

SUMMARY OF SUBMISSIONS – PLAIN LANGUAGE CURRENT MATTERS

This summary incorporates submissions and reply submissions received as a result of the [Statement \(\[2019\] FWC FB 1255\)](#) issued on 28 February 2019.

Interested parties are invited to review the draft summary of submissions to ensure their submissions are accurately characterised.

If any party seeks an amendment to this summary of submissions they should notify amod@fwc.gov.au by 4.00pm on Monday 20 May 2019.

ITEM	PARTY	DOCUMENT	DOC REF	SUMMARY OF ISSUE	NOTES
1 – Para [13] provisional view	CFMMEU C&G	Sub-02/04/19	Paras 4 – 6	<p>Vehicle Award, Manufacturing Award, Building Award will not be redrafted in PL at this time</p> <p>-Does not oppose the Full Bench’s provisional view.</p> <p>-Seeks clarification re: Mobile Crane Award and Joinery Award. Assumes these awards will be redrafted in PL through the current process.</p>	
	ABI & NSWBC	Sub – 01/04/19	Para 2.1	-Not opposed to provisional view.	
	AMWU	Sub – 27/03/19	Paras 3-5	-Supports provisional view. Submits that 2020 is an appropriate time to revisit plain language re drafting of the awards.	
	MBA	Sub – 25/03/19	Page 1	-Supports provisional view.	
	Ai Group	Sub – 22/03/19	Paras 4-6	<p>-Not opposed to provisional view.</p> <p>-Note issues raised in joint submissions may still be relevant in 2020 as such it may still be inappropriate to commence plain language- re-drafting.</p>	

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	HIA	Sub – 22/03/19	Paras 2.1.1-2.1.3	-Not opposed to provisional view <i>or</i> for the Onsite Award continuing through the PLLT process.	
	CFMMEU-C&G	Reply Sub – 17/04/19	Paras 5 – 6	-The response of the employer parties is consistent with the CFMMEU-C&G in not opposing the provisional view, so no further submission necessary.	
	MBA	Reply Sub – 24/04/19	Page 2	Re Construction Awards – seek opportunity to comment after finalisation of Construction Full Bench – AM2016/23.	
2 – Para [27] provisional view	CFMMEU – C&G	Sub-02/04/19	Paras 7-10	<p>Inserting ‘full-time employee’ into minimum wage tables</p> <p>-Opposes the provisional view.</p> <p>-Purpose of the minimum wage tables was to set out minimum classification rates and not minimum weekly award rates of pay. Minimum weekly rate of pay will differ depending on whether allowances payable, if employee is casual/part-time/shift worker/engaged on daily hire basis.</p> <p>-Will create rather than reduce confusion.</p> <p>-Submit preferred approach to add a subclause clarifying what is prescribed along the lines of example they provide at para 10.</p>	
	ABI & NSWBC	Sub – 01/04/19	Paras 3.1-3.5	<p>-Not opposed to provisional view.</p> <p>-May cause confusion with some awards due to interaction of operative part of the clause with the wage table.</p>	
	HIA	Sub – 22/03/19	3.1.1-3.1.7	<p>-Opposes provisional view with regard to Onsite and Joinery Awards.</p> <p>-Onsite Award minimum weekly rates are not confined to full-time employment so this may cause confusion and clause 19.1(b) of the</p>	

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				<p>award already explains the application of the minimum weekly wage.</p> <p>-Clause 18.2 of the Joinery Award provides meaning of ‘minimum weekly rate’ and therefore the change is unnecessary.</p>	
	FAAA	Sub – 18/04/19	Paras 29 – 34	<p>Re Aircraft Cabin Crew Award</p> <p>-FAAA disagree with the calculation of the MHR, which has been derived by dividing the MWR for each classification by 38.</p> <p>-Submit that the ordinary hours of work for international and domestic cabin crew is 1872 hours per year and the ordinary weekly hours of work based on a 52 week year is 36 hours. Therefore, the MHR should be based on a 36 hour week not the 38 hour week in the NES.</p> <p>-Submit that as the Award is silent on regional cabin crew, the ordinary weekly hours of regional flying employees should be based on the NES ie. 38 hours per week.</p> <p>FAAA set out the MHR at para 33.</p> <p>-Propose that their proposed changes to the MHR be reflected in the tables in Schedule D of Award.</p>	
	CFMMEU-C&G	Reply Sub – 17/04/19	Paras 7 – 9	<p>-Note that MBA & Ai Group did not address the provisional view – to include “full-time employees” below the heading of the weekly rates column.</p> <p>-Note that ABI did not oppose the provisional view but did express a view the issue should be considered on an award-by-award basis.</p> <p>-Note that HIA oppose the provisional view in relation to the On-Site & Joinery Awards.</p> <p>-CFMMEU-C&G maintains its opposition to the provisional view – see 02/04/19 submissions</p>	

