

REVISED SUMMARY OF SUBMISSIONS – TECHNICAL AND DRAFTING

This table is a summary of submissions on technical and drafting issues lodged for this award on or before 5.00pm on 29 November 2016.

The summary has been revised to include feedback from the hearing on 6 December 2016 ([Transcript](#)) 30 January 2017 ([Transcript](#)).

Note: At [Transcript](#) [528], the representative appearing for six associations of independent schools of the States of New South Wales, South Australia, Western Australia, Queensland, Tasmania and Victoria noted that in [\[2016\] FWCFB 3177](#), the annual leave provisions (specifically insertion of the annual leave model terms) in the Educational Services (Teachers) Award had been referred to AM2015/6. The representative noted that to her knowledge, it had not been referred. Annual leave matters in AM2015/6 listed for mediation on [23 February 2017](#).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1	UV	Sub-30/06/2016	2	Minimum wages Definition of minimum hourly rate should be used. Propose: ‘Minimum hourly rate means the minimum rate of pay for the employee’s classification, grade and level’.	Para 1-5	Withdrawn – see Transcript 30/01/17 [PN60-PN61], confirmed in report .
2	UV	Sub-30/06/2016	3.3	Access to the award and the National Employment Standards – <i>general submission applies numerous awards</i> – The words ‘whichever makes them more accessible’ have been deleted from the ED. They should be retained.	Para 3	To be discussed further at next conference, confirmed in report .
3	IEU & another	Sub-30/06/2016	6.1	Award flexibility for individual arrangements Clause 6.1(b) and (c) should only refer to Schedule A – as only employees employed under Schedule A are entitled to overtime payments and penalty rates.	Para 9	Opposed by CCSA in the instance of early childhood teachers employed at early childhood education and care service outside of the school system to be

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						discussed further at next conference. See Transcript 30/01/17 [PN339], confirmed in report .
	AFEI	Sub-05/08/2016		Opposed. Variation would be inconsistent with current award.	Para 18	
4	ABI and NSWBC	Sub-30/06/2016	7.2	Facilitative provisions The following clauses should be added: 12.2, A.2, A.3.1, and A.4.2.	Para 6.1	To be discussed further at next conference, confirmed in report .
	IEU & another	Reply-21/07/2016		Facilitative provisions were agreed prior to making of modern award. Prefer ED clause to version proposed by ABI.	Para 6	
	AFEI	Sub-05/08/2016		Agree with ABI's submission.	Para 19	
5	IEU & another	Sub-30/06/2016	11.2	Part-time employment Do not support specification of the value of 90%. The phrase 'being an average of more than 34 hours and 12 minutes per week' should be deleted, as it has no relevance to the way in which a part-time teacher's time fraction and salary/benefits are calculated.	Para 10-16	Agreed – see Transcript 30/01/17 [PN214]. Confirmed in report .
6	IEU & another	Sub-30/06/2016	11.3	Part-time employment Reference to full-time employee is not correct. A full-time employee would not make a request to work above 90% of full-time hours, only a part-time employee can. Clause should commence with 'A part-time employee...'	Para 17-19	Agreed – see Transcript 30/01/17 [PN208]. Confirmed in report .
	AFEI	Sub-05/08/2016		Not opposed to removal of reference to 'full-time employee'.	Para 21	

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7	IEU & another	Sub-30/06/2016	11.4	Part-time employment Do not support drafting this clause in two parts (a) and (b). Suggest 'A part-time employee is entitled to the benefits under this award on a pro rata basis. The pro rata basis will be calculated by dividing the number of face-to-face teaching hours prescribed for the part-time employee from time to time by the usual number of face-to-face teaching hours prescribed for a full-time employee in the school, children's service or early childhood education service.'	Para 20-23	Agreed – see Transcript 30/01/17 [PN216-240]. Confirmed in report .
	ABI and NSWBC	Sub-30/06/2016		ED drafting in clauses 11.4(a) and (b) causes confusion. Suggest maintaining wording of clause in current award or express as equation: 'Prescribed face-to-face teaching hours of the employee' / 'Usual prescribed face-to-face teaching hours of a full-time employee'	Para 6.2	
	IEU & another	Reply-21/07/2016		Note ABI's submission. Press own proposal in submission 30/06/2016.	Para 7	ABI don't oppose alternative formula by IEU. See Transcript 30/01/17 [PN315]
	AFEI	Sub-05/08/2016		ED is consistent with current award. Do not consider IEU's proposal necessary, but not opposed. Prefer IEU to other methods (such as ABI's submissions).	Para 22	
	UV	Reply-25/07/2016		Not opposed to ABI's submission.	Para 26	

