



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)

**Submission of the
Textile Clothing and Footwear Union of Australia
In relation to the Revised Exposure Draft
(24 November 2015)**

Submitted by:

Textile Clothing and Footwear Union of Australia
(National Office)
359 Exhibition Street
Melbourne VIC 3000

(t) 03 9639 2955
(f) 03 9639 2944

Contact:
Vivienne Wiles
TCFUA National Industrial Officer
(e) vwiles@tcfvic.org.au

**2014 AWARD REVIEW
(AM2014/491)
AWARD STAGE – GROUP 1C
Textile, Clothing, Footwear and Associated Industries Award 2010
Revised Exposure Draft
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 feedback on the Revised Exposure Draft and provide submissions by 20 November 2015, in accordance with the Full Bench decision [2015] FWCFB 7236.
3. On 20 November 2015, the TCFUA sought, and was provided with an extension of time to file its submissions by 23 November 2015. The TCFUA apologises to the Commission for the further delay in the filing of these submissions.
4. Attached is a table outlining the TCFUA's submissions in relation to various aspects of the Revised Exposure Draft for the TCF Award 2010.

Textile, Clothing and Footwear Union of Australia

(24 November 2015)

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
TABLE OF CONTENTS	
Table of Contents [pp 2-3]	Under heading “Part 4 – Wages and Allowances” <ul style="list-style-type: none"> • The TCFUA has previously submitted that it would assist in the useability of the TCF Award, if the heading of Part 4 could be amended to read ‘Wages, Allowance and <u>Superannuation</u>’. • This suggestion was not opposed by the main parties with an interest in the TCF Award (AWU, AI Group ABI & NSWBC) and who have participated in the extensive number of conferences held before Commission Lee (2014/15) regarding this award. • The table of contents in the current TCF Award 2010 (varied to 15 October 2015) provides for a separate Part 6 which deals solely with the subject matter of ‘Superannuation’ (see clause 14). Whilst the TCFUA does not oppose the incorporation of the current Part 6 into ‘Part 4 – Wages and Allowances’ it is submitted that that the inclusion of ‘Superannuation’ in the main heading will alert readers to where the provision relating to superannuation is now located. • The TCFUA submits such an amendment would assist both employers and employees in the TCF industry, a significant number of whom do not have English as their first language and many have limited English language literacy skills.
PART 1 – APPLICATION AND OPERATION	
Clause 2 The NES and this award [pp 4-5]	Clause 2.2 <ul style="list-style-type: none"> • Clause 2.2 in the Revised Exposure Draft states: <i>‘The employer must ensure that copies of this award and the NES are available to all employees to whom they apply.’</i> • It is submitted that clause 2.2 above does not accurately reflect the finding of the Full Bench in [2014] FWCFB 9412 (23 December 2014) in the settlement of the model clause. At paragraph [29] of the decision, the Full Bench held that the ‘amended clause will be as follows: <i>‘The employer must ensure that copies of this award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.’</i>

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> • It is possible that the drafting of clause 2.2 has been inadvertently mixed with clause 2.4 – see below. • It is submitted that clause 2.2 should be amended to reflect to model term above.
Clause 2 The NES and this award [pp 4-5]	Clause 2.4 <ul style="list-style-type: none"> • There appears to be a formatting error in clause 2.4 which currently provides: <i>'Where this award refers to a condition of employment provided for in the NES, the NES definition applies, <u>either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.</u>'</i> • It appears that the underlined section of clause 2.4 is intended to be part of clause 2.2 • In any event, clause 2.4 as currently drafted does not make sense.
Clause 3 Coverage [pp 5-6]	Clause 3.4(c) <ul style="list-style-type: none"> • Clause 3.4(c) refers to the <i>'Manufacturing and Associated Industries and Occupations Award 2014'</i>. • Typographical error – should refer to <i>'2015'</i> consistent with the reference in clause 3.4(b) to the <i>'Clerks – Private Sector Award 2015'</i>.
Clause 5 Facilitative Provisions [pp 8-9]	Clause 5.1 <ul style="list-style-type: none"> • Clause 5.1 provides: <i>'A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or the majority of employees in the enterprise or part of the enterprise concerned.'</i> • Clause 8 of the TCF Award 2010 currently contains no introductory preamble. • The TCFUA has previously submitted that proposed clause 5.1 can be read ambiguously, to the effect that facilitative provisions, generally, allow for award provisions to be departed from by <i>either</i> individual or majority agreement. This interpretation would be misleading in relation to clause 5.2 (Facilitation by individual agreement) and clause 5.5 (Facilitation by majority agreement).

