



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

(AM2014/250 and others)  
Award Stage – Group 4 Awards

(AM2014/264)  
Dry Cleaning and Laundry Industry Award 2010

**Submission in relation to Exposure Draft for the  
Dry Cleaning and Laundry Industry Award 2010**

**Textile, Clothing and Footwear Union of Australia  
(18 January 2017)**

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2014 AWARD REVIEW  
(AM2014/250 and others)  
AWARD STAGE – GROUP 4

(AM2014/264)  
DRY CLEANING AND LAUNDRY INDUSTRY AWARD 2010

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Dry Cleaning and Laundry Industry Award 2010

**TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA**

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**1. BACKGROUND**

- 1.1 The Textile, Clothing and Footwear Union of Australia ('TCFUA') files these submissions in accordance with the Statement and Directions<sup>1</sup> issued by the Fair Work Commission ('Commission') on 26 August 2016.
- 1.2 The Statement and Directions directed interested parties to provide submissions on drafting and technical issues in Group 4D, E and F exposure drafts (other than those being dealt with as part of Plain language exercise).<sup>2</sup>
- 1.3 On 3 November 2016, the Commission published an Exposure Draft for the Dry Cleaning and Laundry Industry Award 2010 ('DC&LI Award').<sup>3</sup> The preface to the Exposure Draft states:
- 'This exposure draft has been prepared by staff of the Fair Work Commission based on the Dry Cleaning and Laundry Industry Award 2010 (the Laundry award). This exposure draft does not seek to amend any entitlements under the Laundry Award but has been prepared to address some of the structural issues identified in modern awards.*
- The review of this award in accordance with s.156 of the Fair Work Act 2009 is being dealt with in matter AM2014/264. Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.*
- This draft does not represent the concluded view of the Commission in this matter.'*
- 1.4 The TCFUA's submissions are directed to providing a response to the Exposure Draft for the DC&LI Award in which the TCFUA has a primary interest.

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<sup>1</sup> (AM2014/250 and others), Statement and Directions [2016] FWC 6062 (26 August 2016)

<sup>2</sup> Ibid; at para [11]

<sup>3</sup> Exposure Draft: Dry Cleaning and Laundry Industry Award 2010 [MA000096] (3 November 2016)

## **2. EXPOSURE DRAFT – DC&LI AWARD**

**2.1** Attached is a table outlining the TCFUA's submissions in relation to specific provisions of the Exposure Draft for the DC&LI Award.

Filed on behalf of:

Textile, Clothing and Footwear Union of Australia

18 January 2017

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(AM2014/250 and others) – Group 4 Awards

(AM2014/264) Dry Cleaning and Laundry Industry Award 2010 – Exposure Draft (3 November 2016)

**SUBMISSION OF THE TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA (18 January 2017)**

<p><b>DC&amp;LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)</b></p>	<p><b>TCFUA SUBMISSIONS</b>                  *reference to ‘DC&amp;LI Award’ (Dry Cleaning and Laundry Industry Award 2010)</p>
<p><b>TABLE OF CONTENTS</b></p>	
<p>Table of Contents  [pp 1-2]</p>	<p><b>Under heading ‘Part 4 – Wages and Allowances’</b></p> <ul style="list-style-type: none"> <li>• The TCFUA submit that it would assist in the useability of the DC&amp;LI Award, if the heading of Part 4 was amended to read ‘Wages, Allowances and <u>Superannuation</u>’.</li> <li>• Superannuation entitlements are an important award safety net condition, however, in the TCFUA’s experience it is an area of common non-compliance by employers.</li> <li>• The inclusion of the word ‘Superannuation’ in the main heading of Part 4 would act as a helpful signpost to users of the DC&amp;LI Award as to where the relevant ‘superannuation’ provision is located.</li> <li>• The TCFUA submits that such an amendment would assist award dependent employees in the dry cleaning and laundry industry, a large number of whom do not have English as their first language.</li> </ul>
<p><b>PART 1 – APPLICATION AND OPERATION OF THIS AWARD</b></p>	
<p>Clause 7 Facilitative provisions for flexible work practices  [p 8]</p>	<p><b>Clause 7 [7.1]</b></p> <ul style="list-style-type: none"> <li>• The Exposure Draft includes a new clause 7 (Facilitative provisions for flexible working practices).</li> <li>• The current DC&amp;LI Award currently contains no substantive facilitative provision, however provides for facilitation within the body of various specific clauses.</li> <li>• A previous Full Bench (Group 1A and 1B Awards) considered the issue of the inclusion of an index of facilitative provisions in awards – see [2014] FWCFB 9412 (23 December 2014)<sup>1</sup></li> <li>• Clause 7.1 of the Exposure Draft provides a new preamble before a new Index of facilitative provisions in clause 7.2. The preamble states:  <i>‘A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.’</i></li> <li>• The TCFUA has previously submitted that this formulation is potentially ambiguous, to mean that facilitative provisions allow for award terms to be departed from by <i>either</i> individual agreement or majority agreement i.e. that</li> </ul>

