

IN THE FAIR WORK COMMISSION

Matter No.: AM2016/15 Plain language re-drafting
Re Application by: Fair Work Commission own initiative



Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) about the **"Guidelines for plain language drafting of modern awards"**

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) makes the following Submissions to the Fair Work Commission about the "Guidelines for plain language drafting of modern awards" (the Guidelines).
2. The Fair Work Commission Full Bench dealing with this matter issued a Statement 4 November 2016¹ which outlined the process for consultation to be undertaken by the Commission about these Guidelines. These submissions are lodged with the Commission in accordance with this Statement.
3. The AMWU has had the benefit of reviewing the Australian Council of Trade Union's (ACTU) Submissions and supports and adopts the submissions of the ACTU. The AMWU particularly supports the ACTU's submissions in relation to process and ensuring that there are no changes to the legal entitlements.
4. The AMWU also makes some more specific submissions below regarding:
 - a. The reference to meanings or definitions in other documents at 7.10;
 - b. The reference to other clauses in 9.5;

References to meanings and definitions in other documents at 7.10

5. The Guidelines provide a framework for meaning and definition at part 7 of the Guidelines. Paragraph 7.10 and 7.11 outline how definitions provided for in the Act or in other locations should be referenced.
6. The AMWU submits that the Commission should aim to include meaning and definitions in the Modern Award rather than reference external documents. However, if the Commission decides to reference external documents, it should keep track of external documents referenced and provide a hyperlink in the plain language Modern Award to those relevant parts of external documents. The hyperlink could be to a Fair Work Commission web page where those documents are kept and updated.
7. The plain language drafting of Modern Awards provides another opportunity for the Commission to consider the approach to external documents outside the control of the Commission.
8. External documents are referenced throughout the Modern Award system. The most common reference is to the National Employment Standards or to the Fair Work Act. Other references include to the "Australian Standards" which are a nonbinding voluntary standard.
9. A plain language approach should result in an understanding of the Modern Award without cumbersome research on the part of the reader. Cumbersome should be considered from the point of view of employees who are reliant on the safety net

¹ [2016] FWCFB 7968

and not from the point of view of professional Human Resources Professionals or Industrial lawyers. In relation to definitions, the Modern Award should provide access to the definition without a requirement to reference another document which may not be easily located by employees reliant on the Modern Award safety net.

10. A Modern Award's claim to be a plain language document may be challenged if it refers, for meaning and definitions, to another document that is not written in plain language and is potentially complex in nature. The *Fair Work Act 2009* or a piece of legislation, whether it objectively is a plain language document or not, is unlikely to be considered to be a plain language document by non-lawyers or lawyers. The National Employment Standards sounds like it could be a simple plain language document, but the official National Employment Standards are found in Part 2-2 of the *Fair Work Act 2009*.
11. However, if the Commission is of the view that the meaning or definition should change with the document referenced, it would be better if the document referenced were accessible via a hyperlink to an up to date version which could be kept on the Fair Work Commission's website. The documents, such as legislation or gazetted instruments are likely to be documents which can be changed by parties external to the Fair Work Commission, such as parliaments or other government or non-government agencies or Commonwealth officers.
12. Most people accessing their entitlements are unlikely to be printing out the Award. Members of the public are more likely to view the Award in their web browser on their phone or on their computer. Providing a hyperlink to another website within the Fair Work Commission webpage ensure that readers can return to the website for the Modern Award they are interested in easily.
13. Further, the Fair Work Commission can also ensure that it is kept aware of any changes to those documents which are referenced keeping them up to date on the Fair Work Commission's website. Keeping across changes to referenced documents is important so that the Commission can ensure that it considers the impact of any changes to those reference documents on the Modern Awards' ability to achieve the Modern Awards Objective.
14. For the Commission to ensure that Modern Award continues to achieve the Modern Awards Objective, where it decides to reference external documents, it would need to keep track of the content of those external documents for changes.
15. Keeping track of the documents assists the Commission to discharge its' responsibilities for the Modern Award system. Without monitoring changes to referenced documents, the Modern Award may suddenly fail to achieve the Modern Awards objective and the Fair Work Commission would not be aware of that until the change is brought to the Fair Work Commission's attention by affected parties.
16. There may be a risk that if the Commission doesn't keep the documents on its website up to date then people may rely upon incorrect information. This risk

should be low if the Commission ensures that it keeps abreast of changes to referenced documents using its powers to obtain information.

17. While the process in the past has been one where interested parties would be the primary driving force in Award proceedings, assisting the Commission by alerting it to changes which affect the safety net. The current public expectation is that the Fair Work Commission is responsible for Modern Awards. While Unions fought hard to establish the Award Safety Net and continue to advocate for improvements in the Modern Awards, it is the independent umpire finally determines the content of the Modern Awards. Going forward, it would make more sense for the Commission to minimise the disruptive effect of foreseeable changes affecting the safety net and act on its own initiative to consult with interested parties when external documents that are referenced change.

The reference to other clauses at 9.5

18. The reference to other clauses at paragraph 9.5 of the Guidelines doesn't make sense. The Guidelines at 9.5 provides that:

"In all other cases when referring to a provision, refer to the provision by the highest unit in the reference (e.g. clause 19.3 rather than subclause 19.3)."

19. There doesn't seem to be a meaningful difference between "clause 19.3" and "subclause 19.3," except that they have been given different titles. One is designated a clause and one is designated a subclause. The highest unit would seem to be 19, rather than 19.3.
20. Paragraph 9.5 may be unclear in its intended purpose. Different examples should be used such as "clause 19 rather than subclause 19.3" or "subclause 19.3 rather than paragraph 19.3(b)."

End

17 November 2016