

AWARD MODERNISATION SUBMISSIONS AND DRAFT AWARD PROVISIONS

Stage 3 – Post Exposure Draft



12 June 2009

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**AWARD MODERNISATION SUBMISSIONS AND
DRAFT AWARD PROVISIONS
Stage 3 – Post Exposure Draft
22 June 2009**

CHAPTER 1 – INTRODUCTION

1. This submission deals with the 50 exposure drafts which the Commission has issued for the 39 industries in Stage 3 of the award modernisation process.
2. Ai Group has identified an interest in nearly all of the 39 industries.
3. We are continuing to devote very substantial resources to the award modernisation process to ensure that industry's views are well-represented, that the outcome is a fair one, and that the objectives of the process are achieved.
4. The Global Financial Crisis is having a major impact upon industry and Ai Group urges the Commission to make every effort to avoid imposing any additional costs upon businesses. In the current environment the priority needs to be retaining jobs. Increased costs will be at the expense of jobs.
5. These submissions are made on behalf of Ai Group and the Engineering Employers Association of South Australia.

CHAPTER 2 – MATTERS OF GENERAL IMPORTANCE

6. In its Award Modernisation Statement of 22 May 2009, the Commission raised a number of general issues. Ai Group's comments on some of these are set out below.

Piecework

7. At paragraph 6 of the Commission's Statement of 22 May, the Full Bench invited submissions in relation to how paid leave should be calculated for pieceworkers.
8. Ai Group submits that leave entitlements for full-time and part-time pieceworkers should generally be based on the minimum amount per hour that the employee would earn under the piece work arrangement in the award and multiplied by the employee's ordinary hours of work. For example, if the modern award provided that the average competent piece worker must earn 15% above the minimum hourly rate for their classification then the basic piece rate of pay for leave calculations would be the minimum hourly rate multiplied by 115%. The daily or weekly leave payment would be the basic piece rate of pay multiplied by the ordinary hours that the part-time or full-time piece worker would have worked during the period of leave.
9. Similar to other casuals, casual piece workers should not be entitled to annual leave.

Seasonal employment

10. In its Statement of 22 May, the Full Bench said:

“[8] In considering provisions related to the contract of employment and types of employment we do not feel that it is appropriate to include provisions providing expressly for probationary, fixed term or seasonal employment in

modern awards unless there is a particular reason for doing so. (Emphasis added)

11. Ai Group does not disagree with the above comments but wishes to draw the Commission's attention to the fact that in some existing awards there are particular and important reasons for including seasonal employment provisions. In these awards different award provisions apply to seasonal workers than other workers. In such circumstances, seasonal employment provisions should be included in the relevant modern award/s.

The amended Award Modernisation request and exemption provisions

12. On 7 May, the Minister varied the Award Modernisation Request as it relates to award exemption clauses. The Request now states that award modernisation is not intended to:

“Exempt or have the effect of exempting employees who are not high income employees, from modern award coverage or application, unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation”.

13. It is clear from the variation, we submit, that the Government supports the retention of exemption rates in those industries where existing exemption rates apply widely. There are a number of industries which fall within this category.
14. Accordingly, Ai Group submits that exemption rates need to be considered on an award by award basis. Any blanket approach would not be consistent with the Award Modernisation Request.

CHAPTER 3 – AIRLINE OPERATIONS (AM2008/25)

15. The Commission has published three exposure drafts for the airline operations sector as follows:

- *Air Pilots Award 2010*
- *Aircraft Cabin Crew Award 2010*
- *Airline Operations – Ground Staff Award 2010*

16. Ai Group's views on the *Exposure Draft - Airline Operations – Ground Staff Award 2010* are set out below.

Airline Operations – Ground Staff Award 2010

17. Ai Group has had the opportunity to review the terms of the *Exposure Draft - Airline Operations – Ground Staff Award 2010* ("the Airline Operations ED") and generally supports the drafting adopted by the Commission in a range of key areas.

18. There are, however, some matters which Ai Group would seek to have modified from the exposure draft. These are reflected in Ai Group's revised version of the award found at **Annexure A**.

19. The following paragraphs outline our arguments in support of the modifications we have proposed to the Airline Operations ED.

20. Within these submissions a range of awards will be referred to either in reference or in support of various arguments advanced. These awards are those which the Commission has identified in its indicative list of awards and NAPSA's for the sector and will be referred to subsequently as follows:

- *Aircraft Engineers (General Aviation) Award 1999* ("GA Award")

- *Airline Operations (Domestic Airlines) Award 2000* (“Domestic Airlines Award”)
- *Airline Operations (Transport Workers’) Award 1998* (“TWU Award”)
- *Airline Operations – Clerical and Administrative Award 1999* (“Clerical Award”)
- *Overseas Airlines Award 1994* (“OS Award”)

These are collectively known as the “Former Awards”.

Clause 3 – Definitions and interpretation

“airline operations industry”

21. The terms of the Airline Operations ED defines the “airline operations industry” as:

“airline operations industry means:

- (a) *operating aircraft; and/or*
- (b) *ancillary on-airport servicing of aircraft, for the purposes of providing commercial passenger or freight air transport services in, and from a base in, Australia.”*

22. This definition is largely identical to that which was jointly advanced by Ai Group and Qantas in submissions made during the pre-drafting phase for this sector¹, and accordingly whilst we are largely supportive of the definition, our concern continues to be the degree to which aircraft repair and maintenance which has traditionally been covered under the *Metal, Engineering and Associated Industries Award 1998* (“the Federal Metals Award”) will be caught by this modern award.

¹ *Ai Group/BARA – Stage 3 Airline Operations Supplementary Submission – 1 April 2009*; at Annexure B

23. Ai Group's eligibility rule covers the aviation industry, and the Federal Metals Award applies widely to the manufacture, repair and maintenance of aircraft and components. This coverage embraces commercial airlines, defence aircraft and other sectors of the industry.
24. Ai Group's eligibility rule and the scope of the Federal Metals Award, as it relates to the repair and maintenance of aircraft, were considered in detail by a Full Bench of the Commission in *Boeing Australia Ltd and AWU*, Giudice J, Lawler VP and Larkin C, 23 February 2006, PR968945.
25. The Full Bench held that Ai Group's eligibility rule covers employers involved in the operation, manufacture, repair and servicing of aircraft - both civil and military. Further, after analysing the coverage of the Metal Industry Award and related awards from 1938, the Full Bench concluded that the Federal Metals Award applies widely to the repair and maintenance of aircrafts and components.
26. The Stage 1 *Manufacturing and Associated Industries and Occupations Award 2010* ("the Modern Manufacturing Award") covers the manufacture, repair and maintenance of a wide range of products, articles and structures etc, including:
- "4.3 (f) *aircraft and components*".
27. Accordingly, the scope of awards covering the repair and maintenance of aircraft (eg. the *Aircraft Engineers (General Aviation) Award 1999*) is already included within the coverage of the Modern Manufacturing Award.
28. Based upon comments contained within the Commission's Statement of 22 May 2009 which accompanied the exposure drafts, the importance of this issue has not gone unnoticed. In particular Ai Group was comforted by the observation that:

“Maintenance conducted away from an airport would remain covered by the Manufacturing Modern Award.²”

29. In circumstances where an employer performs aircraft maintenance and is ordinarily covered by the Modern Manufacturing Award, but is required occasionally to perform on-airport maintenance, Ai Group believes that the “rule to deal with overlap” is capable of being applied to appropriately determine whether the Modern Manufacturing Award or the modern award for the airline operations industry should be applied.

“confined space”

30. The definition of “confined space” appears to have been modelled on a comparable provision within the GA Award³. This definition however is broader than that which is provided for in the GA Award as the exposure draft also includes the proposition of a place where work is done that is “*without proper ventilation*”.
31. Ai Group opposes this expanded aspect of the definition as we contend that it creates a broader entitlement to the confined space allowance than that which exists under the current safety net. Furthermore, it also potentially creates an entitlement to the allowance where an employee is not in fact working in what would ordinarily be considered a confined space. Such a proposition we contend is self evident from the manner in which the definition is structured as the concept of a place “without proper ventilation” is not linked to the notion of being in a cramped or confined space, therefore in an area in which an employee has no restriction of movement, they would still be entitled to a “confined space” allowance should such an area have ventilation issues. We

² [2009] AIRCFB450; at [16]

³ Sub-clause 36.6

submit that this expands the traditional understanding of the circumstances in which this disability allowance should be available and it should be deleted.

Insertion of additional definition for “home base”

32. A number of allowances within the Airline Operations ED rely on the concept of “home base” to dictate their application⁴. We contend that the notion of “home base” has a specific meaning within the airline sector and that the definition which is contained in the GA Award should be inserted within the modern award to ensure that clarity and certainty is created regarding application of those allowances.

33. In accordance with this submission, home base would be defined as follows:

“Home base means any base at which an employee is domiciled for a period in excess of 180 days.”

Removal of Employee Duties provision

34. Within Ai Group’s proposed modern award⁵ filed with our supplementary submission of 1 April 2009, provision was made for a general clause which articulated employee duties of a general nature.

35. This clause was removed within the Airline Operations ED presumably in accordance with the following observations made by the Full Bench in the Commission’s 22 May Statement:

“[8].....Nor do we think it is appropriate to include requirements that employees work to a particular level of skill or competence or in a particular general fashion. Such requirements simply add to the mount of regulation. While they may have had historical importance, in most cases they no longer serve any useful purpose”.

⁴ Sub-cause 19.15(a) and 19.16

⁵ Ai Group/BARA – Stage 3 Airline Operations Supplementary Submission – 1 April 2009; at Annexure B

36. Whilst Ai Group understands the Commission's decision to remove sub-clauses 8.1, 8.2, 8.3 and 8.5 on the basis of the above comments of the Full Bench, we submit that sub-clause 8.4 is in a different category and should be included within the modern award to clarify that an employee can be engaged on day work, shift work or a combination of day work and shift work. We submit that inclusion of this sub-clause will not substantially increase the regulatory burden under the award, but will provide clarity and certainty regarding the operation of the hours of work and shift work provisions.
37. Accordingly, we seek, and have inserted within our revised exposure draft, a partially modified version of sub-clause 8.4⁶ which is contained at sub-clause 26.1A as follows:

“An employee may be required to work as a day worker or as a shift worker on any combination of day, afternoon, night or early morning days or shifts (whether on continuous work or not) at the rates applicable. An employee will transfer from one of those systems of work to another in accordance with such requirements.”

Insertion of a new Clause 12A – Abandonment of employment

38. Within Ai Group's proposed modern award⁷ filed with our supplementary submission of 1 April 2009, we included a clause⁸, taken from the terms of the Modern Manufacturing Award⁹. This provision has not been retained in the Airline Operations ED.

⁶ Modifications have been made to account for other consequential amendments within the exposure draft

⁷ Ai Group/BARA – Stage 3 Airline Operations Supplementary Submission – 1 April 2009; at Annexure B

⁸ Clause 14

⁹ Clause 21

39. Ai Group submits that whilst such a provision is not a feature of the Former Awards in this sector, it should nevertheless be included within the modern awards as it provides a useful and simple method of understanding the process to be applied for an employer in circumstances where an employee may have abandoned his or her employment.
40. We further contend that its inclusion supports the modern award objective of creating awards that are “simple to understand and easy to apply”¹⁰. We have reinserted our proposed abandonment of employment provision at clause 12A in ***Annexure A***.

Clause 14 – Classifications

Sub-clause 15.3 – Maintenance, engineering and technical officers

41. Sub-clause 15.3 seeks to reproduce the classification structure that applies under the GA Award for trades assistant, aircraft maintenance engineers (“AMEs”) and licensed aircraft maintenance engineers (“LAMEs”). Should the Commission determine that it is appropriate to include coverage for on-airport aircraft maintenance within this modern award, Ai Group is not opposed to the inclusion of these classifications, the associated pay rates and classification definitions subject to appropriate transitional provisions being inserted within the award to account for any additional costs which are imposed on employers as a result of this structure.
42. Ai Group does however oppose the inclusion of the classifications of “*Production Planner*”, “*Drafting Officer*” and “*Maintenance Technical Officer*”. We submit that these classifications have never been a feature of the existing safety net in this sector and that the GA Award contains no recognition of such

¹⁰ *Workplace Relations Act 1996*; s576A(1)(a)

classifications. Instead, Ai Group contends that the Federal Metals Award¹¹ currently regulates the employment of these occupations in the airline sector.

43. This coverage has been reproduced in the Modern Manufacturing Award, specifically sub-clause 4.2(c)(ii)-(iv) which provides that the award covers:

*“(c) the following occupations:
... ..
(ii) technical workers;
(iii) draughtpersons;
(iv) production planners;”*

44. We submit that this coverage should not be disturbed through the inclusion of such classifications within a modern award for the airline industry.

45. We further contend that should this submission not be adopted, and the proposed classification structure within the exposure draft be retained, rather than reducing the regulatory burden on employers, it will actually be increased. This submission is made on the basis that the structure within the exposure draft which applies to production planners and drafting officers is a single level structure covering only employees who have attained an Associate Diploma qualification or equivalent. Such a limitation defies the reality of the occupation as the Modern Manufacturing Award recognises the occupations of production planner or drafting officer at the C9 classification through to C2(b).

46. Accordingly, should these classifications be retained within the airline operations modern award an employer could be required to apply more than one award to employees performing similar work based upon their level of qualification. We submit that such a result does not support a range of award modernisation objectives such as reducing the regulatory burden on

¹¹ See Part II – Drafting, Planning and Technical Employees

employers¹² and seeking to reduce the number of awards that apply to a particular employer¹³. Ai Group therefore seeks deletion of all three classifications within the airline operations modern award.

47. Should this submission not be endorsed we would seek a further opportunity to comment briefly on the classification definition and appropriate wage rate for “*maintenance technical officer*”. Currently the exposure draft defines this classification as:

“A.3.8 Maintenance Technical Officer

An electronic tradesperson required to repair, overhaul, modify, test, and/or calibrate equipment and cross skills as required.” (Emphasis Added)

48. We submit that if in fact it is intended that this classification be of a trade equivalent level of skill and competence, the rate of remuneration, which is equivalent to that of a C2(a) under the Modern Manufacturing Award, is grossly inflated. In the alternative, if it is intended that the wage rate reflects an appropriate work value assessment, we contend that the classification definition would need to be revised to reflect this fact.

Sub-clause 15.4 – Storepersons and logistics

49. It appears that this classification stream has been imported from the Domestic Airlines Award. Ai Group does not support the inclusion of this classification stream within the award as we contend that it is more appropriately dealt with through the general storage services award which is currently being considered by the Commission as part of Stage 3.

¹² Consolidated Award Modernisation Request – 2 May 2009; at para 1(a)

¹³ Consolidated Award Modernisation Request – 2 May 2009; at para 9

50. Ai Group is concerned that should this classification be inserted into the modern award for the airline sector there is the potential for greater overlap and confusion between this award and the Modern Manufacturing Award given that the Modern Manufacturing Award also covers storepersons¹⁴.
51. Additionally, we submit that the existence of the classification in the Domestic Airlines Award should not be taken into account in deliberations regarding its inclusion in a modern airline operations award as the Domestic Airlines Award only covers two operational employers¹⁵, has no common rule status in Victoria, and even at its point of largest respondency covered only three employers¹⁶.

Clause 19 – Allowances

52. Ai Group seeks amendment to the terms of a number of allowances within the exposure draft and in some instances has also identified allowances which it can see no practical use for. The contentions in support of modification or deletion of those allowances are set out in the following paragraphs.
53. Additionally, however, Ai Group urges the Commission to give further consideration to the limitation of many of the allowances by reference to their current coverage within the Former Awards. We submit that the current manner in which many of the allowance provisions are drafted would see them potentially applied to groups of employees who have never had such an entitlement in their existing safety net. This could result in substantial increased costs for employers and, we contend, this needs to be avoided.
54. In particular, failure to limit some of the allowances would lead to absurd applications of the allowance, far beyond the purpose for which they were originally intended. An example of this is the “*money collection*” allowance

¹⁴ Sub-clause 4.2(x)

¹⁵ Gate Gourmet Pty Ltd – See Schedule A, and Alpha Flight Services Pty Ltd – See Roping in Award No. 1 of 2000 (T3063)

¹⁶ Ansett Australia Limited is the other employer respondent

which must be paid whenever an employee collects money. The origins of this allowance are from the TWU Award where the nature of the work performed means that the collection of money does not ordinarily form part of an employees core duties. In the exposure draft, however, this allowance applies not just to transport employees but all employees including those in the clerical, administration and support stream. One of the classifications under this stream,¹⁷ however, identifies as a core duty the *'issuing and re-issuing of tickets'*. Necessarily such a role requires the handling of money and we submit it would be absurd to suggest that an employee in these circumstances should receive an additional allowance for performing an inherent requirement of his or her classification.

