Australian Industry Group Submission to the Fair Work Commission

26 September 2014

4 Yearly Review of Modern Awards – Exposure Drafts – Sub-group 1A and 1B awards

AUSTRALIAN INDUSTRY GROUP

CONTENTS

1. INTRODUCTION 3

2. PRELIMINARY ISSUES 3

3. ISSUES COMMON TO EACH EXPOSURE DRAFT 4

4. EXPOSURE DRAFT – ALUMINIUM INDUSTRY AWARD 2014 17

5. EXPOSURE DRAFT – AMBULANCE AND PATIENT TRANSPORT INDUSTRY AWARD 2014 19

6. EXPOSURE DRAFT – ASPHALT INDUSTRY AWARD 2014...........................29

7. EXPOSURE DRAFT – CEMENT, LIME AND QUARRYING AWARD 2014......31

8. EXPOSURE DRAFT – CLEANING SERVICES AWARD 2014 34

9. EXPOSURE DRAFT – COTTON GINNING AWARD 2014 38

10. EXPOSURE DRAFT – CONCRETE PRODUCTS AWARD 2014......................41

11. EXPOSURE DRAFT – PREMIXED CONCRETE AWARD 2014 42

12. EXPOSURE DRAFT - SALT INDUSTRY AWARD 2014 44

13. EXPOSURE DRAFT – SECURITY SERVICES INDUSTRY AWARD 2014 48

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this submission in response to the Fair Work Commission's (**Commission**) publication of Exposure Drafts for modern awards in sub-groups 1A and 1B during the Award Stage of the 4 Yearly Review of Modern Awards.

2. This submission is made in accordance with the Commission's Statements of 13 August 2014 and 5 September 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 1A and 1B. 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. This section addresses clauses that are contained in most, if not all, of the Exposure Drafts.

3.1 Definition of "all purposes"

9. The Exposure Drafts include a definition of "all purposes" as follows:

> ***"all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on leave".*

10. Historically, "all purposes" has been commonly interpreted to mean "for all purposes of the award" except where a particular clause states otherwise.

11. The proposed definition goes beyond "for all purposes of the award" to include payments made to an employee, under the National Employment Standards (NES).

12. The proposed definition would expand the entitlements of employees, and increase costs for employers, in numerous areas including requiring that all purpose allowances be paid in respect of:

- Annual leave (s.90(1));
- Payments in lieu of annual leave on termination (s.90(2));
- Personal/carers' leave (s. 99);
- Compassionate leave (see s.106);
- Leave for the purposes of attending jury service (see s.111(2));
- Public holidays (see s.116); and
- Paid no safe job leave (see s.81A(2).

13. There are also numerous other types of leave / absences where an employee does not receive payment from the employer but receives payment from another party (e.g. workers' compensation). The definition of "all purposes" could create uncertainty regarding whether or not the allowances are payable as an award entitlement for these periods.

14. The proposed definition is inconsistent with the NES which provides that annual leave, personal/carer's leave and public holidays are payable at the "base rate of pay". A higher rate should only be imposed upon employers if such higher rate is expressly provided for in an award clause dealing with the relevant type of leave, not as a result of a sweeping and costly definition of "all purposes". For example, some annual leave clauses specify that certain all-purpose allowances are payable while an employee is on annual leave.

15. The definition of “all purposes” is arguably inconsistent with the prohibition on long service leave terms being included in awards (s.155) as the term “leave” in the clause could be interpreted to include long service leave.

16. If any definition of “all-purposes” is to be included in awards, the definition should be:

> *“all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance when calculating any payments under this award, unless otherwise stated in a particular clause”.*

3.2 Deletion of transitional provisions

17. The Exposure Drafts delete the transitional provisions in clauses 2.3 to 2.6 of the current awards. Ai Group supports the proposed deletion of these clauses as they are, or will shortly become, obsolete.

18. The Exposure Drafts delete the transitional provisions relating to redundancy pay, accident pay and district allowances, which cease to operate after 31 December 2014. Ai Group has sought the deletion of these clauses as part of the *Transitional Provisions Common Issue Case* (AM2014/190) and accordingly we support the deletion of these provisions from the Exposure Drafts.

19. Also, the Exposure Drafts remove the following definitions relating to transitional instruments:

- Agreement-based transitional instrument;
- Award-based transitional instrument;

- Division 2B State award;
- Division 2B State employment agreement;
- Enterprise award-based instrument;
- NAPSA; and
- Transitional minimum wage instrument.

20. Ai Group supports the deletion of these definitions from a modern award, where the term defined no longer appears in the award. We note that some of the terms currently appear in the accident pay and district allowance transitional provisions. These matters are the subject of the *Transitional Provisions Common Issue Case*.

3.3 Wages clauses

21. Ai Group does not support the concept of incorporating an "Ordinary Hourly Rate" column in the wages clause of awards which sets out rates which include all-purpose allowances payable to all employees. Even though there is typically a footnote that explains that the all-purpose allowances have been included in the rate, many employers are likely to overlook the tiny footnote and believe that they need to pay the allowance/s on top of the Ordinary Hourly Rate.

22. Further, the concept of identifying an "Ordinary Hourly Rate" in an award schedule is misleading for employers who are required to calculate entitlements arising from outside the award under the NES. Some NES entitlements, such as annual leave, personal/carer's leave and public holidays

refer to the entitlement being calculated on the "base rate of pay" as defined in s.16 of the FW Act, which is a definition that excludes monetary allowances.

23. Moreover, under Regulations 3.33(3) and 3.46(g) of the *Fair Work Regulations 2009*, employers are obliged to specify the amount of an allowance paid to an employee as part of record keeping and pay slip obligations. The separation of a minimum hourly rate of pay and quantum of the relevant allowance makes it easier for employers to comply with record-keeping and pay slip obligations. ,

24. If despite Ai Group's opposition, the Commission decides to proceed with the approach in the Exposure Draft, the relevant Schedule summarising the hourly award rates of pay should also include a column setting out the "Minimum Hourly Rate" in addition to the column for "Ordinary Hourly Rate" to address the concerns above. We also suggest a notation is included in the schedules to indicate that the Minimum Hourly Rate may be the "base rate of pay" for the purposes of calculating certain entitlements under the NES.

25. Further, notations need to be included in the Allowances Clause for each relevant allowance that has been included in the "Ordinary Hourly Rate" which appears in the wages clause.

3.4 Relationship between the award and the NES

26. A minor change has been made to the award clause that states that the NES and award, together, contain the minimum conditions of employment. The new clause states:

> *"The National Employment Standards (NES) and entitlements in this award contain the minimum conditions of employment for employees covered by this award."*

27. Ai Group prefers the existing clause which states:

> *"The NES and this award contain the minimum conditions of employment for employees covered by this award."*

28. Awards and the NES contain rights for employees and employers, and obligations upon employees and employers. This dual role of awards is captured more adequately in the current clause than in the proposed new clause.

3.5 Casual loading

29. The Exposure Drafts include a new clause which states that casual loading is paid instead of certain benefits.

30. There are differences in the clauses in particular Exposure Drafts with no apparent rationale for the differences. For example:

- The *Exposure Draft – Aluminium Industry Award 2010* states:

  > *"6.7 The casual loading is paid instead of annual leave, paid personal/carer's leave, redundancy benefits and other entitlements of full-time and part-time employment."*

- The *Exposure Draft – Asphalt Industry Award 2010* states:

  > *"6.4(f) The casual loading is paid instead of annual leave, paid personal/carer's leave, <u>notice of termination</u>, redundancy benefits and other entitlements of full-time and part-time employment."*

31. Ai Group is not convinced of the merits of including the proposed clause because the casual loading is paid in lieu of a myriad of entitlements some of which do not apply to casuals at all, some of which apply only to certain long-term casuals, and some of which are very difficult to quantify. Also, some of the entitlements arise from the award, some arise from the NES and some arise from other sources (e.g. State long service leave laws). In the *Metal Industry Casual Employment Decision* (Print T4991) a Full Bench of the Australian Industrial Relations Commission took into account the following entitlements in deciding that the casual loading in the *Metal, Engineering and Associated Industries Award 1998* should be increased from 20% to 25%:

- Public holidays
- Annual leave
- Annual leave loading
- Sick leave
- Carer's leave
- Bereavement leave
- Long service leave
- Notice of termination
- Redundancy pay
- Job search leave
- Lost training opportunities

- Access to superannuation

32. If the aim of the clause is to inform employers and employees of the award provisions which do not apply to casuals, this is a different issue to the entitlements which the casual loading is “paid instead of”.

