

AM2009/36

**APPLICATION TO VARY THE
MANUFACTURING MODERN AWARD**

**SUBMISSION OF THE AUSTRALIAN
INDUSTRY GROUP**



30 October 2009

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1. On 12 October 2009, joint correspondence was sent to the Commission from Ai Group and the six unions in the Metal Trades Federation of Unions (ie. AMWU, AWU, CEPU, CFMEU, LHMU and NUW).
2. The letter arose from discussions between the parties about the Commission's Stage 3 Award Modernisation Decision of 4 September 2009. In its decision the Full Bench stated, in several places, that the *Manufacturing and Associated Industries and Occupations Award 2010* ("the Manufacturing Modern Award") would be varied.
3. Accordingly, Ai Group and the MTFU Unions viewed our discussions as taking place in the context that the Commission had made its decision and all that remained was for the specific award amendments to be settled. We saw the process as akin to one of "settling orders" rather than one where the Commission's decision was open to further argument. This is the reason why we sent a letter to the Commission rather than filing an application to vary the award.
4. The correspondence which we sent to the Commission on 12 October 2009, sets out:
 - Relevant references from the Commission's Decision of 4 September and its earlier Statement of 22 May.
 - Proposed amendments to clauses 3.1, 4.1, 4.3, 4.4, 24 and Schedule A which Ai Group and the six MTFU unions support; and

- A proposed amendment to paragraph 4.3(ix) which:
 - Ai Group, the AMWU and the CEPU support;
 - The CFMEU opposes; and
 - The LHMU and NUW have no position upon.
5. It is evident from the Commission’s website that the joint Ai Group / MTFU correspondence of 12 October has been treated by the Commission as both an application to vary the Manufacturing Modern Award and a submission in support of such application. We have no objection to this approach and we request that the Commission grant relief from the Rules with regard to the format of our application to vary.
6. The submissions which follow supplement the points made in our 12 October correspondence.

Definition of “agricultural implements, machinery and appliances” in 3.1 and clarification of the term “agricultural implements” in 4.3(m)

7. The additional definition proposed for insertion in 3.1 is an important existing definition found in Schedule C of the *Metal, Engineering and Associated Industries Award 1998* (“the Metal Industry Award”). It was a longstanding definition in the former *Agricultural Implement Making Award 1980* which was incorporated into the Metal Industry Award in 1998.
8. The major manufacturers of agricultural implements, machinery and appliances, plus numerous smaller organisations, are currently applying the Metal Industry Award.

9. The *Agricultural Implement Making Award 1980* applied to the manufacture etc of “*agricultural implements, machinery and appliances*”, and now the Metal Industry Award applies to this type of work.
10. The inclusion of the term “agricultural implements” in 4.3(m) of the Manufacturing Modern Award was sought by Ai Group and the MTFU and endorsed by the Commission in its Stage 1 Decision. Whilst the term most likely would be interpreted with reference to the coverage of the *Agricultural Implement Making Award 1980* and the Metal Industry Award (should there be any dispute about the interpretation), we submit that it is better to remove doubt. The inclusion of the existing definition of “*agricultural implements, machinery and appliances*” in the Manufacturing Modern Award, together with the associated amendment to 4.3(m) will remove doubt.
11. This issue is appropriately dealt with in conjunction with the Stage 3 amendments because the Commission has decided to include the following provision within the coverage of the Stage 3 *Vehicle Manufacturing, Repair, Services and Retail Award 2010*:

“manufacturing, assembling, fabricating, installing, servicing, maintaining, reconditioning or repairing of engines or vehicle servicing equipment and agricultural machinery or implements or the like where such employer immediately prior to 31 December 2009 was bound by clause 1.5.4 (a) of the Vehicle Industry Award 2000” (Emphasis added)
12. Manufacturers etc of “*agricultural implements, machinery and appliances*” who are currently using the Metal Industry Award, are not bound by the *Vehicle Industry Award 2000*. The proposed amendment simply preserves the status quo and reflects the Commission’s expressed intentions. The following extract from the AIRC’s 4 September Decision is relevant:

“[272] As to coverage it is important that the making of the new award not unsettle the relationship which has existed satisfactorily for many years between the awards of the vehicle industry and the award regulating manufacturing. The fact of complementary exclusion provisions in the Modern Vehicle and the Manufacturing Modern awards is intended to have this effect. Where claims have been made for additions to the scope of coverage of the Modern Vehicle Award, to include, for example, boats and bicycles, our approach has been to maintain the status quo.”

