

**AWARD MODERNISATION
SUBMISSIONS AND DRAFT
AWARD PROVISIONS**

Stage 3 Industries / Occupations



6 March 2009

ARRANGEMENT

<i>Chapter No.</i>	<i>Title</i>	<i>Page</i>
1	Introduction	4
2	Matters of General Importance	7
3	Airline Operations	11
4	Airport Operations (Other than Retail)	25
5	Aluminium Industry	26
6	Cement and Concrete Products (including Asphalt and Bitumen)	32
7	Coal Treatment Industry	34
8	Defence Support	35
9	Electrical Power Industry	37
10	Entertainment and Broadcasting Industry (Other than Racing)	38
11	Food, Beverages and Tobacco Industry (Manufacturing)	40
12	Grocery Products Manufacture	43
13	Liquor and Accommodation Industry (Manufacturing)	45
14	Meat Industry	46
15	Oil and Gas Industry	47
16	Paper Products Industry	49
17	Pet Food Manufacturing	52
18	Pharmaceutical Industry	53
19	Private Transport Industry (Remaining Sectors)	55

20	Publishing Industry	58
21	Scientific Services (including Professional Engineers and Scientists)	61
22	Storage Services	68
23	Sugar Industry	72
24	Technical Services	75
25	Timber Industry	82
26	Vehicle Industry (Repair, Service and Retail)	85
27	Vehicle Manufacturing Industry	88
28	Wholesale and Retail Trade (Wholesale) and Commercial Travellers	90
Annexure A	Letter to Senate Committee	
Annexure B	Airline Operations and General Aviation Industry – Ground Operations – Award 2010	
Annexure C	Food, Beverage and Tobacco Manufacturing Award 2010	
Annexure D	Wine Industry Award 2010	
Annexure E	Poultry Industry Award 2010	
Annexure F	Meat Industries Award 2010	
Annexure G	Professional Engineers and Scientists – Private Sector – Award 2010	
Annexure H	Storage Services Award 2010	
Annexure I	Information Technology and Telecommunications (Professional Employees) Award 2010	
Annexure J	Commercial Travellers Award 2010	

AWARD MODERNISATION PRE-EXPOSURE DRAFT SUBMISSIONS

Stage 3 Industries / Occupations

6 March 2009

Chapter 1 - Introduction

1. The global economic crisis is deepening by the day and Australia is experiencing negative economic growth. Companies are experiencing falling demand for their products and services, reduced or negative profitability, and restricted access to finance. Unemployment levels are rising rapidly.
2. Some industry sectors, being dealt with during Stage 3 of modernisation, have suffered a recent devastating reduction in demand. For example, the vehicle manufacturing industry.
3. The economic situation is not expected to significantly improve for a considerable period of time. The likelihood is that modern awards will come into operation during a very difficult economic environment. Therefore, the Commission needs to take great care in avoiding imposing additional costs upon employers or reducing flexibility.
4. In the current environment higher costs or reduced flexibility will be at the expense of jobs. Jobs need to be the priority.
5. Stage 3 is the largest stage of award modernisation and Ai Group has a substantial interest in the modernisation of awards in the following industries:
 - Airline Operations

- Airport Operations (Other than Retail)
- Aluminium Industry
- Cement and Concrete Products (including Asphalt and Bitumen)
- Coal Treatment Industry
- Defence support
- Electrical Power Industry
- Entertainment and Broadcasting Industry (Other than Racing)
- Food, Beverages and Tobacco Industry (Manufacturing)
- Grocery Products Manufacture
- Liquor and Accommodation Industry (Manufacturing)
- Meat Industry
- Oil and Gas Industry
- Paper Products Industry
- Pet Food Manufacturing
- Pharmaceutical Industry
- Private Transport Industry (Remaining Sectors)
- Publishing Industry
- Scientific Services (Including Professional Engineers and Scientists)
- Storage Services
- Sugar Industry
- Technical Services
- Timber Industry
- Vehicle Industry (Repair, Service and Retail)
- Vehicle Manufacturing Industry
- Wholesale and Retail Trade (Wholesale) and Commercial Travellers

6. In respect of the following Stage 3 industries, Ai Group has not identified a major interest at this stage but this could change depending upon the scope of the awards which are drafted. We intend to review the exposure drafts and inform the Commission of any relevant views.

- Arts Administration
- Cemetery Operations
- Educational Services (Other than Higher Education)
- Journalism
- Licenced and Registered Clubs
- Maritime Industry
- Offshore Island Resorts
- Photographic Industry
- Port and Harbour Services
- Postal Services (Other than Australia Post)
- Public Transport Industry (Other than Rail)
- Tourism Industry
- Travel Industry

7. This submission is made on behalf of Ai Group and its affiliated organisation, the Engineering Employers Association, South Australia.

Chapter 2 – Matters of general importance

8. Ai Group has provided detailed submissions as part of its written and oral contentions during Stage 2 of award modernisation concerning matters of general importance. These submissions followed earlier contentions advanced during Stage 1 of award modernisation also relating to a series of general issues which we believed warranted consideration beyond an industry by industry level.
9. In respect of the views advocated by Ai Group during Stage 1 we acknowledge that the Full Bench in its December decision¹ made a range of determinations regarding the general issues which we pressed. Furthermore, in reference to Ai Group's most recent submissions relating to cross-industry matters we appreciate that these matters are still before the Full Bench and are awaiting a concluded view.
10. On this basis we do not seek to re-agitate any of the matters of general importance covered in previous submissions or proceedings. That being said, we have identified a few further areas of general importance which we believe warrant consideration. Whilst these contentions are made in the course of Stage 3 proceedings, we submit that they are issues which are of general relevance across all industries and Stages of the award modernisation process.

Modern awards applying to the exclusion of any other modern award

11. Ai Group has reviewed the terms of the awards created as part of Stage 1 of award modernisation and the exposure drafts developed for Stage 2 and has identified a potential area of confusion due to the general drafting approach

¹ Decision – Award Modernisation – 19 December 2008 [AIRCFB1000]

adopted in describing the “industry” covered by the modern award and its interaction with the “rule to deal with overlap” developed by the Full Bench.

12. The terms of the *General Retail Industry Award 2010* (“the Retail Award”) provide an appropriate reference point in relation to this issue as they conceptually reflect the dominant approach adopted by the Commission in drafting the coverage clauses of the modern awards. Clause 4 – Coverage of the Retail Award states:

“4.1 This industry award covers employers throughout Australia in the general retail industry and their employees in the classifications listed in clause 16 to the exclusion of any other modern award.”

4.2

4.3

4.4 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.”

Emphasis Added

13. The underlined passages reveal the area of potential confusion apprehended by Ai Group. Whilst clause 4.1 appears to exclude the ability for another modern award to cover the same work, clause 4.4 expressly contemplates that another award is capable of covering the work.
14. Such a situation we respectfully submit does not make the award ‘*simple to understand*’ or ‘*easy to apply*’².
15. Ai Group submits that whilst clearly clause 4.4 must be retained, as such a provision is expressly required by the Award Modernisation Request³, the

² *Workplace Relations Act 1996*; s576A(2)(a)

³ Consolidated Award Modernisation Request – 18 December 2008; para 9.

emphasised language within clause 4.1 does little to assist in defining the coverage of the award and creates confusion and uncertainty. Accordingly, we contend that it should be deleted from the coverage provisions within modern awards created by the Commission.

The powers of Fair Work Australia regarding ‘employee disadvantage’ created by Award Modernisation

16. On 26 February 2009, the Minister for Employment and Workplace Relations provided correspondence to the Chairman of the Senate Education, Employment and Workplace Relations Committee advising of the Government’s intentions regarding substantive aspects of the transitional and consequential legislation that will operate in conjunction with the *Fair Work Bill* (***Annexure A***).

17. Importantly, the correspondence noted that:

“Key elements of this legislation will include:

... ..

- *Provisions to ensure that an employee’s take home pay is not reduced as a result of the employee’s transition onto a modern award by allowing for Fair Work Australia to make orders to deal with any such matter;”*

18. Ai Group submits that articulation of this legislative intent carries substantial implications for the process of award modernisation and the manner in which the notions of ensuring no ‘*disadvantage (to) employees⁴*’ and ‘*increased costs for employers⁵*’ are reflected within the terms of modern awards.

⁴ Consolidated Award Modernisation Request – 18 December 2008; para 2(c)

⁵ Consolidated Award Modernisation Request – 18 December 2008; para 2(d)

19. Fair Work Australia will be provided with the legislative power to issue orders ensuring that each individual employee is not financially disadvantaged as a result of award modernisation but a similar power will apparently not be available to ensure that an individual employer does not suffer an increase in costs. Accordingly, Ai Group contends greater regard should be given by the Commission in ensuring that employer costs are not increased when setting the safety net within modern awards.

20. In this regard we also draw the Commission's attention to the submissions we have made both in Stage 2 proceedings⁶ and in the introduction to these submissions imploring the Commission to modernise awards with an awareness of the precarious economic circumstances presently confronting Australian businesses.

21. We submit, that given these factors and the Government's clear legislative intent to address "employee disadvantage" through alternate means, greater weight should be afforded to the objective of preventing increased employer costs as a result of award modernisation.

⁶ Ai Group submissions – Award Modernisation – 13 February 2009; at [1] – [2]

Chapter 3 – Airline Operations

22. This Chapter of Ai Group's submissions is also made on behalf of the Board of Airline Representatives of Australia (BARA).

23. Ai Group has a diverse membership in the aviation industry. We not only represent employers which operate international airlines (including both Australian and overseas airlines) but also employers which provide services to the aviation industry. These operations include:

- Manufacturing companies ;
- Freight and cargo companies;
- Engineering companies;
- Maintenance companies;
- Sales and product support organisations;
- Companies that offer the hire of helicopters for corporate and private clients;
- Distribution and sales branches of international companies;
- Training organisations and flying schools; and
- Supply chain companies.

24. In addition, BARA represents the vast majority of the international airline carriers using Australian airports. BARA members provide over 95% of international passenger flights to and from Australia.

25. Together, Ai Group and BARA represent 38 overseas airlines, including:

- Singapore Airlines
- Emirates Airlines
- Cathay Pacific Airways
- Japan Airlines

- Thai Airways International
- Air New Zealand
- British Airways
- Etihad Airways

26. Ai Group and BARA are well qualified to provide their views on award modernisation and the appropriate safety net for the aviation industry.

Nature of the aviation industry

27. The aviation industry is characterised by high levels of competition and sensitivities to cost exposure.

28. Greater competition and lower airfares have helped boost the number of air travellers in recent years as demonstrated by consecutive record annual total passenger movements from 2003–04 onwards.⁷

29. Despite rising fuel costs towards the end of the decade and subsequent reductions in some airline services, the number of passenger movements continues to rise and this increase is projected to continue into the future as described below. Total air passenger movements at all Australian airports are expected to increase at an average annual rate of 4.0% and to nearly double by 2025–26.⁸

30. At the same time, airlines are confronted with very difficult economic and cost pressures.

⁷ Bureau of Infrastructure, Transport and Regional Economics [BITRE], 2008, Avline 13, BITRE, Canberra ACT 1.

⁸ Ibid at 9

Industry economics and cost pressures

31. The following US quote is relevant:

“There is no tougher job in corporate America than running an airline: Despite the huge amounts of equity capital that have been injected into it, the industry, in aggregate, has posted a net loss since its birth after Kitty Hawk”.

- Warren Buffett, 1991 letter to Berkshire Hathaway Shareholders.

32. There is no material difference with the situation in Australia.

33. It is convenient, in the first instance, to consider the airlines as the biggest employers and end users of goods and services in the aviation industry.

34. To obtain the right balance between being a competitive airline yet remaining profitable is a perennial challenge.

35. Commercial aviation is a high-risk industry with very high fixed costs including very expensive aircraft, hundreds if not thousands of specialist employees, massive fuel bills and high landing fees. In recent years airlines have had to absorb or pass on increased security costs such as increased passenger and baggage screening passed on by airports as additional charges.⁹

36. Despite the challenging economics the airline industry is also an extremely competitive industry with a high risk of failure. For example since the turn of the millennium Australia has seen the collapse of Ansett in September 2001, at the time the country’s second largest domestic carrier, and the collapse of the short lived OzJet in March 2006.

⁹ Ibid at 1

37. The industry is highly regulated, especially in regards to safety. The cost of compliance is high and the penalties for breaches are punitive. In coming years, costs to airlines will almost inevitably increase with the introduction of further regulation via the Federal Government's carbon reduction scheme.
38. The industry is also particularly vulnerable to dramatic swings in demand and external shocks over which it has no control eg. terrorist attacks, economic downturns and disease epidemics such as SARS.
39. Airlines typically have mature and heavily unionised workforces and high superannuation costs. Huge investment is required to maintain and update fleet.¹⁰
40. There are obvious flow-on ramifications to other employers in the aviation industry which provide goods and services to airlines if the airlines themselves feel the brunt of adverse economic factors or on occasion depart the market.
41. It is for these reasons that Ai Group urges the Commission to give careful consideration to the formulation of the safety net for the Airline Operations Industry, in particular the notions that modern awards should provide for '*flexible, modern work practices*¹¹', '*promote national and international competitiveness*¹²' and '*the creation of jobs*¹³'.

