



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Vivienne Wiles and Paris Nicholls

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

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Usability of awards:

How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature:



Name:

Vivienne Wiles (Senior National Industrial Officer & Coordinator)

Date:

5 February 2024



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IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

S.576(2)(aa)-Promoting cooperative and productive workplace relations and preventing disputes

(AM2023/21)

Modern Awards Review 2023-2024

Stream 2 – Job Security

**SUBMISSION OF THE
CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION
(MANUFACTURING DIVISION)**

In Response to FWC Discussion Paper - Job Security (18 December 2023)

(5 February 2024)

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|--|---|--|----------------------------------|--|
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MODERN AWARDS REVIEW 2023-2024

(AM2023/21)

Stream 2 (Job Security)

SUBMISSION OF THE CFMEU-MANUFACTURING DIVISION

IN RESPONSE TO FWC DISCUSSION PAPER

1. On 15 September 2023, (**September 2023 Statement**) the President issued a Statement outlining the scope of the Modern Awards Review 2023-2024 (**Review**). The Review was initiated on the Commission’s own motion in response to a letter received by the President from the Minister for Employment and Workplace Relations on 12 September 2023.
2. The CFMEU-Manufacturing Division (**CFMEU-MD**) directs this submission to the second of the Minister’s priority areas as follows (**Stream 2 – Job Security**):

“(2) considering whether the terms of modern awards appropriately reflect the new object of the FW Act and modern awards objective regarding job security and the need to improve access to secure work across the economy, including by:

- (a) Considering award provisions concerned with rostering, guaranteed shifts, and the interaction of permanent, part-time and casual classifications; and
- (b) Reviewing standard award clauses with general application across the award safety net, to assess their continuing suitability in light of the updated modern awards objective;¹

3. The process for the conduct of the Review was set out at paragraph [8] of the September 2023 Statement, (including for Stream 2) including the issuing of FWC discussion/research papers, the opportunity for interested parties to lodge submissions in response to be followed by a series of consultation conferences. The September 2023 Statement confirmed:

“Following the conferences, a final report will be issued which will conclude the review process. The report might provide recommendations about possible next steps if parties seek variations to modern awards or propose that the Commission take steps on its own motion to vary awards.”²

¹ Modern Awards Review 2023-2024, President’s Statement (15 September 2023) at [3]. The other priority areas are (1) Arts and culture sector; (3) Work and care; and (4) Making awards easier to use.

² Modern Awards Review 2023-2024, President’s Statement (15 September 2023) at [8]

4. On 4 October 2023, a Statement was issued by the full bench convened for the Review (**October 2023 Statement**), finalising the timetable for each of the priority streams, including Stream 2 (Job Security) as follows:

“(2) Job Security

| | |
|-----------------------------|---------------------------------------|
| 18 December 2023: | Discussion/research paper issued |
| 5 February 2024: | Submissions in response due |
| 12 February – 8 March 2024: | Consultation with interested parties” |

5. The CFMEU-MD files these submissions in response to the FWC Discussion Paper, *Job Security* published on 18 December 2023³ (**Discussion Paper**).

MODERN AWARDS IN WHICH THE CFMEU-MD HAS AN INTEREST

6. In this matter, the CFMEU-MD has an interest in the following modern awards:
- *Dry Cleaning and Laundry Industry Award 2020* [MA000096] (**DC&LI Award**)
 - *Joinery and Building Trades Award 2020* [MA00029] (**Joinery Award**)
 - *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010] (**Manufacturing Award**)
 - *Storage Services and Wholesale Award 2020* [MA000084] (**Storage Award**)
 - *Textile Clothing and Footwear Industry Award 2020* [MA000017] (**TCF Award**)
 - *Timber Industry Award 2020* [MA000071] (**Timber Award**)

AMENDED OBJECTS UNDER THE FW ACT

7. With the passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (SJBPA Act)*, both the Object of the FW Act (s3) and the Modern Awards Objective (s134) have been amended as follows:

s.3 Object of the Act

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes prosperity and social inclusion for all Australians by:

- (a)** *Providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations.*

³ Fair Work Commission; Discussion Paper, Job Security, Modern Awards Review 2023-2024 (18 December

8. The amended Modern Awards Objective has been amended as follows:

s.134 The modern awards objective

(1) The

(aa) the need to improve access to secure work across the economy

DISCUSSION PAPER 'JOB SECURITY'

9. The Discussion Paper at section 5⁴ sets out 7 'Discussion questions' for consideration by interested parties directed to 4 general themes (broadly summarised) in context of how they interact with job security:

- Questions 1 to 3 are directed to provisions in modern awards which relate to job and income security, including notions of the regularity and predictability of the hours of work and income, and restricts the capacity of employers to terminate at will;
- Questions 4 to 5 are directed to the exclusions of casual employees from accessing certain NES entitlements (including paid leave) and the potential supplementation of NES entitlement gaps for casual employees;
- Question 6 is directed to the use of individual flexibility arrangements in awards; and
- Questions 7 to 9 are directed to the group of standard clauses in modern awards including:
 - Individual flexibility arrangements;
 - Consultation about major workplace change;
 - Consultation about change to rosters or hours of work;
 - Dispute resolution;
 - Termination of employment; and
 - Redundancy