Amendments to reflect the coverage of the *Professional Employees Award 2010*

13. The Full Bench has decided that professional engineers and scientists, including those in the manufacturing industry, will be covered by the *Professional Employees Award 2010*. In its Stage 3 Statement of 22 May 2009, the Commission said:

“[197] We have not adopted the position advanced by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union that the Manufacturing Modern Award should be varied to provide a common stream from technical to professional. The approach we have adopted is designed to provide appropriate flexibilities relating to professional employment.”

14. Ai Group and the MTFU have agreed on the following amendments to the Manufacturing Modern Award to reflect the Commission’s decision:

- The insertion of a reference to the *Professional Employees Award 2010* in the definition of “professional field” in subclause 3.1;
- The removal of the wage rates for professional engineers and scientists in subclause 24.1 – Adult Employee Minimum Wages; and
- The insertion of a note in Clause A.2 of Schedule A referring employers and employees to the *Professional Employees Award 2010* for classification requirements relating to professional engineers and scientists.

The treatment of coal, the production of coke and the production of “Syngas”

15. In its Stage 3 Statement of 22 May 2009, the Commission said:

“Coal treatment industry

[50] At present coal treatment in Australia consists of processing done at wash plants, coke works and in the production of briquettes from brown coal for burning in coal-fired power stations. All existing wash plants are integrated into black coal mining operations and are covered by the *Black Coal Mining Industry Award 2010*.¹⁶ All briquette production occurs in conjunction with the mining of brown coal for use in electrical power generation and will be covered by the proposed Electrical Power Award 2010. The only operative coke works in Australia is the Bowen coke works and it is covered by an enterprise NAPSA which is excluded from the award modernisation process. The Illawarra Coke Company has two coke works on the New South Wales South Coast. Both of those plants were closed earlier this year. In summary, it appears that there is no coke works or other coal treatment operation in Australia that would be covered by a coal treatment industry modern award and that such an award would cover new entrants only.

[51] In all the circumstances we are inclined to deal with this residual area by extending the scope of the Manufacturing Modern Award to include coal treatment not covered by another modern award. Parties who oppose such a course and who wish to argue for the creation of a coal treatment industry modern award should make a submission in support of that position. In the event that we are dissuaded from our provisional view that there should be no separate modern award for the coal treatment industry we will issue an exposure draft of such award as part of Stage 4.” (Emphasis added)

16. In its Stage 3 Decision of 4 September, the Commission said:

Coal treatment industry

“[54] In our statement of 22 May 2009 we noted, in summary, that there is no coke works or other existing coal treatment operation in Australia that would be covered by a modern award for the coal treatment industry and that such an award would cover new entrants only. We

indicated an inclination to amend the scope of the Manufacturing Modern Award to include coal treatment not covered by another modern award.

