

FURTHER REVISED SUMMARY OF SUBMISSIONS

This table is a summary of submissions lodged for this award on or before 5.00pm on 4 November 2016, it was updated following the Conference on [4 August 2016](#) [PN130–159] and further revised on 10 October 2017

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	AWU	Sub-18/04/16	3.3(a)		Coverage Typographical error – delete ‘by the covered’ in the opening sentence.	Para 3	AGREED - ED amended: Statement [2016] FWC 7768 (7 Nov 2016)
2.	MUA	Sub-14/04/16	5.2		Facilitative provisions <i>In response to FWC query:</i> Clause 9.2(a) is in relation to when breaks can be taken. Any decision to delay a break so it occurs after 5 hours from start of a shift should be by agreement between employer and majority of employees.	Para 1	WITHDRAWN – see correspondence from MUA dated 21 November 2016
	AWU	ReplySub-05/05/16			Agrees with MUA	Para 1	
3.	MUA	Sub-14/04/16	6.3		Types of employment – Full time employment <i>In response to FWC query:</i> Supports removal of words ‘at least’.	Para 2	AGREED - ED amended – FWC query removed: Statement [2016] FWC 7768 (7 Nov 2016)
	AWU	Sub-18/04/16			Supports removal words ‘at least’.	Para 4–5	
	AWU	ReplySub-05/05/16			Supports MUA submissions	Para 4	

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4.	MUA	Sub-14/04/16	6.5(a)(ii)		Types of employment – casual employment <i>In response to FWC query:</i> Considers current provision clear and the introduction of concept of ‘former’ unnecessary.	Para 3	AGREED - Agreed, clause 6.5(a)(ii) to be deleted – ED amended: Statement [2016] FWC 7768 (7 Nov 2016)
	AWU	Sub-18/04/16			<i>In response to FWC query:</i> Concerned clause purports to exclude NES (s.117 FW Act) – if employee is engaged on full time or part time basis, but then deemed a casual employee if dismissed on first day or within 4 weeks, then they appear to have lost an entitlement to prescribed period of notice. Should be removed.	Para 6	
	AWU	ReplySub-05/05/16			Refer to their 18 April submission.	Para 6	
	MUA	ReplySub-06/06/16			Notes AWU seek to delete clause. Support position given NES applies.	Page 1	
5.	AWU	Sub-18/04/16	6.5(b)(ii)		Casual loading Clause excludes application of allowances for casual employees. Should be removed or otherwise replaced with same wording used in the Building modern award.	Para 7	REFERRED - Confirmed matter is being dealt with by Part-time and Casual Employment Full Bench in AM2014/196 and AM2014/197 : Statement [2016] FWC 7768 (7 Nov 2016) Not pursued as part of

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							Part-time and Casual Employment Full Bench proceedings.
6.	AWU	Sub-18/04/16	8.2(a)(ii)		Hours of work – span of hours Concerned clause allows workers to agree to work any number more hours than 12 at ordinary rate of pay, and without regard to nature of clause being about ‘day workers’. Suggest use of clause similar to that in Manufacturing modern award. 14 hours is the dredging industry standard for extension of ordinary hours by agreement.	Para 8–13	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to comment: Statement [2016] FWC 7768 (7 Nov 2016)
7.	AWU	Sub-18/04/16	9.2(a)		Breaks – meal break <i>In response to FWC query:</i> Suggests subclause be added to clarify which parties can agree to change time of meal break	Para 14	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to comment: Statement [2016] FWC 7768 (7 Nov 2016)
8.	AWU	Sub-18/04/16	9.2(c) and 9.2(e)		Subclauses differ by method of calculation for compensation of denied meal break. AWU not able to provide explanation for difference in entitlement. If there is no reason to be	Para 17	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to

