Plain language draft standard clauses – Summary of submissions and submissions in reply received

This document provides a summary of submissions and reply submissions on the plain language draft standard clauses received to 4 November 2016 from the following interested parties:

- ACTU (ACTU submission and ACTU submission in reply)
- Association of Professional Engineers, Scientists and Managers, Australia (APESMA submission)
- Australian Business Industrial and NSW Business Chamber (ABI and NSW Business Chamber submission)
- Australian Chamber of Commerce and Industry (ACCI submission)
- Australian Industry Group (Ai Group submission and Ai Group submission in reply)
- Australian Manufacturing Workers' Union (AMWU submission and AMWU submission in reply)
- Business SA (Business SA submission and Business SA submission in reply)
- CFMEU – Forestry, Furnishing, Building Products and Manufacturing Division (CFMEU - FFPD submission and CFMEU – FFPD submission in reply)
- Housing Industry Association (HIA submission)
- National Farmers' Federation (NFF submission)
- Private Hospital Industry Employers' Associations (PHIEA submission)
- Shop Distributive and Allied Employees' Association (SDA submission and SDA submission in reply)
- Textile Clothing & Footwear Union of Australia (TCFUA submission and TCFUA submission in reply)

Directions were issued by the Full Bench 17 August 2016.

General submissions about the plain language draft standard clauses

ABI and NSW Business Chamber submits they have material interests in a number of Awards which contain non-standard clauses and seek clarification as to how the extra provisions in these Awards will be treated.

ACTU (paras 4-14) acknowledges the objectives of the plain-language re-drafting process and supports the majority of the changes in the Plain Language Standard Clauses. However, submit a number of the proposed changes would alter the legal effect of the standard clauses and/or render them less simple and easy to understand as required by the modern awards objective. In those cases, the ACTU submit the Plain Language Standard Clauses should be further amended to avoid this consequence or, where appropriate, the existing language in the Exposure Draft Standard Clauses should be preferred.

Ai Group (paras 5-11): Submits that while it supports the proposition that awards should be simple and easy to understand, the desire for consistency and simplicity should not unnecessarily override the preservation of the legal effect of the current award terms. It important that the plain language re-drafting process does not lead to disputation over award provisions that are settled and well-understood. Care must be taken to achieve this. Directions issued suggest that it plain language re-drafting is not directed to introducing variations although it is not clear whether the substantive changes that arise from the re-drafting are so intended, or inadvertent. In many instances the basis of introducing substantive change is not evident. In the absence of any directions for the filing of evidence, the submission addresses changes to the legal effect considered problematic and, as directed, provided an explanation of why the re-drafted clause should not be adopted. Wherever possible, amended wording is proposed. Should the Commission form the view that any one of the substantive changes effected by the re-drafting ought to be made, a separate process should be instituted for dealing with such proposals.

AMWU submits that it supports and adopts the submissions of the ACTU and the SDA. The AMWU strongly supports the ACTU's submissions in relation to the re-drafted plain language Award Flexibility clause (clause A of the re-draft)).

APESMA submits that it has had the opportunity to collaborate with the SDA in preparation of these submissions. They wholly support the submissions of the SDA and also incorporate the SDA's submissions into their submissions.

HIA submits that there must be a balance between the treatment of modern awards as industrial instruments and the inclusion within those industrial instruments of guidance materials generally found other than in the instrument itself and provided by external sources. To conflate the functions of being a regulatory instrument and acting as a form of guidance would be at odds with the modern award objectives and should be avoided. Also submits that a number of the plain language clauses include 'Notes'. The HIA would generally be supportive of the use of hyperlinks within modern awards to the full NES entitlements and the limited use of 'Notes' on the basis that it is made

clear that the Note is not intended to give rise to award obligations. Also notes the differences across awards to the Pharmacy Award exposure draft. For the sake of clarify, Attachment A to the submission lists provisions in 3 awards that differ from the Pharmacy Industry Award clauses or that include allied provisions to the model terms.

NFF (paras 69-83) submits that proposed clauses A.5, A.6(d), A.10, A.11, A.12, B.2, D.1, D.9, E.1, F, G, H and I, would not meet the modern awards objective for the reasons set out at paragraphs 69 to 83 inclusive.

PHIEA submits that it has not identified any unintended consequences in respect of the draft standard clauses relating to Award Flexibility; Dispute Resolution, Termination of Employment or Redundancy and therefore the focus of its submission is on the provisions regarding Consultation about Major Workplace Change & Changes to Rosters and Hours of Work (clauses B and C of the re-draft).

SDA submits it supports and adopts the submissions made by the ACTU and the AWMU.

TCFUA submits it supports and adopts the submissions of the ACTU, AMWU and SDA.

CFMEU - FFPD submits it supports and adopts the submissions of the ACTU.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	**Plain language re-draft**	**Submission summary**
Table of Contents **Part 1—Application and Operation** … 4. Award flexibility **…** **Part 6—Leave, Public Holidays and Other NES Entitlements** … 20. Termination of employment 21. Redundancy **Part 7—Consultation and dispute resolution** 22. Consultation 23. Dispute resolution	**Table of Contents** **Part 1—Application and Operation of this award** … 6. Award flexibility for individual arrangements **…** **Part 7—Consultation and dispute resolution** 27. Consultation about major workplace change 28. Consultation about changes to rosters and hours of work 29. Dispute resolution **Part 8—Termination of employment and Redundancy** 30. Termination of employment 31. Redundancy 32. Transfer to lower paid job on redundancy 33. Employee leaving during redundancy notice period 34. Job search entitlement	ACCI (p.2): Submits it has no objection to amendments to the structure and to locating multiple topics within distinct clauses within distinct headings. Notes user testing comments in relation to sequence of Termination of Employment and Redundancy clauses and has no objection to relocation of these provisions. ACTU (submission in reply p.2): Agrees with ACCI. Business SA (submission in reply para 1.1): Agrees with ACCI.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
4. Award flexibility **4.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning: **(a)** arrangements for when work is performed; **(b)** overtime rates; **(c)** penalty rates; **(d)** allowances; and **(e)** leave loading. **4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer. **4.3** The agreement between the employer and the individual employee must: **(a)** be confined to a variation in the application of one or more of the terms listed in clause 4.1; and **(b)** result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to. **4.4** The agreement between the employer and the individual employee must also: **(a)** be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian; **(b)** state each term of this award that the employer and the individual employee	**A. Award flexibility for individual arrangements** **A.1** Despite anything else in this award, an employee who has started employment may agree in writing with the employer to vary how terms of this award relating to any one or more of the following applies to them: **(a)** arrangements for when work is performed; **(b)** allowances; **(c)** overtime rates; **(d)** penalty rates; **(e)** annual leave loading. NOTE: Arrangements for when work is performed include such matters as hours of work, rostering arrangements and breaks. **A.2** An agreement may only be made in order to meet the genuine needs of the employer and the employee. **A.3** Either the employer or the employee may initiate the making of an agreement. **A.4** An employer who wishes to initiate the making of an agreement must: **(a)** give the employee a written proposal; and **(b)** if the employer is aware that the employee has, or should reasonably be aware that the employee may have, limited understanding of written English, take reasonable steps (including	ACCI (p.2): Submits the clause should reflect the wording of the FW Act as closely as possible. ACTU (Attach 1, p.1) and AMWU (para 4): Submit that re-drafting the requirement in clause 4.2 that it cannot be made until after commenced employment as a qualification in clause A.1 is less clear and it should be drafted as a separate sub-clause/explicit requirement. SDA (paras 4–13): Submits that clause A.1 does not sufficiently convey requirement set out in clause 4.2. Proposes requirement that it must only be made after commencement be included at A.6. ACTU (submission in reply p.3): Agrees with SDA that wording should reflect the wording in clause 4.2. Business SA (submission in reply para 1.2.1): Does not agrees with SDA and ACTU. ABI and NSW Business Chamber (para 1.1): Submits that in clause A.1, 'started employment' is cumbersome and should be substituted with 'commenced employment'. Business SA (submission in reply para 1.2.1): Agrees with ABI and NSW Business Chamber. Ai Group (submission in reply para 6): Does not oppose submissions of ABI. ACTU (Attach 1, p.1) and SDA (paras 25–27): Submits that re-drafting the requirement in 4.4(a) that it be in writing as a qualification in clause A.1 is less clear. It should be drafted as a separate sub-clause/explicit requirement rather than a qualified right within clause A.1. Business SA (submission in reply para 1.2.7) and Ai Group (submission in reply para 7): Disagrees with the ACTU and submits that A.1 is sufficiently clear. Ai Group (paras 12–18): Submits that the re-draft expression 'vary how terms…applies' changes the effect so that an agreement can only vary how a term applies and cannot vary the application of a term so that it does not apply. Proposes removing 'how' and 'applies to them' from A.1. ACTU (submission in reply p.3): Disagrees with Ai Group. Submits that 'applies to them' has the same legal meaning as 'the application of' NFF (paras 10-16): Submits that at clause A.1, 'vary how the terms of the award…applies' implies that what can be agreed is how a term applies, not that the particular term cannot apply at all. Proposes wording. Business SA (submission in reply para 1.2.2): Agrees with Ai Group and NFF that the words 'how' and 'applies to them' in A.1 should be removed. Wording by NFF is supported as an alternative. ACTU (submission in reply p.3): Agrees with NFF, however, prefers AiGroup's proposed wording. ACTU (Attach 1, p.1), APESMA (paras 14–17) and SDA (paras 16–20): Submit that at A.1, it is unclear that list is exhaustive as reflected in clause 4.3(a). Clause should be clearer that it cannot vary other terms of an award not listed in clause A. The terms of clause 4.3(a) should be included. Ai Group (submission in reply para 5): Does not oppose submissions of ACTU, APESMA and SDA. ABI and NSW Business Chamber (para 1.2): Submits that the expression 'arrangements for when work is performed' is appropriate and the notes assist with clarity. ACTU (submission in reply p.3): Disagrees with ABI and NSW Business Chamber. Submits that the note is confusing and should be removed. ACCI (p.2): Submits that the note at A.1 should be removed as it may have the effect of limiting the clauses that can be varied/create the perception that it is limited to the clauses listed in the note. Ai Group (paras 19–25): Submits that it opposes use of hyperlinks in the note at A.1 that could narrow the scope of clause A.1(a).

