

[2017] FWCFB 1638

The attached document replaces the document previously issued with the above code on 27 March 2017.

Delete “21 January” and “20 March” the first time they appear in paragraph [1] and replace with “20 January” and “21 March”.

Joanna Richardson
Associate to Justice Ross

Dated 28 March 2017



STATEMENT

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language re-drafting (AM2016/15)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 27 MARCH 2017

4 yearly review of modern awards – Plain language project

1. Introduction

[1] In this Statement we set out the next steps in the plain language project following the Decisions issued on 20 January and 21 March 2017 (the 20 January decision and the 21 March decision) which dealt with the finalisation of the plain language drafting guidelines (the Guidelines) and certain award-specific clauses in the *Pharmacy Industry Award 2010* (Pharmacy Award).¹

[2] On 22 September 2015, the Commission issued a Statement² establishing a pilot to produce a plain language draft of the Pharmacy Award. The purpose of the pilot was to create a plain language exposure draft which was simpler and easier for employees and employers to understand than the current Award.³ The pilot was conducted as part of the Commission's 4 yearly review of modern awards. A [report](#) on the pilot presented results of user testing research, concluding that the overall reception to the plain language draft was positive.

[3] In a Statement of 6 May 2016⁴, the Commission proposed to prepare plain language drafts of award-specific clauses in a number of other modern awards. As part of the plain language re-drafting project, the Commission also undertook to review the standard clauses in modern awards generally. This Full Bench was constituted to oversee the Commission's plain language project and the process was assigned a matter number—[AM2016/15](#).

[4] The selection of the first tranche of modern awards to be redrafted in plain language was based on an assessment of the level of award reliance among employers and employees in the industries covered by the instruments. Particular weight was given to award reliance among small businesses (those with fewer than 20 employees) on the basis that these entities are less likely to have a dedicated internal human resources function to assist with the interpretation of awards.

[5] This Statement identifies further awards for plain language re-drafting and provides an update on the plain language process associated with the first tranche of modern awards as

well as the standard clauses, common clauses and the National Training Wage Schedule. An updated timetable is also set out at **Attachment A**.

[6] As stated in the 20 January Decision, the aim of plain language drafting is to make awards as simple and as easy to understand as possible without *unintentionally* changing the legal effect of the award.⁵ Where plain language re-drafting of award terms highlights ambiguity it may be desirable that the ambiguity be resolved, even if it results in a change to the legal effect of the award.

2. All modern awards

2.1 Standard clauses and common clauses

[7] Standard clauses are provisions that have arisen from previous test cases and generally appear in the same form across most awards. The standard provisions are:

- Award flexibility;
- Consultation;
- Dispute resolution;
- Termination of employment; and
- Redundancy.

[8] Two conferences dealing with the standard clauses were held by Commissioner Hunt, on 23 November 2016 and 23 January 2017. At the most recent conference it was agreed that an updated document would be published reflecting the extent of general agreement among the parties and incorporating the changes agreed to during the 23 January 2017 conference. Standard clauses have been updated to reflect the current status. These clauses have been included in **Attachment B** of this Statement for the parties' information.

[9] A further conference has been listed on 11 April 2017. During this conference further discussions will be held with the view to resolving issues in the 'Consultation about major workplace change' clause. Parties may also raise issues in relation to the standard clauses as set out in **Attachment B**.⁶ Following the conference, the revised standard clauses will be published and interested parties will be given the opportunity to comment.

[10] Common clauses include provisions and notes generated during the 4 yearly review of modern awards that have been inserted into most exposure drafts. These clauses include machinery type provisions and simple leave provisions.⁷ A conference in relation to the plain language common clauses had been foreshadowed for March 2017. A number of parties expressed concerns regarding the review of 'common clauses'.

[11] As the content of these clauses varies significantly and given the concerns of the parties, we do not propose to proceed with the re-drafting of common clauses as a part of the plain language project. These provisions will be dealt with on an award by award basis.

