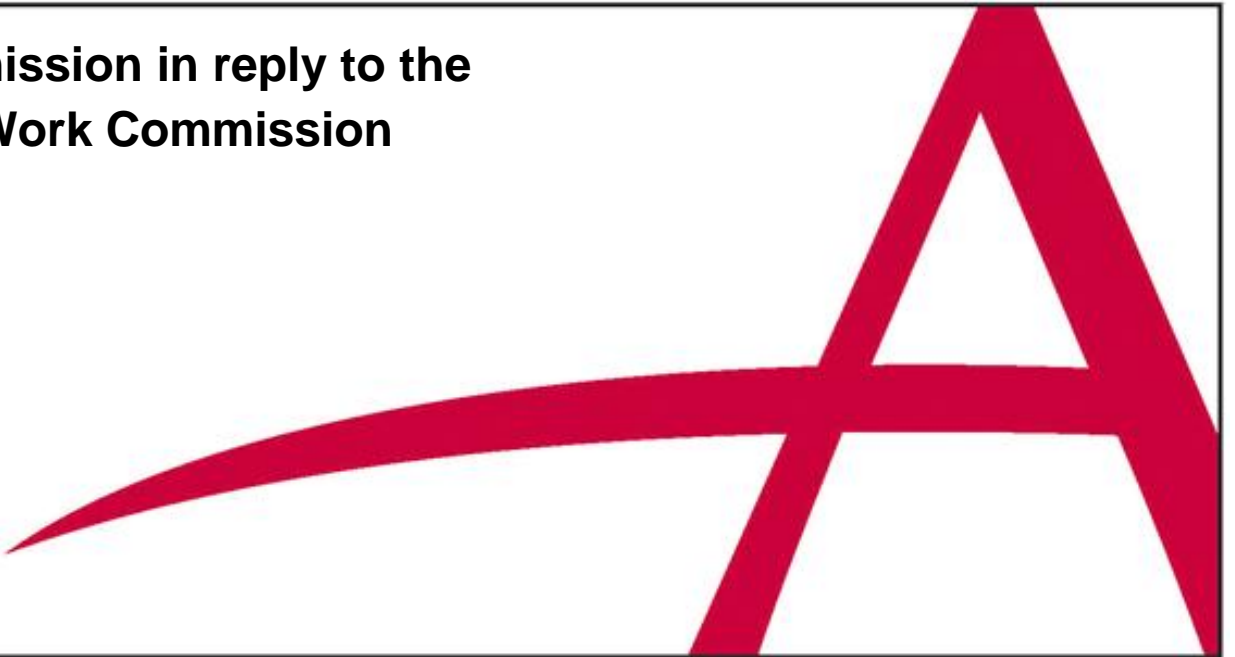


**Submission in reply to the
Fair Work Commission**



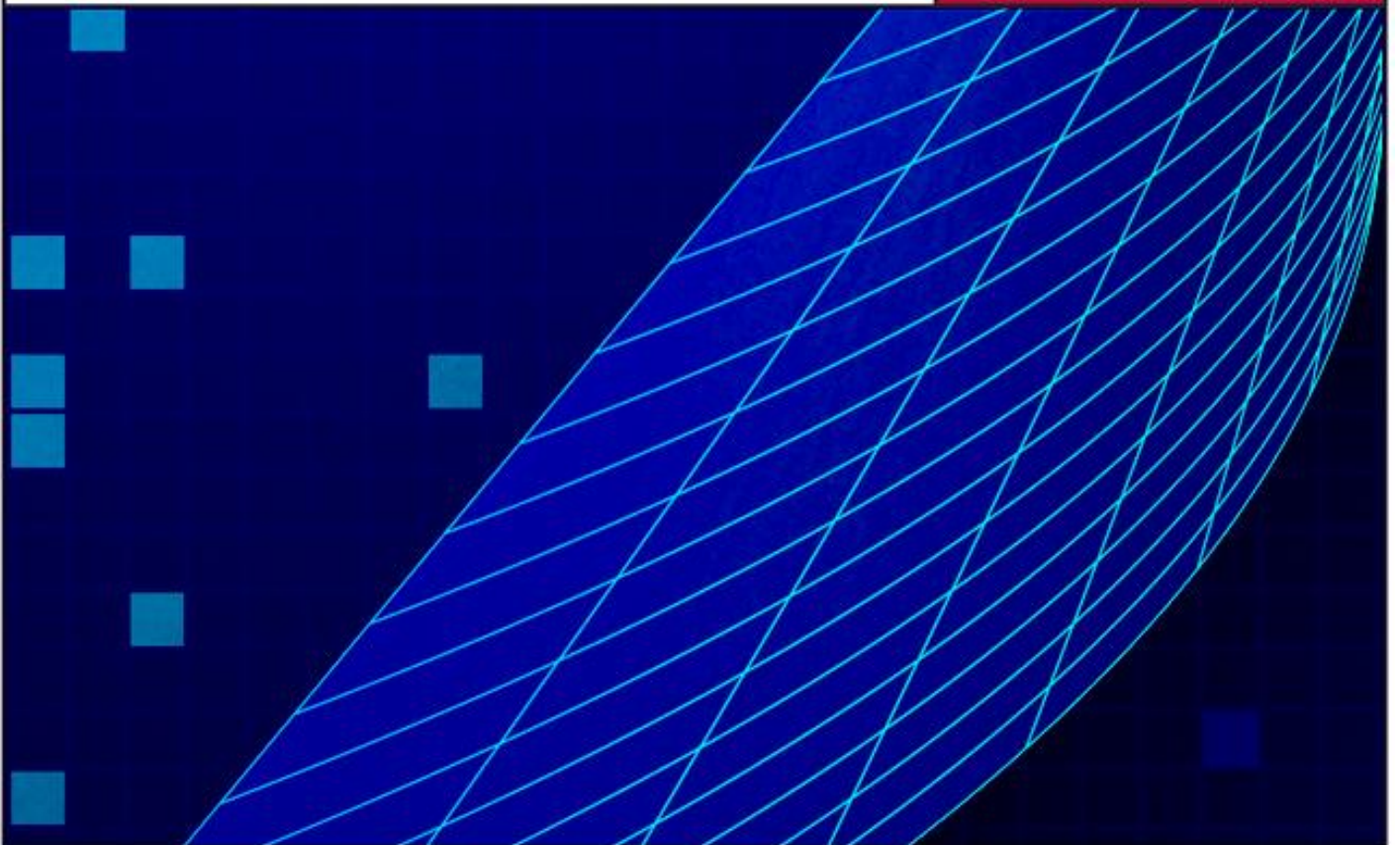
**AM2012/152 – TOOL ALLOWANCE IN THE *SUGAR INDUSTRY
AWARD 2010***

**AM2012/160 – LIFT ALLOWANCE IN THE *BUILDING AND
CONSTRUCTION GENERAL ON-SITE AWARD 2010***



AUSTRALIAN INDUSTRY GROUP

12 November 2013



AM2012/152 – TOOL ALLOWANCE IN THE SUGAR INDUSTRY AWARD 2010

AM2012/160 – LIFT ALLOWANCE IN THE BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

1. INTRODUCTION

1. On 17 October 2013 Commissioner Roe issued a Statement requiring parties to provide submissions in respect of various unresolved common matters in the Apprentices and Trainees Full Bench Proceedings.
2. Dot points 3 and 4 of paragraph 2 of the Statement required that submissions be made by 12 November 2013 in relation to:
 - A tool allowance for apprentices in *Sugar Industry Award 2010* (Sugar Award); and
 - The lift allowance in the *Building and Construction General On-site Award 2010* (Building Award).
3. The Australian Industry Group (Ai Group) makes this submission on the above matters. Ai Group also makes this submission on behalf of the Australian Sugar Milling Council (ASMC) in respect of the Sugar Award.

2. SUGAR AWARD

4. The AMWU application AM2012/152 deals with the tool allowance payable to tradespersons working in milling, distillery, refinery and maintenance (subclause 22.30) and bulk sugar terminal operations (subclause 23.3). Specifically the AMWU seeks that apprentices receive a percentage of the tool allowance payable to tradespersons.
