

SUMMARY OF SUBMISSIONS

This table is a summary of submissions lodged for this award on or before 5.00pm on 20 April 2016. The notes refer to the conference held on 21 April 2016 ([Transcript](#)) and the [Report to the Full Bench dated 22 April 2016](#).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	ASU	Sub-14/04/16	2.3	5	Copies of NES and the Award The words “ <i>whichever makes them more accessible</i> ” from current award should be retained. Should remain mandated.	Para 4	Already determined in [2014] FWCFB 9412 [PN29]. ASU may respond further in reply submissions. Report – 22 April 2016
2.	AIG	Sub-14/04/16	5.2		Facilitative Provisions Clause 21.2 does not require agreement with the <i>majority</i> of employees. Replace “majority of employees” with “employees”.	Paras 120–121	AIG may respond further in reply submissions. Report – 22 April 2016
3.	AIG	Sub-14/04/16	6.3(c)	12	Part-time employees The ED does not provide for, or otherwise define ‘minimum hourly rate’. Reference in current award clause to ‘1/38 th of the weekly rate prescribed at...’ should be maintained.	Paras 122-123	ED amended to include definition of ‘minimum hourly rate’ and insert hourly rates column in table. Transcript [PN132-145]
4.	AIG	Sub-14/04/16	6.4(c)(i) and 6.4(c)(ii)		Casual loading Difficulties arise from the definition of ‘ordinary hourly rate’.	Para 124	General issue – to be dealt with at later stage Transcript [PN146]

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5.	AIG	Sub-14/04/16	6.4(c)(ii)	13.2	Replace 'ordinary hourly rate' with '1/38 th of the weekly wage prescribed by the award'. Under current award the loading is to be calculated on the minimum wage prescribed by the award, absent the inclusion of any all-purpose allowances.	Paras 125–127	General issue – to be dealt with at later stage Transcript [PN148]
6.	AIG	Sub-14/04/16	6.4(c)	13.2	Replace “for the classification in which they are employed” with current award wording (“for the work which the employee performs”). Under current award clause, pay rate is contingent on the work performed. ED wording alters effect of clause by associating the rate a casual is to be paid with employment in a particular classification.	Paras 128 – 129	No change to ED. AIG to advise if it intends to press matter. Transcript [PN165–179]
7.	AIG	Sub-14/04/16	7.2(a)	27.2(a)	Flexibility in relation to ordinary hours of work – day workers Current award wording should be maintained. ED clause is potentially unclear, as it does not distinguish when arrangements can be applied to a workplace/ section thereof and when can only be applied to an individual employee.	Paras 131 – 132	ED to be amended to restore current wording in award clause 27.2(a). Transcript [PN 179 – 180]

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
8.			7.2(a)(i)	27.2(a)	<i>Parties are asked to clarify the operation of clause 7.2(a)(i), i.e. whether the spread of hours can only be altered at one end, or altered simultaneously at each end by up to one or two hours in total.</i>		No party pressing for variation Transcript [PN72–81]
	FWO	Corro-02/03/15			Ambiguity about whether hours can be altered at one end to increase span by one hour, at both ends to move span or at both ends to increase span by two hours.	p.2	
	ABI & NSW BC	Sub-15/04/16			Use of words "at either end" demonstrates that clause is intended to allow for span to be increased at both ends (i.e. for one hour prior to 7.00 am and one hour after 7.00 pm).	Para 4.1	
	BusSA	Sub-15/04/16			'[A]t either end' is intended to be read at both ends	Para 2.2.1	
	AIG	Sub-14/04/16			Provision allows the spread of hours to be altered by up to one hour at one or both ends of the spread simultaneously.	133–134	
9.	AIG	Sub-14/04/16	7.2(c)		Replace reference to "clause 7.2(b)" with current award reference ("this paragraph") or "clause 7.2". Clause 7.2(b) is a machinery term, and no agreement can be reached under it.	135	Cross reference to be changed to clause 7.2 Transcript [PN 181]

