

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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Modern Award Review Stream:

- Arts and Culture:
- Job Security:
- Work and Care:
- Usability of awards:

**SUBMISSIONS IN RESPONSE
AM2023/21
MODERN AWARDS REVIEW
2023-24**

19 FEBRUARY 2024

NSW BUSINESS CHAMBER AND AUSTRALIAN BUSINESS INDUSTRIAL

The New South Wales Business Chamber Ltd (**BNSW**) is New South Wales' peak business organisation with nearly 100,000 members, spanning most industry sectors and sizes. BNSW is a registered state industrial organisation under the *Industrial Relations Act 1996 (NSW)*, as well as a recognised organisation under the *Fair Work (Registered Organisations) Act 2009 (Cth)*.

Australia Business Industrial (**ABI**) is the industrial relations affiliate of BNSW. ABI is federally registered under the *Fair Work (Registered Organisations) Act 2009 (Cth)* and engages in policy advocacy on behalf of its membership as well as engaging in industrial advocacy in State tribunals and the Federal tribunal.

MODERN AWARDS REVIEW 2023-4 – MAKING AWARDS EASIER TO USE

BNSW AND ABI SUBMISSIONS IN RESPONSE

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1. BACKGROUND

1.1 In a Statement dated 4 October 2023, the Full Bench of the Fair Work Commission (**the Commission**) confirmed the timetable for the Modern Awards Review 2023-24 (**the Review**).¹

1.2 This submission forms part of the *'making Awards easier to use'* stream, which concerns 7 commonly-used modern awards, namely:

- (a) the *General Retail Industry Award 2020* (**GRIA**);
- (b) the *Social, Community, Home Care and Disability Services 2010* (**SCHADS Award**);
- (c) the *Hospitality Industry (General) Award 2020* (**HIGA**);
- (d) the *Fast Food Industry Award 2020* (**FFIA**);
- (e) the *Restaurant Industry Award 2020* (**RIA**);
- (f) the *Children's Services Award 2010* (**Children's Award**); and
- (g) the *Clerks Private Sector Award 2020* (**Clerks Award**).

(Collectively, **the identified awards**).

1.3 The timetable set for the *'making Awards easier to use'* stream was as follows:

22 December 2023: Interested parties to file proposals/draft determinations to vary any of the identified Awards and accompanying submissions.

19 February 2024: Submissions in response due.

26 February – 5 April 2024: Consultation with interested parties.²

1.4 On 22 December 2023, BNSW and ABI filed submissions that set out a proposal with respect to the identified awards, together with ten draft determinations set out across four schedules (the **BNSW/ABI Proposal**).³

1.5 Between 30 October 2023 and 22 December 2023, the following interested parties filed submissions, proposals and/or draft determinations:

- (a) Nellers HR Consulting (**Nellers Consulting**) – RIA Proposal (30 October 2023);
- (b) Nellers – GRIA Proposal (30 October 2023);

¹ [2023] FWCFB 179 (**the Statement**).

² [2023] FWCFB 179 at [1(4)].

³ On 11 January 2024, BNSW and ABI provided a copy of an unreported decision, referred to in the BNSW/ABI Proposal, to the Commission Registry. That decision was uploaded to the Review website on 12 January 2024.

- (c) MGA Independent Business Australia (**MGAIBA**) – GRIA Proposal (December 2023);
 - (d) Chamber of Commerce and Industry WA (**CCIWA**) – SCHADS Award and HIGA Proposal (20 December 2023);
 - (e) Australian Services Union (**ASU**) – SCHADS Award and Clerks Award Proposal (21 December 2023);
 - (f) Australian Workforce Compliance Council (**AWCC**) Proposal (21 December 2023);
 - (g) Australian Hotels Association (**AHA**) – Hospitality, Restaurant and Retail Awards Proposal (22 December 2023);
 - (h) Australian Chamber of Commerce and Industry (**ACCI**) Proposal (22 December 2023);
 - (i) Business Council of Australia (**BCA**) Proposal (22 December 2023);
 - (j) Australian Retailers Association (**ARA**) – FFI Award, HIGA and RIA Proposal (22 December 2023);
 - (k) ARA – GRIA Award Proposal (22 December 2023); and
 - (l) Australian Industry Group (**AI Group**) Proposal (22 December 2023).
- (Collectively, **the interested parties' submissions**).

2. STRUCTURE OF THE RESPONSE

2.1 This submission responds to matters arising from the interested parties' submissions.

Structure

2.2 Broadly, this submission is divided into two parts:

(a) Section 3 confirms the position of BNSW and ABI with respect to the common issues raised that impact multiple (or all) of the identified awards.

(b) Sections 4 to 9 address each of the identified awards (save for the FFIA) in turn and sets out the response of BNSW and ABI in relation to award-specific proposals.

2.3 For Sections 4 to 9, the various proposals advanced by the interested parties have been organised by reference to the relevant part of the award (i.e. Hours of Work, Type of Employment, Leave and Public Holidays, etc).

2.4 To the extent an issue is dealt with as a "*common issue*" it will not be repeated in Sections 4 to 9.

Summary of Position

2.5 At the outset of each section of this submission, a table appears that sets out the following:

(a) an overview of the proposals advanced by the interested parties by reference to the subject-matter of the proposal and the relevant part of the identified award; and

(b) a snapshot of the position of BNSW and ABI in relation to each proposal (i.e. whether a particular proposal is advanced, supported, opposed, etc).

2.6 Following that summary, BNSW and ABI set out submissions in support of each position.

3. COMMON ISSUES

Summary of Position

3.1 The submissions filed by the interested parties identified a number of issues that appear common to most (if not all) of the identified awards (**the common issues**).

3.2 The common issues address the following provisions and/or parts of the identified awards:

Part	Provision	BNSW and ABI Position
Application and operation	Individual flexibility arrangements (IFAs).	Support ACCI
Hours of work	Requirement to work ordinary hours continuously.	BNSW/ABI proposal Support AI Group
	Time off in lieu clauses.	Support ACCI
Types of employment	Classification of employees.	BNSW/ABI proposal
	Minimum engagement & payment periods.	Support AI Group
	Variation to part-time working hours.	BNSW/ABI proposal
Minimum wages and related matters	Pay averaging.	Support AI Group
	Pay periods.	Support AI Group
	The calculation of minimum hourly and weekly rates.	Support AI Group
	Superannuation clauses.	Not opposed to ACCI
Leave	Annualised wage arrangement clauses.	Support ACCI; Support AHA (partial); Oppose AI Group
	Excessive annual leave accrual clauses.	Support ACCI
	Cashing out annual leave.	Oppose AWCC
	Annual leave loading.	Support AI Group
Consultation and dispute resolution	Consultation clauses.	Support ACCI
Miscellaneous	Reference to electronic communications.	Do not oppose AI Group

Individual Flexibility Arrangements

3.3 Three variations were proposed in relation in the IFA clause:

- (a) ACCI propose that an additional clause should be inserted to explain the meaning of “*better off overall*” in clause 5.5;
- (b) AI Group propose creating a new category of “*pay periods*” to clause 5.1; and
- (c) AWCC propose that the language should be simplified and additional clauses should be added to provide guidance as to the better off overall assessment.

3.4 BNSW and ABI support the proposal filed by ACCI, which also appears to achieve the desired simplification and guidance sought by the AWCC.

3.5 As to the AI Group proposal to include “*pay periods*”, whilst this does not seem to be controversial it is unclear whether that variation would have an impact on usability.

Hours of work

Requirement to work ordinary hours continuously

3.6 The BNSW/ABI Proposal included a submission that clause 13.6(a) and clause 21.2 of the Clerks Award and Children’s Award, respectively, should be varied to enable employees to ability to choose to work their ordinary hours “*non-continuously*” should they wish to do so.⁴ This is achieved by inserting the words “*unless an employee has requested to work their hours non-continuously*”.⁵

3.7 In the context of the *Clerks Award*, both BNSW/ABI and the AI Group have both recognised the desirability of varying clause 13 to have regard to contemporary work practices, in particular, remote work.

3.8 However, the AI Group proposal goes further – stating that clauses 10.5, 11.4, 13.3 and 13.6(a) do not apply “[i]f an employee is working from a location other than a workplace designated by the employer”.

3.9 BNSW/ABI support the AI Group proposal which will help to ensure that hours can be worked more flexibly where employees are working from home at their own election.

Time off in lieu clauses

3.10 ACCI made a universal proposal for the time off in lieu clauses to be simplified. Both the AHA and CCIWA also made a proposal in the context of the HIGA and the SCHADS Award, respectively.

3.11 BNSW and ABI submit the proposal by ACCI should be preferred and make the following observations:

- (a) The ACCI proposal reduces the prescriptive nature of the current clause; in particular, it removes the mandatory form of the agreement that currently appears in most awards.
- (b) The ACCI proposal would remove the requirement that a separate agreement be entered into for each period of time off. Such that employees may enter into an ongoing agreement. This is also consistent with the recommendation made by the AHA.

⁴ BNSW/ABI Proposal at [2.1]-[2.9], Schedule 1.

⁵ See also BNSW/ABI Submissions at [2.1]-[2.9].

- (c) The ACCI proposal requires both employer and employee to reach an agreement as to when the time is to be taken. This appears to address issues identified by both the AHA and CCIWA.
- (d) The ACCI proposal also removes reference to s 65 of the *Fair Work Act*; a cross-reference that is not essential to the operation of the clause. This, of course, does not alter the application of that section where relevant.

