



29 September 2016

ABN 76 008 556 595

**Our Ref:** 20160583  
**Your Ref:** AM2016/15

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Dear Associate

#### **AM2016/15 - PLAIN LANGUAGE - STANDARD CLAUSES**

We act on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**) in respect of the above matter.

In accordance with the Directions issued by the President on 17 August 2016, below are our submissions on behalf of our clients in respect of the five plain language standard clauses.

#### **1. AWARD FLEXIBILITY**

- 1.1 Clause A.1: the expression "*an employee who has started employment*" is cumbersome. A preferable alternative is "*an employee who has commenced employment*".
- 1.2 Clause A.1: our clients agree that, even though it may not be strictly in keeping with the plain language principles, the continued inclusion of the expression "*arrangements for when work is performed*" is appropriate and the 'Note' assists with clarity.
- 1.3 Clauses A.2 and A.10: subclause A.10 is more relevant to the subject matter dealt with earlier in the clause and should be moved and renumbered as A.3.
- 1.4 Clause A.6: our clients agree that clarifying the meaning of the expression "*better off overall*" in this context would be beneficial. However, we disagree with the proposed definition from the FWO as it places too much importance on the financial benefits of the arrangement. These benefits are relevant, but in our clients' experience, employees are often driven to request flexibility arrangements for non-financial reasons, which should be reflected in the criteria for assessing whether they are better off.

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## 2. CONSULTATION ABOUT MAJOR WORKPLACE CHANGE

- 2.1 Clauses B.1: our clients support the continuing inclusion of the expression “*definite decision*” as opposed to “*final decision*”.
- 2.2 Clauses B.3 and B.4: these subclauses should be reordered to facilitate the logical flow of the clause.
- 2.3 Clauses B.5 and B.6: these subclauses should be reordered to facilitate the logical flow of the clause.

## 3. CONSULTATION ABOUT CHANGES TO ROSTERS OR HOURS OF WORK

- 3.1 Clause 22.2(d) of the current provision has been omitted from the new clause C. This clause is important so it is clear that these provisions operate in conjunction with, not to the exclusion of, other provisions in a particular Award. This represents a substantive change and this provision must be included in the new clause.

## 4. DISPUTE RESOLUTION

- 4.1 Clause D.4: the inclusion of the word ‘both’ in referring to clauses D.2 and D.3 would make it clearer that parties need to work through both of these steps before referring a dispute to the Fair Work Commission.
- 4.2 Clause D.9: the term “*occupational health and safety*” should be replaced with “*work health and safety*” for consistency with contemporary legislative terminology.

## 5. REDUNDANCY - TRANSFER TO LOWER PAID JOB

- 5.1 Clause G.2: the use of the expression ‘for a notice of termination’ is unwieldy and unclear. Our clients propose the following:

*“The employee is entitled to be given written notice of the transfer to a new classification of the same **minimum period of notice** as the employee would be entitled to ~~for a notice of termination~~ for termination of employment.”*

(underlining added)

- 5.2 Clause G.3: the link between the “*payment*” referred to in this clause and the method of calculating that payment in subclause G.4 is not clear. Our clients propose adding the words “*in accordance with clause G.4*” at the end of G.3.

## 6. JOB SEARCH ENTITLEMENT

- 6.1 Clause I.1: for clarity, our clients suggest the following amendments:

*“Where an employer has given an employee written notice of termination of employment, the employer must allow the employee paid time off of up to one day ~~over~~ during the period of notice for the purpose of seeking other employment.”*

(underlining added)

- 6.2 Clause I.2 and I.3: the current drafting makes the interaction of these clauses unclear. We suggest collapsing both into the following clause I.2:

*“Where an employee has been given written notice of termination of employment in circumstances in which the employee is entitled to redundancy pay, the employer must allow the employee, during the **minimum period of notice**, paid time off of up to one day each week for the purpose of seeking other employment.”*

- 6.3 Clause 1.4: this clause only requires an employee to provide proof of attendance at a job interview if more than one day per week is taken. Clause 21.4(b) currently provides for the provision of evidence if more than one day is taken, without the “*per week*” requirement. This represents a substantive change and should be rectified.
- 6.4 Clause 1.6: this also refers to the “*one day per week*” requirement, which is a departure from the current clause.
- 7. AWARDS WITH NON-STANDARD CLAUSES**
- 7.1 Our clients have material interests in a number of Awards which contain non-standard clauses. It is unclear how the extra provisions in these Awards will be treated.
- 7.2 Our clients consider that parties would be assisted by further guidance from the Commission as to whether these issues will be dealt with in the context of individual award stage of the 4 Yearly Review.
- 7.3 If you have any questions, please contact Kate Thomson on (02) 4989 1003.

Yours sincerely

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