

### REVISED SUMMARY OF SUBMISSIONS – TECHNICAL AND DRAFTING

This table is a summary of submissions on technical and drafting issues lodged for this award on or before 5.00pm on 29 November 2016.

The summary has been revised to include feedback from the hearing on 6 December 2016 ([Transcript](#)).

**Note:** At [Transcript](#) [528], the representative appearing for six associations of independent schools of the States of New South Wales, South Australia, Western Australia, Queensland, Tasmania and Victoria noted that in [\[2016\] FWCFB 3177](#), the annual leave provisions (specifically insertion of the annual leave model terms) in the Educational Services (Teachers) Award had been referred to AM2015/6. The representative noted that to her knowledge, it had not been referred.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1	UV	<a href="#">Sub-30/06/2016</a>	2	<b>Minimum wages</b> Definition of minimum hourly rate should be used. Propose: 'Minimum hourly rate means the minimum rate of pay for the employee's classification, grade and level'.	Para 1-5	
2	UV	<a href="#">Sub-30/06/2016</a>	3.3	<b>Access to the award and the National Employment Standards – general submission applies numerous awards</b> – The words 'whichever makes them more accessible' have been deleted from the ED. They should be retained.	Para 3	
3	IEU & another	<a href="#">Sub-30/06/2016</a>	6.1	<b>Award flexibility for individual arrangements</b> Clause 6.1(b) and (c) should only refer to Schedule A – as only employees employed under Schedule A are entitled to overtime payments and penalty rates.	Para 9	

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	AFEI	<a href="#">Sub-05/08/2016</a>		Opposed. Variation would be inconsistent with current award.	Para 18	
4	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>	7.2	<b>Facilitative provisions</b> The following clauses should be added: 12.2, A.2, A.3.1, and A.4.2.	Para 6.1	
	IEU & another	<a href="#">Reply-21/07/2016</a>		Facilitative provisions were agreed prior to making of modern award. Prefer ED clause to version proposed by ABI.	Para 6	
	AFEI	<a href="#">Sub-05/08/2016</a>		Agree with ABI's submission.	Para 19	
5	IEU & another	<a href="#">Sub-30/06/2016</a>	11.2	<b>Part-time employment</b> Do not support specification of the value of 90%. The phrase 'being an average of more than 34 hours and 12 minutes per week' should be deleted, as it has no relevance to the way in which a part-time teacher's time fraction and salary/benefits are calculated.	Para 10-16	
6	IEU & another	<a href="#">Sub-30/06/2016</a>	11.3	<b>Part-time employment</b> Reference to full-time employee is not correct. A full-time employee would not make a request to work above 90% of full-time hours, only a part-time employee can. Clause should commence with 'A part-time employee...'	Para 17-19	
	AFEI	<a href="#">Sub-05/08/2016</a>		Not opposed to removal of reference to 'full-time employee'.	Para 21	

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7	IEU & another	<a href="#">Sub-30/06/2016</a>	11.4	<b>Part-time employment</b> Do not support drafting this clause in two parts (a) and (b). Suggest 'A part-time employee is entitled to the benefits under this award on a pro rata basis. The pro rata basis will be calculated by dividing the number of face-to-face teaching hours prescribed for the part-time employee from time to time by the usual number of face-to-face teaching hours prescribed for a full-time employee in the school, children's service or early childhood education service.'	Para 20-23	
	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>		ED drafting in clauses 11.4(a) and (b) causes confusion. Suggest maintaining wording of clause in current award or express as equation: 'Prescribed face-to-face teaching hours of the employee' / 'Usual prescribed face-to-face teaching hours of a full-time employee'	Para 6.2	
	IEU & another	<a href="#">Reply-21/07/2016</a>		Note ABI's submission. Press own proposal in submission 30/06/2016.	Para 7	
	AFEI	<a href="#">Sub-05/08/2016</a>		ED is consistent with current award. Do not consider IEU's proposal necessary, but not opposed. Prefer IEU to other methods (such as ABI's submissions).	Para 22	
	UV	<a href="#">Reply-25/07/2016</a>		Not opposed to ABI's submission.	Para 26	