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3 – Para [33] proposal	CFMMEU – C&G	Sub-02/04/19	Para 11	Cross references in coverage clauses -Not opposed to proposal.	
	ABI & NSWBC	Sub – 01/04/19	Para 4.1	-Not opposed to proposal.	
	Ai Group	Sub – 22/03/19	Paras 7-9	-Clauses to be inserted into awards will need modification to take into account that some have occupational rather than industry coverage, some have both and many awards cover group apprentices as well as group trainees.	
	HIA	Sub – 22/03/19	Paras 3.2.1-3.2.9	-Suggests that cross reference issue in clauses 4.6 and 4.7 of the Onsite Award can be remedied in line with the provisional view. Suggest redrafting. -Opposes provisional view in relation to the Joinery Award.	
	Ai Group	Reply Sub – 18/04/19	Para 6	-Ai Group’s position is set out in Ai Group’s March 2019 submission and the views therein address the submissions of the other parties.	
	CFMMEU-C&G	Reply Sub – 17/04/19	Paras 10 – 11	-Note that MBA is silent on the issue; ABI do not oppose the proposal; HIA support the proposal for the On-Site Award but not the Joinery Award; and Ai Group appear to support the proposal but with award-specific considerations. -CFMMEU-C&G supports the cross-referencing but recognises that award-specific considerations may be necessary (esp re occupational coverage) re Mfg Award & Joinery Award.	
4 – Para [52] discussion	AMWU	Sub – 27/03/19	Paras 6-7	National Training Wage Schedule standardisation -Have come to agreement with Ai Group on NTW schedules to be included in the awards specified at para [56] of the February statement.	

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				-agreed draft schedules are attached to submission.	
	Ai Group	Sub – 22/03/19	Paras 10-12	-Have come to agreement with AMWU regarding content of NTW schedules in 4 awards.	
5 – Para [67] Proposal	CFMMEU - MD	Sub – 08/04/19	Paras 5-7	<p>Terminology of Rates – Annual leave loading issue – proposal to adopt the suggestion of Ai Group (based on Clerks PLED)</p> <p>-Opposes draft wording from Ai Group.</p> <p>-‘minimum hourly rate’ (MHR) reference would lower rate of payment for employees who have ordinary hourly pay.</p> <p>-Reference to a MHR being inclusive of weekend penalties/shift loadings problematic where MHR also defined in award as bare classification.</p> <p>-Proposed clause is less ‘plain language’ than the one it seeks to replace.</p> <p>-Issue should be addressed on an award by award basis.</p>	
	United Voice	Sub – 04/04/19	Paras 3-4	<p>-Concerned that adopting the wording suggested by Ai Group would lower the rate for employees who have ordinary hourly pay (inclusive of all-purpose allowances).</p> <p>-Arguably less ‘plain language’ than the clause it seeks to replace.</p>	
	CFMMEU – C&G	Sub-02/04/19	Paras 12-14	<p>-Opposes proposal.</p> <p>-Requires award by award approach.</p> <p>-Agrees with Full Bench that the proposed solution ‘may make the award more complex and difficult for users to apply’ and suggests a simpler of including a subclause such as example provided at para 14.</p>	

