AUSTRALIAN BUSINESS
Lawyers & Advisors

Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSIONS IN REPLY ON EXPOSURE DRAFTS: GROUP 2 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

BACKGROUND

1. In its Statement of 8 December 2014, the Fair Work Commission (**Commission**) outlined a process for the both publication of Exposure Drafts for Group 2 Awards and timeframes for the filing of submissions and reply submissions on the Exposure Drafts.[1]

2. On 2 and 4 February 2015 respectively, we filed submissions on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**) in respect of the Group 2A-B awards and the Group 2C-D awards.

3. We now make these submissions in reply on behalf of ABI and NSWBC in relation to the Exposure Drafts of the following Group 2 awards:

   (a) Graphic Arts, Printing and Publishing Award;

   (b) Seafood Processing Award;

   (c) Storage Services Award;

   (d) Health Professionals and Support Services Award;

   (e) Nurses Award;

   (f) Pharmacy Industry Award.

   (g) Passenger Vehicle Transportation Award;

   (h) Road Transport (Long Distance Operations) Award

   (i) Road Transport and Distribution Award; and

   (j) Waste Management Award.

4. ABI is a registered organisation under the Fair Work (Registered Organisations) Act 2009. ABI has some 4,200 members.

5. NSWBC is a recognised State registered association pursuant to Schedule 2 of the Fair Work (Registered Organisation) Act 2009 and has over 17,000 members.

[1] [2014] FWC 8837.

GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD

6. Clause 5.4: We agree with the submissions of both Ai Group and the AMWU.

7. Clause 6.4(b)(i): We agree with the submissions of AFEI at [17]-[19].

8. Clause 7.13(d): We agree with the submissions of both Ai Group and the AMWU.

9. Clause 8: We do not oppose the submissions of the AMWU.

10. Clauses 10.2, 10.3 and 10.4: We agree with Business SA, Ai Group and the AMWU that the wage rates should be recalculated.

11. Clause 10.6: The submissions of PIAA, Ai Group, Business SA and the AMWU are correct and should be adopted.

12. Clause 15.1: We agree with the submissions of AFEI (at [21]) and the PIAA.

13. Clause 16.1: The submissions of the AMWU and Ai Group (at [69]) are correct and should be adopted.

14. Clause 18.3: The submissions of Business SA and the AMWU are correct and should be adopted.

15. Clause 19.5: The submissions of AFEI at [23] are correct and should be adopted.

16. Clause 21.5(b): We support the submissions of AFEI at [25].

17. Clause 22.3: The submissions of Ai Group (at [82]-[83), PIAA and Business SA (at [10]) are correct and should be adopted. We consequently oppose the submission of the AMWU.

18. Clause 22.5: The submissions of Business SA are correct and should be adopted, consistent with the existing Award.

19. Clause 23: We support the submissions of PIAA and Ai Group (at [84]-87]). The submissions of the AMWU are opposed.

20. Clause 24.2: We support the submissions of PIAA and the AMWU.

21. Clause 24.6: We support the submissions of PIAA and oppose the submissions of the AMWU. The penalty rate payable should be properly expressed as 150% based on the hours worked.

22. Clause 24.5(b): ABI and NSWBC agree with the submissions of AFEI (at [25.9]) that this clause could be better expressed to reflect the entitlement currently in the Award.

23. Clause 26.4: We agree with the submissions of Ai Group at [104] that clause 26.4 could be better expressed.

24. Clause 29: The submissions of AFEI at [29] are correct and should be adopted.

25. Schedule B.4: We support the submissions of both Ai Group at [109] and the AMWU.

26. Schedule I.1.1: The submissions of AFEI at [30]-[32] and Ai Group at [110]-[112] are correct and should be adopted.

SEAFOOD PROCESSING AWARD

27. Clause 3.3: The AMWU in their submissions at [2] appear to pursue a substantive claim to vary the coverage of the Award. Such a claim is likely to have a material impact on the operation of the Award and as such should not be entertained though the Exposure Draft process. Rather, such a proposed variation should be the subject of detailed consideration by the Commission accompanied by submissions and evidence.