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
10.			7.8	27.9	<i>Parties are asked whether a definition should be provided for 'country employees'? Does the definition in clause 17.6 apply?</i>		'Country employee' is defined in clause 17.6(a). Reference to clause 17.6(a) to be inserted in clause 7.8 of ED. Transcript [PN27 – 35]
	FWO	Corro-02/03/15	7.8		Clause provides different hours of work for 'country employees'. This term is not defined	p.1	
	ABI & NSW BC	Sub-15/04/16	7.8, 11.3(b)(i) and 17.6		To eliminate potential confusion and disputes, would be merit in defining terms, e.g, definition for 'country employees' could be "employees who work in country areas" and 'country areas' could be defined as "those which are predominately rural, pastoral and/or agricultural." Perhaps define terms in Schedule H.	Para 4.2	
	BusSA	Sub-15/04/16	7.8		Country employee – definition 17.6 should apply to 7.8 not 11.3(b) – to be included in definition clause	Para 2.2.2	
11.	AIG	Sub-14/04/16	8.1		Meal Breaks ED wording “period between 30...60 minutes” deviates substantively from current award as a 30 minute or 60 minute break is not permitted. Should maintain current award wording (“...not less than 30...and not more than 60 minutes”)	136-137	ED to be amended to current award wording “not less than 30 minutes and not more than 60 minutes” Transcript [PN181–185]

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
12.	AIG	Sub-14/04/16	8.2(a)		Flexibility in relation to breaks Current award wording should be retained, see submissions in relation to clause 7.2(a).	Para 139	ED to be amended to current award wording in clause 29.2. Transcript [PN185]
13.	AIG	Sub-14/04/16	8.2(c)		Clause refers to 'ordinary hourly rate' – difficulties arise from proposed definition.	Para 139	General issue – to be dealt with at later stage Transcript [PN185]
14.	ABI & NSW BC	Sub-15/04/16	9		No hourly rate, should be defined 1/38 th weekly rate – inclusion of 'minimum hourly rate' column	Para 4.4	ED to be amended to include 'minimum hourly rate' column. Transcript [PN267]; see also [PN132-145]
15.	AIG	Sub-14/04/16	9.2(a)	20.2(a)	Adult employees References to clauses 9.8 and 9.6 should be inserted to avoid confusion.	Paras 140–141	References to clauses 9.8 and 9.6 respectively to be inserted in ED. Transcript [PN186–188]
16.			9.2(b)		Junior employees <i>Parties are asked to clarify whether junior rates apply to employees in the Commercial Travellers Stream</i>		Junior rates do not apply to Commercial Travellers stream. Transcript [PN83–92].
	BusSA	Sub-15/04/16	9.2(b)		Junior workers are not employed in commercial travellers scheme given nature of the work.	Para 2.2.3	

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17.	BusSA	Sub-15/04/16	9.2(b)(i)		Typo Technical 'steam' to be 'stream'	Para 2.1.1	Amend to 'stream'. Transcript [PN192 – 194].
18.	AIG	Sub-14/04/16	9.2(b)(ii)		Junior employees – clerical stream The rate of pay of employees aged 20 years is superfluous and should be removed.	Para 142	AIG no longer pressing. Transcript [PN189–191].
19.	ASU	Sub-14/04/16	9.3		Inclusion of note at end of clause, not in the current award	Para 6	Determined in [2015] FWCFB 4658 at [57]
20.	BusSA	Sub-02/03/15	9.3(d)	25.4	Termination of employment Requirement to pay wages on day of termination or by post the next working day. Employers may not be able to comply with clause. Suggested alternative wording inserted into the <i>Vehicle Manufacturing, Repair, Service and Retail Award 2010</i> .	p.5	Referred to separate Full Bench (AM2016/8) Transcript [PN65–69] Issue affects multiple awards – see also Correspondence from AIG 25 Nov 2014
21.	AIG	Sub-14/04/16	9.5(a)		Higher duties ED uses term “required”, whereas award uses term “directed.” Existing award wording should be retained.	Para 143 – 145	ED to be amended – “required” to be replaced with “directed” Transcript [PN195 – 197]
22.			9.7		School-based apprentices <i>Parties are asked to confirm whether this schedule is required as there are no provisions for apprentices under the award</i>		ED to be amended – Schedule and clause 9.7 to be deleted on basis that there is no provision for apprentices in award. See [2013] FWCFB 5411 .
	BusSA	Sub-15/04/16			Schedule not relevant and can be removed	Para 2.2.4	Transcript [PN94–96].