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> • As per the TCFUA’s previous submissions, we support the wording of the preamble of the Manufacturing Award 2010, which provides: ‘8.1 (a) This award also contains facilitative provisions which allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or section or sections of it. The facilitative provisions are identified in clauses 8.2, 8.3 and 8.4. (b) The specific award provisions establish both the standard award condition and the framework within which agreement can be reached as to how the particular provisions should be applied in practice [last sentence deleted consistent with the Full Bench’s decision, [2014] FWCFB 9412 at [42]] • It is submitted that the Manufacturing Award wording is less likely to lead to ambiguity or misunderstanding about the nature of facilitative provisions and on what basis they can operate. • The Full Bench decision [2014] FWCFB 9412 at [43] left open the potential for the introductory words to facilitative provisions to be amended in relation to a particular award/s. • The AI Group and ABI & NSWBC have previously indicated that they are open to considering the insertion of the Manufacturing Award wording into the TCF Award (see item od, FWC Revised Summary of Submissions, 17 February 2015).
PART 2 – TYPES OF EMPLOYMENT AND CLASSIFICATIONS	
Clause 6 Types of Employment [pp 9-15]	Clause 6.3 (Part-time employees) Clause 6.3(h) <ul style="list-style-type: none"> • Clause 6.3(h) currently provides: ‘All time worked in excess of the hours mutually agreed in accordance with <u>clause 6.3(c)</u> will be overtime and paid for at the rates prescribed in clause 20 – Overtime.’

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> The AWU in its written submission¹ identified that that cross reference to clause 6.3(c) is incorrect and that the correct cross-reference is 6.3(d). The TCFUA agrees with AWU submission.
Clause 6 Types of Employment [pp 9-15]	<p>Clause 6.4 (Casual employees) Clause 6.4(h) – deleted</p> <ul style="list-style-type: none"> The AWU in its written submission² submitted in relation to the deletion of clause 6.4(h): <i>'5. A new subclause asking parties to list provisions that did not apply to casual employees was proposed by the Commission but employer and Union parties overwhelmingly rejected this. Therefore, in [2014] FWCFB 9412 at [69] the Full Bench removed the proposed sub clause.</i> <i>6. However, in this award in addition to the removal of the Commission's proposed sub clause, clause 6.4(h) of the exposure draft has also been deleted. Clause 6.4(h) of the exposure draft needs to be retained as it presently appears at 14.7 of the current award.</i> The TCFUA agrees with the AWU submission. It is submitted that clause 14.7 of the TCF Award 2010 is a substantive provision, and that the Exposure Draft process was not intended to remove substantive provisions from modern awards.
Clause 6 Types of Employment [pp 9-15]	<p>Clause 6.5 (Casual conversion to full-time or part-time employment) Clause 6.5(e)</p> <ul style="list-style-type: none"> Clause 6.5 has been significantly reformulated from the current clause 14.10, TCF Award 2010.

¹ 4 Yearly Review of Modern Awards, Revised Exposure Draft Group – 1C, 1D and 1E Awards, Outline of Submissions (20 November 2015) at para 4

² 4 Yearly Review of Modern Awards, Revised Exposure Draft Group – 1C, 1D and 1E Awards, Outline of Submissions (20 November 2015) at paras 5-6