33. If any model clause is to be inserted into awards to clarify certain award and NES entitlements that do not apply to casuals, we suggest the following clause:

> *“Casual employees are not entitled to payments for public holidays not worked, annual leave, annual leave loading, paid personal/carer’s leave, paid compassionate leave, notice of termination, paid redundancy benefits, paid jury service and various other entitlements of full-time and part-time employment.”*

3.6 Facilitative provisions

34. Each Exposure Draft contains a new facilitative provisions clause. In addition to listing various facilitative provisions in the relevant award, the clause:

- Provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee or the majority of employees;

- States that a facilitative provision should not be used as a device to avoid award obligations; and

- States that a facilitative provision should not result in unfairness to an employee or employees covered by the award.

35. Ai Group is not convinced that such a clause is necessary to meet the modern awards objective. If the Commission disagrees with Ai Group's view, the clause should do no more than list the facilitative provisions. It should not impose additional conditions or hurdles upon agreement-making. The facilitative provisions in awards are currently operating fairly and effectively without additional conditions; there is no evidence to the contrary.

36. To subject the facilitative provision agreement-making process between employers and employees to additional regulation would not be appropriate or consistent with the modern awards objective, particularly the need to take into account the regulatory burden on business (s.134(1)(f)), and to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)).

37. Imposing additional conditions on existing award facilitative provisions has the potential to narrow the scope for agreements to be reached between employers and employees.

38. Vague concepts such as "not be used as a device to avoid award obligations" and "not result in unfairness" are inconsistent with the need for awards to be simple and easy to understand (s.134(1)(g)), and to be enforceable. For example, an agreement validly reached with a majority of employees to change hours of work may subsequently be challenged as unfair to an individual for reasons particular to that person. Such a consequence would serve as a disincentive for employers and employees to reach agreements.

39. The draft clause fails to recognise the fact that some facilitative provisions can only be accessed by agreement between an individual employee and the employer, while other provisions can only be accessed by agreement with the majority of employees. Many facilitative provisions can be accessed either individually or with the majority, but by no means all provisions. The structure and conditions for facilitative provision agreement-making are best addressed in the subject matter clause in which each facilitative provision appears, as currently applies widely throughout the modern award system, not in a facilitative provisions clause.

40. If, despite Ai Group's submissions, the Commission decides to include a facilitative provisions clause in each award, the following sentence should be deleted from the draft clause, for the reasons identified above.

> *"Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award."*

41. Notably, the vague concepts in the above sentence have not been incorporated into the Commission's model Award Flexibility Clause.

3.7 Schedule – Summary of Hourly Award Rates of Pay

42. The Exposure Drafts contain a Schedule that sets out minimum hourly rates of pay for each classification under the award. The Schedules also sets out hourly rates inclusive of shift loadings, weekend penalty rates, public holiday penalty rates and overtime penalty rates.

43. Ai Group is not convinced that the inclusion of the Schedule is necessary to meet the modern awards objective.

44. We are also very concerned that the timeframe for the 4 Yearly Review will not allow sufficient time for all relevant parties to be made aware of the cost and other implications of the Schedule and to be given a realistic opportunity to carefully check the rates of pay in the Schedule and to understand the award interpretations (some of which are contested between industrial parties) which underpin the rates of pay in the Schedule.

45. If, despite Ai Group's submissions, the Commission decides to include the Schedule in awards it is essential that the Schedule clearly specifies the formulas used to calculate the rates and what rounding rules have been used.

3.8 Schedule – Summary of Monetary Allowances

46. Ai Group does not oppose the inclusion of a Schedule that sets out the monetary allowances payable under the award and the manner in which they have been calculated.

3.9 Examples

47. Ai Group does not oppose the inclusion of examples within awards, provided that the examples are relevant and accurate.

3.10 Pay slips

48. Ai Group does not agree that the inclusion of a provision identifying the pay slip requirements in the FW Act and *Fair Work Regulations 2009* is necessary to meet the modern awards objective.

49. The inclusion of references to a few legislative requirements in awards has the potential to create confusion and uncertainty. There are numerous provisions in the FW Act and in a large number of other federal and State statutes that have relevance to the employment relationship, and which are not referred to in the Exposure Drafts. It is not the role of awards to summarise legislative entitlements.

50. Also, the inclusion of a reference to this entitlement in awards could result in a tripling of the penalty for breaches of the pay slip requirements, in conflict with the intentions of Parliament. The maximum penalty for breach of section 536 of the FW Act is $25,500. Repeating the obligation in awards could result in a further penalty of $51,000 being imposed (i.e. a total penalty of $76,500) for an award breach which would be extremely excessive.

3.11 Summary of NES entitlements

51. The Exposure Drafts contain a summary of NES entitlements relating to annual leave, personal/carer's leave, parental leave, community service leave, public holidays and redundancy.

52. Such summaries are not necessary to achieve the modern awards objective.

53. A mere reference to the NES is sufficient to alert the reader to the need to refer to the FW Act. It is not the role of awards to summarise legislative entitlements.

54. A summary of NES entitlements would entrench legislative provisions in modern awards. If the summary in the award includes entitlements that are subsequently amended by the Legislature, each award would have to be amended. Until this occurred, there would be confusion, uncertainty and enforcement difficulties.

55. Further, a summary of NES entitlements cannot accurately reflect the rights and obligations under NES. This gives rise to the potential for a reader of the award to misunderstand or to be completely unaware of the various exclusions and nuances within the legislative provisions, which affect important rights, and obligations. For example, the summary of NES provisions regarding termination of employment and redundancy does not make reference to s.123 of the Act, which lists important exclusions of classes of employees who are not entitled to notice of termination and/or redundancy benefits.

56. An additional example arises with respect to parental leave. The summary of these NES provisions, as it appears in the Exposure Drafts:

- Does not make reference to the entitlement to take concurrent leave of 8 weeks (s.72(5));

- Inaccurately describes the right to request additional parental leave as a right to request "an additional 12 months' unpaid leave", when s.76 provides a right to request "up to" 12 additional months of leave; and
- Does not make reference to the return to work guarantee at s.84.

57. An additional problem that could result is a doubling of penalties for breaches of NES provisions, in conflict with the intentions of Parliament. The maximum penalty for a breach of the NES is $51,000. Repeating the obligation in awards could result in a further penalty of $51,000 being imposed (i.e. a total penalty of $102,000) for an award breach, which would be extremely excessive.

58. Section 55(6) gives some protection by clarifying that NES "entitlements" that are duplicated in awards do not result in a double benefit (or presumably exposure to a double penalty for breaches). However, the protection only appears to relate to the "entitlements" of employees, and not to obligations upon employers and employees that are not appropriately characterised as employee entitlements.

4. EXPOSURE DRAFT – ALUMINIUM INDUSTRY AWARD 2014

59. The concerns raised in section 3 above, apply to the *Exposure Draft – Aluminium Industry Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6 – Types of employment

60. In respect of sub-clauses 6.5(e) and (f) Ai Group is unclear as to why the term "engage" has been replaced with the term "roster" in respect of minimum engagement periods. The term "roster" is commonly used with reference to

specified work patterns for a group of employees. The term “engage” is a more appropriate term.

