Australian Industry Group

4 YEARLY REVIEW OF AWARDS

Exposure Drafts – Subgroups 2A and 2B

28 JANUARY 2015

4 YEARLY AWARD REVIEW – AWARD STAGE
EXPOSURE DRAFTS – SUB-GROUPS 2A AND 2B AWARDS

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1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this submission in response to the Fair Work Commission's publication of exposure drafts for modern awards in sub-groups 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.

2. PRELIMINARY ISSUES

3. Ai Group is generally supportive of changes to modern awards to make them easier to understand. However, Ai Group is not supportive of changes that alter employment terms and conditions to the detriment of employers.

4. Ai Group has considered the exposure drafts for sub-groups 2A and 2B. We note that these exposure drafts:

    - Generally provide a clearer structure for modern awards; and
    - Are intended to describe award conditions in plain English.

5. However, some of the altered wording, at first glance, appears to be minor but when carefully considered it is apparent that some provisions alter the effect and meaning of award terms and would impose substantial additional costs upon employers.

6. Any changes to entitlements need to be assessed against relevant statutory provisions including the modern awards objective in s.134 of the *Fair Work Act 2009* (FW Act) and the requirement in s.138 that award terms be necessary to achieve the modern awards objective.

7. The requirement that awards be simple and easy to understand (s.134(1)(g)) should not be placed ahead of other critical requirements such as taking into account the impact on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f)), and promoting flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)).

3. ISSUES COMMON TO EACH EXPOSURE DRAFT

8. We note that many of the general drafting and technical issues have been determined by the Commission in its decision of 23 December 2014.[1]

9. We also note that further proceedings have been scheduled to deal with the definitions of "all-purposes" and "ordinary hourly rate".[2]

10. Ai Group's position on the definition of "all-purposes" is set out in our submission of 26 September 2014.

11. With regard to the concept of "ordinary hourly rate", in its decision of 23 December 2014 the Full Bench stated:

> **"[44]** The exposure drafts have been prepared using the following principles:
>
> - Where an award does not contain any allowances or loadings payable for all purposes, the term 'minimum weekly/hourly rate' has been used throughout (e.g. draft Wool Storage, Sampling and Testing Award 2014)
>
> - Where an award contains an allowance or loading that is payable for all purposes, the term 'ordinary hourly rate' has been used to express penalties and loadings (e.g. "overtime is payable at 200% of the ordinary hourly rate" in draft Premixed Concrete Award 2014)".
>
> - - -
>
> **[45]** The use of the term 'ordinary hourly rate' has been used in affected awards to clarify that all purpose allowances must be added to the minimum rate of pay *before* calculating any penalty rate. When an all purpose allowance is payable to all employees in all circumstances, that amount has been added to the minimum rate in the wage rates clause and expressed as the ordinary hourly rate

[1] *4 Yearly Review of Modern Awards* [2014] FWCFB 9412.

[2] *4 Yearly Review of Modern Awards* [2014] FWCFB 9412, para [53].

> (see for example the industry allowance payable to all employees in the draft *Salt Industry Award 2014*). However many all purpose allowances are only payable to certain employees in certain qualifying circumstances so the amount cannot be included as a 'universal' ordinary hourly rate. In these exposure drafts, a note has been inserted to the effect that the "Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled" (see for example the leading hand allowance payable to certain employees in the draft *Poultry Industry Award 2014*)."

12. As stated by the Full Bench above, *"many all-purpose allowances are only payable to certain employees in certain qualifying circumstances"*. For this reason, the term "ordinary hourly rate" cannot be used in all circumstances to express penalties and loadings in an award if the award includes one or more all-purpose allowances. The relevant rate needs to be considered on an entitlement by entitlement basis. To highlight just a few examples amongst many:

- The *Manufacturing and Associated Industries Award 2010* includes various all-purpose allowances which apply to the calculation of some loadings. However, the loading for a Supervisor / Trainer / Coordinator – Levels I and II) (paragraph 24.1(f)) is calculated on the "minimum hourly wage" which does not include all-purpose allowances.

- The *Business Equipment Award 2010* includes various all-purpose allowances which apply to the calculation of some loadings. However, the annual leave loading (subclause 31.2(a)) is calculated on the minimum award rate.

13. In considering whether an all-purpose allowance is applicable to the calculation of a particular entitlement under the current award terms proper regard must also be had to any provision dealing with the calculation of that specific entitlement. Some awards set out specific approaches to the application of particular loadings or penalties that would preclude the inclusion of any "all-purpose allowance" in their calculation.

14. Ai Group agrees with the Full Bench's adoption of the principle that awards should be worded to require that penalties be calculated on the minimum award rate in circumstances where there are no all-purpose allowances in the award. However, this approach does not appear to have been adopted in all instances in the exposure drafts.

15. The exposure drafts include a definition of "ordinary hourly rate" where this term has been adopted within the instrument. We are concerned that inclusion of the term "ordinary hourly rate" may suggest that penalties are to be applied to over-award payments as an award obligation which would be inconsistent with the safety net nature of awards.

16. Ai Group anticipates making further submissions in relation to these matters following the release of the revised exposure drafts.

4. EXPOSURE DRAFT – ALPINE RESORTS AWARD 2014

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

17. Clause 6.5(b)(i) requires the payment of the "ordinary hourly rate" and a 25% loading on the "ordinary hourly rate".

18. The term "ordinary hourly rate" is not defined in the Exposure Draft and this award does not include any all-purpose allowances.

19. The term "ordinary hourly rate" should be replaced with "the applicable minimum hourly rate".

20. **Clause 6.6 – Types of employment – Casual conversion to full-time or part-time employment**

21. Ai Group notes that the current clause 10.5(b) has been significantly redrafted. We have identified various concerns arising from this redrafting, which are similar to those identified with respect to Group 1 Exposure Drafts. We note that such issues have been referred to the Casual Employment Common Issues Full Bench. Ai Group intends to make submissions before that Full Bench regarding the redrafting of these provisions.

22. Should the Commission adopt a different approach with respect to these issues regarding the Group 2 Exposure Drafts, Ai Group will seek an opportunity to make submissions at the appropriate time.

Clause 7.6 – Seasonal employment

23. The added reference to the "loading in clause 7.5" at the end of clause 7.6 of the Exposure Draft is confusing. The relevant rates prescribed for seasonal employees in clause 13 include the 8.33% loading. The additional words may suggest that the loading is to be added to the rates there prescribed.

24. Ai Group submits that the words "plus the loading in clause 7.5" should be deleted.

Clause 8.1 – Apprentices

25. In addition to clause 13.4, clauses 13.5 and 13.6 also deal with apprentice rates of pay. Accordingly, clause 8.1 should also refer to those provisions.

Clause 9 – Classifications

26. Clause 9 should be varied to amend a drafting error:

> " … are set out <u>in</u> Schedule A – Classification Definitions."

Clause 10.1 – Ordinary hours of work

27. Ai Group refers to the question contained in the Exposure Draft at clause 10.1 and submits that the clause should not be amended.

28. The reference to "any five days of the week", and the absence of a reference to specific days of the week upon which ordinary hours can be worked, necessarily implies that ordinary hours may be worked on any day of the week, including Saturdays and Sundays.

29. The five days need not be worked consecutively. Any amendment to such an effect would amount to a substantive change, as it would remove the current flexibility available to employers and employees as to when ordinary hours may be worked.

