



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

Payment of Wages
(AM2016/8)

**Submission in relation to proposed variations to payment of wages
terms in modern awards**

Textile, Clothing and Footwear Union of Australia

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2014 AWARD REVIEW
(AM2016/8)
PAYMENT OF WAGES

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1. INTRODUCTION

1.1 The Textile, Clothing and Footwear Union of Australia ('TCFUA') files these submissions in accordance with Directions¹ issued by the Fair Work Commission ('FWC') on 15 August 2016 and in response to Statements issued 2 August 2016² and 8 September 2016³ respectively.

1.2 In these proceedings, the TCFUA's submission is primarily directed to the review of the 'payment on termination' term of the *Dry Cleaning and Laundry Industry Award 2010* ('*Dry Cleaning Award*').⁴ Specifically it responds to the submissions of the employer parties and to matters raised by the FWC.

1.3 The TCFUA is strongly opposed to the proposed variation of the *Dry Cleaning Award* for the reasons outlined below.

1.4 The TCFUA also supports, and adopts by way of general application, the submission of the AMWU.

2. BACKGROUND

2.1 The Australian Industry Group ('AIG')⁵ and Australian Business Industrial & the NSW Business Chamber ('ABI')⁶ have filed draft determinations and submissions in support seeking to vary 10 awards⁷ in relation to 'payment on termination' terms. In summary, the effect of the proposed variations would be to allow employers who pay employees by EFT to make termination payments in accordance with the normal pay cycle.

¹ (AM2016/8), Directions [2016] FWCFB 5741 (15 August 2016).

² (AM2016/8), Statement [2016] FWCFB 5254 (2 August 2016)

³ (AM2016/8), Statement [2016] FWCFB 6401 (8 September 2016)

⁴ [MA000096] *Dry Cleaning and Laundry Industry Award 2010*; clause 19.3

⁵ (AM2016/8), AIG Submission and Draft Determinations (20 September 2016)

⁶ (AM2016/8), ABI & NSWBC Submission (20 September 2016)

⁷ The 10 awards subject to the claims of AIG and ABI were outlined at paragraph [11] of the Statement (2 August 2016) and include the: *Business Equipment Award 2010*; *Food Beverage and Tobacco Manufacturing Award 2010*; *Graphic Arts, Printing and Publishing Award 2010*; *Horticulture Award 2010*; *Manufacturing and Associated Industries and Occupations Award 2010*; *Road Transport and Distribution Award 2010*; *Road Transport (Long Distance) Award 2010*; *Storage Services and Wholesalers Award 2010*; *Supported Employment Services Award 2010* and *Wine Industry Award 2010*.

2.2 In its Statement (2 August 2016) the FWC identified at [11]:

'There are 27 other modern awards which are not presently subject to claims by any party but which also impose timeframes with respect to termination payments. These awards are set out at Attachment A. This Full Bench will also review the payments on termination terms of these 27 modern awards. Draft variation determinations will be published by mid September in respect of these awards, in the same terms as those sought by the Ai Group and ABI in relation to the 10 modern awards which are subject of their claim. The publication of these draft variation determinations is intended to facilitate the review of the relevant terms of the modern awards in Attachment A, they do not represent the concluded view (or provisional view of the Full Bench....'⁸

2.3 The *Dry Cleaning Award* is one of the 27 other modern awards listed in Attachment A to the Statement (2 August 2016). The FWC subsequently published draft determinations for 25 of the 27 additional awards as Attachment A to the (8 September 2016) Statement, including for the *Dry Cleaning Award*. The FWC reiterated *'that the draft determinations do not represent the concluded (or provisional) view of the Full Bench.'*⁹

2.4 The AIG generally supports the adoption of the variations proposed to the 18 awards (of the 25) in which it had an interest, including the *Dry Cleaning Award* for the reasons outline in its submission.¹⁰

2.5 The ABI confirmed that its submissions are *'equally applicable to the Commission's consideration of the payment of wages terms in these 25 awards'*.¹¹

3. DRY CLEANING AND LAUNDRY INDUSTRY AWARD 2010

3.1 Clause 19 (Payment of Wages) provides as follows (extracted in full):

'19. Payment of Wages

19.1 Wages are to be paid weekly or fortnightly.

19.2 Method of Payment

By no later than payday, wages must be paid by cash or electronic funds transfer, the latter into the bank or financial institutional account nominated by the employee.

