

**From:** [Estha van der Linden \(Business SA\)](#)  
**To:** [AMOD](#)  
**Cc:** [Chris Klepper \(Business SA\)](#)  
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[Sub in Reply- Group 4A, B and C.pdf](#)

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Please find attached the Business SA Group 4 Submission in reply.

If you have any questions, please contact the undersigned or Chris Klepper on [chrisk@business-sa.com](mailto:chrisk@business-sa.com)

Regards



**Estha van der Linden**  
Senior Policy Adviser

T: 8300 0073

[esthav@business-sa.com](mailto:esthav@business-sa.com) | [www.business-sa.com](http://www.business-sa.com)

Level 1, 136 Greenhill Road, Unley. South Australia. 5061



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# Business SA Submissions in Reply

*Technical and Drafting  
Issues Related to Sub-  
Group 4A, 4B and 4C  
Exposure Drafts*

June 2016

## Executive Summary

Business SA is pleased to provide these response submissions to the Fair Work Commission. This submission will respond to submissions made by other employer and employee parties in regard to Group 4A, 4B and 4C exposure drafts. To assist in navigating this document each exposure draft response has been placed in a table signifying: the party making the submission; a link to that party's submission; the page or paragraph number of that party's specific submission; the exposure draft clause which that specific submission applies to; the title of that clause; and Business SA's response. Where Business SA disagrees with a submission, or agrees but wishes to make further comment, clear reference has been provided to each discussion point.\*

Business SA is aware of the altered Group 4 award calendar following the Fair Work Commission's 15 July 2016 Statement ([\[2016\] FWC 4781](#)). Submissions in reply for certain Construction awards are included in this submission, despite their deferred filing dates. Business SA provides responses for these awards to facilitate further discussion amongst interested parties and the Commission. We reserve the right to add, vary or withdraw submissions related to these awards within the appropriate time frames.

## Why this matter is important to South Australian businesses

*As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:*

- South Australian businesses will be impacted by any changes to the award system
- In the current economic environment South Australian employers need certainty that their interests will be represented when changes to the award are considered
- South Australian employers and employees will benefit from a well-considered modern award review enabling both parties to better understand their rights and responsibilities

\*Note: Unless otherwise stated, all clauses refer to their relevant exposure draft.

*For further information from Business SA's policy team, please contact Estha van der Linden, Business SA, on (08) 8300 0000 or [esthav@business-sa.com](mailto:esthav@business-sa.com)*

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## Parties and Abbreviations

- Australian Business Industrial and the NSW Business Chamber (ABI)
- Aged Care Employers (ACE)
- Australian Industry Group (AIG)
- Australian Federation of Employers and Industries (AFEI)
- Australian Services Union (ASU)
- Australian Worker's Union (AWU)
- Civil Contractor's Federation (CCF)
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)
- Construction, Forestry, Mining and Energy Union (CFMEU)
- Fire Protection Association Australia (FPAA)
- Housing Industry Association (HIA)
- Health Services Union (HSU)
- Jobs Australia (JA)
- Master Builders Australia (MBA)
- Master Electricians Australia (MEA)
- Master Plumbers and Mechanical Contractors Association of NSW (MPA)
- Master Plumbers Group (MPG)
- National Electrical and Communications Association (NECA)
- National Fire Industry Association (NFIA)
- Plumbing Trades Employees Union (PTEU)
- United Voice (UV)

## Submissions in Reply

### 1. *Aged Care Award 2016*

Whilst Business SA did not make formal submissions on the *Aged Care Award 2016* exposure draft, we wish to remain party to these proceedings and as such will reply to submissions made by other parties.

Number	Party/Parties	Document/s Link	Their Reference/s	Exposure Draft Clause	Clause Title	Business SA Response
1.1	AWU / AIG / ACE / HSU / UV	<a href="#">AWU Aged Care Sub / AIG (other than construction awards) / ACE Aged Care Sub / HSU Aged Care Sub / UV Group 4</a>	[4] / [75] / [5] / [16] / [16]	2	Definitions–Casual ordinary hourly rate	Agree
1.2	UV	<a href="#">UV Group 4</a>	[17]	2	Definitions–All purposes	Agree
1.3	HSU	<a href="#">HSU Aged Care Sub</a>	[8]	2	Definitions–Aged care industry	Agree
1.4	ABI	<a href="#">ABI Group 4</a>	[4.1]	11.1	Casual employment	Agree
1.5	AIG	<a href="#">AIG (other than construction awards)</a>	[78]	11.1	Casual employment	Agree
1.6	AWU	<a href="#">AWU Aged Care Sub</a>	[7]	11.1	Casual employment	Disagree, see below at 1.33
1.7	UV	<a href="#">UV Group 4</a>	[18]	11.1	Casual employment – Fixed term employee	Disagree, see below at 1.34
1.8	ABI	<a href="#">ABI Group 4</a>	[4.2]	11.3	Casual employment	Agree
1.9	AWU	<a href="#">AWU Aged Care Sub</a>	[10]-[14]	13	Ordinary hours of work	Review
1.10	AIG	<a href="#">AIG (other than construction awards)</a>	[82]	15.5	Payment for time worked during sleepover	Agree
1.11	AIG / ACE / HSU	<a href="#">AIG (other than construction awards) / ACE Aged Care Sub / AIG (other than construction awards)</a>	[85] / [7] / [33]	15.5(a)	Payment for time worked during sleepover	Agree