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
have agreed to vary; **(c)** detail how the application of each term has been varied by agreement between the employer and the individual employee; **(d)** detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and **(e)** state the date the agreement commences to operate. **4.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record. **4.6** Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee. **4.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal. **4.8** The agreement may be terminated: **(a)** by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or **(b)** at any time, by written agreement between the employer and the individual employee. NOTE: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the Act). **4.9** The notice provisions in clause 4.8(a) only apply to an agreement entered into from the	providing a translation in an appropriate language) to ensure that the employee understands the proposal. **A.5** An agreement must result in the employee being better off overall on its making than if the agreement had not been made. **A.6** An agreement must do each of the following: **(a)** state the names of the employer and the employee; **(b)** identify the award term or terms to be varied; **(c)** set out how the award term, or each term, is varied; **(d)** show how the agreement results in the employee being better off overall on its making than if the agreement had not been made; **(e)** state the date on which the agreement is to start. **A.7** An agreement must be signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian. **A.8** Except as provided by clause A.7, an agreement must not require the approval or consent of anyone other than the employer and the employee.	Business SA (para 1.1): Submits that it objects to the inclusion of the note in A.1 as it does not include all of the possible 'arrangements for when work is performed' and hyperlinks will have to vary by award. HIA (2.3.1–2.3.9): Submits that the note in A.1 should be removed because it could lead to confusion where 'arrangements for when work is performed' relate to different clauses across awards. ACTU (submission in reply p.4) and Business SA (submission in reply para 1.2.3): Agrees with ACCI, Ai Group and HIA that notes and hyperlinks should be removed. APESMA (paras 6–11): Submits that separating the requirements in clause 4.2 into clause A.1 and A.2 does not provide the same level of clarity. Current clause is clearer. ACTU (submission in reply p.4): Agrees with APESMA. ACCI (p.2): Submits A.2 should remove the term 'only' to more closely reflect s.144(1) of the FW Act. Business SA (submission in reply para 1.2.4): Agrees with ACCI. Ai Group (submission in reply para 10): Does not oppose variation proposed by ACCI but does not consider it necessary. APESMA (paras 12–13) and SDA (paras 14–15): Submit that A.3 should include both elements of clause 4.2 by adding *'An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.'* ACTU (submission in reply p.4): Agrees with APESMA. Ai Group (submission in reply para 11): Disagrees with APESMA and SDA, submits that the addition is unnecessary. ACCI (p.3): Submits that clause A.3 and A.4 should be deleted in the interests of streamlining and simplifying the clause because an agreement involves a process of parties arriving at a consensual arrangement. ACTU (submission in reply p.3): Disagrees with ACCI, submits that removing clause A.3 and A.4 would be a substantive change that would remove requirements of clauses 4.4(a) and 4.7. Ai Group (submission in reply para 12): Agrees with ACCI. ACCI (p.3): Submits that clauses A.5–A.7 should be consolidated into one sub-clause and use a paragraph format because it would more easily translates into a checklist. Proposes wording. ACTU (submission in reply p.3): Disagrees with ACCI. Ai Group (submission in reply para 28): Agrees with ACCI. Ai Group (paras 26–32 and 34): Submits that the expression 'on its making' in clause A.5 and A.6(d) should be replaced with 'at the time the agreement is made' is this is clearer. ACTU (submission in reply p.3): Agrees with Ai Group. Business SA (submission in reply para 1.2.6): Agrees with Ai Group in relation to A.5. ACTU (Attach 1, p1): Submits that the expression *'an agreement must result in the employee being better off overall on its making…'* in A.5 is unusual and results in the applicable test being less clear. The existing wording should be used instead. SDA (paras 21–24): Submits that the terms in A.5 are not simpler and clearer than clause 4.3(b) and so the current provisions should be used. APESMA (paras 18–19): Submits that A.6 should state more explicitly that the agreement must be in writing (rather than or in addition to A.1) along with other requirements as constructed in the award.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a), subject to four weeks' notice of termination. **4.10** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.	**A.9** The employer must keep a copy of the agreement as a time and wages record and give another copy to the employee. **A.10** The employer and the employee must genuinely agree, without duress or coercion of any kind, to the variation of the term, or each variation of a term, provided for by an agreement. **A.11** The employer and the employee may at any time agree in writing to terminate the agreement. **A.12** The employer or the employee may at any time give 13 weeks' (or, if the agreement was entered into before the first full pay period starting on or after 4 December 2013, 4 weeks') written notice of termination of an agreement to the other party. **A.13** The agreement ceases to have effect at the end of the period of notice mentioned in clause A.12. **A.14** The period of notice required under clause A.12 is reduced to a period of not more than 28 days if an agreement made under this clause does not meet a requirement set out both in section 144(4) of the Fair Work Act and in clause A. **A.15** The right to make an agreement under clause A is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an employee.	ACTU (submission in reply p.4): Agrees with SDA and APESMA. Ai Group (submission in reply para 15): Does not oppose submissions of the ACTU, APESMA and SDA. SDA (paras 4–13) and AMWU (para 5): Submits that clause A.6 should include the second sentence in clause 4.2. ACTU (submission in reply p.5): Agrees with SDA. HIA (2.3.13–2.3.15): Submits that clause A.6(c) could be improved by replacing it with 'set out how the award term is varied'. Submits that it is unclear why words 'or each term' have been included. Ai Group (submission in reply para 15): Submits that the words 'or each term' in the re-draft are necessary and should be included. Ai Group (para 33): Submits that the expression 'set out' in clause A.6(c) should also be used in clause A.6(d) rather than the expression 'show'. ACTU (submission in reply p.5): Agrees with Ai Group. ACCI (p.3): Submits that clause A.6(d) can be removed because it adds prescription and complexity to the clause and it is not a requirement set out in s.144 of the FW Act. If it is to remain, the expression 'show' should be replaced with 'state' to reflect the written nature of the agreement. NFF (paras 17–19): Submits that under clause A.6(d) replacing 'detail' with 'show' may suggest the agreement must demonstrate conclusively that the better off overall test is met whereas clause 4.4(d) only requires a description. HIA (2.3.16–2.3.21): Submits that under clause A.6(d) replacing 'detail' with 'show' imposes a higher threshold and 'detail' should be retained. Business SA (submission in reply para 1.2.9): Agrees with NFF and HIA that the word 'detail' should be retained. Business SA (para 1.1): Submits that under clause A.6(d) the expression 'show' is a broader requirement than 'detail'. AMWU (para 6–7): Submits that the more detail an agreement provides the more likely they are not to fall foul of the better off overall requirement. ACTU (submission in reply p.6): Agrees with Ai Group, NFF, HIA, Business SA and AMWU that the term 'show' should not be used and that 'detail' is preferred. ACTU (Attach 1, p2), APESMA (paras 20–23), SDA (paras 28–31) and AMWU (para 8): Submit that at A.6(d), the qualification *'in relation to the individual employee's terms and conditions of employment'* in clause 4.4(d) should be included in this clause. Ai Group (submission in reply para 21): Disagrees with ACTU, APESMA, SDA and AMWU and submits that the provision is about the form of the agreement rather than its substance. ABI and NSW Business Chamber (para 1.4): Submits that a note to clarify the meaning of 'better off overall' would be helpful, but disagrees with the proposal to include the FWO definition because it places too much importance on financial benefits of the arrangement. ACCI (p.4): Submits that it does not support the approach of including a note about 'better off overall' because the award should not attempt to interpret the FW Act. NFF (para 20) submits that proposed note about 'better off overall' may narrow the terms of the FW Act to not include non-monetary benefits.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		Ai Group (paras 35–40): Submits the clause should not include the note about 'better off overall'. HIA (2.3.16–2.3.21): Submits that it would not support inclusion of a note or definition of 'better off overall' as it is best left to judicial interpretation. APESMA (paras 20–25): Submits that proposed note should not be included in the legal instrument, but it may be appropriate to include in an annotated version. SDA (paras 32–36): Submits that the proposed note should not be included and that the clause should not define 'better off overall'. ACTU (submission in reply p.6) and Business SA (submission in reply para 1.2.8): Agrees with ABI and NSW Business Chamber, ACCI, NFF, Ai Group, HIA, APESMA and SDA that the note in relation to "better off overall" should be removed. NFF (paras 21–22): Submits that A.9 has a different effect to clause 4.5. Currently the employer is required to keep the actual agreement and give a copy to the employee; while A.9 only requires the employer to keep a copy. Ai Group (submission in reply para 29): Agrees with NFF. ABI and NSW Business Chamber (para 1.3): Submits that clause A.10 is more relevant to the subject matter dealt with earlier in the clause and should be moved up to become clause A.3. Ai Group (submission in reply para 30): Does not oppose variation proposed by ABI but does not consider it necessary. ACTU (submission in reply p.6) and Business SA (submission in reply para 1.2.5): Agrees with NFF and ABI and NSW Business Chamber. Ai Group (paras 41–42): Submits that the expression 'of any kind' in clause A.10 is superfluous and should be deleted. ACTU (submission in reply p.6): Disagrees with Ai Group. Submits that 'of any kind' does not change the legal effect, does not impose additional obligation but rather clarifies and emphasis the obligation. Ai Group (paras 43–46): Submits that at A.10 the text 'to the variation of the term, or each variation of a term provided for by an agreement' should be deleted because it makes it unduly complex. Proposes wording. ACTU (submission in reply p.6): Agrees with Ai Group that A.10 is a problem. Submits 4.2 should be retained. Business SA (para 1.3): Submits that it is unnecessary to separate clause 4.8 into two subclauses (A.11 and A.12) because A.8 is clear that it can be (a) or (b). ACCI (p.4): Submits that clauses A.11 and A.12 could be consolidated to better clarify the way in which an agreement can be terminated. Proposes wording. Ai Group (submission in reply para 32): Agrees with ACCI. Business SA (submission in reply para 1.2.10): Supports ACCI's re-wording of A.11 and A.12. ACTU (Attach 1, p.2): Submits that clauses A.11 to A.14 make it less clear than clauses 4.8 and 4.9 that it may be terminated *unilaterally* by any party after giving the defined notice or at any time *by agreement*. The grammatical construction of current 4.8 makes this clearer. APESMA (paras 28–29) and SDA (para 39): Submit clauses A.11 to A.14 are less clear than clause 4.8. ACTU (submission in reply p.7): Agrees with APESMA and SDA ACTU (Attach 1, p.2), APESMA (paras 28–29) and SDA (para 40): Submit that clause A.13 (if it

