



Fair Work Commission
Section 156 - Fair Work Act 2009
4 Yearly Review of Modern Awards

(AM2014/91)

Textile, Clothing, Footwear and Associated Industries Award 2010
Group 1C
Revised Exposure Draft
(4 November 2015)

**Reply Submission of the
Textile Clothing and Footwear Union of Australia
(7 December 2015)**

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**2014 AWARD REVIEW
(AM2014/491)
AWARD STAGE – GROUP 1C
Textile, Clothing, Footwear and Associated Industries Award 2010
Revised Exposure Draft
Reply Submission of the
Textile Clothing and Footwear Union of Australia**

BACKGROUND

1. The Fair Work Commission (FWC) published a Revised Exposure Draft for the Textile, Clothing, Footwear and Associated Industries Award 2010 ('TCF Award 2010') on 4 November 2015. The TCF Award 2010 is listed in Sub group 1C of the Award Stage of the 4 Yearly Review.
2. Interested parties were given the opportunity to provide Reply submissions by 4 December 2015, in accordance with the Full Bench decision [2015] FWCFB 7236.¹
3. On 4 December 2015, the TCFUA sought, and was provided with an extension of time to file its reply submissions by 7 December 2015.
4. The TCFUA supports and adopts the reply submissions of the AWU filed 4 December 2015,² both in terms of matters of general application, and issues specifically affecting the terms of the TCF Award.
5. Attached is a table outlining the TCFUA's further reply submissions in relation to submissions filed by the AI Group (20 November 2015) and Business SA (27 November 2015) in relation to the Revised Exposure Draft for the TCF Award 2010. The TCFUA also continues to rely on its previous submissions filed on 24 November 2015.³

Textile, Clothing and Footwear Union of Australia

(7 December 2015)

¹ S156 – 4 Yearly Review of Modern Awards, (AM2014/72 and Ors), [2015] FWCFB 7236 at [358]

² S156 – 4 Yearly Review of Modern Awards, AWU Reply Submission (4 December 2015)

³ S156 – 4 Yearly Review of Modern Awards, TCFUA Submission (24 November 2015)

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
BUSINESS SA Submission (27 November 2015)		
Clause 3.4 Coverage	<ul style="list-style-type: none"> Reference to '2014' should be replaced with '2015' 	<ul style="list-style-type: none"> The TCFUA agrees with the Business SA submission. Same issue also identified in TCFUA Submission (24 November 2015)
Clause 26.3 Notice of termination by an employee	<ul style="list-style-type: none"> Drafting error. The clause should read “...<i>the employer may withhold from any money due to the employee....</i>” 	<ul style="list-style-type: none"> The TCFUA is not opposed to the Business SA submission.
Schedule G Part –day public holidays	<ul style="list-style-type: none"> Schedule G should be amended in accordance with the statement published on 15 May 2015 [2015] FWC 3317 and 2015 determination PR573679 of 16 November 2015 	<ul style="list-style-type: none"> Business SA incorrectly references 'Schedule G', should actually be Schedule 'E' Otherwise TCFUA agrees with the Business SA submission
AI GROUP SUBMISSION (20 November 2015)		
Clause 2.2 & 2.4 NES and this Award	<ul style="list-style-type: none"> Text added at end of clause 2.4 should be moved to the end of clause 2.2. This appears to be a drafting error.¹ 	<ul style="list-style-type: none"> TCFUA agrees Same issue also identified in TCFUA Submission (24 November 2015)
Clause 3.1 Coverage	<ul style="list-style-type: none"> Clause 3.1 should be amended by substituting the word 'an' in the third line with 'and'. This appears to be a drafting error.² 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission.

