

SUMMARY OF SUBMISSIONS

The summary of submissions has been further revised to include an update on the status of matters, as reflected in the Report to the Full Bench of [25 August 2016](#).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1	AWU	Sub – 17/04/16	5.2	–	Facilitative provisions Include reference to clauses 8.4(c) and 9.2(c).	Page 1, [4]	AGREED - Clause to be varied to include references to clauses 8.4(c) and 9.2(c), see Report to Full Bench and see Transcript [PN335-PN337] .
	BusSA	Reply sub – 06/05/16			Agrees with AWU.	Page 14, [7.1]	
2	AWU	Sub – 17/04/16	6.4	10.3	Part-time employees Insert a new sub-clause: “ <i>All time worked in excess of the agreed hours will be overtime and paid for at the appropriate overtime rate in clause 13 – Overtime and penalty rates.</i> ”	Pages 1-2, [6]-[7]	OUTSTANDING - Parties have not reached an agreed position regarding this claim, see Report to Full Bench 25Aug16
	BusSA	Reply sub – 06/05/16			Disagrees with AWU as it amounts to a substantial change. Submits matter being dealt with as part of AM2014/196 and AM2014/197 .	Page 14, [7.2], [7.10]	
	ABI & NSWBC	Reply sub – 06/05/16			Opposes proposed changed. Clause not in current award. May result in increased costs for employers.	Page 9, [16.2]	
3	ABI & NSWBC	Sub – 15/04/16	6.4(b)	10.3(b)	Part-time employees Words “at least” should be removed.	Page 17, [16.1]	AGREED - Remove the words “at least”, see Report to Full Bench and see
	AWU	Sub in reply – 05/05/16			Agrees with ABI that words “at least” should be removed.	Page 1, [3]	

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	BusSA	Reply sub – 06/05/16			Agrees with ABI.	Page 14, [7.4]	Transcript [PN340-PN342].
	AFEI	Reply sub – 06/05/16			Supports ABI’s proposed amendment.	Page 4, [33]	
4	AFEI	Sub – 15/04/16	6.4(b)	10.3(b)	Part-time employees By removing “regular part-time employee” may require agreement on patterns on work for all part-time employees rather than just regular part-time employees.	Page 4, [24]	OUTSTANDING - Parties have not reached an agreed position regarding this claim, see Report to Full Bench and see Transcript [PN343-PN345]. AFEI submits insertion of term. AWU finds it unnecessary. See Report to Full Bench 25Aug16
	BusSA	Reply sub – 06/05/16			Agrees with AFEI.	Page 14, [7.3]	
	AWU	Sub in reply – 05/05/16			Disagrees with AFEI. No basis for distinction between “regular part-time employee” and “part time employee” given clause 10.1(a)(ii) only refers to the category of “part-time” employee.	Page 2, [7]	
5	AWU	Sub – 17/04/16 Sub-31/05/16	6.4(c)	10.3(c)	Part-time employees As there are all-purpose allowances, reference to the word “minimum” should be replaced with “ordinary”.	Page 1, [5]	AGREED - No opposition expressed in relation to AWU proposal. See Report to Full Bench 25Aug16
	BusSA	Reply sub – 06/05/16 Sub-03/06/16			Agrees with AWU.	Page 14, [7.5]	
	ABI & NSWBC	Reply sub – 06/05/16			AWU’s proposal likely to cause confusion as clause 10 does not include	Page 9, [16.1]	

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					a reference to ordinary hourly rates.		
	AFEI	Reply sub – 06/05/16			Opposes AWU and submits proposal is a substantive change to current award.	Page 4, [35]	
6	AWU	Sub – 17/04/16	6.5(c)	10.4(b)	Casual employees – Casual loading Casual employees are entitled to payment of the loading for all hours worked including overtime. Suggests removing the reference to “ordinary hours” and amending clause to read “ <i>For each hour worked...</i> ”	Page 2, [8]	AGREED - Clause 6.5(c)(i) to be amended by removing reference to “ordinary hour” and amending clause to read “for each hour worked...”, see Report to Full Bench and see Transcript [PN354-PN356]
7	AWU	Sub – 17/04/16	8.4(a)	21.3(a)	Ordinary hours of work and rostering – Rostered days off Wording is vague and could be interpreted to allow an employer to vary full-time ordinary hours without restriction if an RDO system applies.	Page 2, [9]	WITHDRAWN - See Report to Full Bench 25Aug16
8	BusSA	Sub – 15/04/16	8.4(c), (e)	21.3(b)(i), 21.3(c)	Ordinary hours of work and rostering – Rostered days off Substitute “gazetted public holiday” to “a public holiday according to the National Employment Standards”.	Page 27, [7.1.1]	AGREED - Clause to be amended by substituting “gazetted public holidays” to “a public holiday according to the National Employment
	AWU	Sub in reply – 05/05/16			Not opposed to suggested amendment by BusSA.	Page 3, [10]	

