



# REPORT TO THE FULL BENCH

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

## **4 YEARLY REVIEW OF MODERN AWARDS: Report to the Full Bench**

(AM2014/214) *Storage Services and Wholesale Award 2010*

DEPUTY PRESIDENT BULL

SYDNEY, 7 DECEMBER 2015

*Four yearly Review of Modern Awards, Storage Services and Wholesale Award 2010,  
Updated Report to the Full Bench, conference held on 19 November 2015*

[1] On 7 October 2015, a hearing was held before the Full Bench in relation to the four yearly review of the sub group 2A modern awards, which includes the *Storage Services and Wholesale Award 2010* (the Award).

[2] The matter was subsequently listed for conference before me on 19 November 2015 to discuss any outstanding issues in relation to the Award and its exposure draft.

[3] In attendance at the conference of 19 November 2015 were the:

- Australian Workers' Union (AWU), represented by Ms Gherjestani;
- Australian Industry Group (Ai Group), represented by Mr Ferguson and Ms Bhatt;
- Australian Federation of Employers and Industries (AFEI), represented by Mr Jones-Valledor;
- Australian Business Industrial and The NSW Business Chamber Ltd, represented by Mr Arndt.

[4] At the conference, Ms Gherjestani of the AWU advised the Commission that the Shop Distributive and Allied Employees' Association (SDA) and the National Union of Workers (NUW) remained interested parties to the Award but were not able to attend the conference. Both unions have subsequently provided comment in relation to the discussions held at the conference.

[5] BusinessSA (South Australia's Chamber of Commerce and Industry) was also absent from the conference, and has also subsequently corresponded to the Commission in relation to its submissions previously filed for this Award.

[6] On 26 November 2015, Matt Galbraith on behalf of the SDA wrote to the Commission advising that it was in the process of organising discussions with the Ai Group for the purposes of discussing the outstanding issues in relation to:

1. Rostered days off (issue 78 in the table below);
2. Wholesale employees (issue 80 in the table below); and
3. Annualised salary provision (issue 81 in the table below).

[7] The SDA also provided further submissions in relation to items 38, 60, and 63 which were subsequently withdrawn by the SDA on 1 December 2015.

[8] The Ai Group wrote to the Commission on 3 December 2015 advising that since the conference, the Ai Group, the SDA and the AWU have held discussions regarding substantive variations sought in the Award as well as outstanding issues between the parties.

[9] The Ai Group, with the support of the SDA and AWU requests a further conference before the Commission to facilitate further discussions in an attempt to reach a resolution on the substantive and outstanding issues.

[10] Accordingly, the matter will be relisted for conference to assist the parties.

[11] Listed below are the issues discussed at the 19 November 2015 conference and their outcome. Written submissions filed subsequent to the conference have been incorporated to reflect the final positions of the parties.