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		remains) should be re-worded to avoid confusion about a possible distinction between when notice is given of termination, the date of termination and the date the agreement ceases to have effect (the latter two dates being equivalent). Proposes wording. Ai Group (submission in reply para 33): Does not oppose variation proposed by ACTU, APESMA and SDA. NFF (para 23): Submits that the proposed clause A.14 converts a note into a substantive award term which may affect interpretation and at the very least duplicates a legal requirement of the FW Act. The note form should be retained. ACTU (submission in reply p.7): Disagrees with NFF APESMA (para 30): Submits that it agrees that the provisions in clause A.14 should be a sub-clause rather than a note. SDA (para 41): Submits that it agrees that the provisions in clause A.14 should be a sub-clause rather than a note but that the wording of the note under clause 4.8 is simpler and easier to understand. Ai Group (paras 47–58): Submits that clause A.14 should be reinstated as a note because as a sub-clause it would inappropriately give primacy to a party's ability to terminate the agreement due to potentially minor and insubstantial deviations from the requirements of the model clause. Business SA (submission in reply para 1.2.11): Agrees with Ai Group (paras 47–58) and NFF (para 23). ACTU (submission in reply p.7): Agrees with APESMA and SDA, disagrees with Ai Group.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
22. Consultation **22.1 Consultation regarding major workplace change** **(a) Employer to notify** **(i)** Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any. **(ii)** **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect. **(b) Employer to discuss change** **(i)** The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 22.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes. **(ii)** The discussions must commence as early as practicable after a definite	**B. Consultation about major workplace change** **B.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must: **(a)** give notice of the changes to all employees who may be affected by them and their representatives (if any); and **(b)** at the earliest practicable date, discuss with those employees and their representatives (if any): **(i)** when the changes are to be made; and **(ii)** their likely effect on employees; and **(iii)** the measures that are to be taken to avoid or reduce the adverse effects of the changes on employees. **B.2** For the purposes of the discussion under clause B.1(b), the employer must give a written notice to the employees and their representatives (if any) that: **(a)** contains all relevant information about the changes including: **(i)** their nature; and **(ii)** their expected effect on employees; and **(b)** sets out any other matters connected with the changes that are likely to affect employees.	ACCI (page 4): Submits that user experience will be improved by more clearly setting out employer responsibilities in a checklist like the re-drafted clause B.1. ACTU (submission in reply p.8): Agrees with ACCI NFF (paras 24-28): Submits that clause B.1 changes the effect of clause 22 from past to present tense. It should be made clear in B1 that the obligation to consult only arises after a definite decision has been made. NFF (paras 24-28): Submits that clause B.1 does not include the phrase 'after a definite decision has been made' that appears in clause 22.1(b)(ii)). This omission may have the effect of the requirement for consultation to occur 'at the earliest practicable date' at clause B.1(b) to occur either before or after the decision is made. Proposes wording. ACTU (submission in reply p.8): Disagrees with NFF, submits that B.1 does not change legal effect in relation to change of tense or omission of words 'after a definite decision has been made'. NFF (para 28): Submits that clause B.1(b) sets out what must be discussed with employees and their representatives. The changes in wording alter the meaning of the clause. Sets out differences in a comparison table. Ai Group (submission in reply para 39): Disagrees with NFF and submits that that the proposed clause does not impose an obligation on employers to implement measures. ACTU (submission in reply p.8): Agrees with NFF that the new drafting changes the provision, submits wording in 22.1(b)(i) 'the introduction of the changes' has broader obligation and should be retained. ABI and NSW Business Chamber (item 2.1) Clause B.1: supports the continuing inclusion of the expression 'definite decision' as opposed to 'final decision'. Business SA (submission in reply para 1.3.1): Agrees with ABI (para 2.1) and NFF (paras 24-28). AMWU (paras 9 and 10) Clause B.1: Submits that the words 'definite decision' should remain. Any language which implies the employer has reached a concluded view should be avoided. The language 'final decision' may also result in consultation beginning later than is envisaged in the current drafting. ACTU (submission in reply p.8) and Ai Group (submission in reply para 35): Agrees with AMWU, ABI and NSW Business Chamber that 'definite decision should be retained'. Ai Group (paras 59–65): Submits that clause B.1(b) would change the timing of mandated discussions. Clause 22.1(b)(ii) states that discussions must *'... commence as early as practicable.'* Whereas clause B.1(b) mandates when discussions occur. It appears to suggest that the entire discussions must occur at the *'earliest practicable date ...'* not just the commencement of discussions. Ai Group (paras 59–65): Submits that the word *'date'* at clause B.1(b) appears to require that all of the discussion will occur on a single day. The clause should be re-drafted to make clear that they do not have to occur on a single day. Ai Group (submission in reply para 37): Given concerns of NFF, suggests B.1(b) varied as follows 'as early as practicable after the decision has been made, commence discussions with those employees affected and their representatives (if any) about:' ACTU (submission in reply p.8): Agrees with above Ai Group submissions in relation to B.1(b). ACCI (p.4): Submits that at clause B.1(b)(i) the requirement to discuss ''when changes are to be made' be amended to 'when changes are *likely* to be made'. Ai Group (submission in reply para 38): Agrees with ACCI. Ai Group (paras 69-72): Submits that clause B.1(b) has expanded the obligations and imposes an

