of $90.44 per night to cover the costs of lodging and all meals or provided with board and lodging as agreed between the employer and employee.

[325] Clause 17.3(c)(iv) of the exposure draft is currently drafted as follows:

> **(iv)** An employee sent from one place to another as prescribed in clause 17.3(c) will be paid a meal allowance of **$8.54** for each meal. This allowance will not be payable if the employee is otherwise entitled to a meal allowance pursuant to clause 17.3(a).

[326] We *provisionally* proposed to remove the allowance in clause 17.3(c)(iv) unless parties were able to demonstrate its utility by providing a scenario in which the allowance would apply.

[327] In opposing the *provisional* view, the AWU submitted that the allowance in 17.3(c)(iv) still has some practical application. The AWU noted that while the allowance in clause 17.3(c)(ii) covers the costs of lodging and "all meals", in practice "..."all meals" could only possibly be intended to remunerate the employee for all meals once every day… However, as country work by definition requires an employee to travel a certain distance, the employee will still be away from home for at least one meal that the allowance in 17.3(c)(ii) does not provide for… The allowance in clause 17.3(c)(iv) is payable at these times."[196]

[328] Clause 17.3(c)(iv) is almost identical to the clause appearing in the current Pest Control Award and that was, in turn, developed consistently with the pre-modern instrument - the *Pest Control Industry (Victoria) Award 2000*.[197]

[329] A key difference between the current clause and the pre-modern instrument clause is that the current clause is called "Country work" whereas the old clause was called "Travelling allowance and fares".

[330] The AWU's submission essentially categorises the allowance described as a travel allowance. The scenario described by the AWU is likely to occur when an employee is required to work remotely for a period of time requiring overnight accommodation.

[331] That being the case, we do not agree that the AWU's interpretation reflects what the clause actually says. On that basis we propose to re-draft the clause as follows:

> '**(iv)** An employee required to undertake **country work** will be paid a meal allowance of **$8.54** for each meal occurring during the travel time described in clause 17.3(c)(iii). This allowance will not be payable if the employee is otherwise entitled to a meal allowance pursuant to clause 17.3(a) or 17.3(c)(ii).'

[332] Interested parties are provided a final opportunity to comment on the proposed re-draft outlined at [331] above. Comments are due no later than **4.00 pm on Tuesday 21 August 2018**.

Item 4 – Shiftwork

[333] The AWU supports the variation to the definition of afternoon shift in clause 21.1(a) of the exposure draft proposed in the *March 2018 decision* but submits that the word 'or' in the amended clause 21.1(a) be deleted.[198]

[334] We agree and clause 21.1(a) will be varied as follows:

> '**(a) Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight ~~or~~ where the majority of time worked is between the hours of 6.00 pm and midnight.'

Item 5 – Annual Leave – Payment and Loading

[335] Item 5 considers the application of the 'industry allowance' at clause 22.3(b) of the exposure draft. Given the absence of a definition and a lack of clarity as to when an employee is entitled to the allowance, we removed the reference to avoid ambiguity.

[336] Interested parties were invited to comment on our *provisional* view. In its submission, the AWU noted its intention to substitute 'industry allowance' with the words 'leading hand allowance' as a substantive variation. [199] This item will be referred to a separately constituted Full Bench.

[337] There are no other outstanding matters for this Full Bench to determine in relation to the Pest Control Award.

2.23 *Plumbing and Fire Sprinklers Award 2010*

[338] The exposure draft based on the *Plumbing and Fire Sprinklers Award 2010*[200] (Plumbing Award) requires further consideration. In the *March 2018 decision* we expressed two *provisional* views and sought comment from interested parties. The following parties filed submissions:

- AWU
- ABI
- CEPU
- Ai Group
- Master Plumbers ACT; Master Plumbers and Mechanical Services Association of Australia; Master Plumbers & Gasfitters Association of Western Australia; Master Plumbers Association of Queensland; Master Plumbers of South Australia; and Master Plumbers Association of Tasmania (Master Plumbers Group)

Item 7 – Part-time employment

[339] In the *March 2018 decision* we expressed a *provisional* view that clause 11.3(b) of the exposure draft should be varied to specify a requirement for a finishing time.[201]

[340] Master Plumbers submitted that it does not oppose the variation to clause 11.3(b).[202] Ai Group also submitted that it does not oppose the *provisional* view.[203] ABI does not oppose the inclusion of the words "finishing times".[204]

[341] The CEPU[205] and AWU[206] support the *provisional* view.

[342] The exposure draft will be varied according to our *provisional* view.

Item 12 – Adult apprentices

[343] In the *March 2018 decision* we expressed a *provisional* view that clause 13.14(d)(ii) should be deleted from the exposure draft because it is unhelpful.[207] The revised exposure draft was published with the following variation to clause 13.14(d):[208]

'**(d) Employment as an adult apprentice**

~~(i)~~ Where possible, employment as an adult apprentice should be given to an applicant who is currently employed by the employer so as to provide for genuine career path development.

~~(ii)~~ ~~Adult apprentices will not be employed at the expense of other apprentices.~~'

[344] We noted that interested parties commented that the clause is unhelpful because it provides no guidance about what the words 'Where possible' mean. The CEPU supports the removal of the words "Where possible" from the start of clause 13.14(d).[209] The AWU does not oppose the *provisional* view to delete 13.14(d)(ii).[210]

[345] Master Plumbers maintained its submission that the whole of clause 13.14(d) should be deleted.[211] Ai Group[212] and ABI[213] support the deletion of clause 13.14(d) in its entirety.

[346] We agree that the removal of clause 13.14(d) in its entirety has merit and will remove the ambiguity associated with any attempt to comply with the clause. Clause 13.14(d) will be deleted in its entirety. The exposure draft will be varied accordingly.

Other matters

[347] There were a number of other matters that require further consideration in light of the *March 2018 decision* and the submissions received regarding the most recent exposure draft.

Item S23 – Proposed Shiftwork Clause

[348] As noted in the *March 2018 decision*, the Fire Protection Association Australia's proposed shiftwork clause will be referred to a separate Full Bench.

Clause 7.2 – Facilitative provisions

[349] Master Plumbers submitted that the table of facilitative provisions should be varied as follows:[214]

Clause	**Provision**	**Agreement between an employer and:**
15.3	Early start	a majority of affected employees
15.4	Alternative methods of arranging ordinary hours and rostered days off	a majority of affected employees
15.5(c)	General exception for employers of fewer than 15 (not working alongside other building and construction workers)	an individual employee

Clause	Provision	Agreement between an employer and:
15.5(e)(ii)	Rostered days off for employees not working alongside other building and construction workers	the employees
15.5(f)(ii)	Rostered days off for employee working alongside other building and construction workers	the employees
16.2	Variation of meal breaks	a majority of affected employees
21.3	Working during meal break	an individual employee
26.2	Public holidays—substitution	a majority of affected employees

[350] The variations proposed to clause 7.2 will not be made because the proposed variations are inconsistent with the general approach taken across the exposure drafts. The intention of this clause is to provide an indexing reference, not a standard provision.

Clause 12 –Casual employment

[351] Clause 12.1 and 12.2 of the exposure draft were varied in accordance with para [586] of the *March 2018 decision*, as parties had previously agreed to the changes. In the exposure draft, it was noted parties may provide feedback on the amendments. No further comment on the redrafted clauses was received. We will adopt the variations.

Overtime Rest Breaks and Overtime Meal Breaks

[352] Master Plumbers supports the relocation of these clauses.[215] No other party made a submission relating to this issue. We will adopt the variation as set out in the most recent exposure draft.[216]

Item 17 – Clause 20.3(f) – Allowances

[353] As part of the exposure draft, we posed a question about who was entitled to the *Industry disability allowance and space, height and dirt money allowance—fire sprinkler fitter employees* in clause 20.3(f). The initial question led to subsequent discussions about whether any (or all) apprentices were entitled to the allowance and how the apprentice rate is calculated.