<sup>1</sup> (AM2014/1 and others) [2014] FWCFB 9412 (23 December 2014) at paras [37] – [43]

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DC&LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)	TCFUA SUBMISSIONS *reference to 'DC&LI Award' (Dry Cleaning and Laundry Industry Award 2010)
	<p>both forms of facilitation are available in relation to a particular provision. Whilst clause 7.2 includes a third column headed 'Agreement between an employer and..' it does not alter the potential ambiguity inherent in clause 7.1.</p> <ul style="list-style-type: none"> <li>• The Full Bench in [2014] FWCFB 9412 left open the possibility of amendment of the introductory words to accommodate the nature of the facilitative provisions in a particular award.<sup>2</sup> Unlike some other modern awards which contain provisions which provide two options, in the DC&amp;LI Award the specific clauses which provided for facilitation are <u>only</u> by individual agreement or majority agreement i.e. only one option is available.</li> <li>• If however, the Full Bench ultimately determines to retain the Preamble in its current form, the TCFUA proposes that the opening sentence in clause 7.2 (which occurs before the actual table of facilitative provisions) be amended in the following way: <p style="margin-left: 40px;"><i>'7.2 – Facilitative provisions in this award are contained in the following clauses. <u>Each facilitative provision can only be used in the circumstances listed in the right hand column below.</u></i> [proposed additional text underlined]</p> </li> <li>• The TCFUA submits that with the proposed amendment to clause 7.2, there is less likelihood that clause 7 will be misunderstood as regards the nature of facilitative provisions and on what basis they can operate (i.e. individual or majority agreement).</li> </ul> <p><b>Clause 7 [7.2]</b></p> <ul style="list-style-type: none"> <li>• A new clause 7.2 states 'Facilitative provisions in this award are contained in the following clauses' and lists 6 specific terms of the award – clauses 14.9, 17.2(b), 22.3, 23.4, 25.4 and 22.5</li> <li>• Clause 14.9 is described as 'Ordinary hours of work – laundry workplaces – rostered days off'. The TCFUA submits that a more accurate description of 14.9 is 'Ordinary hours of work – laundry workplaces – <u>substitution of a rostered day off</u>'</li> <li>• Clause 22.3 is described as 'Time off instead of payment for overtime'. Whilst the clause reference (22.3) is correct in the table in 7.2, the TCFUA notes that the current clause 22.2 in the DC&amp;LI Award has since been deleted and replaced with the Model (TOIL at overtime rates) term.<sup>3</sup></li> </ul>

<sup>2</sup> Ibid; at para [43]

<sup>3</sup> (AM2014/300) Award Flexibility. Determination for Dry Cleaning and Laundry Industry Award 2010, PR585793, 14 December 2016.

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**SUBMISSION OF THE TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA (18 January 2017)**

DC&LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)	TCFUA SUBMISSIONS *reference to 'DC&LI Award' (Dry Cleaning and Laundry Industry Award 2010)
<b>PART 2 – TYPES OF EMPLOYMENT AND CLASSIFICATIONS</b>	
<p>Clause 11 Casual employment</p> <p>[pp 9-10]</p>	<p><b>Clause 11 (Casual employment)</b></p> <ul style="list-style-type: none"> <li>• Clause 11 of the Exposure Draft has restructured, and amended the current clause 10.5, DC&amp;LIA.</li> <li>• Clause 10.5(c), DC&amp;LI Award provides: '10.5(c) <i>A casual employee must be paid an hourly rate of 1/38<sup>th</sup> of the weekly rate prescribed for the appropriate classification plus a loading of 25% for <u>all</u> hours worked.'</i> [our emphasis]</li> <li>• Clause 11.4 of the Exposure provides: '11.4 <i>A casual employee must be paid at the minimum hourly rate prescribed for the appropriate classification plus a loading of 25% for all <u>ordinary</u> hours worked.'</i> [our emphasis]</li> <li>• It is submitted that the deletion in the Exposure Draft of the word 'all' currently contained in clause 10.5 is a material change which goes to the substantive rights of casual employees under the award. The effect of the deletion would imply that a casual is entitled to a 25% casual loading only for working ordinary hours. The TCFUA rejects any such interpretation and submits that the word 'all' be reinserted in clause 11.4 of the Exposure Draft, and the word 'ordinary' deleted.</li> </ul>
<b>PART 3 – HOURS OF WORK</b>	
<p>Clause 13 Ordinary hours of work – dry cleaning workplaces</p> <p>[p 10]</p>	<p><b>Clause 13 (Ordinary hours of work – dry cleaning workplaces)</b></p> <ul style="list-style-type: none"> <li>• Clause 21.1(a) of the DC&amp;LI Award currently provides: '21.1(a) - <i>The ordinary hours of work will average 38 hours per week.'</i></li> <li>• Clause 21.1(a) is then followed by 21.1(b) which sets out the spread of hours in which ordinary hours may be worked.</li> <li>• Clause 13.1 of the Exposure Draft provides: '13.1 - <i>The ordinary hours of work for a <u>full-time employee</u> will average 38 hours per week'</i> [our emphasis]</li> <li>• Clause 13.1 is similarly followed by 13.2 which sets out the spread of hours in which ordinary hours may be worked.</li> <li>• A potential consequence of the inclusion of the words 'full time employee' in 13.1 of the Exposure Draft is that 13.2 (which sets out the spread of hours) may be read as only applying to full time employees when viewed in</li> </ul>

