



# UPDATED REPORT TO THE FULL BENCH

*Fair Work Act 2009*  
s.156 - 4 yearly reviews of modern awards

## **4 YEARLY REVIEW OF MODERN AWARDS: Report to the Full Bench**

*(AM2014/214) Storage Services and Wholesale Award 2010*

DEPUTY PRESIDENT BULL

SYDNEY, 15 MARCH 2016

*Four yearly Review of Modern Awards, Storage Services and Wholesale Award 2010,  
Updated Report to the Full Bench, further conference held on 5 January 2016 at the request  
of the parties*

[1] On 7 October 2015, a hearing was held before the Full Bench in relation to the four yearly review of the sub group 2A modern awards, which includes the *Storage Services and Wholesale Award 2010* (the Award).

[2] The matter was subsequently listed for conference before me on 19 November 2015 to discuss any outstanding issues in relation to the exposure draft, and a [Report to the Full Bench \[PR574731\]](#) was published on 7 December 2015 summarising the outcome of the discussions.

[3] The Ai Group, with the support of the SDA and AWU requested a further conference before the Commission to facilitate discussions on the substantive and outstanding issues in relation to the Award.

[4] Accordingly, a conference was held before me on 5 January 2016, where the following parties were in attendance:

- The Shop Distributive and Allied Employees' Association (SDA) represented by Mr Galbraith;
- Australian Workers' Union (AWU), represented by Ms Gherjestani, Ms Gherjestani also appeared on behalf of the National Workers' Union (NUW);
- Australian Industry Group (Ai Group), represented by Mr Ferguson and Ms Bhatt; and
- Australian Federation of Employers and Industries (AFEI), represented by Mr Jones-Valledor and Mr Miljak.

[5] At the 5 January 2016 conference, the parties advised that there was scope for agreement to be reached between the parties present regarding the process to be adopted in order to resolve the following substantive variations sought to the Award:

1. Rostered days off (issue 26 in the table below);
2. Definition of wholesale employees (issue 75 in the table below); and
3. Proposed annualised salary provision (issue 77 in the table below).

[6] It was noted at the conference that the Exposure Draft as it currently stands does not reflect all Full Bench decisions that have been handed down by the Commission regarding technical and drafting issues arising from the exposure drafts, for example; in relation to personal carers' leave at issue 57 in the table below.

[7] Parties were provided with a further opportunity to provide written submissions in relation to outstanding issues in relation to the Award by 22 January 2016.

[8] Listed below are the identified issues and outcomes in relation to the Award following the conferences held before me. Some issues have now moved from the 'not agreed issues' to 'agreed issues' or 'issues for further discussion'.



DEPUTY PRESIDENT

*Storage Services and Wholesale Award 2010 – AM2014/214*

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
1.	1, 3	NUW	–	<b>Terminology – ordinary hourly rate</b> Inconsistent use of ‘ordinary hourly rate’ and ‘minimum hourly rate’.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412</a> and <a href="#">[2015] FWCFB 4658</a> .
		BusSA		Opposes ‘ordinary hourly rate’ as it is inconsistent with <a href="#">[2014] FWCFB 9412</a> .	
		ABI & NSWBC		‘Ordinary hourly rate’ and ‘minimum hourly rate’ used interchangeably and should be used consistently.	
		AWU		<b>Terminology – ordinary hourly rate</b> Exposure draft should refer to ‘ordinary hourly rate’. Agrees with ABI & NSWBC and ordinary hourly rate should be adopted.	
		Ai Group		Opposes NUW and AWU that ‘ordinary hourly rate’ should be used in preference to ‘minimum hourly rate’.	
		SDA		Supports use of term ‘ordinary hourly rate’.	
2.	20A	Ai Group	–	<b>Casual loading</b> ‘Ordinary hourly rate’ should be replaced with ‘minimum hourly rate’ as that is the relevant term used in the minimum wages clause.	Resolved by Full Bench decision <a href="#">[2014] FWCFB 9412</a> and <a href="#">[2015] FWCFB 4658</a>
		SDA		Award should refer to ‘ordinary hourly rate’ throughout.	
		AWU		Suggest inserting definition of ‘ordinary hourly rate’ rather than replacing it with ‘minimum hourly rate’.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
3.	62	SDA	–	<b>NES summaries and payslips</b> Opposes inclusion of NES summaries but supports inclusion of payslip provisions in annotated version of awards.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
4.	4	SDA	2	<b>Relationship between award and NES</b> Removal of word ‘access’ from title and amalgamation of two clauses substantially changes clause 5.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		Ai Group		SDA submission addressed by 23 December 2014 decision.	
5.	5	Ai Group	3.1	<b>Coverage</b> Words ‘to the exclusion of any other modern award’ should be deleted.	Agreed – words ‘to the exclusion of any other modern award’ deleted from clause 3.1.
		SDA		Agrees with Ai Group.	
		AWU		Not opposed to Ai Group.	
6.	6	SDA	3.2	<b>Coverage – industry definition</b> Definition of ‘storage services and wholesale industry’ is unnecessary.	Agreed – definition of ‘storage services and wholesale industry’ deleted from clause 3.2.
		Ai Group		Deletion of definition not opposed.	
7.	7	ABI & NSWBC	3.6(a)	<b>Coverage – terminology</b> Reference to ‘the Fair Work Act 2009 (Cth) (the Act)’ should be replaced with term ‘the Act’.	Resolved – reference to ‘the Act’ only per ABI & NSWBC submission.
		AWU		Agrees with ABI & NSWBC	
		SDA		Does not oppose ABI & NSWBC	
		Ai Group			