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	ABI & NSWBC	Sub – 01/04/19	Paras 5.1-5.3	-Supports Full Bench’s views expressed at [68] regarding the proposal of the Ai Group resulting in further confusion. -Proposed different drafting based on clause 32.3 of the Clerks PLED at para 5.3.	
	CPSU	Sub – 29/03/19	Paras 2-4	-Supports the submissions of the CFMMEU, AWU, AMWU and CEPU. -Agrees proposed clause may cause uncertainty and should not reduce existing entitlements.	
	CEPU	Sub – 29/03/19	Paras 3-5	-Opposes the proposed model clause. -Submits that it is confusing and may have undesirable implications.	
	AMWU	Sub – 27/03/19	Paras 8-11	-Inclusion of model clause should not be done without consideration of the context of each award to ensure no diminishing of existing entitlements. -Submission inelegant and requires potentially confusing exercise by award user.	
	AWU	Sub – 25/03/19	Paras 3-8	-Does not support inclusion of proposed clause and proposes alternative approach at para [7] with the term “minimum hourly rate” used in awards without all-purpose awards and “ordinary hourly rate” in awards containing all-purpose allowances. -Submits model clause may reduce entitlements by excluding all-purpose allowances, reference to a MHR being inclusive of penalties/loading problematic as MHR also defined as bare classification rate excluding allowances, and wording in (c)(ii) and (d)(ii) arguably more confusing .	

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	Ai Group	Sub – 22/03/19	Paras 13-24	<p>-Note that the proposed clause is only a partial adoption of the Ai Group’s proposal and as such the meaning has been lost. Opposes its adoption into any exposure drafts.</p> <p>-Submits clause does not resolve problem of clause comparing payment of MHR in addition to penalty rates with payment of leave loading.</p> <p>-Suggests most awards listed in attachment B of the statement require individual amendments.</p> <p>-Proposes clause to be inserted into revised Clerks PLED at para 20.</p>	
	CFMMEU – M&E	Sub – 22/03/19	Paras 5-7	<p>-Clerks PLED is drafted in markedly different terms to Black Coal terms.</p> <p>FWC proposed wording likely to cause confusion in relation to the loading payable under some awards.</p> <p>Submit that no change is needed to the relevant clause in the Black Coal Award.</p>	
	HIA	Sub – 22/03/19	Paras 4.1.1-4.1.8	Sees no issue with the provisions in the Onsite and Joinery Award and thus opposes changes to these provisions.	
	Ai Group	Reply Sub – 18/04/19	Paras 7 – 24	<p>Re - Interaction between annual leave loading clauses and penalty rates provisions:</p> <p>-Ai Group’s position on issue is set out in their March Submission.</p> <p>-Note that the majority of other parties’ submissions highlight issues with the clause proposed at [67].</p> <p>- Note that the problems raised by other parties in relation to the confusing wording of the clause are resolved in the revised leave</p>	

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				loading clause proposed at 20 of its March Submission. -Opposes the AWU proposed clause at paras7 and 8 of AWU's submissions. -Opposes the CFMMEU's proposed clause at para 14 of CFMMEU-C&G's submission.	
	CFMMEU-C&G	Reply Sub – 17/04/19	Paras 12 – 14	-Note that no employer party supports the proposed wording; ABI & Ai Group propose their own different variations; HIA state that the formulation of provisions in the On-Site & Joinery Awards is not problematic and should not be changed. -CFMMEU-C&G does not support either of the proposals put forward by Abi & Ai Group and repeats its earlier submission, that it this issues requires an award by award approach.	
6 – Para [84] request for submissions	CFMMEU - MD	Sub – 08/04/19	Paras 8-30	Insertion of model shut down provisions -Opposes the insertion of the model term into awards which currently contain annual leave shut down provisions. -Awards have provisions designed to address and reflect industry practice and existing annual leave shut down provisions contain more beneficial terms to those contained in the model term. -Manufacturing, Timber and Joinery Awards all ensure that unpaid leave for a shutdown counts as service, submit that this is the correct and appropriate position for award dependent workers.	
	United Voice	Sub – 04/04/19	Paras 5-13	-Opposes insertion of model term into awards already containing shutdown provisions. -Submit that a term in an award allowing an employer to direct an employee to take unpaid leave as part of a close down may not be permitted under the FW Act. See their Children's Award Submission at	

