

16 April 2018

Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney 2010

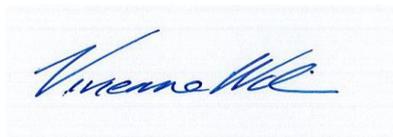
By email: amod@fwc.gov.au

Dear Associate,

**Four Yearly Review of Modern Awards
(AM2016/13) Annualised Wage Arrangements**

In response to the Decision of the Full Bench of the Fair Work Commission [2018] FWCFB 154, the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division makes the following submission enclosed.

Yours faithfully



Vivienne Wiles
National Industrial Officer
CFMEU
Manufacturing Division

540 Elizabeth Street
Melbourne, VIC, 3000

Tel: 03 9639 2955 Mob: 0419 334 102

Email: vwiles@tcfvic.org.au



IN THE FAIR WORK COMMISSION

Four Yearly Review of Modern Awards
Annualised Wage Arrangements
(AM201613)

**CFMEU – MANUFACTURING DIVISION
SUBMISSIONS IN REPLY**

(16 April 2018)

CFMEU – Manufacturing Division	Contact Person: Vivienne Wiles National Industrial Officer	Address: 540 Elizabeth Street, Melbourne, VIC, 3000	Tel: Email:	(03) 9639 2955 0419 334 102 wiles@tcfvic.org.au ffpdindustrial@cfmeu.org.au
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AM2018/13
Annualised Wage Arrangements

Reply Submission of CFMEU – Manufacturing Division

BACKGROUND

1. The CFMEU – Manufacturing Division provides these submissions in response to the decision and directions of the Annualised Salaries Full Bench on 20 February 2018.¹
2. On 27 March 2018, the amalgamation of the Textile, Clothing and Footwear Union of Australia (TCFUA) with the Construction, Forestry, Mining and Energy Union (CFMEU) and the Maritime Union of Australia (MUA) took effect.²
3. On the amalgamation taking effect, the TCFUA³ and MUA⁴ were de-registered as registered organisations under the *Fair Work (Registered Organisations) Act 2009* (RO Act).
4. Upon the amalgamation, the Forestry, Furnishing, Building Products and Manufacturing Division of the CFMEU became the Manufacturing Division of the Construction, Forestry, Maritime, Mining and Energy Union. The members and activities of the former TCFUA were absorbed into the CFMEU – Manufacturing Division.

AM2016/13 – ANNUALISED SALARIES

5. For a combination of reasons the CFMEU – Manufacturing Division was not in a

¹ S.156 – 4 yearly review of modern awards, Annualised Salaries (AM2016/13), [2018] FWCFB 154

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

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

⁴ *The Maritime Union of Australia* [2018] FWC 1797, Gostencnik DP (27 March 2018)

position to provide initial submissions by in accordance with the directions of the Full Bench.

6. The CFMEU – Manufacturing Division apologises for the lateness in filing and respectfully seeks leave to provide these submissions to confirm its position in respect to the inclusion of annualised wage arrangements in certain modern awards in which it has an interest.

7. The Full Bench at paragraph [134] in its decision of 20 February 2018, invited interested parties to make further submissions concerning whether:

(1) the terms of the above provisions [provisional Model Clauses 1 – 4] are appropriate to be adapted as model annualised wage arrangement provisions;

(2) any existing annualised wage arrangement provision in a modern award should be varied to reflect any of the proposed model terms (subject to the conclusions stated later in this decision concerning the specific claims advanced in these proceedings);

(3) any modern award which does not currently contain an annualised wage arrangement should be varied to include one of the proposed model clauses; and

(4) annualised wage provisions are capable of having any practical application to part-time employees (including any proposals to that end).

8. The 19 modern awards which the initial subject of the primary proceedings in matter AM2016/13 did not include awards in which the former TCFUA and the CFMEU (FFPD Division) had a primary interest. As a result, the former TCFUA and CFMEU (FFPD Division) did not participate in the principal proceedings and provided no submissions or evidence at the time.

9. With respect to the other modern awards which currently do not contain annualised wage arrangements, the CFMEU – Manufacturing Division has a primary interest in the following awards:

- *Textile, Clothing, Footwear and Associated Industries Award 2010*⁵ (TCF Award)
- *Dry Cleaning and Laundry Industry Award 2010*⁶ (DC&LI Award)
- *Timber Industry Award 2010*⁷ (Timber Award)

10. The CFMEU – Manufacturing Division strongly opposes the inclusion of any form of model Annualised Wage Arrangements term in either of the TCF Award, the DC&LI Award or the Timber Award. We submit that in context of the history and nature of these respective industries, the inclusion of a model annualised wage arrangements term/s would not be appropriate or necessary (as per s.138, *Fair Work Act 2009*) for a fair and relevant minimum safety net for these sectors of the economy.

11. Relevantly, prior to the operation of modern awards on 1 January 2010, terms providing for annualised wage arrangements have never been a feature of award regulation in the TCF, dry cleaning and laundry and timber industries.

12. We reject any contention that annualised wage arrangements terms would be suitable in industries which are largely award dependent and low paid such as the TCF, dry cleaning and laundry and timber industries. A common characteristic of these sectors is the high rate of non-compliance with minimum award wages and conditions and statutory employee record keeping. Common areas of non-compliance with minimum safety net conditions include, by way of example, in relation to ordinary hourly rates of pay, overtime payments, allowances, leave loading, small business redundancy and

⁵ *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017]

⁶ *Dry Cleaning and Laundry Industry Award 2010* [MA000096]

⁷ *Timber Industry Award 2010* [000071]

superannuation.

13. In these sectors, employee record keeping is often very poor and not in accordance with the *Fair Work Regulations 2009*⁸ with respect to the provision and content of pay slips, and other leave and superannuation records.
14. The risk of non-compliance is further compounded when awareness by employers of their obligations and by employees of their rights and conditions is typically low.
15. In our view, the actual and potential for systemic non-compliance with minimum award, NES and statutory wages and conditions is a relevant consideration in the determination of whether a model term providing for annualised wage arrangements is appropriate for inclusion in modern awards which currently don't contain such a term.
16. We further support and adopt, by way of general application, the primary and reply submissions of the ACTU⁹ and other affiliate unions, in particular the AMWU¹⁰ in opposition to the inclusion of a model term in awards which do not contain a term providing for annualised wage arrangements.
17. In circumstances where the Full Bench is ultimately of the view that the extension of annualised wage arrangements terms in modern awards is warranted (beyond the current 19 awards), then such considerations should only be done on an award by award basis. In this context, we submit further opportunity should be provided to interested parties to provide detailed industry specific submissions and evidence in relation to a particular modern award/s.

⁸ See Chapter 3, Part 3-6, Division 3 (Employee Records)

⁹ (AM2016/13) ACTU Submission (20 March 2018), ACTU Submission in Reply (13 March 2018)

¹⁰ (AM2016/13) AMWU Submission (20 March 2018), AMWU Submission in Reply (13 March 2018)

Filed by:

CFMEU – Manufacturing Division

(16 April 2018)