

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 [\[2015\] FWCFCB 7236](#) and in response to the Revised Exposure Draft published on [4 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	NOTES
1.	CFMEU	Sub 20-11-15		18	Accident pay – notes omitted from exposure draft. Decision made to retain in current award.		Drafting error corrected in exposure draft – provision inserted at clause 10A.
	CMIEG	Sub 20-11-15			Provision should be retained.	3(h); 4(a)-(b)	
	AIG	Sub 23-11-15			Current award provision appears to be omitted.	104	
2.	AIG	Sub 23-11-15	7		Classification – first para should be numbered 7.1, there is 7.2 without 7.1.	85	Drafting error corrected in exposure draft.
	CFMEU	Reply 21-12-15			Agrees	16	
3.	AIG	Sub 23-11-15	8.1		Ordinary hours of work – provision does not meet requirements of s.147 of the FW Act. Suggest inserting ‘up to’ before ‘35 hours’.	86	
	CFMEU	Reply 21-12-15			Disputes inconsistency with s.147. Provision should remain. If inconsistency found, ‘up to 35 hours’ is confusing. Provides alternative wording.	3-7 (draft provision see para 6)	
4.	AIG	Sub 23-11-15	8.7(f)(ii)		Rostered days off – insert ‘such’ after ‘for each’ to make clear provision relates only to public holiday which coincide with RDO.	87	Drafting issue agreed by parties, amended in exposure draft.
	CFMEU	Reply 21-12-15			Agrees	16	

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5.	CFMEU	Sub 20-11-15	9.2(a)		Paid meal break – break should be at ordinary time rate if taken during ordinary time; overtime rate if taken during overtime hours. Agreed position with CMIEG, AIG opposed. No further submissions after October decision. Current provision should be retained.	7-12	
	CMIEG	Sub 20-11-15			Relies on joint submission with CFMEU – 20-10-14	3 (c)	
	AIG	Reply 7-12-15			Understand no proposal made to vary award, should variation be made, AIG would like to make submission.		
6.	CMIEG	Sub 20-11-15	9.2(c)		Paid meal break – Relies on joint submission with CFMEU – 20-10-14	3(c)	
	AIG	Reply 7-12-15			CFMEU and CMIEG submitted would be convenient if provision specified break is 30 minutes in length. AIG oppose variation. Parties required to pursue variation were required to file 21 days after October decision, no application was made.	11-50	
7.	CFMEU	Sub 20-11-15	12.1		Rotating night shift – parties asked whether term should be called ‘non permanent night shift’. No issues with current term. Notes no submission in compliance with October decision on this issue, current term should be retained.	14-16	

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8.	AIG	Sub 23-11-15	13.1	22.2	Penalty rates – exposure draft refers to shift rates as penalties, current award uses ‘shift allowances’ (in annual leave clause) and shift premium in clause 22.2. Heading should be amended to ‘shift allowances’.	88-91	
	AIG	General sub 31-08-16			Reiterates inconsistency in context of inconsistency in other awards.	17	
	CFMEU	Reply 21-12-15			Not opposed to inserting subheading ‘shift allowances’ in ‘8.1’ (sic – 13?). Additionally, proposes to insert cross-reference to 8.1 (sic 13.1?) in clause 15.9(b).		
9.	CFMEU	Sub 20-11-15	13.2		Weekend work – penalty rates apply to all employees. Strike through on ‘other than shiftworkers’ is correct in ED published on 4 Nov 2015.	17-19	No change needed.
10.	AIG	Sub 20-11-15	13.3(a)(i)		Penalty rates – reference to clause 14.3 should be substituted for 14.2.	92	
	CFMEU	Reply 21-12-15			Agrees	16	
	CFMEU	Further sub 16-06-16			Reference should be to clause 14.2 or 14.3. To clarify position words ‘ordinary hours on’ to be inserted between ‘work’ and ‘afternoon’ in 13.3(a) and 13.3(b).	Page 4	
11.	CMIEG	Sub 20-11-15	14		Redundancy pay – application seeking to vary award to provide for cap on redundancy pay. Referred to Full Bench.		Referred to Full Bench next listed for hearing 7-11 November 2016.

