

### SUMMARY OF SUBMISSIONS ON REVISED EXPOSURE DRAFT – OUTSTANDING ISSUES

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

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
1	AWU	<a href="#">Sub 24-11-15</a>	2.2, 2.3	<b>NES and this award</b> - 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	<b>RESOLVED.</b> Error – ED amended
2	AIG	<a href="#">Sub 20-11-15</a>	6.4(c) (10.3(b) current award)	<b>Casual employees</b> - Replace ‘ordinary’ with ‘minimum’.	307–321	<b>RESOLVED</b>
		<a href="#">Sub 11/07/17</a>		No longer presses the issue.	370	
	AWU	<a href="#">Reply 4-12-15</a>		Submissions are inappropriate. Issue has been determined by the Full Bench: <a href="#">[2015] FWC FB 6656</a> at [110] and <a href="#">[2015] FWC FB 7236</a> at [242].	4	
3	AWU	<a href="#">Sub 24-11-15</a>	6.3(b) (10.2(b) current award)	<b>Part time employees</b> - Replace ‘minimum hourly rate’ with ‘ordinary hourly rate’ as per 6.4(c).	5	<b>REMAINS OUTSTANDING.</b>
	AIG	<a href="#">Reply 7-12-15</a>		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	
		<a href="#">Sub 11/07/17</a>		Remains outstanding. Content for matter to be determined on the papers.	369	
4	AIG	<a href="#">Sub 20-11-15</a>	10.3	<b>Apprentices and trainees</b> - Apprentice conditions of employment in current award are not included in ED. See <a href="#">PR559297</a> .	322	<b>RESOLVED.</b> ED amended to resulting from <a href="#">PR559297</a>

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4A	AMWU	<a href="#">Sub 30/06/2017</a>	11.3(c)	Incorrect reference to clause 10.3 should be amended to 11.3	11-13	<b>RESOLVED</b> ED amended to correct cross reference error.
5	AIG	<a href="#">Sub 20-11-15</a>	11.4(a)	<b>Expense related allowances</b> - 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	<b>RESOLVED</b> . ED amended in accordance with <a href="#">[2015] FWCFB 4658</a> .
	AWU	<a href="#">Sub 24-11-15</a>		Propose same amendment.	6	
6	AIG	<a href="#">Sub 20-11-15</a>	13	<b>Penalties</b> - 'For all ordinary hours worked by the employee' should be deleted. It is not in the current award, confusing and unnecessary.	324-327	<b>RESOLVED</b> . Change appears to be agreed by the parties and has been marked in the exposure draft.
	AWU	<a href="#">Reply 4-12-15</a>		Not opposed.	6	
7	AIG	<a href="#">Sub 20-11-15</a>	13.2 (23.4 current award)	<b>Shiftwork penalties</b> - 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	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWCFB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Do not agree.	7	
8	AIG	<a href="#">Sub 20-11-15</a>	13.2(a), 13.2(b), 13.2(c) (23.4(a) current award)	<b>Shiftwork penalties</b> – AIG seeks to have penalty rates expressed as a percentage (as per current award) rather than the dollar figure.	2.2, 328-331	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWCFB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Do not agree.	7	

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11	AIG	<a href="#">Sub 20-11-15</a>	13.2(d)	<b>Shiftwork penalties</b> - Repeats definitions of afternoon, early morning and night shifts. They are defined in clause 13.1 and should be deleted.	332–333	<b>RESOLVED.</b> Repetition drafting error, solution has been amended in ED as agreed change by parties.
	AWU	<a href="#">Reply 4-12-15</a>		Agree with AIG.	8	
12	AIG	<a href="#">Sub 20-11-15</a>	13.3	<b>Exclusion from shiftwork penalties</b> - Replace ‘penalties’ with ‘loadings’ in entire clause.	2.2, 328–331	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWCFB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Do not agree.	7	
13	AIG	<a href="#">Sub 20-11-15</a>	13.3	<b>Exclusion from shiftwork penalties</b> - Erroneous reference to 13.1(d)(i). Delete and insert reference to 13.2.	334	<b>RESOLVED.</b> Error – ED amended
	AWU	<a href="#">Reply 4-12-15</a>		Agree with AIG.	9	
14	AIG	<a href="#">Sub 20-11-15</a>	13.4 (23.5 current award)	<b>Sunday work</b> - 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	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWCFB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Disagree. Wording used in ED is clearer than what is proposed.	10	
15	AIG	<a href="#">Sub 20-11-15</a>	13.5 (23.6 current award)	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	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWCFB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Disagree. Wording used in ED is clearer than what is proposed.	10	

