

SUMMARY OF SUBMISSIONS ON FURTHER REVISED EXPOSURE DRAFT – OUTSTANDING ISSUES

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

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
1.	AIG	Sub 23-11-15	2.2–2.3		National employment standards – clause contains drafting error – should be amended.	393	RESOLVED ED amended
	BusSA	Sub 27-11-15				39	
2.	AWU	Sub 23-11-15	7.4(c)(i)		Casual employees – ‘for each ordinary hour worked’ should be changed to ‘for each hour worked’ because casual loading in this award is paid for all hours worked. Reserves right to reply if AWU’s submission pressed.	8–9	REMAINS OUTSTANDING AWU made no further submissions, have not pressed claim.
	ABI & NSWBC	Sub-7-07-17				37	
3.	BusSA	Sub 27-11-15	Currently omitted	12.2(b)	Casual employees – appears significant provisions dealing with overtime work and payment for casual employment have been removed and not replaced by any other relevant provision in the ED. Notes current award clause 12.2(b), which states casual loading is payable on overtime, Saturday, Sunday & public holidays, has been omitted from ED. Should be retained. Provision should be reinserted.	38	RESOLVED ED amended – clause 12.2(b) inserted as new 7.4(d).
	AWU	Sub 23-11-15	7.4, 12.2(e), Sch D3			10–11	
	AIG	Reply 7-12-15				247–250	

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4.	AIG	Sub 23-11-15	7.4(c)(ii)		Casual employees – clause should be deleted as ‘unnecessary and problematic’.	394	RESOLVED ED amended in accordance with para [69] of [2014] FWCFB 9412
	BusSA	Sub 27-11-15				40	
5.	AIG	Sub 23-11-15	8.2, 14	17.10	Piecework/Minimum wages – does not reiterate case for inclusion of current clause (following 2015 FWCFB 7236 at [287]), however notes nothing clarifies interaction between clauses 14 (minimum wages) and 8.1-8.2 (piecework), i.e. clauses 8.1-8.2 provides an alternative remuneration to that in 14. Proposes new clause 14.7 outlining minimum prescribed in clause 14 do not apply to piecework workers. Wording proposed in submission.	396–403	WITHDRAWN
	ABI & NSWBC	Sub-7-07-17				37	
	AIG	Sub-11-07-17				402	
6.	AIG	Sub 23-11-15	12.2(c)		Ordinary hours and roster cycle – wording not in current award. Proposed variation considered and rejected in [2015] FWCFB 2856 at [153]. Consistent with that decision clause should be deleted.	395	RESOLVED ED amended to delete clause in accordance with [153] of [2015] FWCFB 2856
	BusSA	Sub 27-11-15				41	

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6A.	AIG	Sub-11-07-17	14.1		Preamble is not confined to full-time employees. Appears to require payment of minimum weekly rate to all adult employees, including part-time and casual employees. Suggest including '(full-time employees)' below heading of second column of table.	403-405	REFERRED Referred to the Plain Language Full Bench (AM2016/15), see [2018] FWC 1544 .
7.	AIG	Sub 23-11-15	20.1		All purpose allowances – consistent with [91] of [2015] FWCFB 4658 'annual' to be inserted before 'leave' in definition of all purpose.	404	RESOLVED Amendment made to ED in accordance with [91] of [2015] FWCFB 4658 .
	BusSA	Sub 27-11-15					
8.	AFEI	Sub 23-11-15	23		Penalty rates and shiftwork arrangements – note structure of clause discussed at [302] of [2015] FWCFB 7236 . Agrees with FWC, day work rates not appropriate in clause for shiftworkers. Potential anomaly in cl.27.6, 30.5 & 30.6 of current award, weekend rates for day workers, could be addressed by recognising: 23.3(c) is intended to provide weekend rates of pay for day workers who have ordinary hours of work on weekend with agreement under cl.13.2(d); 23.1(a) is intended to provide weekend rates of pay for day workers who do not have ordinary hours on a weekend. <u>Proposes</u> - Move 23.3(c) to 23.1	16–18	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 .

