

SUMMARY OF SUBMISSIONS

This table is a summary of submissions lodged for this award on or before 5.00pm on 23 June 2016 and has been updated following the Mention heard on [6 June 2016](#) [PN207]. Updates since last publication on 30 May 2016 are marked in red text.

The summary does not include materials filed in relation to AM2016/5 – regarding award coverage and classification see Statement [\[2016\] FWC 1191](#).

ITEM	PARTY	DOCUMENT	CLAUSE (Exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	MIAL	Sub – 14/04/16	3.2	4	Coverage Subject to review in AM2016/5. Consequential amendments to coverage may be necessary.	Page 2	To be determined by Full Bench – Mention 6 June 2016 [PN207]
2.	SeaSwift	Sub – 12/04/16	3.2	4.1	Coverage Delete word ‘above’ and insert ‘following’.	Page 3	To be dealt with after Full Bench – Mention 6 June 2016 [PN208]
	MUA	Sub – 14/04/16			Change ‘above awards’ to ‘awards identified in clause 3.3’.	Page 4, item 1	
	MIA	Sub – 14/04/16			Referencing anomaly at clause 3.2.	Page 2	
	SeaSwift	Sub – 15/04/16			Referencing error at clause 3.2.	Item 65	
	AWU	Reply–5/05/16			Agrees with MUA, MIAL	Para 12, 13	
3.	SeaSwift	Sub – 12/04/16	3.3	4.1	Coverage Delete ‘(f) the <i>Seagoing Industry Award 2016</i> ; and’, and renumber accordingly.	Page 3	To be determined by Full Bench – Mention 6 June 2016 [PN207]
		Sub – 15/04/16			Seeks clearer demarcation between Seagoing, Maritime and PHEWV Awards. Deletion of exclusions will nullify any contention contract towage operations are not covered by award by virtue of an exclusion referring to employees wholly or substantially	Items 66 – 68	

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					covered by another award. This would remove ambiguity and uncertainty. Seek application be dealt with by Full Bench in AM2016/5.		
	AMOU	Sub – 05/05/16			Opposed to SeaSwift claim.	p. 1	
	MUA	Sub – 14/04/16			Opposes SeaSwift proposal	Page 4, item 2	
4.	SeaSwift	Sub – 12/04/16	3.3	4.1	Coverage Insert a new clause 3.3(a). Draft clause provided in submission.	Pages 3 - 4	To be determined by Full Bench – Mention 6 June 2016 [PN208]
	MUA	Sub – 14/04/16			Oppose SeaSwift proposal	Page 4, item 2	
5.—	AIMPE	Sub-02/03/15	3.3	4.1	Coverage Because of how the coverage clause is drafted, Inshore Enterprise Agreements incorrectly refer to this award. Award's coverage broader than it should be. Propose number of changes to coverage.	Para 1	Withdrawn – Mention 6 June 2016 [PN214-15]
6.	AWU	Sub – 18/04/16	6.4(g)	10.4(f)	Part-time Reference to 'regular' part-time employee unnecessary and creates ambiguity. There is no other type of part-time employee.	Para 6	Not opposed – Mention 6 June 2016 [PN219]

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7.	MUA	Sub – 14/04/16	6.4(h)	10.4(g)	<p>Part-time overtime <i>Parties are asked to make submissions on how clause 6.4(h) applies. In particular, how does a part-time employee work additional hours that aren't overtime hours?</i></p> <p>Provision based on AN120376. Words 'excluding any additional hours' is confusing in context of MA. Words should be deleted.</p>	Item 1	To be referred to conference – Mention 6 June 2016 [PN222]
	BusSA	Sub-15/04/16			If wording 'additional hours' is kept, a definition should be inserted into Sch D. Historically 'additional hours' systems were agreed between employers and unions. Commission should seek feedback as to whether the system still operates in the industry.	12.1.1	
	AWU	Sub-18/04/16			Overtime is payable outside ordinary hours. Proposed amended clause contained in submission.	Paras 2 – 4	
	AWU	Reply-5/05/16			Agree with MUA's submission, clause is confusing. Agrees with BusSA's proposal for 'additional hours' to be defined in award, rather than AWU submission Sub – 18/04/16 at para 4.	Para 1	
	MIAL	Reply-5/05/16			Part-time employee may work additional hours within span of hours defined in cl.7.2. AWU submission would facilitate this practice.	Page 1	