Types of employment

Classification of employees

- 3.12 The BNSW/ABI Proposal included a submission that the Children's Award, *HIGA*, *RIA* and the SCHADS Award be varied to include the following clause:

"The classification by the employer must be based on the characteristics that the employer requires the employee to have, and skills that the employer requires the employee to exercise, in order to carry out the principal functions of employment".⁶

- 3.13 That clause aligns to the current clause 12.2 in the *Clerks* Award.

- 3.14 This proposal continues to be pressed.

Minimum engagement & payment periods

- 3.15 The AI Group propose that clauses establishing minimum engagement and payment periods, respectively, should be amended to:

- (a) enable employers and employees (part-time and casual) to agree that the applicable minimum payment/engagement period can be reduced;⁷ and
- (b) insert an exception with respect to attending meetings or participating in training where the employee is not required to attend a designated workplace (e.g. remote attendance).

- 3.16 The CCIWA advance a similar proposal with respect to training in the context of the SCHADS Award.

- 3.17 For the reasons that follow BNSW and ABI support both proposals, where employees are working remotely at their own election:

- (a) The ability to enter an agreement as to the operation of a clause increases the flexibility of the provisions for both employer and employee. The requirement for

⁶ BNSW/ABI Proposal at [4.1]-[4.14].

⁷ AI Group Submission at [35].

agreement before a reduction can occur further promote cooperative and productive workplace relations.⁸

- (b) Expanding the list of the facilitative provisions in the identified awards is a simple way to enhance the usability of the identified awards. Further, it assists with compliance by reducing regulatory burden and enabling employers and employees to agree to a mutually acceptable arrangement.
- (c) The exception regarding attendance to meetings and training ensures the modern award is updated to reflect modern practices. Increased access to remote work necessarily mitigates against the inconvenience of being required to attend a designated workplace for below the minimum engagement period.

Variation to part-time working hours

3.18 The BNSW/ABI Proposal included a submission that the *Children's Award*, *Clerks Award* and *SCHADS Award* should be varied to contain a term that closely aligns to the GRIA part time clause with respect to changes to hours of work to enable the relevant provision to be better understood in each award.⁹

3.19 This proposal continues to be pressed.

Minimum wages and related matters

Pay averaging

3.20 The AI Group propose to introduce a clause into the FFIA, GRIA, *Children's Award* and the *SCHADS Award*, which permit "*pay averaging*" in line with the relevant award's pay periods. BNSW and ABI support this proposal.

Pay periods

3.21 The AI Group propose to introduce a new facilitative provision into the FFIA, GRIA, *Children's Award* and the *SCHADS Award*, which would enable an employee (or the majority of employees) to enter an agreement to be paid on a monthly basis (rather than weekly or fortnightly).

3.22 BNSW and ABI support this proposal, which increases the flexibility of the provision's operation in each award.

3.23 To a similar end, the AI Group also propose the deletion of clause 17.2(c) from the *Clerks Award*. This would have the effect of removing a prescriptive element of the clause's operation, namely, the requirement that "*payment must be made on the basis of 2 weeks*

⁸ See *Fair Work Act 2009* (Cth) s 576(2)(aa).

⁹ BNSW/ABI Proposal at [3.1]-[3.12].

in advance and 2 weeks in arrears". That deletion further enhances the flexibility of the provision, which is supported by BNSW and ABI.

The calculation of minimum hourly & weekly rates

3.24 The AI Group propose that the Children's Award, FFIA and SCHADS Award be varied to include the following clause:

"An employer is taken to satisfy its obligation to pay a full-time employee for a 38 ordinary hour week where the employer pays an amount that is equivalent to the minimum weekly rate prescribed by clause X or the minimum hourly rate multiplied by 38."

3.25 The basis for this variation is to ensure that the manner in which an employee's minimum rate of pay, whether weekly or hourly, is calculated is done so consistently.

3.26 There is a need to ensure that the weekly and hourly minimum rates of pay are consistent regardless of how they are calculated. BNSW and ABI are aware that the issue will continue to persist and cause confusion to both employers and employees and could result in unintentional underpayments. Accordingly, upon that basis, BNSW and ABI support the proposal.

3.27 The AI Group further propose to vary clause 14.1 of the Children's Award to make clear that the minimum hourly and weekly rates are set out. That proposal is also supported by BNSW and ABI.

Superannuation clauses

3.28 ACCI propose the superannuation provision should be simplified.

3.29 BNSW and ABI do not oppose the proposal.

Leave

Annualised wage arrangement clauses

3.30 ACCI propose that the annualised wage arrangement clauses in the Clerks Award, HIGA and RIA should be deleted and replaced (see Proposal C).

3.31 The AI Group and AHA also proposed an amendment to the clause in the context of the Clerks Award and HIGA, respectively. Both proposals seek to extend the application of the annualised wage arrangement provisions to part time employees.

3.32 BNSW and ABI submit the ACCI proposal should be preferred and make the following observations:

- (a) The ACCI proposal¹⁰ reduces the administrative burden associated with implementing annualised arrangements. Such simplification may result in an increased uptake of a process by employer as the steps for compliance are easily understood.
- (b) The AI Group proposal¹¹ does not serve to simplify the current process. In particular, the need to consider and reconcile the impact of changing hours under clause 10.3 or 10.4 upon a 'part time' annualised wage arrangement, makes the process immediately more complicated – and likely result in reservations by the employer to adopt it.
- (c) Similarly, the AHA proposal appears to assume that an annualised wage arrangement would operate the same as it does for fulltime employees. This is not the case. If an annual wage arrangement is to apply to part time employees, consideration must be given to the impact of changing hours under clause 10.8 or 10.11. This will introduce further complication into the HIGA – and likely result in reservations by the employer to adopt it.

3.33 The AHA also propose that that the list of provisions in clause 20.1(a) of the RIA should be expanded to be in line with the HIGA. This would mean that the entitlements covered by an annualised wage arrangement within the RIA would be broadened to capture:

- (a) all allowances (as opposed to just the split shift allowance);
- (b) payment for annual leave loading (rather than payment for annual leave); and
- (c) any additional public holiday arrangements for full-time employees.

3.34 BNSW and ABI support the AHA's proposal to expand the list of provisions in clause 20.1(a).

Excessive annual leave accrual clauses

3.35 As set out in the BNSW/ABI Proposal, BNSW and ABI support ACCI's proposal with respect to the excessive annual leave accrual clauses.¹²

Cashing out annual leave

3.36 The AWCC filed proposals in relation to the cashing out of annual leave provisions in the HIGA, Children's Award, Clerks Award and SCHADS Award. The primary variation proposed is the insertion of "guidance" into each provision.

¹⁰ ACCI Submissions at [4.1], Proposal C.

¹¹ AI Group Submission at [220].

¹² BNSW/ABI Proposal at [6.1]-[6.4].

3.37 BNSW and ABI do not support the insertion of “*guidance*” provision proposed by the AWCC. The proposal duplicates the immediately preceding paragraphs. Further, as drafted the “*guidance*” reads as additional requirement (noting the repeated use of “*must*”). If adopted, this proposal would make an easily understood provision overly complicated.

Annual leave loading

3.38 The AI Group advanced the following proposals:

- (a) For the *Clerks Award*, *FFIA*, *GRIA* and *SCHADS Award*, insert a clause that makes 17.5% the default rate in circumstances where the number of hours that would attract penalty rates is not known or identifiable.¹³
- (b) For the *Clerks Award*, *FFIA*, *GRIA* and *SCHADS Award*:
 - (i) replace any references to weekend / shift penalty “*rates*”, with a reference to the relevant weekend / shift “*penalties*”; and
 - (ii) insert a definition of the relevant weekend / shift penalties.¹⁴
- (c) Some minor amendments to the wording in clause 32.3 of the *Clerks Award* and clause 28.3 of the *GRIA* that simplify the clause and remove potentially ambiguous references to “*additional payment*”.

3.39 BNSW and ABI support each of the above proposals with respect to annual leave loading.

Consultation clauses

3.40 The consolidation of the consultation clauses proposed by ACCI results in simplification of the consultation provisions that enhances the usability of the provision.

3.41 BNSW and ABI support the ACCI proposal.

Electronic Communications

3.42 BNSW and ABI do not oppose this.

¹³ See example, AI Group Submission at [108].

¹⁴ AI Group Submission at [120]-[121].

4. CLERKS AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Wages and allowances	Exemption rate	<i>BNSW/ABI proposal filed; Support AI Group (as well)</i>
Hours of work	Ordinary hours (cl 13.3)	<i>Not opposed to AI Group</i>
	Option to forfeit unpaid meal break (cl 15.3)	<i>Alternative proposal advanced in response to AI Group</i>
Overtime and penalty rates	Return to duty (clause 21.5)	<i>Support AI Group</i>
	Rest period after working overtime (cl 22)	<i>Support ACCI</i>

4.1 Submissions in support of each position follow.

Wages and allowances

Exemption Rate

4.2 Both BNSW/ABI and AI Group proposed introduction of a new exemption rate into the *Clerks Award*.

4.3 The proposals differ in three material respects:

- (a) The exemption rate proposed by BNSW and ABI requires employees to be paid 55% above the weekly award rate whereas the Ai Group proposal requires employees to be paid 15% above the Level 5 rate.
- (b) The exemption rate proposed by BNSW and ABI is intended to satisfy up to 50 hours work per week, whereas the Ai Group proposal satisfies all hours of work per week.
- (c) The BNSW and ABI proposal applies to full time employees whereas the Ai Group proposal applies to full time and part time employees.