¹⁰ Qantas media release 5 February 2009 announced an institutional placement of ordinary fully paid shares to raise \$500 million used in part to support the fleet renewal program.

¹¹ *Workplace Relations Act 1996*; s576A(1)(c)

¹² *Workplace Relations Act 1996*; s576B(2)(a)

¹³ *Workplace Relations Act 1996*; s576B(2)(a)

Proposed approach to award modernisation

42. Ai Group proposes that due to the diverse nature of the aviation and related industries, a combination of industry based modern awards and occupational awards is appropriate. Namely:
- a. The *Manufacturing and Associated Industries and Occupations Award 2010* (“the Modern Manufacturing Award”) to cover the scope of the *Aircraft Engineers (General Aviation) Industry Award 1999*);
 - b. An occupational award to cover pilots;
 - c. An occupational award to cover flight attendants; and
 - d. An industry award – the *Airline Operations and General Aviation Industry – Ground Operations – Award 2010*.
43. These various proposals are commented on in more detail below.

Aircraft Engineers (General Aviation) Industry Award 1999 and the Modern Manufacturing Award

44. Ai Group’s eligibility rule covers the aviation industry, and the *Metal, Engineering and Associated Industries Award 1998* 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.
45. Ai Group’s eligibility rule and the scope of the *Metal, Engineering and Associated Industries Award 1998*, 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.

46. 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 *Metal, Engineering and Associated Industry Award 1998* applies widely to the repair and maintenance of aircrafts and components. The following extracts are relevant:

"[29] In 1938 the Commonwealth Court of Conciliation and Arbitration made an award applying to named respondents in relation to "the building and manufacture of aircraft and parts thereof and aircraft engines" throughout Australia, and to "the repair and maintenance of aircraft and other operations connected with air services" but only in the mainland capital cities. Appropriate classifications were included which were also to be found in the version of the Metal Industries Award then in force. The award contained the following exclusion in clause 26:

"(c) an employer bound by this award shall be exempt from every other award of this Court in relation to employees engaged in the industry or industries to which this award applies."

[30] A new Metal Industries Award was made in 1941 and two matters were pointed to as significant. The first was that the classifications of aero mechanic were no longer included and, subject to some exceptions, the list of employer respondents no longer contained businesses clearly identifiable as operating in the airline industry.

[31] Based on these facts it is contended that the Metal Industries Award ceased to have application to the aircraft industry. Reliance was also placed on adjustments to what might be referred to as the Aircraft Industry Award over the years based on circumstances in the aircraft industry. It is accepted that this occurred and there is no need to set out that history of separate award coverage.

[32] Seen in light of the establishment and development of a separate aircraft industry award, it was submitted that the words in the incidence clause of the Metal Industries Award must be read so as not to include work in the aircraft industry. With respect to those who have found otherwise, we do not agree. There are a number of reasons.

[33] It is clear enough that in 1938 and the years that followed the relevant parties decided that it was appropriate to have a separate award for the aircraft industry. The method chosen

to bring this about was to identify the relevant employers and to make them respondent to the new award, at the same time excluding the operation of other awards binding on those employers in relation to the aircraft industry. No exclusion was put into the Metal Industries Award. Had it been, the position would have been clear cut. The fact that no exclusion was included is significant because that would be the natural course if it was intended that the award was not to apply in the aircraft industry. Indeed, the Metal Industries Award contains an explicit mechanism for the exclusion of industries from its coverage, namely the specification of an industry in Schedule B.

[34] The absence of an exclusion in the Metal Industries Award takes on an even greater significance when it is appreciated that an exclusion was included in the first Aircraft Industry Award, as we have noted above.

[35] There is no necessary connection between the establishment of a separate award for the aircraft industry and a reduction in the scope of the Metal Industries Award. Those concerned may have thought it inadvisable to put an exclusion in the Metal Industries Award and run the risk that an employer in the aircraft industry who had not been included in the Aircraft Industry Award would fall out of award coverage altogether.

[36] Finally, there is no clear statement by this Commission or any of its predecessors that it intended to exclude the aviation industry from the scope of the coverage clause in the Metal Industries Award. That award occupies a special place in the federal system. It covers, and has always been intended to cover, respondents involved in a very broad range of industries and it is the key award for the purposes of establishing relativities between awards. We would expect any reduction in the reach of that award to be a matter that would be addressed explicitly. The structure of the coverage clause supports that view..."

47. The Stage 1 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*”.

48. 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.

49. Ai Group supports the retention of such work under the Modern Manufacturing Award and understands that this approach is widely supported by companies and unions operating within the aviation industry.
50. Clearly the broad skills-based classification structure in the Modern Manufacturing Award would cover the work of aircraft engineers and other classifications engaged in the repair and maintenance of aircraft.
51. To date the Commission has been presented with a significant number of proposals by Ai Group and the unions to include sector specific conditions in the Modern Manufacturing Award (eg. Ai Group has argued for the retention of the lower penalty rates in the *Rubber, Plastic and Cablemaking Industry – General – Award 1998*) but these have been largely rejected by the Commission in the interests of creating an award that is ‘*simple to understand*’ and ‘*easy to apply*’¹⁴.
52. In a few special cases, sector specific allowances have been included in the Modern Manufacturing Award, eg. the carbon black allowance from the Rubber, Plastic and Cablemaking Industry Award.
53. If the Commission decides to include any allowance/s or specific provisions for aircraft engineers in the Modern Manufacturing Award, it is essential that such provisions only apply to the employees who are currently receiving such entitlements and do not apply to employees of companies applying the terms of the *Metal, Engineering and Associated Industries Award 1998*.
54. Also, if the Commission decides to include allowance/s in the Award for “licenced aircraft engineers” then it is essential that an appropriate definition of “licence” be included which refers to licences issued by the Civil Aviation Safety Authority (CASA) under the *Civil Aviation Regulations*. Unless this is done, interpretation problems could arise in respect of other certifications

¹⁴ *Workplace Relations Act 1996*; s576A(2)(a)

possessed by employees engaged in manufacturing, repairing and maintaining aircrafts (eg. electrical licences, welding tickets etc).

An occupational award to cover pilots

55. Ai Group submits that there should be a separate occupational award for pilots. The industrial coverage of pilots has historically been distinct and the terms and conditions of pilots are vastly different to the terms and conditions of other industry participants.

56. It is important that the Commission have regard to the different contexts within which pilots operate in the broader aviation industry. There are numerous contexts in which pilots may be employed. By way of example, in addition to many airlines, Ai Group's members which employ pilots include:

- Manufacturers of aircraft;
- A company that services aircraft engines; and
- Entities of varying sizes that may have all or part of their business dedicated to the provision of privately chartered flight services.

57. These operators are variously covered by the *Helicopter Pilots (General Aviation) Award 1999* ("Helicopter Pilots Award") and/or the *Pilots' (General Aviation) Award 1998* ("Pilots Award"). Certain Ai Group members are also covered by the *Aerial Agricultural Aviation Pilots Award 1999*.

58. Some key terms and conditions of employment which are features of the Pilots Award and Helicopter Pilots Award, and which on our assessment are important to retain within any modern award, include:

- A co-pilot re-classification clause (or similar) which allows for proportionate payments of the commander pilot rate;

- Roster, travelling and working away arrangements that allow for a high degree of flexibility and which are relatively non-prescriptive;
- With respect to employers with employees currently covered by the Helicopter Pilots Award, a distinction between pilots in on-shore hydrocarbon operations and pilots in off-shore hydrocarbon, MPT and SAR operations for the purpose of rates of pay, salary additions, allowances, hours of duty and travel;
- Annual salaries set at levels comparable to those under the existing awards, and which are based on aircraft classification/size, responsibility and qualifications/experience; and
- Additions to salary and allowances being kept to the number and value contained in the existing award.

59. It is essential that any occupational award for pilots is sufficiently flexible to accommodate employment in each of these contexts, without increasing employers' costs or imposing rigid terms and conditions. In particular, it is submitted that:

- Increasing pilot salary levels (including allowances and salary additions) within any modern award to the level that may typically apply in, for example, larger commercial operations will have a deleterious impact on smaller operations which employ pilots, including operations where the work of pilots is incidental to the core business. Such an effect would be both harmful to industry and contrary to the objects of award modernisation.
- Imposing any prescriptive requirements with respect to rosters and travel would, given the nature of the work undertaken by pilots, significantly impede the operations of such businesses.

An operational award to cover flight attendants

60. Similarly, it is our submission that there should be a separate occupational award for flight attendants. The industrial coverage of flight attendants has, historically been distinct and the terms and conditions are vastly different to the terms and conditions of other industry participants. There are also many specific, occupational requirements relating to the terms and conditions of flight attendants that are not appropriately dealt with in an industry award, and deserving of separate coverage in an occupational award.
61. Based on the Commission's research, it appears that there are no federal industry or occupational awards in existence that cover flight attendants.

The Proposed *Airline Operations and General Aviation Industry – Ground Operations – Award 2010*

62. Ai Group / BARA in conjunction with Qantas, represented by Blake Dawson, have created a draft award (***Attachment B***).
63. The award is the culmination of a joint consultative process, and represents, a largely agreed position. The Commission will note that within the document there are some areas of difference between the parties. These areas are elaborated on below. The differences however are limited in nature and we submit that the majority of the award represents a jointly agreed approach.

Coverage

64. A pragmatic approach to drafting the *Airline Operations and General Aviation Industry – Ground Operations – Award 2010* was taken and its scope is intended to reflect the nature and industrial coverage of the industry.

65. The Commission has identified the following federal awards to be dealt with in the airline operations sector:

- *Aircraft Engineers (General Aviation) Award 1999;*
- *Airline Operations (Transport Workers') Award 1998;*
- *Airline Operations – Clerical and Administrative Award 1999;*
- *Overseas Airlines (Interim) Award 1999 (Overseas Airlines Award); and*
- *Airline Operations (Domestic Airlines) Award 2000.*

66. Clause 4.1 of our proposed *Airline Operations and General Aviation Industry – Ground Operations – Award 2010* states that the Award is intended to cover:

“Employers in the Airline Operations Industry or the General Aviation Industry in respect of the following:

- (i) Ground handling of passengers, baggage, airline freight, in-flight catering and in-flight supplies;*
- (ii) Ramp and cleaning services;*
- (iii) Clerical, administrative and support functions including check-in, customer service, sales and airline ticket reservations; and*
- (iv) Food preparation in a facility engaged wholly in in-flight catering,*

and all their employees throughout Australia in the classifications listed in Schedule A to the exclusion of any other modern award.¹⁵”

67. This provision is intended to encompass the scope of the following Awards identified by the Commission within this sector:

- *Airline Operations (Transport Workers') Award 1998;*

¹⁵ Clause 4.1 of the Qantas and Ai Group Draft *Airline Operations and General Aviation Industry – Ground Operations Award 2010*

- *Airline Operations – Clerical and Administrative Award 1999*;
- *Overseas Airlines (Interim) Award 1999 (Overseas Airlines Award)*; and
- *Airline Operations (Domestic Airlines) Award 2000*.

Areas of difference

68. Given the diverse nature of the industry, there are some points of difference in the respective positions of Qantas and Ai Group. These are noted in the draft award, and will be elaborated upon in the Consultation Hearings in Melbourne on 19 and 20 March.

69. Generally, the areas of difference relate to the following clauses:

- 9.2 – The facilitative provisions (necessary minor amendments for consistency with hours provisions)
- 12.4 – Part time employment (necessary minor amendment for consistency with hours provisions)
- 21 – Hours
- 22 – Rostering
- 23.3 – Crib break
- 24 – Shift work
- 27 – Higher duties allowance
- 29 – Personal / carer’s leave evidence requirements

70. Predominantly, Ai Group has sought to model the award upon the terms of the *Overseas Airlines Award 1999*.

Classification structure

71. With regards to the classification structure, Ai Group is still in the process of finalising what it sees as an appropriate classification structure for the *Airline Operations and General Aviation Industry – Ground Operations – Award 2010*.

72. Ai Group will be in a position to advance its proposed classification structure prior to the public consultation hearings scheduled for 19 and 20 March 2009.

Exemption provisions

73. We draw the Commission's attention to the following clauses in the current *Overseas Airlines Award 1999*:

- Clause 21.1.6 – regarding the maximum ordinary hourly rate for the calculation of overtime;
- Clause 21.5.1 – overtime will not be paid to employees receiving salaries in excess of the maximum for Band E;
- Clause 23.3.4 – annual leave loading will not apply to employees in receipt of salary in excess of the maximum of Band E; and
- Clause 19.3.7 – regarding the maximum ordinary hourly rate for the calculation of shift loadings.

74. On the basis that the classification structure is yet to be determined, we have not sought to include these in the draft *Airline Operations and General Aviation Industry – Ground Operations – Award 2010*. Importantly however, this omission should not be presumed as a concession that these clauses are inappropriate for inclusion within the Award.

