

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission
Exposure Drafts:
Subgroups 2A & 2B

4 MARCH 2015



4 YEARLY REVIEW OF MODERN AWARDS

REPLY SUBMISSION

EXPOSURE DRAFTS: SUBGROUPS 2A & 2B

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1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this reply submission in response to the Fair Work Commission's publication of exposure drafts for modern awards in subgroups 2A and 2B during the Award Stage of the 4 Yearly Review of Modern Awards.
2. This submission is made in accordance with the Commission's Statement of 8 December 2014. It should be read in conjunction with our initial submissions of 28 January 2015 regarding the subgroup 2A and 2B exposure drafts.

2. EXPOSURE DRAFT – ALPINE RESORTS AWARD 2014

3. We note that the submissions filed by the Australian Ski Areas Association (ASAA) address the Exposure Draft and the substantive variations sought by it, the Falls Creek and Mount Hotham Chambers of Commerce and the AWU. In accordance with the Commission's directions, the submissions below only address the Exposure Draft. We understand that a separate process has been established by the Commission to deal with substantive claims to vary the Award. Ai Group reserves its right to make submissions regarding those claims at the appropriate juncture.

Clause 6.5(b)(i) – Types of employment – Casual employment

4. The AWU submits that clause 6.5(b)(i) should not refer to the ordinary hours of work. Ai Group does not oppose the variation proposed by the AWU on the basis that the Exposure Draft appears to deviate substantively from the current award.

Clause 6.5(b)(i) – Types of employment – Casual employment

5. The AWU submits that clause 6.5(b)(i) should refer to the "minimum hourly rate" rather than the "ordinary hourly rate". This is consistent with Ai Group's submissions of 28 January 2015 at paragraphs 17 – 19.

Clause 6.5(b)(ii) – Types of employment – Casual employment

6. Whilst it is our view that the variation made to the current clause 10.5(a), as it now appears at clause 6.5(b)(ii) of the Exposure Draft, more accurately reflects the factors compensated by the casual loading, Ai Group does not oppose the AWU's proposal to retain the text of the current clause.

Clause 6.5(b)(iii) – Types of employment – Casual employment – Casual loading

7. We refer to the ASAA's submissions at section 9. In accordance with the Commission's decision of 23 December 2014, we understand that this provision is to be deleted from all Exposure Drafts.

Clause 6.6(c)(iv) – Types of employment – Casual conversion to full-time or part-time employment

8. The AWU submits that the cross reference to clause 5 in clause 6.6(c)(iv) of the Exposure Draft should be amended. The corresponding clause in the current award is clause 10.5(b)(vi). It refers to clause 10.5(b)(iv), which, due to the restructuring of the casual conversion provisions in the Exposure Drafts, now appears in parts at clauses 6.5(b)(iii), 6.5(d)(i) and 6.5(d)(ii). Ai Group submits that those are the appropriate cross references to be included in clause 6.6(v)(iv).

Clause 6.7(b) – Types of employment – Minimum engagement

9. Ai Group does not oppose the amendment proposed by the AWU.

Clause 7.6 – Seasonal employment

10. Ai Group supports the ASAA's submission that the words "plus the loading in clause 7.5" be deleted from the conclusion of clause 7.6. We refer to paragraphs 23 – 24 of our 28 January 2015 submissions.

Clause 8 – Apprentices

11. Ai Group agrees with the AWU that this provision will require amendment such that it reflects the Commission's determination of 23 December 2014 (PR559266).

Clause 8.1 – Apprentices

12. Ai Group does not oppose the ASAA's submission that clause 8.1 be amended to refer to clause 13 rather than clause 13.4. This amendment would ensure that the clause reflects the current award provision.

Clause 10.1 – Ordinary hours of work

13. Ai Group supports the ASAA's position regarding the question contained in the Exposure Draft at clause 10.1. We refer to paragraphs 27 – 30 of our submissions dated 28 January 2015 in this regard.

Clause 10.4(b) – Ordinary hours of work – Make-up time

14. The AWU submits that clause 10.4(b) should be deleted. Whilst the award does not contain specific provisions pertaining to shift workers, "shiftwork" is a defined term in the award (and Exposure Draft). It is not clear, as alleged by the AWU, that this provision is unnecessary.
15. The deletion of clause 10.4(b) would amount to a substantive change that would remove flexibility for such employees and their employers. The AWU's proposal is thus opposed.

Clause 13.3(a) – Minimum wages – Junior employees

16. Although we are not of the view that the reference to employees "19 years and over" necessarily creates confusion as submitted by the AWU, we do not oppose the deletion of the relevant row from the table in clause 13.3(a).

Clauses 14.2(c) and 14.3(d) – Higher duties, dual-role and multi-hiring arrangement

17. The amendments proposed by the AWU would introduce substantive changes to the Award. They seek to extend the application of the higher duties clause in the absence of any submissions or evidence that address why such variations are necessary to achieve the modern awards objective. The amendments, if made, would introduce additional employment costs (s.134(1)(f)) and are inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)). The variations proposed should not be made.

Clause 15.3(d)(ii) – Allowances – Expense related allowances – Protective clothing reimbursement

18. The AWU proposes an amendment to clause 15.3(d)(ii) on the basis that it presently allows employers “too much discretion”. The AWU makes this submission without any evidence which might allow the Commission to conclude that the change sought is in fact necessary when assessed against the modern awards objective.
19. The provision appropriately protects employers against loss or damage caused through misuse by the employee and allows employers to make reasonable deductions as prescribed. The AWU’s proposal narrows the ability for employers to recoup the expenses associated with providing protective clothing, uniforms, tools and equipment significantly. This would undoubtedly impose a greater financial burden on employers (s.134(1)(f)).
20. The amendment proposed should not be made.
21. Ai Group further submits that the current clause 17.5(b) states that “loss due to any cause or damage through misuse by the employee will be charged against the employee’s wages”. The wording at the second bullet point under clause 15.3(d)(ii) of the Exposure Draft deviates from this as it refers to “any loss or damage through misuse by the employee”. This potentially narrows the instances in which loss by the employee can be charged against the

employee's wages from "loss due to any cause" to "any loss ... through misuse by the employee".