30. Ai Group submits that no amendment should be made to the provision.

Clause 10.5 – Make-up time

31. The opening words of clause 22.5 of the current award ("Notwithstanding provisions elsewhere in this award") have been removed in the Exposure Draft. Ai Group submits that the words should be retained as they clarify that clause 10.5 takes precedence over other clauses in the award and thus make the award simple and easy to understand (s.134(1)(g)).

32. For example, the relevant words make clear that the rate payable to a shiftworker performing make-up time must be the shiftwork rate which would have been applicable to the hours taken off, rather than any other rate that may apply when the make-up time is performed.

Clause 13.1 – Minimum wages – Alpine resort workers

33. Ai Group notes that the seasonal hourly rate prescribed for a Resort Worker Level 2 in the current award is $18.81 however under the Exposure Draft, the rate is $18.80.

34. The difference in the rate presumably arises due to differing approaches taken to the rounding and calculation of wage rates. Ai Group submits that it is essential that a consistent approach is taken by the Commission. We refer to our submissions of 26 September 2014, from paragraphs 42 – 45.

Clause 13.6(c) – Minimum wages – Adult apprentices

35. Clause 16.7 of the current award was inserted by a Full Bench of the Commission as a result of the two year review of modern awards regarding apprentices, trainees and juniors.[3] The terms of the clause were the subject of detailed consideration by the Commission and interested parties. Ai Group submits that in the interests of consistency and preventing any unintentional consequences, the terms of the current clause should be retained.

36. In particular, we note that clause 16.7(c) of the current award applies to "a person employed by the employer under this award immediately prior to entering into a training agreement". The words "under this award" do not appear in the Exposure Draft, thus expanding the application of the clause to an employee who was engaged by the employer prior to entering into a training agreement under a different modern award. This is a substantive variation which would impose additional costs on employers and should not be adopted.

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

37. 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".

38. 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".

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

[3] *Modern Awards Review 2012 – Apprentices, Trainees and Juniors* [2013] FWCFB 5411.

Clause 18.1 – Annual leave

40. Ai Group refers to the question contained in the Exposure Draft at clause 18.1 and submits that a provision regarding the rate of pay on annual leave should not be inserted.

41. Clause 18.1 of the Exposure Draft (and clause 26.1 of the current award) refer the reader to the NES for provisions regarding annual leave. Section 90(1) states that annual leave is to be paid at the employee's base rate of pay. Thus, the award and NES already provide for the rate of pay for annual leave.

Clause 18.2 – Annual leave – Paid leave in advance of accrued entitlement

42. A typographical error appears in clause 18.2, which should be amended by deleting the word "in" before "wholly or partly".

Clause C.1.4 – Schedule of hourly rates of pay – Alpine resort workers – Full-time and part-time seasonal employees – ordinary and penalty rates

43. Ai Group submits that the public holiday rates in C.1.4 are incorrect. In the rates published, the public holiday penalty has been compounded on the seasonal employee loading which is not correct.

Clause C.1.5 – Schedule of hourly rates of pay – Alpine resort workers – Full-time and part-time seasonal employees – overtime rates

44. Ai Group submits that the public holiday rates in C.1.4 are incorrect. In the rates published, the overtime rate has been compounded on the seasonal employee loading which is not correct.

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

Clause 10.7(b) – Higher duties allowance

45. Clause 10.7(b) of the exposure draft is substantially different from the corresponding clause of the current award (clause 16.2(c)).

46. The clause deals with the higher duties allowance paid to veterinary surgeons. The current clause provides that if a veterinary surgeon is required to perform higher duties for a temporary period of more than two weeks that the associate (as defined in the award) must receive an allowance at the level necessary to increase the salary received to the minimum rate for the higher classification of the duties performed for the period in which those duties are performed.

47. The proposed clause 10.7(b) however provides that the associate must be paid their salary AND the higher salary for the period in which the higher duties are performed. This proposed clause substantially increases, without rationale, the entitlement owed to veterinary surgeons performing higher duties.

48. The clause 10.7(c) of the exposure draft needs to be varied so that the existing entitlement is retained.

Clause 10.7(c)(ii) – On call

49. Clause 10.7(c)(ii) of the exposure draft includes the following words at the ends of the clause *"… when an employee is rostered to work on that Saturday*". These words do not appear in the corresponding clause of the current award (clause 16.2(e)(ii).

50. These words are unnecessary and should be deleted from clause 10.7(c)(ii) of the exposure draft as they may confuse readers of the award as to the allowance to be provided to employees who are rostered to be on-call.

6. EXPOSURE DRAFT – AQUACULTURE INDUSTRY AWARD 2014

51. Ai Group notes the coverage provisions of the *Aquaculture Industry Award 2010* have been amended in a way that may inadvertently expand coverage of the award. The existing coverage clause 4.1 of the award is expressed to cover employers "*engaged in the breeding, production, farming and related harvesting of fish, shellfish, crustacea and marine vegetation and operations ancillary thereto including initial preparation for market and their employees...*"

52. The proposed exposure draft clause 3.1 replaces the terms "ancillary thereto" with "related operations".

53. Ai Group does not support clause 3.1 in the exposure draft but would support the following amendment:

> "This industry award covers employers throughout Australia engaged in the breeding, production, farming and related harvesting of fish, shellfish, crustacea and marine vegetation and ancillary operations including initial preparation for market and their employees in the classifications in Schedule A—Classification Definitions to the exclusion of any other modern award."

7. EXPOSURE DRAFT – GRAPHIC ARTS AWARD 2014

Clause 3.5 – Coverage

54. Clause 3.5 of the Exposure Draft corresponds with clause 4.7 of the current award. The coverage of the award is expressed by reference to certain industries as well as occupations. By omitting a reference to the occupational coverage in clause 3.5, the Exposure Draft narrows the coverage of the award such that it applies only to employers who provide group training services for apprentices and/or trainees engaged in the industry and/or parts of the industry listed at clause 3.2. It would not include employers who provide group training services for apprentices and/or trainees engaged in the occupations set out in clause 3.2. This amounts to a substantial alteration to the coverage of the instrument.

55. Clause 3.5 should be amended as follows:

> "This award covers employers which provide group training services for apprentices and/or trainees engaged in the industry, ~~and/or~~ parts of industry and/or occupations set out at clause 3.1 …"

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

56. Clause 5.4 of the Exposure Draft should be amended to include a reference to "6.3(c) Part-time employment - Level 1", as per the current award.

Clause 5.6 – Facilitative provisions – Level 3 – facilitation by majority agreement

57. Clause 5.6 of the Exposure Draft refers to various clauses relating to the hours of work. The submissions we make below regarding those provisions are also relevant to the cross references contained in this provision.

Clause 6.6 – Types of employment – Casual conversion to full-time or part-time employment

58. Ai Group notes that the current clause 12.5 has been significantly redrafted. We have identified various concerns arising from this redrafting, which are similar to those identified with respect to Group 1 Exposure Drafts. We note that such issues have been referred to the Casual Employment Common Issues Full Bench. Ai Group intends to make submissions before that Full Bench regarding the redrafting of these provisions.

59. Should the Commission adopt a different approach with respect to these issues regarding the Group 2 Exposure Drafts, Ai Group will seek an opportunity to make submissions at the appropriate time.

Clause 7.13(d) – Apprentices – Release for training

60. Clause 7.13(d) of the Exposure Draft should be amended to correct a typographical error. The reference to clause 7.13(d) should be substituted with "clause 7.13(b)".