55. We submit that allowances should apply in the following manner:

General allowances applying to all classifications:

- Sub-clause 19.3 Aviation Security Identification Card
- Sub-clause 19.4 Coffin Allowance
- Sub-clause 19.5 Disability Allowance
- Sub-clause 19.6 First aid Allowance
- Sub-clause 19.7 Nightsoil Allowance
- Sub-clause 19.8 Travelling time, allowance and board
- Sub-clause 19.9 Change in place of employment
- Sub-clause 19.10 Private motor vehicle allowance
- Sub-clause 19.11(a) Uniform and protective clothing allowance
- Sub-clause 19.12 Foreign language allowance

¹⁷ Level 2

Aviation transport workers stream allowances

- Sub-clause 19.11(b) Uniform and protective clothing allowance
- Sub-clause 19.13 Money collection
- Sub-clause 19.14 Transport workers stream – leading hand allowance

Maintenance and engineering stream allowances

- Sub-clause 19.15(a) Relief duty
- Sub-clause 19.15(b) Engineering school
- Sub-clause 19.17 Special rates
- Sub-clause 19.18 Tool allowance
- Sub-clause 19.19 Licensed aircraft engineers – license payments

56. Within our revised version of the exposure draft, we have limited the application of these allowances based upon the award classification structure. We now seek to address those areas of modification or deletion to allowances which we propose.

Sub-clause 19.8 – Travelling time, allowance and board

57. This clause is derived from the terms of the TWU Award and there is no equivalent provision in the OS Award or the Clerical Award. The GA Award contains a provision of a similar nature but it is limited to travel within Australia¹⁸. Ai Group is not opposed to the retention of this provision. However, we submit that it needs to be amended to account for the peculiarities of certain sectors of the airline industry which have previously not been required to apply such a provision.

¹⁸ Clause 14

58. These peculiarities affect employees under the clerical, administration and support stream who will not uncommonly be sent either interstate or overseas to undergo work related training. Given the distance associated particularly with these international trips, we submit that the clause should not apply in circumstances where the employee is travelling for the purpose of training. The sub-clause within the exposure draft has been amended accordingly.

Sub-clause 19.11 – Uniform and protective clothing allowance

59. As already identified, we seek limitation of the allowance prescribed by 19.11(a) to only employees under the transport workers stream due to the fact that this is the only award in the sector under which such an entitlement is payable. We believe that further support for this approach can be gleaned from the fact that whilst the Clerical Award¹⁹ and the GA Award²⁰ contain provisions of similar effect to sub-clause 19.11(a), they do not contain an equivalent to 19.11(b).

60. Should the Commission not support the limitation of this provision, we contend that it should be limited to circumstances where the clothes must be dry cleaned as opposed to laundered. We have amended the sub-clause accordingly.

Sub-clause 19.16 - Permanent transfers

61. Ai Group has reviewed the terms of this provision and notes that it is derived from the terms of the GA Award²¹. We contend however that it is a provision that should be deleted as the legal obligation created by the clause cannot exist without employer agreement. This is due to the following aspects of the provision:

¹⁹ Sub-clause 23.5

²⁰ Clause 31

²¹ Clause 15

“19.16 Permanent transfers

- (a) *An employee on permanent transfer will be entitled to receive payment from the employer for all reasonable expenses incurred by the removal of themselves, their spouse and dependants, their furniture, possessions and personal effects from one home base to another home base as approved by the employer in advance.*

- (b) *For the purposes of this clause, a base will be regarded as a home base if the employee is transferred there for a period which exceeds 180 days. A transfer to a base other than a home base expressed to be for a period less than 180 days will become a transfer to another home base if the employee is notified in writing during the course of that period that the transfer will extend for a period beyond 180 days. In such cases temporary reimbursement will cease and the provisions of clause X will become applicable.*

- (c) *When special circumstances arise, employees may be allowed additional expenses subject to agreement in writing prior to transfer.*
(Emphasis Added)

62. We submit that in circumstances where an employer has provided their “agreement” to a particular level of compensation, a legal obligation exists irrespective of the award provision, retention of the provision is therefore in our submission unnecessary.

Clause 22 – Indemnity / Insurance

63. Clause 22 currently only operates within the GA Award and has no parallel in any of the other awards within this sector. Ai Group therefore submits that it is appropriate to limit its application to employees engaged in the maintenance and engineering stream.

Clause 26 – Ordinary hours of work

64. Within the exposure draft the Commission has included an ability for 12 hour days or shifts to be introduced subject to agreement with a majority of employees. This facilitative provision is contained at paragraph 26.4(c). Ai Group supports the inclusion of this provision as it represents a flexible and modern work practice, a notion which modern awards are intended to embody.
65. Given this fact, Ai Group submits that a consequential amendment needs to be made to the span of hours prescribed for day work at paragraph 26.2(c) of the exposure draft. Currently, 26.2(c) states that ordinary hours for a day worker shall be between the hours of 7:00am to 6:00pm. We submit that this provision must be varied to allow ordinary hours to commence from 6:00am to 6:00pm to give effect to the ability for an employer to roster 12 hour day work as contemplated by 26.4(c). Without this variation, it would be impossible for an employer to ever seek 12 hour days when working in accordance with the award as the maximum number of ordinary hours within the span of hours for day workers is 11 hours. Such a result we contend cannot be what was intended.
66. Additionally, Ai Group seeks variation of the maximum duration over which ordinary hours may be averaged for both day workers and shiftworkers. These provisions are found at paragraphs 26.2(a) and 26.3(b) respectively. We contend that in circumstances where 12 hour days or shifts were to be introduced, it would be nigh impossible to devise a roster which could operate within the confines of a maximum averaging period of 4 weeks as is required by the exposure draft. Accordingly we seek a longer period over which ordinary hours may be averaged with a duration not exceeding 12 months. In support of this being an appropriate duration we refer the Commission to the terms of the Modern Manufacturing Award²² which also provides for 12 hour

²² Sub-clause 36.3 and 36.4

shift arrangements but allows ordinary hours to be averaged over a longer period.

Clause 28 – Special provisions for shiftworkers

Sub-clause 28.5 – Continuous afternoon and night shifts

67. Ai Group is aware that interpretation of clauses such as this one have been the subject of disputation for many years. Conjecture on this matter usually centres around whether the specific employee is required to work five consecutive shifts so as to avoid payment of the additional loading by an employer, or whether the shift structure itself is what is being referred to within the provision, with the number of shifts being worked by an individual employee being irrelevant.
68. We submit that the established case law on interpretation of such provisions²³ confirms that in the interpretation of such a clause, the existence of the shift structure must be the determining factor and not the individuals who worked on such shifts. That being said, we contend that it is sensible to seek to remove any potential confusion or ambiguity in relation to the manner in which the provision operates. Such an outcome in our view is clearly supported by the objectives of award modernisation.
69. Accordingly, Ai Group has redrafted sub-clause 28.5. It is not intended that this redraft alter the conventional interpretation of this provision.

Sub-clause 28.6 – Multiple shift allowance

70. Ai Group opposes the retention of sub-clause 28.6 and submits that the very concept of flexible and modern work practices is undermined by a provision which requires an additional penalty to be paid in circumstances where an

²³ See *Tecnico Ltd v Amalgamated Engineering Union*, 6 April 1945

employer rosters an employee with various start times to meet their operational requirements.

71. Furthermore, it is our understanding that a provision of this nature is not a feature of any other modern award which has been created by the Commission to date.

Clause 29 – Daylight saving

72. Ai Group submits that the current Clause 29 is neither simple to understand or easy to apply. We have drafted what we believe is a far simpler clause and inserted it into the amended exposure draft.

Clause 30 – Overtime

Sub-clause 30.4 – Standing by

73. This clause is derived from the GA Award. It is not a feature of other awards, including the OS Award, the Clerical Award and the TWU Award. Should the Commission determine nevertheless to retain this provision, we submit that it should be restricted to the stream for maintenance and engineering officers.

Clause 35 – Public holidays

Sub-clause 35.2 - Payment for working on a public holiday

74. It is noted that sub-clause 35.2 in its current form only refers to entitlements for day workers. For ease of navigation throughout the modern award, it is submitted that the clause be amended, as in our amended exposure draft, to provide that a shift worker is entitled to payment for public holidays in accordance with sub-clause 28.7.

Schedule A

Sub-clause A.3.6(b) and A.3.6.7(b)

75. Ai Group has already explained its objections to the retention of the classification of production planner and drafting officer. Should however the Commission decide to retain these classifications within the award the reference to “*Associate Diploma*” within paragraphs A.3.6(b) and A.3.6.7(b) should be changed to “*Advanced Diploma*” to reflect current terminology.

CHAPTER 4 – AIRPORT OPERATIONS (OTHER THAN RETAIL) (AM2008/26)

Airport Employees Award 2010

76. For this sector, the Commission has issued an *Exposure Draft – Airport Employees Award 2010*.
77. This exposure draft covers employers who operate airports and their employees in relevant classifications.
78. A large number of maintenance, construction and other contractors carry out work at airports. As drafted, the modern award would exclude such contractors and this is appropriate.
79. Maintenance contractors typically work in numerous industries and it would be highly disruptive for award coverage to change based upon the industry in which their clients operate. The maintenance contracting industry is an industry in its own right.
80. Furthermore, the exposure draft contains more restrictive provisions than the modern award which will generally apply to maintenance contractors, the *Manufacturing and Associated Industries and Occupations Award 2010*, particularly in matters such as hours of work. We submit that it is important that maintenance contractors continue to remain excluded from the coverage of any modern award for the airport operations sector. We support the current drafting of coverage of this award.

CHAPTER 5 – ALUMINIUM INDUSTRY (AM2008/27)

Aluminium Industry Award 2010

Clause 4 – Coverage

81. Ai Group is concerned about the coverage clause in the *Exposure Draft – Aluminium Industry Award 2010*.
82. As the Commission has been informed, prior to the release of the exposure draft Ai Group was involved in substantial discussions with representatives from the Aluminium Industry Parties²⁴ to seek to resolve the overlap between the proposed Modern Aluminium Industry Award and the Modern Manufacturing Award.
83. A consent position was eventually reached on the terms of a coverage clause and this has been provided to the Commission.
84. The consent position included the following vital provision:

“ This award does not apply to:

(6) processing, smelting, melting, casting, rolling, extrusion and fabrication of aluminium in respect of manufacturing operations or activities covered by the Manufacturing and Associated Industries and Occupations Award 2010.”

85. The agreed clause has not been included in the exposure draft. Instead, the following much vaguer clause has been included by the Commission:

²⁴ Alcoa World Alumina and Alcoa Rolled Products, Hydro Aluminium, Rio Tinto Alcan Tomago Aluminium, and Worsley Alumina Pty Ltd

“(f) the processing, including melting, casting, rolling extrusion and fabrication of aluminium as part of a downstream manufacturing process. “

86. There is an apparent typographical error in the provision - a comma has been omitted after “rolling”. This punctuation is clearly required given the fact that ‘*rolling*’ and ‘*extrusion*’ are two distinct processes.
87. More significantly, the use of the term “downstream manufacturing process” will undoubtedly lead to numerous interpretation problems. There are a very large number of products and materials manufactured out of aluminium under the existing *Metal, Engineering and Associated Industries Award 1998* and which fall within the coverage of the Modern Manufacturing Award (eg. aluminium extrusions, cans, windows, shower screens, castings, automotive components, boats, guttering, etc). Many companies manufacture aluminium materials (eg. extruded sections) and/or products that are processed into other products further downstream. Ai Group is concerned that these companies might not be held to be engaged in a “downstream manufacturing process”.
88. The following simple example highlights the appropriate boundary between the coverage of the Modern Aluminium Industry Award and the Modern Manufacturing Award:

<i>Process</i>	<i>Appropriate award coverage</i>
Production of alumina from bauxite	Modern Aluminium Industry Award
Production of aluminium ingots from alumina	Modern Aluminium Industry Award
Extrusion of aluminium sections from ingots	Modern Manufacturing Award
Manufacture of shower screens and windows from extruded aluminium sections	Modern Manufacturing Award

89. It is extremely important that the Commission not disturb the coverage of the Modern Manufacturing Award (as made during Stages 1 and 2 of the modernisation process) in respect of the manufacture of materials and products out of aluminium.
90. The intention of Ai Group and the Aluminium Industry Parties is that the Modern Aluminium Industry Award would not apply beyond the worksites of the major aluminium companies such as Alcoa and Rio Tinto. In most cases, these companies are bound by enterprise awards so the terms of the Modern Aluminium Industry Award will have little immediate impact upon them. In contrast, if the Modern Aluminium Industry Award does not include an appropriate exclusion for work carried out under the Modern Manufacturing Award, the existing award conditions of a very large number of employers and employees could be disturbed from 1 January 2010.
91. Ai Group submits that it is essential that paragraph 4.2(f) in the exposure draft be reworded as follows:
- “(f) processing, smelting, melting, casting, rolling, extrusion and fabrication of aluminium in respect of manufacturing operations or activities covered by the Manufacturing and Associated Industries and Occupations Award 2010.”*
92. Additionally, Ai Group has been in discussions with the Aluminium Industry Parties subsequent to the release of the exposure draft and understands that the Aluminium Industry Parties are intending to seek the following additions to the coverage provision:
- Within sub-clause 4.2(b) insertion of the word *‘including’* after the phrase *‘all processing’* and insertion of the word *‘melting’* after *‘smelting’* and before *‘casting’*.

- Within sub-clause 4.3(e) deletion of the term *'supplementary labour'* and insertion in lieu thereof *'temporary labour'*.
- Insertion of the following exclusion to the award, which is consistent with the exclusion which was agreed between Ai Group and the Aluminium Industry Parties and reflected in our supplementary submissions of 28 April 2009²⁵:

"This award does not apply to:

- (a) an employer who is bound by an enterprise award or a Notional Agreement Preserving a State Award (NAPSA) derived from a state enterprise award in respect of any employee who is covered by the enterprise award or the NAPSA derived from a state enterprise award;*
- (b) an employee excluded from award coverage by the Act;*
- (c) employers in respect of their employees in the operations or activities in the following industries or occupations:*
 - (1) catering, accommodation, cleaning and incidental services (unless employed by an aluminium industry Employer or a related company);*
 - (2) clerical or administrative staff;*
 - (3) staff employees engaged in managerial, professional, technical, scientific and supervisory positions;*
 - (4) security services (unless employed by an aluminium industry Employer or a related company);*
 - (5) Persons employed in the head office or town office of an employer;*

²⁵ At [9]

(6) *Processing, smelting, melting, casting, rolling, extrusion and fabrication of aluminium in respect of manufacturing operations or activities covered by the Manufacturing and Associated Industries and Occupations Award 2010.”*

93. Ai Group is not opposed to any of these provisions being contained within a modern award created for the aluminium industry.

94. We additionally note, in accordance with the agreement reached between ourselves and the Aluminium Industry Parties, that the following exclusion is intended to be included within the coverage provisions of the Modern Manufacturing Award:

4.4 *Manufacturing and Associated Industries and Occupations does not mean:*

... ..

(k) *Work covered by the Aluminium Industry Award, 2010, as well as any employees exempted from the Aluminium Industry Award 2010 by the application of clause 4.2 (c) (3) of that Award.”*

(NOTE: The above exclusion has been agreed upon between Ai Group and the Aluminium Industry Parties, subject to an appropriate exclusion being inserted into the *Aluminium Industry Award 2010* for work covered by the *Manufacturing and Associated Industries and Occupations Award 2010*).

95. Ai Group’s revised coverage provision, contained at **Annexure B**, reflects this provision.

CHAPTER 6 – ARTS ADMINISTRATION (AM2008/28)

96. The Commission has not issued an exposure draft for this sector and proposes that the sector be dealt with in conjunction with the entertainment and broadcasting industry. Ai Group has no objection to this course of action.

CHAPTER 7 – CEMENT AND CONCRETE PRODUCTS (INCL. ASPHALT AND BITUMEN) (AM2008/29)

97. The Commission has issued the following exposure drafts for this sector:

- *Asphalt Industry Award 2010*
- *Cement and Lime Award 2010*
- *Concrete Products Award 2010*
- *Premixed Concrete Award 2010*

Asphalt Industry Award 2010

Clause 4 – Coverage

98. Contractors covered by the Modern Manufacturing Award carry out maintenance work in factories which manufacture asphalt, bitumen and related products.

99. The exposure draft contains more restrictive provisions than the Modern Manufacturing Award (eg. hours of work) which would cause operational difficulties and cost increases for contractors.

100. Maintenance contractors typically work in numerous industries and it would be highly disruptive for award coverage to change based upon the industry in which their clients operate. The maintenance contracting industry is an industry in its own right.

101. Ai Group submits that the award needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Cement and Lime Award 2010

Clause 4 – Coverage

102. In this exposure draft, the definition of “Cement and Lime Industry” includes *“work in or in connection with or incidental to the manufacture and/or handling of...blast furnace slag..... within production establishments, or work in or in connection with or incidental to the distribution of...blast furnace slag”*.

103. Producing and handling blast furnace slag is part of the process of manufacturing steel and it is inappropriate that companies in the steel industry be covered by the Modern Cement and Lime Industry Award.

104. Accordingly, Ai Group submits that the Award should include the following exclusion:

“This award shall not apply to employers and employees in the steel industry.”

105. In addition to ensuring that the coverage of the award does not encroach upon employers in the steel industry, Ai Group submits that it is imperative that maintenance contractors are not brought within the coverage of this award. Contractors with federal award responsiveness currently perform maintenance work under the *Metal, Engineering and Associated Industries Award* (“the Federal Metals Award”). It is important that such contractors continue to be covered by the Modern Manufacturing Award when they carry out maintenance work in the cement and lime industry.

106. Ai Group submits that the award needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Concrete Products Award 2010

107. Ai Group is pleased that the Commission has rejected the CFMEU's proposal to include the manufacture of concrete products in the Modern Joinery Award and issued an *Exposure Draft – Concrete Products Award 2010*. The reasons for Ai Group's opposition to the CFMEU's proposal were set out in our pre-exposure draft submissions.