DEPUTY PRESIDENT

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
1.	1, 3	NUW	–	<b>Terminology – ordinary hourly rate</b> Inconsistent use of ‘ordinary hourly rate’ and ‘minimum hourly rate’.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		BusSA		Opposes ‘ordinary hourly rate’ as it is inconsistent with <a href="#">[2014] FWCFB 9412.</a>	
		ABI & NSWBC		‘Ordinary hourly rate’ and ‘minimum hourly rate’ used interchangeably and should be used consistently.	
		AWU		<b>Terminology – ordinary hourly rate</b> Exposure draft should refer to ‘ordinary hourly rate’. Agrees with ABI & NSWBC and ordinary hourly rate should be adopted.	
		Ai Group		Opposes NUW and AWU that ‘ordinary hourly rate’ should be used in preference to ‘minimum hourly rate’.	
		SDA		Supports use of term ‘ordinary hourly rate’.	
2.	20A	Ai Group	–	<b>Casual loading</b> ‘Ordinary hourly rate’ should be replaced with ‘minimum hourly rate’ as that is the relevant term used in the minimum wages clause.	Resolved
		SDA		Award should refer to ‘ordinary hourly rate’	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				throughout.	
		AWU		Suggest inserting definition of 'ordinary hourly rate' rather than replacing it with 'minimum hourly rate'.	
3.	62	SDA	–	<b>NES summaries and payslips</b> Opposes inclusion of NES summaries but supports inclusion of payslip provisions in annotated version of awards.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
4.	4	SDA	2	<b>Relationship between award and NES</b> Removal of word 'access' from title and amalgamation of two clauses substantially changes clause 5.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		Ai Group		SDA submission addressed by 23 December 2014 decision.	
5.	5	Ai Group	3.1	<b>Coverage</b> Words 'to the exclusion of any other modern award' should be deleted.	Agreed – words 'to the exclusion of any other modern award' deleted from clause 3.1.
		SDA		Agrees with Ai Group.	
		AWU		Not opposed to Ai Group.	
6.	6	SDA	3.2	<b>Coverage – industry definition</b> Definition of 'storage services and wholesale industry' is unnecessary.	Agreed – definition of 'storage services and wholesale industry' deleted from clause 3.2.
		Ai Group		Deletion of definition not opposed.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
7.	7	ABI & NSWBC	3.6(a)	<b>Coverage – terminology</b> Reference to ‘the Fair Work Act 2009 (Cth) (the Act)’ should be replaced with term ‘the Act’.	Resolved – reference to ‘the Act’ only per ABI & NSWBC submission.
		AWU		Agrees with ABI & NSWBC	
		SDA		Does not oppose ABI & NSWBC	
		Ai Group			
8.	8	BusSA	5.1(b)	<b>Facilitative provisions – Agreement to vary award provisions</b> Remove items in line with 23 December 2014 decision.	Resolved – deletion of final sentence of clause 5.1(b) per Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		SDA		Decision made reference to deletion of final sentence only.	
9.	9	SDA	5.2(a)(i)	<b>Facilitative provisions – Travelling allowance</b> Delete from clause as entitlement is an absolute provision.	Agreed – travelling allowance not to be included in facilitative provisions.
		AFEI		Agrees with SDA.	
		Ai Group			
		ABI & NSWBC		Agrees with Ai Group and SDA.	
10.	10	Ai Group	5.2(a)(ii)	<b>Facilitative provisions – cross reference 8.1</b> Reference should be to 8.1(d).	Agreed – cross reference should be to clause 8.1(d).
		SDA		Supports Ai Group.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
11.	11	ABI & NSWBC	5.2(a)(ii)	<b>Facilitative provisions – cross references</b> Consider whether inclusion of clause references in clause 5.2 will give rise to unintended consequences.	Agreed between the parties
	12	AWU		Agrees with ABI & NSWBC	
12.	14	BusSA	5.2(a)(vii)	<b>Facilitative provisions – cross reference 20.4(a)</b> Include additional cross reference to clause 20.4(a) – Rostered day off falling on a public holiday.	Agreed – cross reference to clause 20.4(a) to be inserted.
		Ai Group		Does not oppose BusSA.	
		SDA			
13.	13	BusSA	5.3(a)	<b>Facilitative provisions – cross reference 15.3</b> Include reference to clause 15.2.	Agreed – cross reference to clause 15.2 to be inserted.
		Ai Group		Opposes BusSA submission.	
		SDA			
14.	15	BusSA	5.3(a)	<b>Facilitative provisions – cross reference 20.3</b> Include additional cross reference to clause 20.3 – Substitution of public holidays.	Agreed – cross reference to clause 20.3 to be inserted.
		Ai Group		Opposes Ai Group submission.	
		SDA		Does not oppose Ai Group.	
15.	16	Ai Group	5.3(a)(i)	<b>Facilitative provisions – cross reference 11</b> Cross reference to clause 11 should be deleted.	Agreed – clause 5.3(a)(i) to be deleted.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		SDA		Does not oppose Ai Group.	
		ABI & NSWBC		Supports Ai Group.	
16.	17	Ai Group	5.3(a)(ii)	<b>Facilitative provisions – clause 8.1</b> Clause 8.1 contains provisions that provide for facilitation by majority agreement ((d) & (e)). Both are separately listed in clause 5.3. Clause 5.3(a)(ii) should be deleted.	Agreed – clause 5.3(a)(ii) to be deleted.
		SDA		Supports Ai Group.	
17.	18	Ai Group	5.3(a)(vi)	<b>Facilitative provisions – clause 15.1</b> Clause should refer to clauses 15.2 and 15.4(d) instead.	Agreed – clause 5.3 to refer to clauses 15.2 and 15.4(d), not general reference to ‘shift rosters’.
		SDA		Supports Ai Group.	
18.	20	AWU	6.4(c)(i)	<b>Casual employment</b> Word ‘ordinary’ should be removed from clause 6.4(c)(i) or words of current clause 11.4(b) should be retained.	Agreed – word ‘ordinary’ deleted from clause 6.4(c)(i).
		Ai Group		Does not oppose AWU.	
		ABI & NSWBC			
19.	21	SDA	6.4(c)(ii) & (iii)	<b>Casual employment</b> Opposes inclusion of clauses 6.4(c)(ii) & (iii) and proposes incorporation of Full Bench decision <a href="#">[2014] FWCFB 9412</a> . Party also	Agreed – clauses 6.4(c)(ii) & (iii) as issued dealt with by <a href="#">[2014] FWCFB 9412</a> .

