

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

**Reply Submission**  
Various Exposure Drafts

**23 September 2019**

**Ai**  
GROUP

## **4 YEARLY REVIEW OF MODERN AWARDS VARIOUS EXPOSURE DRAFTS**

### **1. INTRODUCTION**

1. The Australian Industry Group (**Ai Group**) files this submission in response to various submissions filed by other interested parties in relation to exposure drafts of the following awards:

- (i) *Aged Care Industry Award 2010;*
- (ii) *Asphalt Industry Award 2010;*
- (iii) *Business Equipment Award 2010;*
- (iv) *Cleaning Services Award 2010;*
- (v) *Concrete Products Award 2010;*
- (vi) *Commercial Sales Award 2010;*
- (vii) *Contract Call Centre Award 2010;*
- (viii) *Electrical, Electronic and Communications Contracting Award 2010;*
- (ix) *Graphic Arts, Printing and Publishing Award 2010;*
- (x) *Hair and Beauty Industry Award 2010;*
- (xi) *Health Professionals and Support Services Award 2010;*
- (xii) *Manufacturing and Associated Industries and Occupations Award 2010;*
- (xiii) *Meat Industry Award 2010;*
- (xiv) *Nurses Award 2010;*
- (xv) *Oil Refining and Manufacturing Award 2010;*
- (xvi) *Pharmaceutical Industry Award 2010;*

- (xvii) *Poultry Processing Award 2010;*
- (xviii) *Road Transport (Long Distance Operations) Award 2010;*
- (xix) *Road Transport and Distribution Award 2010;*
- (xx) *Seafood Processing Award 2010;*
- (xxi) *Storage Services and Wholesale Award 2010;*
- (xxii) *Sugar Industry Award 2010;*
- (xxiii) *Telecommunications Services Award 2010;*
- (xxiv) *Textile, Clothing, Footwear and Associated Industries Award 2010;*
- (xxv) *Timber Industry Award 2010;*
- (xxvi) *Vehicle Manufacturing, Repair, Services and Retail Award 2010;*
- (xxvii) *Waste Management Award 2010;* and
- (xxviii) *Wine Industry Award 2010.*

2. The submission is filed in response to the directions issued by the Fair Work Commission (**Commission**) in its decision of 2 September 2019.<sup>1</sup>

---

<sup>1</sup> 4 yearly review of modern awards [2019] FWCFB 6077 at [35].

## 2. AGED CARE INDUSTRY AWARD 2010

### Response to submission of the Aged Care Employers (dated 15 April 2019)

#### Clause 7: Facilitative provisions

3. Ai Group understands that clause 7 reflects a standard approach adopted across the vast majority of exposure drafts. It does not oppose the insertion of clause 7.

#### Clause 22.2(a): Overtime for part-time and casual employees

4. Ai Group opposes the submission made. The clause, if amended as proposed, would read as follows:

All time worked by a part-time or casual employee who works in excess of than 38 hours per week or 76 hours per fortnight must be paid at the following rates: ...

5. The sentence is not simple or easy to understand.
6. The clause should instead be amended as follows: (marked in red)

All time worked by a part-time or casual employee ~~who works more~~ in excess of ~~than~~ 38 hours per week or 76 hours per fortnight must be paid at the following rates:

7. This is consistent with the Commission's earlier decision in this regard.<sup>2</sup>

#### Clause 32.1(e): Termination of employment

8. We agree with the amendment proposed.

---

<sup>2</sup> 4 yearly review of modern awards—Award stage—Group 4 awards [2018] FWCFB 4175 at [26].

### **3. ASPHALT INDUSTRY AWARD 2010**

#### **Response to submission of ABI and NSWBC (dated 13 March 2019)**

##### Schedule F: definition of 'casual ordinary hourly rate'

9. Ai Group opposes the change proposed. If adopted, the instrument would no longer make clear that the casual ordinary hourly rate includes the minimum hourly rate prescribed by clause 10. This would render the definition (and the use of the term itself) unclear or at the very least, less clear.
10. Further, the term 'casual ordinary hourly rate' is used in various provisions of the body of the exposure draft. The change proposed would require a reader of such a clause to first turn to the definitions schedule, which would then redirect the reader to the schedules appended to the exposure draft. This two-step process is unhelpful and unnecessary.

#### **4. BUSINESS EQUIPMENT AWARD 2010**

**Response to submission of ABI and NSWBC (dated 29 March 2019)**

Clause 7.8: Ordinary hours of work – special provisions for country employees

11. We agree with the submission made.

## **5. CLEANING SERVICES AWARD 2010**

### **Response to submission of United Voice (dated 13 March 2019)**

#### Clause 22.4: Example 1

12. Whilst we have not reviewed the example in full for the purposes of this submission, we acknowledge that the reference to “\$30.819” in the last sentence appears to be an error. Assuming the calculations undertaken in the example are correct, it should instead read “\$308.19”.

## **6. CONCRETE PRODUCTS AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 13 March 2019)**

#### Clause 13.3(e): Hours – other than continuous work

13. It appears that the Commission's decision at [125] of *4 yearly review of modern awards—Award stage—Group 1* [2018] FWCFB 3802 is reflected in the exposure draft; however, we agree that paragraph [144] of the same decision is not reflected.

14. Accordingly, the first two sentences of clause 13.3(e) should be deleted.

#### Clause 13.4: Variation by agreement

15. We agree with the submission made. Clauses 13.4(c) and (d) should be deleted.

## **7. COMMERCIAL SALES AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 29 March 2019)**

#### Clause 3.1: Coverage

16. The change proposed should be made. This would ensure consistency with the inclusion of the definition of “commercial traveller” at clause 3.2 and make the instrument simpler and easier to understand.

#### Clause 9.2: Classifications and minimum wages

17. The change proposed should be made.

#### Schedule A: Schedule of hourly rates

18. In light of the Commission’s decision cited by ABI and the NSWBC, we do not oppose the submission made.

## 8. CONTRACT CALL CENTRE AWARD 2010

### Response to submission of CPSU (dated 29 March 2019)

#### Schedule B.2.3: Summary of hourly rates

19. The rates at B.2.3 apply to casual employees performing overtime. The rates are calculated on the basis that such employees are entitled to the casual loading *in addition to* overtime rates. Ai Group contends (and has contended throughout the Commission's review of this award) that the casual loading is not payable during overtime under the *Contract Call Centre Award 2010*. So much is made clear by clause 13.1 of the award: (our emphasis)

**13.1** A casual employee is an employee who is engaged on a casual basis. A casual employee for working ordinary time will be paid per hour 1/38th of the weekly wage prescribed by clause 18—Classifications and minimum wage rates for the work performed, plus 25%.