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
8.	8	BusSA	5.1(b)	<b>Facilitative provisions – Agreement to vary award provisions</b> Remove items in line with 23 December 2014 decision.	Resolved – deletion of final sentence of clause 5.1(b) per Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		SDA		Decision made reference to deletion of final sentence only.	
9.	9	SDA	5.2(a)(i)	<b>Facilitative provisions – Travelling allowance</b> Delete from clause as entitlement is an absolute provision.	Agreed – travelling allowance not to be included in facilitative provisions.
		AFEI		Agrees with SDA.	
		Ai Group			
		ABI & NSWBC		Agrees with Ai Group and SDA.	
10.	10	Ai Group	5.2(a)(ii)	<b>Facilitative provisions – cross reference 8.1</b> Reference should be to 8.1(d).	Agreed – cross reference should be to clause 8.1(d).
		SDA		Supports Ai Group.	
11.	11	ABI & NSWBC	5.2(a)(ii)	<b>Facilitative provisions – cross references</b> Consider whether inclusion of clause references in clause 5.2 will give rise to unintended consequences.	Agreed between the parties
	12	AWU		Agrees with ABI & NSWBC	
12.	14	BusSA	5.2(a)(vi)	<b>Facilitative provisions – cross reference 20.4(a)</b> Include additional cross reference to clause 20.4(a) – Rostered day off falling on a public holiday.	Agreed – cross reference to clause 20.4(a) to be inserted.
		Ai Group		Does not oppose BusSA.	
		SDA			

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
13.	13	BusSA	5.3(a)	<b>Facilitative provisions – cross reference 15.3</b> Include reference to clause 15.2.	Agreed – cross reference to clause 15.2 to be inserted.
		Ai Group		Opposes BusSA submission.	
		SDA			
14.	15	BusSA	5.3(a)	<b>Facilitative provisions – cross reference 20.3</b> Include additional cross reference to clause 20.3 – Substitution of public holidays.	Agreed – cross reference to clause 20.3 to be inserted.
		Ai Group		Opposes Ai Group submission.	
		SDA		Does not oppose Ai Group.	
15.	16	Ai Group	5.3(a)(i)	<b>Facilitative provisions – cross reference 11</b> Cross reference to clause 11 should be deleted.	Agreed – clause 5.3(a)(i) to be deleted.
		SDA		Does not oppose Ai Group.	
		ABI & NSWBC		Supports Ai Group.	
16.	17	Ai Group	5.3(a)(ii)	<b>Facilitative provisions – clause 8.1</b> Clause 8.1 contains provisions that provide for facilitation by majority agreement ((d) & (e)). Both are separately listed in clause 5.3. Clause 5.3(a)(ii) should be deleted.	Agreed – clause 5.3(a) to list clauses 8.1(d) and 8.1(e) separately in lieu of general reference to ‘clause 8.1’.
		SDA		Supports Ai Group.	
17.	18	Ai Group	5.3(a)(vi)	<b>Facilitative provisions – clause 15.1</b> Clause should refer to clauses 15.2 and 15.4(d) instead.	Agreed – clause 5.3 to refer to clauses 15.2 and 15.4(d), not general reference to ‘shift rosters’.
		SDA		Supports Ai Group.	
18.	20	AWU	6.4(c)(i)	<b>Casual employment</b>	Agreed – word