[354] Following the conference of 17 August 2017, it appeared that a consent position had been reached regarding the redrafting of clause 20.3(f) and the revised exposure draft was re-published as follows:[217]

> **'(f) Industry disability allowance and space, height and dirt money allowance—fire sprinkler fitter employees**
>
> Adult fire sprinkler fitter employees will receive the following additional weekly allowances for all purposes:
>
> | **Allowances** | **$ per week** |
> |---|---|
> | Industry disability allowance | 30.75 |
> | Space, height and dirt money | 28.32 |
>
> An apprentice sprinkler fitter is entitled to a percentage of the above allowance as specified in clause 18.2.'

[355] Subsequently, Master Plumbers has submitted that the allowance is not payable to an apprentice and submitted the following redrafting of the clause:[218]

> '**(f)** Industry disability allowance and space, height and dirt money allowance—fire sprinkler fitter employees
>
> **(i)** A fire sprinkler fitter tradesperson and a sprinkler fitting worker will receive the following additional weekly allowances for all purposes.
>
> | **Allowances** | **$ per week** |
> |---|---|
> | Industry disability allowance | $29.77 |
> | Space, height and dirt money | $27.42' |

[356] The parties have not agreed on the question whether apprentices are entitled to the allowance or how it is calculated. This has consequential implications for the apprentice provisions and the tables set out in Schedule A and Schedule B.

[357] On that basis the most appropriate course is to refer this matter to the same Full Bench that will be constituted to deal with the outstanding substantive matters in this award.

Clause 22.2(a) – Shiftwork

[358] Master Plumbers maintained the following variation should be made to clause 22.2 of the exposure draft:[219]

> '**22.2 Shiftwork**

Between Midnight on Sunday and Midnight on Friday

(a) Where an employee is directed by the employer to work ordinary hours between midnight on a Sunday and midnight on a Friday, and such employee is:

(i) given no less than 48 hours' notice prior to the commencement of such work by the employer; and

(ii) such work is for five or more consecutive shifts;

the employee will receive a loading of 33% calculated on their ordinary hourly rate of pay for such ordinary hours worked.

(b) Where an employee is directed by the employer to work ordinary hours between midnight on a Sunday and midnight on a Friday, and such employee is:

(i) given less than 48 hours' notice prior to the commencement of shiftwork by the employer; or

(ii) such work is for less than five consecutive shifts;

the employee will receive a loading of 50% for the first two hours and 100% thereafter calculated on their minimum hourly rate of pay for such ordinary hours worked.

Between midnight on a Friday and midnight on a Saturday

(c) Where an employee is directed by the employer to work ordinary hours between midnight on a Friday and midnight on a Saturday, such employee will receive:

(i) a 50% loading calculated on their minimum hourly rate of pay for the first two ordinary hours worked; and

(ii) a 100% loading calculated on their minimum hourly rate of pay for the remaining ordinary hours worked thereafter.

Between midnight on a Saturday and midnight on a Sunday

(d) Where an employee is directed by the employer to work ordinary hours between midnight on a Saturday and midnight on a Sunday, such employee will receive a 100% loading calculated on their minimum hourly rate of pay for such ordinary hours worked.

Public holidays

> **(e)(i)** Where an employee is directed to work ordinary hours on a public holiday or substitute days as prescribed in clause 37—Public holidays, such employee will receive a 150% loading calculated on their minimum hourly rate of pay, for such ordinary hours worked.
>
> **(e)(ii)** A plumbing and mechanical services employee required to perform any work on a public holiday will be afforded at least four hours work or paid for four hours at the appropriate rate.'
>
> (emphasis added)

[359] The variations proposed by Master Plumbers affect clauses 22.2 and 22.3 of the current exposure draft.

[360] Given that clause 22.2 will be subject of the separate Full Bench proceedings concerning the outstanding substantive matters, it is appropriate to refer consideration of this item to that same Full Bench. If clause 22.2 is redrafted it may not be necessary to consider this item any further.

Schedule B – All purpose rate

[361] This item is related to clause 20.3(f). If the variation to clause 20.3(f) earlier discussed is made there would need to be a consequential amendment to the tables in Schedule B.

[362] Given that clause 20.3(f) will be referred to the separate Full Bench for consideration, this matter will be considered further by that Full Bench.

Calculation of rates in Schedule C and D

[363] In the republished exposure draft the following note was inserted regarding the hourly rates of pay schedules:[220]

> 'Item 23 of the *Revised Summary of Submissions – Technical And Drafting* document (republished 23 November 2017) refers to a number of submissions regarding the Summary of hourly rates in Schedule C and schedule D. The note indicates that the parties reached an agreed position on this item regarding the use of "minimum" and "ordinary" and how rates are calculated by reference to any all purpose allowance payable .
>
> We note that there have been a number of Full Bench decisions considering the use of "minimum" and "ordinary". Interested parties may consider [2015] FWCFB 4658 (*July 2015 decision*) at [42]–[44], [2015] FWCFB 6656 (*September 2015 decision*) at [109]–[110] and [2018] FWCFB 1548 (*March 2018 decision*) at [327]–[329].
>
> On that basis no change has been made to the calculation method for the rates in the tables in Schedule C and Schedule D. Interested parties may wish to comment further by **19 April 2018**.'

[364] Master Plumbers endorsed the approach.[221]

[365] This Full Bench does not need to consider this issue any further.

2.24 *Professional Employees Award 2010*

[366] The exposure draft based on the *Professional Employees Award 2010*[222] (Professional Employee Award) requires further consideration. In the *March 2018 decision* we expressed a number of *provisional* views and sought further input from interested parties. The following parties filed submissions:

- APESMA
- ABI
- Business SA
- Ai Group

[367] We will now consider each of the outstanding items in turn.

Item 22 – Ordinary hours of work

[368] This issue relates to circumstances where employees (by agreement with their employer) average their ordinary hours of work over a regular cycle. In the exposure draft, the Commission asked parties to confirm the maximum number of weeks in a cycle that the 38 ordinary hours per week may be averaged.

[369] It was noted in the *March 2018 decision* that the parties had agreed to insert the additional wording into clause 13.2 of the exposure draft confirming the maximum number of weeks. The parties agreed to the following wording:

> 'For the purposes of this sub-clause 13.2, a cycle cannot be longer than 12 months.'

[370] We noted that we were concerned that the proposed averaging of ordinary hours of work over a 12 month period is not a reasonable period of time over which to average ordinary hours, and that this would raise practical issues with the reconciliation of the ordinary hours and any overtime worked including in situations where employment is terminated prior to a 12 month period.

[371] We outlined that this item would be referred to a separately constituted Full Bench for further consideration and determination. Ai Group contested this view in their submission dated 19 April 2018 and sought us to reconsider.[223] We have had regard to Ai Group's submission but are not persuaded to depart from our previous decision.

[372] We confirm our decision that this item will be referred to a separately constituted Full Bench.[224]

Item 26 – Schedule of casual rates of pay

[373] Ai Group[225], ABI[226], Business SA[227] and APESMA[228] made submissions in support of our *provisional* view. We confirm our *provisional* view regarding the table headings in Schedule B.[229]

Items 29 and 30 – Annual leave

[374] We expressed a *provisional* view in the *March 2018 decision* that the annual leave loading provision should be redrafted and noted our intention to refer the matter to the plain language process.[230] A revised exposure draft with a proposed amendment to clause 17 was published on 26 March 2018. None of the interested parties have commented on that draft.

[375] We confirm our *provisional* view that the matter should be considered by the Plain Language Full Bench. In the meantime, we will not finalise any amendments to clause 17 of the exposure draft.

[376] APESMA confirmed that it would also pursue two outstanding substantive matters (Items S2 and S4).[231]

[377] There are no outstanding matters for this Full Bench to determine with regards to the Professional Employees Award.

