

AM2016/23 - Construction Awards

1. WHS and Allowances

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MBA	Sub – 12Dec16; Sub – 16Dec16	20.1(a), 20.1(b), 20.1(b)(iv), 20.1(b)(vii), 20.1(b)(viii), 20.1(c), 20.1(d), 20.1(d)(iii) [SPV 39]**; 20.3 [SPV 43]; 20.3(d) [SPV 44]; 21.2; 21.3; 21.3(a); 21.4; 21.4(d); 21.4(g); 21.5; 21.6; 21.7; 21.8; 21.9; 21.9(a), 21.9(b) [SPV 47 – 58]; 21.11 [SPV 60]; 22.2(a) [SPV 68]; 22.2(d) – 22.2(d)(ii); 22.2(e); 22.2(e)(i), 22.2(e)(ii); 22.2(f) [SPV 71 – SPV 74]; 22.2(i), 22.2(i)(i) [SPV 78]; 22.2(j) [SPV 79]; 22.2(k); 22.2(l); 22.2(m); 22.2(n); 22.2(o) – 22.2(o)(iii); 22.2(p) [SPV81 – 86]; 22.2(q); 22.2(r) – 22.2(r)(ii); 22.2(s) [SPV 88 – 90]; 22.3(a) – 22.3(a)(ii); 22.3(b); 22.3(c); 22.3(d) [SPV 94 – 97]; item 22.3(f) [SPV 99]; 22.3(g) [SPV 100]; 22.3(i) – 22.3(i)(ii) [SPV 102]; 22.3(l) – 22.3(l)(ii) [SPV 105]; 22.3(n); 22.3(o); 22.3(p); 22.3(q); 22.3(r); 22.4(a); 22.4(b) – 22.4(b)(v); 22.4(c); 22.4(d); 22.4(e); 22.4(f); 22.4(g); 22.4(h) [SPV 108–120]; 33.1(d) [SPV 159]; 25.4 [SPV 167]	<p>Various allowances and clauses – Workplace health and safety</p> <p>Primary position: seeks deletion of an allowance or clause if it deals with a matter that would otherwise be covered by relevant WHS laws.</p> <p>Secondary position: allowance or clause should be amended to remove references to WHS matters and any other words that are not necessary for provision to operate appropriately.</p> <p>If primary or secondary position not adopted, proposes that clauses that cause an inconsistency with WHS laws should be altered to replace specific references with generic references.</p>	<p>Paras 2.4 – 2.6 [12 Dec 16 submission];</p> <p>Paras 2.3 – 2.6; 3.9 – 5.60; 7 – 9.7 [16 Dec 16 submission]</p>	<p>** SPV:</p> <p>Summary proposed variations updated last 5 August 2016</p> <p>https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/construction-awards-summary-100816.pdf</p>	David Solomon MBA Witness (Name Redacted)
CEPU – Elec. Div	Reply sub – 10Mar17	22.2(k); 22.2(l); 22.2(m); 22.2(n); 22.2(o) – 22.2(o)(iii); 22.2(p) [SPV81 – 86]; 22.2(q); 22.2(r) – 22.2(r)(ii); 22.2(s) [SPV 88 – 90]; 22.3(a) – 22.3(a)(ii); 22.3(b); 22.3(c); 22.3(d) [SPV 94 – 97]; item 22.3(f) [SPV 99]; 22.3(g) [SPV 100]; 22.3(i) – 22.3(i)(ii) [SPV 102]; 22.3(l) – 22.3(l)(ii) [SPV 105]; 22.3(n); 22.3(o); 22.3(p); 22.3(q); 22.3(r); 22.4(a); 22.4(b) – 22.4(b)(v); 22.4(c); 22.4(d); 22.4(e); 22.4(f); 22.4(g); 22.4(h) [SPV 108–120]; 33.1(d) [SPV 159]; 25.4 [SPV 167]	<p>Opposes variation. The functions awards and WHS laws perform are distinct; allowances permitted in award under ss.139 and 142 of FW Act. Previously contested in 2012 review and variation does not satisfy desirability of rationalising allowances noted by FB in that matter.</p>	Paras 26 – 28.		
CFMEU C&G	Reply sub – 10Mar17	22.2(k); 22.2(l); 22.2(m); 22.2(n); 22.2(o) – 22.2(o)(iii); 22.2(p) [SPV81 – 86]; 22.2(q); 22.2(r) – 22.2(r)(ii); 22.2(s) [SPV 88 – 90]; 22.3(a) – 22.3(a)(ii); 22.3(b); 22.3(c); 22.3(d) [SPV 94 – 97]; item 22.3(f) [SPV 99]; 22.3(g) [SPV 100]; 22.3(i) – 22.3(i)(ii) [SPV 102]; 22.3(l) – 22.3(l)(ii) [SPV 105]; 22.3(n); 22.3(o); 22.3(p); 22.3(q); 22.3(r); 22.4(a); 22.4(b) – 22.4(b)(v); 22.4(c); 22.4(d); 22.4(e); 22.4(f); 22.4(g); 22.4(h) [SPV 108–120]; 33.1(d) [SPV 159]; 25.4 [SPV 167]	<p>Opposes variation.</p> <p>Re primary position: Provisions were not inserted to deal with WHS matters per se, rather to provide for payment of allowances or rest breaks where certain disabilities experienced. No significant changed circumstances since 2012 review.</p> <p>Claims of inconsistency with WHS laws should be rejected. Consequences complained of at 5.50 – 5.60 based on incorrect interpretation of award provisions.</p> <p>Re secondary position: example provided in support of variation is necessary to provide clarity.</p> <p>Re third position – leaving specific provisions in award ensures award meets modern awards objective.</p>	<p>Re primary position: Paras 11 – 32, 35 – 38, 45 – 47</p> <p>Re secondary position: Paras 50 – 51</p> <p>Re third position: Para 52</p>		

AWU	Reply sub – 10Mar17		<p>Opposes variation. Overly simplistic to propose that any award condition that provides additional compensation for being exposed to a potentially dangerous working environment should be deleted. Specific examples provided to show that safety laws regulate what duties a worker can perform onsite and the Award provides for additional compensation when they are undertaken.</p> <p>Regarding clause 22.4(b)(i) – Opposes deletion of clause entirely. Agrees that the reference to exposure for a period greater than 1 hour should be deleted.</p>	Paras 61-92		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		<p>Opposes variation. Many entitlements not duplications of WHS laws. Award clauses are for employees to access entitlements which benefit them directly - different from obligations for employer to provide safe work environment which may not entail any specific entitlement to employee.</p> <p>Re proposed generic obligation to provide/ reimburse personal protective equipment – makes sense to create generic obligation but should retain current examples to ensure the change is to clarify entitlement not diminish it.</p>	<p>Paras 8 – 19</p> <p>[re generic personal equipment term]</p> <p>Para 19</p>		
MBA	Sub – 12Dec16 Sub – 16Dec16	20.1(a), 20.1(b), 20.1(b)(vi), 20.1(b)(vii), 20.1(b)(viii), 20.1(c), 20.1(d), 20.1(d)(iii) [SPV 39]; 22.3(e) [SPV 98]; 22.4(f) [SPV 118]	Various allowances and clauses – Outmoded, irrelevant or no longer applicable Seeks deletion of allowances or award clauses party submits are outmoded, irrelevant or no longer applicable.	Paras 2.4, 2.7 – 2.9 [12 Dec 16 submission]; Paras 2.3, 5.32 – 5.41 [16 Dec 16 sub]		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Only example provided in support is cl.20.1(d)(i), rejects that clause is obsolete. Proposes variation to clause.	Paras 33 –34		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