[55] Following the publication of our statement of 22 May 2009 we received no submission urging the Commission to make an award for the coal treatment industry or challenging the appropriateness of placing the production of coke within the scope of the Manufacturing Modern Award. The CFMEU(M&E) objected to the production of 'Syngas' being placed within the scope of that award. Syngas is a term that refers to a gas produced from coal processed on site through a number of technologies. It appears that those technologies remain experimental and that no commercial Syngas enterprise has yet been established (albeit that the CFMEU(M&E) has pointed to material suggesting that a commercial Syngas operation will be developed in the near future). The fact remains that we have almost no information on how commercial production will be undertaken or the nature of the work that will be performed by employees in the commercial production process. We are not inclined at this stage to apply black coal mining industry conditions to any Syngas industry that may emerge in the future. Nor are we persuaded that the production of Syngas should necessarily find a permanent home in the Manufacturing Modern Award. Rather, we think that this matter should be revisited if and when a commercial Syngas industry has been established. Parties can make appropriate application(s) if and when that circumstance comes to pass." (Emphasis added)

17. Our correspondence of 12 October includes a proposed amendment to paragraph 4.3(ix) which:

- Ai Group, the AMWU and the CEPU support;
- The CFMEU opposes; and
- The LHMU and NUW have no position upon.

18. Ai Group, the AMWU and the CEPU propose that the coverage of the award include:

(ix) The treatment of coal and the production of coke (other than where such work is covered under another modern award).

19. The proposed amendment, we submit, is consistent with the Commission's apparent intentions, as evidenced by the above extracts from the Statement of 22 May and the Decision of 4 June.
20. Paragraph [50] of the 22 May Statement refers to the coal treatment industry as comprising *"processing done at wash plants, coke works and in the production of briquettes from brown coal for burning in coal-fired power stations"*.
21. The Statement goes on to say that *"it appears that there is no coke works or other coal treatment operation in Australia that would be covered by a coal treatment industry modern award and that such an award would cover new entrants only"*.
22. In view of this the Full Bench said *"In all the circumstances we are inclined to deal with this residual area by extending the scope of the Manufacturing Modern Award to include coal treatment not covered by another modern award."*
23. As we interpret the Commission's Statement of 22 May and its Decision of 4 September, the Commission has decided that:
 - The treatment of coal and the production of coke should be covered under the Manufacturing Modern Award (except where covered under another modern award). (Refer to the first sentence in para [51] of the 22 May Statement and the first sentence in para [55] of the 4 September Decision).
 - The production of "Syngas" (ie. *"gas produced from coal processed on site through a number of technologies"*) will be included under the Manufacturing Modern Award for the time being but this issue can be revisited at later stage. (Refer to the last two sentences in para [55] of the 4 September Decision and, in particular, the reference to *"permanent home in the Manufacturing Modern Award"* (Emphasis added)).

The printing and processing of photographs from film

24. At paragraph [166] of the Statement of 22 May 2009, the Commission said:

“The coverage of the Manufacturing Modern Award might be altered to make it clear that the award covers employees engaged in process manufacturing. This could be done by expanding the list of industries in clause 4.2 of the award to cover the processing and printing of photographs from film.”

25. At paragraph [212] of the 4 September Decision, the Full Bench stated:

“We will expand the coverage of the Manufacturing Modern Award to cover printing and processing of photographic film. No one opposed this course and Ai Group supported it. We will adopt their draft amendment.”

26. An amendment to reflect the Commission’s decision is included within our correspondence of 12 October (paragraph 4.2(a)(x)).

The manufacture of fungicides, insecticides, vermin destroyer and weed destroyer

27. The manufacture of fungicides, insecticides, vermin destroyer and weed destroyer are covered by the *Manufacturing Chemists Award 1998* and/or the *AWU Drug and Pharmaceutical Industry Award 2000* but are not covered by the Pharmaceutical Modern Award. Accordingly, such products need to be covered under the Manufacturing Modern Award, along with the other chemicals which the award covers.

28. At paragraph [163] of the AIRC’s Statement of 22 May 2009 the Commission said:

"We publish a Pharmaceutical Industry Award 2010 exposure draft. It is based on that proposed by the NUW. However, the coverage clause has been simplified to try to overcome concerns about potential overlap with the coverage of the Manufacturing Modern Award."