22. Ai Group submits that the clause should be amended to reflect the current clause 17.5(b).

Clause 18 – Annual leave

23. Ai Group refers to the question contained in the Exposure Draft at clause 18.3. We agree with the ASAA's submission that the clause should not be amended.
24. Clause 7.5 of the Exposure Draft requires the payment of a loading to seasonal employees "instead of annual leave". The Commission has determined that clause 7.5 is inconsistent with the NES which provides, at s.87(1), that employees other than casual employees are entitled to annual leave. A process has been established by the Commission to determine the appropriate remedy to address this inconsistency.¹
25. Ai Group submits that the terms of clause 18, however, do not give rise to the suggestion, explicitly or otherwise, that seasonal employees are not entitled to annual leave. Readers of the Award are simply referred to the NES, which does not exclude seasonal employees from the entitlement. Therefore it is not necessary to make any amendment to clause 18.

Clause 18.1 – Annual leave

26. Ai Group agrees with the ASAA that clause 18.1 of the Exposure Draft should not be amended to specify the rate of pay that applies during a period of annual leave. We refer to paragraphs 40 – 41 of our submissions dated 28 January 2015 in this regard.

¹ 4 Yearly Review of Modern Awards [2014] FWCFB 9412 at [86] – [87].

Schedule A.3.1 – Classification Definitions – Resort Worker Level 2

27. Ai Group does not oppose the amendment proposed by the AWU to address a typographical error.

Schedule C – Summary of Hourly Rates of Pay

28. Ai Group notes that if the Commission determines that, pursuant to its decision regarding inconsistencies between the NES and modern awards, clause 7.5 of the Exposure Draft is to be deleted, the relevant rates in Schedule C will require review.

Schedule C.1.3 – Summary of Hourly Rates of Pay – Alpine Resort Workers – Casual employees – ordinary and penalty rates

29. Ai Group opposes the AWU's interpretation of the current clause 25.1. The clause simply means that the 250% rate payable to a casual employee for work performed on a public holiday is inclusive of the 25% loading. That is, a casual employee is to be paid 250% of the minimum hourly rate (which does not include the casual loading), rather than 275% of the minimum hourly rate. The rates calculated in C.1.3 are therefore correct.

Schedule H – Definitions – standard rate

30. The AWU has proposed that the definition of the standard rate be amended as a result of the Commission's decision of 23 December 2014, in which it found that the current clause 11.5 is inconsistent with the NES.
31. Whist we acknowledge that the definition may require review, any change to the definition is a substantive one, flowing from proceedings relating to alleged inconsistencies between the NES and various modern awards. Should the Commission determine that the current clause 11.5 is to be deleted, as proposed in its draft determination, any redefinition of the standard rate should be considered as part of those proceedings.

3. EXPOSURE DRAFT – ANIMAL CARE AND VETERINARY SERVICES AWARD 2014

Clause 11.1(c)(ii) – On Call

32. Ai Group refers to its earlier submission dated 28 January 2015. Paragraphs 49 and 50 of that submission deal with clause 11.1(c)(ii) of the Exposure Draft. The reference to clause 10.7(c)(ii) is incorrect and should be replaced with 11.1(c)(ii).

4. EXPOSURE DRAFT – AQUACULTURE INDUSTRY AWARD 2014

Clause 3.1 - Coverage

33. Ai Group agrees with the AWU's submission that the variation made to the current clause 4.1 of the award may expand the coverage of the award, however we do not support the amendment proposed by the union. Any inadvertent alteration to the coverage of awards should be avoided. In our submission, this is best achieved by reinstating the term "ancillary", in clause 3.1 of the Exposure Draft. We refer to paragraph 53 of our 28 January 2015 submissions in this regard.

Clause 3.1 - Coverage

34. Although not necessary, we do not oppose Austuna's proposal to insert the words "of this Award" after "classifications".

Clause 3.6 - Coverage

35. Austuna submits that a reference to employees excluded from coverage of this award, by reference to their position, would be useful. Such an amendment to the coverage of the Award is potentially a substantive one. Whilst we do not oppose, in principle, such a variation, we reserve our right to make further submissions on this issue if pursued.

5. EXPOSURE DRAFT – GRAPHIC ARTS AWARD 2014

Clause 5.4 – Facilitative provisions – Level 1 – facilitation by individual agreement

36. Ai Group agrees with the submissions of the AMWU and ABI that clause 5.4 omits a reference to the current clause 12.3. We refer to paragraph 56 of our 28 January 2015 submissions in this regard.

Clause 6.4(b)(iv) – Types of employment – Casual employment – Casual loading

37. We agree with the submissions of the PIAA and AMWU that clause 6.4(b)(iv) should be deleted. This is in accordance with the Commission's decision of 23 December 2014. We appreciate that this Exposure Draft was published prior to the decision.

Clause 6.4(c)(ii) and (iii) – Types of employment – Casual employment – Minimum payment

38. Ai Group supports the AFEI's submission that the word "or" should be inserted between subclauses (ii) and (iii).

Clause 7.13(d) – Apprentices – Release for training

39. We agree with the AMWU that the incorrect cross reference in clause 7.13(d) should be amended. We refer to paragraph 60 of our submissions dated 28 January 2015 in this regard.

Clause 9.2 – Wage rates and classification structure

40. Ai Group supports the AFEI's submission that the casual hourly rate column should either be deleted, or a footnote should be inserted to make clear that the rate prescribed includes the casual loading.

Clause 10.2(a) – Junior wages – Junior artist and/or designer (including junior commercial artist)

41. We agree with the AMWU's submission that the rates prescribed in clause 10.2(a) are incorrect (see paragraph 61 of our submissions, dated 28 January 2015).

Clause 10.3 – Junior wages – Juniors employed in a regional daily newspaper office other than inserters not being an apprentice/trainee

42. We agree with the AMWU's submission that the rates prescribed in clause 10.3 are incorrect (see paragraph 62 of our submissions, dated 28 January 2015).

Clause 10.4 – Junior wages – Other juniors not being an apprentice/trainee

43. We agree with the AMWU's submission that the rates prescribed in clause 10.4 are incorrect (see paragraph 64 of our submissions, dated 28 January 2015).

Clause 10.6 – Junior wages – Juniors employed in screen printing

44. Ai Group agrees with the submissions of the AMWU, PIAA, Business SA and ABI regarding clause 10.6 of the Exposure Draft. We refer to paragraph 65 of our 28 January 2015 in this regard.

Clause 11.1 – Wages of apprentices (other than adult apprentices) – minimum wage rates for apprentices (other than adult apprentices) continuing an apprenticeship that commenced prior to 1 January 2014

45. We refer to Business SA's submissions. In our view, the insertion of weekly rates in clause 11.1 is unnecessary and need not be included.

Clause 11.3 – Wages of apprentices (other than adult apprentices) – Proficiency payments

46. Business SA submits that the reference to clause D.1 is incorrect. Having regard to the inclusion of references to proficiency payments at D.1, we submit that the reference is correct and should be retained.

