

IN THE FAIR WORK COMMISSION

Four Yearly Review of Modern Awards  
(AM2016/15)

Plain Language Redrafting – Standard Clauses

Manufacturing and Associated Industries and Occupations  
Award 2010  
(Small Business Redundancy)

JOINT SUBMISSION OF THE

CFMMEU – MANUFACTURING DIVISION  
CFMMEU – CONSTRUCTION & GENERAL DIVISION  
AUSTRALIAN MANUFACTURING WORKERS UNION

(23 April 2020)

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(AM2016/15)

## Plain Language Redrafting – Standard Clauses

### Manufacturing and Associated Industries and Occupations Award 2010 (Small Business Redundancy)

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#### INTRODUCTION

1. This is a joint submission of the following union parties with an interest in the Manufacturing and Associated Industries and Occupations Award 2010:
  - CFMMEU – Manufacturing Division
  - CFMMEU – Construction & General Division  
(collectively referred to in these submissions as the CFMMEU)
  - Australian Manufacturing Workers Union
2. The Standard Clauses Full Bench has been dealing with the small business redundancy provisions in the *Manufacturing and Associated Industries and Occupations Award 2010* (the Manufacturing Award) and the *Timber Industry Award 2010*. One outstanding matter is the coverage of the small furnishing employer redundancy provision set out in clause 23.2 of the Manufacturing Award.
3. At paragraph [47] of the 11<sup>th</sup> December 2018 Decision ([2018] FWCFB 7447)<sup>1</sup>, the Full Bench expressed the provisional view that clause 23.2 of the Manufacturing Award limits the application of small employer redundancy pay according to the ‘types of work’ covered by the predecessor award and not on a geographic basis.
4. After allowing parties an opportunity to respond to this provisional view<sup>2</sup> the Full Bench in its 9<sup>th</sup> October 2019 Decision ([2019] FWCFB 6858)<sup>3</sup> decided that:

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<sup>1</sup> <https://www.fwc.gov.au/documents/decisionssigned/html/2018fwcfb7447.htm>

<sup>2</sup> Ibid at paragraph [50]

<sup>3</sup> <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwcfb6858.htm>

[85] Having regard to the terms of clauses 23.2(b) and 15.7(b) and all of the contextual considerations (including those raised by Ai Group) we are satisfied that the relevant clauses limit the entitlement to redundancy pay by reference to the types of work covered by the predecessor awards, and not on a geographic basis. We confirm our *provisional* view and reject Ai Group's submission.

5. The Full Bench also decided that Vice President Hatcher would convene a conference of interested parties to seek to resolve the simplification of these terms.<sup>4</sup>
6. As noted in the October 2019 Decision<sup>5</sup> the AiG initially proposed that the types of work, to which the small employer redundancy terms applied, be simplified by a link to the pre-modern award.
7. Following the Conference before Vice President Hatcher on 6<sup>th</sup> November 2019, the parties submitted a joint report<sup>6</sup> on 14<sup>th</sup> February 2020 in which the AiG proposed an alternative clause as follows:

#### **23.4 Redundancy pay for employee of furnishing small business employer**

- (a) Clause 23.4 applies to an employee of a small business employer who is predominantly engaged in the manufacture or repair of:
  - (i) furnishings made from cane, bamboo and other like materials;
  - (ii) upholstery, furnishing drapery, blinds, screens, awnings, mattresses and bedding;
  - (iii) flooring products made from other than wood;
  - (iv) picture frames made from other than wood;

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<sup>4</sup> Ibid at paragraph [92]

<sup>5</sup> Ibid at paragraph [89]

<sup>6</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-75-joint-report-aig-cfmmeu-awu-140220.pdf>

(v) musical instruments made from other than wood;

except where any of the above items are made out of metal, plastic, rubber or any like material or the employee is excluded from redundancy pay under the NES by section 121(1)(a), section 123(1), section 123(4)(a) or section 123(4)(d) of the Act.

8. As indicated in the Joint Report the AMWU and CFMMEU did not agree with the alternate AiG proposal<sup>7</sup>. At a further conference before Vice President Hatcher on 30<sup>th</sup> March 2020, the Vice President asked the AMWU and CFMMEU to put in writing their version of the AiG alternate clause with a short submission.

#### **AMWU and CFMMEU Proposed 23.4(a)**

8. As the AMWU and CFMMEU identified at the 20<sup>th</sup> March 2020 Conference before Vice President Hatcher, the main concern with the AiG clause is that it does not protect the existing small business redundancy for employees of small furnishing employers. The AiG clause would significantly reduce the application of it, as it does not include parts of the coverage of the pre-modern *Furnishing Industry National Award 2003* and seeks to add a further limitation by the additional words “*except where any of the above items are made out of metal, plastic, rubber or any like material*”.
9. The coverage of the pre- modern *Furnishing Industry National Award 2003* is set out in Appendix A. The areas of work not included in the AiG alternative clause are highlighted in yellow.
10. The following clause proposed by the AMWU and CFMMEU would, we submit, ensure that the application of the small furnishing employer redundancy clause is not reduced.

