

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Number:** AM2016/15, AM2016/17

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards – National Training Wage Schedule  
(AM2016/15, AM2016/17)**

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**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY  
UNION (CONSTRUCTION & GENERAL DIVISION) IN REPLY ON PLAIN  
LANGUAGE REDRAFTING & ON TAILORING SCHEDULES**

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6<sup>th</sup> April 2017

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## Introduction

1. The Fair Work Commission (the Commission) is currently undertaking a 4 yearly review of modern awards (the Review) as required by s.156 of the *Fair Work Act 2009* (the FW Act). On the 6<sup>th</sup> July 2016 the President, Justice Ross, issued a Statement<sup>1</sup> regarding the National Training Wage Schedule (NTW Schedule) currently included in 103 of the modern awards. In the Statement the President advised that the Commission is assessing the NTW Schedule to determine whether it meets the modern awards objective in s.134 of the FW Act.
2. In the Statement the President also advised that the Commission was proposing to standardise the NTW Schedule, and to remove the NTW Schedule from all modern awards, save for the *Miscellaneous Award 2010*, and incorporate the NTW Schedule by reference into the other modern awards that currently contain the Schedule in full.<sup>2</sup> The Statement then set out how the proposed changes would be made, and invited interested persons to make written submissions on the proposals outlined in the Statement. Any submissions were required to be filed by 4pm on 28<sup>th</sup> July 2016.
3. On 28<sup>th</sup> July 2016 the CFMEU (Construction & General Division) (the CFMEU C&G) filed a submission in which it indicated to the Commission that it did not support the proposal and set out the reasons for adopting this position.
4. On 9<sup>th</sup> December 2016 the CFMEU C&G sent correspondence<sup>3</sup> to the Commission, in response to a request for further information, in which it advised that the CFMEU C&G was only seeking a tailored schedule to be inserted in to the *Building and Construction General On-site Award 2010*, *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*; and identified the training packages and wage levels to be included in the schedules in those awards.
5. On 23<sup>rd</sup> February 2017 a Full Bench issued a Statement<sup>4</sup> in which they advised of their provisional view that where parties had requested that the NTW schedule be tailored to a particular modern award, then that should occur.<sup>5</sup> The Full Bench requested parties with an interest in those awards to file submissions setting out how the draft schedules should be

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1 [2016] FWC 4495

2 Ibid at paragraph [5]

3 <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201617-subs-cfmeu-091216.pdf>

4 [2017] FWCFB 1095

5 Ibid at [8]

tailored by 4pm on 17<sup>th</sup> March 2017, and requested submissions on the plain language re-draft of the NTW schedule to be filed on the same date.<sup>6</sup>

6. On 17<sup>th</sup> March 2017, the CFMEU C&G sought, and was granted, an extension of time for the filing of its submission until 24<sup>th</sup> March 2017<sup>7</sup>. The date for the filing of reply submission was also extended to 6<sup>th</sup> April 2017.
7. The CFMEU filed a submission on tailoring schedules on 24<sup>th</sup> March 2017. A number of other parties also filed submissions concerning awards that the CFMEU C&G has an interest in. These submissions were from the HIA<sup>8</sup> (the HIA Submission), MBA<sup>9</sup> (the MBA Submission), AIG<sup>10</sup> (the AIG Submission) and AMWU<sup>11</sup> (the AMWU Submission). This submission is the CFMEU C&G's reply to the submissions of the other Parties.

### **Reply to the HIA Submission**

8. The HIA Submission at paragraph 2.2.2 suggests that the CFMEU C&G approach to retain tailored schedules, rather than including a reference to the full NTW Schedule in the Miscellaneous Award, is at odds with the Commissions objective of “*reducing award length and complexity*”. We strongly disagree. The tailored schedule proposed by the CFMEU C&G for the *Building and Construction General On-site Award 2010* runs to nearly 5 pages, three less than the current NTW Schedule, so it would assist in reducing award length. Having a tailored schedule would also reduce complexity by only containing those parts of the schedule that are directly relevant to employers and employees covered by the *Building and Construction General On-site Award 2010*, and containing relevant cross referencing with award clauses. It would also reduce the complexity for employers and employees by only having to refer to the one award rather than having to find the NTW Schedule in the Miscellaneous Award and then trying to fathom out what parts of the NTW Schedule were directly relevant. This is particularly pertinent given that Clause 28 of the *Building and Construction General On-site Award 2010* excludes the operation of certain provisions of the NTW Schedule.

