

AWARD MODERNISATION SUBMISSIONS AND DRAFT AWARD PROVISIONS

Stage 3 – Post Exposure Draft

Commercial Travellers



16 June 2009

AWARD MODERNISATION – STAGE 3

COMMERCIAL TRAVELLERS (AM2008/63)

1. In Ai Group's submission dated 12 June, we undertook to file the content for Chapter 37 of that submission (Commercial Travellers) and the associated amended exposure draft by 16 June. Such content is set out below.
2. The Commission's decision to issue a separate exposure draft for commercial travellers, rather than include such employees within an award for the storage services or wholesale industry, is appropriate and welcome.

Introduction

3. The Commission's decision to issue a separate exposure draft for commercial travellers, rather than include such employees within an award for the storage services or wholesale industry, is appropriate and welcome.
4. However, Ai Group has some concerns about various provisions of the *Exposure Draft - Commercial Travellers Award 2010*. The issues of greatest concern are:
 - The minimum wages set out in clause 13, especially when combined with the weekend allowance and living away from home allowance;
 - The vehicle allowance, especially as it relates to full-time employees (sub-clause 16.9); and
 - The inclusion of advertising sales representatives within the scope of the award.

5. Ai Group is concerned about the Commission's decision to adopt a number of the more costly provisions of the *Commercial Sales (Victoria) Award* – including provisions in relation to a number of allowances – while declining to adopt the key feature of that award, being the exemption rate clause.
6. Ai Group urges the Commission to have regard to the terms of the full range of relevant awards/NAPSAs applying to commercial travellers, in making the final modern award.
7. In many respects, the provisions of the Victorian award are not representative and would impose unwarranted additional costs and inflexibilities on employers.
8. Ai Group also submits that in deciding upon the appropriate safety net for commercial travellers, the Commission should also have regard to the provisions applying to commercial travellers under other modern awards. For example, under the *Business Equipment Award 2010*, Part 5 – Hours of Work and Related Matters, does not apply to commercial travellers covered by the award.

Clause 3: Definitions and interpretation

9. Clause 3 contains a definition of “advertising sales representative”. Ai Group does not support the coverage of advertising sales representatives by modern awards where such persons are not traditionally covered by awards and NAPSAs, with the exception of Victoria (which also contains an exemption rate). Ai Group is concerned that extending coverage in this way would introduce new inflexibilities for many businesses and result in high income employees being covered by modern awards, contrary to sub-clause 2(b) of the Award Modernisation Request.

10. Ai Group does however submit that if advertising sales representatives are to be covered, the definition contained in the exposure draft is preferable to the definition in the Victorian award, since the exposure draft definition is confined to such persons employed “substantially away from the employer’s place of business”. This may serve to limit the coverage of some advertising sales representatives who would be covered under the more expansive definition in the Victorian award. Even so, Ai Group is concerned that a lack of certainty will result regarding which advertising sales representatives are covered and whether they are “substantially away”, for example, in the case of advertising sales representatives who regularly attend out of office client meetings, events and conferences but who are essentially office-based employees. There is also authority for the proposition that an employee who performs work in promoting sales or selling via telephone or electronic means is substantially away from the employer’s place of business due to the meaning of the term “employer’s” (see *National Union of Workers v Skilled Communications Personnel Pty Ltd* [2002] AIRC 595).
11. Ai Group supports the Commission’s decision not to include within the scope of the modern award telephone salespersons (see [231] of the Full Bench decision of 22 May 2009). Telephone salespersons are more appropriately covered by the *Clerks – Private Sector – Award 2010*, *Contract Call Centre Award 2010* or a relevant industry award where one with appropriate classifications applies. It would be worthwhile including an express exclusion for telephone salespersons in the modern award, particularly given the authority referred to above, and Ai Group’s amended draft (see **Annexure**) includes such a provision.
12. Commercial Radio, a member of Ai Group, has made separate submissions on the issue of coverage of advertising sales representatives in the radio industry.