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

[378] The exposure draft based on the *Social, Community, Home Care and Disability Services Industry Award 2010*[232] (SCHCDSI Award) requires further consideration. The following interested parties filed further submissions in relation to the exposure draft:

- ASU
- ABI
- HSU
- Ai Group
- UV

[379] The outstanding items are dealt with below.

Item 4 – Minimum hourly rate

[380] In the *March 2018 decision*, we expressed a *provisional* view that existing references to 'ordinary' or 'appropriate' rates of pay in clauses 11.3, 13.6(c), 14.1(c), 18.1(b)(iii), 18.4 and 20.3(a) of the exposure draft should be changed to 'minimum rate' or 'minimum hourly rate', whichever is more appropriate. [233] Parties disagreeing with this view were requested to notify the Commission.

[381] Ai Group agrees with the *provisional* view expressed by the Full Bench[234] and ABI does not object to the *provisional* view.[235]

[382] However, UV, the HSU and the ASU opposed the *provisional* view, except in relation to clause 20.3(a).[236]

[383] In its submission, UV submitted that replacing the terms 'appropriate rate' or 'ordinary rate' with 'minimum hourly rate' in the relevant clauses could lead to confusion about the correct rate of payment, to the detriment of employees.[237]

[384] It contended that the terms 'appropriate rate' and 'ordinary rate' in the context of clauses 11.3, 14.1(c), 18.1(b)(iii) and 18.4 are broader than the 'minimum hourly rate' and would include any relevant penalty rates and overtime.[238] The HSU made similar submissions in relation to these clauses.[239]

[385] The HSU also submitted that the phrase 'minimum hourly rate' has a specific meaning in the SCHCDSI Award, and should only be used where it refers to amounts in the minimum wages tables contained in clauses 15.1, 15.2 and 15.3 of the Exposure Draft. Accordingly, a different term is required when referring to broader hourly rates. [240]

[386] In the *March 2018 decision*, we referred to an earlier decision issued as part of the Review (the *December 2014 decision*). That decision provides that awards containing allowances or loadings payable for all purposes will include definitions of 'all purposes' and 'ordinary hourly rate' but did not provide for a definition of 'minimum hourly rate'. We therefore consider that a definition of 'minimum hourly rate' is not required to be included in the SCHCDSI Award, and decline to make such variation.

[387] The ASU submitted that use of the phrase 'appropriate rate of pay' should be retained; the ASU submitted that the *December 2014 decision*[241] is not relevant to the use of this phrase because it does not deal with the rate of pay used as the basis for calculating award entitlements.[242]

[388] However the ASU accepted that use of the phrase 'ordinary rate of pay' is inconsistent with the *December 2014 decision*, and therefore also submitted that alternative phrasing must be used when referring to hourly rates that are inclusive of loadings and penalties.[243]

[389] In the absence of consensus amongst the interested parties we will refer this matter to be determined along with the outstanding substantive issues in the SCHCDSI Award (see para [405] below and also Attachment B). In the interim, the changes made to the exposure draft, reflecting our *provisional* view, will be removed.

Item 32 – Minimum wages

[390] A matter was raised in the *March 2018 decision* regarding the wording of the notes at the beginning of clauses 15.1 and 15.3 of the exposure draft. We noted the parties had agreed that these issues could be resolved by inserting the words 'this may require an additional payment in accordance with the terms of the relevant Equal Remuneration Order.' immediately after the words 'this modern award' at the end of NOTE 2 in clause 15.1.

[391] The relevant sections of clauses 15.1 and 15.3 are reproduced below:

15.1 Minimum wages—social and community services employees and crisis accommodation employees

NOTES: 1. A **transitional pay equity order** taken to have been made pursuant to item 30A of Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) has effect in accordance with that item. Transitional pay equity orders operate in Queensland as provided for in items 30A (6) and (7).

2. An **equal remuneration order** [PR525485] also applies to employees in the classifications in Schedule A and Schedule C of this modern award. This may require an additional payment in accordance with the terms of the transitional pay equity order.

15.3 Minimum wages—home care employees

NOTE: A transitional pay equity order taken to have been made pursuant to item 30A of Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) has effect in accordance with that item. Transitional pay equity orders operate in Queensland as provided for in items 30A (6) and (7). This may require an additional payment in accordance with the terms of the transitional pay equity order.

[392] In the *March 2018 decision* we decided we were unable to confirm the employment streams to which the Transitional Pay Equity Order is relevant. Accordingly, we suggested that this matter be determined by the substantive matters Full Bench.

[393] Both the ASU and HSU made submissions in relation to the application of the Transitional Pay Equity Order applying to certain employees covered by the SCHCDSI Award. They each submitted that the Transitional Pay Equity Order under Reg 3.03B of the *Transitional Provisions and Consequential Amendments Regulations 2009* (TPEO) is relevant only to classifications included in Schedules B and C of the current modern award.[244] The ASU submit that the TPEO applies to employees who are covered by the classifications listed in Schedule B and C of the award provided the employer is not a constitutional corporation and was not a respondent to either the federal per-modern *Social and Community Services (Queensland) Award 2001* or the *Crisis Accommodation Supported Housing (Queensland) Award 1999.*

[394] The HSU submit that they do not agree that the matter of which employment streams the TPEO applies to is difficult to determine and nor do they agree that it is a substantive matter that needs to be determined by a separate Full Bench. The HSU submit that in their views, the TPEO is only relevant to Schedules B and C of the award.

[395] No other party commented on this issue.

[396] In light of the submissions from the AWU and HSU, we agree that this issue does not need to be determined by a separate Full Bench.

[397] However, in looking into this issue it appears that the ongoing nature of the Equal Remuneration Order (ERO) and the TPEO may render the inclusion of hourly rates of pay in Schedule F— Summary of Hourly Rates of Pay, of the SCHCDSI exposure draft inaccurate and unnecessary.

[398] Our *provisional* view is that clauses F.1 and F.3 should be deleted because the rates do not consider the additional payments required by the ERO or the TPEO.

[399] Consequently, we also consider that the inclusion of Schedule A—Transitional provisions may not be appropriate because the provisions contained within the schedule are inaccurate and currently have no practical application. Our *provisional* view is that the schedule should either be removed or significantly re-drafted.

[400] Interested parties are asked to comment on this *provisional* view. Submissions are to be filed no later than 4.00 pm on **4.00 pm on Tuesday 21 August 2018**. The matter will then be determined on the papers.

Item 49 – Quantum of leave

[401] In the *March 2018 decision*, it was noted that the parties had agreed to change the title of clause 20.2 of the exposure draft from 'Quantum of leave' to 'Definition of shiftworker for the NES.' Clause 20.2 is set out as follows:

> **20.2 ~~Quantum of leave~~ Definition of shiftworker for the NES**
>
> For the purpose of the NES, a shiftworker is an employee who works for more than four ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues and is entitled to an additional week's annual leave on the same terms and conditions.

[402] In the *March 2018 decision* we decided that this was more than a technical or drafting matter and that if parties wished to pursue the change they were to advise the Commission and it would be dealt with by the substantive matters Full Bench.

[403] The HSU does not agree that this is a substantive issue, and does not intend to pursue a substantive claim on this matter. They propose that this is something that could be referred to the Plain Language review of the SCHCDSI Award.[245]

[404] We have decided that the clause title in the Exposure Draft will be reverted back to that in the current award. The title of the clause will be 'Quantum of leave'.

Outstanding substantive matters

[405] In its submission, UV advised which matters it would be pursuing in the SCHCDSI Award substantive issues proceedings,[246] and explained that it was withdrawing item S20, but would be pursuing the substance of that claim under Item S2A, which is significantly similar.[247] The HSU also confirmed that it intends to pursue a number of outstanding

substantive claims relating to this award.[248] These substantive matters are outlined at Attachment B to this decision.

[406] In the *March 2018 decision* we indicated that an updated summary of substantive submissions would be published following the issuing of the decision, we refer interested parties to Attachment B of this decision.