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				Word 'ordinary' should be removed from clause 6.4(c)(i) or words of current clause 11.4(b) should be retained.	'ordinary' deleted from clause 6.4(c)(i).
		Ai Group		Does not oppose AWU.	
		ABI & NSWBC			
19.	21	SDA	6.4(c)(ii) & (iii)	<b>Casual employment</b> Opposes inclusion of clauses 6.4(c)(ii) & (iii) and proposes incorporation of Full Bench decision <a href="#">[2014] FWCFB 9412</a> . Party also supports Ai Group's submission.	Agreed – delete clauses 6.4(c)(ii) & (iii) as issued dealt with by <a href="#">[2014] FWCFB 9412</a> .
		AWU		Clause 6.4(ii) does not appear in current award and should be deleted and agrees with Ai Group.	
		Ai Group		Opposes inclusion of subclause.	
20.	22	Ai Group	8.1(a)	<b>Hours of work</b> Reference to full-time employees removes casual employees from application of clause and would result in breach of s.147 of Act. Words 'a full-time employee's' should be deleted.	Agreed – reference to 'a full-time employee's' deleted.
		NUW		Supports Ai Group in that there should be some reference to casual employees.	
		SDA		Supports Ai Group.	
		AWU			
21.	22A	Ai Group	8.1(a)	<b>Hours of work – Ordinary hours of work – day workers</b> Words 'up to' should be inserted before '38 per	Parties agree to replace 8.1(a) with current 22.1(a) and insert the words "up to"

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				week' to prevent clause being interpreted as requiring casual employees to work 38 ordinary hours a week, contrary to clause 6.4(a).	after the word "be"
22.	22B	Ai Group	8.1(c)	<p><b>Hours of work – Ordinary hours of work – day workers</b></p> <p>The word 'shift' is not used in the current clause except where it specifically relates to shiftworkers. The words 'on shift' should be substituted with 'on days'</p>	<p>Parties agree to reinsert existing clause 22.1(b).</p> <p>This is based on there being no intention to change its' meaning from the current award and any change would result in a substantive one.</p>
23.	23	FWO	8.1(c)	<p><b>Hours of work – Ordinary hours of work – day workers</b></p> <p>Unclear what entitlements apply to employees whose hours of work traverse the hours that apply to both shift and day workers.</p>	Parties agree the existing exposure draft provisions are appropriate and should remain.
24.	25	BusSA	8.2	<p><b>Hours of work – Spread of hours</b></p> <p>Title of clause should be 'spread of ordinary hours' for clarity.</p>	<p>Parties present at the conference of 19/11 agreed to the title change.</p> <p>AWU propose to also insert the word "ordinary" in the opening sentence after the word "of" for consistency.</p> <p>The clause would read "The spread of ordinary hours may be altered..."</p>

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					All parties agreed to AWU's proposal.
		Ai Group		Not opposed to BusSA	
		SDA		Change to clause title is unnecessary.	
25.	27	BusSA	8.4(d)	<b>Hours of work</b> Clause reference should be amended from 9.4(b) to 8.4(b).	Agreed – clause reference to be changed from 9.4(b) to 8.4(b).
		SDA		Agrees with BusSA.	
		Ai Group			
26.	28	SDA	8.4	<b>Hours of work – Rostered days off</b> Amend clause so RDOs are not capped at 12 over a 12 month period.	Parties agree at cl.8.4(a) that the reference to 12 RDO's be reworded to 13 RDO's, and to include the word 'worked' after the reference to 4 weeks.
27.	29	SDA	9.1	<b>Meal breaks</b> Revert to wording in current award.	Agreed – retain wording of current clause 23.1(a) in place of clause 9.1(a).
		ABI & NSWBC		Agrees with SDA.	
		BusSA			
		Ai Group			
		NUW			
		SDA			
		AWU			
28.	30	Ai Group	9.2	<b>Rest breaks</b> Current wording ('normal commencement or cessation of work') should be retained.	Agreed – retain current wording and replace 'starting or finishing time' with 'commencement or cessation of work'.
		SDA		Agree with Ai Group.	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
29.	25A	SDA	8.2	<p><b>Hours of work – Spread of hours</b>            Clause has been relocated resulting in there being no spread of hours under the ‘spread of hours’ subclause.</p>	<p>Parties tentatively agree to AWU’s proposal:</p> <p>cl.8.1(b) to be moved under cl.8.2, which would then be marked as 8.2(a), and cl.8.2 will then become 8.2(b)</p> <p>The current clause at 22.1(a) of the current award should replace 8.1(a) of the exposure draft, subject to change agreed at item 21.</p>
		ABI & NSWBC		Agrees with SDA that ‘spread of hours’ clause does not contain the spread of hours, but disagrees that the reference to the spread should be repeated in clause 8.2. An amendment to the clause title is proposed	
		Ai Group		Opposes SDA that clause 8.1(b) be reproduced at clause 8.2.	
30.	31	Ai Group	10.1	<p><b>Minimum wage rates</b>            Delete ‘for a full-time adult employee’ from preamble.</p>	Agreed – ‘a full-time’ deleted.
		AWU		Term ‘full time’ should be deleted from draft preamble.	
		ABI & NSWBC		Does not oppose AWU	
31.	31A	SDA	10.1	<p><b>Minimum wage rates</b>            Not opposed to inclusion</p>	Resolved