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23.			9.8		<i>Schedule A provides a classification of Trainee Salesperson. Parties are asked to clarify what rate of pay applies to Trainee salespersons.</i>		ED amended to include reference to Schedule F in A.3.1 Transcript [PN97–98]
24.	BusSA	Sub-15/04/16	10.1		Exemptions for employees in the technical stream Typo – 11.2(c) to read 11.2(d)	Para 2.1.2	ED to be amended to 11.2(d). Transcript [PN279]
25.			10.2		<i>Parties are asked to confirm that all clauses apart from those listed in clause 10.2 do not apply to these exempt Clerical employees</i>		Parties are to comment by 28 April 2016 on what additional clauses should be included to ensure consistency with Act and/or whether or not the clauses which do not apply should be listed rather than those which do apply. The matter will be discussed at 29 April conference. Report – 22 April 2016
	BusSA	Sub-15/04/16			Clerical employees do not receive provision with exception of those listed in 10.2	Para 2.2.5	
26.	AIG	Sub-14/04/16	10.3(b)		Exemptions for employees in the commercial travellers stream Clause should be amended to identify the provisions, in lieu of general reference to part 3.	Paras 146 – 148	ED to be amended to reflect specific provisions exempted in the current award. Transcript [PN 198]

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27.	AIG	Sub-14/04/16	11.2(a)		All purpose allowances Definition of ‘all purposes’ should be made consistent with earlier decision [see note] by inserting “annual” before “leave”.	Para 149	See [2015] FWCFB 4658 at [91]. ED to be amended to insert “annual” before “leave.” Transcript [PN 198-201]
28.	AIG	Sub-14/04/16	11.3(a)		Motor vehicle allowance – employer provided vehicle Heading to clause is misleading – ‘employer provided vehicle’ should be deleted.	Paras 150 – 151	ED to be amended to delete “employer provide vehicle” Transcript [PN 202]
29.			11.3(b)(i)	22.1(b)(ii) (A)	<i>Parties are asked whether a definition should be provided for ‘country territory’ for the purposes of clause 11.3(b)(i)</i>	Para 2.2.6	Parties are to comment on proposed definition by 28 April 2016. The matter will be discussed at 29 April conference. Report – 22 April 2016
	FWO	Corro-02/03/15	11.3(b)(i)		Clause provides a higher vehicle allowance for employees in a ‘country territory’. This term is not defined.	p.1	
	BusSA	Sub-15/04/16	11.3(b)(i)		Benefit in defining ‘country’ consulting with members		
30.	AIG	Sub-14/04/16	11.3(b)(iii)		Motor vehicle allowance – employee provided vehicle Current award wording should be maintained – “from...residence” should be deleted.	Para 152	ED to be amended to delete “from their usual place of residence” Transcript [PN 202]
31.	AIG	Sub-14/04/16	11.3(d)(i)		Area allowance Northern Territory area allowance is no longer payable and should be deleted from clause.	Para 153 – 155	Agreed – Northern Territory area allowance to be deleted Transcript [PN 202]