20. Clause 13.1 creates an entitlement to the casual loading during ordinary hours of work. No other provision of the award extends this entitlement to overtime.

21. It is Ai Group's understanding that the above position:

(a) Was not opposed by the CPSU (or any other interested party); and

(b) Had been accepted by the Commission.

22. It appears to us that by virtue of an administrative error, the most recent version of the exposure draft contains overtime rates for casual employees that are inconsistent with the above. Rather than identify that error, the CPSU appears to now opportunistically argue that the rates there prescribed are correct.

23. Below we summarise the relevant aspects of the procedural history of this matter, which make this plain:

(a) The first version of the [exposure draft](#) (dated 18 December 2015) contained overtime rates for casual employees at B.2.3. They added the casual loading to the overtime rates.

- (b) Ai Group filed a submission regarding the first version of the [exposure draft](#) on 14 April 2016. At paragraphs 298 – 299, we submitted that the award does not afford casual employees an entitlement to the casual loading during overtime and the rates prescribed at B.2.3 were therefore incorrect.
- (c) A conference about the exposure draft was conducted before Commissioner Roe on 21 April 2016. A [report](#) published by the Commissioner the following day relevantly stated:
- B2.3 Exposure draft will remove the 25% loading for casuals on overtime. Unions to respond further in the reply submissions.
- (d) The second version of the [exposure draft](#) was published on 27 April 2016. It contained overtime rates for casual employees at B.2.3. Amendments were ‘marked up’ to the rates, which had the effect of deducting the casual loading.
- (e) Another [conference](#) about the exposure draft was conducted before Commissioner Roe on 29 April 2016. The following exchange occurred between the Commissioner and the ASU. We note that the CPSU was also represented in the proceedings. (Our emphasis)

THE COMMISSIONER: Yes. And that is in B2.3.

MR RIZZO: B2.3. Right, yes.

THE COMMISSIONER: So essentially we don't believe that the casual loading is payable on overtime.

MR RIZZO: Okay. So well the Commission has taken the default position?

THE COMMISSIONER: Well, I think what we're saying is, we think that that is what the current award provides. That we think that's what the current award says.

MR RIZZO: Yes.

THE COMMISSIONER: And we understand that if you think there's a strong argument to the contrary, you know, then you need to raise that in the supply [sic] submissions which are due next week.

MR RIZZO: Yes.

THE COMMISSIONER: And obviously that will then be a substantive matter that would have to be resolved.

MR RIZZO: But is it also true that some awards do cater for the- -

THE COMMISSIONER: No doubt about that, yes.

...

THE COMMISSIONER: But when we look at it in this award, we don't think that's the case.

MR RIZZO: Right.

THE COMMISSIONER: But if when you look at it, you've got a different view and you want to pursue it, then please raise it in the reply submissions.

MR RIZZO: Okay.

THE COMMISSIONER: That obviously applies to the CPSU as well, of course.<sup>3</sup>

- (f) On 2 May 2016, Commissioner Roe published a [report](#) to the Full Bench, which relevantly stated: (our underlining)

**[2]** The matters raised by the parties as discussed at the 21 April 2016 conference are dealt with in the revised summary of submissions report and the revised exposure draft. The matters were further discussed at a conference on 29 April 2016. **Unless parties advise otherwise in the reply submissions due 5 May 2016 we proceed on the basis that the only matters outstanding from the submissions received in respect to the exposure drafts are set out below.**

...

**[4]** Outstanding issues and matters resolved at the 29 April 2016 conference:

...

***CONTRACT CALL CENTRES AWARD 2010***

...

3. Item 38: B.2.3 the exposure draft has now removed the 25% loading for casuals on overtime. If the unions wish to pursue this matter further they will need to address this in reply submissions.

- (g) Despite being on notice of the Commissioner's provisional view that the casual loading is not payable during overtime and the express indication that any opposition to this view should be raised in reply submissions, neither the ASU nor the CPSU filed such a submission.

---

<sup>3</sup> Transcript of proceedings on 29 April 2016 at PN273 – PN291.

- (h) On 26 May 2016, Commissioner Roe published another [report](#) to the Full Bench, which relevantly stated: (our emphasis)

[1] This Report provides an update of the Report of 2 May 2016 in light of the reply submissions received and the further conference held on 26 May 2016. To assist the conference a revised summary of submissions was published and the parties were also provided with a draft report in advance of the conference. This Report attempts to refer to all matters which are outstanding at this stage of the process. Revised exposure drafts will be published shortly which reflect this Report. Parties are requested to advise if they have any issues with this Report and their reflection in the exposure draft within seven days of the issue of the revised exposure drafts.

...

#### **CONTRACT CALL CENTRES AWARD 2010**

...

Item 38: B.2.3 the exposure draft has now removed the 25% loading for casuals on overtime. There was no contrary reply submission received. This matter is resolved.

- (i) The third version of the [exposure draft](#) was published on 1 June 2016. It contained overtime rates for casual employees at B.2.3. They were the same as the second version of the exposure draft.
- (j) On 6 June 2016, [proceedings](#) were conducted before Justice Ross about a number of 'group 3' exposure drafts. Ai Group indicated that the issue of the rates prescribed at B.2.3 was resolved. The CPSU was present at the proceedings. No party expressed a contrary view.<sup>4</sup>
- (k) On 6 July 2016, Commissioner Roe's chambers issued a [notice of listing](#) for another conference on 20 July 2016. The notice of listing relevantly said:

Following the hearing before Justice Ross on 6 and 7 June 2016 it appears that the following are the outstanding matters in these Awards (item numbers as in the latest summary of submissions documents).

...

The purpose of the conference is to seek to resolve these items, confirm there are no other outstanding issues, and to set directions for any further written submissions for outstanding items where appropriate.

---

<sup>4</sup> Transcript of proceedings on 6 June 2016 at PN1589.

The notice of listing did not identify the relevant issue as an outstanding matter.

- (l) In a [report](#) to the Full Bench published on 21 July 2016, the Commissioner confirmed that no interested party identified any additional outstanding issues during the 20 July conference.
- (m) The fourth version of the [exposure draft](#) was published on 16 August 2016. It contained overtime rates for casual employees at B.2.3. They were the same as the second and third versions of the exposure draft (i.e. the casual loading was not added to the overtime rates).
- (n) On 6 July 2017, a Full Bench of the Commission issued a [decision](#) about a number of 'group 3' awards. The following extract is relevant: (our emphasis)

**[45]** On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Contract Call Centres Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the Ai Group, AFEI, and ABI. The ASU and the Community and Public Sector Union (CPSU) also made proposals at the conferences. Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved at this conference and a further conference on 29 April 2016. A [revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document.

