

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission
Construction Awards
(AM2016/23)

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Ai
GROUP

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CONSTRUCTION AWARDS

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this submission in relation to the Full Bench Decision of 26 September 2018¹ (**Decision**).
2. This submission outlines Ai Group's position on provisional views expressed by the Full Bench regarding the *Building and Construction General On-Site Award 2010* (**Building Award**), the *Joinery and Building Trades Award 2010* (**Joinery Award**), the *Mobile Crane Hiring Award 2010* (**Mobile Crane Award**) and the *Plumbing and Fire Sprinklers Award 2010* (**Plumbing Award**).

2. LIVING AWAY FROM HOME – CLAUSE 24²

3. The CFMMEU had proposed a replacement clause 24 for the Building Award, with the same terms applied to the Joinery Award and Mobile Crane Award.
4. On 17 August 2017, the Full Bench determined a provisional view which the parties had the opportunity to respond to. In this decision, the Full Bench decided upon the form of the clause. In doing so, it also found that subclauses 24.4, 24.5 and 24.6 of the Building Award needed to be *clarified and simplified*.³ The clauses relate to the Messing System, Camping Allowance and Camp Meal Charges.
5. The Full Bench has expressed a further provisional view that two new subclauses should be created:
 - a) Reimbursement of meal expenses for living in camp; and

¹ [2018] FWCFB 6019.

² Para 151-152 of the Decision.

³ Para 150 of the Decision.

- b) Camp Conditions.
6. The proposed subclauses are consistent with the Decision and Ai Group has no objection to the proposed clauses replacing subclauses 24.4, 24.5 and 24.6 of the current Building Award.

3. COVERAGE AND CLASSIFICATION ISSUES⁴

Testing work

7. The AWU is seeking to vary the classification structure in Schedule B of the Building Award to include employees who are engaged to perform testing work on soil, concrete and aggregate within classification CW/ECW2 level.
8. Whilst the Full Bench has not accepted the AWU's proposed variation, the parties have been asked to address the fact that paragraph 4.10(b)(v) of the Building Award contemplates coverage of construction materials testing without there being a corresponding classification or rate of pay for the performance of such work.
9. Ai Group's view is that a variation to the classification structure of the Building Award would create confusion as to the appropriate award which should apply. In light of this, Ai Group supports the removal of paragraph 10.4(b)(v).
10. The *Manufacturing and Associated Industries and Occupations Award 2010* (**Manufacturing Award**) includes occupational coverage of "technical workers", an expression defined in the Award to include "physical testing".

Utility Locator

11. Mr Walsh had proposed a change to the Building Award to include a classification for a "Utility Locator". The Full Bench has invited submissions on the issue.

⁴ Paragraph 244 and 246 of the Decision.

12. Mr Walsh's claim should be rejected on the basis that the work is covered by the *Surveying Award 2010* (**Surveying Award**).

13. The Surveying Award defines surveying as:

"Surveying means the act or process of determining the form, contour, position, area, height, depth or any other similar particulars of the earth's surface, whether on land or water or of any natural or artificial features on, below or above any part of that surface or planning the position or the length and direction of the bounding lines of any part of that surface, or of any such natural or artificial features thereof and includes the making or obtaining of a plan of plans thereof.

It includes the acquisition, management, interpretation and analysis of data; the portrayal and dissemination of derived information in written, graphical, numerical, digital, photographic or magnetic media; and associated consulting, design, and plan preparation. In addition, and when performed by employees in the classifications listed in Schedule B – Classification Structure and Definitions, Surveying also includes administration, management and technical support activities."

14. The nature of the work described by Mr Walsh involves determining the position, layout, depth etc of artificial features (e.g. pipes, cables), and marking them out on the ground or on a plan. This fits within the above definition.

15. The Surveying Award has classifications for survey technicians and survey assistants (field hands), as well as professionals.

16. The training package for surveyors, including the surveying qualifications, includes competencies in relevant specific areas such as remote sensing, as well as more generic units relating to the use of equipment to make measurements etc, which are relevant to the work described by Mr Walsh. The training package is linked to the Surveying Award through the minimum training requirements referred to in the classification structure.

17. Certificate II and/or Certificate III in Surveying and Spatial Information Services could reasonably be applied to a utility location role. Also, competencies including CPPSIS5061 - *Locate underground services in surveying practice* would be relevant to many Survey Technicians working towards a Diploma or Advanced Diploma.

18. Finally, we note that the Surveying Award is an occupational award which would cover a worker undertaking surveying work in the construction industry. Indeed, surveying work is very commonly carried out in the construction industry.

4. ALLOWANCES⁵

19. The Full Bench has determined that, except for the multistorey allowance, all other disability allowances in clauses 21 and 22 of the Building Award will be abolished and replaced by an enhanced industry allowance. The industry allowance will differ between the residential building and construction sector and all other building and construction.
20. The industry allowance proposed for the residential building and construction sector is 4% of the weekly standard rate per week and the proposed allowance for all other building and construction work is 5% of the weekly standard rate per week.
21. The Full Bench has provided an opportunity for the parties to file submissions in relation to the proposed quantum.
22. On balance, Ai Group is not opposed to the quantum proposed by the Full Bench, as set out above, but would oppose any higher quantum.

