

SUMMARY OF SUBMISSIONS

This table is a summary of submissions and reply submissions lodged on or before 5.00pm on 9 December 2020.

Interested parties are requested to review the draft summary of submissions to ensure that their submissions are accurately characterised. If parties would like to make amendments they should notify AMOD (amod@fwc.gov.au) by the close of business on 5 February 2021.

This draft summary of submissions includes drafting comments in relation to submissions received on the *Fast Food Industry Award* plain language exposure draft published on 28 October 2020.

List of abbreviations (in alphabetical order)

ABI	Australian Business Industrial and the NSW Business Chamber
Ai Group/AIG	Australian Industry Group
FFIA	Fast Food Industry Award
SDA	Shop Distributive and Allied Employees' Association

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
1	SDA	Sub-25/11/20	2	<p>Definitions</p> <p>Notes that the PLED has deleted the words ‘unless the contrary intention appear’ in current award clause 3.1</p>	Para 3	<p>RESOLVED:</p> <p>Standard wording in all PLEDs. See drafter comments in Pharmacy PLED Submission Summary – 10 November 2016:</p> <p>Drafter comment: “...The trend in legislative drafting has been to omit ‘unless the contrary intention appears’ from definition clauses as the case law clearly establishes that is the situation anyway without those additional words. Plain language experts also hold the view that inserting it creates a doubt in the mind of readers....”</p>

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
2	SDA	Sub-25/11/20	2	<p>Definitions – adult employee</p> <p>Objects to definition of ‘adult employee’ as an employee who is 21 year of age or over.</p> <p>Definition prejudices rights of employees aged 18 and over who are recognised as adults in every other legal setting.</p> <p>SDA lists Australian jurisdictions recognising adults as 18 and over.</p>	Para 4	
	Ai Group	Reply Sub – 9/12/20		Disagree with SDA’s sub that the proposed definition of ‘adult employee’ is ‘prejudicial to the rights of employees aged 18 and over’.	Para 4	
3	SDA	Sub-25/11/20	2	<p>Definitions – default fund employee</p> <p>Objects to the deletion of ‘default fund employee’</p>	Para 5	<p>RESOLVED.</p> <p>Part of 4 yearly review process: If a term in the current award is defined but not used anywhere in the award, the definition has been deleted. See Comparison of FFIA Current / ED published on 16/11/16.</p>
	Ai Group	Reply Sub – 9/12/20		Submits in response to SDA that is it appropriate to delete ‘default fund employee’ because is not used in the PLED.	Para 5	
4	SDA	Sub-25/11/20	2	<p>Definitions – standard rate</p> <p>Objects to change in definition from weekly to hourly rate and the deletion of reference to the allowance. Proposes a ‘standard’ weekly rate’ and ‘standard hourly rate’ definition.</p>	Para 6	<p>RESOLVED.</p> <p>Reflects definition in Comparison of FFIA Current / ED published on 16/11/16.</p>
	Ai Group	Reply Sub – 9/12/20		Submits that the changes proposed to the definition of standard rate by SDA are not necessary. Notes each of the relevant	Para 6	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				allowances in PLED Schedule B are expressed as a percentage of the hourly standard rate.		
5	SDA	Sub-25/11/20	3.4	<p>The National Employment Standards and this award</p> <p>Objects to the deletion of words ‘whichever makes them more accessible’ from clause. Submits requirement ensures copy of NES is fit for purpose.</p>	Para 10	<p>RESOLVED.</p> <p>Part of 4 yearly review process. Matter dealt with in [2014] FWCFB 9412 at para [29].</p>
	Ai Group	Reply Sub – 9/12/20		Submits in response to SDA that PLED cl.3.4 reflects the approach taken by the FWC across the awards system and departing from that approach is not warranted.	Para 7	
6	SDA	Sub-25/11/20	4.2	<p>Coverage</p> <p>Objects to location of ‘fast food industry’ definition within the coverage clause. Submits definition be located in the definitions clause and referred to by reference in cl. 4.2</p>	Para 8	<p>RESOLVED.</p> <p>Definition of industry moved to clause 4— Coverage and a reference definition inserted into clause 2—Definitions per [2017] FWCFB 3433 at [339].</p>
