
**IN THE FAIR WORK COMMISSION**

AM2016/15
Four Yearly Review of Modern Awards
Plain Language – standard clauses

# SUBMISSIONS ON TERMINATION OF EMPLOYMENT

**20 November 2017**

1. The Health Services Union (HSU) provides these submissions in accordance with the Directions issued by the Full Bench on 18 October 2017 ('the Directions'),[1] and the Decision issued on 18 October 2017 ('the Decision') in relation to the plain language review of standard clauses in modern awards.[2]

2. Parties were invited to address the issues and respond to the provisional views of the Full Bench in relation to the plain language draft of the Termination of Employment clause.

3. The HSU has an interest in the following awards in these proceedings:

- *Aboriginal Community Controlled Health Services Award 2010*
- *Aged Care Award 2010*
- *Ambulance and Patient Transport Industry Award 2010*
- *Health Professional and Support Services Award 2010*
- *Medical Practitioners Award 2010*
- *Nurses Award 2010*
- *Pharmacy Industry Award 2010*
- *Social Community Home Care and Disability Services Industry Award 2010*
- *Supported Employment Services Award 2010*

4. The HSU supports and adopts the submissions of the Australian Council of Trade Union (ACTU) and the Australian Manufacturing Workers' Union (AMWU) filed in relation to the Directions and the Decision above.

5. Our brief submissions below raise some additional issues relevant to employees in the health sector, particularly in relation to the Full Bench's provisional view that a deduction made pursuant to Clause E.1(c) may be incompatible with s 326(1)(b), as it is 'unreasonable in the circumstances''.

*The penalty to the employee is not proportionate*

6. It is our view that the question of proportionality is the most relevant to this consideration. The imposition of a penalty on an employee for not providing notice of termination is excessive and disproportionate to the minimal loss suffered by the employer.

7. This is particularly the case in areas of high unemployment where there is a willing workforce with a large numbers of employees willing to pick up shifts, or new applicants willing to apply for a job. Many of our members in the health sector are part-

[1] [2017] FWCFB 5367
[2] [2017] FWCFB 5258

time workers who are underemployed, and are always willing to take on extra shifts in order to make ends meet. Aged care employers in Tasmania, for example, use a mechanism that involves texting a large pool of part-time employees when shifts become available. The employee that texts back first will get the shift. It is understood that vacant shifts may be filled in a matter of minutes through this mechanism.

8. To provide one example, the HSU has members in a nursing home in North-West Tasmania, who informed the Union that when new approximately 10 positions became available due to expansion there were vast numbers (in the hundreds) of applicants.

9. In circumstances such as these, the detriment to the employer is limited, if there is one at all. In such cases, the deduction may mean a windfall for the employer. However, the loss to the award-reliant employee is severe. Deducting money from wages owed effectively means that employees have worked for free.

10. The HSU notes the Full Bench's proposal that the deduction could be limited to no more than one week's wages. However, we submit that this will often still be a disproportionate sum. As we have outlined above, there are many situations where an employer suffers no or limited loss from the resignation of an employee.

*The penalty is harsher to the employee than terms allowable in enterprise agreements*

11. We also note that the effect of a deduction pursuant to Clause E.1(c) on an employee is harsher than the inclusion of the same or similar term in an enterprise agreement. S 324(b) provides that an employer may make a deduction from an employee only where '*the deduction is authorised by the employee in accordance with an enterprise agreement*'. S 324(c), by contrast, allows for a deduction where '*the deduction is authorised by or under a modern award or an FWC order*'. It does not require agreement from an employee for the deduction to be lawful in relation to modern awards.

12. We submit that the clause would place low-paid, award-reliant employees in a more vulnerable position than employees covered by enterprise agreements, as the latter can only have deductions made from monies owing to them by agreement. This is another reason why clause E.1(c) is not reasonable in all circumstances.

20 November 2017

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**National Industrial Officer**