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
decision has been made by the employer to make the changes referred to in clause 22.1(a). **(iii)** For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.	**B.3** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 27.1(b). **B.4** Clause B does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests. **B.5** For the purpose of clause B, a change that is provided for by this award (other than clause B) must be taken not to have a significant effect on employees. **B.6** In clause B: **significant effects**, on employees, includes any of the following: **(a)** termination of employment; **(b)** major changes in the composition, operation or size of the workforce or in the skills required by employees; **(c)** loss of, or reduction in, job or promotion opportunities; **(d)** loss of, or reduction in, job tenure; **(e)** alteration of hours of work; **(f)** the need for employees to be retrained or transferred to other work or locations; **(g)** job restructuring.	unjustified new burden on employers to discuss with employees who may be affected, whereas clause 22(b)(i) requires only discussions with *'the employees affected.'* The more onerous obligation to discuss only applies in relation to a narrower group and this should be reflected in clause B.1. ACTU (submission in reply p.9): Agrees with Ai Group. NFF (paras 29-33) Submits that clause B.2 is more prescriptive than clause 22.1(b)(iii). In clause 22.1(b)(iii) the employer must provide, in writing, all relevant information about the changes. Under clause B.2, the employer must provide 'a written notice' that 'contains all relevant information about the changes'. This change suggests that the information provided to employees be in a single notice, as opposed to multiple documents which together contain all relevant information. Proposes wording. Ai Group (submission in reply para 40): Does not oppose NFF's proposed variation. Ai Group (paras 66- 68): Submits that clause B.2(b) imposes additional burden by requiring that an employer give a written notice that *'sets out any other matters connected with the changes that are likely to affect employees'*. The requirement is broader than any obligation contained in clause 22.1(b)(iii). This imposes an additional burden upon employers with no apparent justification. The reference to *'... any other matters connected ...'* potentially compounds the adverse consequences. ACTU (submission in reply p.9): Agrees with Ai Group that following wording should be retained 'any other matters likely to effect employees'. Business SA (submission in reply para 1.3.2): Agrees with Ai Group that the re-drafted clause imposes an additional burden on employers. ABI and NSW Business Chamber (Item 2.2): Submits that clauses B.3 and B.4 should be re-ordered to facilitate the logical flow of the clause. ACTU (submission in reply p.9), Ai Group (submission in reply para 42) and Business SA (submission in reply para 1.3.3): Agrees ABI and NSW Business Chamber. ACTU (Attach 1, p.3) Submits that the reference at B.3 to clause 27.1(b) should actually be a reference to B.1(b). Assumes that clause B.1(b) is intended to be equivalent to clause 22.1(b). AMWU (para 11): Submits that the reference to clause 27.3(b) in clause B.3 appears to be inadvertent and should be changed to reflect the rest of the drafting. Ai Group (submission in reply para 41): Agrees with AMWU. ACTU (Attach 1, p3): Submits that clause B.3 appears to limit the matters that may be raised by employees that an employer must promptly consider by confining it to those 'raised … in the course of the discussion under clause 22.1(b)' or otherwise confining the employer's consideration of any matters to the discussion which is had 'at the earliest practicable date'. There is no such limitation in the existing model clause. ACTU (Attach 1, p.3): Submits the term 'the discussion' in clause B.3 as a singular expression can be contrasted with the existing cluse 22.1(b)(i) which refers to 'the discussions'. NFF (paras 34–41): Submits that B.5 seeks to reflect the last sentence of clause 22.1(a)(ii) but its separation from the definition of 'significant effects' may unintentionally broaden its meaning. Proposes wording. Business SA (submission in reply para 1.3.4): Supports NFF's proposed wording. NFF (paras 34–41) Submits that clause B.6(b) should be amended to reflect the wording of clause 22.1(a)(ii) Proposes wording. Business SA (submission in reply para 1.3.6) and Ai Group (submission in reply para 46): Supports NFF's proposed wording.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		ABI and NSW Business Chamber (Item 2.3): Submits that clauses B.5 and B.6 should be reordered to facilitate the logical flow of the clause. Business SA (item 1.4, p.4): Submits that clause B.5 is less clear than clause 22.1(a)(ii) and the words 'is deemed not to have' have been unnecessarily replaced with 'must be taken not to have'. The phrase 'is deemed' is not complex or legalistic and clearly states the alteration of certain elements of the award is already decided not to have significant effect. The re-draft says the same thing but in a less clear manner. Proposes amended wording, or the final sentence of current 22.1(a)(ii) be reinstated in place of clause B.5. Ai Group (paras 73–74) Submits that an important element of the current definition of 'significant effects' (the last sentence of clause 22.1(ii)) is now dealt with separately in B.5. This could result in a reader misinterpreting what constitutes a significant effect if they fail to read every sub-clause. Suggest that the provisions of clause B.5 be incorporated within clause B.6. Business SA (submission in reply para 1.3.5): Agrees with Ai Group's submission that B.5 and B.6 should be combined. ACCI (page 4): Submits that a typographical error may have been made in clause B.6(b) where 'employees' should be 'the employer'. Business SA (item 1.5, p.5): Submits that clause B.6(b) is less precise than current 22.1(a)(ii), specifically the words 'skills required by employees' in regards to the meaning of 'significant effect' which centres on the needs of the employer and the skills required by the workplace. The current wording 'the skills required' should be used without the additional wording. ACTU (submission in reply p.9): Agrees NFF, Business SA, Ai Group, ACCI and ABI and NSW Business Chamber in relation to B.5 and B.6. Ai Group (submission in reply para 47): Does not oppose ACCI, NFF and Business SA and submits that the term 'the skills required by employees' should be replaced with 'the skills required'.
22.2 Consultation about changes to rosters or hours of work **(a)** Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change. **(b)** The employer must: **(i)** provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);	**C. Consultation about changes to rosters or hours of work** **C.1** Clause C applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable. **C.2** The employer must consult with any employees affected by the proposed change and their representatives (if any). **C.3** For the purpose of the consultation, the employer must: **(a)** provide to the employees and representatives mentioned in clause C.2 information about the proposed change (for example, information about the nature of the change and when the change is proposed to be made); and: **(b)** invite them to give their views about the impact of the proposed change on them, including its impact on their family or caring responsibilities.	ACCI (page 4): Submits that user experience will be improved by the re-draft that identifies up front when the clause applies and when it does not. NFF (paras 42-44) Submits that the word 'its' in clause C.3(b) should be replaced with 'any' to accommodate circumstances where an employee has no family or caring responsibilities. ACTU (submission in reply p.10): Agrees ACCI and NFF. Business SA (submission in reply para 1.4.3) and Ai Group (submission in reply para 49): Agrees with NFF. ACCI (page 5): Clause C.3(b): Submits that the parentheses appearing in clause 22.2(b)(ii) around the text 'including any impact in relation to their family or caring responsibilities' should be retained to more closely reflect the wording in section 145A(2)(b) of the FW Act and so as not to unintentionally disturb the effect of this provision. HIA (item 2.5.6–2.5.11): Submits that in clause C.3(b), parentheses be used for 'including any impact in relation to their family or caring responsibility' as it appears in clause 22.2(b)(ii) reflects s.145A of the FW Act. The Full Bench in decision [2013] FWCFB 10165 determined that the term remain consistent with the FW Act. Further, removing the parentheses may have the effect of elevating the current terms. ACTU (submission in reply p.10 and 11): Disagrees with ACCI and HIA. Business SA (submission in reply para 1.4.2) and Ai Group (submission in reply para 48): Agrees with ACCI and HIA. ACTU (Attach 1, p4): Submits that a clause C.5 (and B.7) should be included to reflect clause 22.2(d) to ensure that the consultation clauses are not read so as to override other rights and restrictions in the