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				<p>paras [213]-[263].</p> <p>-If the FWC determines such a term is permitted they submit that the model term does not adequately reflect the protections found in a number of awards and where higher protections exist they should be retained.</p> <p>-They submit the (h) clause should be amended for clarity.</p> <p>-Submit that unpaid leave in a shutdown should count as service.</p>	
	CFMMEU – C&G	Sub-02/04/19	Paras 15-18	<p>-Opposes insertion of model term as the existing provisions are tailored to the ways in which the industries operate and should not be disturbed without evidence they are not working/substantive reasons why they should be varied.</p> <p>-Submit that unpaid leave taken during a shutdown should count as service.</p> <p>-All awards containing A/L shutdown clause should include a provision stating unpaid leave taken during shutdown counts as service.</p>	
	ABI & NSWBC	Sub – 01/04/19	Paras 6.1-8.5	<p>-Submit substantive changes to existing shutdown provisions only be made if cogent basis to do so.</p> <p>-Submit model term should not be inserted into existing award provisions with a shutdown clause.</p> <p>-Suggest amended clause if FWC does decide to insert model clause.</p> <p>-Submit their redrafted clause should be used for award specific variations.</p> <p>-Submits that s 22 of the FW Act does not count unpaid leave as service.</p>	

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	CPSU	Sub – 29/03/19	Paras 5-11	<ul style="list-style-type: none"> -Has an interest in the Broadcasting, Call Centres, Miscellaneous and Telecommunications Awards. -Not opposed to the inclusion of the model clause. -Supports the submissions of the CFMMEU. -Submit that where awards contain additional safeguards for closedown tailored to the industry going beyond the model term, these should be retained. 	
	CEPU	Sub – 29/03/19	Paras 6-10	<ul style="list-style-type: none"> -Supports insertion of model clause into Electrical Power Award. -Opposes insertion of model clause into Electrical Contracting Award as it would leave those covered by the award worse off. 	
	AMWU	Sub – 27/03/19	Paras 12-15	<ul style="list-style-type: none"> -Presses same submission made in AM2014/47. -Unpaid leave taken during a shutdown is a benefit for the employer as recognised by s 22 of the FW Act. Does not allow for a pause in the accrual of service-related entitlement. -Supports inclusion of model term provided that existing safeguards are maintained. 	
	MBA	Sub – 25/03/19	Pages 1-2	<ul style="list-style-type: none"> -Submit that nothing before the FWC to necessitate change to the Shut Down provisions within the Construction Awards. 	
	AWU	Sub – 25/03/19	Paras 9-16	<ul style="list-style-type: none"> -Model term should be amended to prescribe that all periods of leave taken pursuant to a shutdown are treated as service for all purposes. -Does not oppose insertion of model term as long as award-specific variations are made for awards which contain express additional limitations on when the shutdown provisions can be applied. 	

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	Ai Group	Sub – 22/03/19	Paras 25-68	<p>-Must take into account potential impact insertion of model term may have on employers. In many awards the current provisions reflect the circumstance and needs of the industry.</p> <p>-Opposes adopting model term in current form as in many awards it would reduce employer’s capacity to manage and coordinate a shutdown, omission of right to direct employees to take unpaid leave would undermine utility of a shutdown and there are practical difficulties that would flow from the process developed for shutdown implementation.</p> <p>-Not opposed to greater uniformity of shutdown clauses. Suggest alternative drafting.</p> <p>-Model term should be amended to include a time limit on the making of an election to take paid or unpaid leave under a shut down.</p> <p>-Submits that unpaid leave taken during a shutdown counts as service.</p>	
	AMIEU	Sub – 22/03/19	Paras 4-15	<p>-Submits the model clause would remedy a number of issues in the current clause in the Meat and Poultry Awards, however requires some variation to protect conditions.</p> <p>-Proposes variations to model clause which seek to maintain the intention of model clause while acknowledging that the meat and poultry industries have enjoyed specific conditions for a long time.</p>	
	CFMMEU – M&E	Sub – 22/03/19	Paras 6-20	<p>-Supports inclusion of model term in Mining and Terminals Awards.</p> <p>-Maintains position that unpaid leave during shutdown counts as service for Black Coal, Mining and Terminals Awards. Employee taking unpaid leave at unilateral discretion of employer should not incur another penalty. Markedly different situation to that where an employee approaches employer to take leave without pay.</p>	