29. At paragraph [211] of the AIRC's Decision of 4 September 2009, the Full Bench stated:

"The exposure draft of the *Pharmaceutical Industry Award 2010* has been altered to clarify that its coverage extends to the wholesaling of prescription pharmaceuticals or of both prescription and non-prescription pharmaceuticals and that it does not cover those covered by the Food Modern Award or the Manufacturing Modern Award."

30. Ai Group has held discussions with the LHMU regarding the relationship between the Manufacturing Modern Award and the *Pest Control Award 2010*.

31. Our correspondence of 12 October includes the outcome of the discussions between Ai Group and the LHMU on the relationship between the Manufacturing Modern Award and the *Pest Control Award 2010*. An agreed new paragraph 4.3(bb) is proposed for the coverage clause of the Manufacturing Modern Award, as follows:

"(bb) *fungicides, insecticides, vermin destroyer and weed destroyer (except for spraying, fumigating, poisoning or otherwise applying such substances)."*

32. In addition to the LHMU, the proposed new paragraph is supported by the other 5 MTFU unions.

33. The intention of the agreement reached between Ai Group and the LHMU is that the manufacture of fungicides, insecticides, vermin destroyer and weed destroyer would be covered by the Manufacturing Modern Award while the spraying / application of such substances to fumigate buildings etc would be covered under the Pest Control Modern Award.

Fibre Cement

34. Ai Group and the six MTFU unions support the manufacture of fibre cement materials and products being included within the coverage of the Manufacturing Modern Award, consistent with the following extract from the Commission's Statement of 22 May:

“[46] At this stage we propose to add fibre cement products to the definition of manufacturing and associated industries and occupations in the Manufacturing Modern Award.”

35. This issue is addressed in the proposed amendment to existing paragraph 4.3(ff) (consequentially renumbered as 4.3(gg)).

Non-food grocery products

36. The proposed new paragraph 4.3(mm) includes non-food grocery products from the existing *Grocery Products Manufacture – Manufacturing Grocers Award*.
37. The inclusion of such products is consistent with the following extracts from the Commission's Statement of 22 May and Decision of 4 September.
38. On 22 May, the Commission said:

[86] An exposure draft Food, Beverage and Tobacco Manufacturing Award 2010 has been developed for the food, beverages and tobacco manufacturing industry. The exposure draft incorporates the aerated waters, baking, confectionary, dairy and general food sectors of that industry. It also incorporates the pet food manufacturing industry, the food component of the grocery products manufacture industry and the brewing sector of the liquor and accommodation industry. The non-foods component of the grocery products manufacture industry may, most appropriately, be covered by the Manufacturing Modern Award to the extent it is not already so covered. Submissions are sought from those with a relevant interest as to whether that modern award should be varied to further include the non-foods component

of the grocery products manufacture industry and, if so, on the details of the variations needed. (Emphasis added).

39. After receiving submissions from Ai Group and other parties, on 4 September the Commission decided:

“**[106]** The manufacturing of food will mainly be covered by one of the three modern awards dealt with in food, beverages and tobacco industry (manufacturing). Any remaining area will be covered by the Manufacturing Modern Award.”

The production of polypropylene / polyethylene

40. The Manufacturing Modern Award currently excludes (at paragraph 4.4(j)), *“the production of polypropylene / polyethylene”*.

41. At paragraph 4.3(v) of the Commission’s Decision of 4 September, it is stated:

“**[183]** The unions proposed that the modern award should cover the manufacture of polyolefins. This was opposed by OIIC, Qenos Pty Ltd and LyondellBasell Australia Pty Ltd, the latter two companies describing themselves as being in the plastics and chemicals industry. They submitted they were not in the industry as defined in this modern award, the only connection being their use of refined oil products as the feed stock in a manufacturing process undertaken by them. We accept the submissions made by these companies and have decided they should be covered by the Manufacturing Modern Award. A variation to that award will be made to delete cl.4.4(j) with the intention being that the activities of these companies will then come within the coverage described in cl.4.3(v).

42. Our correspondence of 12 October proposes the deletion of paragraph 4.4(j), as decided by the Commission.