

SUMMARY OF SUBMISSIONS ON REVISED EXPOSURE DRAFT – OUTSTANDING ISSUES

This table is a summary of reply submissions lodged for this award after the 9 June 2017 decision [\[2017\] FWCFB 3177](#) and in response to the Further Revised Exposure Draft published on [13 June 2017](#).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
1	AIG	Sub-11/07/17	1.5	Title and commencement Submit that the clause be deleted.	32-33	RESOLVED Determined in [2015 FWCFB 6656] at [74] ED amended
2	AIG	Sub-11/07/17	6.5(a)	Eligible casual employee – bullet point 2 Submit that the clause does not confine conversion to one employer. Propose to amend it to: ‘who is employed by a particular employer for a sequence of periods under this award over six months; and...’	37-39	REMAINS OUTSTANDING
3	AIG	Sub-11/07/17	6.5(a)	Eligible casual employee – bullet point 3 The clause would be satisfied if employment continued beyond six months as a casual employee. Amend to: ‘whose employment is to continue beyond the conversion process.’	40-42	REMAINS OUTSTANDING
4	AIG	Sub-06/03/15	8.3(d)	Clause 8.3(d) refers to “a shift worked”, which is confusing in the context of a clause that applies employees other than shiftworkers. The word “shift” should be substituted with “day”. This is consistent with clause 21.2(f)	117	RESOLVED , By agreement
	AIG & AWU	JointReport-25/04/15		Parties agree that clause should be amended by substituting the word ‘shift’ to ‘day’	8	

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5	AIG	Sub-11/07/17	10.1	Adult employees A literal interpretation would require payment of the minimum weekly rate to all adult employees, including casual and part-time employees. Consider adding 'full-time employees' to the text.	43-44	REFERRED Referred to the Plain Language Full Bench (AM2016/15) see decision [2017] FWCFB 5536 at [581], see also [2018] FWC 1544 .
6	AIG	Sub-11/07/17	11.1(a)	All purpose allowance Insert 'annual' before 'leave'.	45-47	RESOLVED determined in [2015] FWCFB 4658 at [91]. ED amended
7	AIG	Sub-06/03/15	11.2(a)(ii) and (iii)	Expense related allowances – Meal Allowance The separation of the words "every four hours thereafter" in clause 11.2(a)(iii) is confusing, as it is no longer clear whether the allowance is payable for every four hours after the allowance is payable under subclause (i) or (ii). The provision should be amended such that it is consistent with the current clause 15.4(a)(ii).	121-123	RESOLVED , By agreement
	AIG & AWU	JointReport-25/04/15		Parties agree that clause 11.2(a)(ii) and (iii) be amended by inserting the words "every four hours thereafter." at the end of (ii) and deleting (iii)	11	
8	AIG	Sub-06/03/15	11.2(e)(i) and (iii)	Expense-related allowances – Distant work – accommodation and incidental allowances The first bullet point [sic] to clause 11.2(e) should be amended by inserting the words "for seven days" after "per week" to make clear that the allowance is intended to compensate an employee for a period of seven days, as opposed to a working week of, for instance, five days	125	RESOLVED , By agreement ED amended - amendment in second bullet point, not first.
	AIG & AWU	JointReport-25/04/15		Parties agree that clause 11.2(e) should be amended by inserting the words "for seven days" after "per week"	12	

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9	AIG	Sub-06/03/15	13.2 (b)(i), and (ii), (iv)	<p>Shiftwork and penalties – Afternoon and night shift penalties</p> <p>Cl 13.1(b)(i) should be amended by inserting the word “whilst” before “working”, as found in the current clause 22.2(a). Ensures allowance is only payable while the employee is working an afternoon or night shift. The current ED, arguably requires payment of the allowance to an employee who works afternoon or night shifts from time to time, even when the employee is working, for example, during the day;</p> <p>Clause 13.1(b)(ii) should be amended by substituting the words “who works” with “who is required to work”. This is consistent with clause 22.2(b), which requires payment of the penalty rate where the employee is required to perform such shiftwork, as compared to circumstances where an employee may voluntarily does so.</p>	127	RESOLVED, By agreement
	AIG & AWU	JointReport- 25/04/15		The parties agree that clause 13.2(b)(i) should be amended by inserting the word “whilst” before “working” and that clause 13.2(b)(ii) of the ED should be amended by substituting the words “who works” with “who is required to work on”.	13-14	
10	AIG	Sub-06/03/15	13.2(iv)	This provision does not confine the payment of the higher rate to ordinary hours, as is the case in the current clause 22.2(c)	127	RESOLVED, By agreement
	AIG & AWU	JointReport- 25/04/15		The Parties agree that clause 13.2(b)(iv) should be amended by inserting the words ‘during ordinary working hours’ after “for all time worked”	15	