Clause 14 – Supported wage system

47. Ai Group does not oppose the amendment proposed by ABI to clause 14.

Clause 15.1 – Classification and reclassification of employees – Reclassification to an eight level classification structure

48. Ai Group concurs with the submissions of AFEI, PIAA and ABI that clause 15.1 is obsolete.

Clause 16.1 – Work organisation

49. We concur with the AMWU that the typographical error found in clause 16.1 should be amended. We refer to paragraph 69 of our submissions, dated 28 January 2015.

Clause 18.2 – Allowances – Wage related allowances

50. Whilst we agree with Business SA's submission, that the formula by which the allowances contained in clause 18.2 should be retained, we have not identified any difficulty arising from the retention of the relevant percentages in Schedule D, rather than the body of the Award. We note that this is consistent with the approach taken in other Exposure Drafts.

Clause 18.2(d) – Allowances – Wage related allowances – First aid allowance

51. Ai Group supports the AFEI's submissions regarding clause 18.2(d) of the Exposure Draft. The current clause 25.2(a) gives rise to an obligation to pay the first aid allowance where:

- An employee has been trained to render first aid, and

- The employee is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance or a similar body, and
- The employee is appointed by their employer to perform first aid duty.

52. By comparison, clause 18.2(d) of the Exposure Draft applies where:

- An employee is qualified to render first aid to St John Ambulance standard or equivalent, and
- The employee is appointed by their employer to perform first aid duty.

53. The redrafted provision expands the entitlement to the allowance. An employee who was once qualified to render first aid but however no longer holds a current qualification/certificate, would meet the requirements of this provision. This clearly deviates from the current award. As the Exposure Draft is not intended to incorporate any substantive changes², the current clause should be retained.

Clause 18.3(a) – Allowances – Expense related allowance – Meal allowance

54. Ai Group submits that the following variations should be made to clause 18.3(a) of the Exposure Draft:

- **Clause 18.3(a)(i):** insert the word “so” before the words “required to work”, as it appears in the current clause 25.2(b)(i). Without this amendment, the provision requires the payment of the meal allowance where the employee is required to work overtime as specified without being notified that the employee will be required to perform any ‘work’. Under the current award, however, the meal allowance is payable where the employee is required to work more than one and a half hours of overtime without notice.

² 4 Yearly Review of Modern Awards [2014] FWCFB 9412 at [140].

- **Clause 18.3(a)(ii):** insert the word “such” after “notified”, as it appears in the current clause 25.2(b)(ii). This makes clear the term “overtime” is a reference to more than one and a half hours of overtime, as per clause 18.3(a)(i).
- **Clauses 18.3(a)(iv) and (v):** the reference to clause 22 should exclude clause 22.5. This properly reflects the reference to clause 32 in the current clauses 25.2(a)(iv) and (v).

Clause 18.3(a)(i) and (iv) – Allowances – Expense related allowances – Meal allowance

55. We refer to the submissions of the AMWU, Business SA and ABI in response to a question contained in the Exposure Draft at clause 18.3. As earlier indicated in our 28 January 2015 submissions, we are of the view that the issue identified in the Exposure Draft should be the subject of discussions between interested parties.

Clause 19.5 – Payment of wages

56. Ai Group supports the AFEI’s submissions regarding the typographical error identified in clause 19.5.

Clause 21.5(b) – Ordinary hours of work, rostering and special provisions for shift work employees – Methods for arranging ordinary hours other than a non-daily and/or regional daily newspaper office

57. Ai Group agrees with the AFEI’s submission regarding clause 21.5(b) of the Exposure Draft. We refer to paragraph 77 of our submissions of 28 January 2015 in this regard.

Clause 21.7(e) - Ordinary hours of work, rostering and special provisions for shift work employees – Fixation and change of hours

58. Ai Group supports the AFEI’s submissions regarding clause 21.7(e). We refer to paragraph 78 – 79 of our submissions of 28 January 2015 in this regard.

Clause 22.3 – Meal breaks

59. We support the submissions of the PIAA, Business SA and ABI that the word “extra” be deleted from clause 22.3. We refer to paragraphs 82 – 83 of our 28 January 2015 submissions.

Clause 22.5 – Meal breaks – Meal break – continuous shiftworkers

60. Ai Group does not oppose the deletion of the word “paid” the second time it is used in clause 22.5, as proposed by Business SA.

Clause 23 – Time provisions for refreshment

61. Ai Group agrees with the position stated by the PIAA and ABI with respect to clause 23. We refer to paragraphs 84 - 87 of our submissions dated 28 January 2015 in this regard.
62. We do not agree with the AMWU’s assertion that the change proposed would not change the substance of the provision. The current text of the provision makes clear that the employee is entitled only to a momentary stoppage from work, specifically for the purposes of acquiring a refreshment. The words proposed in the Exposure Draft clearly deviate from this, and change the nature of the entitlement arising from it.

Part 5 – Penalties and Overtime

63. ABI submits that it is not opposed to the expression of penalties as percentages. We refer to paragraph 88 of our submissions dated 28 January 2015 in this regard. To this extent, we do not support the submissions of the AMWU and PIAA.

Clause 21.2(c)(iii) – Ordinary hours of work, rostering and special provisions for shift work employees – Ordinary hours of work – other than in a regional daily newspaper office – Days on which ordinary hours are worked

64. Ai Group does not oppose the AMWU’s submission that the reference to clause 24 should be substituted with a reference to clause 24.5.

Clause 24.5(b) – Penalty rates – Weekend work – other than in regional daily newspaper office – Saturday or Sunday rates for shiftworkers – other than regional daily newspaper office

65. Ai Group refers to the AFEI's submissions regarding the rate expressed for shiftworkers in a non-daily newspaper office in clause 24.5(b). Ai Group does not oppose an amendment to the second column of the table such that it reflects the current clause 30.5(e).

Clause 25.8(d) – Overtime – 36 hour break

66. Ai Group agrees with the AMWU that the cross reference in clause 25.8(d) should be amended as proposed. We refer to paragraph 101 of our submissions dated 28 January 2015.

Clause 25.9(a) – Overtime – Time off instead of payment for overtime

67. Ai Group concurs with the AFEI's submissions regarding clause 25.9(a) of the Exposure Draft. We refer to paragraph 103 of our 28 January 2015 in this regard.

