

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission
Tranche 2 Exposure Drafts

27 November 2019

Ai
GROUP

**4 YEARLY REVIEW OF MODERN AWARDS
TRANCHE 2 EXPOSURE DRAFTS**

TABLE OF CONTENTS

	Title	Page
1	Introduction	3
2	Airline Operations – Ground Staff Award	5
3	Asphalt Industry Award	8
4	Cleaning Services Award	10
5	Clerks – Private Sector Award	11
6	Commercial Sales Award	11
7	Concrete Products Award	12
8	Contract Call Centres Award	13
9	Gas Industry Award	14
10	Manufacturing and Associated Industries and Occupations Award	15
11	Meat Industry Award	21
12	Pharmaceutical Industry Award	23
13	Poultry Processing Award	26
14	Road Transport and Distribution Award	28
15	Storage Services and Wholesale Award	30
16	Transport (Cash in Transit) Award	32
17	Vehicle Manufacturing, Repair, Services and Retail Award	34
18	Waste Management Award	39

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in relation to the following 'second tranche' of exposure drafts published by the Fair Work Commission (**Commission**) 14 October 2019:
 - (a) *Airline Operations – Ground Staff Award* (**Ground Staff Award**);
 - (b) *Asphalt Industry Award* (**Asphalt Award**);
 - (c) *Cleaning Services Award* (**Cleaning Award**);
 - (d) *Clerks – Private Sector Award* (**Clerks Award**);
 - (e) *Commercial Sales Award*;
 - (f) *Concrete Products Award*;
 - (g) *Contract Call Centres Award* (**CCC Award**);
 - (h) *Gas Industry Award* (**Gas Award**);
 - (i) *Manufacturing and Associated Industries and Occupations Award* (**Manufacturing Award**);
 - (j) *Meat Industry Award* (**Meat Award**);
 - (k) *Pharmaceutical Industry Award* (**Pharmaceutical Award**);
 - (l) *Poultry Processing Award* (**Poultry Award**);
 - (m) *Road Transport and Distribution Award* (**RTD Award**);
 - (n) *Storage Services and Wholesale Award* (**Storage Award**);
 - (o) *Transport (Cash in Transit) Award* (**CIT Award**);
 - (p) *Vehicle Manufacturing, Repair, Services and Retail Award* (**Vehicle Award**); and
 - (q) *Waste Management Award* (**Waste Award**).

2. We also make the following general submissions.
3. *First*, consistent with the submissions we have previously made in respect of the ‘Tranche 1’ exposure drafts, we submit that a period of not less than three months should be allowed to lapse between the issue of a final determination by the Commission varying each award to reflect the final iteration of the exposure draft and the date upon which those variations commence operation. We continue to rely on the submissions we have previously made in this regard.¹
4. *Secondly*, we understand that the Commission intends to issue a decision in due course dealing with the terminology used in the annual leave loading clauses in various exposure drafts and their interaction with other provisions concerning shift and weekend rates.² Accordingly, we have not sought to address any concerns we have with the annual leave loading clauses contained in the relevant exposure drafts in this submission.
5. In our submission, however, until this matter is determined and any consequential variations to the exposure drafts are made, the relevant awards should not be varied to reflect the proposed annual leave loading clauses given the significant difficulties arising from their operation and the substantive impact this would have on an employee’s entitlement under those clauses.

¹ Ai Group [submission](#) dated 20 September 2019 at page 3.

² *4 yearly review of modern awards—Plain language project* [2019] FWCFB 5409 at [153].

2. GROUND STAFF AWARD

6. The submissions that follow relate to the exposure draft of the Ground Staff Award.

Clause 7.4(a): Facilitation by majority agreement

7. The reference to clause 19 should be replaced with a reference to clause 19.2. Clause 19 contains various subclauses. Only clause 19.2 is a facilitative clause.

Clause 10.3(a): Part-time shiftworkers

8. The word “on” should be inserted before “guaranteed”.

Clause 17.7(b): Shift penalty rates – weekends and public holidays

9. The word “premiums” should be replaced with “rates and allowances” in order to reflect the terminology adopted in clauses 17.3 – 17.6. It is potentially arguable that the shift rates prescribed by clauses 17.3 – 17.5 are not, as such, *premiums*; only the portion in addition to the minimum hourly rate constitutes the ‘premium’.

Clause 24.1(c): Payment for working overtime

10. Clause 24.1(c) appears to have been included in error. It reflects the ‘time off in lieu of overtime’ provision that was contained in the award prior to the insertion of the new clause 32.2 of the award (clause 24.6 of the exposure draft) in lieu of it. Accordingly, clause 24.1(c) should be deleted.

Clause 35.1(c): Notice of termination by an employee

11. A space should be added between “(b)” and “continuous”.

Clause B.2.4: Full-time and part-time aviation transport employees including shiftworkers—overtime rates

12. Consistent with the amended clause 24.1(a) of the exposure draft, the table at B.2.4 should be amended by:
- (a) Deleting the two columns that appear under the heading “Shiftworkers (except continuous shiftworkers)”; and
 - (b) Amending the heading “Day workers” to read “Day workers and shiftworkers (except continuous shiftworkers)”.

Clause B.3.4: Full-time and part-time clerical, administration and support employees including shiftworkers—overtime rates

13. We repeat the submission made above regarding clause B.2.4.

Clause B.4.4: Full-time and part-time maintenance and engineering employees including shiftworkers—overtime rates

14. We repeat the submission made above regarding clause B.2.4.

Clause B.5.3: Full-time and part-time storepersons and logistics shiftworkers—penalty rates

15. The rates in this table appear to be incorrect. For example, 150% of the minimum hourly rate applying to Level 1 should be \$31.08 and 200% of the minimum hourly rate applying to a Level 1 should be \$41.44. In our submission all of the rates contained in the table require recalculation.