2.2 The National Training Wage Schedule

[12] A plain language draft of the National Training Wage Schedule was published on the National Training Wage page ([AM2016/17](#)) on 23 February 2017. In a statement published on 23 February 2017 the Full Bench expressed a provisional view that:

- The National Training Wage will only be included in the *Miscellaneous Award 2010* and in 9 awards⁸ where parties have requested that the NTW Schedule be retained;
- The NTW Schedule will be tailored to the 9 awards referred to above;
- The National Training Wage Schedule will be removed from all modern awards except the *Miscellaneous Award* and the 9 specified awards;
- The National Training Wage conditions are to be incorporated into other awards that currently contain a NTW Schedule through a reference to the *Miscellaneous Award*;
- There will be no change to modern awards that do not currently contain a NTW Schedule.⁹

[13] In the statement parties were directed to file submissions regarding the plain language re-draft of the National Training Wage Schedule and the form of the National Training Wage Schedule to be inserted into the 9 awards. An extension of time was granted for filing of submissions until **24 March 2017**. Submissions in reply are now due on **6 April 2017**. A timetable has been included at **Attachment A**.

2.3 The Guidelines

[14] Following the 20 January decision, parties were given a further opportunity to make comments on the revised guidelines until 10 February 2017.¹⁰ No submissions were received from interested parties in respect of the revised guidelines. In paragraph [4] of the 21 March decision¹¹ in relation to the *Pharmacy Industry Award 2010*, the Full Bench noted that the Guidelines would shortly be published in final form.

[15] Modern awards should use the same or similar wording for related concepts and should follow the same structure where possible. Chapter 6 of the Guidelines identifies language that should not be used in plain language documents. Many of the guidelines could be implemented across all modern awards without resulting in a substantive impact to award provisions. All modern awards will be reviewed for consistency of language and to bring them into line with the structure outlined in the Statement of 10 May 2016,¹² wherever practical. Clauses which are difficult to understand (and which are frequently used by those covered by the award) may also be identified for re-drafting.

3. The first tranche of awards

[16] In the 20 January Decision we expressed provisional views on a range of issues in the Pharmacy Award and determined a number of other contentious issues.¹³ Outstanding Pharmacy Award issues to be addressed by the parties were identified in the 20 January Decision at paragraph 226.¹⁴ Parties filed submissions in relation to the issues identified at paragraph 226 on the 20 January Decision and a Hearing was held on 22 February. The 21 March decision resolved the majority of outstanding issues. A conference will be held before Vice President Hatcher to deal with:

- Coverage – on-hire¹⁵
- Overtime¹⁶
- Definition of dispensary assistant.¹⁷

[17] The *Hospitality Industry (General) Award 2010* and *Restaurant Industry Award 2010* are being dealt with together in order to promote efficiency and consistency.¹⁸ Plain language re-drafts of these awards will now be available by the week commencing **10 April 2017**.

[18] A plain language draft of the *General Retail Industry Award 2010* will be available for review of the parties by the week commencing **22 May 2017**.

[19] We have issued a separate Statement dealing with an update on the plain language process associated with the *Clerks—Private Sector Award 2010*.¹⁹ Parties were directed to file written submissions on the Clerks' plain language re-draft by 28 February 2017. Reply submissions are due on **28 March 2017**.

4. The second tranche of awards

[20] A further 10 modern awards have been selected to be re-drafted in plain language. In selecting these modern awards we have taken into consideration the following factors:

- industries or subsectors identified by the Fair Work Ombudsman as having high levels of non-compliance;²⁰
- award reliance survey data regarding modern awards used by small businesses;²¹
- the resources available to the Commission; and
- current public interest.

[21] We propose that the following additional modern awards will be included in the second tranche of awards to be re-drafted in plain language:

- *Aged Care Award 2010*;
- *Building and Construction General On-site Award 2010*;
- *Children's Services Award 2010*;
- *Cleaning Services Award 2010*;
- *Fast Food Industry Award 2010*;
- *Hair and Beauty Industry Award 2010*;
- *Manufacturing and Associated Industries and Occupations Award 2010*;
- *Security Services Industry Award 2010*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*;
- and
- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*.

[22] Interested persons are invited to comment on the selection of the second tranche of modern awards for re-drafting in plain language. Submissions that propose additional modern awards to those selected should be accompanied by reasons and any supporting data or factual material.

[23] As a matter of efficiency, some of the modern awards identified may be dealt with concurrently. In particular, the *Security Services Industry Award 2010* and the *Cleaning Services Award 2010* may be sufficiently similar to be dealt with together as may be the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010*.

[24] Interested persons are invited to comment on awards that could be dealt with together in accordance with directions below.

[25] Written comments about the second tranche of modern awards should be sent to amod@fwc.gov.au by **4pm on Friday 7 April 2017**.

