

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Plain Language Re-drafting – Standard
Clauses
(AM2016/15)

2 July 2018

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GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2016/15 PLAIN LANGUAGE RE-DRAFTING – STANDARD CLAUSES

1. INTRODUCTION

1. This submission responds to:
 - a. The Full Bench Decision ([2018] FWCFB 3009) of 13 June 2018 in the Plain Language Re-drafting of Standard Clauses proceedings (**13 June Decision**), regarding Standard Clause E; and
 - b. The Full Bench Statement ([2018] FWCFB 3258) of 13 June 2018 (**13 June Statement**), regarding Standard Clause G.

2. STANDARD CLAUSE E – TERMINATION OF EMPLOYMENT

2. At paragraph [104] and Attachment 1 of the 13 June Decision, the Full Bench set out a revised model clause to give effect to its Decision.
3. At paragraph [105], the Full Bench said:

“The remaining issue in respect of the model termination of employment term is whether such a provision is ‘necessary to achieve the modern awards objective’, within the meaning of s.138. Interested parties may file submissions in respect of the issue in accordance with the following directions:..”
4. The revised model clause is ‘necessary to achieve the modern awards objective’ for the following reasons.

A “fair and relevant minimum safety net”

5. Imposing a reciprocal obligation on employees to give their employer notice of termination is inherently fair. Accordingly, the revised model clause is consistent with the objective that the modern award system should provide a “fair” safety net (s.134 of the *Fair Work Act 2009*).

6. Removing the existing reciprocal obligation for employees to give their employer notice of termination would be unfair. Such an outcome would not be consistent with the objective that the modern award system should provide a “fair” safety net.

The elements of the modern awards objective

7. The revised model clause would particularly further the following elements of the modern awards objective, and there are no elements which the proposed clause would be inconsistent with:
 - a. s.134(1)(d) – the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - b. s.134(1)(f) – the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.
8. As recognised by the Full Bench of the AIRC in the [main TCR Decision](#) of 2 August 1984, there are adverse impacts upon employers when employees terminate their employment without giving notice: (emphasis added)

However, notwithstanding the ACTU arguments we are not prepared, except to a limited extent, to provide for different periods of notice by employer and employee. In particular, we are concerned at the possible consequences for small firms of a loss of employees with long service and the requirement for such employers to find another employee. We have decided that an employee should be required to give the additional notice based on years of service but that it would not be appropriate to require increased notice from the employee based on age.

9. The clause would operate to minimise the significant disruption and cost to employers which arises when employees do not give notice of termination of employment.
10. Paragraph (d) of the clause would provide a practical means of encouraging compliance by employees with the notice requirements in paragraph (b) of the clause. In the 13 June Decision, the Full Bench found that such a provision is “essential” for making an award provision that imposes an obligation on an employee to give notice to the employer, operate in a practical way (para [59]).

The Full Bench also held that there is little discernible difference between the words ‘*essential*’ and ‘*necessary*’ when used in the context of a provision such as s.142(1)(b) (para [48]).

11. For the above reasons (and those set out in our previous submissions in the current proceedings), the revised model clause is ‘necessary to achieve the modern awards objective’ and hence consistent with ss. 134 of 138 of the Act.

3. **STANDARD CLAUSE G – TRANSFER TO LOWER PAID JOB ON REDUNDANCY**

12. In the 13 June Statement, the Full Bench expressed the *provisional* view that the title of Standard Clause G should be amended as follows:

‘G—Transfer to lower paid ~~job~~ **duties on redundancy**

13. Ai Group does not oppose the above amendment.