

SUMMARY OF SUBMISSIONS ON REVISED EXPOSURE DRAFT – OUTSTANDING ISSUES

This table has been revised to include submissions received in response to paragraph 125 of Full Bench Decision [2017] FWCFB 3177 regarding outstanding issues and the exposure draft. The summary includes submissions received before 11 July 2017.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
1A	ABI	Sub-07/07/17	2.1	Typographical error: ‘and’ should be deleted after ‘NES’.	18	RESOLVED Typographical error amended in exposure draft.
1	AWU	Sub 20-11-15	6.3(d)	Part-time employees – given the award has all purpose allowances wording should be ‘ordinary hourly rate’	4	REMAINS OUTSTANDING
	AIG	Reply 7-12-15		Opposes AWU submission. Current wording reflects existing award entitlement and clause states ‘minimum hourly rate of pay for the relevant classification in clause 9’, clause 9 following July decision only contains minimum hourly rates, to use ‘ordinary hourly rate’ could be misleading.	124-125	
	CFMEU	Sub-30/06/17		Item remains outstanding.	2	
	AIG	Sub-11/07/17		Maintains its opposition to the AWU’s submission. It is content for the Full Bench to determine this matter.	307-308	
2	AWU	Sub 20-11-15	6.4(c)	Casual employees – clause has not been amended to reflect September Decision [110] of [2015] FWCFB 6656, where was expressed that general approach for casual loading should be 25% of the ordinary hourly rate for awards which contain all purpose allowances. AWU provides wording.	5	REMAINS OUTSTANDING
	AIG	Reply 7-12-15		Opposes AWU proposal would increase employers’ costs; current clause does not include all purpose allowances in calculating casual rate.	126-133	

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				Reference to clause 13 sets out minimum weekly wages. Exposure draft reflects award and should not be amended.		
	CFMEU	Sub-30/06/17		Item remains outstanding.	2	
	AIG	Sub-11/07/17		No longer opposes the AWU'S submission.	309	
3	CFMEU	Sub 20-11-15	6.4(e)	Casual employees – exposure draft using term ‘entitlements’ instead of ‘attributes’ used in current award. Could lead to attempts to deny casual award entitlements they have always received. Seeks to have ‘entitlements’ replace with ‘attributes’.	1-3, 6	REMAINS OUTSTANDING Clause in ED amended to reflect current provision this is consistent with [2014] FWCFB 9412
	AIG	Reply 7-12-15		Does not oppose CFMEU proposal. However believes clause is best deleted, as only refers to some entitlements/attributes of full-time part-time employment that casual loading is paid instead of, hence clause is misleading.	134-135	
4	AWU	Sub 20-11-15	6.5	Probationary period – support provisional view of the FB to remove clause. Not necessary and mislead employees as to their unfair dismissal rights.	6	REMAINS OUTSTANDING
	AMMA	Sub 25-11-15		Supports the retention of clause. Variation must demonstrate that necessary to achieve modern award objective, deletion of substantial provision 6.5 is not necessary to achieve modern award objective.	Page 1	
	AWU	Reply 4-12-15		FB determined in relation to Rail Industry Award 2010 that there's no practical purpose of clause applies to this award too. Clause should be deleted.	4	

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4a	AIG	Sub-11/07/17	9.1	Adult employee minimum wages It is not confined to full-time employees and therefore can be interpreted as requiring minimum payment of the minimum weekly rate to all adult employees. Suggests including the words 'full-time employees' in the table.	310-311	REFERRED Referred to the Plain Language Full Bench (AM2016/15), see [2018] FWC 1544 .
5	AMWU	Sub 20-11-15	10.1(a)(v)	Annualised salary – supports the provisional view FWC in [140] of [2015] FWCFB 7236	5.1	RESOLVED Provisional view agreed.
	AWU	Sub 20-11-15		Supports provisional view of the FB to insert 'loading' to clarify that annual salary cannot be paid to compensate for annual leave.	7	
	AMMA	Sub 25-11-15		Does not oppose proposed variation.		
	AIG	Reply 7-12-15		Does not oppose proposed variation.	136	
5a	ABI	Sub-07/07/17	11.1	Typographical error: 'Sch. A' should be 'Sch. C'.	18	RESOLVED Typographical error amended in exposure draft.
6	AIG	Sub 20-11-15	11.2(g)	Rail allowance – support FB provisional view that rail allowance should be 30% of the 'minimum rate of pay' [142] [2015] FWCFB 7236	259	RESOLVED Provisional view not opposed.
7	AWU	Sub 20-11-15	13.1	Shift work and penalty rates – Definitions – Reference to afternoon shift should be removed from definition of 'permanent night shift' for self-explanatory reasons.	8	RESOLVED Removal of afternoon shift agreed by parties, ED amended.
	AMMA	Sub 25-11-15		Definition requires further consideration. Preliminary view should be varied to reflect Hydrocarbons Industry (Upstream) Award which refers to night shift only.	Page 1-2	
	AWU	Reply 4-12-15		Agree reference afternoon shift should be deleted, as no additional payment for permanent afternoon shift under this award.	5	