19.3 Termination

⁸ [2016] FWCFB 5254; at [11]

⁹ [2016] FWCFB 6401; at [7]

¹⁰ AIG submission; op cit; at [64]

¹¹ ABI submission; op cit; at [2.5]

When notice of termination of employment has been given by an employee or an employee's services has been terminated by an employer, payment of all wages and other money owing to an employee will be made to the employee by no later than the last day of the formal notice period.'

3.2 The FWC's draft determination for the *Dry Cleaning Award* clause current 19.3 with the replacement clause as follows (new text underlined):

19.3 Termination

(a) When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and any other money owing to an employee will be made to the employee, by no later than the last day of the formal notice period.

(b) Despite 19.3(a), if the employee is normally paid by electronic funds transfer, wages due may be transferred into the employee's account in accordance with the usual pay cycle.

3.3 The FWC in its Statement (8 September 2016) additionally raises a question in relation to the *Dry Cleaning Award* (and the *Aged Care Award 2010*) in that:

'...both provide that termination monies are to be paid "no later than the last day of the formal notice period". These provisions may give rise to some uncertainty as the duration of the formal notice period may not be known to the employee. It may be preferable to specify a definite period such as 'within seven days of the giving of notice of termination.'¹²

3.4 The TCFUA opposes both sets of proposals for the reasons set out below.

4. AIG & ABI PROPOSED VARIATIONS

4.1 In the *Preliminary Issues Decision*,¹³ the Full Bench held that:

'The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument depends on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variations.'¹⁴ [emphasis given]

¹² [2016] FWCFB 6401' at [8(c)]

¹³ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788

¹⁴ Ibid; at [23]

4.2 The TCFUA submits that the AIG/ABI variations (as they would apply to the *Dry Cleaning Award* as one of the additional 27 awards identified by the FWC) are not proposed changes which are ‘*self-evident and can be determined with little formality*’.¹⁵ They are not intended to redress typographical errors, technical or drafting matters or an anomaly within the various awards. On the contrary, the proposed variations would affect substantive rights currently enjoyed by award dependent workers to receive wages and other monies owed to them on termination in a fair and timely manner. The current award provisions are beneficial in nature and the changes proposed would on any analysis diminish those benefits.

4.3 In this context, and consistent with the *Preliminary Issues Decision*, the onus rests with AIG and ABI to (i) advance a merit argument; (ii) supported by a submission addressing the relevant legislative provisions; and (iii) accompanied by probative evidence directed to demonstrating the facts supporting the proposed variation.

4.4 The AIG and ABI have, in our submission, failed to demonstrate these matters to a level that could reasonably persuade the Commission to exercise its discretion to make the variations sought. The cases advanced by the AIG and ABI are deficient on both a substantive and evidentiary level.

4.5 The AIG has filed no specific evidence in support of its claims.

4.6 The ABI has filed one witness statement, (Scott Farquharson)¹⁶ and a Report ‘Towards the Digital Economy: Milestones Report’ by APCA.¹⁷

4.7 The absence of probative evidence filed by AIG and ABI should not be considered to be indicative of a conclusion that the variations proposed are not significant. Rather it demonstrates that AIG and ABI were unable to identify any probative evidence which relevantly supports the contentions in their respective submissions.

5. AIG and ABI CONTENTIONS

5.1 In summary, the AIG argue in support of its proposed variations that the current award provisions:

- are irrelevant, having regard to modern payroll practices given the widespread use of EFT in paying employees;
- are unfair to employers as they impose additional employment costs and regulatory burden;

¹⁵ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 at [23]

¹⁶ ABI; Witness Statement of Scott Farquharson, Manager, Payroll Services, CSR Ltd (dated 16 September 2016)

¹⁷ ABI; Australian Payments Clearing Association, ‘Towards the Digital Economy: Milestones Report, Fifth Report, April 2016 (filed with ABI submission 20 September 2016)

- are out of step with the vast majority of modern awards.¹⁸

AIG contention - Modern payroll practices and payments to employees by EFT

5.2 The AIG emphasise in their submission that the prevalence of payment of wages to employees by EFT means that current award termination provisions are 'irrelevant'. This contention conflates the concept of the *method* of payment (i.e. cash, cheque, EFT) with the *timing* of payment of monies due to an employee on termination.