[407] There are no other outstanding matters for this Full Bench to determine in relation to the SCHCDSI Award.

2.26 *Supported Employment Services Award 2010*

[408] The exposure draft based on the *Supported Employment Services Award 2010*[249] requires some further consideration.

[409] Following the *March 2018 decision*, there remains one outstanding issue in relation to this award. Submissions were received from UV, ABI and the Health Services Union of Australia (HSU).

[410] The submissions filed by the HSU and UV noted the Statement that was issued by a separate Full Bench who are dealing with a number of substantive items in relation to this award.[250] Their submissions did not address any other issue.

Item 11 – Casual employment

[411] This outstanding issue is a submission from the AWU in relation to the casual employment clause in the exposure draft (clause 11). The AWU submit there is a conflict between clause 11.1 that states casual employees are 'engaged on an hourly basis' and clause 11.6 which provides a minimum engagement period of 3 hours for casual employees. The AWU proposed the following wording to replace clause 11.1:

> 'An employee who does not meet the definition of a part-time employee, and who is not a full-time employee, will be employed as a casual employee, and will work a maximum of 38 ordinary hours per week.'

[412] ABI opposed the change submitting it sought to impose a new definition of casual employee.[251] We asked interested parties to reconsider their position on the issue and advise the Commission whether a substantive variation will be pursued.

[413] ABI filed a submission in reply to the *March 2018 decision* and noted its continued objection to the proposed amendment to the wording of clause 11.1 in the exposure draft if pressed by the AWU.[252]

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

[415] In the absence of any submission by the AWU indicating that they wish to press the issue as a substantive matter we will not make any amendment to clause 11.1 of the exposure draft.

Other matters

[416] We note that there is a separate Full Bench considering a number of substantive matters in this award. In our *March 2018 decision* we outlined that *Item 21 – Employees with disabilities* would be referred to that separate Full Bench (see Attachment B).

2.27 *Surveying Award 2010*

[417] The exposure draft based on the *Surveying Award 2010*[253] (Surveying Award) was republished on 23 March 2018. No submissions were received.

[418] In the *March 2018 decision* we noted that a substantive Full Bench will be constituted to deal with an APESMA submission relating clause 14 of the exposure draft (ordinary hours of work). APESMA are to notify the Commission in writing (to amod@fwc.gov.au) by no later than **4.00 pm on Tuesday 21 August 2018** if they intend to pursue this issue.

2.28 *Travelling Shows Award 2010*

[419] The exposure draft based on the *Travelling Shows Award 2010*[254] (Travelling Shows Award) was republished on 23 March 2018. The AFEI and the Showmen's Guild of Australia (SGA) filed submissions in response.

[420] There is one outstanding issue.

Clause 22.1 – Sundays and public holidays—casual employees

[421] In the *March 2018 decision* we presented interested parties with a research paper that outlined three options for varying clause 22.1 of the exposure draft. Option 1 is to combine clause 22.1 and clause 22.2. Option 2 is to develop a new casual employment clause. Option 3 is to delete clause 22.1 entirely.

[422] It was our *provisional* view that option 1 be adopted.

[423] AFEI submitted support for Option 1.[255] Similarly, the SGA submitted that Option 1 appears to be the most appropriate variation.[256] No other submissions were received.

[424] We therefore confirm our *provisional* view that option 1 be adopted.[257] The exposure draft will be varied by deleting the existing clauses 22.1 and 22.2 and inserting the following new clause:

> **22. Penalty rates—Sundays and public holidays—full-time, part-time and casual employees**
>
> **22.1** All ordinary hours worked on a Sunday will be paid for at an employee's ordinary rate.

> **22.2** All time worked on a public holiday by a full-time or part-time employee will be paid for at **150%** of the ordinary hourly rate, and the employee will be granted an additional day off to be taken within 14 days of working on the public holiday.
>
> **22.3** All time worked on a public holiday by a casual employee will be paid for at the ordinary hourly rate in clause 16 plus the casual loading under clause 11.2.
>
> **22.4** The minimum payment for work performed by a full-time or part-time employee on a public holiday will be as for four hours worked.
>
> **22.5** The minimum payment for work performed by a casual employee on a public holiday will be as for three hours worked.

[425] There are no outstanding matters requiring determination by this Full Bench or a separate Full Bench.

2.29 *Water Industry Award 2010*

[426] The exposure draft[258] based on the *Water Industry Award 2010*[259] (Water Award) was republished on 23 March 2018. UV and the AWU filed submissions. The AWU noted in their submission they have no outstanding matters in relation to this award.[260]

[427] UV confirmed its intention to pursue a number of substantive variations.[261] A separate Full Bench will be constituted to consider and determine those items. A list of the substantive variation is contained at Attachment B to this decision.

Next Steps

Casual loading issue in the Aboriginal Health Award, the Car Parking Award and the Cemetery Award

[428] Interested parties are to file submissions in response to the UV submission outlined at paras [159] – [162]. Any submission should be filed by no later than **4.00 pm on Tuesday 21 August 2018**. The matter will then be determined on the papers.

Broadcasting Award

[429] A conference to discuss the outstanding issues will be convened before Justice Ross at **10.00 am** on **Friday 17 August 2018** in Sydney. A short paper highlighting the background to all issues to be discussed at the conference will be issued shortly. A notice of listing will be issued concurrently with this decision.

Electrical Contracting Award

[430] In relation to the proposed new shiftwork clause, this matter will be listed for Mention before Justice Ross at **9.30 am on Friday 17 August 2018** in Sydney. The purpose of the

Mention will be to ascertain how the FPAA wish to proceed (see paras [204] – [209] of this decision). A notice of listing will be issued concurrently with this decision.

Live Performance Award

[431] Interested parties are to advise the Commission in writing (to amod@fwc.gov.au) by no later than **4.00 pm on Tuesday 21 August 2018** if they wish to pursue any outstanding substantive items. If no submission is received, the items will be considered withdrawn (see paras [315] – [316] of this decision).

Funeral Award

[432] A conference to discuss a number of outstanding issues in the Funeral Award will be convened before Justice Ross at **2.00 pm** on **Friday 17 August 2018** in Sydney. A notice of listing will be issued concurrently with this decision.

Pest Control Award

[433] Interested parties are provided a final opportunity to comment on the redrafted clause dealing with country work at [331] of this decision. Comments are due no later than **4.00 pm on Tuesday 21 August 2018**.

Surveying Award

[434] APESMA are to notify the Commission if they wish to press their submission relating clause 14 of the exposure draft (ordinary hours of work). APESMA must notify the Commission in writing (to amod@fwc.gov.au) by no later than **4.00 pm on Tuesday 21 August 2018** (see paras [417] – [418] of this decision).

Social, Community, Home Care and Disability Services Industry Award

[435] Interested parties are provided an opportunity to comment on the *provisional* view outlined at paragraphs [398] and [400]. Submissions are to be filed in writing (to amod@fwc.gov.au) by no later than **4.00 pm on Tuesday 21 August 2018**.

Finalising exposure drafts

[436] All other outstanding matters for Group 4 awards are now resolved or have been referred to a separately constituted Full Bench for consideration.

[437] Each exposure draft will be updated and republished, and 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 respect of the Group 4 awards. This will not be an opportunity to reargue matters which have already been determined, but will provide interested parties with an opportunity to comment on variations made to the exposure drafts to incorporate decisions relating to 'common issues'.