7	Ai Group	Sub – 25/11/20	4.2(a)	<p>Coverage</p> <p>Objects to replacing the words ‘meals’ and ‘snacks’ with ‘food’ due to concerns about altering the meaning of the coverage clause. Explains that not all ‘food’ constitutes a ‘meal’ or ‘snack’. Submits using term ‘food’ may blur distinction between the fast food industry and the general retail industry (covered by the General Retail Industry Award 2020).</p>	Paras 2-6	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	ABI	Sub – 25/11/20		Objects to drafting of PLED cl. 4.2(a) because referring to ‘food’ generally in this context potentially broadens the scope of the definition. Submits reference should be to ‘meals, snacks and/or beverages’ as per the FFIA.	Para 2.1(a)	
	Ai Group	Reply Sub – 9/12/20		Agrees with ABI’s subs regarding PLED cl. 4.2. Refers to its own concerns identified at paras 2 – 17 on 25/11/20.	Para 32	
	SDA	Reply Sub – 9/12/20		Submits that AIG’s objections to the PLED coverage clause are broadly consonant with its own position in para 8 of its 25/11/20 sub. SDA favours retaining FFIA current clause.	Paras 3-6; 46-48	
8	Ai Group	Sub – 25/11/20	4.2(b)	Coverage Objects to replacing the words ‘take away foods’ with ‘food’ due to concern it broadens the scope of the fast food industry and expands the coverage of the award. Explains that ‘take away foods’ are a specific type of ‘food’ and not synonymous terms.	Para 7-10	
	ABI	Sub – 25/11/20		Objects to the general reference to ‘food’ in PLED cl. 4.2(b). Submits reference should be to ‘take away foods’ as per the FFIA.	Para 2.1(b)	
	Ai Group	Reply Sub – 9/12/20		Agrees with ABI’s subs regarding PLED cl. 4.2. Refers to its own concerns identified at paras 2 – 17 on 25/11/20.	Para 32	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	SDA	Reply Sub – 9/12/20		Submits that AIG’s objections to the PLED coverage clause are broadly consonant with its own position in para 8 of its 25/11/20 sub. SDA favours retaining FFIA current clause.	Paras 3-6; 46-48	
9	Ai Group	Sub – 25/11/20	4.2(c)	Coverage Objects that the words ‘inside the catering establishment’ have not been retained in PLED cl. 4.2(c) due to concerns their deletion may alter the coverage of the award. Submits that the exclusion from award coverage is no longer confined to businesses that provide a sit down service <i>inside the catering establishment</i> and includes any that provide a sit down service <i>outside</i> the catering establishment.	Paras 11-17	
	SDA	Reply Sub – 9/12/20		Submits that AIG’s objections are broadly consonant with its own position in para 8 of its 25/11/20 sub. SDA favours retaining FFIA current clause.	Paras 3-6	
10	SDA	Sub-25/11/20	4.3	Coverage Submits that cl. 4.5 and 4.6 of FFIA 2010 be retained in their entirety and located at cl. 4.3(a) and (b) of PLED	Para 9	
	Ai Group	Reply Sub – 9/12/20		Agrees with SDA’s subs about PLED cl. 4.3. Refers to its own subs at paras 18 – 22 of on 25/11/20.	Para 9	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	Ai Group	Sub – 25/11/20		<p>Objects to PLED cl. 4.3(a) due to concerns it alters the award’s coverage. Submits that by excluding the requirement that an employee be engaged in the performance of work for a <i>business</i> in the fast food industry, the coverage of an employee and their employer becomes instead dependent upon on whether the on-hire employee is working in the fast food industry.</p> <p>Notes that the PLED does not stipulate that the award only covers a labour hire employer in respect of on-hire employees <i>while</i> they are engaged in the performance of relevant work in the industry.</p> <p>Submits that the current FFIA clause 4.5 related to on-hire arrangements should be retained.</p>	Paras 18-22	
	SDA	Reply Sub – 9/12/20		<p>Submits that AIG’s objections to the PLED coverage clause are broadly consonant with its own position in para 8 of its 25/11/20 sub.</p> <p>SDA favours retaining FFIA current clause.</p>	Paras 3-6; 46-48	
11	Ai Group	Sub – 25/11/20	4.4(d)	<p>Coverage</p> <p>Submits that the exclusion under PLED cl. 4.4(d) of employers from the award’s coverage extends beyond the exclusions currently provided under cl 4.2-4.4 of the FFIA. Submits most employers will be excluded based on their employ of at least one person excluded from award coverage by the Act.</p>	Paras 23 and 24	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				Submits that cl 4.4(d) should exclude employers from coverage in relation to the employees described at cl. 4.4(a)-4.4(c). Provides alternative wording.		