28. Clause 5.2: We support the submissions of Ai Group, Business SA and Austuna.

29. Clause 6.3(a)(ii): The submission of the AWU at [2] is correct and should be adopted.

30. Clause 6.4(b)(ii): We disagree with the AWU submissions at [3] and consider that it is useful to identify the purpose of casual loadings.

31. Clause 8.2(c): We do not support the submissions made by the AMWU at [3] as their proposal is not consistent with the current provisions of the Award.

32. Clause 8.2(g): We do not consider that the change proposed by the AWU at [4] is necessary to make the Award clearer. The current drafting of clause 8.2(g) is clear and unambiguous in its meaning.

33. Clause 8.5(c): We support the submissions of Ai Group, the AWU and the AMWU and note that paragraph 26 of our submissions filed on 2 February 2015 incorrectly identified the cross-reference as clause 18.8 (the correct cross-reference is clause 13.8).

34. Clause 8.6(c): We disagree with the submissions of the AWU at [6]. In our view the Exposure Draft is consistent with the current Award provision.

35. Clause 10.1(a)(i): The submissions of the AWU at [7] are correct and should be adopted.

36. Clause 13.4: We do not support the submissions made by the AMWU at [3] - this proposal is not consistent with the current provisions in the Award.

37. Clause 13.5: We agree with the submissions made by the AWU at [9], however we consider that the heading should read "Non-continuous shifts."

38. Clause 13.7(b): The submissions of the AWU at [10] are correct and should be adopted.

39. Clause 14.1(a): We support the submissions made by Ai Group at [159]-[160] in favour of the submissions made by the AWU at [12].

40. Clause 14.7(c): We disagree with the submission of the AWU at [14]. Rather, clause 14.7(c) should be amended to "minimum hourly rate" rather than "ordinary time rate", consistent with the language of the Exposure Draft.

41. Clause 14.7(e): The submissions of the AMWU (at [7]), Austuna (at [2.7]) and Business SA are correct and should be adopted.

42. Clauses 14.7(e), 18.2 and 20.2: The AWU submission at [10] is correct and should be adopted.

43. Schedule A.1.3: We support the submissions made by Ai Group at [163] in respect of Saturday rates. We also support the submissions of the AWU at [18], however submit that the heading should read "Non-continuous shifts".

44. Schedule A.1.4: We disagree with the AWU submission as the table at Schedule A.1.3 already contains the applicable rates payable to non-continuous shiftworkers for Sundays and public holidays.

45. Schedule A.2.2: ABI and NSWBC agree with the submissions of AWU at [20] to clarify that the casual loading is included in the 100% rate.

STORAGE SERVICES AWARD

46. Clause 8.2: We agree with the SDA's submission at [41] that the Exposure Draft now contains a "Spread of Hours clause that does not contain the spread of hours". We disagree that the reference to the spread of "between 7.00am and 5.30pm" should be repeated in Clause 8.2 and propose instead that the title of the clause be varied to "Alteration of the Spread of Hours" to ensure clarity and avoid unnecessary and potentially confusing repetition.

47. Clauses 8.2 and 15.2: In response to the questions raised by the Commission about the 'alteration of the span of hours' clause, we are still obtaining instructions and anticipate filing a short supplementary submission on this specific issue in the near future. Our clients wish to reserve their positions on this issue at the current time.

48. Clause 9.1: Consistent with our primary submission, we agree with the SDA's submission at [48] that Clause 9.1 in respect of Meal Breaks should revert to the language of the current Award.

49. Clause 10.1: The SDA's submission at [37] is correct that clause 10.1 should be amended to reflect the fact that the included wages table includes rates relevant to employees other than "full-time adult" employees. Care should be taken however to ensure that the Minimum Weekly Rate is expressed as applying only to "full-time adult" employees.