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> • In its previous submissions, the TCFUA opposed any changes to clause 14.10, TCF Award 2010. No rationale has been provided for the changes made. The TCFUA has sought no variation to the terms of existing clause 14.10 either during the award stage of the Review or as part of the Casual Employment – Common Issues proceedings. • A number of the changes to the current clause 14.10 are significant, and represent substantive amendments to existing provisions. • Clause 6.5 now includes an entirely new provision, clause 6.5(e) which allows for the 6 month period to be increased to 12 months based on either majority agreement or agreement of the casual employees concerned. Such a provision has never existed in the casual conversion clause of the TCF Award, and has not been sought by any union or employer party with an interest in the award. The new clause 6.5(e) is strongly opposed by the TCFUA and in our submission, should be deleted.
Clause 6A Outwork and related provisions [pp 14-15]	Clause 6A - numbering <ul style="list-style-type: none"> • The clauses which follow the heading ‘6A – Outwork and related provisions’ are numbered 6.1 to 6.3 (a) – (i). Currently there are clauses 6.1 to 6.3 under the earlier provisions relating to ‘Types of Employment’ (6.1), ‘Full-time employees’ (6.2) and ‘Part-time employees’ (6.3). • To avoid confusion, the TCFUA suggests that the clause 6A clauses be renumbered as ‘6A.1’, ‘6A.2’ and ‘6A.3’.
Clause 6A Outwork and related provisions [pp 14-15]	Clause 6A Clause 6.1 <ul style="list-style-type: none"> • The TCFUA proposes that the word ‘for’ be reinserted into clause 6A of the Revised Exposure Draft (consistent with the current clause 17.1) so that it reads: <i>‘Arrangements (including <u>for</u> the engagement of outworkers) must be made by Principals in accordance with Schedule F – Outwork and Related Provisions.’</i>
PART 3 – HOURS OF WORK	
Clause 8	Clause 8.3 (Change of Hours)

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Ordinary Hours of Work and Rostering [pp 15-17]	Clause 8.3(a) <ul style="list-style-type: none"> • The AWU identified a typographical error in subclause 8.3(a) submitting that the semi-colon at the end of this clause needs to be replaced with a full stop.³ • The TCFU agrees with the AWU submission.
Clause 8 Ordinary Hours of Work and Rostering [pp 15-17]	Clause 8.5 (Substitution of rostered day off) Clause 8.5(b) <ul style="list-style-type: none"> • Clause 8.5(b) of the Revised Exposure Draft provides: <i>'The employer and a majority of <u>affected</u> employees may agree, in accordance with clause 5.4, to substitute the rostered day off agreed to for another day.'</i> • Clause 8.5(b) is a different formulation to the current clause 33.2, TCF Award which refers to 'the majority of employees concerned', a potentially wider group of employees.
Clause 9.4 Breaks [pp 17-19]	Clause 9.5 (Minimum breaks between overtime shifts) <ul style="list-style-type: none"> • The subheading is misleading as the substantive provision in clause 9.5 relates to minimum breaks between periods of work, before or after overtime (not minimum breaks between 2 periods of overtime as the subheading implies) • For example, clause 9.5(a) provides: <i>'Where-ever practicable, the employer will arrange overtime so that employees will have at least ten consecutive hours break <u>between work on successive days.</u>'</i> [our emphasis] • The current subheading for the equivalent clause in the TCF Award 2010 is 'Rest period before or after overtime' (cl.40.3) which more accurately describes the purpose of the substantive provision. • The TCFUA submits therefore, that the subheading for clause 9.5 of the Revised Exposure Draft should be amended to read 'Rest period before or after overtime'.

³ 4 Yearly Review of Modern Awards, Revised Exposure Draft Group – 1C, 1D and 1E Awards, Outline of Submissions (20 November 2015) at para [7]

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
Clause 9.4 Breaks [pp 17-19]	<p>Clause 9.5 (Minimum breaks between overtime shifts) Clause 9.5(b) (i) & (ii)</p> <ul style="list-style-type: none"> The introductory words to clause 9.5(b) provide that: <i>'Where an employee has not had at least ten <u>consecutive</u> hours break between those times, the employee:...</i> [our emphasis] However, the sub clauses (i) and (ii) which follow do not include the word 'consecutive' in the words 'ten hours off duty' which appear in each sub-clause. The current clause 40.4(b) (i) & (ii), which is relevantly identical in all other respects, does include the word 'consecutive' in combination with the words '10 consecutive hours off duty'. It is submitted that the omission of the word 'consecutive' from sub-clause 9.5(b) (i) & (ii) is an error and should be reinserted. The continuing omission has the effect of potentially changing the meaning of a substantive provision.
PART 5 – PENALTIES AND OVERTIME	
Clause 18 Shiftwork and penalties – textile industry [pp 37-39]	<p>Clause 18.49(a) (Employees under 18 years)</p> <ul style="list-style-type: none"> Subclause 18.4(a) provides: <i>'Employees under 18 years of age are prohibited from working after 11.00pm but may work between the hours of 6.00am and 11.00am provided that they are paid the relevant shift penalty set out in <u>clause 18.3</u>.'</i> [our emphasis] It is submitted that the reference to 'clause 18.3' is an incorrect reference and should be 'clause 17.3' The equivalent provision in the TCF Award 2010 (clause 36.6) refers to 'clause 35 – Payment for Shiftwork', which is the provision which applies to shiftwork – General. The TCFUA has only recently identified this error and therefore raises it as part of these submissions.
PART 6 – LEAVE, PUBLIC HOLIDAYS AND OTHER NES ENTITLEMENTS	
Clause 24 Public Holidays	<p>Clause 24.1</p> <ul style="list-style-type: none"> The introductory wording of clause 24.1 provides 'Public holidays are provided for in the NES'.