4.4 BNSW and ABI are supportive of both proposals.

4.5 In relation to the differences at paragraph 4.3(b) and 4.3(c) above, the Ai Group proposal effectively encompasses what BNSW and ABI are seeking, but builds upon it by:

- (a) extending the hours covered; and
- (b) extending the application to part time employees.

4.6 In relation to the rate that has been proposed (15% above Level 5 vs 55% above the employee's classification), the BNSW and ABI proposal is a more conservative proposal,

as BNSW and ABI intend to ensure that 50 hours of work is compensated for being worked each and every week (outside of leave and public holidays).

- 4.7 On the other hand, the Ai Group proposal attempts to reflect the reality that employees will not work maximum hours (eg. 50 hours or more) every week, but are more likely to work a blend of hours.
- 4.8 The calculations underpinning the BNSW and ABI proposal (55% increase to the award rate for up to 50 hours work) are as follows:

Amount required to be paid under Award for 50 hours work per week each week

Yearly hours			Payment entitlement for Level 5 employee
Category of hours	Yearly hours	Explanation	
Ordinary hours	1710	38 hrs x 45 weeks per year (once leave & public holidays removed)	\$51,675.20
Public holiday hours	76	10 days	\$2,296.72
Personal leave	38	1 week assumed taken	\$1,148.36
Annual leave (including 17.5% loading)	152	4 weeks assumed taken	\$5,397.29
Overtime @ 150%	180	4 hrs x 45 weeks per year (once leave & public holidays removed)	\$8,159.4
Overtime @ 200%	360	8 hrs x 45 weeks per year (once leave & public holidays removed)	\$21,758.4
Meal allowance	45	Assume up to 45 meal allowances payable per year	\$820.35
Total	2516		<u>\$92,256.72</u>

Amount an employee would earn if paid exemption rate of 55% weekly rate for their hours each week, including leave and public holidays

Yearly hours			Payment entitlement at 55% weekly rate
Category of hours	Yearly hours	Explanation	
Weekly salary payment	1710	38 hrs x 45 weeks per year (once leave & public holidays removed)	\$80,098.11
Public holiday hours	76	10 days	\$3,559.92

Yearly hours			Payment entitlement at 55% weekly rate
Personal leave	38	1 week assumed taken	\$1,779.96
Annual leave	152	4 weeks assumed taken	\$7,119.83
Total	1976		<u>\$92,557.82</u>

- 4.9 As can be seen from the above tables, the mathematics supports a conclusion that the rate proposed by BNSW and ABI is fair and reasonable, assuming that an employee works 50 hours per week, each week aside from public holidays and annual leave.
- 4.10 The Commission might be minded to adopt a hybrid position between the Ai Group and BNSW and ABI proposals if the Commission is prepared to accept that employees are not likely to work the maximum load of 50 hours each week.
- 4.11 In this sense the BNSW and ABI proposal represents the most cautious/conservative option, but not necessarily the fairest option for employers.

Hours of work

Ordinary hours

- 4.12 The AI Group propose that clause 13.3 should be varied to provide the ordinary hours may be worked *“between 7:00am and 7:00pm on Monday to Sunday”*.
- 4.13 This proposal is not opposed by BNSW and ABI.
- Option to forfeit unpaid meal break*
- 4.14 The AI Group propose that a new provision should be inserted in the clause 15 that would allow an employer and employee to agree that the employee will forfeit the meal break if they work more than five hours but not more than six hours.¹⁵
- 4.15 BNSW and ABI make the following observations:
- (a) Increasing the opportunities for employers and employees to enter alternative arrangements by agreement promotes flexibility. The existing clause 15 does not have this flexibility.
 - (b) The AI Group proposal although similar in effect to both clause 22.1(a) of the Children’s Award and clause 14.1(a) of the Nurses Award, could benefit from further simplification.
- 4.16 BNSW and ABI submit that an alternative approach is to adopt the language used in clause 14.1(a) of the Nurses Award:

¹⁵ AI Group Submission at [213].

“Provided that, by agreement of an individual employee, an employee who works shifts of 6 hours or less may forfeit the meal break”.

4.17 That sentence could be added to the end of clause 15.3 in the Clerks Award.

Overtime and penalty rates

4.18 Three categories of variation are proposed:

- (a) return to duty (clause 21.5); and
- (b) rest period after working overtime (clause 22).

Return to duty

4.19 The AI Group propose two amendments to the *“return to duty”* provisions in clause 21. Both amendments update the provisions to have sensible regard for the impact of remote working arrangements. Such that performing work after the usual finishing hour of work for the day would attract overtime. Similarly, the requirement of a *“minimum payment of 3 hours”* is removed from clause 21.5(b), to avoid the disincentive to permit or allow workers to attend to their duties remotely.

4.20 BNSW and ABI are supportive of this proposal.

Rest period after working overtime

4.21 The ACCI proposal to delete clause 22 and replace it with a more *“user-friendly”* clause is supported by BNSW and ABI. The proposal is more simply written and does not otherwise alter the intended operation of the clause or result in a reduction in worker entitlements.

5. CHILDREN'S SERVICES AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Hours of work	Rostering notice (clauses 21.7(a) and (b)(ii))	<i>Support AI Group</i>
	Client cancellation clause (new)	<i>Support AI Group</i>
	Electronic rostering (clause 21.7(a))	<i>Propose varied clause to AI Group</i>
	Meal breaks (out of school hours care and vacation) (new)	<i>Alternative proposal advanced in response to AI Group</i>
	Rest periods (clause 22.2(c))	<i>Not opposed to AI Group; Further consultation required</i>
Miscellaneous	Schedule A	<i>Support AI Group</i>

5.1 Submissions in support of each position follow.

Hours of work

Rostering notice

5.2 The AI Group proposal would include an “*employee’s unexpected absence from work*” as a further exception to the 7 days’ notice requirement for a roster change in clause 10.4(d)(iii) and 21.7(b)(ii).¹⁶

5.3 BNSW and ABI support this proposal and observe the proposal to be consistent with equivalent exceptions that currently appear in the SCHADS Award (see clause 25.5(d)(ii)(B)).

New client cancellation clause

5.4 The AI Group submit that consideration should be given to the development of a “*client cancellation*” clause for inclusion in the Children’s Award. No proposal was advanced. However, it was observed that similar provisions exist in the SCHADS Award (see clause 25.5(f)).

5.5 BNSW and ABI agree that the proposed new clause may benefit from further discussion during the consultation sessions.

¹⁶ If adopted consequential amendments would be required to update references contained in clauses 10.4(d)(iv), 10.4(d)(v), 21.7(b)(iii), 21.7(b)(iv) and 21.7(b)(v).

Electronic rostering

5.6 Clause 21.7(a) currently provides: *“An employer will post a legible roster at a place readily accessible to employees indicating the rostered hours of work”*.

5.7 The AI Group suggest it is unclear whether an employer may post the roster by electronic means. Hence, it is proposed that the clause be replaced with the following:

“An employer must ensure that the work roster is available to all employees, either exhibited on a notice board which is conveniently located at or near the workplace or through accessible electronic means.”

5.8 BNSW and ABI do not consider clause 21.7(a) to be ambiguous in its current form and consider that the clause should be capable of being construed so as to involve posting of rosters electronically.

5.9 BNSW and ABI consider that the AI Group proposal is lengthier than necessary to achieve AI Group’s stated aim and that the following provision could achieve the same outcome:

“An employer will post a legible roster at a place readily accessible to employees (which may include electronic distribution) indicating the rostered hours of work”.

Meal breaks

5.10 The AI Group proposal identifies a possible ‘gap’ with respect to the operation of meal breaks in circumstances where employees are working out of school hours care during school vacations.

5.11 In lieu of inserting a new clause that substantially duplicates the existing meal break provisions, BNSW and ABI propose an alternative variation (using the new text proposed by the AI Group):

“22.1 Meal breaks

(a) An employee will not be required to work in excess of five hours without an unpaid meal break of not less than 30 minutes and not more than one hour. Provided that employees who are engaged for not more than six hours continuously per shift may elect to forego a meal break.

(b) A meal break must be uninterrupted. Where there is an interruption to the meal break and this is occasioned by the employer, overtime will be paid until an uninterrupted break is taken. The minimum overtime payment will be as for 15 minutes with any time in excess of 15 minutes being paid in minimum blocks of 15 minutes.

(c) Notwithstanding clause 22.1(a):

(i) Where an employee is required to remain on the employer's premises, the employee will be entitled to a paid meal break of not less than 20 minutes or more than 30 minutes. This paid meal break is to be counted as time worked. By agreement with the employer an employee may leave the premises during the meal break, however, such time away from the premises will not be counted as time worked and nor will any payment be made for such time.

(ii) Where an employee is required by the employer to have a meal while actively supervising children as part of the normal work routine or program, this will be treated as time worked and paid as such. In addition, clauses 22.2(a) and (b) do not apply."

- 5.12 This alternative proposal is also consistent with the structure of the meal break provisions in the SCHADS Award, namely, there are not two separate streams of meal break provisions.

Rest periods

- 5.13 The AI Group propose inserting the following text into clause 22.2(c):

"All rest periods must be uninterrupted, except for employees engaged in providing out of school hours care during school vacation periods away from the employer's premises, who may be required to take a paid break while actively supervising children as part of the normal work routine or program."

- 5.14 BNSW and ABI do not oppose the proposal. However, consider it may benefit from further discussion during the consultation sessions.

