

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 22 February 2017.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1	AIG	Sub-18/01/17	1.2	Title and commencement Clause should read: This modern award commenced operation on 1 January 2010. The award has been varied since that date.	Para 55	This issue will be determined by the Award Stage–Group 3 Full Bench and applied generally.
	ABI & NSWBC	Sub-18/01/17		‘as varied’ should be deleted from sentence	Para 2.2	
2	AFEI	Sub-18/01/17	2.1	Definitions - communications The word ‘or’ should be deleted at the end of point (e) and inserted at the end of point (d). The sentence at (f) should stand alone.	Para 40	
	AIG	ReplySub-22/02/17		Agree with AFEI’s submission.	Para 118	
3	AIG	Sub-18/01/17	2.2	Engineering stream—Experienced Engineer Definition in current award cl.3.2 should be retained.	Paras 254-257	
	APESMA	ReplySub-22/02/17		Supports AIG’s proposal.	Para 4	
4	AIG	Sub-18/01/17	2.2	Engineering stream—Graduate Engineer Word ‘testamur’ should not be replaced with ‘certificate’.	Paras 258-260	
	APESMA	ReplySub-22/02/17		Supports AIG’s proposal.	Para 5	

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5	AIG	Sub-18/01/17	2.2	Professional Engineering Duties Current clause should remain.	Paras 261-262	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.1	
6	ABI & NSWBC	Sub-18/01/17	2.2	Professional engineering duties Full-stop missing from the end of sentence.	Para 10.1	
	AIG	ReplySub-22/02/17		Agree with ABI & NSWBC's submission.	Para 119	
	BusSA	ReplySub-22/02/17		Agrees with ABI & NSWBC's submission.	Para 5.2	
7	AIG	Sub-18/01/17	2.3	Information technology and telecommunications services stream— Experienced information technology employee Retain definition in current award cl. 3.3.	Paras 263-264	
	APESMA	ReplySub-22/02/17		Supports AIG's proposal.	Para 6	
8	AIG	Sub-18/01/17	2.3	Information technology and telecommunications services stream— Telecommunications service Final sentence of definition of 'telecommunications service' be replaced with 'carrying includes transmitting, switching or receiving.'	Paras 265-268	
	APESMA	ReplySub-22/02/17		Supports AIG's proposal.	Para 7	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.3	

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9	AIG	Sub-18/01/17	2.4	Scientist stream—Experienced scientist Clause should be amended as follows: 'possessing the following qualifications and' to be inserted after 'professional scientist' and just before 'engaged in employment'.	Paras 269-270	
	APESMA	ReplySub-22/02/17		Submits it would be appropriate to restore the current award preamble. Retain existing award definition for 'experienced scientist'.	Para 8	
10	APESMA	Sub-21/12/16	2.4	Definitions—Scientist stream The professional scientific bodies referenced in the Academic schedule and Experienced scientist sections have altered the title of their grades of membership. Award should reflect this. Provided proposed amendments.	Para 8	
	AIG	ReplySub-22/02/17		Could be significant cost implications as a result of APESMA's submission. If issue not agreed, should be dealt with as a substantive claim.	Paras 120-122	
11	AIG	Sub-18/01/17	2.4(a)	Scientist stream—Experienced scientist Wording should be consistent with current award provision	Paras 271-273	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.4	
12	AIG	Sub-18/01/17	2.5(a)(ii)	Quality auditing stream—educational requirements Wording should be consistent with current award provision.	Paras 274-276	
	APESMA	ReplySub-22/02/17		AIG's concerns would be resolved by retaining current award provision.	Para 9	

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13	AIG	Sub-18/01/17	4.1	Coverage Words 'industry and occupational award' should be deleted.	Paras 277-280	
	APESMA	ReplySub-22/02/17		Does not agree with AIG's submission.	Para 10	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.5	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 53	
14	ABI & NSW BC	Sub-18/01/17	5	Effect of variations made by the FWC Clause should be made a subclause of Clause 1—'Title and Commencement'.	Para 2.1	Provision is contained as a discrete clause in all Group 4 EDs in accordance with plain language principles [2016] FWC 2924 , see para [4].
15	AFEI	Sub-18/01/17	7.2	Facilitative provisions for flexible working practices Reference should be made to cl.13.2.	Para 41	
	AIG	ReplySub-22/02/17		Does not oppose AFEI's submission.	Para 126	
16	AIG	Sub-18/01/17	7.2	Facilitative provisions for flexible working practices Reference to cl.13.7 should be deleted.	Paras 281-283	
	APESMA	ReplySub-22/02/17		Disagrees with AIG. 13.7 should be included.	Para 11(a)	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 54	