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12.	AIG	Sub 23-11-15	14.1	17.1	Overtime – current award includes exemption for clause 17.7 (call back) cross reference should be 14.8.	93	Drafting error corrected in exposure draft.
	CFMEU	Reply 21-12-15			Agrees	16	
13.	AIG	Sub 20-11-15	14.2(b)		Payment for overtime – clause should be amended to ‘200% of the minimum hourly rate’ in line with decision [95-96] of [2015] FWCFB 4658	94	Exposure draft amended to reflect [95-96] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15			Agrees	16	
14.	CFMEU	Further Sub 3-12-15	14.3		Overtime – six and seven day roster – exposure draft does not reflect current award entitlement for 6 and 7 day roster employees who work excess of or outside ordinary hours and public holidays. Proposed wording provided.	4-9	AIG proposes consideration of whether 14.3(c) or (d) be inserted be deferred until its proposal can be heard or determined.
	AIG	Reply 7-12-15			Does not oppose variation proposed by CFMEU to clause 14.3(a) and (b) as reflect current award. Opposes proposed new clause 14.3(c) and (d), do not agree with CFMEU’s interpretation of current award.	17-18	
	CMIEG	Reply 22-01-16			Opposes insertion of clauses 14.3(c) and 14.3(d). Amendment unnecessary and inconsistent with operation of clause.	28-29	
	CFMEU	Further sub 16-06-16			Amendment to Further Sub 3-12-15 (para 5) proposed clause 14.3(c) reference to ‘a rotating night shift’ be amended to ‘any rotating night shift’	Page 1-2	

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					to be consistent with proposed 14.3(a). Clarification on the argument provided in correspondence 17-06-16		
15.	CFMEU	Sub 20-11-15	15.3		Accrual of annual leave – should be based on ‘employment’ not ‘service’ as AIG submitted. No submission made in compliance with October decision, term ‘employment’ should be retained.	20-24	
16.	AIG	Sub 20-11-15	15.8(c)		Paid leave in advance – reference to 15.2(b) should be replaced with 15.3.	95	[Clause since substituted following decision [2016] FWCFB 3953 , PR582969]
17.	CFMEU	Sub 20-11-15	16.2		Personal leave – current award leave accrues on commencement of employment, rather than anniversary. No submissions received to contrary in compliance with October decision, current provision should be retain.	25-29	
18.	CFMEU	Sub 20-11-15	18.3(b), 18.4(b)		Public holiday – parties agreed to delete clause 18.4(b) however exposure draft 18.3(b) was deleted. This appears to be a drafting error.	30-35	Typographical error in report to FB 11 December 2014. Parties position put in revised exposure draft submitted by AIG 15-01-15 referred to in decision [12] [2015] FWCFB 7236 . ED updated to reflect intent of decision.
	AIG	Sub 20-11-15			Parties agreed to delete 18.3(b)	96	
	CMIEG	Reply 22-01-16			Agrees error in the drafting.	9	

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19.	AIG	Sub in response to October Directions 13-11-15	18.4		Public holidays amendment to provide that public holiday rates are in substitution for, not cumulative upon penalty rates in clause 13 (penalty rates – shift and weekend work) and clause 14 (overtime). Request opportunity to file reply submissions, and for parties to advise if matter could be dealt with on papers.	Proposed wording provided page 1-2.	
	CFMEU	Sub 20-11-15			Exposure draft asked whether 200% of minimum hourly rate was in addition to ordinary rate and if so, if it differed from 18.4(b): CFMEU and CMIEF both agreed it did. AIG oppose this and have put in submissions in compliance with October decision. CFMEU opposes AIG position.	36-42	
	CMIEG	Sub 20-11-15			Relies on submission of CFMEU and earlier joint submission.	3c	
	AIG	Sub 20-11-15			Seeks to vary provision to minimum hourly rate. See above submission 13-11-15 filed in accordance with October decision directions.	97	
	CMIEG	Reply 22-01-16			Withdraws support for CFMEU position. No basis for penalty, allowance or loading to be paid to 18.3 and 18.4. Current drafting of exposure draft should remain unamended. No change needed to schedule C-D.	10-25	

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	CFMEU	Reply 7-04-16			Considers AIG and CMIEG submissions. When public holiday falls on weekend, employee is not entitled to Saturday/Sunday rates in addition to public holiday. Employee entitled to 200% of relevant minimum hourly rate in addition to minimum hourly rate i.e. 300%. Exception 6 or 7 day shift workers, any overtime performed on day will be paid at 300%. When employee rostered ordinary hours on public holiday, and hours fall on afternoon or night shift – employee entitled to public holiday payment and shift allowance cumulative. If 6 or 7 day shift worker performs overtime on a public holiday, is entitled to applicable shift allowance in addition to 300% public holiday rate for working overtime.	Proposed wording set out in para 18.	
	AIG	Reply 7-12-15			Request amendment deferred until can be heard on it.	21	AIG request to be heard on matter.
	CFMEU	Reply 21-12-15			Does not object to AIG proposal for matter to be heard.		
20.	CMIEG	Sub 20-11-15	25		Annual leave – variation to model term. Parties expressed view in submission that could be dealt with at award stage.		Being dealt with by common issue – AM2014/47 Annual Leave