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

61. The rates in clause 10.2(a) are incorrect and require recalculation. For example 37.5% of the Level 4 rate is $265.58, not $265.62.

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

62. The rates in clause 10.3 are incorrect and require recalculation. For example 30% of the Level 3 rate is $205.41, not $205.58.

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

63. Ai Group submits that the words contained in the parentheses in existing clause 18.4 should be reinserted in clause 10.4. Those words ensure that the provision is simple and easy to understand (s134(1)(g)), as they clearly identify the various categories of employees to whom the provision does not apply.

64. Also, the rates in clause 10.4 are incorrect and require recalculation. For example, 30% of the Level 2 rate is $197.82, not $197.98.

Clause 10.6 – Junior wages – Juniors employed in screen printing

65. Ai Group refers to the question contained in the Exposure Draft at clause 10.6 and submits that the reference to clause 10.3 should be replaced with a reference to clause 10.5(c). This is consistent with clause 5.1.2(e) of the *Graphic Arts – General – Award 2000*.

Clause 11.2(a) – Wages of apprentices (other than adult apprentices) – Minimum wage rates for apprentices (other than adult apprentices) that commenced on or after 1 January 2014

66. The reference contained in the current clause 19.2(a) to “competency based wage progression” has been removed in clause 11.2(a) of the Exposure Draft. Ai Group submits that the words should be reinserted as they appear in the

current award. The reference makes clear that the percentages contained in the table relate to the minimum wage rate and competency based wage progression.

Clause 12.1 – Adult apprentices

67. Current clause 20.1 applies only where an employee is employed by an employer in the printing industry, immediately before becoming an adult apprentice with that same employer. The redrafted provision, however, applies to any adult apprentice who was employed in the industry before becoming an apprentice. There is no requirement that the apprenticeship is with the same employer.

68. The existing provision was inserted by a Full Bench of the Commission during the two year review, after careful consideration of its purpose, effect and impact.[4] The variations proposed in the Exposure Draft would operate as a major barrier to the employment of adult apprentices and impose a costly new obligation on employers. They should not be adopted.

Clause 16.1 – Work organisation

69. Clause 16.1 should be amended to correct a typographical error as follows:

> " … carry out duties that <u>are</u> within the limits … "

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

70. Ai Group refers to the question contained at clause 18.3(a) of the Exposure Draft.

71. This issue should be the subject of discussions between the industrial parties in an attempt to clarify the intended operation of the meal allowance provisions and their interaction with the meal break provisions in clause 22 and 25.6.

[4] *Modern Awards Review 2012 – Apprentices, Trainees and Juniors* [2012] FWCFB 5411.

Clause 18.3(c) – Allowances – Expense related allowance – Uniform or clothing

72. The words *"by the employer"* should be inserted after *"required"* to ensure consistency with current clause 25.2(d). This would clarify that the allowance is payable only where the requirement to wear a uniform is imposed by the employer.

73. The deletion of the relevant words potentially expands the application of the clause and imposes additional costs on employers (s.134(1)(f)).

Part 4 – Hours of Work

74. Ai Group notes that the hours of work provisions in the current award have been significantly restructured and redrafted. To the extent that this redrafting is erroneous or is likely to give rise to unintended consequences, the variations made are opposed.

Clause 21.2 – other than in a regional daily newspaper office

75. Ai Group has identified the following concerns regarding clause 21.2 of the Exposure Draft:

- **Clause 21.2(a)** corresponds with clause 30.2(a)(i) of the current award, which applies to day workers only. Clause 21.2(a), however, is not confined to day workers. The heading should be changed to *"Spread of hours – day workers"*

- **Clause 21.2(b)** corresponds with clause 30.2(a)(ii) and (iii) of the current award, which applies to day workers only. Clause 21.2(a), however, is not confined to day workers. The heading should be changed to *"Altering spread of hours – day workers".*

- **Clause 21.2(c)** corresponds with clauses 30.2(d)(i), 30.3(c), 30.3(d)(i), 30.4(d) and 30.4(f)(i). However, the following important amendment is needed to 21.2(c)(i) to reflect 30.3(c) and 30.4(d):

> "The ordinary hours of work may be worked on any day Monday to Friday inclusive, provided that for shiftworkers ordinary hours commencing on a Friday may continue into Saturday."

- **In Clause 21.2(c)(iv)** the words *"(other than in a regional newspaper office)"* should be deleted to avoid confusion. The hours of work provisions relating to regional newspaper offices are deal with in separate subclauses.

- It would be more logical to deal with the number of ordinary working hours in **clause 21.2(d)** and to deal with work cycles in clause **21.2(e).** In the Exposure Draft, the work cycle provisions are dealt with in 21.2((d) and (e). If this approach is adopted:

  - clause 21.2(d) could simply state:

    > "The ordinary hours of work must not exceed an average of 38 per week".

  - clause 21.2(e) could state:

    > **(i) Day workers**
    >
    > The ordinary hours of work are to be worked over a cycle which does not exceed 152 hours in 28 days. By agreement between the employer and the majority of employees affected (level 2 facilitation), a roster system may operate on the basis of a weekly average of 38 ordinary hours over a period which does not exceed five months
    >
    > **(ii) Shiftworkers**
    >
    > The ordinary hours of work are to be worked over a cycle which does not exceed 152 hours in 28 days. By agreement between the employer and the majority of employees affected (level 2 facilitation), a roster system may operate on the basis of a weekly average of 38 ordinary hours over a period which exceeds 28 consecutive days but which does not exceed 12 months.

- **Clause 21.2(f)** does not include the entitlement in existing clause 30.2(b)(ii) which identifies the maximum daily hours for day workers. The first sentence in clause 21.2(f) should be replaced with the following sentence:

> "The ordinary hours of work for day work and non-continuous shift work will not exceed 8.75 hours per day or shift."

- **Clause 21.2(f)** does not include the facilitative provisions in existing clauses 30.3(a)(iii) and 30.4(b)(iii). To address this, clause 21.3(ii) should be amended to:

> "Notwithstanding clause 21.2(f)(i), the ordinary hours of work for day work and shift work may be up to 10 hours per day by agreement between the employer and the majority of employees (level 1 facilitation)."

Clause 21.4 – Limitation on double shifts – Continuous shiftwork and employees in regional daily newspaper office

76. The heading to clause 21.4 should be amended as follows to reflect the fact that the existing provisions do not apply to continuous shiftworkers in non-daily newspaper offices:

> "Limitation on double shifts – Continuous shiftwork employees other than in a newspaper office and employees in a regional daily newspaper office".

Clause 21.5 – Methods of arranging ordinary hours

77. Clause 21.5(b) should be worded in a similar manner to existing clause 30.7(b). The employer's right to fix hours should be dealt with first and then the scope for agreement to be reached should be dealt with.

Clause 21.7(e) – Fixation and change of hours

78. Clause 30.9(e) of the current award requires payment at double time for "all time worked" until the expiration of the relevant 48 hours. The absence of the words "all time worked" significantly expand the application of the entitlement in clause 21.7(e) to potentially require payment at double time for the entire 48 hour period, including those hours where the employee did not work.

79. This is a substantive change which would impose additional costs on employers (s.134(1)(f)). The words "for all time worked" should be reinstated.

Clause 22.2(a) – Meal breaks

80. The words “on that day or shift” should be reinserted within the parentheses after “ordinary hours” in clause 22.2(a) of the Exposure Draft, as they currently appear in clause 32.2(a). The provision, as currently drafted, is ambiguous as it is not clear whether the reference to “ordinary hours” is the maximum ordinary hours that may be worked in a week or their ordinary hours on that day/shift.