5. HOURS OF WORK⁶

23. The Full Bench has proposed a new clause 33 – ordinary hours of work. Ai Group has not identified any problems with the clause with the exception of the provisions which fix daily maximum hours of work for casual employees.
24. Proposed subclause 33.4 provides for daily ordinary hours of work for casual employees not exceeding eight hours.

⁵ Paragraph 372 of the Decision.

⁶ Paragraphs 412 - 413 of the Decision.

25. The proposed provisions unnecessarily restrict employment arrangements for casual employees. The provisions could cause operational difficulties for employers and disrupt existing employment arrangements for many existing casual employees.
26. Subclause 14.3 of the current Award provides that
- “An employer, when engaging a person for casual employment, must inform the employee, in writing, that the employee is to be employed as a casual, stating by whom the employee is employed, the job to be performed, the classification level, the actual or likely number of hours to be worked, and the relevant rate of pay.
27. Subclause 14.4 provides for minimum number of hours that a casual employee may work per engagement, and subclause 14.6 provides for casuals to receive overtime and penalty payments in accordance with the Award.
28. The proposed subclause provides for maximum ordinary hours that a casual may be required to work in a day, after which the casual is to be paid at overtime rates. To have such maximum ordinary hours limited to eight hours a day would remove important flexibility for employers and employees. For example, it would curtail options for employees who wish to work greater hours over fewer days.
29. The Award as it currently stands, provides for casuals to receive overtime payments in circumstances where they work in excess of their ordinary hours of work.⁷ This is based on the hours set on engagement in accordance with subclause 14.3 of the Award.
30. If casuals work such hours as to entitle them to the provisions of subclause 33.1, they receive the same entitlements as a full-time employee. Unusually, whilst there is a span of hours contemplated in subclause 33.1, it mandates that it is in accordance with an RDO scheme. This means that where an RDO is not applied, such as for a casual, there needs to be flexibilities to enable a casual to work longer hours in a day but potentially less days in a week.

⁷ Clause 36.2 of the Building Award.

31. In the alternative, if the Commission is minded to impose maximum ordinary hours of work for casual employees, the maximum daily hours should be structured to meet the requirements of the span of hours between 7.00am and 6.00pm on Monday to Friday. This would mean that the maximum daily ordinary hours a casual employee could be rostered to work would be 11 hours.

6. FOREPERSONS AND SUPERVISORS⁸

32. The Full Bench has invited submission with regards to restructuring and simplifying clause 43 “so that it does no more than set properly fixed minimum rates for forepersons and supervisors”. **Ai Group strongly opposes this proposal as it would have sweeping adverse consequences for employers covered by the Award and would disrupt the employment arrangements of a large number of forepersons and supervisors.**
33. The following aspects of clause 43 are critical:
- a) Only forepersons and supervisors in the metal and engineering sector who are employed by employers with 30 or more employees are covered by the Award. (See subclause 43.1). Other forepersons and supervisors are award-free. It is essential that award-coverage is not extended to other forepersons and supervisors.
 - b) Subclauses 43.3 and 43.4, provide the flexibility for wages to be paid monthly (which is by far the most common pay period for forepersons and supervisors). It is essential that these provisions are retained.
 - c) Subclause 43.5 is intended to ensure that forepersons and supervisors are not disadvantaged **in an overall sense** when compared to other employees covered by the Building Award. The wording recognises that forepersons and supervisors are typically paid a salary and do not typically receive overtime, shift or weekend penalties. Subclause 43.5 is critical and needs to be retained.

⁸ Paragraphs 451 of the Decision

d) Subclause 43.6 defines a “Foreperson/supervisor” and a “General foreperson/supervisor”, for the purposes of the coverage of clause 43 and for the minimum wage rates in clause 43.2. It is essential that these definitions are retained.

34. With regard to the setting of properly fixed minimum rates for forepersons and supervisors, the following changes should be made to clause 43.2, given that the purpose of modern awards is not to regulate over-award payments:

43.2 Wages

(a) The weekly minimum wage rate for forepersons and supervisors will be as follows:

Classification	Supervision of three or more tradespersons, excluding leading hands	Supervision of other than three or more tradespersons, excluding leading hands
Foreperson/supervisor	The average of the weekly <u>minimum</u> wage rates for 38 ordinary hours of work, including <u>award</u> payments applicable from time to time to the tradespersons (excluding leading hands) supervised by a foreperson/supervisor plus \$148.16, or \$899.30, whichever is the greater.	The average of the weekly <u>minimum</u> wage rates for 38 ordinary hours of work, including <u>award</u> payments applicable from time to time to the adult employees (excluding leading hands) plus \$113.70, or \$974.90, whichever is the greater, provided that where only juniors and/or apprentices are supervised, the minimum wage rate to be paid is \$974.90 per week.
General foreperson/supervisor	The highest <u>minimum</u> weekly wage rate paid for 38 ordinary hours of work to a foreperson/supervisor supervised by a general foreperson/supervisor plus \$151.04, or \$875.00, whichever is the greater.	The highest <u>minimum</u> weekly wage rate paid for 38 ordinary hours of work to a foreperson/supervisor supervised by a general foreperson/supervisor plus \$113.70, or \$954.30, whichever is the greater.

(b) Employees paid the wage rates in clause 43.2(a) will not receive overtime payments, shift work premiums, special rates, meal allowances, allowances for travelling and board, motor allowances, first aid allowances and other additional amounts specified in clauses 25—Fares and travel patterns allowance, 24—Living away from home—distant work, and 22—Special rates.