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				supports Ai Group's submission.	
		AWU		Clause 6.4(ii) does not appear in current award and should be deleted and agrees with Ai Group.	
		Ai Group		Opposes inclusion of subclause.	
20.	22	Ai Group	8.1(a)	<b>Hours of work</b> Reference to full-time employees removes casual employees from application of clause and would result in breach of s.147 of Act. Words 'a full-time employee's' should be deleted.	Agreed – reference to 'a full-time employee's' deleted.
		NUW		Supports Ai Group in that there should be some reference to casual employees.	
		SDA		Supports Ai Group.	
		AWU			
21.	22A	Ai Group	8.1(A)	<b>Hours of work – Ordinary hours of work – day workers</b> Words 'up to' should be inserted before '38 per week' to prevent clause being interpreted as requiring casual employees to work 38 ordinary hours a week, contrary to clause 6.4(a).	Parties agree to insert the words "up to" after the word "be" in cl.8.1(a)



<b>Issues agreed between parties (Resolved)</b>					
<b>Issue No</b>	<b>Summary of subs. Ref</b>	<b>Party</b>	<b>Clause (Exposure draft)</b>	<b>Summary of issue</b>	<b>Outcome</b>
22.	22B	Ai Group	8.1(c)	<p><b>Hours of work – Ordinary hours of work – day workers</b></p> <p>The word ‘shift’ is not used in the current clause except where it specifically relates to shiftworkers. The words ‘on shift’ should be substituted with ‘on days’</p>	<p>Parties agree to reinsert existing award provision.</p> <p>This is based on there being no intention to change its’ meaning from the current award and any change would result in a substantive one.</p>
23.	23	FWO	8.1(c)	<p><b>Hours of work – Ordinary hours of work – day workers</b></p> <p>Unclear what entitlements apply to employees whose hours of work traverse the hours that apply to both shift and day workers.</p>	<p>Parties agree the existing exposure draft provisions are appropriate and should remain.</p>
24.	25	BusSA	8.2	<p><b>Hours of work – Spread of hours</b></p> <p>Title of clause should be ‘spread of ordinary hours’ for clarity.</p>	<p>Parties present at the conference of 19/11 agreed to the title change.</p> <p>AWU propose to also insert the word “ordinary” in the opening sentence after the word “of” for consistency.</p> <p>The clause would read “The spread of ordinary hours may be altered...”</p> <p>All parties agreed to AWU’s</p>

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					proposal.
		Ai Group		Not opposed to BusSA	
		SDA		Change to clause title is unnecessary.	
25.	27	BusSA	8.4(d)	<b>Hours of work</b> Clause reference should be amended from 9.4(b) to 8.4(b).	Agreed – clause reference to be changed from 9.4(b) to 8.4(b).
		SDA		Agrees with BusSA.	
		Ai Group			
26.	29	SDA	9.1	<b>Meal breaks</b> Revert to wording in current award.	Agreed – retain wording of current clause 23.1(a) in place of clause 9.1(a).
		ABI & NSWBC		Agrees with SDA.	
		BusSA			
		Ai Group			
		NUW			

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		SDA			
		AWU			
27.	30	Ai Group	9.2	<b>Rest breaks</b> Current wording ('normal commencement or cessation of work') should be retained.	Agreed – retain current wording and replace 'starting or finishing time' with 'commencement or cessation of work'.
		SDA		Agree with Ai Group.	
28.	25A	SDA	8.2	<b>Hours of work – Spread of hours</b> Clause has been relocated resulting in there being no spread of hours under the 'spread of hours' subclause.	Parties tentatively agree to AWU's proposal:  cl.8.1(b) to be moved under cl.8.2, which would then be marked as 8.2(a), and cl.8.2 will then become 8.2(b)  The current clause at 22.1(a) of the current award should replace 8.1(a) of the exposure draft.
		ABI & NSWBC		Agrees with SDA that 'spread of hours' clause does not contain the spread of hours, but disagrees that the reference to the spread should be repeated in clause 8.2. An amendment to the clause title is proposed	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		Ai Group		Opposes SDA that clause 8.1(b) be reproduced at clause 8.2.	
29.	31	Ai Group	10.1	<b>Minimum wage rates</b> Delete 'for a full-time adult employee' from preamble.	Agreed – 'a full-time' deleted.
		AWU		Term 'full time' should be deleted from draft preamble.	
		ABI & NSWBC		Does not oppose AWU	
30.	31A	SDA	10.1	<b>Minimum wage rates</b> Not opposed to inclusion of extra rates in wage tables – worthwhile additions.	Resolved
31.	32	FWO	10.1 & Schedule B	<b>Minimum wages</b> Different pay rates for level 1 employees 'on commencement, after 3 months and after 12 months'.	Parties agree to leave Schedule B of exposure draft as currently is.
		BusSA		<del>Party has not come to an agreed position on matter.</del>  BusSA wrote to the Commission on 2 December 2015 stating that it agrees to leave the exposure draft as is.	
32.	33	SDA	10.2	<b>Junior wages</b> Unnecessary to include minimum weekly rate alongside the junior percentages Many juniors will be in	Parties agree to remove the "minimum weekly rate" column at cl.10.2 - Juniors