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8	IEU & another	Sub-30/06/2016	11.5(b)	Part-time employment ED drafting does not adequately emphasise requirement to give notice in event of a variation in a part-time employee's teaching load or working days. Clause should be deleted and replaced with clause 10.4(d)(ii) of the current award.	Para 24-25	Agreed, AFEI do not oppose IEU's position – see Transcript 30/01/17 [PN244]. Confirmed in report .
	AFEI	Sub-05/08/2016		Consider ED to be consistent with current award. Do not consider IEU's proposal necessary but not opposed to retaining wording of current award.	Para 23	
9	IEU & another	Sub-30/06/2016	13.1	Fixed term employment Prefer wording of current award, which is clearer than ED.	Para 26-27	Agreed, AFEI do not oppose IEU's position – see Transcript 30/01/17 [PN246]. Confirmed in report .
	AFEI	Sub-05/08/2016		Consider ED to be consistent with current award. Do not consider IEU's proposal necessary but not opposed to retaining wording of current award.	Para 24	
10	IEU & another	Sub-30/06/2016	14.2	Classifications – Recognition of previous service Incorrectly titled. 'Previous' should be deleted. Does not accurately describe the purpose of the clause.	Para 28-30	AFEI believe matter for submissions and to be discussed further at next conference. See Transcript 30/01/17 [PN268]. Confirmed in report .
	AFEI	Sub-05/08/2016		Opposed. Variation unnecessary. ED consistent with current award.	Para 25	

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11	IEU & another	Sub-30/06/2016	14.4	Classifications – Progression – <i>Response to question raised by Commission</i> Do not support inclusion of a definition for ‘years of service’. Sufficiently defined by the term ‘normal years of service’.	Para 31-33	Agreed between parties separate definition of ‘years of service’ is unnecessary and should be removed. See Transcript 30/01/17 [PN271]. Confirmed in report .
	UV	Sub-30/06/2016		Unnecessary to insert definition of years of service, as it is defined at clause 14.2(b), (c) and (d).	Para 42	
	ABI and NSWBC	Sub-30/06/2016		A separate definition is not necessary.	Para 6.3	
	AFEI	Sub-05/08/2016		Agree with above submissions. Do not support inclusion of a definition.	Para 26	
12	IEU & another	Sub-30/06/2016	17.1	Minimum wages Do not support inclusion of minimum hourly rate of pay. A part-time teacher’s salary is based on the proportion of a full-time teacher’s face-to-face hours, therefore the value of an hour of face-to-face teaching will not have the same value as 1/38 th of the weekly rate of pay. Hourly rates are generally not used in the sector.	Para 36-38	See items 5 and 7 Opposed by CCSA in the instance of early childhood teachers employed at early childhood education and care service outside of the school system, to be discussed further at later conference. See Transcript 30/01/17 [PN339]. Confirmed in report .
	AFEI	Sub-05/08/2016		Agree with IEU’s submission.	Para 27	
13	IEU & another	Sub-30/06/2016	N/A	Minimum wages – Part-time employee Submit clause 14.4 of current award should be	Para 39-42	Agreed. See Transcript 30/01/17 [PN116-PN121].