Clause B.5.4: Full-time and part-time storepersons and logistics employees including shiftworkers—overtime rates

16. We repeat the submission made above regarding clause B.2.4.

Clause C.1.1: Wage-related allowances – disability allowance

17. The clause numbers referenced in the schedules should be amended as follows to improve clarity:

- (a) Disability allowance—excessive fumes, noise and dust etc: 20.3(b)(i)(A)
- (b) Disability allowance—noise and dust to a limited degree: 20.3(b)(i)(B)

3. ASPHALT AWARD

18. The submissions that follow relate to the exposure draft of the Asphalt Award.

Clause 7.2: Facilitative provisions

19. The reference in the table to clause 16 should be replaced with a reference to clause 16.1. Clause 16 contains various subclauses. Only clause 16.1 is facilitative in nature.

Clause 11.4(a)(i): Casual loading

20. The reference to clause 15.1 should be replaced with a reference to clause 15. Not all casual employees will be entitled to the minimum hourly rate prescribed in clause 15 (e.g. an employee to whom clause 15.3 applies).

Clause 13.6: Daylight saving examples

21. The full stop after '8' and '9' each time they appear should be deleted.

Clause 14.2: Paid rest breaks – employees other than shiftworkers

22. The words “seven and a half” have been struck out and have not been replaced. They should be replaced with “7.5”.

Clause 20.1(a): Definitions

23. The reference to clause 20.1 should be replaced with “clause 20”. This appears to be a drafting error.

Clause 20.2(b)(iv): Shift penalty rates

24. The reference to clause 20.2(b) in the final sentence should be replaced with “clause 20.2(b)(iv)”, consistent with the current clause 22.2(c). This appears to be a drafting error.

Clause 20.5(a): Overtime – shiftworkers

25. The words “employees” and “of pay” after “200%” should be deleted in order to ensure that the clause adopts the term “ordinary hourly rate” (which is defined), consistent with the language used in the other overtime clauses (see for example clause 20.5(c)).

4. CLEANING AWARD

26. The submissions that follow relate to the exposure draft of the Cleaning Award.

Clause 2: Definitions – minimum hourly rate

27. The definition should be amended by deleting the words “for a full-time employee”. The purpose of the words is unclear. Moreover, they are potentially confusing. For example:

- (a) It is unclear whether they have the effect of limiting the application of the term to full-time employees. This would, as we understand it, be an unintended outcome of the definition. The term “minimum hourly rate” is used in various instances throughout the exposure draft in respect of entitlements for full-time, part-time and casual employees.
- (b) Table 2 at clause 15 does not refer to or confine the entitlement to the hourly rates there prescribed to full-time employees.

Clause 4.5(d): Coverage

28. The clause should be amended as follows to address what appears to be a typographical error:

- (d) employers of employees mentioned in clause 4.5(~~ba~~) ~~or~~ 4.5(c).

Schedule B: Summary of hourly rates – Note

29. We understand that the Commission has determined that the note found at Schedule B is to be deleted from all exposure drafts. It appears to have been retained in the exposure draft by error.

5. CLERKS AWARD

30. The submissions that follow relate to the exposure draft of the Clerks Award.

Clause 11.5(k)(ii): Casual conversion

31. The reference to clause 10.3 should be replaced with “clause 10.2”. This appears to be a typographical error.

6. COMMERCIAL SALES AWARD

32. The submissions that follow relate to the exposure draft of the Commercial Sales Award.

Terminology – minimum hourly rate

33. The exposure draft variously uses the phrase ‘minimum hourly rate’ and ‘applicable minimum hourly rate set out in clause 15 – Classifications and minimum rates’:

Clauses referring to ‘minimum hourly rate’	Clauses referring to ‘applicable minimum hourly rate set out in clause 15 – Classifications and minimum rates’
11.2(a)(i)	19.1
11.2(a)(ii)	19.2
A.1.1	19.3
A.1.2	25.3
A.2.1	25.4

34. As we understand it, each of the above clauses are intended to refer to the minimum hourly rate prescribed by clause 15.1. The use of different terminology is potentially confusing and may inadvertently lead to the suggestion that the meaning to be ascribed to the phrase ‘minimum hourly rate’ must be something other than the ‘applicable minimum hourly rate set out in clause 15 – Classifications and minimum rates’.

35. Consistent terminology should be used throughout the exposure draft by amending the first or the second set of provisions listed above to adopt the terminology used in the other.

7. CONCRETE PRODUCTS AWARD

36. The submissions that follow relate to the exposure draft of the Concrete Products Award.

Clause 7.2: Facilitative provisions

37. The reference in the table to clause 17 should be replaced with a reference to clause 17.1. Clause 17 contains various subclauses. Only clause 17.1 is facilitative in nature.

Clause 11.3(b): Casual conversion

38. The reference to clause 11.3(c) should instead be a reference to clause 11.3(b). Clause 11.3(b) requires an employer to notify an employee of their eligibility to elect to convert to permanent employment. The purpose of the final sentence is to make clear that any non-compliance with that obligation does not affect an employee's right to request conversion under the clause.
39. The current reference to clause 11.3(c) does not appear to have any practical effect. Clause 11.3(c) does not impose an obligation on an employer.

Clause 13.1(b): 38 hour week

40. The reference to clause 13.1 should be replaced with "clause 13". Clause 13.1 does not set the spread of hours or provide for the fixation of work done outside the spread of hours. Clause 13.2 and clause 13.3 are, however, relevant to this.