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				the first 12 months of employment and therefore not receiving these rates so could lead to confusion Juniors also likely to be part-time or casual so weekly rates will not be relevant.	
33.	34	ABI & NSWBC	10.4	<b>Supported wages system</b> Words ‘because of the effects of a disability’ should be deleted.	Agreed – words ‘because of the effects of a disability’ to be deleted.
		Ai Group		Does not oppose ABI & NSWBC.	
		SDA			
34.	36	Ai Group	11.4	<b>Public holiday or day off coinciding with pay day</b> Words of current clause should be retained.	Agreed – wording of current clause 20.4 to be retained.
		SDA		Agrees with Ai Group.	
		AFEI			
		ABI & NSWBC			
		SDA			
35.	37	SDA	12	<b>Allowances</b> Does not oppose changes to formatting of allowances.	Agreed – parties do not oppose changes to allowances.
36.	38	SDA	12.3(b)(i)	<b>Allowances – Travelling, transport and fares reimbursement</b> Words ‘who on any day, or from day-to day’ have been omitted from	Agreed – wording of current award to be retained.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				exposure draft.	
		AWU		Agrees with SDA and current wording should be retained.	
		Ai Group			
		AWU		Considers words to be unnecessary and should not be retained.	
		ABI & NSWBC			
		BusSA			
37.	39	ABI & NSWBC	12.3(d)	<b>Allowances – Protective clothing and uniform</b> Current drafting may give rise to an ambiguous general obligation to ‘provide overalls’. Party submits clause should be redrafted.	Agreed – parties have agreed to support wording in ABI & NSWBC’s submission.
		Ai Group		Supports ABI & NSWBC proposed wording.	
		SDA			
		AWU			
38.	43	SDA	15.1	<b>Shiftwork</b> Submits penalties are incorrect. Rates in afternoon shifts should be replaced with 115% and 140%, respectively. Rates in night shift should be replaced with 130% and 155%, respectively.	Agreed – percentages incorrect.
		BusSA		Agree with SDA.	
		Ai Group			
		ABI & NSWBC			
		AWU			

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
39.	43A	Ai Group	15.1	<p><b>Shiftwork</b></p> <p>Submit ‘and penalties’ should be deleted from heading as current award characterises the higher rate payable as an allowance.</p> <p>Characterisation may have implications for workers compensation and long service leave calculations under state legislation.</p>	<p>Parties tentatively agree to suggestions put forward at the 19 November 2015 conference below:</p> <ul style="list-style-type: none"> <li>• AWU submit cl. 25 of current award remain.</li> <li>• AiG do not oppose this but if that be the case, the reference to “ordinary rate” should be to the ‘minimum hourly rate’</li> <li>• Refer to [2015] FWCFB 4658 at paragraphs 42-47</li> <li>• AWU agreeable to Ai Groups proposal.</li> <li>• AiG further submit that references to “time and a half” and “double time” should be referenced as 150% and 200% of the</li> </ul>

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					<p>minimum hourly rate respectively.</p> <ul style="list-style-type: none"> <li>Refer to [2015] FWCFB 4658 at paragraphs 95 and 96</li> </ul>
40.	44	ABI & NSWBC	15.1	<p><b>Shiftwork</b> Clause should be varied to read:</p> <p>‘Saturday – in accordance with 15.4(d)(ii) and 15.4(e)(i)’</p> <p>‘Sunday – in accordance with 15.4(d)(ii) and 15.4(e)(ii)’</p>	Agreed – clause 15.1 amended to reflect ABI & NSWBC’s submission.
		SDA		Agree to support ABI & NSWBC	
41.	45	Ai Group	15.1	<p><b>Shiftwork</b> Not opposes to ABI &amp; NSWBC</p>	Agreed – linked with item 44.
		SDA			
42.	49	AWU	16.1(b)	<p><b>Overtime and penalty rates</b> Words ‘will be paid’ have been repeated in the first line and should be deleted.</p>	Agreed – duplicate words ‘will be paid’ to be deleted.
		ABI & NSWBC		Agree to support AWU submission.	
		Ai Group			
		BusSA			
		SDA			



Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
43.	50	AWU	16.1(a) & 16.2(a)	<p><b>Overtime and penalty rates – calculation of overtime</b></p> <p>16.2(a) states ‘each day or shift’ will stand alone. This is in conflict with 16.1(a) that states any time in excess of hours outside the ordinary hours of work. Party suggests the following wording of 16.1(a): ‘Overtime is payable for all time worked by an employee in addition to the rostered hours on any shift, or in excess of or outside the ordinary hours of work prescribed by this Award’.</p>	Withdrawn
44.	51	NUW	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Opposes proposed exclusion of casual employees in clause 16.4(b).</p>	Agreed – casuals not to be excluded from clause 16.4(b).
		Ai Group		Does not oppose NUW.	
		SDA			
45.	52	Ai Group	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Exposure draft proposes significant changes and current wording should be retained:</p> <ul style="list-style-type: none"> <li>- The words ‘where an employee works so much overtime’ should be reinserted into clause 16.4(b) to clarify clause only applies where</li> </ul>	Parties agree to reinstate wording from current award at cl.24.4