	SDA	Reply Sub – 9/12/20		Submits that AIG’s objections to the PLED coverage clause are broadly consonant with its own position in para 8 of its 25/11/20 sub. SDA favours retaining FFIA current clause.	Paras 3-6; 46-48	
12	ABI	Sub – 25/11/20	4.4(e)	Coverage Submits that the amendment of PLED cl. 4.4(e) to refer to the exclusion of employers ‘covered’ by the Hospitality Industry (General) Award 2020 and the General Retail Industry Award 2020, rather than employers operating in the hospitality and retail industries, is potentially confusing, particularly for employers operating under an enterprise agreement. Submits that FFIA cl. 4.1 is clear and should be retained.	Para 2.2	
	Ai Group	Reply Sub – 9/12/20		Submits that ABI’s concern does not warrant redrafting of PLED 4.4(e).	33	
	SDA	Reply Sub – 9/12/20		Submits that ABI’s subs regarding cl. 4 broadly agree with its own and AIG’s. and support the view that the changes offer little to no benefit. SDA favours retaining FFIA current clause.	Paras 46-48	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
13	Ai Group	Sub – 25/11/20	4.5	<p>Coverage</p> <p>Objects to the replacement of the words ‘the employee’ with ‘it’ in PLED cl 4.5 – creates ambiguity.</p> <p>Submits it is unclear if clause requires an assessment of the environment in which the work is normally performed or the environment in which the work is normally performed <i>by the employee</i>. Provides amended wording.</p>	Paras 25-27	
	SDA	Reply Sub – 9/12/20		<p>Submits that AIG’s objections to the PLED coverage clause are broadly consonant with its own position in para 8 of its 25/11/20 sub.</p> <p>SDA favours retaining FFIA current clause.</p>	Paras 3-6	
14	Ai Group	Sub – 25/11/20	7.2	<p>Table 1—Facilitative provisions</p> <p>Submits that the references to clauses 10.5 and 10.7 in Table 1 at PLED cl.7.2 should be deleted because they’re not facilitative provisions.</p>	Para 28	<p>RESOLVED.</p> <p>PLED updated. References to PLED clauses 10.5 and 10.7 deleted.</p>
15	SDA	Sub-25/11/20	10	<p>Part-time employees</p> <p>Objects that cl. 10 of PLED does not contain an equivalent of cl.12.7 of FFIA regarding the minimum period for a rostered shift</p>	Para 12	
	Ai Group	Reply Sub – 9/12/20		<p>Opposes SDA’s proposed amendment.</p> <p>Submits that FFIA and PLED do not contain substantive provisions requiring that</p>	Para 10-11	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				employees must be rostered or that a roster must be prepared. Consequently, the reference to rostering in FFIA cl. 12.7 is anomalous and confusing. Submits removal of cl.12.7 is appropriate.		
16	SDA	Sub-25/11/20	10	Part-time employees Objects that FFIA clause 12.8 is not retained in the PLED. Submits clause is a necessary protection to ensure part-time employees are treated as such.	Para 15	RESOLVED. Current award clause 12.8 is located at PLED clause 11.2 (Casual employees).
	Ai Group	Reply Sub – 9/12/20		Submits that FFIA cl. 12.8 is reflected at PLED cl.11.2. Consequently, no amendment is necessary.	15-16	
17	SDA	Sub-25/11/20	10.3	Part-time employees Submits that the words ‘At time of engaging’ lack clarity. Submits current words ‘At time of first being employed should be retained’. Submits that cl. 10.3(c) of PLED should read ‘the actual times...’ so as to fully reflect the current provision at cl. 12.2(c)	Para 11	
	Ai Group	Reply Sub – 9/12/20		Does not consider SDA’s proposed changes to PLED cl. 10.3 necessary but does not oppose them.	Para 12-13	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
18	SDA	Sub-25/11/20	10.8	<p>Part-time employees</p> <p>Submits that clause should reference the payment of penalty rates for part-time employees. Eg. ‘in accordance with clause 15 – Minimum rates and clause 21.1 Penalty rates for each ordinary hour worked.’</p>	Para 14	
	Ai Group	Reply Sub – 9/12/20		<p>Submits that SDA’s proposed change is not necessary. Various other provisions may also be relevant to the amounts payable to part-time employees for ordinary hours of work (such as allowances). Referring to all those provisions would cause unnecessary complexity.</p>	Para 14	
19	SDA	Sub-25/11/20	11.3	<p>Casual employees</p> <p>Submits that NOTE 2 be better placed at cl. 11.3. Noting that FFIA cl. 13.2 provides for an additional 25% of the ordinary rate, rather than the minimum rate, submits that omitting a reference to penalty rate payments and overtime at PLED cl. 11.3 could change meaning.</p>	Para 16	
	Ai Group	Reply Sub – 9/12/20	11.3	<p>Submits it is unclear whether the SDA objects to the placement of Note 2 and/or whether they have proposed a change to it. Intends to respond at conference if clarification is provided.</p>	Para 17	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
20	Ai Group	Sub – 25/11/20	12.2	<p>Classifications</p> <p>Objects that the words ‘as determined by the employer’ at the end of FFIA cl. 16.2 are omitted in PLED cl.12.2. Submits that omission make it unclear how the principal functions of the employee’s employment are determined.</p>	Paras 32-35	
	ABI	Sub – 25/11/20		<p>Objects to the omission of the words ‘as determined by the employer’, as set out in FFIA cl. 16.2, from PLED cl. 12.2.</p> <p>Proposes alternative wording.</p>	Para 2.3	
	SDA	Reply Sub – 9/12/20		<p>Disagrees with AIG’s objections at paras 32 – 35 of their 25/11/20 subs.</p> <p>Supports wording to emphasise that classifications are decided by an external objective test rather than the subjective judgement of the employer alone.</p> <p>Submits the PLED drafting aids clarity without changing the fundamental meaning of the provision. Noting objective test, disagrees that it is unclear how an employee’s principal functions are determined.</p> <p>Notes PLED cl. 12.1 states ‘An employer must classify an employee covered by this award in accordance with clause 12.4.’; submits it can be argued that provision implies that employer has an unfettered discretion in determining classifications.</p>	Paras 9-12; 49	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				Submits that if the provision is retained, a clarificatory note should be inserted stating that the test is based on the skills used and duties actually performed. Submits these arguments also apply to ABI's 25/11/20 subs re PLED clause 12.2.		
