

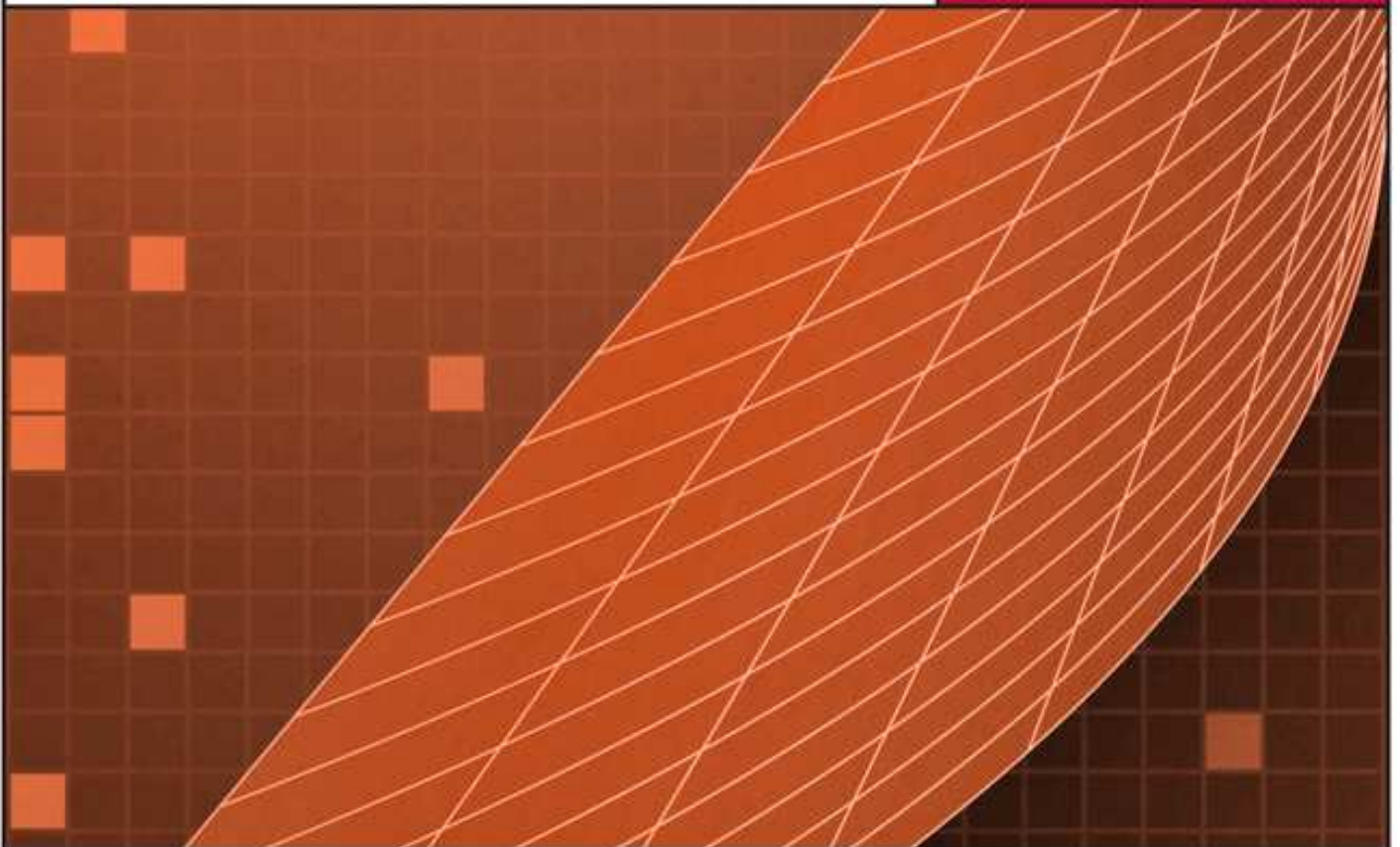
**SUBMISSION TO FAIR
WORK AUSTRALIA**



**AM2010/80 – Application to vary the Joinery and
Building Trades Award 2010**

 **AUSTRALIAN INDUSTRY GROUP**

14 July 2010



Application to vary the Joinery and Building Trades Award 2010

1. Overview

1. Ai Group supports the application. The variation is necessary to achieve the modern awards objective.
2. The existing modern award conditions are causing hardship for both employers and employees, including in some cases loss of employment and transfer of work overseas due to very substantial cost increases.
3. Ai Group has a substantial interest in the glass industry. Our members include major glass manufacturers as well as employers who are involved in a wide variety of activities involving glass, including sales, distribution, manufacturing, treatment, cutting, installing, etc.
4. In addition to companies which are principally involved in the glass industry, there are many companies which use glass components in broader manufacturing processes (eg. aluminium window manufacturers, shower screen manufacturers, instrument manufacturers etc).

2. Background to the development of modern award conditions for the glass industry

The Commission's Stage 2 decision on modern award coverage for the glass industry

5. During Stage 2 of award modernisation, the glass industry was the subject of extensive consideration by the Tribunal and a decision was made on appropriate modern award coverage.
6. The Tribunal decided:
 - That the Manufacturing Modern Award would cover:
 - *“glazing, cutting, bending, fixing in position or otherwise working of, or with, all types of glass.”* (4.2(a)(vii));
 - *“bottle merchants.”* (4.2(a)(viii));
 - *“all types of flat glass and fibreglass, and all substitutes, and all products made therefrom including but not limited to flint ware, bottles, containers, jars, bricks, light bulbs, opal ware, pyrex ware, translucent reinforced sheeting, tubing, rods and lamp shades.”* (4.3(ee))”
 - That the Manufacturing Modern Award would not cover:
 - *“employees of glazing contractors, being an entity engaged in the business of providing glazing services on a contract basis”* (4.4(i))
 - That the Joinery Modern Award would cover *“glazing contracting work”*.