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				<p>overtime worked</p> <ul style="list-style-type: none"> <li>- Current clause applies to the next rostered 'ordinary work' while the ED refers to 'resuming work'. Retain current wording</li> <li>- Words of current 16.4(b)(i) should be retained to ensure entitlement confined to loss of pay for 'ordinary working time' during the absence</li> <li>- Words of current 16.6(b)(ii) should be retained as they make clear that the provision applies when an employee resumes work or continues to work. ED's generic reference to 'work' is less clear</li> <li>- Current clause requires payment at a higher rate 'until released from duty' while ED proposes requires payment at higher rate 'until employer has received a break of at least 10 hours'. Amendment is substantial change and could lead to increased costs</li> </ul>	
		SDA		Party notes the various matters raised by Ai Group.	
46.	53	Ai Group	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Clause 16.4(b)(ii) should be amended to refer to</p>	Resolved.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				the minimum hourly rate.	
47.	54	BusSA	16.5	<b>Overtime and penalty rates – Weekend and public holiday rates</b> Minimum hourly rate is the ordinary rate of pay.	Resolved.
		Ai Group		Prefers the use of ‘minimum hourly rate’.	
		SDA		Supports use of ‘ordinary hourly rate’ throughout award.	
48.	54A	Ai Group	16.5(b)(ii)	Clause should be amended to read ‘where such overtime is worked’	Parties agree the word “such” be reinstated
49.	56	Ai Group	17.2(a)	<b>Annual leave – Additional leave for certain shiftworkers</b> Reference in 17.2(a) to 17.1 should be amended to read s.87(1)(b) of the Act as per the current award, and in accordance with the Full Bench decision.	Agreed – issue dealt with by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		SDA		Does not oppose Ai Group.	
		AWU			
50.	57	FWO	17.3	<b>Annual leave – Loading</b> Confusion around applicable loading payable to employee on annual leave.	Parties agree to leave exposure draft as is.
51.	58	BusSA	17.4(a)	<b>Annual leave – Annual close down</b> Objects to the change in wording.	Agreed – wording of current clause to be retained and clause 17.4 to be replaced with current clause
		SDA		Supports BusSA.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					26.5.
		Ai Group		Requirement to give ‘one month’s’ notice rather than ‘such notice’ as per current award imposes greater obligation on employers’.	
		AWU		Not opposed to retaining current wording of clause if words omitted by Ai Group retained.	
		FWO		Unclear what ‘qualifying period of employment’ refers to.	
52.	59	BusSA	17.4(b)	<b>Annual leave – Annual close down</b> Reference to 17.4(b) should be amended from 15.4(a).	Agreed – reference to 15.4(a) should be amended to 17.4(a).
		SDA		Parties either support or are not opposed to above submission.	
		AWU			
		Ai Group			
		SDA			
53.	60	Ai Group	17.4(b)	<b>Annual leave – Annual close down</b> Clause requires an employers to give notice to a new employee ‘on the date they are offered employment’ rather than ‘date of employee’s engagement’, which will not be before the date on which the employee accepts the employer’s offer of employment. Retain current wording.	Agreed – linked to item 58.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
54.	63	SDA	18	<b>Personal/carer's leave</b> Individual employers and employees may make arrangements whereby employees are paid some of these entitlements on termination.	Resolved.
		BusSA		Provision allowing the cashing out of personal/compassionate leave is not supported.	
55.	64	Ai Group	18.3	<b>Personal/carer's leave</b> Submission of the SDA is noted (see item 63). Ai Group may seek to make submissions at a later point.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
56.	65	SDA	20	<b>Public holidays</b> Words of current award do not appear in the exposure draft. Distinction should be made in exposure draft so users do not think the public holiday provisions in the new award are merely a summary of the NES entitlements.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
57.	66	SDA	20.1	<b>Public holidays</b> Ai Group does not oppose retaining the current clause.	Resolved – linked with item 65.
58.	67	Ai Group	20.4(a)	<b>Public holidays – RDO falling on public holiday</b> Typographical error should be amended as follows: 'The alternate day is to be determined'.	Agreed – clause 20.4(a) amended to read 'The alternate day off is to be determined'.
		SDA		Agrees with Ai Group.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
59.	68	SDA	21	<b>Community service leave</b> Words ‘after 10 days, leave is unpaid’ have potential to be misinterpreted.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		Ai Group		Submission of SDA is noted. Ai Group may seek to make submissions at a later point.	
60.	69	SDA	23.2	<b>Redundancy</b> Unnecessary to repeat the definition of ‘small business employer’ in clause as it is defined in definitions schedule.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		Ai Group		Following Full Bench decision of 23 December 2014, party anticipates definition will be deleted.	
		SDA			
		BusSA		Not opposed to removal of ‘small business employer’ definition.	
61.	70	ABI & NSWBC	25.6	<b>Dispute resolution</b> In light of legislation now operating in the majority of Australian jurisdictions, the reference to ‘occupational health and safety legislation’ should be updated to ‘work health and safety legislation’ to facilitate ease of reference and to ensure clarity.	Withdrawn
62.	72	Ai Group	B.1.2	<b>Summary of hourly rates of pay – Full-time and part-time employees</b> Consistent with	Parties agree to title change in schedule B1.2 to insert the word “allowances”