Clause 4 – Coverage

108. Contractors covered by the Modern Manufacturing Award carry out maintenance work in establishments in the concrete products industry.

109. The exposure draft contains more restrictive provisions than the Modern Manufacturing Award (eg. hours of work) which would cause operational difficulties and cost increases for contractors.

110. Ai Group submits that the award needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Clause 21 – Superannuation

111. Ai Group submits that AustralianSuper should be included on the list of funds in the Superannuation clause.

Premixed Concrete Award 2010

Clause 4 – Coverage

112. Contractors covered by the Modern Manufacturing Award carry out maintenance work in establishments in the pre-mixed concrete industry.
113. The exposure draft contains more restrictive provisions than the Modern Manufacturing Award (eg. hours of work) which would cause operational difficulties and cost increases for contractors.
114. Ai Group submits that the award needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Clause 19 – Superannuation

115. Ai Group submits that AustralianSuper should be included on the list of funds within the Superannuation clause.

Fibre cement

116. In its Award Modernisation Statement of 22 May 2009, the Commission indicated its intention to amend the Modern Manufacturing Award to include the manufacture of fibre cement products.
117. Ai Group proposes the following amendment to Clause 4 – Coverage, of the Modern Manufacturing Award:

“4.3 For the purposes of clause 4.2(a)(i), the products, structures, articles, parts, components, materials and substances include:

... ..

(ff) gypsum, plasterboard, fibre cement and similar materials and all products made therefrom.”

118. This amendment has been reflected in Ai Group’s amended coverage provision for the Modern Manufacturing Award at **Annexure B** of this submission.

CHAPTER 8 – COAL TREATMENT INDUSTRY (AM2008/31)

119. In its Statement of 22 May 2009, the Commission made the following observations in relation to the coal treatment industry:

“[50] At present coal treatment in Australia consists of processing done at wash plants, coke works and in the production of briquettes from brown coal for burning in coal-fired power stations. All existing wash plants are integrated into black coal mining operations and are covered by the Black Coal Mining Industry Award 2010.¹⁶ All briquette production occurs in conjunction with the mining of brown coal for use in electrical power generation and will be covered by the proposed Electrical Power Award 2010. The only operative coke works in Australia is the Bowen coke works and it is covered by an enterprise NAPSA which is excluded from the award modernisation process. The Illawarra Coke Company has two coke works on the New South Wales South Coast. Both of those plants were closed earlier this year. In summary, it appears that there is no coke works or other coal treatment operation in Australia that would be covered by a coal treatment industry modern award and that such an award would cover new entrants only.

[51] In all the circumstances we are inclined to deal with this residual area by extending the scope of the Manufacturing Modern Award to include coal treatment not covered by another modern award.”

120. Ai Group is not opposed to this course of action and has amended the coverage of the Modern Manufacturing Award in the following terms to account for this expanded coverage:

“4.2(a) (ix) The treatment of coal (other than where such work is covered under another modern award)”

121. A revised coverage provision incorporating this amendment is reflected at **Annexure B** of this submission.

CHAPTER 9 – DEFENCE SUPPORT INDUSTRY (AM2008/32)

122. The Commission has not issued an exposure draft for this industry given that the employers and employees in the industry will be covered under other modern industry awards or enterprise awards. Ai Group supports this approach.

CHAPTER 10 – EDUCATIONAL SERVICES (OTHER THAN HIGHER EDUCATION) (AM2008/33)

123. In this sector, the Commission has issued three exposure drafts:

- *Educational Services (Teachers) Award 2010*
- *Educational Services (Post-secondary Education) Award 2010*
- *Educational Services (Schools) General Staff Award 2010*

Educational Services (Teachers) Award 2010

Clause 3 – Definitions and interpretation

124. Ai Group is concerned about the interpretation which could be placed upon the terms “school” and “teacher”, given the definitions in the exposure draft. This award should cover “teachers” in “schools”, as these terms are commonly understood.

125. It is important that this award not cover trainers employed by organisations which are not principally engaged in the business of providing education services in schools (eg. manufacturing companies, IT companies, employer associations etc). Trainers are employed in all industries and often conduct off-the-job training in classrooms / training rooms. Indeed, many awards (eg. the Modern Manufacturing Award) include specific classifications for trainers.

126. Many of the courses conducted by industry trainers are accredited by training authorities.

127. The term “school” is defined in the *Oxford Australian Dictionary*²⁶ as:

²⁶ Oxford University Press; seventh edition (1987)

“school means an institution for educating children or giving instruction of a more elementary or more technical kind than that given at university.”

128. The *Macquarie Dictionary* defines “school” as:

“A place or establishment where instruction is given, esp. one for children”

129. Neither of these definitions, if adopted in the award, would remove Ai Group’s concerns about the coverage of trainers in industry. Accordingly, the award needs to include a specific exclusion, as follows:

“This Award does not cover trainers and other employees who provide education or training who are employed by an employer whose principal business or undertaking is other than the provision of school education”.

Educational Services (Post-secondary Education) Award 2010

Clause 4 – Coverage

130. This exposure draft importantly excludes trades, cleaning and maintenance staff.

131. As with the exposure draft for the *Educational Services (Teachers) Award 2010*, it is important that this award not cover trainers employed by organisations which are not principally engaged in the business of providing education services in schools and colleges (eg. manufacturing companies, IT companies, employer associations etc). Trainers are employed in all industries and often conduct off-the-job training in classrooms / training rooms. Many awards (eg. the Modern Manufacturing Award) include specific classifications for trainers. Many of the courses conducted by industry trainers are accredited by training authorities.

132. As currently drafted, the definition of *'post-secondary educational services industry'* which is identified as *"the provision of education and training to persons over the age of 16 years"*, is unequivocally capable of covering trainers of the type described above, and who are not 'teachers' in the traditional sense. We submit that such employees should not be covered by this modern award and that an appropriate exclusion must be inserted within this award to ensure that such employees are not covered.

133. Ai Group submits that the following exclusion needs to be included in the award:

"post-secondary educational services industry does not mean the provision of education and training where provided by an employer whose principal business or undertaking is other than the provision of educational services, or provided by an employee or such an employer."

Educational Services (Schools) General Staff Award 2010

Clause 4 – Coverage

134. As Ai Group interprets this exposure draft, it only covers employees of schools. Limiting the coverage of the award to employees of schools (as the term "school" is commonly understood) is very important. A large number of Ai Group member companies carry out maintenance work in schools. This number has recently increased due to the Government's stimulus package to address the Global Financial Crisis, which directs substantial funds to building and maintenance projects in schools.

135. The hours of work provisions of this award are completely inappropriate for maintenance contractors and other employees not employed by schools. The application of such provisions would impose massive cost increases and operational difficulties upon employers who are not currently applying them.

CHAPTER 11 – ELECTRICAL POWER INDUSTRY (AM2008/34)

136. As the Commission is aware, Ai Group has been heavily involved in the award modernisation proceedings jointly representing (with Blake Dawson) the National Employer Group for the electrical power industry.
137. The submissions in this Chapter are made by Ai Group in its own right.

Electrical Power Award 2010

Clause 4 – Coverage

Manufacturers of electrical power industry equipment

138. All of the major manufacturers of transformers and other substantial pieces of equipment used in the electrical power industry are members of Ai Group, and many are represented on Ai Group's National Executive and State Councils. These companies currently employ their manufacturing workers under the *Metal, Engineering and Associated Industries Award 1998* ("the Metals Award") and this work is covered by the Modern Manufacturing Award.
139. As Ai Group interprets the coverage provisions of the *Exposure Draft – Electrical Power Award 2010*, the modern award would not cover manufacturers of electrical power industry equipment. The exclusion of this work is appropriate and important.

Contractors engaged in the power industry

140. Ai Group has a large membership amongst contracting firms which work in the electrical power industry and are currently bound by the Metals Award. There is a long history of the Metals Award covering contractors in the power industry. These contractors are included within the coverage of the Modern Manufacturing Award.
141. The *Exposure Draft – Electrical Power Award 2010* covers so called “embedded” contractors (Ref. paragraph 4.2(d)). Ai Group strongly opposes this.
142. There are many contractors based in areas such as the Latrobe Valley who employ maintenance workers under the Metals Award who are “*principally employed*” to perform work at power station sites. The imposition of the terms of the *Exposure Draft – Electrical Power Award 2010* on such contractors would result in a huge increase in their costs and would cause substantial operational difficulties. The 37.5 hour week, the restrictive daily and weekly span of hours, the high penalty rates and the paid meal breaks for all shift workers are but a few examples which highlight the negative impacts upon contractors.
143. As the Commission is aware, the “embedded contractors” concept in modern awards arose from the negotiations between Ai Group and AMMA during the development of the *Mining Industry Award 2010*. We submit that arrangements that may be appropriate for a remote mine-site are not appropriate for adoption widely. The concept of “embedded contractors” is foreign to the Electrical Power Industry. It would be a fraught exercise to distinguish “embedded contractors” from other contractors. The concept would create uncertainty, which is contrary to the objects of award modernisation.

144. To impose the terms of the *Exposure Draft – Electrical Power Award 2010* on contractors currently covered by the Metals Award would breach the Award Modernisation Request. It is the intention of the Request that additional costs not be imposed upon employers. The imposition of the award conditions in the exposure draft would impose huge cost increases upon employers who are contractors in the electrical power industry.
145. The cost increases for contractors would result in higher costs for Electrical Power Industry companies, and higher electricity prices for businesses and consumers.
146. There is no valid reason for the Commission to take such a course of action. Contractors are not covered under the existing federal awards or NAPSA's in the Electrical Power Industry and should not be covered under the *Electrical Power Award 2010*.
147. The nature of the work performed by contractors is very different in the different segments of the Electrical Power Industry, ie. generation, transmission, distribution and retail. Therefore, by definition the contractors, the work they perform and the way they are used is very different. The industry like many other large industries uses contractors extensively to provide a wide range of services, and the inclusion of contractors in the *Electrical Power Award 2010* is inappropriate.
148. The exposure draft does not reflect the status quo. The inclusion of contractors in the modern award would upset a number of local arrangements currently in place.
149. For example in the state of Queensland, contractors have operated since at least 1985 under different terms and conditions and there is no evidence that such arrangements have given rise to any disputation or other problems.

150. A Commission decision to include contractors in the modern award would overturn the agreement reached between Ai Group, the CEPU, CFMEU and other power industry unions on this issue.
151. Following months of negotiations between Ai Group and the six MTFU unions (AMWU, AWU, CFMEU, CEPU, LHMU and NUW) during Stage 1 of award modernisation, the parties submitted a joint draft award (Annexure A to Ai Group's submission of 1 August 2008). The joint draft award included preservation of the following existing exclusion in the Metals Award:

“1.0 Electrical Trades: Employers in the State of New South Wales as to the employment of persons in connection with wiring contracting and the installation of electric light and power plants are exempt from this award. This exemption shall not apply to employers who are manufacturers or vendors of plant or equipment who install or maintain the said plant and equipment in high and low tension power stations and/or substations for the generation and/or transmission of electric power.”

152. The above exclusion only applied to electrical contractors in one State. It was agreed that mechanical contractors in all States and Territories plus a wide range of electrical workers were appropriately covered under the Modern Manufacturing Award.
153. The Full Bench did not accept the exclusion proposed by Ai Group and the MTFU in the exact terms agreed upon between the parties. Instead, the Commission inserted the following relevant exclusions in the Modern Manufacturing Award:

4.4 Manufacturing and Associated Industries and Occupations does not mean:

- (g) *with regard to transmission cables, installation and maintenance work carried out in the power industry, telecommunications industry or on-site in the building and construction industry.*
- (h) *employees of electrical contractors, being any entity principally engaged in the business of providing electrical services on a contract basis.”*

154. As can be seen from the above, the exclusion in 4.4(g) only applies to installation and maintenance work carried out on **transmission cables**, and only in three industries (ie. the power, telecommunications and construction industries). The exclusion in 4.4(h) only applies to entities **principally engaged** in the business of providing electrical services on a contracting basis.

155. Ai Group submits that there was a clear intent amongst Ai Group, the MTFU and the Commission that the Modern Manufacturing Award would apply to **mechanical contractors in the power industry**. Such intent is reflected in the coverage of the Modern Manufacturing Award and it is essential that this coverage not be disturbed.

156. It is vital that the *Electrical Power Award 2010* contain the following exemption:

“This award does not cover employers and employees covered by the Manufacturing and Associated Industries and Occupations Award 2010.”

157. With regard to **electrical contractors in the power industry**, the Commission has made the *Electrical, Electronic and Communications Contracting Award 2010* (“the Modern Electrical Contracting Award”). Clause 4 of that award deals with coverage and states

“4.1 This industry award covers employers throughout Australia in the industry of electrical services provided by electrical, electronics and communications contractors and their employees in the classifications within Schedule A—Classification Definitions to the exclusion of any other modern award.”

158. Subclause 4.5 of the award defines the term “electrical services” to include:

“(a) the maintenance of electric power distribution lines and all associated work; and or

(b) the installation of electric light and power.....”

159. Ai Group submits that the Modern Electrical Contracting Award clearly covers electrical contractors working in the electrical power industry.

160. Accordingly, the *Electrical Power Award 2010* needs to contain the following exemption:

“This award does not cover employers and employees covered by the Electrical, Electronic & Communications Contracting Award 2010.”

Clause 23 – Superannuation

161. Ai Group submits that AustralianSuper should be included on the list of funds within the Superannuation clause.

Part 5 – Hours of work and related matters

162. Ai Group submits that the *Electrical Power Award 2010* should include a 38 hour week for reasons which include those set out in Ai Group’s submissions at the pre-exposure draft stage.

CHAPTER 12 – FOOD, BEVERAGES AND TOBACCO INDUSTRY (MANUFACTURING) (AM2008/36)

163. The food manufacturing sector in Australia is critical to the country's economic stability. Any increases in labour costs imposed through the modern awards will make the industry less competitive against overseas manufacturers. Ai Group is concerned that flexibilities that have been enjoyed in some parts of Australia will be lost if the exposure draft awards become the final awards.
164. The Commission has published three exposure drafts in relation to the food, beverages and tobacco manufacturing sector as follows:
- *Food, Beverage and Tobacco Manufacturing Award 2010*;
 - *Poultry Processing Award 2010*; and
 - *Seafood Processing Award 2010*
165. The following submissions deal with each of the exposure draft awards released by the Commission. Ai Group will elaborate on these submissions at the Full Bench consultations in June/July 2009.

Food, Beverage and Tobacco Manufacturing Award 2010

Clause 3 – Definitions and interpretation

166. The definition of "Standard Rate" in Clause 3.1 incorporates Level 5 wage rates as the basis for calculating allowance rates under the award. This significantly increases the allowance rates for many parts of the sector. One example is the first aid allowance, which is \$12.69 under the modern award. As an example of the impact, the following increases will occur:

- ↑ 4.13 per week (*Confectioners Award 2002*)

- ↑ 3.88 per week (*Food Beverage & Tobacco Industry – Retail Dairies Victoria 1996*)
- ↑ 3.25 per week (*Butter Factories & Condensories Award 1998*)
- ↑ 3.15 per week (*Pet Food Manufacturing Industry – VIC & SA – Award 1998*)

167. As with other modern awards, the appropriate wage rate level to incorporate through the standard rate is Level 2. There is no justification for linking allowances to the Level 5 wage rate. Most employees in this sector are employed under Level 2 or Level 3.

Clause 12 – Casual Employment

Sub-clause 12.1

168. Ai Group submits that for the sake of certainty, sub-clause 12.1 should have the following additional words added at its conclusion:

“The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment provided for in this award”.

Sub-clause 12.4

169. Ai Group notes the comments of the Full Bench in the Statement of 22 May where the Commission identified that:

“[8]... we do not feel that it is appropriate to include provisions providing expressly for probationary, fixed term or seasonal employment in modern awards unless there is a particular reason for doing so.”

170. We submit, however, that given the high prevalence of seasonal factors in the performance of work in some parts of the sector (eg. ice-cream manufacturing, fruit and vegetable processing and beverages), the Commission should include a seasonal clause in this award.
171. Ai Group further submits that when regard is had to this factor, there is a clear synergy between the characteristics of the food sector and those present for the work covered by the exposure draft of the *Alpine Resorts Award 2010* where the Commission has included specific reference to seasonal employment.
172. Should the Commission decide not to include a seasonal employment provision in the modern award, we contend that the casual conversion provision should be deleted to allow employers to respond to seasonal demands. With weekly changes in customer demands, it is essential that food manufacturers be able to use casuals without the obligation of having to convert them to permanent staff.
173. In the alternative, the Commission should amend clause 12.4 in the same way that it has in the *Alpine Resorts Award* to allow for a 12 month period before conversion is required. Such a provision we contend would be consistent with a number of awards in the sector including the *Food, Beverages and Tobacco Industry - Ice Cream Manufacturing - Victoria - Award 1998* and the *Butter Factories & Condensories Award 1998*, each of which provide that a seasonal employee may be employed for a continuous period up to twelve months.
174. Finally, should none of these proposals be accepted we submit that the hours of work provisions should be varied to permit ordinary hours to be averaged over a period of up to 12 months in lieu of the current provision allowing for averaging over 28 days. Such an amendment will allow employers the ability to increase ordinary hours of work during peak seasons in line with their seasonal requirements. Clause 29.2 (d) should be amended as follows:

“(a) Subject to clause 29.5, the ordinary hours of work for day workers are an average of 38 per week over a 12 month period but not exceeding 152 hours in 28 days.”