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				of extra rates in wage tables – worthwhile additions.	
32.	32	FWO	10.1 & Schedule B	<p><b>Minimum wages</b></p> <p>Different pay rates for level 1 employees ‘on commencement, after 3 months and after 12 months’.</p>	Parties agree to leave Schedule B of exposure draft as currently is.
		BusSA		BusSA wrote to the Commission on 2 December 2015 stating that it agrees to leave the exposure draft as is.	
33.	33	SDA	10.2	<p><b>Junior wages</b></p> <p>Unnecessary to include minimum weekly rate alongside the junior percentages</p> <p>Many juniors will be in the first 12 months of employment and therefore not receiving these rates so could lead to confusion</p> <p>Juniors also likely to be part-time or casual so weekly rates will not be relevant.</p>	Parties agree to remove the “minimum weekly rate” column at cl.10.2 - Juniors
34.	34	ABI & NSWBC	10.4	<p><b>Supported wages system</b></p> <p>Words ‘because of the effects of a disability’ should be deleted.</p>	Agreed – words ‘because of the effects of a disability’ to be deleted.
		Ai Group SDA		Does not oppose ABI & NSWBC.	
35.	36	Ai Group	11.4	<p><b>Public holiday or day off coinciding with pay day</b></p> <p>Words of current clause should be retained.</p>	Agreed – wording of current clause 20.4 to be retained.
		SDA		Agrees with Ai Group.	
		AFEI & ABI			

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		NSWBC SDA			
36.	36A	AFEI	11.4	<del>Public holiday or day off coinciding with pay day</del> Agree with question proposed in exposure draft.  AFEI to propose suggested wording for this clause	Withdrawn (see AWU's correspondence of 12 January 2016)
37.	37	SDA	12	<b>Allowances</b> Does not oppose changes to formatting of allowances.	Agreed – parties do not oppose changes to allowances.
38.	38	SDA	12.3(b)(i)	<b>Allowances – Travelling, transport and fares reimbursement</b>  Words 'who on any day, or from day-to day' have been omitted from exposure draft.	Agreed – wording of current award to be retained.
		AWU		Agrees with SDA and current wording should be retained.	
		Ai Group			
		AWU			
		ABI & NSWBC		Considers words to be unnecessary and should not be retained.	
		BusSA			
39.	39	ABI & NSWBC	12.3(d)	<b>Allowances – Protective clothing and uniform</b> Current drafting may give rise to an ambiguous general obligation to 'provide overalls'. Party submits clause should be redrafted.	Agreed – parties have agreed to support wording in ABI & NSWBC's submission.
		Ai Group		Supports ABI & NSWBC proposed wording.	
		SDA			
		AWU			
40.	43	SDA	15.1	<b>Shiftwork</b> Submits penalties are	Agreed – percentages

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				incorrect. Rates in afternoon shifts should be replaced with 115% and 140%, respectively. Rates in night shift should be replaced with 130% and 155%, respectively.	incorrect.
		BusSA		Agree with SDA.	
		Ai Group			
		ABI & NSWBC			
		AWU			
41.	43A	Ai Group	15.1	<p><b>Shiftwork</b></p> <p>Submit ‘and penalties’ should be deleted from heading as current award characterises the higher rate payable as an allowance.</p> <p>Characterisation may have implications for workers compensation and long service leave calculations under state legislation.</p>	<p>Parties tentatively agree to suggestions put forward at the 19 November 2015 conference below:</p> <ul style="list-style-type: none"> <li>• AWU submit cl. 25 of current award remain in lieu of clause 15 of the exposure draft.</li> <li>• AiG do not oppose this but if that be the case, the reference to “ordinary rate” should be to the ‘minimum hourly rate’</li> <li>• Refer to [2015] FWCFB 4658 at paragraphs 42-47</li> </ul>

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					<ul style="list-style-type: none"> <li>• AWU agreeable to Ai Groups proposal.</li> <li>• AiG further submit that references to “time and a half” and “double time” should be referenced as 150% and 200% of the minimum hourly rate respectively.</li> <li>• Refer to [2015] FWCFB 4658 at paragraphs 95 and 96</li> </ul>
42.	44	ABI & NSWBC	15.1	<p><b>Shiftwork</b> Clause should be varied to read:</p> <p>‘Saturday – in accordance with 15.4(d)(ii) and 15.4(e)(i)’</p> <p>‘Sunday – in accordance with 15.4(d)(ii) and 15.4(e)(ii)’</p>	Agreed – clause 15.1 amended to reflect ABI & NSWBC’s submission.
		SDA		Agree to support ABI & NSWBC	
43.	45	Ai Group	15.1	<p><b>Shiftwork</b> Not opposed to ABI &amp; NSWBC</p>	Agreed – linked with item 41
		SDA			
44.	49	AWU	16.1(b)	<p><b>Overtime and penalty rates</b> Words ‘will be paid’ have been repeated in the first line and should be</p>	Agreed – duplicate words ‘will be paid’ to be deleted.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				deleted.	
		ABI & NSWBC		Agree to support AWU submission.	
		Ai Group			
		BusSA			
		SDA			
45.	50	AWU	16.1(a) & 16.2(a)	<p><b>Overtime and penalty rates – calculation of overtime</b></p> <p>16.2(a) states ‘each day or shift’ will stand alone. This is in conflict with 16.1(a) that states any time in excess of hours outside the ordinary hours of work. Party suggests the following wording of 16.1(a): ‘Overtime is payable for all time worked by an employee in addition to the rostered hours on any shift, or in excess of or outside the ordinary hours of work prescribed by this Award’.</p>	Withdrawn
46.	51	NUW	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Opposes proposed exclusion of casual employees in clause 16.4(b).</p>	Agreed – casuals not to be excluded from clause 16.4(b).
		Ai Group		Does not oppose NUW.	
		SDA			
47.	52	Ai Group	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Exposure draft proposes significant changes and current wording should be retained:</p> <ul style="list-style-type: none"> <li>- The words ‘where an employee works so much overtime’ should be reinserted into clause</li> </ul>	Parties agree to replace clause 16.4 with current cl.24.4

