

DRAFT SUMMARY OF SUBMISSIONS

This draft summary incorporates submissions and submissions in reply received in accordance with the [Directions](#) issued on 19 September 2017.

Interested parties are invited to review the draft summary of submissions to ensure their submissions are accurately characterised. If any party seeks amendment to this draft summary of submissions they should notify amod@fwc.gov.au by **4.00 pm, Friday 3 November 2017**.

| ITEM | PARTY | DOCUMENT | CLAUSE (PLED) | SUMMARY OF ISSUE | THEIR REFERENCE | NOTES |
|------|-------------|------------------------------------|---------------|---|-----------------|--|
| 1 | BSA | Sub-13/10/17 | 6.8 | Individual flexibility arrangements Submits cross-reference is incorrect and should be amended to 6.7(b). | Para 1 | |
| | AIG | Reply-Sub-20/10/17 | | Agrees with Business SA. | Para 4 | |
| 2 | UV | Sub-06/10/17 | 8.2 | Types of employment Submits PLED has altered the language of clause which alters legal effect of the provision. Submits PLED removes obligation on employer to inform employee of usual location of work and classification and to record this in the employee's time and wages record. | Paras 2 – 7 | Agree this is a change from current provision. |
| | AIG | Reply-Sub-20/10/17 | | Does not see a need to alter PLED. Submits cl 8 requires the employer to advise an employee of the terms of their engagement. | Para 5 | |
| 3 | ABI & NSWBC | Sub-12/10/17 | 9 | Full-time employment Submits PLED clause is repetitive and unclear. Provides alternative draft wording in submission. | Para 16 | |
| | AIG | Sub-12/10/17 | | Submits the PLED requires a full-time employee to work under an 'agreed' | Paras 5 – 7 | |

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| | | | | hours of work arrangement and this is not a requirement of current award. Submits this is not appropriate. Submits wording does not take into account that casual employees could work 38 hours in some weeks even if they work irregularly overall and should not be deemed full-time employees. | | |
| | BSA | Sub-13/10/17 | | Submits PLED differs significantly to current award. Submits PLED requires an 'agreed' hours of work arrangement. Submits PLED does not recognise casual employees may work 38 hours in a week. | Para 2 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with above submissions. Supports PLED wording. Submits that under current award arrangement of ordinary hours is not a unilateral decision of an employer. | Paras 2 – 9 | |
| 4 | BSA | Sub-13/10/17 | 10 | Part-time employment Submits PLED differs significantly from current award provisions and may lead to confusion as to how part-time employees are to be paid. | Para 3 | |
| | AIG | Reply-Sub-20/10/17 | | Agrees part-time clause is problematic and needs to be re-drafted. | Para 7 | |
| | UV | Reply-Sub-20/10/17 | | Does not object to retaining current award cl 12.4(e). | Para 10 | |

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| 5 | UV | Sub-06/10/17 | 10.2 | Submits PLED alters the manner in which a part-time employee may work ordinary hours. Submits PLED could lead to a belief that a part-time employee may be rostered to work 7.6 hours across 6 days without an entitlement to overtime. Submits note should be amended. Provides draft wording in submission. | Paras 8 – 11 | |
| 6 | ABI & NSWBC | Sub-12/10/17 | 10.4 | Submits clause appears to be problematic. Submits clause can be interpreted to mean other provisions of the PLED would be applied to a part-time employee in the same way as a full-time employee because it does not specify otherwise and omits the ‘pro rata’ reference. | Paras 17.1, 17.2 | |
| 7 | ABI & NSWBC | Sub-12/10/17 | 10.5 | Submits clause is problematic because it refers to payments made in accordance with the NES but it is unclear how the proportionality of those payments is to be determined. | Paras 17.3, 17.4 | |
| 8 | BSA | Sub-13/10/17 | 11 | Casual employment Submits clause has been significantly varied. Submits PLED does not clearly articulate who a casual employee is, instead requiring comparison of circumstances against full-time and part-time clauses. | Para 4 | |
| | ABI & NSWBC | Sub-12/10/17 | | Submits clause is problematic. Provides draft wording in submission. Prefers ‘in | Para 18.1 | |