[438] 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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[1] [2018] FWCFB 1548

[2] [2018] FWC 1544

[3] For example, [2017] FWCFB 3433

[4] MA000115

[5] NATSIHWA submission, 26 April 2018, at pages 2-3

[6] NATSIHWA submission, 26 April 2018, at page 7 (the quote has been modified to avoid confusion regarding numbering)

[7] Ibid at page 5

[8] MA000077, at clause 13

[9] NATSIHWA submission, 26 April 2018, at para 2

[10] NATSIHWA submission, 26 April 2018, at para 5

[11] NATSIHWA submission, 26 April 2018, at para 4.4

[12] *Summary of Substantive Variations*, republished 20 November 2017

[13] UV submission, 18 April 2018

[14] MA000018

[15] Ai Group submission, 19 April 2018, at para 4

[16] Ai Group submission, 19 April 2018, at para 5

[17] HSU submission, 19 April 2018, at para 7

[18] UV submission, 18 April 2018, at para 20

[19] Exposure draft, republished 23 March 2018

[20] Qantas submission, 19 April 2018, at para 2

[21] AFAP submission, 19 April 2018

[22] Qantas submission, 19 April 2018, at para 3 and Annexure A

[23] MA000047

[24] [2016] FWCFB 6836 at [5]

[25] Qantas submission, 19 April 2018, at para 3

[26] [2018] FWCFB 1548 at [78]

[27] MA000048

[28] Ai Group submission, 27 February 2017, at page 2

[29] [2018] FWCFB 1548 at [94]

[30] AMWU submission, 18 April 2018, at para 11

[31] [2018] FWCFB 1548, at [98]

[32] AMWU submission, 18 April 2018, at para 14

[33] ALAEA submission, 19 April 2018, at paras 3–4

[34] CEPU submission, 19 April 2018, at para 1
[35] AWU submission, 26 April 2018, at paras 5–6
[36] Ai Group submission, 19 April 2018, at para 7
[37] Ai Group submission, 7 December 2015, at para 78
[38] Ai Group submission, 19 April 2018, at para 7
[39] [2018] FWCFB 1548, at [110]
[40] AMWU submission, 18 April 2018, at para 16
[41] ALAEA submission, 19 April 2018, at para 5
[42] CEPU submission, 19 April 2018, at para 2
[43] AWU submission, 26 April 2018, at para 7
[44] AWU submission, 26 April 2018, at para 9
[45] AMWU submission, 18 April 2018, at para 17
[46] ASU submission, 27 April 2018, at para 4
[47] ALAEA submission, 19 April 2018, at para 8
[48] ALAEA submission, 19 April 2018, at para 10
[49] AMWU submission, 18 April 2018, at para 23
[50] TWU submission, 19 April 2018, at page 1
[51] AMWU submission, 18 April 2018, at para 31
[52] Qantas submission, 19 April 2018
[53] MA000049
[54] [2018] FWCFB 1548 at [123]
[55] AMWU submission, 13 April 2018, at paras 3–5
[56] CPSU submission, 19 April 2018, at para 2
[57] AMWU submission, 13 April 2018, at para 7
[58] CPSU submission, 19 April 2018, at paras 3–4
[59] CEPU submission, 19 April 2018, at para 3
[60] CPSU submission, 19 April 2018, at para 5
[61] AMWU submission, 13 April 2018 at para 2
[62] CPSU submission, 19 April 2018, at para 5
[63] CPSU submission, 19 April 2018, at para 6
[64] AMWU submission, 13 April 2018 at para 2
[65] CPSU submission, 19 April 2018, at para 7
[66] AMWU submission, 13 April 2018 at para 2
[67] [2018] FWCFB 1548 at [157]
[68] AMWU submission, 13 April 2018 at para 2
[69] CPSU submission, 19 April 2018, at para 8
[70] CEPU submission, 19 April 2018, at para 4
[71] [2018] FWCFB 1548 at [160]
[72] [2018] FWCFB 1548 at [163]–[164]
[73] CPSU submission, 19 April 2018, at para 9
[74] CEPU submission, 19 April 2018, at para 5
[75] Ai Group submission, 19 April 2018, at para 21
[76] Exposure draft, republished 23 March 2018
[77] MA000080
[78] [2018] FWCFB 1548, at [197]

[79] ABI submission, 20 April 2018, at para 6
[80] AWU submission, 26 April 2018, at para 17
[81] Exposure draft, republished 23 March 2018
[82] MA000079
[83] [2018] FWCFB 1548 at [203]
[84] APESMA submission, 15 May 2018, at para 2
[85] MA000078
[86] [2018] FWCFB 1548 at [221]
[87] Ai Group submission, 19 April 2018, at para 24
[88] [2018] FWCFB 1548 at [228]–[229]
[89] MA000091
[90] CPSU submission, 19 April 2018 at para 2; ABI submission, 20 April 2018, at para 7
[91] ADG submission, 26 April 2018, at page 1
[92] ADG submission, 26 April 2018, at page 3
[93] [2018] FWCFB 1548 at [242]
[94] Cinema Employers & LPA submission, 17 April 2018 at para 24
[95] [2018] FWCFB 1548 at [248]
[96] MEAA submission, 20 April 2018,, at para 35
[97] MEAA submission, 20 April 2018, at para 17
[98] MEAA submission, 20 April 2018, at para 29
[99] [2018] FWCFB 1548 at [282]
[100] [2018] FWCFB 1548 at [290]
[101] ADG submission, 26 April 2018, at page 4
[102] UV submission, 18 April 2018, at para 3
[103] UV submission, 18 April 2018, at para 12
[104] [2018] FWCFB 1548, at [302]
[105] Exposure draft, republished 23 March 2018
[106] MA000070
[107] MA000120
[108] [2018] FWCFB 1548, at [331]
[109] UV submission, 18 April 2018, at para 24
[110] ABI submission, 20 April 2018, at para 8
[111] Business SA submission, 19 April 2018, at para 3
[112] An individual submission, 19 April 2018, at pages 5–8
[113] AFEI submission, 19 April 2018
[114] UV submission, 18 April 2018, at paras 25–26
[115] G8 Education submission, 19 April 2018
[116] UV submission, 18 April 2018, at para 23
[117] MA000096
[118] CFMEU submission, 23 April 2018, at para 11
[119] AWU submission, 26 April 2018, at para 18
[120] UV submission, 18 April 2018, at para 29
[121] CFMEU submission, 23 April 2018, at para 15
[122] AWU submission, 26 April 2018, at paras 19–20
[123] CFMEU submission, 23 April 2018, at para 18

[124] [2018] FWCFB 1548, at [353]
[125] AWU submission, 26 April 2018, at para 21
[126] CFMEU submission, 23 April 2018, at para 21
[127] [2018] FWCFB 1548 at [363]
[128] CFMEU submission, 23 April 2018, at para 29
[129] [2018] FWCFB 1548 at [372]
[130] UV submission, 18 April 2018, at para 31
[131] MA000077
[132] [2018] FWCFB 1548, at [380]
[133] Exposure draft, republished 26 March 2018
[134] An individual submission, 19 April 2018, at pages 1–5
[135] UV submission, 18 April 2018, at para 32
[136] ABI submission, 20 April 2018, at para 10
[137] MA000025
[138] FPAA correspondence and draft determination, 3 March 2017
[139] MEA submission, 19 April 2018, at page 4
[140] ABI submission, 20 April 2018, at para 12
[141] CEPU submission, 19 April 2018, at para 6
[142] MEA submission, 19 April 2018, at page 5
[143] MEA submission, 19 April 2018, at page 2
[144] Exposure draft, republished 26 March 2018
[145] MA000073
[146] Ai Group submission, 19 April 2018, at pages 10–13
[147] MA000010
[148] [2017] FWCFB 3177, at [41]–[78]
[149] AMWU submission, 26 April 2018, at para 6
[150] Ai Group submission, 19 April 2018, at para 30 (citing [2017] FWCFB 5285)
[151] Ai Group submission, 19 April 2018, at para 31
[152] Ai Group submission, 19 April 2018, at para 34
[153] Report to Full Bench, 7 June 2017
[154] Exposure draft , republished 26 March 2018
[155] AWU submission, 26 April 2018, at para 25
[156] AWU submission, 26 April 2018, at para 26
[157] AMWU submission, 26 April 2018, at para 8
[158] Ai Group submission, 19 April 2018, at para 39
[159] Exposure draft , republished 13 July 2017
[160] Ai Group submission, 19 April 2018, at para 40
[161] Ai Group submission, 19 April 2018, at para 41
[162] AMWU submission, 26 April 2018, at para 10 (citing [2015] FWCFB 7236, at [159])
[163] For example, the *Sugar Industry Award 2010* [2018] FWCFB 1405 at [185]
[164] UV submission, 18 April 2018, at para 35
[165] AMWU submission, 26 April 2018, at para 9
[166] Exposure draft republished 26 March 2018
[167] MA000105
[168] *March 2018 decision* at paras [431] – [454]

