

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 [\[2015\] FWC FB 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 24-11-15	2.2, 2.3		NES and this award - The additional words regarding the locations of copies of the NES and the award added into 2.3 instead of 2.2 of ED.	4	Error – ED amended
2	AIG	Sub 20-11-15	6.4(c)	10.3(b)	Casual employees - Replace 'ordinary' with 'minimum'.	307–321	
	AWU	Reply 4-12-15			Submissions are inappropriate. Issue has been determined by the Full Bench: [2015] FWC FB 6656 at [110] and [2015] FWC FB 7236 at [242].	4	
3	AWU	Sub 24-11-15	6.3(b)	10.2(b)	Part time employees - Replace 'minimum hourly rate' with 'ordinary hourly rate' as per 6.4(c).	5	
	AIG	Reply 7-12-15			Disagree. ED reflects current clause. Tool allowance is not an all-purpose allowance; the Full Bench's October 2015 decision does not indicate whether it is or not. 6.3(b) deals only with the minimum hourly rate for-time employees.	190–195	
4	AIG	Sub 20-11-15	10.3		Apprentices and trainees - Apprentice conditions of employment in current award are not included in ED. See PR559297 .	322	ED amended to resulting from PR559297

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5	AIG	Sub 20-11-15	11.4(a)		Expense related allowances - First sentence should be amended to 'loadings or payment while they are on <u>annual</u> leave' (insert 'annual'). Submission referred to clause 11.2(a) assumed 11.4(a) intended.	323	ED amended in accordance with [2015] FWCFB 4658 .
	AWU	Sub 24-11-15			Propose same amendment.	6	
6	AIG	Sub 20-11-15	13		Penalties - 'For all ordinary hours worked by the employee' should be deleted. It is not in the current award, confusing and unnecessary.	324–327	Change appears to be agreed by the parties and has been marked in the exposure draft.
	AWU	Reply 4-12-15			Not opposed.	6	
7	AIG	Sub 20-11-15	13.2	23.4	Shiftwork penalties - Concern about change to terminology relating to penalties, loadings and allowances in EDs. 'Shift loadings' in clause 23.4 have been re-characterised as penalties in ED. This is confusing and may have unintended consequences. Replace 'penalties' with 'loadings'.	2.2, 328–331	AIG noted this as an issue across many awards.
	AWU	Reply 4-12-15			Do not agree.	7	
8	AIG	Sub 20-11-15	13.2(a), 13.2(b), 13.2(c),	23.4(a)	Shiftwork penalties – AIG seeks to have penalty rates expressed as a percentage (as per current award) rather than the dollar figure.	2.2, 328–331	Refer to concerns in item 7.
	AWU	Reply 4-12-15			Do not agree.	7	
11	AIG	Sub 20-11-15	13.2(d)		Shiftwork penalties - Repeats definitions of afternoon, early morning and night shifts. They are defined in clause 13.1 and should be deleted.	332–333	Repetition drafting error, solution has been amended in ED as agreed change by

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	AWU	Reply 4-12-15			Agree with AIG.	8	parties.
12	AIG	Sub 20-11-15	13.3		Exclusion from shiftwork penalties - Replace 'penalties' with 'loadings' in entire clause.	2.2, 328–331	Refer to concerns in item 7.
	AWU	Reply 4-12-15			Do not agree.	7	
13	AIG	Sub 20-11-15	13.3		Exclusion from shiftwork penalties - Erroneous reference to 13.1(d)(i). Delete and insert reference to 13.2.	334	Error – ED amended
	AWU	Reply 4-12-15			Agree with AIG.	9	
14	AIG	Sub 20-11-15	13.4	23.5	Sunday work - Replace with: 'An employee will be paid a loading of 100% of the ordinary hourly rate for any hours, ordinary or overtime, worked on a Sunday.'	335–336	Linked to issue of 'loading' in items 7, 8, 12, 15, 16
	AWU	Reply 4-12-15			Disagree. Wording used in ED is clearer than what is proposed.	10	
15	AIG	Sub 20-11-15	13.5	23.6	Replace with: 'An employee will be paid a loading of 150% of the ordinary hourly rate for any hours, ordinary or overtime, worked on a public holiday.'	337–338	Linked to issue of 'loading' in items 7, 8, 12, 14, 16
	AWU	Reply 4-12-15			Disagree. Wording used in ED is clearer than what is proposed.	10	
16	AIG	Sub 20-11-15	13.6	23.2(b)	Saturday work - Replace with: 'An employee will be paid a loading of 50% of the ordinary hourly rate for any hours, ordinary or overtime, worked on a public holiday.'	339–340	Linked to issue of 'loading' in items 7, 8, 12, 14, 15
	AWU	Reply 4-12-15			Disagree.	10	
17	Aurizon and ors	Subs-04/12/15	14.1		Overtime - ED doesn't confer overtime entitlement to certain	13–21	Matter being considered by AM2014/196 &