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	<p>conjunction with 13.1. This would be in error as the spread of hours is applicable to all employees covered by the DC&amp;LI Award.</p> <ul style="list-style-type: none"> <li>For this reason, the TCFUA submits that the words ‘full time employee’ should be deleted from 13.1 of the Exposure Draft.</li> </ul>
<b>PART 4 – WAGES AND ALLOWANCES</b>	
<p>Heading of Part</p> <p>[p 12]</p>	<p><b>Part 4 – Wages and Allowances</b></p> <ul style="list-style-type: none"> <li>The TCFUA refers to its submission above in regard to the ‘Table of Contents’</li> <li>For the reasons outlined there, the TCFUA submits that the useability of the award would be assisted if the heading of Part 4 was amended to read ‘Part 4 – Wages, Allowances and Superannuation’</li> </ul>
<p>Clause 18 Minimum Wages</p> <p>[p 12]</p>	<p><b>Clause 18.1 – Minimum wages</b></p> <ul style="list-style-type: none"> <li>Clause 14.1 of the DC&amp;LI Award provides: <i>‘14.1 – An employer must pay full-time employees weekly wages for ordinary hours (exclusive of penalties and allowances) as follows;’</i></li> <li>Clause 18.1 of the Exposure Draft has changed this formulation to read: <i>‘18.1 - An employer must pay full-time employees weekly wages for ordinary hours <u>worked by the employee</u> (exclusive of penalties and allowances).’ [our emphasis]</i></li> <li>The inclusion of the words ‘worked by the employee’ in clause 18.1 may have potential consequences for the position of employees who have been prevented from performing work due to circumstances of an unlawful stand down. In such cases, an employee may still have a legal right to be paid their wages for the day/s in question.</li> <li>For these reasons, the TCFUA submits that the words ‘worked by the employee’ should be deleted.</li> </ul>
<p>Clause 19 Allowances</p> <p>[pp 16 – 18]</p>	<p><b>Clause 19 (Allowances)</b></p> <ul style="list-style-type: none"> <li>The Full Bench decision [2015] FWCFB 4658<sup>4</sup> at paragraph [55] noted that ‘Regulations 3.33(3) and 3.46(1) (g) of the Fair Work Regulations 2009 state that an employer must separately identify an allowance’. In this regard, the Full Bench held:</li> </ul>

<sup>4</sup> (AM2014/1 and others) [2015] FWCFB 4658 (13 July 2015)