8. CCC AWARD

41. The submissions that follow relate to the exposure draft of the CCC Award.

Clause 15.6(b): National training wage

42. The various references to “2010” may require updating.

Clause 20.1(a): Payment for working overtime

43. The reference to clause 10.3 should be replaced with “clause 10.4”, consistent with the current clause 26.1(a).

Clause 20.10: Rates not cumulative – clause numbering

44. The separate numbering of the provision under the heading ‘Rates not cumulative’ is not necessary and should be deleted.

Clause 20.10: Rates not cumulative

45. Consistent with the terminology adopted in clauses 21 and 27, “penalties” should be replaced with “penalty rates”. Clauses 21 and 27 do not identify separately payable penalties.

Clause B.1.1: Summary of hourly rates – full-time and part-time employees

46. We suggest that the heading of the second column (“Ordinary hours”) is replaced with “Monday to Friday, Within spread of hours”. We consider that this more accurately reflects the circumstances in which the rate prescribed is payable and better distinguishes those rates from the rates that appear in the following column.

Clause B.2.1: Summary of hourly rates – full-time and part-time employees

47. We suggest that the heading of the second column (“Ordinary hours”) is replaced with “Monday to Friday, Within spread of hours”. We consider that this more accurately reflects the circumstances in which the rate prescribed is payable and better distinguishes those rates from the rates that appear in the following column.

9. GAS AWARD

48. The submissions that follow relate to the exposure draft of the Gas Award.

Clause 13.1: Ordinary hours of work and rostering

49. Clause 13.1(c) provides that the ordinary hours of work for a part-time employee will be in accordance with clause 8 – Types of employment. However, clause 8 does not deal with the ordinary hours of work for a part-time employee.

50. The reference to clause 8 should be replaced with a reference to clause 10.

Clause 14.1: Meal breaks

51. As noted in the exposure draft, a separate Full Bench is considering the terms of clause 9.1 of the award, which corresponds with clause 14.1 of the exposure draft.

52. Once the relevant Full Bench issues its determination to vary the award, interested parties should be given an opportunity to comment on the terms in which that change is to be reflected in the exposure draft. This is particularly relevant because the matter in issue specifically relates to the rates at which employees are to be paid under the clause. Consideration may therefore need to be given to the terminology to be adopted in the exposure draft, consistent with the language otherwise used in it.

Clause 20.8 – Cashing out of annual leave

53. The end of clause 20.8 should be amended by adding “s” at the end of “week” and a full stop.

Clause C.1.1: Wage-related allowances

54. A space should be inserted after “Definitions”.

Clause C.1.1: Wage-related allowances – Availability duty

55. We suggest that after “\$224.25”, the Commission insert “(or part thereof)” to properly reflect the bracketed element of clause 17.3(a) of the exposure draft.

10. MANUFACTURING AWARD

56. The submissions that follow relate to the exposure draft of the Manufacturing Award.

Clause 2: Definitions

57. The words 'leading boiler attendant or fireperson—first class', 'leading boiler attendant or fireperson—second class' and 'ship repairs' should be in bold.

Clause 2: Definitions

58. The number "(c)" should be deleted before the definition of 'radio industry'.

Clause 4: Coverage

59. The date in both dot points in clause 4.8(a)(xi) and in clause 4.8(a)(xiii) should be the date when the award is varied to reflect the terms of the exposure draft.

Clause 12.8(c): Apprentices – Nominal period

60. Two commas should be inserted in clause 12.8(c) as follows:

the requirements of the relevant State/Territory apprenticeship authority and any requirements of the relevant industry committee, which is currently the Manufacturing and Engineering Industry Reference Committee, with respect to ...

Clause 31.3: Unrelieved shiftwork on rostered day off

61. The equivalent provision in the existing award (clause 40.2(e)) applies only to shiftworkers and as understand it the intent of the new provision is that it apply only to shiftworkers. To avoid any ambiguity, the following minor amendment should be made:

If ~~an employee~~ a shiftworker is required to work on their rostered day off because of the absence of a relieving employee, the unrelieved shiftworker must be paid **200%** of the ordinary hourly rate for all hours worked on their rostered day off.

Clause C.1.1: Table of Rates – casual minimum hourly rate

62. The following amendment should be made to the heading of the second column of the table:

~~% of ordinary hourly rate/minimum~~ casual ~~ordinary~~ minimum hourly rate

63. The expression ‘minimum casual ordinary hourly rate’ is likely to confuse readers of the award, given its similarity to the expression ‘casual ordinary hourly rate’ which is a defined term in the award and has a different meaning. The expression ‘casual minimum hourly rate’ is a more appropriate term. This term is defined in clause C.3.1.

Clause C.1.1: Table of Rates – typographical error

64. The following typographical error appears twice in the table, in the rows relating to the penalties for work on shifts that are not rostered shifts. It should be amended as proposed:

~~three~~3 hours

Clause C.1.1: Table of Rates – additional clause references

65. The following clause references should be added:

Shiftworkers engaged in vehicle manufacturing covered by clause 4.8(a)(ix)	
Night shift only <u>(clause 54.1(b)(ii))</u>	130%
Alternating night and afternoon shifts <u>(clause 54.1(b)(ii))</u>	118%
Alternating day and night shifts—rate for the night shift <u>(clause 54.1(b)(ii))</u>	112.5%
Afternoon shift only <u>(clause 54.1(b)(ii))</u>	118%
Alternating day and afternoon shifts—rate for the afternoon shift <u>(clause 54.1(b)(ii))</u>	112.5%

Alternating day, afternoon and night shifts—rate for the afternoon and night shift (clause 54.1(b)(ii))	112.5%
Continuous afternoon or night shift (clause 54.1(b)(iv))	112.5%
Saturday (clause 54.1(b)(v))	125%

