

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

General Issues arising from  
Exposure Drafts

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**Ai**  
GROUP

# 4 YEARLY REVIEW OF MODERN AWARDS

## GENERAL ISSUES ARISING FROM EXPOSURE DRAFTS

### 1. INTRODUCTION

1. As part of the award stage of the 4 yearly review of modern awards (**Review**), the Fair Work Commission (**Commission**) has published exposure drafts for nearly all of the modern awards. The Australian Industry Group (**Ai Group**) has a significant interest in the majority of those awards and has actively participated in the process of reviewing the Commission's exposure drafts and making submissions regarding technical and drafting issues arising from them.
2. Over the course of the Review, various issues have arisen that are common to the vast majority (if not all) exposure drafts. These have been canvassed in the many submissions we have filed during the course of the Review. Whilst many of these issues have been determined by the Commission, some remain unresolved. During recent proceedings before His Honour, Justice Ross, regarding all group 3 awards, Ai Group was directed to file a submission that sets out our position in respect of three such issues and awards in which the issues arise. The issues are:
  - The characterisation of premiums payable pursuant to an award;
  - The manner in which premiums are expressed in exposure drafts; and
  - The headings used within the tables summarising hourly rates in exposure drafts.
3. Our first concern relates to the **characterisation of premiums payable pursuant to an award**. Modern awards variously characterise premiums that are payable to an employee as penalties, loadings or allowances. For example, an employee may be entitled to a shift "*loading*" in respect of work performed during a shift at a particular time. In numerous instances, the characterisation of a particular premium payable under an award has been altered in the corresponding provision of an exposure draft. For instance, where a current

award mandates the payment of a shift “*allowance*”, the exposure draft may instead refer to it as a shift “*penalty*”. A change to the terminology used to describe a particular payment in an award often has implications for the calculation of other entitlements in the award. We are also concerned that a change in terminology may have implications for the calculation of entitlements under legislation, such as workers’ compensation and long service leave statutes.

4. Our second concern relates to the **manner in which premiums are expressed in exposure drafts**. Numerous exposure drafts state, for example, that a shift worker is to be paid 130% of the relevant rate, rather than a 30% loading. This has implications for the calculation of other award entitlements which still refer to loadings (e.g. annual leave payments).
5. Our third concern relates to the **headings used within the tables summarising hourly rates in exposure drafts**. Often the heading for particular columns will use the term “*ordinary hourly rate*” when the figures in the column are based on the minimum hourly rate. For some employees the ordinary hourly rate will be the same as the minimum hourly rate but, for employees who are entitled to one or more all-purpose allowances, the rates will be different.

## **2. ADDRESSING PROBLEMS CAUSED BY INCONSISTENT TERMINOLOGY WITHIN PARTICULAR EXPOSURE DRAFTS**

6. In the sections which follow, we have endeavoured to identify provisions in particular exposure drafts (in which Ai Group has a significant interest) which are problematic due to inconsistent terminology used within different clauses of the exposure draft. This is aimed at partially addressing the first and second concerns that are identified above. Addressing the third concern would require substantial changes to the approach which the Commission has taken in preparing the exposure drafts.

7. We have not reviewed exposure drafts which Ai Group does not have a significant interest in. Many of these other exposure drafts are likely to contain similar inconsistent terminology and associated problems, particularly in respect of the terminology used for shift rates / penalties / loadings / premiums / allowances etc. In many cases there are likely to be problems with the interaction between shift clauses and annual leave clauses.
8. Also, we have only reviewed the body of the exposure drafts for inconsistent terminology, and not the wage schedules. Terminology in wage schedules should be reviewed for consistency with the terminology in the body of each exposure draft, particular in respect of payments to shiftworkers.
9. In Ai Group's view:
  - An award provision which requires that shiftworkers be paid 15% extra can legitimately be called a "*loading*" or an "*allowance*", but cannot legitimately be called a "*penalty rate*" or a "*shift rate*".
  - An award provision which stated that shiftworkers are to be paid 115% of the ordinary time rate cannot legitimately be referred to as a "*loading*" or an "*allowance*", but it can be referred to as a "*penalty rate*" or a "*shift rate*".
  - Other clauses in awards (e.g. annual leave clauses) which refer to entitlements in the shiftwork cannot legitimately refer to the "*loadings*" or "*allowances*" in the shiftwork clause if the loadings / allowances (e.g. 15%) have been replaced with penalty rates of pay (e.g. 115%).
  - The terminology within each award should be consistent.
10. The interaction between the annual leave payment clauses, annual leave loading clauses and shiftwork payment clauses are particularly problematic in numerous exposure drafts. Annual leave payment clauses often refer to certain "*loadings*" being payable for periods of annual leave. Annual leave loading clauses often provide for night shift workers to receive any higher shift "*loading*"