61. In respect of clause 6.6(c) a change has been made to the rate upon which the casual loading is calculated from “the minimum weekly wage”” to “the ordinary hourly rate”. Ai Group opposes this change. The change could result in a large increase in costs for employers.

Clause 8.3 – Work cycle of fly-in-fly-out / drive-in-drive-out operations

62. With regard to the question asked on page 11 of the Exposure Draft, we propose that clause 8.1(i) be amended as follows:

> *“Subject to clause 8.3, a roster cycle must not be longer than 26 consecutive weeks.”*

Clause 9.4(d) Rest breaks – overtime

63. Ai Group opposes the amendment that has been made to existing clause 21.5(c) in the Exposure Draft. The new wording in clause 9.4(d) of the Exposure Draft potentially narrows the matters over which an employer and the majority of employees may reach agreement.

Clause 13.1 - Shiftwork penalties

64. With regard to the question asked on page 21 of the Exposure Draft, Ai Group supports the continuation of flat dollar shift allowances rather than the rates being converted to penalties based on an employee’s ordinary hourly wage. The conversion of the rates to penalties would most likely increase costs for employers, if not immediately, then over time.

Clause 13.4 and 14.9 – Extra rates not cumulative

65. With regard to the question on page 22 of the Exposure Draft, Ai Group has not interpreted the longstanding "extra rates not cumulative" provision in the Metal Industry Award and the Manufacturing Modern Award to include casual loadings.

66. With regard to the question on page 24 of the Exposure Draft, we prefer that the provision in clauses 13.4 and 14.9 is duplicated given the importance of the subject matter.

5. EXPOSURE DRAFT - AMBULANCE AND PATIENT TRANSPORT INDUSTRY AWARD 2014

67. The concerns raised in section 3 above, apply to the *Exposure Draft – Ambulance and Patient Transport Award 2010.*

68. Subsequent to the release of the Exposure Draft, Ai Group convened a meeting and teleconference of major employers covered by the Award across various States to consult about the Exposure Draft. At the meeting and in communications since the meeting the employers in the industry have expressed great concern about aspects of the Exposure Draft.

69. **Submissions from the following organisations are attached which express strong concerns about various provisions in the Exposure Draft:**

- **St John's Ambulance; and**
- **NPT Group.**

70. The employers operating within the ambulance and patient transport industry provide an essential service to the community. The nature of the services provided in the industry necessitates that employers maintain a high degree of workforce flexibility. The provisions of the Exposure Draft, many of which have been proposed by unions without any consultation with the employers in the industry, would result in the loss of substantial existing workforce flexibility and cause major operational difficulties and cost increases for employers

71. The Exposure Draft is unusual in that a raft of union claims which have not been agreed upon with employers have been included in the Draft.

72. On behalf of employers in the industry, Ai Group strongly opposes the changes proposed by the HSU and UV. Some views on these claims are set out below. Further details of the employers' concerns may be provided in our Reply Submission due on 15 October 2014.

Schedule E – Definitions – definition of "Ordinary Pay"

73. The HSU proposes that the Award be varied to include an extremely expansive and illegitimate definition of "Ordinary Pay". The union's definition which appears in Schedule E of the Exposure Draft includes numerous penalties and allowances. The list proposed by the union is non-exhaustive and includes:

- Saturday, Sunday and public holiday rates;
- shift penalties;
- communications centre allowance;

- operational crewing allowances;
- flying allowance;
- on-call allowance;
- control call allowance;
- paramedic skills allowances;
- relieving allowance; and
- uniform and protective clothing allowance.

74. The definition includes many allowances that are not all-purpose allowances. The paramedic skills allowances are the only allowances that are currently payable for all purposes of the Award.

75. The proposed definition of "Ordinary Pay" would impose major additional costs on employers. For example:

    - In the Exposure Draft, the 17.5% annual leave loading is to be calculated on "ordinary pay". Therefore the annual leave loading would be loaded on top of shift and weekend penalties, as well as the other payments in the list above.

    - In the current award (clause 10.5(c)), the casual loading is payable on the "minimum weekly wage prescribed in clause 14 – Minimum weekly wages", but the Exposure Draft requires the casual loading to be applied to the "ordinary hourly rate" (clause 6.5(c)(ii)). Therefore the

casual loading would be loaded on top of shift and weekend penalties, as well as the other payments in the list above.

- In the Exposure Draft, the triple time penalty for working more than 12 consecutive shifts (clause 13.1) is to be applied to the "ordinary hourly rate". Therefore, this penalty would be applied to a much higher rate than currently applies.

- In the Exposure Draft, the weekend penalties are to be applied to the "ordinary hourly rate" (clause 13.1). Therefore, the weekend penalties would be applied to a much higher rate than currently applies.

- In the Exposure Draft, the public holiday penalties are to be applied to the "ordinary hourly rate" (clause 13.1). Therefore, the public holiday penalties would be applied to a much higher rate than currently applies.

- In the Exposure Draft, the overtime penalties are to be applied to the "ordinary hourly rate" (clause 14.2). Therefore, the overtime penalties would be applied to a much higher rate than currently applies.

- In the Exposure Draft, the on call penalty is to be applied to the "ordinary hourly rate" (clause 14.7). Therefore, the on call penalty would be applied to a much higher rate than currently applies.

76. In Australian industrial law, it is well-recognised that "Ordinary Pay" does not include weekend penalties, public holiday penalties, shift loadings and most allowances.

77. In *Kucks v CSR Limited* (66 IR 182 at 186-187) Justice Madgwick said:

> "*In Australia, the term "ordinary pay" has, according to the Macquarie Dictionary (2nd ed) entered the language, as meaning:*
>
> > *"ordinary pay . . . remuneration for an employee's normal weekly number of hours fixed under the terms of his employment but excluding any amount payable to him for shift work, overtime, or other penalty."*
>
> *That meaning of ordinary is even more apt in the context of the present award.*
> *- - -*
> *When the framer(s) of the award wished to indicate that full, usual pay should be paid, they had no difficulty in making their meaning plain. For example, in cl 16, in relation to annual leave, it was provided:*
>
> > *"(a) . . . annual leave shall be granted on full pay ...*"

78. In addition to the costly award impacts, the HSU's definition of "Ordinary Pay" could have relevance beyond the Award given that this term is used in long service leave laws, superannuation laws and workers' compensation laws.

79. The HSU has provided no evidence in support of its costly and inappropriate claim which is strongly opposed by employers in the industry. The claim is a thinly disguised attempt to achieve a very large increase in remuneration.

80. Not only would award remuneration increase, there would be a significant impact on agreement making due to the operation of the Better Off Overall Test, and the bargaining claims that the unions would undoubtedly pursue if the award claim is accepted.

81. The HSU's definition of "Ordinary Pay" conflicts with the modern awards objective; in particular the need for the Commission to take into account the likely impact on business, including on productivity and employment costs (s.134(1)(f)). The claim if granted would make it much more difficult to roster

employees to work on public holidays and weekends at sustainable costs; hence the Union's claim is inconsistent with s.134(1)(d) and (g) of the Act.

82. The inclusion of a definition of "Ordinary Pay" in the Award is not necessary to meet the modern awards objective and hence is inconsistent with s.138. This Award and thousands of other pre-modern and modern awards have operated effectively for many years without such a definition.

83. The claim would have adverse impacts on the community given the vital services that the employers covered by the Award provide. These vital services are already very costly to provide and labour costs are a substantial component of the total costs.

Clause 6.5(b) – Casual loading

84. In the Exposure Draft a change has been made to the rate upon which the casual loading is calculated from "the minimum weekly wage prescribed in clause 14 – Minimum weekly wages" to "the ordinary hourly rate". Ai Group opposes this change. The change would result in a large increase in costs for employers if the HSU's definition of "Ordinary Pay" is included in the Award (as discussed above).