1.12	AIG	<a href="#">AIG (other than construction awards)</a>	[86]-[87]	15.7(a)	Breaks between shifts	Agree
1.13	AIG	<a href="#">AIG (other than construction awards)</a>	[89]-[91]	15.7(a)(ii) / 15.7(b)(ii)	Breaks between shifts	Agree
1.14	AIG	<a href="#">AIG (other than construction awards)</a>	[93]	16.1(a)	Unpaid meal breaks	Agree
1.15	AIG	<a href="#">AIG (other than construction awards)</a>	[98]	17.5(f)	Attendance at block release training	Agree
1.16	AIG / HSU	<a href="#">AIG (other than construction awards)</a> / <a href="#">HSU Aged Care Sub</a>	[99] / [18]	17.5(f)(ii)	Attendance at block release training	Agree
1.17	HSU	<a href="#">HSU Aged Care Sub</a>	[37]	17.7	Higher Duties	Partially agree, see below at 1.35
1.18	ACE	<a href="#">ACE Aged Care Sub</a>	[8]	18.2(a)	Wage related allowances	Agree
1.19	AIG	<a href="#">AIG (other than construction awards)</a>	[108]	18.2(c)(i)	Nauseous work allowance	Agree
1.20	AIG	<a href="#">AIG (other than construction awards)</a>	[111]	18.2(c)(ii)	Nauseous work allowance	Agree
1.21	AIG / UV	<a href="#">AIG (other than construction awards)</a> / <a href="#">UV Group 4</a>	[114] / [23]	18.3(a)(i)	Expense related allowances– Clothing and equipment	Agree
1.22	AIG	<a href="#">AIG (other than construction awards)</a>	[119]	18.3(a)(iv)	Laundry allowance	Agree
1.23	AIG	<a href="#">AIG (other than construction awards)</a>	[123]	20.3	Weekend penalties	Agree
1.24	HSU	<a href="#">HSU Aged Care Sub</a>	[42]	22.1(b)	Overtime–Full-time employees	Agree
1.25	AIG	<a href="#">AIG (other than construction awards)</a>	[127], [129]	22.2(a), 22.2(b)	Overtime–Part-time and casual employees	Agree
1.26	AIG	<a href="#">AIG (other than construction awards)</a>	[131]	22.4(a)	Rest period after overtime	Agree
1.27	AIG	<a href="#">AIG (other than construction awards)</a>	[134]	22.4(a)(ii)	Rest period after overtime	Agree
1.28	AIG	<a href="#">AIG (other than construction awards)</a>	[143]	22.6(d)	Meal breaks during overtime	Agree

1.29	ABI	<a href="#">ABI Group 4</a>	[4.3]	23.2	Additional leave for certain shiftworkers	Agree
1.30	ACE / HSU	<a href="#">ACE Aged Care Sub / HSU Aged Care Sub</a>	[10]-[11] / [43]-[44]	23.2(a)(i) / 23.2(b)	Additional leave for certain shiftworkers	Agree
1.31	AIG	<a href="#">AIG (other than construction awards)</a>	[144]-[147]	26.3(c)	Public holidays–Casual employees	Agree
1.32	AIG	<a href="#">AIG (other than construction awards)</a>	[153]	Sch B.1.1	Ordinary hourly rate	Agree

- 1.33 Business SA disagrees with the AWU’s submission regarding the nature of a casual employee’s engagement. The phrase ‘...engaged on an hourly basis...’ reflects the fact that casual employees are paid per hour worked. This payment system is then detailed in clause 11.2. The phrase above does not override a casual employee’s minimum engagement entitlement under clause 14.5. Further, the phrase ‘engage on an hourly basis’ is a common term used in a significant number of modern awards.
- 1.34 Business SA submits UV’s proposed definition amounts to a substantive change which must be established on its merits. Additionally, the submission by UV does not deal with the implications of such definition on other parts of this award such as termination of employment, annual leave, sick leave and so on.
- 1.35 Business SA partially agrees with the HSU’s submission regarding the higher duties allowance. Business SA considers the restructured clause appropriate. However, Business SA submits the exposure draft’s reference to ‘time so worked at the higher classification’ in the final sentence of 17.7(a) be reflected in the proposed clause 17.7(b)(i). The exposure draft’s reference to time worked at the higher classification links the payment to the period of higher duties so performed.

