CFMEU
CONSTRUCTION

IN THE FAIR WORK COMMISSION
Matter Number: AM2016/15

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – plain language –standard clauses (AM2016/15)

REPLY SUBMISSION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION (CONSTRUCTION & GENERAL DIVISION) RE STANDARD CLAUSES – AWARD SPECIFIC MATTERS

8th February 2019

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Introduction

1. The Fair Work Commission (the Commission) is currently undertaking a 4 yearly review of modern awards (the Review) in accordance with the transitional provisions of Schedule 1, Part 5 – Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018, of the *Fair Work Act 2009* (the FW Act).

2. On the 11th December 2018 the Full Bench issued a Decision ([2018] FWCFB 7447) regarding the two remaining issues in the plain language standard clauses matter (i.e. F. Redundancy and H. Employee leaving during the redundancy notice period).

3. In the decision the Full Bench set out their provisional views on a number of issues (see paragraphs [10] to [135]) and indicated that draft determinations were to be published incorporating the provisional views.[1] The Full Bench invited any interested party that opposed any of the provisional views to comment on the draft determinations and file submissions and arguments in support of that position by noon on Friday 25th January 2019. Any reply submissions were required to be filed by 4.00pm on Friday 8th February 2019.[2]

4. The awards, for which draft determinations were published on the Commission's website on 13th December 2018[3], included the following awards in which the CFMMEU (Construction and General Division) (CFMMEU C&G) has an interest:

   - *Building and Construction General On-site Award 2010*
   - *Joinery and Building Trades Award 2010*
   - *Mobile Crane Hiring Award 2010*
   - *Manufacturing and Associated Industries and Occupations Award 2010*

5. Submissions on the draft determinations for the above-mentioned awards (except for the *Mobile Crane Hiring Award 2010*), were filed by the AIG[4], HIA[5] and MBA[6]. This reply submission responds to the issues raised by those submissions.

6. The Full Bench decision also identified a technical issue in regard to the wording in the industry-specific redundancy schemes in the Building Award and the Plumbing Award, in

[1] [2018] FWCFB 7447 at paragraph [144]
[2] Ibid at paragraph [145]
[3] See https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-schedule-sc2-draft-determination.pdf
[4] https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-aig-250119.pdf
[5] https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-hia-250119.pdf
[6] https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-mba-290119.pdf

particular the reference to the "*Fringe Benefits Tax Regulations 1992*".[7] The Full Bench asked parties to consider whether this reference should be replaced with a reference to the "*Fringe Benefits Tax Assessment Act 1986*", with any submissions on this point to be filed by 4.00pm on Friday 21st December 2018. The CFMMEU C&G filed a brief response[8] supporting the replacement reference, and notes that the other union and employer submissions filed on this point were also supportive.

Building and Construction General On-site Award 2010 Draft Determination

7. The MBA, in its submission of 25th January 2019,[9] suggests a change to the draft determination for the *Building and Construction General On-site Award 2010* by deleting the wording in the proposed clause 16.1(a) and replacing it with the existing wording from clause 16.1 of the current award, i.e. '*Notice of termination is provided for in the NES. The notice provisions of the NES do not apply to a daily hire employee working in the building and construction industry*'.

8. The MBA argues that, "*the existing provision is adequate and that it should be retained ….the proposed clause 16.1(a) is more complex and would be difficult to understand for Award end-users ……Retention avoids requiring users to have regard to the Act and the Award, something that the current Award provision does not require*."[10]

9. The CFMMEU C&G opposes the MBA's suggested change to the proposed clause 16.1(a). Contrary to the MBA claim, the existing clause is not adequate for the following reasons:

   - The current clause 16.1 only deals with notice of termination by an employer and it only refers to employees covered by s.123(3) of the FW Act, and does not reflect the additional employees covered by s.123(1).
   - The proposed clause 16.1(a) is specific to notice of termination by an employee and reflects the full range of employees that are not covered by the notice requirements in the proposed clause 16.1(b), which reflects the intended operation of the current clause 16.2 of the *Building and Construction General On-site Award 2010.*

10. The proposed clause 16.1(a) is not more complex or difficult to understand (than the existing clause 16.1) as it does nothing more than point the award user to the specific provisions in the FW Act that are relevant. Requiring award users to have regard to the award and the FW