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				<p>16.4(b) to clarify clause only applies where overtime worked</p> <ul style="list-style-type: none"> <li>- Current clause applies to the next rostered 'ordinary work' while the ED refers to 'resuming work'. Retain current wording</li> <li>- Words of current 16.4(b)(i) should be retained to ensure entitlement confined to loss of pay for 'ordinary working time' during the absence</li> <li>- Words of current 16.6(b)(ii) should be retained as they make clear that the provision applies when an employee resumes work or continues to work. ED's generic reference to 'work' is less clear</li> <li>- Current clause requires payment at a higher rate 'until released from duty' while ED proposes requires payment at higher rate 'until employer has received a break of at least 10 hours'. Amendment is substantial change and could lead to increased costs</li> </ul>	
		SDA		Party notes the various matters raised by Ai Group.	
48.	53	Ai Group	16.4(b)	<p><b>Overtime and penalty rates – Rest period after overtime</b></p> <p>Clause 16.4(b)(ii) should be amended to refer to</p>	Resolved.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				the minimum hourly rate.	
49.	54	BusSA	16.5	<b>Overtime and penalty rates – Weekend and public holiday rates</b> Minimum hourly rate is the ordinary rate of pay.	Resolved.
		Ai Group		Prefers the use of ‘minimum hourly rate’.	
		SDA		Supports use of ‘ordinary hourly rate’ throughout award.	
50.	54A	Ai Group	16.5(b)(ii)	Clause should be amended to read ‘where such overtime is worked’	Parties agree the word “such” be reinstated
51.	56	Ai Group	17.2(a)	<b>Annual leave – Additional leave for certain shiftworkers</b> Reference in 17.2(a) to 17.1 should be amended to read s.87(1)(b) of the Act as per the current award, and in accordance with the Full Bench decision.	Agreed
		SDA		Does not oppose Ai Group.	
		AWU			
52.	57	FWO	17.3	<b>Annual leave – Loading</b> Confusion around applicable loading payable to employee on annual leave.	Parties agree to leave exposure draft as is.
53.	58	BusSA	17.4(a)	<b>Annual leave – Annual close down</b> Objects to the change in wording.	Agreed – wording of current clause to be retained and clause 17.4 to be replaced with current clause 26.5.
		SDA		Supports BusSA.	
		Ai Group		Requirement to give ‘one month’s’ notice rather than ‘such notice’ as per current award imposes greater obligation on employers’.	
		AWU		Not opposed to retaining	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				current wording of clause if words omitted by Ai Group retained.	
		FWO		Unclear what 'qualifying period of employment' refers to.	
54.	59	BusSA	17.4(b)	<b>Annual leave – Annual close down</b> Reference to 17.4(b) should be amended from 15.4(a).	Agreed – reference to 15.4(a) should be amended to 17.4(a).
		SDA		Parties either support or are not opposed to above submission.	
		AWU			
		Ai Group			
		SDA			
55.	60	Ai Group	17.4(b)	<b>Annual leave – Annual close down</b> Clause requires an employers to give notice to a new employee 'on the date they are offered employment' rather than 'date of employee's engagement', which will not be before the date on which the employee accepts the employer's offer of employment. Retain current wording.	Agreed – linked to item 58.
56.	61	SDA	17.4(c)	<b>Annual leave</b> Wording 'the next 12 monthly qualifying period of employment' may be inconsistent with s.87 (a) of Act. Annual leave accrues progressively and there is no minimum qualifying period of service before an employee accrues a period of annual leave accessible by that	Parties agree to delete paragraph 17.4(c)