Miscellaneous

- 5.15 Another proposal related to deletion of the transitional provisions in Schedule A. That schedule ceased to have application from December 2014. It is appropriate that consideration be given to its removal from the Children's Award.

6. GENERAL RETAIL INDUSTRY AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Wages and allowances	Minimum rates (apprentice) (clause 17.3)	<i>Support AHA</i>
	First aid allowance (clause 19)	<i>Oppose AI Group Support AHA</i>
	Recall allowance (clause 19.11)	<i>Oppose MGAIBA</i>
	Special clothing definition (clause 19.3)	<i>Oppose MGAIBA</i>
	Salary absorption provision for managers (new)	<i>Support AI Group; Support AHA</i>
	Exemption rates (new)	<i>Support AI Group; Support AHA Propose possible varied approach based on BNSW/ABI Clerk's Award exemption rate</i>
Hours of work	Ordinary hours of work (clause 15)	<i>Oppose MGAIBA; Further consultation required</i>
	Full-time employees (clause 15.6)	<i>Support AHA</i>
	Rostering and employees regularly working Sundays (clauses 15.7 to 15.9)	<i>Support AHA</i>
	Breaks (clause 16)	<i>Support AHA, subject to clarification</i>
	Spread of hours (clause 15.2)	<i>Support AI Group</i>
	Remote work (new)	<i>Support AI Group</i>
	Meal breaks (new)	<i>Support AI Group</i>
Leave and public holidays	Personal/carer's leave (clauses 29.2 to 29.5)	<i>Not opposed to AHA</i>
Type of employment	Part-time employees (clause 10)	<i>Not opposed to AHA</i>
	Additional hours (part-time) (new)	<i>Support AI Group</i>
	Meal breaks (part-time) (clause 10.5(d))	<i>Support AI Group</i>
Application and operation	Facilitative provisions and corresponding templates	<i>Further consultation required</i>

6.1 Submissions in support of each position follow.

Wages and Allowances

Minimum rates (apprentice)

6.2 The AHA proposes to delete references to those provisions contained in clause 17.3 of the GRIA (which deal with apprenticeships which commenced prior to 1 January 2014). BNSW and ABI support this proposal for the following reasons:

- (a) it is highly unlikely that apprentices who have been engaged on apprenticeships prior to pre-2014 (i.e., ten years ago) continue to be engaged on these apprenticeships;
- (b) in the contrary, the difference in the standard weekly rate is minimal; and
- (c) the proposed deletion would allow the GRIA to operate more effectively in a more “*user friendly*” manner.

First aid allowance

6.3 Both the AI Group and AHA advance proposals in relation to clause 19.10.

- (a) The AI Group propose that clause 19.10 be varied to clarify that the first aid allowance is only payable in circumstances where the employee is appointed to perform first aid duty. BNSW and ABI submit that requirement is already made clear by the current drafting of clause 19.10.
- (b) The AHA proposes to insert new text to add the terms “*per day*” into clause 19.10, up to a maximum of \$12.94 per week. This proposal would allow employers to pay a daily (or pro-rated) rate to casual and part-time employees who are entitled to receive the first aid allowance. BNSW and ABI support this proposal.

Recall allowance

6.4 The MGAIBA propose clause 19.11 be varied to include examples when a payment for the recall allowance is not required.

6.5 BNSW and ABI submit that this variation is not necessary. In circumstances where the existing provision is sufficiently clear, listing examples will detract from the usability of the award.

Special clothing definition

6.6 The MGAIBA proposes to vary clause 19.3 of the GRIA by including examples of what constitutes “*special clothing*” and what does not.

6.7 BNSW and ABI submit the proposed variation is not necessary. The definition of “*special clothing*,” as it stands, is already sufficient and clear. Further, a standardised list of items

which may or may not constitute “*special clothing*” may fail to accurately reflect the different types of clothing used by various retail businesses across Australia.

Salary absorption provision for managers; Exemption rates

- 6.8 The AI Group and the AHA each propose that a salary absorption/exemption rates clause be introduced into the GRIA, with AHA proposing that the absorption apply only to managers.
- 6.9 BNSW and ABI are supportive of both proposals and make the following observation. An exemption rates clause was previously inserted into the Restaurant Industry Award, albeit on a temporary basis. The variation demonstrates that such a change is practically achievable and allows greater participation in the workforce.
- 6.10 Whilst supportive of the AI Group drafting, if there is opposition to the Ai Group proposal on the basis that employees may be disadvantaged, BNSW and ABI would propose the alternative formulation put forward by BNSW and ABI with respect to the Clerks - Private Sector Award 2020 - which operates to ensure employees will not be left worse off (see Section 5 of the BNSW and ABI Submissions dated 22 December 2023).

Hours of work

Ordinary hours of work

- 6.11 The MGAIBA propose that a note be inserted within clause 15.1 indicating when overtime is triggered. The circumstances which provide for overtime are clear and are already provided for by clause 21.2 of the GRIA. Inserting a note would simply detract from the award’s usability.
- 6.12 Whilst BNSW and ABI do not support the proposal advanced by the MGAIBA, we consider clause 15.1 will benefit from further discussion during consultations.

Full time employees; Rostering and employees regularly working Sundays

- 6.13 The AHA propose to vary clauses 15.6 to 15.9 and of the GRIA with simplified new clauses.¹⁷ Similarly, Nellers has identified that the current clause 15.7 (rostering arrangements) is significantly complex and creates unnecessary administrative burden for employers.
- 6.14 BNSW and ABI are supportive of the AHA proposal.
- 6.15 BNSW and ABI has also filed separate submissions and a draft determination on 14 February 2024 in relation to clauses 15.6 and 15.7 of the GRIA to clarify that those clauses do not apply to casual employees.

¹⁷ AHA Submission at pages 21-22.

Breaks

- 6.16 The AHA propose that “*clause 16*” of the GRIA be simplified by adopting the wording from clause 14 of the *Miscellaneous Award 2020*. The proposed text is as follows:

“16. Breaks

16.1 An employee must not be required to work for more than 5 hours without an unpaid meal break of at least 30 minutes and not more than 60 minutes.

16.2 An employee is entitled to one 10-minute paid rest break for a shift that is between 4 and 7 hours and two 10-minute paid rest breaks for shifts longer than 7 hours.”

- 6.17 To the extent the AHA propose that clauses 16.1 and 16.2 should be replaced with the above text, that is supported by BNSW and ABI. However, should the effect of the AHA proposal be that clauses 16.1 to 16.6 be deleted – that is not supported. Noting that would result in the deletion of a requirement to roster breaks and, importantly, an entitlement in clause 16.6.

Spread of hours

- 6.18 The AI Group propose that the wording in clause 15.2(c) of the GRIA be varied from “*establishment*” to “*retailer*”. This proposal is supported by BNSW and ABI.

Remote work

- 6.19 The AI Group propose that a new clause 15.6 be inserted into the GRIA limiting the operation of certain clauses where the employer and employee agree to work remotely. BNSW and ABI support this proposal.
- 6.20 The proposal would reflect the changing nature of work without reducing any entitlements. Further, the removal of the minimum engagement period in that circumstance, for example, would be consistent with the observations of the *Full Bench in 4 yearly review of modern Awards - Casual employment and Part-time employment* [2017] FWCCFB 3541, which, in summary, expressed that the rationale for minimum engagement periods was to compensate employees who were put to the effort and cost of travelling to work for minimal pay.

Meal breaks

- 6.21 The AI Group propose that a new clause 16.6 concerning meal breaks be inserted into the GRIA. BNSW and ABI support this proposal. The current drafting of clause 16.5 is restrictive and operationally inflexible. The proposed new clause would reflect the often unpredictable nature of retail work while allowing greater flexibility.

Leave and public holidays

Personal/carer's leave

6.22 The AHA suggest that usability of the personal/carer's leave provision would be enhanced by deleting the remainder of clause 29.2 to 29.5. The effect of this proposal is that clause 29 would be reduced to a single provision:

"29.1 Personal/carer's leave and compassionate leave are provided for in the NES."

6.23 Whilst clauses 29.2 to 29.5 are not barriers to usability, BNSW and ABI do not oppose the proposal advanced by AHA as the 'deleted' provisions are entitlements are already provided for by the NES.

Type of employment and classifications

Part-time employees

6.24 The AHA propose to replace clause 10 of the GRIA with clause 10 of the HIGA. BNSW and ABI do not oppose this proposal.

Additional hours (part-time)

6.25 The AI Group propose to introduce a new clause 10.11 into the GRIA to allow part-time employees to work in addition to their agreed hours of work, by agreement, without attracting overtime (up to 38 hours per week). BNSW and ABI support this proposal. This proposal would allow greater flexibility and engagement in the workforce.

Meal breaks (part-time)

6.26 The AI Group propose to delete clause 10.5(c) from the GRIA to improve operational flexibility. BNSW and ABI support this proposal.

Application and operation

Facilitative provisions and corresponding templates

6.27 MGA submit that the inclusion of templates that correspond to the clauses listed in the facilitative provision would assist with usability. The purpose of the facilitative provisions is to reduce prescription and enable an employer and employee (or group of employees) to enter an agreement.

6.28 In reply, BNSW and ABI submit:

- (a) Whilst this submission is not opposed, BNSW and ABI submit that creation of numerous templates may inadvertently suggest a particular form of agreement is required.

- (b) Prior to increasing the number of schedules to the GRIA, the Commission should be satisfied the additional template is indeed necessary to enhance the usability of the GRIA.

