

REVISED 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](#) and revised again on 10 October 2017.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	BusSA	Sub-02/03/15	3	4.2	Coverage Undergoing further consultation with members regarding coverage clause in respect of inclusion of businesses that hire plants.	p.7	WITHDRAWN at conference – Report to Full Bench 3 June 2016
2.	BusSA	Sub-15/04/16	3.2		Coverage Definition in coverage clause should be removed to avoid any unintentional changes to one and not the other.	10.1.1	AGREED – ED to be amended, definition in clause 3.2 and definition schedule to direct readers to clause – Report to Full Bench 3 June 2016
	AWU	Reply sub-5/05/16			Simplest approach to drafting exclusions and definitions is to use words to the effect of those appearing in cl 3.3(a).	Para 11	
3.	BusSA	Sub-15/04/16	3.3		<i>In response to question: parties are asked whether coverage in clause 3.3 should be expressed by reference to the coverage of the Wine, Silviculture and Sugar Awards</i> Party has no objection to the use of definitions of the Wine, Sugar and Silviculture industries being based on relevant industry awards.	10.2.1	AGREED - Parties agree with proposition put by FWC – Report to Full Bench 3 June 2016
	AFEI	Sub-15/04/16			Clause should include wording consistent with clause 3.3(a) and would refer to ‘wine industry’ as defined in the ‘ <i>Wine Industry Award 2016</i> ’.	Para 29	

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	AWU	Sub-17/04/16			It would be simpler if the exclusions in (b), (c) and (d) were expressed by reference to the Wine, Silviculture and Sugar Awards.	Para 4	
	AWU	Reply sub-5/05/16			Re: AFEI submissions, agree that the exclusions should be linked to the coverage of the relevant awards. Agrees with BusSA submissions.	Paras 9 and 17	
4.	BusSA	Sub-15/04/16	5.2		Facilitative provisions Additional clauses should be added to table in facilitative provisions – clause 6.5(d) and F.6.1.	Para 10.1.3	AGREED – Clauses 6.5(d), F.6.1 and 9.2(c) to be added to facilitative provision – Report to Full Bench 3 June 2016
	AWU	Sub-17/04/16			Clause 9.2(c) can be added as a facilitative provision.	Para 5	
	AWU	Reply sub-5/05/16			Not opposed to additional clauses.	Para 13	
	BusSA	Reply sub-6/06/16			Agree with AWU submissions dated 17/04/16	Para 10.1	
5.	AWU	Sub-17/04/16	6.4		Part-time employment Submits new clause should be inserted at 6.4 as there's insufficient distinction between part-time and casual employment unless a part-time employee receives overtime for working in excess of their regular hours.	Para 6	OUTSTANDING - To be revisited after the Part-time and Casuals Full Bench in AM2014/196 and AM2014/197 is determined – see at Hearing 6 June 2016 [PN702-PN703]
	ABI&NS WBC	Reply sub-6/06/16			Opposes proposal of AWU. Could be significant cost to employers and not a feature of current award.	Para 18	

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6.	AFEI	Sub-15/04/16	6.4(i)(ii)	10.3(i)(ii)	Part-time employment—rosters Clause involves a substantive change from current award clause and imposes additional burden on employer.	Para 27-28	AGREED – see transcript of Hearing 6 June 2016 at PN703 – PN704
	BusSA	Sub-02/03/15			Proposes that sub-clause is varied to remove the required 48 hours' notice in emergency situations.	p.7	
	AWU	Reply sub-5/05/16			Accepts that consultation provision not relevant where there is mutual agreement to alter rostered hours.	Para 8	
	BusSA	Reply sub-6/06/16			Agree with AFEI submission.	Para 10.3	
7.	BusSA	Sub-15/04/16	6.5(a)		Casual employees Words 'by the hour' should be re-inserted into subclause (a) after words 'engaged and paid'.	Para 10.1.4	AGREED – clause to be amended by inserting "by the hour" – Report to Full Bench 3 June 2016
	AWU	Reply sub-5/05/16			Disagrees with proposal – has potential to create confusion	Para 14	
8.	AWU	Sub-17/04/16	6.5(c)(i)		Casual employees – casual loading Under clause 10.4(b) of the MA casual loading is paid on all hours including overtime. Cl should be amended to read "for each hour worked, a casual employee must be paid at least..."	Para 8	AGREED – clause to be amended per AWU submission – Report to Full Bench 3 June 2016