during a period of annual leave, rather than the 17.5% annual leave loading. However, numerous exposure drafts no longer contain shift loadings (e.g. 30%); they now contain shift rates (e.g. 130%). As currently drafted, some of the exposure drafts indicate that 230% is payable to night shift workers on annual leave, rather than 130%. The *Payment of Wages Case* (AM2016/8) is dealing with some aspects of this problem, but not all aspects.

### **Exposure Draft – Aged Care Award**

11. We have identified the following inconsistent terminology and related problems:

- Clause 15.4(c)(i) provides that applicable shift and weekend penalties are to be added to the ordinary hourly rate, but such penalties are now included in a loaded rate of pay and are not separately identified.
- Clause 15.4(d)(i) provides that applicable shift and weekend penalties are to be added to the ordinary hourly rate, but such penalties are now included in a loaded rate of pay and are not separately identified.
- Clause 21.2 refers to “*Shiftwork rates*”. Clause 21.3 refers to the “*shift allowances*” in clause 21.2. Clause 20.2 refers to the “*shift premiums*” in clause 21. Clause 22.1 refers to the “*shift premiums*” in clause 21.1. Clause 23.3(b) refers to “*shift penalties*”. Clause 26.2(e) refers to “*any additional rate for shift...work*”. Clause 26.3(c) refers to “*any additional rate for shift...work*”.

### **Exposure Draft – Airline Operations – Ground Staff Award**

12. We have identified the following inconsistent terminology:

- Clauses 17.3, 17.4, 17.5 and 17.6 contain various rates for shiftwork, but clause 17.7(b) refers to the “*shift premiums*” in these other clauses.

### **Exposure Draft – Aluminium Industry Award**

13. We have identified the following inconsistent terminology:

- The heading for clause 13 refers to “*Shiftwork penalties*” but subclauses 13(a) and 13(b) refer to “*shiftwork loading*”. Clause 14.3(b) refers to “*shift penalties*”. Clause 15.5(b)(ii) refers to “*penalties and allowances*”.

### **Exposure Draft – Ambulance and Patient Transport Industry Award**

14. We have identified the following inconsistent terminology:

- Clause 11.2(g) refers to “*shift allowance*”. Clause 13.3 refers to “*shift allowance*”. Clause 15.5(a) refers to “*shift penalties*”.

### **Exposure Draft – Asphalt Industry Award**

15. We have identified the following inconsistent terminology:

- The heading for clause 13.2 refers to “*shift penalties*”. Clause 13.2(a) refers to the “*loadings*” in clause 13.2(b). Clause 13.2(b) refers to “*shift penalties*”. Clause 15.6((b)(ii) refers to “*shift penalty*”.

### **Exposure Draft – Banking, Finance and Insurance Award**

16. We have identified the following inconsistent terminology:

- The heading for clause 7.7(d) refers to “*shiftwork penalties*” but the clause refers to “*loadings*” in two places. The note in clause 7.7(d) refers to “*shiftwork rates*”. Clause 13.7(b) refers to “*shiftwork penalties*”. Clause 14.3(b)(ii) refers to “*shift loadings*”.

### **Exposure Draft – Black Coal Industry Award**

17. We have identified the following inconsistent terminology:

- Clause 13.1 refers to “*penalty rates*” for afternoon and night shifts. Clause 15.9(b) refers to “*shift allowances*”.

## Exposure Draft – Building and Construction General On-site Award

18. We have identified the following inconsistent terminology:

- Clauses 17.1(b), 17.1(d), 17.2(k) and 17.2(l) use the term “*rates*” to describe penalties for shiftwork. Clause 17.1(i) refers to “*shift rates*”. The heading for clause 17.2(j) refers to “*shift allowances*” but the clause itself contains a rate, not an allowance. Clause 26.8 refers to “*shift loadings*”. Clause 30.2(d) refers to “*shift loading*”.