5. Ai Group and the ASMC oppose the insertion of this new entitlement into the Sugar Award.

6. This aspect of the AMWU's application was not dealt with by the Full Bench in the *Apprentices and Trainees Decision* ([2013] FWCFB 5411), and thereby it was not determined whether the absence of a tool allowance entitlement for apprentices is causing the Sugar Award to:
- Not meet the modern awards objective; and
 - Not operate effectively and without anomalies or technical problems arising from the Part 10A award modernisation process.¹
7. The above considerations are now being dealt with 'on the papers' by the Full Bench as part of the settlement of orders process.
8. The AMWU, in its written submission, contends that the variation proposed is necessary to achieve the modern awards objective. The union does not argue that the variation is necessary because the Sugar Award is not operating effectively and without anomalies or technical problems arising from the Part 10A award modernisation process. The AMWU also contends that it is not necessary for it to demonstrate that cogent reasons exist to justify the variation because there was no comprehensive review of apprentice conditions during award modernisation. The AMWU's arguments are addressed below.

Is the Sugar Award meeting the modern awards objective?

9. The AMWU has not advanced any evidence or any credible argument that the Sugar Award is not meeting the modern awards objective. Therefore it cannot be validly determined that the proposed variation is necessary in accordance with section 138 of the *Fair Work Act 2009*.