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	<p><i>'[57] To ensure that employers are meeting their obligations under these Regulations, a note will be inserted into the exposure draft drawing attention to these Regulations and to the fact that employers must separately identify any allowance on a pay record.'</i><sup>5</sup></p> <ul style="list-style-type: none"> <li>The TCFUA notes that such a note is not contained in either clause 19 (Allowances) or Schedule D (Summary of Monetary Allowances) of the Exposure Draft, consistent with the statement of the Full Bench above.</li> </ul>
<b>PART 5 – OVERTIME AND PENALTY RATES</b>	
<p>Clause 22 Overtime</p> <p>[p 21]</p>	<p><b>Clause 22.3 (Time off instead of payment for overtime)</b></p> <ul style="list-style-type: none"> <li>The TCFUA notes that clause 22.2 (Time off instead of overtime) in the DC&amp;LI Award (on which clause 22.3 of the Exposure Draft) has since been varied by the inclusion of the Model (TOIL at overtime rates) term on 14 December 2016.<sup>6</sup></li> </ul>
<p>Clause 24 Shiftwork</p> <p>[p 23]</p>	<p><b>Clause 24.8 (Question by Commission)</b></p> <ul style="list-style-type: none"> <li>Clause 24.8 of the Exposure Draft provides: <i>'The variation to clause 24.1(a) made by the Fair Work Australia on 28 September 2012 but with effect from 1 January 2010, does not take effect so as to require any employee engaged on a morning shift to repay any component of the wages pertaining to the morning shift loading, paid in respect of the period 1 January 2010 to 28 September 2012, nor will it operate to vary any agreed shift rosters in place on 28 September 2012 in an enterprise covered by this award except where such variation is introduced in accordance with the provisions of clause 16 – Rostering arrangements.'</i></li> <li>Clause 24.8 is in relevantly identical terms to clause 23.10, DC&amp;LI Award, other than referring to a different clause numbers (23.2 and 21.4).</li> <li>The Exposure Draft asks a question of the parties as to whether clause 24.8 can be deleted?</li> </ul>

<sup>5</sup> Ibid; at para [57]

<sup>6</sup> (AM2014/300) Award Flexibility – PR585793 – Determination for the Dry Cleaning and Laundry Industry Award 2010 (14 December 2016)



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	<ul style="list-style-type: none"> <li>The TCFUA submits that clause 24.8 should remain as it still potentially has work to do. In relation to a possible claim on an employee to repay any component of wages relating to the morning shift loading, the period back to 28 September 2012 remains relevant for the purposes of the statute of limitations (6 years) which runs to 28 September 2018.</li> </ul>
<b>PART 8 – TERMINATION OF EMPLOYMENT AND REDUNDANCY</b>	
<p>Clause 35 Transfer to lower paid job on redundancy</p> <p>[p 30]</p>	<p><b>Clause 35 (Transfer to lower paid job on redundancy)</b></p> <ul style="list-style-type: none"> <li>Clause 35 of the Exposure Draft has a heading titled 'Transfer to lower paid job on redundancy'. This is a change from the current clause 12.2, DC&amp;LI Award 2010 which has a heading 'Transfer to lower paid duties'.</li> <li>It is unclear as to the rationale for the change in the heading of clause 35 of the Exposure Draft, particularly given that the term itself refers to a transfer 'to lower paid duties', creating an inconsistency between the heading and the term.</li> <li>The TCFUA submits that the word 'job' has a different characterisation from the word 'duties' and may have a different legal effect.</li> <li>In these circumstances, the TCFUA submits that the heading of clause 35 of the Exposure Draft should reflect the current wording of 'Transfer to lower paid duties' in clause 12.2, DC&amp;LI Award.</li> </ul>
<p>Clause 36 Employee leaving during redundancy notice period</p> <p>[p 30]</p>	<p><b>Clause 36 (Employee leaving during redundancy notice period)</b></p> <ul style="list-style-type: none"> <li>Clause 36 of the Exposure Draft provides: <i>'An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under clause 34 – Redundancy had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.'</i> [emphasis given]</li> <li>Clause 34 of the Exposure Draft provides: <i>'Redundancy pay is provided for in the NES.'</i></li> <li>The formulation in clause 36 of the Exposure Draft is different to that contained in clause 12.3 of the DC&amp;LI Award, which provides as follows:</li> </ul>

