

IN THE FAIR WORK COMMISSION

2014 Award Review

(AM2014/237)

Community and Public Sector Union (CPSU) (PSU Group)

Submissions in response to Decision in Miscellaneous Award Coverage

[2020] FWCFB 754

Introduction

1. The CPSU notes the Decision in this matter on 12 February 2020 and the directions at [60] to respond to the provisional conclusions therein expressed. These comments are made pursuant to those directions.
2. The CPSU supports the submissions of the United Workers Union of 4 March 2020. In addition to those submissions, the CPSU provides the following comments.

Provisional coverage clause at [59]

3. The CPSU supports the provisional conclusion at [58-59] of the Decision that current clauses 4.2 and 4.3 be removed from the Award and the award be varied as set out at [59].
4. Regarding current clause 4.3, the CPSU supports the conclusion at [44-46] that the clause is outside the Ministerial Request and that there is no clear industrial rationale for its inclusion in that Award. Employees deprived of award coverage and minimum safety net terms and conditions by virtue of this clause 4.3 are not high income employees who would have been traditionally not award covered. The examples dealt with by the Full Bench at [45] illuminate the anomalous consequence of clause 4.3.
5. The CPSU believes the provisional clause at [59] of the decision, which removes current clause 4.3 is necessary for the *Miscellaneous Award* to meet the modern awards objective in s134. We say 4.1 and 4.2 of the provisional clause are in accordance with s143(7) of the Act.
6. Regarding clause 4.2, the CPSU accepts the proposed re-write of this clause at 4.2 of the provisional clause is significantly clearer than current clause 4.2. However, the CPSU maintains its view that a clause like 4.2 which details particular professions is not needed.

Coverage of web designers

7. The CPSU refers to the comments made by the Full Bench at [56] of the Decision regarding web designers. The Full Bench said that assuming such workers are not excluded by s143(7) they would nonetheless be excluded under the classification structure of this Award, as they would be degree or diploma qualified. The CPSU does not necessarily agree with this assumption.

8. Without expressing a view on whether all persons who work as web designers in fact hold a diploma or higher qualification, or a lower qualification, we do not agree, as we read paragraph [56] to imply, that an employee who holds a diploma is by virtue of that qualification incapable of being considered a “sub professional employee” as referred to in the Level 4 classification description. The CPSU would be concerned that this decision could be relied upon for a potentially erroneous conclusion that web designers or other such workers are award free.

Classification structure

9. The CPSU wishes to make two comments upon the classification Level 4 in the Award. It provides:

Level 4

An employee at this level has advanced trade qualifications and is carrying out duties requiring such qualifications or is a sub-professional employee.

10. The CPSU is concerned at the comments at [65] regarding ‘degree or diploma qualified’ as creating potential confusion. Level 4 could be read potentially two ways:

An employee at this level:

- a. has advanced trade qualifications and is carrying out duties requiring such qualifications; or
- b. is a sub-professional employee.

Or:

An employee at this level has advanced trade qualifications and:

- a. is carrying out duties requiring such qualifications; or
- b. is a sub-professional employee.

The CPSU believes the use of the “or” in Level 4 indicates there are two separate basis for coverage, outlined at the first of the alternatives outlined above and not the second.

CPSU Sydney

4 March 2020