Clause 4: Coverage

13. Ai Group's concerns regarding the coverage of advertising sales representatives are outline above under Clause 3.
14. The omission of a reference to merchandisers in sub-clause 4.1 appears to be an oversight, given the definition of the term in clause 3 and the classification in clause 13.
15. At this stage Ai Group has not identified any problems with the same modern award covering both commercial travellers and merchandisers. Indeed, a number of current awards/NAPSAs cover both groups.
16. It may be noted that the *General Retail Industry Award 2010* contains classifications for merchandisers within the "general retail industry" as defined in that award and where that award applies to an employee, the *Exposure Draft - Commercial Travellers Award 2010* would not apply.

Clause 10: Types of employment

Clause 10.1: Statement and terms of engagement

17. In sub-clause 10.1, the term "commission" is used, whereas in the definitions, "Commission" is defined as the Australian Industrial Relations Commission or its successor. Ai Group has amended the exposure draft to correct the definitions so that "commission payment" means "any financial incentive payment" etc.

New clause 10.1A: Remuneration by commission

18. Ai Group has inserted a new clause to deal with an issue which is addressed in most awards/NAPSAs, which is the extent to which a commercial traveller can be remunerated by incentive payments. The new clause is based on sub-clause 10(v) of the NSW NAPSA, as it is the most simply worded. The effect is that an employee who is remunerated by commission cannot be paid less than the applicable minimum wage.
19. Currently, under the *Workplace Relations Regulations* (Reg 2.7.1), it is possible to satisfy the guarantee of basic periodic rate of pay under the AFPC Standard by entering into a contract (or workplace agreement) whereby the guarantee may be satisfied over a period of up to 12 months.
20. As a result, it is possible for an employee to be remunerated solely by commission so long as over a relevant period, the employee receives at least the basic periodic rate of pay. This also appears to be the intention of the relevant awards/NAPSAs. Ai Group is concerned to ensure this flexibility is not lost, by inserting a clause in the modern award which makes it clear that an employee can be remunerated by commission so long as the employee receives the applicable minimum weekly wage over a relevant period.

Sub-clause 13.1: Classifications and wage rates

21. Ai Group submits that the minimum weekly wages specified for a Merchandiser and for a Commercial Traveller are too high relative to prevailing minimum weekly rates under most relevant awards/NAPSAs.

Wage rates for Merchandisers

22. The minimum weekly rate in the exposure draft for a Merchandiser is \$602.20, which is on a par with (in fact slightly higher than) the current minimum wages in the South Australian NAPSA and the Victorian Award. However, it is significantly higher than the current minimum weekly wage in the NSW NAPSA and ACT Award, as illustrated in the table below.

Award/NAPSA	Minimum weekly rate for Merchandiser (\$ (assume no time spent away)
Commercial Sales (Victoria) Award	601.92
Commercial Travellers Award (SA)	601.92
Commercial Travellers' Award – State 2003 [Qld]	(does not cover merchandisers)
Commercial Travellers &c (State) Award [NSW]	<u>585.20</u> (Local wholesale merchandiser)
Commercial Travellers (ACT) Award 2000	<u>575.70</u> (Local traveller)
Commercial Travellers and Sales Representatives' Award [WA]	(does not cover merchandisers)
Wholesale Trades Award [Tas]	602.68

23. The differences between amounts payable under awards/NAPSAs need to be viewed together with additional payments which may apply where a certain period of time is spent away from the employer's place of residence. The combination of the high minimum weekly rate for a Merchandiser in the Victorian award, and the weekend allowance and away from home allowance in that award means that the Victorian award (on which the exposure draft is relevantly based) is the most costly of the relevant awards/NAPSAs. This is illustrated in the following table:

Award/NAPSA	Maximum weekly entitlement where time spent away (\$)
Commercial Sales (Victoria) Award	685.38 (minimum weekly rate for a Merchandiser plus weekend allowance and living away from home allowance)
Commercial Travellers &c (State) Award [NSW]	659.68 (minimum weekly rate for a country traveller)
Commercial Travellers Award (SA)	664.72 (minimum weekly rate for a Merchandiser plus Country Allowance and Weekend Allowance)
Commercial Travellers &c (State) Award [NSW]	614.84 (Country Wholesale Merchandiser – applicable where more than 54 consecutive hours away in week)
Wholesale Trades Award [Tas]	610.48 (minimum weekly wage for a merchandiser plus \$3.90 per day where remain away over weekend)
Commercial Travellers (ACT) Award 2000	583.68 (minimum weekly rate for country wholesale traveller – more than 54 consecutive hours spent away in week)

24. Based on the above analysis, Ai Group's amended exposure draft incorporates a rate for Merchandisers based on the NSW NAPSA (\$585.20 per week), plus an "away from home allowance" for Merchandisers of \$29.64 per week, based on the difference in the NSW NAPSA between the minimum weekly wage for a Country Wholesale Merchandiser and a Local Wholesale Merchandiser. The allowance would apply where an employee spent more than two nights away away from his/her usual place of residence in a 7 day period (similar to the definition of Country Wholesale Merchandiser under the NAPSA, which applies where more than 54 consecutive hours are spent away). This is far more representative of the arrangements under the current awards/NAPSAs than the rates and allowance under the Victorian award (which in any event also contains an exemption rate).

Wage rates for Commercial Travellers

25. The minimum weekly wage for a commercial traveller in the exposure draft is consistent with the wage rate for a commercial traveller in the South Australian NAPSA and for a Level 4 Commercial Traveller (defined as an employee with 12 months' industry experience and 3 months' experience with the employer). However, it is higher than the minimum wage rates for comparable classifications under other awards/NAPSAs. This is illustrated in the following table:

Award/NAPSA	Minimum weekly wage for a commercial traveller (local traveller, where relevant) (\$)
Exposure Draft	650.10
Commercial Sales (Victoria) Award	From 589.76 (Level 1 Commercial Traveller) to 649.80 (Level 4)
Commercial Travellers Award (SA)	649.80
Commercial Travellers &c (State) Award [NSW]	625.86
Commercial Travellers' Award – State 2003 [Qld]	613.70
Commercial Travellers and Sales Representatives Award 1988 [WA]	637.64
Commercial Travellers (ACT) Award 2000	616.36
Wholesale Trades Award [Tas]	From 581.40 (level 1 Commercial Traveller) to 637.64 (level 3 Commercial Traveller)

26. Ai Group's draft modern award submitted at the pre-drafting stage contained a minimum weekly wage based on the NSW NAPSA, on the basis that it represents a fair compromise between the prevailing rates. This has also been adopted in Ai Group's revised exposure draft.
27. If the Commission does not accept this submission and maintains the minimum wages in the exposure draft, appropriate transitional arrangements will be necessary.

Probationary traveller

28. The exposure draft contains a probationary rate of 90% which reflects the proposal in Ai Group's earlier draft. This rate and the definition of probationary traveller appear to be a reasonable compromise based on the prevailing arrangements which vary in a number of respects. Some transitional arrangements may still be necessary.
29. The exposure draft does not contain a probationary rate for merchandisers. Ai Group has not at this stage had the opportunity to review the relevant awards/NAPSAs to consider whether a probationary rate for such employees would be appropriate.

Clause 15A: Annualised salary arrangements

30. Ai Group's earlier draft modern award contained an exemption clause based on the provision in the Victorian award. The provision was not adopted in the exposure draft. In the Full Bench statement of 22 May 2009, it was noted at [232] that:

"An exemption provision is found in the Commercial Sales (Victoria) Award 1999 but is not a feature of awards and NAPSAs applying outside Victoria."

31. Clause 2(f) of the Consolidated Award Modernisation Request states that the creation of modern awards is not intended to:

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

32. This clause was inserted into the Request by the Minister’s variation of 7 May 2009.
33. If the Commission decides not to adopt an exemption rate clause, appropriate transitional arrangements would be necessary in Victoria.
34. Ai Group’s revised exposure draft inserts a new clause 15A to allow for annualised salary arrangements. The clause draws from the provision contained in the *Contract Call Centre Award 2010* and in Ai Group’s view, would be appropriate for a modern award applying to commercial travellers and consistent with the Award Modernisation Request.

