

REVISED SUMMARY OF SUBMISSIONS – TECHNICAL AND DRAFTING

This table is a summary of submissions on technical and drafting issues. The summary has been revised to include feedback from the hearing on 6 December 2016 ([Transcript](#)) and conferences held 7 February 2017 ([Transcript](#)) and 27 March 2017 ([Transcript](#) and [Draft report](#)).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	BusSA	Sub-30/06/16	2	Definitions – ‘children’s services and early childhood education industry’ definition should only appear once. Definition in cl. 2 should direct readers to coverage clause 4.2.	Para 2.1.1	Agreed, see Transcript-6/12/16 [PN538]. Confirmed in report .
	AIG	Reply-25/07/16		Amendment not necessary, but does not oppose.	Para 129	Agreed, see transcript 27/3/17 [PN284].
	AFEI	Reply-10/05/16		Supports BusSA submission.	Para 38	
2.	AIG	Sub-30/06/16	2	Definition – ordinary hourly rate Seeks definition of ‘ordinary hourly rate’ to be included.	Para 237	Agreed ‘ordinary hourly rate’ definition should be inserted, see Transcript-6/12/16 [PN538]. Confirmed in report .
	BusSA	Reply-21/07/16		Agrees with AIG	Pg 12	
	AFEI	Reply-10/05/16		Agrees definition should be in cl.2, but then unnecessary to duplicate in B.1.1.	Para 39	Agreed definition of ordinary hourly rate. See Transcript 27/03/17 [PN338-PN339].
	AIG	Sub-16/01/17		Definition inserted in ED published 06/01/17 does not reflect that which was earlier determined by the Commission. Suggests alternative definition.	Paras 82-86	Identified in Transcript 7/02/17 [PN55-PN56]

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	UV	Sub-13/03/17		UV and AIG propose definition be replaced with words: <i>'ordinary hourly rate means the hourly rate for the employee's classification specified in clause 16, plus any allowances specified as being payable for all purposes'</i> .	Para 5	
	AIG	Reply-24/03/17		Agree with UV definition	Pg 1	
3.	UV	Sub-30/06/16	2	Definition – 'ordinary hourly rate and 'minimum hourly rate' – <i>general submission effects multiple awards</i> – should refer to 'employee's classification, grade and level'.	Paras 1-5	To be discussed at next conference. Confirmed in report . Agreed definition of minimum hourly rate. See Transcript 27/03/17 [PN338-PN339].
4.	AIG	Reply-25/07/16		Minimum rate definition unnecessary, rate is prescribed in cl. 16. Regarding 'ordinary hourly rate' the additional reference to 'grade' and 'level' unnecessary as proposed definition in ED refers to classification specified in cl. 17.	Paras 130-132	Agreed definition of minimum hourly rate. See Transcript 27/03/17 [PN338-PN339].
	UV	Sub-13/03/17		UV and AIG propose new definition of: <i>'minimum hourly rate means the minimum hourly rate applicable to an employee's classification level and pay point as set out at clause 16'</i> .	Para 6	
	AIG	Reply-24/03/17		Does not oppose UV definition	Pg 1	

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5.	UV	Sub-30/06/16	2	Definition – all purpose – ‘all purposes’ definition should only appear at cl.17.2(a)	Para 30	AIG noted if definition of ‘ordinary hourly rate’ is inserted per item 2, definition uses term ‘all purpose’. Therefore the definition of ‘all purpose’ should be included in clause 2. UV not particularly agitated by that. See Transcript-6/12/16 [PN540-PN545]. Confirmed in report . Agreed. See Transcript 27/03/17 [PN427].
	AIG	Reply-25/07/16		Notes no definition for ‘all purposes’ is contained in cl.2. Submission not dealt with.	Para 127	
6.—	UV	Sub-30/06/16	3.3	Access to the award and the National Employment Standards — <i>general submission applies numerous awards</i> —The words ‘whichever makes them more accessible’ should be retained.	Para 3	Not being pressed by UV See Transcript 7/02/17 [PN89-PN90]. Confirmed in report .
	AIG	Reply-25/07/16		Opposes UV’s submission. Determined by FWC at early stage of review.	Para 133	
7.—	UV	Sub-30/06/16	4	Coverage —amend reference to <i>Clerks—Private Sector Award 2010</i> —industrial dispute history of childcare centre clerical workers being misclassified as support workers under this award, when they are classified under the Clerks Award [<i>UV v Cuddlepie Early Childhood Learning Centre</i> [2015] FWC 6661]	Pg 6	Appears to be substantive issue, parties given opportunity to write to Commission seeking to have it referred after conference. See Transcript-6/12/16 [PN546-PN561]