5.3 This conceptual conflation ignores the beneficial purpose of the award termination payment clauses, which is, that employees can be ensured that their final wages and entitlements, are available to them at the time of termination or shortly after. This beneficial purpose applies whether the employee is to be paid in cash, by cheque or by EFT. How an employee is to be paid, does not affect the intended outcome of the award clauses i.e. that employees ceasing their employment (whether initiated by them or their employer) have access to their rightful entitlements which have already accrued, and for which work had already been performed for the benefit of their employer. It is unclear from the AIG's submission as to how the payment by EFT of a termination payment to an employee makes this beneficial purpose 'irrelevant'.

5.4 We note that at the time the Part 10A Award Modernisation Full Bench determined the modern award for the dry cleaning and laundry industry,¹⁹ payment of employees by EFT arrangements was already widespread across Australia.

5.5 In support of its 'irrelevancy' contention, the AIG seeks to rely on the Annual Leave Common Issues proceedings, whereby the Full Bench determined to vary awards to allow employers to pay an employee their annual leave during their usual pay cycle.²⁰ Whilst the TCFUA did not support the annual leave EFT variation, we submit that the circumstances of an employee being on annual leave (and receiving payment during the normal pay cycle) is conceptually and practically different from the circumstances of termination of employment.

5.6 An employee on annual leave whilst absent from the workplace remains employed with their employer, and will return to the workplace at the conclusion of the leave. If there are issues with an employee's annual leave payment made during the normal pay cycle, the employee is clearly inconvenienced and negatively affected. However, it is something that the employee can usually raise with their employer whilst on paid leave or alternatively when they return to the workplace at the conclusion of the leave.

¹⁸ AIG Submission, op cit; at [18] –

¹⁹ The modern award for the dry cleaning and laundry industry was made as part of the Stage 4, Part 10A Award Modernisation proceedings. See [2009] AIRCFB 945 (4 December 2009)

²⁰ Ibid; at[30] – [31]

5.7 Self-evidently, for an employee whose employment is terminated, and who has completed the relevant notice period or received payment in lieu of notice, the employment relationship has ended. The employee will not be returning to that workplace. For a terminated employee, if they do not receive their full wages and entitlements by the end of their last day at work, then if there is a problem/discrepancy with that payment, then a number of consequences flow, including:

- the affected former employee will not be aware of the problem/issue until the normal pay cycle is reached. Under the Dry Cleaning Award, the normal pay cycle can be either weekly or fortnightly.
- the affected former employee must then make contact with their former employer to raise the problem/issue, in their own time (unpaid by the former employer);
- if the problem/issue cannot be resolved by telephone or email contact, then the affected former employee will likely have to attend the premises of their former employer, on one or more occasions, again in their own time.

5.8 We note that neither modern awards nor the Fair Work Act 2009 ('FW Act') obligate employers to provide a written breakdown of termination payments to an employee in advance of the actual termination date. In such cases, employees must rely on their final termination pay slip (which is not required to be provided until such time as the payment of the termination monies) to obtain that information.

5.9 It is evident that the effect of the AIG and ABI proposed variations is to unfairly shift the risk and inconvenience of termination payment issues to employees rather than being dealt with in the workplace whilst the employee is still employed.

AIG contention – additional employment costs/regulatory burden

- 5.10 AIG's submission in relation to this contention can be distilled as:
- termination payments can involve a potentially significant sum;
 - employer's may not have access to sufficient money to make the payment in the time provided;
 - the timeframe for payment is too limited;
 - the current award provisions require employers to undertake an additional pay run to process a termination payment;
 - this involves additional time and cost;²¹

5.11 It is uncontroversial that termination payments for employees can vary, and in some instances involve significant sums, although the TCFUA notes, that in relation to award dependent workers this is less likely to be the case, given

²¹ AIG submission; op cit; at [25] – [28]

modest leave benefits provided under modern awards and the NES. The amount of a termination payment does not change dependent on whatever method of payment is used.