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							Standards”, see Report to Full Bench and see Transcript [PN366-PN368]
9	AWU	Sub – 17/04/16	9.1(b)	23.1(b)	<p>Breaks – Meal breaks Penalty payment should be specified as 150% of the “applicable rate of pay” instead of the “ordinary hourly rate”.</p> <p>Opposes AWU and submits proposal is a departure from current award.</p>	Page 2, [10]	<p>WITHDRAWN - AWU have withdrawn this claim, see Transcript [PN369-PN370] and Report to Full Bench. (NOTE: Term “applicable rate of pay” was defined & applied in [2015] FWCFB 7236).</p>
	AFEI	Reply sub – 06/05/16				Page 4, [36]	
10	AWU	Sub – 17/04/16	9.2	23.2	<p>Breaks – Paid breaks Title should be amended to “Overtime breaks” to better reflect the entitlements prescribed.</p> <p>Agrees with AWU.</p>	Page 2, [11]	<p>AGREED - Clause title to be amended to “Overtime breaks”, see Report to Full Bench and see Transcript [PN371-PN372].</p>
	BusSA	Reply sub – 06/05/16				Page 14, [7.6]	
11	AWU	Sub – 17/04/16	9.3	23.3	<p>Breaks – Rest breaks To cater for situations where employee is working outside the span of ordinary hours due to water restrictions, propose the following amendment: “<i>Employees will be allowed a paid rest break of 10</i></p>	Page 2, [12]	<p>OUTSTANDING - Parties will consider alternative position put by the AWU in conference, see Report to Full Bench</p>

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					<i>minutes each morning or shift</i> .		and see Transcript [PN373-PN377]
	BusSA	Reply sub – 06/05/16			Disagrees with AWU as shifts do not exist in award. If AWU continue to press submission, the term “shift” would have to be defined.	Pages 14, 15, [7.7], [7.11]	AWU proposed new wording, see
	ABI & NSWBC	Reply sub – 06/05/16			Opposes AWU as current clause only provides for a rest break during shifts which occur in part during the mornings and submits proposal should be considered as a substantive variation.	Page 9, [16.3]	Transcript-09/08/16 [PN271] . Parties to report back. See Report to Full Bench 25Aug16
12	ABI & NSWBC	Sub – 15/04/16	10.2(b)	14.2	Minimum wages – Juniors <i>Parties are asked whether the second part of clause 10.2(b) should be deleted. Rounding to the nearest quarter of one cent is inconsistent with other awards and may cause unnecessary complexity. Support the deletion of the second part of clause 10.2(b).</i>	Page 17, [16.2]	AGREED - Parties agree that the second part of clause 10.2(b) should be deleted as parties consider rounding to the nearest quarter of a cent is unnecessarily complex, see Report to Full Bench and
	AWU	Sub in reply – 05/05/16			Agrees to adoption of consistent rounding rules.	Page 1, [4]	see Transcript [PN377-PN380] .
	BusSA	Sub – 15/04/16			Agrees clause is too complex and suggests replacing the words “be calculated to the nearest quarter of one cent” with “ <i>be calculated to the nearest cent</i> ”.	Pages 27-8, [7.2.1]	
	AWU	Sub – 17/04/16			Agrees consistent rounding rules should apply and the clause be deleted.	Page 2, [13]	
	AWU	Sub in reply – 05/05/16			Agrees with BusSA.	Page 3, [13]	