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	<p><i>'An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received <u>under this clause</u> has they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.'</i> [emphasis given]</p> <ul style="list-style-type: none"> <li>• The reference to 'under this clause' in clause 36, DC&amp;LI Award is broader in that it captures the following benefits and payments: <ul style="list-style-type: none"> <li>○ Redundancy pay [12.1]</li> <li>○ Transfer to lower paid duties [12.2]</li> <li>○ Employee leaving during notice period [12.3]</li> <li>○ Job Search entitlement [12.4]</li> </ul> </li> <li>• By contrast, clause 36 of the Exposure Draft is narrower, being expressly limited to: <ul style="list-style-type: none"> <li>○ Redundancy pay [34]</li> </ul> </li> <li>• The TCFUA submits that this may not have been the intention of the drafters of the Exposure Draft, but this change to the wording and structure of the Redundancy clause, does change the substantive effect of the provision.</li> </ul>
<p>Clause 37 Job Search entitlement  [p 30 - 31]</p>	<p><b>Clause 37 (Job search entitlement)</b></p> <ul style="list-style-type: none"> <li>• The Exposure Draft includes a new clause 37 (Job search entitlement) and which contains 2 sub-clauses: <ul style="list-style-type: none"> <li>○ [37.1] 'Job search entitlement for notice of termination of employment'</li> <li>○ [37.2] 'Job search entitlement – redundancy'</li> </ul> </li> <li>• Currently, under the DC&amp;LI Award the respective entitlements are contained in separate clauses as follows: <ul style="list-style-type: none"> <li>○ [11.3] 'Job search entitlement' located under clause 11 (Termination of Employment)</li> <li>○ [12.4] 'Job search entitlement' located under clause 12 (Redundancy)</li> </ul> </li> <li>• The TCFUA is not opposed to the additional information contained in each sub heading as provided for in the Exposure Draft in order to identify the different circumstances in which the entitlement is triggered.</li> <li>• However, the TCFUA submits that in terms of usability of the award, the distinct entitlements (which are different) should be contained in separate clauses, as is currently the case under the DC&amp;LI Award. We submit, for example, that an entitlement which relates to the circumstances of redundancy should logically be located under the</li> </ul>

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	<p>substantive clause of ‘Redundancy’ which is where readers would go to determine their rights and obligations in relation to redundancy.</p>
<p><b>SCHEDULE C – SUMMARY OF HOURLY RATES OF PAY</b></p>	
<p>Schedule C Summary of Hourly Rates of Pay  [p 36]</p>	<p><b>Schedule C (Note)</b></p> <ul style="list-style-type: none"> <li>• A new Schedule C (Summary of Hourly Rates of pay) has been inserted into the Exposure Draft.</li> <li>• A Note at the commencement of Schedule C provides: <i>‘NOTE: Employers who meet their obligations under this Schedule are meeting their obligations under the award’</i></li> <li>• The inclusion of the Note above was considered by the Full Bench in [2015] FWCFB 4658 in response to an issue raised by the Ai Group regarding the enforceability of the pay rates schedules. The Full Bench held: <i>‘[63] Contrary to Ai Group’s submission the schedules of hourly rates appended to most awards will be legally enforceable and a note will be inserted into the schedules stating ‘that employers who meet their obligations under this schedule are meeting their obligations under the award.’</i></li> <li>• On further reflection, the TCFUA submits that the Note in Schedule C is potentially misleading, in that it may imply that an employer meeting the obligations in relation to wage rates (under Schedule C) encompasses all the obligations under the award in respect to all other provisions. Although it is understood that this is not the intention, read literally, the Note has that potential meaning.</li> <li>• The TCFUA submits that for this reason, the Note should be deleted, or otherwise amended to remove the potential for readers to be misled regarding their rights and obligations under the DC&amp;LI Award.</li> </ul>
<p>Schedule C Summary of Hourly Rates of Pay  [Dry-cleaning employees]  [p 36]</p>	<p><b>Clause C.1 (Full-time and part-time adult dry cleaning employees)</b> <b>Clause C.1.2 (Full-time shiftworkers – ordinary and shiftwork rates) [TABLE]</b></p> <ul style="list-style-type: none"> <li>• The various tables in Schedule C do not contain cross references to the relevant substantive provisions in the body of the award.</li> <li>• Clause C.1.2 contains a column on the right hand side titled ‘Non-rotating shifts’, which is then broken into 2 further sub-columns titled ‘First 3 hours’ and ‘After first 3 hours’ respectively.</li> <li>• The TCFUA assumes that these columns relate to the substantive provision in clause 23.8, DC&amp;LI Award which provides:</li> </ul>