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					- Current cl.23.1(a) & (b), moved to 23.2A with headings 'overtime on Saturdays' and 'overtime on Sundays'. - In new 23.2A insert 'outside of ordinary hours' after 'all work performed'.		
	AIG	Reply 7-12-15			Notes following [2015] FWCFB 7236 neither CFMEU–FFPD nor FWC proposed new clause structure. Request opportunity to review any restructure.	255	
	AIG	General sub 31-08-16			Heading contains 'allowances for shiftworkers' but clause contains rates not allowances.	45	
	AIG	Sub-11-07-17			Item relates to 'Inconsistent Terminology Issue' which remains outstanding. AIG reiterates request for opportunity to review any restructure of clause that may be proposed in accordance with [2015] FWCFB 7236 .	4-7 and 406	
	ABI & NSWBC	Sub-7-07-17			Reserves right to reply if submissions relating to this item are pressed.	37	
9.	AIG	Sub 23-11-15	25.10	33.9 (deleted)	Annual leave – transfer of business current award deleted regarding NES inconsistencies.	405	RESOLVED ED updated according to [2015] FWCFB 3023 and PR568682

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10.	AIG	Sub 23-11-15	23.2(b)(v)	12.8 (deleted)	Substituted shifts — clause removed following [300] of [2015] FWCFB 7236 . Contends 23.2(b)(v) different to current clause, ED deals with substituted ‘shifts’, while current award dealt with days. To delete 25.2(b)(v) would be substantial change— clause should be reinstated. Consequential amended would be to reinsert wording to 6.2(i).	406–412	RESOLVED <i>ED published on 2 Nov 2015 was updated to reflect [2015] FWCFB 7236 [Note: provisions referred to have been retained in ED with strikethrough]</i>
	AIG	Sub-11-07-17			Submission no longer pressed.	408	
11.	AIG	Sub 23-11-15	23.3		Allowances for shiftworkers – per [2015] FWCFB 7236 penalty rates for shiftworkers were renamed ‘allowances’. ED does not make clear the amount payable.	413–414	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 .
	AWU	Reply 4-12-15			Strongly oppose AIG submission. No need to separately identify additional payment for shift work.	51–53	
	AIG	General Sub 31-08-16			Further submission made, heading ‘allowances for shift workers’ clause contains rates not allowances. Clause inconsistently refers to ‘shift premium’ and ‘shift allowances’.	45	
	AIG	Sub-11-07-17			Item relates to ‘Inconsistent Terminology Issue’ which remains outstanding.	4-7 and 409	
	ABI & NSWBC	Sub-7-07-17			Support AIG. Recommend the inconsistency in ‘shift allowances’ and ‘shift premiums’ be rectified.	36	

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12.	AIG	Sub 23-11-15	30.2		Notice of termination by an employee – typographical error, ‘from’ to be added after ‘withhold’.	415	RESOLVED
	BusSA	Sub 27-11-15		43		Error – ED amended	
13.	AIG	Sub 23-11-15	Sch D		Summary of hourly rates of pay – table states the rates are ‘% of ordinary hourly rate’ when table is based on minimum hourly rates.	416	RESOLVED by [2017] FWCFB 3433 at [360] – [362] (insertion of footnotes).
	AWU	Reply 4-12-15		Oppose AIG submission. Award contains all purpose rates (20.2, 20.3) and references throughout ED should be ordinary hourly rate not minimum hourly rate in accordance with July 2015 and September 2015 decisions.	54–55	In accordance with paras [43]-[44] of [2015] FWCFB 4658 all purpose allowances must be added to minimum rate of pay before calculating penalties or loadings. % of ordinary hourly rates refers to penalty/loading % in table. For employees where all purpose rate applies, all purpose allowances need to be added to minimum hourly rate before calculating penalties or overtime – see clause D.1.1 and D.1.2.	
	AIG	Sub-11-07-17		Matter is resolved by [2017] FWCFB 3433 at [360] – [362].	410		
14.	BusSA	Sub 27-11-15	Sch I		Part-day public holidays – should be updated to reflect recent decision.	44	RESOLVED
	AIG	Reply 7-12-15		Agrees schedule should be amended.	257	ED updated in accordance with PR580863	

Note: the AMWU made submission on [20 November 2015](#), which supported the October Decision as it relates to specific clauses in this award. Given no further issues were raised the submission has not been referred to in the summary of submissions on Further revised exposure draft table.

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial and NSW Business Chamber
AFEI	Australian Federation of Employers and Industries
AIG	Australian Industry Group
AMWU	Australian Manufacturing and Workers' Union
AWU	The Australian Workers' Union
BusSA	Business SA
CFMEU – FFPD	Construction, Forestry, Mining and Energy Union Forestry and Furniture Products Division
ED	Exposure draft