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8	IEU & another	<a href="#">Sub-30/06/2016</a>	11.5(b)	<b>Part-time employment</b> ED drafting does not adequately emphasise requirement to give notice in event of a variation in a part-time employee's teaching load or working days. Clause should be deleted and replaced with clause 10.4(d)(ii) of the current award.	Para 24-25	
	AFEI	<a href="#">Sub-05/08/2016</a>		Consider ED to be consistent with current award. Do not consider IEU's proposal necessary but not opposed to retaining wording of current award.	Para 23	
9	IEU & another	<a href="#">Sub-30/06/2016</a>	13.1	<b>Fixed term employment</b> Prefer wording of current award, which is clearer than ED.	Para 26-27	
	AFEI	<a href="#">Sub-05/08/2016</a>		Consider ED to be consistent with current award. Do not consider IEU's proposal necessary but not opposed to retaining wording of current award.	Para 24	
10	IEU & another	<a href="#">Sub-30/06/2016</a>	14.2	<b>Classifications – Recognition of previous service</b> Incorrectly titled. 'Previous' should be deleted. Does not accurately describe the purpose of the clause.	Para 28-30	
	AFEI	<a href="#">Sub-05/08/2016</a>		Opposed. Variation unnecessary. ED consistent with current award.	Para 25	

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11	IEU & another	<a href="#">Sub-30/06/2016</a>	14.4	<b>Classifications – Progression</b> – <i>Response to question raised by Commission</i> Do not support inclusion of a definition for ‘years of service’. Sufficiently defined by the term ‘normal years of service’.	Para 31-33	
	UV	<a href="#">Sub-30/06/2016</a>		Unnecessary to insert definition of years of service, as it is defined at clause 14.2(b), (c) and (d).	Para 42	
	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>		A separate definition is not necessary.	Para 6.3	
	AFEI	<a href="#">Sub-05/08/2016</a>		Agree with above submissions. Do not support inclusion of a definition.	Para 26	
12	IEU & another	<a href="#">Sub-30/06/2016</a>	17.1	<b>Minimum wages</b> Do not support inclusion of minimum hourly rate of pay. A part-time teacher’s salary is based on the proportion of a full-time teacher’s face-to-face hours, therefore the value of an hour of face-to-face teaching will not have the same value as 1/38 <sup>th</sup> of the weekly rate of pay. Hourly rates are generally not used in the sector.	Para 36-38	See items 5 and 7
	AFEI	<a href="#">Sub-05/08/2016</a>		Agree with IEU’s submission.	Para 27	
13	IEU & another	<a href="#">Sub-30/06/2016</a>	N/A	<b>Minimum wages – Part-time employee</b> Submit clause 14.4 of current award should be reproduced in ED as a new clause 17.4. This clause is necessary to ensure proper understanding of the entitlement of a part-time employee with respect to payment of wages.	Para 39-42	

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14	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>	18.2	<b>Allowances – wage related allowances – director’s allowance</b> References to levels should be re-inserted, to ensure consistency between clauses 18.2 and Sch C.1.	Para 6.4	
	IEU & another	<a href="#">Reply- 21/07/2016</a>		No prima facie objection.	Para 9	
	AFEI	<a href="#">Sub-05/08/2016</a>		ABI’s proposal unnecessary. ED clause consistent with current award.	Para 29	
15	IEU & another	<a href="#">Sub-30/06/2016</a>	18.3(c)(ii)	<b>Allowances – Leadership allowance – Response to question raised by Commission</b> Do not support further definition of Level 2 and 3 leadership allowances at this time.	Para 44	
	AFEI	<a href="#">Sub-05/08/2016</a>		Do not support inclusion of further definitions.	Para 30	
16	IEU & another	<a href="#">Sub-30/06/2016</a>	19.4	<b>Superannuation fund</b> Corrections should be made for reason of accuracy: (a) NGS Super (b) Australian Catholic Superannuation Retirement Fund (ACSRF) ... (m) Concept One the Industry Superannuation Fund ... (q) a superannuation fund or scheme of which the employee is a defined benefit member.’ Names should be corrected in current award too.	Para 45	

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17	IEU & another	<a href="#">Sub-30/06/2016</a>	21.2	<b>Pro rata payment of salary inclusive of annual leave</b> Second sentence of this clause and (a) and (b) should be a separate clause numbered 21.3. Should be stand-alone to assist employees and employers to locate and interpret definitions.	Para 50-54	
	AFEI	<a href="#">Sub-05/08/2016</a>		Do not agree. ED sufficiently clear.	Para 31	
18	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>	21.3(b)	<b>Pro rata payment of salary inclusive of annual leave</b> The word 'or' should be inserted after sub-clause 21.3(b)(i), after 'preschool service date'.	Para 6.5	
	IEU & another	<a href="#">Reply- 21/07/2016</a>		No prima facie objection.	Para 9	
	AFEI	<a href="#">Sub-05/08/2016</a>		Do not consider proposal necessary, but not opposed.	Para 32	
19	IEU & another	<a href="#">Sub-30/06/2016</a>	21.6	<b>Pro rata payment of salary inclusive of annual leave – employees who commence employment after the commencement of the school or preschool year</b> ED clause should be deleted and replaced with clause 22.7 of current award. It is simpler and the words 'provided that' ensure the entitlement is linked to the period of employment during part only of the school or preschool year.	Para 55-56	
	AFEI	<a href="#">Sub-05/08/2016</a>		Not opposed.	Para 33	