[7] [2018] FWCFB 7447 at paragraphs [21] and [22]
[8] https://www.fwc.gov.au/sites/awardsmodernfouryr/am201615-sub-cfmmeu-211218.pdf
[9] MBA, op cit
[10] Ibid at paragraphs 10 to 12

Act is nothing new, and is already required by numerous existing provisions in the award (e.g. the definitions of employee, employer and NES in clause 3 – Definitions; clause 5 – Access to the award and the National Employment Standards; clause 6 – The National Employment Standards and this award; clause 9 – Dispute Resolution; and clause 38 – Annual leave). It should also be noted that s.123 falls within Part 2-2 – The National Employment Standards of the FW Act.

Joinery and Building Trades Award 2010 Draft Determination

11. The MBA submission at paragraph 16 seeks that the wording in the proposed clause 17.1(c) be changed and that the references to "*all purpose allowances, shift rates and penalty rates applicable to ordinary hours"* be deleted. The MBA's rationale for this change is that the current award provision only refers to the ordinary time rate of pay and that "*the proposed clause now provides for payments that include other entitlements other than the employee's base rate of pay for his or her ordinary hours of work*".[11]

12. The CFMMEU C&G opposes the change put forward by the MBA and notes that, to use a colloquial term, the MBA have missed the boat. The issue of what constitutes the ordinary rate of pay was considered by the Full Bench in its decision of 28th August 2017 ([2017] FWCFB 4419) where it stated:

> *"[165] The model redundancy provision established in the award modernisation process concerning transfer to lower paid duties, of which the proposed clause G is intended to be a plain English redraft, was itself a limited redraft of the test case standard provision established in the TCR Supplementary Decision. The provision established in the TCR Supplementary Decision was as follows:*
>
> > *'2. Where an employee is transferred to lower paid duties for reasons set out in clause 1 hereof the employee shall be entitled to the same period of notice of transfer as he/she would have been entitled to if his/her employment had been terminated, and the employer may at his/her option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.'*
>
> *[166] There is no indication that the award modernisation Full Bench, beyond tidying up the drafting of the test case provision established in the TCR*

[11] Ibid, at paragraph 15

Supplementary Decision, intended to effect any substantive change in that provision. The best guide as to the intended meaning of that part of the provision which is now sought to be redrafted as clause G.3 is therefore to be found in the TCR Decision and the TCR Supplementary Decision. In the TCR Decision, the Full Bench, at the level of general principle, dealt with the issue of notice of transfer to a lower paid position as follows:

> *'However, consistent with the remainder of our decision, we are prepared to provide that where an employee is transferred to lower paid duties because the employer no longer wishes the job the employee has been doing, done by anyone, then the employee should be entitled to the same period of notice of the change in employment as he would have been entitled to if his/her employment had been terminated. Alternatively, the employer shall pay to the employee maintenance of income payments calculated to bring the rate up to the rate applicable to his/her former classification in lieu thereof.'*

[167] It is apparent from the above passage that the Full Bench intended that the payment in lieu of notice was intended to equalise the position of the employee to what it would have been if the employee had received actual notice of the transfer. It necessarily follows that the payment, characterised as income maintenance, would include all payments payable to the employee for the working of ordinary time, including all-purpose allowances, loadings and penalties. The reference to the 'former classification' in the last sentence reflects the fact that because the 'duties' of the new role are 'lower paid' than for the old role, a change to the classification level will be involved, but there is no reason to read this as excluding some aspects of total ordinary time pay from the required payment in lieu of notice. The actual clause developed in the TCR Supplementary Decision (earlier set out), which refers to the payment constituting the difference between the old and new ordinary time rate of pay, confirms the Full Bench's intention in this respect.

