

FAIR WORK COMMISSION

Section 156 – Fair Work Act 2009  
Four Yearly Review of Modern Awards

Award Stage - Group 4 Awards  
(AM2014/250 and Ors)

Dry Cleaning and Laundry Industry Award 2010  
(AM2016/264)

**CFMEU – MANUFACTURING DIVISION**  
**Submission in Response to**

FWC Decision [2018] FWCFB 1548 (21 March 2018)

**23 April 2018**

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**(AM2014/250)  
Group 4 Awards**

**(AM2014/264)  
Dry Cleaning and Laundry Industry Award 2010**

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**BACKGROUND**

1. The CFMEU – Manufacturing Division provides these submissions in response to the decision and directions issued on 21 March 2018<sup>1</sup> by the Group 4 Awards Full Bench (*'March 2018 Decision'*).
2. In addition, republished Exposure Drafts for Group 4 awards were issued by the Commission on 23 March 2018.
3. On 27 March 2018, the amalgamation of the Textile, Clothing and Footwear Union of Australia (TCFUA) with the Construction, Forestry, Mining and Energy Union (CFMEU) and the Maritime Union of Australia (MUA) took effect.<sup>2</sup>
4. On the amalgamation taking effect, the TCFUA<sup>3</sup> and MUA<sup>4</sup> were de-registered as registered organisations under the *Fair Work (Registered Organisations) Act 2009* (RO Act).
5. Upon the amalgamation, the Forestry, Furnishing, Building Products and

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<sup>1</sup> 4 yearly review of modern awards – Award Stage – Group 4 awards [2018] FWCFB 1548 (21 March 2018)

<sup>2</sup> *Construction, Forestry, Mining and Energy Union; the Maritime Union of Australia and Textile, Clothing and Footwear Union of Australia* [2018] FWC 1017, Gostencnik DP (6 March 2018). Note: This decision is currently the subject of an appeal by AMMA and MBA (see C2018/1245)

<sup>3</sup> Textile, Clothing and Footwear Union of Australia [2018] FWC 1794, Gostencnik DP (27 March 2018)

<sup>4</sup> The Maritime Union of Australia [2018] FWC 1797, Gostencnik DP (27 March 2018)

Manufacturing Division of the CFMEU became the Manufacturing Division of the Construction, Forestry, Maritime, Mining and Energy Union. The members and activities of the former TCFUA were absorbed into the CFMEU – Manufacturing Division.

#### **AWARD STAGE – GROUP 4 AWARDS**

##### *Dry Cleaning and Laundry Industry Award 2010*

6. The CFMEU – Manufacturing Division has an interest in the following modern awards in Group 4 of the Award stage of the 2014 award review:
  - Dry Cleaning and Laundry Industry Award 2010<sup>5</sup> (*DC&LI Award*)
  - Joinery and Building Trades Award 2010<sup>6</sup> (*Joinery Award*)
7. The technical/drafting and substantive matters pertaining to the construction industry awards, including the *Joinery Award* were referred to a separate Full Bench (AM2016/23) for determination.<sup>7</sup>
8. These submissions are confined to providing a response to the *March 2018 Decision* and directions in relation to the *DC&LI Award* only.<sup>8</sup>
9. The TCFUA (as it was prior to 27 March 2018) was actively involved in the review of the DC&LI Award, including attending all Conferences and providing written submissions on various exposure drafts and other FWC documents.<sup>9</sup> The CFMEU –

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<sup>5</sup> *Dry Cleaning and Laundry Industry Award 2010* [MA000096]

<sup>6</sup> *Joinery and Building Trades Award 2010* [MA000032]

<sup>7</sup> [2018] FWCFB 1548 at paras [232] – [233]

<sup>8</sup> See paragraphs [335] – [374] and Attachment B of the *March 2018 Decision* which deal specifically with the Dry Cleaning and Laundry Industry Award 2010 and paragraphs [765] – [767] for Directions/Next Steps.

<sup>9</sup> (i) (AM2014/250) (2014/264) TCFUA submission (18 January 2017) in relation to the Exposure Draft (3 November 2016) – *Dry Cleaning and Laundry Industry Award 2010*

(ii) (AM2014/250) (2014/264) TCFUA submission in Reply (23 February 2017) in relation to the Exposure Draft (3 November 2016) – *Dry Cleaning and Laundry Industry Award 2010*

Manufacturing Division continues to rely on the previous submissions and correspondence filed by the TCFUA in this matter.

10. The outstanding matters relating to the DC&LI Award are contained at paragraphs [341] – [374] of the *March 2018 Decision*. Our response to the outstanding matters raised follow below:

**(Item 19)**

***Exposure Draft: Clause 22.5 – ‘Recall to work overtime’<sup>10</sup>***

11. Whilst we maintain our position that the words ‘from home’ in clause 22.4 of DC&LI Award (see clause 22.5, Exposure Draft), are outdated and anachronistic the CFMEU – Manufacturing Division at this time does intend to pursue a substantive variation with respect to the provision.

**(Item 21)**

***Exposure Draft: Clause 23.4 – ‘Time off instead of payment for work on a Saturday, Sunday’ or public holiday’<sup>11</sup>***

12. The TCFUA previously supported the position of the AWU of the need for the inclusion of a clause addressing the basis of payment on termination in circumstances where the employee has not taken off the time accrued.

13. We therefore support the Full Bench’s provisional view that a variation (by the inclusion of a new clause 23.4(e) is appropriate.