75. Any exemption provision will need to be linked to the classification structure in the Award. Accordingly, we intend to give further consideration to the terms and level of any exemption provision within the *Airline Operations and General Aviation Industry – Ground Operations – Award 2010* in the context of finalising our proposed classification arrangements.

76. We will inform the Commission of our views on this issue prior to the consultation proceedings.

Chapter 4 – Airport Operations (other than Retail)

77. The Commission has identified a single award as being relevant to award modernisation for the Airport Operations (Other than Retail) Sector and that is the *Airport Employees Award 1999*.
78. Ai Group has reviewed the coverage and parties bound provisions of this award and understands that it covers the operation and maintenance of airports and applies to various airport corporations throughout Australia, such as the Sydney Airport Corporation.
79. On this basis, Ai Group has not identified an interest in the Airport Operations Sector at this time and makes no submissions in relation to the appropriate terms of an exposure draft. We would however seek to reserve our rights to provide further submissions at a later stage should the need arise.

Chapter 5 – Aluminium Industry

80. A very large number of Ai Group members manufacture products from aluminum, including (to name a few):
- Cans and drums;
 - Windows;
 - Pipes;
 - Castings;
 - Automotive components (eg. engine parts);
 - Hardware products;
 - Building products;
 - Boats; and
 - Guttering.
81. Over the years aluminium has replaced steel in the manufacture of numerous products under the *Metal, Engineering and Associated Industries Award 1998* (eg. automotive components, cans).
82. Very commonly the same company will manufacture products out of both aluminium and steel (or a combination of the two) depending upon their customers' requirements.
83. As part of the manufacturing process, aluminium is typically cut, bent, welded, melted, rolled and/or processed in numerous other ways to manufacture products.
84. It is essential that any Aluminium Industry Award not intrude upon the coverage of the Modern Manufacturing Award.

85. Ai Group has held discussions with representatives from the major aluminium industry employer parties and understands that they are seeking the following coverage clause for a modern award for the Aluminium Industry:

“Clause 4 Coverage

4.1 Coverage

- (a) *This award covers:*
- (1) *employers who are engaged in the aluminium industry in respect of work by their employees in the classification in this award; and*
 - (2) *their employees engaged in a classification in this award whilst they are performing work in or in relation to the aluminium industry.*
- (b) *For the purposes of this clause, **aluminium industry** means: bauxite operations, and the treatment of bauxite, alumina, aluminium or any of their derivatives, including all tasks and activities associated with:*
- (1) *bauxite operations, including resource drilling, extraction, rehabilitation work and treatment of bauxite;*
 - (2) *the processing, refining, smelting, casting and rolling operations;*
 - (3) *the servicing, maintaining (including mechanical, electrical, fabricating or engineering) or repairing of works, plant and equipment used in the activities set out in clauses 4(b)(1) to 4(b)(2) by employees principally employed to perform work on an ongoing basis at a location where the activities described above are being performed;*
 - (4) *the provision of temporary labour services used in the activities set out in clauses 4(b)(1) to 4(b)(3) (inclusive), by temporary labour personnel principally engaged to perform work at a location where the activities described above are being performed.*
- (c) *This award applies to the exclusion of any other modern award.*
- (d) *Where an Employer is covered by more than one award, an Employee of that Employer is covered by the award classification which is most appropriate to the work performed by the Employee and to the environment in which the Employee normally performs the work.*

4.2 Exclusions

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) *tertiary manufacturing, including all fabrication and extrusion, of aluminium products;*
 - (2) *catering, accommodation, cleaning and incidental services (unless employed by an aluminium industry Employer or a related company);*
 - (3) *clerical or administrative staff;*
 - (4) *staff employees engaged in managerial, professional, technical, scientific and supervisory positions;*
 - (5) *security services (unless employed by an aluminium industry Employer or a related company);*
 - (6) *Persons employed in the head office or town office of an employer.*

86. Ai Group opposes the manner in which the coverage provision has been drafted and contends that in its current form it could encroach upon the coverage of the Modern Manufacturing Award and potentially increase costs for employers.

87. Unless appropriate exclusions are inserted within the proposed Aluminium Award the operation of the Modern Manufacturing Award may be disturbed or overridden.

88. We submit that the coverage provision of the proposed Aluminium Industry Award should be amended as follows:

“Clause 4 Coverage

4.1 Coverage

(a) This award covers:

- (1) employers who are engaged in the aluminium industry in respect of work by their employees in the classification in this award; and
- (2) their employees engaged in a classification in this award whilst they are performing work in or in relation to the aluminium industry.

(b) For the purposes of this clause, **aluminium industry** means: bauxite operations, and the treatment of bauxite, alumina, aluminium or any of their derivatives, including all tasks and activities associated with:

- (1) bauxite operations, including resource drilling, extraction, rehabilitation work and treatment of bauxite;
- (2) the processing, refining, smelting, casting and rolling operations performed in connection with the activities described in 4.1(b)(1) and the treatment of bauxite, alumina, aluminium or any of their derivatives;
- (3) the servicing, maintaining (including mechanical, electrical, fabricating or engineering) or repairing of works, plant and equipment used in the activities set out in clauses 4.1(b)(1) to 4.1(b)(2) by employees principally employed to perform work on an ongoing basis at a location where the activities described above are being performed;
- (4) the provision of temporary labour services used in the activities set out in clauses 4.1(b)(1) to 4.1(b)(3) (inclusive), by temporary labour personnel principally engaged to perform work at a location where the activities described above are being performed.

(c) This award applies to the exclusion of any other modern award.

4.2 Exclusions

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) *tertiary manufacturing, including all fabrication and extrusion, of aluminium products;*
 - (2) *catering, accommodation, cleaning and incidental services (unless employed by an aluminium industry Employer or a related company);*
 - (3) *clerical or administrative staff;*
 - (4) *staff employees engaged in managerial, professional, technical, scientific and supervisory positions;*
 - (5) *security services (unless employed by an aluminium industry Employer or a related company);*
 - (6) *Persons employed in the head office or town office of an employer.*
 - (7) *melting and smelting of metals in connection with the manufacturing activities covered by the Manufacturing and Associated Industries and Occupations Award 2010;*
- (d) *employers in respect of their operations or activities covered by the Manufacturing and Associated Industries and Occupations Award 2010, except for work covered by 4.1(b)(3) above.*

4.3 *Where an Employer is covered by more than one award, an Employee of that Employer is covered by the award classification which is most appropriate to the work performed by the Employee and to the environment in which the Employee normally performs the work."*

89. The language included within our revised provision includes provisions developed by the Commission in relation to the Mining Industry. We submit that the operational circumstances of the Mining Industry are closely aligned with the extraction, processing, smelting, treatment and associated maintenance requirements of the Aluminium Industry.

90. It is, in our submission, entirely appropriate for the modern Aluminium Industry Award to contain exemptions for 'melting and smelting' in connection with manufacturing activities, for maintenance contractors servicing the Aluminium

Industry, and for other work legitimately covered by the Modern Manufacturing Award.

91. The exclusions contained within sub-clauses 4.2(c)(6) and 4.2(e) of our revised coverage are similar to the exclusions contained within the *Mining Industry Award 2010*¹⁶ (“the Mining Award”). These exclusions were inserted into the Mining Award in response to specific concerns raised by Ai Group in Stage 1 of modernisation¹⁷.

92. Finally, it is our understanding that the representatives from the major aluminium industry employer parties are seeking an exclusion within the Modern Manufacturing Award to ensure consistency between the boundaries of the Aluminium Industry Award and the Modern Manufacturing Award in relation to melting and smelting of metals. Ai Group is not opposed to this course of action if there is an appropriate exclusion inserted into the Aluminium Industry Award for work legitimately carried out under the Manufacturing Award.

¹⁶ See Clause 4.2(c)(xii) and 4.2(e)

¹⁷ Ai group submission – Award Modernisation - 10 October 2008; at [346] – [359]

Chapter 6 – Cement and Concrete Products (including Asphalt and Bitumen)

93. Ai Group is not opposed to the Cement and Concrete Products (Including Asphalt and Bitumen) Sector being considered as a stand alone industry for the purposes of award modernisation.
94. Should the Commission decide not to create a separate award, Ai Group proposes that the manufacture of cement, asphalt and bitumen, together with products made from these materials (eg. concrete products) be included within the coverage of the Modern Manufacturing Award.
95. The Stage 1 Modern Manufacturing Award already includes the manufacture of a large number of materials eg. rubber, plastic, powders, resins and glue, together with products made from these materials. The Stage 2 exposure draft of the Award includes additional materials such as paint.
96. The award conditions in the Cement and Concrete Products Sector align more closely with those in manufacturing awards, rather than construction awards. Accordingly, the sector would fit comfortably within the Modern Manufacturing Award.
97. Ai Group submits that the Cement and Concrete Products Sector should not be incorporated within awards covering the building and construction industry for the following reasons:
- Employment patterns in the Cement and Concrete Products Sector are similar to those in manufacturing in that such employment is permanent in nature compared with for example the project based employment associated with the construction industry.

- The Cement and Concrete Products Sector has a separate history of industrial regulation to the building and/or construction industry and terms and conditions appropriate for the sector have evolved over time and are very different to terms and conditions to the building and construction industry. To attempt to include the Cement and Concrete Products Sector in the building and/or construction industry would upset what are largely settled industrial arrangements and would likely create additional costs for employers as well as instability and uncertainty in regards to vital matters including but not limited to employment conditions and union coverage.
- There is a generally accepted dichotomy between the building and/or construction industry and those who service or supply it. For example the National Code of Practice for the Construction Industry and the Implementation Guidelines identify premixed concrete companies as a material supplier to the building and/or construction industry and not in the building and/or construction industry itself.

Chapter 7 – Coal Treatment Industry

98. The Commission has only identified one NAPSA as being of relevance to the Coal Treatment Industry (ie. the *NSW Coal Superintending Samplers (State) Award*).
99. Ai Group is not convinced that a separate modern award should be made for the Coal Treatment Industry.
100. The *Black Coal Mining Industry Award 2010* covers a relatively wide range of processes.
101. Technical workers in the Coal Treatment Industry may be adequately covered by the occupational coverage of the Stage 1 Modern Manufacturing Award (see paragraph 4.2(c)(ii)).
102. Also, clerical work in the industry would appear to be adequately covered under the *Clerks – Private Sector Award 2010*.

Chapter 8 – Defence Support

103. Ai Group has a major interest in the defence industry. For example, Ai Group's Defence Council is the leading industry voice for companies involved in the defence industry. The Council comprises the CEOs of Australia's leading defence industry companies.
104. Ai Group has a large number of member companies which provide products or services to the defence industry, including the manufacture, repair and maintenance of defence equipment, planes, ships, buildings, weapons and systems. Many of these companies are bound by the *Metal, Engineering and Associated Industries Award 1998*.
105. Ai Group has reviewed the awards identified by the Commission as being relevant for the Defence Support Sector and it is apparent that various major organisations in the Sector have enterprise awards. In fact, there are no federal industry awards listed and only one industry NAPSA (being the *QLD Grounds Staff – Defence Force Contractors Award – Southern Division 2004*).
106. Some of the enterprise awards have clearly been modelled on the Metal Industry Award.
107. The Stage 1 Modern Manufacturing Award covers the manufacture, repair, refurbishment and maintenance of marine vessels and components, aircraft and components, and numerous other products and pieces of equipment used in the defence industry.
108. Ai Group is not convinced at this stage that a stand alone modern award is warranted for the Defence Support Sector. It may be that employees providing defence support services are adequately covered by the modern awards

applicable to the type of work carried out, eg. manufacturing, engineering, cleaning, carpentry, electrical work.

109. Many companies which provide defence support services are contractors which service a number of industries.
110. In the event the Commission decides to create a modern award for the Defence Support Sector, Ai Group submits that it is necessary for the award to contain an exemption for work covered by the Modern Manufacturing Award.

Chapter 9 – Electrical Power Industry

111. Ai Group (jointly with Blake Dawson) is representing the National Employer Group of the Electrical Power Industry. A draft award and submissions have been filed separately.

Chapter 10 – Entertainment and Broadcasting Industry

112. On review of the awards and NAPSAs identified by the Commission for the Industry of Entertainment and Broadcasting it is apparent that the industry is one of considerable breadth. As an indication of this breadth it can be seen that it represents a sector that not only includes such occupations as actors, musicians and athletes but furthermore can stretch to encompass industries such as tenpin bowling and ticketing agencies.
113. Ai Group has a number of members, primarily in the television industry and commercial radio industry, which may be affected by the terms of modern awards created for the Entertainment and Broadcasting Industry. The impact, however, will ultimately be determined by the manner in which the various aspects of the industry are sub-divided and the award conditions which the Commission drafts for such sectors. Accordingly, with the exception of one matter, Ai Group would seek to reserve its position on award modernisation in the Entertainment and Broadcasting pending publication of exposure draft awards by the Commission.
114. The one matter which Ai Group wishes to make submissions on at this time is relates to the inclusion of the *Radio and Television Employees' Award (WA NAPSA)* ("the WA Radio Award") within the list of indicative awards for the industry.
115. Ai Group submits that the WA Radio Award has been incorrectly allocated to the Entertainment and Broadcasting Industry, and that its inclusion is presumably as a result of its title and not due to an analysis of the coverage of the Award.