Part 5 – Hours of work and related matters

175. The span of hours under this modern award is not in keeping with the current commercial environment in which the sector operates. With seven day a week supermarket/shop trading hours, many food manufacturers are required to provide fresh produce seven days a week.
176. In addition, expensive machinery must be operated continuously to generate sufficient return on investment and in order to avoid time consuming disassembling and cleaning processes that have to occur before the machine is started up again.
177. Due to the changing volume levels dependent on customer demands and the seasonal nature of raw materials (eg. fruit and vegetables), the industry cannot limit its operations to Monday to Friday. Therefore, in developing a modern award for the sector, the Commission must carefully consider the cost implications for work outside day work on Monday to Friday.

Clause 29 – Ordinary hours of work and rostering

178. With the above factors in mind, we contend that the current span of hours as reflected in sub-clause 29.2 of the exposure draft is not broad enough. For example, under most of the baking sector awards and NAPSAs, there is no limitation on the span of hours. Also, in hotter climates, employees choose to work earlier in the morning and later in the evening to avoid the hottest parts of the day. For these reasons, the Commission should remove the span of hours to allow ordinary time to be worked at any time of the day on any day of the week.

179. In the alternative, if the Commission decides not to expand the ordinary hours of work beyond the current definition, then it should allow an early morning shift. This is common in other industries where work starts before 6am. The following clause should be inserted into Clause 30.1:

“(b) early morning shift means any shift commencing between 3am and 6am (or earlier than 6am if the span of ordinary hours is varied pursuant to Clause 29.2(c));”

180. Should the Commission decide to endorse this alternate submission, a range of minor consequential amendments would need to be made to the award. One such amendment would be the introduction of a shift penalty provision for early morning shifts. Ai Group submits that the following provision should be added to sub-clause 30.3 to account for this requirement:

“(a) An employee who works on early morning shift must be paid 10% extra for such shift.”

181. In addition to this amendment, should the Commission not adopt our primary submission of removing the span of hours from sub-clause 29.2, we submit that in order to recognise that some food and beverage manufacturers have critical financial and operational reasons for seven day operations, the Commission should amend paragraph 29.2 (b) as follows:

“(b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between the employer and majority of employees concerned, which must not be unreasonably withheld. Agreement in this respect may also be reached between the employer and an individual employee.”

Clause 33 – Annual leave

182. Clause 33.4(a) introduces a requirement that employers must pay employees their annual leave payment before the commencement of the annual leave. This is an additional administrative burden on employers. Also, given that some employees may prefer to be paid during their annual leave, the words “before going on annual leave” should be removed from Clause 33.4(a).
183. Additionally, Ai Group submits that consistent with the clause included in the exposure draft for the *Seafood Processing Award 2010*, a new Clause 33.8 should be included as follows:

“33.8 *Cashing out of annual leave*

- (a) *An employee and an employer can agree to cash out any accrued annual leave of the employee provided that does not result in the employee’s remaining accrued entitlement to paid annual leave being less than four weeks; and*
- (b) *Upon agreement being reached for each cashing out of a particular amount of paid annual leave then that agreement must be recorded by a separate agreement in writing between the employer and the employee; and*
- (c) *The employee must be paid at least the full agreed amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.”*

Clause 34 – Personal/carer’s leave and compassionate leave

184. In the interest of certainty and consistency with the annual leave clause, we submit that sub-clause 34.1 should also include these additional words:

“Casual employees are not entitled to paid personal / carer’s leave.”

185. We further submit that sub-clause 34.2 should be deleted altogether. Based upon our review of the prevailing awards in the sector, we contend that a provision of this nature is not an existing award entitlement and there is no basis for supplementing the NES through the introduction of such a provision.

Schedule A – Classification structure and definitions

186. The classification structure reflected in Schedule A refers to “*structured training*” throughout in reference to the classification definitions of Level 3, Level 4 and Level 5. We submit that the application of this concept is unclear and that in lieu thereof, the language used to describe an employee’s skill level from the *Seafood Processing Award 2010* exposure draft is more easily understood by employees and employers. Accordingly, we seek replacement of the phrase ‘*structured training*’ within the following sub-clauses as follows:

- Replace words in Clause A.2.3(a)(i) with “*proven and demonstrated skills, including industry certification as appropriate, at Level 3*”.
- Replace words in Clause A.2.4(a)(i) with “*proven and demonstrated skills, including industry certification as appropriate, at Level 4*”.
- Replace words in Clause A.2.5(a)(i) with “*proven and demonstrated skills, including industry certification as appropriate, at Level 5*”.

187. Additionally, we submit that the Level 7 classification is a completely new classification level and should be removed. Ai Group contends that there is no basis for including this obligation in the award as it does not relate to any of the existing award classification structures for the sector.

188. Accordingly, its inclusion extends the coverage of the modern award beyond the scope of the existing awards and NAPSAs. Such a result we assert is inconsistent with the requirements of the Modernisation Request, in particular paragraph 2(a) which states:

“2. The creation of modern awards is not intended to:

(a) extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free.”

189. Furthermore, Level 7 is expressed to cover employees who are *“in charge or a production process or part thereof at which employees employed at Level 6 are employed”*. We submit that this descriptor is so broad in its terms that it potentially could include general managers, production managers, operations managers and supervisors. Such employees have always been award free in this sector and should the Commission allow them to now be covered by the proposed modern award there will be significant implications for employers. For these reasons Ai Group strongly opposes the extension of the award to a 7th level.

Poultry Processing Award 2010

Clause 13 – Casual employment

190. As submitted in relation to the *Food, Beverage and Tobacco Manufacturing Industry Award 2010*, Ai Group seeks inclusion of the following phrase within sub-clause 13.2 to ensure consistency across modern awards:

“The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment provided for in this award”.

Clause 24 – Ordinary hours of work and rostering

191. The span of hours under this modern award is not in keeping with the current commercial environment in which the sector operates. With seven day a week supermarket/shop/restaurant trading hours, many poultry processors are required to provide fresh produce seven days a week. For these reasons, the Commission should remove the span of hours to allow ordinary time to be worked at any time of the day on any day of the week.
192. In the alternative, in order to recognise that some poultry processors have critical financial and operational reasons for seven day operations, the Commission should amend paragraph 24.3(a) as follows:
- “(a) The ordinary hours of work ~~for a day worker~~ may be worked on any or all of the days of the week Monday to Friday. The days on which ordinary hours are worked may include Saturday and/or Sunday subject to agreement between the employer and the majority of employees concerned (which must not be unreasonably withheld) or between an employer and an individual employee. If agreement is reached in accordance with clause 24.3(a) the additional rates in clause 24.5 apply.”*
193. Additionally, we submit that the terms of sub-clause 24.2 require amendment to correct the potential for confusion as a result of the facilitative arrangements available under sub-clause 24.3(b).
194. Specifically, sub-clause 24.3(b) provides that the spread of ordinary hours of work is 5.00am to 5.00pm but that it may be altered by up to one hour at either or both ends of the spread by agreement.
195. Sub-clause 24.2(a)(i) defines early morning shift as “commencing at or after 2.00am and before 4.00am”.

196. If agreement is not reached to change the commencement of ordinary hours from 5.00am to 4.00am, there will be ambiguity about the rate of pay applicable between 4.00am and 5.00am. To rectify this issue, Clause 24.2(a)(i) should be amended to state:

“(i) Early morning shift means a shift of ordinary hours commencing between 2.00am and 5.00am (or earlier than 5.00am if the span of ordinary hours is varied pursuant to Clause 24.3(b));”

197. In the interests of clarity, Ai Group also submits that amendment is required to sub-clause 24.5 to ensure that the weekend penalties are clearly expressed as being in substitution of and not in addition to the ordinary shift penalties prescribed by sub-clause 24.4. Such an addition would ensure consistency with the current *Poultry Industry Award 1999* which is the primary federal award regulating this work.

198. Sub-clause 24.5 should include the following:

“The extra rates in clause 24.5 are in substitution for and not cumulative upon the shift allowances prescribed in clause 24.4.”

Clause 27 – Annual leave

199. Consistent with our earlier submissions regarding the exposure draft of the *Food, Beverage and Tobacco Manufacturing Industry Award 2010* and the terms of the exposure draft of the *Seafood Processing Award 2010*, a new Clause 27.7 should be included as follows:

“27.7 Cashing out of annual leave

- (a) *An employee and an employer can agree to cash out any accrued annual leave of the employee provided that does not result in the employee’s remaining accrued entitlement to paid annual leave being less than four weeks; and*
- (b) *Upon agreement being reached for each cashing out of a particular amount of paid annual leave then that agreement must be recorded by a separate agreement in writing between the employer and the employee; and*
- (c) *The employee must be paid at least the full agreed amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.”*

Clause 28 – Personal/carer’s and compassionate leave

200. As with our submissions regarding the *Food, Beverage and Tobacco Manufacturing Industry Award 2010*, Ai Group seeks identical amendments to clause 28 and on the same basis.

201. Accordingly, we propose deletion of sub-clause 28.2 and insertion of the following phrase in sub-clause 28.1:

“Casual employees are not entitled to paid personal / carer’s leave.”

Seafood Processing Award 2010

Clause 3 – Definitions and interpretation

202. The definition of Standard Rate in Clause 3.1 incorporates Level 4 wage rates as the basis for calculating allowance rates under the award. We submit that as with other modern awards, the appropriate wage rate level to incorporate as the standard rate is Level 2. There is no justification for linking allowances to the Level 4 wage rate. Most employees in this sector are employed under Level 2.

Clause 12 – Casual employment

203. Consistent with earlier submissions and for the sake of certainty and consistency with the terms of other modern awards, we seek the following additional words inserted into clause 12.1:

“The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment provided for in this award”.

Clause 23 – Ordinary hours of work and rostering

204. The span of hours under this modern award is not in keeping with the current commercial environment in which the sector operates. With seven day a week supermarket/shop/restaurant trading hours, many seafood processors are required to provide fresh produce seven days a week. For these reasons, the Commission should remove the span of hours to allow ordinary time to be worked at any time of the day on any day of the week.

205. In the alternative, if the Commission decides not to expand the ordinary hours of work beyond the current definition, then it should allow an early morning shift. This is common in other industries where work starts before 6am. The following clause should be inserted into Clause 24.1:

“(b) early morning shift means any shift commencing between 3am and 6am (or earlier than 6am if the span of ordinary hours is varied pursuant to Clause 23.2(c));”

206. Should the Commission decide to endorse this alternate submission, a range of minor consequential amendments would need to be made to the award. One such amendment would be the introduction of a shift penalty provision for early morning shifts. Ai Group submits that the following provision should be added to sub-clause 24.3 to account for this requirement:

“(a) An employee who works on early morning shift must be paid 10% extra for such shift.”

207. In addition to this amendment, should the Commission not adopt our primary submission of removing the span of hours from sub-clause 23.2 we submit that in order to recognize that some seafood processors have critical financial and operational reasons for seven day operations, the Commission should amend paragraph 23.2 (b) as follows:

“(b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Saturday, provided that a day worker must not be required to work more than five and a half days of ordinary hours in a week. The days on which ordinary hours are worked may include Sunday subject to agreement between the employer and the majority of employees concerned (which must not be unreasonably withheld). Agreement in this respect may also be reached between the employer and an individual employee.”

Clause 27 – Annual leave

208. Paragraph 27.4(a) introduces a requirement that employers must pay employees their annual leave payment before the commencement of the annual leave. This is an additional administrative burden on employers. Also, given that some employees may prefer to be paid during their annual leave, the words *“before going on annual leave”* should be removed from Paragraph 27.4(a).

Clause 28 – Personal/carer’s leave and compassionate leave

209. For the sake of certainty and consistency with the annual leave clause, Clause 28 should also include these additional words:

“Casual employees are not entitled to paid personal / carer’s leave.”

CHAPTER 13 – GROCERY PRODUCTS MANUFACTURE (AM2008/37)

210. The Commission has not issued an exposure draft for this industry. In arriving at this decision the Full Bench noted:

“The non-foods component of the grocery products manufacture industry may, most appropriately, be covered by the Manufacturing Modern Award to the extent it is not already so covered. Submissions are sought from those with a relevant interest as to whether that modern award should be varied to further include the non-foods component of the grocery products manufacture industry and, if so, on the details of the variations needed.²⁷”

211. Ai Group supports this approach.

212. We propose that the following paragraphs be added to Clause 4 – Coverage, of the Modern Manufacturing Award to incorporate various grocery products (other than food products) currently covered by the *Grocery Products Manufacture – Manufacturing Grocers Award 1996* – the main federal award covering non-food grocery products:

“4.3 (II) candles²⁸, soap, soap powders and extracts, soda²⁹, Blue (washing), boot blacking, boot polish, boot paste, boot stains, blacklead, charcoal, coal dust, cloudy ammonia, dubbo, ebonite shine, furniture polish, glycerine, greasers, harness dressing, harness compounds, ink, knife polish, kindlers, linoleum and oilcloth polish, metal polish, moulders, blacking, oils, phenyle, plumbargo preparations, stove polish, and vaseline³⁰.”

²⁷ [2009] AIRCFB450; at [86]

²⁸ See Clause 6.1.1 of the Manufacturing Grocers Award

²⁹ See Clause 6.1.2 of the Manufacturing Grocers Award

³⁰ See Clause 6.1.4 of the Manufacturing Grocers Award

213. Ai Group's has consolidated this additional provision within a revised coverage clause for the Modern Manufacturing Award which is contained at **Annexure B**.
214. Minor amendments are also proposed to combine existing paragraphs 4.3(ii), (jj) and (kk) to simplify the clause without altering the meaning.

CHAPTER 14 – JOURNALISM (AM2008/38)

215. The Commission has decided to issue an *Exposure Draft – Journalists Published Media Award 2010* which covers journalists employed by newspapers, magazines, periodicals, journals, wire services and online publications.
216. Ai Group's supports the Commission's proposed approach of:
- Non-journalists generally being covered under Clerks Modern Award;
 - Printing employees being covered under the *Graphic Arts, Printing and Publishing Award 2010*.
217. As the Commission is aware, Ai Group has been very concerned about award coverage extending into the fields of web-design and development. Detailed submissions have been made about this issue, particularly in the proceedings relating to the *Graphic Arts, Printing and Publishing Award 2010*, and such submissions have been accepted by the Commission.
218. Ai Group would be concerned if the scope of the award was extended beyond that in the exposure draft. That is, if the award was extended beyond journalists to cover on-line businesses and web design / development more broadly.

CHAPTER 15 – LICENSED AND REGISTERED CLUBS (AM2008/39)

219. The Commission has issued an *Exposure Draft - Registered and Licensed Clubs Award 2010*.

220. The coverage clause in the exposure draft is drafted in an extremely broad manner and includes the following sub-clause:

“4.1 This award covers employers of employees engaged in the performance of all or any work in or in connection with or for clubs registered or recognised under State, Territory or Commonwealth legislation and their employees in the classifications within Schedule A—Classification Definitions, to the exclusion of any other modern award.” (Emphasis added)

221. Many contractors covered by the Modern Manufacturing Award carry out maintenance work on premises operated by clubs.

222. Maintenance contractors typically work in numerous industries and it would be highly disruptive for award coverage to change based upon the industry in which their clients operate. The maintenance contracting industry is an industry in its own right.

223. Ai Group submits that the award needs to include the following exclusion:

“4.3 This award does not apply to employees of employers who are covered by the following awards:

(d) Manufacturing and Associated Industries and Occupations Award 2010”.

CHAPTER 16 – LIQUOR AND ACCOMMODATION INDUSTRY (MANUFACTURING) (AM2008/39)

224. The Commission has published a single exposure draft for the liquor and accommodation manufacturing industry namely the *Exposure Draft - Wine Industry Award 2010*. In so doing it noted that the brewing sector of this industry has been absorbed into the *Exposure Draft - Food, Beverage and Tobacco Manufacturing Award 2010*. Ai Group supports this absorption and will confine its comments in relation to this sector to the specific terms of the *Exposure Draft - Wine Industry Award 2010*.

Wine Industry Award 2010

Clause 3 – Definitions and interpretation

225. The definition of Standard Rate in Clause 3.1 incorporates Grade 4 wage rates as the basis for calculating allowance rates under the award. We submit that the appropriate wage rate level to adopt for the standard rate is Grade 2. There is no justification for linking allowances to the Grade 4 wage rate. Most employees in this sector are employed under Grade 2.

Clause 4 – Coverage

226. Ai Group understands that some organisations will be asking the Commission to treat independent wine grape growers differently to the rest of the industry. We oppose this separation.

227. The definition of wine industry should include independent wine grape growers for the following reasons:

- It retains a vertically integrated approach to the industry; and

- It will ensure that the same award standards apply across the industry.

228. Should the Commission however determine that independent wine growers are to be excluded from any modern award created for the wine industry and instead placed into the *Horticulture Award 2010* (as has been suggested), we submit that **all** vineyard related activities should be excluded from the scope of the modern wine industry award for the reasons articulated above.

229. Alternatively if a separate section is to be inserted into the *Wine Industry Award 2010*, differing conditions should not apply to independent wine growers only.