Clause 27.2(b) – Stand-by for work

68. Ai Group concurs with the AMWU, that the cross reference contained in clause 27.2(b) should be amended as proposed. We refer to paragraph 107 of our submissions dated 28 January 2015.

Schedule B.4 – Competencies

69. Ai Group agrees with the amendment proposed by the AMWU and PIAA to Schedule B.4, in order to address a typographical error. We refer to paragraph 109 of our 28 January 2015 submissions.

Schedule I – Definitions – default fund employee

70. With reference to ABI's submissions, we have not identified any difficulties arising from the deletion of the definition of "default fund employee". The term is not used in the Award or Exposure Draft.

Schedule I – Definitions – hourly rate

71. Ai Group supports the AFEI's submissions regarding this definition and refers to paragraphs 110 – 112 of our 28 January 2015 submissions.

6. EXPOSURE DRAFT – HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2014

Clause 3.1 – Coverage

72. The Exposure Draft asks parties to “*... clarify whether the list of common health professionals contained in Schedule B is an exhaustive list of those covered by the award or whether it is an indicative list of examples of the types of health professionals*”.
73. Different views have been expressed by different parties regarding whether the list in Schedule B is indicative or exhaustive.
74. Ai Group relies upon the AIRC decision [2009] AIRCFB 948 as support for the view that the list contained in Schedule B is an exhaustive list of occupations covered by the Award. If the list of common health professionals contained in Schedule B was not exhaustive, then the effect of the AIRC's decision in [2009] AIRCFB 948 to remove dental hygienists from the list would arguably be superfluous.
75. Furthermore, the introductory paragraph at clause A.2 refers to Schedule B as “[a] list of common health professionals which are covered by the definitions”. Both clause A.2 and Schedule B do not include expansive terms such as ‘including’ or ‘for example’. Both clause A.2 and Schedule B use limiting language.

Clause 6.4(d) – Casual employment - minimum engagement periods

76. Ai Group supports the variation submitted by the Aged Care Employers to accommodate circumstances where an employer may not have sufficient work for the minimum engagement period. That variation is:

“Subject to clause 6.4(d), a casual employee shall be paid for a minimum period of three hours per shift.”

77. The proposed variation is consistent with the minimum engagement periods for casual employees in many other awards. We note that casual minimum engagement periods will be separately dealt with by the Casual and Part-time Employment Full Bench as part of the Award Review.

Clause 15.2 – Heat allowance

78. In response to the Exposure Draft question regarding the grandfathered heat allowance entitlement at clause 15.2, Ai Group agrees with the PHEIA, Business SA, and AFEI that the provision should be removed.

Clause 18.4 – Shiftwork penalties

79. In relation to clause 18.4, the shiftwork penalties provided are *not* cumulative on the weekend penalties provided in clauses 18.1 and 18.2. This reflects both established practice and the interpretation that applies in many other industries under numerous modern awards. The view is also supported by other employer parties in the industry.
80. For the purposes of clarity, Ai Group suggests a new sub-clause 18.3 (with the current 18.3 renumbered as 18.4 etc) based on the wording in clause 19.1(c) of the Exposure Draft:

“18.3 Weekend penalties not cumulative”

“The weekend penalties will be in substitution for and not cumulative upon the shift loadings prescribed in clause 18.5.”

81. In relation to the calculation of shift penalties and the casual loading, Ai Group considers that there is no basis in the text of the Award for the shift loading to be calculated on the casually loaded rate.

82. For the purpose of adding clarity to the Award, Ai Group would support the PHIEA's suggested variation in adopting the clause used in clause 6.4(d) of the *Exposure Draft – Nurses Award 2010*.

Clause 19.1 – Overtime rates

83. A question in the Exposure Draft asks parties if the provision for overtime should clarify if each day stands alone. Ai Group agrees with other parties that "each day stands alone" for the calculation of overtime.
84. The purpose of the "each day stands alone" overtime rule is to calculate overtime on the relevant penalty based on each day or shift worked, rather than accruing overtime worked on a weekly or pay cycle basis as one period for the purpose of calculating penalties.
85. However, Ai Group considers that it is not necessary to change the Award to reflect this given the current wording of "*on any day*" used in clause 19.1(a) of the Exposure Draft.

References to Minimum Hourly Rates

86. Ai Group notes PHEIA's concerns regarding the use of "minimum hourly rates" throughout the Award and their suggested variation to "*the employee's minimum hourly rate*" or "*their minimum hourly rate*" to ensure that the employee's relevant pay point and classification are captured.
87. Ai Group does not consider this variation necessary. The reference to the minimum hourly rate is the minimum hourly rate to which the employee covered by the Award is entitled. This has been the approach taken in other modern awards and exposure drafts.

7. EXPOSURE DRAFT – MEDICAL PRACTITIONERS AWARD 2014

Clause 8.1(a)(iii) – Ordinary hours of work

88. Ai Group agrees that the term “session” in clause 8.1(a)(iii) does not require definition due to the varying length a session may take in the relevant hours of work arrangements.

Clause 14.5 - Recall

89. Ai Group does not consider that the penalty payments in clause 14.5 - Recall apply to Senior Doctors. Clauses 14.1 and 14.2 make clear that overtime and overtime penalties do not apply to Senior Doctors. The recall penalties as a sub-clause of clause 14 - Overtime are a form of overtime payment for unplanned additional hours. There is nothing in the Award to suggest that a recall penalty is an exception to overtime not applying to senior doctors in clauses 14.1 and 14.2.

8. EXPOSURE DRAFT – NURSES AWARD 2014

Clause 6.3 – Part-time employment

90. We do not agree with the ANMF that clause 6.3 of the Exposure Draft needs amendment. In particular it is not necessary, nor appropriate, that the reference to a pro-rata entitlement in clause 6.3(a)(iii) be separated into a different clause. A pro-rata entitlement is a defining feature of part-time employment.

Clause 6.4 – Casual employment

91. We support the variation to clause 6.4(d) of the Exposure Draft proposed by the Aged Care Employers at paragraph [6] of their submission filed 28 January regarding the casual loading and shift and weekend penalties.

Clause 8.1 – Ordinary hours and rostering

92. We disagree with the Aged Care Employers submission at paragraph [7]. A distinction between day workers and shift workers is necessary for the purpose of calculating overtime set out in clause 15 of the Exposure Draft.
93. We have not identified any problems with the variation proposed by the PHIEA to clause 18.1(f) at paragraph [16] of its submission.

Clause 9.3 – Rest breaks between rostered shifts

94. We do not agree with the ANMF's contention in respect to clause 9.3 of the Exposure Draft. We do not consider the location of clause 9.3 inappropriate.