**[46]** Submissions in reply were received from Ai Group, AFEI and ABI. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a draft report was published on 12 May 2016. A [further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016. A [further report](#) was published by Commissioner Roe on 21 July 2016 and an [updated exposure draft](#) was published on 16 August 2016.

**[47]** The only outstanding matter following the publication of the 16 August 2016 draft is the proposal to vary the classification structure in this Award to clarify the classification level of employees providing and developing on the job training. ...

...

[50] ... We are satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the further report to the Full Bench), and that there are no outstanding technical or drafting issues in respect to this Award. There are no substantive variation proposals which have not already been referred to a specially constituted Full Bench.<sup>5</sup>

- (o) The fifth version of the [exposure draft](#) (dated 19 July 2017) contained overtime rates for casual employees at B.2.3. **They reverted to the rates contained in the first version of the exposure draft (i.e. the casual loading was added to the overtime rates).** The reason for this is not apparent. As can be seen from the above extract, the Commission did not determine that it would take a different approach from that which was contained in the fourth version of the exposure draft. The cover page of the exposure draft identifies the changes made to it on 19 July 2017. It also identifies a number of determinations issued by the Commission that were attributable to the changes made to “Schedule B” of the exposure draft. Each of those related to changes made to the award as a result of the annual wage review. None related to the entitlement of the casual loading during overtime. It would appear to us that the rates at B.2.3 were changed in error.
- (p) The sixth and most recent version of the [exposure draft](#) (dated 1 March 2019) contains overtime rates for casual employees at B.2.3. They are the same as the fifth version.
24. At no stage in these proceedings has the CPSU (or any other interested party) pressed the position that casual employees are entitled to the casual loading during overtime; nor has the Commission expressed the view or determined that that interpretation is correct or that that position should be adopted.
25. Rather, despite having every opportunity to contest our earlier submissions and to identify for the Commission that the matter was in dispute, the unions elected not to do so. It is entirely inappropriate that the CPSU now claims that the rates contained in the exposure draft, which appear to be the result of an administrative error, are correct. Furthermore, notwithstanding that this is the first submission

---

<sup>5</sup> 4 yearly review of modern awards—Award stage—Group 3 [2017] FWCFB 3733.

filed by the CPSU in respect of the many iterations of the exposure draft that the Commission has issued for interested parties to comment; it has not so much attempted to explain or justify its position.

26. If, notwithstanding our submission, the CPSU continues to press its position, Ai Group may seek an opportunity to make further submissions about the matter.

## **9. ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING AWARD 2010**

### **Response to submission of MEA (dated 11 April 2019)**

#### Schedule B: Summary of hourly rates

27. The approach adopted by the Commission to Schedule B of the exposure draft is consistent with the approach adopted across the majority of exposure drafts and reflects the Commission's earlier decisions in this regard.
28. In our view, Schedule B makes sufficiently clear that the rates prescribed do not include the electricians licence allowance and that where it is payable, the rates prescribed in the table do not apply.
29. Accordingly, we do not consider that the changes proposed by MEA are necessary.
30. We do not agree with MEA's submission regarding apprentice rates. It is our understanding that by virtue of clause 16.4(a)(iii) and (iv) of the award, all apprentices are entitled to a proportion of the electrician's licence allowance.

### **Response to submission of ABI and NSWBC (dated 12 April 2019)**

#### Schedule C: Summary of monetary allowances

31. We do not oppose the approach proposed at paragraph 1.4 of the submission.
32. Ai Group may seek an opportunity to make further submissions in relation to this issue if the changes are implemented and there remain any concerns about the accuracy of the calculations undertaken.

## **10. GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD 2010**

**Response to submission of ABI and NSWBC (dated 15 March 2019)**

Clause: 24.9(j): Time off instead of payment for overtime

33. We agree with the submission made.

Clause 33: Abandonment of employment

34. We agree with the submission made.

## 11. HAIR AND BEAUTY INDUSTRY AWARD 2010

35. This submission is also made on behalf of Hair and Beauty Australia.

### Response to submission of the SDA (dated 26 April 2019)

36. At Attachment A of the decision<sup>6</sup> issued by the Commission on 2 September 2019, the Full Bench identified the submissions to which interested parties have been directed to now file a response. That list does not include a submission filed by the SDA on 26 April 2019 regarding the exposure draft of the *Hair and Beauty Industry Award 2010*. The union's submission is detailed and has come to our attention during the final stages of our preparation of this submission. We are therefore not in a position to respond to it at this time, to the extent that we are in fact required to do so.

37. We note that the SDA makes the following submission:

The SDA questions the utility of this Exposure Draft given that the Award will be subject to the plain language re-drafting process. The SDA strongly submits that the Plain Language process should be applied to the *Hair and Beauty Industry Award 2010*, which is the current, legal document, rather than the new Exposure Draft, which we submit contains many inconsistencies with the current Award.

38. We respectfully concur with the view that the plain language redrafting process should be undertaken by reference to the existing award and that there is little utility in settling the terms of the exposure draft.

39. Should the Commission determine that the exposure draft process will nonetheless proceed, Ai Group will seek to file a submission in response to the SDA.

### Response to submission of ABI and NSWBC (dated 15 April 2019)

40. We rely on our submission above regarding the current process. Should the Commission determine that the exposure draft process will nonetheless proceed, Ai Group will seek to file a submission in response to the SDA.

---

<sup>6</sup> 4 yearly review of modern awards [2019] FWCFB 6077 at [35].

## **12. HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 15 March 2019)**

#### Clause 8.3(b): Rostering

41. Ai Group agrees with the submission made.

### **Response to submission of HSU (dated 1 April 2019)**

#### Clause 18.1: Weekend penalties

42. Ai Group acknowledges the inconsistency between the current heading at clause 18.1 of the exposure draft in light of the variations made to clause 26.1 of the current award pursuant to paragraphs [14] – [16] of the Commission’s 9 January 2019 Decision.<sup>7</sup> On that basis, we do not oppose the change made.

---

<sup>7</sup> [2019] FWCFB 120.

