



14 August 2017

Our Ref: 20160583

Your Ref: AM2016/15

BY EMAIL amod@fwc.gov.au

The Associate to Justice I Ross AO
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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 proceedings.

In accordance with the Statement issued by the Full Bench on 20 July 2017, below are our submissions on behalf of our clients in respect of the plain language standard clauses.

1. CLAUSE A - AWARD FLEXIBILITY

1.1 Our clients do not oppose:

- (a) The deletion of the note under clause A.1;
- (b) The wording of clause A.1 proposed by the Full Bench at [26];
- (c) The deletion of clause A.4;
- (d) The proposed amendments to clause A.8(d); and
- (e) The conversion of clause A.14 to a note.

1.2 However, our clients are concerned that the wording proposed at [62] expands the operation of the provision beyond its current scope. To this end, our clients would support either:

- (a) The retention of the wording of the note under the current clause X.8(b); or
- (b) Similar wording which restricts the enactment of the shorter period of termination to the non-compliance with the requirements of section 144(4) of the *Fair Work Act 2009* (Cth) (**FW Act**).

2017 08 09 - award review plain language - outstanding issues

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2. CLAUSE B - CONSULTATION ABOUT MAJOR WORKPLACE CHANGE

2.1 Our clients do not oppose:

- (a) The proposed amendment to clause B.5; and
- (b) The deletion of clause B.6.

2.2 However, notwithstanding this prima facie position, our clients oppose the proposed wording of clause B.1 at [67]. This wording is complex and has introduced a number of significant concepts into the one provision; namely:

- (a) That the employer has made a definite decision to make a major change;;
- (b) That the change is not one which is otherwise provided for in the Award;
- (c) The definition of that change as being the 'relevant change' for the purpose of the rest of the clause (which we note is potentially problematic choice of words);
- (d) That the change must have a significant effect; and
- (e) As soon as practicable after making the decision, the employer must undertake an extensive list of tasks.

2.3 This clause already places a significant compliance burden on employers attempting to understand the circumstances requiring consultation, and how to go about undertaking that consultation when it is required.

2.4 Our clients are also concerned that the insertion of the timing reference into clause B1 may give rise to a misapprehension that all of the discussions with the affected employees/representatives must occur 'as soon as practicable after making that decision', when currently it is only a requirement that those discussions 'commence' at that time.

3. CLAUSE C - CONSULTATION ABOUT CHANGES TO ROSTERS OR HOURS OF WORK

3.1 Our clients do not oppose the Drafter's proposed wording for clause C.3(b) at paragraph [78].

4. CLAUSE D - DISPUTE RESOLUTION

4.1 Our clients do not oppose the proposed amended wording of clause D set out at [87].

4.2 Our clients propose the insertion of the words 'Fair Work Commission' in front of 'process' in clause D.7, or alternatively insertion of the phrase 'process under clause D.5 or D.6'.

5. CLAUSE E - TERMINATION OF EMPLOYMENT

5.1 Our clients do not oppose the proposed wording for clause E.1(c) at [95].

6. CLAUSE G - TRANSFER TO LOWER PAID JOB ON REDUNDANCY

6.1 Upon reflection, our clients have identified a number of concerns with respect to the proposed wording of clause G.1(a). The proposed wording of clause G.1(a) does not reflect either the existing provision or section 119 of the Fair Work Act.

6.2 Our clients support the retention of the word 'duties' (as opposed to 'job') and re-insertion of the reference to the transfer being 'by reason of redundancy'.

- 6.3 Our clients do not oppose the proposed amendment to clause G.2 at [114].
- 6.4 Our clients submit that the issue of whether the retention of the reference to 'ordinary time rate of pay' in clause G.3 may be a matter which needs to be determine with reference to individual Awards.

7. CLAUSE H - EMPLOYEE LEAVING DURING REDUNDANCY NOTICE PERIOD

- 7.1 Our clients agree with the submission of the Australian Industry Group that the relevant period of notice for the purpose of clause H.4 is that to which they are entitled under section 117 of the Fair Work Act.
- 7.2 If you have any questions, please contact Kate Thomson on (02) 4989 1003.

Yours sincerely



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