#### **23.4 Redundancy pay for employee of furnishing small business employer**

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<sup>7</sup> Ibid, see paragraph 4

(a) Clause 23.4 applies to an employee of a small business employer who performs any of the following work:

- (i) Wholly or partly preparing, packing, assembling, manufacturing, repairing or fixing, whether new or second-hand:
- any article of furniture (including in-built furniture); or
  - camp and/or garden furniture; or
  - caravan furniture and/or caravan beds made by a furniture manufacturer; or
  - any article of furniture usually made or partly prepared by cabinet makers or chair, settee, lounge or couch (fixed or convertible) makers; or
  - show cases, clock cases, printer's cases; or
  - ice chests.

Except where any of the foregoing are made of wood or timber, manufactured wood or timber products.

- (ii) upholstery on metal or any substitute material,
- (iii) manufacturing, assembling or repairing of mattresses and bedding;
- (iv) making, fixing or repairing draperies, blinds, lampshades, awnings or screens (including venetian and/or wire blinds) but not including persons working as tentmakers;
- (v) preparing or sealing floors (other than wood) where such preparing or sealing is necessary to ensure the correct laying of the required floor coverings;
- (vi) making or repairing picture frames (including art picture frames) or framed mirrors (Except where any of the foregoing are made of wood or timber, manufactured wood or timber products);
- (vii) wholly or partly preparing, repairing or manufacturing refrigerators;
- (viii) optical work or glass, excepting spectacle lenses or frames.
- (ix) Manufacturing or repairing musical instruments or parts thereof other than electronic organs (Except where made of wood or timber, manufactured wood or timber products)
- (x) tuning or servicing musical instruments (including electronic organs);

- (xi) building, repairing, servicing or tuning pipe-organs.
- (xii) Manufacturing or assembling of Baby carriages, dolls' carriages, mobile chairs or parts thereof;
- (xiii) Manufacture of any goods made of wicker, bamboo, cane or similar materials

except for an employee who is excluded from redundancy pay under the [NES](#) by section 121(1)(a), section 123(1) or section 123(4)(a) of the [Act](#).

**(b)** In paragraph (a) an employee is **an employee of a small business employer** if, immediately before the time the employee's employment is terminated, or at the time when the employee is given notice of termination as described in section 117(1) of the [Act](#) (whichever happens first), the employer is a small business employer as defined by section 23 of the [Act](#).

**(c)** Subject to paragraphs (f) and (g), an employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated:

**(i)** at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or

**(ii)** because of the insolvency or bankruptcy of the employer.

**(d)** The amount of the redundancy pay in paragraph (c) equals the total amount payable to the employee for the redundancy pay period specified in column 2 of **Table 2—Redundancy pay period** according to the period of continuous service of the employee specified in column 1, worked out at the employee's base rate of pay for his or her ordinary hours of work.

**Table 2—Redundancy pay period**

<b>Column 1 Employee's period of continuous service with the employer on termination</b>	<b>Column 2 Redundancy pay period</b>
Less than 1 year	Nil
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years and over	8 weeks

(e) In paragraph (d) **continuous service** has the same meaning as in section 119 of the Act.

(f) The terms of section 120 of the [Act](#) apply as if section 120 referred to ‘paragraph (c)’ rather than ‘section 119’.

NOTE: Under section 120 of the [Act](#) the Fair Work Commission can determine that the amount of redundancy pay under the [NES](#) is to be reduced if the employer obtains other acceptable employment for the employee or cannot pay that amount. Paragraph (f) applies these arrangements also to redundancy pay under clause 23.4.

(g) The terms of section 122 of the [Act](#) apply as if section 122 referred to ‘clause 23.4’ rather than ‘this Subdivision’ and to ‘paragraph (c)’ rather than ‘section 119’.

NOTE: Under section 122 of the [Act](#) transfer of employment situations can affect the obligation to pay redundancy pay under the [NES](#) and the Fair Work Commission can make orders affecting redundancy pay. Paragraph (g) applies these arrangements also to redundancy pay under clause 23.4.

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(23 April 2020)

## **Appendix A – Coverage Clause from the Pre-Modern Furnishing Industry National Award 2003**

(Source: [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap825280/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap825280/asframe.html))

### **6.1 Furniture**

**6.1.1 Wholly or partly preparing, packing, assembling, manufacturing, repairing or fixing, whether new or secondhand:**

- any article of furniture; (including in-built furniture)
- camp and/or garden furniture; or
- caravan furniture and/or caravan beds made by a furniture manufacturer; or
- show cases, clock cases, printer's cases; or
- wood beds; or
- ice chests.