6.29 MGA also submit that clause 7 would benefit for an “*editorial note*” that highlights the existence of templates in Schedule F and G. BNSW and ABI submit this may result in confusion given that Schedule F and G correspond to “agreements” required to comply with clauses 28.8 and 28.9.

7. HOSPITALITY INDUSTRY (GENERAL) AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Wages and Allowances	Apprentice rates (clause 19)	<i>Not opposed to AHA</i>
	Payment of wages (clauses 23.1 - 23.5)	<i>Further consultation required</i>
	Higher duties (clause 22)	<i>Oppose AHA</i>
	Minimum rates – managerial staff (clause 18.2)	<i>Alternative proposal advanced in response to AHA</i>
	Junior employees (clause 18.4)	<i>AHA proposal outside scope of the Review</i>
	Forklift driver allowance (clause 26.3)	<i>Not opposed to AHA, subject to observation</i>
	Meal allowance (clause 26.4)	<i>Support AHA, subject to existing text being partially retained/incorporated</i>
	Tool and equipment allowance (clause 26.5(a))	<i>Oppose AHA</i>
	Special clothing allowance (clause 26.6(e))	<i>Do not oppose AHA</i>
	Overnight stay allowance (clause 26.15(a))	<i>Not opposed to AHA</i>
Application and operation	Definition of “ <i>averaging arrangement</i> ” (clause 2)	<i>Further consultation required</i>
	Definition of “ <i>appropriate level of training</i> ” (clause 2)	<i>Oppose AHA</i>
	Definition of “ <i>liquor service employee</i> ” (clause 2)	<i>Oppose AHA</i>
	Definition of “ <i>rostered day off</i> ” (clause 2)	<i>Not opposed to AHA</i>
	Casual employees – hours cap (clause 11.2)	<i>Support proposal</i>

Part	Subject of Proposal	BNSW and ABI Position
Types of employment and classifications	Part-time employees – setting guaranteed hours and availability (clause 10.4)	<i>Alternative proposal advanced in response to AHA</i>
	Part-time employees – change in employee’s circumstances that changes their availability (clauses 10.11 – 10.12)	<i>Position subject to consultation</i>
Leave and public holidays	Definition of “shiftworker” (clause 30.2)	<i>Oppose AHA</i>
	Public holidays (clause 35.3)	<i>Do not oppose AHA</i>
Overtime and penalty rates	Reasonable overtime (clause 28.1)	<i>Not opposed to AHA</i>
	Penalty rates - additional provisions for work on public holidays (clause 29.4)	<i>Oppose AHA</i>
Hours of work	Clauses 15.1 – 15.5 be deleted and replaced with the text in Annexure A ¹⁸	<i>Further consultation required</i>
	Breaks (clause 16)	<i>Support AHA, subject to clarification</i>
Industry specific provisions	Option for “recurring authorised salary deductions” should be inserted into cl 37	<i>Not confirmed (as no proposal filed by AHA)</i>
	Consolidation of clauses 37.4, 37.7 and 37.8	<i>Support AHA</i>
Termination of employment and redundancy	Notice periods extended (clause 42)	<i>Oppose AHA</i>
Miscellaneous	AHA and CCIWA propose minor amendments and deletions proposed in relation to Schedule A, B and C.	<i>No response from BNSW/ABI</i>

7.1 Submissions in support of each position follow.

Wages and Allowances

Apprentice rates

7.2 The AHA propose deletion of references to “*waiting apprenticeship*” throughout clause 19 and “*on or after 1 January 2014*” in clause 19.5, as well as any associated provisions. No draft determination has been filed.

7.3 BNSW and ABI does not oppose the proposal, but makes the following observations:

- (a) Whether or not the “*waiting apprenticeship*” or “*waiting trade*” is still offered in Australia is a question for evidence. The AHA do not refer to any source to indicate the apprenticeship/trade is now redundant.

¹⁸ AHA Submission.

- (b) As at February 2024, it appears unlikely that there would be any adult apprentices that commenced their apprenticeship before January 2014.
- (c) If clause 19.5 was to be amended to removed references that distinguish between two types of adult apprentice, a corresponding amendment would be required to the notes in Schedule B at clause B.9.

Payment of wages

- 7.4 The AHA propose that clauses 23.1-23.5 should be deleted and replaced with a clause equivalent to clause 16.1 of the *Miscellaneous Award 2020*. That clause provides: *“Payment of wages is dealt with in section 323 of the Act”*.
- 7.5 BNSW and ABI do not oppose the variation but make the following observations:
- (a) The provisions set out in clauses 23.1 to 23.5 are not a carbon-copy of s 323 of the *Fair Work Act*. For example:
 - (i) clause 23.1 provides: *“The employer and an individual employee may agree to a weekly or fortnightly pay period”*; and
 - (ii) clause 23.2 provides: *“...wages may be paid on any day of the week other than a Friday, Saturday or Sunday. However, if the employer and the majority of employees at a workplace agree, wages may be paid on the Friday of a week during which there is a public holiday”*.
 - (b) Clauses 23.1-23.5 are not complex provisions. They set out arrangements in relation to payment of wages, which include provisions that go beyond s 323.
 - (c) A reduction in text should not be the prime motivator when seeking to increase the usability of the HIGA. Especially if the current text is not a barrier to usability.
- 7.6 BNSW and ABI submit that further consultation is required before deleting the substance of clause 23. For instance, it may be that particular parts of clauses 23.1 - 23.5 are problematic and would benefit from revision.

Higher duties

- 7.7 The AHA propose that clause 22 should be deleted and replaced with a new *“plain language”* version.¹⁹
- 7.8 BNSW and ABI make the following observations:

¹⁹ AHA Submission, page 8.

- (a) The higher duties clause in the HIGA is simple and easy to understand. It provides for two scenarios relevant to “*employee[s] (other than an employee within the Food and beverage attendants grade 2 or 3 classification level)*”,
 - (i) working 2 or more hours of higher duties; or
 - (ii) working less than 2 hours of higher duties.
- (b) The calculation of the rate that is to apply is also identified – “*the minimum hourly rate specified in column 4 of Table 3—Minimum rates for that higher classification*”.
- (c) The AHA proposal omits reference to both the exclusion of “*Food and beverage attendants grade 2 or 3*” and “*column 4 of Table 3—Minimum rates for that higher classification*”. As such, the AHA proposal changes the effect of the clause and introduces uncertainty as to the specific rate that is to apply.

7.9 Accordingly, BNSW and ABI oppose the proposal in the current form advanced by the AHA.

Minimum rates

7.10 The AHA propose that clause 18.2 should be amended to include a table setting out the hourly or weekly rates for managerial staff.

7.11 Clause 18.2 currently provides:

“18.2 Managerial staff (Hotels)

An employer must pay an employee within the Managerial Staff (Hotels) classification level as defined by Schedule A—Classification Structure and Definitions a minimum annual salary of \$56,557.”

7.12 BNSW and ABI oppose the variation proposed and make the following observations:

- (a) Clause 18.2 is simple and easy to read. It clearly communicates the minimum annual salary for managerial staff.
- (b) Further guidance as to “*hourly rates of pay*” is set out in Schedule B, which sets out the following in tabular form:
 - (i) full-time and part-time managerial staff (Hotels) employees—ordinary and penalty rates;
 - (ii) full-time and part-time managerial staff (Hotels) employees—overtime rates;
 - (iii) casual managerial staff (Hotels) employees—ordinary and penalty rates; and
 - (iv) casual managerial staff (Hotels) employees—overtime rates.

- (c) Moving the four tables from Schedule B into clause 18.2 will only serve to clutter the clause. This would counteract the purpose of providing a minimum annual salary.

7.13 An alternative proposal is to include a note, similar to “NOTE 4” in clause 18.1, which directs attention to Schedule B:

*“NOTE 4: Schedule B—Summary of Hourly Rates of Pay contains a summary of hourly rates of pay including casual, overtime and penalty rates”.*²⁰

Junior employees

7.14 The AHA submit that the two streams of junior employee in the HIGA should be consolidated into one set of rates.²¹ That submission is not supported by a draft determination.

7.15 BNSW and ABI make the following observations:

- (a) Clause 18.4 sets out two streams of junior rates for:
 - (i) junior employees (other than junior office employees); and
 - (ii) junior office employees.
- (b) The rates for junior employees are expressed as a percentage of the minimum rates in clauses 18.1 or 18.3 (subject to the relevant classification). Notably, the percentages are not uniform between the two streams of junior employee.
- (c) In circumstances where the junior rates have been held to meet the modern awards objective, there is no basis to “consolidate” two separate sets of rates. Further the Commission would require evidence and the benefit of a clear proposal in order to be satisfied such consolidation would improve usability and satisfy the modern awards objective.

7.16 In light of those observations, BNSW and ABI submit the AHA proposal falls outside the scope of the Review and would be better dealt with via an application under s 158.

Allowances: forklift driver, meal, tool and equipment, special clothing, and overnight stay

7.17 The AHA propose a series of amendments to the existing allowance provisions in the HIGA.

7.18 BNSW and ABI make the following observations:

- (a) **Forklift driver allowance:** If the forklift allowance were to be consolidated for all employment types, the reference to the weekly maximum of “\$14.93 per week”

²⁰ HIGA clause 18.1.

²¹ AHA Submission, page 6.

should be retained to not alter the effect of the current provision. Subject to that observation the AHA proposal is not opposed.