[168] Having identified the intended meaning of the existing prescription, it becomes necessary to consider whether the proposed clause G.3 maintains or changes that meaning. On consideration, the use of the expression 'ordinary rate of pay' in the proposed clause G.3 may not capture that meaning. As was made clear in the Four yearly review of modern awards decision of 13 July 2015, the expression 'ordinary hourly rate of pay' was adopted in exposure drafts, in distinction to the expression 'minimum hourly rate of pay', on the basis that it was inclusive of all-purpose allowances, but it was not treated as inclusive of shift allowances and penalty rates

applicable to ordinary hours of work. We are not minded to adopt the AMWU's approach of using the expression 'full rate of pay', which is a defined expression in s.18 of the Act, because we are anxious to avoid introducing yet another linguistic formulation concerning rates of pay into modern awards, and because the s.18 definition makes it clear that 'full rate of pay' includes overtime rates, which would confuse the position. We consider the better course is to modify the provision to specifically include shift allowances and penalty rates where applicable to ordinary time as follows:

> *'G.3 If the employer acts as mentioned in paragraph G.2(b), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of shift allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role and the ordinary rate of pay (also inclusive of shift allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.'*

[169] The reference to shift allowances may be omitted in modern awards which do not provide for shift work.

[170] A revised clause G is set out below:

> *'G.1 Clause G applies if, because of redundancy, the employer decides to transfer an employee to new duties to which a lower ordinary rate of pay is applicable.*
>
> *G.2 The employer may:*
>
> *(a) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or*
>
> *(b) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer.*
>
> *G.3 If the employer acts as mentioned in paragraph G.2(b), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of shift allowances and penalty rates applicable to ordinary hours) for the hours of work the*

employee would have worked in the first role, and the ordinary rate of pay (also inclusive of shift allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.' " (footnotes omitted)

13. Interested parties were invited by the Full Bench to make submissions on the revised clause set out above.[12] Only the ACTU and AMWU made submissions in regard to the proposed clause G, with the AWMU raising the issue of the inclusion of all purpose allowances in the bracketed part of G.3. In a further decision handed down on 18th October 2017 ([2017] FWCFB 5258), the Full Bench decided:

> *"[257] In relation to Clause G.3, we will include an express reference to all-purpose allowances to put beyond doubt that they are encompassed by the expression 'ordinary rate of pay'.*"

14. It is clear from the above that the issue now raised by the MBA has been already dealt with by the Full Bench, therefore the MBA proposal should be rejected.

15. In its submission the MBA also propose the reference to s.119 of the FW Act in the proposed clause 17.4(e) be replaced with a reference to s.22 of the FW Act.[13] The CFMMEU C&G does not support the change as the definition in s.22 of the FW Act deals with more than just redundancy, and the intention in clause 17.4(e) is clearly to indicate that the same meaning that is applied to continuous service for s.119 of the FW Act is also to be used in in determining the entitlement under clause 17.4(d).

16. The HIA raises a different issue in its submission[14] which goes to the form of the revised clauses 17.4(f) and (g), which relate to the redundancy pay for employees of small business employers. The HIA express a preference for the existing wording contained in the current clause 17.2(b) of the *Joinery and Building Trades Award 2010*, rather than the new wording.

17. The CFMMEU C&G does not support the change proposed by the HIA. The CFMMEU C&G does not find the proposed clauses 17.4(f) and (g) to be confusing and that to the extent that the provision requires the FW Act and the award to be read together, submits that this is no different to the existing clause 17.2(b) which requires the reader to have knowledge of s.121(1)(b) and "Subdivisions A, B and C of Division 11 of the NES".

[12] [2017] FWCFB 4419 at [171]
[13] MBA at paragraph 20
[14] HIA, op cit

18. The only change the CFMMEU C&G would consider, to assist the award reader, is to change the references in 17.4(f) and (g) from 'paragraph (c)' to 'paragraphs 17.4(c) and (d)'.

Manufacturing and Associated Industries and Occupations Award 2010 Draft Determination

19. The AIG submission[15] deals with the specific issue of the small furnishing employer redundancy pay provision as set out in the proposed clause 23.4 in the draft determination for the *Manufacturing and Associated Industries and Occupations Award 2010* (the *Manufacturing Award*). The AIG claim that:

    - the geographical application of the *Furnishing Industry National Award 2003* is preserved,[16]
    - the small business redundancy provision is not a term that contains 'State based differences',[17]
    - that if the Full Bench rejects the AIG's position on state based differences then the appropriate response would be to remove the clause,[18]
    - that should a claim proceed that the small business redundancy provisions be extended to States not covered by the pre-reform award it be treated as a significant change requiring a substantial merit based argument,[19]
    - that if the Full Bench retains the small business redundancy provision then the current description of the types of work to which it applies could be simplified by a link to the pre-modern award,[20] and
    - that the exclusions in the proposed clause 23.4 of the *Manufacturing Award* be extended to employees prescribed by regulations made under s.123(4)(d) of the FW Act.

