

## SUMMARY OF SUBMISSIONS – FULL BENCH PROVISIONAL VIEWS

This table is a summary of submissions lodged in response to the Full Bench statement [\[2017\] FWCFB 4239](#) on 17 August 2017

ITEM	PARTY	DOCUMENT	CLAUSE/S	SUMMARY OF ISSUE	REF.
1.	AIG	<a href="#">Sub-15/09/2017</a>	20.1	<p><b><i>Tool and Employee Protection allowance</i></b></p> <ul style="list-style-type: none"> <li>• Submits that proposed clause 20.1(b) extends the level of entitlement for ‘other employees’</li> <li>• Opposes proposed phrase in 20.1(b) ‘<i>any other tools...required for the performance of work</i>’ and ‘<i>any tools...required for the performance of work</i>’ extends the entitlement to tools that would ordinarily be provided by the employee</li> <li>• Submits that risks may arise as there is no definition of ‘standard tools’</li> </ul>	4-7
	AWU	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Submits that reimbursement for mess personnel for laundry costs at 20.1(b)(vi) of current award is not reflected in the Commission’s draft clause</li> <li>• Proposes inserting the existing provision as a new clause</li> </ul>	4-5
	CFMEU – C&G	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Generally accepts proposed amendment to 20.1</li> <li>• Opposes deletion of wording from 20.1 (b) (vi) regarding mess personnel</li> <li>• Opposed to deletion of reimbursement of x-rays for refractory workers. Maintains position propose in 22 June 2017 <a href="#">submission</a> [7]-[8]</li> <li>• Proposes deleting 20.1(e) and amending 20.1(d) to remove the words ‘<i>other than refractory bricklayers</i>’.</li> <li>• Submit a separate provision for refractory bricklayers is unnecessary</li> </ul>	7-11
	HIA	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Generally support proposed approach to tool and protection allowance</li> <li>• Maintains <a href="#">December 2016 Submissions</a> at section 5</li> <li>• Submits allowance should only be payable when expenses are incurred by employee</li> <li>• Submits that if wording ‘required for the performance of work is adopted’ while removing list, employee must be obligated to discuss potential tool purchases and provide proof of purchase</li> </ul>	1.1.3-2.1.10

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				<ul style="list-style-type: none"> <li>• Supports removal of 20.1(d)(iii)</li> <li>• Notes amounts of allowances in statements differ from current award</li> </ul>	
	AMWU	<a href="#">Sub-18/09/2017</a>		<ul style="list-style-type: none"> <li>• Supports CFMEU &amp; AWU submissions</li> </ul>	3-4
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>• Submits that under clause 20.1(b), the words ‘any other employee’ be removed and replaced with ‘<i>conventionally or commonly associated with the performance of work</i>’</li> <li>• Submits that 20.1(c) be redrafted to reflect common types of equipment supplied by tradespeople</li> <li>• Submits that 20.1 (d) should include notation that allowance is not payable in circumstances where employer supplies safety boots and to ensure consistency with 20.1(e)</li> </ul>	2.2 – 2.6
	CCF	<a href="#">Sub- 29/09/2017</a>		<ul style="list-style-type: none"> <li>• Supports amendment to 20.1(a) which makes it clear that allowance is ‘in recognition of the maintenance and provision of the standard tools of trade’</li> <li>• Opposes change to 20.1(b) &amp; 20.1(c) which make employer obliged to reimburse for all tools not specified.</li> <li>• Submits that proposed wording ‘required for the safe performance of work’ is overly broad and may lead to disputes – enterprise agreements could cover additional tools/clothing that are required</li> </ul>	2.1-2.6
2	HIA	<a href="#">Sub-15/09/2017</a>	21-22	<p><b>Reordering of Clauses</b></p> <ul style="list-style-type: none"> <li>• Agrees that allowances section requires review and reorganisation</li> <li>• Opposes approach that would see residential construction sector encompassing both cottage construction and multi-unit apartment buildings</li> </ul>	2.2.10
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>• Support grouping of allowances by skill, disability and expense and for them to be re-ordered in accordance with applicable sectors</li> <li>• Do not support creation of sub-industry or sector specific groupings</li> <li>• Propose system of grouping allowances at attachment</li> </ul>	3.9