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
(ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and **(iii)** give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives. **(c)** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours. **(d)** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.	**C.4** The employer must consider any views given under clause C.3(b).	award. ACCI (page 5): Submits clause C removes the text of current 22.2(d), but it should be retained so that the user is aware that the clause is to be read in the context of award provisions more broadly. The absence of this provision risks changing the effect of the clause and presents a risk that an employer could be found to be in breach of their consultation obligations despite other provisions within the award enabling changes to the scheduling of work and arrangements to be made. APESMA (paras 31-32): Submits that clause 22.2(d) is missing from clause C. This clause should be included in a new clause C.5 to ensure that the consultation clauses are not read so as to override other rights and obligations accrued in the award. Business SA (item 1.6, p.6): Submits that clause 22.2(d) be reproduced in clause C. Proposes wording. Clause 22.2(d) makes it clear to the reader that clause 22.2 operates alongside specific award provisions concerning scheduling of work and notice requirements. SDA (paras 42 and 43): Submits clause 22.2(d) has been omitted from clause C and should be included as a new clause C.5 (and B.7) to ensure that the consultation clauses are not read so as to override other rights and obligations in the award. ABI and NSW Business Chamber (Item 3.1): Submits clause 22.2 (d) has been omitted from clause C. This clause is important so it is clear that these provisions operate in conjunction with, not to the exclusion of, other provisions. This represents a substantive change and this provision must be included in the new clause. AMWU (paras 12 and 13): Submits current 22.2(d) does not appear to be reproduced in clause C. Given that the clause encourages users to read the clause in the full context of the award, it should be reinserted with appropriate links to the relevant clauses in the award. Omitting this clause may lead to employers changing rostering or hours of work without appropriate notification or without being aware of the limitations placed on when ordinary hours of work can be rostered. Ai Group (submission in reply para 52): Disagrees with AMWU. HIA (Item 2.5.2–2.5.5): Submits current 22.2(d) has been removed from clause C and should be retained within clause C. The Full Bench in decision [2013] FWCFB 10165 (paras 46-50) inserted clause 22.2(d) to make it clear that the newly inserted consultation term was to be 'read in conjunction with other award provisions concerning the scheduling of work and notice provisions.' The Commission has held that previous Full Bench decisions should be followed *'in the absence of cogent reasons for not doing so'*. PHIEA (items 4–9, p.2): Submits clause 22.2(d) has been omitted and therefore the clause C is silent on the requirement for the *'provisions to be read in conjunctions with other award provisions concerning the scheduling of work and notice requirements.'* This is a major omission and one which could give rise to an organisation being in breach of the requirement to consult about changes to rosters or hours of work despite them being permitted to make such changes under other award provisions relating to scheduling of work and notice requirements. Clause 22.2(d) should be included as clause C.5. Ai Group (para 75) (and submission in reply para 47): Submits current 22.2(d) has been omitted and should be reinstated. Further submits that clause 22.2(d) should be included as a new clause C.5. Refer to the Full Bench in decision [2013] FWCFB 10165 on the consultation clause in modern award (paras 25 and 47–50). ACTU (submission in reply p.12): Supports NFF's proposed wording: Agrees ACCI, APESMA, Business SA, SDA, AMWU, HIA PHIEA, Ai Group and ABI and NSW Business Chamber in relation to clause 22.2(d). Business SA (submission in reply para 1.4.1): Agrees with ABI, ACCI, Ai Group, PHIEA and HIA that clause 22.2(d) should be retained.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
23. Dispute resolution **23.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate. **23.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 23.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission. **23.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration. **23.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute. **23.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause. **23.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.	**D. Dispute resolution** **D.1** Clause D sets out the procedures to be followed if a dispute arises about a matter under this award or about the National Employment Standards. **D.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor. **D.3** If the dispute is not resolved through discussion as mentioned in clause D.2, the parties must then try to resolve it as soon as practicable at the workplace through discussion between the employee or employees concerned and more senior levels of management. **D.4** If the dispute is not resolved at the workplace through discussions as mentioned in clauses D.2 and D.3, a party may refer the dispute to the Fair Work Commission. **D.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration. **D.6** If the dispute is not resolved through the agreed process mentioned in clause D.5, the Fair Work Commission may use any other method of dispute resolution that it is permitted by the Fair Work Act to use and that it considers appropriate for resolving the dispute. **D.7** A party may appoint any person or body to support or represent them in any discussion or process under clause D. **D.8** While procedures are being followed under clause D in relation to a dispute: **(a)** work must continue in accordance with this award and the Fair Work Act; and **(b)** any employee who is a party to the dispute must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform. **D.9** Clause D.8 is subject to any applicable occupational	ACCI (page 5): Submits user experience could be improved by describing the graduated process for resolving a dispute in clause D. NFF (para 45): Submits replacing the words 'in a timely manner' in current clause 23.1 to 'as soon as practicable' in clause D.3 imposes a greater urgency on parties to resolve the dispute than is currently required. Ai Group (paras 76-84): Submits that use of word 'about' in D.1changes the legal effect and 'in relation to the NES' should be retained. ACTU (submission in reply p.13): Agrees with ACCI, Ai Group and NFF. Business SA (submission in reply para 1.5.2): Agrees with Ai Group. ACTU (Attach 1, p.4), SDA (paras 44–47) and APESMA (paras 33–34): Submit that the words 'as appropriate' in clause 23.1 have been removed from the requirement that employee/s try to resolve the dispute with senior management in clause D3. The qualification 'as appropriate' should be included to avoid requiring employees to negotiate with management in circumstances where it is not appropriate. ACTU (Attach 1, p.4) and SDA (paras 44–47): Submit the term 'in a timely manner' in clause 23.1 connotes a sense of urgency and is a more objective test, rather than 'as soon as practicable' as drafted in D3. There is a risk that employers could use the term 'as soon as practicable' to delay dealing with a dispute. The current expression should be retained. Ai Group (submission in reply para 54–55): Agrees with NFF. Does not agree with interpretation of ACTU or SDA but does not oppose the retention of the wording in clause 23.1. Ai Group (paras 85-92): Submits that words 'as soon as practicable' in D.3 change the legal effect and that 'in a timely manner' should be retained. ABI and NSW Business Chamber (Item 4.1): Submits the inclusion of the word 'both' in D.4 in referring to D.2 and D.3 would make it clearer that parties need to work through both of these steps before referring a dispute to the Commission. ACTU (submission in reply p.13): Agrees with ABI, Ai Group and NSW Business Chamber. Ai Group (submission in reply para 57): Does not oppose ABI. Ai Group (paras 85-102): Submits that D.4 changes the legal effect and that clause 23.2 imposes a higher threshold before a dispute can be escalated and broadens the range of people who can refer a dispute to the Commission. Submits that 'the verbiage' in clause 23.2 should be retained. Business SA (submission in reply para 1.5.3): Agrees with Ai Group. NFF (paras 46–49): Submits that the application of clause 23.2 'if a dispute … is unable to be resolved at the workplace and all appropriate steps under clause 23.1 have been taken' has been changed in clause D.4. The following elements are omitted (but should be retained): • the inability of the parties to resolve the dispute (not just the fact that they have not done so); and • the requirement that all prior appropriate steps under the dispute resolution procedure be followed before the matter is referred to the Commission. ACTU (submission in reply p.13): Agrees with NFF in relation to first dot point. Disagrees with second point and submits that requirement is covered in D2.2 but needs clarification, suggests insert word 'Only' at the start of D.4. ACCI (page 5) and HIA (Item 2.6.1–2.6.6): Submit current clause 23.2 enables a 'party to the dispute' to refer the dispute to the Commission. Clause D.4 states that 'a party' which may broaden the persons who can refer disputes to the Commission and so 'to the dispute' should be reinserted.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
	health and safety legislation.	Business SA (item 2.1, p.7): Submits clause 23.2 restricts the ability to refer a dispute to the Commission to the parties to the dispute and clause D.4 does not restrict the ability to refer disputes in this manner therefore changing the legal effect. ACTU (submission in reply p.13): Agrees with ACCI and Business SA. Business SA (item 1.7, p.6): Submits clause D.6 has been unnecessarily altered from the current clause 23.4. The words 'that it is' and 'to use and' unnecessarily lengthen the clause without providing any interpretive benefit; the wording in clause 23.4 should be retained. Ai Group (submission in reply para 59): Does not oppose Business SA. Ai Group (paras 103-108): Submits that D.6 assumes that parties will reach agreement as to the process to be adopted. NFF (paras 50–54) Submits that the following changes to clause D.7 broaden the legal effect: • change to 'a party' from 'an employer or employee' in current clause 23.5. • change to 'any person or body' from 'another person, organisation or association'. The use of 'any' may give rise to an inconsistency under s.176(3) of FW Act to the extent that it permits representation by a person who cannot be a bargaining representative under the relevant industrial rules. The term 'support or represent' in clause D.7 is narrower than 'accompany and/or represent' as, currently, an appointed person can take on one or both of the support and representation roles but under clause D.7, only one role could be taken on by the appointed person or body. Ai Group (submission in reply para 61–62): Does not oppose NFF. ACTU (submission in reply p.14) and Business SA (submission in reply para 1.5.4): Agrees with NFF. ACTU (Attach 1, p4), SDA (para 48) and APESMA (para 35): Submit 'person, organisation or association' follows terminology used in the FW Act and should remain in clause D.7 rather than 'body'. NFF (para 55): Submits clause D.8(b) limits the obligation on employees in relation to compliance with directions to perform work only to employees who are party to the dispute. Clause 23.6 does not impose that limitation. ABI and NSW Business Chamber (Item 4.2): Submits that the term 'occupational health and safety' should be replaced with 'work health and safety' for consistency with contemporary legislative terminology. ACTU (submission in reply p.14) and Ai Group (submission in reply para 64): Agrees with Ai Group, ABI and NSW Business Chamber. Business SA (submission in reply para 1.5.4): Agrees with NFF and Ai Group. Ai Group (para 109): Submits that D.7 should replace the word 'party' with 'employer or employee' and the words 'or body' with ', organisation or association'. ACTU (submission in reply p.14) and Business SA (submission in reply para 1.5.4): Agrees with Ai Group.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)