Clause 6.5(d) – Overtime for a casual employee

85. The Exposure Draft replaces the existing clause 10.5(d) with clause 6.5(d). The proposed clause is repeated at clause 14.3 of the Exposure Draft and is discussed in the section below relating to clause 14 – Overtime.

Clause 7.2 – Training plans

86. The HSU proposes a new, very prescriptive and inappropriate training plan clause which has been included in the Exposure Draft at clause 7.2.

87. The proposed clause would require each employer to:

- Develop an individual training plan, for each employee with more than 6 months' service, within 60 days of a request being made by an employee; and

- Update the training plan, on the request an employee, at least annually.

88. The employer would be required to ensure that the training plan identified skills sets needed by the employee to progress to higher levels and rates of pay in the classification structure.

89. The proposed clause is a thinly disguised mechanism proposed by the union in order to achieve substantial increases in remuneration for employees. The clause would undoubtedly lead to a raft of reclassification claims and increased disputation in the industry.

90. The HSU has provided no evidence in support of its claim. The claim is strongly opposed by employers in the industry.

91. Employers in the industry have demonstrated a strong commitment to training, as is necessary due to the nature of the services provided. Businesses in this industry, and all industries, are entitled to determine what training is necessary

and beneficial for the business and for those who rely on the services provided.

92. The HSU's clause is entirely directed at the wishes of individual employees and the pursuit of higher wage rates for employees.

93. The clause is inconsistent with the important principle that it is the role of employers to determine the number of employees that the business needs at each skill level. The clause would potentially result in employers in the industry having too many employees classified at higher skill levels and too few employees classified at lower skill levels.

94. The prescriptive nature of the clause would impose an extremely high administrative burden on employers

95. The HSU's claim conflicts with the modern awards objective, in particular the need for the Commission to take into account the likely impact on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f)). The claim is also inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)).

Clause 8 – Hours of work

96. In 8.4(a) of the Exposure Draft the words "Hours of duty will be worked Monday to Sunday" should be replaced with "Hours of work will be worked between Monday and Sunday". All employees covered by the Award are not rostered to work on every day of the week.

Clause 14 – Overtime

97. Ai Group opposes the definition of overtime in clause 14.1(a) of the Exposure Draft because:

- It is inflexible and inconsistent with various provisions in the existing award;
- For full-time and part-time employees, it does not take account of the flexibility in clause 8.4(g) which enables alternations to be made to the hours fixed on the roster;
- For casual employees, it does not reflect the existing flexibility in the Award that allows an employer to engage a casual employee to work ordinary hours on any or all of the hours between 6.30am and 6.00pm without overtime being payable (unless more than 38 hours have been worked in the week or 76 hours in a fortnight) and without the employee being defined as a shift worker. Clause 14.1(a)(iii) indicates that the ordinary hours for a casual employee must be fixed on a roster or agreed with the employee, neither of which are existing requirements.

98. Clause 14.3 of the Exposure Draft (which is repeated at clause 6.5(d)) replaces the existing clause 10.5(d) which deals with overtime for casual employees. Existing clause 10.5(d) provides:

> *"The casual loadings in clause 10.5(c) are paid instead of any weekend or public holiday penalty rate that would otherwise be payable under this Award".*

99. Clauses 14.3 and 6.5(d) in the Exposure Draft state:

> *"The casual loadings in clause 6.5(c) are paid instead of any weekly or holiday penalty rates that would otherwise apply. Where a casual employee is entitled to be paid at overtime rates, the casual employee is entitled to the higher of the appropriate casual loading in clause 6.5(c) or the overtime rates specified in clause 14.2 for overtime hours worked".*

100. It is important that the proposed new second sentence in the above clause is amended as follows to avoid the imposition of additional costs on employers and the loss of existing flexibility:

> "*14.3 (a) The casual loadings in clause 6.5(c) are paid instead of any weekly or holiday penalty rates that would otherwise apply.*
>
> *(b) Except as provided for in 14.3(a), where a casual employee is entitled to be paid at overtime rates, the casual employee is entitled to the higher of the appropriate casual loading in clause 6.5(c) or the overtime rates specified in clause 14.2 for overtime hours worked.*"

Clause 14.7 – On call

101. The Exposure Draft proposes two changes to the on call provisions in clause 25 of the current award.

102. First, at clause 14.7(a) of the Exposure Draft the words "double time" are replaced with "200% of their ordinary hourly rate". This change would result in a large increase in costs for employers if the HSU's definition of "Ordinary Pay" is included in the Award (as discussed above).

103. Second, the Exposure Draft at clause 14.7(g) introduces a new entitlement for casual employees to be paid for three hours per call. This change will reduce flexibility for employers because while the minimum engagement period for a casual (in clause 6.5(b) of the Exposure Draft) is three hours, this period can

be reduced by agreement between the employer and the employee. We propose the following amendment to clause 14.7(g) of the Exposure Draft:

> *"(g) The provisions of this clause apply to casual employees who are required to be on call, however the minimum payment prescribed in clause 14.4(a) will be for three hours per call or any shorter period agreed upon between the employer and the employee, and not one and a half hours."*

Clause 15.5(b) – Annual leave loading

104. This clause in the Exposure Draft, when read with the HSU's proposed definition of "Ordinary Pay", will be very costly for employers as discussed above.

6. EXPOSURE DRAFT – ASPHALT INDUSTRY AWARD 2014

105. The concerns raised in section 3 above, apply to the *Exposure Draft – Asphalt Industry Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6 – Types of employment

Clause 6.4(d) - Casual loading

106. With regard to the question on page 7 of the Exposure Draft, the minimum hourly rate referred to in clause 6.4(d) excludes the industry allowances provided for in clauses 11.2 and 11.3. This is because the casual loading in the existing award is calculated on 1/38th of the minimum weekly rates as set out in existing clause 14.1. Those minimum weekly rates exclude the all-purpose industry allowance provided for in existing clause 15.3(a) as an allowance payable "in addition to the rates prescribed in clause 14*…*"

Clause 6.6(e) – Casual conversion

107. Ai Group proposes the following change to clause 6.6(e) to preserve the current position, as the Exposure Draft has extended the conversion provisions to an expanded group of casual employees:

> *"(a) An **eligible casual employee** is a casual employee:*
>
> - *who works on a regular and systematic basis;*
> - *who is employed <u>under this award</u> for a sequence of periods over six months; and*
> - *whose employment is to continue beyond the ~~period of six months~~ <u>conversion process</u>."*

108. Instead of the wording in clause 6.5(e) of the Exposure Draft, the wording in clause 10.4(e)(iv) should be retained. The new provision would expand the casual conversion matters which the Commission is empowered to deal with under the dispute resolution clause of the Award.

Clause 10.1 – Minimum Wages

109. Ai Group considers that the calculation of the casual ordinary hourly rate is incorrect.

110. The calculation incorrectly includes the industry and inclement weather allowances as part of the minimum rate of pay on which the casual loading is calculated. As stated above, the current award is explicit in stating that the casual loading is calculated on the minimum weekly rate (existing clause 10.4), and that the allowances in existing clause 15.3 are paid in addition to the minimum rates of pay.

Schedule A – clause A.2 – Casual employees

111. As discussed above, the casual loading should apply first to the minimum hourly rate and then the industry and inclement weather allowances added on top.

7. EXPOSURE DRAFT – CEMENT, LIME AND QUARRYING AWARD 2014

112. The concerns raised in section 3 above, apply to the *Exposure Draft – Cement, Lime and Quarrying Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.2 – Types of employment

113. Proposed clause 6.2 requires an employer to:

- inform each employee of the terms of their engagement, including whether they are to be full-time, part-time or casual

- record the decision in the times and wages record

114. The corresponding clause in both the Quarrying Award (clause 10.20) and the Cement and Lime Award (clause 10.2) requires less of employers, i.e. an employer is only required by the award to inform an employee in writing of the category of employment, whether it is full-time, part-time or casual.