Clause 16: Allowances

Clause 16.1: Telephone allowance

35. The clause in the exposure draft (based on the Victorian award) is somewhat outdated as it does not contemplate mobile phones and other technology which may be required by employees covered by the award.
36. Ai Group’s amended exposure draft contains a telephone allowance provision based on the provision in the *Telecommunications Services Award 2010* and *Contract Call Centre Award 2010* which will assist in promoting “flexible

modern work practices and the efficient and productive performance of work” (see clause 1(c) of the Award Modernisation Request).

Weekend allowance and living away from home allowance (sub-clauses 16.4 and 16.5)

37. These sub-clauses, and the amounts of the allowances, are based on the Victorian award. Ai Group submits that these allowances should not be incorporated into the modern award on the basis that they are far higher than similar allowances or entitlements in most other commercial travellers awards/NAPSAs.
38. Having reviewed the relevant provisions in the awards/NAPSAs, Ai Group proposes that:
- Merchandisers be entitled to “away from home allowance” of \$29.64 per week where 2 or more consecutive nights are spent away;
 - Commercial Travellers be entitled to an “away from home allowance” of \$33.82 where 2 or more consecutive nights are spent away.
39. The amounts of these allowances are based on the NSW NAPSA and specifically, are derived from the difference between the minimum weekly rates for country employees and local employees.
40. Under the NAPSAs in NSW, Queensland and Western Australian NAPSAs, there is a higher classification which applies where a certain amount of time is spent away in a week. This is more than 54 consecutive hours (NSW, ACT and Queensland) or more than 3 nights (Western Australia). Under the proposal, the allowance would apply where at least 2 consecutive nights were spent away, which is more generous. The amount by which the higher classification (typically described as a “country traveller”) exceeds the lower classification (“local” or “town” traveller) varies, as do the minimum weekly

wage rates. Ai Group has taken into account these various arrangements in formulating its proposal. No other allowances are payable under these NAPSAs/awards, with the exception of the Queensland NAPSA which additionally provides for a weekend allowance for a country traveller spending Saturday or Sunday away, where an allowance of \$10.70 per day applies.

41. In the Tasmanian NAPSA, the allowance for time spent away only applies on weekends and is \$3.90 per day, which is far lower than the allowances under the Victorian award.
42. If the Commission does not accept Ai Group's proposal regarding the "away from home allowance" based on amounts derived from the NSW NAPSA, our alternative position would be that a "weekend allowance" based on the Queensland NAPSA be included in the modern award, in addition to the "away from home allowance" proposed in our draft modern award.

Vehicle allowance (clauses 16.8 and 16.9)

43. There is significant variation between existing awards/NAPSAs on the methods for calculating vehicle allowance and the total amount to which a given employee would be entitled. This presents a difficulty in formulating an appropriate vehicle allowance clause for the modern award.
44. One important observation to be made however is that the provisions in the Victorian award are the most complex. They are also the most costly, next to the provisions in the ACT award (although note the ACT award has lower minimum wages and does not have other costly allowances contained in the Victorian award for time spent away).
45. Full-time employees are generally treated differently to part-time employees and casuals under the various awards/NAPSAs, and it is convenient to deal with full-time travellers separately.

Full-time employees

46. The following table illustrates the extent to which the vehicle allowances vary between the awards/NAPSAs, based on a full-time commercial traveller driving 10,000 km per year¹.