50. Clause 10.2: ABI and NSWBC support the SDA's submission at [38] that a minimum weekly rate column should not be included alongside the junior percentages in this clause. Consistent with that approach, with respect to Ai Group's submission at [188], ABI and NSWBC submit that the table as found at clause 15.2 of the current Award should be retained.

51. Clause 13: The AWU submissions at [7] state that the higher duties clause applies to all employees. This is an incorrect interpretation of the current Award. Clause 19 of the current Award only applies to "weekly employees" which would serve to exclude casuals.

52. Clause 15.1: ABI and NSWBC support the Ai Group's submission at [195] in respect of the use of the word 'penalties' in clause 15.1. The SDA's submission (at [51]) and Ai Group's submission (at [195]) in respect of the shift rates included in the table at clause 15.1 should also be adopted.

53. Clause 16: The AWU submit that clauses 16.1 (a) and 16.2(a) are 'in conflict' and proposes an amendment to the clause 16.1(a) to allow employees to be paid overtime for all hours additional to their 'rostered hours'. This submission appears to conflate the separate concepts of 'ordinary hours' and 'rostered hours' and will give rise to a substantive change to employee entitlements. Clause 16.1(a) is the relevant sub-clause which gives rise to an entitlement to overtime. ABI and NSWBC submit that clause 16.2(a) does not give rise to an entitlement to overtime for work performed outside a roster but is included for explanatory purposes to determine the method for calculating overtime.

54. Clause 16.1(b): The AWU's submission at [11] is correct and should be adopted.

55. Clause 16.3(a): The SDA's submission at [40] is correct and should be accepted.

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD

56. Clauses 19.2, 19.3: We disagree with the submissions of the Private Hospitals Industry Employers Association (**PHIEA**) regarding any concern about the references to 'minimum hourly rates' of pay. This terminology is appropriately being adopted across all modern awards which do not contain all purposes allowances. Employees are classified on commencement of their employment, and pay points are determined by the employee's length of service (clause 14.1 of the current award). It is clear that when interpreting these clauses, the employee's classification (including their paypoint) is the correct reference to use and there is not an ambiguity in the exposure draft which requires correction.

57. Clause 19.1: In response to the submissions of the PHIEA and the Aged Care Employers, in our view it is already clear from the current wording of the Award ('ordinary hours on any day') that overtime could only be calculated as each day standing alone. However, we support the employer parties' suggestion that the wording 'each day stands alone' could be added to the Exposure Draft.

58. Part 6: We support the submission of the ADA to amend the heading of Part 6 to include a reference to termination and redundancy. This will make the Award more user-friendly.

59. Clause 20: We oppose the suggestion of the HSU that clause 20 of the Exposure Draft requires further clarity regarding the entitlement of a shift worker to an additional week of annual leave. The clause is sufficiently clear and, on that basis, ABI and NSWBC oppose the HSU proposal.

60. Schedule C: We disagree with the submissions of the HSU regarding the meaning of 'ordinary' as it relates to ordinary hours of work. A modern award deals with 'minimum' rates of pay and penalties. The Award cannot and nor should it be read or amended so that it might operate beyond that scope and deal with matters contained in common law contracts. In practice, employees may receive above award rates of pay, but whether these are the rates on which penalties and overtime are calculated is a matter for the common law contract. The Award provides a minimum rate.

NURSES AWARD

61. Clauses 6.4(b), 15.1, 15.3, 18.2(a), 18.6(a): We disagree with the submissions of the PHIEA regarding any concern about the references to 'minimum hourly rates' of pay. This terminology is appropriately being adopted across all modern awards which do not contain all purposes allowances. We refer to our submission at paragraph 56 above.