115. The proposed clause places two additional obligations on employers, the first being that the employer must inform the employee of his/her terms of engagement. This goes beyond merely informing an employee of their category of employment. "Terms of engagement" is akin to terms of employment and thereby the clause would require, as a term of the Award, that an employer provide an employee with a written contract of employment. If the employer does not do so, then the employer would breach the Award. Secondly the proposed clause requires an employer to record the "terms of engagement" in the time and wages record.

116. Ai Group opposes the above new obligations on employers.

Clause 6.6(a) – Casual conversion to full-time or part-time employment

117. Ai Group proposes the following change to clause 6.6(a) to preserve the current position, as the Exposure Draft has extended the conversion provisions to an expanded group of casual employees:

> *"(a) An **eligible casual employee** is a casual employee:*
>
> - *who works on a regular and systematic basis;*
> - *who is employed under this award for a sequence of periods over six months; and*
> - *whose employment is to continue beyond the ~~period of six months~~ conversion process."*

Paragraph 11.2(d)(i) – First aid allowance

118. The third dot point of proposed paragraph 11.2(d)(i) provides an entitlement to a first aid allowance for an employee "who is requested or nominated by the employer to act as a first aider". The language used in the Exposure Draft, deviates from the language used in the existing awards. Clauses 18.4 of the Quarrying Award and 15.3 of the Cement and Lime Award use more appropriate language and this should be retained in the new award. The existing awards say "… the employee … is appointed by the employer to perform first aid duty".

119. The words "requested or nominated" suggest an arrangement less formal than being "appointed".

Clause 11.3(i) – Permanent change in locality

120. This clause contains an entitlement to be paid for travelling time but the rate for this has been omitted. The relevant rate is found in clause 18.8(d) of the Quarrying Award and clause 15.6(d) of the Cement and Lime Award as follows:

> *"The rate of pay for travelling time will be ordinary rates, except on Sundays and holidays when it will be time and a half".*

Clause 11.3(o)(i) – Payment for wet weather

121. Proposed paragraph 11.3(o)(i) sets out the employment conditions under the Award in respect of wet weather and is intended to replace clause 18.6 of the Quarrying Award and clause 15.8 of the Cement and Lime Award.

122. The proposed paragraph provides that an employee will be paid at the ordinary hourly rate for all time lost. This would impose higher costs upon employers. The existing awards provide for the wet weather payment to be paid at the employee's minimum rate of pay.

123. The proposed paragraph should be changed to read:

> *"When the employer or its responsible representative determines that the weather is too wet for ordinary duties, an employee will be paid at the Hourly minimum rate in clause 10 for all time lost."*

Clause 14.6 - Weekend minimum

124. A typographical error appears in proposed clause 14.6. The proposed clause currently reads:

> *"Where an employee requires an employee to work overtime …"*

125. The underlined word should be replaced with "employer".

Schedule B – Quarrying Industry – Summary of hourly rates of pay

126. The tables in B.2 and B.3 set out rates of pay for employees in the quarrying industry. The rates in each of the columns in B.2 and B.3, other than the column setting out the day rate in B.2, appear to be incorrect. For example 115% of $17.49 (ordinary rate of pay for Grade 1) is $20.11, not $24.49 as is listed in the column setting out the rates of pay for afternoon and night shift in B.2. Similarly 150% of $20.86 (ordinary rate of pay for Grade 6) is $31.29, not $36.51 as listed in the column setting out the rates of pay for Saturday work (first 2 hours) in B.2 and in the column setting out the rates of pay for Monday - Saturday work (first 2 hours) in B.3.

8. EXPOSURE DRAFT – CLEANING SERVICES AWARD 2014

127. The concerns raised in section 3 above, apply to the *Cleaning Services Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.4 – Interaction between clause 6.4(b) and 6.4(e)

128. The Exposure Draft poses a question to interested parties as to how clause 6.4(e) interacts with clause 6.4(b).

129. Clause 6.4(b) simply provides for the payment of an allowance of 15%. The clause permits an employer to "roster" an employee for up to 7.6 hours a day, five days a week or 38 ordinary hours per week, without the payment of overtime.

130. By virtue of clause 6.4(e), where an employee is required to work hours in addition to those agreed to at the time of their engagement, and those hours are not rostered hours in accordance with clause 8.3, clause 14 (overtime) applies.

131. Part-time employees are not paid the 15% allowance if they work overtime.

Clause 8.2(b) – Ordinary hours and roster cycles – part-time and casual employees

132. To ensure that the intent is clear, the word "only" needs to be reinstated at item 1 of clause 8.2(b) so that the provision reads:

> *"One employee <u>only</u> is engaged at a small standalone location with a total cleaning area of 300 square metres or less..."*

Clause 8.2(b) – Interaction between clause 8.2(b) and 11.2(a)

133. The Exposure Draft poses a question to interested parties as to how the minimum engagement clause in 8.2(b) interacts with the broken shift allowance in clause 11.2(a) and whether a definition of "day" would assist.

134. We submit that:

- The minimum engagement periods in clause 8.2(b) do not apply to each part of a broken shift;
- It is not clear that inserting definition of day will address this issue without resulting in other unintended consequences.

Clause 11.2 – Broken shift allowance and clause 13 Penalty Rates

135. Broken shifts are utilised within the Cleaning Services Industry.

136. Ai Group is concerned that the FWO and/or other parties may be incorrectly interpreting the Award as requiring the payment of the same shift penalty for all hours worked on a broken shift. We are similarly concerned that the amendments to clause 13.3 of the Exposure Draft may exacerbate this risk or arguable expressly provide for such an outcome.

137. Ai Group understands that the traditional practice within the industry has been for each period of a broken shift to be regarded as a distinct "period of duty" and consequently treated independently for the purposes of calculating applicable shift penalties. Put simply, if the first period of work performed as part of a broken shift fell within the definition of an early morning or afternoon shift that period attracts the relevant shift penalties contemplated by clause 27.1 while if the second period of a broken shift fell within the definition of a permanent night shift, it is only that second period of duty, and not the entirety of the shift, that attracts the higher 30% penalty.

138. This interpretation is consistent with current terms of clause 27.1(b) of the Award which provides:

> *"If a night shift, being a period of duty finishing after midnight and at or before 8.00am, does not rotate or alternate with another shift or day work, then a permanent shift loading of 30% of the ordinary hourly rate for the appropriate classification will be paid for all hours worked…"*

139. It is also consistent with the wording of clause 17.1 – Broken Shift Allowance prior to the provision's variation in 2013. In its original form the provision stated:

> *"An employee who is required to work two shifts in one day or period of duty (excluding meal breaks) will be paid an additional allowance of 0.458% of the standard rate per day up to a maximum of 2.29% of the standard rate per week."*

140. In October 2012 the Broken Shift Allowance clause was varied as part of 2012 review of modern awards so that its now provides;

> ***"17.1 Broken shift allowance***
>
> *[17.1 substituted by PR543432 ppc 21Oct13]*
>
> *An employee who works a broken shift will be paid an allowance of 0.458% of the standard rate per day up to a maximum of 2.29% of the standard rate per week. For the purposes of this award a broken shift is a shift where an employee works in two separate periods of duty on any day within a maximum spread of thirteen 13 hours and where the break between periods exceeds one hour."*

141. The original broken shift allowance clause clearly contemplated the separate period of broken shift as being distinct or separate. Indeed it even describes them as different shifts.