10. In this submission, given the extent of the task at hand, the CFMEU-MD has focused primarily on questions 1 to 3. Questions 1-3 of the Discussion Paper are reproduced below:

Q 1: *Are there specific provisions in the 7 modern awards the subject of the review⁵ that parties consider are necessary to improve access to secure work across the economy? Parties are asked specifically consider provisions dealing with:*

a. Types or modes of employment;

⁴ Discussion Paper; pp 108-109

⁵ The 7 modern awards subject of the Review are: (1) *Children's Services Award 2010*; (2) *Clerks – Private Sector Award 2020*; (3) *Fast Food Industry Award 2020*; (4) *General Retail Industry Award 2020*; (5) *Hospitality Industry (General) Award 2020*; (6) *Restaurant Industry Award 2020*; and (7) *Social, Community, Home Care and Disability Services Industry Award 2010*.

- b. *Rostering arrangements, including rostering restrictions;*
- c. *Payment of wages, in particular pay cycles;*
- d. *Agreed regular patterns of work or guaranteed hours for part-time employees; and*
- e. *Minimum engagement/payment periods*

Q 2: *Are there any additional specific award provisions that are consistent with the new modern awards objective? If so, parties are asked to consider and address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).*

Q 3: *Are there specific award provisions that are not consistent with the new modern awards objective? If so, parties are asked to address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).⁶*

11. The CFMEU-MD does not, as part its industrial coverage, have a direct interest in any of the 7 awards subject to the Review. Whilst we appreciate that the 7 awards/industries have been chosen due their high award dependence, it is evident that the 7 awards are heavily services focused and do not include any awards which typically would be classified as ‘manufacturing’ or capture industries which ordinarily are undertaken in a traditional factory/warehouse type workplace environment.
12. However, by way of general comment, we observe that, subject to a small number of exceptions, many provisions in the 7 awards provide minimal safeguards regarding guaranteed minimum hours guaranteed engagement (daily or weekly) for both part-time and casual employees and/or in relation to rostering arrangements. In this context, such provisions arguably fail the amended objectives of promoting job security and gender equality and do not satisfy the need to improve access to secure work across the economy.
13. In the submissions below for the awards in which the CFMEU-MD has an interest, given the time available, we have focused on 3 awards in particular:
 - DC&LI Award
 - TCF Award
 - Timber Award
14. In taking this focus, we have considered a number of the job security themes, with a particular emphasis on part-time employment (generally), minimum engagement hours for part-time employees and casuals, rostering arrangements and payment of wages. In some instances, we have proposed

⁶ Discussion Paper; p108

variations which not only deal with a key substantive issue (for example, guaranteed minimum hours) but also strengthen ancillary employee notification and documentation requirements, including around classifications. For some of the proposed variations an element has been left blank with the expectation that the issue can be explored more fully in the consultations to come.

15. Whilst we have focused on the 3 awards above and proposed a number of variations in relation to them, we consider that similar issues (and proposed or modified variations) may be appropriate for the other awards in which the CFMEU-MD has an interest.

DC&LI AWARD

Types or modes of employment

16. Clause 8 (Types of employment) of the DC&LI Award provides:

8.1 *Employees under this award will be employed in one of the following categories:*

(a) *full-time employment;*

(b) *part-time employment; or*

(c) *casual employment.*

8.2 *At the time of engagement an employer must inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. This will then be recorded in the time and wages record of the employee.*

17. We submit that clause 8.2 is limited in meeting the amended object of the Act and the Modern Awards Objective (MAO) in s134(1), due to the following.

18. *Firstly*, the obligation to inform each employee in writing of their employment status only applies at the time of engagement and there is no ongoing obligation if and when an employee's employment status changes; e.g., if employee changes from one type of employment to another during the course of their employment.

19. In the experience of the CFMEU-MD, it is quite common, in the laundry industry in particular, for employees to commence as casuals, then move to permanent employment (often part-time employment).

20. *Secondly*, clause 8.2 does not contain any requirement on an employer to advise an employee, at the time of their engagement, which classification they will be engaged at. Further, there is no obligation on an

employer to identify and confirm the relevant classification if the employee moves to a different form of employment type at a subsequent point in their period of employment.

21. Whilst these issues may, on first appearance, see like minor issues in practice, they are relevant to the effectiveness of the award safety net for the industry, which has consistent issues regarding compliance with award minimum conditions. We submit that provisions which facilitate or promote award compliance are directly relevant to the objectives of job and income security and reduce the potential for disputation regarding which entitlements apply to which form of employment at which times.