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16	AIG	<a href="#">Sub 20-11-15</a>	13.6 (23.2(b) current award)	<b>Saturday work</b> - 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	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWC FB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
	AWU	<a href="#">Reply 4-12-15</a>		Disagree.	10	
17	Aurizon and ors	<a href="#">Subs-04/12/15</a>	14.1	<b>Overtime</b> - ED doesn't confer overtime entitlement to certain employees and is a departure from the current award. Proposed wording in submission.	13–21	<b>REFERRED.</b> Overtime for casual employees is being considered in AM2017/51.
18	AIG	<a href="#">Sub 20-11-15</a>	14.1(a)	<b>Definition of overtime</b> - Insert a reference to clause 8.1(f).	341	<b>RESOLVED.</b> <i>Addition of reference to 8.1(f) appears to be agreed, has been amended in ED. Other parties have not commented on Aurizon proposal, not added to ED at this stage.</i>
	AWU	<a href="#">Reply 4-12-15</a>		Not opposed to AIG.	11	
	Aurizon and ors	<a href="#">Subs-04/12/15</a>		Proposed alternative wording for clause.	18(a)	
	AMWU	<a href="#">Sub 30/06/2017</a>		Insert a clause 14(d): 'For a casual employee, overtime is any time worked in excess of the employee's ordinary hours as defined in clause 6.4(b)'.	15	
21	AIG	<a href="#">Sub 20-11-15</a>	14.2(b)	<b>Exclusions from overtime</b> - Replace 'penalty' with 'loading'.	2.2, 328–331	<b>REFERRED</b> Referred to the Plain Language Full Bench (AM2016/15) see decision <a href="#">[2017] FWC FB 5536</a> at [581], see also <a href="#">[2018] FWC 1544</a> .
22	AIG	<a href="#">Sub 20-11-15</a>	14.3	<b>Overtime rates</b> - 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	342–345	<b>RESOLVED.</b> <i>Appears to be a drafting error, solution agreed by parties has been marked in ED in red.</i>

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE (paragraph)	NOTES
				first column, row 2.		
	AWU	<a href="#">Reply 4-12-15</a>		Agree to deletion.	12	
	Aurizon and ors	<a href="#">Sub 04-12-15</a>		Propose same deletion.	21	
23	AIG	<a href="#">Sub 20-11-15</a>	20.2	<b>Termination</b> - Appears to be a drafting error. Insert 'from': '... the employer may withhold <u>from</u> any money due to an employee ...'	346	<b>RESOLVED.</b> Error – ED amended
	AWU	<a href="#">Sub 24-11-15</a>		Propose same amendment.	7	
24	AIG	<a href="#">Sub 20-11-15</a>	Sch A p 33	<b>Classifications</b> - Formatting error. Third, fourth and fifth dot points at level 5 of the Operations classification should be indented.	347–348	<b>RESOLVED.</b> Error – ED amended
	AWU	<a href="#">Sub 24-11-15</a>		Agree with AIG.	14	
25	AIG	<a href="#">Sub 20-11-15</a>	Sch B	<b>Hourly rates of pay</b> - 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	<b>RESOLVED.</b> Paragraphs [43]-[47] of <a href="#">[2015] FWCFB 4658</a> 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	<a href="#">Sub 24-11-15</a>		Disagree. The ED correctly uses the term 'ordinary hourly rate' because this award contains an all-purpose allowance. Term suggested will create confusion.	15	
	AIG	<a href="#">Sub 11/07/17</a>	Sch B	<a href="#">[2017] FWCFB 3433</a> at [360] – [362] resolves matter.	372	

**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
AMWU	Australian Manufacturing Workers' Union
ED	Exposure draft of <i>Rail Industry Award 2010</i>