



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – National Training Wage – Award-Specific Schedules

(AM2016/15; AM2016/17)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 25 AUGUST 2020

4 yearly review of modern awards – National Training Wage – award-specific schedules – Joinery and Building Trades Award 2010 – Mobile Crane Hiring Award 2010.

1. Background

[1] This decision deals with the National Training Wage (NTW) Schedules in the *Joinery and Building Trades Award 2010* (Joinery Award) and the *Mobile Crane Hiring Award 2010* (Mobile Crane Award). It should be read in conjunction with decisions issued on 14 July 2020,¹ 21 May 2020,² 15 August 2017,³ and 9 June 2017.⁴

[2] A Statement⁵ published on 6 July 2016 noted that 103 out of the 122 of the modern awards of general application, as well as 15 enterprise and State reference public sector modern awards, contained the National Training Wage Schedule (the NTW Schedule). The NTW Schedule runs over 8 pages and there were only minor variations between the NTW Schedules in the various awards. In order to reduce award length and complexity, the following changes were proposed:

(i) standardising the NTW Schedule; and

(ii) removing the NTW Schedule from all modern awards, save for the Miscellaneous Award 2020 (Miscellaneous Award), and incorporating the NTW Schedule by reference into the other modern awards that currently contain the Schedule in full.

¹ [\[2020\] FWCFB 3642.](#)

² [\[2020\] FWCFB 2620.](#)

³ [\[2017\] FWCFB 3176](#)

⁴ [\[2017\] FWCFB 4174.](#)

⁵ [\[2016\] FWC 4495.](#)

[3] In response to the July 2016 Statement, the AMWU and CFMMEU proposed that the NTW Schedule should be relevant and appropriate to the work covered by the particular award. Among the awards the AMWU and CFMMEU identified as requiring a NTW Schedule, albeit in a modified form, were the Joinery Award and the Mobile Crane Award.

[4] In a Statement⁶ published on 23 February 2017, we expressed the *provisional* view that:

‘where parties have requested that the NTW schedule be tailored to a particular modern award that this should occur. A tailored version of the NTW schedule will be inserted in the awards listed above adopting the proposed plain language provisions where appropriate. Parties with an interest in those awards should file submissions setting out how the draft schedules should be tailored.’⁷

[5] In our decision⁸ of 9 June 2017 we confirmed that award-specific NTW schedules would be maintained in 9 modern awards (including the Joinery Award and the Mobile Crane Award).⁹

[6] In a decision¹⁰ of 15 August 2017 we finalised the standardised NTW Schedule and the Miscellaneous Award NTW Schedule was varied¹¹ in September 2017.

[7] Draft award-specific NTW Schedules were annexed to a Statement of 28 August 2017.¹² Interested parties were invited to file submissions in relation to the draft award-specific NTW Schedules.¹³

[8] In a Decision¹⁴ published on 14 July 2020 (the July 2020 Decision) we summarised the submissions advanced by the parties to this proceeding and decided that the most efficient way of dealing with the outstanding issues was by holding a short oral hearing. Marked up versions of the current NTW Schedules in each award, showing the variations sought by the CFMMEU, were set out at Attachments and 1 and 2 to the July 2020 Decision.

[9] A hearing subsequently took place on 5 August 2020. The following parties were represented at the hearing:

- Ai Group;
- CFMMEU;
- HIA; and
- MBA.

[10] The transcript of the hearing is available [here](#).

⁶ [\[2017\] FWCFB 1095](#)

⁷ Ibid at [8]

⁸ [\[2017\] FWCFB 3176](#)

⁹ Ibid at [3]

¹⁰ [\[2017\] FWCFB 4174](#).

¹¹ [PR596939](#).

¹² [\[2017\] FWCFB 4457](#).

¹³ [\[2017\] FWCFB 4174](#) at [69]; [\[2017\] FWCFB 4457](#) at [11] and [12].

¹⁴ [\[2020\] FWCFB 3642](#)

[11] A further conference in respect of the Joinery Award was held on 20 August 2020. The transcript of the conference is available [here](#).

2. Consideration

[12] As we have mentioned, we have determined that the Joinery Award and the Mobile Crane Award should be varied to tailor the NTW Schedules to the circumstances pertaining to each particular award. The only issues remaining concern the content of the award-specific NTW Schedules. In essence the CFMMEU submitted that the NTW Schedules in the Joinery and Mobile Crane Awards should be varied, so they are award-specific, by deleting unnecessary references to wage rates and training packages that are not relevant or have no application.¹⁵ It is submitted that many of the training packages referenced in the Schedules do not apply to the employers and employees covered by the awards and that those references and the applicable award rates should be removed.¹⁶

[13] It is convenient to deal first with the Mobile Crane Award.

2.1 Mobile Crane Award

[14] Ai Group and the CFMMEU have an interest in the Mobile Crane Award.