142. There is an obvious tension in adopting terminology to describe a broken shift as constituting two shifts. Accordingly Ai Group believes that the change in definition of a broken shift implemented in the 2012 review is sensible. However, this does not justify altering the approach to calculating shift penalties. To the extent that this is the outcome of the 2013 variation it is unintended and should be rectified. There is no reason why the Award cannot be crafted to reflect the fact that differing shift penalties may apply to separate elements of the broken shift.

143. Ai Group is concerned that the table in clause 13.3 does not reflect the proper interpretation of the Award. Instead it potentially alters employee entitlements, at least in the context of employees performing broken shifts.

144. Ai Group considers that clause 13 should be amended to make it clear that when considering shift loadings, each period of duty of a broken shift should be considered to constitute a discrete shift. Ai Group suggests that the clause be amended as follows:

> "*13.4 Where an employee works on a broken shift attracting an allowance under clause 11.1(a), each separate period of duty will be regarded as a separate shift for the purpose of determining the appropriate penalty rate under clause 13.1 and 13.2.*

145. Minor consequential amendments to clause 13.3 of the Exposure Draft may also be required to reflect this variation.

Clause 11.2(e) – First aid allowance

146. Clause 11.2(e) of the Exposure Draft deviates from clause 17.5 of the current award. Specifically, the words "in writing" have not been retained. These words should be reinstated to avoid disputes as to whether an employee has been so appointed by the employer.

Clause 11.3(b) – Vehicle allowance

147. In clause 11.3(b)(i) and (ii) of the Exposure Draft the words "by agreement" need to be replaced with "by agreement with the employer" to clarify the intent and for consistency with the existing entitlement.

Clause 14.3 – Overtime rates

148. The rates for part-time employees in the table are not correct. Part-timers are not entitled to the 15 per cent loading for overtime work.

Clause 14 – Example 2

149. The example concerns a casual employee, not a part-time employee. The inclusion of the part-time allowance in the calculations is not correct.

Clause 15.3(a) – Annual close down

150. Clause 29.6(b) of the current award states that an employer "may" give one month's notice of its intention to close down pursuant to this provision. It does not mandate the giving of such period of notice. Clause 15.3(a) of the Exposure Draft, however, states that the employer "will" give one month's notice. The variation imposes a mandatory obligation on employers to give notice when no such obligation presently exists and hence is opposed.

Clause A.2.1 – Classification definitions – cleaning services employee level two

151. In response to the question posed to interested parties in clause A.2.1 of Schedule A to the Award, the "task of leading hand" should not be included in the definition of a CSE 3 Employee. Leading hands are not currently restricted to employees at the CSE 3 Level, and should not be in the new award.

Schedule B – Summary of hourly rates of pay

152. In B.3 the part-time allowance has been included in the overtime calculations when this allowance is not payable on overtime.

9. EXPOSURE DRAFT – COTTON GINNING AWARD 2014

153. The concerns raised in section 3 above, apply to the *Exposure Draft – Cotton Ginning Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.5(c) – Casual loading

154. The Exposure Draft expresses the casual loading as a percentage of the "ordinary hourly rate", which is defined in the Award as including all purpose allowances. The current award however, at clause 10.4(b), requires the payment of a 25% loading on "1/38th of the minimum weekly wage prescribed at clause 14". The minimum wages prescribed at clause 14 are exclusive of all

purpose allowances.

155. Clause 6.5(c) should be expressed to require the payment of the 25% loading on the hourly base rate, as specified in clause 10.

Clause 6.6(a)(i) – Casual conversion – eligible casual employee

156. Ai Group proposes the following change to clause 6.6(a)(i) to preserve the current position, as the Exposure Draft has extended the conversion provisions to an expanded group of casual employees:

> ***“(a)*** *An* ***eligible casual employee*** *is a casual employee:*
> - *who works on a regular and systematic basis;*
> - *who is employed under this award for a sequence of periods over 12 months; and*
> - *whose employment is to continue beyond the ~~period of 12 months~~ conversion process.”*

Clause 6.6(b) – Notice of election of casual conversion

157. The current clause 10.5(b) requires an employer of a casual employee “who seeks to convert to full-time or part-time employment”, to give notice in writing of their right to convert. The proposed clause 6.6(b) extends this obligation to an employer of any eligible casual employee, as defined by clause 6.6(a)(i).

158. The change in language has effectively increased the breadth of the obligation imposed on employers to give notice. The wording in the current award should be retained.

Clauses 8.1(e) and 8.2(c) - Ordinary hours for part-time and casual employees

159. Clauses 8.1(e) and 8.2(c) of the Exposure Draft states that the ordinary hours of work for a part-time or casual employee will be in accordance with clause 6. Clause 6 does not, however, deal with ordinary hours of work for a casual employee. Therefore, the reference to a casual employee in clauses 8.1(e) and 8.2(c) should be deleted.

Clause 9.4 – Minimum break between shifts

160. This clause provides for a break between “shifts” whilst the current award refers to “work”. The term “shift” is not used elsewhere in the Award. In order to avoid confusion, the terminology in the current award should be retained.

Clause 11.2(f)(ii) – Special contingency payment

161. The addition of a provision which states that this allowance is payable on a pro-rata basis to part-time employees is not necessary. This is already provided at clause 6.4(a)(ii). The inclusion of such a provision with respect to this allowance, but not other allowances that apply on a pro rata basis, could lead to arguments that other allowances do not apply on a pro rata basis.

Clause 14.2(c) – Overtime rates

162. Clause 14.2(c) incorrectly characterises overtime rates as a “loading”. The words “overtime loading” should be replaced with “overtime rates”.

Clause 15.2 – Payment for annual leave

163. With regard to the question on page 18 of the Exposure Draft, the reference to "base rate of pay" should be retained in clause 15.2(a). Amending the reference to "ordinary hourly rate of pay" (including all purpose allowances) could increase costs for employers.

164. In 15.2(b), the references to the casual loading being paid on top of the all purpose allowances should be deleted. The phrase "ordinary wage rate as prescribed by this award for the period of annual leave "excluding shift loadings)", which appears in clause 25.2 of the current award, is the rate of pay at which an employee is paid during their period of leave. That is, the base rate of pay.

Clause A.4 – Casual employees – overtime rates

165. We to the submissions above regarding clause 6.5(c) of the Exposure Draft. If these submissions are accepted, the rates in the table at clause A.5 will require recalculation.

10. EXPOSURE DRAFT – CONCRETE PRODUCTS AWARD 2014

166. The concerns raised in section 3 above, apply to the *Exposure Draft – Concrete Products Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.6 - Casual conversion

167. Ai Group proposes the following change to clause 6.6(a) to preserve the current position, as the Exposure Draft has extended the conversion provisions to an expanded group of casual employees:

> ***"(a)*** *An* ***eligible casual employee*** *is a casual employee:*
>
> - *who works on a regular and systematic basis;*
> - *who is employed under this award for a sequence of periods over 12 months; and*
> - *whose employment is to continue beyond the ~~period of 12 months~~ conversion process."*

Clause 11.3(a)(i) – meal allowance

168. A critical and widely used exclusion has been omitted from the meal allowance clause. Under existing clause 16.7, an employee is not entitled to the meal allowance if the employee was "notified on the previous day or earlier that they will be required to work", as commonly occurs. If an employee has notification of the requirement to work he or she is able to bring a meal from home and the rationale for the meal allowance no longer exists.

169. Clause 11.3(a)(i) needs to be amended as follows:

> "A meal allowance of **$14.18** is payable to an employee who is required to work more than two hours of overtime beyond the completion of the employee's ordinary hours unless the employee was notified on the previous day or earlier that they will be required to work or unless the employer supplies the employee with a meal. The allowance is payable for the first and subsequent meals."

Schedule B – heading for B.2.2

170. The heading for B.2.2 is incomplete. It should be amended to make it clear that this table applies only to shift workers. Table B.2.1 applies to other employees.