Clause 10 – Minimum weekly wages

95. We agree with the ANMF that the title of clause 10 of the Exposure Draft should be amended as it includes rates in minimum hourly rates as well as minimum weekly rates. We propose the clause be retitled 'Minimum Rates of Pay'. We also agree that the word 'adult' in the introductory paragraph to clause 10 serves no purposes as there are no 'junior rates' in the Award and is inconsistent with clause 10.2(a) dealing with student nurses less than 21 years of age.
96. We do not agree with the ANMF's arguments relating to the 'minimum casual hourly rate' and clause 10.6.

Clause 11.4(a)(i) – Clothing and equipment

97. We have not identified any problem with the variation proposed by the Aged Care Employers submission at paragraph [10].

Clause 11.4(b) – Meal Allowance

98. We agree with the Aged Care Employers submission at paragraph [11].

Clause 15.1(c) – Overtime

99. We support the variation to clause 15.1(c) of the Exposure Draft proposed by the Aged Care Employers at paragraph [13] of their submission filed 28 January

Clause 15.3(b) – Rest period after overtime

100. We have not identified any problem with the variation proposed by the Aged Care Employers submission at paragraph [14].

Clause 16 – Saturday and Sunday work

101. We disagree with the Aged Care Employers submission at paragraph [18]. The proposal to include the words ‘penalty of’ before the relevant rate payable for work performed on Saturday and Sunday may mislead the reader into interpreting the clause as suggesting that an employee would be entitled to (for example) an additional 150% of the minimum rate as a penalty as opposed to 150% in total for the work performed. The penalty in the case of Saturday work is 50% in addition to the minimum hourly rate. The penalty is 150%.
102. We have not identified any problems with the inclusion of a proposed additional clause to follow clause 16.2 in the Award. The proposed clause would insert a cross reference to clause 6.4(d) for the rates payable to casual employees working on weekend. While the inclusion of the new clause is useful, the wording proposed by the Aged Care Employers should be amended to “*For the calculation of the rates payable for casual employees performing Saturday and or Sunday Work, refer to clause 6.4(d).*”

Clause 17.5 – Annual leave loading

103. The Exposure Draft asks the parties to “*clarify whether the leave loading in clauses 17.5(b)(i) and 17.5(b)(ii) is based on 4, 5 or 6 weeks*”.

104. It is our view that it is commonly understood among employers covered by the award that leave loading is payable only on the first four weeks of any annually accrued leave.
105. We agree with the variation proposed to clause 17.5(a) of the Exposure Draft by the PHIEA at paragraph [23] of its submission in so far that the PHIEA suggests a change in terminology from ‘ordinary pay’ to ‘minimum pay’ in respect off the calculation of annual leave loading.

Schedule C.1 – Wage related allowances

106. The percentage of 3.45 in the table at Schedule C.1 is incorrect and should be 3.54 instead.

9. EXPOSURE DRAFT – SEAFOOD PROCESSING AWARD 2014

Clause 3.3 – Coverage

107. The AMWU has proposed amendments to clause 3.3(a) and the deletion of clause 3.7 of the Exposure Draft. The variations proposed are significant in nature and amount to substantive changes to the coverage of the Award. We note that clause 3.7 is a standard provision that appears in a significant number of modern awards and represents an accepted approach to resolving issues that arise from overlapping award coverage.
108. The changes proposed should not be made in the absence of evidence and submissions in support of the proposition that the variations are necessary to meet the modern awards objective. We note that the union has not mounted such a case.
109. The AMWU's proposal seeks to disturb the coverage of this award and its interaction with other modern awards. The claim is opposed.

Clause 3.6(a) – Coverage

110. Ai Group does not oppose ABI's submission regarding the reference to the *Fair Work Act 2009* in clause 3.6(a).

Clause 5.2 – Facilitative provisions

111. Ai Group supports Business SA's submissions regarding clause 5.2. We refer also to paragraph 152 of our 28 January 2015 submissions in this regard.

Clause 6.3(a)(iii) – Types of employment – Part-time employment

112. Ai Group does not oppose the AWU's submission that the reference to a "regular pattern of hours" be retained, on the basis that this would reflect the current award.

Clause 6.4(b)(iii) – Types of employment – Part-time employment

113. Ai Group supports the AWU's submission that this clause should be deleted. We refer to paragraph 146 – 147 of our 28 January 2015 submissions in this regard.

Clause 8.2(c) – Ordinary hours of work and rostering – Ordinary hours of work – day workers

114. The AMWU's proposal to vary clause 8.2(c) of the Exposure Draft is opposed. What is here sought can properly be characterised as a substantive change rather than one that seeks to "clarify" the operation of the provision. The terms of the Award, as presently crafted, do not preclude the extension of the spread of hours beyond 12 hours.

Clause 8.2(g) – Ordinary hours of work and rostering – Ordinary hours of work – day workers

115. Ai Group does not oppose the variation proposed by the AWU, although we note that it is not necessary. The application of the clause is sufficiently clear.

Clause 8.5(c) – Ordinary hours of work and rostering – Ordinary hours of work – rosters

116. Ai Group agrees with the AWU and AMWU's submissions that the reference to clause 13.7 in this clause should be amended to "13.8". We assume that the reference at paragraph 27 of ABI's submissions to clause 18.8 is inadvertent.
117. We refer to paragraph 151 of our 28 January 2015 submissions in this regard.

Clause 8.6(c) – Ordinary hours of work and rostering – Methods of arranging ordinary working hours

118. Ai Group does not support the AWU's submission regarding the cross-references contained in this clause. We refer to paragraph 153 of our 28 January 2015 submissions and note that the amendment there proposed properly reflects the current clauses 23.5 and 23.2(c).

Clause 8.7(b) – Ordinary hours of work and rostering – Daylight saving

119. We agree with ABI's submissions with respect to clause 8.7(b).

Clause 10.1(a)(i) – Minimum wages

120. Ai Group agrees with the AWU's submission that the heading to Schedule C has been omitted.

Clause 10.7 – Minimum wages – Supported wage system

121. Ai Group does not oppose the deletion of the words "because of the effects of a disability", as proposed by ABI.

Clause 11.4 – Allowances – Extra rates not cumulative

122. Ai Group does not agree with the AWU or AMWU's submissions that this clause is ambiguous. It is a standard provision that appears in a significant number of awards. We refer to paragraphs 156 – 157 of our 28 January 2015 in this regard. The clause should not be deleted.