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(iii) (AM2014/250) (2014/264) TCFUA correspondence (including draft proposal) (28 April 2017) in relation to the Exposure Draft (3 November 2016) – *Dry Cleaning and Laundry Industry Award 2010*

(iv) (AM2014/250) (2014/264) TCFUA correspondence in reply (outstanding matters) in relation to Further Revised Exposure Draft (20 July 2017) – *Dry Cleaning and Laundry Industry Award 2010*

<sup>10</sup> [2018] FWCFB 1548 at paras [341] – [347]

<sup>11</sup> [2018] FWCFB 1548 at paras [348] – [351]

14. However, we have had an opportunity to review the submissions filed by United Voice (18 April 2018)<sup>12</sup> in these proceedings. We concur with United Voice's submission at paragraphs [28] – [30] and support the alternative formulation proposed, reproduced below:

*New clause 23.4(e)*

*'If, on the termination of the employee's employment, time off for work worked on a Saturday, Sunday or public holiday worked by the employee to which clause 23.4 applies has not been taken, the employer must pay the employee for the time at the penalty rates applicable to the time when worked.'*<sup>13</sup>

15. The alternative formulation proposed by United Voice ensures that clause 23.4 is internally consistent as sub-clause 23.4(b) provides that the time to be taken off is to be calculated at 'value time' e.g. *'if an employee works for one hour at time and half penalty rates, they will be entitled to take one and a half hours off.'*

**(Item 22)**

**Exposure Draft: Clause 24.1 – 'Definitions'**<sup>14</sup>

16. The TCFUA in its previous submissions, supported the position of the AWU and the proposed variation to clause 24.1 of the Exposure Draft.

17. The TCFUA subsequently opposed the alternative formulation suggested by the Commission provided to the parties on 8 September 2017.

18. We maintain our position that the original AWU proposal best addressed the issues of concern. However, given the Full Bench's observations and decision in relation to this

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<sup>12</sup> (AM2014/250 & Ors) Submission of United Voice (18 April 2018)

<sup>13</sup> Ibid; at para [351]

<sup>14</sup> [2018] FWCFB 1548 at paras [352] – [357]

matter the CFMEU – Manufacturing Division does not at this time intend to pursue substantive redrafting of this provision.

**(Item 31)**

**Exposure Draft: Clause 31 – ‘Full-time and part-time adult laundry employees’<sup>15</sup>**

19. The CFMEU – Manufacturing Division endorses the provisional view of the Full Bench that there is no scope under the *DC&LI Award* for laundry workers to perform ordinary hours of work on a Saturday.

20. In our submission, the text of the relevant substantive provision (clause 21.2(a) of the DC&LI Award) is clear and unambiguous in its meaning as follows:

**21.2(a)**

*‘The ordinary hours of work will average 38 hours per week. Ordinary hours may be worked Monday to Friday between the spread of hours of 6.00am to 6.00pm and may be worked in in one of the following arrangements.’*

21. Consequently, we submit that it is therefore appropriate and necessary to delete the Saturday rates columns in clauses C.2.1<sup>16</sup> and C.3.2<sup>17</sup> in Schedule C of the republished Exposure Draft for the *DC&LI Award*.

22. In the March 2018 Decision at paragraph [363] it states:

*‘It appears to us that the tables in clauses C.2.2 and C.3.3 adequately capture the rates of pay for hours worked on a Saturday. If parties disagree, thy can propose any further variations to the rates tables by 19 April 2018...’*

23. We concur with this statement with respect to clause C.2.2.

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<sup>15</sup> [2018] FWCFB 1548 at paras [358] – [363]

<sup>16</sup> Republished Exposure Draft (23 March 2018) – Clause C.2.1 (Full-time and part-time employees other than shiftworkers – ordinary and penalty rates)[Laundry employees]

<sup>17</sup> Republished Exposure Draft (23 March 2018) – Clause C.3.2 (Casual employees other than shiftworkers – ordinary and penalty rates – Laundry employees)

24. With respect to C.3.3, for clarity, we reiterate the TCFUA's concerns raised previously in its written submissions regarding the method of calculation of rates of pay for casual employees in Schedule C of the (various) *DC&LI Award* Exposure Drafts.
25. We acknowledge that the broader issues of overtime of casuals across a range of modern awards has since been referred to a separately convened Full Bench (AM2017/51) for consideration.
26. In response to the Statement<sup>18</sup> issued on 4 December 2018, the TCFUA filed submissions on 22 January 2018 outlining its position regarding the overtime for casuals issues in relation to a number of awards including the *DC&LI Award*. The CFMEU – Manufacturing Division continues to rely on the TCFUA's submissions in matter AM2017/51 and in these proceedings.

**(Item 9)**

***Exposure Draft: Clause 13.1 – 'Ordinary hours of work – dry cleaning workplaces'***<sup>19</sup>

27. The TCFUA previously supported the AWU's position that the word 'average' in clause 13.1 should be deleted on the basis that there was not an averaging mechanism contained in hours of work provisions for the dry-cleaning stream.
28. The Full Bench has subsequently determined that a variation is necessary, such that clause 13.1 will read:
- 13.1**  
*'The ordinary hours of work will be 38 hours per week.'*
29. The CFMEU – Manufacturing Division supports the variation determined by the Full Bench.

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<sup>18</sup> (AM2017/51) [2017] FWCFB 5417

<sup>19</sup> [2018] FWCFB 1548 at paras [364] – [372]

Filed by:

CFMEU – Manufacturing Division  
(23 April 2018)