Clause 22.3 –Meal breaks

81. Clause 22.3 should be amended by inserting the word “minimum” before “hourly rate”. This properly reflects the current reference in clause 32.3 to the “weekly wage”, which is the minimum weekly wage prescribed by the award.

82. Ai Group refers to the question contained at clause 22.3 of the Exposure Draft. Awards containing a similar penalty commonly provide for a payment of time and a half of the minimum hourly rate (for instance, see clause 38.5 of the *Manufacturing and Associated Industries and Occupations Award 2010*). Further, clause 6.3.3 of the *Graphic Arts – General – Award 2000*, which preceded the modern award, provided for a penalty of “half extra”.

83. On this basis, Ai Group submits that the provision should be amended by deleting the word “extra”.

Clause 23 – Time provisions for refreshment

84. Ai Group refers to the question contained in the Exposure Draft and strongly opposes any amendment being made to clause 23.

85. Clause 23 has its origins in the award simplification proceedings conducted by the AIRC. The provisions were the subject of extensive negotiations between Ai Group and the AMWU during the proceedings and were subsequently inserted by consent. The former “rest intervals” provision was replaced with the agreed clause when the AIRC published the *Graphic Arts – General –*

Award 2000.[5] The clause was identical in its terms to the current clause 36 and clause 23 of the Exposure Draft.

86. The "Time Provisions" clause was developed by the industrial parties having regard to industry practices, whereby employees are commonly able to obtain a refreshment without disrupting production and return to a suitable area near their machine to consume it. The provision of a specific rest break is not necessary and is not consistent with the intent of the clause, as agreed between the industrial parties when it was inserted into the Award.

87. The existing provision has a long history and has not caused any difficulties. It should not be amended.

Part 5 – Penalties and overtime

88. Ai Group refers to the question under the heading to Part 5 of the Exposure Draft and submits that the relevant terms should be expressed as a percentage of the minimum hourly rate. Awards operate as a safety net and should not regulate over-award payments.

Clause 24.1 – Penalty rates – Shiftwork definitions

89. The important flexibility in current clause 31.2 to amend the shift definitions at one end of the spread has been omitted and needs to be inserted in clause 24.1.

Clause 24.1(c) – Penalty rates – Shiftwork definitions – Morning shift

90. The definition of morning shift in existing clause 31.1(c) of the current award contains an exclusion for employees working in accordance with clause 30.2, i.e. day workers. The cross-reference in clause 24.1(c) of the Exposure Draft to clause 21.2 is erroneous because this clause applies to day workers and shift workers. The definition should be amended as follows:

[5] AP782505CR.

> **"Morning shift** means any shift commencing at or after 5.00 am and prior to 7.00 am but nothing in this definition will cause a day worker to be deemed to be working on morning shift."

Clause 24.2(a) – Penalty rates - Shift allowances – morning, afternoon and night shift

91. In order to avoid any ambiguity arising from the redrafting of the current clause 31.3(a), clause 24.2(a) should be amended as follows:

> "An employee on morning shift, afternoon shift, or night shift …".

92. Our proposal is consistent with the current award.

Clause 24.2(b) – Penalty rates – Shiftwork definitions – Permanent night shift

93. We propose that the words *"during the engagement period of cycle"* in clause 24.2(b) be deleted and replaced with a reference to *"during any such night shift".* This better reflects the existing provision. It makes clear that the 30% allowance is not payable during any other shifts which fall during the "engagement period or cycle" but only on a permanent night shift.

Clause 24.3(b) – Penalty rates – Night work – in a non-daily newspaper office only – Night work overlapping day work hours

94. The current clause 30.5(c)(ii) requires the payment of the night work wage for day work hours where, on any day, they are overlapped by night work hours. Clause 24.3(b) of the Exposure Draft extends this requirement to "all hours worked". This is a substantive change which would impose significant costs on employers (s.134(1)(f)) which should not be adopted. The words of the current clause should be reinstated.

Clause 24.4(a) – Penalty rates – Night work – in regional daily newspaper office only

95. Clause 24.4(a) of the Exposure Draft corresponds with the current clause 30.6(d). The opening words of that provision ("Notwithstanding any other shift provisions in this award") have not been included in clause 24.4(a).

96. The words should be reinserted as they make the award simpler and easier to understand (s.134(1)(g)). The phrase clarifies the relationship between this provision and the shiftwork provisions contained in the award.

Clause 24.5 – Penalty rates – Night work – other than in regional daily newspaper office

97. The reference to *"other than regional daily newspaper offices"* is not necessary in the heading for clause 24.5(b) because this appears in the heading for clause 24.5 and does not appear in the headings for 24.5(a) and (c).

Clause 25.3(b) – Overtime – Overtime work on a Saturday or Sunday – Minimum engagements/payments for working overtime

98. The first sentence in clause 25.3(b) should be amended as follows to reflect the current clause 33.3(b):

> "An employee who has been notified by the employer of the requirement to work overtime on a Saturday (not being work which is continuous with work which commenced on a Friday) or on a Sunday and reports to work on a weekend and is ready willing and able to perform overtime will be entitled to the following:"

Clause 25.3(c) – Overtime – Overtime work on a Saturday or Sunday – Minimum engagements/payments for working overtime

99. In clause 25.3(c), the cross reference to clause 21 should be amended to also refer to clause 24, consistent with the existing award provisions.

Clause 25.6(b) – Overtime – Meal break during overtime

100. The opening words of the current clause 33.6(b) (i.e. *"Notwithstanding clause 33.6(a)"*) have been omitted from clause 25.6(b) of the Exposure Draft. Ai Group submits that the words should be reinstated to ensure that the provision is simple and easy to understand as they explain the relationship between it and the preceding subclause.

Clause 25.8(d) – Overtime – 36 hour break

101. The reference to clause 25.7(a) in clause 25.8(d) should be substituted with "clause 25.8". This appears to be a drafting error.

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

102. The opening words of the current clause 33.9(a) ("Notwithstanding clause 33.2") have been omitted from clause 25.9(a) of the Exposure Draft. Ai Group submits that they should be reinserted. The words make the clause simple and easy to understand as they explain the relationship between it and the obligation to pay overtime under clause 33.2.

103. Further, the words "with the consent of the employer", as they appear in the first line of the current clause 33.9(a), have been omitted. These words are important as they make clear that an employee can only elect to take time off instead of payment for overtime with the consent of the employer. Clause 25.9(a), as currently drafted, requires the employer's consent as to when the time off is taken, but no such consent is required in response to the employee's election to take time off instead of payment for overtime. This is a substantive change that should not be adopted.

Clause 26.4 – Call-back

104. Clause 34.4 of the current award, as redrafted at clause 26.4 is ambiguous and does not read well. The provision should be amended to make clear that it refers to a situation where the employee has received a call-back but is not required for that call back. Ai Group proposes the following amendment:

> " … are not required for <u>such</u> call …".

Clause 26.5 – Call-back

105. Clause 26.5 should be amended as follows in the last line:

> "… rostered period off and <u>such</u> overtime work …".

Clause 27.1 – Stand-by for work

106. Clause 27.1 should be amended to rectify a drafting error as follows:

" … Provided arrangements are made between the employer …".

Clause 27.2(b) – Stand-by for work

107. The reference to clause 6.4(a) in clause 27.2(b) of the Exposure Draft should be substituted with a reference to clause 6.4(b). This appears to be a drafting error.