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				submission in relation to clause 15.1, 'penalty rates' should be deleted from the heading to B.1.2.	after the words "penalty rates"
63.	72A	Ai Group	B.1.2	<b>Summary of hourly rates of pay – Full-time and part-time employees</b> Rate for night shift should be amended to read '130%' – rates themselves are correct.	Agreed
		SDA		Agrees with Ai Group.	
		AWU			
64.	75	ABI & NSWBC	Schedule B	<b>Summary of hourly rates of pay</b> Seek inclusion of rounding rules in relation to amounts listed in the relevant tables. The 150%, 200% and 250% hourly rates appear to be calculated on the 100% hourly rate rounded to 2 decimal places as opposed to a calculation using an 'unrounded' 1/38 <sup>th</sup> of the weekly rate figure. Party submits that this may give rise to slight discrepancies in payment rates.	Withdrawn by ABI & NSWBC – refer to correspondence of 26 November 2015.
65.	77	Ai Group	B2.2	<b>Summary of hourly rates of pay – Casual shiftworkers</b> Consistent with submission in relation to clause 15.1, 'penalty	Parties agree that Table B2.2 title be amended to add the word "/allowances" after the words

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				rates' should be deleted from the heading to B.2.2.	"penalty rates"
66.	79	Ai Group	B.2.2	<b>Summary of hourly rates of pay – Casual shiftworkers</b> Rate for casual night shift should be amended to read '155%' – rate themselves correct.	Agreed – Night shift rate should be 155%.
		SDA		Agrees with Ai Group.	
67.	80	SDA	Schedule G	<b>Definitions</b> Definitions should remain at clause 3. Definitions determine how award provisions are interpreted. Having them at the front is more logical and user friendly. Users may miss them at the back. Party also notes 'default fund employee' has been deleted from exposure draft.	Parties agree that all awards have been drafted with definition clause as schedule to the award.

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
68.	19	FWO	6.2	<b>Full-time employment</b> Current clause may cause confusion.	Requires further discussion
		BusSA		Does not agree on this issue.	



Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		AiG		AiG's proposal to insert the words "and engaged for an average of 38 hours per week" after the end of cl.6.2.	
		SDA, AWU and NUW		<p>The Unions propose the following wording for clause 6.2:</p> <p>(a) A full-time employee is an employee who works (an average of) 38 ordinary hours per week.</p> <p>(b) A full-time employee is one engaged and paid by the week.</p> <p>The unions submit that their proposed wording is clearer and easier to read.</p>	
69.	36A	AFEI	11.4	<p><b>Public holiday or day off coinciding with pay day</b></p> <p>Agree with question proposed in exposure draft.</p> <p>AFEI to propose suggested wording for this clause</p>	<p>Outstanding</p> <p>Employer groups propose a redrafting of the clause and the unions oppose any change to the clause.</p> <p>Issue will need to be arbitrated</p> <p>At the conference of 19 November</p>
		Ai Group		Agrees with AFEI.	
		AWU		Opposes AFEI. Current clause not ambiguous and should be maintained in its current form. Question	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				posed by FWC inadvertently changes clause.	2015 employer groups propose to replace the words at cl.11.4:  1. “preceding pay day” where it appears after the word “working day” to “following pay day”; and  2. “following pay day” where it appears at the end of the clause to “preceding pay day”
		SDA		Opposes AFEI – current clause is clear and unambiguous.	
		AWU			
70.	42	AWU	13	<b>Higher duties</b> Clause applies to all employees and ‘weekly employee’ should be replaced by ‘an employee’.	AWU rely on Full Bench decision in [2015] FWCFB 7236 at paragraph 170.
		ABI & NSWBC		Opposes AWU. Clause should refer to ‘full-time or part-time employee’ rather than ‘weekly employee’.	AiG state that this change would be a substantive change.
		BusSA			
		Ai Group			
		AFEI			
		SDA			
				‘Weekly employee’ and ‘full-time or part-time employee’ have the same meaning. Submits casual	SDA/NUW consistent with the position already identified and support the AWU’s