- 5.12 It is clearly an employer's responsibility to make provision progressively for the accrual of certain leave entitlements (for example, annual leave). More generally, as a function of employing workers, employers have an obligation to ensure that there is sufficient funds to meet liabilities for wages and entitlements as, and when, they fall due.
- 5.13 The AIG also overstate the issues regarding the limited timeframe available for the termination payment to be made. In circumstances where the termination is initiated by the employer, the employer will be aware of the applicable notice period required and/or if payment in lieu of notice will be made. Where termination is initiated by an employee, in the great majority of cases, there will be at least one week's notice required to be given, other than in relation to casual employees. Similarly with the argument regarding the size of the termination payment, the period in which a termination payment is required to be made, is not altered by the method of payment used.
- 5.14 AIG assert that the requirement to administer an extra pay run for a termination payment is unfair to employees. AIG has not produced one witness statement from any employer attesting to this. AIG has not produced any submissions or evidence as to the purported cost of additional pay runs for businesses. A cursory review of publicly available, bank charging policies identifies that the big four banks offer eligible businesses flat charges per month irrespective of how many electronic transactions are processed each month. For example:
- NAB \$10.00 per month
 - CBA \$15.00 per month
 - Westpac \$20.00 per month
 - ANZ \$20.00 per month
- 5.15 Otherwise, bank fees per transaction, are generally very modest. For example, the NAB and CBA openly declare that their respective fee per transaction is NAB (\$0.22 cents) and CBA (\$0.50 cents).
- 5.16 In this context, it is difficult to accept that the cost for employers of additional pay runs for employee termination payments are significant or burdensome. Further the time taken to prepare a termination payment (e.g. the calculations of wages and leave entitlements) is required (and is the same) whether the employee is paid in cash, cheque or by EFT. The actual processing of an EFT payment is actually very short.

AIG contention – current award terms ‘out of step’ with other awards

5.17 The AIG state that the majority of other industry and occupational awards do not contain such termination of payment clauses.²² This of itself, is not a justification for the deletion of current benefits for employees in various modern awards. In the absence of submissions which advance a persuasive case for change, supported by probative evidence demonstrating those facts, the Commission should be cautious in exercising its discretion under s.156(2) to make the variations sought.

5.18 The statutory framework for the 2014 Award Review requires that each award must be reviewed in its own right, however this does not prevent the FWC from reviewing 2 or more awards at the same time.²³ The Review expressly contemplates that modern awards may contain different or variable provisions about the subject matter. The *Preliminary Issues Decision* held:

‘[33]...The need to balance the competing considerations in s.134(1) and the diversity in the characteristics of the employers and employees covered by different modern awards means that the application of the modern awards objective may result in different outcomes between different modern awards.

[34] Given the broadly expressed nature of the modern awards objective and the range of considerations which the Commission must take into account there may be no one set of provisions in a particular award which can be said to provide a fair and relevant safety net of terms and conditions. Different combinations of permutations of provisions may meet the modern awards objective.’²⁴

5.19 AIG have not identified in submissions or provided evidence of any particular problem with the operation of the termination payment clause in the *Dry Cleaning Award*. Such an entitlement has been an industry practice for many decades, and as far as the TCFUA is aware, has operated with little disputation. In the TCFUA’s submission, it is not sufficient for AIG to advance a generalised case (unsupported by probative evidence) in order to achieve a standardised outcome across all modern awards.

6. ABI SUBMISSION

6.1 ABI²⁵ make a number of similar contentions to the AIG. ABI’s contentions can be summarised as:

²² AIG submission; op cit; at [36] – [38]

²³ *Fair Work Act 2009*, s.156(5)

²⁴ *Preliminary Issues Decision*; op cit; at [33] – [34]

²⁵ ABI submission; op cit
; see paras [5.1] – [7.4]

- the growth in use of EFT transactions relative to the use of cash or cheque;²⁶
- the impracticality of existing award provisions in relation to EFT transactions.²⁷

6.2 The TCFUA relies on its submissions above in respect to the AIG claims as equally applying the ABI case.

6.3 The fact that EFT transactions have increased over time, relative to cash and cheque transactions is not disputed. It is self evidently the case. However, the shift to EFT payments for employee wages and entitlements, is not of itself, evidence that the requirement for termination payments to be made on or at the time termination is no longer a relevant term of various modern awards, including the *Dry Cleaning Award*.

6.4 The TCFUA submits that ABI have failed to establish a necessary nexus between EFT payments and the ‘impracticality of existing award provisions’ in order to support a deletion of such provisions. ABI make five contentions in relation to the ‘impracticality argument:

- the provisions apply to all terminations, including those which arise summarily;²⁸
- employers can have difficulty obtaining wage information necessary to process payments;²⁹
- employers sometimes need time to make funds available for payment;³⁰
- processing termination payments manually imposes a time and administrative cost on employers;³¹
- employers can be charged additional financial costs when paying ‘out of cycle’ EFT transactions for employees.³²

6.5 In relation to the first contention, ABI have not provided any evidence of an actual circumstance where an employee has been terminated summarily and this has caused a problem in relation to payment. The witness statement of Scott Farquharson filed by ABI is generally speculative on this issue and provides no concrete example of a real issue.

