

REVISED SUMMARY OF SUBMISSIONS – TECHNICAL AND DRAFTING

This table is a summary of submissions on technical and drafting issues. The summary has been revised to include feedback from the conference held on 27 March 2017 ([Transcript](#) and [Draft report](#)).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1	TCFUA	Sub-18/01/17	ToC, Part 4	Part 4 – Wages and Allowances Insert ‘Superannuation’ at end of title.	Page 4	Not opposed by AFEI, AWU and UV, see Transcript-27/03/17 [PN51-PN73]. ABI & NSWBC questions need for change and will circulate submission if issue significant, see Transcript-27/03/17 [PN57-PN63] & [PN76-PN78]. AFEI would support either ABI & NSWBC or TCFUA, see Transcript-27/03/17 [PN73-PN75].
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA’s proposal.	Para 62	
2	AWU	Sub-20/01/17	ToC, Part 5	Overtime and Penalties Rates Heading should be ‘Overtime and Penalty Rates’.	Para 11	Agreed, see Transcript-27/03/17 [PN78-PN86]
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA’s proposal.	Para 63	
	TCFUA	ReplySub-23/02/17		Agrees with AWU’s submission.	Page 6	
3	AFEI	Sub-18/01/17	2, 4.2	Definitions <i>‘Dry cleaning and laundry industry’</i> is defined in both clause 4.2 and clause 2. The definition at clause 4.2 not required.	Para 46	Agreed that definition of <i>‘dry cleaning and laundry industry’</i> should appear only once and only in clause 4, see Transcript-27/03/17 [PN86-PN108]
	AWU	Sub-20/01/17		Not necessary to repeat the definition of the <i>‘dry cleaning and laundry industry’</i> in clause 2, already appears in clause 4.2.	Para 3	
	TCFUA	ReplySub-23/02/17		Preferable to locate definition in clause 2 and delete repetition from clause 4.2.	Page 2	

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4	ABI & NSWBC	Sub-18/01/17	5	Effect of variations made by the Fair Work Commission This clause should be a subclause of clause 1. Title and Commencement.	Para 2.1	Provision is contained as a discrete clause in all group 4 ED's in accordance with plain language principles [2016] FWC 2924 , see para [4]. Submission no longer pressed by ABI & NSWBC, see Transcript-27/03/17 [PN109-PN114]
	TCFUA	ReplySub-23/02/17		Not opposed to ABI & NSWBC's submission.	Page 1	
5	TCFUA	Sub-18/01/17	7.1	Facilitative provisions Facilitative formulation/preamble is potentially ambiguous. Proposes opening sentence be amended. Provides wording.	Pages 4, 5	AFEI and ABI & NSWBC question need for change. AWU and UV are neither opposed nor unopposed. TCFUA continues to press matter and will provide submission, see Transcript-27/03/17 [PN115-PN140]
	AFEI	ReplySub-22/02/17		Does not consider TCFUA's proposal necessary.	Para 64	
6	TCFUA	Sub-18/01/17	7.2	Facilitative provisions Suggest more accurate description of clause 14.9 is 'Ordinary hours of work – laundry workplaces – substitution of a rostered day off'.	Page 5	Agreed, see Transcript-27/03/17 [PN141-PN161]
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA's proposal.	Para 65	
7	TCFUA	Sub-18/01/17	11	Casual employment 'All' has been deleted. Submits it should be reinserted in cl 11.4 and 'ordinary' deleted.	Page 3	TCFUA submitted the word 'all' has been deleted from clause 11.4 of ED. see Transcript-27/03/17 [PN162] AMOD notes: the word 'all' has not been deleted from ED. For issue regarding the word 'ordinary', please refer to Item 8.