Award or NAPSA	Vehicle allowance per year (Full-time employee, 10,000 km)
Commercial Sales (Victoria) Award and Exposure Draft	Up to and including 2 L: \$12,242 Over 2L: \$15,646 ² <i>[Higher rates apply where the employee receives the living away from home allowance in the week]</i>
Commercial Travellers (ACT) Award	Up to and including 2000 ccs: \$14,214.20 Over 2000ccs: \$15,703.92
Commercial Travellers &c (State) Award [NSW]	Up to 2000 cc: \$11,693.60 Over 2000cc: \$12,844.4
Commercial Travellers' Award – State 2003 [Qld]	Up to 1.5 L: \$9,126.68 Over 1.5 L and up to 2.5L: \$10,210.96 Over 2.5L: \$12,731.52
Commercial Travellers and Sales Representatives' Award 1978 [WA]	Up to 2.5L: \$9,161.20 Over 2.5L: \$11,050.96
Commercial Travellers Award [SA]	Up to and including 2L: \$9,518.40 Over 2L: \$10,645.20
Wholesale Trades Award [Tas]	Up to 1600 cc:\$4,590 1601 cc to 2600 cc: \$5,490 2601 cc and over: \$5,580

¹ The table excludes any other allowances such as air conditioning allowance, and where relevant is based on the local traveller rate as opposed to the country traveller rate.

² Figures assume no fleet discount

47. It can be seen from the above that the provisions in the Tasmanian NAPSA is at the lowest end of the spectrum, whereas the Victorian award and ACT award are at the highest end. In comparison, the provisions in the other four NAPSAs (NSW, Queensland, WA and SA) are in the same “ball park”.
48. Ai Group’s draft modern award submitted at the pre-drafting stage contained vehicle allowances based on the Queensland NAPSA, on the basis that these provisions were a fair representation of the prevailing arrangements. Equally, provisions based on the NSW, WA or SA NAPSA would be acceptable as a reasonable compromise of the existing variations.
49. Alternatively, a far simpler provision would be achieved by adopted a flat rate of 74 cents per kilometre as the vehicle allowance (with no separate standing charge/overhead cost allowance). It must be said that this formula would generally result in a lower amount than under the current awards/NAPSAs other than the Tasmanian NAPSA, for commercial travellers. However, the rate is actually higher than under some awards/NAPSAs for merchandisers (for example, under the South Australian NAPSA).
50. Adopting a per kilometre rate of 74 cents per kilometre would have the following benefits:
- It would assist in making the award “simple to understand and easy to apply” (as per clause 1(a) of the award modernisation request) by removing the number of variables which effect vehicle allowance as per the current awards/NAPSAs;
 - It would be consistent with the vehicle allowance in a number of major awards and modern awards, such as the Modern Manufacturing Award;
 - It would be consistent with the vehicle allowance in the *General Retail Industry Award 2010* (which also covers merchandisers).

51. Ai Group's exposure draft incorporates a vehicle allowance of 74 cents per kilometre.

Part-time and casual employees

52. As indicated above, the table relates to a full-time employee who is a commercial traveller. Under a number of the awards/NAPSAs, different to part-time employees, casuals and employees who travel part week only. Such employees may be entitled to a per kilometre rate only or may receive a proportionate amount of the standing charge/overhead cost plus a per kilometre rate, or some combination. For example:

- Under the Victorian award, a part time employee or casual is entitled to 61 cents per kilometre;
- Under the NSW NAPSA, a part-time traveller is entitled to around 44 cents per kilometre. The rate for a local wholesale merchandiser is 51.2 cents per km;
- Under the Queensland NAPSA, an employee using their vehicle for part week only is entitled to up to 44 cents per kilometre (less depending on the vehicle);
- Under the WA NAPSA, part-time travellers are entitled to 1/5 of the standing charge per day plus the running cost;
- Under the ACT award, part-time or casual employees are entitled to 66 cents per kilometre.

53. In light of the above, there are many possible options for the vehicle allowance in the modern award. Ai Group revised exposure draft incorporates a per kilometre rate of \$0.61 cents per km for part-time and casual employees, based on the Victorian award (and the exposure draft), on the basis that this is roughly representative of existing arrangements. It is higher than the vehicle allowance under some awards/NAPSAs, including the NSW and Queensland

NAPSA, and appropriate transitional arrangements would be necessary if this was adopted.

