

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	NOTES	
1.	CFMEU	Sub 20-11-15	10A (inserted 13 June 2017 - see notes)	18	Accident pay – omitted from ED. Decision made to retain in current award.		REFERRED Note AM2014/190 – Transitional Provisions – Accident Pay CMIEG’s application listed for hearing on 5 and 6 October and 24 November 2017	
	CMIEG	Sub 20-11-15			Provision should be retained.	3(h); 4(a)-(b)		Note [2015] FWCFB 644, [65]-[72] and [2015] FWCFB 3523 . Drafting error corrected in ED – provision inserted at clause 10A.
	AIG	Sub 23-11-15			Current award provision appears to be omitted.	104		
	AMWU	Sub-05-07-17			Suggests it be noted that clause 10A is being reviewed by a separately constituted Full Bench in AM2014/190 .	3		
	CMIEG	Sub-30-06-17			Notes ED re-inserts current cl 18 as clause 10A of ED. In AM2014/190 CMIEG made application re cl 18, arising from decision of on 18Aug15 ([2015] FWCFB 3523).	10		
	ABI/ NSWBC	Sub-07-07-17			Matter has been referred to Full Bench in AM2014/190 . Reserve right to make further submissions on issue.	8		
2.	AIG	Sub 23-11-15	7		Classification – first para should be numbered 7.1, there is 7.2 without 7.1.	85	RESOLVED Drafting error corrected in ED.	
	CFMEU	Reply 21-12-15			Agrees	16		
3.	AIG	Sub 23-11-15	8.1		Ordinary hours of work – provision does not meet requirements of s.147 of the FW Act. Suggest inserting ‘up to’ before ‘35 hours’.	86	WITHDRAWN	
	CFMEU	Reply 21-12-15			Disputes inconsistency with s.147. Provision should remain. If inconsistency found, ‘up to 35 hours’ is confusing. Provides alternative wording.	3-7 (draft provision see para 6)		

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	AIG	Sub-11-07-17			No longer pressed.	235	
4.	AIG	Sub 23-11-15	8.7(f)(ii)		Rostered days off – insert ‘such’ after ‘for each’ to make clear provision relates only to public holiday which coincide with RDO.	87	RESOLVED Drafting issue agreed by parties, amended in ED.
	CFMEU	Reply 21-12-15			Agrees	16	
5.	CFMEU	Sub 20-11-15	9.2(a)		Paid meal break – break should be at ordinary time rate if taken during ordinary time; overtime rate if taken during overtime hours. Agreed position with CMIEG, AIG opposed. No further submissions after October decision. Current provision should be retained.	7-12	REMAINS OUTSTANDING
	CMIEG	Sub 20-11-15			Relies on joint submission with CFMEU – 20-10-14	3 (c)	
	AIG	Reply 7-12-15			Understand no proposal made to vary award, should variation be made, AIG would like to make submission.		
	ABI/ NSWBC	Sub-07-07-17			Reserve right to make further submissions.	9	
	CMIEG	Sub-30-06-17			No application to vary has been made in accordance with [2015] FWCFB 7236 at [14], so current clause would be retained. CMIEG is, in any event, content with current clause.	Page 4	
	AIG	Sub-11-07-17			No application to vary has been made in accordance with [2015] FWCFB 7236 at [14], so issue is no longer outstanding. If Commission intends to vary clause in accordance with ‘agreed position’ put by CFMEU and CMIEG, AIG may seek opportunity to be heard.	236-238	

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6.	CMIEG	Sub 20-11-15	9.2(c)		Paid meal break – Relies on joint submission with CFMEU – 20-10-14	3(c)	REMAINS OUTSTANDING No longer pressed
	AIG	Reply 7-12-15			CFMEU and CMIEG submitted would be convenient if provision specified break is 30 minutes in length. AIG oppose variation. Parties required to pursue variation were required to file 21 days after October decision, no application was made.	11-50	No application to vary made in accordance with [2015] FWCFB 7236 at [14].
	CMIEG	Sub-30-06-17			No application to vary has been made in accordance with [2015] FWCFB 7236 at [14], current clause would be retained. CMIEG content with current clause.	Page 4	
	AIG	Sub-11-07-17			No application to vary has been made in accordance with [2015] FWCFB 7236 at [14], so issue is no longer outstanding. If Commission intends to vary clause in accordance with ‘agreed position’ put by CFMEU and CMIEG, AIG may seek opportunity to be heard.	239-241	
6A	CMIEG	Sub-30-06-17	10.2(d)		Payment of wages on termination In AM2016/8 , the CMIEG, AIG and CFMEU have made submissions re model term on payment of wages on termination. A further issue re payment of wages generally is also being considered.	12	Being dealt with in AM2016/8 – Payment of Wages