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	CCF	<a href="#">Sub-29/09/2017</a>		<ul style="list-style-type: none"> <li>• Support reordering of allowances as per paragraph 4 of statement</li> <li>• Acknowledge there are differing views as to the grouping.</li> <li>• Suggest this matter may be addressed by conference</li> </ul>	3.1
3	AIG	<a href="#">Sub-15/09/2017</a>	21-22	<p><b><i>Site and general wage related allowances – Abolition of Disability and other Allowances</i></b></p> <ul style="list-style-type: none"> <li>• Accept categorisation of allowance as expense, disability and skill allowances</li> <li>• Opposes abolishing disability allowance. Submit increase in industry allowance will create substantial cost for employers. Submits that allowances be allocated on the basis of specific disabilities/other express criteria.</li> </ul>	8-10
	AWU	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Accept goal of simplifying Award by replacing some allowances with an increased industry allowance</li> <li>• Oppose creating different industry allowances for different sectors</li> <li>• Propose Commission facilitating conferences to discuss simplification process</li> <li>• Submit 4.10(b) of current award contains most appropriate definition of the civil construction sector</li> <li>• Submit industry allowance should be increased without employees overall being disadvantaged by simplification process</li> <li>• Submit 22.2 (b)(ii) and 22.4(b) (iii) be retained.</li> </ul>	6-9
	CFMEU – C&G	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Accepts proposed categorisation of allowances;</li> <li>• Submits, however, that certain allowances have been incorrectly categorised, i.e: clauses 21.4(e), 22.2(u) and 22.2(v).</li> <li>• Oppose having separate industry allowances for different sectors</li> <li>• Submits practice of having one rate of industry allowance should continue</li> <li>• Proposes agreement between parties to pay a consolidated disability allowance in lieu of special rates except for specific situations listed</li> </ul>	12-25

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	HIA	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Opposes abolition of disability allowance on the basis that it would substantially increase costs for employers</li> </ul>	2.2.11-15
	AMWU	<a href="#">Sub-18/09/2017</a>		<ul style="list-style-type: none"> <li>• Opposes abolition of the lift industry allowance</li> </ul>	5-41
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>• Site and general wage related allowances – Abolition of Disability and other Allowances</li> <li>• Oppose proposal to abolish disability allowance and increasing the industry allowance</li> <li>• Submits industry allowance already compensates for general disabilities associated with construction work</li> </ul>	3.3
	CCF	<a href="#">Sub-29/09/2017</a>		<ul style="list-style-type: none"> <li>• Reject proposal to abolish disability allowance – refers to ACCI v ACTU [2015] as this would prevent employers from compensating for difficulty or discomfort</li> <li>• Submit allowance should be tailored to suit specific industry needs</li> <li>• Suggests parties engage in conference to resolve matter</li> </ul>	3.2-3.6
4	N/A	N/A	22	<p><b>Special Rates</b></p> <ul style="list-style-type: none"> <li>• No submissions made in relation to this provision</li> </ul>	N/A
5	AIG	<a href="#">Sub-15/09/2017</a>	24.1	<p><b>Qualification (Living Away from Home Allowance)</b></p> <ul style="list-style-type: none"> <li>• Accepts proposed clause without objection</li> </ul>	16
	AWU	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Supports amendments proposed by CFMEU</li> <li>• Concerned that ‘community living standards having regard to the location in which the work is performed’ is not an appropriate reference point for accommodation requirements</li> <li>• Proposes alternative wording: ‘<i>Any accommodation provided under paragraph (a) must be in accordance with contemporary living standards taking account of limitations arising from the location in which work is performed and must include reasonable washing, laundry, recreational, kitchen, external lighting, communications and fire protection facilities.</i>’</li> </ul>	10-12