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8.	FWO	Corr-02/03/15	6.5(b)(i)	10.3(b)	Casual loading Unclear whether casual loading applies instead of, or in addition to overtime and shiftwork rates.	Item 30 page 8	Being dealt with by Part-time and Casuals Full Bench in AM2014/196 and AM2014/197
	AWU	Sub-18/04/16			Casual loading applies on overtime hours in accordance with award. Propose same wording as <i>Building MA</i> .	Para 5	
	MUA	Sub-28/05/15			Proposes to add after 'loading which incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award <u>except overtime and shift allowances</u> '.	Page 1	
	MUA	Sub - 14/04/16			Suggest amendment to clarify casual loading is in addition to overtime and shiftwork penalties.	Item 11	Proposed clause at item 11 of submission.
	AWU	Reply - 5/05/16			Agrees with MUA's proposal.	Para 11	
9.	FWO	Corro-02/03/15	7.2	18.2	Ordinary hours Unclear under which circumstances an employee can work ordinary hours on Saturday or Sunday, given cl. 20.1(b) and 20.3 refer to ordinary hours worked on Saturday or Sunday, whereas cl. 18.2 states ordinary hours can be worked Monday to Friday.	Item 31 page 8	To be referred to conference – Mention 6 June 2016 [PN222]

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10.	MUA	Sub – 14/04/16	8.2 to 8.4	19	Breaks <i>Parties should make submissions to clarify which of the breaks in clauses 8.2 to 8.4 are paid and which are unpaid.</i> Clause based on AP816677 breaks clause and did not specify which breaks were paid. Suggest all breaks (cl.8.2, 8.3, 8.4) unpaid. No payment for breakfast break consistent in context of option to convert it to a paid 20 minute break.	Item 2	Agreed breaks are unpaid – Mention 6 June 2016 [PN225-28]
	BusSA	Sub – 15/04/16			Meal breaks in cl. 8.2-8.4 are unpaid.	12.2.2	
	MIAL	Sub – 14/04/16			Meal breaks in cl. 8.2-8.4 are unpaid.		
	AWU	Sub – 18/04/16			Meal breaks in cl. 8.2-8.4 are unpaid. Where breaks are not taken, payment as per 8.2(c) apply.	Page 3, paras 2 – 3	
	AWU	Reply – 5/05/16			Agree with MUA, MIAL, BusSA. All parties agree these breaks are unpaid.	Para 2, 14, 22	
11.	AIMPE	Sub-02/03/15	9.1	13.1	Wages Incorrect relativity between rate of pay for Master and Engineer. Seeking parity between Engineer classification at 100% relativity and Master.	Para 2	To be referred to a separately constituted Full Bench for determination – AM2016/5

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12.	MUA	Sub – 14/04/16	9.1	13.1	<p>Wages – crane driver <i>Parties are asked to clarify payment for a crane driver at 20 tonnes.</i> Rate sourced from AN120350, which only provided for rates over and under 20 tonnes. Propose a driver of 20 tonne crane be paid higher rate. Amend wording to “Crane Driver (20 tonnes or over)”.</p>	Item 3	
	BusSA	Sub – 15/04/16			Will seek member feedback regarding appropriate rate of pay for Crane Driver at 20 tonnes.	12.2.3	
	AWU	Reply – 5/05/16			Agree with MUA, crane diver of a 20 tonne crane should be paid the higher rate. AWU reserves position pending BusSA submission.	Para 3, 23	
	MIAL	Reply – 5/05/16			Submits, as identified by MUA, the schedule relating to crane drivers appears to derive from <i>Motor Boats and Small Tugs (State) Award</i> . MIAL submits clause to be amended to read ‘under and including 20,000 tonnes’		