[15] Prior to the hearing on 5 August 2020, Ai Group filed correspondence¹⁷ proposing a number of amendments to the proposed NTW Schedule for the Mobile Crane Award set out at Attachment 1 to the July 2020 decision. The amendments proposed related to correcting cross-referencing and typographical errors and ensuring consistency of terminology. At the hearing on 5 August 2020 the CFMMEU did not oppose the amendments proposed by Ai Group in its correspondence of 5 August 2020. The CFMMEU also advised it did not oppose the definition of ‘training package’ proposed by Ai Group being inserted in the draft schedule.

[16] Parties were directed to confer and file a revised draft variation determination. On 10 August 2020 the CFMMEU filed a revised draft variation determination¹⁸ which was agreed to by Ai Group. The revised draft variation determination incorporates Ai Group’s definition of ‘training package’ and Ai Group’s amendments set out in its correspondence dated 5 August 2020.

[17] Section 138 of the *Fair Work Act 2009* (Cth) (the FW Act) provides, relevantly, that a modern award may only include terms ‘to the extent necessary to achieve the modern awards objective’.

[18] The modern awards objective is to ‘ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions’, taking into account the particular considerations identified in ss.134(1)(a)–(h) (the s.134 considerations).

¹⁵ [CFMMEU – Construction Division](#) submission, 4 February 2020 at para [6].

¹⁶ [CFMMEU – Construction Division](#) submission, 4 February 2020 at para [9].

¹⁷ [Ai Group, correspondence](#), 5 August 2020.

¹⁸ [CFMMEU, submission](#), 10 August 2020.

[19] The modern awards objective is very broadly expressed.¹⁹ It is a composite expression which requires that modern awards, together with the NES, provide ‘a fair and relevant minimum safety net of terms and conditions’, taking into account the matters in ss.134(1)(a)–(h).²⁰ Fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question.²¹

[20] We are satisfied that the variation proposed is necessary to ensure that the Mobile Crane Award achieves the modern awards objective. In reaching that conclusion we have had regard to the s.134 considerations. In particular we note that the variation proposed is consistent with the need to ensure that the modern award is ‘simple [and] easy to understand’ (s.134(1)(g)). The inclusion of only those training packages which are apposite to the work covered by the award is entirely consistent with the Commission’s obligation to ensure that modern awards provide a ‘fair and *relevant* minimum safety net of terms and conditions’.

[21] We will vary the Mobile Crane Award in the terms agreed by Ai Group and the CFMMEU.

2.2 Joinery Award

[22] The CFMMEU, HIA and MBA have an interest in the Joinery Award.

[23] The CFMMEU submitted that only the following training packages are relevant:

- Construction, Plumbing and Services (Wage Level A);
- Manufacturing (Wage Level A);
- Manufacturing and Engineering (Wage Level A);
- Transport and Logistics (Wage Level B);
- Furnishing (Wage Level B);
- Forest and Wood/Forest Products (Wage Level B); and
- Sustainability.²²

[24] The MBA submitted that the union’s award-specific NTW Schedule does not contain all the current training packages that are relevant to the joinery traineeship, and, further, that the union’s proposed schedule removes any opportunity for ‘future proofing’ for the training needs of future apprentices.

[25] The MBA also submitted the names of some training packages have changed and that a ‘catch all’ provision be inserted, in the form of a reference to the Miscellaneous Award.

[26] The HIA supported the MBA’s submissions.

¹⁹ *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* (2012) 205 FCR 227 at [35].

²⁰ [\[2017\] FWCFB 1001](#) at [128]; *Shop, Distributive and Allied Employees Association v The Australian Industry Group* (2017) 253 FCR 368 at [41]–[44].

²¹ [2018] FWCFB 3500 at [21]–[24].

²² [CFMMEU – Construction Division](#) submission, 4 February 2020 at para [12].

[27] During the course of the hearing on 5 August 2020 the parties agreed to have discussions to see whether an agreement can be reached about the inclusion of the additional training packages proposed by the MBA and HIA.

[28] In correspondence²³ dated 17 August 2020 the CFMMEU advised that the parties had discussed the additional training packages proposed (on a ‘without prejudice’ basis) by the MBA and the HIA for inclusion in the CFMMEU’s draft determination. The parties agreed to the following changes to the draft determination filed on 5 February 2020:

‘Replace clauses D.6.1 and D.6.2 with the following:

D.6.1 Wage Level A

Training package	AQF certification level
Construction, Plumbing and Services	I, II, III
Manufacturing	I, II, III
Manufacturing and Engineering (technical)	II, III
Plastics, Rubber and Cablemaking	III
Transport and Logistics	III

(Note: the above training packages include any relevant replacement training package)

