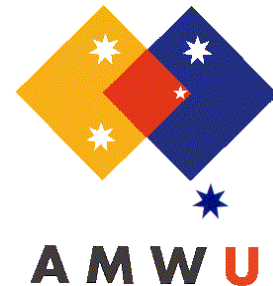


From: Warren Tegg [<mailto:warren.tegg@gmail.com>]
Sent: Sunday, 9 October 2016 12:52 PM
To: Chambers - Gostencnik DP
Subject: 4 Yearly Review - AM2016/14 - Training Costs

Dear Associate,

Please find attached the AMWU reply to the AiG further submission in the Training Costs matter.

King regards,



IN THE FAIR WORK COMMISSION

Matter No: AM2014/14

***Fair Work Act 2009
Section 156 - 4 yearly review of modern awards***

***(Manufacturing and Associated Industries and Occupations Award
2010 and Ors.)***

Reply to Further Submission

Date: 7 October, 2016

NAME:	Warren Tegg
ORGANISATION:	Australian Manufacturing Workers Union
ADDRESS:	133 Parramatta Road, Granville NSW 2142
CONTACT DETAILS	
Telephone:	0407 213 681
Email:	warren.tegg@amwu.asn.au

1. The Australian Manufacturing Workers' Union (**AMWU**) makes this submission in accordance with the directions of 30 August 2016 and in response to the further submission of the Australian Industry Group (**AiG**) on 27 September 2016.
2. In the hearing on 30 August, the AMWU presented an order (Print J0730) from Deputy President Keogh in December 1989. This order inserted provisions for trainees and adult apprentices into the Metal Industry Award 1984.
3. This predates clause 6C into the Metal Industry Award 1984, which was inserted by Deputy President Keogh in June 1990.
4. Clause (c)(iv) of section 13B reads:

All other terms and conditions of the award shall apply unless specifically varied by this clause.

5. Following the insertion of clause 6C in 1990, this means that trainees had access to clauses (d)(ii) & (iii) which provide access to payment for course fees, text books and travel costs for all training undertaken by the trainee (*the training costs clause*).
6. In paragraphs 20-24 of their submission of 17 June 2016, AiG rely on the phrase "that are applicable to the trainee" to explain why the training costs clauses were not specifically excluded from operation for trainees. The AMWU has already made submissions on why this interpretation is incorrect, but in the case of clause 13B(c)(iv), there is no such qualification. All terms and conditions of the award – including the training costs clause – applied to trainees employed under the Metals Industry Award 1984 from the moment that they were inserted.
7. In their submission, AiG has not presented a reasonable explanation as to why Deputy President Keogh did not exclude clause 6C from application to trainees, when it was inserted only months after the traineeship clause, which explicitly ensured that all other clauses of the award applied to trainees, was inserted into the award by the same Deputy President.
8. The reason that AiG requested additional time for these submissions was to provide an explanation for this series of events and none has been forthcoming.
9. As such, the Commission should rely upon the plain reading of the text of the award as it existed in June 1990 to establish that trainees have had access to the training costs clause since its insertion into the award.

10. Access to the training costs entitlement has since been unbroken for trainees in the manufacturing industry. In the Metal Industry Award 1984, the Metal, Engineering and Associated Industries Award 1998 (and through it the National Training Wage Award 1994 and 200), the Manufacturing and Associated Industries and Occupations Award 2010, trainees have specifically been granted access to all the terms and conditions of the relevant award, except explicitly excluded.
11. In none of these awards have trainees been excluded from the training costs clause.
12. AiG has presented no reasonable explanation as to why the training costs clause, once established as an entitlement under the Metal Industry Award 1984 following its insertion in 1990, would not have continued to apply under the subsequent awards, given that at no time have they explicitly excluded from application to trainees for any reason.

Differences between Apprentices and Trainees

13. As set out previously, the decision in *the Apprentice, Trainees and Juniors Case* to exclude training undertaken by apprentices in relation to the training contract from the operation of clause 32.5 is not conclusive in relation to trainees.
14. Particularly, since their inclusion in the Metal Industry Award 1984, the sections of the award that apply to trainees have been expressed very broadly, as set out above.
15. This contrasts with apprentices under the Metal Industry Award 1984, where there is nothing in section 14 (Apprenticeship) which states that all terms and conditions of the award apply to apprentices unless otherwise specified.
16. Indeed, leave clauses that did apply were specifically mentioned (clause 14(q)) and termination and redundancy provisions that did not apply were also specifically mentioned (clause 14(d)).
17. As such, it can be seen that there were different conditions of employment between apprentices and trainees from the introduction of trainees into the award in 1989.
18. The approach of having different training costs provisions applying to trainees and apprentices is also supported by AiG's primary position, which would see trainees receive no payment for these expenses, while apprentices would be entitled to some payment.

Implications for trainees

19. Given that the Commission has been presented with evidence that the training costs clause has applied to trainees since its insertion into the award and no evidence that this has ever ceased to be the case, any move to reduce this vital employment conditions must meet the modern award objectives.
20. As such, the primary position put by AiG – that trainees should have no access to a training costs provision for training undertaken under a training contract – should be rejected out of hand. They have simply not presented any evidence about what the impact of removing this important workplace entitlement will have on this group of vulnerable, low-paid employees will be.
21. The secondary position put by AiG should also be rejected as it would involve a significant diminution of workplace entitlements for trainees, who currently enjoy access to a fair and reasonable training costs clause. Again, AiG has simply not presented any evidence upon which the Commission can rely about the impact of reducing this workplace entitlement, nor have they advanced any cogent merit argument in support of their secondary position.
22. The AMWU submits that, given the evidence presented, the only course of action available to the Commission is to continue to the status quo and ensure that trainees continue to enjoy the same fair and reasonable training costs provision to which they have had access since it was introduced in 1990.