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	<p>'23.8 An employee in a dry cleaning workplace who works on any morning, afternoon or night shift <u>which does not continue for a period of three successive mornings, afternoons or nights</u> will be paid time and one half for the first three hours and then double time for the remaining period worked on each occasion.' [emphasis given]</p> <ul style="list-style-type: none"> <li>• The equivalent provision in the Exposure Draft is clause 24.6.</li> <li>• The TCFUA submits that the description in the column as 'non-rotating shifts' is an inaccurate description of the substantive provision in clause 23.8, DC&amp;LI Award. For example, a worker could be engaged on rotating shifts (Day/Afternoon/Night), however that rotation occurs on a weekly basis according to a monthly roster. In such a case, the worker would still be entitled to the entitlement in clause 23.8 as they are not working a particular shift on 'three successive mornings, afternoons or nights'.</li> <li>• If the Commission determines to retain the wording in the column as discussed above, then the TCFUA submits that a reference be made to the substantive provision, so that it is clear to the reader in what circumstances the entitlement in clause 23.8 DC&amp;LI is triggered.</li> </ul>
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[Laundry employees]</p> <p>[p 39]</p>	<p><b>Clause C.2 (Full-time and part-time adult laundry employees)</b> <b>Clause C.2.3 (Full-time shiftworkers – ordinary and shiftwork rates) [TABLE]</b></p> <ul style="list-style-type: none"> <li>• The issue identified in relation to the table in clause C.1.2 regarding the column headed 'Non-rotating shifts' applies similarly to the table in clause C.2.3 which applies to laundry employees.</li> <li>• The TCFUA assumes that the column headed 'Non-rotating shifts' etc. relate to the substantive provision in clause 23.7, DC&amp;LI Award which provides: '23.7 An employee in a laundry workplace who works on any morning, afternoon or night shift which does continue for at least five successive mornings, afternoons or nights in a five day workshop, or for at least six successive mornings, afternoons or nights in a six day workshop must be paid for the first three hours of each shift at time and a half. The remaining hours on each such shift must be paid at double time.'</li> <li>• The equivalent provision in the Exposure Draft is clause 24.5.</li> <li>• The TCFUA submits that the description in the column as 'non-rotating shifts' is an inaccurate description of the substantive provision in clause 23.7, DC&amp;LI Award. For example, a worker could be engaged on rotating shifts (Day/Afternoon/Night), however that rotation occurs on a weekly basis according to a monthly roster. In such a</li> </ul>

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	<p>case, the worker would still be entitled to the entitlement in clause 23.8 as they are not working a particular shift on at least 'five [or six as the case may be] successive mornings, afternoons or nights'.</p> <ul style="list-style-type: none"> <li>If the Commission determines to retain the wording in the column as discussed above, then the TCFUA submits that a reference be made to the substantive provision, so that it is clear to the reader in what circumstances the entitlement in clause 23.7, DC&amp;LI is triggered.</li> </ul>								
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[Laundry employees]</p> <p>[p39 – 40]</p>	<p><b>Clause C.2 (Full-time and part-time adult laundry employees)</b> <b>Clause C.2.4 (Full-time and part-time shiftworkers – penalty rates) [TABLE]</b></p> <ul style="list-style-type: none"> <li>The fifth column in C.2.4 is headed 'Public Holiday' plus a method of calculation of '250% of the minimum hourly rate'.</li> <li>The actual hourly rates for each classification level appear to be incorrect.</li> <li>The TCFUA has calculated that the correct hourly rates for work on a public holiday should be:</li> </ul> <table data-bbox="562 842 1245 970"> <tr> <td>Laundry employee Level 1</td> <td>\$44.88 (rather than \$44.25)</td> </tr> <tr> <td>Laundry employee Level 2</td> <td>\$46.48 (rather than \$45.53)</td> </tr> <tr> <td>Laundry employee Level 3</td> <td>\$48.50 (rather than \$46.18)</td> </tr> <tr> <td>Laundry employee Level 4</td> <td>\$49.72 (rather than \$48.90)</td> </tr> </table> <ul style="list-style-type: none"> <li>The TCFUA's calculations are based on the method of: e.g. 250% x \$17.95 (ordinary hourly rate for Laundry employee Level 1) = \$44.88</li> </ul>	Laundry employee Level 1	\$44.88 (rather than \$44.25)	Laundry employee Level 2	\$46.48 (rather than \$45.53)	Laundry employee Level 3	\$48.50 (rather than \$46.18)	Laundry employee Level 4	\$49.72 (rather than \$48.90)
Laundry employee Level 1	\$44.88 (rather than \$44.25)								
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Laundry employee Level 4	\$49.72 (rather than \$48.90)								
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[Dry cleaning employees]</p> <p>[p 40]</p>	<p><b>Clause C.3 (Casual adult employees)</b> <b>Clause C.3.1 (Casual employees other than shiftworkers – ordinary and penalty rates – Dry cleaning employees) [TABLE]</b></p> <ul style="list-style-type: none"> <li>Clause C.3.1 contains 4 columns titled: <ul style="list-style-type: none"> <li>'Ordinary hours' [125% of minimum hourly rate]</li> <li>'Saturday – ordinary hours worked before midday' [150% of minimum hourly rate]</li> <li>'Saturday – ordinary hours worked after midday' [175% of minimum hourly rate]</li> <li>Public holiday [275% of minimum hourly rate]</li> </ul> </li> </ul>								