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
7.	CFMEU	Sub 20-11-15	12.1		Rotating night shift – parties asked whether term should be called ‘non permanent night shift’. No issues with current term. Notes no submission in compliance with October decision on this issue, current term should be retained.	14-16	RESOLVED
	CMIEG	Sub-30-06-17			Does not wish to make submissions, but notes no application to vary has been made in accordance with [2015] FWCFB 7236 at [14]. Current clause would be retained.		
	AIG	Sub-11-07-17			No application to vary has been made in accordance with [2015] FWCFB 7236 at [14], so issue is no longer outstanding. AIG notes original question posed by Commission has been removed.	242-243	
8.	AIG	Sub 23-11-15	13.1	22.2	Penalty rates – ED refers to shift rates as penalties, current award uses ‘shift allowances’ (in annual leave clause) and shift premium in clause 22.2. Heading should be amended to ‘shift allowances’.	88-91	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 .
	AIG	Sub 31-08-16			Reiterates inconsistency in context of inconsistency in other awards.	17	
	CFMEU	Reply 21-12-15			Not opposed to inserting subheading ‘shift allowances’ in ‘8.1’ (sic – 13?). Additionally, proposes to insert cross-reference to 8.1 (sic 13.1?) in clause 15.9(b).		
	AIG	Sub-11-07-17			Item relates to ‘Inconsistent Terminology Issue’ which remains outstanding.	4-7 and 244	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
9.	CFMEU	Sub 20-11-15	13.2		Weekend work – penalty rates apply to all employees. Strike through on ‘other than shiftworkers’ is correct in ED published on 4 Nov 2015.	17-19	RESOLVED Error corrected in ED of 4Nov2015 in accordance with [2015] FWCFB 7236 , para [16]
10.	AIG	Sub 20-11-15	13.3(a)(i)		Penalty rates – reference to clause 14.3 should be substituted for 14.2.	92	REMAINS OUTSTANDING
	CFMEU	Reply 21-12-15			Agrees	16	
	CFMEU	Further sub 16-06-16			Reference should be to clause 14.2 or 14.3. To clarify position words ‘ordinary hours on’ to be inserted between ‘work’ and ‘afternoon’ in 13.3(a) and 13.3(b).	Pages 3-4	
	CFMEU	Sub-30-06-17			Continues to press variations sought in Further sub 16-06-16 at pp3-4.	11-13	
	AIG	Sub-11-07-17			Change proposed by AIG was initially agreed, but CFMEU subsequently proposed alternative amendment.	245	
11.	CMIEG	Sub 20-11-15	21	14	Redundancy pay – application seeking to vary award to provide for cap on redundancy pay. Referred to Full Bench. Next listed for hearing 7-11 November 2016.		RESOLVED Determined in AM2014/67 see [2017] FWCFB 584 and PR589930
	CMIEG	Sub-30-06-17			Note Federal Court proceedings re joint application of CFMEU, APESMA and AMWU for judicial review of Full Bench determination to vary redundancy pay clause. Matter was listed for hearing before a Full Court of the Federal Court on 2 August 2017.		Federal Court application dismissed on 17 August 2017, see Order and Decision [2017] FCAFC 123 in NSD352/2015.
12.	AIG	Sub 23-11-15	14.1	17.1	Overtime – current award includes exemption for clause 17.7 (call back) cross reference should be 14.8.	93	RESOLVED Drafting error corrected in ED.
	CFMEU	Reply 21-12-15			Agrees	16	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
13.	AIG	Sub 20-11-15	14.2(b)		Payment for overtime – clause should be amended to ‘200% of the minimum hourly rate’ in line with decision [95-96] of [2015] FWCFB 4658	94	RESOLVED ED amended to reflect [95-96] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15		Agrees		16	
14.	CFMEU	Further Sub 3-12-15	14.3		Overtime – six and seven day roster – ED does not reflect current award entitlement for 6 and 7 day roster employees who work in excess of or outside ordinary hours and public holidays. Proposed wording provided. Does not oppose variation proposed by CFMEU to clause 14.3(a) and (b) as reflect current award. Opposes proposed new clause 14.3(c) and (d). Does not agree with CFMEU’s interpretation of current award. AIG proposes consideration of whether 14.3(c) or (d) be inserted be deferred until its proposal can be heard or determined. Opposes insertion of clauses 14.3(c) and 14.3(d). Amendment unnecessary and inconsistent with operation of clause. Amendment to Further Sub 3-12-15 (para 5) proposed clause 14.3(c) reference to ‘a rotating night shift’ be amended to ‘any rotating night shift’ to be consistent with proposed 14.3(a). This submission should be read in conjunction with CFMEU correspondence 17-06-16 , which clarifies argument.	4-9	REMAINS OUTSTANDING
	AIG	Reply 7-12-15		17-18			
	CMIEG	Reply 22-01-16		28-29			
	CFMEU	Further sub 16-06-16		Page 1-2			