62. Clause 8.1(c) and (f): We agree with PHIEA that the word 'or' has been omitted from the end of the clause. The clause presents options for how the employee should be free from duty in a given week, fortnight or 28 day cycle and without 'or' the clause does not make sense.

63. Clause 9.3: We are unclear as to why the AMNF believes that clause 9.3 should be a standalone provision in the Nurses Award. In the absence of more comprehensive explanation, this is opposed and the Exposure Draft should remain as it is presently because the provision is clear both in its wording and placement.

64. Clause 10: We agree with PHIEA that the clause could be amended to read "Minimum Wage Rates" so as to avoid any confusion that AMNF believes exists in the Award because the clause contains hourly and weekly wages.

65. Clause 10: We do not oppose the removal of the word 'adult' from clause 10. The Award does not provide for junior employment and so this word is redundant.

66. Clause 11 and Schedule A: We note that in response to the question asked by the Commission as to the operation of clause 11 and its application to levels 4 and 5 nurses, the ANMF and a number of other parties made submissions about what the clause *should* state (which if accepted would result in substantive changes to the Award). We refer to our submissions of 2 February 2015 regarding the construction of the current Award.

67. Clause 11.4(a)(i): We agree with PHIEA and the Aged Employers Group that the words 'by the employer' should be retained. Their removal may lead to a situation where an employee argues they were authorised in some other manner and should be able to claim a motor vehicle allowance.

68. Clause 11.4(b): We disagree that the distinction between a shift worker and a day worker has no work to do. Having such a distinction can only assist an employer when interpreting the Award and ensuring that an employee, when they do work shift work, receives the appropriate payment for such work.

69. Clause 14.2(a) and (b): The correct nomenclature in relation to shift workers is that they receive a loading. There is no error.

70. Clause 17 (of current award): The Commission was correct to omit the district allowances in accordance with the Full Bench's decision in [2015] FWCFB 644 and they should not be included in the Exposure Draft.

71. Clause 14: In the absence of further explanation from the AMNF, we disagree with the AMNF that this clause is ambiguous as to when shift work loadings apply.

72. Clause 17.1: We disagree with the ANMF and submit that it is not confusing to retain 17.1 and 17.2(c) in the Exposure Draft. Clause 17.1 proscribes the general entitlement to annual leave and clause 17.2(c) proscribes the entitlement to annual leave for a

shiftworker. The two clauses are dealing with different scenarios and so there is no ambiguity requiring clarification.

73. Clause 17.2(b): We disagree with the AMNF and PHIEA that the words 'and referred to in 17.1' should be deleted. The cross-reference is correct and simply explains an entitlement for shiftworkers which is additional to the general entitlement in clause 17.1.

74. Schedule B: We disagree with the submissions of the HSU and submit that an Award is a minimum rates industrial instrument. There may, in practice, be circumstances where the employee is provided with an above award rate in their employment contract. However, the Award should not take account of above-award payments and how these may interact with the Award.

PHARMACY INDUSTRY AWARD

75. Clause 5: We disagree with the submissions of SDA at [17]-[20] and APESMA at [14]-[16]. ABI and NSWBC submit that the provision in the Exposure Draft is sufficiently clear to identify the facilitative provisions in the Award.

76. Clause 6.4(a): We disagree with the submissions of SDA at [45]-[47] and APESMA at [17]-[20], that the removal of the word 'and' changes the definition of 'part-time employee.'

77. Clause 6.4(d): The SDA submissions at [48] are correct and should be accepted.

78. Clause 6.4(d): We support the submissions of the Pharmacy Guild in respect of deleting the words 'no less than' in clause 6.4(d).

79. Clause 6.4(f): We support the Guild's submissions.

80. Clause 6.4(f): We do not oppose the submission of SDA at [49]-[54] and APESMA at [21]-[23].

81. Clause 6.5(i): The SDA suggest at [55]-[59] that the Exposure Draft has changed a casual employee's rate of pay. We disagree with that submission and consider that the language used in the Exposure Draft has the same meaning and effect as the current Award provisions.