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8	AWU	Sub-20/01/17	11.4	Casual Employment <i>'Ordinary'</i> has been inserted into ED clause. Submits this is a substantive change and word should be deleted.	Paras 4-5	TCFUA and AWU maintain insertion of word <i>'ordinary'</i> is a substantive change. UV questions AMOD team's intention in inserting word. ABI & NSWBC will agitate issue further. AMOD team to clarify intention behind insertion of word <i>'ordinary'</i> , see Transcript-27/03/17 [PN161-PN196]
	TCFUA	ReplySub-23/02/17		Agrees with AWU's submission.	Page 4	
9	AWU	Sub-20/01/17	13.1	Ordinary hours of work- dry cleaning workplaces Replace <i>'will average 38 hours per week'</i> with <i>'will be 38 hours per week'</i> .	Paras 6-7	Not agreed. AMOD team to research history of clause 13.1 and averaging provisions, see Transcript-27/03/17 [PN197-PN254]
	AFEI	ReplySub-22/02/17		Opposes AWU's submission.	Para 66	
	TCFUA	ReplySub-23/02/17		Agrees with AWU's submission.	Pages 4-5	
10	TCFUA	Sub-18/01/17	13.1	Ordinary hours of work – dry cleaning workplaces <i>'Full time employee'</i> should be deleted.	Pages 6, 7	Agreed, see Transcript-27/03/17 [PN257-PN271].
11	AFEI	Sub-18/01/17	14.4	Ordinary hours of work – laundry workplaces Clause should be amended to include the word <i>'average'</i> before <i>'weekly wage'</i> .	Para 48	Not agreed. AFEI to make further submissions, see Transcript-27/03/17 [PN271-PN290].
	TCFUA	ReplySub-23/02/17		Opposes AFEI's submission.	Pages 2-3	
	AWU	Replysub-24/02/17		Opposes AFEI's submission.	Para 5	

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12	AWU	Sub-20/01/17	14.9	Ordinary hours of work—laundry workplaces Unclear why a cap of 12 rostered days off imposed for 12-month period when accrual of one day in each 4-week cycle should lead to 13 rostered days off accruing.	Para 9	Not agreed, see Transcript-27/03/17 [PN291-PN319].
	TCFUA	ReplySub-23/02/17		Agrees with AWU.	Page 5	
13	TCFUA	Sub-18/01/17	18.1	Minimum wages Delete words ‘worked by the employee’.	Page 7	Not opposed, except by ABI & NSWBC which reserves its position, see Transcript-27/03/17 , PN320-PN335].
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA’s submission.	Para 67	
14	AFEI	Sub-18/01/17	18.2, 18.3	Wages of junior employees Clauses should be amended to provide payments for junior employees based on a percentage of the ‘minimum adult rate’.	Para 47	Parties appear to have agreed that column headings in clauses 18.2 and 18.3 should read ‘% of minimum weekly rate of pay’, see Transcript-27/03/17 [PN336-PN370].
	UV	ReplySub-22/02/17		Agrees clause should be amended, but appropriate words are ‘minimum rate of pay’.	Para 3	
	TCFUA	ReplySub-23/02/17		Opposes AFEI’s submission. May alter legal effect of provisions.	Page 3	
	AWU	Replysub-24/02/17		Opposes AFEI’s submission. Suggests the percentage tables read ‘% of rate of pay’	Para 6	

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15	AWU	Sub-20/01/17	18.4(d)	Wages of apprentices Delete words 'Or the rate prescribed by clause 18.4(b) for the relevant year of the apprenticeship, whichever is the greater'.	Para 10	AWU to re-consider its position in light of Full Bench decision [2013] FWCFB 5411, see Transcript-27/03/17 [PN371-PN402].
	AFEI	ReplySub-22/02/17		AWU's proposed change is unnecessary.	Para 69	
	TCFUA	ReplySub-23/02/17		Has alternate view to AWU and relies on reason why clause was inserted from [2013] FWCFB 5411.	Para 10	
16	TCFUA	Sub-18/01/17	19	Allowances Clause 19 or Schedule D must contain a note drawing attention to an employers' requirement to separately identify any allowance on a pay record – ED does not.	Pages 7, 8	ED should include note required by Full Bench in [2015] FWCFB 4658 drawing attention to fact that employers must separately identify any allowance in a pay record, see Transcript-27/03/17 [PN403-PN413].
17	TCFUA	Sub-18/01/17	22.3	Time off instead of payment for overtime Clause has since been varied by the inclusion of the Model (TOIL at overtime rates) term in accordance with PR585793 .	Page 8	ED is to be amended to include model TOIL clause. UV reserved its position noting model clause might need to be tailored. TCFUA advised reference to clause 22.3 on page 5 of TCFUA Sub-18/01/17 should be a reference to clause 22.2, see Transcript-27/03/17 , [PN413-PN443].
	AWU	Sub-20/01/17		Include the new TOIL term inserted into the Award on 14 December 2016.	Para 12	
	TCFUA	ReplySub-23/02/17		Agrees with AWU submission	Page 6	