Clauses 28.6(b)(ii) and (iii) – Annual leave – Annual leave loading – Shiftwork and Night work in a newspaper office

108. The reference to clause 28.5(b) in clauses 28.6(b)(ii) and (iii) should be substituted with "clause 28.5(b) and (c)". This properly reflects the cross references contained in the current clauses 37.6(b)(ii) and (iii).

Schedule B.4 – Competencies

109. The reference to Schedule D at B.4 should be amended to read "Schedule B", as per the current C.4.

Schedule I – Definitions – hourly rate

110. The definition of "hourly rate" in the award has been amended by the insertion of the words *"for all purposes".*

111. These extra words could impose a substantial additional cost upon employers depending upon the definition of 'all purposes" ultimately adopted by the Commission.

112. The words *"for all purposes"* do not appear in the definition of "hourly rate" in the current award and they should be deleted.

Substantive Changes

113. Ai Group filed an Outline of Issues on 25 November 2014 identifying substantive changes sought to the *Graphic Arts, Printing and Publishing Award 2010*.

114. Ai Group proposes that: (with reference to the current award)

- Clause 25.4 – *Training allowance* should exclude trainees;

- Clause 28.5 – *Payment on termination* should enable employers who pay by electronic funds transfer to pay termination monies in accordance with the employer's pay cycle.

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

Clause 3.1 – Coverage

115. The words in clause 3.1 of the Exposure Draft slightly differ from the words in the corresponding clause 4.1 of the existing award. Clause 3.1(a) refers readers to the classifications listed in Schedule A whereas clause 3.1(b) refers readers to the classifications listed in clause 11. Clause 11 sets out the minimum wages for health professional employees whereas Schedule A sets out the classification definitions.

116. Clause 3.1(b) should be amended as follows:

> "(b) employers engaging in a health professional employee in the classifications listed in clause ~~11~~ A.2 of Schedule A. "

Clause 8.2(c) – Private medical imaging practices – five and a half day practices

117. Ai Group is of the view that clause 8.2(c) would read more clearly is the following variation was made:

"Where a private medical imaging practice services patients on a five and a half day a week basis …"

Clause 8.2(d) – Private medical imaging practices – seven day practices

118. Ai Group is of the view that clause 8.2(d) would read more clearly is the following variation was made:

"Where a private medical imaging practice services patients on a seven day a week basis …"

Clause 23 – Public holidays

119. Consistent with the Commission's decision to remove NES summaries, the following provisions should be removed from the Exposure Draft:

- The second and third sentences in clause 23.1; and
- Clause 23.2.

Substantive Changes

120. Ai Group filed a Supplementary Outline of Issues on 28 November 2014 identifying the substantive changes sought to the *Health Professionals and Support Services Award 2010*.

121. We propose the following amendments: (with reference to the current award)

- The inclusion of a facilitative provision in clause 27.1 to enable the 5 hour maximum period before an unpaid meal break is taken to be extended to 6 hours by agreement between the employer and an individual employee or by agreement with the majority of employees. This will enable employers to accommodate requests by employees who wish to work a shift of between 5 ½ and 6 hours in order to drop their children off at school and pick them up from school. This flexibility is included in many other awards.

- The inclusion of an annualised salary clause for employees in the health professionals' stream and employees at higher classification levels in the support services stream.

9. EXPOSURE DRAFT – MEDICAL PRACTITIONERS AWARD 2014

Clause 6.4(b) – Casual loading

122. The reference to *ordinary hourly rate* in the two dot points in clause 6.4(b)(i) of the Exposure Draft should be varied to *minimum hourly rate*, consistent with clause 10.4(b) of the current award.

Clause 10.1 – Minimum wages

123. Clause 10 sets out tables with minimum wages payable to employees covered by the award. Colum five of the table details the *Casual hourly rate*. We propose that a footnote be inserted in reference to the *Casual hourly rate* which informs readers that the *Casual hourly rate* includes the 25% casual loading provided for in clause 6.4(b)(i) – Casual loading.

124. We suggest a similar footnote be inserted in clause 13 which deals with penalty rates and in clause 14 which deals with overtime.

Clause 10.2 – Progression through pay points

125. Ai Group is concerned that clause 10.2 of the Exposure Draft does not accurately reflect the corresponding clause in the current award (clause 15) and may mislead readers about the true intention of the clause.

126. Clause 10.2 of the Exposure Draft says:

> "(a) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to the acquisition and use of skills.
>
> (b) Progression will be:
>
> (i) for full-time employees – by annual movement; or

(ii) for part-time or casual employees – after 1824 hours of similar experience"

127. Clause 15 of the current award says:

> "Progression for all classifications for which there is more than one paypoint will be made by annual movement to the next pay point having regard to the acquisition and use of skills, or in the case of a part-time or casual employee, 1824 hours of similar experience"

128. Ai Group is concerned that clause 10.2 of the Exposure Draft disconnects the requirement to have regard to the acquisition and use of skills from the time-based progression provisions.

129. The clause dealing with progression through pay points in the current *Health Professionals and Support Services Employees Award 2010* is the same as clause 15 in the current *Medical Practitioners Award 2010*. The following provision in the Exposure Draft for the *Health Professionals and Support Services Employees Award 2014* better reflects the existing provisions in both awards and should be adopted in the *Medical Practitioners Award 2010*:

> "Progression to the next pay point for all classifications for which there is more than one pay point will be:
>
> (a) for full-time employees—by annual movement; or
>
> (b) for part-time or casual employees—after 1824 hours of similar experience,
>
> having regard to the acquisition and use of skills."

Clause 10.3 – Higher duties allowance

130. Clause 10.3 of the Exposure Draft proposes the following clause in respect of the higher duties allowance:

> "Where an employee temporarily occupies a position in a higher classification for a period of more than three days, that employee must be paid not less than the minimum rate applicable to that higher classification, including any relevant managerial allowance, for all time worked at that higher level."

131. The corresponding clause in the existing award (clause 27) says:

> "Where an employee temporarily occupies a position in a higher classification for a period of more than three days, that employee must be paid not less than the difference between the salary of the employee temporarily filling the position and the minimum salary attaching to the position they are temporarily occupying, including any relevant managerial allowance".

132. Given the re-wording of the clause, the entitlement is no longer accurately described as an "allowance" and the heading should be "Higher duties".

10. EXPOSURE DRAFT – NURSES AWARD 2014

Clause 5.2 – Facilitative provisions

133. Clause 5.2 includes a table which identifies clause 10.7(a) as a facilitative provision but fails to identify that the flexibility in this clause can be accessed through either individual or majority agreement as per existing clause 18.1 which simply refers to "mutual agreement".

Clause 6.1(b) – Employment categories

134. Clause 6.1(b) stipulates that "*[a]t the time of engagement an employer will inform each employee of their terms of engagement and in particular whether they are to be employed on a full-time, part-time or casual basis*". This clause differs from the corresponding clause (10.1) in the existing award which simply requires employers to "*inform each employee whether they are employed on a full-time, part-time or casual basis*".

135. The proposed clause 6.1(b) includes the additional obligation of informing each employee of *"their terms of engagement".* The extent of information that the employer would be required to provide to an employee to satisfy the obligation under the proposed clause is unclear.

136. The current wording in clause 10.1 should be retained.

Clause 11.2 - Allowances

137. The Exposure Draft asks the parties to "*confirm whether Registered nurses level 4 or 5 are entitled to any of the allowances in clause 11*".