¹ (AM2014/91) AI Group Submission (20 November 2015) at para [364]

² (AM2014/91) AI Group Submission (20 November 2015) at para [365]

2014 AWARD REVIEW
 (AM2014/91) TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010
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REPLY SUBMISSION OF THE TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA
(7 December 2015)

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
Clause 3.4(c) Coverage	<ul style="list-style-type: none"> The reference to '2014' in clause 3.4(c) should be replaced with '2015'³ 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission. Same issue also identified in TCFUA Submission (24 November 2015)
Clause 6.3(h) Part-time employees	<ul style="list-style-type: none"> The reference to 'clause 6.3(c) should be replaced with 'clauses 6.4(d) and (e). This appears to be a drafting error.⁴ 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission. Referencing issue also identified in AWU Submission (20 November 2015) and supported by TCFUA Submission (24 November 2015) i.e. correct reference is 'clause 6.4(d).
Clause 6.4(i) Casual loading	<ul style="list-style-type: none"> See full text at paragraphs [368] – [374] AI Group contends that clause 6.4(i) of the Exposure Draft should be amended as follows: 'For each ordinary hour worked, a casual employee must be paid: (i) the ordinary hourly rate; and (ii) a loading of 25% of the ordinary minimum hourly rate, prescribed for the relevant classification in which they are employed. 	<ul style="list-style-type: none"> The TCFUA opposes the AIG submission. The TCFUA supports and adopts the AWU submission (20 November 2015 at paras [43] – [47]). The TCF Award 2010 expressly contains 2 all-purpose allowances. The TCFUA submits that this issue has been determined by the Full Bench and the AIG submission provides no further material upon which the amendment proposed is supportable.

³ (AM2014/91) AI Group Submission (20 November 2015) at para [366]

⁴ (AM2014/91) AI Group Submission (20 November 2015) at para [367]

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
Clause 8.4(c) and (d) Arrangement of working hours including rostered days off	<ul style="list-style-type: none"> The October 2015 decision states that ‘where the parties have reached agreement, the agreed position will be adopted and published in a revised version of the Exposure Draft.’ Refer to item 10 of the Commission’s summary of submissions dated 17 February 2015. It indicates that the parties agreed to amend clauses 8.4(c) and (d), however this has not been reflected in the Exposure Draft. Consistent with the Commission’s decision, the provisions identified should be amended accordingly.⁵ 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission. The FWC’s Summary of Submissions (17 February 2015) state that there was agreement that ‘8.4(c) and 8.4(d) should be renumbered to 8.4(b)(i) and 8.4(b)(ii) respectively to make clear that they relate to clause 8.4(b), reflecting position under current award.’
Clause 8.4(g) Rostered day off falling on public holiday	<ul style="list-style-type: none"> The reference to ‘clause 23’ should be replaced with a reference to ‘clause 24’. This appears to be a drafting error. Item 11 of the Commission’s summary of submissions dated 17 February 2015 indicates that the amendment was agreed to by the relevant parties.⁶ 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission – correct reference is ‘clause 24’
Clause 14.2(a)(i) All purpose allowance	<ul style="list-style-type: none"> Clause 14.2(a) should be amended to make reference to the exemption for incentive payments. This is to avoid any ambiguity or tension between the terms of clause 14.2(a) and 14.2(b). This could be achieved by varying clause 14.2(a)(i) as follows: 	<ul style="list-style-type: none"> The TCFUA opposes the submission of the AI Group. The TCFUA supports and adopts the submission of the AWU (4 December 2015 at paras [48] – [49]). The TCFUA submits that there is no inconsistency or ‘tension’ between the 2 provisions which would warrant the amendment sought by the AI Group.