116. Ai Group contends that this award is not an award that can be characterised in the same manner as the other ‘entertainment and broadcasting’ awards that are reflected within the Commission’s indicative list of awards for this industry. Instead it is an award that primarily relates to the maintenance and repair of radios and televisions.

117. Clause 3 – Area and Scope of the Award states that the Award will apply to employees:

“employed by the respondents in connection with the making, installing, repairing and altering, assembling, testing, aligning, fault locating, rewinding and rewiring radio machines, instruments or other apparatus (including public address and background music systems, tape recorders, stereo and hi-fidelity amplifiers, electronic musical instruments and electronic amusement machines) and television machines, instruments or other apparatus.”

118. Ai Group submits that the appropriate modern award to cover work of this type is not an entertainment or broadcasting industry award but rather the Modern Manufacturing Award. Indeed, Ai Group has sought that the equivalent federal award, the *Television, Radio and Electronics Service Industry Award 1998* (to which Ai Group is a party) also be absorbed into the Modern Manufacturing Award for similar reasons.¹⁸

119. We contend that such rationalisation could occur with little modification to the scope of the Modern Manufacturing Award as it already covers repair, maintenance and fault finding of a broad range of electrical and electronic apparatus.¹⁹ Our proposed rewording of the coverage provisions of the Modern Manufacturing Award to encompass the scope of the federal *Television, Radio and Electronics Service Industry Award 1998* are located at paragraph [336] of our submissions of 13 February 2009 regarding Stage 2 of award modernisation.

¹⁸ Ai Group submissions – Award Modernisation – 13 February 2009; at [329] – [336]

¹⁹ See Clause 4.2(a)(iii) and 4.3(k) of the *Manufacturing and Associated Industries and Occupations Award 2010*.

Chapter 11 – Food, Beverage and Tobacco Industry (Manufacturing)

120. In deciding how to consolidate the existing array of awards and NAPSAs covering the Food, Beverage and Tobacco Industry (Manufacturing), Ai Group has come to the view that the following awards should be created by the Commission:

- *Food, Beverage and Tobacco Manufacturing Industry Award 2010;*
- *Wine Industry Award 2010;*
- *Poultry Industry Award 2010;*
- *Meat Industries Award 2010* (as referred to in Chapter 14 – Meat Industry, of this submission).

121. Accordingly, Ai Group has drafted a *Food, Beverage & Tobacco Manufacturing Industry Award 2010 (Annexure C)*, a *Wine Industry Award 2010 (Annexure D)* and a *Poultry Industry Award 2010 (Annexure E)*.

122. The following comments seek to outline the rationale that underpins our subdivision of the industry into four groups as outlined above. We intend to make further submissions in the pre-drafting consultations and subsequent to the release of exposure drafts for this industry.

Food, beverage and tobacco manufacturing industry

123. The proposed *Food, Beverage and Tobacco Manufacturing Industry Award 2010* incorporates awards covering the following sectors:

- Food Preserving
- Beverages

- Tobacco
- Grocery products
- Confectionery
- Butter factories
- Milk
- Aerated waters
- Brewing
- Baking
- Milling
- Ice-cream
- Frozen goods
- Biscuit
- Pastry cooking
- Ice making
- Pet food

124. In developing the terms of our proposed *Food, Beverage and Tobacco Manufacturing Industry Award 2010*, Ai Group has largely based the provisions on the Modern Manufacturing Award.

125. That being said, there are some important differences in this industry which need to be maintained and which we have reflected in the draft award including, a wider span of ordinary hours (to cover activities such as baking), short-term and seasonal employees and a more industry specific classification structure.

126. Ai Group submits that in modernising an award for the food processing industry it is imperative that the characteristics of the industry are kept foremost in mind. Most importantly this includes the reality that seven day a week supermarket / shop trading hours mean that most food companies are required to provide food and beverage products seven days a week.

127. Due to the perishable nature of many food and beverage products, the changing volume levels dependent on customer demands, and the seasonal nature of some products, the industry cannot limit its operations to Monday to Friday. Therefore, in developing a modern award for the industry the Commission must carefully consider the cost implications for work outside day work on Monday to Friday.
128. Ai Group has considered these and other important industry issues in developing the draft award. The terms of the proposed award consolidate terms from the existing awards and NAPSAs in the sector.

Wine industry

129. In relation to the wine industry, the Wine Industry Association, the AWU, the LHMU and Ai Group agree that a separate modern award should be drafted due to the vertically integrated nature of this industry. The industry encompasses wine grape growing, through to wine making, through to cellar door sales. This industry scope currently exists in the federal *Wine Industry (AWU) Award 1999* and should be maintained.
130. A draft award has been developed by the parties referred to above and is included as ***Annexure D***.

Poultry

131. A *Poultry Industry Award 2010* has been developed because the type of processing, classifications, nature of the work, and hours of work arrangements are in Ai Group's view too different to other food processing awards to be combined. The draft award is set out in ***Annexure E***.

Chapter 12 – Grocery Products Manufacture

132. Ai Group does not believe that the creation of a stand alone award exclusively for the Grocery Products Manufacturing Industry would result in the achievement of a range of objectives for award modernisation including:

- Reducing the regulatory burden on employers²⁰;
- Reducing the number of awards that operate in the system²¹;
- Ensuring that modern awards are simple to understand and easy to apply²²; and
- Removing as far as possible, overlap between modern awards²³.

133. In reviewing the terms of the primary federal award for the industry – the *Grocery Products Manufacture – Manufacturing Grocers Award 1996* (“the Grocers Award”) – it is apparent that the coverage of the award can be split into two broad categories.

134. In relation to the aspects of the Award that relate to food or food products²⁴ we submit that it is appropriate to include this part of industry within the coverage of a single food processing and manufacturing award in the terms reflected in Ai Group’s proposed *Food, Beverage and Tobacco Manufacturing Industry Award 2010*. In this regard we refer the Commission to our submissions found at Chapter 11.

135. Where the Grocers Award relates to the manufacture and preparation of items which are not food or food products, these can be appropriately covered by the terms of the Modern Manufacturing Award. The items that fall within this category are:

²⁰ *Workplace Relations Act 1996*; s576A(1)(a)

²¹ *Workplace Relations Act 1996*; s576B(2)(d)

²² *Workplace Relations Act 1996*; s576A(1)(a)

²³ Consolidated Award Modernisation Request – 18 December 2008; at para 9.

²⁴ See Clause 6.1.5 and 6.1.7

- Candles²⁵;
- Soap, soap powders and extracts, soda²⁶; and
- 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 vaseline²⁷.

136. Products and substances identified above are already potentially covered by the Stage 2 exposure draft of the Modern Manufacturing Award. Paragraph 4.2(a)(i) of the award states that the award applies to “*any products...made from, or containing, the materials or substances set out in clause 4.3*”. Clause 4.3(aa) refers to ‘*chemicals, alkalis and all processes involving chemical synthesis*’. This descriptor was derived from the *Artificial Fertilizer’s and Chemical Industry Award 2001*.

²⁵ See Clause 6.1.1

²⁶ See Clause 6.1.2

²⁷ See Clause 6.1.4

Chapter 13 – Liquor and Accommodation Industry (Manufacturing)

137. Ai Group does not believe that the creation of a stand alone award exclusively for the Liquor and Accommodation (Manufacturing) Industry would result in the achievement of a range of objectives for award modernisation including:

- Reducing the regulatory burden on employers²⁸;
- Reducing the number of awards that operate in the system²⁹;
- Ensuring that modern awards are simple to understand and easy to apply³⁰; and
- Removing as far as possible, overlap between modern awards³¹.

138. We submit that it is appropriate to include this industry within the coverage of a single food processing and manufacturing award in the terms reflected in Ai Group's proposed *Food, Beverage and Tobacco Manufacturing Industry Award 2010*. In this regard we refer the Commission to our submissions found at Chapter 11 relating to this proposed award.

²⁸ *Workplace Relations Act 1996*; s576A(1)(a)

²⁹ *Workplace Relations Act 1996*; s576B(2)(d)

³⁰ *Workplace Relations Act 1996*; s576A(1)(a)

³¹ Consolidated Award Modernisation Request – 18 December 2008; at para 9.

Chapter 14 – Meat Industry

139. Ai Group has developed a *Meat Industries Award 2010* to cover meat processing and smallgoods manufacturing. The Award consolidates terms from the existing awards and NAPSAs. The award is included as ***Annexure F***.
140. We submit that a separate award should be developed for butchers and retail operations.

Chapter 15 – Oil and Gas Industry

141. Many Ai Group member companies operate in the oil and gas industry.
142. Ai Group understands that groups of employers in the industry have prepared, and will submit to the Commission:
- A draft modern award for the hydrocarbon industry (eg. off-shore drilling for oil and gas); and
 - A downstream oil / gas industry award (eg. oil refineries).
143. Ai Group intends to consider the terms of the above draft awards, as submitted to the Commission, as well as any drafts prepared by other parties, and advise the Commission of its views.
144. In the meantime, Ai Group wishes to inform the Commission of its position on the following important issues:
- The manufacture of industrial gases has for many decades been carried out under the Metal Industry Award (refer to item 30 in Schedule A of the existing award). This work is specifically referred to in paragraph 4.3(e) in the coverage clause of the Stage 1 Modern Manufacturing Award and Ai Group opposes any change to award coverage for its member companies (eg. BOC Gases) in this industry.
 - Ai Group has a large membership in the Vehicle Industry (Repair, Service and Retail Industry), including many service stations which are currently covered under the *Vehicle Industry - Repair, Services and Retail Award 2002*. Ai Group submits that service stations should be covered under a modern *Vehicle Industry – Repair Services and Retail – Award 2010*, as proposed in Chapter 26 of this submission.

- Many maintenance contractors which work in the oil and gas industry (both on and off-shore), carry out such work under the *Metal, Engineering and Associated Industry Award 1998* and/or the *National Metal and Engineering On-site Construction Industry Award 2002*. Any modern awards created for the oil and gas industry need to contain appropriate exclusions for maintenance contractors.

Chapter 16 – Paper Products Industry

145. Ai Group understands based upon submissions advanced by the CFMEU's Furniture and Forestry Products Division within Stage 2 of award modernisation, that the union intends to seek the creation of an expansive Forest Products Supply Chain Industry Award ("the Forest Products Award") when awards are modernisation for the Timber Industry in Stage 3.
146. Ai Group's views in relation to the creation of such an Award and its potential overlap with the manufacture of furniture which we contend should be covered by the Modern Manufacturing Award have been detailed in submissions advanced during Stage 2. We have also sought to reiterate some of our key contentions opposing such a course of action within these submissions at Chapter 25 relating to the Timber Industry.
147. We understand that the CFMEU is seeking to include pulp and paper making within its proposed Forest Products Award because its foundation elements are derived from wood. In particular we note the submissions made by the CFMEU on 31 October 2008, as follows:

"The Union foreshadows that at that time (Stage 3) it may be our submission that the Timber Industry awards form part of a broadly based supply chain industry covering the harvesting and processing of forest products... When viewed in conjunction with the Pulp and Paper processing industry the Timber industry is sufficiently distinct to justify the making of a modern Forest Products Supply Chain Industry Award (or a similarly named award) which would cover all aspects of the current paper and timber industry awards.³²"

³² Submission of the Construction, Forestry, Mining and Energy Union – Forestry and Furnishing Products Division, 31 October 2008; at [47]

148. Of the 10 awards and NAPSAs which the Commission has identified for the Paper Products Industry, Ai Group notes that only three represent non-enterprise instruments. Of those three awards, only one relates to pulp and paper processing and that is the *Pulp and Paper Industry – Production Award 1999*.
149. Ai Group believes that there is merit in considering whether the Paper Products Industry (or some elements of it) could be incorporated within a Forest Products Award. At this point, Ai Group has held some preliminary discussions with the CFMEU and advised them of this position, however we have not been provided with any detail of the Union’s proposed award.
150. Fundamental to any support for the Union’s proposal would be ensuring that employer’s costs are not increased and operating requirements are not detrimentally affected as a result of inclusion within a Forest Products Award.
151. Should it become apparent that the conditions sought by the Union would have a detrimental effect on employers’ costs and operating conditions, Ai Group reserves its position and foreshadows that in the alternative we may seek to have the Paper Products Industry absorbed into the Modern Manufacturing Award.
152. If the Paper Products Sector is to be included within the Modern Manufacturing Award then the scope of the *Pulp and Paper Industry – Production Award 1999* needs to be reflected in the coverage clause. The scope of the *Pulp and Paper Industry (Maintenance and Services) Award 2003* would appear to be already covered by the Modern Manufacturing Award.
153. The *Graphic Arts – General – Award 2000* includes within its coverage some aspects of paper product manufacturing such as the manufacture of paper plates and tissues. However, Ai Group does not support an expansion in the

coverage of any modern Graphic Arts Award given the very high penalty rates contained within that award (eg. from 200% to 230% for ordinary time worked on a Saturday, and the requirement that overtime penalties be paid on top of shift penalties) and the crippling effect that they would have on companies not currently paying them.