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	ABI & NSWBC	Reply-22/07/16		Opposes UV submission, disputes will have intended effect, as 4.1 notes award does not cover employers and Clerks Award is occupational award, childcare centre employees would be covered by this award.	Para 4.1	Moved to substantive issues. See Transcript 7/02/17 [PN98]. CCSA contest AIG's submission that they sought to vary the Clerks Award, this claim has been withdrawn by CCSA. See Transcript 7/02/17 [PN101, PN106-108]. Confirmed in report .
	AIG	Reply-25/07/16		Submits substantive claim. Notes CCSA seeks to vary Clerks Award to exclude employers covered by Children's Services Award.	Para 134-135	
	AFEI	Reply-10/05/16		Opposes UV's proposal.	Para 40	
	UV	Sub-6/10/16		See variation in draft determination. Parties disagree whether substantive or not.	Pg 2	
8.	AIG	Sub-30/06/16	11.1	Casual Employment – Removing 'as such' substantially alters clause. Clause be amended to insert 'as such' after 'engaged'. Current cl.10.5(b) to be restored as separate subclause, words 'for temporary and relief purposes' deleted cl.11.1.	Paras 238-240	Agreed, see Transcript-6/12/16 [PN562] Resolved see Transcript 7/02/17 [PN110]. Confirmed in report .
	ABI & NSWBC	Sub-1/07/16		Submits 'as such' should be retained.	Para 5.1	
	BusSA	Reply-21/07/16		Agree with AIG and ABI submissions.	Pg 12	
	AFEI	Reply-10/05/16		Agree with AIG and ABI submissions.	Pg 7	

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9.	AIG	Sub-30/06/16	11.1	Casual employment – calculation of casual loading should be based on minimum hourly rate, not ordinary hourly rate. To calculate on ordinary hourly rate is substantial change to current award. Related amendment to Sch. B.3 required.	Para 241	UV opposes AIG proposal see Transcript 7/02/17 [PN115]. UV to provide submission in reply. See Transcript 7/02/17 [PN126]. Confirmed in report . Qualification issue still in dispute, subject to further discussion. See Transcript 27/03/17 [PN376-382].
	UV	Sub-13/03/17		Should be moved to substantive issues claim as proposal would significantly alter effect of provision. Cites [2015] FWCFB 6656 as relevant FWC decision.	Paras 9-27	
	AIG	Reply-24/03/17		Continue to rely on 30 June 2016 submission outlined above. Content for matter to be determined on papers based on material before the Commission.	Pg 1	
10.-	BusSA	Sub-30/06/16	13.9(g)	Hours of work – out-of-school care, preschools and kindergartens <i>– response to request from Commission</i> Reference to transitional instrument and Div 2B State awards no longer necessary, cl. 1.4 protects employees from reduction in pay.	Para 2.2.1	Subject to further discussion at another conference Transcript 7/02/17 [PN136]. Confirmed in report . Item no longer pressed by BusSA and AFEI. See Transcript 27/03/017 [PN468-PN473].
	UV	Sub-30/06/16		Clause preserves entitlements of employees employed under those instruments and is still necessary. Opposes deletion to reference.	Para 32	
	AFEI	Reply-10/05/16		Agrees with BusSA	Para 43	

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10A	G8E	Sub-12/11/15	16.2	Minimum wages Seeks to insert clause from <i>Educational Services (Teachers) Award 2010</i> at 16.2 (clause 14.2 of current award).	Page 1	Raised at hearing, may be a substantive issue. To be discussed at conference. See Transcript-6/12/16 [PN570-PN571] Moved to substantive issues. See Transcript 7/02/17 [PN154]. Confirmed in report .
11.	BusSA	Sub-30/06/16	16.7(d)	Minimum Wages – higher duties – response to request from Commission Seeking member feedback	Para 2.2.2	BusSA withdrawing submission. See Transcript 7/02/17 [PN163].
	UV	Sub-30/06/16		Minimum Wages – higher duties – Does not support 'Supervising officer' to be amended to 'Authorised supervisor', gives history of use of wording. Notes award modernisation process chose term with intention it be a catch-all title for various types of persons with statutory supervisory responsibilities.	Paras 33-41	UV continues to support retaining wording. See Transcript 7/02/17 [PN165]. Agreed see report . Withdrawn. See Transcript 27/03/017 [PN489-PN492].
12.	DECD SA	Sub-21/07/16	17.2(b) 15.6 (current award)	Wage related allowance – qualifications allowance – submits ambiguous as to what 'graduate certificate is', does not define qualification required to be eligible for allowance.	Pg 2	No representative present at conference to discuss claim see Transcript 7/2/17 [PN170]. Confirmed in report . 'Graduate certificate' to be replaced with 'degree'. DECD SA to circulate proposal to parties. See Transcript 27/03/2017 [PN535].