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11	AFEI	Transcript-24/10/14	13.3(a)	Replace number 144 with 152		RESOLVED Appears to be an error see Transcript-24/10/14 at PN1159-1176 ED amended .
12	AIG	Sub-06/03/15	13.3(i)	Hours of work The reference to cl 13.6 should be substituted with a reference to cl 14.2. This appears to be a drafting error	128	RESOLVED , Drafting error
	AIG & AWU	JointReport-25/04/15		Agreed	16	
13	AIG & AWU	JointReport-25/04/15	14.1(b)	Definition of overtime The Parties agree that clause 14.1(b) should be amended by inserting “overtime and” before “paid at the appropriate overtime rate”		RESOLVED , By agreement
14	AIG	Sub-06/03/15	14.5(a)	Rest period after overtime Cl 14.5(a) does not reflect current provision to the extent that it removes an important element of “practicability”, thus losing an important flexibility. Cl 14.5(a) should be substituted with the terms of current cl 24.6(a).	130	RESOLVED , By agreement
	ABI & NSWBC	Sub-06/04/15		Agree that clause has lost a key element of the current award cl 24.6(a) which is the qualification of “wherever reasonably practicable”. The proposed clause should maintain the existing form of expression of the current Award.	9	
	AIG & AWU	JointReport-25/04/15		Replace cl 14.5(a) with ‘When overtime work is necessary it must, wherever reasonably practicable, be arranged so employees have at least 10 hours off duty between the end of a day or shift and the commencement of another day or shift. If an employee works overtime, the end of the employee’s day or shift is the end of the overtime.’	19	

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15	AWU	Sub-25/06/14	15.6(a) and (c) (previously 15.4(a))	Close-down Agree with the draft determination to substitute cl 25.4(a)	Page 2, para2	RESOLVED, Parties agree to insert words in paragraph [2] of the draft determination, regarding, mandatory notice for shut down. That is, to replace the word 'may' with 'must' in relation to the giving of notice of such close downs. See Report to Full Bench
	ABI & NSWBC	Corr-25/06/14		Agree	1	
	AFEI	Corr-25/06/14		Agree	1	
	FWC	Report- 17/07/14		Noting parties' agreement to draft determination	5	
	AWU	Sub-26/09/14		Reference to "may give those employees one month's notice" should be "must give those employees one month's notice".	Page 2	
	FWC	Draft-det- 17/07/14		By deleting cl 25.4 (a) and inserting in lieu thereof: (a): "An employer may elect to temporarily close down (or reduce to nucleus) during the Christmas/New Year period for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, provided that the employer gives affected employees no less than one month's notice in writing of its intention to close down."	Page 2, para2	
	AFEI	Sub-20/10/14		Opposed the AWU proposal to amend the provision dealing with the giving of notice in the event of an annual close down. The proposal by the AWU may amend the current requirements in the award for the giving of notice.	25	
		Transcript -24/10/17			Draft determination in the report to the Full Bench that doesn't seem to have been reflected in the Exposure Draft – assumes the parties' positions would be that the wording in the draft determination should be adopted	

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	AIG	Sub-01/12/14		An agreement was reached between ABI, AFEI and the AWU to vary clause 25.4(a) of the current award, as per the draft determination attached to Commissioner Riordan's report to the Full Bench of 17 July 2014. Ai Group does not oppose the agreement there reached.	Page 1	
	AFEI	Sub-01/12/14		The proposed variation is to replace the word "may" with "must" in relation to the giving of notice of such close downs. AFEI agrees to the proposed variation	Page 1	
16	AIG	Sub-11/07/17	15.2(b)	Seven day shiftworker The provision is inconsistent with s. 87(2) of the Review regarding NES and should therefore be deleted.	48-49	REMAINS OUTSTANDING
17	AIG	Sub-11/07/17	Sch. F	Definitions – casual ordinary hourly rate Amend 'clause 8' to 'clause 10'. This appears to be a drafting error.	50	RESOLVED Ed amended

List of abbreviations (in alphabetical order)

AIG	Australian Industry Group
ABI & the NSWBC	Australian Business Industrial and the NSW Business Chamber Ltd
AFEI	Australian Federation of Employers & Industries
AWU	The Australian Workers' Union