Proposed variation to clause 8.2

22. A proposed variation to clause 8.2 to address these limitations is provided below: (highlighted in red):
- (a) *At the time of engagement an employer must inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. This will then be recorded in the time and wages record of the employee.*
 - (b) *When an employee's employment type subsequently changes by agreement between the employee and an employer, the employer must confirm such change in writing (specifying the details of the change) at the time of the alteration. This will then be recorded in the time and wages record of the employee.*

Agreed regular patterns of work of guaranteed hours for part-time employees

23. Clause 10 (Part-time employees) of the DC&LI Award provides:

10.1 A part-time employee:

(a) is engaged to work less than full-time hours of 38 ordinary hours per week;

(b) has reasonably predictable hours of work; and

(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

10.3 Any agreed variation to the hours of work will be in writing.

- 10.4 *A part-time employee must be engaged for a minimum of 3 consecutive hours per start including if called in for a separate engagement for overtime.*
- 10.5 *All time worked in excess of the hours agreed under clause 10.2 or varied under clause 10.3 will be overtime and paid for at the rates prescribed in 23 – Overtime.*
- 10.6 *A part-time employee under the provisions of clause 10 must be paid for each ordinary hour worked at the minimum hourly rate prescribed for the appropriate classification.*
[emphasis added]

24. We submit the limitations of clause 10 in meeting the amended Object of the Act and the MAO of improving access to secure work include the following:
25. *Firstly*, the definition of a part-time employee (clause 10.1) includes at 10.1(a) that such employee is engaged to work less than 38 ordinary per week. However, the only guarantee of *weekly* ordinary hours is contained in clause 10.3 which provides a minimum engagement of 3 consecutive hours per start. That is, under clause 10, a part-time employee could legally be employed to work a maximum of 3 hours per week; or even if engaged each day Monday to Friday, a maximum of 15 hours per week.
26. In our submission, having no guaranteed minimum weekly number of hours (other than 3 hours) per week is not consistent with the promotion of job security or gender equality, given the over-representation of women who are award dependent and who work part-time.⁷
27. We note, that prior to award simplification, many awards contained minimum weekly hours provisions for part-time employees; for example, 19 hours per week were guaranteed in both the *Footwear Manufacturing and Component Industries Award 1979* and the *Textile Industry Award 1994*.
28. As outlined in the Discussion Paper, of the 7 awards the subject of the Review, the *Hospitality Award* and the *Restaurant Award* include provisions which guarantee part-time employees a minimum of 8 hours per week.⁸

⁷ [2023] FWCFB 3500 at [114] (noting that award-reliant employees are disproportionately female), [146] (noting that female casuals are more likely to be employed on a part-time basis than full-time).

⁸ Discussion Paper; at [133]

29. In the proposed variation to clause 10 below we have not, at this stage, included a quantum of guaranteed weekly hours but consider this a matter worthy of further discussion at the scheduled series of consultations.
30. *Secondly*, clause 10.2 of the DC&LI Award requires that there is an agreement in writing on a regular pattern of work and which specifies certain identified characteristics of the part-time employee's engagement, including details of:
- the hours worked each day;
 - which days of the week the employee will work; and
 - the actual starting and finishing times each day.
31. Whilst clause 10.2 provides a reasonable safeguard regarding the incident of part-time engagement, the limitation is that although the agreement must be in writing, there is no clear obligation on the employer to provide a copy of such agreement to the particular employee. Whilst such an obligation could be inferred it is not expressly provided for.
32. In our submission, the absence of such obligation contributes to practical problems identifying the nature of the part-time employment agreed to at the time of engagement if the employer has not recorded this in required detail (consistent with the obligations in clause 10.2) in the employment records of the employee.
33. In the experience of the CFMEU-MD, this is a relatively common occurrence in many laundries which typically employ a high percentage of part-time workers. Were an employer required under the award to provide a copy of the written agreement at the time it was made, it would increase the chance of the employee both clearly understanding the details of the arrangement and being able to produce documentary evidence of same if required. In our submission, this would aid award compliance and improve access to security of work and the agreed parameters of that work.
34. *Thirdly*, clause 10.3 states that '*Any agreed variation to the hours of work will be in writing*'. In a similar vein to clause 10.2, there is no express obligation on an employer to provide a copy of such variation agreement to the particular employee. For the reasons we outlined above, we submit that an employer should be required to provide a written copy of the agreement (variation to the existing part-time agreement) to the employee.

35. *Fourthly*, whilst it may be inferred in clause 10.3 that the expression ‘hours of work’ includes by implication the other matters specified in clause 10.2 (i.e., the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day), these aspects are not expressly referenced. We submit that the omission of such express statements has the potential to lead to uncertainty and unpredictability as to the parameters of a varied part-time employment agreement. This is averse to the objective of promoting access to secure and reliable work.
36. *Fifthly*, in the absence of a term in clause 10 providing a minimum number of weekly hours for part-time employees, the minimum engagement of 3 hours per start in clause 10.3, is manifestly inadequate to provide sufficient, secure work for part-time employees under the award. In this context, consideration should be given to increasing the minimum engagement obligation to 4 hours (together with a guaranteed minimum number of weekly hours).

Proposed variation to clause 10

37. A proposed amendment (highlighted in red) to clause 10 to address the issues identified above is outlined as follows:

10.1 A part-time employee:

(a) is engaged to work less than full-time hours of 38 ordinary hours per week but with a guarantee of a minimum of [X] hours per week ;

(b) has reasonably predictable hours of work; and

(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day. A copy of the part-time agreement will be provided to the employee at the time of engagement and recorded by the employer in the employee’s time and wages records.