Chapter 17 – Pet Food Manufacturing

154. Ai Group does not believe that the creation of a stand alone award exclusively for the Pet Food Manufacturing Industry would result in the achievement of a range of objectives for award modernisation including:

- Reducing the regulatory burden on employers³³;
- Reducing the number of awards that operate in the system³⁴;
- Ensuring that modern awards are simple to understand and easy to apply³⁵; and
- Removing as far as possible, overlap between modern awards³⁶.

155. We submit that it is appropriate to include this industry within the coverage of a single food processing and manufacturing award in the terms reflected in Ai Group's proposed *Food, Beverage and Tobacco Manufacturing Industry Award 2010*. In this regard we refer the Commission to our submissions found at Chapter 11 relating to this proposed award.

³³ *Workplace Relations Act 1996*; s576A(1)(a)

³⁴ *Workplace Relations Act 1996*; s576B(2)(d)

³⁵ *Workplace Relations Act 1996*; s576A(1)(a)

³⁶ Consolidated Award Modernisation Request – 18 December 2008; at para 9.

Chapter 18 – Pharmaceutical Industry

156. Within the award modernisation process Ai Group has been involved in discussions with the employer parties with interests in the Pharmaceutical Industry.
157. The Commission's has listed seven federal awards or NAPSAs, excluding enterprise instruments, for consideration when modernising awards in the Pharmaceutical Industry.
158. Ai Group submits that the Commission should create a single modern award for the Pharmaceutical Industry and that the terms of the award should be based upon the two primary federal awards operating in the industry, the *Manufacturing Chemists Award 1998* ("the Chemists Award") and the *AWU Drug and Pharmaceutical Industry Award 2000*. ("the AWU Drug Award").
159. In advancing this submission however, Ai Group notes that there are a number of aspects of the coverage provisions of both the Chemists Award and the AWU Drug Award which may overlap with other modern awards. The description of the Pharmaceutical Industry in the existing awards should be modified to attempt to remove this overlap.

Coverage

160. In developing the coverage provisions of the modern Pharmaceutical Industry Award, Ai Group is not opposed to the terms of the AWU Drug Award being used as the basis for the scope of the award. As identified above however, there are a range of areas where at first instance the scope of the two primary federal awards overlap with already made modern awards, most notably the Modern Manufacturing Award as revised by the Stage 2 Exposure Draft.

Specifically, the AWU Drug Award³⁷ and the Chemists Award³⁸ include within their scope:

- Household chemicals;
- Fungicides;
- Insecticides;
- Vermin Destroyer; and
- Weed Destroyer

161. We contend that the products identified above are all potentially covered by the descriptor within the revised Modern Manufacturing Award at 4.3(aa) which refers to *'chemicals, alkalis and all processes involving chemical synthesis'*, and which was derived from the absorption of the *Artificial Fertilizer's and Chemical Industry Award 2001*³⁹. Should these aspects of the coverage provision be retained within the Pharmaceutical Industry Award it would be imperative to insert appropriate exclusions within the award for work covered under the Modern Manufacturing Award.
162. A similar scenario also presents itself in relation to the manufacturing of *"essences, essential oils (and) food preservatives"* and its potential overlap with a modern award created for the food manufacturing industry.
163. Ai Group submits that should these parts of industry be reflected within the coverage of the modern Pharmaceutical Industry Award, specific exclusions would need to be inserted into the Pharmaceutical Industry Award to ensure that any overlap with a modern food manufacturing award is eliminated where possible.

³⁷ See Clause 3

³⁸ See Clause 4.2.2

³⁹ See Clause 1.5.2(a)(i)

Chapter 19 – Private Transport Industry (Remaining Sectors)

164. The Commission's list of awards for the Private Transport Industry (remaining sectors) identifies 16 awards or NAPSAs, excluding enterprise instruments, for consideration within Stage 3 of award modernisation. Ai Group has reviewed the list and makes the following submissions in relation to the industry.

It is appropriate to create a modern award for the Private Transport – Passenger – Industry?

165. Ai Group submits that in addition to creating a modern award for road transport and distribution and long distance road transport it is appropriate for the Commission to also create a modern award covering passenger transport in the private transport industry.

166. We do not support any broadening of the scope of the proposed *Road Transport and Distribution Award 2010* to include passenger transport and would contend that the nature of the two industries, whilst both dealing with transportation, are highly distinct.

167. Specifically we note the following key differences derived from the primary federal award for passenger transport the *Transport Workers (Passenger Vehicles) Award 2002*:

- A six-tiered classification structure that contains no direct link to vehicle size or weight in determining rates of pay;
- Two-driver operation provisions;
- A limited number of allowances applying to the work; and
- Reduced shift penalties and a 40 hour ordinary working week.

168. Should the Commission determine in line with our submissions that the creation of a separate passenger transport award is warranted we note that it may be necessary to insert additional exclusions within the *Road Transport and Distribution Award 2010* (“the RTD Award”) and the *Road Transport (Long Distance Operations) Award 2010* (“the RTL Award”) which expressly exclude employers who are primarily engaged in passenger transport from the operation of both awards.
169. At this point however we only seek to foreshadow this requirement as the nature and terms of any exclusion will substantially depend on the way in which the RTD Award and RTL Award are expressed and these are matters which are presently before the Commission for determination.

Exclusion of clerical classifications within any passenger transport award

170. Consistent with the approach that the Commission has adopted in relation to the Stage 2 transport industry exposure drafts, Ai Group submits that the modern award for the passenger transport industry should not include classifications for clerical employees.
171. We contend that instead, clerical employees engaged by passenger transport employers should generally have their terms and conditions of employment regulated by the *Clerks – Private Sector Award 2010* (“the Clerks Award”). In advancing this view we note that the vast majority of awards created by the Commission to date have not contained a clerical stream but instead have deferred to the terms of the Clerks Award.
172. The only caveat to this submission is in relation to those employees working in call centre environments. In these instances, where the call centre is a contract call centre and is providing service to the passenger transport industry we submit that such employees should be covered by the terms of the

Contract Call Centre modern award that we proposed during Stage 2 of award modernisation.

The NSW Transport Industry Superannuation Award and the NSW Transport Industry Redundancy Award

173. In reference to the *Transport Industry (State) Superannuation (No. 2) Award (NSW NAPSA)* we submit that no consideration needs to be paid to this award when drafting the proposed modern award as superannuation terms have already been considered by the Full Bench and a model clause determined. There is nothing peculiar to this industry which warrants deviation from the model provision.
174. In relation to the *Transport Industry – Redundancy (State) Award (NSW NAPSA)* we submit that it should not be used as a basis for supplementing the NES with respect to severance pay entitlements or conditions. It is an award that only has limited application and the interests of NSW employees can be adequately protected through the inclusion of transitional provisions as the Commission has previously adopted in other modern awards.

Chapter 20 – Publishing Industry

175. Ai Group does not oppose a separate award being made for the publishing industry, but opposes the incorporation of this industry within the coverage of the *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010*.
176. The exposure draft of the *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010* includes “publishing” in paragraphs 4.5(e), (q) and (r) of Clause 4 – Coverage.
177. In its submissions, Ai Group urged the Commission to remove the duplication by deleting paragraph 4.5(r) and removing the reference to publishing (and despatching) in paragraph 4.5(q). Ai Group also sought that paragraph 4.5(e) be reworded as follows:
- “(e) publishing but only to the extent that such publishing is incidental to printing;”* (Proposed additional words underlined)
178. The amendment sought by Ai Group is consistent with Ai Group’s understanding of award coverage in both the publishing industry and the printing industry. Ai Group has a large membership in the printing industry. Some of the major publishers are also members.
179. We submit that the Graphic Arts Award has not been generally applied in the publishing industry, other than to printing operations. As indicated by the Commission’s list of awards of relevance to award modernisation in the Publishing Industry, the most significant award in the publishing industry is the *Journalists (Book Industry) Award 1998* which applies to organisations such as Allen and Unwin, Butterworths, CCH, HarperCollins, LBC, McGraw-Hill, Pan McMillan and Random House.

180. The *Graphic Arts – General – Award 2000*, and the exposure draft of the modern *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010* contain extremely high penalties (eg. from 200% to 230% for ordinary time worked on a Saturday) and require that overtime penalties be paid on top of shift penalties.

181. The *Journalists (Book Industry) Award 1998* contains much lower penalties. For example, Clause 18 - Overtime states:

“A member shall work reasonable overtime as required by the employer without additional payment, provided, however, where a member is so required to work overtime in any week, the member shall be entitled to time off for a period equivalent to the overtime worked to be taken at a time mutually agreed and in any event by the end of the month following.

Provided that where for any reason such time off in lieu has not been so given and taken, the member shall be paid for such overtime at the rate of time and a half for the first eight overtime hours in any week and at the rate of double time for all overtime hours in excess of eight hours in any week.”

182. Further, Clause 19 – Exemption from Part 6 (Hours of Work, Breaks and Overtime) states:

“Part 6 of this award shall not apply to members classified as Senior Editors Level 3, Grade 3. Such members shall, however, be entitled to receive at least two days off work each week.”

183. It would be inconsistent with the Award Modernisation Request and damaging to industry, to inflict the Graphic Arts Award conditions upon employers who are not already paying them.

184. In considering the terms of any modern award for the publishing industry, Ai Group wishes to repeat the submissions which it made in respect of the Graphic Arts Industry, concerning web development and web design.
185. Web design and development are areas which are predominantly award free. To include these operations within a modern award would potentially impose huge increases in costs and significant inflexibility upon employers, in a manner contrary to the Award Modernisation Request.
186. In conjunction with the creation of a separate modern award for the publishing industry, to avoid confusion the reference to publishing in the title of the Modern Graphic Award should be deleted.

Chapter 21 – Scientific Services (including Professional Engineers and Scientists)

187. The structure and content of awards covering professional employees is vital. If not handled carefully employers and employees could lose the existing high degree of flexibility which is an integral feature of professional employment.
188. An important preliminary point is that professional employees are employed under very different terms and conditions to other employees. The differences are apparent when the existing awards covering such employees are compared to other awards. The existing awards are very flexible and do not typically contain prescriptive hours of work provisions, overtime penalties, allowances, loadings and the like. Rather, they empower an employer and an employee to agree upon a salary which takes into account the pattern of hours that the employee will work (subject to a minimum salary).
189. Most degree qualified professionals are award-free. Consistent with the Award Modernisation Request, employees who are not currently award-covered should remain award free.
190. Awards exist covering particular professional occupations, including:
- Professional engineers;
 - Professional scientists;
 - Information technology professionals;
 - Telecommunications professionals;
 - Architects; and
 - Land surveyors.
191. In this Chapter, Ai Group deals with award coverage for professional engineers and scientists. In Chapter 24 – Technical Services, Ai Group deals

with award coverage for information technology professionals, telecommunications professionals, architects and surveyors.

Engineers and scientists in the private sector

192. The principal award covering Scientific Services in the private sector in Australia is the *Scientific Services Professional Scientists Award 1998*. The *Metal and Engineering Industry (Professional Engineering and Scientists) Award 1998* also covers a large number of scientists.
193. APESMA is the only union respondent and Ai Group is the main employer association respondent to both of these awards. Over the years Ai Group has played the leading role in representing employers in negotiations with APESMA and in AIRC proceedings relating to awards covering professional scientists.
194. The principal award covering professional engineers in Australia is the *Technical Services Professional Engineers (General Industries) Award 1998*. APESMA is the only union respondent and Ai Group is the main employer association respondent to this award,
195. Similar to professional scientists, over the years Ai Group has played the leading role in representing employers in negotiations with APESMA and in AIRC proceedings relating to professional engineering awards.
196. The awards covering professional scientists are very similar to the awards covering professional engineers. The reasons for this are:
- The occupations have many similarities regarding work performed, job responsibilities, educational requirements and the industries in which large numbers of scientists and engineers are employed;

- APESMA is the only union party to nearly all of the awards covering these occupations;
 - Ai Group has negotiated the provisions of the main industry awards for professional engineers and scientists (in nearly all cases by consent) with APESMA.
197. For the above reasons, over the years some of the separate awards which existed for scientists and engineers have been combined (eg. as occurred with the making of the *Metal and Engineering Industry (Professional Engineering and Scientists) Award 1998*).
198. Ai Group submits that there is substantial merit in modernising the awards covering scientists and engineers and creating a single occupational award for scientists and engineers in the private sector.
199. Since June 2008, Ai Group has been negotiating with APESMA over the terms of a modern award covering engineers and scientists.
200. The parties have developed a draft award which represents the status of the negotiations to date (**Annexure G**). Most of the clauses in the draft award are agreed. The clauses which are not agreed are highlighted.
201. The awards which were principally used to develop the draft were the *Scientific Services Professional Scientists Award 1998* and the *Technical Services Professional Engineers (General Industries) Award 1998*.
202. Ai Group's position, as set out in the draft award, is consistent with the content of the above federal awards. In contrast, APESMA is seeking to incorporate some relatively prescriptive provisions based upon the content of various NAPSAs (eg. allowances, more prescriptive hours of work, and references to penalty rates in the hours clause). Ai Group submits that such provisions are

inconsistent with the longstanding flexible approach which is inherent in the federal awards applicable to professional engineers and scientists.