Clause C.1.2: Other circumstances attracting a penalty payment – casual minimum hourly rate

66. The following amendment should be made to the heading of the second column of the table for the same reason as outlined above for clause C.1.1:

% of ordinary hourly rate/~~minimum~~ casual ~~ordinary~~ minimum hourly rate

Clause C.2: Full-time and part-time employees’ hourly rates

67. An apostrophe should be placed after ‘employees’ in the title of clause C.2.

Clause C.2: Full-time and part-time employees’ hourly rates – footnote

68. The following amendment should be made to footnote 1 because these rates are only relevant to vehicle manufacturing employees covered by clause 4.8(a)(ix), not all vehicle manufacturing employees covered by the Award:

Rates in bold are **for** Vehicle Manufacturing employees [covered by clause 4.8\(a\)\(ix\)](#) only.

Clause C.3.2(a): Casual rates based on a 25% casual loading

69. The following amendment should be made to footnote 1, for the above reason:

Rates in bold are **for** Vehicle Manufacturing employees [covered by clause 4.8\(a\)\(ix\)](#) only.

Clause C.3.2(b): Casual rates based on a 17.5% casual loading for certain vehicle manufacturing employees in the technical field

70. The heading needs to be clarified for this table to avoid confusion because only a very small cohort of employees are entitled to a 17.5% loading. The heading should be:

‘Casual rates – based on a 17.5% casual loading for certain vehicle manufacturing employees in the technical field covered by clause 4.8(a)(ix) - in accordance with See clause 11.2(d) and clause 46.1.’

Clause C.3.2(b): Casual rates based on a 17.5% casual loading for certain vehicle manufacturing employees in the technical field

71. In the second column in the table, the words ‘+17.5%’ should be deleted to avoid confusion. The 17.5% casual loading is referred to in the heading row above and is incorporated within the definition of ‘casual minimum hourly rate’.

Clause D.1.2: Wage-related allowances

72. The wording above the table should be amended as follows:

‘See clause 29 – Allowances and special rates for full details of wage-related allowances payable under this award. In addition, clause 52 deals with certain additional or alternative wage-rated allowances for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.’

Clause D.1.3: Wage-related Allowances – Special Rates

73. The wording above the table should be amended as follows:

‘See clause 29 – Allowances and special rates for full details of wage-related allowances – special rates payable under this award. In addition, clause 52 deals with certain additional or alternative wage-rated allowances – special rates for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.’

Clause D.1.3: Wage-related Allowances – Special Rates

74. The following words in the heading for column 4 should be deleted because column 5 deals with the period for payment: ‘per hour unless otherwise stated’.

Clause D.1.3: Wage-related Allowances – Special Rates

75. The following wage-related allowances – special rates are missing from the table:

Allowance	Clause	\$	Payable
Glass or slag wool (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.5	0.84	per hour
Handling garbage (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.6	0.65	per hour
Boiler house employees (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.7	1.31	per hour
Fork-lift or cranes allowance (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.8	2.50	per day

Clause D.2.1: Expense-related Allowances

76. The wording above the table should be amended as follows:

'See clause 29 – Allowances and special rates for ~~full~~ details of expense-related allowances payable under this award. In addition, clause 52.1 and clause 55.4 deal with certain alternative expense-rated allowances for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.'

Clause D.2.1: Expense-related Allowances

77. The words 'per hour unless otherwise stated' should be deleted in the heading for column 4 because column 5 deals with the period for payment.

Clause D.2.1: Expense-related Allowances – tool allowance

78. The following amendments need to be made to the tool allowance in the table because the table currently states that apprentices are entitled to a \$15.29 per week tool allowance which is not correct:

Allowance	Clause	\$	Payable
Tool allowance – tradespersons and apprentices ^{1 2}	29.1(c)	15.29	Per week

¹. These allowances apply for all purposes of the award

². See clause 29.1(c)(v) for the tool allowance for apprentices.

Clause D.2.1: Expense-related Allowances – missing allowances

79. The following expense-related allowances are missing from the table, none of which apply for all-purposes of the award:

Allowance	Clause	\$	Payable
Tool allowance – tradespersons (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.1(a)	15.31	Per week
Tool allowance apprentices (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	52.1(b)		
Level 1 of First Year		6.48	Per week
Level 2 or Second Year		8.38	Per week
Level 3 or Third Year		11.51	Per week
Level 4 of Fourth Year		13.52	Per week
Meal allowance (Vehicle Manufacturing Employees covered by clause 4.8(a)(ix))	55.4	14.34	Per meal

11. MEAT AWARD

80. The submissions that follow relate to the exposure draft of the Meat Award.

Clause 7.2(a): Facilitation by individual agreement – clause 10.2

81. The reference to clause 10.2 should be deleted. It is not a *facilitative* provision. It requires that an employer and part-time employee reach agreement at the time of engagement on the employee's hours of work. It does not "allow agreement between the employer and employees on how specific award provisions are to apply at the workplace or section or sections of it" (per clause 7.1).

Clause 7.4: Facilitation by majority agreement – clause 23.1(b)

82. The reference to clause 23.1(b)(ii) should be deleted. Only clause 23.1(b)(i) contemplates facilitation by majority agreement.

Clause 14.7(c): Rostering

83. The reference to clause 32 should instead be a reference to clause 33. This appears to be a drafting error.

Clause 22.1(a): Entitlement to overtime and payment

84. Clause 36.1(a) of the award says as follows:

- (a) All time worked outside ordinary working hours on any day as prescribed in clause 31—Hours of work (or in the case of a shiftworker, outside the hours rostered as ordinary shiftwork hours in accordance with clause 34—Rostering) will be deemed to be overtime and be paid for at time and a half for the first three hours and double time thereafter.