MBA	Sub – 12Dec16; Sub – 16Dec16	19.2 [SPV 26]; 19.2(a) [SPV 27]; 19.5 [SPV 30]; [SPV 36]; 20.1(a), 20.1(b), 20.1(b)(iv), 20.1(b)(vi), 20.1(b)(viii) [SPV 39]; 20.2 [SPV 40]; 20.2(c) [SPV 42]; 21 [SPV 45]; 21.1 [SPV 46]; 21.10, 21.10(a)(vi), 21.10(a)(viii) [SPV 59]; 21.12; 21.13; 21.13(b), 22	Allowances <i>[In relation to allowances or award clauses that deal with matter not otherwise covered by WHS laws or not outmoded, irrelevant or no longer applicable; and in relation to allowances with WHS element, subject to WHS claim above]</i> Seeks rationalisation of provisions to: (a) group allowances into categories of skill, disability and expense related; and (b) further group disability related allowances into composite and cumulative.	Paras 2.4, 2.7 – 2.9 [12 Dec 16 submission]; Paras 2.3; 10 – 10.7 [16 Dec submission]		David Solomon (MBA witness, CFMEU xn) Dr Gerard Ayers (CFMEU witness)
CEPU – Elec. Div	Reply sub – 10Mar17	[SPV 61 – 64]; 22.1 [SPV 66]; 22.1(c) – (e) [SPV 67]; 22.2(t); 22.2(u); 22.2(v) [SPV 91 – 93]; 22.3(h) [SPV 101]; 22.3(j) [SPV 103]; 22.3(k) [SPV 104]; 22.3(m) [SPV 106]; 22.3(m)(i), 22.3(m)(ii) [SPV 107]; 24.3(a) – 24.3(a)(iii); 24.3(a)(ii); 24.3(b); 24.5; 24.7(a) – 24.7(a)(ii); 24.7(b) – 24.7(b)(ii) [SPV 123 – 128]; 24.7(e) – 24.7(e)(iii) [SPV 130]; 25 [SPV 132]; 25.2(a) [SPV 135]; 25.2(b) [SPV 136]; 25.3 [SPV 137]; 25.4 [SPV 138]; 25.4(a) [SPV 139]; 25.5 – 25.5(b)(ii) [SPV 140]; 25.7 [SPV 141]; 25.9 – 25.9(b) [SPV 144]	Variation in (a) above not necessarily opposed as parties have already made progress on grouping allowances on ‘without prejudice’ basis pending determinations in AM2016/23 which may impact on allowances. Submits more of a drafting and technical matter which does not need to be arbitrated in AM2016/23. Can be dealt with by conciliation following determination of substantive matters. Variation in (b) above opposed. No submissions in support made, or explanation of ‘composite.’	Paras 48 – 49		
AWU	Reply sub – 10Mar17	24.7(a)(ii); 24.7(b) – 24.7(b)(ii) [SPV 123 – 128];	Not opposed to categorisation of allowances.	Paras 91 – 92		
HIA	Reply sub – 16Mar17	24.7(e) – 24.7(e)(iii) [SPV 130]; 25 [SPV 132]; 25.2(a)	Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17	[SPV 135]; 25.2(b) [SPV 136]; 25.3 [SPV 137]; 25.4 [SPV 138]; 25.4(a) [SPV 139]; 25.5 – 25.5(b)(ii) [SPV 140]; 25.7 [SPV 141]; 25.9 – 25.9(b) [SPV 144]	Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CFMEU C&G	Sub – 9Dec16	New clause 20.5	Expense related allowances Proposes insertion of communications equipment allowance.	Paras 9, 176-179, 198, 207, 210		
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AIG	Reply sub – 14Mar17		Opposes variation. The claim is an attempt to flow provisions from some enterprise agreements into the Award.	Para 29, bullet 5		
HIA	Reply sub – 16Mar17		Opposes variation. No evidence or materials in support. Proposed allowance is not necessary part of minimum safety net and would add cost and regulatory burden to businesses. Lack of specificity of provision necessitates finding that insertion at odds with s.139 of FW Act	Paras 3.3 – 3.3.16		

AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. Insufficient evidence of a merit case; that changes consistent with modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective. No evidence that there is an industry of employers failing to provide communication devices to employees at no cost to employees or reimburse employees the cost of using their own devices when not provided by employer.	Paras 3.5 – 3.6, 3.7(b)		
MBA	ReplySub – 27Mar17		Opposes claim: rare for an employer to require an employee to provide their own equipment; removes discretionary flexibility for employers; lacks specificity; inconsistent with modern award objectives.	Paras 6.1–6.16		
CFMEU C&G	Sub – 9Dec16	22.1	Conditions in respect of special rates Proposes insertion of consolidated special rates allowance providing for payment (by individual agreement) of a consolidated allowance in place of majority of individual special rates allowances.	Paras 9, 180 – 182, 198, 214		
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AIG	Reply sub – 14Mar17		Opposes variation. It is likely that employers paying such a consolidated rate would pay more than that payable when simply applying the allowances as they fall due.	Para 29, bullet 6		
HIA	Reply sub – 16Mar17		Opposes variation. Rather than rationalising, variation creates additional allowance. Little practical utility. Lack of rationale for inclusion/ exclusion of allowances and amount of 7.9%. If Commission minded to adopt, strongly opposes requirement that arrangement be recorded in time and wages record.	Paras 3.4 – 3.4.16, Table A		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. Insufficient evidence of a merit case; that changes consistent with modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective. Does not address that rationalisation available under Indiv. Flex. Arrang. (cl. 7)	Paras 3.5 – 3.6, 3.7(c)		

MBA	ReplySub – 27Mar17		Rejects claim. Would create extra administration work and regulatory burden on employers. There is merit in addressing the nature of allowances in the On-Site Award but proposal would compound existing complexities.	Paras 7.1–7.9		
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2. Redundancy