203. Despite these differences, there is a high degree of agreement between Ai Group and APESMA on the content of the proposed *Professional Engineers and Scientists – Private Sector – Award 2010*.
204. The proposed award covers all professional engineers and scientists in the private sector, except for those covered under the *Black Coal Mining Industry Award 2010* and the *Rail Industry Award 2010*.
205. The above two awards are very much the exceptions, very few industry awards contain classifications covering professional engineers and scientists.
206. The *Scientific Services Professional Scientists Award 1998* and the *Technical Services Professional Engineers (General Industries) Award 1998* have very wide coverage and apply to employers in a large number of industries.
207. Engineers and scientists typically associate themselves more with their profession than with the industry in which they are currently working.
208. The training programs and qualifications for professional engineers and scientists are similar across industries and recognised across industries. This horizontal recognition of skills and training is more relevant than the vertical recognition of skills within an industry.
209. Federal awards covering professional engineers and scientists are very similar across different industries. Accordingly awards are best rationalised in a horizontal fashion rather than a vertical fashion, as proposed by Ai Group and APESMA through the making of the *Professional Engineers and Scientists – Private Sector – Award 2010*

210. Whilst the Award Modernisation Request identifies that modern awards should primarily be made along industry lines, the Commission is not precluded from creating a modern award along occupational lines where it deems it appropriate. This is one of the circumstances in which such a distinction is appropriate.

Engineers and scientists in the manufacturing industry

211. In a few industries separate awards have been created for professional engineers and scientists. The *Manufacturing and Associated Industries (Professional Engineers and Scientists) Award 1998* is an example of this. The coverage of this award can be readily be subsumed within the proposed *Professional Engineers and Scientists – Private Sector – Award 2010* and this is the approach that should be taken.

212. Ai Group strongly opposes professional engineers and scientists in the manufacturing industry being included within the Modern Manufacturing Award.

213. Although the *Metal, Engineering and Associated Industries Award 1998* and the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998* apply in the same industry industry, these awards (and those which they superseded) have been separate for many decades.

214. The salaries and conditions in the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998* are very similar to the salaries and conditions in the *Scientific Services Professional Scientists Award 1998* and the *Technical Services Professional Engineers (General Industries) Award 1998*. In contrast, the salaries and conditions in the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998* bear no similarity to the salaries and conditions in the *Metal, Engineering and Associated Industries Award 1998*.

215. By way of example the hours of work provisions within the *Metal, Engineering and Associated Industries Award 1998* are highly flexible and allow an employer a number of options in remunerating an employee for additional hours worked⁴⁰. This can be compared with the *Metal, Engineering and Associated Industries Award 1998* which requires specific penalties to be paid to employees when they work outside of their ordinary hours.
216. It is also significant that the Modern Manufacturing Award will supersede a very large number of awards, of which the *Metal, Engineering and Associated Industries Award 1998* is only one. Engineers and scientists employed in many of the industries which have been incorporated within the Modern Manufacturing Award (eg. the rubber, plastic and cablemaking industry and the chemical industry) are covered under the *Scientific Services Professional Scientists Award 1998* and the *Technical Services Professional Engineers (General Industries) Award 1998*.
217. During Stage 1 of award modernisation, the AMWU, in arguing that the Modern Manufacturing Award should include professional engineers and scientists, drew the Commission's attention to the scientist classification in the *Draughting, Production Planners and Technical Workers Award 1998*. However, the classification covers few if any employees because of the following exemption in Schedule F of that award which provides that the award does not apply to:
- "Professional Engineers, Professional Scientists bound by another award of the Australian Industry Relations Commission (AIRC)."*
218. Given the very wide coverage of the *Scientific Services Professional Scientists Award 1998* plus the coverage of the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998* the

⁴⁰ See Clause 5.3.1

classification of scientist in the *Draughting, Production Planners and Technical Workers Award 1998* has little if any application.

219. Including professional engineers and scientists in the manufacturing industry within the coverage of the proposed *Professional Engineers and Scientists – Private Sector – Award 2010* will not impede career opportunities for employees under the Modern Manufacturing Award. The same opportunities will exist as presently applies.

Engineers and scientists in the ICT industry

220. Ai Group proposes the creation of a separate award covering IT professionals with an engineering or information technology degree (eg. computer science). This issue is dealt with in Chapter 24 – Technical Services, of this submission.

Engineers and scientists in the space tracking industry

221. As agreed between Ai Group, the MTFU unions and APESMA, the space tracking industry has been incorporated within the coverage of the Stage 1 Modern Manufacturing Award.
222. The existing *Space Tracking Industry Award 1998* covers professional engineers and scientists (as well as numerous other lower-level classifications). These professional engineers and scientists are logically covered under the proposed *Professional Engineers and Scientists – Private Sector – Award 2010*.

Chapter 22 – Storage Services

223. The Commission's list of indicative awards for the Storage Services Industry identifies 26 Awards or NAPSAs, excluding enterprise instruments, for consideration as part of the Storage Services Industry within Stage 3 of award modernisation.

It is essential that any modern Storage Services Award not cover storepersons who are covered by any other industry award

224. It is extremely important that any modern Storage Services Award not intrude upon the coverage of the industry awards which cover storepersons. There are a large number of these awards. For example, the Metal Industry Award has always covered storepersons and the NUW's responsiveness to the award has revolved around this. Another example is the existing Business Equipment – Technical Service – Award. It covers storepersons and, again, the NUW is a respondent to the award to represent such workers. The Graphic Arts Award and the Rubber, Plastic and Cablemaking Industry Awards are further examples of awards that cover storepersons.

225. In manufacturing industries the stores / warehouse functions are typically highly integrated into the production process, regardless of whether the store contains materials and/or parts for use in production, or finished goods.

226. The federal *Storage Services General Award 1999* contains a classification structure and wage rates which would be highly problematic if applied to storepersons in industries where stores work is currently covered under the relevant industry award.

227. With the above extremely important qualification relating to its coverage, Ai Group supports the making of a modern storage services award.

Ai Group's draft Storage Services Award 2010

228. Ai Group has drafted a modern *Storage Services Award 2010* (**Annexure H**) for the Commission's consideration. On the whole, the Ai Group version of the Award is based on the *Storage Services General Award 1999*.

Coverage

229. The coverage clause of Ai Group's draft *Storage Services Award 2010* reads:

"This award covers employers throughout Australia in the storage services industry and their employees⁴¹."

230. The draft award contains the following definition of the industry:

*"**Storage services industry** means the receiving, unloading, handling, storing, packing, sorting, preparation of goods to order, loading, preparation for despatch and despatch of goods and merchandise, wares, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise in a warehouse facility⁴²."*

231. The intent of the coverage clause is to ensure that the scope of the Award does not inadvertently extend coverage of the Award to employers operating in other industries. In order to ensure this, subclause 4.2 provides for a general exclusion.

232. In an abundance of caution and in response to submissions made by other parties with regards to the coverage of the *Road Transport and Distribution*

⁴¹ Clause 4.1 of the Ai Group draft *Storage Services Award 2010*

⁴² Clause 3 of the Ai Group draft *Storage Services Award 2010*

Award Exposure Draft during Stage 2 of award modernisation, Ai Group has also included specific exclusions from coverage in clause 4.3 of our draft, as follows:

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

- *The Manufacturing and Associated Industries and Occupations Award 2010;*
- *The Road Transport (Long Distance Operations) Award 2010;*
- *The Road Transport and Distribution Award 2010”*

233. As noted, Ai Group’s version of the *Storage Services Award 2010* is largely based on the *Storage Services General Award 1999*. However, Ai Group draws the Commission’s attention to proposed clauses relating to:

- The inclusion of a night shift definition and loading;
- Payment of wages provisions;
- The classification structure; and
- Superannuation.

which are elaborated on in more detail below.

Night shift

234. We draw the Commission’s attention to our inclusion of a night shift definition and loading in the draft Award. Whilst this is not a feature of the *Storage Services General Award 1999*, it is a feature of a number of the other federal awards in the industry and is necessary to provide flexibility to employers in operating their businesses.

Payments of wages

235. Ai Group submits that a modern award should reflect the ability for an employer to make payments through electronic means without any additional costs.
236. The draft award adopts the payment of wages provision which the Commission developed and inserted into some of the priority industry awards.

The classification structure

237. We have amended the classification structure and thereby wages structure of the *Storage Services General Award 1999* by deletion of the classification “Storeworker Grade 1 after 3 months.”
238. We have instead extended the commencement rate by a further 3 months. Such extension is a better reflection of the current standard of having a 6 month qualifying period. This will also create a simpler classification structure, in line with the legislative requirements that modern awards be easy to understand.

Superannuation

239. Ai Group submits that no consideration need be given to the superannuation provisions of the various awards in the storage services industry, as superannuation terms have already been considered by the Full Bench and a model clause determined. There is nothing peculiar to this industry which warrants deviation from the model provision.

Chapter 23 – Sugar Industry

240. Ai Group has an interest in the sugar industry. A number of companies which operate sugar mills are members together with many contractors which provide maintenance services in the sugar and other industries.

241. During the Commission's consultation phase for Stage 1, the Australian Sugar Milling Association, Queensland, Union of Employers advanced the view that the sugar industry should be excluded from any modern manufacturing award and in the alternative submitted:

"... all of the Australian sugar industry, along industry lines, from farm through rail transport, mills, and refineries to terminals, to be treated as one within a federal award of its own covering all those industry sectors, in Queensland and NSW, within that award"⁴³.

242. Ai Group at that time did not seek to oppose this proposal however we qualified our position with the following submission:

"... we are not supporting the New South Wales sugar industry being taken out of the Metals Award until and unless the employers in that industry in New South Wales support that and we haven't had an opportunity to talk to them."⁴⁴

243. Accordingly, Ai Group now seeks to affirm and more fully outline its position in relation to these matters.

244. Ai Group has now had the opportunity to ascertain the views of various members in the New South Wales Sugar Industry in relation their potential coverage by any modern award made for the broader, national industry. On

⁴³ Submission of Australian Sugar Milling Association, Queensland, Union of Employers re Award Modernisation Consultations, 6 June 2008

⁴⁴ Transcript of Proceedings, AM2008/5, 5 August 2008 at PN366-367

the basis of the feedback received, we have no objection in principle to the New South Wales Sugar Industry being covered by a modern award for the national industry.

245. This 'in principle' support however is qualified on the basis that we have not seen the wages and conditions proposed to be included in the Sugar Industry Award.

246. Furthermore, Ai Group seeks to continue to impress upon the Commission the need for the coverage provisions of any stand-alone award for the Sugar Industry to contain an exemption for contractors who provide services to the Sugar Industry.

247. The *Metal, Engineering and Associated Industries Award 1998* has traditionally covered maintenance contractors in the Sugar Industry. Clause 13 of Schedule B to the *Metal, Engineering and Associated Industries Award 1998* (which deals with persons, organisations, industries and employers exempted from coverage) currently states:

13.0 Queensland Sugar Industry: *This award shall not apply to any employees in the sugar industry in Queensland, but this exemption shall not include employees of contractors, members of the Metal Trades Industry Association performing work in sugar mills, bulk sugar and molasses terminals, sugar refineries and sugar industry research organisations. (Emphasis added)*

248. Unless an exclusion is incorporated within the Sugar Industry Award for contractors, these employers will face the prospect of having to adhere to the Sugar Industry Award whenever they carried out work in the Sugar Industry and other award/s when work is carried out in other industries.

249. We submit that such an outcome would be administratively complex for these employers and would potentially lead to increased costs (not the least being

compliance costs), and would therefore be contrary to the Objects of the award modernisation process – and in particular, contrary to the requirement that modern awards must reduce the regulatory burden on business, promote the efficient performance of work and not increase costs for employers.

250. Ai Group submits that the current exemption contained in clause 4.4(b) of the Stage 1 Modern Manufacturing Award (as agreed between Ai Group and the MTFU Unions) should remain in the award and an appropriate exclusion be inserted into any Sugar Industry Award:

Manufacturing and Associated Industries and Occupations does not mean:

...

- ii. *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.*

Chapter 24 – Technical Services

251. Ai Group’s submissions in this Chapter need to be read in conjunction with the submissions in Chapter 21 relating to the Scientific Services Sector.
252. Leaving aside professional engineers and scientists (which are dealt with in Chapter 21), the Technical Services Sector includes awards covering:
- ICT Professionals;
 - Draughtspersons, Planners and Technical Employees;
 - Land Surveyors; and
 - Architects.

Each of these occupations is dealt with below.