    Save for the last item, the CFMMEU C&G opposes the claims of the AIG for the reasons set out below.

20. The AIG claims are nothing more than a blatant attempt to re-write the application of the small furnishing employer redundancy pay provision in the *Manufacturing Award*, and an attempt to introduce a geographical limitation that is not there and which has not been there for the 9 years since the modern award came into existence. The AIG claims should be rejected.

[15] AIG, op cit
[16] AIG, at paragraph 24
[17] Ibid at paragraph 42
[18] Ibid at paragraph 45
[19] Ibid, at paragraph 49
[20] Ibid at paragraph 58

21. The provisional view of the Full Bench, that the small furnishing employer redundancy pay provision is not limited according to the geographical application of the predecessor pre-modern award,[21] is supported by the CFMMEU C&G.

22. As noted by the Full Bench, clause 23.2(b) refers only to clauses 6.1 to 6.6 of the predecessor award and not also to the preamble to the coverage clause.[22] If it had been the intention of the AIRC Full Bench in the award modernisation proceedings to include the preamble and limit the geographical coverage then they would have simply just referred to clause 6 of the pre-modern award (as the preamble is the only additional wording to clauses 6.1 to 6.6 in the pre-modern award clause 6). The wording in clause 23.2(b) and their meaning are clear, and as Madgwick J in *Kucks v CSR Limited* (Kucks Case)[23], observed:

> "*A court is not free to give effect to some anteriorly derived notion of what would be fair or just, regardless of what has been written into the award. Deciding what an existing award means is a process quite different from deciding, as an arbitral body does, what might fairly be put into an award. So, for example, ordinary or well understood words are in general to be accorded their ordinary of usual meaning*."[24] (underlining added)

23. If the AIRC Full Bench had intended the geographical limitation to apply then they would have included the preamble by either a specific reference or referring to the whole of clause 6. They would have also made it a transitional provision consistent with their approach to the redundancy provision from the *Engine Drivers' and Firemen's (ACT) Award 2000*. The AIRC Full Bench however did not do this, stating,

> *"[165] The terms and conditions in the award are substantially the same as those in the award at the conclusion of the priority stage, reflecting prevailing industry standards. However, small employer redundancy provisions have been inserted for those who perform work within the manufacturing and associated industries and occupations which immediately prior to 1 January 2010 would have been covered by the Engine Drivers' and Firemen's (ACT) Award 2000 (Engine Drivers' (ACT) Award) or was in clauses 6.1 to 6.6 of the Furnishing Industry National Award 2003 (Furnishing Award). They reflect the small employer redundancy provisions of these two awards. The Engine Drivers' (ACT) Award is a common rule award. The provision concerning the Engine Drivers' (ACT) Award is transitional given its*

[21] [2018] FWCFB 7447 at [47]
[22] Ibid, at [48]
[23] 66 IR 182
[24] Ibid at [184]

application solely in the Australian Capital Territory. To provide a consistent approach to the application of the small employer redundancy provisions in modern awards, that concerning the Furnishing Award is not limited to the current respondents to the award." (underlining added and footnotes removed)

24. The AIRC Full Bench made it abundantly clear that the small employer redundancy provisions were not limited to the current respondents to the *Furnishing Award*, nor were they limited by geographical limitations.

25. This is not surprising as the AIRC Full Bench was fully aware of the issue of the existence of state based differences in pre-modern award and NAPSA redundancy provisions, and how they should be dealt with. In the earlier 19th December 2008 decision ([2008] AIRCFB 1000) the Full Bench stated,

"[60] Seen in the context of the history we have set out, the terms of the NES indicate an intention to adopt the Commission's 1984 decision in relation to small business—that employees of employers of fewer than 15 employees should not be entitled to redundancy pay. We are obliged by the terms of the NES to observe the small business exemption. We therefore conclude that the draft provision would exclude a term of the NES contrary to the terms of s.30. We also find that it is not necessary to include the provision in modern awards generally to ensure the maintenance of the safety net. As a general rule, therefore, the small business exemption will be maintained. We shall make an exception for federal awards and industries in which there was no small business exemption prior to the Redundancy Case 2004. Among the priority modern awards the only award in this category is the Textile industry award. The terms of the Textile industry award will include the small business redundancy pay provisions previously in the Clothing Trades Award 1999. The provision will only apply to the clothing industry.