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
HIA	Sub – 2Dec16	17.2	Industry specific redundancy scheme Primary position is ISRS should be removed and redundancy provisions of NES should apply. Secondary position is clause should be varied to amend definition of redundancy; insert a small business exemption; and insert incapacity to pay provision.	Paras 4 – 4.4.28 (primary position) Att. E, Att. F (secondary position)		Rick Sasson Huan Do
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No cogent reasons for variation advanced; arbitrated previously, past decisions must stand.	Paras 15 – 17		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No new arguments raised since Part 10A process and 2012 review.	Paras 53 – 72		
AWU	Reply sub – 10Mar17		Opposes variation. Redundancy scheme applies to broader range of dismissals than generally applies to redundancies. Issue previously dealt with in <i>Award Modernisation</i> [2009] AIRCFB 345; refers to <i>4 yearly review modern awards</i> [2017] FWCFB 584 decision on industry specific redundancy.	Paras 30 -36		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, shown change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards obj.	Paras 3.1 – 3.4		
MBA	Sub – 12Dec16	17.2	Industry Specific Redundancy Scheme Seeks to vary the amount of redundancy pay for which employers are liable by: adoption of more conventional definition of ‘redundancy’; amending the eligibility criteria triggering severance payments to when employer has 5 or more employees and affected employee has completed 2 or more years’ continuous service with employer; and change of existing consequential provisions.	Paras 6 – 6.28, pages 30 – 32	Submission contains some inconsistency regarding eligibility criteria sought (see paras 6.2, 6.11, 6.21, 6.27 and page 31) - have based variation sought on paras 6.11, 6.27 and page 31.	Peter Glover
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No cogent reasons for variation advanced; arbitrated previously, past decisions must stand.	Paras 15 – 17		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No new arguments raised since Part 10A process and 2012 review.	Paras 53 – 72		
AWU	Reply sub – 10Mar17		Opposes variation. Redundancy scheme applies to broader range of dismissals than generally applies to redundancies. Issue previously dealt with in <i>Award Modernisation</i> [2009] AIRCFB 345; refers to <i>4 yearly review modern awards</i> [2017] FWCFB 584 decision on industry specific redundancy.	Paras 30 -36		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		

AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CCF	Sub – 9Dec16	17.2	<p>Industry specific redundancy scheme – Definition</p> <p>Seeks variation to disallow payment of redundancy benefits to non-redundancy employees who terminate employment relationship of their own accord.</p> <p>Three options proposed:</p> <ol style="list-style-type: none"> 1. Vary definition of ‘redundancy’ in clause 17.2 2. Vary amount payable to non-redundant employees terminating the employment relationship of their own accord, per s.141(3)(a) FW Act. 3. Replace ISRS with NES redundancy provisions in s.119 FW Act. 	Pages 3 – 21		David Castledine David O’Connor John Hovey Peter Middleton
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No cogent reasons for variation advanced; arbitrated previously, past decisions must stand.	Paras 15 – 17		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No new arguments since Part 10A process and 2012 review.	Paras 53 – 72		
AWU	Reply sub – 10Mar17		Opposes variation. Redundancy scheme applies to broader range of dismissals than generally applies to redundancies. Issue previously dealt with in <i>Award Modernisation</i> [2009] AIRCFB 345; refers to 4 yearly review modern awards [2017] FWCFB 584 decision on industry specific redundancy.	Paras 30 -36		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA		17.3	<p>Redundancy</p> <p>See notes</p>		<p>MBA did not include variation to this clause in its <u>submission – 2 December 2016</u>, but witness statement of Peter Glover attached to submission refers to ‘Master Builders’ claim to change both the On-Site and Joinery awards’ at para 24].</p> <p>Note: clarification may need to be sought from</p>	Peter Glover

					MBA as to whether it is being pressed in both awards.	
MPMCA	Sub – 9Dec16	18	Industry specific redundancy scheme Does not intend to run claim but supports MBA’s submissions in support of application to vary identical clause in Building Award (clause 17). Seeks to reserve right to appear and respond.	Paras 2 – 5	Claim outlined in submission – 30June16 represents party’s substantive view.	
	Sub – clause 18 – 17Mar17		Per 30 June submission, supports modification of ISRS to more closely align with meaning of ‘redundancy’ under FW Act. Proposes variation so that ISRS’ application limited to: <ul style="list-style-type: none"> • daily hire employees only, FW Act to apply to weekly hire employees; and/or • employers with more than 5 employees; and/or circumstances in which employees made genuinely redundant, not resignations of own accord. 	Paras 1 – 3.2		
MPG	Reply sub – 10Mar17		Agrees and endorses MPMCA’s claims as outlined in their submission – 30June16	Paras 6 – 7		
CEPU – Plumbing Div.	Reply sub – 15Mar17		Opposes variation. FB recently considered similar changes re. Black Coal Award determined clause should remain. Past FB decisions agreed to retention due to nature of Plumbing and Fire Sprinkler industry. Change to meaning of redundancy in cl.18 unequivocally rejected in 2012 review. No new evidence filed to warrant change.	Pages 1 – 2		
MPG	Sub – 20Dec16	18	Industry specific redundancy scheme Seeks variation to ISRS. Submits there are four options: <ol style="list-style-type: none"> 1. Delete ISRS and rely on NES redundancy provisions. 2. <u>Preferred option:</u> Limit application/ operation of ISRS to a plumbing and mechanical services employee employed on daily hire basis, sprinkler fitter and/or a sprinkler fitter’s assistant. Plumbing and mechanical services employee on weekly hire to be reliant on NES redundancy provisions. 3. Alter definition of “redundancy” to exclude employee who resigns from entitlement to redundancy pay. 4. No action – submits not viable. 	Paras 11 – 35		
ABI & NSWBC	Reply sub – 20Mar17		Broadly supports variation but does not propose to lead any evidence in support of variation. Describes change sought as removal of ISRS so redundancy pay per NES; and if not accepted, an express exclusion in clause of resignation from entitlement to redundancy pay.	Paras 6.1 – 6.3		

BG	Sub – 3Feb17	18.2	Industry specific redundancy scheme – Definition Seeks variation so that voluntary resignation is excluded under definition of redundancy.	Pages 3 – 4		
FPA	Sub – 15 Mar17	18.2	Industry specific redundancy scheme – Definition Seeks variation so that resignation by employees employed on weekly hire is excluded under definition of redundancy.	Paras 1 – 10		

3. Fares and Travel

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
HIA	Sub – 2Dec16	25	<p>Fares and travel patterns allowance Proposes clause be replaced to clearly outline obligations of employers and entitlements of employees regarding travel arrangements and payment of daily fares, by:</p> <ul style="list-style-type: none"> • Removing concept of ‘radial areas’ and varying clause 25.3 so that ‘distant work’ is determined to be when an employee is required to travel to a construction site more than 50km away from their usual place of residence; and • Including that employee is not entitled to allowance when: not required to attend site due to an RDO; provided with accommodation at site or provided a company vehicle. 	Paras 6 – 6.5.12, Attachment J	Note: <i>Award modernisation</i> [2009] AIRCFB 345 relevant to all claims concerning cl 25.	Kristie Burt Kristen Lewis (results of HIA members survey)
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument to upset principle that modern award achieved modern awards objective at the time it was made. Substantial arbitral history over allowance. Current clause is clear. Proposed clause illogical and would reduce existing entitlements.	Paras 151, 157 – 191 (transport: 158 – 180) (RDO: 181 – 182). (radial areas: 183 – 191).		
AWU	Reply sub – 10Mar17		Opposes variation. Not necessary to meet modern Award objectives. Issue previously considered in <i>Award modernisation</i> [2009] AIRCFB 345 Re circumstances where allowance is not payable - Should be acknowledged as beneficial condition as allows employers to avoid paying travelling time as time worked. Concerns difficult to understand as operation entirely contingent on employment contract	Paras 42 – 60		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, demonstrated change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.			
MBA	Sub – 12Dec16	25.2	<p>Fares and travel patterns allowance – metropolitan radial areas Seeks variation to clarify type of employees to whom allowance applies, by returning clause to historical position and setting out the entitlement to the allowance, then separately noting the specific circumstances in which it does not apply.</p>	Paras 12 – 12.11, page 34		Peter Glover MBA Witness (Name Redacted) Brendan Holl (CFMEU witness)

CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument to upset principle that modern award achieved modern awards objective at the time that it was made. Current wording, determined by Commission previously to remove ambiguity or error, has resolved issue. No further variation warranted.	Paras 151, 154 – 156		
AWU	Reply sub – 10Mar17		Opposed variation. Not necessary to meet modern Award objective. Issue previously considered in <i>Award modernisation</i> [2009] AIRCFB 345	Paras 42 – 60		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	25.2, 25.3, 25.4	Fares and travel patterns allowance – Metropolitan and Country radial areas Seeks variation to change the operation of the radial areas provisions from 50 km to 75 km.	Paras 13 – 13.4, page 34		Peter Glover MBA Witness (Name Redacted) Brendan Holl (CFMEU witness)
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument, no empirical or probative evidence to justify change.	Para 151, 183, 192 – 198		
AWU	Reply sub – 10Mar17		Opposed variation. Not necessary to meet modern Award objective. Claim conflicts with MBA claim to keep current approach to calculating radial distance. Issue previously considered in <i>Award modernisation</i> [2009] AIRCFB 345.	Paras 42 – 60		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CCF	Sub – 9Dec16	25.8(b)	Fares and travel patterns allowance – Provision of transport Seeks deletion of clause so that employees who are issued with a company vehicle free of charge are excluded from receiving the travel allowance in cl.25.2.	Pages 57 – 59		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument to upset principle that modern award achieved modern awards objective at the time that it was made. No evidence provided to support variation.	Paras, 151, 157 – 180.		
AWU	Reply sub – 10Mar17		Opposed variation. Should be acknowledged as beneficial condition as allows employers to avoid paying travelling time as time worked. Concerns difficult to understand as operation entirely contingent on employment contract and directions issued.	Paras 42 – 60		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		

AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	25.8(b)	Fares and travel patterns allowance – Provision of transport Seeks insertion of “and for no other private use” at end of clause to clarify that provision of a vehicle by the employer to the employee does not entitle the employee to use that vehicle for any other private use.	Paras 14 – 14.8, page 35		Peter Glover
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument to upset principle that modern award achieved modern awards objective at the time it was made. No evidence provided. Substantial arbitral history over allowance and purpose is clear in compensating employees for variable travel costs and travel times.	Paras 151, 158 – 180		
AWU	Reply sub – 10Mar17		Opposes variation. Should be acknowledged as beneficial condition as allows employers to avoid paying travelling time as time worked. Concerns difficult to understand as operation entirely contingent on employment contract and directions issued.	Paras 42 – 60		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CCF	Sub – 9Dec16	New clause 25.10(a)(iii)	Fares and travel patterns allowance – Daily entitlement Seeks insertion of clause to specifically exclude from receiving the travel allowance in cl. 25.2 employees not required to work on a building site as part of their normal duties	Pages 50 – 56		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Fails to provide a sufficient merit based argument to upset principle that modern award achieved modern awards objective at the time that it was made. No evidence to support problem complained of.	Paras 151 – 154		
AWU	Reply sub – 10Mar17		Opposed variation. Not necessary as cl.4.9 confines payment to work performed onsite.	Paras 43, 49, 54		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

4. TOIL and Junior Rates

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
HIA	Sub – 2Dec16	New clause 30.9	Overtime Seeks insertion of the model TOIL term.	Paras 3 – 3.3.21, Attachment B		Kristen Lewis (results of HIA members survey)
CEPU – Elec. Div	Reply sub – 10Mar17		Primary position is TOIL provision is not appropriate due to daily and weekly hire, workers on short time contracts and the project nature of the work in the industry. If inserted, should be at overtime rate.	Paras 9 – 14		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. History of Award flexibility common issue makes clear question of insertion of TOIL term in award a matter to be determined in award stage of proceedings. Should be dismissed based on arbitral history of award, lack of merit from evidence and s.138 of FW Act.	Paras 73, 78 – 115		
AWU	Reply sub – 10Mar17		Re Building Award: Opposes variation. HIA not demonstrated variation is necessary. If TOIL term is to be inserted it should be accrued at relevant overtime rates.	Paras 131 – 133		
AMWU	Reply sub – 17Mar17		Re Building Award: Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, demonstrated change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.	Paras 3.1 – 3.4, 5.1 (Joinery Award)		
MBA	Sub – 12Dec16		New clause 36.17	Overtime Seeks insertion of the model TOIL term.	Paras 4 –4.8, page 30 Paras 24 – 24.2, Page 40	
CEPU – Elec. Div	Reply sub – 10Mar17	Primary position is TOIL provision is not appropriate due to daily and weekly hire, workers on short time contracts and the project nature of the work. If inserted, should be at overtime rate.		Paras 9 – 1.		
CFMEU C&G	Reply sub – 10Mar17	Opposes variation. Project nature of work, short term contracts and daily hire employment are factors militating against inclusion of model TOIL term. Should be dismissed based on arbitral history of award, lack of merit from evidence and s.138 of FW Act.		Paras 73 – 77, 115		
AWU	Reply sub – 10Mar17	Opposes variation. MBA not demonstrated variation is necessary. If TOIL term is to be inserted it should be accrued at relevant overtime rates.		Paras 131 – 133		
HIA	Reply sub – 16Mar17	Generally supports submissions of other employer groups.		Para 1.1.5		
AMWU	Reply sub – 17Mar17	Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.		Para 2		

MBA	Sub – 12Dec16	New clause 19.1A	Minimum wages – Junior employees Seeks insertion of a new clause to provide for minimum rates of pay for junior employees who are not otherwise undertaking training.	Paras 7 – 7.9, page 32		Robert Wilson Peter Glover MBA Witness (Name Redacted) Liam O’Hearn (CFMEU witness) Robert Cameron (CFMEU witness)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation.	Paras 18 – 20		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Lacks merit and party has not met the statutory requirement to justify variation sought. Has not provided any evidence on work value reasons.	Paras 116, 138 – 150		
AWU	Reply sub – 10Mar17		Opposes variation. Evidence not sufficient to show work value reason justifying variation.	Paras 37 - 41		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CCF	Sub – 9Dec16	New clause 19.7(c)	Introduction of junior rates Seeks inclusion of junior rates.	Pages 22 – 38		David Castledine David O’Connor John Hovey Liam O’Hearn (CFMEU witness) Robert Cameron (CFMEU witness)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation.	Paras 18 – 20		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Lacks merit and party has not met the statutory requirement to justify the variation sought. Has not provided any evidence on work value reasons.	Paras 116 – 137, 141 – 150		
AWU	Reply sub – 10Mar17		Opposes variation. Evidence not sufficient to show work value reason justifying variation.	Paras 37 – 41		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

