

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/203 Graphic Arts, Printing and Publishing Award 2010

Re Application by: "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum Award standards. In its history the union has campaign for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. These are submissions in response to the alternative variation proposed by the Australian Industry Group (Ai Group) to the Graphics Arts, Printing and Publishing Award (**Graphic Arts Award and Award**). These submissions are put forward in response to the directions issued by the Commission on 29th November 2018.
2. The application of the Ai Group purports to remove Schedule C Competencies (**Schedule C**) from the Award. The application for variation is opposed by the AMWU. The application was made as an alternative variation in response to the AMWU's claim to vary Schedule C of the Award. The AMWU claim was essentially to update the competencies in Schedule C of the Award.¹
3. On 31 October 2018 the AMWU claim was listed for hearing before a full bench of the Commission. At the hearing the AMWU sought an adjournment of the hearing to file further evidence and the Commission adjourned the proceedings, issuing further directions at the conclusion of proceedings for a further hearing on 6th December 2018.
4. On 14th November 2018 the AMWU withdrew its application for the variation and sought that the hearing of the December be vacated. On 16th November the Ai Group pressed its claim for its proposed variation and the Commission decided to hear the Ai Group's proposed amendment to Schedule C of the Award, listing the matter for hearing on the 10 December 2018.

The Ai Group proposed variation

5. The case for the variation by the Ai Group as advanced in its submissions dated 15th October 2018 substantially reduce to a single proposition: Schedule C be removed from the Award as it is "outdated, problematic and unused". The entirety of the Ai Group submission consists of variations of this theme.
6. The Ai Group's claim is that the retention of Schedule C in the Award:
 - a. Has a detrimental impact on enterprise agreements where the Award is incorporated into an agreement;
 - b. May result in different outcomes in classifications for employees;
 - c. is unnecessary as it is irrelevant.

Role in the bargaining system

7. The Ai Group contends that the incorporation of the Award, in particular the provisions of Schedule C, into enterprise agreements would detract from an enterprise agreement or the terms of an enterprise agreement being easily

¹[AMWU Submission 16 September 2018](#)

understood. The suggestion seems to be that Schedule C of the Award is incapable of being adequately explained, such that employees will not be properly informed of the terms of the Agreement. There is no evidence as to why this may be case.

8. The insertion of the competencies arose from the decision of Senior Deputy President Marsh of the AIRC of 26 October 2005² (**2005 Decision**). The competencies were inserted following an application of the AMWU for competency standards that were derived from the printing industry's accredited training package at that time. It provided for a process for classifying two categories of employees, those with formal qualifications and those without.
9. The competencies in the training package were not weighted in points, whereas those that appear in Schedule C, are. In the 2005 decision the explanation for the points system is set out:

"Clause 5.1.1(b)(viii) explains the points system. It states:

"USING THE POINTS SYSTEM TO DETERMINE AN EMPLOYEE'S CLASSIFICATION

(1) The points assessment for an employee's job is based on selecting competencies that reflect job requirements from the list appearing in Appendix 'F'. The competencies set out in Appendix 'F' are aligned to the units of competency in the Printing and Graphic Arts Industry Training Package (ICP05) and have been assigned a points rating from '1' – '5', with 1 being a basic unit and 5 being assigned to units requiring a high level of skill.

The competencies and the '1' – '5' ratings are based on the following general guidelines:

- *'1' graded competencies are skills needed to function in the workplace;*
- *'2' graded competencies are basic production skills;*
- *'3' graded competencies are basic trade level or equivalent skills;*
- *'4' graded competencies are advanced trade level skills; and*
- *'5' graded competencies are post trade, technical and/or supervisory skills.*

(2) An employee's classification level is determined by adding together the points allocated to each competency selected for the employee's job. The total number of points determines into which classification level at 5.1.1(a) Table 'A' the employee's job is classified. For example, an employee whose job consisted of competencies whose points when added together totalled 42, would be classified at Level 5 (if at least 5 of the competencies are worth at least 3 points each).