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[pp 46-48]	<ul style="list-style-type: none"> This is different from the current wording in clause 43.1 of the TCF Award 2010 which provides, 'The following provision supplement the NES.' It is submitted that the respective formulations have different meanings. As far as the TCFUA can discern there is no apparent reasoning as to why the current term (43.1) should be removed. The TCFUA proposes that clause 24.1 be amended to combine the 2 provisions as follows: <i>'Public holidays are provided for in the NES. The following provisions supplement the NES.'</i>
Clause 24 Public Holidays	<p>Clause 24.2</p> <ul style="list-style-type: none"> Clause 24.2 currently provides: <i>'Where an employee works on a public holidays they will paid in accordance with <u>clause 22.4</u>'</i> [our emphasis] The TCFUA has identified two errors in clause 24.2 <ul style="list-style-type: none"> Word 'holidays' should be 'holiday' (singular) Reference to clause 22.4 should be 'clause 22.3' (which details the basis of the compensation for working on a public holiday)
SCHEDULE C – SUMMARY OF HOURLY RATES OF PAY	
Schedule C Summary of Hourly Rates of Pay [pp72-78]	<p>Clause C.3 (Casual Employees – Day workers)</p> <p>Clause C.3.2 (Casual employees – ordinary and penalty rates) [TABLE]</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the right hand column (Public Holiday rates) for casual day workers are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the public holiday rates using the following method of calculation: <i>For example (trainee rate)</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29per hour) x 2.75 (i.e. 275%) = \$45.54 per hour</i>

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to the public holiday rate of 250%, rather than being added initially to the award casual hourly rate of pay, and then adding the public holiday penalty. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows: <i>For example (trainee rate)</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.50 (i.e. 250% public holiday loading) = \$54.00</i>
Schedule C Summary of Hourly Rates of Pay [pp72-78]	<p>Clause C.3 (Casual employees – Day workers) Clause C.3.3 (Casual employees – overtime rates) [TABLE]</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the 3 right hand columns (175%; 225% and 225%) in relation to overtime rates for casual day workers are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the overtime rates using the following method of calculation: <i>For example (trainee rate)</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 1.75 (i.e. 175%) = \$30.26 per hour</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.25 (i.e. 225%) = \$38.90 per hour</i> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to each of the overtime rate (150% and 200% respectively), rather than being added initially to the award casual hourly rate of pay, and then adding the overtime penalty. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows:

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	<p><i>For example (trainee rate)</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 1.50 (i.e. 150% overtime rate) = \$32.41</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading - \$21.61) x 2.00 (i.e. 200% overtime rate) = \$43.20</i></p>
<p>Schedule C Summary of Hourly Rates of Pay [pp72-78]</p>	<p>Clause C.3 (Casual employees – Day workers) Clause C.3.3 (Casual employees – overtime rates) [TABLE]</p> <ul style="list-style-type: none"> In addition to the method of calculation, the Table is not accurate in relation to the overtime rate payable to employees engaged under a Payment By Results arrangement (see PBR provisions in clause 11, Exposure Draft). Sub-clause 20.3(c) of the Exposure Draft provides: <i>(c) 'An employer must pay an employee who is paid under any system of payment by results for any overtime worked:</i> <i>(i) for the <u>first two hours</u>, at the rate of <u>150%</u> of the award rate for their skill level; and</i> <i>(ii) for <u>any subsequent hours</u>, at the rate of <u>200%</u> of the award rate for their skill level;</i> <i>in addition to the payment of results earnings earned by the worker.'</i> The TCFUA submits that a note could be inserted at the bottom of the table which alerts readers to the different overtime rates payable to employees paid under any system of payment by results, and refer to the specific overtime provisions in sub-clause 20.3(c).
<p>Schedule C Summary of Hourly Rates of Pay [pp72-78]</p>	<p>Clause C.4 (Casual employees – shiftworkers) – numbering issue</p> <ul style="list-style-type: none"> The paragraph located directed under the heading 'C.4 Casual employees – shiftworkers) is not numbered. The TCFUA notes that the same paragraph under the heading 'C.3 Casual employees – day workers' is numbered 'C.3.1'. For consistency between provisions, the TCFUA submits it may be useful to similarly number the paragraph under C.4 as 'C.4.1' etc.
<p>Schedule C</p>	<p>Clause C.4 (Casual employees – shiftworkers)</p>