85. Accordingly, day workers are entitled to payment at overtime rates for time worked outside ordinary hours on any day as prescribed by clause 31. Clause 31 of the award has been reproduced at clauses 14.1 – 14.6 of the exposure draft. However, clause 14 of the exposure draft also includes:

- (a) Clause 14.7 (Rostering); and
- (b) Clause 14.8 (Make up time).

86. Clause 22.1(a) of the exposure draft requires the payment of overtime rates to day workers for all work performed outside ordinary working hours on any day as prescribed in clause 14. This would include clauses 14.7 and 14.8. This is a substantive change to the award and particularly problematic in respect of clause 14.7. Read together, clause 22.1(a) would appear to suggest that day workers are entitled to overtime rates for all time worked outside *rostered* hours which is not presently the case. Only shiftworkers are entitled to overtime rates by reference to the rostering clause (i.e. clause 14.7 in the exposure draft and clause 34 in the award).
87. Accordingly, clause 22.1(a) should be amended by replacing the reference to clause “14” with “clauses 14.1 – 14.6”.

Clause 23.5: Altering starting times

88. The reference to clause 32 should instead be a reference to clause 33. This appears to be a drafting error.

Clause 25.3(b): Payment for annual leave

89. Pursuant to clause 37.3(b) of the award, shift allowances payable pursuant to clause 33.9 do not form part of an employee’s ordinary time earnings. This is because clause 37.3(b)(iv) excludes monetary allowances.
90. The exposure draft does not prescribe shift *allowances*. It prescribes *rates* that are payable for shiftwork at clause 23.3. It appears that clause 25.3(b) does not exclude additional amounts payable to an employee for the performance of shifts.
91. Accordingly, a new subclause under clause 25.3(b) should be inserted, excluding “shift rates”.

Clause B.5: Shiftworkers

92. We consider that the changes proposed by the Commission should be made.

12. PHARMACEUTICAL AWARD

93. The submissions that follow relate to the exposure draft of the Pharmaceutical Award.

Clause 2: Definitions – standard rate

94. The reference to clause 15.1 should be replaced with “clause 15.1(a)”. Clause 15 deals with the minimum rates payable to, for example, juniors and trainees. Consistent with the current clause 3.1 of the award, however, the standard rate is the weekly wage payable to adult employees as prescribed by clause 15.1(a).

Clauses 13.2 and 13.3: Ordinary hours

95. Ai Group filed a [submission](#) on 23 October 2019 in which it proposed various changes to clauses 13.2 and 13.3³ of the exposure draft in response to an issue raised by the AWU during proceedings before the Full Bench on 9 October 2019. We continue to rely on that submission and submit that the changes there proposed should be made.

Clause 19: Overtime

96. We have identified various issues arising from clauses 19.1 and 19.2 of the exposure draft.

97. For instance:

(a) Clause 19.1 defines all time worked in the circumstances described at clauses 19.1(a)(i) – (iii) as overtime, however it is not clear that this would necessarily be the case under the current award. By way of example:

(i) Work performed on a public holiday could, in our view, constitute ordinary hours under the current award. The award does not mandate that it be treated as overtime.

³ The submission refers to clauses 8.2 and 8.3, as they appeared in the last version of the exposure draft. The provisions have since been renumbered.

- (ii) By virtue of clause 19.1(a)(iii) of the exposure draft, any work performed on a rostered day off would be treated as overtime. This is inconsistent with clause 25.5 of the current award which provides that where time is worked by an employee on an RDO, the employee is entitled to be paid either 250% or given a day off at some future date.

The most common RDO arrangement involves employees working 19 x 8 ordinary hour working days and then having the 20th working day off as an RDO. For example, an employee may work 8 ordinary hours, Monday to Friday, for three weeks, and 8 ordinary hours, Monday to Thursday, in the fourth week, with Friday deemed to be the RDO. If the employee works on the Friday of the fourth week, this would be overtime in some, but not all, circumstances, as follows:

- If the employee is not given an alternative RDO, the time worked on the fourth Friday would be overtime;
 - If the employee is given an alternative RDO at some future date (consistent with clause 25.5 in the current award), the time worked on the fourth Friday would not be overtime. Often employees wish to bank RDOs or take an RDO on an alternative date, by agreement with their employer.
- (b) Clause 19.2 requires the payment of the rates there described during overtime only. This is potentially a substantive change to clause 25 of the award (or elements of clause 25) given that it is not expressly confined to the performance of overtime
- (c) Clause 19.2 appears to require a minimum payment of 3 hours on a Saturday at 150% of the minimum hourly rate *and* another minimum 3 hour payment at 200% of the minimum hourly rate. This is substantively different to clause 25.2 of the award, which requires a three hour minimum payment in total on a Saturday.

98. We suggest that these issues could be remedied by:

- (a) Amending the heading of clause 19 to read: “Overtime and Penalty Rates”.
- (b) Deleting clause 19.1(a).
- (c) Relocating clause 19.1(b) to clause a new clause 10.5.
- (d) Deleting the heading to clause 19.2.
- (e) Replacing the preamble to the table with the following.

Where an employee performs work described in the table below, the employer must pay the employee the corresponding rate prescribed: ...

- (f) Deleting all references to “overtime” in the table at clause 19.2.
- (g) Amending the table in respect of Saturday rates as follows:

Saturday — first 2 hours - first 2 hours - after 2 hours	150 <u>200</u>	3 hours
Saturday — after 2 hours	<u>200</u>	<u>3 hours</u>

99. For completeness, we suggest that if the changes above are made, the heading to clause 20 should be varied to read “Shiftwork penalty rates”.