5. Coverage

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
CFMEU C&G	Sub – 9Dec16	4.2	Coverage Proposes variation to ensure primacy of Award applying to employers and employees engaged in the on-site building, engineering and civil construction industry.	Paras 9, 162–172, 198, 214		
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AIG	Reply sub – 14Mar17		Opposes variation. Re-agitation of a previous claim which was properly determined by Award Mod. FB.	Para 29, bullet 1 – 3		
HIA	Reply sub – 16Mar17		Opposes variation. No evidence necessary to meet modern awards objective and that there is any real issue with current provision. If Commission minded to adopt variation, concerned with current drafting as at odds with plain language.	Paras 3 – 3.1.36		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. Insufficient evidence of a merit case; that changes consistent with modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.	Paras 3.5 – 3.6		
MBA	ReplySub – 27Mar17		Opposes claim. Would magnify current problem of conflict of award coverage on site, inconsistent with the Full Bench decision in <i>Coffey</i> , remove flexibilities and increase regulatory and compliance burden.	Paras 4.1–4.12		
CCF	Sub – 9Dec16	4.10(b)(ii)	Coverage – definition of civil construction Seeks deletion of clause to allow the <i>Asphalt Industry Award 2010</i> to regain exclusive coverage of the asphalt industry.	Pages 60 – 67		
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. Rejected by FWC in 2012 review as distinction between Asphalt and Building Awards clear and no cogent reasons advanced. Same applies in present instance.	Paras 22 – 25		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No probative evidence provided to justify change, other than attempting to compare award conditions, and similar application rejected in 2012 review.	Paras 255 –259		
AWU	Reply sub – 10Mar17		Opposes variation. Road making work previously covered in prereform Construction Award. Commission previously considered coverage issue in [2009] AIRCFB 826 and in 2012 review. No evidence provided to support variation.	Paras 112-121		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16		3.1	Definitions and interpretation	Paras 25 – 25.3,	

			Seeks insertion of a new definition of joinery work that allows Award to remain applicable to employees who do off-site joinery work but sometimes work on construction sites to install materials prepared off-site.	page 40		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence provided to justify variation and similar application rejected in 2012 review.	Paras 260 – 263		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
T. Walsh	Sub – 17Mar17	Schedule B	Classifications Seeks variation to insert classification for a Utility Locator, which includes various levels of skill and remuneration.			

6. Other MBA matters

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MBA	Sub – 12Dec16	19.5	Mobile cranes capacity adjustment formula Seeks a technical change to clarify the way in which the formula is calculated and applies, by directing users to cl.13.2.	Paras 8 – 8.5, page 33		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence to justify a variation to award.	Page 241		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	19.6(b)	Piece rates Seeks deletion of cl.19.6(b) which states ‘agreement must made without coercion or duress.’	Paras 9 – 9.8, page 33		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence to justify a variation to award.	Page 242		
AWU	Reply sub – 10Mar17		Opposes variation. Notes that FB previously decided against removal in [2009] AIRCFB 966.	Paras 107 –111		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Opposes variation. Individual Flexibility Arrangements must also include this phrase, and was determined in 2012 that a further requirement necessary to ensure IFAs not entered into before commencement of employment. In line with that decision and due to risk prospective employees may be forced into arrangement, should be made clear arrangement cannot be entered into before commencement.	Paras 5, 20 – 21		
MBA	Sub – 12Dec16	34.1(a) and 34.1(b)(i)	Shiftwork – General building and construction and metal and engineering construction sectors Seeks inclusion of definition of “early morning shift” that covers work starting between 11pm and 4.30am, with corresponding rate being the ordinary time hourly rate plus 50%.	Paras 20 – 20.4, Page 39, Attachment B		Peter Glover
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. Rejected in 2012 review for lack of evidence, should be rejected for same reason.	Para 32		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Primary position is change unnecessary. If variation deemed necessary, starting times of the night shift should be varied.	Para 246 – 249		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

MBA	Sub – 12Dec16	36.7 (and 15.3(b) and 15.3(c))	Overtime Proposes that cl.15.3(b) and 15(c) regarding apprentices and cl.36.7 regarding trainees be consolidated in one clause, by inserting “or apprentice” after “trainee” in cl.36.7.	Paras 21 – 21.4, page 39		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation(s). No evidence in support provided and removal of clause 15.3(b) and 15.3(c) could mislead parties as to what special provisions apply to apprentices regarding overtime and shiftwork.	Para 250		
AWU	Reply sub – 10Mar17		Opposes variation. Clauses operate differently as cl 15.3(b) imposes a restriction on employer that applies generally and cl 15.3(c) and 36.7 require any connection to training obligations.	Paras 123 – 125		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	31.1	Alternative working arrangement Seeks variation to replace requirement of agreement by 60% of affected employees with agreement by majority of affected employees.	Paras 28 – 28.2, page 42		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence to justify variation.	Para 263		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		

7. Dirty Work

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
CCF	Sub – 9Dec16	22.2(h)	Special rates applicable to all sectors – Dirty work Seeks insertion of a definition of ‘unusually dirty work’ to identify situations where allowance is payable. In the alternative, seeks removal of allowance in its entirety.	Pages 43 – 45		
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No evidence provided to support variation.	Para 31		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence provided to justify variation.	Para 240		
AWU	Reply sub – 10Mar17		Opposes variation as would result in significantly reducing the circumstances where dirty work allowance is paid. Proposes new definition.	Paras 126-130		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

8. Tool and Employee Protection Allowance

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
HIA	Sub – 2Dec16	20.1	Tool and employee protection allowance Seeks variation to place positive obligation on employee to provide and maintain tools and protective equipment to receive allowance; and to state that allowance not payable if employer provides all tools and protective boots.	Paras 5 – 5.5.10, Attachment I		Kristen Lewis (results of HIA members survey)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. Variation was rejected in 2012 review as no cogent reasons established.	Paras 29 – 30.		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Provision is clear and unambiguous. Proponent has failed to provide empirical or probative evidence sufficient to warrant variation.	Paras 232 – 239		
AWU	Reply sub – 10Mar17		Opposed. Allowance is part of minimum wages of the identified tradesperson as opposed to an allowance contingent on specific circumstance. Variation previously rejected in 2012 review.	Paras 103 – 106		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, shown change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards obj.	Paras 3.1 – 3.4		