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				employees temporarily acting above their classification should be paid at higher rate.	position
		NUW		Opposes AFEI.	
71.	55	Ai Group	16.6(a)	<b>Overtime and penalty rates – Call-back</b> The appropriate rate is the rate payable based on the employee’s classification to be determined in accordance with when the work is performed.	Outstanding  AiG and other employer groups want existing provision to remain.
		ABI & NSWBC		The ‘appropriate rate’ will depend on whether the hours are worked in excess or outside the span of ordinary hours. Party submits current drafting of clause should be retained.	The Unions retain their position that an employee who has left work for the day must be paid for a minimum of four hours’ work calculated at the appropriate
		AWU		The ‘appropriate rate’ must reflect the overtime rate, and should be paid at 150% of ordinary hourly rate for first 2 hours and 200% thereafter.  Rejects Ai Group’s submission and ABI & NSWBC submission. In Road Transport and Distribution Award submission Ai Group concedes that call-back constitutes overtime payments. Referred to clauses 6.3(c) & (f) which specify that overtime is	<b>“overtime”</b> rate for each time the employee is called back.  The Unions have looked at the pre-reform awards, which largely state that an employee recalled to work must be paid at the appropriate overtime rate.

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				paid for all time worked in excess of hours mutually arranged. Call-back will be overtime because hour worked will be beyond those mutually agreed.	
		SDA		Payment is at overtime rates. It is not logical to expect an employee to return to work after completion of a shift without additional compensation.	
		BusSA		The 'appropriate rate' must reflect the overtime rate, hence it should be paid at the rate of 150% of the ordinary hourly rate for the first two hours and 200% of the hourly rate thereafter.	
72.	61	SDA	17.4(c)	<b>Annual leave</b> Wording 'the next 12 monthly qualifying period of employment' may be inconsistent with s.87 (a) of Act. Annual leave accrues progressively and there is no minimum qualifying period of service before an employee accrues a period of annual leave accessible by that employee.	Parties agree that cl. 17.4(c) be deleted from the exposure draft but retain the sentence starting with the words "In this clause date of closing....."  Requires further discussion – refer to SDA's submission below.
		Ai Group		Does not agree with the proposal of the SDA to delete clause	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				17.4(c)(iii).	
		ABI & NSWBC		It is unclear what the 'qualifying period of employment' refers to. Clause may cause confusion and should be deleted.	
		SDA		<p>Clause is unclear in its reference to a '12 month qualifying period' and appears to be no reference elsewhere in the award. No reference is confusing and potentially misleading.</p> <p>Does not oppose the position agreed to by the parties but unsure about the retention of the suggested sentence ("In this clause <b>date of closing...</b>". <b>Date of closing</b> is not mentioned elsewhere in this clause. To be discussed.</p>	
73.	73	Ai Group	B.1.3	<p><b>Summary of hourly rates of pay – Saturday and Sunday rates</b></p> <p>Rates should be calculated in accordance with clauses 16.5(a)(i) &amp; 16.5(b)(i) – the rates there prescribed relate to all time worked as is evident from the reference to overtime.</p>	<p>Outstanding</p> <p>Unions and the AiG are to hold further discussions.</p> <p>The Unions have looked at enterprise agreements underpinned by the this award</p>

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				<p>On this basis, rates in B.1.3 should be amended to Saturday: 150% of minimum hourly rate, not 150% for first 2 hours then 200%.</p> <p>AiG's position is that all Saturday work is paid at 150% including overtime.</p> <p>AiG propose to amend Table B1.3 with columns to include "Monday to Friday" and a separate column for Saturday. The "Monday to Saturday" column in the table to be deleted.</p> <p>AiG wish to leave the clauses as is.</p>	<p>and pre-reform awards, which provide for Saturdays 150% for the first 2 hours and 200% after (also 200% for work on Saturdays after 12pm) and 200% on Sundays.</p> <p>The Unions will collate the information from the pre-reform awards and will present to Commission and parties.</p>
		NUW		Opposes Ai Group.	
		SDA		Opposes Ai Group. Clause 16.1(b) of exposure draft and clause 24.1 of current award both provide for time and a half for the first 2 hours and double time thereafter. Rates do not need to be amended.	
		AWU		Strongly opposes Ai Group's submission that rates should be amended. The current award and exposure draft clearly allow for overtime rates on	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				<p>Saturdays to be paid at 150% for first 2 hours and 200% thereafter.</p> <p>To undertake what the current practice is within the industry.</p>	
74.	76	Ai Group	Schedule B	<p><b>Summary of hourly rates of pay</b></p> <p>The submissions made by ABI &amp; NSWBC with respect to Schedule B gives rise to a general issue ventilated during earlier proceedings before the Commission. The publication of rounding rules is relevant to exposure drafts.</p>	<p>Outstanding – This issue is linked to item 60, which has now been withdrawn.</p> <p>Ai Group to provide further comment</p>