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					found, submits that to simplify clause, cl. 9.2(e) could be removed and incorporated into 9.2(c)		comment: Statement [2016] FWC 7768 (7 Nov 2016)
9.	AWU	Sub-18/04/16	9.2(d)		Breaks – meal break Unclear how clause is to be observed. Suggests clause be replaced and directly refer to cl.9.2(a) and (c).	Para 15	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to comment: Statement [2016] FWC 7768 (7 Nov 2016)
10.	AWU	Sub-18/04/16	9.2(e)		Clause requires words ‘an additional’ to be added to read ‘...employees must be paid an additional one hour at ordinary time rates’	Para 18	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to comment: Statement [2016] FWC 7768 (7 Nov 2016)
11.	MUA	Sub-14/04/16	9.3		Breaks <i>In response to FWC query:</i> Clause 9.2(c) and (e) are two exceptions to overriding requirement in cl. 9.3. Suggests cl.9.3 be amended	Para 4	OUTSTANDING – Commission will redraft clauses 9.2 and 9.3, and parties will be provided an opportunity to comment: Statement

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							[2016] FWC 7768 (7 Nov 2016)
	AWU	Sub-18/04/16			<i>In response to FWC query:</i> Clause 9.2(c) and (e) operate as an exception to clause 9.3	Para 4	
	AWU	Sub-18/04/16			Clause should be deleted. In conflict with cl. 9.2 and creates ambiguity.	Para 19	
	AWU	ReplySub-05/05/16			Prefers MUA wording over current ED wording, but would prefer clause was deleted entirely.	Para 7	
	MUA	ReplySub-06/06/16			Does not support AWU's position to delete. Wording MUA provided 14/04/16 should be adopted.	Page 1-2	
12.	FWO	Corro-2/3/15	10.3	14.3	Weekly aggregated wage Unclear what is meant by 'weekly aggregated wage'. Use of term in cl 14.3 differs from cl.14.1 and 14.2 which both provide 'minimum weekly rates' in respect of different categories of employees. In absence of definition of 'weekly aggregated wage', may be unclear which entitlements have been 'aggregated' (and as a result it may be unclear which, if any, entitlements remain separately payable).	Page 5	AGREED - ED amended – weekly and hourly aggregated wage rates included. Rates calculated using the methodology used for calculating the 'trailer shift master' shiftworker rate: Statement [2016] FWC 7768 (7 Nov 2016)
	MUA	Sub-14/04/16			<i>In response to FWC query:</i> New definition of aggregate rate be inserted into Sched D of ED.	Para 5	

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	AWU	Sub-18/04/16			Definition should be included to clarify how final wage is calculated. Query why there is no minimum wage for positions 'Trailer master' and 'Chief engineer'	Para 20	
13.	AWU	Sub-18/04/16	10.4		Higher Duties The word 'work' be used rather than 'duties' to reflect that not all duties must be performed, rather work of that higher position, on that occasion. Same amendment made to Asphalt Industry modern award during review of group 1A and 1B awards.	Para 21	OUTSTANDING - Commission has published research in relation to the higher duties provision (Research - 8 Nov 16) and has indicated that directions for the filing of further material will be issued: Statement [2016] FWC 7768 (7 Nov 2016)
14.	AWU	Sub-18/04/16	11.2(b)		Dual certificate allowance should also be expressed as hourly rate. This reflects that allowance will form component of ordinary rate.	Para 25	AGREED – Schedule A of ED amended – wage tables inserted for employees who may be entitled to the dual certificate allowance. Parties asked to consider which employees may act in a dual capacity as master and engineer: Statement [2016] FWC 7768 (7 Nov 2016).

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15.	MUA	Sub-14/04/16	11.2(h)(ii)		Additional allowances—cooks <i>In response to FWC query:</i> Allowance should be paid weekly.	Para 6	AGREED - Agreed – ED amended. FWC query removed. The words ‘per week’ will be inserted after the reference to ‘\$40.29: Statement [2016] FWC 7768 (7 Nov 2016).
	AWU	Sub-18/04/16			On one construction appears appropriate that payment be on each occasion. Second construction is that payment should be weekly.	Para 26	
	AWU	ReplySub-05/05/16			Supports MUA submissions	Para 4	
16	MUA	Sub-14/04/16	11.2(j)(i)		Vessels proceeding from port to port <i>In response to FWC query:</i> Reference to ‘Navigations Act’ should be updated.	Para 7	AGREED - Agreed – ED amended: Statement [2016] FWC 7768 (7 Nov 2016).
17.	MUA	Sub-14/04/16	11.2(j)(ii)		Reference to the <i>Seamen’s Compensation Act 1974</i> should be updated to <i>Seafarers Rehabilitation and Compensation Act 1992</i>	Para 7	AGREED - Agreed – ED amended: Statement [2016] FWC 7768 (7 Nov 2016).
	AWU	ReplySub-05/05/16			Supports MUA submissions	Para 4	
18.	MUA	Sub-14/04/16	11.3(b)(iv)		Protective and industrial clothing allowances <i>In response to FWC query:</i> Pre reform award requirement to reimburse did not apply where employer supplied protective clothing	Para 8	AGREED - Agreed – ED amended: Statement [2016] FWC 7768 (7 Nov 2016).