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9.	AWU	Reply sub-5/05/16 Report to Full Bench 25 August 2016	Proposed new clause 6.5(f)		Casual employees – ordinary hours of work Raise concern about lack of clarity regarding ordinary hours of work for casual employees and whether s147 of Act is satisfied. Proposes new subclause 6.5(f) to read “A casual employee’s ordinary hours of work are the lesser of 38 hours per week or the hours required to be worked by the employer”.	Paras 4-6	OUTSTANDING - To be revisited after the Part-time and Casuals Full Bench in AM2014/196 and AM2014/197 is determined – see Hearing 6 June 2016 [PN715-PN716] AFEI & BSA - oppose insertion of new clause. See See Report to Full Bench 25 August 2016 PN 3.
10.	FWO	Corro-02/03/15	9	24.2	Overtime entitlement for casuals Received enquires as to whether casual employees are entitled to overtime rates. Clause 24.2(f) provides all time worked outside ordinary hours is overtime. May not be clear whether overtime rates can apply to casuals.	Item 28, p.8	REFERRED – see Report to the Full Bench 3 June 2016 at [3] - Part-time and Casuals Full Bench in AM2014/196 and AM2014/197 Not pursued as part of Part-time and Casual Employment Full Bench proceedings.
11.	ABI&NS WBC	Sub-15/04/16	9.2(a) and 6.3(a)		Part-time employment and ordinary hours Party submits there is an error and a contradiction which should be resolved in favour of introducing a reference in clause 6.3 which is consistent with the averaging	Para 18.1-18.3	AGREED – clause to be amended – Report to Full Bench 3 June 2016

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					provided in 9.2(a).		
	NGIA	Sub-14/04/16			Party endorses the ABI&NSWBC submission.	Page 1	
	AWU	Reply sub-5/05/16			Not opposed to proposal. Provides example wording in submissions	Page 1	
	BusSA	Reply sub-6/06/16			Agree with ABI&NSWBC proposal.	Para 10.2	
12.	AWU	Sub-17/04/16	10.1(b)		Breaks - meal breaks Party submits that payment should be specified as 200% of the “applicable rate of pay” instead of the “ordinary hourly rate”.	Para 9	WITHDRAWN at conference – Report to Full Bench 3 June 2016
13.	AWU	Sub-17/04/16	10.2(a)		Breaks – paid rest breaks CI should be amended to read “Employees will be allowed a paid rest break of 10 minutes each morning or shift”.	Para 10	AGREED to substitute “day” for “morning”. See Report to Full Bench 25 August 2016
	BusSA	Reply sub-6/06/16			Agree with AWU.	Para 10.4	
14.	AWU	Sub-17/04/16	11.1(b)		Wages and allowances – minimum wages Submits reference should be to “for performing 38 <u>ordinary</u> hours of work”.	Para 11	AGREED – clause to be amended to adopt AWU submission – Report to Full Bench 3 June 2016
	BusSA	Reply sub-6/06/16			Disagree – the current award does not include the word ‘ordinary’ in its equivalent clause (cl. 15.2).	Paras 10.5 and 10.7	
15.	ABI&NS WBC	Sub-15/04/16	13.1		<i>In response to a question: parties are asked whether all of the allowances in this award apply for all purposes. They appear to be described as that in the current award,</i>		AGREED - Parties agree that no amendment to ED is required – Report to Full Bench 3 June 2016

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					<i>however, it may be difficult to calculate an all-purpose meal allowance or all-purpose reimbursement</i> Party acknowledges current award designates meal and travelling allowance as all-purpose allowances but these allowances should not be construed as all-purpose allowances.		
	NGIA	Sub-14/04/16			Party endorses the ABI&NSWBC submission.	Page 1	
	BusSA	Sub-15/04/16			Party submits only the first aid allowance can properly apply for all purposes and be calculated into a worker's ordinary rate of pay. Reimbursement for meals, tools and equipment, and travelling are one off payments and are unable to be applied for all purposes.	Para 10.2.2	
	AFEI	Sub-15/04/16			Party not opposed to classifying the meal, tool and equipment and travelling allowances as 'expense related allowances', rather than all-purpose allowances.	Para 30	
	AWU	Sub-17/04/16			Party accepts the meal allowance, tool and equipment allowance and travelling allowance should be prescribed as expense related allowances as opposed to all-purpose allowances.	Para 12	
	AWU	Reply sub-			Accepts that the meal, tool and equipment	Paras 7, 10 and	