2. *Building and Construction General On-site Award 2016*

Number	Party/Parties	Document/s Link	Their Reference	Exposure Draft Clause	Clause Title	Business SA Response
2.1	AWU	<a href="#">AWU Building Sub</a>	[4]	2	Definitions–employee in charge of plant	Agree
2.2	CEPU	<a href="#">CEPU Building Sub</a>	[3]	2	Definitions – adult apprentice	Agree
2.3	CFMEU	<a href="#">CFMEU Sub</a>	[6]	2	Definitions – adult apprentice	Partially agree, see below at 2.31
2.4	HIA	<a href="#">HIA Building Sub</a>	[2.1]	2	Definitions – accident pay	Partially agree, see below at 2.32
2.5	MBA	<a href="#">MBA Building Sub</a>	[15]	2	Definitions – CW and ECW	Agree
2.6	ABI	<a href="#">ABI Group 4</a>	[9.1]	7.2	Facilitative table – Multiple amendments	Agree
2.7	HIA	<a href="#">HIA Building Sub</a>	[2.2.4]	7.2	Facilitative provisions for flexible working arrangements	Agree
2.8	AIG	<a href="#">AIG Construction Sub</a>	[80]	12.1	Casual employment	Agree
2.9	CCF	<a href="#">CCF Building Sub</a>	Page 1	12.2	Casual employment–Inclement weather	Agreement in principle, see below at 2.33
2.10	AIG	<a href="#">AIG Construction Sub</a>	[83]	14.1	Apprentices	Agree
2.11	HIA	<a href="#">HIA Building Sub</a>	[2.4.1]	14.8(d)	Attendance at block release training	Agree
2.12	HIA	<a href="#">HIA Building Sub</a>	[2.5.3]	16.9(a)	Hours of work–Early starts	Agree
2.13	CFMEU	<a href="#">CFMEU Sub</a>	[19]	16.12(a)	Underground Work	Disagree, see comment below at 2.34
2.14	AWU	<a href="#">AWU Building Sub</a>	[9]	17.2(k)	Civil construction sector–Saturdays	Agree
2.15	HIA	<a href="#">HIA Building Sub</a>	[2.6.1]	18.3(f)	Meal breaks–Rest periods and crib time	Agree
2.16	CFMEU	<a href="#">CFMEU Sub</a>	[21]	19.1(a)	Minimum wages–General	Disagree, see below at 2.35



2.17	MBA	<a href="#">MBA Building Sub</a>	[42]	19.1(a)	Minimum wages	Agree (re deletion of 'adult')
2.18	AWU	<a href="#">AWU Building Sub</a>	[12]	19.2(a)	Leading hands	See comment below at 2.36
2.19	AWU	<a href="#">AWU Building Sub</a>	[13]	19.2(b)	Leading hands	Agree
2.20	AWU	<a href="#">AWU Building Sub</a>	[15]	19.5	Mobile cranes capacity adjustment formula	Disagree, see below at 2.37
2.21	CFMEU	<a href="#">CFMEU Sub</a>	[25]	19.11	Higher duties	Disagree, see below at 2.38
2.22	CFMEU	<a href="#">CFMEU Sub</a>	[30]	21.6	Laser safety officer allowance	Agree
2.23	ABI	<a href="#">ABI Group 4</a>	[9.4]	21.12	Electrician's licence allowance	Agree
2.24	CFMEU	<a href="#">CFMEU Sub</a>	[31]	22.2(d)	Confined space	Disagree, see below at 2.39
2.25	HIA	<a href="#">HIA Building Sub</a>	[2.9.3]	22.2(r)(i)	Suspended perimeter work platform	Agree
2.26	AWU / HIA	<a href="#">AWU Building Sub / HIA Building Sub</a>	[18] / [2.10.1]	23.9	Inclement weather	Agree
2.27	CMFEU	<a href="#">CFMEU Sub</a>	[38]	26.3	Accident pay	Disagree, see below at 2.40
2.28	HIA	<a href="#">HIA Building Sub</a>	[2.12.2]	28.4	Payment for working overtime	Agree (re use of 'ordinary hours of work')
2.29	AWU	<a href="#">AWU Building Sub</a>	[20]	28.8(b)	Consecutive hours off duty	Disagree, see below at 2.41
2.30	MBA	<a href="#">MBA Building Sub</a>	[44]	Sch C.2.1	Adjustment of expense related allowance	Agree

2.31 Business SA partially agrees with the CFMEU's submission regarding these definitions. Business SA supports the deletion of repeated definitions, and agrees that the terms are appropriately defined in clause 14.1. However, Business SA submits reference to 'adult apprentices' should remain in clause 2, with that definition referring the reader to the primary definition in clause 14.1. This shows the reader that 'adult apprentice' is a defined term without repeating that definition.