138. The corresponding clause (clause 16) in the current award is clear. The allowances are not payable to Registered nurses level 4 and 5. The allowances, and the exclusion for Registered nurses level 4 and 5, are replicated in clause 11 of the Exposure Draft.

Substantive Change

139. Ai Group filed a Supplementary Outline of Issues on 28 November 2014 identifying a substantive change sought to the *Nurses Award 2010*.

140. We propose the inclusion of a facilitative provision in clause 27.1 to enable the 5 hour maximum period before an unpaid meal break is taken to be extended to 6 hours by agreement between the employer and an individual employee or by agreement with the majority of employees. This will enable employers to accommodate requests by employees who wish to work a shift of between 5 ½ and 6 hours in order to drop their children off at school and pick them up from school. This flexibility is included in many other awards.

11. EXPOSURE DRAFT – SEAFOOD PROCESSING AWARD 2014

Clause 5.2 – Facilitative Provisions

141. Ai Group raises the following concerns regarding clause 5.2 of the Exposure Draft:

- The reference to clause 8.2 in the first column should be amended to read “clause 8.2(c)” and, in a separate row, a reference to clause 8.2(f) should be inserted. This is to make clear that clause 8.2 is not, in its entirety, a facilitative provision. Rather, only the aforementioned subclauses are facilitative.

- The final column with respect to clause 18.4 should be amended to read “<u>An individual or the</u> majority of employees”.

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

142. Clause 6.3(a)(iii) deviates from the current clause 11.7, as it is not confined to "the terms of this award". Its application therefore could be interpreted as extending to over-award pay and entitlements. This is a substantive change which could impose additional costs on employers and therefore, should not be adopted.

143. Additionally, the proposed clause would give rise to an ambiguity. It is not clear what the words "same kind of work" mean. For example, the application of the clause would be unclear if a part-time employee is engaged to perform a "kind of work" which is not performed by any full-time employee.

144. The wording in the current clause should be retained.

Clause 6.3(h) – Types of employment – Part-time employment

145. Clause 6.4(h) should also refer to clause 13.2, which provides public holiday rates for a day worker.

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

146. Ai Group opposes the insertion of clause 6.4(b)(iii). The clause is not necessary to achieve the modern awards objective. We refer to our submissions regarding the stage 1A and 1B Exposure Drafts, dated 26 September 2014, at section 3.5.

147. We note that the ACTU has also raised concerns regarding the inclusion of such a provision.[6]

[6] See submissions dated 15 October 2014.

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

148. The current clause 23.2(a) defines ordinary hours of work for day workers. By inserting the words "for a full-time employee" in clause 8.2(a), the Exposure Draft could be interpreted as removing casual employees from the application of the clause. This would result in a contravention of s.147 of the Act. Ai Group submits that the words "for a full-time employee" should be deleted.

149. The clause should also be amended by inserting the words "up to 38 per week". Without this amendment, the clause could be interpreted as requiring casual employees to work 38 ordinary hours a week.

Clause 8.5 – Ordinary hours of work and rostering – Ordinary hours of work – rosters

150. Clause 8.5 of the Exposure Draft seeks to amalgamate clauses 23.3(c), 23.3(d), 23.4(b) and 23.4(d) of the current award. The current clauses 23.3 and 23.4 do not apply to day workers. The heading to clause 8.5 should be amended to read: "Ordinary hours of work – continuous and non-continuous shiftworkers – rosters".

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

151. The reference to clause 13.7 in clause 8.5(c) should be substituted with a reference to clause 13.8. This appears to be a drafting error.

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

152. Ai Group submits that clause 8.6(b)(i) should include a reference to clause 8.5 consistent with the effect of current clause 23.5(b)(i).

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

153. The reference to clause 8.2(d) should be deleted from clause 8.6(c), as it does not deal with the spread of ordinary hours.

Clause 9.1(d) – Breaks – Unpaid meal breaks

154. The reference to clause 9.1 in clause 9.1(d) should be amended to clause 9.1(a). This properly reflects the current clause 25.4.

Clause 10.1 – Minimum wages

155. For ease of reference, Ai Group submits that the preamble and table at clause 10.1 of the Exposure Draft should be numbered 10.1(a), and subclauses (a) and (b) should be renumbered accordingly.

Clause 11.4 – Allowances – Extra rates not cumulative

156. Ai Group refers to the question at clause 11.4 of the Exposure Draft. The clause is a standard provision that appears in a significant number of modern awards and it appeared in numerous pre-modern awards (e.g. the Metal Industry Award).. The clause seeks to ensure that weekend penalty rates, overtime rates, shift penalties/allowances and other rates are not cumulative so as to exceed the maximum of double the ordinary time rates.

157. Clause 11.4 should be a stand-alone provision, rather than falling under the heading of "allowances" as it does not relate solely to allowances. This would properly reflect the current award.

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

158. Clause 13.5(b)(ii) should also refer to clause 8.5 to ensure consistency with the effect of current clause 24.3(b)(ii).

Clause 14.1(a) – Overtime – Payment for working overtime

159. The current clause 26.1(a) requires the payment of overtime rates for work done outside ordinary hours, which is defined by clause 26.1(b). The Exposure Draft, at clause 14.1(a), confines the payment of overtime to time worked outside the *spread* of ordinary hours. The definition of ordinary hours, as per the current award, is found at clause 14.1(b).

160. The inclusion of the reference to the *spread* in 26.1(a) is likely to confuse readers of the award.

Clause 14.3(b) – Overtime – Rest period after overtime

161. With regard to the question in the Exposure Draft, the wording of the clause as drafted is correct.

Clause 15.2(a) – Annual leave – Additional leave for certain shiftworkers

162. Clause 15.2(a) of the Exposure Draft refers to clause 15.1. We refer to the Commission's decision that summaries of the NES will not be included in modern awards.[7] The reference in clause 15.2(a) to 15.1 should be amended to read "s.87(1)(b) of the Act", as per the current award.

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

163. The table at Schedule A.1.3 should be amended to include penalty rates payable to shiftworkers on Saturdays (see clause 24.4 of the current award and clause 13.6 of the Exposure Draft).

[7] *4 Yearly Review of Modern Awards* [2014] FWCFB 9412 at [35] – [36].

12. EXPOSURE DRAFT – STORAGE SERVICES AND WHOLESALE AWARD 2014

Clause 3.1 – Coverage

164. Clause 3.1 of the Exposure Draft deviates from the current clause 4.1 by adding the words *"to the exclusion of any other modern award"* at the end of the provision. Those words should be deleted.

165. Clause 4.1 of the current award establishes the coverage of the award but does not deal with the interaction between it and other modern awards. It is clauses 4.2(a), 4.2(d) and 4.6 that address this issue.

166. The *Storage Services and Wholesale Award 2010* like, say, the *Clerks – Private Sector – Award 2010*, contains important coverage provisions which prevent particular types of employees who are found in many industries (e.g. storepersons, clerks) being inappropriately removed from coverage under the relevant industry award.. The phrase *"to the exclusion of any other modern award"* is not appropriately included in such awards.

167. Clause 3.1 should go no further than the current clause 4.1. The insertion of the relevant words potentially contradicts the later provisions of clause 3 of the Exposure Draft that deal with the interaction between this award and other modern awards. Any such amendment to the coverage of this award would be a substantive change and should not be adopted.

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

168. Clause 12.3(b) is listed at clause 5.2(a)(i), however is not a facilitative provision. It simply requires the payment of an allowance with respect to travelling, transport and fares reimbursement.

