

IN THE FAIR WORK COMMISSION

Section 156 - 4 Yearly Review of Modern Awards

(AM2019/17)

Finalisation of exposure drafts – newly constituted Full Bench

**SUBMISSION OF THE
CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION
(MANUFACTURING DIVISION)**

**In response to
Decision [2019] FWCFB 6077 (2 September 2019)**

(27 September 2019)

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BACKGROUND

1. On 2 September 2019, a Decision was issued [2019] FWC 6077¹ (*September 2019 Statement*) regarding the status of the first four yearly review, the finalisation of exposure drafts and the consequent variation of each modern award. A new full bench has been constituted for the purposes of overseeing this process.²

2. In the 4 Yearly Review of Modern Awards, the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (“CFMMEU – MD”) has an interest in a number of modern awards, including:
 - *Dry Cleaning and Laundry Industry Award 2010* [Group 4F] (“*Dry Cleaning Award*”)
 - *Joinery and Building Trades Award 2010* [Group 4C] (“*Joinery Award*”)
 - *Manufacturing and Associated Industries and Occupations Award 2010* [Group 1C] (“*Manufacturing Award*”)
 - *Textile, Clothing, Footwear and Associated Industries Award 2010* [Group 1C] (“*TCF Award*”)
 - *Timber Industry Award 2010* [Group 1C] (“*Timber Award*”)

3. At Attachment B of the *September 2019 Decision*, it sets out the modern awards in tranches 1 -3 which remain to be finalised.³ The awards in which the CFMMEU – MD has an interest are allocated as follows:

Tranche 1⁴

- Nil

¹ 4 yearly review of modern awards (AM2019/17), Finalisation of Exposure Drafts, [2019] FWCFB 6077 (as corrected) 2 September 2019.

² [2019] FWCFB 6077 at paragraph [1]

³ [2019] FWCFB 6077 at Attachment B

⁴ [2019] FWCFB 6077 – Tranche 1 (40 exposure drafts)

Tranche 2⁵

- *Dry Cleaning Award*
- *Manufacturing Award*

Tranche 3⁶

- *Joinery Award*
- *TCF Award*
- *Timber Award*

4. Exposure Drafts for Groups 1,2, 3 and 4 were most recently published during February and March 2019, with submissions received in March and April 2019. Paragraph [26] of the September 2019 Decision, states, in part:

*'...we are conscious that parties have not had an opportunity to respond to issues raised in these submissions. Any interested party who wishes to file a reply to any submission listed in Attachment A to this decision is directed to do so by no later than 4:00pm on Friday 20 September 2019. An oral hearing will be listed for 9 October 2019.'*⁷

5. On 20 September 2019, a Statement [2019] FWCFB 6562⁸ was issued extending the deadline for the filing of submissions to 27 September 2019.
6. The submissions below are in response to the submissions of the ABI & NSWBC filed 13 March 2019.⁹

⁵ [2019] FWCFB 6077 – Tranche 2 (43 exposure drafts)

⁶ [2019] FWCFB 6077 – Tranche 2 (33 exposure drafts)

⁷ [2019] FWCFB 6077 at paragraph [26]

⁸ (AM2019/17) Statement [2019] FWCFB 6562

⁹ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019)

MANUFACTURING AWARD

Excess Leave – Clause 31.7

Cashing out of annual leave – Clause 31.13

7. In relation to the Manufacturing Award, the ABI & NSWBC propose the following changes:
- Note at clause 31.7 should be amended to read “the Act” rather than “the Fair Work Act” consistent with the other changes that have been made to the exposure draft.
 - The two Notes at clause 31.13 should be amended to read “the Act” rather than “the Fair Work Act”, consistent with the other changes that have been made to the exposure draft.¹⁰
8. The CFMMEU – MD agrees with the proposed changes sought by the ABI & NSWBC.

TCF AWARD

9. In relation to the TCF Award, the ABI & NSWBC propose the following changes.

Facilitative Provisions – Clauses 5.2 to 5.4

10. In summary, ABI & NSWBC submit that clauses 5.2 to 5.4 do not cross reference the appropriate clause for each facilitative provision and that the inclusion of cross referencing would assist readers of the award.¹¹
11. In the CFMMEU’s submission, the change proposed by ABI & NSWBC is not necessary. There is no evidence before the Commission identifying problems encountered by readers of the award in understanding and applying the facilitative provisions

¹⁰ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraphs 16 - 17

¹¹ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraphs 43 - 45

Schedule F (Outwork and related provisions) – clause F.5.8

12. The ABI & NSWBC raise 2 issues in relation to clause F.5.8. Clause F.5.8 of the exposure draft list the award provisions that do not apply to outworkers.

Issue 1

1. The first issue raised by the ABI & NSWBC is the cross reference next to “Dispute Resolution” has been updated to read “clauses 29and 29.2 and this appears to be inconsistent with [2018] FWCFB 3802 at [401] which adopted the TCFUA submission to update the read “clauses 29.1 and 29.2”.¹²
2. The CFMMEU – MD agrees with the submission of the ABI & NSWBC such that the reference should be amended to read “clauses 29.1 and 29.2”.

Issue 2

3. Secondly, the ABI & NSWBC note that none of the other provisions listed in clause F.5.8 contain a cross reference and submit that that their inclusion would provide consistency and assist readers of the award.¹³
4. The CFMMEU – MD opposes the submission of the ABI & NSWBC. The original rationale for specifying the particular sub-clauses (29.1 and 29.2) of the dispute resolution clause which don’t apply to outworkers was that the first step of the DSP (seeking to resolve dispute at workplace) has no practical application to TCF workers working from home. As such, this necessitated a specific carving out of those sub-clauses. That is, there was a clear purpose for the cross referencing of the sub-clause as the entire DSP clause was not excluded.

¹² Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraphs 46 - 48

¹³ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraph 49

5. The same logic does not apply to the other dot points in clause F.5.8 of the exposure draft. The change proposed by the ABI & NSWBC in this regard is not necessary.

Schedule C – Clause C.3.2

6. The ABI & NSWBC submit that Footnote 1 to the table is incomplete and reads *“Payment per shift in addition to applicable”* and the words *“applicable ordinary hourly rate”* should be added to the end of the footnote.¹⁴
7. The CFMMEU – MD agrees with the submission of the ABI & NSWBC.

TIMBER AWARD

National Training Wage – Clause 19

8. The ABI & NSWBC submit that that numbering of clause 19 appears inconsistent with both the relevant determination (PR606396) and usual numbering applied to modern awards in general. The two sub-clauses have been numbered 19(a) and 19(b) whereas 19.1 and 19.2 would appear to be more appropriate.¹⁵
9. The CFMMEU – MD agrees with the submission of the ABI & NSWBC.

Filed on behalf of:

**Construction Forestry Maritime Mining and Energy Union
(Manufacturing Division)**

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27 September 2019

¹⁴ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraphs 50 - 51

¹⁵ Submission of ABI & NSWBC, Group 1 Awards (13 March 2019) at paragraphs 52 - 53