2.32 Business SA partially agrees with the HIA's submission regarding the definition of accident pay. Business SA supports the deletion of repeated definitions. However, Business SA submits the primary definition of 'accident pay' should be remain in clause 26.3. This ensures

that definition is read in context with its surrounding clauses. The clause 2 definition should simply direct the reader to the definition in 26.3. This shows the reader that 'accident pay' is a defined term without repeating the definition.

- 2.33 Business SA agrees in principle with the CCF's response to the Commission's question at clause 12.2 but is seeking member feedback regarding their interpretation of this clause.
- 2.34 Business SA disagrees with the CFMEU's submission regarding clause 16.12(a). However, Business SA does see merit in removing reference to imperial measurement within this clause.
- 2.35 Business SA disagrees with the CFMEU's submission regarding clause 19.1(a); the clause is not misleading nor inconsistent with 19.1(b). Clause 19.1(a) simply states an employee will not be paid less than the minimum rates. Clause 19.1(b) makes clear employees are entitled to payment for any applicable allowances required by the award on top of that minimum rate. Business SA submits clauses 19.1(a) and 19.1(b) interact appropriately.
- 2.36 Business SA notes the examples of cl 19.2(a)'s application provided by the AWU. Business SA interprets [12] as a submission the examples should be included in the award. Business SA opposes this submission. Business SA submits examples should not be included in the award proper as this could unintentionally limit future proper interpretation of clause 19.2(a). Examples would more appropriately form the basis of a 'fact sheet', separate to the award, to aid an award user's interpretation.
- 2.37 Business SA disagrees with the AWU's submission regarding clause 19.5. The exposure draft reflects the current award and the proposed change would be a substantive variation.
- 2.38 Business SA disagrees with the CFMEU's submission regarding clause 19.11. While the last sentence of the clause has been altered between the current award and the exposure draft, this amendment has clarified, but not changed, an employee's entitlement to payment for higher duties. The change clarifies the employee's higher duties entitlement when less than two hours work (of the same duties discussed earlier in 19.11) have been performed.
- 2.39 Business SA is currently seeking member feedback on the CFMEU's proposal to change the definition of confined space.
- 2.40 Business SA disagrees with the CFMEU's submission to delete the definition of 'accident pay' in clause 26.3. See submission at [2.32] of this document.

2.41 Business SA recognises the intent of the AWU's submission, however disagrees that reference to clauses 27.8 and 28.8 is consistent with the current award. Business SA submits reference to clauses 28.7 and 28.8(a) would be a more accurate representation of the current clause 36.14.

3. *Children's Services Award 2016*

Number	Party/Parties	Document/s Link	Their Reference/s	Exposure Draft Clause	Clause Title	Business SA Response
3.1	AIG	<a href="#">AIG (other than construction awards)</a>	[238]	2	Definitions	Agree
3.3	ABI / AIG	<a href="#">ABI Group 4 / AIG (other than construction awards)</a>	[5.1] / [238]	11.1	Casual employment	Agree
3.4	ABI / AIG	<a href="#">ABI Group 4 / AIG (other than construction awards)</a>	[5.2] / [243]	17.2(c)	Wage related allowances – broken shift allowance	Agree
3.5	ABI	<a href="#">ABI Group 4</a>	[5.3]	Sch C.2.1(a)	Adjustment of expense related allowances	Agree