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
<p>Summary of Hourly Rates of Pay</p> <p>[pp72-78]</p>	<p>Clause C.4.1 (Casual employees – shiftworkers other than in the textile industry – ordinary and penalty rates) [TABLE]</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the 3rd column (275% for public holiday penalty rates) are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the public holiday penalty rates using the following method of calculation: <p><i>For example (trainee rate):</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.75 (i.e. 275%) = \$47.55 per hour</i></p> <ul style="list-style-type: none"> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to the public holiday penalty rate (250% respectively), rather than being added initially to the award casual hourly rate of pay, and then adding the public holiday penalty of 250%. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows: <p><i>For example (trainee rate):</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.50 (i.e. 250% public holiday rate) = \$54.02</i></p>
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[pp72-78]</p>	<p>Clause C.4 (Casual employees – shiftworkers)</p> <p>Clause C.4.2 (Casual employees – shiftworkers in the textile industry – other than seven day continuous shift workers – ordinary and penalty rates) [TABLE]</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the 3rd (175%), 4th (225%), 5th (275%) and 6th (225%) columns are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the penalty and public holiday rates in the 2rd, 4th, 5th and 6th columns using the following method of calculation:

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<p><i>For example (trainee rate):</i> Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 1.75 (i.e. 175%) = \$30.26 per hour Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.25 (i.e. 225%) = \$38.90 per hour Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.75 (i.e. 275%) = \$47.55 per hour</p> <ul style="list-style-type: none"> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to the penalty and public holiday penalty rates (175%, 225% 275% and 225%) respectively), rather than being added initially to the award casual hourly rate of pay, and then adding the relevant penalty. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows: <p><i>For example (trainee rate):</i> Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 1.50 (i.e. 150% penalty rate) = \$32.41 Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.00 (i.e. 200% penalty rate) = \$43.22 Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.50 (i.e. 250% penalty rate) = \$54.02</p>
<p>Schedule C Summary of Hourly Rates of Pay [pp72-78]</p>	<p>Clause C.4 (Casual employees – shiftworkers) Clause C.4.3 (Casual employees – shiftworkers in the textile industry – seven day continuous shift workers – ordinary and penalty rates [TABLE])</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the 3rd (175%), 4th (225%) and 6th (225%) columns are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the penalty and public holiday rates in the 3rd, 4th and 6th columns using the following method of calculation: <p><i>For example (trainee rate):</i></p>

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<p><i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 1.75 (i.e. 175%) = \$30.26 per hour</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.25 (i.e. 225%) = \$38.90 per hour</i></p> <ul style="list-style-type: none"> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to the penalty and public holiday penalty rates (175%, 225%, and 225% respectively), rather than being added initially to the award casual hourly rate of pay, and then adding the relevant penalty. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows: <p><i>For example (trainee rate):</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 1.50 (i.e. 150% penalty rate) = \$32.41</i> <i>Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.00 (i.e. 200% penalty rate) = \$43.33</i></p>
<p>Schedule C Summary of Hourly Rates of Pay [pp72-78]</p>	<p>Clause C.4 (Casual employees – shiftworkers) Clause C.4.4 (Casual employees – shiftworkers – overtime rates [TABLE])</p> <ul style="list-style-type: none"> The TCFUA submits that the wage rates in the 2nd (175%), 3rd (225%), 4th (225%) and 5th (225%) columns are incorrect in relation to each classification contained therein. It is apparent that the FWC in creating the table has calculated the penalty rates in the 2nd, 3rd, 4th and 5th columns using the following method of calculation: <p><i>For example (trainee rate):</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 1.75 (i.e. 175%) = \$30.26 per hour</i> <i>Ordinary hourly rate of pay, not inclusive of 25% casual loading (\$17.29 per hour) x 2.25 (i.e. 225%) = \$38.90 per hour</i></p>