[169] [2018] FWCFB 1548, at [472]

[170] AWU submission, 26 April 2018, at para 33

[171] UV submission, 18 April 2018, at para 39

[172] [2018] FWCFB 1548 at [490]

[173] UV submission, 18 April 2018, at para 37

[174] AWU submission, 26 April 2018, at para 37

[175] ABI & NSWBC submission, 20 April 2018, at paras 16-17

[176] ABI & NSWBC submission, 20 April 2018, at para 18

[177] [2018] FWCFB 1548, at [497]

[178] AMWU submission, 26 April 2018, at paras 38-39

[179] Business SA submission, 19 April 2018, at para 4; UV submission, 18 April 2018, at para 38; AMWU submission, 26 April 2018, at para 40.

[180] MA000067

[181] Report to the Full Bench, 1 September 2017

[182] News Ltd submission, 21 December 2016, at page 35

[183] [2018] FWCFB 1548, at [518]–[519]

[184] Exposure draft, republished 26 March 2018

[185] MEAA submission, 19 April 2018, at page 2

[186] MEAA submission, 19 April 2018, at page 2

[187] ABI submission, 20 April 2018, at para 21

[188] MA000081

[189] LPA submission, 18 April 2018

[190] [2018] FWCFB 1548, at [536]

[191] Exposure draft, republished 26 March 2018

[192] MA000117

[193] [2018] FWCFB 1548, at [544]–[545]

[194] Exposure draft republished 26 March 2018

[195] MA000097

[196] AWU submission, 26 April 2018, at paras 43-44

[197] AP792504, clause 17.10

[198] AWU submission, 26 April 2018, at para 47

[199] AWU submission, 26 April 2018, at para 49

[200] MA000036

[201] [2018] FWCFB 1548, at [595]

[202] Master Plumbers Group submission, 19 April 2018, at para 6

[203] Ai Group submission, 19 April 2018, at para 44

[204] ABI submission, 20 April 2018, at para 22

[205] CEPU submission, 19 April 2018, at para 8

[206] AWU submission, 26 April 2018, at para 50

[207] [2018] FWCFB 1548, at [600]

[208] Exposure Draft, republished 29 March 2018, clause 13.14(d)

[209] CEPU submission, 19 April 2018, at para 9

[210] AWU submission, 26 April 2018, at para 51

[211] Master Plumbers Group submission, 19 April 2018, para 6

[212] Ai Group submission, 19 April 2018, at para 46

[213] ABI submission, 20 April 2018, at para 25

[214] Master Plumbers Group submission, 19 April 2018, at para 9

[215] Master Plumbers Group submission, 19 April 2018, at para 11

[216] Exposure Draft, republished 29 March 2018, clauses 21.7 and 21.8

[217] Exposure Draft, republished 29 March 2018, clause 20.3(f)

[218] Master Plumbers Group submission, 19 April 2018, at paras 12–13

[219] Master Plumbers Group submission, 19 April 2018, para 16 and Attachment 1

[220] Exposure Draft, republished 29 March 2018, Schedule C and Schedule D

[221] Master Plumbers Group submission, 19 April 2018, at para 18

[222] MA000065

[223] Ai Group submission, 19 April 2018, at paras 48-52

[224] [2018] FWCFB 1548, at [621]

[225] Ai Group submission, 19 April 2018 , at paras 53-54

[226] ABI submission, 20 April 2018, at para 26

[227] Business SA submission, 19 April 2018, at para 5

[228] APESMA submission, 15 May 2018, at para 4

[229] [2018] FWCFB 1548, at [623]

[230] [2018] FWCFB 1548, at [634]

[231] APESMA submission, 15 May 2018, at para 4

[232] MA000100

[233] [2018] FWCFB 1548, at [667]

[234] Submission of Ai Group, 19 April 2018 at para 56

[235] Submission of ABI & NSW Business Chamber, 20 April 2018 at para 27

[236] Submission of UV, 18 April 2018 at paras 41-42; submission of HSU, 19 April 2018 at paras 10-12; submission of ASU, 24 April 201 at paras 7-8

[237] Submission of UV, 18 April 2018 at paras 41-42

[238] Submission of UV, 18 April 2018 at para 42

[239] Submission of HSU, 19 April 2018 at para 12

[240] Submission of HSU, 19 April 2018 at paras 10-12

[241] [2014] FWCFB 9412

[242] Submission of ASU, 24 April 2018 at para 9

[243] Submission of ASU, 24 April 2018 at para 10

[244] Submission of ASU, 24 April 2018 at paras 11-18; submission of HSU, 19 April 2018 at para 13

[245] Submission of HSU, 19 April 2018 at para 14

[246] Submission of UV, 18 April 2018 at para 43

[247] Submission of UV, 18 April 2018 at para 44

[248] Submission of HSU, 19 April 2018 at para 15

[249] MA000103

[250] [2018] FWCFB 2196

[251] ABI submission, 22 July 2016, at para 6.2

[252] ABI submission, 20 April 2018, at para 28

[253] MA000066

[254] MA000102

[255] AFEI submission, 19 April 2018

[256] SGA submission, 19 April 2018, at para 2

[257] [2018] FWCFB 1548, at [746]

[258] Exposure draft republished XX March 2018

[259] MA000113

[260] AWU submission, 26 April 2018

[261] UV submission, 18 April 2018, at para 46

Attachment A

List of Group 4 awards

Award code	Award title	Matter number	Sub-grouping
MA000115	*Aboriginal Community Controlled Health Services Award 2010*	AM2014/250	4A
MA000018	*Aged Care Award 2010*	AM2014/251	4A
MA000046	*Air Pilots Award 2010*	AM2014/252	4B
MA000047	*Aircraft Cabin Crew Award 2010*	AM2014/253	4B
MA000048	*Airline Operations—Ground Staff Award 2010*	AM2014/254	4B
MA000049	*Airport Employees Award 2010*	AM2014/255	4B
MA000080	*Amusement, Events and Recreation Award 2010*	AM2014/256	4D
MA000079	*Architects Award 2010*	AM2014/257	4C
MA000078	*Book Industry Award 2010*	AM2014/258	4D
MA000091	*Broadcasting and Recorded Entertainment Award 2010*	AM2014/259	4C
MA000020	*Building and Construction General On-site Award 2010*	AM2014/260	4C
MA000095	*Car Parking Award 2010*	AM2014/261	4E
MA000070	*Cemetery Industry Award 2010*	AM2014/262	4E
MA000120	*Children's Services Award 2010*	AM2014/263	4A
MA000096	*Dry Cleaning and Laundry Industry Award 2010*	AM2014/264	4F
MA000025	*Electrical, Electronic and Communications Contracting Award 2010*	AM2014/265	4C
MA000077	*Educational Services (Teachers) Award 2010*	AM2014/266	4A
MA000003	*Fast Food Industry Award 2010*	AM2014/267	4F
MA000073	*Food, Beverage and Tobacco Manufacturing Award 2010*	AM2014/268	4E
MA000105	*Funeral Industry Award 2010*	AM2014/269	4E
MA000004	*General Retail Industry Award 2010*	AM2014/270	4F
MA000005	*Hair and Beauty Industry Award 2010*	AM2014/271	4F
MA000009	*Hospitality Industry (General) Award 2010*	AM2014/272	4F
MA000064	*Hydrocarbons Field Geologists Award 2010*	AM2014/273	4C
MA000029	*Joinery and Building Trades Award 2010*	AM2014/274	4C
MA000067	*Journalists Published Media Award 2010*	AM2014/275	4D
MA000081	*Live Performance Award 2010*	AM2014/276	4D
MA000117	*Mannequins and Models Award 2010*	AM2014/277	4F
MA000032	*Mobile Crane Hiring Award 2010*	AM2014/278	4C
MA000097	*Pest Control Industry Award 2010*	AM2014/279	4E
MA000036	*Plumbing and Fire Sprinklers Award 2010*	AM2014/280	4C
MA000065	*Professional Employees Award 2010*	AM2014/281	4E
MA000013	*Racing Clubs Events Award 2010*	AM2014/282	4D
MA000058	*Registered and Licensed Clubs Award 2010*	AM2014/283	4F
MA000119	*Restaurant Industry Award 2010*	AM2014/284	4F
MA000100	*Social, Community, Home Care and Disability Services Industry Award 2010*	AM2014/285	4A
MA000103	*Supported Employment Services Award 2010*	AM2014/286	4A