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18	AWU	Sub-20/01/17	22.4 (b)	Period after overtime Suggests alternative clause wording which clarifies the 10 hour break is between the completion of overtime and the commencement of ordinary hours.	Paras 13-14	Parties to reconsider AWU's proposed wording and offer alternative wording if any, see Transcript-27/03/17 [PN463-PN467].
	AFEI	ReplySub-22/02/17		Prefers wording of ED to that proposed by AWU	Para 69	
	TCFUA	ReplySub-23/02/17		Does not support AWU's proposed amendment. May alter legal effect.	Page 7	
19	AWU	Sub-20/01/17	22.5	Recall to work overtime Delete words 'from home'. Reference to 'at home' could negate the entitlement for an employee who didn't return home after completing work.	Paras 15-16	AWU continues to press issue with support of TCFUA and UV. AFEI and ABI & NSWBC consider variation a substantive change, see Transcript-27/03/17 [PN468-PN485].
	AFEI	ReplySub-22/02/17		Opposes AWU's submission. Considers it a substantive change.	Para 70	
	TCFUA	ReplySub-23/02/17		Supports AWU's proposed amendments in principle.	Page 7	
20	AWU	Sub-20/01/17	23.1	Saturday work Potential for an employee to suffer pay reduction when they perform ordinary hours on a Saturday. Suggests inserting words at end of clause 23.1(b) to clarify.	Paras 17-19	AWU presses position with support of TCFUA and UV. ABI & NSWBC and AFEI consider change substantive, see Transcript-27/03/17 [PN485-PN505].
	AFEI	ReplySub-22/02/17		AWU's proposal is a substantive change.	Para 71	
	TCFUA	ReplySub-23/02/17		Agrees with AWU's submission and supports proposed amendment.	Page 8	

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21	AWU	Sub-20/01/17	23.4	Time off instead of payment for work on a Saturday, Sunday or public holiday Additional provision should be inserted to guarantee payment on termination to an employee if the time off has not been taken. Suggests using wording for TOIL term in clause 22.2(h) of current award.	Para 20	Parties to consider using wording taken from model TOIL clause in drafting an additional provision, see Transcript-27/03/17 [PN505-PN524].
	TCFUA	ReplySub-23/02/17		Agrees with AWU's submission in principle. Notes proposed wording would need to be modified.	Pages 8-9	
22	AWU	Sub-20/01/17	24.1 (b)	Definitions Prescribing of only a commencing time trigger but not a finishing time may create uncertainty. Suggests inserting a span for commencing time or reference to shift finishing after a particular time.	Paras 21-22	Parties to consider appropriate change and then Commission to determine whether change is substantive. ABI & NSWBC does not agree operation of clause is unclear and considers any variation substantive, see Transcript-27/03/17 [PN525-PN543].
	AFEI	ReplySub-22/02/17		Concerned AWU's proposal may result in a substantive change.	Para 72	
23	TCFUA	Sub-18/01/17	24.8	Shiftwork <i>In response to question raised by Commission</i> Clause should remain.	Pages 8, 9	All parties except for ABI & NSWBC support retention of clause. ABI & NSWBC may provide submission that clause should be deleted as it has no more work to do, see Transcript-27/03/17 [PN544-PN560].
	ABI & NSWBC	Sub-18/01/17		Clause can be removed. Unlikely to serve any ongoing purpose.	Para 11	
	AWU	Sub-20/01/17		No [Clause should remain]	Para 23	
	TCFUA	ReplySub-23/02/17		Opposes ABI & NSWBW's submission. Supports AWU submission. Notes its previous submission.	Page 9	