[61] There are a number of different redundancy pay schemes in State awards and legislation which are reflected in NAPSAs. These 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 businesses, different calculations for base pay and so on. It is appropriate that these interstate differentials be taken into account in transitional provisions. Most awards will contain a transitional provision as follows:

"1.1 Subject to clause 1.2, an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:

(a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Workplace Relations Act 1996 (Cth) had applied to the employee; and

(b) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.

1.2 The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.

1.3 This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.

1.4 This clause ceases to operate on 31 December 2014." (underlining added)

26. The AIRC Full Bench was clearly mindful of the challenges of its task and the need to address competing objectives. In a later decision on the transitional provisions to be included in the priority and Stage 2 modern awards, the Full Bench stated:

"[4] The consolidated request also provides that the process is not intended to disadvantage employees or increase costs for employers – objectives which are potentially competing. The content of the awards we have formulated is a combination of existing terms and conditions in relevant awards and existing community standards. In order to minimise disadvantage to employees and increases in costs for employers we have generally adopted terms and conditions which have wide application in the existing awards in the relevant industry or occupation. However the introduction of modern awards applying across the private sector in place of the variety of different provisions in the Federal and State awards inevitably means that some conditions will change in some States. Some wages and conditions will increase as a result of moving to the terms which apply elsewhere in the industry. Equally some existing award entitlements will not be reflected in the applicable modern award because they do not currently have general application."

And,

[60] ……..There is an additional relevant matter. If modern awards are to apply nationally, as they must, it is inevitable that there will be changes in conditions of employment, in some case increases, in other decreases. No amount of economic analysis can alter that fact. While economic analysis can be very important, it must be seen in the context of the requirement

that we develop national standard conditions in the modern award concerned." [25] (underlining added)

27. The table, in paragraph 47 of the AIG submission, shows that the majority of States and Territories were covered by the *Furnishing Industry National Award 2003*, and therefore its small business redundancy provision, so it is not surprising that given its wide application the AIRC Full Bench determined that the clause was to have national coverage.

28. This general approach to wide application and national coverage has been consistently adopted by both the AIRC and the Commission. In the Accident Pay decision[26], the Full Bench stated,

"[172] In general we have taken the approach that where there has been a clear national standard of accident make-up pay in the pre-reform instruments which formed the basis for the making of a modern award or where a significant proportion of the employees now covered by a modern award had an entitlement to accident pay under the terms of pre-reform instruments, this would weigh in favour of including an accident pay provision in the award as part of the minimum safety net of terms and conditions. In those circumstances the inclusion of such a provision would not represent a significant change in the relevant award provisions.

…….

[199] In relation to the Concrete Products Award 2010, Dry Cleaning and Laundry Industry Award 2010, Horticulture Award 2010 and Wine Industry Award 2010, we note that the pre-reform instruments and accident pay entitlements did not apply in all States. However it is clear that a significant number of workers covered by the awards were entitled to accident pay under pre-reform instruments which applied in most States or at least several States. In these circumstances, and having regard to the considerations relating to the modern awards objective which we have earlier referred to, we consider it appropriate and necessary for the achievement of that objective that the awards include an accident pay provision."

29. The CFMMEU C&G agrees with the AIG that the small furnishing employer redundancy pay provision does not contain state based differences, but for different reasons. Simply stated the CFMMEU C&G position is that the award clause does not have any geographical limitations (for the reasons set out above), therefore there can be no state based differences.

[25] 2009 AIRCFB 800
[26] [2015] FWCFB 3523

30. The AIG claim that " *the manner in which the small business redundancy provisions in the Timber Award and the Manufacturing Award restrict the geographical application of the entitlement does not cause the clauses to offend section 154*" is misconceived and ignores the more recent Full Bench Decision on s.154. In the decision rejecting the creation of the proposed Norfolk Island Award ([2018] FWCFB 4732), the Full Bench stated,

