

SUMMARY OF SUBMISSIONS ON REVISED EXPOSURE DRAFT – OUTSTANDING ISSUES

This table has been revised to include submissions received in response to para [125] of Full Bench Decision [\[2017\] FWCFB 3177](#) re outstanding issues and the exposure draft. The summary includes submissions received on or before 11 July 2017.

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	AIG	Sub-20/11/15	3.8		Coverage The text found at clause 3.8 is a note and therefore should not be given a clause number.	288	RESOLVED Error – ED amended
	AWU	Reply-04/12/15			Agree with AIG	4	
2.	AIG	Sub-20/11/15	6.4(b)(ii)		Casual employees Clause should be deleted – not in current award and is unnecessary and problematic. Submit same concern raised by ACTU and other unions.	289	RESOLVED Clause deleted in accordance with [69] of [2014] FWCFB 9412
	AWU	Reply-04/12/15			Agree with AIG	5	
3.	AIG	Sub-20/11/15	8.2(a)		Ordinary hours of work and rostering Ordinary hours of work provisions do not meet requirements of s.147 of the Act. Propose clause 8.2(a) be amended by inserting the words ‘up to’ after the words ‘average of’.	290 and generally 30–33	REMAINS OUTSTANDING
	AWU	Reply-04/12/15			Not opposed	6	
	AIG	Sub-11/07/17			AIG note AWU is not opposed. Content for Full Bench to determine matter on the papers based on what has been filed.	334–335	

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4.	AMWU	Sub-23/11/15	6.3(c) and 8.2(c)		Part-time employees and Ordinary hours— shiftworkers Reiterate claim that clause is ambiguous. Refer to paras 10–14 of its submission-20/11/15 re AM2014/75. Submit cross-reference to clause 22.2 should be added to clauses 6.3(c) and 8.2(c). Intend to submit a list of awards which it believes are affected by this clause for consideration at the conclusion of the Award Stage.	1–4	REMAINS OUTSTANDING Refer to sub-25/11/14	
		Sub-30/07/17				7-10		
	ABI & NSWBC	Reply-07/12/15				Inclusion of a cross-reference to clause 22 is unnecessary.		3.1
	AIG	Reply-Sub-07/12/15				Disagree with AMWU – clauses should not be varied to include cross-reference to clause 22.2.		162–173
	ABI & NSWBC	Sub-07/07/17				Continue to press opposition to Sub-23/11/15 of AMWU proposing amendment to clause 6.3(c) and 8.2(c) to include reference to clause 22.2. Maintain there is no ambiguity, so proposed amendment is unnecessary.		22
	AIG	Sub-11/07/17				Maintains opposition to AMWU’s submission.		336-337

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					AIG content for Full Bench to determine matter on the papers based on what has been filed.		
5.	AWU	Sub-23/11/15	9.1(b)		Unpaid meal breaks Submit change in ED to ‘ordinary hourly rates’ from ‘ordinary time rates’ could technically result in non-continuous shift workers losing their shift loading when they continue working for more than 5 hours without a meal break. Submit this arises because definitions of ‘ordinary hourly rate’ and ‘minimum hourly rate’ proposed by the FB ([2015] FWCFB 4658 at [42]) do not include shift allowances. Submit definition of ‘Applicable rate of pay’ could be inserted (as for AM2014/75 – see [2015] FWCFB 7236 at [103]) and clause amended – alternatively, reference to ‘ordinary time rates’ could be retained.	4–7	REMAINS OUTSTANDING
	ABI & NSWBC	Reply-07/12/15			Agree with AWU and refer to [2015] FWCFB 7236 at [102]–[104].	3.2	
	AIG	Reply-Sub-07/12/15			Strongly oppose AWU submission. Do not oppose retention of words ‘ordinary time rates’ in the alternative and refer to its submission of 20/11/15 – section 6.1 re AM2014/75.	174–175	
	AIG	Sub-11/07/17			Maintain strong opposition. Refer to Full Bench decision [2017] FWCFB 3177 re use of term ‘applicable rate of pay’ in Manufacturing Award. Agreement reached by parties	338-341	

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					including AWU re a clause similar to clause 9.1(b). Would not oppose amendment in like terms. Suggest wording: 'Employees will be paid for the sixth hour at the rate applying immediately prior to the end of the fifth hour of work'.		
5A	AIG	Sub-11/07/17	10.1		Preamble is not confined to full-time employees. Appears to require payment of minimum weekly rate to all adult employees, including part-time and casual employees. Suggest including '(full-time employees)' below heading of second column of table	342-344	REFERRED Referred to the Plain Language Full Bench (AM2016/15), see [2018] FWC 1544 .
5B	ABI & NSWBC	Sub-07/07/17	10.3		Incorrect reference to Schedule C - Supported Wage System. Reference should be to Schedule D.	21	RESOLVED Error – ED amended
6.	AWU	Sub-23/11/15	10.6(a)		Higher duties Reference to 'A full-time employee engaged on duties...' should be changed to 'An employee engaged on duties...' (in accordance with paragraph [171] of [2015] FWCFB 7236).	8	RESOLVED Error – ED amended
	ABI & NSWBC	Reply-07/12/15			Agree with AWU	3.3	
	AIG	Reply-07/12/15			Agree with AWU	176	