9. Ordinary Hours of Work

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
HIA	Sub – 2Dec16	33.1	Ordinary hours of work Proposes varying the current provision to allow for the implementation of a system for averaging hours; for an employer to choose to fix one day as the RDO or to roster employees on different days; and to allow the banking of RDOs on agreement.	Paras 8 – 8.4.20, Attachment N		Laura Marantz Kristen Lewis (results of HIA members survey)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. Could result in diminution of pay. No probative evidence or cogent reasons provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Previously arbitrated in Part 10A award modernisation and 2012 review proceedings. Variation seeking a reduction in employee entitlements. Requires more substantial evidence than provided.	Para 203 –211		
AWU	Reply sub – 10Mar17		Opposes variation as would alter safety net conditions in building and construction industry. Therefore, substantial probative evidence would need to be provided.	Paras 96-102		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, demonstrated change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.	Paras 3.1 – 3.4		
CFMEU C&G	Sub – 9Dec16	New clause 33.1(f)	Ordinary hours of work Seeks insertion of a new provision so that the daily ordinary hours of work of casual employees are specified.	Paras 9, 191 – 196, 198, 211, 214, page 112		
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AIG	Reply sub – 14Mar17		Opposes claim. AIG has not identified any difficulties with existing provisions.	Para 29, bullet 8		
HIA	Reply sub – 16Mar17		Opposes variation. Would create ambiguity and uncertainty and add cost and regulatory burden.	Paras 3.6 – 3.6.11		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. Not supported by evidence in particular concerning how the clause is perceived to be ambiguous, and by whom, and why the change is needed.	Paras 3.5 – 3.6, 3.7(d)		
MBA	ReplySub – 27Mar17		Opposes claim. Clause does not need further clarification. No confusion in the industry. Cl. 14.5 clearly references ordinary hours for casual employees and refers to cl. 33.1.	Paras 9.1–9.11		

MBA	Sub – 12Dec16	33.1(a)(ii)	Ordinary hours of work – Agreement on alternate RDOs Seeks that ‘nominated industry rostered day off’ be replaced with ‘rostered days off as prescribed in cl.33.1(a)(i)’.	Paras 17 – 17.4, page 37		Cameron Spence
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No probative evidence or cogent reasons provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Not necessary and no evidence in support provided.	Paras 199 – 200.		
AWU	Reply sub – 10Mar17		Opposes variation as would alter safety net conditions in building and construction industry. Therefore, substantial probative evidence would need to be provided.	Paras 96 – 102		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	33.1(a)(iii)	Ordinary hours of work – agreement on banking of RDOs Proposes to replace existing clause with more flexible provision allowing an employer and majority of employees at a site or enterprise an option to agree to accrue RDOs into a bank that can be drawn upon at times agreed with employer.	Paras 18 – 18.4, Page 37		Cameron Spence
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No evidence or cogent reasons for variation provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Not necessary and no evidence in support provided.	Para 201		
AWU	Reply sub – 10Mar17		Opposes variation as would alter safety net conditions in building and construction industry. Therefore, substantial probative evidence would need to be provided.	Paras 96 – 102		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16	33.1(a)(vi)	Ordinary hours of work – Agreement on banking of RDOs Seeks variation to clarify that employees required to work in the defined circumstances on a (substitute) RDO will receive either the ordinary rate of pay with a penalty; or the ordinary rate and the option of either cashing out (substitute) RDO or banking (substitute) RDO to be taken at a later date as agreed.	Paras 19 – 19.5, Page 38		Cameron Spence
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No evidence or cogent reasons for variation provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No evidence in support provided and variation would reduce existing entitlement.	Para 202.		
AWU	Reply sub – 10Mar17		Opposes variation as would alter safety net conditions in building and construction. Therefore, substantial probative evidence would need to be provided.	Paras 96 – 102		
HIA	Reply sub –		Generally supports submissions of other employer groups.	Para 1.1.5		

	16Mar17					
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 16Dec16	33.1(d)	Ordinary hours of work—Work in compressed air Seeks deletion of clause due to withdrawal of Standards and burden on employers.	Paras 6.1; 6.8 – 6.10	Party submits WHS related but subject of claim for different reason	David Solomon Peter Glover Dr Gerard Ayers (CFMEU witness)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No evidence or cogent reasons for variation provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Agrees clause refers to outdated Standard but as intent is to ensure work meets relevant Australian Standard, appropriate to include it in award. No proper evidence provided for removing protection. Clause should be retained but wording altered.	Paras 43 – 44		
AWU	Reply sub – 10Mar17		Agrees with MBA that reference should be changed. Opposes MBA assertion that ‘unreasonable burden’ on employers to pay to have access to safety information.	Paras 82 – 83		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 16Dec16	33.1(e)(i)(iii)	Ordinary hours of work —underground work Submits reference to <u>30</u> ordinary hours of work is a drafting error and seeks variation to 38.	Paras 6.1 – 6.7	Party submits WHS related but subject of claim for different reason	David Solomon Peter Glover Dr Gerard Ayers (CFMEU witness)
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. No evidence or cogent reasons for variation provided.	Para 21		
CFMEU C&G	Reply sub – 10Mar17		Agrees clause badly worded but does not support deletion. Current wording is ambiguous and should be varied to reflect wording in January 2009 exposure draft.	Paras 39 – 42		
AWU	Reply sub – 10Mar17		Opposes variation. Reasonably clear intent is 30 hours for employees who perform duties in cl 33.1(e)(iii). Proposes variation to drafting of cl 33.1(e)(iii).	Paras 74 – 81		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

10. Annual Leave and Leave Loading

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MBA	Sub – 12Dec16	38.1	Annual leave – Leave entitlement Seeks variation to include reference to the definition of continuous service in cl.3.1.	Paras 22 – 22.5, page 40.		Peter Glover
CFMEU C&G	Reply sub – 10Mar17		Does not think variation is necessary but makes no other submissions on issue.	Para 251		
AWU	Reply sub – 10Mar17		Does not oppose variation.	Paras 143 – 144		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
HIA	Sub – 2Dec16	38.2	Annual leave – Payment for annual leave Seeks removal of the Fares and travel patterns allowance (cl. 25) from the calculation of annual leave loading.	Paras 9 – 9.4.11, Attachment P		Laura Marantz
CEPU – Elec. Div	Reply sub – 10Mar17		Opposes variation. Rejected in 2012 review. Without any evidence or cogent reasons should be rejected.	Para 33.		
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. Would reduce safety net applying to employees and no probative evidence provided to support a departure from decision made in 2012 review.	Para 252 – 254.		
AWU	Reply sub – 10Mar17		Variation opposed. Rejected in 2012 review. No evidence provided to support claim. Administrative burden insufficient given sophisticated payroll systems.	Paras 135 – 138		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Supports variation. Has made a merit case, demonstrated change meets modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.	Paras 3.1 – 3.4		