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					and equipment. ED should maintain position and delete clause reference to cl.11.3(b)(ii) and insert cl.11.3(b)(iii)		
	AWU	ReplySub-05/05/16			Supports MUA submissions	Para 4	
19.	MUA	Sub-14/04/16	13.3		Shiftwork penalties <i>In response to FWC query:</i> Does not consider necessary to convert rates to penalties based on an employee's ordinary hourly rate	Para 9	AGREED - Agreed – ED amended: Statement [2016] FWC 7768 (7 Nov 2016).
	AWU	Sub-18/04/16			Shiftwork loading should be based on the 'ordinary rate' in order to capture the all-purpose allowance.	Para 28	
	AWU	ReplySub-05/05/16				Para 8	
	MUA	ReplySub-06/06/16			Supports AWU's position, shift work penalties be based on an employee's ordinary hourly rate in light of terms of pre-reform awards referred to in AWU submission 18/4/16.	Page 2	
20.	AWU	Sub-18/04/16	13.3(a)		Shiftwork penalties Wording of clause confusing. Proposes alternative wording	Para 27	OUTSTANDING: AWU withdrew part of claim – proposed wording amended: Statement [2016] FWC 7768 (7 Nov 2016).
21.	AWU	Sub-10/12/15	14	23	Annual leave loading Seeks insertion of annual leave loading provision	Paras 3–13	OUTSTANDING - AWU still pursues claims (see submission 7 August 2017)

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	AWU	Sub-18/04/16				Para 29	
	AWU	Sub-07/08/17			AWU confirms it continues to pursue claim	Paras 1-61	
22.	MUA	Sub-14/04/16	14		Annual leave <i>In response to FWC query:</i> The hours of work for shiftworker are set out in cl 8.2(b) and consist of 12 hour shifts for 7 days for a week followed by 12 hour shifts for 6 days for a week. This work pattern should be used for the purpose of the NES.	Para 10	OUTSTANDING - Parties to confirm whether they wish to pursue claim – Statement [2016] FWC 7768 (7 Nov 2016) MUA content for matter to be determined on basis of material filed - Conference 4 August 2016 [PN263–266].
	AWU	ReplySub-05/05/16			Agree with MUA. As long as employee weekly hours amount to 38 hours when averaged over a specified period, the pattern set out under award is consistent with the NES	Para 9	
23.	AWU	Sub-18/04/16	A.4		Casual employees Seeks insertion of a definition of ‘ordinary hourly rate’ to be included to ensure all-purpose allowance is included when calculating casual wages. Submits same clause as set out at cl. A.1.1 could be used again at A.4		REFERRED - Confirmed matter is being dealt with by Part-time and Casual Employment Full Bench in AM2014/196 and AM2014/197 : Statement [2016] FWC 7768 (7 Nov

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							2016) Not pursued as part of Part-time and Casual Employment Full Bench proceedings.
24.	MUA	Sub-14/04/16	C.3.3(c)		Coverage <i>In response to FWC query:</i> Not aware of a training program that should not be covered by Schedule.	Para 11	AGREED - FWC query removed: Statement [2016] FWC 7768 (7 Nov 2016)
25.	AWU	Sub-18/04/16	Sched E		Definitions For consistency, suggest defining terms 'not fully operational' instead of 'laid up'. Would require replacing terms used in cl. 11.2(b)(i), 11.2(e) and in column 1 of table in cl. B.1.1.	Para 22 – 24	AGREED - ED amended to use term 'not fully operational' which will be defined to include 'laid up'. Parties provided opportunity to consider whether amendment gives rise to any practical issues in reply submissions: Statement [2016] FWC 7768 (7 Nov 2016)

List of abbreviations (in alphabetical order)

AWU	The Australian Workers' Union
ED	Exposure Draft
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
MA	Modern Award

MUA

The Maritime Union of Australia