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	AFEI	Sub – 15/04/16			Does not oppose the rounding rules for junior wages being deleted.	Page 4, [25]	
13	BusSA	Sub – 15/04/16	10.5(e)(iii)	14.5(d)	Minimum wages – Apprentice conditions of employment – Reduction of payment Unclear application of this section regarding government assistance. Employer may face underpayment of wages claim if payment is reduced for an apprentice whose application for government assistance is rejected.	Page 27, [7.1.2]	WITHDRAWN - Parties understand this claim has been withdrawn, see Transcript PN380-PN384] and Report to Full Bench
	AWU	Sub in reply – 05/05/16			No significant issues with current wording to justify amendments. If government rejects claim, employer may become liable for the payment.	Page 3, [11]	
14	BusSA	Sub – 15/04/16	10.5(h)	14.5(e)	Minimum wages – Apprentice conditions of employment “Unsatisfactory performance” can be constructed too broadly and suggests the following definition: “ <i>Reimbursement under clause 10.5(f) is not payable where the RTO considers the apprentice’s progress unsatisfactory</i> ”.	Page 27, [7.1.3]	WITHDRAWN - Parties understand this claim has been withdrawn, see Transcript PN380-PN384] and Report to Full Bench
	AWU	Sub in reply – 05/05/16			The insertion of an additional assessment process by the RTO may be impractical. We are not aware of any practical issues arising with the current provision .	Page 3, [12]	

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15	AWU	Sub – 17/04/16	10.6(a)	19.1	Minimum wages – Payment of wages Words “actual ordinary” should be deleted as they arguably remove the payment obligation or overtime hours.	Page 3, [14]	AGREED - Clause to be varied by deleting the words “according to the actual ordinary hours worked each week or fortnight”, see Report to Full Bench and Transcript [PN384-PN388] .
16	ABI & NSWBC	Sub – 15/04/16	11.3(a)(ii)	15.1(b)	Wage related allowances – Leading hand <i>Parties are asked to comment on whether the wording in clause 11.3(a)(ii) means the leading hands allowance is payable for all purposes. The corresponding provision in AP782197CRV - Gardening, Nurseries and Greenkeeping (Northern Territory) Award 1998 provides that this allowance is payable for all purposes. The allowance is not expressed as an all-purpose allowance in current award, should not be expressed as one in ED.</i>	Page 17, [16.4]	OUTSTANDING - The AWU submit the Leading Hand allowance is payable for all purposes. Employer parties do not agree, see Report to Full Bench and see Transcript [PN388-PN392] . Item remains in dispute. See Report to Full Bench 25Aug16
	AFEI	Sub – 15/04/16			Allowance is paid as an additional amount, rather than an amount that becomes inclusive in an employee’s wage such as an all-purpose allowance.	Page 4, [26]	
	AWU	Sub in reply – 05/05/16			Disagree with ABI and AFEI and states the intention of the words is found in	Page 2, [6]	

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					sub-clause (ii): <i>“These allowances are in addition to any other wage specified for the employee”.</i>		
	BusSA	Sub – 15/04/16			Allowance is payable for all purposes and is stated to be one in clause 11.2 and notes consistency with <i>Horticulture Award 2010</i> and <i>Manufacturing and Associated Industries and Occupations Award 2010</i> .	Page 28, [7.2.2]	
	AWU	Sub – 17/04/16			Allowance to be paid for all-purposes.	Page 3, [15]	
	AWU	Sub in reply – 05/05/16			Allowance to be paid for all-purposes.	Page 3, [14]	
	AFEI	Reply sub – 06/05/16			Leading hand allowance is not an all-purpose allowance.	Page 4, [37]	
17	ABI & NSWBC	Sub – 15/04/16	11.4(e)(iii)	15.5	Expense related allowances – Travel and accommodation <i>Parties are asked to clarify the rate of pay for ‘travel time’ in clause 11.4(e)(iii)</i> Rate of pay would be single time rates consistent with other modern awards.	Page 17, [16.3]	AGREED - Parties agree that the ordinary rate of pay is applicable, see Report to Full Bench and see Transcript [PN392-PN395] .
	AWU	Sub in reply – 05/05/16			Travelling time would be paid at ordinary rates.		
	BusSA	Sub – 15/04/16			Rate of pay should be the employee’s ordinary rate. No payment should be made for travelling between home and the depot or vice versa.	Page 29, [7.2.3]	
	AWU	Sub – 17/04/16			Travelling time would be paid at	Page 3, [16]	