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13.	MUA	Sub – 14/04/16	9.1	13.1	Wages – classification definitions <i>Parties are asked whether classification definitions should be inserted in this award.</i> Issue was raised during making of award. Classifications definitions should not be inserted.	Item 4.	To be dealt with by Group 3 Full Bench – Mention 6 June 2016 [PN234]
	BusSA	Sub – 15/04/16			Supports insertion of classification definitions into award.	12.2.3	
	MIAL	Sub – 14/04/16			This will be dealt with my full bench.	Page 2	
	AWU	Sub – 18/04/16			Classifications are not necessary.	Page 3, para 4	
	AWU	Reply – 5/05/16			Agree with MUA	Para 4	
	MIAL	Reply – 5/05/16			MIAL notes other parties do not consider definitions necessary, MIAL is content with this position but reserves its position should definitions currently contained in the award change.	Page 2	
14.	AWU	Sub – 18/04/16	9.3	14.27	Higher duties Suggest the following change: “... on duties <u>work</u> carrying a higher rate than their ordinary classification level”. Change would reflect that not all the duties of the classification must be performed on each particular occasion.	Page 2, Para 1	Not opposed – Mention 6 June 2016 [PN237-41]

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15.	AWU	Sub – 18/04/16	10.1(d)	14.4	Allowances – dual capacity allowance This is an all-purpose allowance and should be expressed as an hourly rate. Suggest allowance reads “...will be paid an allowance of \$4.68 [(0.58c per hour)] for each day...”	Page 3, para 5	Not opposed – Mention 6 June 2016 [PN241-42]
16.	MUA	Sub – 14/04/16	10.1(e), (f) and (o)	14.6, 14.7, 14.18	Allowances – uniforms, compensation for loss of personal effects, waiting orders <i>Parties are asked whether the allowances in clauses 10.1(e), (f) and (o) should be classed as expense related allowances. Allowances for uniform and compensation for loss of personal effects should be classed as expense related allowances. Allowance for waiting orders is a work related allowance.</i>	Item 5	Agreed – clauses 10.1(e) and (f) are expense related allowances and clause 10.1(o) is work related allowance – Mention 6 June 2016 [PN243]
	MIAL	Sub – 14/04/16			These allowances should not be considered expense related allowances. <i>Note this submission is amended in reply sub see below.</i>	Page 5	
	BusSA	Sub – 15/04/16			Agrees with MUA.	12.2.4	
	AWU	Sub – 18/04/16			Agree with MUA and BusSA, consistent with AWU submission.	Page 3, para 6	
	AWU	Reply – 5/05/16				Para 5, 15, 24	
	MIAL	Reply – 5/05/16			Agrees with other parties. Clause 10.1(e) and (f) are expense related allowances, 10.1(o) is work related. This amends their previous position above.		

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17.	MUA	Sub – 14/04/16	10.1(j)	14.11	Allowances – Slipway etc. allowance <i>This award does not provide for junior rates or a definition of junior. Should the allowance in clause 10.1(j) apply to all employees?</i> Yes, replace ‘A junior employee’ with “An employee”.	Item 6	Agreed – clause to be removed as no junior classification within the award – Mention 6 June 2016 [PN266-67]
	MIAL	Sub – 14/04/16			Allowance should be deleted given no provision for juniors.	Page 5	
	MIAL	Reply – 5/05/16			Clause should be deleted, as allowance was only payable to juniors (under <i>Deckhands (Passenger Ferries Launches and Barges) Award</i>). PHEWV MA does not have juniors. Clause redundant.	Page 2	
	BusSA	Sub – 15/04/16			Clause should apply to all employees.	12.2.5	
	AWU	Sub – 18/04/16			‘A junior’ should be replaced with ‘An’.	Page 4, para 8	
	AWU	Reply – 5/05/16			Agree with MUA, MIAL, BusSA.	Para 6, 16, 25	
18.	AWU	Sub – 18/04/16	10.1(n)	14.16	Allowance – Loading and discharge of cargo and supplies Clause does not provide coverage for part-time employees. Allowance should be expressed as a daily payment. Suggest amendment in submission.	Page 4, para 9	Not opposed – revision to be made to ED – Mention 6 June 2016 [PN268-73]