Clause 13.1(c) – Penalties and shiftwork – Saturday and Sunday work – day worker

123. Clause 13.1(c) commences with the words “if the spread of hours is altered” with reference to clause 8.2(f). Clause 8.2(f), however, does not deal with changing the spread of hours. The clause should be amended by substituting the relevant words with “where agreement is reached”. This is consistent with the current clause 23.2(f).

Clause 13.4 – Penalties and shiftwork

124. The AMWU’s proposal to vary clause 13.4 of the Exposure Draft is opposed. What is here sought can properly be characterised as a substantive change rather than one that seeks to “clarify” the operation of the provision. The terms of the Award do not preclude the extension of the span of hours at both ends.

Clause 13.5(b) – Penalties and shiftwork – Afternoon and night shift allowances – Non-rotating night shift

125. Ai Group does not oppose the AWU’s submission to amend the heading to this clause. We note that ABI has also submitted that the heading may not be appropriate.

Clause 13.7(b) – Penalties and shiftwork – Rate for working on Sunday and public holiday shifts

126. Ai Group does not oppose the AWU’s submission that the word “is”, where it appears at the conclusion of the preamble, should be deleted.

Clause 14.1(e)(i) – Overtime – Payment for working overtime

127. Ai Group does not oppose the variation proposed by the AWU to clause 14.1(e)(i) of the Exposure Draft.

Clause 14.3(a) and (b) - Overtime – Rest period after overtime

128. We refer to the AWU's submissions with respect to this provision. In proposing an alternate subclause (b), we note that the AWU has omitted the current exclusion of casual employees from this clause. This is a substantive change and one that is strongly opposed. Notably, the change is not necessary to cure any ambiguity with respect to nightshift workers, as alleged by the AWU.
129. The AWU's proposal in other respects also amounts to a substantive change to the Award. The union has not submitted why the change is necessary to ensure that the Award achieves the modern awards objective. The variations proposed should not be made.
130. Ai Group further submits that clause 14.3(b) should be amended to reflect the current clause 26.3(b), which applies only after an employee has worked overtime. The following amendment would ensure that the provision reflects the current award:

“An employee who works so much overtime that the employee has not had at least 10 consecutive hours off duty ...”.

Clause 14.6(b) – Overtime – Public holiday work

131. The variation proposed to clause 14.6(b) by the AWU is potentially a substantive change. For instance, where a continuous shiftworker currently works overtime before commencing their ordinary hours, and that overtime falls on a public holiday, but the ordinary hours that follow do not fall on a public holiday, the employee would be remunerated as follows:
 - 200% of the minimum hourly rate for the overtime performed, for a minimum of three hours; and
 - At the appropriate rate for the ordinary hours worked, incorporating any relevant shift allowances and/or weekend penalties.

132. The amendment proposed by the AWU would result in an employee in the above circumstances receiving 200% of the minimum hourly rate for the entire duration worked.
133. On this basis, the AWU's proposal is opposed.

Clause 14.7(c) – Overtime – Paid rest break

134. Ai Group does not oppose the AWU's proposed amendment to clause 14.7(c) on the basis that it reflects the current clause 26.7(c).

Clause 14.7(e) – Overtime – Paid rest break

135. Ai Group supports the amendment proposed by Business SA, the AWU and AMWU with respect to clause 14.7(e).

Clause 15.11 – Annual leave – Proportionate leave on termination

136. Whilst we do not agree that the current heading is confusing, the variation proposed by the AMWU is not opposed.

Clause 18.3 – Public holidays

137. Ai Group does not oppose the amendment proposed by the AWU with respect to clause 18.3.

Clause 20.2 – Termination of employment – Notice of termination by employee

138. Ai Group does not oppose the amendment proposed by the AWU with respect to clause 20.2.

Schedule A.1.3 – Summary of Hourly Rates of Pay – Full-time and part-time employees – Full-time and part-time shiftworkers – penalty rates

139. Consistent with our submissions above regarding clause 13.5(b), we do not oppose the amendment proposed by the AWU with respect Schedule A.1.3.

Schedule A.1.4 – Summary of Hourly Rates of Pay – Full-time and part-time employees – Full-time and part-time shiftworkers – overtime

140. We refer to the AWU's submissions regarding Schedule A.1.4. Ai Group does not oppose, in principle, the insertion of additional columns in Schedule A.1.4, which contain the rates payable to non-continuous shiftworkers for overtime performed on Sundays and public holidays. We reserve our right to make further submissions about the accuracy of such rates if they are to be included.

Schedule A.2 – Summary of Hourly Rates of Pay – Casual employees

141. Ai Group does not oppose, in principle, the inclusion of rates payable to casual employees performing shiftwork, as proposed by the AWU. However, we reserve our right to make further submissions about the accuracy of such rates if they are to be included.

Schedule A.2.2 – Summary of Hourly Rates of Pay – Casual employees – Casual employees – ordinary and penalty rates

142. Ai Group notes that the rate prescribed for ordinary hours in this table is described as 100% of the “casual ordinary hourly rate” which is defined as including the casual loading. On this basis, the amendment proposed by the AWU is unnecessary.

Schedule F – Definitions – default fund employee

143. With reference to ABI's submissions, we have not identified any difficulties arising from the deletion of the definition of “default fund employee”. The term is not used in the Award or Exposure Draft.

Schedule F – Definitions – seafood processing

144. With reference to the AMWU's submissions, we have not identified any difficulty arising from the inclusion of the definition of “seafood processing” in Schedule F, however we do not oppose the AMWU's proposal in this regard.

10. EXPOSURE DRAFT – STORAGE SERVICES AND WHOLESALE AWARD 2014

Use of “minimum hourly rate”

145. The NUW and AWU submit that the term “ordinary hourly rate” should be used throughout the Award rather than “minimum hourly rate”. Ai Group opposes this submission. The term “ordinary hourly rate” is not defined in the Award. The “minimum hourly rate”, however, is referable to the minimum wages clause and makes clear that it is the rate there prescribed that is to be used in determining the relevant entitlement. Below and in our submissions of 28 January 2015 Ai Group has dealt with various instances in which the terminology used in the Exposure Draft is problematic.

Clause 2 – The National Employment Standards and this award

146. We refer to the submissions made by the SDA regarding clause 2 of the Exposure Draft and note that these matters have been determined by the Commission in its decision of 23 December 2014. We assume that the decision has not been reflected in this Exposure Draft as it was published prior to the date on which the decision was handed down.

Clause 3.2 – Coverage

147. Whilst we have not identified any difficulty arising from the inclusion of the definition of the “storage services and wholesale industry” in clause 3.2, we do not oppose its deletion as proposed by the SDA, provided it remains the definitions schedule/clause.