20. Termination of employment

20.1 Notice of termination is provided for in the NES.

20.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

Years of service	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

If an employee fails to give the required notice, the employer may withhold any money due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.

Plain language re-draft

Part 8—Termination of employment and Redundancy

E. Termination of employment

NOTE: The National Employment Standards set out requirements for notice of termination by an employer. See Part 2.2, Division 11 of the Fair Work Act.

E.1 Notice of termination by an employee

(a) An employee must give the employer written notice of termination in accordance with Table x—Period of notice of at least the period specified in Column 2 according to the period of continuous service of the employee specified in Column 1.

Table x—Period of Notice

Column 1 **Employee's period of continuous service with the employer at the end of the day the notice is given**	Column 2 **Period of notice**
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(b) If an employee fails to give the required period of notice in accordance with Table x—Period of notice, the employer may deduct the amount that would otherwise be payable to the employee (on termination under this award or the National Employment Standards) for the period of notice **not given** by the employee.

Submission summary

ACCI (page 5): Submits it is not necessary to reference to the specific parts of the FW Act in clause E as they add to the length and complexity of the provision.

ACTU (submission in reply p.15): Disagrees with ACCI.

Ai Group (paras 112-117): Submits that currently awards link the notice of termination obligations imposed upon employees to the notice of termination obligations imposed upon employers so that obligations are largely reciprocal. Clause E.1, including Table x-Period of notice, does not contain any reference to obligations imposed upon employers. Instead, it operates entirely independently. If this approach is adopted, a difficulty arises from the absence of a definition of 'continuous service' in the award and the removal of the connection to the FW Act. This could result in the reference to 'continuous service' in the award being interpreted in a different manner to that contained in the legislation. The meaning of 'continuous service' under the FW Act is a contentious issue.

ACTU (submission in reply p.15): Disagrees with Ai Group and submits that the change makes the employee's obligation explicit and is not dependent on deciding the question of continuous service.

Ai Group (paras 118-125): Submits clause E.1(b) does not adequately and clearly specify from what payments an employer may deduct the relevant amount and what amount may be deducted. The current clause achieves this level of clarity e.g. clause 22.2 of the Manufacturing Award. Clause E.1(b) does not adequately delineate the amount to be deducted and where that amount is to be deducted from. Suggest 'from' be inserted after the word 'deduct' (to make it clear where the amounts are being deducted from). Also proposes wording.

ACTU (submission in reply p.15): Agrees with Ai Group. Alternatively, the existing final para of 20.2 could be retained.

Ai Group (paras 126–127): Submits that clause E.1(b) permits an employer to make a deduction if an employee *'fails to give the required period of notice in accordance with Table x-period of notice.'* As the notice requirements for an employee on termination are specified in clause E.1(a), the reference to *'Table x-period of notice'* in clause E.1(b) should more accurately say *'Clause E.1(a)'* or *'Clause E.1(a) and Table x-period of notice.'*

Ai Group (paras 128–129): Submits in clause E.1(b) it is implicit in the term *'the amount'* that there is an amount payable to the employee, but there may not be. The term *'the amount'* should be replaced with the words *'any amount'* to be clearer that there may or may not be amounts owing to the employee. This terminology is consistent with the words used in the current clause.

Ai Group (paras 130–132): Submits the brackets around the words '*on termination under this award or the National Employment Standards'* in clause B.1(b) should be removed because these words are critical to the determination of the amounts that would otherwise be payable to the employee. The brackets are not contained in the current award clause and there is no reason for them to be included in the re-draft as they do not make the clause any clearer. Proposes wording.

Ai Group (para 132): Proposes wording for clause B.1(b):

ACTU (submission in reply p.15): Agrees with Ai Group above submissions. Alternatively, the existing final para of 20.2 could be retained.