- (b) **Meal allowance:** BNSW and ABI are supportive of the “*plain language*” variation proposed by AHA, subject to the stipulation that clause 26.4 “*applies to any full-time or part-time employee*” is incorporated into the revised text.
- (c) **Tool and equipment allowance:**
 - (i) The references to “*cook or apprentice cook*” should not be replaced with “*employee*”. That would extend application of the allowance to *all* classifications in Schedule A.
 - (ii) Currently, the allowance only applies to the “*cook*” classification in the kitchen stream.²² There is also no confusion that it would apply to “*chefs*” given the Cook Grades 3-5 each include “*chef*” within the classification definition.²³
 - (iii) Accordingly, the AHA proposal is opposed.
- (d) **Special clothing allowance:**
 - (i) Clause 26.6(e) sets out a specific laundry allowance for “*motel employees*”. The AHA submit this should be deleted because “*motel employee*” is not defined in the HIGA and no other provision in the award is constrained to “*motel employees*”.
 - (ii) It is not apparent why motel employees attract a specific entitlement separate to clause 26.6(c) - which already provides for laundry allowances.
 - (iii) On this basis, the AHA proposal is not opposed.
- (e) **Overnight stay allowance:**
 - (i) The AHA suggest that the overnight stay allowance may be misconstrued as applying to employees that are engaged in “*overnight work*” as opposed to employees that are required to “*sleep overnight*” at the premises.
 - (ii) Whilst substituting the word “*stay*” with “*sleep*” will not fundamentally change the operation of the clause, there is doubt as to whether clause 26.15(a) as currently drafted results in confusion as to its application.
 - (iii) The AHA proposal is not opposed.

²² HIGA Sch A, A.2.2.

²³ HIGA Sch A, A.2.2. Cf AHA Submission, page 10.

Application and operation

Definition of “averaging arrangement”

- 7.19 The AHA propose that a definition for “*averaging arrangement*” should be inserted into clause 2, and that definition should state that the term is interchangeable with “*roster cycle*”. However, the AHA do not propose any wording.
- 7.20 BNSW and ABI observe that the term “*averaging arrangement*” does not appear in the HIGA. As such, there does not appear to be a compelling basis to insert it. This proposal may benefit from further consultation.

Definition of “appropriate level of training”

- 7.21 The AHA submit that the current definition of “*appropriate level of training*” is “*not fit for purpose having regard to the nature of the hospitality industry and the employment patterns adopted by the hospitality workforce*”. In particular, the AHA fixate upon the possibility that completion of an individual unit of competency (as opposed to the relevant qualification) may be considered “*appropriate*” by the current definition.
- 7.22 BNSW and ABI make the following observations:

- (a) An employer is responsible for classifying employees “*in accordance with Schedule A*”.²⁴
- (b) Throughout the classifications in Schedule A, the HIGA stipulates that an employee must have the “*appropriate level of training*” in order to fall within a particular classification. For example:

“Food and beverage supervisor (wage level 5) means an employee who has the appropriate level of training, including a supervisory course, and who has responsibility for the supervision, training and co-ordination of food and beverage staff or for stock control for one or more bars.”²⁵

- (c) The HIGA currently provides the following definition:

“*appropriate level of training*, in relation to an employee other than a casino gaming employee, means that the employee:

(a) has completed an appropriate training program that meets the training and assessment requirements of a qualification or one or more appropriate units of competency forming part of a training package; or

²⁴ HIGA cl 14.

²⁵ HIGA Sch A, A.2.1(e).

(b) has been assessed by a qualified skills assessor as having skills at least equivalent to those attained in an appropriate training program; or

(c) as at 30 June 2010, had been doing the work of a particular classification for a period of at least 3 months.”

- (d) Paragraphs (a) and (b) of the definition provides guidance to employers about what informs their assessment of whether an employee “*has the appropriate level of training*”, without being unduly prescriptive.
- (e) Consideration may be given to the deletion of paragraph (c) of the definition may be deleted.

7.23 For the preceding reasons the AHA proposal in its currently terms is opposed.

Definition of “liquor service employee”

7.24 The AHA propose that the definition of “*liquor service employee*” would benefit from the inclusion of a note that provides examples about the activity that falls within the definition (e.g. “*sells alcohol to customers in a casino*” or “*pours alcoholic drinks for service*”).

7.25 For the following reasons, BNSW and ABI are not supportive of the ‘note’ proposed by the AHA:

- (a) The definition of “*liquor service employee*” is simple and easily understood. This is plain by reference to the definition itself:

“liquor service employee means a person employed to sell or dispense liquor in bars, bottle departments or shops and includes a cellar employee.”

- (b) The note proposed by the AHA would introduce prescription into the HIGA under the guise of guidance. If such a note (or similar) were to be inserted into the HIGA, the list should be non-exhaustive.

Definition of “rostered day off”

7.26 The AHA propose that the definition of “*rostered day off*” would benefit from simplification. The following new text is proposed:

“Rostered day off means a 24-hour period an employee is not required to work (a non-working day). It is distinct from an accrued day off or accrued time off in lieu.”

7.27 BNSW and ABI observe the term to be well-understood across industries. It is noted that the term is used but not defined in the GRIA. This omission does not appear to cause confusion.

7.28 Whilst not opposed to the introduction of a definition, BNSW and ABI do not consider the variation necessary to enhance the usability of the HIGA.

Types of employment and classifications

Casual employees – hours cap

- 7.29 The CCIWA submit that *“the hourly cap for casual employees to accommodate employee requests for reasonable additional hours”* should be re-evaluated. No proposal was filed.
- 7.30 BNSW and ABI consider it anomalous that clause 11.2 contains a ban on working above 38 hours per week. This ban is not confined - in its wording - to ordinary hours but could feasibly operate as a prohibition on more than 38 hours work in total during a week.
- 7.31 It is not apparent why such a ban is necessary and it constitutes a significant departure from other Award terms which generally permit hours above 38 to be worked in a week, provided overtime is payable.

Part-time employees

- 7.32 The AHA propose that the flexibility of clause 10.4 would be enhanced by enabling *“4 days off”* to be averaged over a 2-week periods (instead of a requirement that the employee have 2-days off each week).
- 7.33 As to that proposal, BNSW and ABI make the following observations:
- (a) The AHA propose that clause 10.7(b) be amended to say: *“must have 2 days off each week, or 4 days off averaged over each 2-week period”*. That amendment provides employers with the option to change rostering arrangements without input from the employee.
 - (b) Two alternative means of increasing the flexibility of clause 10.7(b) include:
 - (i) make the clause a facilitative provision under clause 7; or
 - (ii) insert words to the following effect: *“An employee and employer may agree to 4 days off averaged over each 2-week period”*.
- 7.34 Further, the AHA propose that clause 10.11-10.12 would benefit from *“plain language”* drafting. In response, BNSW and ABI make the following observations:
- (a) The AHA proposal in relation to clause 10.11-10.12, removes reference to *“guaranteed hours”* and clause 10.5. By deleting clause 10.12, the proposed new wording fails to ensure an employer is not in breach of clause 10.5 if they cannot immediately accommodate the alteration to the employee’s guaranteed hours.
 - (b) Clause 10.12 relevantly provides:

“10.12 If the employer cannot reasonably accommodate the alteration to the part-time employee’s availability under clause 10.11, then (regardless of clause 10.5):

(a) the part-time employee's guaranteed hours agreed under clause 10.4 cease to apply; and

(b) the employer and the part-time employee must agree a new set of guaranteed hours under clause 10.4."

(c) Clause 10.12 should not be deleted from the HIGA.

7.35 In light of those observations, BNSW and ABI wish to conduct further consultations before advising of a position in response to clause 10.11 and 10.12.

Leave and public holidays

Definition of "shiftworker"

7.36 The AHA propose that the definition of shiftworker in clause 30.2 should be replaced with the definition of shiftworker that appears in s 87(3) of the *Fair Work Act*. That definition provides:

"Award/agreement free employees who qualify for the shiftworker entitlement

(3) An Award/agreement free employee qualifies for the shiftworker annual leave entitlement if:

(a) the employee:

(i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and

(ii) is regularly rostered to work those shifts; and

(iii) regularly works on Sundays and public holidays; or

(b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards."

7.37 BNSW and ABI make the following observations:

(a) Clause 30.2 is extracted below:

30.2 Additional paid annual leave for certain shiftworkers

(a) Clause 30.2 applies to an employee who is a 7 day shiftworker regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week.

(b) The employee is a shiftworker for the purposes of the NES (entitlement to an additional week of paid annual leave).

(b) The current wording of clause 30.2 is consistent with the equivalent provisions in the Clerks Award, GRIA and RIA.

- (c) Putting aside formatting differences, the primary distinction between the wording in clause 30.2 and s 87(3) is a reference to employment in “**an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week**” (emphasis added) – as opposed to “in a **business in which shifts are continuously rostered 24 hours a day for 7 days a week**”.
- (d) The clause as presently drafted already states that “a shiftworker for the purposes of the NES” is entitled to an additional week of paid annual leave.

7.38 BNSW and ABI query how the AHA proposal enhances the usability of the provision. For those reason, the proposal is not supported at this stage.

Public holidays

7.39 The AHA submits that confusion arises as to how an employer is to calculate “an extra day’s pay” for the purposes of clause 35.3(a)(i). The AHA propose that insertion of an additional provision would remedy that confusion. The proposed text is as follows:

“(c) The extra day’s pay in clause 35.5(a)(i) is paid at the usual rate of pay the employee would have received for working equivalent ordinary hours on a standard working day (usually 7.6 hours). The equivalent hours do not count for the purposes of hours of work, overtime or leave accruals.”²⁶

7.40 This is not opposed.

Overtime and penalty rates

Reasonable overtime

7.41 The AHA propose replacing clause 28.1 with the note from the RIA, namely:

“NOTE: Under the NES (see section 62 of the Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.”²⁷

7.42 BNSW and ABI make the following observations:

- (a) Clause 28.1 sets out the same content of s 62 of the *Fair Work Act*. It addresses the right of an employee to refuse overtime hours if they are unreasonable, together with factors that are to be taken into account when determining whether overtime hours are reasonable or unreasonable.