Clause 13 – Casual employment

Sub-clause 13.1

230. We submit that for the sake of certainty and consistency with the terms of other modern awards, sub-clause 13.1 should have the following additional words added:

“The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment provided for in this award”.

Sub-clause 13.2

231. Ai Group submits that there is an apparent inconsistency with the rate of pay for casuals during ordinary hours and during overtime hours. Sub-clause 13.4 allows the base hourly rate excluding the casual loading to be paid to a casual working overtime. There is no equivalent provision for a casual working ordinary hours where other penalties or shift loadings apply. To clarify the issue, the following sentence should be added to sub-clause 13.2:

“Where any other penalty or loading is payable for working ordinary hours the calculation of such penalty must be based on the minimum hourly wage for the classification. The casual loading is not paid for time worked on Saturday, Sunday or a public holiday.”

Sub-clause 13.5

232. The Commission has decided generally not to include a seasonal category of worker in modern awards because employers would be free to enter into such arrangements within the provisions of the awards. Earlier in this submission, we have however noted an exception to this general proposition in the exposure draft for the *Alpine Resorts Award 2010*, and asked the Commission to make a similar exception in relation to modern awards made for the food, beverage and tobacco manufacturing industry.
233. Ai Group submits that given the seasonal nature of work in the wine industry during vintage season, the Commission should also include a seasonal clause in this award.
234. Should the Commission decide not to include a seasonal employment provision in the award, we contend that the casual conversion provision should be deleted to allow employers to respond to seasonal demands. We submit that this industry is highly reliant on labour flexibility as a result of the seasonal nature of the industry and it is not practical under these circumstances to include casual conversion provisions within the modern award.

235. In the alternative, the Commission should amend sub-clause 13.5 in the same way that it has under the *Alpine Resorts Award 2010* to allow for a 12 month period before conversion is required. Such a provision we contend would be consistent with that found in the primary federal award for this industry – the *Wine Industry – AWU – Award 1999* (“the AWU Wine Award”). We submit that this provision in the AWU Wine Award has been a feature of the award and endorsed by the Commission in specific recognition that a ‘vintage season’ in this industry extends for longer than 6 months. It would be incongruous with this notion should casual conversion be available after only 6 months.
236. Finally, should none of these three proposals be accepted by the Commission we submit that the hours of work provisions within the award should be varied to permit ordinary hours to be averaged over a period of up to 12 months. Such an amendment will allow employers the ability to increase ordinary hours of work during peak seasons in line with their seasonal requirements. A new sub-clause 26.4(d) should be inserted as follows:

“an average of 38 hours per week over a 12 month period;”

Clause 16 and Schedule A – Classification structure and definitions

237. Ai Group opposes the classification structure being extended to include supervisory employees as proposed at the Grade 5 level. This would significantly extend the operation of the existing awards beyond what is comprehended by the leading hand provisions. The current Level 5 classification in the *Wine Industry – AWU – Award 1999* in this regard is limited to a “rural tradesperson”.
238. Ai Group contends that there is no basis for including this provision in the modern award as it does not relate to any of the existing award classifications in the industry.

239. Its inclusion would extend the coverage of the modern award beyond the scope of the existing awards and NAPSAs. Such a result, we assert, would be inconsistent with the requirements of the Modernisation Request.
240. In addition, the definitions for certain grades lack specificity. For example, in the Grade 2 Vineyard Stream the list of modules is replicated at the Grade 3 level without any express provisions distinguishing the two. It is easier to meet the Grade 3 level requirements than those articulated for Grade 2. We submit that amendment is required to these definitions so that appropriate classification of employees is achieved without the likelihood of disputation or allegations of underpayment.

Clause 26 – Ordinary hours of work and rostering

241. The span of hours under this modern award is not in keeping with the current commercial environment in which the sector operates. Particularly during vintage season, wineries are required to manufacture wine seven days a week. For these reasons, the Commission should remove the span of hours to allow ordinary time to be worked at any time of the day on any day of the week.
242. In the alternative, the Commission should amend paragraph 26.2(d) as follows:

“(d) The spread of hours may be varied by agreement between an employer and the majority of employees in the relevant workplace or the section or sections of it. This agreement must not be unreasonably withheld. The days on which ordinary hours are worked may include Saturday and/or Sunday subject to agreement between the employer and the majority of employees concerned. This agreement must not be unreasonably withheld. Agreement in this respect may also be reached between the employer and an individual employee.”

243. Additionally, Ai Group seeks amendment to the shift definitions reflected in sub-clause 26.3.

244. Paragraph 26.3(c) defines afternoon shift as starting between 2.00pm and 6.00pm and night shift as starting between 10.00pm and 2.00am. This arrangement is impractical and unnecessarily restrictive because in accordance with these two definitions any shift which started after 6.00pm and prior to 10:00pm would be neither an afternoon shift or a night shift and would thereby attract overtime penalties instead of the 15% shift loading.

245. Paragraph 26.3(c) should therefore be amended to be consistent with most modern awards as follows:

“(c) For the purposes of this award:

- (i) afternoon shift means any shift finishing after 6.00pm and at or before midnight;*
- (ii) night shift means any shift finishing after midnight and at or before 8.00am.”*

246. Should the Commission not be prepared to make this change then we contend that the existing wording in the *Wine and Spirit Industry (South Australia) Award* should be inserted in lieu of the phrase ‘for the purposes of this award’ at the commencement of sub-clause (c) as follows:

“(c) Unless otherwise mutually agreed between the employer and the employee, for the purposes of this award:”

Clause 29 – Annual leave

247. Consistent with the clause included in the exposure draft of the *Seafood Processing Award 2010*, we contend that a new sub-clause 29.7 should be included as follows:

“29.7 Cashing out of annual leave

- (a) An employee and an employer can agree to cash out any accrued annual leave of the employee provided that does not result in the employee's remaining accrued entitlement to paid annual leave being less than four weeks; and*
- (b) Upon agreement being reached for each cashing out of a particular amount of paid annual leave then that agreement must be recorded by a separate agreement in writing between the employer and the employee; and*
- (c) The employee must be paid at least the full agreed amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.”*

Clause 30 – Personal/carer’s leave and compassionate leave

248. For the sake of certainty and consistency with the annual leave clause, clause 30 should include the following additional words:

“Casual employees are not entitled to paid personal / carer’s leave.”

Piecework arrangements

249. Piecework arrangements are an existing feature of the industry and currently exist in the AWU Wine Award. A new clause 14 should be included in the modern wine industry award as follows:

“14 Piece work employment

14.1 *A piece work employee means an employee who is engaged on piece work rates of pay which enable an average employee working ordinary hours to earn at least 20% above the minimum hourly rate of pay.*

14.2 *Such piece work rates of pay are paid instead of the minimum wage rates specified in Clause 16 (Minimum Wages).”*

CHAPTER 17 – MARITIME INDUSTRY (AM2008/40)

250. The Commission has issued the following exposure drafts for the Maritime Industry:

- *Seagoing Industry Award 2010*
- *Dredging Industry Award 2010*
- *Maritime Offshore Oil and Gas Award 2010*

251. Overall, the Commission has issued nine exposure drafts covering marine vessels and related areas as part of Stage 3 of modernisation, including:

- *Seagoing Industry Award 2010*
- *Dredging Industry Award 2010*
- *Maritime Offshore Oil and Gas Award 2010*
- *Port Authorities Award 2010*
- *Stevedoring Industry Award 2010*
- *Coal Export Terminals Award 2010*
- *Marine Towage Award 2010*
- *Ports, Harbours and Enclosed Water Vessels Award 2010*
- *Marine Tourism and Charter Vessels Award 2010*

252. Ai Group makes no submissions regarding the appropriateness or otherwise of making a further nine modern awards covering marine vessels and related areas.

253. We have used the term “further” because the Commission has already made an award that covers a substantial segment of the work in the industries relating to marine vessels – that is, the Modern Manufacturing Award.

254. The Modern Manufacturing Award covers the manufacture, assembly, repair, maintenance, installation, fabrication, reconditioning, refurbishment, coating, cleaning, testing, etc of:

“4.3(e) ships, boats, barges and marine vessels of all descriptions, and components.”

255. The Modern Manufacturing Award also covers the manufacture of shipsgear, life jackets and cargo nets. (Refer to paragraph 4.3(dd)).

256. In addition to Clause 4 – Coverage, of the Modern Manufacturing Award, the award includes numerous specific provisions relating to marine vessels, including:

- Definition of “confined space”, re. ships (Clause 3);
- Definition of “ship repairs” (Clause 3);
- Juniors working in ship building yards (Paragraph 29.3(h));
- Ship repairing allowance (Paragraph 32.1(b));
- Tool allowance – shipwright / boatbuilder (Paragraph 32.1(d));
- Dirty work, re. ship repair (Paragraph 32.3(g)(ii));
- Height money, re. ship repair (Paragraph 32.3(h));
- Insulation materials, re. ship construction and repair (Paragraph 32.3(k));
- Ships in dock allowance (Paragraph 32.3(p));
- Ship Trials (Clause 39).

257. The coverage of the Modern Manufacturing Award, as it relates to marine vessels, is not controversial and is consistent with longstanding award coverage patterns. The following points highlight this:

- The existing *Metal, Engineering and Associated Industries Award 1998* applies to “*shipbuilding and repairing*” (Ref. Schedule A, Item 2);

- The *Metal Industry (Ship Painting and Docking) Award 1993* was incorporated into the *Metal, Engineering and Associated Industries Award 1998* during the award simplification exercise in 1998;
- There is a very long history of the *Metal Industry Award* and the *Metal Industry (Ship Painting and Docking) Award* applying to the manufacture, repair and cleaning of ships and other marine vessels;
- The Shipwrights Union is one of the predecessor organisations for the AMWU, and its former eligibility rule is incorporated within the AMWU's current eligibility rule; and
- In the award modernisation negotiations between Ai Group and the six MTFU unions (AMWU, AWU, CEPU, CFMEU, LHMU and NUW) it was agreed that the Modern Manufacturing Award would supersede the NAPSA's arising from the following state awards:
 - *Ship and Marine Vessels Builder and Repairer Award* (Queensland);
 - *Ship Painters and Dockers Award No.29 of 1960* (Western Australia); and
 - *Ship Builders Award* (Tasmania).

258. The agreement reached has been implemented through the agreed wording that now appears in subclause 4.3(e) of the Modern Manufacturing Award, as referred to above.

259. It is essential that modern awards covering work relating to marine vessels and related areas contain an appropriate exclusion for work carried out under the Modern Manufacturing Award.

260. Such an exclusion is included in the *Maritime Offshore Oil and Gas Award 2010* but this is the exception amongst the nine exposure drafts referred to above.
261. It would be unfair for the nine proposed modern awards to include numerous exclusions for work covered by other modern awards (amongst those nine), but work covered by the other major modern award in the industry not be expressly excluded.
262. Should the Commission not include an exclusion for work covered by the Modern Manufacturing Award, the employers in the industry of marine vessel cleaning, maintenance and/or repair may find themselves covered by several of the abovementioned nine modern awards on the basis that the marine vessel which they happen to be cleaning or repairing at a particular point a time is of a particular type (eg. a ferry, a tug) or on the basis that the vessel provides services to a particular industry (eg. oil and gas, tourism, charter services, cruises).
263. Such a situation, we submit, would be absurd given that the work performed by the organisations involved in cleaning, repairing and maintaining marine vessels is largely identical regardless of the industry in which the vessel operates.

Seagoing Industry Award 2010

Clause 4 – Coverage

264. For the reasons set out above, the following additional paragraph needs to be added to sub-clause 4.2 – Exclusions:

“4.2 This award does not cover:

(c) employers covered the following awards:

(viii) the Manufacturing and Associated Industries and Occupations Award 2010”

Dredging Industry Award 2010

Clause 4 – Coverage

265. For the reasons set out above, the following additional paragraph needs to be added to sub-clause 4.2:

“4.2 This award does not cover employers covered by the following awards:

(h) the Manufacturing and Associated Industries and Occupations Award 2010”

Maritime Offshore Oil and Gas Award 2010

Clause 4 – Coverage

266. For the reasons set out above, the following clause of the exposure draft is particularly important and Ai Group commends the Commission for recognising the importance of including it:

“4.2 Exclusions

The award does not cover:

(c) *employers covered the following awards:*

(iii) *the Manufacturing and Associated Industries and Occupations Award 2010*”

CHAPTER 18 – MEAT INDUSTRY (AM2008/42)

267. The Commission has published a single exposure draft for this sector, the *Meat Industry Award 2010*.
268. Importantly, the exposure draft includes an exemption for maintenance work carried out under the Modern Manufacturing Award.
269. The following paragraphs of this Chapter identify areas of amendment and additional provisions sought by Ai Group in relation to this exposure draft.

Meat Industry Award 2010

Clause 13 – Part-time employment

270. Sub-clause 13.3 introduces a new requirement on employers in this sector that does not exist under the current federal awards. We contend that it should be deleted. It will result in additional costs on employers in having to pay overtime rates for hours beyond those specifically agreed rather than the “reasonably predictable hours of work” currently required.

Clause 15 – Casual employment

271. For the sake of certainty and consistency with the terms of other modern awards, sub-clause 15.1 should have the following additional words added:

“The casual loading is paid instead of annual leave, personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment provided for in this award”.

Clause 31 – Hours of work

272. The span of hours under this modern award is not in keeping with the current commercial environment in which the sector operates. With seven day a week supermarket/shop/restaurant trading hours, many meat processors and manufacturers are required to provide fresh produce seven days a week. For these reasons, the Commission should remove the span of hours to allow ordinary time to be worked at any time of the day on any day of the week.

273. In the alternative, in order to recognise that some meat processors have critical financial and operational reasons for seven day operations, the Commission should amend paragraph 31.2 (f) as follows:

“The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between the employer and the majority of employees concerned (which must not be unreasonably withheld). Agreement in this respect may also be reached between an employer and an individual employee.”

274. Furthermore, to ensure consistency between the hours worked by meat processing and meat manufacturing establishments, Ai Group seeks the introduction of a new paragraph 31.2(g)(iii) in the following terms:

“The days on which ordinary hours are worked may include Sunday subject to agreement between the employer and the majority of employees concerned (which must not be unreasonably withheld). Agreement in this respect may also be reached between an employer and an individual employee.”

Clause 37 – Annual leave

275. Paragraph 37.3(a) provides that annual leave must be paid prior to the employee going on leave. We submit that the existing federal awards allow that requirement to be altered by mutual agreement. Given that some employees may prefer to be paid during their annual leave, paragraph 37.3(a) should be deleted and amended as follows (consistent with the existing awards):

“Unless otherwise agreed, each employee will be paid prior to the commencement of annual leave.”

276. Furthermore, consistent with the clause included in the exposure draft of the *Seafood Processing Award 2010*, we contend that a new sub-clause 37.6 should be included as follows:

“37.6 Cashing out of annual leave

- (a) An employee and an employer can agree to cash out any accrued annual leave of the employee provided that does not result in the employee’s remaining accrued entitlement to paid annual leave being less than four weeks; and*
- (b) Upon agreement being reached for each cashing out of a particular amount of paid annual leave then that agreement must be recorded by a separate agreement in writing between the employer and the employee; and*
- (c) The employee must be paid at least the full agreed amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.”*

Clause 38 – Personal/carer’s leave and compassionate leave

277. For the sake of certainty and consistency with the annual leave clause, Clause 38 should also include these additional words:

“Casual employees are not entitled to paid personal / carer’s leave.”

CHAPTER 19 – OIL AND GAS INDUSTRY (AM2008/44)

278. The Commission has issued exposure drafts of the following modern awards for the oil and gas industry:

- *Gas Industry Award 2010*
- *Oil Refining and Manufacturing Award 2010*
- *Hydrocarbons Industry (Upstream) Award 2010*

279. A Group's submissions on these exposure drafts are set out below

Gas Industry Award 2010

280. The exposure draft of the *Gas Industry Award 2010* covers the transmission, distribution, wholesaling and retailing of gas to industrial, commercial and domestic consumers.

281. The exposure draft does not contain a specific exclusion for the manufacture of industrial gases under the Modern Manufacturing Award nor the carrying out of maintenance in the gas industry under the Modern Manufacturing Award, and these omissions are of great concern to Ai Group.

282. In response to the Commission's observations concerning the absence of any employer submissions concerning modernisation of awards in this industry beyond the submissions advanced by Ai Group concerning industrial gases, Ai Group has attempted to contact those organisations which it believes are the major employing interests within this sector to obtain their views.

283. We can advise the Commission that on 11 June we were advised by Jemena Limited (formerly known as Alinta), SP Ausnet and Westnet (collectively "the Gas Industry Employers") of their interest in this sector and their desire to

advance views in relation to the appropriate terms and conditions for a modern award for the gas industry.

284. Regrettably, Ai Group has not been able within that limited time frame to obtain all relevant information concerning the Gas Industry Employers' views regarding the *Exposure Draft - Gas Industry Award 2010* ("the Gas Industry ED") for inclusion within this submission. We anticipate that we will be in a position to file this material early in the week commencing 15 June 2009 and shall accordingly be filing a comprehensive submission dealing exclusively with the interests of the Gas Industry Employers at that time.
285. The primary focus therefore in relation to the remainder of this Chapter shall be to the amendments required to the Gas Industry ED to ensure protection of our members' interests, particularly in respect of those in the industrial gas industry and maintenance contractors.