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21.	AIG	Sub 20-11-15	A.8.2 B.3.1		Wage related allowances – third column should be amended to include frequency with which allowance is payable.	98, 100	[Third column appears to outline percentage of Level 2 weekly rate, to calculate allowance amount. Fourth column sets out amount and frequency of payment.]
22.	APESMA	Sub 20-11-15			Classification – Undermanager. Classification of undermanager is absent from exposure draft and current award. Appeared in pre-modern award, and classification required by WHS legislation. Discussion with CFMEU and CMIEG indicates no objection to rectifying the matter.	2-7	Amendment appears to be agreed, ED amended in red text.
	AIG	Reply 7-12-15			Does not oppose insertion of ‘undermanager’ in B.2.1 Group K	22	
23.	APESMA	Sub 20-11-15	B.2.1		Classification – typographical error, no line between classifications of ‘planning officer’ and ‘occupational health nurse’.	8-9	Drafting error corrected in exposure draft.
	AIG	Reply 7-12-15			Does not oppose correction		
24.	AIG	Sub 20-11-15	B.2.1		Minimum rates – adults the casual hourly rate column should be deleted consistent with paragraph [54] of [2015] FWCFB 4658 .	99-100	Decision updated in accordance with [54] of [2015] FWCFB 4658 . (Noting minimum wages are not in body of award but in Sched A & B, detailed wage tables in Sched C).
	CFMEU	Reply 21-12-15			Agrees	16	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
25.	AIG	Sub 20-11-15	Sch C		Summary of hourly rates of pay – to be amended in line with paragraph [63] of [2015] FWCFB 4658	101	Exposure draft amended in accordance with [63] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15			Agrees	16	
26.	CFMEU	Further Sub 3-12-15	Sch C and D		Summary of hourly rates of pay - tables should be amended to include: rates for workers on afternoon or night (rotating or permanent) shift on Saturday and Sunday in C.1.2 and D.1.2; and, hourly rate for 6 or 7 day roster employee works overtime on an afternoon or night shift falls on public holiday in C.1.4 and D.1.4; casuals who work 6 or 7 day roster	10-11	
	CFMEU	Further sub 16-06-16			Tables should also include overtime provisions for employees who work either of roster 17.2(b)(ii) or (iii).	Page 3	
27.	CFMEU	Further Sub 3-12-15	C.1.3, C.1.4, D.1.3, D.1.4		Summary of hourly rates – refers to ‘6 or 7 day roster <i>shiftworkers</i> ’ when definition and clause 14.3 uses term ‘6 or 7 day roster employees’. Should change to ‘ <i>employees</i> ’ for consistency.	13	Error, exposure draft amended.
28.	AIG	Sub 20-11-15	C.2		Casual employees – award does not currently permit engagement of production and engineering employees on casual basis. Sch C.2 should be deleted.	102	Parties appear to agree on interpretation. Exposure draft has been amended to reflect this.
	CFMEU	Further Sub 3-12-15			Neither current award nor exposure draft allow for casual production and engineering employees. Delete tables.		

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	CFMEU	Reply 21-12-15			Agrees with AIG	16	
29.	AIG	Sub 20-11-15	Sch D		Summary of hourly rates of pay – to be amended in line with paragraph [63] of [2015] FWCFB 4658	103	Exposure draft amended in accordance with [63] of [2015] FWCFB 4658
	CFMEU	Reply 21-12-15			Agrees	16	

Note:

- Resolving the outstanding matters, CMIEG submits that matters may be best addressed in conference, or mentioned, convened by a delegated member of the Full Bench - [Sub 20-11-15](#) (paragraph 6), reply submission [22-01-16](#).
- APESMA – Collieries’ Staff Division supports submission made by CFMEU – correspondence [20-11-15](#)
- AMWU supports submissions made by CFMEU-Mining Division on 20 November 2015 and 3 December 2015 – correspondence [4-12-15](#)

List of abbreviations (in alphabetical order)

APESMA	The Association of Professional Engineers, Scientists and Managers Australia
AIG	Australian Industry Group
AMWU	Australian Manufacturing and Workers’ Union
CMIEG	Coal Mining Industry Employer Group
CFMEU	Construction, Forestry, Mining and Energy Union
FWC	Fair Work Commission