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32.	BusSA	Sub-15/04/16	11.3(d)(ii)		The wording “and such will be in full satisfaction of the employer’s obligation under this clause.” has been deleted. BusSA considers this wording necessary for the operation of the Clause and submits that it be reinserted.		No change to ED. Transcript [PN 280]
33.	AIG	Sub-14/04/16	11.4(c)(ii)(C)	22.2(c)(ii)(C)	Expenses and accommodation reimbursement Clause is missing “in pursuance of the performance of the employee’s duties” as provided in current award clause.		No change to ED, parties can make further submissions if required - Transcript [PN 214]
34.			11.4(c)(iii)		<i>Parties to consider whether the wording “and for the purposes of all relevant State workers compensation legislation” should be maintained in the award.</i>		Reference to State workers compensation will be retained in exposure draft. Employers to advise by 28 April 2016 if they wish to pursue this matter further. Report – 22 April 2016
	BusSA	Sub-15/04/16			Wording “and for the purposes of all relevant State workers’ compensation legislation” should be removed from Award. Submits MA not appropriate place for workers’ comp, possibility of contradicting legislation.	Para 2.2.7	
	ABI & NSW BC	Sub-15/04/16			MA should not extend into realm of workers compensation legislation. Questionable whether clause permissible under s.139, purports to potentially override State workers compensation legislation	Para 4.5	

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35.	BusSA	Sub-15/04/16	12.7		Casual employees Typo 24.1(a) to read 12.1(a)		Agreed – ED cross reference amended
	AIG	Sub-14/04/16	12.7		Replace cross reference to “clause 24.1(a)” with “clause 12.1(a)” .	Para 157	Transcript [PN 216]
36.	AIG	Sub-14/04/16	14		Penalty rates – dayworkers Amend heading by replacing “penalty rates” with “allowances”, consistent with terms of clauses 14.1–14.3 of ED and 27.3– 27.5 of current award.	Para 158	General issue – discussion deferred – Transcript [PN 218]
37.			14.1		<i>A number of ‘penalties’ in the Award...are based on pre-reform penalties which were expressed as dollar amounts, rather than as a percentage of an employee’s ordinary hourly rate ...Parties are asked to consider whether it would be more appropriate to amend these penalties so that they are expresses as a percentage of the employee’s ordinary hourly rate.</i>		ED should not be amended to express ‘penalties’ as a percentage of the hourly rate. Transcript [PN118-122]
	BusSA	Sub-15/04/16			The additional allowance should not be varied – a change to a percentage could be a substantive change.	Para 2.2.8	
	AIG	Sub-14/04/16			Method of calculating the relevant rates should not be altered.		

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38.			14.1		<i>Parties are asked to clarify the interaction between clauses 13.1 and 15.1(a). Both appear to provide for work 'outside the spread of hours.'</i>		No amendment to ED Transcript [PN 70]
	BusSA	Sub-15/04/16			Answered on the basis that question posed seeks an explanation of interaction between 14.1 and 15.1(a). Clause 15.1 relates to shift workers. Clause 1.41 relates only when day workers are required to work a percentage of their ordinary hours outside of the ordinary spread, but are not shift workers.	Para 2.2.8	
39.	ABI & NSW BC	Sub-15/04/16	14.2, 14.3, 15.2 and 15.3(b)		Penalties are proposed to be expressed as dollar amounts instead of percentages. Change has resulted in deviations of one cent in the employee's favour. These deviations do not appear in other clauses sharing the regime change, being 11.2(b), 11.2(c), 11.2(d), 11.2(e)(i), 14.1, 15.2(c)(ii), 15.2(c)(iii) and 16.5. Propose all dollar amounts are calculated in the same way, (that is, to the same decimal place).	Para 4.6	No change to ED. If wish to press ABI & NSWBC will need to indicate in reply submissions. Transcript [PN 268]

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
40.			15		<i>Parties are asked whether the award should include a definition for a shift workers to clarify circumstances when shift allowances apply</i>		No need for definition – amendment of ED not required Transcript [PN 70-71]
	FWO	Corro-02/03/15			FWO has had enquiries about the circumstances in which an employee should be considered a shiftworker under current award clauses 27.1 and 28.1.	p.1	
	BusSA	Sub-15/04/16			It is already clear where shift work provisions are applicable, but agreeable to insertion of definition if significant number of parties favour it.	Para 2.2.9	
	AFEI	Sub-15/04/16			Definition of ‘shiftworker’ not required.	Para 39	
	ABI & NSW BC	Sub-15/04/16			Merit in including a definition of “shiftworker” in Schedule H of the ED so as to clarify when the shiftwork allowances are payable.	Para 4.7	
41.	AIG	Sub-14/04/16	15		Special provisions for shift workers Clause 15 should be relocated immediately after clause 7 (Ordinary hours of work and rostering), as certain provisions of clause 7 relate to both dayworkers and shiftworkers.	Paras 161 – 162	No change to ED at this stage Transcript [PN 223]