> *[39] It may be accepted that s.154 is not concerned with a requirement that each modern award has practical operation in every State or Territory. Modern awards which are expressed to cover particular industries or occupations throughout the Commonwealth may not in practice apply to any employers or employees in a particular State or Territory at a given time because, for historical, geographic, demographic, economic or other reasons, the relevant industry or occupation is not carried out in that State or Territory. We accept the Applicants' submission that the change in language from the former s.576T(1)(b) of the WR Act to the current s154(1)(b) was intended to make that clear.*
>
> *[40] However that does not mean that s.154 is merely concerned with the linguistic formulation of the modern award term in question. The effect of ABI and the Applicants' submission appears to be that a term which, expressed in one way, infringes the prohibition in s.154 may, by the use of a different formulation of words, be permissible even though its legal effect is exactly the same. That cannot be accepted. That is essentially the same proposition which in the judgment of Buchanan J in ACCI v ACTU was described as '…elevat[ing] form over substance…' and 'artificial', and was rejected. It allows the avoidance of what Buchanan J characterised as the general objective of s.154(1), namely to eliminate 'State-based' differences. 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)."* (underlining added)

31. As there are no state based differences in the existing clause and the proposed clause, the provisions do not offend s.154, therefore there is no need to consider the AIG suggestion that the small furnishing employer redundancy pay provision be removed.

32. In regard to simplifying the coverage of the small furnishing employer redundancy pay provision the CFMMEU C&G submits that this will probably need further consideration. The CFMMEU C&G would point out most of the work set out in clause 6.2 of the pre-reform award is no longer covered by the *Manufacturing Award* and is in fact covered by the *Joinery and Building Trades Award 2010*. In AM2009/42 and 43 the award modernisation Full Bench determined in [2009] AIRCFB 974, that,

> *"[11] We have concluded that the downstream glass industry as ultimately defined by the CFMEU should be covered by the JBT Modern Award rather than the Manufacturing Modern Award. The JBT Modern Award is the more appropriate of the two because it already covers glazing contractors. We have decided to vary the JBT Modern Award so that it covers glass and glazing work and glass and glazing contracting, but excludes employers and employees engaged in the manufacture of glass from raw materials and employers and employees covered by the Vehicle Manufacturing, Repair, Services and Retail Award 2010. The award will define "glass and glazing work" as:*
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> > *"(a) designing, bevelling, cutting, embossing or glazing by hand or machine, painting, silvering, sand-blasting, bending or otherwise working of all types of glass used in the trade, as well as leadlights, spandrel panels, clear plastic, sheet acrylic or any substitute therefore, glass lenses or prisms;*
> >
> > *(b) fitting and/or fixing in position all types of glass used in the trade, as well as louvres, spandrel panels, glazing bars, clear plastic, or glass lenses or prisms in domestic on site situations;*
> >
> > *(c) packing and delivery of all types of glass used in the trade, as well as louvres, spandrel panels, leadlights, glazing bars, fibreglass, clear plastic, sheet acrylic or any substitute therefore, glass lenses or prisms including any labouring work in connection with any such operations;*
> >
> > *(d) toughening, heat treating or laminating glass or safety glass;*
> >
> > *(e) fabrication, assembly, glazing and installation of Insulation Glass units;*
> >
> > *(f) every operation, process, duty and function carried on or performed in or in connection with or incidental to any of the foregoing."*
>
> *[12] We are not persuaded it is necessary or appropriate to include "glass worker and glazier" in the coverage clause of the JBT Modern Award. To the extent such employees perform glass and glazing work as defined or are employed by glass and glazing contractors*

they will be engaged in the classifications in the award. A separate reference might cause confusion about the extent of coverage of the Manufacturing Modern Award.

[13] We shall also vary the Manufacturing Modern Award to delete the reference to "glazing, cutting, bending, fixing in position or otherwise working of, or with, all types of glass" from cl.4.2(a)(vii) and specifically exclude "employers or employees engaged in glass and glazing work or glass and glazing contracting covered by the Joinery and Building Trades Award 2010" from the definition of "Manufacturing and associated industries and occupations" in cl.4.4."

33. The CFMMEU C&G suggests that this discrete matter (of simplifying the description of the types of work to which the provision applies) may benefit from a conference of interested parties once the substantive issue, concerning the Full Bench provisional view on geographical coverage, is determined.

34. Finally, as stated in paragraph 19 above the CFMMEU C&G is not opposed to the AIG proposal that the exclusions in the proposed clause 23.4 of the *Manufacturing Award* be extended to employees prescribed by regulations made under s.123(4)(d) of the FW Act.