(3) In addition to (1) above, where an employer requires additional competencies to reflect job requirements, up to two additional competency units may be selected,

² [PR964271](#)

by agreement, from another nationally endorsed Training Package, subject to the following:

- *The unit(s) selected must be equivalent to a '3' graded competency or higher;*
- *The recognition of additional points under 5.1.1(b)(viii)(2) shall not be an Award requirement. It shall only occur where the employer and the employee agrees to such recognition."*

[48] *The competencies set out in Appendix "F" are lifted from the Package and cover all sectors of the industry. Each competency has been assigned a points rating based on its level of complexity (1-5) derived from Australian National Training Authority (ANTA) and industry testing and endorsement.³*

10. Although there are no weightings in the training package, in either the ICP05 nor the current version ICP V 2.0, the rationale of the application of the points system remains intact. As noted in the comparator document submitted to the Commission in these proceedings by the AMWU, ⁴ many of the competencies from the ICP05 training package in 2005 have a correlating competency in the current training package that is easily identifiable from the relevant training websites if required.
11. AMWU has made a sustained effort to negotiate enterprise agreements covering members in the printing and graphics industry. Our records indicate that approximately 75% of the AMWU's current membership in print and graphic industries are currently covered by an enterprise agreement and the remainder, 25% are award reliant.
12. In May 2017 the number of jobs that in the printing and graphic arts sector stood at approximately 30,000.⁵ Of those employees, those who are award reliant, would utilise the points system to resolve a dispute about their classification and wage outcomes. These employees, especially those without a formal qualification would be denied a fair and transparent means of classification via the points system should the Ai Group's proposal be accepted. Employees with a qualification would simply present their trade certificate to be accurately classified, whereas an employee doing the same job beside the employee with the formal qualification would not have such a clear path to classification.
13. It is not just award based employees who will be affected, enterprise agreements also utilise the classification and re-classification clause in the award through incorporation. A search of the Fair Work Commission website for enterprise

³ [Ibid at \[47\]](#)

⁴ [AMWU Comparator Document 24 April 2018](#)

⁵ [Industry Skills Forecast and Proposed Schedule of Work - Printing and Graphic Arts April 2018](#) at page 15

agreements that incorporate the Award returns a total of 258 results. ⁶ Of those, 10 appear in the table below:

14.

Matter Number	Name of EA
AG2014/8132	Detmold's Packaging Regency Park 2014
AG2013/999	The Land Pre Press 2013
AG2016/3390	Mercury Walch Staff EA 2016
AG2016/7381	Regional Production Employees EA 2016
AG2017/2290	Pegasus Print Group EA 2017
AG2015/3834	Abaris Printing and Publishing EA 2015
AF2016/3555	Fairfax Media Production and Distribution Tamworth 2016
AG2017/569	De Neefe Signs Melbourne Manufacturing / Production EA 2017
AG2017/102	Rural Press Printing P/L (Fairfax) Murray Bridge 2017
AG2015/5751	Fairfax Media Printing and Distribution Launceston

15. The agreements listed above all incorporate the Award, and do not have a classification structure as term of the Agreement. The classification and re classification clause of the award, including the use of the points system to resolve disputes, form terms of the enterprise agreement. These enterprise agreements passed the scrutiny of the Commission and were approved. In the event there is a dispute as to classifications the employees covered by the Agreement have the optional mechanism available in the Award to resolve the dispute. A more general search of the FWC website using simply "Graphic Arts" industry as the parameters returns results of 1,172 enterprise agreements. It may be there are more than 268 which incorporate the award and rely on the award classification and re classification clauses.

16. If an employer opts to terminate an enterprise agreement and employees revert to the Award, the provision of the Awards will operate as the safety net.

17. There is no evidence provided by the Ai Group that there are any agreements that have not been approved due to the "complexity" of Schedule C or the Award provisions nor that it would encourage manufactured disputation about classifications. As Ai Group have pointed out, the current training package referenced in the Award (ICP05) that may be applicable to employees in the printing and graphics industry, spanned 6 volumes and was over 2000 pages in length. The Schedule in the Award provides a much easier reference point for

⁶ [Search results for "Graphics Arts, Printing and Publishing Award" on FWC website.](#)

employers and employees alike for determining which the skills relevant to their work.

18. The Commission should not be satisfied that the proposal by Ai Group would contribute to an improvement in understanding of enterprise agreements that incorporate the Award and or that it corrects an unsubstantiated defect in the current bargaining system.

The Modern Award objectives

19. The other ground of the Ai Group's application is that the current Schedule C is irrelevant and not suited to contemporary circumstances. In the decision of the Full Bench of the Federal Court, in *Shop Distributing and Allied Employees Association v Ai Group*, the court said:

As discussed "fair and relevant", which are best approached as a composite phrase, are broad concepts to be evaluated by the FWC taking into account the s 134(1)(a) to (h) matters and such other facts, matters and circumstances as are within the subject matter, scope and purpose of the Fair Work Act. Contemporary circumstances are called up for consideration in both respects, but do not exhaust the universe of potentially relevant facts, matters and circumstances.⁷ Emphasis added.