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	<ul style="list-style-type: none"> <li>• The TCFUA submits that the rates of pay in the column 'Ordinary hours' are correct as the method of calculation reflects the substantive provision i.e. the 25% casual loading is added to the ordinary hourly rate for a casual employee.</li> <li>• However, the TCFUA submits that the wage rates contained in the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> columns are incorrect for each classification, as the method of calculation does not accurately reflect the substantive provisions of the DC&amp;LI Award.</li> <li>• It is evident that the method of calculation used by the Commission for each of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> columns is based on an approach whereby the 25% casual loading is not added upfront to the casual ordinary rate of pay, but rather subsequently added to the particular penalty as follows:             <ul style="list-style-type: none"> <li>○ 'Saturday – ordinary hours worked before midday' [25% added to 125% to make 150%]</li> <li>○ 'Saturday – ordinary hours worked after midday' [25% added to the 150% to make 175%]</li> <li>○ 'Public holiday '[25% added to 250% to make 275% ]</li> </ul> </li> <li>• The effect of employing this method is to produce an effective hourly rate which is less than if the 25% casual loading was added initially:             <p><i>For example (Dry cleaning employee Level 1) – 'Saturday – ordinary hours worked before midday'</i>  <i>\$17.70 per hour (ordinary rate of pay, <u>not</u> inclusive of 25% casual loading)</i>  <i>X 150% = \$26.55 per hour</i></p> <p><i>For example (Dry cleaning employee Level 1) – 'Saturday – ordinary hours worked after midday'</i>  <i>\$17.70 per hour (ordinary rate of pay, <u>not</u> inclusive of 25% casual loading)</i>  <i>X 175% = \$30.98</i></p> <p><i>For example (Dry cleaning employee Level 1) – 'Public Holiday'</i>  <i>\$17.70 per hour (ordinary rate of pay, <u>not</u> inclusive of 25% casual loading)</i>  <i>X 275% = \$48.68</i></p> </li> <li>• The TCFUA submits that this approach is inconsistent with the terms of the DC&amp;LI Award and represents a change in the legal effect of current substantive provisions.</li> <li>• The TCFUA submits that the correct method of calculation under the DC&amp;LI Award is the compounding method as follows:</li> </ul>

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DC&LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)	TCFUA SUBMISSIONS *reference to 'DC&LI Award' (Dry Cleaning and Laundry Industry Award 2010)
	<p><i>For example (Dry cleaning employee Level 1) – 'Saturday – ordinary hours worked before midday'</i>                      \$22.13 (ordinary rate of pay \$17.70 + 25% casual loading, \$4.425)                      X 125% = \$26.66</p> <p><i>For example (Dry cleaning employee Level 1) – 'Saturday – ordinary hours worked after midday'</i>                      \$22.13 (ordinary rate of pay \$17.70 + 25% casual loading, \$4.425)                      X 150% = \$33.20</p> <p><i>For example (Dry cleaning employee Level 1) – 'Public Holiday'</i>                      \$22.13 (ordinary rate of pay \$17.70 + 25% casual loading, \$4.425)                      X 250% = \$55.32</p>
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[Laundry employees]</p> <p>[pp 40 -41]</p>	<p><b>Clause C.3 (Casual adult employees)</b>  <b>Clause C.3.2 (Casual employees other than shiftworkers – ordinary and penalty rates – Laundry employees) [TABLE]</b></p> <ul style="list-style-type: none"> <li>• Clause C.3.2 is structured in relevantly similar terms to clause C.3.1, except that it contains different classifications for laundry employees and different hourly rates of pay.</li> <li>• The TCFUA submits that the rates of pay in the column 'Ordinary hours' are correct as the method of calculation reflects the substantive provision in the DC&amp;LI Award i.e. the 25% casual loading is added to the ordinary hourly rate for a casual employee.</li> <li>• However, in all other respects, clause C.3.2 uses the same erroneous method of calculation for casual employees in relation to:                         <ul style="list-style-type: none"> <li>○ 'Ordinary hours' [125% of minimum hourly rate]</li> <li>○ 'Saturday – ordinary hours worked before midday' [150% of minimum hourly rate]</li> <li>○ 'Saturday – ordinary hours worked after midday' [175% of minimum hourly rate]</li> <li>○ Public holiday [275% of minimum hourly rate]</li> </ul> </li> <li>• The TCFUA repeats and relies on its submissions in respect to clause C.3.1 as being equally applicable to clause C.3.2.</li> </ul>
Schedule C	<b>Clause C.3 (Casual adult employees)</b>