¹ See item 6(2) of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

10. Similarities cannot be drawn between the rationale for the variations to apprentice wages and conditions determined by the *Apprentices and Trainees Decision* and the insertion of a tool allowance entitlement for apprentices into the Sugar Award. The matters determined in the *Apprentices and Trainees Decision*, such as ‘travel allowance for block release training’ or ‘reimbursement for course fees and text books’ were considered in the specific context of the evidence that was before the Commission on these matters. For example, see paragraphs [330] and [362] of the Decision.
11. Unlike the above allowances considered by the Full Bench, most apprentices regardless of age or income, are entitled to the *Tools for your Trade Allowance* amounting to \$5,500 over the life of the apprenticeship provided by the Federal Government.² This is a significant entitlement which is not provided to qualified tradespersons who must buy their own tools if they are not provided by the employer.
12. The AMWU attempts to argue that the proposed variation is justified because a number of other modern awards include a tool allowance for apprentices. This is a weak argument; it fails to take into account the uniqueness of the sugar industry, and the fact that the Sugar Award and its predecessors were negotiated between the industrial parties and included different bargains to those reflected in other awards identified by the union.
13. It has been recognised by the Commission that in the making of modern awards there were swings and roundabouts in respect of what was ultimately included in particular modern awards and what was not.³

² Those apprentices undertaking an apprenticeship on the National Skills List are entitled to the Tools for your Trade Allowance. See <http://www.australianapprenticeships.gov.au/sites/default/files/publication-documents/Summary%20of%20AAIP%203%20August%202013.pdf>.

³ See [2013] FWC 8080 at [48].

Are there cogent reasons that warrant the making of the proposed variation?

14. The AMWU argues that it is not necessary for it to demonstrate that cogent reasons exist to justify the variation because there was no comprehensive review of apprentice conditions during award modernisation.
15. The Sugar Award was made during Stage 3 of the award modernisation proceedings. Apprentice conditions were considered by the industrial parties and the Commission during the making of the Sugar Award. This is evident by the submissions of Mr Broanda of the Australian Workers Union before Commissioner Spencer on 27 March 2009:

“PN333

There is I note in a number of drafts, a number of problems with the apprentice and trainee provisions, including presently apprentices and trainees get paid for college time. They get paid tool allowances things of that nature. None of the proposals that have been advanced and I say that with the caveat, I'm not sure of the Manufacturing Award, but I don't think any of the proposals expressly provide for paid college time. Things of that nature that are inherent within the apprentice and trainee issue industry that need to be dealt with. Commissioner, I won't labour the points any further.”

16. The industrial parties proposed, in each of their Draft Sugar Awards,⁴ including the AMWU,⁵ that the tool allowance would only be payable to tradespersons. This is reflected in the wording of the tool allowance clause that currently appears in the Sugar Award.
17. Apprentice conditions in the Sugar Award were considered by the Full Bench when making the modern award. For example, see [2009] AIRCFB 826 at paragraph [248].

⁴ See

<http://www.airc.gov.au/awardmod/fullbench/industries/awardmoddocument.cfm?award=sugar&document=Draft>.

⁵ See http://www.airc.gov.au/awardmod/databases/sugar/Draft/AMWU_draft.pdf.

18. Therefore, the AMWU's argument that the 'cogent reasons' test does not apply is not correct and the union's application for the proposed variation must fail. No cogent reasons have been advanced by the union which would support a deviation from the Full Bench's decision to make the Sugar Award in its current terms.

3. BUILDING AWARD

19. The CEPU is seeking a variation to increase the proportion of the lift industry allowance payable to apprentices under paragraph 42.2(b) of the Building Award.
20. Ai Group opposes the CEPU's proposed variation on the basis the union has failed to meet the jurisdictional requirements to justify the making of the proposed variation.⁶
21. The CEPU submission is premised on the argument that '*fairness needs to be restored to the Building Award*'.⁷ There is no evidence before the Full Bench that suggests that the Building Award is operating unfairly, or contrary to the modern awards objective set out in subsection 134(1) of the *Fair Work Act*.
22. The CEPU also argues that paragraph 42.2(b) of the Building Award, because it contains no nexus to the relativities for apprentice wages in the Award, is anomalous.
23. Ai Group disagrees with this contention. We refer to the submissions made by the HIA dated 1 October 2010 whereby the HIA sets out the provisions proposed for the Building Award by the Australian Industrial Relations Commission in the exposure draft of the Award (see paragraphs 2.1.8 and 2.1.9). The exposure draft contemplated that allowances be paid to apprentices based on a percentage that was different to the relativities relating to wages.

⁶ Item 6(2) of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

⁷ See paragraph 26 of the CEPU submission.

24. Paragraph 42.2(b) of the Building Award is clear. It is not anomalous in its words or intention.
25. The proposed variation is not necessary to achieve the modern awards objective and hence the variation is inconsistent section 138 of the *Fair Work Act 2009*.