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
75.	24	AFEI	8.2	<p><b>Hours of work – Spread of hours</b></p> <p>Existing ordinary hours of work provisions do not require amendment. Span of hours may be amended at each end.</p>	<p><a href="#">Issue will be dealt with by the Full Bench, refer to [2015] FWCFB 7236 at paragraph [159]</a></p>
		NUW		Does not support AFEI.	
		AWU		Opposes AFEI and submits the word ‘either’ permits the expansion of the spread of hours at one or the other end and not both.	
		SDA		Word ‘either’ means one or the other but not both.	

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				When read in conjunction with the facilitative provision, clause is clearly not intended to permit an increase in the daily spread	
		BusSA		Supports AFEI.	
76.	26	BusSA	8.2	<b>Hours of work – Spread of hours</b> Each end of ordinary hours can be expanded and does not support Ai Group.	<a href="#">Outstanding</a>  <a href="#">Related to issue 78 above and to be dealt with at concurrently.</a>
		NUW		Opposes BusSA but supports AWU's submission that span can be altered at one or the other end of spread, but not both.	
		AWU		Opposes BusSA and submits 'either' means 'one or the other but not both'.	
		Ai Group		Words do not suggest that the other end of the spread must be shifted to maintain a span of 10.5 hours. Clause permits expansion of span by 1 hour and clause supports clause 8.1(d) that an employee may work up to 10 ordinary hours in one day.	
		SDA		Opposes Ai Group and submits purpose of clause is to move spread forward or back by one hour, but not to extend the number of hours within the span.	



Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		FWO		Confusion around altering the spread of hours.	
		ABI & NSWBC		Opposes SDA as it is not possible to 'shift' spread of hours at only one end of spread without increasing/decreasing hours. Opposes AWU as parties' interpretation would allow variation of the spread of hours at both ends of the spread.	
		AFEI		Opposes SDA as it is unreasonable reading a facilitative provision as to restrict its operation in the manner contended by SDA.	
77.	28	SDA	8.4	<b>Hours of work – Rostered days off</b> Amend clause so RDOs are not capped at 12 over a 12 month period.	Substantive issue referred to Full Bench.  SDA advise that they maintain their position on this matter
		AWU		Supports SDA	
		NUW			
		ABI & NSWBC		Does not support SDA but do not intend to bring evidence in opposition to claim	
		BusSA		Does not support SDA in current format but is willing to be constructive part of proceeding when SDA puts forward its case.	
		Ai Group		Does not support SDA as proposal does not meet	

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				modern award objective.	
78.	35	Ai Group	11.3	<b>Payment of wages on termination</b> Current clause 20.3 should be amended to enable an employer who pays by electronic funds transfer, to pay wages on termination of employment in accordance with the employer's normal pay cycle.	Substantive issue  Not agreed, matter raised in other awards instigated in the manufacturing award by AiG.  Parties support a single Full Bench to deal with this issue.
		BusSA		Supports Ai Group.	
		SDA		Opposes Ai Group – does not consider delay in any payments due to an employee beyond current period of ‘within two working days after termination’ to be satisfactory.	
		AWU		Opposes Ai Group – variation not necessary to meet modern award objective.	
79.	71	Ai Group	A.8	<b>Wholesale employee level 4</b> Classification should be re-worded to clarify the employees who are and are not covered by this classification.	Substantive issue  AiG to press claim and run merit argument.
		AWU		Party regards Ai Group's proposal as a substantive change and opposes substantive variation sought.	
		SDA		Opposes variation as it	

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				attempts to remove a particular group of employees from the coverage of this award.	
		NUW			
		ABI & NSWBC		Supports Ai Group's proposal.	
		BusSA			
80.	82	Ai Group	–	Annualised salary provision should be inserted to improve flexibility.	Substantive issue  AiG to press claim and run merit argument.
		AWU		Party considers Ai Group's proposal to insert an annualised salary provision into award would be a substantive change. It opposes the inclusion of an annualised salary provision.	
		SDA		Strongly opposes the inclusion of annualised salary. Party does not agree that an employer should have the ability to direct an employee to accept annualised salary arrangements.	
		NUW		Opposes variation as it is difficult to ascertain why the variation sought is necessary to achieve the modern awards objective.	
		ABI & NSWBC		Supports Ai Group.	
		BusSA		Supports Ai Group's proposal as it provides consistent wages for	

<b>Issues to refer to Full Bench</b>					
<b>Issue No</b>	<b>Summary of subs. Ref</b>	<b>Party</b>	<b>Clause (Exposure draft)</b>	<b>Summary of issue</b>	<b>Outcome</b>
				employees over a 12 month period.	

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