4. *Electrical, Electronic and Communications Contracting Award 2016*

Number	Party/Parties	Document/s Link	Their Reference	Exposure Draft Clause	Clause Title	Business SA Response
4.1	NECA	<a href="#">NECA Electrical Sub</a>	[39]	<i>Current award 2.2</i>	Commencement and transitional	Agree
4.2	AIG	<a href="#">AIG Construction Sub</a>	[86]	7.2	Facilitative provisions for flexible working practices	Agree
4.3	NECA	<a href="#">NECA Electrical Sub</a>	[11]	10.5(b)	Part-time employment – public holidays	Disagree – see comment at 3.25
4.4	CEPU	<a href="#">CEPU Electrical Sub</a>	[2]-[3]	10.5(b)	Part-time employment – public holidays	Disagree – See comment at 3.26
4.5	CEPU	<a href="#">CEPU Electrical Sub</a>	[5]	11.4	Casual employment	Disagree – See comment at 3.27
4.6	NECA / NECA SA	<a href="#">NECA Electrical Sub</a> / <a href="#">NECA SA Electrical Sub</a>	[14] / [11]	11.4	Casual employment	Disagree – see comment at 3.28
4.7	CEPU	<a href="#">CEPU Electrical Sub</a>	[7]	12.10	Apprentices	Agree
4.8	CEPU	<a href="#">CEPU Electrical Sub</a>	[16]	13.6(b)	Late comers	Agree in principle
4.9	AIG	<a href="#">AIG Construction Sub</a>	[92]	13.8(d)(ii)	Substitution of rostered days off	Agree
4.10	CEPU	<a href="#">CEPU Electrical Sub</a>	[18]	13.9	Rest break	Disagree – See comment at 3.29
4.11	FPAA	<a href="#">FPAA Electrical Sub</a>	[34]	13.9	Rest break	Agree
4.12	CEPU	<a href="#">CEPU Electrical Sub</a>	[20]	13.10, 13.11	Shiftwork – crib time	Disagree – See comment at 3.30
4.13	CEPU	<a href="#">CEPU Electrical Sub</a>	[22]	13.11(c)(ii)	Timing of crib time	Agree in principle
4.14	NECA / NECA SA	<a href="#">NECA Electrical Sub</a> / <a href="#">NECA SA Electrical Sub</a>	[26] / [24]	13.11(c)(ii)	Timing of crib time	Agree
4.15	AIG	<a href="#">AIG Construction Sub</a>	[96]	13.13(b)	Shift allowances	Agree

4.16	NECA	<a href="#">NECA Electrical Sub</a>	[52]	13.15	Rate for working on a Sunday and public holiday shifts	Agree
4.17	AIG	<a href="#">AIG Construction Sub</a>	[100]	13.16(a)(ii)	Overtime on shiftwork	Agree
4.18	CEPU	<a href="#">CEPU Electrical Sub</a>	[24]	14.1(c)	Meal breaks and rest breaks	Disagree – See comment at 3.31
4.19	AIG	<a href="#">AIG Construction Sub</a>	[101]	17.2(f)(ii)	Rate for ordering materials	Agree
4.20	MEA	<a href="#">MEA Electrical Sub</a>	[42]	17.5(d)(iii)	Start and/or finish on job– Employer provided transport	Agree
4.21	MEA	<a href="#">MEA Electrical Sub</a>	[28]-[29]	17.5(e)	Start/finish at employer’s registered office	Agree
4.22	AIG	<a href="#">AIG Construction Sub</a>	[102]	19.1(a)	Payment for working overtime	Agree
4.23	AIG	<a href="#">AIG Construction Sub</a>	[106]	30	Transfer to lower paid job on redundancy	Agree
4.24	AIG	<a href="#">AIG Construction Sub</a>	[112]	Sch B.1.1	Ordinary hourly rate	Agree

- 4.25 Business SA disagrees with NECA’s submission regarding modern award objective consistency. Reference to clause 13.15 and 19.4(b) does not make this award complex or difficult to understand. Such references clearly indicate to the reader that a part-time employee working on a public holiday is subject to conditions detailed in other parts of the award.
- 4.26 Business SA notes the CEPU submission states its support at [3] for the Commission’s alternative references to “clause 13.5 as a whole and 19.4(b).” Business SA does not agree as this is not what the Commission suggested. If the CEPU meant to say the Commission’s alternative reference to 13.15 as a whole, Business SA will agree with the CEPU’s submission.
- 4.27 Business SA disagrees with the CEPU’s response to the Commission’s query. Business SA’s position on this query is detailed in our *Electrical, Electronic and Communications Contracting Award 2016* submission at [\[4.2.2\]](#).
- 4.28 Business SA disagrees with NECA/ NECA SA’s submission that a reference to clause 13.16–Overtime on shiftwork be added to clause 11.4. The current award does not state casual employees are entitled to clause 24.15, overtime on shiftwork provisions<sup>1</sup> and as such the submission above is a substantive change.

<sup>1</sup> *Electrical, Electronic and Communications Contracting Award 2010* cl 10.3(d).

- 4.29 Business SA disagrees with the CEPU's submission regarding the clause 13.9 rest break. Business SA's response to the Commission's question is outlined at [\[4.2.6\]](#) of our submission.
- 4.30 While Business SA agrees with the CEPU that 'crib time' should not be replaced with 'rest break', Business SA submits the term should still be replaced. Given the effect of the definition of crib time in clause 2, Business SA submits 'crib break' should be replaced with the term 'paid meal break' in clauses 13.10 and 13.11. This will better reflect the operation of crib time.
- 4.31 Business SA disagrees with the CEPU's submission that there is no inconsistency between 14.1(c) and 13.11(c)(iii). Business SA submits these clauses are not properly distinguished from each other. Business SA can see the intent of the CEPU's suggested amendments but submits further amendment is required. Business SA's basis for change and proposed amendments are set out in our submission at [\[4.2.8\]](#).

