Fair Work Commission
Section 156 - Fair Work Act 2009
4 Yearly Review of Modern Awards

(AM2016/5)
Plain Language – Standard Clauses

FWC Statement [2017] FWCFB 3745 – 20 July 2017

Submission of the Textile Clothing and Footwear Union of Australia in response to Statement

(11 August 2017)

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BACKGROUND

1. The Textile, Clothing and Footwear Union of Australia (TCFUA) files these submissions in response to the Statement issued by the Full Bench on 20 July 2017 with respect to the Plain Language redrafting of award Standard Clauses ('*July Statement*')[1] The standard clauses are:

   A. Award flexibility;
   B. Consultation bout major workplace change;
   C. Consultation about changes to rosters or hours of work;
   D. Dispute resolution;
   E. Termination of employment;
   F. Redundancy;
   G. Transfer to low paid job on redundancy; and
   H. Employee leaving during redundancy notice period.[2]

2. In these proceedings, the TCFUA has a primary interest in the *Textile, Clothing, Footwear and Associated Industries Award 2010*[3] ('TCF Award 2010') and the *Dry Cleaning and Laundry Industries Award 2010*[4] ('DC&LI Award 2010').

3. The TCFUA appeared at the Conferences held with respect to the Plain Language – Standard Clauses on 23 November 2016, 12 January 2017. The TCFUA previously filed correspondence in this matter on 28 October 2016 and 29 September 2017.

4. In response to the issues raised in the *July Statement*, unless otherwise specified, the TCFUA supports and adopts by way of general application, the written submissions filed in this matter by the Australian Council of Trade Unions ('ACTU')[5] and the Shop Distributive and Allied Employees' Association ('SDA')[6]. Further, the TCFUA provides the following additional submissions.

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[1] 4 Yearly Review of Modern Awards (AM2016/15) Plain Language – Standard Clauses, Statement [2017] FWCFB 3745 (20 July 2017)

[2]

[3] Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]

[4] Dry Cleaning and Laundry Industries Award 2010 [MA000096]

[5] (AM2016/15) ACTU submission (11 August 2017)

[6] (AM2016/15)

TCF Award 2010

5. The TCF Award contains a number of standard clauses (and ancillary provisions) which deviate from the relevant model term determined for modern awards. These include, for example:
    - Clause 7 – Award Flexibility
    - Clause 9.2 – Consultation about changes to rosters or hours of work
    - Clause 11 – Dispute resolution training leave

6. On the issue of 'non-standard' standard clauses in modern awards, the Statement issued on 15 July 2016[7] provided:

> [*16] Where an award contains a provision that differs from the standard term or contains allied provisions (e.g. a dispute resolution training term), these terms may be dealt with by the Plain Language Full Bench or through the Award stage proceedings for the relevant awards following a decision on the plain language model terms*.'[8]

7. In context of the above, the TCFUA's participation in the 3 Conferences and the filing of submissions with respect to the standard clauses, should not be taken as support for the inclusion of any final, settled model standard clause into the TCF Award (without appropriate modification), where currently there is different, standard term.

Additional submissions to those filed by the ACTU and SDA

Clause D – Dispute Resolution

8. The TCFUA has a particular concern regarding the proposed reformulation of the standard dispute resolution clause for reasons including those articulated by the SDA[9] and the ACTU[10] in their respective written submissions.

9. We do not support the change in the terminology from 'party/parties' to employer/employees'. Clause 10 (Dispute Resolution) of the TCF Award 2010 currently uses the terms 'party/parties' as does clause 9 of the DC&LI Award 2010. Generally, we are concerned that a change to 'employer/employees' would operate to narrow the operation of

[7] 4 yearly review of modern awards – Plain Language (AM2016/15), Statement (J. Ross) [2014] FWC 4756 (15 July 2017)
[8] Ibid; at [16]
[9] SDA submission (9 August 2017) at paragraphs 23-27
[10] ACTU submission (11 August 2017) at paragraphs 18-19

the dispute resolution procedures in awards, including the TCF Award 2010 and DC&LI Award 2010, by unintentionally limiting the capacity of unions to file a dispute notification about an award term in its own name. Such an outcome, in our submission, would change the legal effect of a substantive term in modern awards.

10. More specifically, Schedule F (Outwork and Related Provisions) of the TCF Award 2010, contains terms which gives the union specific rights regarding the provision of certain documentation held by principals (as defined in clause F.2.4) in the TCF industry (see clause F.7 – Observance of award). In circumstances where there was a dispute about the operation of, or compliance with, clause F.7, it is the union that is the appropriate *party* to the dispute, not an employee/s.

11. Additionally, the coverage provisions of the TCF Award 2010 are not limited to 'employers' or employees' but extend to 'outwork entities' (as defined in clause 4.2). Further, in relation to Schedule F, the term 'Worker' which has an expanded meaning to include 'an outworker' or 'a person who personally performs work which is the subject of an arrangement.'

Clause G – Transfer to lower paid job on redundancy

12. The TCFUA supports the submissions of the ACTU[11] regarding clause G.1 in response to the submissions of the Ai Group (re: definition of 'redundancy').

13. We add further that section 119(1) of the *Fair Work Act 2009*, does not define 'redundancy' but instead outlines the circumstances (which are limited) in which an employee becomes entitled to redundancy pay under the NES (s119 of the Act)[12] and that the requirement for termination under s119 means that the test for redundancy is narrower than at common law.[13]

Filed on behalf of the:
Textile Clothing and Footwear Union of Australia
(11 August 2017)

[11] ACTU submission (11 August 2017) at paragraphs 21-26
[12] See *CFMEU and Ors v Spotless Facility Services Pty Ltd* [2015] FWCFB 1162 at [60]
[13] See *Hodgson v Amcor Ltd; Amcor Ltd v Barnes* (2012) 264 FLR 1; [2012] VSC 94; BC2012355 at [371] Vickery J.