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42.	AIG	Sub-14/04/16	15.2(b)(i)	28.2(b)(i)	Flexibility in relation to standard shiftwork Terms of current award clause should be retained –see submissions in relation to clause 7.2(a).	Para 163	ED amended to retain the current wording Transcript [223]
43.	ABI & NSW BC	Sub-15/04/16	15.2(d)		Midnight is beginning of day, not end. Propose alternative wording be used, for example, describing a Saturday shift as being “between 12:00am Saturday morning to 11:59pm Saturday night inclusive”.	Para 4.8	No change to ED at this stage. Transcript [PN 269 – 270]
44.	AIG	Sub-14/04/16	15.2(d)		Rate for Saturday and Sunday shifts Clause refers to ‘ordinary hourly rates – difficulties arise from its proposed definition.	Para 164	General issue – to be dealt with at later stage Transcript [PN 224].
45.	ABI & NSW BC	Sub-15/04/16	15.4		Daylight savings – shift work payment When starts or stops. When daylight saving begins, one shiftworker might be paid for an hour unearned and when daylight saving ends a different shiftworker might be paid an hour less than what was worked. Unfair system for employees and could lead to disputes with employers. Provides proposed working at para 4.10.	Para 4.9-4.10	The proposal of ABI will be further considered by the parties and response provided by 28 April 2016. The matter will be discussed at 29 April conference. Report – 22 April 2016

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
46.	ABI & NSW BC	Sub-15/04/16	16.1		Payment for overtime “An employee who works in excess of or outside the employee’s ordinary hours” should be changed to “An employee <i>required to work</i> in excess of ... “ to avoid instances where payment is alleged to be owed by an employee for unauthorised overtime.	Para 4.11	No change to ED at this stage. ABI & NSWBC to indicate if wish to press variation. Transcript [PN278].
47.	AIG	Sub-14/04/16	16.1(a)		Overtime rates Clause refers to ‘ordinary hourly rates – difficulties arise from its proposed definition.	Para 165	General issue – to be dealt with at later stage Transcript [PN224]
48.	AIG	Sub-14/04/16	16.3(b)		Sunday Clause refers to ‘ordinary hourly rates – difficulties arise from its proposed definition.	Para 166	General issue – to be dealt with at later stage Transcript [PN224]
49.	AIG	Sub-14/04/16	16.3(c)(ii)	30.39(c)	Minimum payment Amend cross reference to clause 16.1, consistent with current award.		Agreed – ED amended Transcript [PN224]
50.	ASU	Sub-14/04/16	16.3(d)(iv)		Clause not included in current award. The word “may” could cause ambiguity and uncertainty as to employees’ entitlement to meal allowance. Replace with “is”.	Para 8	No change made to ED. Transcript [PN 291 – 298]
51.	AIG	Sub-14/04/16	16.6	30.6(a)	Rest period after working overtime ED’s use of term “where possible” is a substantive change. Should be replaced with “reasonably practicable” per current award.		Agreed – ED amended Transcript [PN226]