Clause 4 – Coverage

286. On 22 May 2009 in its statement accompanying the exposure drafts, the Commission observed at paragraphs 157 and 158 the following:

[157] The only appearance at the pre-exposure draft consultations on behalf of any employer interests was by Ai Group and its submission was principally directed towards the manufacture of industrial gases. It submitted that that activity had been covered, for many decades, by the Metal Industry Award⁵⁴ and should now be covered by the Manufacturing Modern Award. In this respect it identified its member BOC Gases. We note clause 4.3(d) in the Manufacturing Modern Award which, read together with clause 4.2(a)(i), provides that the award covers the manufacture, making, processing, treatment and preparation of industrial gases.

[158] The draft we publish should be considered by parties in the industry as a matter of urgency. Assuming that an award should issue for this industry a great deal more needs to be done. Firstly the coverage of the award needs to be clear."

287. Given that the Commission appears to have accepted our contention that the manufacture, processing, treatment and preparation of industrial gases has for many decades been covered by the *Metal, Engineering and Associated Industries Award 1998* (“the Federal Metals Award”) and its predecessor awards, we submit that the *Manufacturing and Associated Industries and Occupations Award 2010* (“the Modern Manufacturing Award”) should continue to retain exclusive coverage of this industry.

288. In addition to BOC Gases, Ai Group counts within its membership Air Liquide Australia and Core Gas. Collectively these organisations represent the major employers in the industrial gases sector. Air Liquide and Core Gas also engage their employees pursuant to the Federal Metals Award. They have never applied any of the awards identified in the Commission’s indicative list of awards for the oil and gas industry.

289. The reason for this is clear, we contend, if the Commission has regard to submissions put by the AWU, the union with primary coverage of the oil and gas industry, on transcript during consultation proceedings on 24 March 2009.

“In our submission it’s -the gas industry is relatively uncontentious, I would suggest. It is intended to cover the gas transmission distribution and sale of gas. That is from the time it enters the pipes offshore through to the downstream retail component. It’s not intended to cover offshore accumulation or indeed the energy industry, which covers electricity retail and also where electricity and gas are both retailed together. And the most relevant industrial instrument we say is the Energy (Gas) Industry Award..³¹.”

290. This proposition is reinforced when one reviews the resendency list of the *Energy (Gas) Industry Award 1999* which includes the following organisations:

“SCHEDULE A - RESPONDENTS

Energy 21 Pty Ltd, Level 5, 196 Flinders St, Melbourne, 3000

Gas Services Business Pty Ltd, 196 Flinders St, Melbourne, 3000

³¹ Transcript AM2008/44 – 24 March 2009; at PN96

Gasmart Pty Ltd, 241 Whitehorse Rd, Nunawading, 3131

Ikon Energy Pty Ltd, Level 8, IBM Centre, 60 City Rd, Southbank, 3006

Kinetik Energy Pty Ltd, 19th Floor, Herald & Weekly Times Building, Southbank, 3006

Multinet Gas Pty Ltd, 16 Kaikoura Ave, East Hawthorn, 3123

Office of Gas Safety, Level 1, Wool House, 369 Royal Pde, Parkville, 3001

Stratus Networks Pty Ltd, 1 Wood St, Thomastown, 3074

Westar Pty Ltd, 740 Ballarat Rd, Ardeer, 3022”

291. Whilst it is not abundantly clear, to the best of Ai Group’s knowledge these organisations or their successors are or were involved in activities involving the transmission and/or distribution of natural gas. In direct contrast, BOC Gases, Air Liquide and Core Gas are involved in the manufacture of industrial gases.

292. Ai Group submits that the current definition of the “*gas industry*”³² as reflected within the Gas Industry ED does not appropriately define the industry with these factors in mind. It is imperative that this issue is addressed within any modern award created for the gas industry.

293. Ai Group has had the benefit of reviewing the submissions of Blake Dawson which are to be filed for the purpose of these proceedings. It is our understanding that they propose:

(a) insertion of the following exclusion within the modern gas industry award:

“4.3 *This award does not cover:*

(a) ...

(b) ...

³² Sub-clause 4.2

- (c) *the industry of the manufacture, making, processing, treatment, preparation, extraction, separation and associated storage, transport, distribution, sales and marketing of industrial, medical and special gases.”*

Or

- (b) a redefining of the term “gas industry” to confine application of the modern award to ensure that industrial gas manufacturers such as BOC Gases, Air Liquide Australia and Core Gas are not capable of falling within the definition.

294. Ai Group supports either of these options to ensure that the Modern Manufacturing Award continues to be the appropriate instrument regulating this work.

295. In addition to ensuring that the gas industry is defined in appropriate terms, it is essential that the award contain an express exclusion for employers and employees covered under the Modern Manufacturing Award. This exclusion is important not only to provide certainty regarding industrial gases, but also to ensure that maintenance workers in the industry continue to be covered under the Modern Manufacturing Award.

296. We are mindful of the observations made by the Commission in relation to the attempted coverage of clerical, administrative, professional/managerial and maintenance trades under this award by the AWU:

“It would appear from the AWU draft that it proposes the coverage to extend to clerical, administrative, professional and managerial employees and trades and engineering employees. The structure contains definitions which were described as generic which is certainly an accurate description for them. Importantly though the draft provides that the reader needs to look to the employer’s method of classification which would depend on “an objective evaluation system as contained in the employer’s policies manual”. The draft also provided that the application of the generic definitions were to be determined by

“comprehensive position descriptions”. It is unclear from the AWU draft which level an employee should be classified at.³³”

297. Ai Group opposes the inclusion of clerical, professional, managerial or maintenance trades employees within any modern award for the gas industry.

Oil Refining and Manufacturing Award 2010

298. The exposure draft of the *Oil Refining and Manufacturing Award 2010* incorporates a 35 hour week and other very generous conditions of employment.

299. Very importantly the draft award only covers maintenance workers employed by a refinery operator, and not contractors.

Hydrocarbons Industry (Upstream) Award 2010

300. The exposure draft of the *Hydrocarbons Industry (Upstream) Award 2010* includes “embedded” maintenance workers. Ai Group is currently considering the appropriateness of such an approach and will seek to make submissions on this issue during the public consultations after reviewing the submissions of other interested parties.

³³ [2009] AIRCFB450; at [158]

CHAPTER 20 – PAPER PRODUCTS INDUSTRY (AM2008/45)

301. In Ai Group’s pre-exposure draft submissions concerning the paper products industry (“Pulp and Paper”), Ai Group indicated there was merit in considering whether Pulp and Paper could be incorporated into a forest products supply chain award which was being advanced by the Construction, Forestry, Mining and Energy Union – Forestry and Furnishing Products Division (“the CFMEU-FFPD”).
302. Fundamental to our “in principle” support for this approach was ensuring that employers’ costs were not increased, and operating requirements were not detrimentally affected as a result. If these requirements were not satisfied, Ai Group’s alternative proposal was that the Paper Products industry be absorbed into the Modern Manufacturing Award.
303. Given the basis upon which our “in principle” support was provided, Ai Group was highly concerned with the approach adopted by the CFMEU – FFPD within its draft *Forest Products and Allied Industries Supply Chain Award 2010*, which in our view sought to incorporate the highest conditions from the *Timber and Allied Industries Award 1999* and marry them with the highest conditions from the *Pulp and Paper Industry – Production Award 1999* to create the “safety net” for Pulp and Paper employees.
304. Ai Group advanced comprehensive submissions in both the Pulp and Paper and Timber Industry consultation proceedings in opposition to the CFMEU – FFPD’s approach.
305. Having reviewed the terms of the *Exposure Draft – Timber Industry Award 2010* we are reassured to see that the outcome sought by the CFMEU – FFPD, which would have been very costly for the industry, has not been adopted by the Commission.

306. On this basis, we continue to support inclusion of Pulp and Paper within a broader “timber industry” modern award. That being said, should the CFMEU – FFPD press once again for a “best of both worlds” safety net for the Pulp and Paper sector, we foreshadow amendment of our position and pressing for Pulp and Paper to be included within the Modern Manufacturing Award.
307. The remaining matters which Ai Group seeks to address in relation to specific variations to the exposure draft are dealt with in the Timber Industry Chapter of this submission.

CHAPTER 21 – PET FOOD MANUFACTURING (AM2008/46)

308. Ai Group has previously submitted that this sector should be incorporated within the *Food, Beverage and Tobacco Manufacturing Award 2010*.
309. The Commission has adopted Ai Group's proposed approach and not issued a separate exposure draft for this sector.
310. Ai Group continues to endorse this approach.

CHAPTER 22 – PHARMACEUTICAL INDUSTRY (AM2008/47)

311. The Commission has published a single exposure draft award for this industry.
312. Ai Group broadly supports the concept of a separate, modern award for the industry but wishes to raise some specific issues about aspects of the *Exposure Draft – Pharmaceutical Industry Award 2010*.

Pharmaceutical Industry Award 2010

313. Ai Group's redrafted version of the *Pharmaceutical Industry Award 2010* is included at **Annexure C** to this submission.

Clause 3 – Definitions and interpretation

314. The Standard rate in the Clause 3.1 of the exposure draft is the minimum wage for the Manufacturing/Production Worker Grade 4 classification in clause 15.1(a). This is the highest grade and pay rate in the award.
315. A review of modern awards made during the Priority Stage and Stage 2 of the modernisation process indicates that the Standard Rate is not the highest grade in the relevant award.
316. Ai Group submits that the Standard Rate should be Manufacturing/Production Worker Grade 3. In **Annexure C**, we have made the necessary amendment to Clause 3.1 to give effect to this.

Clause 4 – Coverage

317. Contractors covered by the Modern Manufacturing Award carry out maintenance work in establishments in the pharmaceutical industry.

318. Ai Group submits that the award needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Clause 22 – Superannuation

319. Ai Group submits that AustralianSuper should be included on the list of funds within the Superannuation clause.

Clause 25 – Overtime and penalty rates

320. The terms of the exposure draft at sub-clauses 25.3 and 25.4 confer a minimum engagement of four hours when working on a Saturday and Sunday.

321. The *Manufacturing Chemists Award 1998* requires a minimum payment of three hours³⁴ for Saturday work and there is no minimum requirement for Sunday work. We contend that the *Manufacturing Chemists Award 1998* regulates the majority of establishments in the pharmaceutical industry and, accordingly, the terms of this award are a more appropriate safety net than the terms of the *AWU Drug and Pharmaceutical Industry Award 2000* from which 25.3 and 25.4 appear to be drawn.

322. An increase to the minimum engagement hours when working on Saturday or Sunday would increase costs for employers in a manner contrary to the terms of the Modernisation Request.

323. In **Annexure C**, Ai Group has amended subclauses 25.3 and 25.4 to reflect a minimum engagement of three hours when working on a Saturday or Sunday.

³⁴ Clause 25.1.1(C) Manufacturing Chemists Award 1998

Clause 26 – Annual leave

324. We submit that the terms of sub-clause 26.2 of the exposure draft confer an additional payment in excess of the NES standard by requiring that annual leave payments include penalties, allowances, loadings and over-award payments.
325. This requirement is not an established feature of the industry as equivalent provisions are not contained within any of the NAPSAs or the *Manufacturing Chemists Award 1998*.
326. As submitted above, the terms of the *Manufacturing Chemists Award 1998* reflect industry practice, and should be preferred to the terms of the *AWU Drug and Pharmaceutical Industry Award 2000*.
327. Furthermore, given the current operation of the Australian Fair Pay and Conditions Standard (“AFPC Standard”) in determining the rate of pay for annual leave for employees covered by the *AWU Drug and Pharmaceutical Industry Award 2000*, we submit that sub-clause 26.2 does not represent an existing entitlement for employees covered by the *AWU Drug and Pharmaceutical Industry Award 2000*. It matters not, in our submission, whether such a provision was a feature of the award prior to the introduction of the AFPC Standard. The NES only allow supplementation where necessary to ensure a fair minimum safety net having regard to the existing award provisions.
328. To supplement the NES in the manner proposed would substantially increase employers’ costs in this industry in a manner contrary to the terms of the Modernisation Request.

329. Ai Group proposes the application of the NES with regard to the method of calculating annual leave payments. In ***Annexure C*** we have deleted clause 26.2.

CHAPTER 23 – PHOTOGRAPHIC INDUSTRY (AM2008/48)

330. The Commission has not issued an exposure draft for this industry because of the extent of technological change in the industry, namely the move to digital media and away from film.
331. The Commission proposes that employees in retail photographic outlets be covered under the *General Retail Industry Award 2010*.
332. Further, the Commission proposes that the coverage of the Modern Manufacturing Award be expanded to cover the printing and processing of photographs from film. Ai Group supports this approach.
333. We propose that the following paragraph be added to Clause 3 – Coverage, of the Modern Manufacturing Award (taking into account the amendment proposed earlier relating to the coal treatment industry):

“4.2(a) (x) the printing and processing of photographs from film”

334. The existing paragraphs 4.2(a)(ix) and (x) should be consequentially renumbered.
335. Ai Group’s has consolidated this additional provision within a revised coverage clause for the Modern Manufacturing Award which is contained at ***Annexure [x]***.

CHAPTER 24 – PORT AND HARBOUR SERVICES (AM2008/49)

336. The Commission has issued the following exposure drafts for this sector:

- *Port Authorities Award 2010*
- *Stevedoring Industry Award 2010*
- *Coal Export Terminals Award 2010*
- *Marine Towage Award 2010*
- *Ports, Harbours and Enclosed Water Vessels Award 2010*

337. As set out earlier, in the section of this submission relating to the Maritime Industry, it is vital that none of the above awards apply to contractors carrying out maintenance and other work covered by the Modern Manufacturing Award. None of the exposure drafts contain an express exclusion for work covered under the Modern Manufacturing Award.

Coal Export Terminals Award 2010 and Port Authorities Award 2010

338. The *Exposure Draft – Coal Export Terminals Award 2010* and the *Exposure Draft – Port Authorities Award 2010* only apply to employees of coal export terminal operators and of port authorities respectively. This limitation is important and appropriate.

Stevedoring Industry Award 2010

339. The coverage of the *Exposure Draft – Stevedoring Industry Award 2010* is limited to the “*loading and unloading of cargo into or from a ship or other vessel*”. This limitation is essential.

340. With regard to this exposure draft, firstly, the word “*vessel*” needs to be replaced with “*marine vessel*”, to avoid interpretation problems.

341. Secondly, it is pleasing and very appropriate that the Commission has rejected the MUA's proposal to expressly include maintenance tradespersons who would otherwise be covered under the Modern Manufacturing Award.

342. The *Exposure Draft – Stevedoring Industry Award 2010* contains extremely costly conditions which would be crippling for employers who provide contract maintenance services to the sector.

343. Given these extremely costly conditions, to avoid any doubt Ai Group submits that the modern award should include the following exclusion for maintenance work carried out under the Modern Manufacturing Award:

“4.1*The award does not cover employers and employees wholly or substantially covered by the following awards:*

“(i) *the Manufacturing and Associated Industries and Occupations Award 2010*”.

Marine Towage Award 2010 and Ports, Harbours and Enclosed Water Vessels Award 2010

344. For the reasons set out in the section of this submission relating to the Maritime Industry, it is important that the *Marine Towage Award 2010* and the *Ports, Harbours and Enclosed Water Vessels Award 2010* include an exclusion for employers and employees covered by the Modern Manufacturing Award.

345. Such exclusion should be implemented by adding the Modern Manufacturing Award to the list of excluded awards in sub-clause 4.1 of each modern award.

CHAPTER 25 – POSTAL SERVICES (OTHER THAN AUSTRALIA POST) (AM2008/50)

346. The Commission has not issued an exposure draft for this industry given that the employees are covered under other modern industry awards or enterprise awards.
347. In its Statement of 22 May, the Commission indicated that it had considered the term “franchisee” as used in the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* and in the Award Modernisation Request.
348. Franchisees of the same franchise are able to be covered under a modern enterprise award, and enterprise awards are excluded from the award modernisation process relating to industry / occupational awards.
349. The Commission has expressed the view that the licenses under which licensed post offices operate are franchises for award modernisation purposes. Ai Group does not oppose the Commission’s decision to refrain from issuing an exposure draft for the Postal Services (Other than Australia Post) Industry. However, Ai Group does not have sufficient knowledge of the licenses under which licensed post offices operate to express a view on whether such licenses should be treated as franchises under the Fair Work Transitional legislation and the Award Modernisation Request. We seek to reserve our rights in respect of future proceedings, relating to the modernisation of enterprise instruments, where the definition of “franchisee” could be particularly important.

CHAPTER 26 – PRIVATE TRANSPORT INDUSTRY (REMAINING SECTORS) (AM2008/51)

350. The *Exposure Draft – Passenger Vehicle Transportation Award 2010* covers both private and public passenger transport.
351. The draft award covers the transport of passengers by motor vehicle, limousine, hire car, bus, coach, electric tramway, monorail or light rail.
352. Importantly, the draft award does not cover the manufacture or maintenance of vehicles.

CHAPTER 27 – PUBLIC TRANSPORT (OTHER THAN RAIL) (AM2008/53)

353. This industry is being dealt with in conjunction with the Private Transport Industry (Remaining Sectors).

CHAPTER 28 – PUBLISHING INDUSTRY (AM2008/52)

354. The *Exposure Draft – Book Industry Award 2010* covers book editors and publicists whereas the *Graphic Arts, Printing and Publishing Award 2010* (as made during Stage 2) covers the printing side of the publishing industry.
355. Ai Group is not opposed to this broad approach.