6.6 The TCFUA notes that in circumstances where an employee has been dismissed summarily:

- the timing of such termination is within the power of the employer;
- summary dismissals are legally challengeable, and in the TCFUA’s experience, often are; and

²⁶Ibid; at [5.1] – [5.4]

²⁷ ABI submission; op city; [6.1] – [6.4]

²⁸ Ibid; [6.1 (a) – (d)]

²⁹ Ibid; [6.1 (e) – (g)]

³⁰ Ibid; [6.1 (h) – (k)]

³¹ Ibid; [6.1 (l) – (q)]

³² Ibid; [6.1 (o) – (q)]

- an employee summarily dismissed is arguably in more need of having their final pay and entitlements paid at the time of termination, given the absence of notice being provided.

6.7 Conversely, in circumstances where an employee has resigned and the employer has agreed to 'pay out' their notice period, this decision is also in the gift of the employer.

6.8 ABI make a generalised assertion that 'if an award provision is impossible to comply with then it is inconsistent with 'a fair and relevant safety net'.³³ This is a highly speculative and unsubstantiated contention. There is absolutely no evidence before the Commission that the various award provisions being sought to be varied are impossible to comply with by any employer. The TCFUA submits that no finding or inferences could reasonably be made to this effect.

6.9 ABI makes submission regarding the difficulty of obtaining wage information to process payments. The structure and operation of how employers arrange to process employee information, including hours worked and wages etc. is entirely within the discretion and control of each individual employer. ABI relies on the statement of Scott Farquarson in support. Mr Farquarson is the Payroll Services Manager of CSR Ltd. CSR Ltd is a top 200 publicly listed company in Australia with significant resources at its disposal. It is disingenuous to believe that a company of this size and sophistication would not be in a position to order its payroll operations in a way to meet the requirements under the various award provisions.

6.10 In relation to ABI's third, fourth and fifth arguments outlined above, the TCFUA relies on its submissions regarding similar contentions pressed by the AIG. In respect to the 'cost of additional pay run' submission, we note that CSR Ltd in the 2015 financial year increased its statutory net profit after tax by 43% (\$125.5m).³⁴

7. S134 – MODERN AWARDS OBJECTIVE

7.1 In the Preliminary Issues Decision, the Full Bench held:

'[31] The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions' taking into account the particular considerations identified in paragraphs 134(1)(a) to (h) (the s134 considerations). The objective is very broadly expressed. The obligation to take into account the matters set out in paragraphs 134(1) (a) to (h) means that each of these

³³ ABI submission; op city; at [6.2(d)]

³⁴ http://www.csr.com.au/~media/corporate/files/annual-reports/2015_annual-report-for-31-march-2015.ashx

matters must be treated as a matter of significance in the decision making process...'

*'[32] No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.'*³⁵

Section 134(1)(a) – relative living standards and the need of the low paid

- 7.2 The TCFUA submits that this a relevant factor to be taken into account in considering the AIG and AIG claims and the draft determinations for the other awards, including the *Dry Cleaning Award*.
- 7.3 In the TCFUA's experience, significant parts of the dry cleaning and laundry industry are award dependent and low paid. Even where enterprise agreement do exist in the industry, wage rates are typically not significantly higher than the minimum rates of pay in the award.
- 7.4 The AIG submit that their variation proposals do not detract from the maintenance of the relative living standards and needs of the low paid, as the amount of money received by a terminated employee is the same.³⁶ However, this discounts the precarious financial position of many award dependent employees, particularly the significant percentage of such workers employed on less than full time hours. Many employees reliant on award wages do live week to week, and have little financial buffer to absorb unexpected interruptions to their income. To put it bluntly, a week or more without income is a serious and stressful situation for many award dependent workers.
- 7.5 In the case of the dry cleaning and laundry industry, the award allows for employees to be paid on a weekly or fortnightly basis. If the variations proposed were accepted, the practical effect is that already low paid workers in the industry may be forced to wait up to 2 weeks to receive their termination pay (for work already undertaken and entitlements already accrued).