## Exposure Draft – Business Equipment Award

19. We have identified the following inconsistent terminology:

- Clause 12.7 refers to “*shift loadings*”. Clause 15.2(c) refers to “*shift allowances*”. Clause 15.2(d) refers to “*shift allowances*”. Clause 15.3(b) refers to an “*allowance*”, an “*extra rate*” and “*shift premiums*”. Clause 16.8 refers to “*rates*” for shiftworkers. Clause 17.2 refers to “*shift loading*”.

## Exposure Draft – Cement, Lime and Quarrying Award

20. We have identified the following inconsistent terminology:

- The heading for clause 13 refers to “*penalty rates*” for shiftwork. Clauses 13.3, 13.4, 13.5 and 13.6 refer to “*extra rates*”. Clause 15.6(b) refers to “*shift penalties*”.

## Exposure Draft – Cleaning Services Award

21. We have identified the following inconsistent terminology:

- The heading for clause 13 refers to “*penalty rates*” for shiftwork. Clause 13.2 refers to “*shift loading*”. Clause 13.3 refers to “*penalty rate*”. Clause 15.5(b)(i) refers to “*shift penalties*”. Clause 15.6(a)(iii) refers to “*penalty rates paid for shiftwork*”.

## **Exposure Draft – Clerks – Private Sector Award**

22. We have identified the following inconsistent terminology:

- The heading for clause 14.4 refers to “*shift allowances*” but clause 14.4(c) refers to “*penalty rate*”. Clause 14.7 refers to “*shift allowances*”. Clause 15.3(b)(ii) refers to “*shift loading (including relevant weekend penalty rates)*”.

## **Exposure Draft – Concrete Products Award**

23. We have identified the following inconsistent terminology:

- The heading for clause 13.6 refers to “*afternoon or night shift allowances*” but clause 13.6 (a), (b) and (c) contain rates, not allowances. Clauses 13.7, 13.8 and 13.9 contain rates for shiftworkers. The heading for clause 13.10 refers to “*shift penalties*” but the wording in clause 13.10 refers to the “*shift allowances*” in clause 13.6. Clause 15.6(ii) refers to “*shift penalty*”.

## **Exposure Draft – Contract Call Centres Award**

24. We have identified the following inconsistent terminology:

- Clause 8.9(a) refers to the “*penalty*” for shiftworkers in clause 13. Clause 13.2 refers to “*shift penalties*”. Clause 14.9 refers to “*penalties*”. Clause 15.4(b) refers to “*loadings*” in clause 13.

## **Exposure Draft – Cotton Ginning Award**

25. We have identified the following inconsistent terminology and associated problems:

- Clause 6.5(e) states that where a penalty rate and a loading apply, the casual employee only receives the penalty rate and not the loading, and where more than one loading applies, the casual employee receives the higher loading. The current award (in clause 21.2(c)) contains a “*loading*”

for night work. This has been replaced with “*penalty rates*” in clause 13 of the Exposure Draft, which will impact upon the entitlement for casuals.

- Clause 15.2 of the exposure draft, states that the 17.5% annual leave loading is paid instead of the “*night loading*”, but the night loading has been replaced with a 115% “*penalty rate*”.

### **Exposure Draft – Electrical Power Industry Award**

26. We have identified the following inconsistent terminology:

- Clause 13.3 refers to “*penalty rates*” for shiftworkers. Clause 14.3(b)(ii) refers to “*shift allowance*”.

### **Exposure Draft – Electrical, Electronic and Communications Contracting Award**

27. We have identified the following inconsistent terminology:

- The heading for clause 13.13 refers to “*shift allowances*” but clauses 13.3(a), 13.3(b) and 13.3(d) contain shift rates, not allowances. Clause 13.14 and 13.15 also contain shift rates. Clauses 13.14, 13.15(e) and 13.16(c) refer to “*shift premiums*”. Clause 20.3(b) refers to “*shift loadings*”.

### **Exposure Draft – Gas Industry Award**

28. We have identified the following inconsistent terminology:

- Clause 13.8 refers to “*penalty rates*” for shiftworkers. Clause 14.5(a)(ii) refers to “*shift allowance*”.