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| | | | | addition to' to 'on top of' the minimum hourly rate... | | |
| | AIG | Reply-Sub-20/10/17 | | Agrees the drafting of clause could be improved. | Para 8 | |
| | UV | Reply-Sub-20/10/17 | | Agrees clause is problematic. | Para 11 | |
| 9 | ABI & NSWBC | Sub-12/10/17 | 11.3 | Submits clause should be amended to reduce any uncertainty as to whether casual loading is cumulative or compounding. Provides draft wording. | Para 18.2 | |
| | UV | Reply-Sub-20/10/17 | | Supports retaining the wording in current award cl 12.5(a) which states "an additional loading of 25%". | Para 12 | |
| 10 | UV | Sub-06/10/17 | 12 | Classifications Submits current award cl 15.2 should be retained. | Paras 12 – 16 | |
| | ABI & NSWBC | Sub-12/10/17 | | Submits current award cl 15.2 has been omitted and should be reinserted. | Para 19 | |
| 11 | BSA | Sub-13/10/17 | 12 | Submits PLED makes significant changes to application of classification structure, and changes provisions in cl 12.1 and 12.2. | Para 12 | |
| 12 | AIG | Sub-12/10/17 | 12 | Submits PLED requires an employer to classify all employees in accordance with definitions in Sched A. Submits this is not in current award and PLED is too prescriptive. | Para 8 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits current award cl 15.1 contains the requirement and this obligation | Paras 14 – 16 | |

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| | | | | should be retained. | | |
| 13 | ABI & NSWBC | Sub-12/10/17 | 13.1 | Ordinary hours of work and rostering Submits 'agreement' regarding arrangement of working hours has been added and 'agreement' is only found at current award cl 24.1(c)(iv). Submits 'agreement' requirement should be removed. | Para 20.1 | |
| | AIG | Sub-12/10/17 | | Submits PLED requires a full-time employee work under an agreed hours of work arrangement, which is not a requirement of the current award and is not appropriate. | Para 9 | |
| | BSA | Sub-13/10/17 | | Submits ' agreed hours of work arrangement' is not a current provision of the award. | Para 6 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with above submissions. Supports PLED wording. | Paras 17 – 20 | |
| 14 | ABI & NSWBC | Sub-12/10/17 | 13.5(c)(i) | Submits clause has omitted requirement that a single employee be rostered at the location, per cl 24.2 of current award. Submits reference should be reinserted. | Para 20.2 | |
| | UV | Reply-Sub-20/10/17 | | Does not object to retaining current award cl 24.2(c). | Para 21 | |
| 15 | AIG | Sub-12/10/17 | 13.6 | Submits cross-reference in para (d) should be '31' not '0-31'. | Para 10 | |
| 16 | ABI & NSWBC | Sub-12/10/17 | 14.1(c) | Breaks Submits requirement in cl 26.1 current award that an employee is entitled to a 'further' paid ten minute break only if | Para 21.1 | |

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| | | | | they are a 'full-time shift worker working a straight shift' has been omitted. Submits 'further' should be reinserted. | | |
| | AIG | Sub-12/10/17 | | Submits PLED substantially expands circumstances in which shiftworkers are entitled to a 10-min paid rest break. Submits this should only apply to full-time shiftworkers who work a straight shift, per cl 16.1 current award and not part-time or casual shiftworkers. | Para 11 | |
| | BSA | Sub-13/10/17 | | Submits PLED has made significant changes to current award cl 26.1. Submits PLED opens access to additional 10-minute paid break beyond that currently in the award, which only applies to full-time shiftworkers on a straight shift. | Para 7 | |
| | UV | Reply-Sub-20/10/17 | | Does not object to ABI's proposal that 'further' be re-inserted. | Para 22 | |
| 17 | AIG | Sub-12/10/17 | 14.2(c) | Submits part-time and casual shiftworkers should not be entitled to paid rest breaks, see current award cl 26.2 | Para 12 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits current award cl 26.2 does not exclude part-time and casual shift workers. | Para 23 | |
| 18 | ABI & NSWBC | Sub-12/10/17 | 14.1(a) and 14.2(a) | Submits that while the PLED clauses operate to mean the effect is still the same, the clauses are not clearer than the existing ones. Proposes the Drafter re-consider whether existing provisions can | Para 21.2 | |