**6.1.2 Repairing any new or second-hand article of furniture usually made or partly prepared by cabinet makers or chair, settee, lounge or couch (fixed or convertible) makers;**

**6.1.3 upholstering on wood, metal or any substitute material;**

**6.1.4 wood carving;**

**6.1.5 spraying;**

**6.1.6 wood turning;**

**6.1.7 wood machining;**

6.1.8 fixing or repairing new or second-hand furniture or seating in buildings;

**6.1.9 French polishing new or second-hand furniture in or in connection with buildings;**

**6.1.10 polishing or finishing with wax, lacquer or any other material new or second-hand furniture or fittings in connection with buildings;**

**6.1.11 displaying, fixing or repairing in a building or shop, display units, cabinets, shop fittings and furnishings for shops, offices, banking chambers, churches, court**



rooms and the like and private houses, provided such articles are manufactured in the factory of a respondent to this award and who is engaged manufacturing other articles covered by the award;

**6.1.12** designing, making, covering with baize or similar material, repairing, painting or decorating furnishing accessories or novelties (excluding such articles made entirely of fibre glass, plastics or similar materials) such as nut bowls, smokers' stands, display stands, ornamental stands, fancy boxes, breadboards or salt boxes;

**6.1.13** designing, making, repairing, painting or decorating walking sticks;

**6.1.14** wholly or partly preparing or manufacturing furniture timbers cut to size, veneers, veneered panels, plywood or coreboard or any substitute thereof;

**6.1.15** manufacturing or repairing mantels or wood mantel pieces;

**6.1.16** manufacturing, assembling or repairing wire mattresses;

**6.1.17** manufacturing or repairing mattresses or bedding;

**6.1.18** sanding or sealing wooden floors preparatory to either the laying of floor coverings or the application of all types of lacquers and polish;

**6.1.19** applying all types of lacquers and polishes to wooden floors;

**6.1.20** preparing or sealing floors (other than wood) where such preparing or sealing is necessary to ensure the correct laying of the required floor coverings;

**6.1.21** waxing, gilding, bronzing or applying other "metallic finish" process by hand, brush, power-tool, machine or spray;

**6.1.22** making, fixing or repairing draperies, blinds, awnings or screens (including venetian and/or wire blinds) but not including persons working as tentmakers;

**6.1.23** the work of persons employed as mattress sewers, upholstery sewers, table hands, lampshade hands or drapery hands;

**6.1.24** making or repairing picture frames (including art picture frames) or framed mirrors;

**6.1.25** wholly or partly preparing, repairing or manufacturing refrigerators;

**6.1.26** preparing hardboard or similar materials for all purposes;

**6.1.27** the woodwork of wireless cabinets, billiard tables, incubators and sewing machines;

**6.1.28** planning, designing, cutting, laying, measuring, repairing, and/or fixing and sewing of floor coverings and furnishing drapery, loose covers, stuffed quilts, pillows, bolsters, cushions, blinds (other than venetian blinds) where such work is performed in the employment of a retail shop and furnishing drapery establishments, and in the house furnishing cutting and sewing and in the preparation of and filling with materials for such work;

**6.1.29** employees other than workers in the employment of a retail shop and furnishing drapery establishments engaged in wholly or partially in the planning, measuring, and/or repair of blinds, cornice boxes, pelmets, facia and the like used in connection with blinds.

## **6.2 Glass or glazing**

**6.2.1** Designing, bevelling, cutting, embossing or glazing by hand or machine, painting, silvering, sandblasting, bending or otherwise working all kinds of plate, sheet, float, figured rolled, structural or stained glass, louvers, clear-plastic or glass lenses or prisms;

**6.2.2** fitting and/or fixing in position all kinds of plate, sheet, float, figured rolled, structural or stained glass, fibre glass, louvers, mirrors, spandrel panels, glazing bars, clear-plastic or glass lenses or prisms;

**6.2.3** packing all kinds of plate, sheet, float, figured rolled, structural or stained glass, louvers, mirrors, clear-plastic or glass lenses or prisms including any labouring work in connection with any such operations;

**6.2.4** manufacturing toughened (heat treated) or laminated safety glass;

**6.2.5** manufacturing or repairing lampshades;

**6.2.6** optical work or glass, excepting spectacle lenses or frames.

### **6.3 Musical instruments**

**6.3.1** Manufacturing or repairing instruments or parts thereof other than electronic organs;

**6.3.2** tuning or servicing musical instruments (including electronic organs);

**6.3.3** building, repairing, servicing or tuning pipe-organs.

### **6.4 Radio, audio equipment and television cabinets**

Building or repairing the cabinets (mainly of wood) of radios, audio equipment or television sets.

### **6.5 Wicker and baby carriages**

#### **6.5.1 Manufacturing**

**6.5.1(a)** Baby carriages, dolls' carriages, mobile chairs or parts thereof;

**6.5.1(b)** any goods made of wicker, bamboo, cane or similar materials;

**6.5.1(c)** assembling or putting together any parts of baby carriages, dolls' carriages or mobile chairs.

### **6.6 Wooden toys**

Manufacturing or repairing wooden toys.