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	AFEI	ReplySub-22/02/17		Does not oppose TCFUA's and AWU's submissions.	Para 73	
	AWU	Replysub-24/02/17		Opposes submission of ABI. Relies on sub-20/01/17.	Para 4	
24	TCFUA	Sub-18/01/17	35	Transfer to lower paid job on redundancy The word 'job' has a different characterisation from the word 'duties'. May have a different legal effect. Heading of clause should revert current award clause ' <i>Transfer to lower paid duties</i> '.	Page 9	All parties except for ABI & NSWBC support TCFUA's proposal. ABI & NSWBC may provide submission on matter, see Transcript-27/03/17 , [PN561-PN572].
	AFEI	ReplySub-22/02/17		Does not consider TCFUA's proposed amendment necessary.	Para 74	
25	TCFUA	Sub-18/01/17	36	Employee leaving during redundancy notice period Formulation in ED is different to clause 12.3 current award. Believes this would constitute a substantive change.	Pages 9, 10	Not agreed. Matter needs further consideration, see Transcript-27/03/17 , [PN572-634].
	AWU	Sub-20/01/17		Amend ' <i>the benefits and payments they would have received under clause 34 – Redundancy</i> ' to ' <i>the benefits and payments they would have received under clause 34, 35 and 37</i> '.	Para 24	
	TCFUA	ReplySub-23/02/17		Agrees with AWU submission and proposed amendment.	Page 10	
	AFEI	ReplySub-22/02/17		Does not consider proposed amendments necessary.	Para 75	

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26	TCFUA	Sub-18/01/17	37	Job search entitlement Notes drafting of ED which takes two separate clauses (job search entitlement-termination of employment and redundancy) in current award and combines into two sub-clauses. Submits they should be kept separate.	Pages 10, 11	Not opposed. TCFUA to circulate proposed wording to parties, see Transcript-27/03/17 [PN636-PN674].
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA's proposal.	Para 76	
27	TCFUA	Sub-18/01/17	Sched C.1.2	Summary of Hourly Rates of pay Inclusion of note is potentially misleading. Submits note should be deleted or amended.	Page 11	TCFUA's position noted as 'reflective'. Although note in schedule has been considered by Full Bench, TCFUA may provide submission for comment, see Transcript-27/03/17 [PN675-PN691].
28	TCFUA	Sub-18/01/17	Sched C.1, C.1.2, C.2, C.2.3	Summary of Hourly Rates of pay Description in columns as ' <i>non-rotating shifts</i> ' is inaccurate description. If description is retained, submits a reference be made to substantive provision.	Pages 11-13	UV and AFEI agree with TCFUA that description ' <i>non-rotating</i> ' requires amendment. TCFUA to draft alternative form of words and circulate it to parties for comment, see Transcript-27/03/17 [PN693-PN724].
	AFEI	ReplySub-22/02/17		Does not oppose TCFUA's proposal.	Para 77	
29	TCFUA	Sub-18/01/17	Sched C.2.4	Summary of Hourly Rates of Pay Hourly rates for each classification level appear to be incorrect. Provides calculations of correct rates.	Page 13	AMOD team to explain and circulate method of calculation of penalty rates in C.2.4, see Transcript-27/03/17 [PN725-PN736].

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	AFEI	ReplySub-22/02/17		Does not oppose TCFUA's proposed amendment but provides a different calculation.	Para 78	
30	TCFUA	Sub-18/01/17	Sched C.3.1, C.3.2, C.3.3, C.3.4	Summary of Hourly Rates of Pay Wage rates contained in the 2nd, 3rd and 4th columns are incorrect for each classification. Provides calculations of correct rates.	Pages 13-17	TCFUA and UV submit basis for calculation of wage rates should be compounding. AFEI and ABI & NSWBC submit basis for calculation should be cumulative. AMOD team to clarify whether basis for calculation is compounding or cumulative. Parties then to provide further submissions, see Transcript-27/03/17 [PN737-769].
	AFEI	ReplySub-22/02/17		Opposes TCFUA's proposal and calculations. Submits ED rates are correct.	Para 79	
	ABI & NSWBC	ReplySub-22/02/17		Disagrees with TCFUA's submission.	Para 10.1	
31	AWU	Sub-20/01/17	Sched C.2.1, C.3.2	Full-time and part-time adult laundry employees Delete columns for day work ordinary hours worked on a Saturday.	Para 25	AWU continues to press issue and will write to AMOD team clarifying its position, see Transcript-27/03/17 [PN770-PN793].
	TCFUA	ReplySub-23/02/17		Agrees with AWU's submission.	Page 10	

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial & New South Wales Business Chamber
AFEI	Australian Federation of Employers and Industries
AWU	Australian Workers Union
ED	Exposure Draft
TCFUA	Textile Clothing & Footwear Union of Australia
UV	United Voice