## **Exposure Draft – Graphic Arts, Printing and Publishing Award**

29. We have identified the following inconsistent terminology:

- 20.7(e)(iii) refers to a “*night work allowance*”. Clause 21.3 refers to “*shift allowances*”. Clause 27.5(c) refers to “*shift allowances*”. Clause 27.6(b)(ii) refers to “*shift loading*”.

## **Exposure Draft – Joinery and Building Trades Award**

30. We have identified the following inconsistent terminology:

- Clause 21.3(a) refers to “*shift loadings*”. Clause 24.2 refers to “*shift rates*”.

## **Exposure Draft – Legal Services Award**

31. We have identified the following inconsistent *terminology*:

- *The heading for clause 13.3 refers to “shift penalties”.* Clause 13.3(a) refers to “*shift penalties*” and “*penalty rates*”. Clause 13.4(a) and (b) contain various penalty rates of pay for shift workers. Clause 13.4(c) refers to “*shift penalties*”. Clause 13.6 refers to “*shift penalties*”. Clause 15.4(b)(ii) refers to “*shift loading*”.

## **Exposure Draft – Manufacturing and Associated Industries and Occupations Award**

32. We have identified the following inconsistent terminology:

- Clause 29.2 contains rates for shiftworkers. Clause 31.3 refers to “*shift loading*”. Clause 31.4(b)(ii) refers to “*shift loading*”:

## **Exposure Draft – Meat Industry Award**

33. We have identified the following inconsistent terminology:

- *Clause 16.3 contains rates for shiftworkers.* Clause 19.4(b) refers to “*loadings*”. Clause 19.5(b)(i) refers to “*shift allowance*”.

### **Exposure Draft – Medical Practitioners Award**

34. We have identified the following inconsistent terminology:

- The heading for clause 13 refers to “*penalty rates*”. Clause 13.1 refers to “*shift penalties*”. Clause 15.4(ii) refers to “*shift penalties*” but not in the same context as in clause 13.1. Clause 15.4(ii) should require the payment of 25% extra on annual leave if the employee is a night shift worker – not 125% extra.

### **Exposure Draft – Mobile Crane Hiring Award**

35. We have identified the following inconsistent terminology:

- Clause 18.3(a)(ii) refers to “*shift loadings*”. Clause 22 contains rates for shiftwork which are described as “*rates*” or “*shift premiums*”. Clause 23.3(b)(ii) refers to “*shift loadings*”.

### **Exposure Draft – Nurses Award**

36. We have identified the following inconsistent terminology:

- Clause 14.2 refers to “*shift penalties*” in the heading and in paragraph (d) but the clause contains loadings (e.g. 12.5% in clause 14.2(a)) rather than penalty rates. Clause 17.5(b)(ii) refers to “*shift penalties*”.

### **Exposure Draft – Pharmaceutical Industry Award**

37. We have identified the following inconsistent terminology:

- The heading for clause 13 is “*Penalty rates*”. Clause 13.2 refers to “*shift allowances*” but the clause contains rates, not allowances. Clause 15.3(e)(ii) refers to “*penalty rate payments*”.

## **Exposure Draft – Road Transport and Distribution Award**

38. We have identified the following inconsistent terminology:

- Clause 15.3 is headed “*Shift allowances*” but it contains rates, not allowances. Clause 15.4 refers to the “*shift loading*” in clause 15.3, but clause 15.3 contains rates, not loadings. Clause 18.3(b)(ii) refers to “*shift loading*”.

## **Exposure Draft – Seafood Processing Award**

39. We have identified the following inconsistent terminology:

- Clause 13.5 refers to “*shift allowances*” but the clause contains rates, not allowances. Clauses 13.6, 13.7 and 13.8 also contain rates for shiftworkers. Clause 15.5(ii) refers to “*shift loading*”.

## **Exposure Draft – Social, Community, Home Care and Disability Services Industry Award**

40. We have identified the following inconsistent terminology:

- Clause 20 is headed “*Penalty rates*”. Clause 20.1(a) and (b) contain various rates for shiftwork. Clauses 19.1(a)(ii), 19.1(c) and 20.1(c) refer to “*shift premiums*”. Clause 20.2(c) is headed “*shift allowances and penalty rates*” but the clause only contains rates, not allowances. Clause 21.3(b)(ii) refers to “*shift penalties*”.