Business SA (submission in reply para 1.6.1): Agrees with Ai Group submissions and submits that the term 'any amounts' is preferred to 'the amount'.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
Clause 21 is reproduced here for comparative purposes **21. Redundancy** **21.1** Redundancy pay is provided for in the NES.	**F. Redundancy** NOTE: The National Employment Standards set out requirements for Redundancy pay. See Part 2.2, Division 11, Subdivision B of the Fair Work Act. NOTE: Clause 27—Consultation about major workplace change sets out requirements to consult about major workplace change, including changes that may involve redundancy.	ACCI (page 5): Submits it is not necessary to reference the specific parts of the FW Act in clause F as they add to the length and complexity of the provision. ACTU (submission in reply p.16): Disagrees with ACCI. AMWU (Item 14): Submits the first Note should also refer to subdivision C of Division 11 of the FW Act. The second Note should refer to clause B to reflect the rest of the drafting. ACTU (submission in reply p.16): Agrees with AMWU. Ai Group (submission in reply para 67–68): Does not oppose AMWU.
Clause 21.2 is reproduced here for comparative purposes **21.2 Transfer to lower paid duties** Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as if the employment had been terminated and the employer may, at the employer's option, make payment instead. The payment will be equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.	**G. Transfer to lower paid job on redundancy** NOTE: The National Employment Standards set out Notice of termination and redundancy pay requirements. See Part 2.2, Division 11 of the Fair Work Act. **G.1** Clause G applies if the employer: **(a)** no longer requires the job (**the old job**) being performed by an employee to be performed by anyone; and **(b)** wishes to transfer the employee to a new job (**the new job**) at a lower classification and lower hourly rate of pay. **G.2** The employee is entitled to be given written notice of the transfer to a new classification of the same ***minimum period of notice*** as the employee would be entitled to for a notice of termination. **G.3** If the employer transfers the employee to the new classification before the end of the ***minimum period of notice***, the employee is entitled to receive a payment from the employer. **G.4** The amount of payment to which the employee is entitled under clause G.3 is the difference between ***A*** and ***B*** where: **(a)** A is the ***full rate of pay*** for the hours the employee would have worked in the old job had the employee continued to be employed in that job until the end of the minimum period of notice; and **(b)** B is the ***full rate of pay*** to which the employee is entitled for working in the new job until the end of the minimum period of notice. NOTE: See section 18 of the Fair Work Act for the meaning of '***full rate of pay***'.	ACCI (page 6): Submits it is not necessary to reference to the specific parts of the FW Act in clause G because it adds to the length and complexity of the provision. ACTU (submission in reply p.16): Disagrees with ACCI. APESMA (para 36) and SDA (para 49): Submits clause G has changed the words 'transferred to lower paid duties' to 'transfer to a lower paid job' on redundancy. The re-draft also refers to 'old job' and 'new job'. The change in terminology from 'duties' to 'job' changes the legal effect of the clause. The use of the word 'job' creates a broader applicability than the use of the term 'duties'. AMWU (paras 16–19): Submits the description of redundancy in clause G.1(a) appears not to accurately describe all the scenarios in which an employee may be eligible to access this clause. The text of the clause, drawn from the FW Act, relies on a particular understanding of the word 'job' which may not be common outside of industrial relations professionals. Rather than attempting to describe eligibility for redundancy in such brief terms, the clause could simply refer to the Fair Work Act. Proposes wording for G.1 (a): ' makes an employee redundant from their job (the old job) as set out in the National Employment Standards (See Part 2.2, Division 11 of the Fair Work Act); and …'. ACTU (submission in reply p.16): Agrees with APESMA and AMWU. Ai Group (submission in reply para 71): Does not agree with the AMWU and submits that their proposed variation over-complicates the matter. Business SA (submission in reply para 1.7.1–1.7.2): Does not agree that changing the word 'duties' to 'job' changes the legal effect. Submits that the word 'job' is more consistent with the Act. Agrees with AMWU that wording should reflect the wording of the Act but does not support the wording proposed by the AMWU. Ai Group (paras 133–136): Submits the words 'except where this is due to the ordinary and customary turnover of labour' be inserted in clause G.1(a) because this would align the application of the obligation under the clause to the circumstances where redundancy pay is payable under the FW Act. NFF (paras 56–58): Submits application of clause G.1(b) has changed clause 21.2 where an employee 'is transferred' to if an employer 'wishes to transfer' an employee to a 'new' job. There may be occasions where the transfer is initiated by the employee (such as a voluntary redundancy) so there is no need to introduce the element of intent or that the job is 'new' (which may be interpreted as a newly created job). All that is required is that an employee is transferred to lower paid duties. NFF (paras 56–58): Submits clause G.1(b) introduces the new concept of transfer to a 'lower classification and lower hourly rate of pay.' This may limit the scope of the clause to transfers to other classifications contained in the award, and/or operate so that it does not apply to employees who are not engaged on an hourly basis (such as pieceworkers). Proposes wording. Ai Group (paras 137–139): Submits that clause G.1(b) adds to (a) and specifies that clause G applies if the employer *'wishes to'* whereas clause 21.2 states *'where'*. The re-draft is potentially misleading because it could suggest that an employer needs to comply with the sub-clauses in clause G as soon as

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		the employer has a desire to transfer an employee to a new job. Proposes wording. ACTU (submission in reply p.16): Agrees with Ai Group and NFF submissions. Ai Group (paras 140–141): Submits clause G.2 creates a new entitlement and should accordingly be amended. There has never been a requirement of an employer to provide written notice of a transfer to a lower paid job and it is not necessary to create such a requirement now. It would increase the administrative burden on employers. Ai Group (paras 142-143): Submits the words '*transfer to a new classification*' in clause G.2 are problematic because, on a literal reading, they suggest that clause G.2 applies to any change in a classification under an award, including to a higher classification. Proposes wording that aligns the description of the transfer with that given in clause G.1(b). ACTU (submission in reply p.17) and Business SA (submission in reply para 1.7.3): Agrees with Ai Group. ABI and NSW Business Chamber (Item 5.1): Submits that the use of the expression 'for a notice of termination' in clause G.2 is unwieldy and unclear. Propose wording. ACTU (submission in reply p.17): Agrees with: ABI and NSW Business Chamber in relation to G2. Ai Group (submission in reply para 74): Does not oppose ABI. Ai Group (paras 144-147): Submits that clause G.3 gives an entitlement to the employee to receive payment in lieu of notice *'if the employer transfers the employee to the new classification before the end of the minimum period of notice,'* but it does not specify that an employer is at the outset entitled, at its option, to transfer the employee to the new job and make a payment in lieu of notice. Proposes wording. ACCI (page 6): Submits clause G.3 (and other sub-clauses in G) is expressed more as an entitlement rather than an obligation when compared to the drafting of clause 21.2. From the perspective of an employer required to implement the award, a more practical focus would be to clearly describe what the employer is required to do if they transfer an employee to another job in the circumstances described by sub-clause G.1. Wording such as 'the employee is entitled to receive a payment from the employer' could be better expressed as 'the employer must pay the employee…'. ABI and NSW Business Chamber (Item 5.2): Submits the link between the 'payment' referred to in this clause and the method of calculating that payment in sub-clause G.4 is not clear. Propose new wording at the end of G.3: 'in accordance with clause G.4'. ACTU (submission in reply p.17): Agrees with: Ai Group and ACCI in relation to G.3; and ABI and NSW Business Chamber in relation to G4. Business SA (submission in reply para 1.7.4): Submits that the connection between G3 and G.4 is clear, however, does not oppose ABI's submission. Ai Group (submission in reply para 76): Submits that if ABI's variation is accepted, the wording at the beginning of clause G.4 may need to be varied to ensure that the two clauses read coherently together. NFF (paras 59–63): Submits G.4 increases the amount payable to an employee transferred to lower paid duties. Under the FW Act, notice of termination and redundancy entitlements are paid at the 'base rate of pay', which is defined in section 16 of the FW Act and excludes (among other things) overtime and penalty rates. Under current clause 21.2, payment for the period of notice where an employee is transferred to lower paid duties is at the 'ordinary time rate of pay' (which also excludes overtime and penalty rates). Clause G.4 states the 'full rate of pay' which is defined in section 18 of the FW Act and includes overtime and other loadings and penalty rate payments. If clause G is to be adopted in lieu of current clause 21.2 (which is much simpler), it should refer to the 'base rate of pay' and the note should refer to section 16 of the FW Act.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		ACTU (submission in reply p.18): Disagrees with NFF. Submits that NFF is incorrect in characterising 'ordinary time rate of pay' as excluding penalties and overtime. Ai Group (submission in reply para 77–78): Disagrees with NFF and HIA and submits that the term 'full rate of pay' should be generally replaced with 'ordinary hourly rate', alternatively retention of current clause. AMWU (submission in response to Ai Group): Submits that use of the word 'ordinary hourly rate' is the subject of consideration in Group 1 awards and that the terminology means that shift and other penalties would not be included. Further submits that, in this instance, the rate of pay should include penalties and overtime. Business SA (submission in reply para 1.7.5): Agrees with NFF. Ai Group (paras 148-162): Submits it strongly opposes use of the term 'full rate of pay' in clause G.4(a) and G.4(b) because it would complicate rather than simplify awards and would have a detrimental effect on employers. The paragraphs should refer to 'ordinary time rate of pay'. HIA (2.9.1-2.9.4): Submits it is unclear if the terms in bold and italics are intended to be defined terms. If they are to be defined terms, the re-drafting will need to be assessed on an award by award basis to ensure the terms used (and to be defined) are appropriate. Specifically, the use of the term 'full rate of pay' will need to be considered in light of the terms used in each modern award, for example neither the Timber Award nor the Joinery Award use this terminology. Further, the use of the appropriate term in this context will also be impacted by the Commission's decisions in relation to the definition of 'ordinary hourly rate' and the treatment of all-purpose allowances. These matters are best dealt with during the Award Stage. ACTU (submission in reply p.18): Agrees with Ai Group and HIA.
Clause 21.3 is reproduced here for comparative purposes **21.3 Employee leaving during notice period** An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.	**H. Employee leaving during redundancy notice period** **H.1** Clause H applies if an employee has been given written notice of termination of employment by their employer in circumstances in which the employee is entitled to redundancy pay. (See section 119 of the Fair Work Act). **H.2** The employee may terminate their employment at any time during the ***minimum period of notice*** required to be given by their employer. (See section 117 of the Fair Work Act). **H.3** The requirement for the employer to pay the employee at the ***full rate of pay*** for the hours the employee would have worked had the employee continued to be employed until the end of the ***minimum period of notice*** is not affected by the early termination of employment by the employee. NOTE: See section 18 of the Fair Work Act for the meaning of '***full rate of pay***'.	HIA (2.10.1–2.10.5): Submits there are some award-specific differences that will require the re-drafted clause to be tailored to suit awards (e.g. the reference to section 119 of the FW Act will not be relevant to the Onsite Award). ACTU (submission in reply p.19): Agrees with HIA. NFF (paras 64–66): Submits clause H.1 should apply if an employee has been given notice of termination, including where the notice is given by a liquidator or receiver who may not be the employer of employees. The cross-reference at the end of clause H.1 should also refer to ss.121 and 122 of the FW Act, which affect an employee's entitlement to redundancy pay. Ai Group (submission in reply para 79): Does not oppose NFF regarding H.1. NFF (paras 64–66): Submits clauses H.2 and H.3 change the meaning of current clause 21.3, as set out in the table at NFF (para 66). ACTU (submission in reply p.19) and Business SA (submission in reply para 1.8.1): Agrees with NFF. Ai Group (paras 164-168): Submits 'at any time' should be deleted from clause H.2 because it suggests that an employee does not need to provide the minimum period of notice. ACTU (submission in reply p.19): Agrees with Ai Group. Submits that existing clause 21.3 is preferred. ACTU (Attach 1, p.3), SDA (paras 50-51) and APESMA (paras 37-38): Submit that the term *'benefits and payments'* in clause 21.3 has been changed to *'full rate of pay'* in H.3. *'Benefits and payments'* is a broader term and was originally intended to make clear that redundancy/severance payments were not impacted by the employee given notice of termination during the notice period. The broader term *'benefits and payments'* should be retained. Ai Group (submission in reply para 84): Submits that ACTU, SDA and APESMA's proposal to replace