Clause 3.6(a) – Coverage

148. Ai Group does not oppose the amendment proposed by ABI to clause 3.6(a).

Clause 5.2(a) – Facilitative provisions – Facilitation by individual agreement

149. Ai Group does not oppose Business SA’s proposal to insert a reference to clause 20.4(a) in clause 5.2(a).

Clause 5.2(a) – Facilitative provisions – Facilitation by individual agreement

150. Ai Group opposes Business SA's proposal to insert a reference to clause 20.3(a) in clause 5.2(a). That provision requires majority agreement, rather than individual agreement.

Clause 5.2(a)(i) – Facilitative provisions – Facilitation by individual agreement

151. Ai Group agrees with the submissions of the SDA, AFEI and ABI regarding the reference to the travelling allowance in clause 5.2(a)(i). We refer to paragraphs 168 – 169 of our 28 January 2015 submissions in this regard.

Clause 5.2(a)(ii) – Facilitative provisions – Facilitation by individual agreement

152. In response to paragraph 35 of ABI's submissions, we refer the Commission to the amendment proposed at paragraph 170 – 171 of our 28 January 2015 submissions.

Clause 5.2(a)(vi) – Facilitative provisions – Facilitation by individual agreement

153. Ai Group opposes Business SA's submission that clause 5.2(a)(vi) should be amended to refer to clause 15.2. That provision requires majority agreement, rather than individual agreement.

Clause 5.3(a)(i) – Facilitative provisions – Facilitation by majority agreement

154. Contrary to ABI's submissions, clause 5.3(a)(i) should be deleted. We refer to paragraph 172 of our 28 January 2015 submissions in this regard.

Clause 6.4(c)(i) – Types of employment – Casual employment – Casual loading

155. Ai Group supports ABI's submissions that references to the applicable "base rate" should be consistent throughout the Award. As per paragraph 175 – 176 of our 28 January 2015 submissions, clause 6.4(c)(i) should be amended to refer to the minimum hourly rate. The "ordinary hourly rate" is not defined in the Exposure Draft.

Clause 6.4(c)(i) – Types of employment – Casual employment – Casual loading

156. Having regard to the terms of the current award, Ai Group does not oppose the AWU's submissions regarding clause 6.4(c)(i).

Clause 6.4(c)(ii) – Types of employment – Casual employment – Casual loading

157. Ai Group supports the submissions of the SDA and AWU that clause 6.4(c)(ii) should be deleted. We refer to paragraphs 177 – 178 of our 28 January 2015 submissions in this regard.

Clauses 8.1(b) and 8.2 – Hours of work

158. The SDA proposes that clause 8.1(b) be reproduced at clause 8.2 of the Exposure Draft. Ai Group submits that such repetition is unnecessary and should not be adopted.

Clause 8.2 – Hours of work – Spread of hours

159. Ai Group supports the submissions of AFEI and Business SA that the spread of hours can be extended at each end. We refer to paragraphs 183 – 184 of our 28 January 2015 submissions in this regard.

160. The SDA's submissions and the AWU's proposal are opposed. The Award, as presently drafted, does not require the maintenance of a 10.5 hour spread. The variation proposed by the AWU is a substantive one that would introduce a significant inflexibility affecting both employers and employees. To this extent, the variation proposed is contrary to the modern awards objective (ss.134(1)(d) and (f)).

Clause 8.2 – Hours of work – Spread of hours

161. Ai Group does not oppose the amendment proposed by Business SA to the heading of clause 8.2.

Clause 8.4(d) – Hours of work – Rostered days off – Rostered day off – substitute days

162. Ai Group agrees with Business SA's submission that the reference to clause 9.4(b) in this clause should be substituted with a reference to clause 8.4(b). We refer to paragraph 185 of our 28 January 2015 submissions in this regard.

Clause 9.1(a) – Breaks – Meal breaks

163. Ai Group concurs with ABI and the SDA, that clause 9.1(a) be substituted with the current clause 23.1(a).

Clause 9.2 – Breaks – Rest Break

164. The current clause 23.3 requires that the rest break must not be granted within one hour of "normal commencement or cessation of work". These words appear to contemplate the performance of overtime.
165. The Exposure Draft, however, uses the words "normal starting or finishing time". This may be construed as a reference to an employee's ordinary hours of work. For instance, in clause 8.3 (Changing ordinary hours of work), the Exposure Draft (and current award) refer to the "normal starting and finishing times".
166. On this basis, Ai Group submits that the words "normal commencement or cessation of work" should be retained.

Clause 10.1 – Minimum wages – Minimum wage rates

167. We do not oppose the deletion of the words "for a full-time adult employee" from the preamble to the table in clause 10.1, pursuant to the SDA's submissions.

Clause 10.2 – Minimum wages – Juniors

168. We refer to the SDA's submissions and note that at paragraph 186 – 188 of our 28 January 2015 submissions, we also proposed that the weekly rates prescribed in clause 10.2 should be deleted.

Clause 10.4 – Minimum wages – Supported wage system

169. Ai Group does not oppose the amendment proposed by ABI.

Clause 11.4 – Payment of wages - Public holiday or day off coinciding with pay day

170. Ai Group refers to the question posed at clause 11.4 of the Exposure Draft and agrees with the AFEI, that the proposal put is a sensible one.

Clause 12.3(b)(i) – Allowances – Expense related allowances – Travelling, transport and fares reimbursement

171. Ai Group does not oppose the amendment proposed by the AWU and SDA to clause 12.3(b)(i) of the Exposure Draft.

Clause 12.3(d) – Allowances – Expense related allowances – Protective clothing and uniforms reimbursement

172. Ai Group supports the amendment proposed to clause 12.3(d) by ABI.

Clause 12.3(e)(i) – Allowances – Expense related allowances – Damaged personal effects allowance

173. Ai Group does not oppose the amendments proposed by ABI to clause 12.3(e)(i).

Clause 13 – Higher duties

174. Ai Group does not oppose the submissions of ABI, Business SA and AFEI that the reference to “weekly employees” in clause 13 could be replaced with “full-time or part-time employees”. We refer to paragraph 194 of our 28 January 2015 submissions in this regard.

175. Ai Group opposes the AWU’s submission that the relevant terms be substituted with a reference to “an employee”. This would result in a substantive change to the Award as the higher duties clause does not

presently apply to casual employees. The AWU has not established that such a variation proposed is necessary to achieve the modern awards objective.