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
	CFMEU	Sub-30-06-17			Continues to press matter. States that CMIEG and AIG confine 'any opposition to the variation as it relates to public holidays'.	2-6	
	CMIEG	Sub-30-06-17			CMIEG opposes amendments sought by CFMEU and refers to Reply 22-01-16 at [28]-[29].	Page 4	
	AIG	Sub-11-07-17			AIG 'maintains its opposition to the variation proposed by the CFMEU'.	246	
14A	CMIEG	Sub-30-06-17	14.11		Time off instead of payment for overtime Each cross-reference within the clause should set out complete reference eg 'subparagraph (iii)' should read 'subparagraph 14.11(c)(iii)'	Page 6	RESOLVED Model term inserted by PR584077 on 22 August 2016.
15.	CFMEU	Sub 20-11-15	15.3		Accrual of annual leave – should be based on 'employment' not 'service' as AIG submitted. No submission made in compliance with October decision, term 'employment' should be retained.	20-24	NO LONGER PRESSED.
	CMIEG	Sub-30-06-17			Does not wish to make submissions, but notes no application to vary has been made in accordance with [2015] FWCFB 7236 at [14]. Current clause would be retained.	Page 5	
	AIG	Sub-11-07-17			Do not seek to pursue issue at this time.	247	
16.	AIG	Sub 20-11-15	15.8(c)		Paid leave in advance – reference to 15.2(b) should be replaced with 15.3.	95	RESOLVED [Clause since substituted following decision [2016] FWCFB 3953 , PR582969]