5. Next steps

[26] The timetable issued on 4 November 2016²² has been revised in order to finalise certain award-specific clauses in the Pharmacy Award and the other awards nominated for plain language re-drafting. In order to accommodate the number of awards to be re-drafted, the awards will not be dealt with sequentially. The revised timetable for further plain language re-drafting is at **Attachment A**. Interested persons are invited to comment on the revised timetable by sending their comments to amod@fwc.gov.au by **4pm on Friday 7 April 2017**.

PRESIDENT

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¹ [2017] FWCFB 344, para 2.

² [2015] FWC 6555.

³ [2015] FWCFB 6555, para 11.

⁴ [2016] FWC 2837.

⁵ [2017] FWCFB 344, para 13.

⁶ Transcript of 23 January 2017, at PN2357 to PN2363.

⁷ [2016] FWC 4756, para 5.

⁸ *Airline Operations—Ground Staff Award 2010 (AMWU)*; *Airport Employees Award 2010 (AMWU)*; *Building and Construction General On-site Award 2010 (AMWU & CFMEU)*; *Food, Beverage and Tobacco Manufacturing Award 2010 (AMWU)*; *Joinery and Building Trades Award 2010 (CFMEU)*; *Manufacturing and Associated Industries and Occupations Award 2010 (AMWU)*; *Mobile Crane Hiring Award 2010 (CFMEU)*; *Sugar Industry Award 2010 (AMWU)*; and *Surveying Award 2010 (AMWU)*.

⁹ [2017] FWCFB 1095, paras 8–9.

¹⁰ [2017] FWCFB 344, para 56.

¹¹ [2017] FWCFB 1612, para 4.

¹² [2017] FWC 2924, para 4.

¹³ [2017] FWCFB 344, para 2.

¹⁴ *Ibid*, para 2.

¹⁵ [2017] FWCFB 1612, para 18.

¹⁶ *Ibid*, para 81.

¹⁷ Ibid, para 88.

¹⁸ [\[2016\] FWCFB 5621](#), para 18.

¹⁹ [\[2017\] FWC 743](#).

²⁰ Fair Work Ombudsman, *2015–16 Fair Work Ombudsman Annual Report*: at page 5, lists: hospitality, retail, cleaning (including trolley collecting) and security.

²¹ Priority has been given to the top 20 modern awards used by non-public sector organisations to set pay for their award-reliant employees and the top 20 modern awards for employees working in small organisations.

²² [\[2016\] FWCFB 7969](#).

Attachment A—Updated Plain language modern awards timetable

A.1 *Pharmacy Industry Award 2010*

Plain language draft Pharmacy Industry Award (see [\[2016\] FWCFB 7967](#))

	Date
Hearing	15 December 2016
Decision and revised exposure draft published	17 January 2017
Deadline for submissions on revised exposure draft	6 February 2017
Deadline for submissions in reply on revised exposure draft	10 February 2017
Hearing award specific clauses	22 February 2017
Decision published	21 March 2017
Conference	TBA

A.2 All awards

Plain language draft *standard* clauses (See [\[2016\] FWCFB 8915](#) at para 4)

	Date
Plain language draft standard clauses published for comment	11 August 2016
Deadline for written submissions	29 September 2016
Submissions summarised and published	w/c 3 October 2016
Deadline for reply written submissions	w/c 27 October 2016
Reply submissions summarised and published	w/c 31 October 2016
Conference	23 November 2016
Conference	23 January 2017
Further conference	11 April 2017

Plain language guidelines (see [\[2016\] FWCFB 7968](#) and [\[2016\] FWCFB 7967](#))

	Date
Plain language draft guidelines published for comment	4 November 2016
Deadline for written submissions	17 November 2016
Submissions summarised and published	21 November 2016
Conference	23 November 2016
Revised draft guidelines published	20 January 2017
Deadline for submissions on revised guidelines	10 February 2017

National Training Wage Schedule

	Date
Plain language draft Schedule published for comment	23 February 2017
Deadline for written submissions	24 March 2017
Deadline for reply written submissions	6 April 2017
Submissions summarised and published	w/c 10 April 2017

A.3 Four modern awards selected for plain language re-drafting

Clerks—Private Sector Award 2010 (see [\[2016\] FWCFB 7967](#))