5. *Joinery and Building Trades Award 2016*

Number	Party/Parties	Document/s Link	Their Reference	Exposure Draft Clause	Clause Title	Business SA Response
5.1	HIA	<a href="#">HIA Joinery Sub</a>	[2.1]	2	Definitions – ‘accident pay’ and ‘injury’	Partially agree, see below at 4.25
5.2	MBA	<a href="#">MBA Joinery Sub</a>	[25]	3.3	National Employment Standards and this award	Agree
5.3	HIA / ABI	<a href="#">HIA Joinery Sub / ABI Group 4</a>	[2.2.3] / [10.1]	7.2	Facilitative provisions	Agree
5.4	AIG	<a href="#">AIG Construction Sub</a>	[135]-[138]	11.4	Casual employment	Agree
5.5	HIA	<a href="#">HIA Joinery Sub</a>	[2.17]-[2.19]	11.4	Casual employment	Agree
5.6	AIG	<a href="#">AIG Construction Sub</a>	[143]-[146]	11.5	Casual employment	Agree
5.7	AIG	<a href="#">AIG Construction Sub</a>	[150]	13.11(c)	Apprentice training	Agree
5.8	MBA / ABI	<a href="#">MBA Joinery Sub / ABI Group 4</a>	[38] / [10.2]	13.16	Training costs – fees and textbooks	Agree
5.9	AIG	<a href="#">AIG Construction Sub</a>	[158]	19.1	Minimum wages	Agree
5.10	AIG	<a href="#">AIG Construction Sub</a>	[160]	19.5(a)(ii)	Three year apprenticeship (nominal term)	Agree
5.11	MBA	<a href="#">MBA Joinery Sub</a>	[42]	20.6(a)	Scaffolding allowance	Agree
5.12	AIG	<a href="#">AIG Construction Sub</a>	[161]	21.8	Accident Pay	Agree
5.13	AIG	<a href="#">AIG Construction Sub</a>	[162]	23.2(a)(i)	Payment for working overtime	Agree
5.14	AIG	<a href="#">AIG Construction Sub</a>	[166]	23.3(a)	Weekend work–Saturday	Agree
5.15	AIG	<a href="#">AIG Construction Sub</a>	[167]	24.4(d)	Shift rates	Agree
5.16	AIG	<a href="#">AIG Construction Sub</a>	[170]	24.4(e)	Shift rates	Agree



5.17	CFMEU	<a href="#">CFMEU Sub</a>	[52]	24.2(f)	Shiftworkers–Hours of work	Disagree
5.18	ABI	<a href="#">ABI Group 4</a>	[10.4]	24.5	Shiftworkers–Overtime and public holiday rates	Agree
5.19	AIG	<a href="#">AIG Construction Sub</a>	[171]	26.3(a)(iii)	Annual leave loading	Agree
5.20	AIG	<a href="#">AIG Construction Sub</a>	[173]	26.3(a)(vi)	Annual leave loading	Agree
5.21	AIG	<a href="#">AIG Construction Sub</a>	[177]	36	Transfer to lower paid job on redundancy	Agree, see comment at 4.25
5.22	HIA	<a href="#">HIA Joinery Sub</a>	[2.7]	Sch B	Summary of Hourly Rates of Pay	Agree
5.23	AIG	<a href="#">AIG Construction Sub</a>	[193]-[194]	Sch B.2	Full-time, part-time and casual employees...	Agree

- 5.24 Business SA partially agrees with the HIA’s submission regarding these definitions. Business SA supports deletion of repeated definitions, however Business SA submits the definitions should only appear in context. The clause 2 definitions of ‘accident pay’ and ‘injury’ should simply direct the reader to the clause 21.3(a) and 21.3(b) respectively. This ensures each term is only defined once, and will be read in context.
- 5.25 Business SA has read AIG’s submissions at [174]-[177] and supports their submission at [177]. However, Business SA notes [177] suggests amendment to the heading of clause 30. This appears an unintended error. Based on paragraphs [174]-[176] Business SA supports AIG’s proposal in relation to clause 36.