	Ai Group	Reply Sub – 9/12/20		Agrees with ABI's subs regarding PLED cl.12.2.	Para 34	
21	SDA	Sub-25/11/20	12.4	Classification definitions Objects to the changes to definitions could create ambiguity. Prefers current definitions – it is settled and clear and concise.	Para 19	
	Ai Group	Reply Sub – 9/12/20		Agrees with SDA's subs about PLED 12.4. Refers to its own subs about PLED cl. 12.4 on 25/11/2020.	Para 18	
22	ABI	Sub – 25/11/20	12.4(a)(i)	Classification definitions Objects to the omission of the word 'cooking' from the definition of 'fast food employee level 1' at PLED cl. 12.4. Submits omission is not consistent with FFIA cl. B.1.1 and 'cooking' should be inserted at PLED cl. 12.4.	Para 2.4	
	Ai Group	Reply Sub – 9/12/20		Agrees with ABI's subs regarding PLED cl.12.4. Refers to paras 32 – 50 of its own 25/11/20 sub.	Para 35	
	Ai Group	Sub – 25/11/20		Submits that 'cooking' should be listed as an activity at PLED cl. 12.4(a)(i) to clarify that	Para 36-37	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				such employees may be classified at level 1. Submits it is a significant activity and it is listed at B.1.1		
23	Ai Group	Sub – 25/11/20	12.4(a)(i)	Classification definitions Submits that the word ‘food’ in PLED cl. 12.4(a)(i) should be replaced with ‘meals, snacks’ (see item 7)	Para 38	
24	Ai Group	Sub – 25/11/20	12.4(a)(i)	Classification definitions Objects to using the phrase ‘food or beverages’ in PLED cl. 12.4(a)(i) rather than ‘food and/or beverages’ because read literally it excludes employees undertaking the relevant activities in relation to both food <i>and</i> beverages. Submits ‘or’ should be replaced with ‘and/or’	Paras 39 - 40	
25	Ai Group	Sub – 25/11/20	12.4(a)(i)	Classification definitions Submits that the word ‘primarily’ should be inserted after ‘public’ in PLED cl.12.4(a)(i). Submits use of the word ‘primarily’ in FFIA cl. B.1.1 makes the ‘take away’ element of the definition less restrictive. Concerned PLED drafting does not also contemplate food or beverages consumed at the point of sale, despite being sold <i>primarily</i> for consumption away from the point of sale. Submits this creates uncertainty about whether fast food operators providing dine-in areas are covered by the award.	Paras 41-44	RESOLVED. PLED updated. The word ‘primarily’ inserted after ‘public’ in PLED clause 12.4(a).

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
26	Ai Group	Sub – 25/11/20	12.4(a)(i)	<p>Classification definitions</p> <p>Submits that PLED cl. 12.4(a)(i) defines a level 1 employee more expansively than the FFIA does and introduces new undefined and unclear terminology such as the reference to ‘retail complex’. Submits ‘retail complex should be deleted’. Alternative wording provided.</p>	Paras 45-47	
27	Ai Group	Sub – 25/11/20	12.4(b)(i)	<p>Classification definitions</p> <p>Submits that the first ‘or’ in PLED cl. 12.4(b)(i) should be replaced with ‘and/or’. Concerned that only using ‘or’ may exclude from award coverage employees responsible for both supervising level 1 employees <i>and</i> training new employees.</p>	Paras 49 - 50	
	SDA	Reply Sub – 9/12/20	12	<p>Submits that AIG’s objections to the PLED classification clause at paras 36-50 of their sub on 25/11/20 are broadly consonant with its own position in para 19 of its sub on 25/11/20 favouring the retention of current classification definitions.</p>	Paras 12-13	
28	Ai Group	Sub – 25/11/20	13.1	<p>Ordinary hours of work and rostering</p> <p>Submits that a clause providing that a casual employee cannot work more than 38 hours each week should be inserted into the PLED.</p> <p>Submits absence of such a clause may effect the calculation of superannuation entitlements and give rise to the issue of whether section</p>	Paras 51 - 52	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				147 of the Fair Work Act 2009 has been satisfied. Suggested clause provided.		
	SDA	Reply Sub – 9/12/20	13.1	Supports AIG’s subs at paras 51 and 52 that a clause should be inserted clarifying that casual employees cannot work more than an average of 38 hours per week (averaged over a period of no more than four weeks).	Para 15	
29	Ai Group	Sub – 25/11/20	13.2(a)-13.2(d)	Ordinary hours of work and rostering Submits that the word ‘ordinary’ should be inserted before ‘hours’ in PLED cl. 13.2(a) – (d) so it’s clear cl. 13.2 concerns the arrangement of ordinary hours.	Para 53	RESOLVED. PLED updated. The word ‘ordinary’ before hours in PLED clauses 13.2(a) – (d).