169. Ai Group refers to the question contained at clause 5.2(a) of the Exposure Draft in this regard and submits that clause 5.2(a)(i) should be deleted.

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

170. Clause 5.2(a)(ii) refers to clause 8.1 – Hours of Work – ordinary hours. Ai Group submits that this reference should be amended to read "clause 8.1(d)".

171. Clause 8.1 contains two provisions that provide for facilitation by individual agreement: clauses 8.1(d) and 8.1(e). Clause 8.1(e) is specifically referenced at clause 5.2(a)(iii). On this basis, clause 5.2(a)(ii) should be amended to make clear that it relates only to clause 8.1(d).

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

172. Clause 5.3(a)(i) refers to clause 11 – Payment of wages. Clause 11 does not contain any provision that enables facilitation by majority agreement. On this basis, Ai Group submits that clause 5.3(a)(i) should be deleted.

Clause 5.3(a)(ii) – Facilitative Provisions – Facilitation by majority agreement

173. Clause 5.3(a)(ii) refers to clause 8.1 – Hours of work – ordinary hours. Clause 8.1 contains two provisions that provide for facilitation by majority agreement: clauses 8.1(d) and 8.1(e). Both of these provisions are separately listed in clause 5.3(a). Therefore, Ai Group submits that clause 5.3(a)(ii) should be deleted.

Clause 5.3(a)(vi) – Facilitative Provisions – Facilitation by majority agreement

174. Clause 5.3(a)(vi) refers to clause 15.1 – Shift rosters, however that provision contains shiftwork definitions and penalties and does not provide for facilitation by majority agreement. Clauses 15.2 and 15.4(d) provide for facilitation by majority agreement. On this basis, Ai Group submits that clause 5.3(a) should refer to those clauses instead.

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

175. Clause 6.4(c)(i) requires the payment of the "ordinary hourly rate" and a 25% loading on the "ordinary hourly rate". However, the term "ordinary hourly rate" is not defined in the award, nor is it used in the minimum wages clause to describe the rates there prescribed.

176. Ai Group submits that the term "ordinary hourly rate" should be replaced with "minimum hourly rate". That is the term used in clause 10.1 of the Exposure Draft to describe 1/38h of the minimum weekly rate.

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

177. Ai Group opposes the insertion of clause 6.4(c)(ii). The clause is not necessary to achieve the modern awards objective. We refer to our submissions regarding the stage 1A and 1B Exposure Drafts, dated 26 September 2014, at section 3.5.

178. We note that the ACTU has also raised concerns regarding the inclusion of such a provision.[8]

Clause 8.1(a) – Hours of work – Ordinary hours of work – day workers

179. Clause 22.1 of the current award provides for ordinary hours of work. The ordinary hours specified apply to full-time employees and casual employees. The ordinary hours of work of a part-time employee are separately identified in clause 11.3(b).

180. The express reference to full-time employees in clause 8.1(a) of the Exposure Draft, erroneously removes casual employees from its application. This deviates from the current award and would result in a breach of s.147 of the Act. On this basis, Ai Group submits that the words *"A full-time employee's"* should be deleted.

[8] See submissions dated 15 October 2014.

181. The clause should also be amended by inserting the words "up to 38 per week". Without this amendment, the clause could be interpreted as requiring casual employees to work 38 ordinary hours a week, which would be contrary to clause 6.4(a).

Clause 8.1(c) – Hours of work – Ordinary hours of work – day workers

182. Clause 8.1(c) introduces the word "shift" which is not used in the current clause 22.1, other than where it relates specifically to shiftworkers. Ai Group submits that the clause should use the terminology of the existing award clause by substituting the words *"on shifts"* with *"on days".*

Clause 8.2 – Hours of work – Spread of hours

183. Ai Group refers to the question contained at clause 8.2 of the Exposure Draft. The words of the clause do not give rise to the suggestion, explicitly or otherwise, that the other end of the spread must be shifted to maintain a span of 10.5 hours. Therefore, Ai Group submits that the clause permits the expansion of the spread of hours at either end such that the spread could be extended from 6.00 am to 6.30 pm.

184. Clause 8.1(d) states that an employee may work up to 10 ordinary hours in a day. This clause supports the above interpretation. It enables an employer, by agreement with the employee/s, to stagger working days of up to 10 ordinary hours in length for different employees over a possible spread of 12.5 hours with some employees, say, starting at 6.00am and others finishing at 6.30pm. This flexibility is essential to business operations in the industry and needs to be maintained.

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

185. The reference to clause 9.4(b) in clause 8.4(d) should be amended to refer to clause 8.4(b). This appears to be a drafting error.

Clause 10.2 – Minimum wages – Juniors

186. While the current award expresses junior rates of pay as a percentage of the relevant adult rate, the Exposure Draft includes the monetary amount payable. Ai Group submits that the expression of those rates are inaccurate.

187. Junior employees are entitled to a percentage of the weekly wage for the classification of Storeworker grade 1 or Wholesale employee Level 1. The minimum rates payable to employees under those classifications increase incrementally from commencement, after three months and after 12 months. Thus, the junior rate payable must be applied to the appropriate adult rate depending upon the employee's length of service. The table at clause 10.2 of the Exposure Draft does not properly capture this.

188. Ai Group submits that the table should either be amended to include the rate payable to a junior employee at each age on commencement, after three months and after 12 months. In the alternative, the table need not express the monetary value of the rate payable. The table as found at clause 15.2 of the current award should be retained.

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

189. Clause 20.4 of the current award addresses circumstances in which an employee is to take a day off by virtue of the employee's ordinary hours or because the day is a public holiday.

190. Clause 11.4 of the Exposure Draft deviates from this as follows:

- It refers only to their pay day being a public holiday, rather than the employee taking a day off by virtue of the day being a public holiday. That is, it does not contemplate the possibility of an employee working on a public holiday.

- It refers to the employee's pay day coinciding with a "day off". This is a broader concept than a day off "by virtue of the employee's ordinary hours", which is a reference to a rostered day off. A "day off" may include absence from work for any reason.

191. The words of the current clause should be retained.

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

192. Clause 12.3(b)(i) corresponds with clause 16.3(a) of the current award. It purports to restructure and redraft the words of the clause. Ai Group submits that the clause deviates from the current award in the following ways and, on that basis, the words of the current award should be retained:

- The words *"present for work at such job at the usual starting time"* have been replaced with the words *"start work at the usual starting time".*

  The current clause requires an employee to present for work at the job away from the employee's accustomed workshop or depot. It does not require the employee to start work at that time. Such a distinction may be relevant where an employee is attending a different worksite and is required to await direction from his/her employer before starting work. It also provides an employer with the flexibility of determining when the employee starts work at the different worksite.

- The words "in reaching and returning from such job" have been replaced with the words "travelling to and from work".

  The words "such job" refer to the job away from the employee's accustomed workshop or depot". The substitution of this phrase with the word "work" makes the clause less clear.

- The words "from the employee's home to such workshop or depot and returning" have been replaced with the words "to and from their usual workplace".

The clause should consistently use the term “workshop or depot” to ensure that the reference is to the employee’s accustomed workshop or depot. The word “workplace” could mean something else.

- The words “such workshop or depot” at the conclusion of the clause have been replaced with “their usual workplace”.

  The clause should consistently use the term “workshop or depot” to ensure that the reference is to the employee’s accustomed workshop or depot. The word “workplace” could mean something else.