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
		'full rate of pay' with 'benefits and payments' would not address Ai Groups concerns as raised in their submission paras 169–174. Business SA (submission in reply para 1.8.3): Opposes SDA, the ACTU and APESMA. ACCI (page 6): Submits the re-draft may have unintentionally altered the effect of the clause. Clause 21.3 states that an employee *'is not entitled to payment instead of notice'*. Clause H does not make this clear. Proposes wording. Ai Group (submission in reply para 83): Does not oppose ACCI. Business SA (submission in reply para 1.8.2): Agrees with ACCI. Business SA (item 1.8, p.7): Submits clause H.3 does not exclude payment instead of notice, which is a principle stated in clause 21.3. Suggest adding a new clause H.4: '*An employee who terminates their employment under clause H.2 is not entitled to payment instead of notice.'* ACTU (submission in reply p.19): Submits that existing clause 21.3 is preferred. HIA (2.10.1–2.10.5) Submits clause H.3 is not simpler and easier to understand than the current provision. The intention of the current provision is to preserve the redundancy entitlements of an employee who may leave during the notice of termination period, but that if the employee does leave during the notice period the employee is not entitled to payment instead of notice. H.3 reverses the operation of the current provision such that if a redundant employee leaves during the notice period the employer will be required to pay the employee despite early termination. The current provision be retained. Ai Group (paras 169–174): Submits that clause H.3 re-draft has the opposite effect to clause 21.3 and should be removed. Ai Group (paras 175–176): Submits that the note related to the 'full rate of pay' in H.3 should be removed. ACTU (submission in reply p.19): Agrees with HIA and Ai Group.
Clauses 20.3 and 21.4 are reproduced here for comparative purposes **20.3 Job search entitlement** Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer. **21.4 Job search entitlement** **(a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for	**I. Job search entitlement** **I.1** Where an employer has given an employee written notice of termination of employment, the employer must allow the employee paid time off of up to one day over the period of notice for the purpose seeking other employment. **I.2** However, clause I.3 applies if an employee has been given written notice of termination of employment in circumstances in which the employee is entitled to redundancy pay. NOTE: See section 119 of the Fair Work Act. **I.3** The employer must allow the employee, during the ***minimum period of notice***, paid time off of up to one day each week for the purpose of seeking other employment. NOTE: See section 117 of the Fair Work Act. **I.4** If the employee is allowed paid time off of more than	ACTU (Attach 1 p.2) and SDA (para 52): Submits that the word *'written'* has been added to clause I.1. Although under the NES the employer is required to give written notice of termination, the inclusion may have unintended consequences for the effect of the provision where the employer does not give written notice such that the job search entitlement would not be triggered if notice was not given in writing. Ai Group (submission in reply para 85): Does not oppose ACTU and SDA. Business SA (submission in reply para 1.9.2): Does not support ACTU and SDA. ABI and NSW Business Chamber (Item 6.1) Clause I.1: Submits that, for clarity, the clause should be re-worded. Propose the following: *'Where an employer has given an employee written notice of termination of employment, the employer must allow the employee paid time off of up to one day ~~over~~ during the period of notice for the purpose of seeking other employment.'* ACTU (submission in reply p.21): Disagrees with ABI and NSW Business Chamber. Business SA (submission in reply para 1.9.1): Agrees with ABI. Ai Group (submission in reply para 86): Does not oppose ABI. AMWU (para 20) Clause I.1: *'without loss of pay'* in current 20.3 has been changed to *'paid time off'* in I.1. This may create confusion about which rate of pay should apply to workers who access their job search entitlement

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language re-draft	Submission summary
the purpose of seeking other employment. **(b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient. **(c)** This entitlement applies instead of clause 20.3.	one day per week during the ***minimum period of notice*** for the purpose of the employee seeking other employment, the employee must, at the request of the employer, produce proof of attendance at a job interview. **I.5** A statutory declaration is sufficient for the purpose of clause I.4. **I.6** An employee who fails to produce proof when required under clause I.4 is not entitled to be paid for the time off in excess of one day per week. **I.7** Time off under clause I is to be taken at times that are convenient to the employee after consultation with the employer.	Suggest adding a Note to clarify that these workers are to be paid the same rate of pay as it they were at work. Propose the following wording: *'NOTE: Employees who takes* (sic) *paid time off from work under this clause will be paid for the hours that they are absent as if they had worked during those hours.'* ACTU (submission in reply p.21): Agrees with AMWU. Ai Group (para 178): Submits that clauses I.1 and I.2 are confusing as drafted and should be combined. Proposes wording. Ai Group (submission in reply para 87): In response to AMWU regarding I.1, acknowledges submission and suggests retention of the current wording. ABI and NSW Business Chamber (Item 6.2) Submits that the drafting of clauses I.2 and I.3 makes the interaction of these clauses unclear. Proposes wording for clause I.1. ACTU (submission in reply p.21): Disagrees with Ai Group and ABI and NSW Business Chamber. Business SA (submission in reply para 1.9.3): Agrees with ABI. Alternatively the submission of Ai Group (para 178) would be supported. Ai Group (paras 179-182): Submits that it strongly opposes the current form of clause I.3 and I.4 because it would significantly increase the employee entitlement in most modern awards. Most modern awards entitle an employee to one day during the minimum period of notice. The term 'each week' should be deleted. ACTU (submission in reply p.21): Agrees with Ai Group, however, also submits that caution is necessary to ensure that higher entitlements for employees are not undermined by the model term. ABI and NSW Business Chamber (Item 6.3): Submits that clause I.4 only requires an employee to provide proof of attendance at a job interview if more than one day per week is taken. Current 21.4(b) provides for the provision of evidence if more than one day is taken, without the *'per week'* requirement. This is a substantive change and should be rectified. Ai Group (para 183-187): Submits that clause I.6 would significantly increases the employee entitlement. The words 'more than one day per week' should be deleted. ACTU (submission in reply p.22): Agrees with Ai Group and ABI and NSW Business Chamber. Business SA (submission in reply para 1.9.4): Agrees with ABI. NFF (paras 67-68) Submits that proposed clause I.6 limits the 'no entitlement to payment' rule where no proof is provided to time off in excess of one day per week. Clause 21.4 provides that if an employee has been allowed paid leave for more than one day during the notice period (as opposed to more than one day per week during the notice period) and the employee does not produce proof of attendance at an interview on request, they will not be entitled to payment 'for the time absent'. The non-entitlement to payment is for all time absent, not only time absent in excess of one day per week. Ai Group (submission in reply para 89): Disagrees with NFF, submits that in this instance the Note is useful. ACTU (Attach 1 p.3): Submits that clause I.6 is unnecessary and should be deleted. ABI and NSW Business Chamber (Item 6.4): Submits that clause I.6 also refers to *'one day per week'*, which is a departure from the current clause and should be rectified. Business SA (submission in reply para 1.9.5): Agrees with ABI.