Award code	Award title	Matter number	Sub-grouping
MA000066	*Surveying Award 2010*	AM2014/287	4C
MA000102	*Travelling Shows Award 2010*	AM2014/288	4D
MA000113	*Water Industry Award 2010*	AM2014/289	4E

Attachment B — Substantive issues to be referred

Award Title	Party pressing substantive claim	Description of issues
Aboriginal Community Controlled Health Services Award	NATSIWHA	NATSIWHA seeks to vary the award by: • introducing the following allowances: Damaged clothing allowance; a Blood check allowance; a Telephone allowance; and a Nauseous work allowance; an Occasional interpreting allowance; a Heat allowance; an Isolation allowance; and a Medication administration allowance (allowances to which the parties do not agree). • expanding the Coverage clause to include Aboriginal and/or Torres Strait Islander health workers and practitioners. • amending the title of the Award (only if the above claim to change the coverage of the Award is successful). • introducing a 6 'Grade' classification structure to incentivise education, training and development. • introducing a new grading wage structure in which persons engaged as "Advanced Health Worker – Practice" and "Health Practitioners" (previously these roles were classified in the Award as Grade 3) are reclassified as new Grade 5 with associated increases to remuneration. • expanding the Ceremonial leave clause to include "bereavement related ceremonies and obligations". • including the following definitions in the Definitions and interpretation clause: (a) Aboriginal and/or Torres Strait Islander Health Worker; (b) Advanced Health Worker- Care; (c) Advanced Health Worker- Practice; (d) Coordinator Care; (e) Community Controlled Health

		Services Employees; (f) Generalist Health Worker; (g) Health Practitioner; (h) Health Worker Trainee (i) Senior Health Care Workers- Care; (j) Senior Health Practitioner; and (k) Senior Health Worker. These definitions have no 'work to do' unless the Commission varies the Award to include NATSIHWA's proposed classification structure (as summarised in Item S2 of the Substantive Issues Summary Table). • introducing clauses for "Progression"; "Recognition of previous service"; and "Evidence of qualifications".
	HSU	HSU seeks to vary the award by: • ensuring that the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, is paid in addition to weekend and public holiday rates. • introducing the following allowances: a Sole practitioner allowance; a Climatic and isolation allowance; and a Removal expenses allowance. • amending the on call and recall allowance clause by providing a 10 hour uninterrupted break after being recalled to work, instead of a six hour break and by providing an allowance for telephone or remote attendance where an employee is on call but not required to physically attend the work premises. • increasing the permissible period within which a roster change request may be made from 7 to 14 days. • introducing tea breaks.
Aged Care Award	UV	UV seeks to vary the award by: • introducing a Telephone allowance.

		• amending the Sleepovers clause to allow for a continuous sleepover span of eight hours and amending the Payment for time worked subclause to allow any employee to be paid for all time worked during a sleepover at the prescribed overtime rate with a minimum payment of one hour. • amending the Classification Definition (Personal care worker) to replace "is required to hold a relevant Certificate III" with "holds a relevant Certificate III".
	HSU	HSU seeks to vary the award by: • ensuring that the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, is paid in addition to weekend and public holiday rates. • ensuring shift allowances are paid when employees are working afternoon or night duty regardless of the day of the week. • introducing the following allowances: a Telephone allowance; On call/recall allowances; a Reimbursement of costs associated with first aid certificate renewal allowance; a Damaged clothing allowance; and an allowance for employees who are the subject of a unilateral employer-imposed roster change. • deleting or amending the Broken shift clause to include a minimum engagement period; a new broken shift allowance; and payment of overtime where the broken shift finish time is greater than the daily maximum shift length of 10 hours.
Air Pilots Award	AFAP	AFAP seeks to vary the award by: • introducing a rate of pay for Captains and First officers of an Embraer 135/145 aircraft. • amending Schedule C either by inserting a clause which cross-references Schedule B or

		expanding the list of aircraft types in Schedule C to ensure pilots of regional airlines operating an aircraft type not listed in C.1.1 will be paid the minimum salary and additions to minimum salary provided for in Schedule B.
Airline Operations-Ground Staff Award	TWU and AMWU	TWU and AMWU seek to vary the award by: • removing the word 'continuous' from clause 23.1(a) of the exposure draft
Architects Award	ACAA	ACAA seek to vary the award by: • amending the Overtime clause to clarify that time off instead of payment will be granted on an "hour for hour" basis. • introducing a definition for an employee who has"A Completed Bachelor Degree with a pathway to a Master of Architecture" and associated minimum wage rates. • amending the Equipment and special clothing allowance clause by replacing the list of equipment and clothing with the words "relevant technical equipment or special clothing" . • amending the Superannuation fund clause. • amending the Termination of employment clause by specifying notice procedure requirements. • amending the Dispute resolution clause by inserting the word "workplace" before the words "health and safety legislation".
	APESMA	APESMA seeks to vary the award by: • amending the Overtime clause (see ACAA's claim listed above).

		• introducing an additional level in the Graduate of Architecture classification, being "Graduate of Architecture (Part 1)" classification and associated minimum wage rates. • amending the Progression from Graduate of Architecture to Registered Architect clause to remove reference to prescribed competencies which, in some instances, no longer exist.
Broadcasting and Recorded Entertainment Award		A separate full bench will consider the following issues: • Calculation of overtime. • Loaded minimum hourly rate.
Children's Services Award	UV	UV seeks to vary the Award by: • introducing a Training allowance. • inserting a Note under the Clothing and equipment allowance clause regarding on site laundry facilities. • inserting the words "hat, sun protection (including sunscreen lotions)" into the Clothing and equipment allowance clause. • deleting the Higher duties clause or alternatively, amending it to remove the words "(including in-service training)". • reducing the maximum amount of leave without pay for a Christmas close down from 4 to 2 weeks. • introducing the following allowances: a weekly allowance for an employee appointed as an educational leader; an hourly allowance for a responsible person physically present at a child

		care centre; a programming and administrative tasks allowance for children service employees that are required to perform additional programming and administrative duties in addition to their rostered hours. • amending the Non-contact time clause by extending non-contact time to 8 hours per week
	AFEI	AFEI seeks to vary the Award by: • amending the part-time employment clause to allow an employer to change an employees' starting and/or finishing times (whether ongoing or ad hoc) where an agreement cannot be reached. • amending the casual employment clause by removing the restriction on employing casuals for temporary and relief purposes.
	Business SA	Business SA seeks to vary this award by: • removing the restriction on employing casuals for temporary and relief purposes. (see AFEI's claim listed above)
	ACA, ABI and NSWBC	Australian Childcare Alliance, ABI and NSWBC seek to vary the award by: • amending the Ordinary hours of work and rostering clause to provide employers with greater flexibility to change rosters other than with 7 days' notice and to allow ordinary hours to be worked before 6.00 am or after 6.30 pm.
	an interested individual	An Individual seeks to vary the award by: • including an Educational leadership allowance for employees with educational leadership responsibilities in early childhood education and care settings.