Section 134(1)(b) – the need to encourage collective bargaining

- 7.6 We do not consider this to be a neutral consideration. Contrary to the AIG's submission, the TCFUA rejects the contention that current award provisions are inflexible or costly.
- 7.7 The current termination payment provisions are beneficial in nature and any diminution of them would constitute an unacceptable change to the minimum safety net for award dependent workers in the TCF industry.

³⁵ Preliminary Issues Decision; op city; at [32] – [33]

³⁶ AIG submission; op city; at [43]

7.8 Whilst these types of provisions may well be the subject of bargaining, it is important to acknowledge that there are industries where, due to the relative low bargaining power of its workers, enterprise bargaining is unlikely to be achievable. In the dry cleaning and laundry industry this is relevant to significant parts of the sector.

Section 134(1)(c) - the need to promote social inclusion through increased workforce participation

7.9 We disagree with the AIG contention that s134(1)(c) is a neutral consideration. As outlined in the AMWU's submission, the impact on an employee in being forced to wait for their final termination wages and entitlements can be significant, including in terms of budgeting, looking for other work and/or accessing government benefits.³⁷

Section 134(1)(d) – the need to promote flexible modern work practices and the efficient and productive performance of work

7.10 It is inarguable that the payment of employees by EFT is a modern payroll practice. However, the question in the current proceedings is whether removing a current award benefit which requires employers to pay termination payments at, or shortly after, the time of termination would promote 'modern work practices' more generally. In the TCFUA's submission, it would not.

7.11 In its submission regarding this consideration, the AIG refer by analogy to the Annual Leave decision regarding payment of annual leave by EFT. For the reasons outlined previously, the TCFUA submits that it is not a straightforward comparison, such that the circumstances of annual leave and cessation of employment are appreciably different, and distinguishable.

Section 134(1)(da) – the need to provide additional remuneration

Section 134(1)(e) – the principle of equal remuneration for work of equal or comparable value

7.12 These factors would appear to be neutral considerations.

Section 134(1)(f) – the likely impact on business including productivity, employment costs and regulatory burden

7.13 The TCFUA relies on its submission above regarding the employers' contentions in respect to additional pay run, costs and time imposts. The TCFUA reiterates that AIG and ABI completely overstate these effects and have presented no probative evidence in support of such contentions.

³⁷ AMWU submission; op city; at [19] – [39]

Section 134(1)(g) – the need to ensure a simple, easy to understand, stable and sustainable modern award system that avoids unnecessary overlap of modern awards

7.14 The TCFUA submits that the current award provision in the *Dry Cleaning Award* is easy to understand and has operated within the dry cleaning and laundry industry for decades without major disputation.

Section 134(1)(h) – the likely impact on employment growth, inflation and sustainability, performance and competitiveness of the national economy

7.15 The TCFUA submits that this is a neutral consideration.

8. FWC DRAFT DETERMINATION – DRY CLEANING AWARD

8.1 For the reasons outlined in these submissions, the TCFUA opposes the FWC’s draft determination for the *Dry Cleaning Award*. In the TCFUA’s submission, a persuasive case has not been made out by either AIG or ABI which would support a variation to clause 19.3 in the form of the draft determination.

8.2 Additionally, the Commission raised in its (8 September 2016) Statement³⁸ that clause 19.3(a) of the draft determination for the *Dry Cleaning Award* provides that the termination monies are to be paid ‘no later than the last day of the formal notice period’ and this wording may give rise to uncertainty as the duration of the formal notice period may not be known to the employee. The Commission ask the question as to whether it is preferable to specify a definite period such as ‘within seven days of the giving of notice of termination.’³⁹

8.3 The TCFUA submits that in its experience, the current wording in clause 19.3 of the *Dry Cleaning Award* (reflected in 19.3(a) of the draft determination) is not subject to uncertainty or ambiguity. In our view ‘the last day of the formal notice period’ is synonymous with the last day of employment. The alternative formulation suggested by the Commission ‘within seven days of the giving of the notice of termination’ could, for example, practically mean that an employee summarily dismissed would not receive their termination pay until up to a fortnight after they left their place of employment.

**Filed by:
Textile, Clothing and Footwear Union of Australia
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³⁸ [2016] FWCFB 6401, at [8 (c)]

³⁹ Ibid;