ICT Professionals

253. As set out in the submissions which Ai Group made during Stage 2 of the modernisation process, we strongly support the making of an award covering ICT professionals.
254. In its Statement of 23 January 2009, the Full Bench said:

“[88].....The parties to the current award agree that the nature of professional employment in the sector makes it more appropriate that there be a separate award for professional employees. The employers proposed an information technology and telecommunications industry award confined to professional employees engaged in those industries. The Association of Professional Engineers, Scientists and Managers, Australia proposed an occupational award covering information technology and telecommunications professionals.

[89] *We have decided to defer the consideration of awards covering such employees until Stage 3 of the award modernisation process. The nature of awards covering professional employees generally will be considered in Stage 3 and the alternative approaches can be considered in that broader context.*”

The development of the *Information Technology Industry (Professional Employees) Award 2001*

255. Award coverage of ICT professionals can be traced back to a log of claims which APESMA served on more than 500 IT companies in mid-1996.
256. Over the next three years, Ai Group represented the employers in very lengthy and exhaustive AIRC proceedings and negotiations with APESMA. Mr Chris Jessup QC and Mr Frank Parry were briefed by Ai Group.
257. In a Full Bench appeal decision of 23 June 1998 (Print Q2179) APESMA’s right to represent engineers in the IT industry was confirmed.
258. Following this decision Ai Group negotiated the *Information Technology Industry (Professional Engineers) Award 1999* with APESMA, and the award was made by consent.
259. Subsequently, APESMA and Ai Group consented to the scope of the award being widened to cover IT professionals with a relevant degree incorporating a major in information technology (eg. computer science). At that time the title of the award was changed to the *Information Technology Industry (Professional Employees) Award 2001*.
260. The scope clause of the 2001 award defines the Information Technology Industry in the following manner:

“6.2 *The Information Technology Industry is defined as:*

- 6.2.1 *the design and manufacture of computers and computer peripherals;*
- 6.2.2 *the design and manufacture of telecommunications equipment;*
- 6.2.3 *the design and manufacture of computer software;*
- 6.2.4 *computer system installation, repair and maintenance;*
- 6.2.5 *computer consultancy services;*
- 6.2.6 *computer programming; and*
- 6.2.7 *systems analysis services.*
- 6.2.8 *activities which are incidental, ancillary or complimentary to the activities set out in 6.2.*
- 6.3 *For the purposes of this award, the Information Technology Industry only includes those employers whose principle function is set out in 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6 and/or 6.2.7 and not other employers.* (Emphasis added)

- 261. Subclause 6.3 above was inserted from 1 January 2006, following an application by Ai Group to remove ambiguity and uncertainty, given doubt which had arisen regarding whether the award applied only to IT professionals working for IT companies, or IT professionals working for all companies.
- 262. Ai Group made a similar application to vary the Victorian Common Rule Declaration but Commissioner Smith decided that it was appropriate for the Declaration to have a wider scope than the main award (PR968123).
- 263. Ai Group submits that there was a clear understanding when the award was made that it only applied to IT professionals working for IT companies. All of the companies served with the original log of claims were IT companies.
- 264. Since 2001, the *Information Technology Industry (Professional Employees) Award 2001* has become the most important and widely applied award in the ICT industry.

The Telecommunications Industry (Professional Employees) Award 2002

265. In 2002, a mirror award to the *Information Technology (Professional Employees) Award 2001* was created entitled the *Telecommunication Industry (Professional Employees) Award 2002*. The two awards are identical except for the coverage clause and list of respondents.

Proposed Information Technology and Telecommunications (Professional Employees) Award 2010

266. Ai Group and APESMA have agreed upon the terms of an *Information Technology and Telecommunications Industries Professional Employees Award 2010*, with the exception of the coverage clause (**Annexure I**).

267. Ai Group seeks an award covering IT and telecommunications professional employees who are:

- **Principally engaged** in the IT industry (as defined in similar terms to the *Information Technology (Professional Employees) Award 2001*); or
- **Principally engaged** in the Telecommunications Industry (as defined in similar terms to the *Telecommunication Industry (Professional Employees) Award 2002*).

268. APESMA seeks an award covering IT and telecommunications professional employees who are:

- **Engaged** in the IT industry (defined more broadly than the *Information Technology (Professional Employees) Award 2001*); or
- **Principally engaged** in the Telecommunications Industry (as defined in similar terms to the *Telecommunication Industry (Professional Employees) Award 2002*).

269. Ai Group submits that when both of the existing awards were made there was a clear understanding that they only applied to IT professionals working for IT / Telecommunications companies. Ai Group negotiated both awards with APESMA and is a party to each award. Ai Group opposes any extension in the scope of award coverage.
270. To extend the scope, as sought by APESMA, would breach the Award Modernisation Request because it would result in many thousands of employees who have traditionally been award free becoming award-covered. A high proportion of medium to large companies employ IT professionals.
271. Apart from the coverage clause the rest of the proposed modern award has been agreed upon between Ai Group and APESMA. The content is heavily based upon the *Information Technology (Professional Employees) Award 2001* and the *Telecommunication Industry (Professional Employees) Award 2002*.
33. Ai Group strongly opposes IT professionals being covered under the modern awards which will cover lower classifications in the ICT industry, such as the *Telecommunications Services Industry Award 2010*.
34. The conditions of employment for professional employees are substantially different to the conditions of employment for other award-covered employees in the ICT industry such as clerical employees and technicians.
35. The award conditions for professional employees covered by the *Information Technology Professional Employees Award 2001* and the *Telecommunications Industry Professional Employees Award 2001* do not regulate how and when work will be performed and enable employers to elect from a range of options in compensating an employee for additional hours worked. This approach has been reflected in the proposed *Information*

Technology and Telecommunications Industries Professional Employees Award 2010.

36. An employer under the proposed *Information Technology and Telecommunications Industries Professional Employees Award 2010* may require an employee to work call backs, shift work or additional hours and compensate the employee by:

- Taking into account the additional or shift hours required in fixing the employee's annual remuneration;
- Granting special additional remuneration;
- Granting a special allowance; or
- Granting other compensation such as special additional leave.

55. The provisions of the proposed award would preserve the existing flexibility for an employer and a professional employee to agree on flexible conditions that are appropriate to the employee's position and the business. ICT professional employees are engaged for their technical expertise. They have high levels of responsibility and perform important key functions for businesses in the ICT industry.

Draughtspersons, planners and technical officers

272. The two principal awards covering draughtspersons, planners and technical employees are:

- The *Metal, Engineering and Associated Industries Award 1998 (Part II)*; and
- The *Draughting, Production Planners and Technical Workers Award 1998*.

273. Ai Group is the main employer association respondent to both awards.

274. The *Metal, Engineering and Associated Industries Award 1998 (Part II)* and the *Draughting, Production Planners and Technical Workers Award 1998* have both been incorporated within the Stage 1 Modern Manufacturing Award.

Land surveyors

275. Ai Group supports the making of a modern award covering land surveyors.

276. During Stage 1 of award modernisation, the AMWU proposed the inclusion of land surveyors within the Modern Manufacturing Award. Such an approach is not logical and Ai Group opposes the idea. Land surveyors are not ordinarily employed in the manufacturing industry.

Architects

277. Ai Group supports the making of a separate award for professional architects.

278. During Stage 1, the AMWU proposed the inclusion of trainee architects within the Modern Manufacturing Award. Ai Group can see no logic in this approach and hence opposes the AMWU's proposal. Architects are not typically employed in the manufacturing industry.

Chapter 25 – Timber Industry

279. Within proceedings for Stage 2 of award modernisation, the CFMEU, Furniture and Forestry Products Division advanced submissions foreshadowing a desire to see the creation of a modern Forest Products Supply Chain Industry Award, which would cover:

“all aspects of the current paper and timber industry awards including harvesting and timber merchants classifications... (it) might validly also include those classifications derived from the Furnishing Industry awards... for example the wood machinist, wood carver, French polisher and similar classifications⁴⁵.”

280. These submissions were made in relation to the Commission’s decision to consider the Furnishing Industry as part of the Manufacturing Group for Stage 2.

281. Ai Group strongly opposed the approach advocated by the CFMEU, importantly noting that:

- The manufactured items derived from the furnishing industry awards were not exclusively or even predominantly in some cases made from wood⁴⁶;
- The Metal Industry Award has covered furniture manufacturing⁴⁷ for many decades; and
- It is not appropriate in this instance to delineate award coverage based upon the material that the item is made from⁴⁸.

⁴⁵ Submission of the Construction, Forestry, Mining and Energy Union – Forestry and Furnishing Products Division, 31 October 2008; at [47] – [48]

⁴⁶ Transcript AM2008/13 – AM2008/24, 24 February 2009; at PN1163

⁴⁷ Transcript AM2008/13 – AM2008/24, 24 November 2008; at PN101

⁴⁸ Transcript AM2008/13 – AM2008/24, 24 February 2009; at PN1165

282. Whilst Ai Group acknowledges that its submissions advanced within Stage 2 are still under consideration, we wish to reinforce our position that furniture manufacturing from wood should not form part of any modern award for forest products.
283. We submit that the Commission should not be swayed from its original decision, as reflected in the *January 2009 – Exposure Draft – Manufacturing and Associated Industries and Occupations Award 2010*⁴⁹, to include products made from wood (including furniture) as a legitimate aspect of manufacturing appropriately covered by the Modern Manufacturing Award.
284. Additionally, Ai Group contends that should this view be maintained, there are a range of items which are currently described in the *Timber and Allied Industries Award 1999* (“the TAI Award”), which would fall within the coverage of the Modern Manufacturing Award.
285. These matters are identified at Clause 6 of the TAI Award as follows:
- a) Assembling and construction of products from processed timber (Clause 6.3.2);
 - b) Manufacturing of boards, panels or veneer from timber and timber products. Handle, sort, stack, lift, treat, cut, press, glue, edge, trim, paint, laminate and process in any manner, panel, board or veneer. Transport and store board, panels or veneer. Operate and maintain any or all machinery associated with board, panel or veneer manufacture including manufacturing plant and infrastructure. Plan, setup and assemble products from board, panel or veneer and associated components. (Clause 6.3.3); and
 - c) Machining timber in any manner to produce components and articles. Assemble wood components and associated attachments into products. Paint and glaze products. Joinery work. Manufacture frames,

⁴⁹ See Clause 4.3(gg)

trusses, doors, windows and other building products or components. Measure, estimate, design and manufacture products for building and other purposes. (Clause 6.3.4)

286. The scope of the CFMEU's proposed Forest Products Award is also discussed in Chapter 16 relating to the Paper Products Industry.

Chapter 26 – Vehicle Industry (Repair, Service and Retail)

287. Ai Group is a party to the *Vehicle Industry (Repair, Services and Retail) Award 2002* and has a substantial membership in this sector. Our members include car dealerships, service stations, motor vehicle repair outlets, national car hire firms and others.
288. Over many decades Ai Group has played a major role in industry negotiations with the AMWU (Vehicle Division) and in AIRC proceedings relating to the *Vehicle Industry (Repair, Services and Retail) Award 2002*.
289. Ai Group supports the retention of a separate *Vehicle Industry (Repair, Services and Retail) Award 2002*. The award's current scope reflects the supply chain and the key sectors of the industry. For example, a motor dealership typically sells cars as well as servicing and repairing them.
290. An appropriate coverage clause for a modern *Vehicle Industry – Repair, Services and Retail – Award 2010* is set out below. The coverage is largely similar to the coverage of the existing award but the wording has been simplified somewhat:

4. Coverage

4.1 *This award covers employers throughout Australia in the Vehicle Industry Repair Services and Retail Industry and their employees in the classifications listed in this award.*

4.2 ***Vehicle Industry Repair Services and Retail Industry*** means:

- (a) *Businesses whose principal function is selling, distributing, repairing, maintaining, towing, wrecking, servicing and parking of motor vehicles, caravans, trailers of all kinds and the like, together with equipment, parts or components thereof and the supply of running requirements;*

- (b) *Repair and servicing of motor vehicles in businesses engaged in the motor vehicle rental business; and*
- (c) *Retailing, handling, retreading, storing, distribution, fitting and repairing of tyres or the like.*

4.3 *The **Vehicle Industry Repair Services and Retail Industry** does not mean:*

- (a) *Work covered under the Manufacturing and Associated Industries and Occupations Award 2010*
- (b) *Work covered under the Vehicle Industry Manufacturing Award 2010.*

4.4 *Where an Employer is covered by more than one award, an Employee of that Employer is covered by the award classification which is most appropriate to the work performed by the Employee and to the environment in which the Employee normally performs the work.*

291. Ai Group opposes any expansion in the coverage of the award to include manufacturing activities. Ai Group has a large number of member companies which manufacture a wide range of vehicle components, parts, and accessories, including:

- Major components of vehicles, such as brake systems, steering systems, engine parts, seats, instruments etc;
- Fasteners and other small parts;
- Agricultural vehicle components and implements⁵⁰;
- Trailers;
- Bull bars and tow bars;
- Tray backs; and
- Vehicle bodies, to name a few.