### **13. MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010**

**Response to submission of ABI and NSWBC (dated 13 March 2019)**

Clause 31.7: Excess leave

43. We do not oppose the proposed change.

Clause 31.13: Cashing out of annual leave

44. We do not oppose the proposed changes.

## **14. MEAT INDUSTRY AWARD 2010**

### **Response to submission of ABI and the NSWBC (dated 13 March 2019)**

#### Clause 8.5(a): Reference to ancillary products

45. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

#### Clause A.2.4: Classification definitions - Salesperson

46. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

#### Clause H: Definitions – reference to “ancillary products”

47. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

### **Response to submission of AMIEU (dated 15 March 2019)**

#### Clause 8.2: Ordinary hours – cleaners

48. We do not oppose an amendment being made to clause 8.2 such that it refers to the amounts payable under clause 17.4, however we do not support the amendment proposed by the AMIEU because:

- (a) It refers to the relevant employees as ‘cleaning employees’. This terminology is different to ‘cleaners’ and may needlessly cause confusion.
- (b) The proposed amendment states that the relevant employees would be entitled to a ‘penalty’ under clause 17.4. Clause 17.4 prescribes a *rate*, not a penalty.

49. If an amendment of the nature proposed by the AMIEU is to be adopted, we suggest the following alternate sentence be added at the end of clause 8.2:

A cleaner may be entitled to payment under clause 17.4.

Clause 8.3(d): Ordinary hours of work

50. We do not oppose the amendment proposed.

Clause 8.5(a): Reference to ancillary products

51. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

Clause 9.4: Shiftworkers

52. Ai Group opposes the change proposed. The change would introduce a paid meal break for employees on a three-shift system. This would constitute a substantive change to the award that should not be implemented as part of the exposure draft process.

Clause 12: Higher duties

53. We do not consider that the exposure draft creates a different threshold for payment under the higher duties clause to that which applies under the current award.

Clause 16.1(b): Hours of work – shiftwork

54. Ai Group does not oppose the change proposed given the content of the casual and part-time employment clauses.

Clause A.2.4: Classification definitions - Salesperson

55. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

Clause H: Definitions – reference to “ancillary products”

56. Ai Group considers that the addition of the expression “ancillary products” is unnecessary and could create uncertainties regarding the coverage of the award.

## **15. NURSES AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 15 March 2019)**

#### Clause 8.2(f): Rostering

57. We agree that there appear to be some formatting errors.

#### Clause 15.5(a): Recall to work when on call

58. Whilst we do not consider the amendment proposed necessary, we do not oppose it.

#### Clause 15.5(b): Recall to work when on call

59. We support the amendment proposed.

#### Clause 15.6(a): Recall to work when not on call

60. Whilst we do not consider the amendment proposed necessary, we do not oppose it.

#### Clause 15.6(b): Recall to work when not on call

61. We support the amendment proposed.

### **Response to submission of ANMF (dated 27 March 2019)**

#### Clause 3.3: Coverage

62. We support the submission made.

#### Clause 15.3(b): Rest period after overtime

63. We support the submission made.

#### Clause 15.3(c): Rest period after overtime

64. We support the submission made.

## **16. OIL REFINING AND MANUFACTURING AWARD 2010**

### **Response to submission of AMWU (undated)**

#### Clause 10.6(a): Annualised salaries

65. We agree with the AMWU's observation however we assume that the text box will be removed when the exposure draft is finalised.

## 17. PHARMACEUTICAL INDUSTRY AWARD 2010

### Response to submission of ABI and the NSWBC (dated 13 March 2019)

#### Clause 8.3: Ordinary hours of work for shiftworkers

66. Ai Group would not oppose clause 8.3(a) being amended so that it provides for the ordinary hours of work for full-time shiftworkers. However, if this was done, additional amendments would be required in order to set or provide for the determination of ordinary hours of work for other types of employees so as to ensure the award complies with s.147 of the Act.
67. Relevantly, a provision in the nature of clause 8.2(d) would need to be inserted into clause 8.3 in order to deal with part-time employment. Although clause 6.3 defines part-time employment by reference to the number of ordinary hours that such employees are engaged to work, it *arguably* does not set or provide for the determination of such hours, as contemplated by s.147.
68. Clause 6.4 deals with casual employment but does not refer to ordinary hours. Accordingly, if the kind of changes proposed by ABI were adopted, a provision dealing with ordinary hours of work for casual employees would need to be included in the exposure draft.
69. On reflection, it appears to us that if the change to clause 8.2(a) flowing from the above cited Full Bench decision was implemented, as currently proposed in the exposure draft, the award would fail to set or provide for the determination of ordinary hours of work for casual day workers, as required by s.147.
70. Ai Group proposes that the simplest course of action may be to amend both 8.2(a) and 8.3(a) to refer to both full-time and casual employees and to replicate 8.2(d) in clause 8.3.

## **18. POULTRY PROCESSING AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 13 March 2019)**

#### Clause 3.2: Coverage

71. Ai Group agrees with the submission made.

#### Schedule G: Definitions

72. Ai Group agrees with the submission made.

### **Response to submission of the AMWU (dated 13 March 2019)**

#### Clause 8.2(b): Ordinary hours

73. Ai Group agrees that the reference in clause 8.2(b) to clause 21.2 is incorrect. However, contrary to the AMWU's submission, Ai Group considers the correct reference to be to clause 22A of the revised exposure draft.

### **Response to submission of the AMIEU (dated 15 March 2019)**

#### Clause 8.2(b) Ordinary hours

74. Ai Group agrees that the cross-reference should be to clause 22A.

#### Clause 10.5: Higher duties

75. Ai Group does not agree with the concerns expressed by AMIEU regarding the threshold for 'higher duty payments' pursuant to clause 10.5. It would be inappropriate for the award to give rise to an entitlement to a 'higher duty payment' in circumstances where an employee is not required by the employer to perform the duties of a position carrying a higher minimum wage. Moreover, we do not consider that the threshold in the exposure draft is substantively different to that which applies under the current award.

### Clause 10.5(b): Higher duties

76. The concern expressed by the AMIEU concerning the removal of the words “or less” in clause 10.5(b) reflects an omission which appears to have taken place between the exposure drafts issued on 2 November 2015 and 13 June 2017.
77. In a decision made on 23 October 2015, the Full Bench determined to make agreed changes to the exposure draft summarised at Attachment A of a report to the Full Bench made on 23 December 2014.<sup>8</sup> This included replacing the words “less than four hours” with “four hours or less during one day” in clause 10.6(b) (now 10.5(b)).
78. Ai Group notes that the variation made to clause 10.6(b) was not accurately transposed to the 13 June 2017 exposure draft and hence does not appear in its most recent iteration in clause 10.5(b). This appears to have been the result of an error.
79. Accordingly, clause 10.5(b) should be amended by inserting the words “or less during one day” after “four hours”.

