

AM2009/175

**APPLICATION TO VARY THE
MANUFACTURING AND ASSOCIATED
INDUSTRIES AND OCCUPATIONS AWARD
2010**

**FURTHER SUBMISSION OF THE AUSTRALIAN
INDUSTRY GROUP**



4 March 2010

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1. This submission deals only with a limited number of matters. With regard to all aspects of the AMWU's application, including the various issues raised by the AMWU, CFMEU, CEPU, MBA and other parties, we rely upon:
 - The Ai Group submission filed on 22 December;
 - The marked-up and annotated version of the AMWU exhibit of 23 February, filed by Ai Group on 26 February; and
 - The oral submissions made by Ai Group on 1 March.

Coverage

2. An amendment is needed the coverage clause of the Award to reflect the Full Bench decision relating to floor covering and finishing [2009] AIRCFB 988. The relevant extract from the decision is:

“[25] To give effect to this change we will include a further dot point (as underlined) in cl. 4.2(a)(iii) of the Manufacturing Modern Award, so it will read:

“(iii) the repair, refurbishment, reconditioning, maintenance, installation, testing and fault finding of:

- *any of the items referred to in clause 4.2(a)(i); or*
- *floor covering; or*
- *plant, equipment and buildings (including power supply) in the industries and parts of industries referred to in clauses 4.2(a)(i) and (ii); or*

- *plant, equipment and buildings (including power supply) in any other industry.”*
3. Clauses also need to be included for on-hire employment and group training, as submitted by Ai Group in response to the draft residual variations issued by FWA.

Definition of production planner

4. We concur with Section 3 (Unacceptable Expansion of Concept) in the MBA’s submission of 2 March.
5. We strongly oppose the CFMEU’s proposed exclusion set out in para 2.8 of its submission of 4 March. The union has unsuccessfully sought such an exclusion on numerous occasions during the award modernisation process and this has been rejected by the Tribunal. Such an exclusion would have potentially sweeping ramifications and it would be extremely unfair to insert such a widespread exclusion on the basis of a debate about the definition of a “production planner”.
6. Ai Group rejects the AMWU and CFMEU submissions relating to the definition of production planners. The definition which Ai Group supports is set out in paragraph 16 of our submission of 22 December.

Subclause 24.2 – Mixed functions

7. In its exhibit of 23 February, the AMWU has only included the heading “Mixed Functions”, not the wording of subclause 24.2. Ai Group opposes any change to the existing wording of subclause 24.2 (other than the change in title to “*Higher Duties*” which FWA has proposed as part of the residual variations)

and we understand that the unions are not proposing any change. We make this submission to avoid any doubt regarding this issue.

Paragraph 24.3(b)(vi)

8. Ai Group opposes the inclusion of this paragraph.
9. The AMWU has submitted that this provision relates to employees covered by the National Metal and Engineering Industry Competency Standards at Levels C4, C3, C2a and C2b, and has submitted that the provision is needed because points requirements have not been determined for these levels.
10. Ai Group submits that points requirements are not needed. Employees at Levels C4, C3, C2a and C2b are appropriately classified using the minimum training requirement and other aspects of the classification definitions in clause B.3. These employees are senior staff and it is reasonable to expect that staff at these levels will have formal qualifications. In those cases where such staff do not have formal qualifications, employees at these levels are highly skilled and command generous market salaries.
11. In the event that Ai Group's primary submissions (as set out above) are not accepted, we make the following comments about the draft clause circulated by Her Honour, SDP Acton's Associate on 2 March.
12. The draft clause is:

“(vi) Where competency requirements for a classification level are not expressed in points, the classification level of an employee is to be determined on the basis of the competencies in the National Metal and Engineering Competency Standards held and utilised by the employee which are equivalent to the specified minimum training

requirements in a classification level. Clauses 24.3(b)(i), (ii) and (iv) also apply.”

13. In an email of 3 March, the AMWU proposed the following amendments:

“(vi) Where competency requirements for a classification level are not expressed in points, the classification level of an employee is to be determined on the basis of the relative proportion of competencies in the National Metal and Engineering Competency Standards held and utilised by the employee which are equivalent to the specified minimum training requirements in a classification level. Clauses 24.3(b)(i), (ii), (iii) and (iv) also apply.”

14. Ai Group has no objection to the cross-reference to paragraph “(iii)” being included but we do not consent to the other amendment proposed by the AMWU. Classification should be based upon competencies held and utilised, if FWA decides to include paragraph (vi) despite Ai Group’s objections.

15. Also, if FWA decides to include the provision, we propose that a heading be inserted to improve clarity, as follows:

“(vi) *Competency requirements for Classifications C4, C3, C2a and C2b*

Where competency requirements for a classification level are not expressed in points, the classification level of an employee is to be determined on the basis of the competencies in the National Metal and Engineering Competency Standards held and utilised by the employee which are equivalent to the specified minimum training requirements in a classification level. Clauses 24.3(b)(i), (ii), and (iv) also apply.”

Classification process for employees not covered by the National Metal and Engineering Competency Standards

16. The AMWU asserts that Ai Group's proposals do not provide a basis to classify employees not covered by the Metal and Engineering Industry Competency Standards. This union submission is completely wrong.
17. The AMWU's attempt to misrepresent Ai Group's submissions, is yet another attempt to convince FWA to accept the arguments which were rejected during Stage 1 of the modernisation process. It is another attempt to link the classification structure in the Manufacturing Modern Award to a wide range of unspecified competency standards and industry training bodies in numerous industry sectors.
18. The union's proposals are a recipe for widespread reclassification claims and disputation.
19. Employers need to be able to understand what they are required to do to classify employees and it is not fair to expect them to embark upon a huge research exercise to work out the classification procedures under the award.
20. Under Ai Group's proposals, employees not covered under the Metal and Engineering Competency Standards would be classified in the manner set out below.