CHAPTER 29 – SCIENTIFIC SERVICES (INCLUDING PROFESSIONAL ENGINEERS AND SCIENTISTS) (AM2008/37)

356. The Commission has issued exposure drafts of the following four awards for the Scientific Services (Including Professional Engineers and Scientists) and Technical Services Sectors:

- *Architects Award 2010*
- *Hydrocarbons Field Geologists Award 2010*
- *Surveying Award 2010*
- *Professional Employees Award 2010*

357. Ai Group will limit its submissions at this stage to the fourth of these exposure drafts.

Professional Employees Award 2010

358. This exposure draft covers professional engineers, professional scientists, IT professionals and telecommunications professionals. During all three stages of the award modernisation process, Ai Group has made extensive submissions about award conditions for these categories of employees.

359. We are pleased that the Commission has rejected the AMWU's submissions and not included professional engineers and scientists in the Modern Manufacturing Award. Ai Group has made detailed submissions about this issue.

360. However, we are very concerned about several aspects of the exposure draft. These concerns are set out below.

Title

361. Ai Group submits that the extremely expansive title of the draft award is inappropriate and misleading. The award does not cover the vast majority of professional employees in Australia (eg. accountants, HR professionals, economists, IR professionals, lawyers, doctors, vets, teachers, etc).
362. Unless amended, the title is likely to lead to a raft of union claims over the months and years ahead to extend award coverage to professionals who are currently award-free (eg. accountants, HR professionals).
363. The title may also lead to confusion about which modern award is applicable to those professionals who are covered under other modern awards (eg. architects, doctors, teachers etc).
364. To include a misleading title in a modern award would breach the Act which states that modern awards must “*be expressed in plain English and be easy to understand in structure and content*”.
365. Ai Group submits that the title of the modern award should be the *Engineers, Scientists, Information Technology and Telecommunications Professional Employees Award 2010*.

Coverage

366. The definition of the “*information technology industry*” in the exposure draft is based upon the definition in the *Information Technology Industry (Professional Employees) Award 2001*, but there are two substantial amendments, both of which Ai Group opposes.

367. Firstly, the exposure draft uses the words - *“information technology industry means:”* - whereas the *Information Technology Industry (Professional Employees) Award 2001* uses the words - *“information technology industry means a business whose principal function is:”* The change in terminology would massively expand award coverage of IT professionals in all States other than Victoria, contrary to the terms of the Award Modernisation Request. Ai Group submits that the existing wording needs to be retained.
368. The use of the existing wording would ensure consistency between the definition of *“information technology industry”* and *“telecommunications services industry”*, which requires that the business be *“principally engaged”* in the industry to be covered by the award.
369. The second amendment made to the existing definition of *“information technology industry”*, is the addition of the following sub-clauses:
- (h) *the design, development and maintenance of on-line internet architecture and the facilitation of on-line content management;*
 - (i) *activities which are incidental, ancillary or complimentary to the activities set out in this definition.”*
370. It appears that these provisions have been invented by APESMA and are not sourced from any existing award. To expand award coverage into these currently award-free areas would be inconsistent with the Award Modernisation Request and is opposed by Ai Group.

Clause 16 – Allowances

371. Ai Group opposes the inclusion of monetary allowances at clause 16.

372. The monetary allowances present new cost liabilities and additional regulation upon employers. Their inclusion is inconsistent with the longstanding flexible approach inherent in the federal awards currently applicable to engineers, scientists, IT and telecommunications professionals.
373. The allowances are not included in the major existing federal awards covering these categories of employees.
374. The major federal awards are essentially consent awards between Ai Group and APESMA and it is essential that the longstanding consent position (which revolves around a flexible, non-prescriptive approach) not be disturbed through award modernisation.

Subclause 16.1 – Travelling expenses and travelling time

375. Subclause 16.1 in the exposure draft requires that employers provide “*reasonable compensation*” for excess travel time. Such an obligation is onerous and inappropriate. It is inconsistent with the nature of professional employment. Professional employees are often required to travel (both domestically and internationally) to discharge their professional duties and this factor is part and parcel of professional employment and reflected in the salaries that professionals are paid.
376. A new obligation to provide travel time to professional employees (many of whom are engaged at a managerial level) is unnecessarily prescriptive, costly and may result in decreases in salaries to allow for additional ‘travel time’ payments.

Subclause 16.3 – Equipment and special clothing

377. This clause is not in the major existing awards and is opposed by Ai Group. The term “special clothing” is vague and uncertain and is likely to lead to disputes about its application. Like other employees, engineers and scientists need to wear appropriate clothes to work, and in many circumstances it is not reasonable for employers to provide such clothing.

Clause 18 – Hours of work

378. Ai Group strongly opposes the hours of work clause in the exposure draft. This clause is far more prescriptive than the provisions of the existing major awards applicable to engineers, scientists, IT and telecommunications professionals.

379. As set out above, the major federal awards covering these types of professionals are essentially consent awards between Ai Group and APESMA and the longstanding consent position (which revolves around a flexible, non-prescriptive approach) should not be disturbed in the name of award modernisation.

380. The provision which Ai Group is most concerned about is the following paragraph of sub-clause 18.2:

“Provided that, where relevant, such compensation or remuneration will include consideration of the penalty rate or equivalent and the conditions as applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.”

381. This provision is totally inappropriate for an award covering professional employees. It is very common for professional employees to work in establishments where non-professional employees receive penalty rates. Such rates should have no bearing on the rates paid to professional employees.
382. The rates of pay applicable to professional employees (both award rates and over-award rates) take into account the nature of professional employment. Professional employees are very rarely paid penalty rates.
383. In setting remuneration for professional employees, employers take into account:
- Award minimum salaries;
 - The specific duties and responsibilities of the role;
 - The qualifications required of the employee; and
 - Market conditions.
384. The responsibilities, duties, technical expertise and qualifications required of professional employees are different to the responsibilities, duties, expertise and qualifications of non-professional employees. These differences are reflected in the remuneration arrangements for these positions, including any additional or irregular hours worked.
385. Professional employees are typically paid an annual salary which compensates the employee for discharging the responsibilities and duties associated with the job. In discharging these duties professional employees are sometimes required to work irregular or additional hours beyond their ordinary hours.

386. In addition to the professional employees who are required by their employer to work reasonable additional hours, there are a very large number of professional employees who choose to work additional hours because of such factors as:

- Their motivation and work ethic;
- The satisfaction which they derive from their job;
- The enjoyment and recognition that they receive from their job;
- Their desire for career progression; and
- Their desire to perform at a high level and achieve work goals.

387. Far from being modern, the above paragraph of sub-clause 18.2 belongs in an era long gone. The provision is totally inconsistent with the nature of professional employment and the needs of contemporary workplaces.

388. If the inappropriate paragraph is removed, the rest of sub-clause 18.2 is largely similar to the hours of work clause in the *Information Technology Industry (Professional Employees) Award* and the *Telecommunications Industry (Professional Employees) Award*. These consent clauses have worked well in practice and have not operated unfairly for employees or employers.

Annual leave loading

389. Ai Group and APESMA agreed upon the following annual leave loading clause for the Modern IT & T Professional Employees Award, which the parties proposed to the Commission at the pre-exposure draft stage. The clause is similar to the clause which appears in the *Information Technology Industry (Professional Employees) Award*, the *Telecommunications Industry (Professional Employees) Award* and the major federal awards covering engineers and scientists:

“Annual leave loading

- (a) *In respect of annual leave an employee shall be paid a loading of 17-1/2% of his/her entitlement under [INSERT] calculated at their normal rate of salary. Provided always that:*
- (b) *In no case shall there be an entitlement to an amount in excess of the statistician’s average weekly earnings per employed male unit (original - Australia) for the September quarter of the year preceding the year in which the date of the accrual of the annual leave falls.*
- (c) *Where employers, in determining the total remuneration of employees, have taken into account that an annual leave loading will not be paid to their employees because the total remuneration has been fixed having regard to this fact or because other benefits related to annual leave of equal value have been granted by the employer, an entitlement to the annual leave loading prescribed herein shall not accrue.” (Emphasis added).*

390. The concept dealt with in the underlined wording is essential and is not included in the Commission’s draft clause. It is very common practice for employers who engage professional employees, to absorb annual leave loading into the employee’s annual salary.

391. The clause inserted by the Commission is far more prescriptive because it requires that the employee be paid a *“benefit from their employer which is related to their annual leave and which is established as being of equivalent value to or greater value than the loading”* (Emphasis added).

392. For a very large number of employers who engage engineers, scientists, IT or telecommunications professionals, the requirement to provide professional employees with leave loading on top of market-based salaries would be a new obligation resulting in a direct increase in labour costs. These costs would be extensive.

393. Ai Group submits that the clause agreed upon between Ai Group and APESMA for the proposed Modern IT & T Professional Employees Award (as set out above) should be inserted in lieu of subclause 19.2.

CHAPTER 30 – TECHNICAL SERVICES (AM2008/57)

394. This sector is being dealt with in conjunction with the Scientific Services (Including Professional Engineers and Scientists) Sector.

CHAPTER 31 – STORAGE SERVICES (AM2008/55)

395. The Commission has published an exposure draft award to cover the Storage Services and Wholesale and Retail Industry.

396. Ai Group broadly supports this position and the exposure draft. In this Chapter we raise some specific issues about various aspects of the *Exposure Draft - Storage Services and Wholesale Award 2010*.

Storage Services and Wholesale Award 2010

397. Ai Group's proposed amendments to the *Exposure Draft - Storage Services and Wholesale Award 2010* are contained at **Annexure D** to this submission.

Clause 3 – Definitions and interpretation

398. The Standard Rate in the Sub-clause 3.1 of the Exposure Draft is the minimum wage for the Storeworker Grade 4. This is the highest grade and pay rate in the Award.

399. A review of modern awards made during the Priority Stage and Stage 2 of award modernisation indicates that the Standard Rate is not the highest rate in these awards.

400. Ai Group submits that the Standard Rate should be Storeworker Grade 3. This will also provide alignment of the Standard Rate with Storeworker functions in other modern awards. We have made the necessary amendment to Clause 3.1 to give effect to this. This amendment provides for an adequate safety net.

Clause 4 – Coverage

401. In our pre-exposure draft submissions, Ai Group argued strongly that it was extremely important that any modern Storage Services Award not intrude upon the coverage of industry awards which cover storepersons (eg. the Modern Manufacturing Award, the Modern Graphic Arts Award and the Modern Business Equipment Award, to name only a few.

402. It is pleasing and very appropriate that the exposure draft adopts the approach which Ai Group has proposed and *“does not cover an employer to the extent that the employer is covered by...another modern award that contains classifications relating to the storage services and wholesale industry with respect to any employee who is covered by that award”*.

Sub-clause 11.3 – Part time employment

403. Ai Group has amended paragraph 11(g) in order to provide for part time employees to be paid overtime payments once they complete 38 hours. These provisions can be found in the *Storemen and Packers, General (State) NAPSA (NSW)*.

Clause 20 - Payment of wages

404. Ai Group has inserted, at subclause 20.1, the provision to pay employees monthly by agreement. Whilst we accept that this is not a common feature of the current awards, we submit that the provision is an appropriate safety net and provides for flexibilities for employers without creating any disadvantage to employees.

Clause 22 – Hours of work

Sub-clause 22.2 – Spread of hours

405. Ai Group notes that the scope of the *Exposure Draft - Storage Services and Wholesale Award 2010* will extend coverage to those employers and employees bound by the following awards:

- *AP781202CRV - Food, Beverages and Tobacco Industry - Frozen Goods - Victoria - Award 2000*
- *AN120256 – Ice Cream Cold Storage (State) Award*
- *AN120144 – Cold Storage and Ice Employees (Northumberland) Award*
- *AN120145 – Cold Storage and Ice Employees (State) Award*
- *AN140074 – Cold Storage and Ice-Making Award - State 2003*

406. This is evidenced by the definition of **storage services and wholesale industry** as found in sub-clause 3.1:

“storage services and wholesale industry means the receiving, handling, storing, freezing, refrigerating, bottling, packing, preparation for sale, sorting, loading, despatch, delivery or sale by wholesale of produce, goods or merchandise as well as activities and processes connected, incidental or ancillary”

407. As a result of such inclusion we submit that the hours provisions of the *Exposure Draft - Storage Services and Wholesale Award 2010*, do not contemplate the nature of work undertaken in this section of the industry. For example, it is a feature of this industry that the spread of ordinary hours are between 6am and 6pm. This is so that operators can meet the demands of their retail clients and the delivery times required for cold food.

408. This contention is supported by a review of the following awards and their conditions as follows:

- *Food, Beverages and Tobacco Industry - Frozen Goods - Victoria - Award 2000* at 21.1.3 - the spread of hours is Monday to Friday 6am to 6pm
- *Ice Cream Cold Storage (State) Award* at 3(b)(1) - the spread of hours is Monday to Sunday 6am to 6pm
- *Cold Storage and Ice Employees (Northumberland) Award* at clause 3 - the spread of hours is Monday to Friday 6am to 6pm
- *Cold Storage and Ice Employees (State) Award* at 4(i)(b)3 - the spread of hours is Monday to Friday 6am to 6pm
- *Cold Storage and Ice-Making Award - State 2003* at Clause 6.1.1 – the spread of hours is 6.30am to 4.30pm

409. A Statutory Declaration of **Mr Luis Fleiszig** is included at **Annexure E** which highlights the need for the current spread of hours to be maintained.

410. We propose the retention of the existing spread of hours for cold storage work as it provides for an adequate safety net. A decrease to the spread of hours would have the effect of increasing costs for employers in a manner contrary to the terms of the Modernisation Request.

411. Ai Group has amended sub-clause 22.2 to reflect a separate spread of hours for cold storage work. As a corollary to these amendments a definition of “Cold Store” has been inserted into sub-clause 3.1.

412. The scope of the exposure draft will also extend coverage to those employers and employees bound by awards covering markets or work of that nature.

413. A large proportion of such work requires 24 hour operations, to accommodate the early morning starts, particularly those associated with markets. Ai Group has assessed the following NAPSAs that cover wholesale trade and markets and ascertained that they contain a spread of hours that are 24 hours in nature. If this is not the case, in all other instances, an early morning shift is contemplated and allowed for within the following NAPSAs:

- *General Stores, Warehousing and Distribution Award - State 2002*
- *Storemen and Packers, Wholesale Drug Stores (State) Award*
- *Warehouse Employees' - General (State) Award*
- *Sydney Markets Award 2003*
- *Wholesale Fruit and Vegetable Employees' (State) Award*
- *Brisbane Markets Award - 2003*

414. Further rationale for the inclusion of more flexible hours of work provisions, in particular an early morning shift arrangement, can be found in the fact that Appendix A of the *Storage Services General Award 1998* contemplates early morning shifts to cater for the nature of work associated with markets. This is extracted below:

“4.1 Early morning shift means a shift commencing at or after 3.00 a.m. and finishing at or before 1.30 p.m.”³⁵

415. Ai Group proposes the retention of the early morning shift provisions to ensure that those enterprises that have to operate before the ordinary spread of hours are able to do so, in a similar manner that the award provides for them through nights shift and afternoon shifts. This would add consistency and allow for flexibility. It would also ensure that the exposure draft, whilst capturing certain types of businesses, still retains features which enable them to operate without excessive costs.

³⁵ *Storage Services General Award 1998 - Appendix A*

416. Ai Group proposes at paragraph 25.1(a) the insertion of an early morning shift definition and at paragraph 25.4 (a), the insertion of a shift penalty of 20% for such work.

417. The awards currently operating in the industry also provide for flexibility in changing the ordinary hours of work. Examples of this can be found in the:

- *Storage Services - Warehousing - Award 1999*
- *Storage Services Steel Distributing Award 2000*

418. Ai Group seeks the insertion of provisions conferring the right for employers to change start and finish times or change rosters:

- By the provision of 1 weeks notice; or
- By agreement with the employee; or
- With the provision of 24 hours notice, in cases of changes necessitated by circumstances outside the control of the employer.

419. This feature is not uncommon in current awards and NAPSAs and provides for flexibilities without creating any disadvantage to employees.

420. Ai Group has amended sub-clauses 22.3 and 25.5 of the exposure draft to give effect to this.

Clause 24 – Overtime and penalty rates

421. The exposure draft confers a penalty rate of time and half for the first 2 hours and double time thereafter for ordinary work undertaken on Saturday. This is in excess of the standard established by the *Storage Services – Warehousing – Award 1999* and the *Storage Services – General – Award 1999*. We submit that the common standard for the industry is for ordinary hours worked on a

Saturday to be compensated by the payment of a penalty of time and half for all hours worked.

422. Ai Group submits that the existing standard for all ordinary work undertaken on a Saturday to be paid at time and half should be retained. This is an appropriate safety net which meets the objects and requirements of the Modernisation Request. We have amended paragraph 24.5(a)(i) of the exposure draft to reflect this.

Schedule A – Classifications

423. The exposure draft has included in the indicative tasks the term *“management of a defined section/department”*. Ai Group seeks the deletion of the term. In its current form it creates award coverage of managers. A current review of NAPSAs and federal awards in the Storage Services and Wholesale Industries, indicates that such employees are not intended to be award covered.
424. Further, we submit that the inclusion of the term creates an anomaly in the classification descriptors between the highest grade for storeworker and the highest grade for wholesale employee whilst maintaining no pay differential between the two. There is no industry need for having this different indicative term for Wholesale Employee Grade 4.
425. To include a term which could inadvertently capture such employees would have the effect of creating inflexibilities and increasing costs for employers in a manner contrary to the terms of the Modernisation Request. Ai Group has deleted this indicative task in our submitted version of the exposure draft.