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

193. The current clause 16.6(c), at the second bullet point, contemplates a scenario where an employee receives compensation from the workers’ compensation scheme and from the employer which exceeds the cost of the replacement or repair of an employee’s dentures and/or prescription spectacles. The second bullet point of clause 12.3(e)(iii) of the Exposure Draft does not include a reference to reimbursement from the employer. The paragraph should be amended to reflect the current clause.

Clause 13 – Higher duties

194. Ai Group does not object to the references to “weekly employee” being replaced with “full-time or part-time employee”.

Clause 15.1 – Shiftwork definitions and penalties

195. Several concerns arise regarding clause 15.1 of the Exposure Draft:

- The heading should be amended to remove the words “and penalties”. The current award characterises the higher rate payable to an employee as an allowance. This characterisation can have implications for the calculation of workers compensation and long service leave entitlements under State legislation. For this reason, a cautious

approach should be taken in altering the language presently used to describe a shiftwork allowance or penalty.

- Further, the payment of 112.5% of the minimum hourly rate is not the *penalty* payable to the employee – it is the relevant rate of pay to which the employee is entitled.

- The rates expressed with respect to an afternoon shift are incorrect and should be amended to 115% for full-time and part-time employees and 140% for casual employees.

- The rates expressed with respect to a night shift are incorrect and should be amended to 130% for full-time and part-time employees and 155% for casual employees.

Clause 15.2 – Shiftwork

196. Ai Group refers to the question contained at clause 15.2 of the Exposure Draft. The award does not give rise to the suggestion, explicitly or otherwise, that the other end of the spread must be shifted to maintain a spread of 10.5 hours. Therefore, Ai Group submits that the clause permits the expansion of the spread of hours at one end or both ends provided that no employee works a longer ordinary shift than the maximum permitted under the award.

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

197. Clause 16.4(b) deviates significantly from the current clause 24.4(b) and (c). Ai Group submits that such variations, which affect the substance of the clause, should not be made through the redrafting process. The words of the current clause should be retained.

198. The following variations of substance are identifiable:

- The current clause 24.4(b) commences with the words “Where an employee works so much overtime”. Those words do not appear in clause 16.4(b) of the Exposure Draft. They should be inserted to make

clear that the clause applies only where an employee has worked overtime.

- The current clause contemplates circumstances where "there are fewer than 10 hours between finishing overtime on one day and commencing ordinary work on the next day". In the Exposure Draft, a reference is simply made to "resuming work at the employees' next rostered starting time". The current wording is necessary to make clear that the clause applies only where an employee has worked overtime. Further, the Exposure Draft introduces the notion of a "rostered starting time". This may differ from the commencement of an employee's "ordinary work", which is a reference to the ordinary hours of work, as defined by the award.

- The current clause ensures that an employee does not suffer a loss of pay for "ordinary working time" occurring during the ten hour break. The Exposure Draft, at clause 16.4(b)(i), simply states that an employee may start work later to ensure that he or she receives a break of ten hours, without loss of pay. The words of the current clause should be reinserted to ensure that the entitlement is confined to loss of pay for "ordinary working time" occurring during the ten hour break.

- Clause 16.6(b)(ii) commences with the words "if the employee is required to work". This is to be compared to clause 24.4(c), which deals with circumstances where an employee "resumes work or continues to work". The words of the current clause should be retained as they make clear that the provision applies in both of those circumstances. The generic reference to "work" is less clear.

- Clause 24.4(c) of the current award requires payment at a higher rate "until released from duty". Clause 16.6(b)(ii) of the Exposure Draft, however, requires payment at a higher rate "until the employee has received a break of at least 10 hours". Such an amendment is a substantial change and would result in a significant increase in costs for employers.

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

199. Ai Group refers to the question contained at clause 16.6(a) of the Exposure Draft. The "appropriate rate" is the rate payable based on the employee's classification, to be determined in accordance with when the work is performed. If the work is performed during overtime, as defined by the award, the appropriate rate will be the overtime rate.

Clause 17.2(a) – Annual leave – Additional leave for certain shiftworkers

200. Clause 17.2(a) of the Exposure Draft refers to clause 17.1. We refer to the Commission's decision that summaries of the NES will not be included in modern awards.[9]

201. In light of this decision, the reference in clause 17.2(a) to 17.1 should be amended to read "s.87(1)(b) of the Act", as per the current award.

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

202. Clause 17.4(a) mandates that the employer must give one month of notice whereas the current clause 26.5 states that the employer may give such notice. This is a substantive change that imposes an additional obligation on employers and should not be adopted.

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

203. Clause 17.4(b) refers to clause 15.4(a). This should be amended to read "17.4(a)". This appears to be a drafting error.

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

204. Clause 17.4(b) requires an employer to give notice to a new employee *"on the date they are offered employment".* This deviates from the current clause 26.5, which refers to the *"date of the employee's engagement",* which will not be before the date on which the employee accepts the employer's offer of employment. The existing wording should be retained.

[9] *4 Yearly Review of Modern Awards* [2014] FWCFB 9412 at [35] – [36].

Clause 20.4(a) – Public holidays – Rostered day off falling on a public holiday

205. Clause 20.4(a) contains a typographical error that should be amended as follows:

> "The alternate day is to be determined …".

Clause B.1.2 – Summary of hourly rates of pay – Full-time and part-time employees – shiftworkers – penalty rates

206. Consistent with our submissions regarding clause 15.1, "penalty rates" should be deleted from the heading to B.1.2.

Clause B.1.2 – Summary of hourly rates of pay – Full-time and part-time employees – shiftworkers – penalty rates

207. The rate for a night shift should be amended to read "130%". The rates do not require amendment.

Clause B.1.3 – Summary of hourly rates of pay – Full-time and part-time employees – overtime rates

208. Rates for overtime performed on a Saturday or Sunday should be calculated in accordance with clauses 16.5(a)(i) and 16.5(b)(i) of the Exposure Draft. The rates there prescribed relate to all time worked (i.e. ordinary time and overtime) as is evident from the reference to overtime in 16.5(a)(ii).

209. On this basis, the rates in Schedule B.1.3 should be amended. Overtime worked on a Saturday is to be paid at 150% of the minimum hourly rate, not 150% for 2 hours and then 200%.

Clause B.2.2 – Summary of hourly rates of pay – Casual employees – shiftworkers – penalty rates

210. Consistent with our submissions regarding clause 15.1, "penalty rates" should be deleted from the heading to B.2.2.

Clause B.2.2 – Summary of hourly rates of pay – Casual employees – shiftworkers – penalty rates

211. The rate for a night shift should be amended to read "155%". The rates do not require amendment.

Substantive Changes

212. Ai Group filed an Outline of Issues on 25 November 2014 identifying the substantive changes sought to the *Storage Services and Wholesale Award 2010*.

213. Ai Group proposes that: (with reference to the current award)

- The classification definition at B.8 – *Wholesale Employee Level 4* should be re-worded to clarify the employees who are and are not covered by this classification.

- An annualised salary clause should be inserted into the award to provide employers and employees with appropriate flexibility, particularly for employees classified at higher levels.

- The time **5:30pm** in clause 22.2(a) – *Spread of hours*, should be amended to **6:00pm**. Clause 22.2(a) does not align with Clause 25 – *Shiftwork* which provides for a definition of afternoon shift as a shift finishing after **6:00pm** and at or before midnight.

- Clause 20.3 – *Payment of wages on termination of employment* 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.