

SUMMARY OF SUBMISSIONS ON REVISED EXPOSURE DRAFT

This table is a summary of reply submissions lodged for this award after the 23 October 2015 decision [\[2015\] FWCFB 7236](#) and in response to the Revised Exposure Draft published on [2 November 2015](#). The summary includes submissions received before 23 September 2016.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
1.	AWU	Sub 20-11-15	6.3(d)		Part-time employees – given the award has all purpose allowances wording should be ‘ordinary hourly rate’	4	
	AIG	Reply 7-12-15				124-125	
2.	AWU	Sub 20-11-15	6.4(c)		Casual employees – clause has not been amended to reflect September Decision [110] of [2015] FWCFB 6656, where was expressed that general approach for casual loading should be 25% of the ordinary hourly rate for awards which contain all purpose allowances. AWU provides wording.	5	
	AIG	Reply 7-12-15				126-133	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
					allowances in calculating casual rate. Reference to clause 13 sets out minimum weekly wages. Exposure draft reflects award and should not be amended.		
3.	CFMEU	Sub 20-11-15	6.4(e)		Casual employees – exposure draft using term ‘entitlements’ instead of ‘attributes’ used in current award. Could lead to attempts to deny casual award entitlements they have always received. Seeks to have ‘entitlements’ replace with ‘attributes’.	1-3, 6	Clause in ED amended to reflect current provision this is consistent with [2014] FWCFB 9412
	AIG	Reply 7-12-15			Does not oppose CFMEU proposal. However believes clause is best deleted, as only refers to some entitlements/attributes of full-time part-time employment that casual loading is paid instead of, hence clause is misleading.	134-135	
4.	AWU	Sub 20-11-15	6.5		Probationary period – support provisional view of the FB to remove clause. Not necessary and mislead employees as to their unfair dismissal rights.	6	Provisional view – not agreed
	AMMA	Sub 25-11-15			Supports the retention of clause. Variation must demonstrate that necessary to achieve modern award objective, deletion of substantial provision 6.5 is not necessary to achieve modern award objective.	Page 1	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
	AWU	Reply 4-12-15			FB determined in relation to Rail Industry Award 2010 that there's no practical purpose of clause applies to this award too. Clause should be deleted.	4	
5.	AMWU	Sub 20-11-15	10.1(a)(v)		Annualised salary – supports the provisional view FWC in [140] of [2015] FWCFB 7236	5.1	Provisional view agreed
	AWU	Sub 20-11-15			Supports provisional view of the FB to insert 'loading' to clarify that annual salary cannot be paid to compensate for annual leave.	7	
	AMMA	Sub 25-11-15			Does not oppose proposed variation.		
	AIG	Reply 7-12-15			Does not oppose proposed variation.	136	
6.	AIG	Sub 20-11-15	11.2(g)		Rail allowance – support FB provisional view that rail allowance should be 30% of the 'minimum rate of pay' [142] [2015] FWCFB 7236	259	Provisional view not opposed
7.	AWU	Sub 20-11-15	13.1		Shift work and penalty rates – Definitions – Reference to afternoon shift should be removed from definition of 'permanent night shift' for self-explanatory reasons.	8	Removal of afternoon shift agreed by parties, ED amended.
	AMMA	Sub 25-11-15			Definition requires further consideration. Preliminary view should be varied to reflect Hydrocarbons Industry (Upstream) Award which refers to night shift only.	Page 1-2	
	AWU	Reply 4-12-15			Agree reference afternoon shift should be deleted, as no additional payment	5	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
					for permanent afternoon shift under this award.		
	AIG	Reply 7-12-15			Agrees with AWU and AMMA that definition should not include afternoon shift. If definition included should be based on one in current use, such as Exposure Draft - Hydrocarbon Industry (Upstream) Award 2015.	137-138	
8.	AMMA	Sub 25-11-15	13.1		Definition permanent night shift, typographical error, 'or' has been omitted after first sentence.	Page 2	Drafting error – corrected in exposure draft.
9.	AWU	Sub 20-11-15	14.1		Overtime – start of clause should be amended to remove reference to clause 13. Reference creates ambiguity as clause 13 refers to penalty rates for ordinary hours and 14 deals with overtime, separate entitlements.	9	Drafting error – corrected in exposure draft.
	AIG	Reply 7-12-15			No objection to deleting reference to clause 13.		
10.	AIG	Sub 20-11-15	14.1, 14.2		Overtime – 'overtime rate' in table in 14.1 and 14.2 should be replaced with '% of ordinary hourly rate' consistent with schedule B.	260	Exposure draft amended to reflect agreed position.
	AWU	Reply 4-12-15	14		Agree reference to ordinary hourly rate		
11.	AWU	Sub 20-11-15	20.2		Termination of employment – typographical error, 'from' to be inserted after 'withhold'.	10	Drafting error – corrected in exposure draft.
	AIG	Sub 20-11-15		261			
	BusSA	Sub 27-11-15		25			
12.	AMWU	Sub 20-11-15	Sch B		Summary of wages – insertion resulting from paragraph [63] of [2015] FWCFB 4658 , should read	6.1-6.2	<i>Note: Current wording is a grammatical correction that has been applied to all</i>

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
					‘employers who meet their obligations under this schedule are meeting the obligations under the award’ (emphasis added), exposure draft refers to ‘their obligations’.		<i>exposure drafts.</i>
13.	AWU	Sub 20-11-15	Sch B		Summary of wages – notes that casual overtime rates have not been included. If table of casual overtime rates included requests opportunity to review.	11	See item 14
	BusSA	Sub 27-11-15		26			
	AIG	Reply 7-12-15		141			
14.	AIG	Sub 20-11-15	B.2.3		Summary of wages – casual employees – casual loading is not payable on overtime, shiftwork penalties, weekend penalties or public holidays – table should be amended accordingly. Issue has been referred to Casual Employment Full Bench. AIG submission is wrong. Clause 6.4(d) clearly states casual loading form part of the all purpose rate, this is consistent with cl. 10.3 of the current award. Outcome of it not applying would mean a casual worker working night shift would receive only 15% loading while casual on day work receives 25%, clearly not intended.	262-265	Has been referred to AM2014/197 Casual Employment Full Bench. See item 13
	AWU	Reply 4-12-15		9-14			
	CFMEU	Reply 21-12-15		Supports AWU position		Page 1	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
15.	BusSA	Sub 27-11-15	Sch G		Part-day public holiday rates – to be updated in line with recent statement.		Schedule G amended in accordance with PR580863
	AWU	Reply 4-12-15			Agrees with Business SA	6	
	AIG	Reply 7-12-15			Does not oppose proposal.		

Note:

- AMWU reply submission [4 November 2015](#) supported submissions made by AWU on 20 November 2015 and submissions of CFMEU.
- CFMEU correspondence in reply dated [21 December 2015](#) notes it agrees with AWU reply submission dated 4 December 2015.

List of abbreviations (in alphabetical order)

AIG	Australian Industry Group
AMWU	Australian Manufacturing and Workers' Union
AMMA	Australian Mines and Minerals Association
AWU	The Australian Workers' Union
BusSA	Business SA
CFMEU	Construction, Forestry, Mining and Energy Union
FB	Full Bench of the Fair Work Commission
FWC	Fair Work Commission