	Date
Revised <i>Clerks—Private Sector Award 2010</i> exposure draft and summary of submissions published	w/c 11 October 2016
Plain language re-draft of award-specific clauses published for comment	w/c 12 December 2016 w/c 30 January 2017
Deadline for written submissions	17 February 2017 28 February 2017
Deadline for reply written submissions	24 March 2017 28 March 2017
Submissions on award-specific clauses summarised and published	w/c 20 February 2017 w/c 3 April 2017
Conference	3 April 2017 w/c 17 April 2017
Hearing	May 2017

Hospitality Industry (General) Award 2010 and Restaurant Industry Award 2010 (see [\[2016\] FWCFB 7967](#))

	Date
Exposure drafts (including plain language award-specific clauses) published for comment	w/c 16 January 2017 w/c 10 April 2017
Deadline for written submissions	24 February 2017 4 May 2017
Deadline for reply written submissions	24 March 2017 29 May 2017
Submissions on award-specific clauses summarised and published	w/c 27 February 2017 w/c 12 June 2017
Conference	Late June 2017
Hearing	July 2017

General Retail Industry Award 2010 (see [\[2016\] FWCFB 7967](#))

	Date
Exposure draft (including plain language award-specific clauses) published for comment	w/c 22 May 2017
Deadline for written submissions	20 July 2017 10 July 2017
Deadline for reply written submissions	23 June 2017 7 August 2017
Submissions on award-specific clauses summarised and published	w/c 27 July 2017 w/c 21 August 2017
Conference	Late September 2017 Late August
Hearing	Mid September 2017

Attachment B— Schedule of Standard Clauses

A. Award flexibility for ~~I~~ Individual flexibility arrangements

A.1 Despite anything else in this award, an employer and an individual employee ~~who has started employment~~ may agree ~~in writing with the employer~~ to vary the application of the ~~how~~ terms of this award relating to any ~~one or more~~ of the following ~~applies to them~~:

- (a) arrangements for when work is performed; or
- ~~(b) —allowances;~~
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) ~~annual~~ leave loading.

NOTE: Arrangements for when work is performed include such matters as hours of work, rostering arrangements and breaks.

A.2 ~~The employer and the individual employee must have~~ An agreement must be one that is genuinely made ~~the agreement~~ by the employer and the individual employee without coercion or duress.

A.3 An agreement ~~under this clause can~~ may only be ~~entered into~~ made after the individual employee has commenced employment with the employer.

A.4 An agreement may only be made in order to meet the genuine needs of the employer and the employee.

A.5 Either the employer or the employee may initiate the making of an agreement.

A.6 An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or should reasonably be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

A.7 An agreement must result in the employee being better off overall ~~on its making~~ at the time the agreement is made than if the agreement had not been made.

A.8 An agreement must do ~~each~~ all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, ~~each term, or terms~~ to be varied; and
- (c) set out how the award term, or each award term, is varied; and
- (d) set out ~~show~~ how the agreement results in the employee being better off overall at the time the agreement is made ~~on its making~~ than if the agreement had not been made; and
- (e) state the date ~~on which~~ the agreement is to start.

- A.9** An agreement must be:
- (a)** in writing; and
 - (b)** signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- A.10** Except as provided by in clause A.9, an agreement must not require the approval or consent of ~~anyone~~ a person other than the employer and the employee.
- A.11** The employer must keep ~~a copy~~ of the agreement as a time and wages record and give ~~another~~ a copy to the employee.
- A.12** The employer and the employee must genuinely agree, without duress or coercion ~~of any kind~~, to the any variation of an award ~~the term~~, or each variation of a term, provided for by an agreement.
- ~~**A.11** The employer and the employee may at any time agree in writing to terminate the agreement.~~
- ~~**A.11** The employer or the employee may at any time give 13 weeks' (or, if the agreement was entered into before the first full pay period starting on or after 4 December 2013, 4 weeks') written notice of termination of an agreement to the other party.~~
- A.13** An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or
 - (b) by the employer or ~~the individual~~ employee giving 13 weeks' written notice to the other party; or (reduced to 4 weeks ~~written notice to the party~~ if the agreement was entered into before the first full pay period starting on or after 4 December 2013).
- ~~**A.13** The agreement ceases to have effect at the end of the period of notice mentioned in clause A.12.~~
- A.14** The period of notice required under clause A13 is reduced to a period of not more than 28 days if an agreement made under this clause does not meet a requirement set out both in section 144(4) of the ~~Fair Work~~ Act and in clause A.
- A.15** An agreement terminated as mentioned in clause A.13(b) ceases to have effect at the end of the period of notice required under that clause.
- A.16** The right to make an agreement under clause A is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

B. Consultation about major workplace change

B.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees (excluding changes otherwise provided for by this award), the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) ~~at the earliest~~ as early as practicable date, begin to discuss with ~~those~~ affected employees and their representatives (if any):
 - (i) ~~when~~ the changes ~~are~~ to be made; and
 - (ii) their likely effect on employees; and
 - (iii) ~~the measures that are to be taken~~ to avoid or reduce the adverse effects of the changes on employees.