⁵ (AM2014/91) AI Group Submission (20 November 2015) at para [375 - 376]

⁶ (AM2014/91) AI Group Submission (20 November 2015) at para [377]

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
	(i) Instructor allowance, <u>except for the purposes of incentive payments</u> (clause 14.2(b); and... ⁷	
Clause 17.3 Payment for shiftwork	<ul style="list-style-type: none"> Refer to submissions at 2.2 above. Consistent with the concerns raised, the heading to clause 17 should be amended by deleting the words ‘and penalties’. This is consistent with the current clause 35.1, which does not characterise the additional payment as a loading, penalty or otherwise. To do so now may have an unintended consequence as set out in section 2.2.⁸ 	<ul style="list-style-type: none"> The TCFUA opposes the AI Group submission. The FWC has generally determined to restructure the format of modern awards as part of the 2014 Award Review. Having so determined, the heading of clause 17 is consistent with the equivalent headings of clause 18 (Shiftwork and penalties – textile industry) and clause 19 (Seven day continuous shiftwork and penalties – textile industry).
Clause 18.4(a) Employees under 18 years	<ul style="list-style-type: none"> Reference to ‘clause 18.3’ should be substituted with ‘clause 17.3). This is consistent with the current clause 36.6.⁹ 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission. Same issue also identified in TCFUA Submission (24 November 2015 at p7).
Clause 20.3(a)(i) Payment for working overtime	<ul style="list-style-type: none"> Consistent with the Commission’s July 2015 decision at paragraphs [95] – [96], clause 20.3(a)(i) of the Exposure Draft should be amended by inserting the words ‘minimum hourly rate’ after ‘150%’.¹⁰ 	<ul style="list-style-type: none"> The TCFUA opposes the AI Group’s submission. The TCFUA supports and adopts the submission of the AWU (4 December 2015 at paras [42] and [50]) which refers to the Full Bench’s findings re: use of

⁷ (AM2014/91) AI Group Submission (20 November 2015) at para [378]

⁸ (AM2014/91) AI Group Submission (20 November 2015) at para [379]

⁹ (AM2014/91) AI Group Submission (20 November 2015) at para [380]

¹⁰ (AM2014/91) AI Group Submission (20 November 2015) at para [381]

2014 AWARD REVIEW
 (AM2014/91) TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010
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(7 December 2015)

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
		the term ‘ordinary hourly rate’ as against ‘minimum hourly rate’.
Clause 20.3(a)(ii) Payment for working overtime	<ul style="list-style-type: none"> Consistent with the Commission’s July 2015 decision at paragraphs [95] – [96], clause 20.3(a)(ii) of the Exposure Draft should be amended by inserting the words ‘minimum hourly rate’ after ‘200%’.¹¹ 	<ul style="list-style-type: none"> The TCFUA opposes the AI Group’s submission. The TCFUA supports and adopts the submission of the AWU (4 December 2015 at para [42]) which refers to the Full Bench’s findings re: use of the term ‘ordinary hourly rate’ as against ‘minimum hourly rate’.
Clause 24.2 Public Holidays	<ul style="list-style-type: none"> Reference to ‘clause 22.4’ should be substituted with a reference to ‘clause 24.3’. This appears to be a drafting error.¹² 	<ul style="list-style-type: none"> TCFUA agrees with the AIG submission. Same issue also identified in TCFUA Submission (24 November 2015 at p8, together with a further typographical error)
Clause 24.3(c)(i) Work on public holidays	<ul style="list-style-type: none"> Clause 24.3(c)(i) should be amended to make clear that the loading applies in addition to the employee receiving the regular Saturday or Sunday penalty rate for all ordinary hours worked on 25 December, with a minimum of four hours payment. This is consistent with the current clause 43.2(b).¹³ 	<ul style="list-style-type: none"> The TCFUA is not opposed to the AIG submission.