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	AIG	Reply 7-12-15		Agrees with AWU and AMMA that definition should not include afternoon shift. If definition included should be based on one in current use, such as Exposure Draft - Hydrocarbon Industry (Upstream) Award 2015.	137-138	
8	AMMA	Sub 25-11-15	13.1	Definition permanent night shift, typographical error, 'or' has been omitted after first sentence.	Page 2	RESOLVED Drafting error – corrected in exposure draft.
8A	ABI	Sub-07/07/17	13.2	Penalties and overtime Supports the AIG's 24 October 2014 submission that 'ordinary rate of pay' is a substantive change variation to the existing Award.	19	REMAINS OUTSTANDING
9	AWU	Sub 20-11-15	14.1	Overtime – start of clause should be amended to remove reference to clause 13. Reference creates ambiguity as clause 13 refers to penalty rates for ordinary hours and 14 deals with overtime, separate entitlements.	9	RESOLVED Drafting error – corrected in exposure draft.
	AIG	Reply 7-12-15		No objection to deleting reference to clause 13.		
10	AIG	Sub 20-11-15	14.1, 14.2	Overtime – 'overtime rate' in table in 14.1 and 14.2 should be replaced with '% of ordinary hourly rate' consistent with schedule B.	260	RESOLVED Exposure draft amended to reflect agreed position.
	AWU	Reply 4-12-15	14	Agree reference to ordinary hourly rate		
11	AWU	Sub 20-11-15	20.2	Termination of employment – typographical error, 'from' to be inserted after 'withhold'.	10	RESOLVED Drafting error – corrected in exposure draft.
	AIG	Sub 20-11-15			261	
	BusSA	Sub 27-11-15			25	

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12	AMWU	Sub 20-11-15	Sch. B	Summary of wages – insertion resulting from paragraph [63] of [2015] FWCFB 4658 should read ‘employers who meet their obligations under this schedule are meeting the obligations under the award’ (emphasis added), exposure draft refers to ‘their obligations’.	6.1-6.2	RESOLVED <i>Note: Current wording is a grammatical correction that has been applied to all exposure drafts.</i>
13	AWU	Sub 20-11-15	Sch. B	Summary of wages – notes that casual overtime rates have not been included. If table of casual overtime rates included requests opportunity to review.	11	REMAINS OUTSTANDING See item 14
	BusSA	Sub 27-11-15			26	
	AIG	Reply 7-12-15			141	
14	AIG	Sub 20-11-15	Sch. B.2.3	Summary of wages – casual employees – casual loading is not payable on overtime, shiftwork penalties, weekend penalties or public holidays – table should be amended accordingly. Issue has been referred to Casual Employment Full Bench. AIG submission is wrong. Clause 6.4(d) clearly states casual loading form part of the all purpose rate, this is consistent with cl. 10.3 of the current award. Outcome of it not applying would mean a casual worker working night shift would receive only 15% loading while casual on day work receives 25%, clearly not intended.	262-265	REMAINS OUTSTANDING Has been referred to AM2014/197 Casual Employment Full Bench. <i>Item was not pursued in the casual and part-time proceedings.</i> See also item 13
	AWU	Reply 4-12-15			9-14	
	CFMEU	Reply 21-12-15			Page 1	
14a	ABI	Sub-07/07/17	Sch. C.1	Typographical error: ‘Sch. G’ should be ‘Sch. H’.	18	RESOLVED
15	BusSA	Sub 27-11-15	Sch. G	Part-day public holiday rates – to be updated in line with recent statement. Agrees with Business SA Does not oppose proposal.		RESOLVED Schedule G amended in accordance with PR580863
	AWU	Reply 4-12-15			6	
	AIG	Reply 7-12-15				
15A	AIG	Sub-11/07/17	Sch. H	Suggests amending the definition of ‘ordinary hourly rate’. It proposes amending ‘B.1.3’ to ‘9’.	318	NEW ISSUE

Note:

- AMWU reply submission [4 November 2015](#) supported submissions made by AWU on 20 November 2015 and submissions of CFMEU.
- CFMEU correspondence in reply dated [21 December 2015](#) notes it agrees with AWU reply submission dated 4 December 2015.

List of abbreviations (in alphabetical order)

ABI	Australian Business Industrial and the NSW Business Chambers Ltd
AIG	Australian Industry Group
AMWU	Australian Manufacturing and Workers' Union
AMMA	Australian Mines and Minerals Association
AWU	The Australian Workers' Union
BusSA	Business SA
CFMEU	Construction, Forestry, Mining and Energy Union
FB	Full Bench of the Fair Work Commission
FWC	Fair Work Commission