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7.	AIG	Sub-20/11/15	11.2(a)		First aid allowance Clause should be amended by inserting ‘who is’ after the words ‘an employee’ to make clear the employee is only entitled to allowance during the period where the employee is appointed as a first aid officer in accordance with the clause. That is, payment of allowance does not extend to circumstances in which an employee was once appointed, but is no longer.	291	RESOLVED
	AWU	Reply-04/12/15			Change unnecessary	7	
	AIG	Sub-11/07/17			No longer presses this submission.	345	
8.	AIG	ReplySub-23/11/15	11.2(d)		Wage related allowances - Respirator Typo- the words ‘is’ should be inserted after the words ‘while the employee’.	291	RESOLVED Drafting error – ED amended
	AWU	Reply-04/12/15			Agree with AIG	8	
9.	AIG	Sub-20/11/15	13		Penalty rates Clause heading should be ‘shiftwork’ consistent with terminology used at clause 13.2 (which reflects clause 23.3(f) of current award).	293–294	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 .
	AWU	Reply-04/12/15			Propose heading be amended to read ‘Penalty rates—shiftwork’. Amendment allows clause 15.3(e)(ii) to remain unchanged as per paragraph 11 of submission re 15.3(e).	13	
	AIG	ReplySub-			The heading for clause 13 is ‘Penalty rates’.	37	Linked to item 12

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		31/08/16			Clause 13.2 refers to 'shift allowances' but the clause contains rates, not allowances. Clause 15.3(e)(ii) refers to 'penalty rate payments'.		
	AIG	Sub-11/07/17			'Inconsistent Terminology Issue' remains outstanding. AIG assume this will dealt with in accordance with [2017] FWCFB 3433 at [369] – [379].	4-7 and 346	
10.	AWU	Reply-05/11/15	13.1(a)(iv)		Penalty rates Maintain second dot point in clause should be deleted. Do not intend to file additional material in support of variation – submit self-evident.		RESOLVED ED amended in red text to reflect agreed change.
	AIG	Reply-07/12/15			Do not oppose AWU submission. Propose wording in submission.	177	
11.	AIG	Sub-20/11/15	14.2		Overtime Second column in heading row should be amended to delete the word 'time' after the word 'Overtime', and the words '% of the minimum hourly rate' should be added after the words 'Overtime rate'.	295	RESOLVED Drafting error – ED amended.
	AWU	Reply-04/12/15			Agree with AIG	10	
11A.	AIG	Sub-11/07/17	14.2		Table does not prescribe amount by reference to which overtime rate is to be calculated. Suggest '(% minimum hourly rate)' be inserted under the heading 'Overtime rate'.	347	REMAINS OUTSTANDING

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12.	AIG	Sub-20/11/15	15.3(e)(ii)		Annual leave Second dot point should be amended to ensure proper identification of shift premiums which are characterised as ‘shift allowances’ rather than ‘penalties’ under clause 13.2 of the ED. Propose wording: ‘the <u>shift allowance including relevant weekend penalty rates payments</u> the employee would have received...’	296–297	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 . Linked to item 9
	AWU	Reply-04/12/15			Wording proposed by AIG is unclear given ordinary hours cannot be worked on the weekend under this award. Wording should remain unchanged and the heading of clause 13 amended – see item 9 above.	11	
	AIG	Sub-11/07/17			See item 9 for submission.		
13.	AWU	Sub-23/11/15	20.2		Termination of employment Typo – provision should read ‘...the employer may withhold <u>from</u> any money due to the employee on termination...’	9	RESOLVED Drafting error - ED amended
	ABI & NSWBC	Reply-07/12/15			Agree with AWU	3.4	
	AIG	Reply-07/12/15			Agree with AWU	178	
14.	ABI & NSWBC	Sub-07/07/17	22.1(b)		There is an incorrect reference to clause 21.1(a). The correct reference should be to clause 22.1(a)	21	RESOLVED Drafting error – ED amended

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial and NSW Business Chamber
AIG	Australian Industry Group
AWU	The Australian Workers' Union
ED	Exposure Draft of <i>Pharmaceutical Industry Award 2010</i>