10.3 Any agreed variation to the part-time agreement in 10.2 (including the regular pattern of work, the hours worked each day, the days of the week the employee will work and the actual starting and finishing times each day) of work will be in writing. A copy of the varied part-time agreement will be provided to the employee at the time of the variation and recorded by the employer in the employee’s time and wages record.

10.4 A part-time employee must be engaged for a minimum of 4 consecutive hours per start including if called in for a separate engagement for overtime.

10.5 All time worked in excess of *or outside of* the hours agreed under clause 10.2 or varied under clause 10.3 will be overtime and paid for at the rates prescribed in 23 – Overtime.

10.6 A part-time employee under the provisions of clause 10 must be paid for each ordinary hour worked at the minimum hourly rate prescribed for the appropriate classification.

Minimum engagement/payment periods – Casual employees

39. As a general submission, we submit that the current statutory and award regulation of casual employment results in an unacceptable level of precarity, unpredictability and security of work and income. This is more pronounced in sectors which are heavily award dependent, female dominated and low paid.
40. In the DC&LI Award, casual employees have few entitlements other than an entitlement to a 25% casual loading, a minimum engagement of 3 hours and the payment of overtime for hours worked in excess of 38 hours per week.
41. Clause 11.4 of the DC&LI Award provides:
- 11.4 A casual employee must be paid for a minimum of 3 hours for each start on any day.
42. In our view, the minimum engagement period of 3 hours per start is not consistent with the amended Object of the Act and MAO in s134. The Discussion Paper⁹ at paragraphs [182] – [183] reproduced below, sets out clearly the problem of inadequate minimum engagement terms in awards, and their interaction with sub-optimal job and income security for affected employees.

[181] The rationale for minimum payment periods of engagement was explained in *Re Victorian Employers' Chamber of Commerce* and industry as follows:

“The rationale for minimum periods of engagement is one of protecting employees from unfair prejudice or exploitation. Given the time and monetary cost typically involved in an employee getting to and from work, it has long been recognized that employees, especially casual employees, can be significantly prejudiced if a shift is truncated by the employer at short notice (as would otherwise be lawful in a typical

⁹ Discussion Paper; at [180] – [182]

casual engagement) or the employee can be pressured into accepting unviable short shifts in order to retain access to longer shifts.”

[182] The Full Bench in the 4 yearly review casuals and part-time decision articulated the rationale of minimum engagement period in similar terms:

“Minimum engagement periods in awards have developed in an ad hoc fashion rather than having any clear foundling in a set of general principles. However, their fundamental rationale has essentially been to ensure that the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like. An employment arrangement may become exploitative if the income provided for the employee’s labour is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment. Minimum engagement periods are also important in respect of the incentives for persons to enter the labour market to take advantage of casual and part-time opportunities (and this engage the consideration in paragraph (c) of the modern awards objective in s.134). [citations not included]

43. We submit, as a general principle, that minimum engagement periods in awards (for both casual and part-time employees) require a reconsideration in light of the ‘problem’ identified in the passage above, and in context of the current cost of living crisis in Australia, which has a disproportionate impact on the low paid.
44. We contend that in order to meet the satisfy the amended MAO and Object of the Act, it is necessary at the very least to vary clause 11.4 to increase the floor of minimum engagement/payment period for casual employees in the DC&LI Award to 4 hours. We note that a minimum 4 hour paid entitlement/engagement for casual employees (or higher) is provided for in a number of other modern awards.¹⁰
45. We propose clause 11.4 of the DC&LI award be varied as follows (**highlighted in red**):

¹⁰ For example: The *Joinery and Building Trades Award 2020* – clause 11.2 provides for a minimum daily engagement of 7.6 hours; the *Manufacturing and Associated Industries and Occupations Award 2020* - clause 11.2 provides for a minimum 4 hour payment (other than in order to meet their personal circumstances, a casual employee may request and the employer may agree to a minimum engagement of 3 consecutive hours); the *Timber Industry Award 2020* – clause 12.1 provides for a minimum of 4 hours’ pay per day whether the casual is required to work for 4 hours or not; the *Storage Services and Wholesale Award 2020* – clause 11 provides that a casual employee will be guaranteed not less than 4 hours’ engagement every start.

11.4 *A casual employee must be paid for a minimum of 4 hours for each start on any day or shift whether the casual employee is required to work for 4 hours or not.*

Classifications and notice and documentation requirements

46. Clause 12 of the DC&LI Award provides (in part):

12.1 *All employees covered by this award must be classified according to the structures set out in Schedule A-Dry Cleaning Classifications or Schedule B-Laundry Classifications. Employers must advise their employees in writing of their classification and changes to their classification.*

47. We consider that it is uncontroversial that the concept of secure work includes an employee being correctly classified (and paid accordingly) under the relevant classification structure of the award.

48. The limitation of clause 12.1 of the DC&LI Award is that there is no express obligation on an employer to provide written advice to an employee as to the applicable classification in a *contemporaneous* manner, i.e. at the time of engagement and the time of any change to their classification.