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17	AIG	Sub-18/01/17	7.2	Facilitative provisions for flexible working practices Reference to cl.17.5 should be deleted.	Paras 284-285	
	APESMA	ReplySub-22/02/17		Disagrees with AIG. Clause falls within 'flexible provisions for flexible working practices'.	Para 11(b)	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 55	
18	AIG	Sub-18/01/17	7.2	Facilitative provisions for flexible working practices Reference to cl.17.6 should be deleted.	Paras 286-287	
	APESMA	ReplySub-22/02/17		Disagrees with AIG. Clause falls within 'flexible provisions for flexible working practices'.	Para 11(b)	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 55	
19	BusSA	Sub-18/01/17	7.2	Facilitative provisions for flexible working practices Current cl.8.4 needs to be reproduced in ED.	Para 5.1	
	AIG	ReplySub-22/02/17		Does not agree with BusSA.	Paras 123-125	
	APESMA	ReplySub-22/02/17		Agrees with BusSA.	Para 20	

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20	AIG	Sub-18/01/17	11.1(a)	Casual employment Insert 'prescribed in clause 14—Minimum wages' after 'classification'.	Paras 288-290	
	APESMA	ReplySub-22/02/17		Agrees with AIG's proposal.	Para 12	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.6	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 56	
21	AIG	Sub-18/01/17	11.1(a)	Casual employment 'A casual employee is an employee engaged and paid as a casual employee' should be inserted as cl.11.1(a) and other clauses renumbered.	Paras 291-292	
	APESMA	ReplySub-22/02/17		Opposes AIG's proposal.	Para 13	
	AFEI	ReplySub-22/02/17		Agrees with AIG's submission.	Para 56	
22	APESMA	Sub-21/12/16	13	Ordinary hours of work <i>In response to question raised by Commission</i> ED does not specify a maximum number of weeks in a cycle. May impact on application of award. Requires clarification and should be a substantive issue.	Para 3	
	BusSA	Sub-18/01/17		No 'cycle' specified in award. Appropriate to average ordinary hours of work over a 12 month period.	Para 5.2	

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	AFEI	Subs-18/01/17		Current award does not specify a maximum number of weeks over which 38 hours may be averaged. If specified, would be substantive change.	Para 44	
	ABI & NSW BC	Sub-18/01/17		Does not consider it necessary or appropriate to impose an arbitrary cap.	Para 10.2	
	AIG	ReplySub-22/02/17		Agrees with submissions of AFEI, ABI & NSWBC. Opposes BusSA's and APESMA's submissions.	Paras 127-129	
	APESMA	ReplySub-22/02/17		Supports insertion of 'time to time' after 'from'.	Para 14	
	APESMA	ReplySub-22/02/17		Proposes 'of 152 hours in 28 days' be added after 'average'.	Para 22	
23	AIG	Sub-18/01/17	13.5	Ordinary hours of work. Words 'time to time' should be inserted after 'from', as per the current cl.18.3.	Para 293	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.7	
24	APESMA	Sub-21/12/16	14.1	Minimum wages Appears to be a 'rounding up' issue with Level 3 (Professional/senior (lead) quality auditor) rate. Should be \$30.42.	Para 5	
	BusSA	ReplySub-22/02/17		Disagrees with APESMA's submission. Rates in ED are correct.	Para 5.9	