82. Clause 6.5(c)(ii): ABI and NSWBC disagree with the SDA submissions and contend that there is merit in identifying the purpose of casual loadings.

83. Clause 10.4: ABI and NSWBC disagree that the Exposure Draft has changed the entitlement to and rules surrounding the use of an annualised salary. The changes proposed by the SDA at [80]-[85] and APESMA at [24]-[28] are opposed. The format and wording of the Exposure Draft at clause 10.4 is much clearer and simpler than clause 27 of the current Award.

84. Clause 11.2: ABI and NSWBC agree the submissions made by SDA, APESMA and the Guild in relation to the questions asked by the Commission in clause 11.2 of the Exposure Draft.

85. Clauses 13.2, 13.4 and 14.2: We support the Guild's submissions.

86. Schedule A: We do not oppose the submissions of APESMA at [35]-[37].

PASSENGER VEHICLE TRANSPORTATION AWARD

87. Clause 6.4(a)(iii): The Ai Group submission is correct and should be adopted. Clause 10.4(h) of the current Award should exist in the Exposure Draft as a separate sub-clause of clause 6.4 rather than as a limb of sub-clause 6.4(a).

88. Clauses 6.4(e), (f) and (h): The TWU and Ai Group submissions are correct and the Ai Group proposals should be adopted in order to avoid a substantive change to the Award.

89. Clause 6.4(h): We disagree with the TWU's submission that there is any confusion or inconsistency between clause 6.4(h) and the other provisions of clause 6.4. In our view there is no inconsistency between the provisions.

90. Clause 6.5(d): In relation to the query posed by the Commission regarding whether the 2 hour minimum payment for casual employees applies to each engagement, both the TWU and APTIA are advancing substantive variations in relation to this provision. The clause should therefore remain in its current form until those substantive variations are heard, and ABI and NSWBC reserve their rights to make submissions on this provision in accordance with directions in any contested hearing.

91. Clause 8.1(a): In relation to the query posed by the Commission regarding two-driver operations, ABI and NSWBC at this stage agree with both AFEI and the Ai Group that there is no need for a span of ordinary hours to be introduced for two-driver operations.

92. Clause 8.1(c)(i): The Ai Group submission is correct and should be adopted.

93. Clause 9: The AFEI submission is correct. The heading for clause 9 should be changed to either 'Meal Breaks' or simply 'Breaks'.

94. Clause 10.5(a): The Ai Group submission is correct and should be adopted to retain the existing Award terminology.

95. Clause 11.3(d): The Ai Group submission is correct and should be adopted. Through the Exposure Draft process, this clause has been misinterpreted by the Commission and the clause has been substantively altered. The Commission should adopt the proposed wording advanced by the Ai Group.

96. Clause 13.1(a): We note the TWU's concern regarding the potential for confusion in relation to penalty rates that are applicable to early or late work and do not oppose the TWU's suggestion to retain the existing terminology relating to early and late work.

97. Clause 15.2: The Ai Group submission is correct and should be adopted.

98. Schedule A.6.(b)(ii)-(iv): The Ai Group submission is correct and should be adopted.

99. Schedule B.1.1 and B.1.2: We support the submission of Business SA that the reference to "ordinary and penalty rates" be amended to "minimum and penalty rates" to ensure consistency of terminology in the Award.

100. Schedule B.2.2: The submissions of Business SA and the AWU appear to be correct insofar as the table does not account for the 25% casual loading.

101. Schedule G: The definition of "shiftworker" as contained in Schedule G of the Exposure Draft is identical to the definition at clause 24.2 of the current Award. Accordingly, ABI and NSWBC do not have any objection to the definition being retained.