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| | | | | be more accurately captured by PLED. | | |
| 19 | AIG | Sub-12/10/17 | 14.4 | Submits clause has a wider effect than current award cl 26.3(a) and should be amended. Provides draft wording in submission. | Para 13 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's proposed amendment. Submits PLED is clear in its present form and supports it. | Para 24 | |
| 20 | UV | Sub-06/10/17 | 15 | Work organisation Submits PLED has altered legal meaning. Submits current award cl 15.2 provides an employee may be required to perform duties outside of classification where they are 'incidental' to their tasks. Submits that under PLED an employee may be required to perform duties across other classifications without limitation. Submits current award cl 15.2 should be retained. | Paras 12 – 16 | |
| | AIG | Sub-12/10/17 | | Submits clause should be amended to avoid any doubt about the meaning of the word 'streams'. Provides draft wording in submission. | Para 14 | |
| | UV | Reply-Sub-20/10/17 | | Does not object to removing 'streams' but notes its broader concerns above regarding cl 15. | Para 25 | |
| | AIG | Reply-Sub-20/10/17 | | Prefers its own proposed amendment to the one suggested by UV. | Para 12 | |
| 21 | UV | Sub-06/10/17 | 16.1 | Minimum rates Submits PLED removes recognition that | Paras 17 – 20 | |

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| | | | | minimum weekly wages are exclusive of penalties and allowances. Submits current award cl 16.1 clearly identifies this. Submits clause should be re-drafted. Provides draft wording in submission. | | |
| | AIG | Reply-Sub-20/10/17 | | Does not agree with UV's submission. Submits drafting is similar to the approach taken in other exposure drafts. | Para 13 | |
| 22 | AIG | Sub-12/10/17 | 18.3 | Payment of wages Submits PLED should be amended to ensure consistency with current award. Submits PLED wording would lead to numerous disputes over bank fees. Provides draft wording in submission. | Para 15 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. | Para 26 | |
| 23 | UV | Sub-06/10/17 | 18.4 | Submits entitlement of employees who are paid by cheque to receive payment for waiting has been removed. Submits clause should be amended. Provides draft wording in submission. | Paras 21 – 23 | |
| 24 | AIG | Reply-Sub-20/10/17 | | Opposes UV's suggestion that employees paid by cheque should continue to be entitled to the waiting time penalty. | Para 14 | |
| 25 | UV | Sub-06/10/17 | 21.1 | Allowances Submits current award cl 17 is clearer and more direct than PLED and should be retained. | Paras 24 – 27 | |
| | AIG | Reply-Sub-20/10/17 | | Does not agree with UV's submission. | Para 15 | |

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| | AIG | Sub-12/10/17 | 21.3(b), 21.4(c) | Submits 'continuously' should be inserted after 'works' to reflect existing entitlements. | Para 16 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits PLED wording already reflects existing entitlements and AIG's amendment may reduce existing entitlements. | Para 27 | |
| 26 | AIG | Sub-12/10/17 | 21.8(a) | Submits clause should be amended to reflect existing entitlements and improve clarity. Provides draft wording in submission. | Para 17 | |
| | UV | Reply-Sub-20/10/17 | | Agrees with AIG's submission. | Para 28 | |
| 27 | AIG | Sub-12/10/17 | 21.9 | Submits clause should be amended to reflect existing entitlements and improve clarity. Provides draft wording in submission. | Para 18 | |
| | UV | Reply-Sub-20/10/17 | | Agrees with AIG's submission. | Para 28 | |
| 28 | UV | Sub-06/10/17 | 21.10 | Allowances – Meal Allowance Submits PLED amends legal effect of clause and alters circumstances in which an entitlement to meal allowance arises. Submits clause should be amended. Provides draft wording in submission. | Paras 28 – 33 | |
| | AIG | Reply-Sub-20/10/17 | | Disagrees with UV's submission. Submits clause is intended to apply only where overtime of at least the specified amount is required to be worked. | Para 16 | |

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| | AIG | Sub-12/10/17 | 21.11 | Submits 'with the employer' should be inserted after 'by agreement' to reflect existing entitlements and improve clarity. | Para 19 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits meaning in PLED is clear. | Para 29 | |
| 29 | UV | Sub-06/10/17 | 23.1(b) | Overtime Submits PLED alters the circumstances in which a part-time employee is entitled to overtime. Refers to submissions in relation to part-time employment (item 5). Submits clause should be amended. Provides draft wording in submission. | Paras 34 – 36 | |
| | AIG | Reply-Sub-20/10/17 | | Does not agree with UV's submission. | Para 17 | |
| 30 | AIG | Sub-12/10/17 | 23.2(b) | Submits reference to 'Table 6—Penalty Rates' should be replaced with 'Table 5—Overtime Rates'. | Para 20 | |
| 31 | AIG | Sub-12/10/17 | 23.5 | Overtime – Call back Submits 'is required by the employer' should be inserted to clarify the employee cannot choose to leave before the job is completed and be entitled to payment. Provides draft wording in submission. | Para 21 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits the PLED meaning is clear. | Para 30 | |
| 32 | AIG | Sub-12/10/17 | 23.6(c) | Submits clause should be amended to reflect existing entitlements and improve clarity. Provides draft wording in submission. | Para 22 | |
| | UV | Reply-Sub- | | Disagrees with AIG's proposed | Para 31 | |