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17.	CFMEU	Sub 20-11-15	16.2		Personal leave – current award leave accrues on commencement of employment, rather than anniversary. No submissions received to contrary in compliance with October decision, current provision should be retained.	25-29	NO LONGER PRESSED No application to vary has been made in accordance with [2015] FWCFB 7236 at [14]
	CMIEG	Sub-30-06-17			Does not wish to make submissions, but notes no application to vary has been made in accordance with [2015] FWCFB 7236 at [14]. Current clause would be retained.	Page 5	
	AIG	Sub-11-07-17			Do not seek to pursue issue at this time.	248	
17A	CMIEG	Sub-30-06-17	16.3(b)	26.3(b)	Evidence required (personal/carer's leave and compassionate leave) Reference to ‘dispute resolution procedure’ should refer to ‘clause 23 – Dispute resolution’ as appears elsewhere in the award.	Page 6	REMAINS OUTSTANDING
18.	CFMEU	Sub 20-11-15	18.3(b), 18.4(b)		Public holiday – parties agreed to delete clause 18.4(b) however ED 18.3(b) was deleted. This appears to be a drafting error.	30-35	RESOLVED Typographical error in report to FB 11 December 2014. Parties position put in revised exposure draft submitted by AIG 15-01-15 referred to in decision [12] [2015] FWCFB 7236 . ED updated to reflect intent of decision.
	AIG	Sub 20-11-15			Parties agreed to delete 18.3(b)	96	
	CMIEG	Reply 22-01-16			Agrees error in the drafting.	9	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
19.	AIG	Sub in response to October Directions 13-11-15	18.4		Public holidays amendment to provide that public holiday rates are in substitution for, not cumulative upon penalty rates in clause 13 (penalty rates – shift and weekend work) and clause 14 (overtime). Request opportunity to file reply submissions, and for parties to advise if matter could be dealt with on papers.	Proposed wording provided page 1-2	REMAINS OUTSTANDING
	CFMEU	Sub 20-11-15		ED asked whether 200% of minimum hourly rate was in addition to ordinary rate and if so, if it differed from 18.4(b): CFMEU and CMIEG both agreed it did. AIG oppose this and have put in submissions in compliance with October decision. CFMEU opposes AIG position.	36-42		
	CMIEG	Sub 20-11-15		Relies on submission of CFMEU and earlier joint submission.	3c		
	AIG	Sub 20-11-15		Seeks to vary provision to minimum hourly rate. See above submission 13-11-15 filed in accordance with October decision directions.	97		
	CMIEG	Reply 22-01-16		Withdraws support for CFMEU position. No basis for penalty, allowance or loading to be paid to 18.3 and 18.4. Current drafting of ED should remain unamended. No change needed to schedule C-D.	10-25		
	CFMEU	Reply 7-04-16		Considers AIG and CMIEG submissions. When public holiday falls on weekend, employee is not entitled to Saturday/Sunday rates in addition to public holiday. Employee entitled to 200% of relevant minimum hourly rate in addition to	Proposed wording set out in para 18.		

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					minimum hourly rate i.e. 300%. Exception 6 or 7 day shift workers, any overtime performed on day will be paid at 300%. When employee rostered ordinary hours on public holiday, and hours fall on afternoon or night shift – employee entitled to public holiday payment and shift allowance cumulative. If 6 or 7 day shift worker performs overtime on a public holiday, is entitled to applicable shift allowance in addition to 300% public holiday rate for working overtime.		
	AIG	Reply 7-12-15			Request amendment deferred until can be heard on it.	21	
	CFMEU	Reply 21-12-15			Does not object to AIG proposal for matter to be heard.		
	CFMEU	Sub-30-06-17			CFMEU opposes variation proposed by AIG re payment of shift allowances when ordinary hours are worked on a public holiday.	7-10	
	CMIEG	Sub-30-06-17			CFMEU and CMIEG made a joint submission about clause on 20 October 2014. CMIEG now disagrees with CFMEU about construction of clause, and opposes corresponding amendment to clause 14.3 (item 14). AIG’s proposed amendment accords with CMIEG’s construction of clause.	Page 5	
	AIG	Sub-11-07-17			AIG continue to seek amendment to clause 18.4 and may seek opportunity to be heard	249	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
					further in relation to this matter.		
20.	CMIEG	Sub 20-11-15	15	25	Annual leave – variation to model term. Parties expressed view in submission that could be dealt with at award stage.	4(e)-(f)	REMAINS OUTSTANDING Being dealt with in AM2014/47 – Annual Leave
		Sub-30-06-17			In AM2104/47 , CMIEG, AIG, CFMEU and APESMA have sought variation of current award clause 25 to include model terms on annual leave arising from 15 September 2015 decision ([2015] FWCFB 5771) and further variations re shutdowns.	11	
20A	CMIEG	Sub-30-06-17	21.6		Variation to retrenchment pay Reference to ‘dispute resolution procedure’ should refer to ‘clause 23 – Dispute resolution’ as appears elsewhere in the award.	Page 6	REMAINS OUTSTANDING
21.	AIG	Sub 20-11-15	A.8.2 B.3.1		Wage related allowances – third column should be amended to include frequency with which allowance is payable.	98, 100	WITHDRAWN
	ABI/ NSWBC	Sub-07-07-17			Reserve right to make further submissions.	9	
	AIG	Sub-11-07-17			No longer pressed.	250	
22.	APESMA	Sub 20-11-15			Classification – Undermanager. Classification of undermanager is absent from ED and current award. Appeared in pre-modern award, and classification required by WHS legislation. Discussion with CFMEU and CMIEG indicates no objection to rectifying the matter.	2-7	RESOLVED Amendment appears to be agreed, ED amended in red text.