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				employee.	
		Ai Group		Does not agree with the proposal of the SDA to delete clause 17.4(c)(iii).	
		ABI & NSWBC		It is unclear what the 'qualifying period of employment' refers to. Clause may cause confusion and should be deleted.	
		SDA		<p>Clause is unclear in its reference to a '12 month qualifying period' and appears to be no reference elsewhere in the award. No reference is confusing and potentially misleading.</p> <p>Does not oppose the position agreed to by the parties but unsure about the retention of the suggested sentence ("In this clause <b>date of closing...</b>". <b>Date of closing</b> is not mentioned elsewhere in this clause. To be discussed.</p>	
57.	63	SDA	18	<p><b>Personal/carer's leave</b> Individual employers and employees may make arrangements whereby employees are paid some of these entitlements on termination.</p>	Resolved.
		BusSA		Provision allowing the cashing out of personal/compassionate leave is not supported.	Parties agree that cl.18.3 needs to be deleted as per FB decision <a href="#">[2014] FWCFB 9412.</a>
58.	64	Ai Group	18.3	<p><b>Personal/carer's leave</b> Submission of the SDA is noted (see item 63). Ai Group may seek to make submissions at a later</p>	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				point.	Parties' note that the Exposure Draft as it currently stands does not reflect Full Bench decisions that have been handed down by the Commission regarding technical and drafting issues arising from the exposure drafts.
59.	65	SDA	20	<b>Public holidays</b> Words of current award do not appear in the exposure draft. Distinction should be made in exposure draft so users do not think the public holiday provisions in the new award are merely a summary of the NES entitlements.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
60.	66	SDA	20.1	<b>Public holidays</b> Ai Group does not oppose retaining the current clause.	Resolved – linked with item 65.
61.	67	Ai Group	20.4(a)	<b>Public holidays – RDO falling on public holiday</b> Typographical error should be amended as follows: 'The alternate day is to be determined'.	Agreed – clause 20.4(a) amended to read 'The alternate day off is to be determined'.
		SDA		Agrees with Ai Group.	
62.	68	SDA	21	<b>Community service leave</b> Words 'after 10 days, leave is unpaid' have potential to be misinterpreted.	Resolved – by Full Bench decision <a href="#">[2014] FWCFB 9412.</a>
		Ai Group		Submission of SDA is noted. Ai Group may seek to make submissions	

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				at a later point.	
63.	69	SDA	23.2	<b>Redundancy</b> Unnecessary to repeat the definition of ‘small business employer’ in clause as it is defined in definitions schedule.	Resolved – by Full Bench decision <a href="#">[2014] FWCFCB 9412.</a>
		Ai Group		Following Full Bench decision of 23 December 2014, party anticipates definition will be deleted.	
		SDA		Not opposed to removal of ‘small business employer’ definition.	
		BusSA			
64.	70	ABI & NSWBC	25.6	<b>Dispute resolution</b> In light of legislation now operating in the majority of Australian jurisdictions, the reference to ‘occupational health and safety legislation’ should be updated to ‘work health and safety legislation’ to facilitate ease of reference and to ensure clarity.	Withdrawn
65.	72	Ai Group	B.1.2	<b>Summary of hourly rates of pay – Full-time and part-time employees</b>  Consistent with submission in relation to clause 15.1, ‘penalty rates’ should be deleted from the heading to B.1.2.	Parties agree to title change in schedule B.1.2 to insert the word “allowances” after the words “penalty rates”
66.	72A	Ai Group	B.1.2	<b>Summary of hourly rates of pay – Full-time and part-time employees</b> Rate for night shift should be amended to read ‘130%’ – rates themselves are correct.	Agreed

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		SDA AWU		Agrees with Ai Group.	
67.	75	ABI & NSWBC	Schedule B	<b>Summary of hourly rates of pay</b> Seek inclusion of rounding rules in relation to amounts listed in the relevant tables. The 150%, 200% and 250% hourly rates appear to be calculated on the 100% hourly rate rounded to 2 decimal places as opposed to a calculation using an ‘unrounded’ 1/38 <sup>th</sup> of the weekly rate figure. Party submits that this may give rise to slight discrepancies in payment rates.	Withdrawn by ABI & NSWBC – refer to correspondence of 26 November 2015.
68.	76	ABI	Schedule B	<b>Summary of hourly rates of pay</b> The submissions made by ABI & NSWBC with respect to Schedule B gives rise to a general issue ventilated during earlier proceedings before the Commission. The publication of rounding rules is relevant to exposure drafts.	Withdrawn by ABI
69.	77	Ai Group	B.2.2	<b>Summary of hourly rates of pay – Casual shiftworkers</b> Consistent with submission in relation to clause 15.1, ‘penalty rates’ should be deleted from the heading to B.2.2.	Parties agree that Table B.2.2 title be amended to add the word “/allowances” after the words “penalty rates”
70.	79	Ai Group	B.2.2	<b>Summary of hourly rates of pay – Casual shiftworkers</b> Rate for casual night shift should be amended to	Agreed – Night shift rate should be 155%.