6. *Plumbing and Fire Sprinklers Award 2016*

Number	Party/Parties	Document/s Link	Their Reference	Exposure Draft Clause	Clause Title	Business SA Response
6.1	FPAA / AWU	<a href="#">FPAA Plumbing Sub / AWU Plumbing Sub</a>	[32]-[34] / [21]-[24]	-	<i>Proposed 'shift work' clause</i>	Disagree, see below at 5.13
6.2	ABI	<a href="#">ABI Group 4</a>	[12.1]	7.2	Facilitative provisions	Agree
6.3	MPG	<a href="#">MPG Plumbing Sub</a>	[13]-[14]	7.2	Facilitative provisions	Agree
6.4	AIG	<a href="#">AIG Construction Sub</a>	[247]	12.1	Casual employment	Agree
6.5	AIG	<a href="#">AIG Construction Sub</a>	[252]-[254]	12.2	Casual employment	Agree
6.6	FPAA	<a href="#">FPAA Plumbing Sub</a>	[20]	13.14(d)(ii)	Adult apprentices– Employment as an adult apprentice	Disagree, see below at 5.14
6.7	MPG	<a href="#">MPG Plumbing Sub</a>	[19]-[24]	13.14(d)(ii)	Adult apprentices– Employment as an adult apprentice	Agree, see below at 5.15
6.8	MPA / FPAA	<a href="#">MPA Plumbing Sub / FPAA Plumbing Sub / PTEU Sub</a>	[8] / [24] / Page 2	16.6	Overtime meal breaks	Agree
6.9	FPAA	<a href="#">FPAA Plumbing Sub</a>	[26]	18.8(a)	Payment of wages	Partially agree, see below at 5.16
6.10	AWU	<a href="#">AWU Plumbing Sub</a>	[17]-[20]	21.1	Penalty rates	Disagree, see below at 5.17
6.11	AIG	<a href="#">AIG Construction Sub</a>	[258]	22.1	Weekend work	Agree
6.12	AIG	<a href="#">AIG Construction Sub</a>	[263]	22.2	Shiftwork	Agree

- 6.13 Business SA recognises no specific submission has been made by the FPAA or the AWU to introduce a shift work clause at this stage. However, Business SA submits any such application would be a substantive change and one which Business SA would oppose.
- 6.14 Business SA disagrees with the FPAA's submission that clause 13.14(d)(ii) is not inconsistent with the Act. By opening with "Where possible", sub-paragraph (d)(i) operates as a preferred, but not restrictive, approach to employing adult apprentices. Under sub-paragraph (d)(ii) an adult apprentice may not be employed at the expense of other apprentices. Sub-paragraph 13.14(d)(ii) is not a logical progression of 13.14(d)(i). 13.14(d)(ii) discriminates against adult apprentices entirely on the basis of their age. Sub-paragraph 13.14(d)(ii) is not a term permitted in a modern award.<sup>2</sup>
- 6.15 Business SA agrees with the MPG's comments regarding enforceable and aspirational clauses, and specifically their submission at [23] that clause 13.14(d)(ii) should not be included in the final draft of the award.
- 6.16 Business SA partially agrees with the FPAA's suggested wording for clause 18.8(a). Business SA considers the proposed wording acceptable, but submits the draft's reference to "or any combination of these" be retained.
- 6.17 Business SA disagrees with the AWU's submission regarding inconsistency or ambiguity between penalty and overtime rates for plumbing and mechanical services employees. Business SA is unclear how an inconsistency arises on the AWU's submission at [19]. However, Business SA is opposed to increasing the penalty rate from 150% to 200% of the ordinary hourly rate. The 150% rate is present in the current award.<sup>3</sup> As such the increase proposed would amount to a substantive variation.

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<sup>2</sup> *Fair Work Act 2009 (Cth)* s 153(1).

<sup>3</sup> *Plumbing and Fire Sprinklers Award 2010* cl 33.2(a)(ii).

7. *Social, Community, Home Care and Disability Services Award 2016*

Number	Party/Parties	Document/s Link	Their Reference	Exposure Draft Clause	Clause Title	Business SA Response
7.1	JA / ACE	<a href="#">JA SCHCDS Sub / ACE SCHCDS Sub</a>	[3] / [4]	2	Definitions – sleepover	Agree
7.2	ASU	<a href="#">ASU SCHCDS Sub</a>	[7]	2	Definitions – sleepover	Partially agree, see below at 7.24
7.3	HSU	<a href="#">HSU SCHCDS Sub</a>	[7]-[9]	2	Definitions – multiple	Agree
7.4	AWU	<a href="#">AWU Social Sub</a>	[5]	2	Proposed definition – minimum hourly rate	Partially agree, see below at 7.25
7.5	ACE	<a href="#">ACE SCHCDS Sub</a>	[5]	4	Coverage	Partially agree, see below at 7.26
7.6	AIG / UV / AFEI	<a href="#">AIG (other than construction awards) / UV Group 4 / AFEI Social Sub</a>	[252] / [53] / [3]	5.2 (7.2)	Facilitative provisions	Agree
7.7	AFEI	<a href="#">AFEI Social Sub</a>	[4]-[5]	9 / 10	Full-time employment / Part-time employment	Agree
7.8	AFEI	<a href="#">AFEI Social Sub</a>	[6]	11	Casual employment	Agree
7.9	UV / JA / ACE	<a href="#">UV Group 4 / JA SCHCDS Sub / ACE SCHCDS Sub</a>	[54] / [5] / [8]	11	Casual employment	Agree
7.10	ACE	<a href="#">ACE SCHCDS Sub</a>	[6]	12.2	Classifications	Agree
7.11	AWU	<a href="#">AWU Social Sub</a>	[6]	13.1(a)(i)	Ordinary hours of work	Agree
7.12	ASU	<a href="#">ASU SCHCDS Sub</a>	[15]-[16]	14.1(b)	Rostering arrangements	Disagree, see below at 7.27
7.13	ABI / ACE	<a href="#">ABI Group 4 / ACE SCHCDS Sub</a>	[7.2] / [10]	14.3(d)	Rosters	Agree