---

<sup>8</sup> [2015] FWCFB 7236 at [188].

## **19. ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010**

### **Response to the submission of ARTIO (dated 8 March 2019)**

#### Clauses 8.5(b) and 8.5(d) – Rostered days off

80. Ai Group supports a variation to clause 8.5(d) of the nature proposed by ARTIO.

#### Schedule F: Definition of 'CPK'

81. The proposed definition is unnecessary. The abbreviation, which is commonly utilised in industry, only ever appears in brackets after the use of the full term "cents per kilometre". It is not used in isolation, and as such its meaning is readily apparent from the text of the clauses in which it is used.

#### Schedule F and clause 3.2 - definition of 'long distance operation' and 'interstate operation'

82. Ai Group does not oppose the definition of the terms "long distance operation" and "interstate operation" being included in clause 3, in the interests of making the award simpler and easier to understand. Adopting this approach, the definition of interstate operation should be inserted as a new clause 3.3 and the remaining provisions renumbered.

83. Alternatively, in the interest of avoiding duplication, we propose that it may be more appropriate to either include a note in clause 3.2 indicating that both of the terms are defined in schedule F or to include a note in schedule F indicating that the terms are defined in clause 3.2.

### **Response to submission of NatRoad (dated 4 March 2019)**

#### Clause 3.2: Definition of 'long distance operation'

84. Ai Group agrees with the submission made but has suggested an alternate approach in response to ARTIO's submission pertaining to the same provision.

### Clause 3.3: Coverage

85. Ai Group agrees with the submission.

### Clause 6.3: Full-time employment

86. Ai Group agrees with the Submission.

### Clause 6.4(g): Part-time employment

87. Ai Group does not consider the proposed change necessary. Clause 6.4(g) deals with the “work” of a part-time employee. It may be confusing to include a reference to the concept of “duties” in the second part of the provisions.

### Clause 6.5(b): Casual employment

88. Ai Group does not oppose the amendment proposed but notes that there may be some benefit to retaining the current wording as it is not uncommon for participants in the industry to use the abbreviation “cpk rates” when discussing this form of remuneration.

### Clause 7: Classifications

89. Ai Group does not oppose either approach. Both appear to be appropriate.

### Clauses 8 and 9: Ordinary hours of work and Meal breaks

90. NatRoad have not proposed any amendment. We are accordingly uncertain as to precisely what change they contend should be made.

### Clause 11.1(a): Minimum wages

91. Ai Group agrees with the submissions.

### Clause 11.4(a): Minimum wages

92. Ai Group agrees with the submissions.

Clause 11.7: Payment of wages

93. Ai Group agrees with the submissions.

Clause 11A.1: Payment of wages

94. Ai Group agrees with the submission.

Clauses 12.2(d)(i) and (ii): Dangerous goods allowance

95. Ai Group agrees with the submissions.

Clause 12.3(a) and Schedule F: weekly employees

96. Ai Group agrees with the submission.

Clause 12.3(c): Travelling allowance

97. The second reference to the word “on” should be deleted as proposed in the exposure draft but the word “means” should be retained (it is currently struck out), otherwise the sentence does not make sense.

Schedule A: Summary of hourly rates

98. Ai Group understands that the Commission has determined that the note will be included in all exposure drafts. We do not object to its inclusion.

## **20. ROAD TRANSPORT AND DISTRIBUTION AWARD 2010**

### **Response to submission of ABI and the NSWBC (dated 15 March 2019)**

#### Clause 13.3(b)(ii)-(iii): Special vehicle allowance

99. Ai Group does not oppose the variation suggested.

#### Schedule B: Classification Structure

100. Ai Group does not oppose the variation suggested.

### **Response to submission of ARTIO (dated 8 March 2019)**

#### Clause 13.3(e): Employee handling money

101. Ai Group would support any variation to clarify that the weekly allowance is only payable when an employee handles money in the relevant week. The variation to the table proposed by ARTIO appears to be intended to clarify this point and would be an improvement to the current wording.

102. An alternate way of addressing the issue would be to insert the following wording below the heading of clause 13.3(e) and above the table:

An employee handling money will be entitled to a weekly allowance in accordance with the following table, based on the highest amount of money that they are required to handle in a given week: ...

#### Clauses 15.3 and 15.5: Shift allowances and overtime

103. ARTIO's submissions do not appear to appreciate that the term "ordinary hourly rate" is defined in the exposure draft and would not include the shift loadings.

#### Clause 15.4: Shiftwork – casual employees

104. Clause 15.4 of the exposure draft provides that the 25% casual loading is calculated "in addition to the shift loading specified in clause 15.3" (emphasis added). This arguably already addresses ARTIO's concern.

105. In the interests of clarity, there may however be merit in amending clause 15.3 to include a reference to the rate upon which the 25% loading is calculated.

Clause 6.5(c) of the exposure draft indicates that this would be the “ordinary hourly rate”.

106. ARTIO’s proposed variation to include a reference to “minimum rates” in clause 15.4 would be inconsistent with the approach proposed in clause 6.5(c) to the application of the 25% casual loading.

#### Schedule H: Definition of ‘employee handling money’

107. ARTIO has proposed deleting the word “employee” from the definition. The variation seems unwarranted and potentially problematic given the current definition in the exposure draft matches the words of the clause 13.3.

#### **Response to submission of NatRoad (dated 4 March 2019)**

##### Clause 13.3(e): Employee handling money

108. NatRoad appear to have overlooked the definition of the term “employee handling money” contained in the exposure draft. The definition there set out should not be replaced by that proffered by NatRoad.

##### Clause 13.3(f): Dangerous goods

109. Ai Group agrees with this submission.

##### Schedule C: Summary of hourly rates

110. Ai Group understands that the Commission has determined that the note will be included in all exposure drafts. We do not object to its inclusion.