Issues agreed between parties (Resolved)					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				read '155%' – rate themselves correct.	
		SDA		Agrees with Ai Group.	
71.	80	SDA	Schedule G	<p><b>Definitions</b> Definitions should remain at clause 3. Definitions determine how award provisions are interpreted. Having them at the front is more logical and user friendly. Users may miss them at the back. Party also notes 'default fund employee' has been deleted from exposure draft.</p>	Parties agree that all awards have been drafted with definition clause as schedule to the award.

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
72.	19	FWO	6.2	<p><b>Full-time employment</b> Current clause may cause confusion.</p>	Requires further discussion from AiG and AWU/NUW.
		BusSA		<p>Does not agree on this issue.  (BusSA not present at the conference – 5/1/16)</p>	<p>AiG propose to insert the following wording as one clause (No need for clause to be broken up into clause a and clause b):</p> <p>“A full time employee is .....who is engaged for an average of 38 ordinary hours per week and paid the weekly wage as per cl.10”</p>

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
					AWU/NUW do not agree to the added words of “and paid the weekly wage as per cl.10”.
		AiG		AiG’s proposal to insert the words “and engaged for an average of 38 hours per week” after the end of cl.6.2.	
		SDA, AWU and NUW		<p>The Unions propose the following wording for clause 6.2:</p> <p>(a) A full-time employee is an employee who works (an average of) 38 ordinary hours per week.</p> <p>The unions submit that their proposed wording is consistent with s147 of the Fair Work Act and there is no need for including additional wording (as proposed by the AIG) at the end of the clause.</p>	
73.	42	AWU	13	<p><b>Higher duties</b> Clause applies to all employees and ‘weekly employee’ should be replaced by ‘an employee’.</p>	Unions will pursue the application of the clause to all employees, including casual employees.
		ABI & NSWBC		Opposes AWU. Clause should refer to ‘full-time or part-time employee’ rather than ‘weekly employee’.	AiG will not oppose reference to full time and part
		BusSA			

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
		Ai Group			time employees if there are no other variations to this clause.
		AFEI			
		SDA		‘Weekly employee’ and ‘full-time or part-time employee’ have the same meaning. Submits casual employees temporarily acting above their classification should be paid at higher rate.	AiG state that should the clause be redrafted to include casuals – this would be a substantive claim.
		NUW		Opposes AFEI.	AWU rely on Full Bench decision in [2015] FWCFB 7236 at paragraph 170.  SDA/NUW consistent with the position already identified and support the AWU’s position.
74.	55	Ai Group	16.6(a)	<b>Overtime and penalty rates – Call-back</b> The appropriate rate is the rate payable based on the employee’s classification to be determined in accordance with when the work is performed.	Outstanding  AiG and other employer groups want existing provision to remain.
		ABI & NSWBC		The ‘appropriate rate’ will depend on whether the hours are worked in excess or outside the span of ordinary hours. Party submits current drafting of clause	The Unions retain their position that an employee who has left work for the day must be paid for a minimum of

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				should be retained.	<p>four hours' work calculated at the appropriate <b>“overtime”</b> rate for each time the employee is called back.</p> <p>The Unions have looked at the pre-reform awards, which largely state that an employee recalled to work must be paid at the appropriate overtime rate.</p>
		AWU		<p>The ‘appropriate rate’ must reflect the overtime rate, and should be paid at 150% of ordinary hourly rate for first 2 hours and 200% thereafter.</p> <p>Rejects Ai Group’s submission and ABI &amp; NSWBC submission. In Road Transport and Distribution Award submission Ai Group concedes that call-back constitutes overtime payments. Referred to clauses 6.3(c) &amp; (f) which specify that overtime is paid for all time worked in excess of hours mutually arranged. Call-back will be overtime because hour worked will be beyond those mutually agreed.</p>	
		SDA		Payment is at overtime rates. It is not logical to expect an employee to return to work after completion of a shift without additional compensation.	
		BusSA		The ‘appropriate rate’ must reflect the overtime rate, hence it should be paid at the rate of 150% of the ordinary hourly rate for the first two hours and	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				200% of the hourly rate thereafter.	
75.	71	Ai Group	A.8	<b>Wholesale employee level 4</b> Classification should be re-worded to clarify the employees who are and are not covered by this classification.	Parties to continue discussions and provide new wording for the definition of wholesale employees level 3 and 4.
		AWU		Party regards Ai Group's proposal as a substantive change and opposes substantive variation sought.	
		SDA & NUW		Opposes variation as it attempts to remove a particular group of employees from the coverage of this award.	
		ABI & NSWBC and BusSA		Supports Ai Group's proposal.	
76.	73	Ai Group	B.1.3	<b>Summary of hourly rates of pay – Saturday and Sunday rates</b> Rates should be calculated in accordance with clauses 16.5(a)(i) & 16.5(b)(i) – the rates there prescribed relate to all time worked as is evident from the reference to overtime. On this basis, rates in B.1.3 should be amended to Saturday: 150% of minimum	Parties accept that the table at B.1.3 does not reflect cl.16.5 and there is only a single rate for Saturdays, Sundays and public holidays of 150, 200 and 250% respectively.  Unions argue that Saturday rates in the