20. There are other potentially relevant factors that contribute to the evaluative judgement of whether the Award is fair and relevant. Factors that are beyond a narrow application of "contemporary circumstances". In this instance they include:

- The Schedule remains an effective mechanism for dispute resolution over classifications.
- Continues to provide a fair and relevant minimum safety net.

21. The proposition that a mechanism in the Award should be removed in its entirety, because other Awards do not have it, has no proper basis. There is nothing the Fair Work Act of the Commission's decisions which require that Award conditions be consistent across awards and industries.

22. The Ai Group assert that the existing Schedule C is unfair to employers and employees who may or may not be exposed to "reclassification risks and costs". There is no evidence led by the Ai Group that this is in fact the case.

23. The Ai Group submissions also fail to acknowledge the long standing of the schedule, does not provide any evidence that it is being used or is ineffective when used, and is potentially detrimental to employees.

Regulatory burden

⁷ 272 IR 88

24. The Ai Group submissions are based on the proposition that Schedule C will increase the cost of employment. They certainly do not contend, not are unable to contend that the relevant employers are unable to meet their existing Award obligations.
25. It is hypocritical to suggest that the regulatory burden for employers will increase over time as printing companies face declining revenues whilst attempting to offer a “diverse range of services”, and not acknowledge that he same very trends will create demand for skills from the training package to be utilised by employees and so the Award should reflect those skills. Further, the competencies / points system provides a more transparent means of resolving any classification disputes should they arise.
26. To assert that disputes are costly is to make a statement of fact without any evidence. In the AMWU’s anecdotal experience, the points system is cost neutral. To assert that retention of the schedule and the attached clauses for dispute resolution are an “encouragement” for disputation is a nonsense. On the contrary, the points- based system is a one stop reference point for employers to attend to the task of identifying relevant competencies, minimising the need to trawl through dense training packages.
27. As stated in the 2005 decision at [292]:

It must be the case that an employer can identify skills required. Moreover, the AMWU’s draft order is clear in the approach which can be followed to resolve an individual disagreement or dispute without automatically requiring a trained assessor at the outset.

- *The AMWU relied on an example of a competency, Screen Printing, from the Printing and Graphic Arts Training Package (ICP05) [90](#) to demonstrate a staged approach to determining an employee’s classification level if there was a requirement to have recourse to the training package. It may be that reliance on performance criteria is sufficient to resolve the dispute; if not, a “range statement” can be applied. This statement allows the different work environments and situations that will affect performance and demonstrates how the units are designed to be adapted to a range of circumstances. It is possible to stop at this stage in determining skills worked. However, the next stage is the “evidence guide” which describes the underpinning knowledge and skills that must be demonstrated to prove competence.*
- *An examination of the structure of the competency standard contained in the training package supports the views of the AMWU and AI GROUP that access to a trained assessor will not be a prerequisite for classifying employees at the workplace level or for resolving disputes.*

This material together with the training package itself should provide the rigour and transparency claimed by the AMWU and AI GROUP to prevent manipulative claims being brought by employees.⁸

28. There is no basis for the assertion that the retention of the schedule will require additional training of HR or managerial staff of employers and result in an increased regulatory burden. Nor is there any evidence that that there will be unreasonable workload for management staff to navigate the Schedule. The ease of use of the Schedule, self-contained in the Award, is self-evident.
29. Any staff, whether of a small employer or an enterprise that has managerial staff in the industry can be reasonably expected to have a knowledge of Award that applies to its workers. A schedule detailing the competencies and skills of the job is hardly different to the complex interactions between provisions that exist in this and every other Award.

Schedule C should be retained

30. There is no evidence that Schedule C is not operating effectively as it currently operates in the Award. The AMWU relies on its earlier submissions as to the purpose of Schedule C.⁹
31. The AMWU concedes that there are units of competency that appear in the schedule in that are no longer in the current training package. This does not however obviate the utility of the competency unit when assessing skills that are used on the workplace in order to ascertain the skills profile and determine the points value.

Conclusion

32. For the reasons set out above the Full Bench should determine to not vary the Award.

⁸ [PR964271](#) *Ibid* at [259] [2]

⁹ [AMWU Submissions 24 Oct 2018](#)