D.6.2 Wage Level B

Training package	AQF certification level
Forest and Wood Products	I, II, III
Furnishing	I, II, III
Manufacturing and Engineering	II, III
Plastics, Rubber and Cablemaking	II
Transport and Logistics	I, II

(Note: the above training packages include any relevant replacement training package)’

[29] The MBA and HIA also proposed the inclusion of the Sustainability Training Package and the Certificate I from the Manufacturing and Engineering Training Package. The CFMMEU did not oppose the inclusion of these packages but submitted that if they were included then that decision should not be a precedent for the inclusion of these packages in other awards. We agree with the point advanced by the CFMMEU. Proposals to include these packages in other schedules will be determined on their merits having regard to the particular award context. The parties agreed that in the context of the Joinery Award these packages would be covered by wage level B under the default arrangement under the schedule (see clause D.4.4 of the CFMMEU’s draft determination).

²³ [CFMMEU – correspondence](#), 17 August 2020.

[30] The MBA and HIA also suggested the inclusion of two additional training packages and qualifications, namely the Resources and Infrastructure Training Package and the Foundational Skills Training Package. The inclusion of these packages was opposed by the CFMMEU.

[31] In respect of the Resources and Infrastructure Industry Training Package the CFMMEU submits that, as its name implies, this training package covers the resources and infrastructure industries which include coal mining, mining, civil construction, and drilling for oil and gas. The units of competency are mainly written to accommodate the work in the resource and infrastructure industries. By way of example, example, the unit of competency - RIICOM201D - Communicate in the workplace in its application states “This unit describes a participant’s skills and knowledge required to communicate in the workplace within the Resources and Infrastructure Industries”.

[32] On the material presently before us we are not persuaded that it is necessary to include the Resources and Infrastructure Training Package in the NTW Schedule to the Joinery Award. In respect of the Foundational Skills Training Package, the CFMMEU did not have any ‘in principle’ objection to its inclusion but there was a dispute as to the applicable wage level. The CFMMEU contended that wage level B was appropriate whereas the MBA and HIA contended that wage level C was the relevant level.

[33] The Foundational Skills Training Package has not yet been included in any NTW Schedule and hence there has been no determination regarding the wage level applicable to this training package. There is insufficient material before us to determine the disputed wage level issue and in those circumstances we do not propose to include the package in the Joinery Award NTW Schedule at this time. Any party may make a subsequent application to vary the schedules and have the appropriate wage level determined. This course will afford any interested party an opportunity to advance a merit-based case in support of a particular wage level.

[34] The CFMMEU filed a revised draft determination on 20 August 2020 which incorporated the agreed changes set out at [28] above.

3. Conclusion and Next Steps

[35] We reject the primary position advanced by the MBA and HIA, which in essence seeks the retention of the standardised NTW Schedule, in totality. It is apparent on face of the standard NTW Schedule (found in the Miscellaneous Award) that a number of training packages have no application, or potential application, to employees covered by the Joinery Award. Examples of such training packages include Aeroskills, Beauty, Floristry, Museum, Library and Library/Information Services and Music.

[36] Contrary to the submissions advanced by the MBA and HIA we are not persuaded to incorporate a ‘catch all’ provision referring to the Miscellaneous Award. Nor are we persuaded that the CFMMEU’s proposed NTW Schedule removes an opportunity for ‘future proofing’ the schedule to meet any future needs of apprentices covered by the Joinery Award. There is no impediment to an interested party seeking to vary the NTW Schedule in response to changes in the training environment.

[37] We propose to vary the Joinery Award in accordance with the CFMMEU’s revised draft determination, with two additions. The additions concern the inclusion of the Sustainability Training Package and the Certificate I from the Manufacturing and Engineering Training

Package; and the retention of wage level C. The retention of wage level C anticipates that future training packages may align with this level.

[38] We are satisfied that the variation proposed is necessary to ensure that the Joinery Award achieves the modern awards objective. In reaching that conclusion we have had regard to the s.134 considerations. In particular we note that the variation proposed is consistent with the need to ensure that the modern award is ‘simple [and] easy to understand’ (s.134(1)(g)). The inclusion of only those training packages which are presently apposite to the work covered by the award is entirely consistent with the Commission’s obligation to ensure that modern awards provide a ‘fair and *relevant* minimum safety net of terms and conditions’.

[39] The CFMMEU is directed to file an amended variation determination giving effect to our decision. The amended draft variation determination is to be filed by **4pm Tuesday, 1 September 2020**. We will publish the amended draft variation determination and interested parties will have 7 days to comment.

PRESIDENT

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Appearances:

Mr H Harrington for The Australian Industry Group

Mr S Maxwell for the CFMMEU

Ms L Regan for the Housing Industry Association

Ms R Sostarko and Mr S McGregor for the Master Builders Association

Hearing details:

Melbourne (by telephone).

2020.

5 and 20 August.