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20	IEU & another	<a href="#">Sub-30/06/2016</a>	21.7	<p><b>Pro rata payment of salary inclusive of annual leave – employees who take approved leave without pay</b></p> <p>In this clause, (a) and (b) are alternative options and (b)(i) and (ii) must both occur if (b) applies. Suggest following changes:</p> <p>(a) - end of subclause: replace ‘and’ with ‘or’</p> <p>(b)(i) - end of subclause: replace ‘or’ with ‘and’.</p>	Para 57-59	
	AFEI	<a href="#">Sub-05/08/2016</a>		Not opposed.	Para 34	
21	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>	30	<p><b>Termination of employment</b></p> <p>Comparison document contains a note that clause 21.5 should be moved to clause 32 ED. ED does not contain a clause 32, assumed this means clause 30. Unclear if comment was an error – current award does not contain a clause 21.5. If reference to clause 21.5 intended to refer to how pro-rata salary inclusive of annual leave should be calculated on termination and FWC considers it necessary for this to be in clause 30, suggest reference be to clause 21 as a whole.</p>	Para 6.6	Error in comparison document. Parties should refer to ED text. Clause 30.2 references 21.4 as to how entitlements are calculated on termination.
22	IEU & another	<a href="#">Sub-30/06/2016</a>	31.6	<p><b>Redundancy – Part-time employees</b></p> <p>Not necessary to refer to clause 31. Suggest changing ‘this clause 31’ to ‘this clause’.</p>	Para 60	
	AFEI	<a href="#">Sub-05/08/2016</a>		Not opposed.	Para 35	



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23	IEU & another	<a href="#">Sub-30/06/2016</a>	Sch A.2.12	<b>Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year – Rostered days off – Response to question raised by Commission</b> Do not support system of RDOs for employees who work in term weeks. This is not possible due to the structure of a school’s timetable. A.2 only applies to non-school setting, for teachers working 38 hour weeks for at least 48 weeks per year. Clause should be retained in Sch A and not moved to body of award.	Para 61-62	
	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>		Inclusion of this clause at Sch A is odd. Sch A only applies to early childhood services operating for at least 48 weeks per year. Questionable if clause should be at clause 15 because the rest of the award does not contemplate RDOs.	Para 6.7	
	IEU & another	<a href="#">Reply- 21/07/2016</a>		Support retention of clause A.2.12 in Schedule A.	Para 10	
24	IEU & another	<a href="#">Sub-30/06/2016</a>	Sch A.3.1(a)	<b>Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year – Meal Break</b> Clause should be varied to provide for the meal break to commence no later than five hours after the employee commenced work. This is needed to clarify the entitlement and ensure consistency with other proposed variations.	Para 63-64	Relates to substantive variation put by parties, see <a href="#">Sub-2Mar15</a> at paragraph 3 page 2. IEU to provide proposed clause wording, see <a href="#">Transcript-6/12/16</a> [PN514-PN516]

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25	IEU & another	<a href="#">Sub-30/06/2016</a>	Sch B.1.1	<b>Summary of Rates of Pay – Full-time and part-time employees</b> Do not support inclusion of hourly rates of pay.	Para 65	See also item 12
	AFEI	<a href="#">Sub-05/08/2016</a>		Agree.	Para 37	
26	IEU & another	<a href="#">Sub-30/06/2016</a>	Sch B.2.2	<b>Summary of Rates of Pay – Casual employees – full day rates</b> An additional sentence should be included as a note to table. This is to make it clear that only a casual employee employed in a children’s service or an early childhood education service may be paid the quarter day rate.	Para 66	IEU amended submission at hearing – note should be placed at the end of table of half-day and quarter-day rates, see <a href="#">Transcript-6/12/16</a> [PN518]
27	ABI and NSWBC	<a href="#">Sub-30/06/2016</a>	Sch C.2	<b>Summary of Monetary Allowances – Expense related allowances</b> A note should be inserted to clarify payment of vehicle allowance is capped at 400km per week (per clause 18.4).	Para 6.8	
	IEU & another	<a href="#">Reply-21/07/2016</a>		No prima facie objection.	Para 9	
	AFEI	<a href="#">Sub-05/08/2016</a>		Agree with ABI.	Para 36	

#### List of abbreviations (in alphabetical order)

ABI and NSWBC	Australian Business Industrial and the NSW Business Chamber
AFEI	Australian Federation of Employers and Industries
ED	Exposure draft
IEU & another	Independent Education Union of Australia & the Associations of Independent Schools
UV	United Voice