292. Some of Ai Group's members carry out the above work under the *Metal, Engineering and Associated Industries Award 1998* whilst others apply the *Vehicle Industry Award 2000*. Manufacturing work is not currently covered under the *Vehicle Industry (Repair Services and Retail) Award 2002* and Ai

⁵⁰ The Agricultural Implement Making Award was incorporated within the *Metal, Engineering and Associated Industries Award 1998* in 1998. The award contains specific provisions relating to this industry in Schedule C.

Group strongly opposes such work being covered under any modern Vehicle Industry Repair Services and Retail Award.

293. Ai Group is a party to the *Clerks (Vehicle Industry – Repair, Services and Retail) Award 2003* which applies only in Queensland. There is merit in considering the inclusion of clerical classifications in a modern Vehicle Industry Repair Services and Retail Award given the nature of car dealerships, tyre outlets and the like. However, Ai Group strongly opposes the inclusion of clerical classifications in awards which apply to manufacturing.

Chapter 27 – Vehicle Manufacturing Industry

294. The vehicle manufacturing industry is one of the largest sectors of Ai Group's membership. Our membership includes the car assembly firms as well as virtually all of the significant manufacturers of automotive components.
295. The assembly firms have enterprise awards. The component companies apply either the *Metal, Engineering and Associated Industries Award 1998* or the *Vehicle Industry Award 2000*. Far more of the first and second tier suppliers use the *Metal, Engineering and Associated Industries Award 1998*, than use the *Vehicle Industry Award 2000*.
296. The *Rubber, Plastic and Cablemaking Industry – General – Award 1998* also applies to many automotive component companies (ie. those that make components out of plastic or rubber).
297. The coverage of the Stage 1 Modern Manufacturing Award applies widely to the manufacture and repair of vehicles, as specified in paragraph 4.3(j):
- “4.3 (j) motor engines, motor cars, motor cycles and other motor driven vehicles and components”.*
298. During Stage 1 of award modernisation the parties were asked to consider the modernisation of awards in the vehicle manufacturing industry in conjunction with the modernisation of awards in the metal and engineering industry, the rubber, plastic and cablemaking industry, and the glue and gelatine industry.
299. Awards applicable to the metal and engineering industry, the rubber, plastic and cablemaking industry, and the glue and gelatine industry were all incorporated within the Modern Manufacturing Industry. The issue of whether

a separate award should be made for vehicle manufacturing was deferred until Stage 3.

300. Ai Group supports the creation of a Modern Vehicle Industry Manufacturing Award, given the support expressed for such award by the car assemblers and some component suppliers who are currently using the *Vehicle Industry Award 2000*. However, such award would need to be drafted in a manner which does not disturb the award coverage of automotive component companies currently bound by the *Metal, Engineering and Associated Industries Award 1998* or the *Rubber, Plastic and Cablemaking Industry – General – Award 1998*. These automotive component companies are now covered by the Modern Manufacturing Award, as made at the conclusion of Stage 1 of the modernisation process.

Chapter 28 – Wholesale and Retail Trade (Wholesale) and Commercial Travelers

301. Ai Group has drafted a modern award, which would apply as an occupational award, to commercial travellers, where there is no other modern award containing relevant classifications (**Annexure J**).

302. A modern award applying to commercial travellers must be carefully drafted to reflect the fact that:

- a high proportion of medium and large businesses employ commercial travellers;
- commercial travellers are employed across a range of different industries; and
- many commercial travellers receive commission as a key component of their remuneration.

303. Ai Group has carefully analysed the wages and conditions of the existing awards and NAPSAs (and associated pay scales) applying to commercial travellers in Australia. The awards and NAPSAs with classifications for commercial travellers are as follows:

Jurisdiction	Title
New South Wales	<i>Commercial Travellers &c (State) Award [NSW]</i>
Victoria	<i>Commercial Sales (Victoria) Award 1999</i>
Queensland	<i>Commercial Travellers' Award – State 2003 [Qld]</i>

Western Australia	<i>Commercial Travellers and Sales Representatives' Award 1978 [WA]</i>
South Australia	<i>Commercial Travellers Award [SA]</i>
ACT	<i>Commercial Travellers (ACT) Award 2000</i>
Tasmania	<i>Wholesale Trades Award [Tas]</i>

304. There is no general award with specific classifications for commercial travellers in the Northern Territory, although the *Retail, Wholesale and Distributive Employees (NT) Award* would appear to have application.

Scope

305. The definition of “commercial traveller” is reasonably standard throughout the various current awards and NAPSA’s. The following definition of “Commercial Traveller” has been used in Ai Group’s draft:

“Commercial Traveller means a person employed, substantially away from the employer’s place of business, for the purpose of soliciting orders for, or selling articles, goods, wares or merchandise or material for wholesale sale; for resale; or for use in or in connection with the production and/or preparation and/or distribution of commodities for sale by the customer.”

306. This definition is contained in the ACT award and has been adopted on the basis that it is concise and simple to understand.

307. Persons employed in selling advertising space or time of any kind have been excluded from the draft. While such employees are specifically included in the Victorian award, they would not appear to be covered in other awards and NAPSA’s.

308. A number of the relevant awards/NAPSAs also cover wholesale merchandisers (the exceptions are the Queensland and Western Australian NAPSAs). They are typically covered by separate classifications with lower rates of pay and some differences in allowances and conditions. Ai Group is giving further consideration to whether it would be appropriate for such employees to be covered by the same modern award as commercial travellers.

Types of employment

309. The draft award provides for employment of Commercial Travellers on a full-time, part-time or casual basis. Casual employment of Commercial Travellers is provided for in most of the current awards/NAPSAs (namely, the Queensland, South Australian and Tasmanian NAPSAs and the ACT award). None of these awards/NAPSAs provide casual conversion rights and they have not been included in the draft.

Classifications and wages

310. A simple classification structure has been adopted, with one classification for Commercial Travellers and one for Probationary Travellers.

311. Currently, a number of the awards/NAPSAs provide for separate classifications for travellers based on time spent away from home (eg. the NSW and Queensland NAPSAs provide for a separate classification for “country traveller”). This creates a complexity in that from week to week, a particular employee may be classified as either a local traveller or a country traveller. In Ai Group’s view, differences based on time spent away from home are more easily and simply accommodated by way of appropriate allowances rather than through the classification structure. This is the approach taken in the Victorian award and the South Australian NAPSA.

312. The wage rates adopted in the draft are the current rates in the pay scale derived from the NSW NAPSA. More specifically, the rate adopted for the Commercial Traveller (\$625.86 per week) is based on the rate for a local traveller under the NSW NAPSA.

313. This rate can be considered a fair representation of comparable rates in the other awards/NASPsAs. By comparison, the various rates are currently as follows :

<i>Payscale derived from...</i>	<i>Wage rate (per week)</i>
NSW NAPSA	<u>Local traveller: \$625.86</u> Country traveller: \$659.68
Victorian award	Level 3 Commercial Traveller: \$627.00 Level 4 Commercial Traveller: \$649.80
Queensland NAPA	Town or Local Traveller: \$613.70 Country Traveller: \$644.48
South Australian NAPSA	Commercial Traveller: \$649.80
Western Australian NAPSA	Commercial Traveller/Sales Representative: \$637.64 Country Traveller/Sales Representative: \$671.84
ACT Award	Local Traveller: \$616.36 Country traveller: \$629.66

314. Lower rates for probationary employees are a common feature of the relevant awards/NASPsAs. While definitions vary, the definition adopted in the draft (less than 3 months service with the employer) is a fair representation of the prevailing provisions and applies under the NSW NAPSA and ACT award. A probationary wage based on 90% of the applicable rate is also used in the NSW NAPSA and ACT award.

315. Junior rates have been adopted in the draft award. While not all of the awards/NAPSAs provide junior rates, it would be appropriate and consistent with the Award Modernisation Request for junior rates to be included. Junior rates are provided under the Queensland and South Australian NAPSAs and the Victorian award. The same percentages for junior rates apply in the Queensland and South Australian NAPSAs and these are the percentages which have been adopted.
316. An exemption rate which equates to \$44,717 per year (excluding commission) has been adopted and is based on the provision in the Victorian award (the term there used is “special class commercial travellers”, the conditions for whom are set out in appendix A of the award). The exemption also applies to Commercial Travellers who supervise other such employees. In Ai Group’s view, it is appropriate for an exemption of this nature to be included in a modern award applying to commercial travellers, many of whom are highly remunerated. Under the draft award and consistent with the Victorian award, such an employee would still be entitled to be provided with either a motor vehicle, or an allowance in lieu, equivalent to the amounts set out in the award, and would also be entitled to an appropriate letter of offer detailing conditions of employment, again consistent with the Victorian award provision.

Allowances and special rates

317. A provision for “expense and accommodation reimbursement” has been included, which is a common feature of the awards/NAPSAs. A generally worded provision has been adopted as it is adaptable to various issues and circumstances and is simple.
318. A meal allowance based on the Queensland NAPSA provision has been included. The allowance applies where an employee is required to work after 6.00pm on any day of the week and is not provided with a meal by the

employer. This provision is included in lieu of special rates for work in the evenings which are included in some of the awards/NAPSAs.

319. The draft incorporates an “away from home allowance” to compensate employees who are required to be away from home for two or more consecutive nights in any one week, Monday to Sunday. The amount of the allowance is \$33.82 per week. This rate is based on the difference between the weekly minimum rate for local and commercial travellers in the NSW NAPSA, consistent with the local traveller rate having been adopted as the Commercial Traveller rate in the draft.
320. The country traveller rate from the NSW NAPSA (upon which the away from home allowance is based) is one of the highest from the relevant awards/NAPSAs. For this reason, an additional allowance on top of the away from home allowance has not been included for weekends spent away, which is contained in some of the awards/NAPSAs (eg. the South Australian and Queensland NAPSA and the Victorian award). Furthermore, the higher vehicle allowances for country travellers (or travellers who spend a certain amount of time away from home) which are common to most of the awards/NAPSAs, have been removed. In Ai Group’s view, compensation for being away from home is more appropriately and logically dealt with by way of an away from home allowance than through a higher vehicle allowance.
321. The relevant awards/NAPSAs contain provisions for vehicle allowances with two components, namely:
- a weekly fixed amount (variously called a standing charge allowance or overhead cost allowance); and
 - a per kilometre rate.

This two-component approach has been retained in the draft, although further consideration could be given to simplifying the allowance, such as by combining the two to give a higher per kilometre rate.

322. The relevant awards/NAPSAs (except for the Tasmanian NAPSA) also contain two sets of vehicle allowances (both with the two components) with a distinction being made based on whether the employee spends a certain amount of time away. For example, in the NSW NAPSA, there are separate provisions for locomotion allowance (which has a per kilometre amount and a standing charge weekly allowance amount) for local travellers and for country travellers. Both receive the same per kilometre rate but country travellers receive a higher standing charge allowance.
323. Ai Group's draft adopts a simpler approach. All full-time employees would receive the same vehicle allowance based on a per km rate and an overhead cost allowance. The Queensland NAPSA locomotion allowance rates for local travellers have been used. Whilst there are variations between the per kilometre rates and fixed costs allowances across the various awards/NAPSAs, the rates/allowances from the Queensland NAPSA appear to be fairly representative.
324. The draft includes separate vehicle allowance provisions for part-time and casual employees who provide their own vehicle. This allowance is a per kilometre rate only, with no overhead cost allowance. They would receive a higher per kilometre rate than full-time employees to compensate. This approach is based on the NSW NAPSA and the Victorian award. The amount of 44 cents per kilometre which has been adopted is based on the allowance in the NSW NAPSA.
325. Some of the relevant awards/NAPSAs provide separate rates for providing a station wagon or towing a trailer or caravan (eg. NSW and Queensland

NAPSAs). These additional allowances are not contained in the majority of the awards/NAPSAs and have not been included.

326. Some of the relevant awards/NAPSAs contain air-conditioning allowances (which apply where an employee provides a vehicle fitted with air-conditioning) and/or a laundry and dry cleaning allowance (applicable where working in a vehicle not fitted with air-conditioning). These have not been included in Ai Group's draft. In Ai Group's view, these allowances should be modernised, preferably by not being included in a modern award on the basis that they are antiquated.

Hours of work and related matters

327. The awards/NAPSAs for commercial travellers appropriately contain some of the most flexible hours provisions in any awards. The hours provisions adopted in the draft are based on the Queensland NAPSA, which does not define the days/times in which ordinary hours may be worked, nor does it provide special rates for days/times. A meal allowance has been included for work after 6.00pm, again based on the Queensland NAPSA (see section above).

328. The draft does not contain special rates based on maximum daily hours or the number of hours worked per week or over an averaging period. This is representative of current arrangements. More specifically, the following awards/NAPSAs contain no such special rates:

- the NSW NAPSA;
- the Queensland NAPSA;
- the WA NAPSAs;
- the ACT award.

329. The *Fair Work Bill* introduced into Parliament in November enables a modern award to provide for an average of ordinary hours of work over a period of up to 26 weeks. In Ai Group's submission, it would be appropriate for this modern award to provide for the maximum permitted averaging arrangement.