## **21. SEAFOOD PROCESSING AWARD 2010**

**Response to submission of AMWU (undated)**

Clause 12.3: Superannuation

111. We agree with the submission made.

## **22. STORAGE SERVICES AND WHOLESALE AWARD 2010**

**Response to submission of ABI and NSWBC (dated 15 March 2019)**

### Clause 3.2: Coverage

112. We support the submission made.

## **23. SUGAR INDUSTRY AWARD 2010**

**Response to submission of ABI and NSWBC (dated 29 March 2019)**

Clause 26.10(d): Rostered day off

113. Ai Group agrees with the submission made.

Schedule E: Summary of monetary allowances

114. Ai Group agrees with the submission made.

## 24. TELECOMMUNICATIONS SERVICES AWARD 2010

### Response to submission of CPSU (dated 29 March 2019)

115. The rates at B.3.3 apply to casual employees performing overtime. The rates are calculated on the basis that such employees are entitled to the casual loading *in addition to* overtime rates. Ai Group contends (and has contended throughout the Commission's review of this award) that the casual loading is not payable during overtime under the *Telecommunications Services Award 2010*. So much is made clear by clause 11.3(b) of the award: (our emphasis)

(b) A casual employee is one engaged and paid as such, and for working ordinary time will be paid per hour 1/38th of the weekly wage prescribed by this award for the work which the employee performs, plus 25%.

116. Clause 11.3(b) creates an entitlement to the casual loading during ordinary hours of work. No other provision of the award extends this entitlement to overtime.

117. It is Ai Group's understanding that the above position:

(c) Was not opposed by the CPSU (or any other interested party); and

(d) Had been accepted by the Commission.

118. It appears to us that by virtue of an administrative error, the most recent version of the exposure draft contains overtime rates for casual employees that are inconsistent with the above. Rather than identify that error, the CPSU appears to now opportunistically argue that the rates there prescribed are correct, despite having expressly indicated at an earlier stage in the proceedings that it did not seek any changes to a previous version of the exposure draft, which set out overtime rates that did *not* include the casual loading.

119. Below we summarise the relevant aspects of the procedural history of this matter, which make this plain:

(a) The first version of the exposure draft (dated 18 December 2015) did not set out overtime rates for casual employees in its summary of hourly rates at Schedule B.

- (b) A [conference](#) about the exposure draft was conducted before Commissioner Roe on 21 April 2016. During the proceedings, Commissioner Roe raised the issue of whether casual employees are entitled to the casual loading during overtime, as follows:

THE COMMISSIONER: All right. Then the second one is the issue of whether casual loading applies to overtime. I think in this award it is completely unclear what a casual gets paid for work outside of ordinary hours. I think it's unclear in the current award and we haven't clarified it in the exposure draft because - you know, we can't because there's nothing to work on. I think that that issue is an issue which we should ask the parties to address in the reply submissions, because I don't know what the solution to that question is.

MR BARLOW: Yes, Commissioner. I think it's appropriate to adopt it that way. It has previously been the CPSU's position where this issue has arisen that it was our view that because the words regarding ordinary work were omitted here, that it was paid.

THE COMMISSIONER: All right. What I'm saying is that it's not clear and we need to hear more from the parties about that issue.<sup>9</sup>

MR BARLOW: Yes, Commissioner.

- (c) On 22 April 2016, the Commissioner published a [report](#) to the Full Bench regarding the aforementioned conference. It relevantly stated:

Parties to address the issue of how casuals working overtime should be paid in the reply submissions.

- (d) The second version of the [exposure draft](#) was published on 27 April 2016. It did not set out overtime rates for casual employees in its summary of hourly rates at Schedule B.

- (e) Another [conference](#) about the exposure draft was conducted before Commissioner Roe on 29 April 2016, during which the following relevant exchange occurred between the Commissioner, Ai Group and the CPSU:

THE COMMISSIONER: Then the next item is how casuals working overtime should be paid. Frankly, I think that this is one issue where the Fair Work Ombudsman is correct. I think it is unclear. And do the parties have any preliminary views about that that they want to express today?

---

<sup>9</sup> Transcript of proceedings on 21 April 2016 at PN607 – PN610.

MR BARLOW: Commissioner, it's previously been the CPSU's position that they are paid in that circumstance, and this is one of those- - -

THE COMMISSIONER: Yes, how are they paid? So what are they paid? Are they paid ordinary rates, are they paid overtime rates or are they paid overtime rates plus the casual loading?

MR BARLOW: The latter one has been our position, historically Commissioner.

THE COMMISSIONER: Okay. And what do the employers believe is the case?

MR FERGUSON: We don't have a position to put today, Commissioner- - -

THE COMMISSIONER: Okay.

MR FERGUSON: - - -but I'm just looking at the words. I'm just trying to see how you think the overtime was payable to include the casual loading.

MR BARLOW: I don't have the clause in front of me, 6.3. I think we're dealing with making it silent, Commissioner, and thereby it is – as opposed to other awards where the situation is different with those two clauses, as we've just discussed in the Contract Call Centre Award, Commissioner.

MR FERGUSON: I'm just – and I don't want to put anyone in a difficult position, but the casual loading clause is clearly only payable in relation to ordinary hours.

THE COMMISSIONER: All right, well I think- - -

MR FERGUSON: Anyway.

THE COMMISSIONER: I do think this is a matter that does need to be clarified, one way or another, because at the moment I think it's quite unclear what they get paid. I understand what Mr Ferguson says about the issue of the loading, but I think, if you look at the overtime clause I don't think that makes it particularly clear. Maybe I'm wrong about that, but I think we'd be assisted if the parties were to let us know. Well, I suppose it is fairly clear, isn't it, that 15.1(a) it says, "Full time and casual employees, overtime is anytime worked in excess of the ordinary hours". And then it's got a rate for that, so I think it is fairly clear that casual employees do get overtime.

I think the issue is, really about the casual loading and Mr Ferguson is saying, it looks fairly clear to him that it doesn't include it. So I think the unions need to have a look at that and address that issue in the reply submissions.

MR BARLOW: Yes, Commissioner.<sup>10</sup>

---

<sup>10</sup> Transcript of proceedings on 29 April 2016 at PN297 – PN311.

- (f) The Commissioner published a [report](#) to the Full Bench on 2 May 2016 about the aforementioned conference. It relevantly stated:

**[2]** The matters raised by the parties as discussed at the 21 April 2016 conference are dealt with in the revised summary of submissions report and the revised exposure draft. The matters were further discussed at a conference on 29 April 2016. **Unless parties advise otherwise in the reply submissions due 5 May 2016 we proceed on the basis that the only matters outstanding from the submissions received in respect to the exposure drafts are set out below.**

...

#### **TELECOMMUNICATIONS SERVICES AWARD 2010**

...

2. Item 12: The next version of the exposure draft will include a table of rates in Schedule B for casuals overtime and those rates will be as per B.2.4 for full time and part time employees. If the unions wish to claim that the current award provides that casuals are entitled to casual loading in addition to overtime penalties when working overtime they will need to do so in the reply submissions. If the unions are making a claim to alter the current award then this would need to be referred to a Full Bench.