Clause C.1: Wage-related allowances

100. The reference to clause 15.1 should be replaced with “clause 15.1(a)” to ensure consistency with our suggested amendments to the definition of “standard rate” in clause 2.

13. POULTRY AWARD

101. The submissions that follow relate to the exposure draft of the Poultry Award.

Clause 2: Definitions – standard rate

102. The reference to clause 15 should be replaced with “clause 15.1”. Clause 15 deals with the minimum rates payable to employees including, for example, juniors and trainees. Consistent with the current clause 3.1 of the award, however, the standard rate is the weekly wage payable to adult employees as prescribed by clause 15.1.

Clause 7.2: Facilitative provisions – clause 21.5

103. The reference to clause 21.5 should be replaced with “clause 21.5(b)”. Clause 21 contains various subclauses. Only subclause (b) is a facilitative clause.

Clause 7.2: Facilitative provisions – clause 21.7

104. The reference to clause 21.7 should be deleted. It is not a facilitative clause.

Clause 19.1: Definition of overtime

105. Clause 19.1 defines overtime as “any work done outside of the employee’s ordinary hours provided by clause 13”. The clause potentially introduces the notion of an *employee’s* ordinary hours or, put another way, the hours that an employee ordinarily works. It is clear, however, from clause 26.1 of the current award that the entitlement to overtime is not referable to any such concept. Rather, pursuant to that clause, overtime rates are payable “for all work done outside ordinary hours”. That is, overtime rates are payable for work performed outside ordinary hours as defined by the award.

106. Clause 19.1 of the exposure draft should be amended as follows to better reflect the current award and to ensure that it does not alter the circumstances in which overtime rates are payable:

Overtime is any work done outside of the ~~employee’s~~ ordinary hours as provided in clause 13 – Ordinary hours of work.

Clause 21,5(e): Annual close down

107. The reference to clause 21.10 appears to be an error. We suggest that it is replaced with “clause 21.5”.

Clause C.1.1: Wage-related allowances

108. The reference to clause 15 should be replaced with “clause 15.1” to ensure consistency with our suggested amendments to the definition of “standard rate” in clause 2.

Clause C.1.1: Wage-related allowances

109. The ‘s’ before “17.2” should be deleted.

14. RTD AWARD

110. The submissions that follow relate to the exposure draft of the RTD Award.

Clause 19.5(d)(ii): Housing Allowance

111. The quantum of the allowance should be \$3.15 as reflected in table D.2.1. The exposure draft erroneously provides that it is \$3.10.

Clause C.2: Full-time and part-time employees – ordinary and penalty rates

112. Parties have been asked to advise whether the columns relating to public holidays in the tables in clauses C.2.1, C.2.3 and C.2.5 should be amended by:

- Adjusting the percentages and rates in the table to reflect the percentages in clause 23.2(a); and
- Inserting a footnote stating “Payment for work on a public holiday is in addition to any amount payable in respect of the weekly wage (see clause 23.2)

113. The proposed amendments should be made.

114. The amendment contemplated by the first bullet point is necessary as the award provides for different rates of remuneration to be paid for work performed on a public holiday depending on whether it is performed either within, or outside of, ordinary working time. If the amendment to the rate is not made the table will erroneously reflect the higher rates applicable to work performed outside of ordinary working time as provided for under clause 23.2(c).

115. The amendment contemplated by the second bullet point is necessary to reflect clause 23.2(b).

Clause C.3: Full-time and part-time employees – Overtime

116. In response to the question contained in C.3 of the exposure draft, we submit that the proposed footnote should not be inserted.

117. Given these tables are dealing with payment for overtime, there is no need to reference a payment in respect of the weekly wage as referred to in clause 23.2(b). Clause 23.2(c) will wholly regulate the rate of pay for an employee working during the hours contemplated by that clause.

15. STORAGE AWARD

118. The submissions that follow relate to the exposure draft of the Storage Award.

Clause 7.3(a)(vi): Facilitation by majority agreement

119. The semicolon and “and” should be deleted and replaced with a full stop.

Clause 15.1 – Minimum rates

120. The weekly and hourly rates for ‘Wholesale employee level 4’ are incorrect. They reflect the ‘Storeworker grade 1 – on commencement’ rates.

Clause 20.3(f): Hours of work

121. The reference to clause 20.3(c) should be replaced with “clause 20.3(d)”. This appears to be a drafting error. Clause 20.3(c) does not prescribe an “extra rate”.

Clause 20.3(f): Hours of work

122. Given the changes made to the terminology used in clause 20.4, we suggest that “shift penalties” is replaced with “shift penalty rates”.

Clause 21.2: Calculation of overtime

123. The reference to “clause 21” should be replaced with “clauses 21 – 23”.

124. The definitions at clause 21.2 of the exposure draft appear at clause 24.2 of the award. The definitions are expressed as applying to “this clause”; that being clause 24. Clause 24 deals with various matters including overtime rates, penalty rates for weekends, penalty rates for public holidays and call backs. The defined terms are variously used in those clauses but most relevantly in clauses 24.5 and 24.6.

125. Clauses 24.5 and 24.6 of the award have been redrafted at clauses 22 and 23 of the exposure draft. They are separate from clause 21 and as a result, the reference to “this clause” in clause 21.2 does not extend the definition of the relevant terms to clauses 22 and 23.