49. To address this issue, it is proposed that clause 12.1 be amended as follows (changes highlighted in red):

12.1 *All employees covered by this award must be classified according to the structures set out in Schedule A-Dry Cleaning Classifications or Schedule B-Laundry Classifications. Employers must advise their employees in writing of their classification (at the time of engagement) and any changes to their classification (at the time of the change).*

Rostering arrangements, including rostering restrictions

50. Clause 16 (Rostering arrangements) of the DC&LI Award provides:

16. Rostering arrangements

16.1 *The start and finishing times of each employee (excluding casual employees) will be fixed by the employer.*

16.2 *Subject to clause 33-Consultation about changes to rosters or hours of work, those times will not be changed, except in a case of emergency or by agreement with the individual employee, unless 7 days' notice has been given.*

16.3 *Clause 16 also applies to shift rosters.*

51. We submit clause 16 of the DC&LI Award does not appropriately facilitate and promote predictability and security of rostering given the following.
52. *Firstly*, clause 16 is not expressed to operate subject to clause 10 (Part-time employees), specifically clauses 10.2 and 10.3, with respect to the requirements for part-time agreements.
53. *Secondly*, on its face, there is no outer limit on the potential changes to the starting and finishing times (or shift rosters) which can be unilaterally imposed by an employer.
54. *Thirdly*, there are few safeguards in clause 16 which protect employees from such unilateral changes to starting and finishing times (or shift rosters) in context where such changes are permitted in the following circumstances:
- in case of an 'emergency' (whatever this is interpreted to encompass);
 - by agreement with an individual employee;
 - unless 7 days' notice has been given
55. *Fourthly*, there is no requirement in clause 16.2 or 16.3 for the agreement with an individual employee or the 7 days' notice:
- to be in writing; and/or
 - for the affected employee(s) to be provided a copy in writing; and/or
 - for the change in hours or work or shift rosters to be recorded in the employee(s) time and wages record(s).
56. We therefore submit clause 16 fails to provide adequate safeguards for employees to ensure a reasonable level of predictability and security of hours of work as part of rostering arrangements under the award.
57. To address this issue, it is proposed that clause 16 be amended as follows (changes highlighted in red):
58. Clause 16 (Rostering arrangements) of the DC&LI Award provides:
- 16. Rostering arrangements**
- 16.1 *The start and finishing times of each employee (excluding casual employees) will be fixed by the employer.*

- 16.2 *Subject to clause 33-Consultation about changes to rosters or hours of work, those times will not be changed, except ~~in a case of emergency or~~ by written agreement with the individual employee, ~~unless 7 days' notice has been given~~(In the event a notice period is included, we propose a 28-day notice period). A copy of the agreement will be provided to the employee at the time it is made and recorded by the employer in the employee's time and wages record.*
- 16.3 *Clause 16 also applies to shift rosters.*
- 16.4 *Clause 16 is subject to Clause 10 (Part-time employees).*

TCF AWARD

Types or modes of employment

57. Clause 8 (Types of Employment) of the TCF Award provides:

8. Types of employment

8.1 *Employees under this award will be employed in one of the following categories:*

- (a) *full-time*
- (b) *part-time; or*
- (c) *casual.*

59. Clause 8 contains no obligation on the employer to provide any written confirmation to an employee regarding their type of employment, either at the time of engagement or when the type of employment changes (for example, from casual to permanent, or from part-time to full-time).

60. For the reasons we outlined above in relation to the DC&LI Award, the inclusion of a term which addresses this limitation would improve transparency in the mode of employment under which an employee is engaged and therefore which specific provisions of the TCF award apply to regulate that particular employee's engagement. In our submission, this would facilitate certainty and aid award compliance, two aspects of predictability and security in work.

61. We submit that is necessary to vary clause 8 of the TCF Award to ameliorate this issue and ensure consistency with the amended Object of the Act and MAO in s.134(1)(aa). The proposed variation to clause 8 of the TCF Award is outlined below (**highlighted in red**):

Proposed variation to clause 8

8. Types of employment

8.1 *Employees under this award will be employed in one of the following categories:*

- (a) *full-time*
- (b) *part-time; or*

(c) *casual.*

8.2 At the time of engagement an employer must inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. This will then be recorded in the time and wages record of the employee.

8.3 When an employee's employment type subsequently changes by agreement between the employee and an employer, the employer must confirm such change in writing (specifying the details of the change) at the time of the alteration. This will then be recorded in the time and wages record of the employee.

Agreed regular patterns of work or guaranteed hours for part-time employees

60. Clause 10 (Part-time employees) of the TCF Award provides as follows:

10. Part-time employees

10.1 *A part-time employee is a day worker or shiftworker who:*

- (a) is engaged to work less than 38 hours per week;*
- (b) has predictable hours of work; and*
- (c) receives, on a pro rata basis, equivalent pay and conditions of those full-time employees who do the same kind of work.*

10.2 *A part-time employee may be employed in any skill level of this award.*

10.3 *At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.*

10.4 *Any variation to the regular pattern of work must be agreed and recorded in writing in accordance with clause 7.*

10.5 *An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on any day or any shift.*

10.6 *An employer must not require a part-time employee to attend for duty more than once on any one day.*

10.7 *All time worked in excess of the hours mutually agreed in accordance with clauses 10.3 and 10.4 will be overtime and paid at the rates prescribed in clause 28-Overtime.*

10.8 *A part-time employee must be paid at least:*

(a) *if time workers: at the ordinary hourly rate prescribed for the appropriate skill level for the work performed; or*