11. EXPOSURE DRAFT – PREMIXED CONCRETE AWARD 2014

171. The concerns raised in section 3 above, apply to the *Exposure Draft – Premixed Concrete Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.6(a) – Casual conversion

172. Ai Group proposes the following change to clause 6.6(a) to preserve the current position, as the Exposure Draft has extended the conversion provisions to an expanded group of casual employees:

> ***"(a)*** *An* ***eligible casual employee*** *is a casual employee:*
>
> - *who works on a regular and systematic basis;*
> - *who is employed under this award for a sequence of periods over 12 months; and*
> - *whose employment is to continue beyond the ~~period of 12 months~~ conversion process."*

Clause 8.1(c) – Ordinary hours and work cycles

173. Clause 8.1(c) in the Exposure Draft needs to be amended to replace the words "38 hours per week" with "an average of 38 hours per week", consistent with clause 20.1 in the current award. The wording in the Exposure Draft would significantly reduce flexibility for employers and employees, and cause operational difficulties.

Clause 8.1(d) – Ordinary hours and work cycles

174. Clause 8.1(d) states that the ordinary hours of work for a part-time and casual employee will be in accordance with clause 6. Clause 6 does not, however, define ordinary hours of work for a casual employee. The reference to casuals in clause 8.1(d) should be deleted.

Clause 15.2 – Additional leave for shift workers

175. Clause 15.2 in the Exposure Draft expands the entitlement to the additional week of annual leave from "shift workers who are rostered to work regularly on Sundays and holidays" (existing clause 24.2) to "an employee who rostered to work regularly on Sundays and holidays".

176. This would impose major additional costs and operational difficulties upon some employers and it conflicts with the modern awards objective.

177. Clause 15.2(a) needs to be amended as follows:

> *"A **shiftworker,** for the purposes of the additional week's leave referred to in clause 15.1, is a shiftworker ~~an employee~~ who is rostered to work regularly on Sundays and public holidays."*

12. EXPOSURE DRAFT - SALT INDUSTRY AWARD 2014

178. The concerns raised in section 3 above, apply to the *Exposure Draft – Salt Industry Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 6.4(c) – Casual loading

179. In respect of paragraph 6.4(c)(i) a change has been made to the rate upon which the casual loading is calculated from "the minimum weekly wage"" to "the ordinary hourly rate". Ai Group opposes this change. The change could result in an increase in costs for employers.

Clause 9.5 – Minimum breaks between shifts – on successive days or shifts

180. The heading to this clause uses the term "shifts", however the provision itself uses the term "work", as does the equivalent provision in the current award. The heading should retain the word "work" so as to avoid confusion regarding whether the clause applies only to shift workers and to ensure consistency with the language of the clause.

Clause 10.5(a) – Annualised salary arrangements

181. The existing annualised salary clause allows an employee to pay an annual salary in satisfaction of annual leave loading. Accordingly, to preserve this flexibility clause 15.8 needs to be referred to in clause 10.5(a).

Clause 10.5(d) – Base rate of pay for employees on annual salary arrangements

182. Clause 18.3 of the current award refers to the relevant rate of pay at clause 14 - Minimum wages. Clause 14 includes the minimum wages for adult employees, junior employees and apprentices. Thus, the reference to clause 10.1 at clause 10.5(d) of the Exposure Draft should instead be a reference to clause 10.

Clause 11.4(a) – Meal allowance for overtime work

183. The word "or" should be inserted between the words "meal-making facilities" and "if the employee".

Clauses 13.1 to 13.3 – Shift work, weekend work and public holiday penalties

184. Clauses 23.5 to 23.7 of the current award set out the relevant penalty rates. In each case, the penalty is expressed as a percentage of the "base rate of pay".

185. Base rate of pay is defined in section 16 of the FW Act.

186. By replacing "base rate of pay" with "ordinary hourly rate of pay", the amount payable to employees under clauses 13.1 to 13.3 will increase.

187. Clauses 13.1 to 13.3 should each refer to the base rate of pay rather than the ordinary hourly rate of pay.

Clause 14.2(a)(i) Overtime payments – employees other than continuous shift workers

188. The reference to "100%" in clause 14.2(a)(i) should read "200%". Ai Group assumes that this is a typographical error.

Clauses 14.2, 14.3 and 14.5(b) – Overtime

189. Clauses 14.2, 14.3 and 14.5(b) differ from clauses 23.1 and 23.2 as they refer to the "ordinary hourly rate of pay" rather than the "base rate of pay". The change will result in increased costs for employers and the "base rate of pay" should be retained.

Clause 14.4(b) – Overtime – Method of calculation

190. The words "loadings or" should not be deleted from clause 14.4(b) as proposed in the Exposure Draft. The current provision (clause 23.3(b)) has the effect that a casual employee is not entitled to the casual loading while performing overtime, because the employee receives the higher penalty payments for this time. To delete the reference to "loadings" would disturb this position and impose higher costs on employers.

Clause 15.7 – Payment for annual leave

191. The Exposure Draft would entitle employees to a higher payment during annual leave. The current clause 25.3 only requires the payment of all purpose allowances during annual leave, not other allowances. The following change should be made to the wording in clause 15.7 of the Exposure Draft:

> *"Before the start of an employee's annual leave, the employer must pay the employee the amount the employee would have earned for working their ordinary hours had they not been on leave, including any loadings, penalties and all purpose allowances. The employee is not entitled to payments in respect of overtime, or any other payment which might have been payable to the employee as a reimbursement for expenses incurred."*

Clause 15.8 – Annual leave loading

192. The reference in this provision to clause 15.7(a) should be a reference to clause "15.7".

193. **Clause 18.3 – Public holidays**

194. Clause 18.3 does not accurately reflect the rate at which an employee must be paid for work on a public holiday. Clause 18.3 should refer to clause 13.3 and clause 14, depending upon whether the time worked on a public holiday is ordinary time (clause 13.3) or overtime (clause 14).

Clause 18.4 – Substitution of public holidays by agreement

195. Clause 28.2 of the current award provides for the substitution of a full day or part day for a full day or part day that would otherwise be a public holiday. The Exposure Draft only appears to allow the substitution of full day public holidays. The flexibility afforded by the current clause should be retained.

Schedule B – Clauses B.1.1, B.1.2, B.1.3, B.2.1, B.2.2 and B.2.3 – Penalty rates and overtime

196. As submitted above, overtime and penalty rates should be calculated on the base rate of pay as currently applies. Therefore, the rates in clauses B.1.1, B.1.2, B.1.3, B.2.1, B.2.2 and B.2.3 should be recalculated.

197. In accordance with existing clause 23.3(b) and submissions made above, a casual employee is not entitled to the casual loading when performing overtime. Therefore, the rates in clauses B.2.2 and B.2.3 should be recalculated.

Schedule C - Summary of monetary allowances

198. The “standard rate” in clause C.1 is said to be $718.90. This appears to be an error because the rate for classification Level 4 under the award (see definition of “standard rate” in the Award) is $746.20.

Schedule H – Definitions – leading hand

199. Schedule H in the Exposure Draft contains a definition of “leading hand”. The definition is inconsistent with the leading hand allowance in clause 11.3(d). If the definition is to be retained, the words “two or more” should be changed to “three or more”.

13. EXPOSURE DRAFT – SECURITY SERVICES INDUSTRY AWARD 2014

200. The concerns raised in section 3 above, apply to the *Exposure Draft – Security Services Industry Award 2010.* Additional comments on the Exposure Draft are set out below.

Clause 3 – Coverage – the removal of existing clause 4.3

201. Ai Group opposes the deletion of existing clause 4.3 of the Award which states:

> *“To avoid doubt, this award does not apply to an employer merely because the employer, as an incidental part of a business that is covered by another modern award, has employees who perform functions referred to in clause 4.2*”

202. This is a critical clause which avoids disturbing award coverage in numerous industries

203. The existing award does not apply to an employer covered by another modern award where the security service functions in clause 4.2 are an incidental part of the business of that employer.