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25	AIG	Sub-18/01/17	14.1	Minimum wages Words 'full-time employee' should be inserted under 'Annual wages' in table.	Paras 294-296	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.8	
26	AIG	Sub-18/01/17	14.1	Minimum wages Final column in table should be deleted.	Paras 297-299	
	APESMA	ReplySub-22/02/17		Actual rates for casual employees should be prescribed in the award.	Para 16	
27	APESMA	Sub-21/12/16	14.2	Minimum wages – calculation There is an argument that past custom and practice used 365/7(52.14). Propose the issue be further considered.	Para 6	
	BusSA	Sub-18/01/17		Correct calculation method is: Hourly rate = (annual wage x 6/313)/38.	Para 5.3	
	AFEI	ReplySub-22/02/17		Does not support APESMA's submission.	Para 58	
28	AIG	Sub-18/01/17	15.3	Vehicle allowance Wording in current cl.16.2 should be retained.	Paras 300-303	
	BusSA	Sub-18/01/17		Agrees with AIG.	Para 5.4	
	APESMA	ReplySub-22/02/17		Supports ED drafting.	Para 17	
	AFEI	ReplySub-22/02/17		Supports submissions of AIG and BusSA.	Para 59	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
29	APESMA	Sub-21/12/16	17.2	<p>Annual leave <i>In response to question raised by the Commission</i> The key variable is not whether annual leave is progressively accrued or accrues on 12 months' completion of service. Application of this clause needs to relate to when annual leave is taken and the loading cap which would apply at that time.</p>	Para 7	
	AIG	Sub-18/01/17		Employee will not be entitled to be paid a separate annual leave loading if the total 'amount' that they are paid for the relevant period of annual leave is greater than 'the ABS average weekly earnings for all males (Australia) for the preceding September quarter of the year. Clause should be retained	Paras 304-306	
	BusSA	Sub-18/01/17		Cap on annual leave applies on the date when annual leave is taken, rather than when annual leave is accrued.	Para 5.5	
	APESMA	ReplySub-22/02/17		Supports ED drafting of clause.	Para 18	
30	AIG	Sub-18/01/17	17.2(a)	<p>Annual leave Words 'the year' should be inserted after 'preceding'</p>	Para 307	

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31	AFEI	Sub-18/01/17	17.4	Annual close-down ED drafting has changed the effect. Words 'in that enterprise, section or sections' should be inserted to the end of clause. Otherwise current wording should remain.	Paras 42-43	
	BusSA	ReplySub-22/02/17		Agrees with AFEI's submission.	Para 5.10	
32	AIG	Sub-18/01/17	17.4	Annual close-down ED drafting is a substantive change. Submits 'may' should be inserted before 'also'.	Para 315-316	AIG references clause 19.4 in submission. However there is no clause 19.4 in ED.
	APESMA	ReplySub-22/02/17		AIG's concerns are addressed by the re-drafted clause.	Para 19	
33	AIG	Sub-18/01/17	17.4(a)	Annual close-down Redrafting of clause unnecessary.	Para 308	
34	AIG	Sub-18/01/17	17.4(a)	Annual close-down 'a section or more of the enterprise' in the first line should be replaced with 'the enterprise, or a section or sections thereof'.	Para 309	
	BusSA	ReplySub-22/02/17		Agrees with AIG's submission.	Para 5.11	
	AFEI	ReplySub-22/02/17		Supports AIG's submission.	Para 60	

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35	AIG	Sub-18/01/17	17.4(a)	Annual close-down Clause be replaced with ‘An employer may close down the enterprise, or a section or sections thereof for the purpose of allowing annual leave to all or the majority of employees in the enterprise, section or sections concerned’.	Paras 310-312	
	BusSA	ReplySub-22/02/17		Agrees with AIG’s submission.	Para 5.11	
	AFEI	ReplySub-22/02/17		Supports AIG’s submission.	Para 60	
36	APESMA	Sub-21/12/16	Sched A	Classification Structure and Definitions Historically the entry rate for Professional Engineer (4-year degree) or Professional Scientist (4 or 5-year degree) was higher than the rate of the Professional Scientist (3-year degree). Submit the entry rate of a 4 or 5-year degree should be Pay Point 1.2.	Para 8	
	AFEI	ReplySub-22/02/17		Does not support APESMA’s proposal.	Para 61	
37	AFEI	Subs-18/01/17	Sched A.2.1(a)	Graduate professional – appointment and progression <i>In response to question raised by the Commission</i> Does not oppose the inserting reference to a five year degree.	Para 45	
	AIG	ReplySub-22/02/17		Does not agree with AFEI’s proposal to amend clause. Alignment is consistent with current award.	Paras 133-136	

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industry and New South Wales Business Chamber
AFEI	Australian Federation of Employers and Industries
AIG	Australian Industry Group
APESMA	Association of Professional Engineers, Scientists and Managers, Australia
BusSA	Business South Australia
ED	Exposure draft