	SDA	Reply Sub – 9/12/20		Not opposed to AIG’s proposal at para 53 of their sub on 25/11/20 to insert the word ‘ordinary’ before hours in cl. 13.2(a) to (d) inclusive.	Para 16	
30	Ai Group	Sub – 25/11/20	14.4	Breaks Submits that PLED cl. 14.4 results in substantial variation from the FFIA by creating a new obligation on employers requiring that they <u>must seek to ensure that</u> the employee has meaningful breaks during work hours. Submits cl. 14.4 should be deleted or replaced with the FFIA cl. 27.1(b).	Paras 54 - 55	
	SDA	Reply Sub – 9/12/20		Opposes AIG’s proposal to replace PLED cl. 14.4 with FFIA cl. 27.1(b). Submits that employers always had to provide breaks in a	Paras 17-18	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				way which was meaningful to the employees and the word ‘must’ in PLED cl.14.4 merely clarifies the current entitlement.		
31	SDA	Sub-25/11/20	15.1	Adult rates Objects to using the term ‘adult rates’ due to concerns about resulting ambiguity and inconsistency with the usual legal meaning of ‘adult’ (see item 2). Submits the term ‘ordinary rate’ is sufficient.	Para 20	
	Ai Group	Reply Sub – 9/12/20		Disagrees with SDA’s sub that the reference to ‘adult’ rates in PLED 15.1 requires amendment.	Para 19	
32	SDA	Sub-25/11/20	15.1	Adult rates Submits that including the following note linking the hourly rate to the minimum weekly rate would add clarity: ‘The minimum hourly rate is 1/38th of the minimum weekly rate’	Para 21	
	Ai Group	Reply Sub – 9/12/20		Not opposed to SDA’s proposal to insert a note or footnote explaining the basis upon which the minimum hourly rates have been derived.	Para 20	
33	SDA	Sub-25/11/20	15.2	Junior rates Objects to the use of the term ‘adult rate’ (see items 2 and 41).	Para 22	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	Ai Group	Reply Sub – 9/12/20		Submits in response to SDA that the reference in PLED cl.15.2 to ‘adult’ rates does not require amendment.	21	
34	Ai Group	Sub – 25/11/20	15.2	Junior rates Submits that the word ‘or’ in Table 4 should be replaced with ‘of age’.	Para 56	RESOLVED. PLED updated. The word ‘or’ replaced with the words ‘of age’ in PLED clause 15.2.
	SDA	Reply Sub – 9/12/20		Supports AIG’s proposal at para 56 of their sub on 25/11/20 to replace the word ‘or’ in Table 4 with ‘of age’.	Para 19	
35	SDA	Sub-25/11/20	17.2	Broken Hill allowance Suggests including a note showing the quantum as a percentage (ie. 4.28% of the standard hourly rate) to add clarity	Para 27	RESOLVED. Part of 4 yearly review process: percentages moved from Allowances clause to Monetary Allowances Schedule (FFIA PLED Schedule B)
	Ai Group	Reply Sub – 9/12/20		Submits SDA ‘s proposed changes to the Broken Hill allowance are not necessary in light of the approach taken in PLED Schedule B.	Para 22	
36	SDA	Sub-25/11/20	17.3	Cold work allowance Suggests including a note showing the quantum as a percentage (ie. 1.3% and 2% of the standard hourly rate respectively) to add clarity.	Para 26	RESOLVED. Part of 4 yearly review process: percentages moved from Allowances clause to Monetary Allowances Schedule (FFIA PLED Schedule B)
	Ai Group	Reply Sub – 9/12/20		Submits SDA ‘s proposed changes to the Cold Work allowance are not necessary in	Para 23	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				light of the approach taken in PLED Schedule B.		
37	SDA	Sub-25/11/20	17.4	Meal allowance Objects to drafting of PLED cl. 17.4 as it creates ambiguity. Submits that FFIA cl.19.1 is clearer and should be retained.	Para 23	
	Ai Group	Reply Sub – 9/12/20		Not opposed to SDA’s proposal.	Para 25	
38	SDA	Sub-25/11/20	17.5	Special clothing allowance Submits that the term ‘special clothing’ should be inserted in cl. 17.5 as follows: ‘If an employer requires an employee to wear any article of clothing, such as a uniform, dress, protective, special or other clothing, then the employer must:...’	Para 24	
	Ai Group	Reply Sub – 9/12/20		Not opposed to SDA’s proposed amendment to the special clothing allowance.	Para 25	
39	Ai Group	Sub – 25/11/20	17.6(a)(ii)	Travelling time reimbursement Objects to PLED cl. 17.6(a)(ii). Submits that contrary to the FFIA provisions, cl. 17.6(a)(ii) requires payment for any additional costs, potentially incorporating costs other than fares, without regard to whether they were reasonably incurred. Submits that the PLED is not clear that determining ‘additional’ costs involves a comparison against the fares that	Para 58 - 59	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				would reasonably be incurred in travel to and from the employee’s usual place of work. Provides alternative wording.		
