

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further submission

Training Costs
AM2016/14

27 September 2016

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2016/14 – TRAINING COSTS

1. Ai Group makes this further submission in accordance with the Directions issued by the Commission on 30 August 2016. Paragraph [1] in the Directions invited Ai Group to file any further submissions in relation to the Order issued by Deputy President Keogh varying the *Metal Industry Award 1984*, as tendered by the AMWU.
2. The Order (Print J0730) was made by Deputy President Keogh in December 1989. It inserted provisions into the *Metal Industry Award 1984 – Part I* enabling the employment of Australian Traineeship System (ATS) trainees (clause 13A) and adult apprentices (clause 14A).
3. The Australian Traineeship System (ATS) was established in 1985. The traineeship system was further developed under the National Training Reform Agenda from 1986. On 12 September 1994, a Full Bench of the Australian Industrial Relations Commission made the *National Training Wage Interim Award 1994* (Print L5189). As is evident from the following clause 6 in the *National Training Wage Interim Award 1994*, the ATS traineeships were being phased out at the time when the interim award was made:

“6 - SUPERSESSION

Any existing award provisions for the Australian Traineeship System (ATS) or the Career Start Traineeship (CST) shall not apply to any employer bound by this award, except in relation to ATS or CST trainees who commenced a traineeship with the employer before the employer was bound by this award.”

4. Operative from 9 August 1995, a new clause 13B was inserted into the *Metal Industry Award 1984 – Part I* clarifying that clause 13A – Traineeships (ATA) did not apply to trainees covered by the *National Training Wage Interim Award 1984*. Clauses 13A and 13B were replaced during the award simplification process with the following clause in the *Metal, Engineering and Associated Industries Award 1998*:

4.2.7 Trainees

The parties to this Award shall observe the terms of the National Training Wage Interim Award 1994, as amended.

5. At the hearing on 30 August 2016, the AMWU argued that trainees have had access to the training clause since December 1989. This argument misses the point.
6. In Ai Group's written submission of 17 June 2016, Ai Group argued that the history and background to clause 32.5 of the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)* "demonstrates that it was not intended to apply to trainees or apprentices undertaking training in connection with their training contracts".¹
7. Ai Group is not arguing that apprentices, adult apprentices and trainees did not have access to the training clause from the time that it was inserted into the *Metal Industry Award 1984 – Part I* on 12 April 1990, but rather that the clause was not intended to apply to training undertaken by apprentices, adult apprentices and trainees in connection with their training contracts. All employees (including apprentices, adult apprentices and trainees) had access to the clause for training that fell within the purpose of the clause. Such purpose did not include training that was part of the training contract of an apprentice, adult apprentice or trainee.
8. As discussed in Ai Group's submission of 17 June 2016, Clause 6C (Training), that was inserted into the *Metal Industry Award 1984 – Part I* in 1990, was directed at:
 - The establishment of an enterprise-wide training program, which reflected the needs of the enterprise;
 - Enabling employees to develop their skills to facilitate progression to higher levels in the 14-level skills-based classification structure which had been inserted into the Award in September 1989; and

¹ Ai Group submission of 17 June 2016 at paragraphs [5]-[28].

- Enabling employers to better utilise the skills of their employees.
9. An enterprise-wide training program aimed at facilitating progression through the 14-level classification structure and facilitating the utilisation of a wider range of skills by employees would not logically include training carried out by apprentices, adult apprentices and trainees as part of their training contracts because, for example, the classification structure in the Award does not apply to apprentices, adult apprentices and trainees. The classification structure only applies when an employee's apprenticeship or traineeship is completed, and only if the employer decides to continue to employ the employee on an ongoing basis rather than allowing the employment to end at the expiry of the apprenticeship or traineeship.
 10. The Order of Deputy President Keogh relied upon by the AMWU varied the *Metal Industry Award 1984 – Part I* in respect of trainees and adult apprentices. As set out in Ai Group's submission of 17 June 2016, the Full Bench in the *2 Year Review - Apprentice, Trainees and Juniors Case* decided that clause 32.5 of the Manufacturing Award should not apply to apprentices, including adult apprentices. There is no logical reason why the clause should apply to trainees when it does not apply to apprentices.
 11. Ai Group urges the Full Bench to vary the Manufacturing Award, the *Graphic Arts, Printing and Publishing Award 2010*, and the *Food, Beverage and Tobacco Manufacturing Award 2010* in the manner proposed by Ai Group. If the Full Bench is not prepared to vary the awards in accordance with Ai Group's primary position, Ai Group urges the Full Bench to vary the awards in accordance with the secondary position set out in Ai Group's submission of 17 June 2016.