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> The TCFUA submits that this is an incorrect method of calculation as the casual loading of 25% is added to the penalty rates (175%, 225%, 225% and 225% respectively), rather than being added initially to the award casual hourly rate of pay, and then adding the relevant penalty. This approach is inconsistent with the terms of the TCF Award 2010. The TCFUA submits that the correct form of calculation is the compounding method as follows: <i>For example (trainee rate):</i> Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 1.50 (i.e. 150% penalty rate) = \$32.41 Casual hourly rate of pay (\$17.29 per hour plus 25% casual loading = \$21.61) x 2.00 (i.e. 200% penalty rate) = \$43.322
Schedule C Summary of Hourly Rates of Pay [pp72-78]	<p>Clause C.4 (Casual employees – shiftworkers) Clause C.4.4 (Casual employees – shiftworkers – overtime rates [TABLE])</p> <ul style="list-style-type: none"> In addition to the method of calculation, the Table is not accurate in relation to the overtime rate payable to employees engaged under a Payment By Results arrangement (see PBR provisions in clause 11, Exposure Draft) Sub-clause 20.3(c) of the Exposure Draft provides: (d) <i>‘An employer must pay an employee who is paid under any system of payment by results for any overtime worked:</i> <i>(iii) for the first two hours, at the rate of 150% of the award rate for their skill level; and</i> <i>(iv) for any subsequent hours, at the rate of 200% of the award rate for their skill level;</i> <i>in addition to the payment of results earnings earned by the worker.’</i> The TCFUA submits that a note could be inserted at the bottom of the table which alerts readers to the different overtime rates payable to employees paid under any system of payment by results, and refer to the specific overtime provisions in sub-clause 20.3(c).
SCHEDULE D – SUMMARY OF MONETARY ALLOWANCES	
Schedule D	<p>Clause D.3 (Expense Related Allowances)</p> <ul style="list-style-type: none"> The clause reference for ‘Meal Allowance – clause 24.5’ is incorrect.

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
[pp 79-81]	<ul style="list-style-type: none"> The correct reference is 'clause 12.3(a)'.
SCHEDULE F – OUTWORK AND RELATED PROVISIONS	
Schedule F [pp 83-95]	<p>Clause F.5 (Minimum conditions for workers) Clause F.5.8</p> <ul style="list-style-type: none"> Clause F.5.8 provides, in part, as follows: <i>'A principal must apply the remaining provisions of this award to the worker as though the worker is an employee, whether or not the principal is an employee or the worker is an employee, excluding the following clauses:</i> <ul style="list-style-type: none"> <i>Dispute resolution (clauses 29 and 30)</i> [our emphasis] [followed by further list of matters] The reference to 'clauses 29 and 30' above is incorrect. The effect of the currently worded clause F.5.8 is that all of the dispute resolution procedure in clause 29 would be excluded, as well as clause 30. This would amount to a substantive change from existing provisions. The correct reference in clause F.5.8 should be to 'clauses 29.1 and 29.2'. The equivalent provision in the TCF Award 2010 (clause F.5.8) references 'clauses 10.1 and 10.2' i.e. the first 2 steps only of the dispute resolution procedure are excluded reflecting the particular nature of outwork undertaken at home. Accordingly, it is submitted that clause F.5.8 be amended to refer to 'clauses 29.1 and 29.2'.
Schedule F [pp 83-95]	<p>Clause F.5 (Minimum conditions for workers) Clause F.5.10 (Dispute Resolution)</p> <ul style="list-style-type: none"> Clause F.5.10 provides: <i>'In the event of a dispute involving parties to which this schedule applies in relation to a matter arising under this Award, or the NES, in the first instance the parties will attempt to resolve the dispute through direct discussions. If the dispute cannot be resolved through direct discussions, a party to the dispute may refer to dispute to Fair Work Commission. The provisions of clauses 29 and 30 apply in respect of the dispute.'</i> [our emphasis]