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					ordinary rates as per clause 11.4(b).		
	AWU	Sub in reply – 05/05/16			Agrees with BusSA.	Page 3, [15]	
18	AWU	Sub – 17/04/16	13.1	22.1	Overtime and penalty rates – Payment for working overtime The beginning of this clause should state: “ <i>All time worked in excess of 38 <u>ordinary</u> hours in a week...</i> ”	Page 3, [17]	AGREED - Clause to be varied so beginning states “all time worked in excess of 38 ordinary hours in a week”, see Report to Full Bench and Transcript [PN395-PN399]
19	AWU	Sub – 17/04/16	13.3(a)	22.2(a)	Overtime and penalty rates – Rest period after overtime duty Clause should refer to “ <i>10 consecutive hours off duty between completing the overtime and commencing ordinary hours</i> ”.	Page 3, [18]	OUTSTANDING - Parties have not reached an agreed position regarding this claim, see Report to Full Bench and Transcript [PN400-402]
	BusSA	Reply sub – 06/05/16			Agrees with AWU but suggests proposed change would need to apply for both 13.3(a) and 13.3(b).	Pages 14, 15 [7.8], [7.12]	Parties encouraged to have further discussions to see if consent is possible. See Report to Full Bench 25Aug16.
	AFEI	Reply sub – 06/05/16			AFEI does not agree. Proposal unnecessary.	Page 4, [38]	
	BusSA	Corr-16/08/16			No longer oppose AWU’s claim.		

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20	AWU	Sub – 17/04/16	13.3(b)	22.2(b)	Overtime and penalty rates – Rest period after overtime duty Casual employees should be excluded from this provision given its importance for fatigue management.	Page 3, [19]	REFERRED - This issue is being considered in AM2014/196 and AM2014/197 and see Transcript [PN402-PN404] Not pursued as part of Part-time and Casual Employment Full Bench proceedings.
	AFEI	Reply sub – 06/05/16			Considers proposal to be a substantial departure from current award and opposes proposed amendment.	Page 4, [39]	
21	AWU	Sub – 17/04/16	14.5(b)	24.5(b)	Annual leave – Payment for annual leave Clause should be amended to read “ <i>an additional loading of 17.5% of the <u>ordinary</u> hourly rate <u>per hour of leave taken.</u>”</i>	Page 3, [20]	WITHDRAWN - Parties understand this claim has been withdrawn, see Transcript [PN404-PN405] and Report to Full Bench
	BusSA	Reply sub – 06/05/16			Agrees with AWU.	Page 14, [7.9]	
	ABI & NSWBC	Reply sub – 06/05/16			Change unnecessary and may alter the payment rule in current award.	Page 9, [16.4]	
	AFEI	Reply sub – 06/05/16			Amendment is not necessary.	Page 5, [40]	
22	BusSA	Sub – 02/03/15	Schedule A	Schedule B	Classification Structure Term “occupational health and safety” does not reflect current legislation and should be amended.	Page 6	AGREED - Clause to be amended by replacing references to “occupational

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					May seek to replace the wording in the current award with the term 'work health and safety'.		health and safety" with "work health and safety", see Report to Full Bench and see Transcript [PN406-PN416]
23	AWU	Sub – 17/04/16	Schedule B.3	–	Summary of Hourly Rates of Pay – Casual adult employees Casual overtime rates should be included in the exposure draft as this is an area of common confusion.	Page 3, [21]	OUTSTANDING - AWU will expand on its submission and circulate to other parties for consideration, see Report to Full Bench and see Transcript [PN417-PN432] AWU filed draft table of casual overtime rates. This should be considered in light of any submissions filed by AIG outlining position on adopting "ordinary hourly rate" as opposed to "minimum hourly rate" in tables outlining overtime

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							rates for casual employees. See Report to Full Bench 25Aug16

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial & New South Wales Business Chamber
AFEI	Australian Federation of Employers and Industries
AWU	The Australian Workers' Union
BusSA	Business SA