

From: Vasuki Paul [mailto:Vasuki.Paul@aigroup.com.au]
Sent: Tuesday, 12 March 2019 7:06 PM
To: AMOD
Subject: RE: AM2016/23 - 4 Yearly Review of Modern Awards - Construction Awards

Dear Member Support Team,

RE: AM2016/23 – 4 Yearly Review of Modern Awards – Construction Awards

We refer to the direction of the 25h February 2019 in the above matter. We enclose our submissions responding to the CFMMEU submissions of 7th December 2018 .

Regards



Vasuki Paul
National Manager – Construction Utilities and Mining

Level 2, 441 St Kilda Road, Melbourne, 3004
T: 03 98670244
M: 0407654090
E: vasuki.paul@aigroup.com.au



Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Building and Construction
General On-Site Award 2010
(AM2014/260)

and

Joinery and Building Trades
Award 2016
(AM2014/274)

Mobile Crane Hiring Award
2010
(AM2014/278)

11 March 2019

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GROUP

4 YEARLY REVIEW OF AWARDS

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010 (AM2014/260), JOINERY AND BUILDING TRADES AWARD 2016 (AM2014/274) AND MOBILE CRANE HIRING AWARD 2010 (AM 2014/278)

1. On 7th December 2018, the CFMMEU filed further submissions regarding draft determinations issued by the Full Bench on the 23rd November 2018 in respect of the *Building and Construction On-site Award 2010* (Building Award), the *Joinery and Building Trades Award 2010*, (Joinery Award) and the *Mobile Crane Hiring Award 2010* (Mobile Crane Award).
2. The CFMMEU at paragraphs 6-8 of their submissions has proposed that the rest and recreation provisions arising from the Full Bench Decision¹ of 26 September 2018, should also be applied to the Joinery Award and the Mobile Crane Award.
3. The decision of the 26 September 2018 rejected the majority of the CFMMEU's proposed rest and recreation provisions but did accept that one aspect of their claim "raised an issue of merit."²
4. The finding was made based on the evidence put by the CFMMEU in the matter. Such evidence dealt specifically and only with issues that arose from the terms contained in the Building Award and thereby the industry covered by that Award. The evidence provided in the matter was centred on major construction projects.
5. The Full Bench decision regarding the variation of the rest and recreation clause was based such evidence.³
6. The CFMMEU has failed to provide any relevant evidence about the conditions applicable to employers and employees that are covered by the Joinery Award or the Mobile Crane Award.

¹ [2018] FWCFB 6018

² *ibid* at para 154- 155

³ *Ibid* at para 155

7. The CFMMEU, at paragraph 6 of its submissions, relied on the fact that its claims about living away from home included that any such terms should be also applied to the Joinery Award and Mobile Crane Award.
8. Whilst the CFMMEU may have made a claim that their variations to clause 24 of the Building Award, save for some exclusions, should be applied to the Joinery Award and Mobile Crane Award, it does not follow that the Full Bench decision automatically applies to those 2 Awards.
9. The Full Bench had deliberately identified which awards a variation arising from the decision would impact. An example of this is the Living Away from Home allowance entitlement.⁴ It follows that the decision not to vary the Joinery or Mobile Crane Awards in certain respects, was a decision to not accept the CFMMEU's claim.
10. In the Decision, the Full Bench had provided the parties with:
 - a. the opportunity to comment on the form of the draft determinations relating to several variations, including the variation to the rest and recreation provisions in the Building Award.⁵
 - b. The opportunity to file submissions on other "*matters identified in paragraphs [151]-[152], [244], [246], [372], [412]-[413] and [451].*"⁶
11. In the CFMMEU's submission of the 7th December 2018, at paragraphs 6-8, the Union is seeking to reagitate a claim that has been dismissed in order to change the Decision and not raise any issues pertaining to the form of the variation. In doing so, it goes beyond the scope provided by the Full Bench at paragraph 468 of the Decision.

⁴Ibid at paras 143 and 146

⁵ Ibid at para 468

⁶ Ibid at para 469

12. The terms of these two awards are markedly different from those applying to the Building Award. It is not possible to simply insert the CFMMEU's proposed rest and recreation clause without having the necessary evidence as to the nature of these industries, the reasons for any existing rest and recreation clauses in the two awards and the impact that the proposed new terms may have on employers and employees in these industries. There is no evidence to support the CFMMEU's claim to flow these provisions on to the Joinery Award or the Mobile Crane Award.
13. For the above reasons, Ai Group submits that the CFMMEU's claim as set out in paragraphs 6 to 8 of its submission of 7 December 2018 should be rejected.