Clause C.1.1: Wage-related allowances

126. We suggest that the reference to clause 17.2(a) be replaced with “clause 17.2(a)(i)” for clarity.

16. CIT AWARD

127. The submissions that follow concern the exposure draft of the CIT Award.

Clause 2: Definitions – ordinary hourly rate

128. Consistent with the approach adopted in various ‘tranche 1’ exposure drafts, “also” should be inserted in the definition as follows:

Ordinary hourly rate means ... this allowance also forms part of that employee’s ordinary hourly rate

129. The proposed amendment is intended to make clear that any all purpose allowance other than the industry allowance, if payable to an employee, is to be included in the employee’s ordinary hourly rate *in addition to* the industry allowance, not in lieu of it.

Clause 15.1(e): Unpaid meal break

130. In keeping with the various changes made to the exposure draft as a result of which any penalty or loading is instead expressed as a rate, we suggest the following changes to clause 15.1(e):

(e) The entitlement to the penalty rate in clause 15.1(d) is not in addition to any other penalty rate. Where more than one penalty rate or other rate loading is payable, the employee receive the highest payment only.

Clause 21.8: Shiftwork rates – shiftworkers

131. Consistent with the expression of rates in clause 21.8 instead of shift *allowances* or *loadings*, we suggest that “allowances” in the preamble be replaced with “rates”.

Clause 21.8: Shiftwork rates – shiftworkers – afternoon shift

132. The table at clause 21.8 prescribes the rate payable for ordinary hours worked during an “afternoon shift (where continues for fewer than 5 consecutive afternoons)”.

133. The award expresses the relevant rate at clause 25.9(c) as applying in the following scenario: (our emphasis)

(c) Shiftworkers who work on an afternoon or night shift which does not continue for at least five consecutive afternoons or nights will be paid at the rate of time and a half for the first three hours and double time after that for each shift.

134. The clause makes clear that the rate is payable where the *shift* does not continue for at least five consecutive afternoons. The entitlement to the higher rate is not contingent upon whether the *employee* works on the afternoon shift for at least five consecutive shifts.

135. The subtle change in drafting to the award potentially creates an ambiguity as to the circumstances in which the higher rate is payable or, at the very least, the exposure draft is less clear than the award.

136. We accordingly suggest the following minor change to the description of the relevant afternoon shift in the exposure draft:

Afternoon shift (where the shift continues for fewer than 5 consecutive afternoons)

Clause 21.9: Shiftwork rates – shiftworkers – night shift

137. We suggest the following minor change to the description of the relevant night shift definition for the same reasons as those articulated above regarding the relevant afternoon shift rate:

Night shift (where the shift continues for fewer than 5 consecutive nights)

Clause A.1.2: Summary of hourly rates – ordinary hourly rate

138. The final sentence suggests that all applicable all purpose allowances need to be added to the rates in the tables, which is inaccurate and contradicts clause A.1.1 and the footnotes to the tables.

139. We suggest that the final sentence be amended as follows:

... Consistent with clause A.1.1, any additional all purpose allowances need to be added to the rates in the table where they are applicable.

17. VEHICLE AWARD

140. The submissions that follow relate to exposure draft of the Vehicle Award.

Clause 7.2: Facilitative provisions

141. To improve clarity, we propose that the reference to clause 11.6 (full-time or part-time conversion) be replaced with a reference to 11.6(g).

Clause 7.2: Facilitative provisions

142. Clause 11.6(j) has been listed under both clause 7.2 and clause 7.4. Clause 11.6(j) is a facilitative provision that can be utilised by agreement between an employer and an individual employee or a majority of employees. As such, it should only be listed under clause 7.4 and should therefore be removed from clause 7.2.

Clause 11.4(a): Casual employees

143. The last two rows of the table in clause 11.4(a) should be varied to clarify that the 75% and 125% loadings are applicable for the first 3 hours and after the first three hours of overtime respectively.

Clause 11.4(c): Casual employees

144. Clause 11.4(c) should refer to clause 11.4(a), rather than clause 11.4, to improve clarity.

Clause 11.4(c): Casual employees

145. Clause 11.4(c) should refer to clause 16.6(c) rather than clause 16.6(b).

Clause 11.4(c): Casual employees

146. The inclusion of the words '(unapprenticed junior rates)' in clause 11.4(c) is superfluous and confusing as both subclauses 16.6(a) and 16.6(c) contain rates applicable to unapprenticed juniors. Ai Group proposes sub-clause 11.4(c) be varied as follows:

For the purpose of clause 11.4(a), the relevant minimum hourly rates are set out in clauses 16.2, 16.3, 16.6(a), and 16.6(c) (unapprenticed junior rates) and 16.7.

Clause 16.6(d): Vehicle Industry RS&R – Unapprenticed Juniors

147. The Commission has noted that the inclusion of 'driver of a commercial vehicle under 8 tonnes' in the list of classifications at clause 16.6(d) conflicts with the tables at clauses B.1.6 and B.2.4 which calculate the rates for junior drivers of commercial vehicles under 8 tonnes pursuant to the rates provided for under clause 16.7.
148. Ai Group has discussed this matter with the Motor Trades Associations (**MTA**) and agrees that the inclusion of 'driver of a commercial vehicle under 8 tonnes' in clause 16.6(d) should be deleted.
149. Clause 16.7 of the Exposure Draft contains a method of ascertaining the applicable rates for a junior driver based on the 'relevant adult driver rate'. Adult rates for drivers of commercial vehicles are contained within clause 16.3 of the exposure draft. These rates are not restricted to drivers of commercial vehicles over 8 tonnes. Moreover, Ai Group notes that there is no dedicated classification for a driver of a commercial vehicle under 8 tonnes in Schedule A of the exposure draft. Deleting the reference to 'driver of a commercial vehicle under 8 tonnes' would avoid the inconsistency in the Award noted by the Commission.

Clause 25: Shiftwork penalties

150. The title of this clause and the wording in clause 25.1 should be varied to use the term 'shiftwork penalty rates', rather than 'shiftwork penalties,' because the relevant figures include both the penalty and the base rate.