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		5/05/16			and travelling allowances cannot seemingly operate as all-purpose allowances. Agrees with AFEI and BusSA submissions.	17	
16.	BusSA	Sub-15/04/16	17.3		Payment for period of annual leave Note added to subclause should be deleted.	Para 10.1.4	WITHDRAWN at conference – Report to Full Bench 3 June 2016
	AWU	Reply sub-5/05/16			Notes the Full Bench has already determined the this. Note should be included in all EDs.	Para 15	See: [2015] FWCFB 4658 at [94]
17.	AWU	Sub-17/04/16	17.7		Proportionate leave on termination Submits that to ensure compliance with the NES this cl should be amended to read: “calculated in accordance with clause 17.3 and 17.4”.	Para 13	REFERRED – see Report to the Full Bench 3 June 2016 at [3] - to AM2014/47 Annual Leave Full Bench: Report to Full Bench 3 June 2016
	AFEI	Reply sub-6/05/16			Opposes proposed amendment – unnecessary and departs from the terms of the current award.	Para 55	
18.	AWU	Sub-17/04/16	17.8(a)		Time of taking leave This provision is not compatible with the progressive accrual of annual leave and should be deleted. The model term derived in the Annual Leave common proceedings adequately deals with arrangements for the taking of leave.	Para 14	REFERRED – see Report to the Full Bench 3 June 2016 at [3] - to AM2014/47 Annual Leave Full Bench: Report to Full Bench 3 June 2016
19.	BusSA	Sub-15/04/16	21.3		Public holidays Party submits the words “subject to clause 21.2” should be added for clarity.	Para 10.1.5	AGREED – clause amended to adopt Business SA submission – Report to Full Bench 3 June 2016
	AWU	Reply sub-			Not opposed to proposal.	Para 16	

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		5/05/16					
20.	AWU	Sub-17/04/16	Schedule B		Summary of hourly rates of pay – casual employees Party submits that casual overtime rates should ultimately be included in the exposure draft as they are often applied in differing manners.	Para 15	OUTSTANDING - To be added to ED for parties further consideration – Hearing 6 June 2016 [PN754] AFEI and BSA support consistent approach across awards regarding titles of tables and use of terms ordinary hourly rate v’s minimum hourly rate. See Report to Full Bench 25 August 2016 , PN5
21.	BusSA	Sub-15/04/16	Schedule H		Summary of hourly rates of pay Words “specified as being included in the employee’s ordinary hourly rate or” in ordinary hourly rate definition should be removed.	Para 10.1.2	WITHDRAWN at conference – Business SA submission withdrawn – Report to Full Bench 3 June 2016
	AWU	Reply sub-5/05/16			Do not consider amendment necessary.	Para 12	
	AWU	Sub-17/04/16	Schedule H		Definitions Party submits the nursery definition can be deleted as it appears in cl 3.2. If it is agreed to change the coverage exclusions to refer to the Wine, Silviculture and Sugar Awards, the definitions of silviculture and	Para 16	AGREED - Definitions of ‘wine industry’, ‘silviculture and afforestation’ and ‘nursery industry’ to be deleted from Schedule H – Report to Full Bench 3 June

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					afforestation and the wine industry can also be deleted.		2016
	BusSA	Reply sub-6/06/16			Disagree – defined terms should be primarily found in the definitions schedule. Reference to nursery industry in cl. 3.2 should directly refer to Schedule H.	Paras 10.6 and 10.8	

List of abbreviations (in alphabetical order)

ABI&NSWBC	Australian Business Industrial and the NSW Business Chamber
AFEI	Australian Federation of Employers and Industries
AWU	The Australian Workers' Union
BusSA	Business SA
NGIA	Nursery & Garden Industry Australia