	SDA	Reply Sub – 9/12/20		Disagrees with AIG’s 25/11/20 sub at para 57 that PLED cl.17.6(a)(ii) is more expansive than the current provision at cl.19.4(a) of the FFIA.	Para 20	
40	Ai Group	Sub – 25/11/20	17.7(b)	Transport of employee reimbursement Objects to PLED cl. 17.7(b) because its reference to ‘commercial passenger vehicle’ may encompass ride sharing options, certain types of bus services and hire cars. Submits this is substantive change to the award because FFIA cl. 19.7(a) is limited to reimbursement for taxi fares only.	Paras 60 - 61	
	SDA	Reply Sub – 9/12/20		Disagrees with AIG’s subs at paras 60-61 on 25/11/20 that the PLED provides a much broader entitlement to employees for reimbursement of travel costs compared to the current Award. Submits that the PLED’s drafting is consonant with societal developments to commercial transport services and outlines benefits of new services, particularly cost efficiency and safety. Submits that concerns the drafting may encompass certain bus services and hire cars is not realistic given the entitlement applies to employees finishing after 10.00pm or before 7.00am. Suggests inserting words to the effect	Paras 21-25	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				of 'equivalent to a taxi' at the end of PLED cl.17.7(b) as an option to mitigate concern. Notes similar wording was adopted at cl.19.8 of the Pharmacy Industry Award 2020		
41	Ai Group	Sub – 25/11/20	17.7(b)(ii)	Transport of employee reimbursement Submits that the words following the comma should appear in a separate line below PLED cl. 17.7(b)(ii). They are to be read with cl. 17.2(b)(i) - 17.2(b)(ii).	Para 62	
	SDA	Reply Sub – 9/12/20		Supports AIG's sub at para 62 on 25/11/20 regarding the placement of the comma.	Para 26	
42	SDA	Sub-25/11/20	17.8	Motor vehicle allowance Objects to using the term 'requires' in PLED cl.17.8 instead of 'requests' as per the current FFIA provision. Submits that change restricts the allowance.	Para 25	RESOLVED. PLED updated. The word 'requires' has been replaced with 'requests' in PLED clause 17.8.
	Ai Group	Reply Sub – 9/12/20		Not opposed SDA's proposed amendment to the motor vehicle allowance because it seeks to reinstate the language used in the FFIA provision.	Para 26	
43	SDA	Sub-25/11/20	18	Accident pay Objects that the definition for injury at FFIA cl. 20.1(b) is not retained in the PLED cl.18.	Para 29	RESOLVED. Current award clause 20.1(b) is at PLED clause 18.2(c).

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	Ai Group	Reply Sub – 9/12/20		Submits in response to SDA that the definition of ‘injury’ has not been deleted, it’s reflected at PLED cl. 18.2(c).	Para 27	
44	SDA	Sub-25/11/20	18.3(d)	Accident pay - Entitlement to the payment Notes that cl. 18.3(d) allows for the FWC to adjudicate for matters beyond a declaration of bankruptcy or liquidation.	Para 28	RESOLVED. PLED updated. Reference in Note has been amended to be ‘18.3(d)(ii)’.
45	Ai Group	Sub – 25/11/20	18.3(d)	Accident pay - Entitlement to the payment Objects to the drafting of PLED cl. 18.3(d) on basis that it is substantively different to FFIA. Submits that, contrary to the FFIA provisions, an employee’s entitlement to accident pay would continue on the termination of their employment if the termination was because of the employer’s bankruptcy or the liquidation of the employer’s business. Also submits that requirement for an employee’s entitlement to be referred to the FWC for determination has been excluded. Submits that PLED cl. 18.3(d)(ii) should be replaced with FFIA cl. 20.3(b)(ii) and the note deleted.	Para 63-65	
	SDA	Reply Sub – 9/12/20		Disagrees with AIG’s objection to PLED cl.18.3(d). Submits that the PLED’s drafting merely clarifies the entitlement to accident pay in the case of bankruptcy and/or liquidation and does not preclude the employer (or	Para 27-28	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				liquidator) from seeking a determination from the FWC.		
46	Ai Group	Sub – 25/11/20	20.5	<p>Minimum payment on a Sunday</p> <p>Submits that FFIA cl. 26.4 does not distinguish between rostered ordinary hours and other ordinary hours and the FFIA does not mandate the preparation or provision of a roster. Consequently, the reference to a ‘roster’ in the note at PLED cl. 20.5 is confusing and causes ambiguity. Submits that the words ‘a roster of’ should be deleted.</p>	Para 66-68	<p>RESOLVED.</p> <p>PLED updated. The words ‘a roster of’ deleted from the Note in PLED clause 20.5.</p>
	SDA	Reply Sub – 9/12/20		<p>Supports AIG’s objection at para 67 of their 25/11/20 sub to the insertion of the words ‘rostered hours’ in PLED cl. 20.5 on basis that the FFIA currently only refers to ordinary hours.</p>	Para 29-30	
47	ABI	Sub – 25/11/20	20.5	<p>Minimum payment on a Sunday</p> <p>Submits that the reference to ‘a roster of ordinary hours’ in the note at PLED cl. 20.5 is confusing. Suggests amending to ‘a rostered shift of ordinary hours’.</p>	Para 2.5	<p>RESOLVED.</p> <p>PLED updated in line with item 46 above.</p>
	Ai Group	Reply Sub – 9/12/20		<p>Oppose ABI’s proposed change to PLED 20.5 Refers to paras 66 – 68 of its own sub on 25/11/20.</p>	Para 36	
	SDA	Reply Sub – 9/12/20		<p>SDA submitted it objects to the insertion of ‘rostered hours’ in AIG’s submission and</p>	Para 50	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
				therefore to ABI’s 25/11/20 subs regarding PLED clause 20.		