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13.	AIG	Sub-30/06/16	17.2(c)	Wage related allowances – broken shift allowance – ‘who’ should appear after ‘employee’	Para 243	Agreed, see Transcript-6/12/16 [PN562]
		Reply-25/07/16			Para 137	
	ABI & NSWBC	Sub-1/07/16		Insert the word ‘who’	Pg 5	Matter resolved see Transcript 7/2/17 [PN176]. Confirmed in report .
	AFEI	Reply-10/05/16		Does not oppose inclusion	Para 41	
BusSA	Reply-21/07/16	Agrees	Pg 12			
14.	BusSA	Sub-30/06/16	17.3(d)	Expense related allowances—use of vehicle allowance—ED changes ‘where an employer requests’ to ‘if employer requests’ alters operation of clause. Retain original wording.	Para 2.1.2	Withdrawn see Transcript 7/2/17 [PN178].
	AIG	Reply-25/07/16		Change proposed by BusSA is not necessary.	Para 138	
	AFEI	Reply-10/05/16		BusSA’s amendment is unnecessary.	Para 42	
15.	DECD SA	Sub-21/07/16	Sched A.1.1—A.1.8	Classification—(current award B.1.1—B.1.8)—ambiguity over whether employee classified by level of qualification obtained or by duties engaged to do. Interpretation DECD takes is that employee’s classification should be dictated by duties employee is engaged to perform unless they are engaged as ‘qualified educator’ for purposes of child/educator ratio, in which case classification be determined by qualification.	Pg 1	No representative present at conference to discuss claim. See Transcript 7/2/17 [PN178]. Withdrawn. See correspondence 7/04/2017 .
16.	DECD SA	Submission – 21 July 16	Sched A.1.10	Classification – (current award – B.1.10) – terminology of ‘licensed’ does not reflect current processes for approval under the National Qualification Framework. Propose amending it to ‘approved places’ to reflect current terminology.	Pg 1	No representative present at conference to discuss claim see Transcript 7/2/17 [PN178]. DECD SA to circulate a proposal to parties. See Transcript 27/03/17 [PN582].

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17.	AIG	Sub-30/06/16	Sched B	Summary of hourly rates – table structure ‘% of ordinary rates’ could be misleading, if people fail to read in context of B.1. Issue raised in other EDs. Propose to amend to read ‘% of minimum hourly rate’ or indication within table that different rates apply where employee entitled to allowances in cl. 17.2.	Paras 244-248	Agreed, see Transcript-6/12/16 [PN562] AIG: amendments in ED do not reflect what was agreed to previously. UV not opposed but would submit further additions to the clause for clarity. See discussion in Transcript 7/2/17 [PN201-202]
	AFEI	Reply-10/05/16		Agrees with AIG’s submission and proposed solutions.	Para 44	ED amended to reflect general approach to references to ordinary hourly rate in tables.
	AIG	Sub-16/01/16		Do not consider proposed insertion of footnotes in tables adequately addresses concern. Suggest this be discussed during conference listed for 7 February 2017.	Paras 87-88	Agreed see Transcript 27/03/2017 [PN 413-PN414]. Once role of the qualifications allowance has been determined, include in table [PN419].
	AIG	Reply-24/03/17		Continue to press sub-30/6/16. ‘Ordinary hourly rate’ be replaced with ‘minimum hourly rate’	Pg 2	AMOD: The Award Stage FB have issued Decisions concerning use of term minimum hourly rate and ordinary hourly rate. Current wording in ED consistent with those FB decisions. Concerns of AiG and UV have been noted.

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17A	UV	Sub-13/03/17	Schedule B.1.1	Ordinary hourly rate Should be removed as now defined in clause 2 and subsequent paragraphs renumbered.	Para 7	Agreed. See Transcript 27/03/17 [PN390-PN416].
	AIG	Reply-24/03/17		Do not oppose deletion of clause	Pg 2	See AMOD comments above
17B	UV	Sub-13/03/17	Schedule B.1.2	Clarify rates of pay in tables are calculated from the minimum hourly rate. Proposes variation to clause.	Para 8	Agreed. See Transcript 27/03/17 [PN392].
	AIG	Reply-24/03/17		Do not oppose amendment proposed to clause	Pg 2	See AMOD comments above
18.	ABI & NSWBC	Sub-1/07/16	Schedule C.2.1(a)	Summary of monetary allowances – expense related allowances – submits word ‘increased’ should be replaced with ‘adjusted’, current wording presumes that relevant figures will always be increase.	Para 5.3	United Voice to provide position. See Transcript 7/2/17 [PN216]. To be discussed further at next conference. Confirmed in report .
	AFEI	Reply-10/05/16		Does not oppose ABI & NSWBC’s amendment, but notes ED consistent with current award.	Para 45	No longer being pressed by ABI&NSWBC. See Corro-27/03/17 .
	BusSA	Reply-21/07/16		Agrees with ABI & NSWBC’s proposal.	Pg 12	
	UV	Sub-13/03/17		Opposes ABI&NSWBC proposal	Para 28-29	Parties to supply submissions regarding item and ABI&NSWBC proposal. See Transcript 27/03/2017 [PN605-PN607].

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial and the NSW Business Chamber
ACA	Australia Childcare Alliance
AFEI	Australian Federation of Employers and Industries
AIG	Australian Industry Group
BusSA	Business SA, Chamber of Commerce and Industry South Australia
CCSA	Community Connections Solutions Australia
DECD SA	Department for Education and Child Development – South Australia
ED	Exposure draft
G8E	G8 Education Ltd
UV	United Voice