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DC&LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)	TCFUA SUBMISSIONS *reference to 'DC&LI Award' (Dry Cleaning and Laundry Industry Award 2010)
<p>Summary of Hourly Rates of Pay</p> <p>[Dry cleaning employees] [p 41]</p>	<p><b>Clause C.3.3 (Casual shiftworkers – ordinary and penalty rates – Dry cleaning employees)</b></p> <ul style="list-style-type: none"> <li>• Clause C.3.3 contains 8 columns titled: <ul style="list-style-type: none"> <li>○ Ordinary hours</li> <li>○ Morning, afternoon or night shift</li> <li>○ Permanent night shift</li> <li>○ Saturday – ordinary hours worked before midday <ul style="list-style-type: none"> <li>(a) Saturday – ordinary hours worked after midday</li> </ul> </li> <li>○ Public holiday</li> <li>○ Non-rotating shifts (split into 2 further columns - First 3 hours)</li> <li>○ Non rotating shifts (split into 2 further columns - After 3 hours)</li> </ul> </li> <li>• The TCFUA submits that the rates of pay in the column 'Ordinary hours' are correct as the method of calculation reflects the substantive provision in the DC&amp;LI Award i.e. the 25% casual loading is added to the ordinary hourly rate for a casual employee.</li> <li>• However, in all other respects, clause C.3.3 uses the same erroneous method of calculation (as in C.3.1 and C.3.2) for casual employees in relation to: <ul style="list-style-type: none"> <li>○ Morning, afternoon or night shift [115% + 25% to equal 140%]</li> <li>○ Permanent night shift [130% + 25% to equal 155%]</li> <li>○ Saturday – ordinary hours worked before midday [125% + 25% to equal 150%]</li> <li>○ Saturday – ordinary hours worked after midday [150% + 25% to equal 175%]</li> <li>○ Public holiday [250% + 25% to equal 275%]</li> <li>○ Non-rotating shifts (split into 2 further columns - First 3 hours) [150% + 25% = 175%]</li> <li>○ Non rotating shifts (split into 2 further columns - After 3 hours) [200% + 25% = 225%]</li> </ul> </li> <li>• The TCFUA repeats and relies on its submissions in respect to clause C.3.1 and C.3.2 as being equally applicable to clause C.3.3.</li> <li>• The TCFUA also repeats and relies on its earlier submissions in relation to clause C.2.3 regarding the characterisation of the column headed 'Non-rotating shifts' (further broken down into 2 sub-columns 'First 3 hours' and 'After 3 hours') as being potentially misleading.</li> </ul>



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DC&LI AWARD 2010 EXPOSURE DRAFT (3 Nov 2016)	TCFUA SUBMISSIONS *reference to 'DC&LI Award' (Dry Cleaning and Laundry Industry Award 2010)
<p>Schedule C Summary of Hourly Rates of Pay</p> <p>[Laundry employees] [p 42]</p>	<p><b>Clause C.3 (Casual adult employees)</b> <b>Clause C.3.4 (Casual shiftworkers – ordinary and penalty rates – Laundry employees)</b></p> <ul style="list-style-type: none"> <li>• Clause C.3.4 is structured in relevantly similar terms to clause C.3.3, except that it contains different classifications for laundry employees and different hourly rates of pay.</li> <li>• The TCFUA submits that the rates of pay in the column 'Ordinary hours' are correct as the method of calculation reflects the substantive provision in the DC&amp;LI Award i.e. the 25% casual loading is added to the ordinary hourly rate for a casual employee.</li> <li>• However, in all other respects, clause C.3.4 uses the same erroneous method of calculation (as in C.3.1, C.3.2, C.3.3) for casual employees in relation to:             <ul style="list-style-type: none"> <li>○ Morning, afternoon or night shift [115% + 25% to equal 140%]</li> <li>○ Permanent night shift [130% + 25% to equal 155%]</li> <li>○ Saturday – ordinary hours worked before midday [125% + 25% to equal 150%]</li> <li>○ Saturday – ordinary hours worked after midday [150% + 25% to equal 175%]</li> <li>○ Public holiday [250% + 25% to equal 275%]</li> <li>○ Non-rotating shifts (split into 2 further columns - First 3 hours) [150% + 25% = 175%]</li> <li>○ Non rotating shifts (split into 2 further columns - After 3 hours) [200% + 25% = 225%]</li> </ul> </li> <li>• The TCFUA repeats and relies on its submissions in respect to clause C.3.1, C.3.2, C.3.3 as being equally applicable to clause C.3.4.</li> <li>• The TCFUA also repeats and relies on its earlier submissions in relation to clause C.2.3 regarding the characterisation of the column headed 'Non-rotating shifts' (further broken down into 2 sub-columns 'First 3 hours' and 'After 3 hours') as being potentially misleading.</li> </ul>