29 September 2016

Fair Work Commission
80 William St
East Sydney 2010
By email: amod@fwc.gov.au

Dear Associate,

AM2016/15 Plain Language re-drafting
RE: Standard Clauses.

1. The Australian Manufacturing Workers' Union (the AMWU) makes the following submissions in relation to the "Standard clauses – plain language drafts and comparison table" published on 11 August 2016.

2. The AMWU supports and adopts the submissions of the Australian Council of Trade Unions (the ACTU) and the Shop Distributive and Allied Employees Association (SDA).

3. In particular the AMWU strongly supports the ACTU's submissions in relation to the redrafted plain language Award Flexibility clause.

4. **Clause A -** The plain language draft should not obscure the requirement that Individual Flexibility Arrangements can only be entered into after the commencement of employment. It should be a separately identified specific requirement, which was purposely included after the original Award Flexibility Term was reviewed by the Fair Work Commission.

5. The more stringent and detailed requirements which have been watered down in A.6 should be changed back to the previous requirements. The Individual Flexibility Arrangements (IFAs) are not subject to oversight by the Fair Work Commission. This means that the requirements in A.6 are more important than if they were subject to FWC oversight. The IFAs also continue to have effect even if they don't meet the award requirements, which is another reason why the requirements should not be watered down.

6. An employee should be able to make assessments about the impact of employer proposals without reference to secondary materials. By being

required to “state” each Award term that is proposed to be varied, an employee can make that assessment more easily.

7. The more detail an employer can provide about how an employee is better off overall, the more likely they will not fall foul of the Better Off Overall requirement. The more stringent requirement protects the employer and the employee.

8. The Better Off Overall Test should continue to be limited to the individual employee’s terms and conditions of employment and should not include non-financial benefits. Including non-financial benefits would undermine the Modern Award system as a safety net of minimum terms and conditions of employment. This change would be an introduction of WorkChoices style AWA’s by stealth.

9. **Clause B –** The AMWU submits that the language “definite decision” should remain rather than being changed to “final decision.” Given that the aim of the clause is to encourage consultation, including in B.3 a requirement to consider those matters raised by employees and their representatives, any language which implies that the employer has reached a view which cannot be changed should be avoided.

10. The language “final decision” may also result in consultation under this clause beginning later than is envisaged in the current drafting.

11. **Clause B.3** – The reference to clause 27.3 (b) appears to be inadvertent and should be changed to reflect the rest of the drafting.

12. **Clause C** – Clause 22.2(d) does not appear to have been reproduced in the plain language redraft. Given that this clause encourages users to read this clause in the full context of the award, it should be reinserted with appropriate links to the relevant clauses in the award.

13. Leaving this clause out may lead to employers changing rostering or hours of work without appropriate notification or without being aware of the limitations placed on when ordinary hours of work can be rostered.

14. **Clause F –** The first note should also refer to subdivision C of division 11 of the Fair Work Act.

15. The second note should refer to clause B to reflect the rest of the drafting.

16. **Clause G.1 –** The description of redundancy in clause G.1(a) appears not to accurately describe all the scenarios in which an employee may be eligible to access this clause. The text of the clause, which is drawn from the Act, relies on a particular understanding of the word ‘job’ which may not be common outside of industrial relations professionals.

17. For example, there are many scenarios where an employer may still require a certain task to be done but due to a downturn they require fewer workers to perform that task. Many people would say the 'job' being done by the redundant employees was still being performed by the other workers still engaged by the employer. This would result in a 'plain language' reading of clause G.1(a) reaching the conclusion that this group of redundant employees that (if they were offered jobs on a lower classification with the same employer) were judged not to eligible for the redundancy pay set out in this clause.

18. Rather than attempting to describe eligibility for redundancy in such brief terms, the clause could simply refer to the Fair Work Act:

*19. G.1 (a) makes an employee redundant from their job (**the old job**) as set out in the National Employment Standards (See Part 2.2, Division 11 of the Fair Work Act); and*

20. **Clause I** – The change of wording from "without loss of pay" to "paid time off" may create confusion about which rate of pay should apply to the workers who access their job search entitlement. A note should be added clarifying that these workers are to be paid the same rate of pay as if they were at work, in the following terms:

NOTE: Employees who takes paid time off from work under this clause will be paid for the hours that they are absent as if they had worked during those hours.

Yours sincerely,

Warren Tegg
National Research Officer