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	CFMEU C&G	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>Submit that the proposed 24.1 and 24.2 would be acceptable if the following words were added to 24.2(a): <i>'An employer must not exercise undue influence for the purpose of avoiding the obligations under this clause, in persuading an existing employee to give a false address'</i>.</li> </ul>	32
	AMWU	<a href="#">Sub-18/09/2017</a>		<ul style="list-style-type: none"> <li>Supports CFMEU&amp;AWU submissions</li> </ul>	3-4
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>Acknowledges that redrafted provision is less complex than existing provision</li> <li>Submits issue must be addressed to conform with Modern Awards Objective and intent of Award provisions</li> </ul>	4.2
	CCF	<a href="#">Sub-29/09/2017</a>		<ul style="list-style-type: none"> <li>Reject proposal to delete 24.1(b) and amend 24.2</li> <li>Submit this would reverse obligation in regard to LAFHA placing onus on employer</li> </ul>	4.1- 4.4
6	HIA	<a href="#">Sub-15/09/2017</a>	24.2	<p><b><i>Employee's address</i></b></p> <ul style="list-style-type: none"> <li>Opposes proposed changes that would see additional requirements place on employers to take reasonable steps to verify an employee's address, require employers to pay the allowance even if the employee provided the wrong address but the employer failed to take reasonable steps to verify the address, or entitle an employee who subsequently changes their address to claim the allowance</li> </ul>	2.3.1
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>Submit the redrafted provision places onus on employee to provide address, without obligation to provide correct information. Instead, onus is on employer to take reasonable steps to verify while employer has limited capacity to do so</li> <li>Submit 24.2(b) prohibits employer from investigating validity of documents, creating situation where the employer is unable to establish a document is fraudulent</li> <li>Opposes deletion of existing 24.2(b) and removal requirement that employer agree to change. Submit 24.2 (c) be amended to require employee evidence of address to receive allowance.</li> </ul>	4.3- 4.6

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7	CFMEU C&G	<a href="#">Sub-15/09/2017</a>	24.3	<b>Entitlements</b> <ul style="list-style-type: none"> <li>• Oppose the proposal as it does not address initial submissions in regard to issue of single room accommodation, internet, phone access, modelling in camps</li> <li>• Submits that draft clause by CFMEU is more appropriate</li> </ul>	33
	HIA	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Does not opposes approach outlined by Full Bench</li> </ul>	2.3.2
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>• Proposes that clause 24.3(a) (i) provided in Statement be redrafted to require employee to satisfy employer that amount has been reasonably incurred</li> <li>• Propose inclusion of ‘or’ between 24.3(a)(i) and (ii)</li> </ul>	4.9- 4.10
	CCF	<a href="#">Sub-29/09/2017</a>		<ul style="list-style-type: none"> <li>• Support removal of the weekly rate and specifying a daily rate</li> <li>• Proposes alternatives that including paying LAFHA or the greater amount (subject to employer), providing accommodation and 3 meals per day or provide accommodation and reimburse for all reasonable meals per day</li> <li>• Support proposed amendment to 24.3(b)</li> </ul>	4.5- 4.8
8	AIG	<a href="#">Sub-15/09/2017</a>	33	<b>Hours of Work</b> <ul style="list-style-type: none"> <li>• Submits proposed 33(v) is onerous upon employers and results in loss of flexibility, particularly in cases of delays/emergencies</li> <li>• Additional requirement is unnecessary and overly restrictive</li> </ul>	17-18
	AWU	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Opposes deletion of fourth Monday in each four-week cycle as default RDO</li> <li>• Opposes change to 33(a)(v)(B) on the basis that is does not refer to an employee receiving an alternative RDO/being pay accrued RDO</li> <li>• Reiterates support for wording believed to have been agreed between parties</li> <li>• Submit that 33(d)(iv)(C) contains an error. Proposes deleted the word ‘except’</li> </ul>	13-24