204. For example, any directly employed security workers of manufacturers, construction companies, food companies and wholesalers are not covered under this Award, and they should not be.

205. The removal of clause 4.3 is contrary to the modern awards objectives. It would impose cost increases and other negative consequences on employers which are not currently covered by the Award.

206. Also, the variation is not necessary and hence is not in accordance with s.138 of the FW Act.

Clause 3.3 – Incidental duties

207. Clause 3.3 deals with a completely different concept to existing clause 4.3. It deals with the duties of an employee and not with the functions and industry of the employer dealt with by existing clause 4.3. The *Security Services Industry Award 2010* covers the security industry; it is not an occupational award (see *Award Modernisation [2008]* AIRCFB 1000 at [289]) and hence clause 4.3 is far more relevant coverage provision.

208. Ai Group is not opposed to clause 3.3 in the Exposure Draft but it is essential that the current clause 4.3 remains.

Clause 8.1 – Ordinary hours and roster cycles

209. The reference to "rest breaks" in clause 8.1(b)(i) should be changed to "rest breaks in clause 9.1(b)" to ensure that readers of the Award understand that "rest breaks" do not include unpaid meal breaks.

Clause 13 – Penalty Rates – Permanent night work

210. Ai Group opposes the Exposure Draft's new definition of "permanent night work" and would appear to require the payment of a 30% loading for day work in some circumstances, inconsistent with the current award.

211. Under clause 22.2 of the current award, the 30% loading only applies to certain work on a "night span". However, the new provision in clause 13 applies to work carried out (presumably even on day work) "(w)here more than two thirds of the employee's ordinary hours over the roster cycle are worked between midnight and 6:00 am".

212. The new definition would impose greater costs on employers; both those covered by the Award and customers of security services companies in respect of night shift penalties.

213. The new definition is inconsistent with the modern awards objective and the existing definition should be retained.

Clause 14.2 – Overtime for part-time employees

214. The cross-reference in clause 14.2 should be to clause 6.4, rather than 6.4(b), as both 6.4(b) and (c) are relevant.

Clause 14.3 – Overtime commencing on one day and continuing into the next

215. Ai Group is opposed to the Exposure Draft's removal of the existing clause 23.4 which states:

> *"where a period of overtime commences on one day and continues into the following day, the portion of the period worked on each day attracts the loading applicable to that day."*

216. The new clause 14.3 would increase costs for employers because the employer would not have the benefit of two hours being payable at 150% from midnight where more than two hours of overtime had been worked before midnight and the overtime continues into the following day. Under the new provision, all time after midnight would be payable at 200% in such circumstances.

SAVING LIVES THROUGH First Aid
St John

24 September 2014

Fair Work Commission
Attention : Deputy President Booth
Level 4, 11 Exhibition Street
Melbourne Vic 3000

Dear Deputy President,

4 Yearly Review of Modern Awards: Ambulance and Patient Transport Industry Award 2010

I refer to your Full Bench Report 18th July 2014 (AM2014/65).

We have a number of overarching and significant concerns in regards to the proposed changes to the Ambulance and Patient Transport Modern Award; the primary concerns are as follows:

- The proposed changes to the definition of "ordinary pay" would significantly impact Annual Leave payments for Patient Transport Officers and Ambulance Attendants engaged in the provision of non-emergency patient transport services. This provision would be a major administrative burden and add significant financial pressure to our low margin industry sector.

- The proposed changes to the overtime definition incorporates strict controls surrounding overtime, which will impact on flexibility in the workplace and will add to administrative and labour costs.

- The proposed introduction of training plans into the modern award to attain tertiary qualifications relevant to promotion within the classification structure would generate an industry crisis. This would produce an over-supply of Ambulance Attendants with no industry mechanism to employ them, as shifts require 1 x Patient Transport Officer and 1 x Ambulance Attendant. As an organisation, we encourage and promote professional development for all our people, however development initiatives must align with operational and industry realities.

The non-emergency patient transport industry sector in Victoria is in the final stages of preparing submissions for the Ambulance Victoria and Participating Health Service tender . Any amendments to the award definitions that effect tender labour costing will have ramifications across the entire industry sector.

It is important to St John Ambulance Australia (Victoria) that our people are appropriately compensated and developed as is the sustainability of our industry sector as an ongoing viable employer. We ask that the impact of the proposed changes is given strong consideration.

Yours sincerely

Stephen Horton
Chief Executive Officer

ST JOHN AMBULANCE AUSTRALIA (VIC) INC
ABN 69 061 844 380
170 Forster Rd (PO Box 573)
Mt Waverley VIC 3149
T 03 8588 8588
F 03 8588 8555
info@stjohnvic.com.au
stjohnvic.com.au

NPT Group

20-22 Hardner Road
Mt Waverley VIC 3149
T: 03 8588 4888
F: 03 9544 9501
www.nptgroup.com.au

Deputy President Booth
Fair Work Commission

25 September 2014

Attention Deputy President Booth

Re: Proposed changes to the Ambulance and Patient Transport Services Award

By way of background there are 18 licenced NEPT providers in Victoria excluding Ambulance Victoria.

Competition is very fierce within the NEPT sector and private providers operate on 2% to 3% profit margins in an industry where the labour cost is greater than 75% of revenues. We understand that the competitive nature of the sector should not prevent employees from being paid fairly but it is very clear that the proposed changes from HSU and United Voice are not fair and reasonable for all stakeholders.

Several private providers have recently been forced into liquidation and forced to exit the industry. Total Care Patient Transport Services Pty Ltd filed for voluntary liquidation in March 2014. Advance Medical Transport and Ambicare have also been forced to exit the industry due to the uneconomic nature of increasing wages and declining revenue rates from the Public Health Networks.

Public Health Networks are under constant pressure to reduce costs. NEPT costs are target savings areas due to the non-emergency nature and the low clinical risk. Public Hospitals do not recognise the additional cost for after hours, weekends and public holidays. Much like the Retail Industry they expect the same low cost 24/7, 365 days per year. In this situation the private providers have little power to influences prices.

It is import to note the stark contract between State Funded Emergency Ambulance Services and NEPT Private Providers.

In many instances the Government funding model dictates that the Ambulance Services must be used giving it monopolistic powers to be able to recover increasing wage cost. Private providers do not have this luxury and in fact are forced to operate on very low margins just to survive.

The industry is at crisis point as the Ambulance Service has flagged increasing demand and an intention to increase their subcontracting to Private Providers. The declining margins and the entry of Not For Profits (RFDS and St John) who have access to significant tax exemptions are proving to be a significant disincentive to private investment on a State and Federal level. If you focus just on the Payroll Tax exemption, this 4.9% lower cost in wages is greater than the profit margins available to private investors, so who will continue to invest in this sector?

Any basic economic analysis of this situation in the long term will tell you the only likely survivors in the NEPT sector will the State Funded Ambulances Services and Not For Profits who will prevail due the Federal and State tax exemptions.

The proposed changes in the award will place significant cost burden on all NEPT employers and force them to exit the industry. In particular the proposed definition of ordinary pay and ability for part time and casual workers to receiving overtime penalty when working less than a 38 hour week will spell the end for many companies.

The existing high after hours penalties must be removed or only paid on actual hours works and the weekend penalties need to be reduced much like the push in the Retail Sector. We have similar a situation where the Public Health Services need to be serviced 24/7. Providers can't afford to service them at the levels required so the public health services lose out, the private providers lose out and we don't employ as many staff to work after hours or weekends as a result, so the employee miss out.

National Patient Transport strongly opposes the proposed changes and supports AIG submission.

Kind Regards

Jeff Wilson

Chief Executive Officer