54. Alternatively, if the Commission is minded to accept Ai Group's proposal for a 74 cents per kilometre rate for full-time employees, the same rate could be applied to part-time and casual employees. This is not Ai Group's preferred option, as it would increase the rate payable to these employees under a number of awards/NAPSAs (including the Victorian award).

Air-conditioning allowance (clause 16.9(i))

55. The exposure draft incorporates an air-conditioning allowance payable where the employee provides his/her own vehicle fitted with air-conditioning. The amount of the allowance is \$7.40 (the same as under the Victorian award).
56. Ai Group submits that this allowance should be deleted on the basis that it is obsolete and that in any event, it is not contained in all of the relevant NAPSAs/awards (eg. it no longer exists in the Queensland NAPSA and is not contained in the Tasmanian NAPSAs).
57. Alternatively, if the Commission decides against this proposal, and also does not accept Ai Group's submission that the vehicle allowances from the Victorian award should not form the basis of the allowances in the exposure draft, the vehicle allowances would already be sufficiently high as to lend further weight to the argument that an additional allowance for air-conditioning on top of those rates would be truly excessive.
58. The amount of the air-conditioning allowance under the Victorian award is also the highest of the relevant NAPSAs/awards, which otherwise range from \$0.252 per week (under the ACT award) to \$4.25 per week (the Western Australian NAPSA).

Clause 20: Superannuation

59. Clause 20.5 – Absence from work, should be deleted. It is not a feature of awards/NAPSAs in this area (in relation to the requirement in clause 20.5(b) for contributions to be made in respect of periods of absence on workers compensation).

Clause 21: Ordinary hours of work and rostering

Averaging of ordinary hours of work

60. Ai Group's preference is for an ability to average ordinary hours of work over a period of longer than 28 days and ideally, up to 12 months. Under the *Fair Work Act 2009*, a modern award or enterprise agreement may provide for averaging of ordinary hours, and no maximum averaging period is specified. An award/agreement-free employee may agree with the employer for ordinary hours to be averaged over a period of up to 6 months.
61. Not much turns on the ability to average ordinary hours of work under the exposure draft since there is no overtime rate applicable to exceeding maximum daily or weekly hours. The ability to average over a longer period will not be a significant issue for employers so long as no overtime rates (in the traditional sense) are contained in the final version of the award.

Overtime

62. Ai Group strongly supports the decision not to incorporate higher rates for hours worked in excess of daily or weekly hours. This is consistent with the majority of current commercial travellers awards/NAPSAs. The NSW, Queensland and Western Australian NAPSAs and the ACT award do not contain higher rates for work in excess of daily or weekly maximum hours. The

South Australian NAPSA and the Victorian award both do not contain a higher rate for hours in excess of maximum daily hours.

63. None of the awards/NAPSAs for commercial travellers have a higher rate applying to hours worked in excess of maximum daily hours, and only two (the Victorian award and the South Australian NAPSA) have a higher rate for exceeding maximum daily hours. In comparison, the NSW, Queensland and Western Australian NAPSAs and the ACT award do not provide for a higher rate for exceeding maximum weekly hours.
64. However, the practical effect of this is of course reduced by the fact that higher rates apply for work after 6.00pm Monday to Friday and on weekends (clauses 23.1-23.4). These provisions and the rates are based on the Victorian award.
65. The existing commercial travellers awards/NAPSAs deal with evening work Monday to Friday in various ways. For example:
- the South Australian and Western Australian NAPSAs provide for a rate of pay of \$18.40 per hour and \$16.75 per hour respectively, for work after 6pm, and only in certain circumstances (eg. for work at trades fairs, exhibitions or for stock taking purposes);
 - under the Queensland NAPSA, a higher rate does not apply but an employee is entitled to a meal allowance of \$9.60 for work after 6pm on any day, and is entitled to “additional remuneration as mutually arranged” for certain work outside normal duties and times;
 - Under both the NSW and Tasmanian NAPSAs, a higher rate does not apply until 6.30pm.
66. Ai Group’s preferred position, as contained in the draft modern award submitted at the pre-drafting stage, is that the approach in the Queensland NAPSA be adopted.