(b) *if payment by results workers: at the appropriate payment by results system rate in accordance with clause 21-Payment by results (PBR), provided that the payment is not less than the hourly rate for their skill level for the time worked.*

[Note: clauses 10.9, 10.10 and 10.11 not reproduced here]

62. Whilst clause 10 of the TCF Award is a relatively comprehensive provision regulating part-time employment in the TCF industry, there a number of terms discussed below which require variation to strengthen certainty, predictability and security of work and income. These limitations are discussed below and are similar to those raised with respect to the part-time employment clause in the DC&LI award.
63. *Firstly*, clause 10.1(a) of the TCF Award contains no minimum number of hours per week guaranteed for a part-time employee.
64. *Secondly*, clause 10.2 of the TCF Award, on its face could be read literally as if there is a discretion as to what skill level/classification a part-time employee can be engaged at under the award, whereas such employee should be classified at the appropriate skill level taking into account the skills and tasks to be exercised by that employee and the descriptors on Schedules A and B.
65. *Thirdly*, clause 10.3 of the TCF Award (re: agreement at time of engagement), contains no express obligation on an employer to provide a copy of the part-time agreement to an employee at the time of engagement or recording such agreement in the employee's time and wages record.
66. *Fourthly*, clause 10.4 of the TCF Award (re: agreed variation to the regular pattern of work) contains no express obligation on an employer to provide a copy of the agreed variation to the part-time agreement at the time of such change or record such agreement in the employee's time and wages record.
67. *Fifthly*, clause 10.5 of the TCF Award, only contains a minimum engagement of 3 consecutive hours on any day or shift, noting a number of other modern awards contain a minimum engagement/payment of 4 hours or higher.

68. We note that Clause 10.4 of the TCF Award refers to agreement being made in accordance with Clause 7 (Facilitative provisions). We propose clarifying that this is a reference to Clause 7.5, which contains the procedure for seeking agreement, including translation and representation rights.

Proposed variation to clause 10

66. We propose a variation to clauses 10.1 to 10.5 as follows (**highlighted in red**):

10. Part-time employees

10.1 *A part-time employee is a day worker or shiftworker who:*

- (a) *is engaged to work less than 38 hours per week **but with a guarantee of a minimum of [X] hours per week;***
- (b) *has predictable hours of work; and*
- (c) *receives, on a pro rata basis, equivalent pay and conditions of those full-time employees who do the same kind of work.*

10.2 *A part-time employee may be employed in any skill level of this award **in accordance with clause 19-Minimum rates and Schedule A-Classifications/Skill Levels.***

10.3 *At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day. **A copy of the part-time agreement will be provided to the employee at the time of engagement and recorded by the employer in the employee's time and wages records.***

10.4 *Any variation to the regular pattern of work **(including the hours worked each day, the days of the week the employee will work and the actual starting and finishing times each day)** must be agreed and recorded in writing in accordance with clause 7.5. **A copy of the varied part-time agreement will be provided to the employee and recorded by the employer in the employee's time and wages record.***

10.5 *An employer is required to roster a part-time employee for a minimum of **4** consecutive hours on any day or any shift.*

10.6 *An employer must not require a part-time employee to attend for duty more than once on any one day **or any shift.***

10.7 *All time worked in excess of **or outside** the hours mutually agreed in accordance with clauses 10.3 and 10.4 will be overtime and paid at the rates prescribed in clause 28-Overtime.*

10.8 *A part-time employee must be paid at least:*

(a) *if time workers: at the ordinary hourly rate prescribed for the appropriate skill level for the work performed; or*

(b) *if payment by results workers: at the appropriate payment by results system rate in accordance with clause 21-Payment by results (PBR), provided that the payment is not less than the hourly rate for their skill level for the time worked.*

Minimum engagement/payment periods – Casual employees

67. Clauses 11.3 and 11.4 of the TCF Award provide as follows:

11.3 *A casual employee must be notified:*

(a) *upon initial engagement, that they are engaged as a casual employee; and*

(b) *upon any change of employment status, of their new employment status.*

11.4 *On each occasion a casual employee is required to work, the casual employee is entitled to a minimum payment for 3 hours' work.*

68. We submit that it is appropriate and necessary for clauses 11.3 and 11.4 of the TCF Award to be varied to:

(a) ensure internal consistency between clause 11.3 and clause 10.1 (as proposed to be varied by the CFMEU-MD) regarding the obligation to notify an employee in writing regarding their casual employment status or subsequent change;

(b) ensure that a copy of such written confirmation is provided to the casual employee and recorded in the employee's time and wages record;

(c) increase the minimum engagement for a casual employee from 3 hours to 4 hours per occasion.

Proposed variation to clause 11

69. We propose a variation to clauses 11.3 and 11.4 as follows (**highlighted in red**):

11.3 *A casual employee must be notified **in writing**:*

(a) *upon initial engagement, that they are engaged as a casual employee; and*

(b) *upon any change of employment status, of their new employment status.*

A copy of the written notification required in clause 11.3 (a) and (b) must be kept by the employer as part of the employee's time and wages record.