48	Ai Group	Sub – 25/11/20	20.6	<p>Overtime rates</p> <p>Submits that PLED cl. 20.6 and Table 5 are not clear that each day stands alone when calculating overtime rates on Monday to Saturday. Concerned overtime rates are susceptible to being interpreted as calculated on some other basis, such as a weekly basis. Provides a proposed new clause clarifying the calculation of overtime worked Monday to Saturday.</p>	Para 69-71	
	SDA	Reply Sub – 9/12/20		<p>Supports AIG’s concerns that PLED cl.20.5 is ambiguous because the PLED omits provisions equivalent to FFIA cl.26.1(a) and (b) specifying that overtime rates on Monday to Saturday apply ‘on any one day’.</p>	Para 31-32	
49	Ai Group	Sub – 25/11/20	22.2	<p>Additional paid annual leave for certain shiftworkers</p> <p>Objects to PLED cl. 22.2 due to concern that, contrary to FFIA cl. 28.2, the shiftworker definition is not confined to seven day shiftworkers and as a result the additional leave entitlement is broader. Submits that the words ‘seven day’ should be inserted before ‘shiftworker’.</p>	Para 72 - 73	<p>RESOLVED.</p> <p>PLED updated. The words have been ‘7-day’ inserted before ‘shiftworker’ in PLED clause 22.2.</p>

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	SDA	Reply Sub – 9/12/20		States that AIG at para 72 of their sub rightly noted the changes in the definition of shiftworker at PLED cl. 22.2.	33-34	
50	Ai Group	Sub – 25/11/20	22.2	<p>Additional paid annual leave for certain shiftworkers</p> <p>Submits PLED cl. 22.2 should be deleted because the award does not contemplate the performance of shiftwork and consequently cl. 22.2 has no work to do.</p>	Para 74	
	SDA	Reply Sub – 9/12/20		Opposes AIG’s proposal at para 74 to delete the term ‘shiftworker’ because, despite the Award’s silence regarding shiftwork, employees may be rostered in such a way as to qualify them as shiftworkers.	35	
51	SDA	Reply Sub – 9/12/20	22.2	<p>Additional paid annual leave for certain shiftworkers</p> <p>Submits that the reference to ‘continuous’ at PLED cl 22.2 is substantially different to the reference to ‘regularly’ in the FFIA and changes the substantive meaning of the provision. Supports retaining the current FFIA definition.</p>	33-34	
52	SDA	Sub-25/11/20	22.3	<p>Annual leave loading</p> <p>Submits that the retention of the term ‘loading’ as opposed to ‘additional payment’ improves clarity at PLED cl. 22.3(a) - (b) respectively.</p>	Para 32	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	Ai Group	Reply Sub – 9/12/20		Refers to paras 75 – 79 of its own sub on 25/11/20.	28	
53	Ai Group	Sub – 25/11/20	22.3	<p>Annual leave loading</p> <p>Submits that PLED cl. 22.3(a) and 22.3(b) both state that an employee is entitled to an additional payment for accrued annual leave. Cl. 22.3(b) goes on to prescribe the quantum of the additional amount payable. While not abundantly clear what those amounts are to be paid in addition to, read alongside the NES, it appears that the PLED is purporting to require the payment of the prescribed amounts in addition to the employee’s base rate of pay. An example of the application of PLED cl. 22.3(b)(i) is provided and it is noted that a similar outcome would flow from cl. 22.3(b)(ii). Submits that FFIA cl.28.3(b) lacks clarity, however it is not intended to operate in the manner reflected in the PLED.</p> <p>Submits that cl. 22.3 should be amended to resolve issues.</p>	Para 75-78	
	SDA	Reply Sub – 9/12/20		Notes that AIG queries the operation of the annual leave loading at paras 75 to 78 of their sub. Submits that the FFIA cl.28.3(b) is sufficiently clear and emphasises its view that the term ‘loading’ rather than ‘additional payment’ should be used.	Paras 38-39	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
54	Ai Group	Sub – 25/11/20	22.3(b)(ii)	Annual leave loading Submits that cl. 22.3 should be amended to resolve issues. This may include deleting cl. 22.3(b)(ii) given award does not contemplate shiftwork.	Para 79	
	SDA	Reply Sub – 9/12/20		Opposes AIG’s proposal at para 79 to delete PLED cl.22.3(b)(ii) because, despite the Award’s silence regarding shiftwork, employees may be rostered in such a way as to qualify them as shiftworkers.	Para 36	
55	Ai Group	Sub – 25/11/20	22.6(a)	Excessive leave accruals: general provision Submits that if PLED cl 22.2 is deleted in accordance with earlier submissions (see item 51), the reference to it in clause 22.6(a) should also be removed.	Para 80	
	SDA	Reply Sub – 9/12/20		Opposes AIG’s proposal at para 80 to delete the reference at PLED 22.6(a) to cl.22.2 because, despite the Award’s silence regarding shiftwork, employees may be rostered in such a way as to qualify them as shiftworkers.	36	
56	Ai Group	Sub – 25/11/20	22.8(d)	Excessive leave accruals: request by employee for leave Submits that the reference in PLED 22.8(d) to cl 22.8(b) should be replaced with a reference to cl. 22.8(a).	Para 81	RESOLVED. PLED updated. Reference changed to ‘22.8(a)’ as per the current award.