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	AIG	Reply 7-12-15			Does not oppose insertion of ‘undermanager’ in B.2.1 Group K	22	
23.	APESMA	Sub 20-11-15	B.2.1		Classification – typographical error, no line between classifications of ‘planning officer’ and ‘occupational health nurse’.	8-9	RESOLVED Drafting error corrected in exposure draft.
	AIG	Reply 7-12-15			Does not oppose correction		
24.	AIG	Sub 20-11-15	B.2.1		Minimum rates – adults the casual hourly rate column should be deleted consistent with paragraph [54] of [2015] FWCFB 4658 .	99-100	RESOLVED Decision updated in accordance with [54] of [2015] FWCFB 4658 . (Noting minimum wages are not in body of award but in Sched A & B, detailed wage tables in Sched C).
	CFMEU	Reply 21-12-15			Agrees	16	
25.	AIG	Sub 20-11-15	Sch C		Summary of hourly rates of pay – to be amended in line with paragraph [63] of [2015] FWCFB 4658	101	RESOLVED ED amended in accordance with [63] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15			Agrees	16	
26.	CFMEU	Further Sub 3-12-15	Sch C and D		Summary of hourly rates of pay - tables should be amended to include: rates for workers on afternoon or night (rotating or permanent) shift on Saturday and Sunday in C.1.2 and D.1.2; and, hourly rate for 6 or 7 day roster employee works overtime on an afternoon or night shift falls on public holiday in C.1.4 and D.1.4; casuals who work 6 or 7 day roster	10-11	REMAINS OUTSTANDING
	CFMEU	Further sub 16-06-16			Tables should also include overtime provisions for employees who work either of roster 17.2(b)(ii) or (iii).	Page 3	
	CFMEU	Sub-30-06-17			Continues to press variations.	14-16	

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	AIG	Sub-11-07-17			CFMEU' submission is linked to items 14 and 19, both of which are outstanding. By extension, item 26 is outstanding.	251	
27.	CFMEU	Further Sub 3-12-15	C.1.3, C.1.4, D.1.3, D.1.4		Summary of hourly rates – refers to '6 or 7 day roster <i>shiftworkers</i> ' when definition and clause 14.3 uses term '6 or 7 day roster employees'. Should change to ' <i>employees</i> ' for consistency.	13	RESOLVED Error, ED amended.
28.	AIG	Sub 20-11-15	C.2		Casual employees – award does not currently permit engagement of production and engineering employees on casual basis. Sch C.2 should be deleted. Neither current award nor ED allow for casual production and engineering employees. Delete tables.	102	RESOLVED Parties appear to agree on interpretation. ED has been amended to reflect this.
	CFMEU	Further Sub 3-12-15					
	CFMEU	Reply 21-12-15				16	
29.	AIG	Sub 20-11-15	Sch D		Summary of hourly rates of pay – to be amended in line with paragraph [63] of [2015] FWCFB 4658	103	RESOLVED ED amended in accordance with [63] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15				16	
Misc	CFMEU	Sub-30-06-17	General		Notes that some outstanding issues are being dealt with as part of the common issues.	17	See for example, AM2014/190 Transitional Provisions – Accident Pay (item 1) and AM2014/47 Annual Leave (item 20).

Note:

- Resolving the outstanding matters, CMIEG submits that matters may be best addressed in conference, or mentioned, convened by a delegated member of the Full Bench - [Sub 20-11-15](#) (paragraph 6), reply submission [22-01-16](#).
- APESMA – Collieries' Staff Division supports submission made by CFMEU – correspondence [20-11-15](#)

- AMWU supports submissions made by CFMEU-Mining Division on 20 November 2015 and 3 December 2015 – correspondence [4-12-15](#)

List of abbreviations (in alphabetical order)

ABI/NSWBC	Australian Business Industrial and NSW Business Chamber
AIG	Australian Industry Group
AMWU	Australian Manufacturing and Workers' Union
APESMA	The Association of Professional Engineers, Scientists and Managers Australia
CFMEU	Construction, Forestry, Mining and Energy Union
CMIEG	Coal Mining Industry Employer Group
ED	Exposure Draft
FWC	Fair Work Commission