## **Exposure Draft – Storage Services and Wholesale Award**

41. We have identified the following inconsistent terminology:

- Clause 13A.1 refers to “*shift loadings*”. Clause 15.1 refers to “*shiftwork..penalties*” and contains rates. Clause 17.3(b)(iii) refers to “*shift loadings*”.

## Exposure Draft – Sugar Industry Award

42. We have identified the following inconsistent terminology:

- Clause 26.5 refers to “*shift allowances*”, but clause 26.5(a) refers to a “*penalty rate*” even though the relevant entitlement is an allowance, not a rate. Clause 26.2 refers to “*shift rates*”. The heading for clause 26.7 refers to “*shift allowances*” but clause 26.7(a) contains rates, not allowances. Clause 26.7(b) contains a shift allowance. Clause 27.3(b)(ii) refer to “*shift loading*”.

## Exposure Draft – Telecommunications Services Award

43. We have identified the following inconsistent terminology:

- The heading for clause 14 is “*Penalty rates*”. The heading for clause 14.2 is “*shiftwork penalties*” and the clause contains rates. The 130% rate in clause 14.2(c) is referred to as a “*loading*”, but this is a rate, not a loading. Clause 14.4 refers to the “*loadings*” in clause 14, but the relevant entitlements are rates, not loadings. Clause 16.3(c) refers to the “*loadings*” in clause 14, but clause 14 contains rates, not loadings.

## Exposure Draft – Textile, Clothing, Footwear and Associated Industries Award

44. We have identified the following inconsistent terminology:

- Clause 6.4(g) refers to “*penalty payments for...shiftwork*”. Clause 14.2(e) contains a “*shift allowance*”. Clause 15.A.1 refers to “*shift loadings*”. The heading for clauses 17 is “*Shiftwork and penalties..*”. The heading for clause 17.3 is “*Payment for shiftwork*” and clause 17.3 contains rates. The heading for clauses 18 is “*Shiftwork and penalties..*”. The heading for clause 18.3 is “*Payment for shiftwork*”. Clause 18.3(a) contains an allowance that is referred to as a “*penalty loading*”. Clause 18.3(b) contains an allowance that is referred to as a “*penalty loading*”. Clause 18.3(c) refers to “*shift penalties*”. Clauses 18.3(d) and (e) contain

rates for shiftworkers. Clause 18.3(f) refers to the allowance in clause 14.2(e). Clause 21.1(b) refers to “*shift loading*”.

### **Exposure Draft – Timber Industry Award**

45. We have identified the following inconsistent terminology:

- Clause 23.3 is headed “*Allowances for shift workers*”, but the clause contains rates, not allowances. Clause 23.3(b)(v) refers to “*shift premiums*”. Clause 25.5(b)(ii) refers to “*shift allowances*”.

### **Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award**

46. We have identified the following inconsistent terminology:

- Clause 22.5(a)(ii) refers to “*shift loading*”. Clause 35 refers to “*shiftwork penalties*”. Clauses 35.2 and 35.3 contain rates for shiftworkers. Clause 43.3 is labelled “*Penalty rates for shiftworkers*”. Clause 43.3(b) and (e) refer to “*shift premiums*”. Clauses 43.3(b), (d) and (e) contain rates for shiftworkers. Clause 45.2 is entitled “*Shiftwork rates*”. Clauses 45.2(a), (b) and (c) contain rates for shiftworkers.

### **Exposure Draft – Waste Management Award**

47. We have identified the following inconsistent terminology:

- Clause 15.3 refers to “*shift loadings*” but the clause contains rates, not loadings. Clause 17.2(b) refers to “*shift loading*”. Given that the rates (e.g. 130%) are referred to as “*loadings*”, clause 15.3 as drafted appears to require that an annual leave loading of 130% be paid to a night shift worker (i.e. 230% in total for annual leave) rather than a 30% loading.

## Exposure Draft – Wine Industry Award

48. We have identified the following inconsistent terminology:

- Clause 18.3(b) refers to “*shift allowances*” but the clause contains rates, not allowances. In clause 18.3(c)(ii), the rates in 18.3(b) are referred to as “*penalties*”. Clause 20.4(b) refers to “*shift loading*”.