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					employees and is a departure from the current award. Proposed wording in submission.		AM2014/197 Casual and Part-time Full Bench.
18	AIG	Sub 20-11-15	14.1(a)		Definition of overtime - Insert a reference to clause 8.1(f).	341	Addition of reference to 8.1(f) appears to be agreed, has been amended in ED. <i>Other parties have not commented on Aurizon proposal, not added to ED at this stage.</i>
	AWU	Reply 4-12-15			Not opposed to AIG.	11	
	Aurizon and ors	Subs-04/12/15			Proposed alternative wording for clause.	18(a)	
21	AIG	Sub 20-11-15	14.2(b)		Exclusions from overtime - Replace 'penalty' with 'loading'.	2.2, 328–331	Refer to concerns in item 7.
22	AIG	Sub 20-11-15	14.3		Overtime rates - Table reference conditions for which overtime applies for full-time employees in Clerical classification does not cover conditions for Operations classifications. Delete 'any time after 6.00pm and before 6.00 am' in first column, row 2.	342–345	Appears to be a drafting error, solution agreed by parties has been marked in ED.
	AWU	Reply 4-12-15			Agree to deletion.	12	
	Aurizon and ors	Sub 04-12-15			Propose same deletion.	21	
23	AIG	Sub 20-11-15	20.2		Termination - Appears to be a drafting error. Insert 'from': '... the employer may withhold <u>from</u> any money due to an employee ...'	346	Error – ED amended
	AWU	Sub 24-11-15			Propose same amendment.	7	
24	AIG	Sub 20-11-15	Sch A		Classifications - Formatting error. Third, fourth and fifth dot points at	347–348	Error – ED amended

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			p 33		level 5 of the Operations classification should be indented.		
	AWU	Sub 24-11-15			Agree with AIG.	14	
25	AIG	Sub 20-11-15	Sch B		Hourly rates of pay - Current wording of tables is misleading. Hourly rates are expressed as a % of the ordinary hourly rate. In reality the amounts are calculated on the minimum hourly rate of pay. Replace reference to ‘% of ordinary hourly rate’ with ‘% of minimum hourly rate’.	349–350	Paragraphs [43]-[44] of [2015] FWCFB 4658 provides all purpose allowances must be added to minimum rate of pay before calculating penalty or loading. The ‘% of ordinary hourly rates’ refers to the penalty/loading percentage in the table. For employees who the all purpose rate applies, these rates need to be added to minimum hourly rate before calculating the penalties or overtime – see clause B.1.1 and B.1.2.
	AWU	Sub 24-11-15			Disagree. The ED correctly uses the term ‘ordinary hourly rate’ because this award contains an all-purpose allowance. Term suggested will create confusion.	15	

List of abbreviations (in alphabetical order)

AIG	Australian Industry Group
Aurizon and ors	Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Metro Trains Melbourne, Sydney Trains and V/Line Passenger Pty Ltd
AWU	The Australian Workers’ Union
ED	Exposure draft of <i>Rail Industry Award 2010</i>