- (g) The CPSU did not file a reply submission in response to the Commissioner's above invitation.
- (h) On 12 May 2016, Commissioner Roe published a [draft report to the Full Bench](#). It relevantly said:

**[1]** This draft report provides an update of the Report of 2 May 2016 in light of the reply submissions received. The draft attempts to refer to all matters which are outstanding at this stage of the process. Parties are requested to provide their responses to the draft report either in advance of or at the conference listed for 11am on 19 May 2016. ...

...

#### **TELECOMMUNICATIONS SERVICES AWARD 2010**

...

6. Item 12: The next version of the exposure draft will include a table of rates in Schedule B for casuals overtime and those rates will be as per B.2.4 for full time and part time employees. No reply submissions opposed this approach.

- (i) Having not received any advice to contradict the above characterisation of the position reached in relation to the relevant matter, the Commissioner published a [report to the Full Bench](#) finalising the above on 26 May 2016:

**[1]** This Report provides an update of the Report of 2 May 2016 in light of the reply submissions received and the further conference held on 26 May 2016. To assist the conference a revised summary of submissions was published and the parties were also provided with a draft report in advance of the conference. This Report attempts to refer to all matters which are outstanding at this stage of the process. Revised exposure drafts will be published shortly which reflect this Report. Parties are requested to advise if they have any issues with this Report and their reflection in the exposure draft within seven days of the issue of the revised exposure drafts.

...

...

#### TELECOMMUNICATIONS SERVICES AWARD 2010

...

Item 12: The next version of the exposure draft will include a table of rates in Schedule B for casuals overtime and those rates will be as per B.2.4 for full time and 6 part time employees. No reply submissions opposed this approach. This matter is resolved.

- (j) The third version of the [exposure draft](#) was published on 1 June 2016. It set out overtime rates for casual employees at B.3.3 for the first time. The rates were calculated on the basis that casual employees are entitled to the overtime rates prescribed to the award *without* the casual loading.
- (k) On 6 June 2016, a number of 'group 3' awards were the subject of proceedings before Justice Ross. During those [proceedings](#), in which the CPSU was represented, the following exchanged occurred:

MR FERGUSON: Look, this was agreed, unless the unions wanted to raise a concern. I mean, it was an answer to the FWO and it was about the calculation of overtime rates for casuals.

JUSTICE ROSS: Yes.

MR FERGUSON: We're content with the way the exposure draft is now dealing with it, but unions were going to think about it. I think they indicated they weren't going to press the issue, but - - -

JUSTICE ROSS: Well, I suppose you can reserve your position, have a look at the revised exposure draft, and see what you want to do.

MR BARLOW: Thank you, your Honour.<sup>11</sup>

- (l) On 6 July 2016, Commissioner Roe's chambers issued another notice of listing for a further conference before the Commissioner on 20 July 2016. The [notice of listing](#) stated as follows:

NOTE: Following the hearing before Justice Ross on 6 and 7 June 2016 it appears that the following are the outstanding matters in these Awards (item numbers as in the latest summary of submissions documents).

...

The purpose of the conference is to seek to resolve these items, confirm there are no other outstanding issues, and to set directions for any further written submissions for outstanding items where appropriate.

The relevant issue ('item 22') was identified on the notice of listing as an outstanding matter.

- (m) During the [conference](#) before Commissioner Roe on 20 July 2016, **the CPSU confirmed that it did not seek any changes to the exposure draft to the extent that it set out rates for casual employees working overtime. As at the time of the conference, the most recent version of the exposure draft contained rates that did not include the casual loading.**<sup>12</sup>

- (n) On 21 July 2016, the Commissioner published a [report](#) to the Full Bench about the aforementioned conference. It relevantly said:

Item 22: In earlier reports the unions reserved their position on this item. They confirmed at the conference that they are not seeking to alter the exposure draft. The matter is resolved.

- (o) The fourth version of the [exposure draft](#) (dated 16 August 2016) set out overtime rates for casual employees at B.3.3, which were calculated on the same basis as the rates found in the third version (i.e. they did not include the casual loading).

---

<sup>11</sup> Transcript of proceedings on 6 June 2016 at PN1734 – PN1738.

<sup>12</sup> Transcript of proceedings on 20 July 2016 at PN878.

- (p) On 6 July 2017, the Commission issued a [decision](#) concerning a number of ‘group 3 awards’. It relevantly stated: (emphasis added)

## 2.20 Telecommunications Services Award 2010

[312] On 18 December 2015 the Commission published an initial [exposure draft](#) based on the *Telecommunications Services Award 2010* together with a [comparison document](#) showing the changes made to the structure and language in the award. Interested parties were provided with an opportunity to file written submissions and submissions in reply on the drafting and technical issues in the exposure draft. Submissions were received from the Ai Group and ABI. Commissioner Roe published a [report](#) on 22 April 2016 that set out the matters dealt with at a conference held on 21 April 2016. A number of issues raised were resolved. [A revised exposure draft](#) was published on 27 April 2016 along with a [summary of submission](#) document. The Report of 21 April 2016 called for further submissions in respect to a number of specific matters. Submissions in reply were received from Ai Group, AFEI, and ABI. Commissioner Roe held a further conference on 26 May 2016 during which a number of further issues were resolved. In preparation for that conference a draft report was published on 12 May 2016 and a revised summary of submissions document on 19 May 2016. [A further report](#) was published by Commissioner Roe on 26 May 2016. A [revised exposure draft](#) and [summary of submissions](#) reflecting the progress made were published on 1 June 2016. In proceedings before Justice Ross on 6 and 7 June 2016 there was a further opportunity for parties to identify any outstanding issues. Commissioner Roe conducted a further conference on 20 July 2016 to consider the issues identified at the conference before Justice Ross. A [further report](#) was published by Commissioner Roe on 21 July 2016 and an [updated exposure draft](#) was published on 16 August 2016.

[313] The outstanding issues in respect to this Award are items 7, 26 and 32 of the summary of submissions. ...

...

[319] The Full Bench is satisfied that it is appropriate to make the changes agreed to by the parties (as outlined in the reports to the Full Bench), and that there are no outstanding technical or drafting issues in respect of this Award. A revised exposure draft reflecting this decision and the agreed position of the parties’ will be published shortly and parties will be provided with a final opportunity to comment.<sup>13</sup>

- (q) The fifth version of the [exposure draft](#) was published on 17 July 2017. It set out overtime rates for casual employees at B.3.3, which were calculated on the same basis as the rates found in the third and fourth versions (i.e. they did not include the casual loading).