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				reproduced in ED as a new clause 17.4. This clause is necessary to ensure proper understanding of the entitlement of a part-time employee with respect to payment of wages.		Confirmed in report .
14	ABI and NSWBC	Sub-30/06/2016	18.2	Allowances – wage related allowances – director’s allowance References to levels should be re-inserted, to ensure consistency between clauses 18.2 and Sch C.1.	Para 6.4	Agreed, AFEI withdrew opposition. See Transcript 30/01/17 [PN273]. Confirmed in report .
	IEU & another	Reply-21/07/2016		No prima facie objection.	Para 9	
	AFEI	Sub-05/08/2016		ABI’s proposal unnecessary. ED clause consistent with current award.	Para 29	
15	IEU & another	Sub-30/06/2016	18.3(c)(ii)	Allowances – Leadership allowance – Response to question raised by Commission Do not support further definition of Level 2 and 3 leadership allowances at this time.	Para 44	Agreed by parties that it is not appropriate at this time to uniquely define levels. See Transcript 30/01/17 [PN122-PN127] Confirmed in report .
	AFEI	Sub-05/08/2016		Do not support inclusion of further definitions.	Para 30	
16	IEU & another	Sub-30/06/2016	19.4	Superannuation fund Corrections should be made for reason of accuracy: (a) NGS Super (b) Australian Catholic Superannuation Retirement Fund (ACSRF) ... (m) Concept One the Industry Superannuation Fund	Para 45	Agreed. See Transcript 30/01/17 [PN130-133]. Confirmed in report .

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				... (q) a superannuation fund or scheme of which the employee is a defined benefit member.' Names should be corrected in current award too.		
17	IEU & another	Sub-30/06/2016	21.2	Pro rata payment of salary inclusive of annual leave Second sentence of this clause and (a) and (b) should be a separate clause numbered 21.3. Should be stand-alone to assist employees and employers to locate and interpret definitions.	Para 50-54	To be discussed further at next conference: see report .
	AFEI	Sub-05/08/2016		Do not agree. ED sufficiently clear.	Para 31	
18	ABI and NSWBC	Sub-30/06/2016	21.3(b)	Pro rata payment of salary inclusive of annual leave The word 'or' should be inserted after sub-clause 21.3(b)(i), after 'preschool service date'.	Para 6.5	Agreed, see Transcript 30/01/17 [PN146-147]. Confirmed in report .
	IEU & another	Reply-21/07/2016		No prima facie objection.	Para 9	
	AFEI	Sub-05/08/2016		Do not consider proposal necessary, but not opposed.	Para 32	
19	IEU & another	Sub-30/06/2016	21.6	Pro rata payment of salary inclusive of annual leave – employees who commence employment after the commencement of the school or preschool year ED clause should be deleted and replaced with clause 22.7 of current award. It is simpler and the words 'provided that' ensure the entitlement is linked to the period of employment during	Para 55-56	Agreed see Transcript 30/01/17 [PN148, PN283]. Confirmed in report .

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				part only of the school or preschool year.		
	AFEI	Sub-05/08/2016		Not opposed.	Para 33	
20	IEU & another	Sub-30/06/2016	21.7	Pro rata payment of salary inclusive of annual leave – employees who take approved leave without pay In this clause, (a) and (b) are alternative options and (b)(i) and (ii) must both occur if (b) applies. Suggest following changes: (a) - end of subclause: replace ‘and’ with ‘or’ (b)(i) - end of subclause: replace ‘or’ with ‘and’.	Para 57-59	Agreed, see Transcript 30/01/17 [PN287-288]. Confirmed in report .
	AFEI	Sub-05/08/2016		Not opposed.	Para 34	
21	ABI and NSWBC	Sub-30/06/2016	30	Termination of employment Comparison document contains a note that clause 21.5 should be moved to clause 32 ED. ED does not contain a clause 32, assumed this means clause 30. Unclear if comment was an error – current award does not contain a clause 21.5. If reference to clause 21.5 intended to refer to how pro-rata salary inclusive of annual leave should be calculated on termination and FWC considers it necessary for this to be in clause 30, suggest reference be to clause 21 as a whole.	Para 6.6	Error in comparison document. Parties should refer to ED text. Clause 30.2 references 21.4 as to how entitlements are calculated on termination.
22	IEU & another	Sub-30/06/2016	31.6	Redundancy – Part-time employees Not necessary to refer to clause 31. Suggest changing ‘this clause 31’ to ‘this clause’.	Para 60	Agreed, see Transcript 30/01/17 [PN293]. Confirmed in report .
	AFEI	Sub-05/08/2016		Not opposed.	Para 35	