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19.	MUA	Sub – 14/04/16	10.1(o)(i)	14.18(a)	Allowances – Waiting orders <i>Parties are asked whether clause 10.1(o) should be updated to take into account mobile phones.</i> Retain current clause. No requirement to provide mobile phones should be placed on employer.	Item 7	To be discussed at conference – Mention 6 June 2016 [PN277]
	AWU	Sub – 18/04/16			It would be sensible to update clause to account for work-related calls whether on landline or mobile.	Page 3, para 7	
	BusSA	Sub – 15/04/16			Clause should be updated to take account of mobile phones to reimburse employee for ringing in for orders.	12.2.6	
	MIAL	Sub – 14/04/16			Allowance out of step with contemporary society. Should be updated to provide reimbursement for phone call regardless of phone used.	Page 5	
		Reply – 5/05/16			Given parties do not agree with their proposal MIAL does not press it.	Page 2	
AWU	Reply – 5/05/16	Reply to MUA, AWU does not have a strong opinion on clause. However believes it sensible to update clause to account for work related class whether on mobile or landline. Agrees with MIAL. Unsure of BusSA' submission whether employer should not have to provide a mobile phone or that employer should not have to pay for calls on phone which are not work related?	Para 7, 26				

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20.	MUA	Sub – 14/04/16	10.1(p)(iii)	14.20(c)	Allowances – Towing <i>Parties are asked whether the references to ‘normal wage’ in clause 10.1(p)(iii) should be to ‘ordinary hourly rate’</i> Replace “normal wage for each day” with “ordinary rate of pay for each day” to reflect language of ED. Proposed reference to hourly rate inconsistent with payment being for each day.	Item 8	Opposed – Mention 6 June 2016 [PN208]
	BusSA	Sub – 15/04/16			Change to ordinary hourly rate not appropriate. Clause does not apply for all purposes and therefore should not be paid at ordinary hourly rate.	12.2.7	
	MIAL	Sub – 14/04/16			Award terminology should be consistent.	Page 5	
		Reply – 5/05/16			Agrees with BusSA, would amount to substantive change. No amendment.	Page 2	
	AWU	Sub – 18/04/16			‘Normal wage’ should be replaced with ‘ordinary hourly rate’ to incorporate any applicable all-purpose allowances and to establish consistency with updated language across modern awards. ‘Normal wage’ not defined elsewhere in award.	Page 4, paras 11 – 12	
	AWU	Reply – 5/05/16			Agrees with MUA. Proposes ‘ordinary hourly rate’. Agree with MIAL. Disagree with BusSA, while allowance not an all-purpose allowance, it must be paid in addition to the allowances for all purposes at subclauses (i) and (ii).	Para 8, 18, 27	

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21.	MUA	Sub – 14/04/16	10.2(i)(ii)	14.26(b)	Allowances – Living away from home <i>Parties are asked whether ‘attendances’ can be replaced by an alternative work or term.</i> The word ‘attendances’ can be deleted.	Item 9	Agreed – ED to be revised – ‘attendance’ to be replaced with ‘eating utensils’, further comment may be sought– Mention 6 June 2016 [PN283]
	BusSA	Sub – 15/04/16			Unsure of meaning of attendances in context of this clause. Provides two alternatives in submission.	12.2.8	
	AWU	Sub – 18/04/16			Word ‘attendances’ can be removed.	Page 4, para 10	
		Reply – 5/05/16			Agrees with MUA. Notes BusSA submission, AWU prefers ‘attendance’ to be deleted. If not, to be replaced with ‘eating utensils’.	9, 28	
22.	AWU	Sub – 18/04/16	10.2(f)	14.22	Allowances – Transport Insert ‘is’ after the words ‘employee who’ in the clause.	Page 4, para 13	Not opposed – Mention 6 June 2016 [PN289-91]
23.	MUA	Sub – 14/04/16	12.2	20.1	Overtime <i>Parties are asked whether the span of ordinary hours in clause 7.2 should also be defined to clarify under what circumstances an employee can work ‘ordinary hours’ on a weekend.</i> Repeat submissions of 28/05/15. Cl. 7.1 makes clear work on weekend is outside span of ordinary hours. 12.2 should be amended as follows “Employees will be paid the following rates for all overtime and work on the weekend and public holidays”. The subheading in third line of	Item 10	Opposed – Mention 6 June 2016 [PN292-93]