²⁶ AHA Submissions, page 14.

²⁷ Restaurant Award clause 23.

- (b) Reducing word count is one consideration that may enhance the usability of the HIGA.
- (c) Clause 28.1 as currently drafted does not present a barrier to the usability of the HIGA.

7.43 The proposal is not opposed, but BNSW and ABI do not consider it necessary to enhance the usability of the award.

Penalty rates - additional provisions for work on public holidays

7.44 The AHA propose that clause 29.4 be co-located into clause 34. This is because clause 29.4 sets out “*Additional provisions for work on public holidays*” and clause 34 concerns “*Public Holidays*”.

7.45 BNSW and ABI do not support the AHA proposal. Whilst both clauses 29.4 and 30 concern “*full-time employees*”, clause 29.4 is to be read in conjunction with the surrounding penalty provisions – in particular the applicable rate that applies to public holiday work in clause 29.2.

7.46 To separate clause 29.4 from the penalty rate context, may lead employers to misinterpret the operation of clause 29.4.

Hours of work

Ordinary hours or work and rostering

7.47 The AHA propose that clauses 15.1 – 15.5 be deleted and replaced with the text in Annexure A to the AHA Submission. Further, clause 16 would be deleted and replaced with text that aligned to clause 14 of the *Miscellaneous Award*.

7.48 BNSW and ABI submit this proposal would benefit from further consultation.

Breaks

7.49 The AHA propose that “*clause 16*” of the HIGA be simplified by adopting the wording from clause 14 of the *Miscellaneous Award 2020*.

7.50 To the extent the AHA propose that clauses 16.1 and 16.2 should be replaced with the above text, that is supported by BNSW and ABI. However, should the effect of the AHA proposal be that clauses 16.1 to 16.7 be deleted – that is not supported.

Industry provisions

7.51 Turning to the industry specific provisions in the HIGA, the AHA propose that an option for “*recurring authorised salary deductions*” should be inserted into cl 37 (consistent with the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 (Cth)*). Further, clauses 37.4, 37.7 and 37.8 would be consolidated.

7.52 BNSW and ABI is supportive of the proposed consolidation of clauses 37.4, 37.7 and 37.8, which may improve the readability of provision by grouping provisions relating to meal deductions together. No view is expressed, however, as to the “*recurring authorised salary*” submission – as no proposal was filed.

Termination of employment and Redundancy

7.53 The AHA propose that the notice periods in clause 42 should be revisited and extended.

7.54 The extension of notice periods in clause 42 is not necessary for the purpose of making awards easier to use (see (d) above). It is submission that would require evidence, etc.

Miscellaneous

7.55 A series of minor amendments and deletions proposed in relation to Schedule A, B and C by the AHA and CCIWA.

7.56 BNSW and ABI do not presently intend to respond to the proposals in relation to Schedule A, B and C.

8. RESTAURANT INDUSTRY AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Wages and allowances	Higher duties (clause 18.8)	<i>Oppose AHA</i>
	Meal allowance (clause 21.2)	<i>Support AHA, subject to existing text being partially retained/incorporated</i>
	Minimum rates (apprentices) (clauses 18.3 to 18.5)	<i>Do not oppose AHA</i>
	Minimum rates (junior employees) (clauses 18.2(b) and (c))	<i>Support AHA</i>
	Payment of wages (clause 19)	<i>Further consultation required</i>
	Split shift allowance (clause 21.3)	<i>Oppose AHA</i>
	Tool and equipment allowance (clause 21.4)	<i>Oppose AHA</i>
Leave and public holidays	Public holiday (clauses 24.4(d) and 30.3))	<i>Oppose AHA</i>
Type of employment and classifications	Part-time employee (clause 10.7(c))	<i>Oppose AHA</i>
Application and operation	Definition of “ <i>averaging arrangement</i> ” (clause 2)	<i>Further consultation required</i>
	Definition of “ <i>appropriate level of training</i> ” (clause 2)	<i>Oppose AHA</i>
	Definition of “ <i>liquor service employee</i> ” (clause 2)	<i>Oppose AHA</i>
	Definition of “ <i>rostered day off</i> ” (clause 2)	<i>Not opposed to AHA</i>
Hours of Work	Breaks (clause 16)	<i>Support AHA, subject to clarification</i>
Overtime and Penalty Rates	Additional provisions for work on public holidays (clause 24.2)	<i>Oppose AHA</i>
Miscellaneous	Discrete variations throughout Schedule A proposed by AHA	<i>No BNSW/ABI response</i>
	Delete Schedule AA	<i>Support AHA</i>

8.1 The position of BNSW and ABI follows.

Wages and allowances

Higher Duties

8.2 The AHA submit that its proposal in relation to the HIGA is directly applicable to the RIA. BNSW and ABI repeat the observations made at paragraph 7.8 above.

Meal Allowance

8.3 The AHA submit that its proposal in relation to the HIGA is directly applicable to the RIA. BNSW and ABI repeat its observations at 7.18(b) above.

Minimum Rates (Apprentices)

8.4 The AHA propose to broaden the scope of the apprentices provision by removing the reference to “*cooking trade*.” Any changes would be subject to regulatory guidelines of the apprenticeship provider. BNSW and ABI otherwise do not oppose.

Minimum Rates (Junior Employees)

8.5 The AHA propose to delete clauses 18.2(b) and (c) from the RIA.

8.6 BNSW and ABI support the AHA’s proposal and make the following observations:

- (a) clauses 18.2(b) and (c), as presently drafted, creates unnecessary complexity;
- (b) there is no rational basis for rounding the weekly minimum rates to the nearest 10 cents, particularly in circumstances where there is no requirement for rounding where the junior employee is paid an *hourly* rate;
- (c) the minimum rates of pay for adult employees, whether hourly or weekly, do not require rounding; and
- (d) deleting clauses 18.2(b) and (c) of the RIA would ensure consistency with the manner in which rates of pay are calculated within the RIA.

Payment of Wages

8.7 The AHA submit that its proposal in relation to the HIGA is directly applicable to the RIA. BNSW and ABI repeat its observations at 7.4-7.6 above.

Split Shift Allowance

8.8 The AHA propose to delete and replace clause 21.3 of the RIA with clause 26.14 of the HIGA.

8.9 For the reasons that follow, BNSW and ABI oppose the AHA’s proposal:

- (a) The proposal would require the employer to apply two different rates of the split shift allowance to two different circumstances, adding unnecessary complexity to the award.
- (b) Further, employers who are covered by both the HIGA and the RIA represent a minority of employers in the hospitality sector.
- (c) There is no reasonable basis to replace the current clause in the RIA with the split shift allowance.

Tool and Equipment Allowance

8.10 The AHA submit that its proposal in relation to the HIGA is directly applicable to the RIA. BNSW and ABI repeat its observations at 7.18(c) of this reply submission.

Leave and public holidays

8.11 Four categories of the variation are proposed:

- (a) public holiday (clauses 24.4(d) and 30.3));
- (b) public holiday (non-full-time) (clause 30.3); and
- (c) additional provisions for work on public holidays (clause 24.4).

Public Holiday

8.12 Nellers Consulting propose:

- (a) a “*comprehensive review*” into the payment and entitlements of full-time employees who work public holidays against employees who do not work public holidays be conducted; and
- (b) introduce an option within clause 30.3, allowing employees to be compensated at a rate mirroring the language used in clause 24.4, which specifies payment at 225% of the minimum hourly rate, in place of the current provision for additional days' pay.

8.13 BNSW and ABI submit:

- (a) A comprehensive review is not appropriate in the context of the current Review.
- (b) It is entirely unclear how a fulltime employee is disadvantaged by the current drafting and operation of clauses 24.4 and 30.3, respectively.

8.14 Reference is also made to the recent Full Court of the Federal Court’s decision of *CFMMEU v OS MCAP Pty Ltd* [2023] FCAFC 51 clarified that employers must first “*request*” that the employee work on a public holiday before they are required to work (including by way of a roster). Having regard to this recent decision, a full-time employee may choose not to work on the public holiday, however subject to certain circumstances.

8.15 Accordingly, BNSW and ABI oppose the recommendations made by Nellers Consulting.

Type of employment and classifications

Part-time employee

8.16 The AHA submit that its proposal in relation to the HIGA is directly applicable to clause 10.7(c) in the RIA. BNSW and ABI repeat its observations at 7.33 above.

Application and operation

Definitions

8.17 The AHA repeat its proposal it made in relation to the HIGA to apply to the RIA.

8.18 BNSW and ABI repeat its observations at 7.19 to 7.28 above.

Hours of work

Breaks

8.19 The AHA proposed that clause 16 should be deleted and replaced with clause 14 of the *Miscellaneous Award*. BNSW and ABI repeat its observations at 7.49 to 7.50 above.

Overtime and Penalty Rates

Additional provisions for work on public holidays

8.20 The AHA propose that references to public holiday provisions in clause 24.2 should be co-located with the corresponding provisions in clause 30.