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23	IEU & another	Sub-30/06/2016	Sch A.2.12	<p>Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year – Rostered days off – Response to question raised by Commission</p> <p>Do not support system of RDOs for employees who work in term weeks. This is not possible due to the structure of a school's timetable. A.2 only applies to non-school setting, for teachers working 38 hour weeks for at least 48 weeks per year. Clause should be retained in Sch A and not moved to body of award.</p>	Para 61-62	<p>To be discussed further at next conference. Confirmed in report.</p> <p>AMOD to provide explanation as to why clause A.2.12 appears in Schedule A before further conference.</p> <p>AMOD: Clause A.2.12 appears under Schedule for childhood services operating for at least 48 weeks per year, however this clause refers to a service that operates for less than 48 weeks per year. Question is whether clause is better placed in body of award <u>or</u> is clause to apply to services that operate for at least 48 weeks per year.</p>
	ABI and NSWBC	Sub-30/06/2016		<p>Inclusion of this clause at Sch A is odd. Sch A only applies to early childhood services operating for at least 48 weeks per year. Questionable if clause should be at clause 15 because the rest of the award does not</p>	Para 6.7	

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				contemplate RDOs.		
	IEU & another	Reply- 21/07/2016		Support retention of clause A.2.12 in Schedule A.	Para 10	
24	IEU & another	Sub-30/06/2016	Sch A.3.1(a)	<p>Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year – Meal Break</p> <p>Clause should be varied to provide for the meal break to commence no later than five hours after the employee commenced work. This is needed to clarify the entitlement and ensure consistency with other proposed variations.</p>	Para 63-64	<p>Relates to substantive variation put by parties, see Sub-2Mar15 at paragraph 3 page 2. IEU to provide proposed clause wording, see Transcript-6/12/16 [PN514-PN516]</p> <p>AIS and IEU proposed wording outlined in Sub-25Jan17 at paragraph 5 page 2.</p> <p>Further propose to alter clause 16.1(a) to be consistent with above proposed amendments. See Sub-25Jan17 at paragraph 6 page 2. No longer seek to change wording in 16.1(b)</p>

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25	IEU & another	Sub-30/06/2016	Sch B.1.1	Summary of Rates of Pay – Full-time and part-time employees Do not support inclusion of hourly rates of pay.	Para 65	See also item 12 Opposed by CCSA in the instance of early childhood teachers employed at early childhood education and care service outside of the school system. See Transcript 30/01/17 [PN339]
	AFEI	Sub-05/08/2016		Agree.	Para 37	
26	IEU & another	Sub-30/06/2016	Sch B.2.2	Summary of Rates of Pay – Casual employees – full day rates An additional sentence should be included as a note to table. This is to make it clear that only a casual employee employed in a children's service or an early childhood education service may be paid the quarter day rate.	Para 66	IEU amended submission at hearing – note should be placed at the end of table of half-day and quarter-day rates, see Transcript-6/12/16 [PN518] Agreed see report . See Transcript 30/01/17 [PN170-181]
27	ABI and NSWBC	Sub-30/06/2016	Sch C.2	Summary of Monetary Allowances – Expense related allowances A note should be inserted to clarify payment of vehicle allowance is capped at 400km per week (per clause 18.4).	Para 6.8	Agreed see report . See Transcript 30/01/17 [PN185]
	IEU & another	Reply-21/07/2016		No prima facie objection.	Para 9	
	AFEI	Sub-05/08/2016		Agree with ABI.	Para 36	

List of abbreviations (in alphabetical order)

ABI and NSWBC	Australian Business Industrial and the NSW Business Chamber
AFEI	Australian Federation of Employers and Industries
ED	Exposure draft
IEU & another	Independent Education Union of Australia & the Associations of Independent Schools
UV	United Voice