

**Submissions of the "Automotive, Food, Metals, Engineering,  
Printing and Kindred Industries Union" known as the Australian  
Manufacturing Workers' Union (AMWU)**

**AM2016/15**

4 yearly review of modern awards – plain language – standard clauses



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## **Background**

1. The Fair Work Commission (Commission) issued a decision on 11 December 2018 (December decision) <sup>1</sup>in the plain language re-drafting of standard clauses, a part of the 4-yearly review of modern awards.
2. In the December decision the Commission set out their provisional views on the two remaining clauses in the plain language redrafting;
  - F – Redundancy
  - H - Employee leave during redundancy
3. The Commission published draft determinations of the proposed clauses and invited interested parties opposed to the provisional views to comment on the draft determinations by way of submission. Reply submissions were to be filed by 8<sup>th</sup> February 2019.
4. These reply submissions will address the draft determinations published for the following awards which the AMWU has an interest in, and the respective submissions filed by the Australian Industry Group (Ai Group)<sup>2</sup> and the Master Builders Association (MBA)<sup>3</sup>.
  - a) *Manufacturing and Associated Industries and Occupations Award 2010*
  - b) *Building and Construction and General On-Site Award 2010*
  - c) *Joinery and Building Trades Award 2010*
5. The AMWU supports the submissions of the CFMEU Construction and General Division in these proceedings.
6. The Ai Group's submissions address the issue of the small furnishing employer redundancy pay provision in proposed clause 23.4 of the draft determination for the *Manufacturing Award*.

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<sup>1</sup> [2018] FWCFB 7447

<sup>2</sup> [Ai Group Submissions](#)

<sup>3</sup> [MBA Submissions](#)

7. The AI Group contends:
  - a) The geographical application of the *Furnishing Industry National Award 2003 (Furnishing Award)* is preserved.
  - b) If the Full Bench does not accept that the Ai Groups submission that the small business redundancy provision is not a term that offends s154 of the Fair Work Act, it should be removed all together.<sup>4</sup>
8. The AMWU supports the provisional view of the Commission that the small furnishings employer redundancy provision is not limited according to geographical application of the relevant pre-modern award.<sup>5</sup>
9. The AIRC Full Bench in the modern award proceedings did not intend to include the preamble and limit the geographical application of the pre-modern awards. If so, they would have explicitly done so by referring to clause 6 of the *Furnishing Industry National Award* in its entirety, instead of specifically clause 6.1 to clause 6.6.
10. The AIRC Full Bench has thoroughly explored the issues around state-based differences in pre-modern awards and NAPSAs with regards to redundancy provisions, saying in [2008] AIRCFB 1000 at [61]:

*“there are a number of different redundancies pay schemes in the state award and legislation which are reflected in NAPSAs. The schemes sometimes include provisions which are more beneficial for employees than those contained in the NES. Provisions in this category include more generous redundancy pay scales, redundancy pay for employees of small business calculations for base pay and so on. It is appropriate that these interstate differentials be taken into account in transitional provisions.”*
11. The *Furnishing Award* covered most states and territories and clearly applies the small furnishings redundancy provisions nationally. The Full Bench has consistently approached such provisions with a clear national standard that is to be applied broadly.<sup>6</sup>
12. The Ai Group’s assertion that the geographical limitations of the relevant provisions do not offend s154 of the Fair Work Act is not sustainable. In a decision dealing with

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<sup>4</sup> Ai Group Submissions at para 42-49

<sup>5</sup> December decision at [47]

<sup>6</sup> [2015] FWCFB 3523

the proposal to create a Norfolk Island Award the Full Bench considered s154 and said:

*“ Section 154, we consider, is concerned with prohibiting modern award provisions which have the legal effect of establishing terms which operate differentially between States or Territories as such. That s.154(1)(b) prohibits terms and conditions which are expressed to operate in one or more but not every State and Territory does not mean that an award provision will offend s.154(1)(b) only if it literally recites the words of the statute. Rather, an award provision which is expressed in such a way as to give legal effect to a proscribed geographic limitation will offend s.154(1)(b).<sup>7</sup>*

13. The proposed clause does not offend s154 of the Fair Work Act and the Ai Group’s submission that the small furnishing redundancy provisions be removed altogether, from the *Manufacturing Award* should be rejected.
14. The AMWU submits that the invitation to simplify the current description of the types of work to which the redundancy provisions apply will require more time than what was available and may require discussions between interested parties.

#### **Building Construction General On-Site Award 2010 (Building and Construction Award)**

15. The AMWU opposes the MBA’s submitted change to the proposed clause 16.1(a) on the grounds that is not “adequate”<sup>8</sup>.
16. The clause that currently appears in the *Building and Construction Award* deals with the notice of termination by the employer and does not provide the specificity of s.123(1) or 123(3) of the FW Act.
17. The proposed clause is easier to understand and provides better guidance to the relevant sections of the FW Act and the Award, as is usual practice for award users.

#### **Joinery and Building Trades Award 2010**

18. The AMWU notes that issue raised by the MBA in relation to the “*all purpose allowances, shift rates, and penalty rates applicable to ordinary hours*” has already been addressed by the earlier decision of the Full Bench in [2017] FWCFB 4419.<sup>9</sup>

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<sup>7</sup> [2018] FWCFB 4732 at [40]

<sup>8</sup> MBA submissions at 8-12

<sup>9</sup> At [168]

19. The Full Bench stated that:

*“We consider the better course is to modify the provision to specifically include shift allowances and penalty rates where applicable to ordinary time.”*<sup>10</sup>

20. This view was reiterated in a subsequent decision of the Full Bench including an express reference that all-purpose allowances are encompassed by the expression ‘ordinary rate of pay’<sup>11</sup>.

21. The amendments proposed by the MBA ought not be entertained and should be rejected.

END

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<sup>10</sup> [2017] FWCFB 4419 at [168]

<sup>11</sup> [2017] FWCFB 5258 at 256-257