8.21 For the reasons set out above at 7.44 to 7.46, this proposal is not supported by BNSW and ABI.

Miscellaneous

8.22 The AHA also propose:

- (a) discrete variations throughout Schedule A; and
- (b) delete Schedule AA, which concerns transitional arrangements.

8.23 As to those further proposals, BNSW and ABI:

- (a) do not have a response to the variations to Schedule A.
- (b) note that the provisions in Schedule AA were intended for operation between 11 August 2021 and 10 August 2022. In circumstances where no application has been made for its extension, removing the redundant schedule appears to be appropriate.

9. SCHADS AWARD

Summary of Position

Part	Subject of Proposal	BNSW and ABI Position
Minimum wages and related matters	Structure of the minimum weekly wages provisions (cll 15.1-15.8)	<i>Not opposed, subject to observations regarding standard rate; Further consultation required</i>
	Sleepover provisions (cll 25.4 and 25.7)	<i>Subject to a separate application</i>
	Rest breaks between rostered work (cl 25.4)	<i>Support CCIWA</i>
	Roster changes (clause 25.5)	<i>Oppose CCIWA</i>
	Meal breaks (clause 27.1)	<i>Alternative proposal in response to CCIWA</i>
	Tea breaks (clause 27.2)	<i>Support AI Group</i>
Application and operation	Definitions of “home care sector” and “social and community sector” (re: disability)	<i>Observations made</i>
Leave and public holidays	Cashing out annual leave (31.5(h))	<i>Not oppose CCIWA</i>
Types of employment	Part-time employees (10.3(c)(ii))	<i>No position (no proposal by CCIWA)</i>
	Part-time employees (10.3(f))	<i>Support CCIWA</i>
Miscellaneous	Proposed deletion of transitional arrangements in Schedule A and clause 10.5A	<i>Support CCIWA</i>

9.1 The position of BNSW and ABI follows.

Minimum wages and related matters

Structure of the minimum weekly wages provisions

9.2 The ASU propose submit that a structural change to clauses 15.1 to 15.8 would make the provisions easier to use. The effect of the proposal is to incorporate the ERO calculations up-front, together with the corresponding note that explains the operation of the ERO.

9.3 Currently, clause 15.3 is as follows:

15.3 Social and community services employee level 3

Crisis accommodation employee level 1

	Per week \$
Pay point 1 (associate diploma/advanced certificate)	1085.60
Pay point 2	1116.80

	Per week \$
Pay point 3 (3 year degree)	1140.70
Pay point 4 (4 year degree)	1164.10

9.4 For ease of reference, the ASU proposal with respect to clause 15.3 is also extracted below:

Equal remuneration rates for applicable Social and Community Services employees

	Minimum weekly wage	Final Rate ERO Percentage	Current weekly wage	Current hourly wage
Classification	\$	%	\$	\$
Social and community services employee level 3				
Pay point 1 (associate diploma/advanced certificate)	1085.60	126	1367.86	36.00
Pay point 2	1116.80	126	1407.17	37.03
Pay point 3 (3 year degree)	1140.70	126	1437.28	37.82
Pay point 4 (4 year degree)	1164.10	126	1466.77	38.60

9.5 BNSW and ABI make the following observations:

- (a) The “*standard rate*” in the SCHADS Award is defined by reference to clause 15.3. That definition is extracted below:

“standard rate means the minimum wage for a Social and community services employee level 3 at pay point 3 in clause 15.3”

Accordingly, the standard rate is easily identified as \$1140.70.

- (b) The re-organisation proposed by the ASU introduces ambiguity into the task of identifying the standard rate. Such that questions may be raised as to whether the “*minimum wage*” for the purposes of calculation is the “*current weekly wage*” or the “*minimum weekly wage*”. If misinterpreted this may result in significant cost to the employer in relation to the allowances set out in clause 20.1, 20.6(a), 20.9(c), 20.11, 20.12 and 25.7(d).
- (c) If the ASU proposal were to be adopted, the risk of ambiguity may be reduced in part by the following amendment to the definition of the “standard rate” in clause 3:

“standard rate means the minimum weekly wage for a Social and community services employee level 3 at pay point 3 in clause 15.3”.

- (d) Further, the potential barrier to accessibility identified by the ASU, may be met by moving both Note 1 and Note 2 to the outset of clause 15 (similar to clause 17 in the SCHADS Award), but otherwise retain the existing structure of clauses 15.1 to 15.8.

- 9.6 Further consultation may be required to address the above concerns raised by BNSW and ABI.

Hours of work and related matters

Sleepover provisions

- 9.7 Both the AI Group and CCIWA submit that the existing sleepover provisions result in ambiguity and uncertainty and advance brief submissions in support of their variation.
- 9.8 BNSW and ABI appears as an interested party in the AI Group’s application (AM2023/28) that is next listed for a conciliation conference before Deputy President Wright on 6 March 2024.²⁸ In those circumstances, it is not essential that a concluded view be reached as to the sleepover provision in the Review. Proceedings AM2023/28 should instead be permitted to run their course.
- 9.9 The AWCC also prepared a proposal that focuses on revising the language of the provision. The majority of the suggested revisions do not appear necessary to make the sleepover provision easier to use.

Rest breaks between rostered work

- 9.10 CCIWA propose that clause 25.4(a) be amended to *“support employees experiencing financial hardship”* by reducing the minimum break period between shifts to 8 hours (and paragraph (b) be deleted). BNSW and ABI support this proposal.

Roster changes

- 9.11 The CCIWA submit that clause 25.5(d)(i) currently conflicts with clauses 8A and 10.3(e). Upon that basis, it is proposed that clause 25.5(d)(i) should be replaced with the following: *“Following consultation, 28 days’ notice will be given of a change in a roster”*.
- 9.12 BNSW and ABI oppose this proposal and make the following observations:
- (a) The Commission has previously recognised the right to vary a roster on 7 days’ notice is subject to the employer consulting with the employee under clause 8.

²⁸ Notice of Listing <<https://www.fwc.gov.au/documents/awards/variations/2023/nol-060324-am202328.pdf>>.

- (b) Further, in the context of part-time employees (which comprise of a large proportion of the workforce), a written agreement is required under clause 10.3(c). In practice, the purported right to vary an employee's roster is very much limited due to the operation of clause 10.3.
- (c) The provision for 7 days' notice to a change a roster is consistent with other modern awards.²⁹ It is also noted each modern award that recognises 7 days as a suitable minimum notice period also includes the model consultation clause for changes to "the regular roster or ordinary hours of work".
- (d) The requirement for consultation and 28 days' notice prior to implementing a change to a roster is not workable in all the circumstances.

Meal breaks

9.13 The CCIWA propose that clause 27.1(c) be varied as follows:

"(c) Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, or an employee is required by the employer to be present and awake overnight with a client or clients, and there is time to take a meal break, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked."

9.14 BNSW and ABI do not oppose the variation, however, for the sake of clarity it should be included as a new paragraph (d), as follows:

"(c) Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked.

(d) Where an employee is required by the employer to be present and awake overnight with a client or clients, and there is time to take a meal break, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked."

Tea breaks

9.15 The AI Group propose insertion of a new clause 27.2(c) that provides:

²⁹ See example, Children's Award clause 21.7(b)(i); Clerks Award clause 26.4(a); HIGA clause 15.5(d) (fulltime and part-time employees), clause 15.6(a). Each of those awards similarly includes a consultation clause that addresses changes to "the regular roster or ordinary hours of work".

“Notwithstanding anything in this clause, a tea break may be taken in conjunction with another tea break or a meal break to which the employee is entitled, at a time that is agreed between the employer and employee.”

- 9.16 BNSW and ABI support this addition which promotes flexibility that can only be accessed where both employer and employee agree.

Application and operation

- 9.17 As to the suggestion by the ASU that disability support workers should only be classified in the “*social and community services sector*” (addressed in submissions filed by the AI Group³⁰), that consideration falls outside the scope of the current review.
- 9.18 To the extent definitions are discussed during consultation sessions, BNSW and ABI make the following observations:
- (a) the SCHADS Award does not presently recognise a distinct “*disability sector*”; and
 - (b) consistent with the definitions of “*home care sector*” and “*social and community services sector*”, employees may deliver services to people with disability in both sectors.

Leave and public holidays

- 9.19 The CCIWA submit that clause 31.5(h) should be removed to enable employees to cash out any amount of annual leave providing they retain a 4-week accrual.
- 9.20 BNSW and ABI do not oppose this variation. It is noted that in *Clerks Award* the equivalent provision in relation to the cashing out of annual leave (see clause 32.9) is recognised as a facilitative provision in that award.

Types of employment

Part-time employees

- 9.21 Whilst the CCIWA indicated a proposal would be made in relation to clause 10.3(c)(ii), this does not appear.
- 9.22 BNSW and ABI support the proposal to clause 10.3(f), which would result in the following variation:
- “(f) ~~An employer must not require a part-time employee to work additional hours in excess of their guaranteed hours. However, An employee may agree to work hours that are additional to their guaranteed hours.~~”*

- 9.23 The deleted text does not remove the requirement that any allocation of additional hours requires agreement from the employee. This adds beneficial emphasis to this flexible

³⁰ AI Group Submission at [389]-[392].

mechanism with clause 10.3 that enables part times employees the ability to pick up additional work (should it be agreeable to their circumstances).

Miscellaneous

9.24 Further proposals were raised with respect to the deletion of transitional arrangements in Schedule A and clause 10.5A.³¹ BNSW and ABI submit the deletion of both Schedule A and clause 10.5A is an appropriate step.

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³¹ AI Group and ASU.