11.4 *On each occasion a casual employee is required to work, the casual employee is entitled to a minimum payment for 4 hours' work.*

Clause 15 (Classifications)

70. Clause 15 of the TCF Award provides as follows:

15. Classifications

15.1 *Employees will be classified in accordance with clause 19-Minimum rates and Schedule A-Classification/Skill Levels.*

15.2 *Upon request by an employee, an employer must advise employees in writing of their classification:*

(a) *at the time of commencement; and*

(b) *at the time of any change to the employee's classification during the course of the employee's employment.*

71. We submit that it is appropriate and necessary to vary clause 15 of the TCF Award to make it consistent with the new MAO in order to:

- ensure that an employee (without the necessity to make a specific request) is provided written confirmation of their classification at the time of commencement, and at the time of any subsequent change(s) to their classification; and
- the employee's classification is recorded as part of the employee's time and wages record.

72. Certainty (at all relevant times) regarding an employee's classification under the award is critical to ensuring that employees are classified and paid correctly. Such clarity has obvious consequences for income and job security for low paid employees who are award dependent.

Proposed variation to clause 15

73. We propose a variation to clause 15 as follows (highlighted in red):

15. Classifications

15.1 *Employees will be classified in accordance with clause 19-Minimum rates and Schedule A-Classification/Skill Levels.*

15.2 *An employer **must** advise employees in writing of their classification:*

(a) *at the time of commencement; and*

(b) at the time of any change to the employee's classification during the course of the employee's employment.

The details of the employee's classification under clause 15.2(a) and (b) above must be recorded in the employee's time and wages record.

Clause 16 (Ordinary hours of work)

74. Clause 16.3 of the TCF Award provides:

16.3 Changes to hours

- (a) Where the employer and a majority of employees agree, in accordance with clause 7.4:*
- (i) Starting and finishing times may be altered by up to one hour at either end of the spread of hours.*
 - (ii) The number of hours in a day that may be worked without the payment of overtime may be changed. However, the ordinary hours of work must not exceed 10 hours on any day.*

(b)The starting and/or finishing times in any factory or part of any factory will not be altered without agreement between the employer and a majority of employees in accordance with clause 7.4 or after 7 days' notice to affected employees. [emphasis added]

75. We submit that the capacity of an employer to unilaterally change the starting and/or finishing times by one hour at either end is not conducive to regularity and predictability of hours of work. The provision of 7 days' notice of such change is arguably an inadequate period of notice for many employees to accommodate the changed hours of work in context of family/caring responsibilities, including childcare arrangements. This invariably has a disproportionate impact on women workers who often have the primary responsibility for caring for children or otherwise have familial caring responsibilities (including for other family members). This is inconsistent with the amended object of the Act in the promotion of job security and gender equality and the new MAO.

Proposed variation to clause 16

76. We propose the following variation to clause 16.3 of the TCF Award (**highlighted in red**):

16.3 Changes to hours

- (a) Where the employer and a majority of employees agree, in accordance with clause 7.4:**
- (i) Starting and finishing times may be altered by up to one hour at either end of the spread of hours.**
 - (ii) The number of hours in a day that may be worked without the payment of overtime may be changed. However, the ordinary hours of work must not exceed 10 hours on any day.**

- (b)** *The starting and/or finishing times in any factory or part of any factory will not be altered without **written** agreement between the employer and a majority of employees in accordance with clause 7.4 or after 7 days' notice to affected employees. (In the event a notice period is included, we propose a 28-day notice period). A copy of the agreement will be provided to the employee at the time it is made and recorded by the employer in the employee's time and wages record.*

TIMBER AWARD

Types or modes of employment

77. Clause 9 (Types of employment) of the Timber Award provides as follows;

9. Types of employment

9.1 *Employees under this award will be employed in one of the following categories:*

- (a) full-time*
- (b) part-time*
- (c) piecework (see clause 13-Piecework-General Timber Stream); or*
- (d) casual*

78. Clause 9 of the Timber Award contains no obligation on the employer to provide any written confirmation to an employee regarding their type of employment, either at the time of engagement or when the type of employment changes (for example, from casual to permanent, or from part-time to full-time).

79. For the reasons we outlined above in relation to the DC&LI Award and the TCF Award, the inclusion of a term which addresses this limitation would improve transparency in the mode of employment under which an employee is engaged and therefore which specific provisions of the Timber Award apply to regulate that particular employee's engagement. In our submission, this would facilitate certainty of employment status and aid award compliance, two aspects of predictability and security in work.

80. We submit that it is necessary to amend clause 9 of the Timber Award to be varied to ameliorate this issue and ensure consistency with the new MAO in s.134(1)(aa).

Proposed variation to clause 9

81. The proposed variation to clause 9 of the Timber Award is outlined below (**highlighted in red**):

9. Types of employment

9.1 *Employees under this award will be employed in one of the following categories:*

- (a) full-time*

- (b) *part-time*
- (c) *piecework (see clause 13-Piecework-General Timber Stream); or*
- (d) *casual*

9.2 At the time of engagement an employer must inform each employee in writing of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. This will then be recorded in the time and wages record of the employee.

9.3 When an employee's employment type subsequently changes by agreement between the employee and an employer, the employer must confirm such change in writing (specifying the details of the change) at the time of the alteration. This will then be recorded in the time and wages record of the employee.