7.14	UV	<a href="#">UV Group 4</a>	[60]	14.4	Broken shifts	Disagree, see below at 7.28
7.15	AWU	<a href="#">AWU Social Sub</a>	[19]	14.4	Broken shifts	Partially agree, see below at 7.29
7.16	AIG	<a href="#">AIG (other than construction awards)</a>	[255]-[256]	14.6(c)	24 hour care	Agree
7.17	UV	<a href="#">UV Group 4</a>	[61]	14.6(d)	24 hour care	Disagree, see below at 7.30
7.18	AIG / JA	<a href="#">AIG (other than construction awards) / JA SCHCDS Sub</a>	[257] / [18]	14.7(b)(iii)	Excursions	Agree
7.19	ASU	<a href="#">ASU SCHCDS Sub</a>	[24]	14.7(b)(iii)	Excursions	Disagree, see below at 7.31
7.20	AFEI	<a href="#">AFEI Social Sub</a>	[14]	17.3(a)(iii)	Clothing and equipment	Agree
7.21	ACE	<a href="#">ACE SCHCDS Sub</a>	[7]	17.3(b)(i)	Meal allowance	Agree
7.22	ACE	<a href="#">ACE SCHCDS Sub</a>	[15]	21.2	Additional leave for certain shiftworkers	Agree
7.23	HSU	<a href="#">HSU SCHCDS Sub</a>	[19]-[21]	Sch F.1	Wage-related allowances	Agree

- 7.24 Business SA partially agrees with the ASU's submission regarding the definition of sleepover in clause 2. Business SA supports the deletion of repeated definitions, but submits a note to cl 2 is not the preferable approach. Business SA submits the sleepover definition in clause 2 be amended to simply direct the reader to the primary definition in clause 14.5(a). This ensures 'sleepover' is only defined once in the award, and that definition is read in context.
- 7.25 Business SA agrees with the AWU's submission to include a definition of 'minimum hourly rate', however will further consider the exact wording proposed.
- 7.26 Business SA partially agrees with ACE's submission regarding industry sector definitions. While Business SA supports deletion of repeated definitions, the definitions in clauses 4.2-4.5 should be retained. This ensures the industry sectors are defined once in the award, and that definition is read in context. Business SA's submission on this point was made at [\[6.1.1\]](#) of our 30 June 2016 submission.
- 7.27 Business SA disagrees with the ASU's submission at [15]-[16]. The insertion of the word "rostered" into clause 14.1(b) of the exposure draft better reflects the purpose of clause 14.1–Rostered days off. Clause 14.1(a) provides for rostered days off and clause 14.1(b)

provides these rostered days off should be consecutive, where practicable. Clause 25.3 of the current award, the equivalent clause, only covers rostered days off.

- 7.28 Business SA disagrees with UV's submission regarding clause 14.4 and refers readers to [6.2.5] of our 30 June 2016 [submission](#).
- 7.29 Business SA partially agrees with the AWU's submission at [19]. Business SA agrees with the AWU's submission that a sleepover does not meet the definition of a shift for the purposes of a broken shift. However, Business SA disagrees with the AWU's submission regarding sleepover entitlements during excursions. Clause 14.7(iii) clearly entitles an employee to the provision of clause 14.5. Expansion of this entitlement to 'the provisions' of 14.5 would be a substantive change.
- 7.30 Business SA does not agree with United Voice's submission at [61] regarding amendment to clause 14.6(d). Neither the current award nor the exposure draft provide a sleep period of eight hours during a 24 hour care shift.
- 7.31 Business SA disagrees with the ASU's submission regarding clause 14.7(b)(iii). Clause 14.7(b)(iii) specifically states an employee will be entitled to the "sleepover allowance in accordance with the provision of clause 14.5" (emphasis added). Reference was made to the specific provision, not provisions, of clause 14.5. Business SA relies on its 30 June 2016 submission at [\[6.2.6\]](#) and submits an employee is only entitled to the sleepover allowance in clause 14.5(c).

## Conclusion

Business SA would like to thank the interested parties for their submissions on the Group 4 exposure drafts and the Fair Work Commission for the opportunity to respond to those submissions.

## Additional Information

Business SA's submissions on Group 3 exposure drafts can be found [here](#).  
Business SA's submissions on Group 4 exposure drafts can be found [here](#).