102. Examples: APTIA has advanced five proposed examples to be inserted into the Award. In our submission such examples should not be included in modern awards, as they become legal terms of the instrument and could arguably give rise to new, additional, or separate enforceable rights or obligations. If the Commission is minded to publish examples, in our submission it should be done through other means (e.g. by publishing an annotated version of the Award, or by publishing examples as part of guidance material on its website). ABI and NSWBC make the following submissions in respect of certain specific examples proposed by APTIA:

(a) Clause 6.5(d): This provision is currently the subject of two different substantive variations advanced by the TWU and APTIA. At this stage, ABI and NSWBC consider it premature for the Commission to consider introducing an example in relation to this clause until such time as the substantive variations have been dealt with; and

(b) Clause 11.3(d)(i): ABI and NSWBC have reservations about the proposed example. In our view the example is open to confusion and does not effectively clarify the operation of the provision.

ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD

103. Clause 8.2(a): We generally agree with the submissions of the TWU and AWU that the clause should properly reflect the relevant legislation applicable to hours of work and fatigue management for road transport drivers, although we do not consider it necessary that the clause contain an exhaustive list of such legislation and regulations.

104. Clause 8.3(c)(i): The Ai Group submission is correct and should be adopted.

105. Clause 8.5(e): We disagree with the submissions of both the TWU and the AWU and rely on our submissions dated 4 February 2015 (at paragraph 19). Clause 20.5(d) of the current Award clearly states that 'Employees must be paid for rostered days off at the rate prescribed by clause 13.1', and clause 13.1 contains the minimum rates of pay exclusive of any allowances. The proposals of the TWU and AWU represent substantive changes to the entitlements under the Award and should not be entertained.

106. Clause 8.6(c): The Ai Group submission is correct and should be adopted.

107. Clause 11.1: We note the opposition of both the Ai Group and the TWU regarding the proposal to include minimum daily rates in the table and do not press for the inclusion of daily rates.

108. Clause 11.2(d): We agree with both the AWU and Ai Group that the new wording of this clause is ambiguous. The wording of clause 13.2(d) of the existing Award should be reinstated. That approach is preferable to the proposal advanced by the AWU.

109. Clause 11.4(a): We agree with the Ai Group submission that the table should make it clear that the casual rates include the 15% casual loading.

110. Clauses 11.5(b) and 11.6: We oppose the submissions of both the TWU and AWU regarding calculations based on 38 hours. As stated in our submissions of 4 February 2015, such a change would substantively alter the entitlements under the Award.

111. Clause 12.3(a): The AWU submission is opposed. It is a substantive claim and should not be addressed through the Exposure Draft process. Should the AWU wish to pursue this claim, it must advance a merit based argument accompanied by probative evidence and submissions.

ROAD TRANSPORT AND DISTRIBUTION AWARD

112. Clause 5.2(a): In response to the Ai Group submission, we agree that clause 8.3 does not deal with the spread of hours, although we consider that the correct reference should simply be to clause 8.4(b).

113. Clause 5.2(a)(vi): The Ai Group submission is correct and should be adopted. Clause 13.4(a) is not a facilitative provision.

114. Clause 5.3(a)(ii): In response to the Ai Group submission, we agree clause 8.3 does not deal with the spread of hours, although we consider that the correct reference should simply be to clause 8.4(b).

115. Clause 5.3(a)(iv): The Ai Group submission is correct and should be adopted. Clause 9.7(a) is not a facilitative provision.

116. Clause 6.4 (a)(ii): In response to the TWU's proposal to insert a new sub-clause for oil distribution workers, we do not consider it necessary for such a provision to be inserted, although are not strongly opposed to that proposal.

117. Clause 6.4(e): We share the concerns of Ai Group in that the current Award does not appear to give Oil Distribution workers higher hourly rates of pay as the Exposure Draft does.

118. Clause 6.5(c): The Ai Group submission is correct and should be adopted.

119. Clause 8.1: The Ai Group submission is correct and should be adopted. The current clause 22.1 does not exclude part-time and casual employees as the Exposure draft does. As such, this change is a substantive one. The wording of current clause 22.1 should be retained. We also agree with the AI Group's observations about inserting the words "up to 38 hours per week".