Agreed regular patterns of work or guaranteed hours for part-time employees

82. Clause 11 (Part-time employees provides as follows:

11. Part-time employees

11.1 *A part-time employee:*

- (a) *is engaged to work less than an average of 38 ordinary hours per week; and*
- (b) *has a regular pattern of hours.*

11.2 *Before commencing part-time employment, the employee and the employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.*

11.3 *The terms of the part-time work and any agreed variation will be recorded in writing and retained by the employer. The employer will provide a copy of the agreement and variation to it to the employee.*

11.4 *An employer is required to roster a regular part-time employee for a minimum of 3 hours consecutive hours on any shift.*

11.5 *A part-time employee will be paid at the minimum hourly rate for the grade of work performed.*

11.6 *Subject to clause 11, all of the provisions of this award will apply to a part-time employee.*

83. We submit that a number of terms in clause 11 of the Timber Award necessitate variation to strengthen certainty, predictability and security of work and income. Some of these concerns (outlined below) are similar in nature to those raised with respect to the part-time employment clause in the DC&LI Award and the TCF Award.
84. *Firstly*, clause 11.1(a) of the Timber Award contains no minimum number of hours per week guaranteed for a part-time employee.
85. *Secondly*, clause 11.3 of the Timber Award (regarding confirmation of the part-time agreement and any variations to it) does require the employer to retain a record and provide a copy to the employee. However, clause 11.3 does not expressly require that the retention by the employer of the agreement (and any variations to it) is to be done in the form of the employee's time and wages record. Additionally, there is no express requirement that the retention of such record by the employer and the provision of a copy of it to the employee, must be made contemporaneously with the substantive obligations.
86. *Thirdly*, clause 11.4 of the Timber Award, only provides for a minimum engagement of 3 consecutive hours on any shift, noting a number of other modern awards contain a minimum engagement/payment of 4 hours or higher.
87. We submit that it is necessary to vary clause 11 of the Timber Award to ameliorate these issues and ensure consistency with the amended Object of the Act and MAO in s.134(1)(aa).

Proposed variation to clause 11

88. The proposed variations to clause 11 of the Timber Award is outlined below (**highlighted in red**):
- 11. Part-time employees**
- 11.1** *A part-time employee:*
- (a) *is engaged to work less than an average of 38 ordinary hours per week **but with a guarantee of a minimum of [X] hours per week; and***
- (b) *has a regular pattern of hours.*

- 11.2** *Before commencing part-time employment, the employee and the employer must agree upon the hours to be worked by the employee, the days upon which they will be worked and the starting and finishing times for the work.*
- 11.3** *The terms of the part-time work and any agreed variation will be recorded in writing and **recorded and** retained by the employer **in the employee's time and wages record**. The employer will provide a copy of the agreement and **any variation(s)** to it to the employee **at the time the part-time agreement is made and at the time(s) of any variation(s)**.*
- 11.4** *An employer is required to roster a regular part-time employee for a minimum of **4** hours consecutive hours on any **day or** shift.*
- 11.5** *A part-time employee will be paid at the minimum hourly rate for the grade of work performed.*
- 11.6** *Subject to clause 11, all of the provisions of this award will apply to a part-time employee.*

Clause 16 (Classifications)

89. Clause 16 of the Timber Award provides as follows:

16. Classifications

The definitions of the classification levels in clause 20-Minimum rates, are contained in Schedule A-Classification Definitions-General Timber Stream, Schedule B-Classification Definitions-Wood and Timber Furniture Stream and Schedule C-Classification Definitions-Pulp and Paper Stream.

90. As is evident, clause 16 essentially operates as sign-post term which directs users of the Timber Award to the relevant schedules where the classification descriptors for each of the 3 streams is located.
91. There is no express obligation in clause 16 for an employer to advise an employee in writing of which classification they are to be engaged at the time of commencement or where there is a change in classification subsequently.
92. For the reasons we have outlined above with respect to the DC&LI Award and the TCF Award, we submit that all employees should be advised in writing of both the commencing classification and if

there are any changes to an employee's classification. Further, we submit that such written confirmation should occur contemporaneously with the commencement of employment and at the time of any alteration.

Proposed variation to clause 16

93. The proposed variations to clause 16 of the Timber Award is outlined below (**highlighted in red**):

16. Classifications

- 16.1** *The definitions of the classification levels in clause 20-Minimum rates, are contained in Schedule A-Classification Definitions-General Timber Stream, Schedule B-Classification Definitions-Wood and Timber Furniture Stream and Schedule C-Classification Definitions-Pulp and Paper Stream.*
- 16.2** *All employees covered by this award must be classified according to either Schedule A, Schedule B or Schedule C (as relevant to the stream in which the employee is engaged) together with any relevant Definitions of job roles contained in clause 2 (Definitions).*
- 16.3** *An employer must advise their employees in writing of their classification (at the time of engagement) and any changes to their classification (at the time of the change). The details of the employee's classification (including any changes) will be recorded by the employer in the employee's time and wages records.*

Submitted on behalf of the:

**Construction, Forestry and Maritime Employees Union
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