11. AWU Claim

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
AWU	Sub – 2Dec16	Schedule B.2.2(d)	Classifications Seeks variation to clarify that employees covered by Award are classified at CW2 level when engaged to perform testing work on soil, concrete and aggregate.	Pages 1 – 18		Jeff Buhler Anthony Callinan Geoff Muller
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
CFMEU C&G	Reply sub – 10Mar17		Supports variation.	Para 4		
HIA	Reply sub – 16Mar17		Opposes variation. Would expand coverage of Award and seek to ascribe a rate of pay to those engaged in that type of work. No evidence in support.	Paras 5 – 5.1.6		
AMWU	Reply sub – 17Mar17		[See below amended submission] Supports in principle inclusion in Award of workers who are in and experience the building industry work environment, but submits that work of non-destructive testers is part of Technical Field in B.1.13. Proposes variation to ensure work type covered under Technical Field by amending definitions of CW/ECW2 and CW/ECW3 to create new classifications: General Technician Level I and General Technical Level II.	Paras 7, 23 – 29, Attachment A.		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. In particular, no cogent reasons as to why Commission should depart from FB decision [2013] FWCFB 2894 ; failed to address issue that while workers may perform work on construction site, employers business as a whole does not carry out on-site work, therefore employers not in on site building, engineering and construction industry; provided narrow evidence in support which cannot be relied upon to substantiate industry wide circumstances necessitating change.	Paras 3.8 – 3.11		
MBA	ReplySub – 27Mar17		Opposes claim. Would create greater uncertainty for employers and employees and may result in conflict in award coverage and more disputes. Would go against the decision of the FWCFB in <i>Coffey</i> : [2013] FWCFB 2894 .	Paras 11.5–11.12		
AMWU	ReplySub – amended - 24Mar17	Amended previous submission. Supports proposal in principle, but submits work of testers of soil, concrete and aggregate is part of “Technical Field” of work, defined in B.1.13. Proposes to add new classification of “General Technician”, provides draft determination.	Paras 25-30			

12. AMWU Claim

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
AMWU	Sub – 9Dec16	43.2(b)	Forepersons and supervisors – Wages Seeks changes to the restrictions on penalties and other allowances to align with original restriction in pre-reform awards; and insertion of a note to clarify the interaction with cl.43.5 and to confirm the application of the entitlements.	Pages 1 – 9		
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
CFMEU C&G	Reply sub – 10Mar17		Supports variation.	Para 4		
AIG	Reply sub – 14Mar17		Opposes variation. Based on unsupported assumptions.	Para 7 – 21		
HIA	Reply sub – 16Mar17		Opposes variation. Would establish a new entitlement and substantive evidence in support not provided.	Paras 4 – 4.1.6		
MBA	ReplySub – 27Mar17		Does not oppose draft determination proposed by AMWU.	Paras 11.2–11.4		

13. National Training Wage

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MBA	Sub – 12Dec16	28.1 and Schedule C	<p>National training wage Supports proposal to delete the schedule from awards and incorporate terms of Schedule E of <i>Miscellaneous Award 2010</i>.</p> <p>Not included in Memorandum – 22 August 2016.</p> <p>Subject to AM2016/17—National Training Wage</p>	Paras 15 – 15.3, page 35	<p>Not included in Memorandum – 22 August 2016.</p> <p>Subject to AM2016/17—National Training Wage</p> <p>Submission notes that ‘this...claim is subject of proceedings before a separate Full Bench’ in AM2016/17—National Training Wage common issue. No submission filed in AM2016/17 matter.</p>	Peter Glover
CFMEU C&G	Reply sub – 10Mar17		Opposes variation. No empirical or probative evidence provided.	Paras 230 – 231		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CFMEU C&G	Sub – 9Dec16	28.2	<p>National Training Wage Seeks variation to provide for competency based wage progression with default time served arrangement.</p>	Paras 9, 183 - 190, 199, 210, 214	<p>Not included in Memorandum – 22 August 2016.</p> <p>Status after Mention of 1 September 2016 slightly unclear. As matter relates to National Training Wage, subject to AM2016/17—National Training Wage.</p>	
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed	Para 2		
AIG	Reply sub – 14Mar17		Opposes variation. No evidence provided to support claim.	Para 29, bullet 7		

HIA	Reply sub – 16Mar17		Opposes variation. No evidence brought regarding civil sector. Does not oppose principle of corresponding progression, but proponent does not address relative complexity in introducing in civil construction traineeships.	Paras 3.5 – 3.5.4		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	ReplySub – 27Mar17		Does not agree. Supports the Commission’s proposal in the National Training Wage Statement [2016] FWC 4495 . Risks associated with awarding competencies in premature circumstances.	Paras 8.1–8.8		
AIG	Sub – 2Dec16	28.3(a)	National Training Wage Seeks variation to replace “Skill level” in table with “Wage level”, for clarity and consistency with cl.C.5.	Paras 2 – 6	Not included in Memorandum – 22 August 2016 . Status after Mention of 1 September 2016 slightly unclear. As matter relates to National Training Wage, subject to AM2016/17—National Training Wage .	
CFMEU C&G	Sub – 10Mar17		Supports variation.	Para 229		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div. except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

14. Living Away from Home and other CFMEU Claims

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
CFMEU C&G	Sub – 9Dec16	24	<p>Living away from home—distant work Proposes clause to make entitlements clearer; ensure that allowances payable reflect current costs of accommodation and meals; better reflect modern means of transport; and improved rest and recreation entitlements</p> <ul style="list-style-type: none"> • Precluding employers putting undue pressure on employees to provide false address (Cl. 24.2) • Increase amount of the allowance (Cl. 24.3(a)(i)) • Provide specific meal allowances applicable where employer only provides accommodation (cl.24.3(a)) • Update minimum accommodation standards to reflect modern standards and communication methods (cl. 24.3(b)) • Provide employees required to live in construction camp at remote location with their own specific room for duration of time spent living away from home. (new cl. 24.3(c)) • Increase weekly and daily camp allowance where free messing not provided and clarify operation (cl.24.5) • Clarify transport to be from employee’s usual place of residence and remove reference to second class rail (cl. 24.7(a)) • Change entitlement regarding rest and recreation leave (clause 24.7(f)) 	Paras 8, 13-160, 200-202, 206, 208 – 210, 213 -214, and 221	<p>Referred to in submission as the “living away from home” common claim with respect to Building, Joinery and Mobile Crane Awards.</p> <p>Submits proposed clause is the same as proposed for the Building Award, except that it does not include references to construction camps or the camping allowance due to the limited circumstances in which employees under Award would be required to live away from home on distant work [para 55].</p> <p>Party relies on evidence presented in respect of Building Award [see paras 159 – 160].</p>	<p>Jeffrey Allan Sharp Frank O’Grady David Kelly Graham Pallot Josh Burling Danny Callaghan Roland Cummins Paul Ferreira Dean Reilly Kris Woodward David Kirner</p>
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AWU	Reply sub – 10Mar17		Supports proposal and states that if adopted then MBA and CCF issues will fall away.	Para 95		
AIG	Reply sub – 14Mar17		Opposes variation. No evidence provided to support claims.	Para 22-26		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups as residential construction industry largely unaffected by provision.	Para 3.7 – 3.7.29		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		