120. Clause 8.5(a): The Ai Group submission is correct and should be adopted.

121. Clause 8.5(b): The Ai Group submission is correct and should be adopted. With safety being of the highest priority in the industry, the clause should include reference to breaks required by any fatigue management legislation, rules or regulations.

122. Clause 9.6: The Ai Group submission is correct and should be adopted. The current wording of the corresponding clause 23.4 in the current award should be maintained.

123. We prefer the above approach as opposed to the clause proposed by the TWU.

124. Clause 11.1(c): The Ai Group submission is correct and should be adopted. The rates contained in clause clearly 15.2 do not include any all purpose allowances. We agree that the clause should refer to "minimum hourly rate".

125. Clause 12.7(d): We disagree with the TWU submission that the revised wording of this clause has in any way reduced the obligation. The revised wording has no substantial effect on the operation of the clause.

126. Clause 13.2(a)(ii): We rely on our submissions on this matter dated 4 February 2015 and agree with the submissions of Ai Group. For those reasons, we disagree with the TWU submission.

127. Clause 15.1(d): The submissions of Ai Group are correct and should be adopted. The proper approach to determining what loading is applicable to an employee working on a shift is to look at the shift as a whole and determine whether the shift itself, not the work performed by an individual employee, continues for 5 successive afternoons or nights. On the proposed wording on the Exposure Draft, the employee would be entitled to the higher penalty if they don't actually work all 5 successive afternoon or nights. This is a substantive change. The current wording of the award should be retained.

128. Clause 16.2(b): We note that our submissions dated 4 February 2015 contain an error in the calculations of the rates payable to casuals on public holidays. Clauses 28.2(f) and (g) of the existing Award clearly set out the entitlements for casual employees when working on public holidays "for all time", and those rates should be adopted.

129. Clause 16.2(c): We do not oppose the change being proposed by ARTIO to change the phrase 'Saturday/Sunday rate' to 'Saturday or Sunday rate'.

130. Clause 17.3: We disagree with submission of the TWU and NUW on this matter and submit there is no inconsistency between this clause and proposed clause 9.6.

131. Clause 17.5: We agree that the wording of clause 17.5 (c)(ii) is ambiguous. We submit that the wording of the current clause 27.3 is preferable and should be maintained.

WASTE MANAGEMENT AWARD

132. Clause 6.4(d): We agree with the TWU's submission at [3].

133. Clause 6.5(h): We agree with AIG's submission at [11.4] that clause 6.5(h) should be amended to make clear that that casual loading is not payable during overtime. We rely on our primary submission.

134. Clause 9.2(c): We do not oppose the TWU's submission at [5].

135. Clause 11.2(a): The AWU's submission at [4] is misconceived and is opposed. The first sentence of clause 11.2(a) merely provides a definition of an "all-purpose allowance". In respect of outlining the definition of an "all-purpose allowance" generally, it is not relevant that all employees in the Award are in fact entitled to the allowance. The AWU's submission should not be accepted.

136. Clause 16.3(a): We agree with Ai Group's submission at [11.9] that the Clause 16.3(a) should refer to the "commencement of ordinary hours" as opposed to the "commencement of work" in accordance with the drafting of the current clause.

137. Clause 16.3(b)(ii): We do not oppose Ai Group's submission at [11.11].

138. Clause 20.5: We agree with Ai Group's submission at [11.19]-[11.20] in so far as it identifies that the current clause does not require the agreement of a majority of employees.

139. Clause 20.6: We agree with the AMWU's submission at [2] that the term 'weekly employee' in clause 20.6 should be interpreted to mean a part-time or full-time employee.

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On behalf of Australian Business Industrial and the NSW Business Chamber Ltd

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