67. If the Commission does not accept this approach, then Ai Group's alternative position is that a rate of pay of 125% should apply to work after 6.30pm, as a reasonable compromise of the various prevailing arrangements.

Saturday work (sub-clause 23.2)

68. Again, the exposure draft has adopted the approach in the Victorian award which equates to around time and one half of the Level 4 Commercial Traveller Rate (the highest classification) in that award, with a minimum payment which equates to around two and a half hours work at that rate. This is a very cumbersome provision which is not simple to understand and easy to apply. Neither is it representative of the approaches taken in the various NAPSA's/awards to Saturday work.

69. The current commercial travellers awards/NAPSA's take various approaches to the payment of work on Saturdays and Ai Group has closely reviewed these provisions. Variations relate to:

- Whether a higher rate of pay is payable at all for Saturday work;
- The travelling time rate;
- Whether time spent at sales conferences or in some other duties is treated differently to other work on Saturdays;
- Minimum engagement/payment for Saturday work.

70. Ai Group's preferred approach (as set out in our draft submitted in the pre-drafting stage) is to adopt the Queensland NAPSA provision which:

- Does not contain a higher rate for work on Saturdays;
- Provides for a meal allowance for work after 6pm on any day (including Saturdays);
- Provides for additional remuneration as mutually arranged where certain duties are performed on any day outside normal duties and times.

71. If the Commission does not accept this proposal, Ai Group's alternative position is that a Saturday rate of 125% be adopted, based on the South Australian and Western Australian NAPSAs³. A minimum payment as for 2 hours work would be appropriate, rather than three⁴. In Ai Group's view, this would be a far more reasonable compromise given the various prevailing approaches to Saturday work, than the approach in the Victorian award (adopted in the exposure draft).

Sunday work (sub-clause 23.3)

72. The exposure draft adopts the Victorian award provision, which is double time with a minimum payment of three hours.

73. Ai Group's preferred position is based on the Queensland NAPSA, which does not contain higher rates for Sunday work (see comments above relating to Saturday rates).

74. If the Commission does not accept this proposal, Ai Group's alternative position is that a rate of 125% should be adopted for work on Sundays, consistent with the Western Australian NAPSA, with a minimum payment as for 2 hours work.

75. Again, in Ai Group's view this would be a far more reasonable compromise than the rate of double time, with a minimum engagement of three hours, taking into account the relevant provisions of all the current awards/NAPSAs.

76. If the Commission does not accept either of these provisions, and decides to maintain the Sunday rate at double time, Ai Group submits (on the basis of the prevailing arrangements) that:

³ It may be noted that under the South Australian NAPSA, ordinary rates apply to travelling time on Saturdays and a lower rate applies after 12 noon to "special duties", so that a flat Saturday rate of 125% is actually higher than the current approach under that NAPSA).

⁴ The South Australian NAPSA does not contain a minimum payment clause, whereas in Western Australia, it is three hours.

- Travelling time on Sundays should be at ordinary rates;
- Ordinary rates should apply to the first two weekend sales conferences each year, and to work at trade fairs, exhibitions, agricultural shows and for stocktaking purposes;
- A minimum engagement of two hours rather than three hours should apply.

Time off instead (sub-clause 23.4)

77. Ai Group strongly supports a provision enabling an employee to take time off in lieu of the payments prescribed (if the Commission decides to prescribe such payments).

Sub-clause 24.3: Leave loading

78. This provision reflects the clause contained in Ai Group's previous draft modern award and appears to be a reasonable compromise based on the existing awards/NAPSAs.

Sub-clause 24.5: Requirement to take leave notwithstanding NES

79. This provision reflects the clause contained in Ai Group's previous draft modern award and is supported.

Clause 27: Public holidays

80. The provisions in the exposure draft reflect the provisions in Ai Group's earlier draft modern award. They appear appropriate based on the various awards/NAPSAs, but transitional arrangements may still be necessary (eg. under the NSW NAPSA, the public holiday rate is double time).