Clause 15.1 – Shiftwork definitions and penalties

176. Ai Group agrees with the submissions of Business SA and the SDA regarding the penalties prescribed at clause 15.1. We refer to paragraph 195 of our 28 January 2015 submissions in this regard.

Clause 15.1 – Shiftwork definitions and penalties

177. Ai Group does not oppose the amendments proposed by ABI to clause 15.1.

Clause 15.2 – Shiftwork

178. Ai Group agrees with the submissions of ABI and AFEI that the span of hours can be extended by one hour at each end. We refer to paragraph 196 of our 28 January 2015 submissions in this regard.

Clause 16.1(a) – Overtime and penalty rates – Payment for overtime

179. The AWU's proposed amendment to clause 16.1(a) is strongly opposed. The variation sought is not necessary. No conflict arises from the terms of clause 16.1(a) and 16.2(a). Further, the amendment proposed by the AWU introduces the notion of payment at overtime rates for work performed outside rostered hours, where no such obligation arises under the terms of the current award. Rather, overtime rates are payable for work performed outside ordinary hours as defined by the Award.

180. The AWU's proposal would amount to a substantive change to the Award and impose significant new employment costs on employers. On this basis, the change should not be adopted.

Clause 16.1(b) – Overtime and penalty rates – Payment for overtime

181. Ai Group supports the AWU's submissions regarding the typographical error contained in clause 16.1(b).

Clause 16.1(c) – Overtime and penalty rates – Payment for overtime

182. The amendment proposed by the SDA to clause 16.1(c) is unnecessary. Clause 16.1(c) is simply intended as a signpost to the relevant provision that details the circumstances in which a part-time employee is to be paid overtime rates.
183. Further, the words “in addition”, as proposed by the SDA, are confusing. Clause 16.1(b) prescribes the relevant overtime rates. The reference to clause 6.3(f) “in addition” to that subclause is anomalous.

Clause 16.4(b) – Overtime and penalty rates – Rest period after overtime

184. Ai Group does not oppose the NUW’s submission that the exclusion of casual employees from this clause should be removed, on the basis that such an exclusion does not appear in the current clause 24.4.

Clause 16.4(b)(ii) – Overtime and penalty rates – Rest period after overtime

185. Ai Group supports ABI’s submissions that references to the applicable “base rate” should be consistent throughout the Award. Clause 16.4(b)(ii) should be amended to refer to the minimum hourly rate. The “ordinary hourly rate” is not defined in the Exposure Draft.

Clause 16.5 – Overtime and penalty rates – Penalty rates for weekends and public holidays

186. Contrary to Business SA’s submissions, Ai Group prefers the use of the term “minimum hourly rate” in clause 16.5. The rate referred to is the minimum rate prescribed in clause 10.5. The introduction of the term “ordinary rate of pay” is unnecessary and likely to give rise to confusion.

Clause 16.5(b)(ii) – Overtime and penalty rates – Penalty rates for weekends and public holidays – Sundays

187. Clause 16.5(b)(ii) should be amended to reflect the current clause 24.5(b)(ii) as follows:

“... except where such overtime is worked immediately prior ...”.

188. The insertion of the word “such” makes clear that the reference there made to overtime is a reference to overtime on a Sunday as dealt with earlier in the clause.

Clause 16.6(a) – Overtime and penalty rates – Call-back – Mondays to Fridays

189. Ai Group supports ABI’s submission that the drafting of clause 16.6(a) be retained. We refer to paragraph 199 of our 28 January 2015 submission in this regard.

Clause 17.4(a) – Annual leave – Annual close down

190. Ai Group has raised the same objection as Business SA to clause 17.4(a) of the Exposure Draft. We refer to paragraph 202 of our 28 January 2015 submissions.

Clause 17.4(b) – Annual leave – Annual close down

191. Ai Group agrees with the amendment proposed by Business SA to clause 17.4(b). We refer to paragraph 203 of our 28 January 2015 submissions in this regard.

Clause 17.4(c)(iii) – Annual leave – Annual close down – come back to this – SDA submission

192. Ai Group does not agree with the deletion of clause 17.4(c)(iii) as proposed by the SDA. This is a practical provision which is similar to provisions in various other awards.

Clause 18.3 – Personal/carer’s leave and compassionate leave

193. Ai Group notes the submissions made by the SDA regarding clause 18.3 of the Exposure Draft. This is a provision that has been inserted in all Exposure Drafts. We assume that it forms part of the summary of NES provisions relating to personal/carer’s leave and we may seek to make submissions as to

its inclusion once consultation commences regarding the annotated documents to be prepared by the Commission.

Clause 20 – Public holidays

194. Ai Group does not oppose the retention of the current clause 29.1, as proposed by the SDA.

Clause 21 – Community service leave

195. Ai Group notes the submissions made by the SDA regarding clause 21 of the Exposure Draft. This is a provision that has been inserted in all Exposure Drafts. We assume that it forms part of the summary of NES provisions relating to community service leave and we may seek to make submissions as to its inclusion once consultation commences regarding the annotated documents to be prepared by the Commission.

Clause 23.2 – Redundancy

196. The SDA submits that clause 23.2 should be deleted as the relevant definition is contained in Schedule G. We note that the term “small business employer” is only used in clause 23.1, which contains a summary of the NES entitlement to redundancy pay.

197. As decided by the Full Bench in its decision of 23 December 2014, summaries of NES provisions are to be deleted from Exposure Drafts and instead, included in annotated versions of the award. On this basis, the definition of “small business employer” should be deleted from both clause 23.2 and the definitions schedule. We anticipate that this will be a matter that arises numerous Exposure Drafts.

Clause 25.6 – Dispute resolution

198. The amendment proposed by ABI is to a model clause. Consideration should be given as to whether the change in terminology may give rise to any substantive change or anomaly. In the interests of consistency, consideration

should also be given to whether this is a variation that is sought to the dispute resolution clause in all modern awards.

Schedule B – Summary of Hourly Rates of Pay

199. The submissions made by ABI 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 all Exposure Drafts.

Schedule G – Definitions

200. Ai Group has not identified any difficulty arising from the SDA's proposal that the definitions clause be moved to the beginning of the Award, as it currently appears. We note however that the inclusion of definitions at the conclusion of the Exposure Draft is an approach adopted by the Commission across all Exposure Drafts published to date.

Schedule G – Definitions – default fund employee

201. With reference to the SDA's submissions, we have not identified any difficulty arising from the deletion of the definition of "default fund employee". We note that the term is not used in the current award or Exposure Draft.