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
	SDA	Reply Sub – 9/12/20		Supports AIG’s view at para 81 of their submission that the reference in PLED cl.22.8(d) should be amended.	Para 40	
57	Ai Group	Sub – 25/11/20	22.8(e)	Excessive leave accruals: request by employee for leave The reference in PLED cl. 22.8(e) to cl. 22.8(b) should be replaced with a reference to cl. 22.8(a).	Para 82	RESOLVED. PLED updated. Reference changed to ‘22.8(a)’ as per the current award.
	SDA	Sub-25/11/20		Notes an internal reference error at 22.8(e). Submits reference should be ‘22.8(a)’ as per FFIA clause 28.8(e).	Para 34	
	SDA	Reply Sub – 9/12/20		Supports AIG’s view at para 82.	Para 40	
	Ai Group	Reply Sub – 9/12/20		Agrees with SDA’s submission.	Para 29	
58	SDA	Sub-25/11/20	26	Unpaid family and domestic violence leave Objects to referring to the NES and the deleting of the family and domestic violence leave clause (FFIA cl. 32). Submits that retaining current clause adds clarity.	Para 35	RESOLVED. Standard clause inserted into all exposure drafts in accordance with [2019] FWCFB 5144 at [13].
	Ai Group	Reply Sub – 9/12/20		Submits PLED cl.26 is consistent with the FWC’s approach across the awards system and a previous decision in this regard. Departing from that approach is not warranted.	Para 30	

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
59	Ai Group	Sub – 25/11/20	32.1(c)	Redundancy Due to a drafting error, the reference in PLED cl. 32.1(c) to clause 32.1(b)(i) should be replaced with a reference to clause 32.1(b)(ii).	Para 83	RESOLVED. PLED updated. Changed to ‘32.1(b)(ii)’ as per the current award.
	SDA	Reply Sub – 9/12/20		Supports AIG’s submission at para 83.	Para 41	
60	Ai Group	Sub – 25/11/20	32.3(c)	Redundancy Due to a drafting error, the reference in PLED cl. 32.3(c) to cl. 32.3(a) should be replaced with a reference to cl. 32.3(b).	Para 84	RESOLVED. PLED updated. Typographical error – Changed to ‘32.2(b)’ as per the current award.
	SDA	Sub-25/11/20		Reference at the end of PLED cl. 32.3(c) should read 32.3(b).	Para 17	
61	Ai Group	Sub – 25/11/20	A.1.1	Full-time and part-time adult employees—ordinary and penalty rates The heading of the third column should be amended by replacing the word ‘and’ with ‘to’. Apparent drafting error.	Para 85	RESOLVED. PLED updated. The word ‘between’ inserted before ‘10.00 pm’ in column 3 of A.1.1 to reflect current award wording at clause 25.5. Consequential amendment to PLED clause 21.1 – updated to reflect wording at current award 25.5.
62	Ai Group	Sub – 25/11/20	A.2.1	Casual adult employees—ordinary and penalty rates The heading of the third column should be amended by replacing the word ‘and’ with ‘to’. Apparent drafting error.	Para 86	RESOLVED. PLED updated. The word ‘between’ inserted before ‘10.00 pm’ in column 3 of A.2.1 to reflect current award wording at clause 25.5.

ITEM	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
63	Ai Group	Sub – 25/11/20	A.3.2	<p>Full-time and part-time junior employees—ordinary and penalty rates</p> <p>The heading of the third column should be amended by replacing the word ‘and’ with ‘to’. Apparent drafting error.</p>	Para 87	<p>RESOLVED.</p> <p>PLED updated. The word ‘between’ inserted before ‘10.00 pm’ in column 3 of A.3.2 to reflect current award wording at clause 25.5.</p>
64	Ai Group	Sub – 25/11/20	A.3.4	<p>Casual junior employees—ordinary and penalty rates</p> <p>The heading of the third column should be amended by replacing the word ‘and’ with ‘to’. Apparent drafting error.</p>	Para 88	<p>RESOLVED.</p> <p>PLED updated. The word ‘between’ inserted before ‘10.00 pm’ in column 3 of A.3.4 to reflect current award wording at clause 25.5.</p>
	SDA	Reply Sub – 9/12/20	Schedule A	Notes the drafting errors in Schedule A identified at paras 85-88 of AIG’s sub and adds no further submissions.	Para 43	
65	Ai Group	Sub – 25/11/20	B.2.1	<p>Expense-related allowances</p> <p>Submits that the references in PLED cl. B.2.1 to ‘per meal’ should be replaced with ‘per occasion’ because the allowance is not payable by reference to each meal consumed, rather the entitlement arises each occasion the relevant criteria are satisfied.</p>	Para 90	