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<sup>6</sup> Ibid at [12]

<sup>7</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-17-corr-fwcreply-cfmeu-170317.pdf>

<sup>8</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-17-sub-hia-170317.pdf>

<sup>9</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-17-sub-mba-170317.pdf>

<sup>10</sup> <https://www.fwc.gov.au/sites/awardsmodernfouryr/am201615-17-sub-aig-240317.pdf>

<sup>11</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-17-sub-amwu-240317.pdf>

9. The HIA Submission at 2.2.5 claims that the NTW Schedule applies in full to those covered by the *Joinery and Building Trades Award 2010*. This is incorrect as wage level C has no application and only two training packages are relevant.
10. The HIA Submission at 2.2.7 indicates the HIA's support for standardising the NTW schedule and incorporating it by reference. The CFMEU C&G opposes this course of action for the reasons outlined in our 28<sup>th</sup> July 2016 submission.
11. The CFMEU C&G also submits that it is uncertain as to the jurisdictional basis on which one modern award (covering certain employers and employees) can incorporate a term from the Miscellaneous Award (which is expressed to cover employees who are not covered by any other modern award pursuant to s.163(4) of the Fair Work Act). The CFMEU C&G notes that there are a number of references under the Fair Work Act to the incorporation of terms into enterprise agreements e.g. s.123(4)(c)(i), s.180(2)(a)(ii) and s.257, but is unaware of any provisions that refer to the incorporation of terms into an award (there is no reference in Part 2-3 of the Fair Work Act).

#### **Reply to the MBA Submission**

12. The MBA submission at paragraph 3.3 seeks the retention of the words '*being approved training solely on the job or partly on-the job and partly off-the job, or where training is fully off-the job*' in clause A.3(b). The CFMEU C&G submits that the wording is not necessary in this clause. The only time the different types of training for part-time trainees is relevant is in calculating the wage rates as set out in A.4.2(f). As the words are contained within that clause, they are not needed to be included in clause A.3(b).
13. The MBA submission at paragraph 3.4 seeks the deletion of the words '*and the experience level of the trainee specified in column 1*'. The CFMEU C&G opposes this change as the words clearly relate to the title of column 1 and have nothing to do with competency-based progression.
14. The matter identified in paragraph 3.5 of the MBA Submission is one already identified by a number of other parties, including the CFMEU C&G.
15. In paragraph 4.4 of the MBA Submission, they refer to "*many members who engage trainees under AQF Certificate Level I-III traineeships*". That may be the case but the issue here is are those trainees covered by the training packages relevant to the classifications covered by the *Building and Construction General On-site Award 2010* and the wage rates included in clause 28 of that award. If not then it is not relevant.

16. Paragraphs 4.5 to 4.8 of the MBA Submission concern issues not relevant to the narrow issue before this Full Bench (i.e. whether awards should include a tailored provision or a reference to the Miscellaneous Award). The CFMEU C&G's position on methods of progression (which is not that suggested by the MBA) is not relevant to these proceedings.

**Reply to the AIG Submission**

17. The AIG submission filed on 24<sup>th</sup> March 2017 only deals with the plain language re-drafting of the NTW Schedule. Due to the CFMEU C&G's involvement in the Construction Award proceedings (AM2016/23), it has not had the opportunity to consider the numerous matters raised and is therefore not in a position to respond in detail. The only response made now is that we oppose any changes that may affect entitlements under the NTW Schedule.

**Reply to the AMWU Submission**

18. The AMWU submission raises a number of similar issues to those identified by the CFMEU C&G on the need to update the definitions used in the NTW schedule. The changes proposed are generally supported.
19. The CFMEU C&G also supports the tailored NTW Schedule for the *Manufacturing and Associated Industries and Occupations Award 2010* as contained in Attachment 2 to the AMWU Submission.

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