CHAPTER 32 – SUGAR INDUSTRY (AM2008/56)

426. The Commission has issued an *Exposure Draft – Sugar Industry Award 2010*.
427. In negotiations between Ai Group and the six MTFU unions, and in separate discussions between Ai Group and the Australian Sugar Milling Council, the parties worked through in detail the terms of an exclusion for the sugar industry from the Modern Manufacturing Award.
428. The agreed exclusion appears at paragraph 4.4(b) of the Modern Manufacturing Award, as follows:

4.4 *Manufacturing and Associated Industries and Occupations does not mean:*

- (b) *the sugar industry, unless the work is carried out by contractors covered by this award who are performing work in sugar mills, bulk sugar and molasses terminals, sugar refineries and sugar industry research organisations.*

429. It is important that the above exclusion is not disturbed.
430. The *Exposure Draft – Sugar Industry Award 2010* includes the following exclusion:
- “4.5 *Without limit the generality of the foregoing this award does not cover employees of employers covered by the Manufacturing and Associated Industries and Occupations Award 2010.*”
431. Ai Group submits that the words “*Without limiting the generality of the foregoing*” should be deleted from the above exclusion as the words are vague and uncertain. The foregoing provisions in Clause 4 include types of work

which are included (see sub-clause 4.2) as well as types of work which are excluded (see subclause 4.4). Subclause 4.2 defines the “sugar industry” in broad terms and there is a risk that the term “*Without limiting the generality of the foregoing*” in subclause 4.5 of the exposure draft could be read to oust the exclusion in subclause 4.4 of the Modern Manufacturing Award which is intended to have the effect that mechanical contractors working in sugar mills, bulk sugar and molasses terminals, sugar refineries and sugar industry research organisations are covered under the Modern Manufacturing Award.

432. The deletion of the phrase “*Without limiting the generality of the foregoing*” will ensure that the exclusion in sub-clause 4.4 of the Modern Manufacturing Award operates as intended by Ai Group, the Australian Sugar Milling Council and the major sugar industry unions.

CHAPTER 33 – TIMBER INDUSTRY (AM2008/58)

433. As already identified earlier within these submissions, Ai Group during the pre-drafting phase of consultations and submissions advanced a view that it was not opposed in principle to the Pulp and Paper sector of the paper products industry being absorbed into a broader award proposed by the Construction, Forestry, Mining and Energy Union – Forestry and Furnishing Products Division (“the CFMEU-FFPD”) for the timber industry.
434. The approach that the Commission has adopted in developing an exposure draft for the timber industry is to give credence to this proposition and within the Commission’s *Exposure Draft – Timber Industry Award 2010* (“the Timber ED”) the sectors of harvesting and forestry management, milling and processing, panel products, manufacturing, merchandising and retailing, and pulp and paper are included.

Based upon our membership and given the diversity of sectors within the Timber ED, Ai Group does not have a substantial interest in all aspects of the proposed award. Our primary interest relates to the sectors of panel products, manufacturing and pulp and paper. Our interest is considerable within those sectors - in particular pulp and paper where we represent the major employers in the industry.

435. We have therefore reviewed the terms of the Timber ED with these interests in mind, the following paragraphs identify those areas of amendment within the exposure draft which Ai Group seeks.

Clause 4 – Coverage

436. The Commission in its statement of 22 May 2009 identified the following in relation to the coverage provisions of the Timber ED:

“[208] The coverage of the proposed award will no doubt require some refinements so as to clarify the award’s scope. We have at this stage included furniture manufacturing in the draft. An appropriate exclusion will be required in the Manufacturing Modern Award. There may also be a potential overlap with the Joinery and Building Trades Award 2010.⁶³”

437. Ai Group welcomes this further review of the coverage provision within the proposed award as we submit that there are a number of areas in which this award has the potential to overlap with other modern awards including the Modern Manufacturing Award as identified by the Commission.

438. In relation to those areas where there is potential overlap between this proposed award and the Modern Manufacturing Award however, we reject the the idea that there should be a presumption that the Modern Manufacturing Award will yield its coverage to a modern award for the timber industry.

Overlap with the Modern Manufacturing Award

439. The Modern Manufacturing Award has evolved throughout the previous two stages of Award Modernisation so that, as it is currently drafted, it contains an extremely broad coverage touching a large number of industries. In its current form, the Modern Manufacturing Award operates in industries which include furniture, toy and sporting goods manufacturing, and gypsum and plasterboard products. We submit that the integrity of the award must be maintained and should not be eroded by the modern timber industry award.

440. The aspects of coverage within the Timber ED which overlap most profoundly with these sectors within the Modern Manufacturing Award are contained within paragraphs 4.2(c) and 4.2(d) which articulate the proposed awards coverage as follows:

“(c) Panel products sector

- (i) Manufacturing of boards, panels or veneer from timber and timber products.
- (ii) Handling, sorting, stacking, lifting, treating, cutting, pressing, gluing, edging, trimming, painting, laminating and processing in any manner, panel, board or veneer.
- (iii) Transporting and storing board, panels or veneer.
- (iv) Operating and maintaining any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure.
- (v) Planning, setting-up and assembling products from board, panel or veneer and associated components.

(d) Manufacturing sector

- (i) All activities listed in the milling and processing sector.
- (ii) Machining timber in any manner to produce components and articles.
- (iii) Planning, setting-up and assembling wood components and associated attachments into products.
- (iv) Painting and glazing products.
- (v) Manufacturing frames, trusses, doors, windows and other building products or components from wood or timber.
- (vi) Measuring, estimating, designing and manufacturing products for building and other purposes.
- (vii) Manufacturing wooden sporting goods including for cricket, hockey, lacrosse, polocrosse, billiards, badminton.
- (viii) Cabinet making, wood machining, wood turning, wood carving, finishing, polishing, upholstering and other work carried out in or in connection with preparing, packing, assembling, manufacturing repairing or fixing, whether new or second hand any article of furniture (including inbuilt and caravan furniture), chairs and seating, picture frames, wireless cabinets, musical instruments and toys; where any of the foregoing are made of wood or timber, manufactured wood or timber products; and any other product made from wood.”

441. Ai Group submits that the coverage expressed by paragraph 4.2(c) is far too broad given the fact that paragraphs (ii) to (v) all refer to “board” and “panel” generally without any reference to such products being made from wood. This has the potential to create overlap with the Modern Manufacturing Award as the gypsum and plasterboard products which fall within its coverage³⁶ are generally also produced in board or panel form.

442. Indeed, even in relation to paragraph 4.2(c)(i) which refers to the “*manufacturing of boards, panel or veneer from timber and timber products*” we contend that there is the potential for overlap due to the inclusion within the proposed award of sub-clause 4.3 which states:

“**4.3** Reference to timber and/or wood in this award without in anyway limiting the ordinary meaning of the words, will also include any artificial, laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can be used in the place of wood or timber and worked in a similar manner as wood or timber.” (Emphasis Added)

443. Gypsum and plasterboard are often used in relation to home construction and are ordinarily used in substitution of panelling made from timber or wood. Should sub-clause 4.3 be retained, the most commonly manufactured gypsum and plasterboard products could fall within the coverage of the modern award for the timber industry.

444. Ai Group during the pre-drafting consultation proceedings suggested that sub-clause 4.3 should be deleted. The criticism of this submission expressed by the CFMEU – FFPD and a range of other industry parties was that sub-clause 4.3 was merely a reproduction of sub-clause 6.4 from the *Timber and Allied Industries Award 1999* (“the Federal Timber Award”).

³⁶ Sub-clause 4.3(ff)

445. Whilst Ai Group acknowledges that this is the case, such a contention ignores the fundamental differences between an award system based upon named residency and one which will apply on a common rule basis. We contend that the expansive effect that sub-clause 6.4 of the Federal Timber Award is capable of having has never been realised under that award due to the fact that residency could only be created through being roped into the instrument. This however will not be the case if sub-clause 4.3 is retained within the modern award.
446. Ai Group submits that sub-clause 4.3 does not support the creation of a certain and stable modern award system as its potential to give rise to substantial areas of overlap between a modern timber industry award and other modern awards is considerable. The example that we have cited in relation to gypsum and plasterboard under the Modern Manufacturing Award is just one example but indeed there are no doubt many more.
447. Ai Group therefore reiterates its earlier submission that sub-clause 4.3 should be deleted from the proposed modern award. We further submit that paragraphs (ii) through (v) of 4.2(c) should also be amended so that the phrase *“from timber and timber products”* is inserted following the phrase *“board, panel or veneer”* to ensure that the coverage of the award is appropriately limited.
448. Ai Group has previously advanced submissions in opposition to establishing a boundary in the furniture manufacturing sector for either the Modern Manufacturing Award or a modern timber industry award based upon the source material from which the furniture is made. The primary reason why we have contended that delineation based upon source material is unsatisfactory is due to the fact that modern furniture is often made from a range of materials. For example many dining tables or work desks are made with a wooden top but have legs made from metal. Additionally, outdoor furniture is

commonly comprised of an aluminium frame with wooden slats used for the chair and table tops.

449. We submit that the range of furniture products which are made from a composite of materials is wide and varied and it would be impractical in a modern award system to seek to dictate award coverage based upon the material from which the furniture is manufactured.
450. Ai Group contends that on this basis, furniture manufacturing should be removed from the coverage of the modern timber industry award and retained within the Modern Manufacturing Award. We further submit that this is the only sensible resolution to the issue as it would be nonsensical to remove all furniture manufacturing from the Modern Manufacturing Award in favour of the timber industry modern award as there are a huge number and variety of furnishings that are made solely of plastics or metals. To contend that such manufacturing should be in a 'timber industry' award defies all reasonable logic.
451. Should the Commission not endorse this submission we submit that in the alternative, the scope of the award as it applies to furniture manufacturing³⁷ be limited to those furnishings "*primarily made from timber or wood*". Whilst this is not an ideal solution and may still lead to uncertainty, it is preferable to the situation presented by the current terms of the Timber ED.

Overlap with the *Graphic Arts, Printing and Publishing Award 2010*

452. In addition to overlap with the Modern Manufacturing Award, the coverage of the Timber ED as it relates to the pulp and paper sector has the potential for substantial overlap with another modern award already created, the *Graphic Arts, Printing and Publishing Award 2010* ("the Modern Graphic Arts Award").

³⁷ Sub-clause 4.2(d)(viii)

453. Paragraph 4.2(f) of the exposure draft defines the scope of the pulp and paper sector in the following terms:

“(f) Pulp and paper sector

The manufacture, processing and supply of: pulp and recycled pulp; plastic materials where obtained from the wood and cooking chemicals derived from the manufacture, processing and supply of pulp and recycled pulp; paper, including paper board, strawboard, paper bags or any similar commodity, brown papers, copy paper, envelope grade paper, hardboard paper, kraft paper, linerboard, publication and printing papers, sackcraft, security papers, watermark papers, fruit trays, egg cartons, wine trays, paper towel, facial tissue, toilet tissue, paper napkins, printed tissue products (including printed and laminated) where printing and conversion occurs in conjunction with the processing of pulp for tissue manufacture.”
(Emphasis Added)

454. The emphasised passages within paragraph 4.2(f) overlap directly with the coverage of the Modern Graphic Arts Award as follows:

“4.5 Graphic arts, printing, publishing and associated industries and occupations means the following industries, parts of industries and occupations:

... ..

(h) paper making, paper working, calico and/or paper bag making;

(i) envelope making, stationery making and/or paper products working;

(j) ;

(k) cardboard box making, carton making (including the making of any kind of boxes and/or containers of paper and/or cardboard used alone or in combination with any other material or materials)”

455. Within the Timber ED, an attempt to resolve this overlap has been made by inserting the following exclusion within the award:

5.1 The award does not cover employers and employees covered by the following awards:

(a)

(b) Graphic Arts, Printing and Publishing Award 2010.

456. Ai Group submits that it is essential that this approach to resolving the issues of overlap between the Modern Graphic Arts Award and the pulp and paper coverage of the modern timber industry award not be endorsed by the Commission when it finally makes an award for this industry. In areas of overlap the modern timber industry award must not yield its coverage to the Modern Graphic Arts Award as such a result would dramatically elevate the safety net of conditions applicable to pulp and paper employees and substantially increase employer costs.
457. As Ai Group has argued in previous submissions concerning not only this industry but also the graphic arts industry, the *Graphic Arts – General – Award 2000*, which was utilised as the basis for conditions within the Modern Graphic Arts Award has some of the highest conditions of any federal award. It is imperative that these conditions not flow through to other sectors where they currently do not operate, given the huge cost increase that would result.
458. We submit that instead of inserting an exclusion within the modern timber industry award which ensures that the timber award yields coverage to the Modern Graphic Arts Award whenever there is overlap, the opposite should apply and an exclusion should be inserted into the Modern Graphic Arts Award which specifies that it shall not apply where the work is covered by the modern timber industry award.
459. We submit that to invert the operation of the exclusion as we propose is intuitively far more appropriate as the proposed timber industry award has only limited coverage of printing associated with paper/tissue manufacture. This therefore means that the Modern Graphic Arts Award continues to be an award of substantial application and so too does the modern timber industry award as it applies to the pulp and paper sector. This can be contrasted with the effect of the exclusion within the exposure draft which would render the pulp and paper sector within the award as a “rump”, with the vast majority of work in the sector being regulated by the Modern Graphic Arts Award.

Clause 16 and Schedule A – Classifications and classification definitions

460. The *Exposure Draft – Timber Industry Award 2010*, we submit, includes a classification structure which does not take sufficient account of work carried out in the pulp and paper industry. Ai Group is currently analysing this issue and hopes to be in a position to propose appropriate amendments to the Commission shortly.

CHAPTER 34 – TOURISM INDUSTRY (AM2008/59)

461. The Commission has issued the following exposure drafts for this sector:

- *Marine Tourism and Charter Vessels Award 2010*
- *Alpine Resorts Award 2010*

Marine Tourism and Charter Vessels Award 2010

462. As set out in earlier, in the section of this submission relating to the Maritime Industry, it is vital that *Marine Tourism and Charter Vessels Award 2010* not apply to contractors carrying out maintenance and other work covered by the Modern Manufacturing Award.

463. Ai Group submits that Clause 4 – Coverage, of the *Marine Tourism and Charter Vessels Award 2010* needs to include the following exclusion:

“This award does not cover employers and employees covered under the Manufacturing and Associated Industries and Occupations Award 2010”.

Alpine Resorts Award 2010

464. Importantly this modern award is drafted to only apply to employers who operate an alpine resort and their employees. Consequently, contractors covered by the Modern Manufacturing Award, some of whom carry out maintenance work at alpine resorts, would not be included.

CHAPTER 35 – TRAVEL INDUSTRY (AM2008/60)

465. The Commission has decided not to issue an exposure draft for this industry as nearly all of the employees in the industry are covered under other awards eg. clerical and retail awards. Ai Group supports this approach.

CHAPTER 36 – VEHICLE INDUSTRY (REPAIR, SERVICE AND RETAIL) (AM2008/61) & VEHICLE MANUFACTURING INDUSTRY (AM2008/62)

466. Throughout our various written and oral submissions relating to the modernisation of awards for the Vehicle Manufacturing Sector (“the VM Sector”) and the Vehicle Repair, Services and Retail Sector (“the RS&R Sector”), Ai Group has expressed serious concerns about overlap between any modern awards created for these sectors and the Modern Manufacturing Award which covers the manufacture of vehicles and components.
467. Ai Group has reviewed the terms of the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010* and clearly there is substantial overlap between this exposure draft and the Modern Manufacturing Award. This overlap has the potential to disrupt the existing industrial arrangements of hundreds of Ai Group member companies in addition to potentially creating increased costs and industrial disputation.
468. Accordingly, Ai Group has entered into discussions with the AMWU in an effort to devise an appropriate means of removing, or at the very least substantially reducing, the level of overlap between the two awards. Ai Group also intends further discussing the issue with the other major vehicle industry unions including the AWU, NUW and LHMU.
469. The latest discussion between Ai Group and the AMWU occurred on Friday 12 June 2009, and further discussions are scheduled between the parties on Monday 15 June and it is hoped that an agreed position will be able to be reached to resolve the overlap between the Modern Manufacturing Award and the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010*, which Ai Group and the AMWU would submit for the Commission’s consideration.

470. Ai Group has prepared a substantial Chapter of this submission which deals in detail with the exposure draft but, given the discussions which are underway between the parties, Ai Group is not in a position to finalise the Chapter today. We expect to be in a position to file our submissions on the vehicle industry exposure draft by Tuesday 16 June. We apologise for the delay and respectfully ask for the Commission's understanding, and for our vehicle industry materials to be considered despite them being filed a few days late.

CHAPTER 37 – COMMERCIAL TRAVELLERS (AM2008/63)

471. Ai Group has drafted a substantial Chapter of this submission which includes a detailed analysis of award / NAPSA conditions for commercial travellers and an amended exposure draft.
472. At the time of filing Ai Group was still checking a few relatively complex aspects of the information prepared.
473. Ai Group will file this Chapter and the associated **Annexure F** by Tuesday 16 June. We apologise for the delay and seek the Commission's understanding.