¹¹ AM2014/91) AI Group Submission (20 November 2015) at para [382]

¹² AM2014/91) AI Group Submission (20 November 2015) at para [383]

¹³ AM2014/91) AI Group Submission (20 November 2015) at para [384]

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
Clause 26.3 Notice of termination by an employee	<ul style="list-style-type: none"> Clause 24.3 should be amended as follows in order to rectify a drafting error: <i>'If an employee fails to give the required notice, the employer may withhold <u>from</u> any money due to the employee....'</i>¹⁴ 	<ul style="list-style-type: none"> The TCFUA is not opposed to the AIG submission
Schedule C Summary of hourly rates of pay	<ul style="list-style-type: none"> The Note contained in the summary indicates that the rates contained in it relate only to the general stream. Wage rates for employees classified as 'wool and basil employees' or 'storeworker employees' have not been calculated. The Schedule should be amended in order to make clear that that is the case. This might be achieved by amending the heading to the Schedule such that it reads: 'Schedule C – Summary of Hourly Rates of Pay – General'¹⁵ Additionally, a note should be inserted below the heading as follows: 'This schedule only contains hourly rates of pay for employees to whom clause 10.1 applies.'¹⁶ 	<ul style="list-style-type: none"> The TCFUA opposes the AI Group submission. It is correct that 'Schedule C – Summary of Hourly rates of Pay' do not include rates for 'Wool and basil' and 'Storeworker' employees. However, the AI Group's suggested amendments may also be misleading in that, Schedule C overall deals with more than the General classifications in clause 10.1 e.g. contains tables in relation to seven day continuous shiftworkers.

¹⁴ AM2014/91) AI Group Submission (20 November 2015) at para [385]

¹⁵ AM2014/91) AI Group Submission (20 November 2015) at paras [386-7]

¹⁶ (AM2014/91) AI Group Submission (20 November 2015) at para [388]

REVISED EXPOSURE DRAFT – CLAUSE NUMBER & TITLE	COMMENTS/ISSUE RAISED BY EMPLOYER PARTY	TCFUA REPLY SUBMISSION
Schedule C.2.2 Full-time and part-time employees – shiftworkers other than in the textile industry – ordinary and penalty rates	<ul style="list-style-type: none"> The amount payable in respect of a permanent night shift and afternoon and night shift are expressed as 130% and 115% (respectively) of the minimum weekly rate. This is inaccurate, as the amounts there stated has been derived by calculating 30% and 15% of the relevant weekly rate. Therefore, 130% and 115% should be replaced with ‘30%’ and ‘15%’. This is consistent with Schedule C.4.1.¹⁷ 	<ul style="list-style-type: none"> If the TCFUA understands the AI Group’s submission correctly, the potential anomaly arises because read literally the term 115 or 130% of the ‘minimum weekly wage’ would result in higher amounts than represented in the table (which have been calculated using 15% or 30% respectively, not 115% or 130%). If this is the case then the TCFUA agrees with the AI Group submission.
Schedule C.2.2 Full-time and part-time employees – shiftworkers other than in the textile industry – ordinary and penalty rates	<ul style="list-style-type: none"> A footnote has been omitted from Schedule C.2.2 (see headings ‘permanent night shift’ and ‘afternoon & night shift’. This should be amended by inserting a footnote as follows: <ol style="list-style-type: none"> Payment per shift in addition to the applicable minimum hourly rate.¹⁸ 	<ul style="list-style-type: none"> The TCFUA disagrees with the AIG submission. There are different methods of calculation in relation to the shift loading for employees (non-textile) and employees (textile). Further, the textile shift loadings are calculated against the General skill level 2 classification in clause 10.1; whereas the General shift loadings are determined according to the actual skill level classification appropriate to the work performed by the employee.
Schedule C.2.2 Full-time and part-time employees –	<ul style="list-style-type: none"> The table suggests that the public holiday penalty in the final column is calculated on the minimum weekly 	<ul style="list-style-type: none"> The TCFUA agrees with the AIG submission.

¹⁷ (AM2014/91) AI Group Submission (20 November 2015) at para [389]

¹⁸ (AM2014/91) AI Group Submission (20 November 2015) at para [390]

2014 AWARD REVIEW
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shiftworkers other than in the textile industry – ordinary and penalty rates	rate. This is not correct; the penalty is applied to the minimum hourly rate. This should be amended. ¹⁹	

¹⁹ (AM2014/91) AI Group Submission (20 November 2015) at para [391]