		• including a Responsible Person allowance.
Dry Cleaning and Laundry Industry Award	UV	UV seeks to vary the award by: • amending the Protective clothing allowance by removing the words "in good condition, fair wear and tear excepted". • replacing the Uniform allowance with a Laundry allowance of a defined amount. • amending the Higher duties clause so that an employee is paid the higher minimum wage for the entire shift after performing higher duties for 2 hours. • amending the Overtime clause so that the first two hours worked in excess of an employee's ordinary hours will be paid at time and a half and double time thereafter. • proposing a single definition of 'shift worker' to be used in all situations (currently the Award provides two definitions).
Educational Services (Teachers) Award	UV, ACA and ABI & NSWBC and an interested individual	UV seeks to introduce the following allowances: • a weekly allowance for employee appointed as educational leader and • an hourly allowance for responsible person physically present at a child care centre. An individual seeks to vary the Award by: • extending the Leadership allowance to teachers with educational leadership responsibilities in early childhood education and care settings.

		• including a Responsible person allowance. ACA and ABI & NSWBC seek to vary the Award by: • providing employers with greater flexibility to change rosters; • allowing ordinary hours in the children's services and early childhood industry to be worked after 6.30pm.
Electrical, Electronic and Communications Contracting Award	MEA	The MEA seek to vary the award by: • amending various aspects of the Hours of work clause. • a proposed new shiftwork clause. • various matters in Schedule B. • by redrafting the Employment of minors clause to provide clarity about the circumstances in which a junior employee may be engaged, whilst safeguarding the position of apprenticeships. • providing clarification as to whether the Rest break clause applies to both day workers and shift workers.
Food, Beverage and Tobacco Manufacturing Award	UV and AMWU	UV seeks to vary the Award by: • expanding the Coverage clause to cover security officers and cleaners. • amending the Facilitative provisions clause as it is too broad and are unnecessary in the context of the award flexibility provisions.

		• amending the Hot places allowance clause to increase the rate paid for work performed in hot places; to increase the duration of the break for employees working in temperatures in excess of 54 degree Celsius for 2 hours or more; to ensuring that the temperature is determined by agreement between supervisor and employee claiming the extra rate. • amending the Shiftworker definition so that a shiftworker is defined as a 7 day shiftworker who is regularly rostered to work on weekends and public holidays. • amending Meal breaks clause to clarify when the penalty must be paid. • amending the Overtime clause so that an employee's first 2 hours worked in excess of their ordinary hours will be paid at time and a half and double time thereafter. AMWU seeks to vary the Award by: • amending Schedule B so as to establish a method for progresing from level 1 to level 2 and from level 2 to level 3 of the classification structure that is based on relative competency rather than assessed by indicative tasks, and is not contingent upon undertaking structured training. • including a specified process for classifying employees and dealing with reclassification disputes.
Funeral Industry Award 2010	UV and AWU	AWU seeks to vary the award by: • amending the overtime and penalty rates clause by inserting a minimum payment for time worked on public holidays. UV seeks to clarify: • that the Uniform allowance clause applies to all employees, not only full-time employees.

		• the interaction between the clauses relating to recalls and removals and the clauses providing minimum periods of engagement for part-time and casual employees.
Journalists Published Media Award	MEAA	MEAA seeks to vary the Award by: • amending the definition of "Editorial employees" by including "editors, multimedia editors or producers, social media editors or producers and art directors" and removing the words "for online publications". • amending the Coverage clause to prevent certain editorial employees from being excluded from the Award's coverage and from accessing entitlements and safeguards in Part 5 of the Award (due to occupying exempt positions) by increasing the threshold for occupying exempt positions. • amending the Coverage clause to allow both editorial employees engaged by an online publication that does not have an associated print publication and editorial employees in specialist publications to access the entitlements and safeguards in Part 5 of the Award. • amending the Shiftwork and weekend penalties clause to permit equitable access to shiftwork penalties payable to editorial employees not employed by metropolitan, suburban, magazine, wire service, regional daily or country non-daily publishers • amending the Annual leave clause to provide access to additional leave for all publications, irrespective of platform or masthead type, where an employee is required to work on public holidays on an ongoing basis. • amending the Annual leave loading clause to provide greater clarity by including the followings words at the end of the clause "– for all periods of annual leave".

		• amending the cross-reference in the Employees receiving additional annual leave clause.
Pest Control Award	AWU	AWU seeks to vary the Award by: • amending the Payment and loading clause by substituting the reference from "industry" allowance to "leading hand allowance".
Plumbing and Fire Sprinklers Award		The following issues will be considered by a separately constituted Full Bench: • industry disability allowance and space, height and dirt money allowance—fire sprinkler fitter employees clause. In particular, clarification is required as to whether apprentices are entitled to the allowance and how the allowance is to be calculated. • restructuring the Shift work clause (seems to be partly resolved with respect to midnight Sunday issue and AWU's issue (see transcript PN230-236; issue might have been dealt with by the Full Bench during the substantive award proceeding (see MPG's submission para 18); see Report at [3]). • including a 'shift work' clause which brings together relevant shift work provisions under the Award • Schedule B – all purpose rate (if the variation to clause 20.3(f) of the ED is made, there will need to be an amendment to Schedule B)
Professional Employees Award	APESMA	APESMA seeks to vary the Award by: • amending the Professional development clause to provide for reimbursement of the costs of obtaining Professional Registration for Professional Engineers. • amending the Definitions and interpretation clause, Coverage clause, Minimum wage clause

		and the Classification Structure and Definitions Schedule to provide occupational coverage for Engineering Technologists. • Ordinary hours of work clause, in particular whether the Award should specify a maximum number of weeks over which ordinary hours can be averaged.
Social, Community, Home Care and Disability Services Industry Award	UV and HSU	UV and the HSU seek to vary the award by • replacing references to terms such as 'appropriate rate' and 'ordinary rate of pay' within the Award with 'minimum hourly rate'. • amending the Clothing and equipment allowance clause to ensure that the employee will be given a sufficient number of uniforms so that they will not need to launder their work wear more than once a week. • amending the Rosters clause to ensure that permanent staff are protected and that any additional hours required to be worked at short notice will be appropriately remunerated. • amending the Telephone allowance clause to ensure that an employee who is required to use a mobile phone will be entitled to reimbursement for the cost of purchase and other charges. • amending the Broken Shifts clause to ensure that the maximum number of broken shifts that can be worked is two. • amending the Sleepover clause so that it is extended to cover employees who are working a 24 hour care shift or who are supervising clients on excursions. • deleting the 24 Hour care clause, or alternatively amending the clause to ensure that employees will be entitled to overtime for all hours worked over 8 hours.

		• amending the Excursions clause to ensure that employees are paid according to the provisions of the Award for the whole time they are working an excursion. • amending the Meal breaks clause to correct the cross-reference. • amending the Overtime clause to allow casual employees to be paid overtime after 8 hours of work on any one day and to ensure that part-time and full-time employees are paid overtime for work done in addition to their rostered hours. • amending the Payment for working on a public holiday clause by inserting a subclause which prevents rosters being altered for the purpose of avoiding public holiday entitlements under this Award and the NES.
Supported Employment Services Award		The issue relating to: • employees with a disability will be referred to the Full Bench being presided over by VP Hatcher.
Water Industry Award	UV	UV seeks to vary the award by : • amending the Coverage Clause to clarify that an employer "in the water industry" does not mean the employer operates exclusively in the water industry but also covers employers who are contracted to perform work in the water industry. • removing sub clauses 19.5(a)(iv)-(iv) in the Normal Starting Point clause and inserting a new subclause titled "Multiple starting points". • amending the Higher duties clause to provide that all hours worked at higher duties are paid at

		the higher minimum wage, and that that rate be paid for the entire shift where higher duties are performed for two hours or more.