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| | | 20/10/17 | | amendments. Submits the PLED more accurately reflects existing entitlements. | | |
| 33 | UV | Sub-06/10/17 | 25.2 | Annual leave – additional leave for certain shiftworkers Submits PLED alters the legal effect of clause and significantly reduces the number of employees who would be defined as shift workers. Submits definition of shiftworker in current award cl 29.2(a) should be retained. | Paras 37 – 40 | |
| 34 | UV | Sub-06/10/17 | 25.2 | Submits current award cl 29.2(b) contains specific entitlement for employees who work part of a year as a shift worker which is not included in the PLED. This entitlement does not fall under the NES. Submits clause should be reinserted. | Paras 40 – 42 | |
| 35 | AIG | Sub-12/10/17 | 25.3(c) | Submits clause should be amended. Submits cl 17.5 of the current award requires the loading be paid on annual leave on termination, not any higher shift loading. Refers to current award cl 29.7. | Para 23 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG's submission. Submits PLED reduces employee entitlements. Supports retaining current award clause 29.7. | Paras 32, 33 | |
| 36 | UV | Sub-06/10/17 | 25.4 | Annual leave – Temporary close-down Submits PLED removes entitlements for employees by removing the current award provision that the close-down period will be limited to four weeks. | Paras 43 – 47 | |

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| | | | | Submits current award cl 29.6(d) should be retained. | | |
| | UV | Sub-06/10/17 | | Submits PLED does not contain the provision in current award cl 29.6(e) regarding public holidays that fall within a period of leave without pay. Submits current award clause should be retained. | Paras 48 – 51 | |
| 37 | AIG | Sub-12/10/17 | 25.4 | Submits PLED contains numerous major differences to existing award and no attempt appears to have been made to reflect those. Submits current award cl 29.6 should be retained. | Paras 24 – 26 | |
| 38 | AIG | Sub-12/10/17 | 32.5 | Consultation about change of contract Submits clause should be amended to avoid inconsistency with current award and uncertainty about the meaning of ‘the shifts that they worked’. Provides draft wording in submission. | Para 27 | |
| | UV | Reply-Sub-20/10/17 | | Agrees with AIG’s submission. | Para 35 | |
| 39 | AIG | Sub-12/10/17 | 32.6 | Submits clause should be deleted because it is not an obligation under the current award. | Para 28 | |
| | UV | Reply-Sub-20/10/17 | | Disagrees with AIG’s submission. Submits current award cl 9.2 contains the same obligation. | Para 36 | |
| 40 | UV | Sub-06/10/17 | 32.8 | Submits PLED has removed the direct acknowledgement that a union may be involved in the process regarding consultation about change of contract by | Paras 52 – 55 | |

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| | | | | removing the words 'including a relevant union'. Submits current award cl 9.5 should be retained. | | |
| | AIG | Reply-Sub-20/10/17 | | Disagrees with UV's submission. Submits the clause appropriately refers to 'any representative nominated by the employee' which includes any union nominated by an employee. | Para 20 | |
| 41 | UV | Sub-06/10/17 | 34.6 | Dispute resolution procedure training leave Submits reference to 'clause 11' appears to be an error and should be amended to 'clause 34'. | Paras 56, 57 | |
| | AIG | Reply-Sub-20/10/17 | | Agrees with UV's submission. | Para 21 | |
| 42 | AIG | Sub-12/10/17 | 39.1 | Redundancy Submits the two instances of 'security' in first sentence need to be corrected to 'cleaning'. | Para 29 | |

List of abbreviations (in alphabetical order)

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|-----------|--|
| ABI&NSWBC | Australian Business Industrial & NSWBC |
| AIG | Australian Industry Group |
| BSA | Business SA |
| PLED | Plain Language Exposure Draft |
| UV | United Voice |