151. A consequential change should be made to the reference to clause 25 in clause 27.5(c)(ii).

Clause 27.1(a): Special provisions – driveway attendant, console operator and roadhouse attendant

152. The words ‘as prescribed by clause 19’ were inserted into clause 27.1(a) as proposed to the Commission by the MTA in a document dated 13 February 2019, filed with the Commission in Correspondence dated 29 May 2019 with the purpose of referencing the clause pertaining to ‘Ordinary Hours and Rostering’. As this clause is now numbered ‘clause 22’, the reference should be updated to reflect this.

153. Ai Group however understands that the MTA will make submissions asking the Commission to remove the reference to the ‘Ordinary Hours and Rostering’ clause in clause 27.1(a). Ai Group does not oppose this proposal.

Clause 27.3: Casual rates

154. At clause 27.3 of the exposure draft, the Commission has requested parties to confirm changes made to clause 27.3, including amendments to monetary figures to reflect those contained in the current version of the Award and the inclusion of a new clause 27.3(c).

155. Ai Group does not oppose the changes made to clause 27.3 consistent with those proposed by the Victorian Automobile Chamber of Commerce in correspondence to the Commission dated 10 October 2019.

Schedule B: Summary of Hourly Rates of Pay – Terminology

156. The usage of the term ‘shiftwork penalties’ in clauses B.1.2, B.1.4(b), B.1.5(b), B.1.6(b), B.3.2, B.3.6(b), B.5.2 and B.6.2 is incorrect. The figures should be described as ‘shiftwork rates’ as these include the relevant penalty as well as the base rate.

Clause B.3.4(a) and B.3.6(a): Ordinary Hours

157. Parties have been asked to confirm their acceptance of the incorporation of the words 'after midday' in the third column of the rates provided for in B.3.4(a) and B.3.6(a). Ai Group confirms that it agrees with this.
158. However, Ai Group considers that the usage of the term words 'ordinary hours' in the second column of the table in B.3.4(a) and B.3.6(a), to denote the rates applicable from Monday to Friday and up to Midday on Saturday, is confusing. All hours referred to in these tables are 'ordinary hours'. Therefore, it is proposed that the words 'ordinary hours' in the second column of the table in B.3.4(a) and B.3.6(a) be replaced with 'Monday to Friday, Saturday (before midday)'.
159. The same issue arises in a number of other tables in Schedule B. In order to rectify this, the following variations are proposed:
- Clause B.1.1 – second column should be retitled: 'Monday to Friday'
 - Clause B.1.4(a) – second column should be retitled: 'Monday to Friday'
 - Clause B.1.5(a) – second column should be retitled: 'Monday to Friday'
 - Clause B.1.6(a) – second column to be retitled: 'Monday to Friday'
 - Clause B.2.4(a) – the words 'ordinary hours' should be deleted from the title to the second column
 - Clause B.3.1 – second column should be retitled 'Monday to Friday, Saturday (before midday)'
 - Clause B.5.1 - second column should be retitled 'Monday to Friday'
 - Clause B.6.1 - second column should be retitled 'Monday to Friday'

Clause B.3.5: Full-time and part-time junior driveway attendants and roadhouse attendants cooking takeaway food—percentage of Level 1 rate—overtime

160. In the interests of preserving consistency in the structure of Schedule B, clause B.3.5 should be renumbered clause B.3.4(c). The relevant tables for full-time and part-time junior driveway attendants and roadhouse attendants cooking takeaway food (ordinary and penalty rates) and (shiftwork) are numbered as B.3.4(a) and B.3.4(b) respectively.

B.7.1 and B.7.2: RS&R Vehicle Sales Employees

161. The Commission has asked parties to confirm the incorporation of amended rates for casual 'vehicle sales employees' working on Sunday. The amended rates are contained in clauses B.7.1 and B.7.2. Ai Group agrees that the amended rates rectify an inconsistency with clause 28.2(c) of the exposure draft and are therefore appropriate.

18. WASTE AWARD

162. The submissions that follow relate to the exposure draft of the Waste Award.

Clause 11.9(c): Casual conversion

163. “11.9(b)” should be inserted after “clause” at the end of the provision.

Clause 11.9(h): Casual conversion

164. The final paragraph of clause 11.9 should be numbered clause 11.9(h).

Clause 16.2(a): All-purpose allowances

165. The word “of” should be replaced with “or”. This appears to be a typographical error.

Clause 22.6(a): Excessive leave accruals – direction by employer that leave be taken

166. The reference to clause 22.5(a) should be replaced with a reference to clause 22.5. This appears to be a drafting error.

Clause 22.7(d): Excessive leave accruals – request by employee for leave

167. The reference to clause 22.7(b) should be replaced with a reference to clause 22.7(a). This appears to be a drafting error.

Clause 27.5(d)(iii): Payment for work on public holidays

168. This clause should be renumbered clause 27.5(e) and clauses 27.5(e) and (f) should be renumbered clauses 27.5(f) and (g) respectively.

Clause A.2.3: Full-time and part-time employees – overtime

169. In response to the question contained in the exposure draft, we submit that the proposed footnote should not be inserted.

170. The footnote inserted at A.2.1 is, in our submission, intended to reflect the current clause 32.3 of the award and refers to the weekly wage that is payable for the performance of ordinary hours of work. Clause 32.4 of the award separately prescribes the amounts payable for overtime performed on a public holiday. That clause wholly regulates the amounts payable during overtime.

Clause B.2.2(a) – Adjustment of expense-related allowances

171. In the second sentence of clause B.2.2(a), ‘movement’ has been spelt incorrectly.