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					table should be “ Ordinary hours and overtime Weekend and Public Holidays”.		
	BusSA	Sub – 15/04/16			Seeking advice from members on matter.	12.2.8	
	MIAL	Sub – 14/04/16			No need to define a span of hours given the diversity of operations covered by award. Span would create inflexibility. Would be substantive issue.		
	AWU	Sub – 18/04/16			Span only applies to weekdays. Overtime on Saturday payable at 200% after three hours, not penalty of 150%. Proposed amendment in submission.	Pages 4 – 5, para 14	
	AWU	Reply – 5/05/16			Agree with amendments proposed by MUA to introduction and headings. Reply to MIAL refers to proposed amendments to cl.12 (Sub–18/04/16 para 14) which would leave clause 7.2 intact.	Para 10	
	MIAL	Reply – 5/05/16			Disagrees with AWU. Would increase rate payable on Saturdays for any time worked in excess of 3 hours. Rate for any hours worked on Saturday is 150% ordinary hourly rate. Proposes removing reference to ‘ordinary hours’ in table and refer to ‘ordinary hours and overtime Weekend and Public holidays’.	Page 2	

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24.	MUA	Sub – 14/04/16	13.2	21.2	<p>Shiftwork – Shiftwork rates <i>Parties are asked to make submissions on which rates apply to shiftwork on weekends. Issue of how casual loading applies in relation to shiftwork and weekend penalties has been referred to AM2014/197.</i> Repeat submissions of 28/05/15. Casual loading is in addition to overtime and shift rates. No amendment required. Concerned that FWO think wording unclear. Cl.6–Casual employment should be amended.</p>	Item 11	See above at item 8.
25.	BusSA	Sub – 15/04/16	13.2	21.2	<p>Current ED does not provide for shiftwork on weekends. Span limited to ordinary hours Mon to Fri, 6 am – 6 pm with 8 hour work day. Should Cl.7.2 be amended to extend ordinary hours to weekends, appropriate rate would be 150% of ordinary hourly rate for first 8 hours, with an afternoon, night or permanent night shift attracting an additional rate through cl.13.2.</p>	12.2.10	<p>Has been referred to Part-time and Casuals Full Bench in AM2014/196 and AM2014/197 –Mention 6 June 2016 [PN296]</p>
	AWU	Sub – 18/04/16			<p>Casual loading applies in addition to overtime and shiftwork. Shiftwork rates not cumulative on weekend penalty rates. Shift work rates do not apply to work performed on weekends and public holidays.</p>	Para 15	

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	AWU	Reply – 5/05/16			Agree with MUA, casual loading in addition to overtime rates. Agrees with BusSA, as per AWU Sub–18/04/16 , shift work rates are not cumulative on weekend penalty rates and do not apply on weekends or public holidays.	Para 11, 30	
	MIAL	Reply – 5/05/16			Notes matter currently subject to AM2014/197 – Casual employment full bench . Submits PHEWV Award does not provide for shiftwork rate on weekends.	Page 3	

List of abbreviations (in alphabetical order)

AIMPE	Australian Institute of Marine and Power Engineers
AMOU	Australian Maritime Officers Union
AWU	The Australian Workers' Union
BusSA	Business SA
FWO	Fair Work Ombudsman
MA	Modern Award
MIAL	Maritime Industry Australia
MUA	Maritime Union of Australia
PHEWV	Ports, Harbours and Enclosed Water Vessels
SeaSwift	Sea Swift Pty Ltd