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	CFMEU C&G	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Opposes proposed clause</li> <li>• Submit proposed clause removes certainty as to when RDO's are to be taken and reduce the ability of employees to plan ahead</li> <li>• Submits the proposed change gives absolute power to employers to determine when RDO's are to be taken</li> <li>• Submits clause fails to address what happens to accrued entitlements when an employee is required to work on an RDO</li> </ul>	34-35
	HIA	<a href="#">Sub-15/09/2017</a>		<ul style="list-style-type: none"> <li>• Maintain position outlined in <a href="#">December 2016 submission</a> at section 8 and supports provisional view if provisions are inserted enabling employers to choose whether to fix one day in the cycle for all employees to take an RDO or to roster employees to take their RDO on different days during the cycle; and provisions are inserted enabling the banking of RDO's</li> <li>• Opposes deletion of clause 33.1(vii) on the basis this would have a negative impact upon workplace flexibility, productivity and would increase the regulatory burden for employers</li> <li>• Support deletion of 33.1(a)(ii)</li> <li>• Submit that words in parenthesis at 33(a) should be deleted unless an 'averaging of hours' system akin to that proposed by HIA is adopted</li> <li>• Submits 33(a) (iii) should not create onerous obligation to publish a roster. Further, submits there is uncertainty regarding the meaning of 'published'</li> <li>• Submit the requirement under 33(a) (iii) should not apply where the system of fixing an RDO remains the same over a number of 4 week cycles</li> <li>• Opposed to proposed clause 33(a)(v)</li> <li>• Oppose inclusion of 33(a)(vi). Reiterates position in <a href="#">December 2016 submission</a> at s.6.2</li> <li>• Support provisions enabling employees to bank RDO's and submit that employee should be required to provide written notice to take banked RDO at least 5 days prior</li> <li>• Concerned that replacement of 33.1(v) of the current award with 33(vii) does not</li> </ul>	3- 3.4.7

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				contemplate four scenarios outlined in submission and notes AM2016/8 is currently addressing payment of wages of termination	
	AMWU	<a href="#">Sub-18/09/2017</a>		<ul style="list-style-type: none"> <li>• Supports CFMEU and AWU submissions</li> </ul>	3-4
	Master Builders	<a href="#">Sub-19/09/2017</a>		<ul style="list-style-type: none"> <li>• Oppose requirement as per 33(a)(v) in Statement that an employer provide 48 hours' notice if employee is required to work a RDO. Submit this requirement contradicts notion in the clause that work on an RDO may be necessary due to 'unforeseen delays/emergences</li> <li>• Submit requirement for 48 days is not prescribed under 33.1(a)(vi) which applies in akin circumstances</li> <li>• In event that Commission retains provision, propose a caveat that 48 notice is not required for circumstances described as the proposed 33(a)(A)(3) &amp; 4 where it would not be practicable to provide notice</li> <li>• Submit that employees be provided with flexibility to cash-out RDOS</li> </ul>	5.3-5.6
	CCF	<a href="#">Sub-29/09/2017</a>		<ul style="list-style-type: none"> <li>• Submits the requirement to give 48 hours is not practical and that notice in writing creates an administrative burden on small businesses</li> <li>• Supports banking of RDO across the industry but submits if more than one RDO day is to be taken, two weeks 'notice must be given in writing, must specify the number of dates allowing the employer to plan for the absence</li> <li>• Concerned that some CCF members do not work on an RDO system, but rather, a 38 hour week. May cause difficulty if 33.1(vii) is deleted</li> </ul>	5.4-5.6



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9	Master Builders	<a href="#">Sub-19/09/2017</a>	33(d)(iii)	<p><b>Further matters</b></p> <ul style="list-style-type: none"> <li>• Submits that 33.d (iii) is outmoded. Propose following rewording: <i>‘The employment conditions and associated entitlements set by this award shall apply. Limitations on time spent working in compressed air and the physical conditions under which such work is performed shall be subject to the applicable Australian Standard’.</i></li> <li>• Submits that 33.d (iv) has a drafting error. Retains view that hours for underground work described as 30 have been drafted in error and should refer to 38.</li> <li>• Submits that phrase ‘begin at the whistle’ at part B is outmoded terminology and should be reconsidered.</li> </ul>	5.9-5.11

#### List of abbreviations (in alphabetical order)

Abbreviation	Party name
AIG	Australian Industry Group
AMWU	“Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)
AWU	Australian Worker’s Union
CCF	Civil Contractors Federation
CFMEU – C&G	Construction, Forestry, Mining & Energy Union – Construction & General Division
HIA	Housing Industry Association
Master Builders	Master Builders Australia