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52.	AIG	Sub-14/04/16	16.6(b)(i)	30.6(b)	Where the employee does not get a 10 hour rest The “start of the employee’s work on the next day” in ED, compared with “commencement of the ordinary work...” in the current award, changes the entitlement under the clause. The term ‘ordinary’ should be retained.	Para 169	Agreed – ED amended Transcript [PN228]
53.	AIG	Sub-14/04/16	16.6(b)(ii)		Clause refers to ‘ordinary hourly rates – difficulties arise from its proposed definition.	Para 170	General issue – to be dealt with at later stage Transcript [PN234]
54.	AIG	Sub-14/04/16	17.2(b)		Annual leave loading Amend 17.2(b)(i) and (ii) by deleting the words “of the ordinary hourly rate”. Current ED clause is inconsistent with clause 17.2(a) and deviates substantively from current award.	Paras 171 – 173	FWC and parties will further consider this matter. It will not be changed in ED but may be further discussed at 29 April conference. Report – 22 April 2016
55.			17.6	31.6(b)	<i>Parties are asked whether a definition should be provided for ‘country areas’ for the purposes of clause 17.6</i>		No change to ED. Country area defined in 17.6(a). Transcript [PN43]
	FWO	Corro-02/03/15			Undefined phrase ‘country areas’ Clause provides additional annual leave for employees operating in country areas. This term is not defined.	p.1	

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	ABI & NSW BC	Sub-15/04/16			If definition came from 17.6(a): "Employees who are required by their employer to remain away from their usual place of residence on more than two nights in any week" this does not connote any connection to the country, that is, rural areas	Para 4.3	
	BusSA	Sub-15/04/16			A definition would provide clarity. Consulting members and will report back to FWC.	Para 2.2.10	
56.	AIG	Sub-14/04/16	21.3		Public holidays Clause refers to 'ordinary hourly rates – difficulties arise from its proposed definition.	Para 174	General point – to be dealt with at later stage Transcript [PN250]
57.	AIG	Sub-14/04/16	Sch B		Summary of hourly rates of pay The reference to "% of ordinary hourly rate" is confusing and misleading as it suggests the rates have been calculated based on the ordinary hourly rate. All references should be amended	Paras 175 – 176	Agreed – 'ordinary hourly rate' to be amended to 'minimum hourly rate' Transcript [PN254]
58.	AIG	Sub-14/04/16	Sch. B.1		Ordinary hourly rate Definition of 'ordinary hourly rate' dealt with below. Cross reference to clause 11.2(a) appears to be a drafting error – should refer to clause 9.2.	Para 177	ED amended. AMOD notes: no discussion on transcript, however, cross reference appears to be a drafting error.

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59.	AIG	Sub-14/04/16	Sch. B.1.2		Ordinary hourly rate The reference to clause 9.2 is confusing as clause 9.2 does not contain minimum hourly rates.	Para 178	Agreed –ED amended to refer to minimum rates Transcript [PN254]
60.	AIG	Sub-14/04/16	B.3.2	28.2(e); 30.1(a); 30.3(b)	Full-time and part-time shiftworkers —overtime rates Table makes an incorrect assumption that all overtime on a Sunday for a shiftworker is paid at double-time. Table headers should be amended so “Monday to Saturday” reads “Monday to Sunday” and “Sunday” reference should include a footnote identifying where overtime is immediately paid at 200% (that is, when worked on a day off),.	Para 179 – 183	Clause B.2 (sic) re Sunday 200% issue. FWC and parties will further consider this matter. It will not be changed in ED but may be further discussed at 29 April conference. Report – 22 April 2016
61.	AIG	Sub-14/04/16	Schedule H		Definitions Definition of ‘all purposes’ is not consistent with terms of definition in Commission decision- see note. Should be rectified by inserting “annual” before “leave.”	Para 184	See [2015] FWCFB 4658 at [91]
62.	AIG	Sub-14/04/16	Schedule H		Definition of ‘ordinary hourly rate’ confusing as clause 9 does not contain hourly rates.	Para 185	Resolved by including hourly rate column in clause 9. Transcript [PN267]

List of abbreviations (in alphabetical order)

ABI& NSWBC	Australian Business Industrial and the NSW Business Chamber
AFEI	Australian Federation of Employers and Industry
AIG	Australian Industry Group
ASU	Australian Services Union
BusSA	Business SA
FWO	Fair Work Ombudsman
ED	Exposure draft