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	AHA	Sub – 22/03/19		<p>-Does not object to Hospitality Award being varied to include the model term and assume that paragraph (i) refers to directions to take excessive leave in accordance with clause 34.8.</p> <p>-Submits that it is clear from s 22 of the FW Act that unpaid leave does not count as service.</p>	
	HIA	Sub – 22/03/19	Paras 4.2.1-4.2.8	<p>-Submits there is no need to adopt the model clause in the Onsite and Joinery Awards.</p> <p>-Submits it is clear from s 22 of the FW Act that (unless expressly dealt with by the award) unpaid leave does not count as service and this should be adopted in relation to the Onsite Award as it is silent on this issue. Joinery expressly provides for unpaid leave during shutdown to count as service.</p>	
	Ai Group	Reply Sub – 18/04/19	Paras 25 – 76	<p>Re model shut down provision generally:</p> <p>-Not convinced to change their position.</p> <p>-Note that a number of parties seek to retain existing restrictions on directions to take annual leave pursuant to a shutdown provision.</p> <p>-Opposes the retention of such restrictions, particularly where flexibilities referred to in previous submission are not retained.</p> <p>-Note that various union parties express support for the model term on the proviso that no provisions in existing clauses of benefit to employees are removed – Ai Group submits that such ‘cherry-picking’ detracts from benefits of model clause and would be unfair on employers.</p> <p>-Note that a number of entitlements raised by various union parties as appropriate for retention are not currently provided for in current awards (outlined in submission).</p>	

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	MBA	Reply Sub – 24/04/19	Page 1	<p>Re On-Site Award:</p> <ul style="list-style-type: none"> -Submits that the existing provisions within the On-Site Award (clause 38.3) do not require alternation as they have existed for many years, are well understood by the building and construction industry and there is no evidence of confusion or problems in terms of application. -Submits that the question of whether or not unpaid leave taken due to shutdown counts as service is determined by reference to “continuous service” in clause 3 of the Award. -Submits that CFMMEU’s position that unpaid leave taken during a shutdown period counts as service is based on a flawed assumption and this rationale should be rejected. 	
	CFMMEU-C&G	Reply Sub – 17/04/19	Paras 15 – 19	<ul style="list-style-type: none"> -Note that there is a consensus of opinion from employer parties that the model shutdown provisions should not be included in those awards that already contain shutdown provisions. -Above employer party view is consistent with CFMMEU-C&G view. -Re issue of whether unpaid leave taken during shutdown period counts as service, CFMMEU-C&G notes that Ai Group & HIA state that absent an award provision dealing with the issue, s.22 of the FW Act governs the issue. -Note that ABI only refer to s.22 of the Act. -Confirms previous submission that Joinery & Mobile Crane Awards include provisions recognising unpaid leave taken during a shutdown period as service. -Note that AMWU, CEPU, AWU & CFMMEU-MD have identified other awards containing similar provisions. -Reaffirms previous submission. 	

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	FAAA	Sub-03/05/19		<p>-Model term should not be inserted into awards; FAAA’s interest is in the Aircraft Cabin Crew Award.</p> <p>-Submit model term not permitted under s.139 of FW Act; directing employee to take unpaid leave amounts to standing down an employee.</p> <p>-Concerned model term would allow employers to manipulate employees into taking LWOP. Bargaining position of employees should be considered.</p> <p>-In the alternative, model term should be amended.</p> <p>-Supports subs of CFMMEU.</p>	
7 – Para [95] proposal	CFMMEU - MD	Sub – 08/04/19	Para 31	<p>Hourly Rates of Pay Schedules – minimum hourly rate and percentage of ordinary hourly rate</p> <p>-Adopts the submissions of the CFMMEU – C&G.</p>	
	CFMMEU – C&G	Sub-02/04/19	Paras 19-23	<p>-Opposes proposal.</p> <p>-Concerned if tables do not include all-purpose allowance they serve no useful purpose.</p> <p>-Should be dealt with on an award by award basis.</p>	
	MBA	Sub – 25/03/19	Page 2	-Seeks opportunity to make comment on FWC’s proposal re: Construction Awards following finalisation of AM2016/23.	
	HIA	Sub – 22/03/19	Paras 4.3.1-4.3.5	<p>-Reserves right to comment on schedule if included in Onsite Award.</p> <p>-Supports the provisional view but reserves right to make further comments.</p>	
	CFMMEU-C&G	Repl17 y Sub – 17/04/19	Paras 21 – 22	-Notes that HIA & MBA submit that the issue of inclusion of hourly rate for the On-Site Award will be affected by finalisation of	

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				<p>AM2016/23 and reserve right to comment; HIA also expresses support for provisional view for Joinery Award.</p> <p>-Recognises that any further decision may have an impact on the hourly rates for the On-Site Award and possibly Joinery Award but this does not affect their continued opposition to the proposal at [95] for reasons set out in its previous submission.</p>	