---

<sup>13</sup> 4 yearly review of modern awards—Award stage—Group 3 [2017] FWCFB 3433.

(r) The sixth version of the [exposure draft](#) was published on 1 March 2019. It contained amended overtime rates for casual employees at B.3.3. **The rates were ‘marked up’ to add the casual loading to the rates previously provided. The reason for this is not apparent.** The second page of the exposure draft states that the changes made to B.3.3 were “administrative changes by Modern Awards team”. The changes were, however, substantive in nature.

120. It is entirely inappropriate that the CPSU now claims that the rates contained in the exposure draft, which appear to be the result of an administrative error, are correct. Furthermore, it has not so much attempted to explain or justify its position.

121. If, notwithstanding our submission, the CPSU continues to press its position, Ai Group may seek an opportunity to make further submissions about the matter.

## **25. TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010**

### **Response to submission of ABI and NSWBC (dated 13 March 2019)**

#### Clauses 5.2 – 5.4: Facilitative provisions

122. Whilst we do not consider the proposed changes necessary, we do not oppose them.

#### Clause C.3.2: Summary of hourly rates

123. The proposed change should, in our submission, be made.

#### Clause F.2.8: Outwork schedule

124. The proposed change should, in our submission, be made.

## **26. TIMBER INDUSTRY AWARD 2010**

**Response to submission of ABI and NSWBC (dated 13 March 2019)**

Clause 19: National Training Wage Schedule

125. We agree with the submission made.

## **27. VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL AWARD 2010**

### **Response to submission of the VACC (dated 10 May 2019)**

#### Clause 19: Ordinary hours of work and rostering

126. We do not oppose the submission advanced by the VACC.

#### Clause 25.4: Minimum remuneration and calculation of wages for vehicle salespersons

127. We do not oppose the submission advanced by the VACC.

### **Response to submission of the AMWU (dated 29 May 2019)**

#### Clause 3.3 (a): Coverage

128. Ai Group agrees with the submissions made by the AMWU.

#### Clause 6.6(d)(iii): Casual loading

129. Ai Group agrees with the submissions made by the AMWU.

#### Clause 8.2(l) and Schedule H: Motor 'Mechanic/Automotive Technician' description

130. Ai Group agrees with the submissions made by the AMWU.

#### Clause 11.6(b): Unapprenticed juniors

131. Ai Group agrees with the submissions made by the AMWU.

#### Clause 24.3 and Schedule B.4 – Casual service station rates

132. Ai Group agrees with the position of the Motor Traders Organisations that the existing award rates should prevail and any adjustment should occur pursuant to a subsequent Annual Wage Review decision.

#### Clause 25.5: Minimum remuneration and calculation of wages

133. Ai Group agrees with the submissions made by the AMWU.

Clause 25.6: Calculation of wages

134. Ai Group agrees with the submissions made by the AMWU.

Clause 26.13: Cashing out of annual leave

135. Ai Group agrees with the submissions made by the AMWU.

Clause B.1.6: Summary of hourly rates – junior employees

136. Ai Group agrees with the submissions made by the AMWU.

Clause B.3.2 or B.3.3: Summary of hourly rates – casual employees

137. Ai Group agrees with the submissions made by the AMWU.

Clause B.3.4(b): Summary of hourly rates – casual employees

138. Ai Group agrees with the submissions made by the AMWU.

Clause B.9.2: Summary of hourly rates – RS&R vehicle sales employees

139. Ai Group agrees with the submissions made by the AMWU.

Schedule H: Definition of ‘vehicle industry RS&R employee’

140. Ai Group agrees with the submissions made by the AMWU

Overtime rates for casual employees

141. Ai Group considers that overtime rates for casual employees should apply after 10 hours in a day. This is consistent with the limit to 10 ordinary hours per day in clause 19.3 of the exposure draft.

142. Ai Group opposes the AMWU’s contention that overtime for general casual employees should apply after a casual has worked 7.6 hours in a day.

## **28. WASTE MANAGEMENT AWARD 2010**

### **Response to submission of ABI and the NSWBC (dated 15 March 2019)**

#### Schedule A: Payment for public holidays

143. Ai Group agrees with the submission.

### **Response to submission of ARTIO (dated 8 March 2019)**

#### Clause 21.5(a) and Schedule A: Payment for public holidays

144. Ai Group agrees with the submission.

#### Ordinary hours of work on weekends

145. ARTIO has indicated that the award ought to be varied to permit the working of ordinary hours on a weekend. Although Ai Group concurs with this proposition, such a variation would obviously be a major substantive change which would not ordinarily be pursued or made in the course of the exposure draft process.

### **Response to submission of WCRA (dated 14 March 2019)**

#### Clause 10.1: Minimum wages

146. WCRA has described changes that it proposes should be made to clause 10.1 but has not proposed any specific amendments. We understand WCRA to be proposing that the minimum rates specified in clause 10.1 be amended so that the rates there specified are calculated to include the industry allowance.

147. It is important that WCRA's proposal, as articulated, is not adopted. The industry allowance is a separate entitlement to the minimum rates provided by clause 10.1 and this should continue to be reflected in the document. It would be confusing and inappropriate to conflate the two. It is important that minimum rates continue to be separately identifiable, in the sense contemplated by s.16 of the Act, as they will constitute the base rate of pay for employees paid in accordance with award. This is the rate that will be used for various NES entitlements.

148. Depending upon how it is implemented, WCRA's proposed variation may either have the effect of increasing employer costs or misleading employers into paying more than is required under the NES.
149. The changes proposed by WCRA in the alternate are also not necessary. The preamble to clause 10.1 already refers to 11.2(b) and makes clear that the industry allowance is payable in addition to the minimum rates prescribed by that clause.

## **29. WINE INDUSTRY AWARD 2010**

### **Response to submissions of the SAWIA (dated 5 April 2019)**

#### Clause 6.6(a): Casual conversion

150. Ai Group agrees with SAWIA's submission.

151. We also note that our earlier [submissions](#) regarding various aspects of the casual conversion clause remain outstanding (see paragraphs 497 – 511).

#### Clause 12: Piecework rates

152. If the Full Bench considers a variation necessary, Ai Group may seek an opportunity to make submissions in this regard.

#### Clause 16.2(a): Leading hands

153. Ai Group does not oppose SAWIA's submissions.

#### Schedule B: Summary of hourly rates of pay

154. Ai Group does not oppose SAWIA's submissions.