Employees at C10 and above where Ai Group proposes that there be no indicative tasks in clause B.4

21. These employees would be classified using the definitions in B.3.
22. For example, a tradesperson at Level C10 would need to have one of the specified trade qualifications, or equivalent, plus be working at the level described in B.3.7(a)(ii). The reference to “*or equivalent*” is important.
23. The existing modern award definition of “*or equivalent*” in B.3.1(b)(i) (which Ai Group proposes remain the same except for the replacement of the words “*an accredited training course*” with the words “*a qualification*”) provides recognition for formal qualifications plus on-the-job skills and experience.
24. If, say, an employee has a trade qualification which is not listed in B.3.7(a)(i) then it is specified in the definition of “*or equivalent*” that so long as such qualification is recognised by a registered provider as being equivalent then the employee is entitled to be classified at the relevant level.
25. If the employee does not have the formal qualification then the definition of “*Work within the scope of this level*” in B.3.1(b)(ii) is relevant. This definition gives the role to Manufacturing Skills Australia (MSA) to determine what competency standards should be recognised as relevant and appropriate. MSA is the industry skills body for the manufacturing industry and its coverage extends to a very wide range of manufacturing sectors, not just the metal and engineering sector. MSA’s coverage includes manufacturing, automotive, furnishing, chemicals, rubber, plastics, cabling and laboratory operations, to name a few.

26. Ai Group very strongly opposes the AMWU's proposed changes to the definitions of "*or equivalent*" and "*work within the scope of this level*" which would have the effect of linking the classifications in the award to competency standards in numerous industry sectors which have been developed for **training** purposes, rather than for the purposes of linkage to the classification structure in the Manufacturing Modern Award. The AMWU's proposals are a recipe for widespread reclassification claims and disputation.
27. Rather than recognising for classification purposes a large number of unspecified competency standards and giving an important classification role to other unspecified Industry Skill Councils, as proposed by the AMWU, the role should remain with Manufacturing Skills Australia to determine what competency standards should be recognised as "*relevant and appropriate*" under the award. The retention of the existing definitions of "*or equivalent*" and "*Work within the scope of this level*" will ensure this.

Level C10

28. Ai Group opposes the inclusion of indicative tasks at Level C10. The C10 classification definitions in clause B.3 are very broad and include both a trade definition (B.3.7(a)) and a production definition (B.3.7(b)).
29. The indicative tasks proposed by the AMWU for this level include "*bulk paint tinting and resin manufacturing*". This indicative task is clearly drawn from the classification of Grade 4 Paint Worker in the *Australian Paint Industry Award 2000*, which appropriately aligns to Level C11 not C10. The inclusion of this indicative task at Level C10 is highly inappropriate and will cause significant problems for companies in the paint industry.

Levels C9 and C8

30. The AMWU is seeking indicative tasks for Levels C9 and C8 in clause B.4. Unlike the other classification levels where the union has agreed to use the indicative tasks inserted into the *Metal Industry Award 1984 – Part I* by SDP Keogh in 1989, the union’s proposed indicative tasks for Levels C9 and C8 are a substantially watered down version of those inserted into the award by His Honour.
31. Ai Group opposes the inclusion of indicative tasks at Levels C9 and C8, but for FWA’s information these are the indicative tasks that SDP Keogh inserted into the Metals Award in 1989 for these levels:

C9

“Tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post trade training to enable them to perform particular tasks.”

Note: The key aspect of the Level C9 indicative tasks was the requirement for post trade training.

C8

“The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular indicative tasks:

- *Exercises high precision trade skills using various materials and/or specialised techniques;*
- *Performs operations on a CAD/CAM terminal in the performance of routine modifications to NC/CNC programs;*

- *Installs, repairs and maintains, tests, modifies, commissions and/or fault finds on complex machinery and equipment which utilize hydraulic and pneumatic principles and in the course of such work, is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems;*
- *Works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising interconnected circuits.”*

Note: Again, as can be seen above, a key aspect of the Level C8 indicative tasks was the requirement for post trade training, together with a description of various complex trade tasks.

32. If FWA decides to include indicative tasks in the Award for Levels C9 and C8, despite Ai Group’s objections, similar to the approach agreed upon between Ai Group and the unions for Levels C13 to C11 such indicative tasks should include those which SDP Keogh determined as being appropriate.

Employees at C13 to C11 where Ai Group and the unions have agreed to insert indicative tasks in clause B.4

33. Classification of employees at these levels is relatively simple.
34. The employees would be classified using the definitions in B.3, supplemented by the indicative tasks in B.4.
35. The indicative tasks proposed by the AMWU at Level C11 include “*powder coating and tinting under supervision*”. This indicative task is clearly drawn from the classification of Grade 3 Paint Worker in the *Australian Paint Industry Award 2000*, which appropriately aligns to Level C12 not C11. The inclusion of this indicative task at Level C11 is highly inappropriate and will cause significant problems for companies in the paint industry.

CFMEU's proposed Clause B.1(b)

36. Ai Group opposes the CFMEU's proposed new clause B.1(b), as outlined in section 3 of its submission of 4 March. Such a provision is not appropriate for a modern award.
37. Engine drivers have been covered under the Metal Industry classification structure since 20 September 1989. We submit that it is well understood within industry what levels engine drivers are classified at.
38. Similar to all other employees covered by the Manufacturing Modern Award, to the extent that any parties wish to study the historical alignment between old engine driving classifications and the 14 level skills-based classification structure, the old awards and supporting materials remain available. It is not appropriate that these old materials be included in the modern award, as proposed by the CFMEU.