B.2 For the purposes of the discussion under clause B.1(b), the employer must give a ~~written notice~~ in writing to the affected employees and their representatives (if any) ~~that:~~ (a) contains all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) ~~sets out any other matters connected with the changes that are~~ likely to affect employees.

~~**B.3** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 27.1(b).~~

B.3 Clause B does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

~~**B.5** For the purpose of clause B, a change that is provided for by this award (other than clause B) must be taken not to have a significant effect on employees.~~

B.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes.

B.5 In clause B:

significant effects, on employees, includes any of the following:

- (a) termination of employment; and
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required ~~by employees~~; and
- (c) loss of, or reduction in, job or promotion opportunities; and
- (d) loss of, or reduction in, job tenure; and
- (e) alteration of hours of work; and
- (f) the need for employees to be retrained or transferred to other work or locations; and
- (g) job restructuring.

C. Consultation about changes to rosters or hours of work

- C.1** Clause C applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- C.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- C.3** For the purpose of the consultation, the employer must:
- (a)** provide to the employees and representatives mentioned in clause C.2 information about the proposed change (for example, information about the nature of the change and when ~~the change~~ it is proposed to begin ~~be made~~); and
 - (b)** invite them to give their views about the impact of the proposed change on ~~them~~, affected employees (including ~~its~~ any impact on their family or caring responsibilities).
- C.4** The employer must consider any views given under clause C.3(b).
- C.5** Clause C is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

D. Dispute resolution

- D.1** Clause D sets out the procedures to be followed if a dispute arises about a matter under this award or ~~about~~ in relation to the National Employment Standards.
- D.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- D.3** If the dispute is not resolved through discussion as mentioned in clause D.2, the parties to the dispute must then try to resolve it ~~as soon as practicable~~ in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- D.4** If the dispute is ~~not~~ unable to be resolved at the workplace ~~through discussions as mentioned in~~ and all appropriate steps have been taken under clauses D.2 and D.3, a party ~~to~~ may refer the dispute may refer it to the Fair Work Commission.
- D.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- D.6** If the dispute ~~is not resolved through the agreed process mentioned in clause D.5~~ remains unresolved, the Fair Work Commission may use any ~~other~~ method of dispute resolution that it is permitted by the ~~Fair Work~~ Act to use and that it considers appropriate for resolving the dispute.
- D.7** A party to the dispute may appoint ~~any~~ a person, organisation or ~~body~~ association to support or represent them in any discussion or process under clause D.
- D.8** While procedures are being followed under clause D in relation to a dispute:
- (a) work must continue in accordance with this award and the ~~Fair Work~~ Act; and
 - (b) any employee ~~who is a party to the dispute~~ must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- D.9** Clause D.8 is subject to any applicable ~~occupational~~ work health and safety legislation.

Part 9—Termination of employment and Redundancy redundancy

NOTE 1: The National Employment Standards set out requirements for redundancy pay. See Part 2-2, Division 11, Subdivisions B and C of the Act.

NOTE 2: Clause B—Consultation about major workplace change sets out requirements to consult about major workplace change, including changes that involve redundancy.

E. Termination of employment

NOTE: The National Employment Standards set out requirements for notice of termination by an employer. See Part 2-2, Division 11 section 117 of the Fair Work Act.

E.1 Notice of termination by an employee

- (a) An employee must give the employer written notice of termination in accordance with Table x—Period of notice of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table x—Period of Notice

Column 1	Column 2
Employee’s period of continuous service with the employer at the end of the day the notice is given	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (b) In paragraph (a) *continuous service* has the same meaning as in section 117 of the Act.
- (c) If an employee fails to give the ~~required~~ period of notice ~~in accordance with Table x—Period of notice required under paragraph (a)~~, the employer may deduct ~~the amount that would otherwise be payable from any money due~~ to the employee (on termination (under this award or the National Employment Standards) ~~for the~~), the amount that the employee would have been paid in respect of the period of notice not given ~~by the employee~~.