ABI & NSWBC	Reply sub – 20Mar17		<p>Re Building Award - opposes variation. Insufficient evidence of a merit case; that changes consistent with modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective.</p> <p>Re undue influence provision re employee addresses – evidence provided of the prevalence of this practice cannot be relied upon to demonstrate change necessary to achieve modern awards objective. Also unnecessary because issue dealt with by s.344 FW Act.</p> <p>Re increase in daily and weekly allowances – insufficient evidence that current amounts are not providing a fair and relevant minimum safety net. Also no merit case that change needed and that if changed, will meet modern awards obj.</p>	Paras 3.5 – 3.6, 3.7(e)		
			<p>Re Joinery Award - opposes variation. In particular, significantly alters current entitlement when an employee is engaged on distant work; and evidence filed does not specifically deal with operation of clause 24.5(a) as distinct from clauses in Building and Plumbing awards and demonstrate that clause is not providing a fair and relevant minimum safety net.</p>	Paras 3.6, 3.7(e), 5.2 – 5.4		
			<p>Re Mobile Crane Award - opposes variation. Significantly alters current entitlement, in particular extends operation of clause from employee required to be away from home overnight to an employee engaged on distant work. Evidence does not deal with operation of clause 14.3(e) in mobile cranes industry or demonstrate that it is not providing a fair and relevant minimum safety net.</p>	Paras 3.6, 3.7(e), 4 – 4.3		
MBA	ReplySub – 27Mar17		<p>Oppose claim. Significant substantive claim and creates additional obligations on employers, not necessary to achieve the modern awards objective, would adversely affect productivity.</p>	Paras 10.1–10.27		
MBA	Sub – 12Dec16	24.3(a)(ii)	<p>Living away from—distant work – Entitlement Seeks variation to clarify the definition of “board and lodging”.</p>	Paras 10 – 10.10, page 33		Peter Glover
CFMEU C&G	Reply sub– 10Mar17		<p>Party has proposed own changes to clause and relies on its submissions and evidence to support more comprehensive award terms than variation.</p>	Para 243 – 244		
AWU	Reply sub – 10Mar17		<p>Opposes variation as submission does not address why necessary.</p>	Paras 93 – 95		
HIA	Reply sub – 16Mar17		<p>Generally supports submissions of other employer groups.</p>	Para 1.1.5		

AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
CCF	Sub – 9Dec16	24.3(a)(i)	Living away from home—distant work – Entitlement Seeks variation to specify the value of the meals included in the allowance to provide clarity about the entitlement.	Pages 46 – 49		
CFMEU C&G	Reply sub – 10Mar17		Party has proposed own changes to clause and relies on its submissions and evidence to support more comprehensive award terms than variation.	Para 243 – 244		
AWU	Reply sub – 10Mar17		Opposes variation as submission does not address why necessary.	Paras 93 – 95		
HIA	Reply sub – 16Mar17		Generally supports submissions of other employer groups.	Para 1.1.5		
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
MBA	Sub – 12Dec16		24.7(d)	Living away from—distant work – Travelling expenses – Daily fares allowance Seeks variation so that cl.25 would only have application to those residing other than on site or adjacent to it <u>or</u> who are not provided with transport.	Paras 11 – 11.12, page 34	
CFMEU C&G	Reply sub – 10Mar17	Opposes variation. No empirical or probative evidence provide to justify variation.		Para 245		
AWU	Reply sub – 10Mar17	Opposes variation as submission does not address why necessary.		Paras 93 – 95		
HIA	Reply sub – 16Mar17	Generally supports submissions of other employer groups.		Para 1.1.5		
AMWU	Reply sub – 17Mar17	Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.		Para 2		
CFMEU C&G	Sub – 9Dec16	19.3(a) and (b)		Minimum wages – daily hire employees and weekly hire employees Propose variation to include all of the relevant allowances in the hourly rate calculations to reflect that all tradespersons and labourers can be engaged on a daily hire or weekly hire basis.	Paras 9, 173-175, 198, 214	
CEPU – Elec. Div	Reply sub – 10Mar17		Not opposed.	Para 2		
AIG	Reply sub – 14Mar17		Opposes variation. Not supported by any valid reason or evidence.	Para 29, bullet 4		
HIA	Reply sub – 16Mar17		Agrees that where appropriate, referencing allowances payable for all-purposes within minimum wages clause of Award would make Award simpler and easier to understand. However, no evidence or material in support of the necessity of the variation provided. While seems appropriate for the refractory bricklaying allowances to be referenced, it is not clear	Paras 3.2 – 3.2.6		

			that air-conditioning and refrigeration industry allowance and electricians allowance allowances payable to daily hire employees for all purposes of Award.			
AMWU	Reply sub – 17Mar17		Supports submissions and submissions in reply of CFMEU C&G, AWU and CEPU – Elec. Div., except to extent of any inconsistency with AMWU’s reply submissions.	Para 2		
ABI & NSWBC	Reply sub – 20Mar17		Opposes variation. Insufficient evidence of a merit case; that changes consistent with modern awards objective and if varied, Award will only include terms necessary to achieve modern awards objective. Does not address how clauses are ambiguous and how they have been interpreted such that they do not provide a fair and relevant minimum safety net.	Paras 3.5 – 3.7(a)		
MBA	ReplySub – 27Mar17		Opposes claims. They should be rejected as they are unnecessary, would cause confusion and are an unsubstantiated increase to the safety net without justification.	Paras 5.1–5.6		

15. Other Plumbing Award

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MPG	Sub – 20Dec16	32	Penalty rates Proposes clause to replace existing clause, to make more user friendly.	Paras 42 – 49	Submits variation supported by CEPU/ PTEU [para 48]	
ABI & NSWBC	Reply sub – 20Mar17		Broadly supports variation but does not propose to lead any evidence in support of variation.	Paras 6.1 – 6.3		
MPG	Sub – 20Dec16	33	Overtime Seeks insertion of words “Each day’s overtime stands alone” as a preamble to clause.	Paras 50 – 55	Submits variation supported by CEPU/ PTEU [para 54]	
ABI & NSWBC	Reply sub – 20Mar17		Broadly supports variation but does not propose to lead any evidence in support of variation.	Paras 6.1 – 6.3		

16. **Payment of Wages – consideration deferred until Payment of Wages Full Bench has issued its decision, see Corr-22/3/17.**

PARTY	DOCUMENT	CLAUSE	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES	Witnesses
MBA	Sub – 12Dec16	31	Payment of wages Subject to outcome in AM2016/8, seeks insertion of provisional model term (with amendments per submissions in AM2016/8) and deletion of remaining substantive provision.	Paras 16 – 16.7, Page 36		Cameron Spence
CCF	Sub – 9Dec16	31.3	Payment of wages Seeks variation to allow for fortnightly payment of wages. Not included in Memorandum – 22 August 2016 . See CCF’s correspondence – 31 August 2016 and transcript - 1 September 2016 at PN35 – PN41.	Pages 39 – 42		
HIA	Sub – 2Dec16	31.3	Payment of wages Seeks variation to allow payment of wages on weekly or fortnightly basis and, if by mutual agreement, on a monthly basis.	Paras 7 – 7.4.20		Kristen Lewis (results of HIA members survey)
ABI & NSWBC	Sub – 20Sep16 Corr and party's draft determination – 19July16	26.3	Payment of wages Submission made in 2016/8 seeks insertion of new clause to replace cl.26.3 in relation to late payment of wages.	Paras 8 – 12.2		