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> • Similar to the issue in clause F.5.8, the reference to ‘clauses 29 and 30’ above is incorrect and would represent a substantive change from existing provisions. • The correct reference in clause F.5.10 should be to ‘clauses 29.3 – 29.10’ which refers to those parts of the dispute resolution procedure applicable under Schedule F. • The equivalent provision in the TCF Award 2010 (clause F.5.10) references ‘clauses 10.3 – 10.10’ in relation to the dispute resolution procedure. • Accordingly, it is submitted that clause F.5.10 be amended to refer to ‘clauses 29.3 and 29.10’.
<p>Appendix to Schedule F – Information given to outworkers</p> <p>[pp 93 – 95]</p>	<p>Appendix to Schedule F (Information given to outworkers)</p> <ul style="list-style-type: none"> • The Appendix to Schedule F has not been updated with the correct amounts in respect to minimum wage rates and superannuation (SGA contribution). <p>‘Wages’</p> <ul style="list-style-type: none"> • Under the sub-heading ‘Wages’ the clause, in part provides: <i>‘According to law, as at 1 July 2014, the usual weekly wage for 38 hours, Monday to Friday, is <u>684.70</u>. The hourly rate is <u>18.02</u>...’ [our emphasis]</i> • Under the Appendix to Schedule F in TCF Award 2010, following the Annual Wage Review 2014/15, the correct amounts are ‘\$701.80’ and ‘\$18.47’ respectively. • Accordingly, the Appendix to Schedule F in the Revised Exposure Draft should be amended to read: <i>According to law, as at 1 July 2015, the usual weekly wage for 38 hours, Monday to Friday, is \$701.80. The hourly rate is \$18.47...’</i> <p>‘Superannuation’</p> <ul style="list-style-type: none"> • Under the sub-heading ‘Superannuation’ the clause, in part, provides: <i>‘By law, your employer has to make a superannuation contribution of 9.25% to an approved fund, for you...’</i> • Under the Superannuation Guarantee legislation, the required rate of contribution is 9.5%, as the rate was increased from 9.25% to 9.5% effective from 1 July 2014.

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
	<ul style="list-style-type: none"> The TCFUA submits, that given the purpose of the Appendix (Information to be given to outworkers) it is important that the correct superannuation contribution rate be included to assist in compliance. The TCFUA has only recently identified this error and therefore raises it as part of these submissions.
SCHEDULE G – APPRENTICES	
Schedule G Apprentices [pp 96-98]	Schedule G (Apprentices) Clause G.6 <ul style="list-style-type: none"> Clause G.6 of the Exposure Draft has not been amended in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	Schedule G (Apprentices) Clause G.7 <ul style="list-style-type: none"> Clause 7 of the Exposure Draft has not been amended in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	Schedule G (Apprentices) Clause G.16 <ul style="list-style-type: none"> Clause G.16 of the Exposure Draft has not been amended in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015). Clause G.16 provides: <i>'Apprentices are entitled to the NES, as supplemented by this Award, except for Notice of Termination and Redundancy Pay'.</i> Further to the above, clause G.16 of the Exposure Draft is not an accurate reflection of the NES in relation to notice. Section 123 of the Fair Work 2009 does not expressly exclude apprentices from the scope of Division 11 in relation to notice of termination (see section 123(1)).

REVISED EXPOSURE DRAFT - CLAUSE NUMBER & TITLE	SUMMARY OF ISSUE/TCFUA SUBMISSIONS
Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) New Clause G.19</p> <ul style="list-style-type: none"> Schedule G of Exposure Draft has not been amended to include a new clause G.19, in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) New Clause G.20</p> <ul style="list-style-type: none"> Schedule G of Exposure Draft has not been amended to include a new clause G.20, in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) New Clause G.21</p> <ul style="list-style-type: none"> Schedule G of Exposure Draft has not been amended to include a new clause G.21, in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) New Clause G.22</p> <ul style="list-style-type: none"> Schedule G of Exposure Draft has not been amended to include a new clause G.22, in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).
Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) Clause G.19 (Adult Apprentices)</p> <ul style="list-style-type: none"> Required to be renumbered as clause G.23 (and G23.1 and G.23.2) in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015).

2014 AWARD REVIEW
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(24 November 2015)

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Schedule G Apprentices [pp 96-98]	<p>Schedule G (Apprentices) Clause G.20 (School-based Apprentices)</p> <ul style="list-style-type: none"> • Required to be renumbered as clause G.24 in accordance with the Full Bench <i>Apprentices decision</i> [2014] FWCFB 9156 (17 December 2014) and Determination PR559309 (ppc 1 January 2015). •