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				<p>hourly rate, not 150% for first 2 hours then 200%.</p> <p>AiG's position is that all Saturday work is paid at 150% including overtime.</p> <p>AiG propose to amend Table B1.3 with columns to include "Monday to Friday" and a separate column for Saturday. The "Monday to Saturday" column in the table to be deleted.</p> <p>AiG wish to leave the clauses as is.</p>	body of the Award are an error – should be 150% for first 2 hours then 200% thereafter.
		NUW		Opposes Ai Group.	
		SDA		Opposes Ai Group. Clause 16.1(b) of exposure draft and clause 24.1 of current award both provide for time and a half for the first 2 hours and double time thereafter. Rates do not need to be amended.	
		AWU		Strongly opposes Ai Group's submission that rates should be amended. The current award and exposure draft clearly allow for overtime rates on Saturdays to be paid at 150% for first 2 hours and 200% thereafter.	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				To undertake what the current practice is within the industry.	
77.	82	Ai Group		Annualised salary provision should be inserted to improve flexibility.	Parties to continue discussions. AiG to review its position subject to the Commission granting a variation that reflects any agreement reached between the parties regarding the definition of wholesale employees' level 3 and 4.
		AWU		Party considers Ai Group's proposal to insert an annualised salary provision into award would be a substantive change. It opposes the inclusion of an annualised salary provision.	
		SDA		Strongly opposes the inclusion of annualised salary. Party does not agree that an employer should have the ability to direct an employee to accept annualised salary arrangements.	
		NUW		Opposes variation as it is difficult to ascertain	

Issues for further discussions					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				why the variation sought is necessary to achieve the modern awards objective.	
		ABI & NSWCBC, and BusSA		Supports Ai Group's proposal as it provides consistent wages for employees over a 12 month period.	

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
78.	24	AFEI	8.2	<b>Hours of work – Spread of hours</b> Existing ordinary hours of work provisions do not require amendment. Span of hours may be amended at each end.	Issue will be dealt with by the Full Bench, refer to [2015] FWCFB 7236 at paragraph [159]
		NUW		Does not support AFEI.	
		AWU		Opposes AFEI and submits the word 'either' permits the expansion of the spread of hours at one or the other end and not both.	
		SDA		Word 'either' means one or the other but not both. When read in conjunction with the facilitative provision, clause is clearly not intended to permit an increase in the daily spread	
		BusSA		Supports AFEI.	
79.	26	BusSA	8.2	<b>Hours of work – Spread of hours</b>	Outstanding

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				Each end of ordinary hours can be expanded and does not support Ai Group.	Related to issue 78 above and to be dealt with concurrently.
		NUW		Opposes BusSA but supports AWU's submission that span can be altered at one or the other end of spread, but not both.	
		AWU		Opposes BusSA and submits 'either' means 'one or the other but not both'.	
		Ai Group		Words do not suggest that the other end of the spread must be shifted to maintain a span of 10.5 hours. Clause permits expansion of span by 1 hour and clause supports clause 8.1(d) that an employee may work up to 10 ordinary hours in one day.	
		SDA		Opposes Ai Group and submits purpose of clause is to move spread forward or back by one hour, but not to extend the number of hours within the span.	
		FWO		Confusion around altering the spread of hours.	
		ABI & NSWBC		Opposes SDA as it is not possible to 'shift' spread of hours at only one end of spread without increasing/decreasing hours. Opposes AWU as	

Issues to refer to Full Bench					
Issue No	Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Outcome
				parties' interpretation would allow variation of the spread of hours at both ends of the spread.	
		AFEI		Opposes SDA as it is unreasonable reading a facilitative provision as to restrict its operation in the manner contended by SDA.	
80.	35	Ai Group	11.3	<b>Payment of wages on termination</b> Current clause 20.3 should be amended to enable an employer who pays by electronic funds transfer, to pay wages on termination of employment in accordance with the employer's normal pay cycle.	Substantive issue  Not agreed.  Matter also raised in other awards by Ai Group and other parties.  Parties do not oppose a single Full Bench dealing with this issue.
		BusSA		Supports Ai Group.	
		SDA		Opposes Ai Group – does not consider delay in any payments due to an employee beyond current period of 'within two working days after termination' to be satisfactory.	
		AWU		Opposes Ai Group – variation not necessary to meet modern award objective.	

Printed by authority of the Commonwealth Government Printer

<Price code G, PR576225>