CFMEU applications to vary the Manufacturing Modern Award and the Joinery Modern Award

7. On 28 October 2009, the CFMEU made application to, in effect, overturn the Tribunal's Stage 2 Award Modernisation Decision, as it related to the glass industry, to remove what it called the "*downstream glass industry*" from coverage under the Manufacturing Modern Award and include this sector under the Joinery Modern Award (AM2009/42 and AM2009/43).

8. The CFMEU's applications were dealt with at a time when the Tribunal and the industrial parties had an extreme workload as a result of the looming deadline of 31 December 2009 for the completion of the award modernisation process and the deadline for determining the more than 200 applications which had been made to vary modern awards under s.576H of the *Workplace Relations Act 1996*. (It was not until December 2009 that the Government amended the *Fair Work Regulations* to grant a three month extension to the deadline for variations).

9. Accordingly, Ai Group submits that the deadlines imposed upon the Tribunal and the parties by the legislation did not give employer organisations sufficient opportunity to consult with glass industry employers or to thoroughly analyse the widespread implications of the CFMEU's applications. In particular:
 - There was insufficient analysis of the existing award conditions applicable to companies in the glass industry;
 - There was insufficient analysis of how the very costly and inflexible provisions of the Joinery Modern Award would impact upon companies in the glass industry; and
 - There was insufficient analysis of the different sectors of the glass industry which would be caught by the CFMEU's so called "*downstream glass industry*".

10. In its decision in relation to the CFMEU's applications, the Tribunal decided:

- to vary the Manufacturing Modern Award as follows:
 - Paragraph 4.2(a)(vii) was deleted from the coverage clause. That is *“glazing, cutting, bending, fixing in position or otherwise working of, or with, all types of glass”*;
 - Paragraph 4.1(i) was amended to no longer exclude *“employees of glazing contractors, being an entity engaged in the business of providing glazing services on a contract basis”* from coverage under the award but rather *“employers or employees engaged in glass and glazing work or glass and glazing contracting covered by the Joinery and Building Trades Award 2010”*;
- to vary the Joinery Modern Award to:
 - include both *“glass and glazing contracting”* and *“glass and glazing work”* (defined very broadly) within the coverage of the award;
 - only exclude from coverage *“employers or employees engaged in the manufacture of glass from raw materials”* and *“employers or employees covered by the Vehicle Manufacturing, Repair, Services and Retail Award 2010”*

11. The conditions in the Joinery Modern Award were based upon those in the pre-modern *National Joinery and Building Trades Products Award 2002* which had very limited coverage of work involving glass.

12. The Tribunal's decision has led to very substantial cost increases for employers in the glass industry (eg. much higher shift loadings) and reduced flexibility.

3. Shift loadings

13. Ai Group supports all aspects of the application but makes the following submissions in respect of one particularly important aspect – shift loadings.

14. Since the Tribunal's decision to cover the glass industry under the Joinery Modern Award, Ai Group has been contacted by employers in the industry expressing great concern about the impact of the decision on their operations. Employers have cited the following effects of the decision:
 - Large cost increases;
 - The cancellation of a planned afternoon shift;
 - Reversal of a decision made to hire extra staff;
 - Reduced staff numbers;
 - Importing glass products from overseas that would have otherwise been made in Australia.

15. A major area of concern relates to the huge differences in shift loadings between the pre-modern glass industry awards and the Joinery Modern Award. This issue does not appear to have been focussed upon in the proceedings relating to the CFMEU's applications to vary the Manufacturing Modern Award and Joinery Modern Award in late 2009. The differences are highlighted below.

	Afternoon Shift	Rotating Night Shift	Permanent Night Shift
<i>Joinery Modern Award</i>	50% ¹	50%	50%
<i>Glass Merchants and Glazing Contractors General (Victoria) Award 1997</i>	15%	15%	30%
<i>Glass Workers (State) Award – NSW NAPSA</i>	15%	15%	20%
<i>Glass Makers (State) Award – NSW NAPSA</i>	15%	15%	30%
<i>Glass Industry Award (QLD) 1998</i>	15%	15%	25%
<i>Glass Industry – Glass Merchants and Glazing Contractors – South Australia Award 1998</i>	15%	15%	30%
<i>Glass Workers and Glazing (South Australia Award – SA NAPSA</i>	15%	15%	30%
<i>Glass Industry – Glass Merchants and Glazing Contractors (Tasmania) Award 1997</i>	15%	15%	30%
<i>Metal Engineering and Associated Industries Award 1998 (which applied to the manufacture of a significant number of products which included glass components)</i>	15%	15%	30%

16. The lack of fairness in imposing a 50 per cent afternoon and night shift loading on the glass industry is obvious from the above table. The loading is more than triple the afternoon shift loading which currently applies under all of the pre-modern awards and NAPSAs.

17. Ai Group submits that it is interests of both employers and employees in the glass industry that this injustice be addressed. The existing situation threatens the viability of companies in the glass industry and the jobs of glass workers.

¹ The award also includes an early afternoon shift loading of 25% but this only applies to shifts which finish before 9pm. Typically, companies are not able to structure hours to have an afternoon shift finishing that early as day work would need to start at an hour which required the payment of a shift loading.

18. Varying the award, as proposed in the application, would be consistent with the objects of the award modernisation process and is necessary to achieve the modern award objective.