E.2 Job search entitlement

Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

E.3 The time off under clause E.2 is to be taken at times that are convenient to the employee after consultation with the employer.

F. Redundancy

~~NOTE: The National Employment Standards set out requirements for Redundancy pay. See Part 2.2, Division 11, Subdivision B of the Fair Work Act.~~

~~NOTE: Clause 27—Consultation about major workplace change sets out requirements to consult about major workplace change, including changes that may involve redundancy.~~

Redundancy pay is provided for in the NES.

G. Transfer to lower paid job on redundancy

~~NOTE: The National Employment Standards set out Notice of termination and redundancy pay requirements. See Part 2.2, Division 11 of the Fair Work Act.~~

G.1 Clause G applies if the employer:

- (a) no longer requires the ~~job (the old job)~~ duties being performed by an employee in a role (the first role) to be performed by anyone; and
- (b) ~~wishes~~ decides to transfer the employee to a new ~~job~~ role (the second role) (the new job) at a lower ~~classification and lower hourly~~ ordinary rate of pay.

G.2 The employer may:

- (a) give the employee is ~~entitled to be given written~~ notice of the transfer to a new classification of the same ~~minimum period of notice~~ length as the employee would be entitled to for if it were a notice of termination given by the employer; or
- (b) If the employer transfers transfer the employee to the new classification without giving notice of transfer or before the ~~end~~ expiry of a notice of transfer.

G.3 If the employer acts as mentioned in paragraph G.2(b), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee in the first role and the ordinary rate of pay of the employee in the second role for the period for which notice was not given. ~~minimum period of notice, the employee is entitled to receive a payment from the employer.~~

G.4 ~~The amount of payment to which the employee is entitled under clause G.3 is the difference between A and B where:~~

~~(a) A is the full rate of pay for the hours the employee would have worked in the old job had the employee continued to be employed in that job until the end of the minimum period of notice; and~~

~~(b) B is the full rate of pay to which the employee is entitled for working in the new job until the end of the minimum period of notice.~~

~~NOTE: See section 18 of the Fair Work Act for the meaning of “full rate of pay”.~~

H. Employee leaving during redundancy notice period

~~H.1~~ Clause H applies if an employee has been given written notice of termination of employment by their employer in circumstances in which the employee is entitled to redundancy pay. (See section 119 of the Fair Work Act).

~~H.1~~ The employee An employee given notice of termination in circumstances of redundancy may terminate their employment at any time during the period of the notice. ~~minimum period of notice~~ required to be given by their employer. (See section 117 of the Fair Work Act).

~~H.2~~ The employee is entitled to receive the benefits and payments they would have received under this award or the National Employment Standards had they remained in employment until the expiry of the notice.

~~H.3~~ However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

~~H.3~~ The requirement for the employer to pay the employee at the *full rate of pay* for the hours the employee would have worked had the employee continued to be employed until the end of the *minimum period of notice* is not affected by the early termination of employment by the employee.

NOTE: See section 18 of the Fair Work Act for the meaning of “*full rate of pay*”.

H.4 Job search entitlement

~~I.1~~ (a) Where an employer has given an employee written notice of termination to an employee in circumstances of redundancy, the employee must be allowed of employment, the employer must allow the employee paid time off of up to one day over the period of notice for the purpose seeking other employment.

~~I.2~~ However, clause I.3 applies if an employee has been given written notice of termination of employment in circumstances in which the employee is entitled to redundancy pay.

NOTE: See section 119 of the Fair Work Act.

~~I.3~~ The employer must allow the employee, during the *minimum period of notice*, paid time off without loss of pay of up to one day each week during the period of the notice for the purpose of seeking other employment.

NOTE: See section 117 of the Fair Work Act.

~~I.2~~ (c) If the an employee is allowed paid time off without loss of pay of more than one day per week during the *minimum period of notice* for the purpose of the employee seeking other employment, under clause I.1, the employee must, at the request of the employer, produce proof of attendance at a job interview.

~~I.3~~ (d) A statutory declaration is sufficient for the purpose of clause I.24.

~~I.4~~ (e) An employee who fails to produce proof when required under clause I.34 is not entitled to be paid for the time off ~~in excess of one day per week~~.

~~I.5~~ (f) This entitlement applies instead of clause E.2.1.7 — Time off under clause I is to be taken at times that are convenient to the employee after consultation with the employer.