

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Sugar Industry Award 2010
(AM2014/247)

15 June 2018

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GROUP

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SUGAR INDUSTRY AWARD 2010 (AM2014/247)

1. INTRODUCTION

1. This submission is filed in reply to the submission and Witness Statements filed by the Australian Manufacturing Workers Union (**AMWU**) on 29 May 2018 in support of its claim for a tool allowance for apprentices in the *Sugar Industry Award 2010* (**Sugar Award** or **Award**).
2. Ai Group has been unable to locate any draft determination that the AMWU has filed setting out the specific variation that it is seeking. We have also been unable to ascertain the quantum of the allowance sought.
3. Accordingly, at this stage we are unable to fully respond to the AMWU's claim.
4. In our experience of the current Review, the proponent of a claim has typically filed a draft determination specifying the precise terms of the variations sought with or before the filing of their written submissions and evidence. Such a process ensures that respondent parties are aware of and understand the case that they are in fact required to defend. Such a process is both fair and transparent. It also enables the Commission and the parties to efficiently deal with the case presented by the proponents in its totality.
5. Further, we do not consider that the material currently before the Commission will enable it to determine whether the provision proposed is necessary in order to achieve the modern awards objective. Absent such a finding, the Commission is not empowered to make the variation sought by the AMWU. This is because of our concern that a consideration of the factors listed at s.134(1) cannot properly be undertaken absent an identification of specific features of the term sought by the AMWU such as the circumstances in which the allowance would be payable and the quantum of the allowance sought.

2. TOOL ALLOWANCE

6. The Sugar Award does not currently include a tool allowance for apprentices, but it is common in the industry for employers to provide apprentices with a tool kit containing the tools that they need to carry out their duties.
7. Accordingly, any tool allowance that is inserted into the Award would need to avoid “double-dipping”, by ensuring that apprentices are not entitled to the tool allowance if the employer provides the necessary tools.
8. Tool allowance clauses are currently found in clauses 22.30 and 23.3 of the Sugar Award:

22. Allowances—milling, distillery, refinery and maintenance

22.30 Tool allowance

A tool allowance of \$22.35 per week must be paid to tradespersons who are required to supply and use their own tools.

23. Allowances—bulk sugar terminal operations

23.3 Tool allowance

A tool allowance of \$24.77 per week must be paid to tradespersons who are required to supply and use their own tools.

9. The tool allowance provision in clause 32.1(c) of the *Manufacturing and Associated Industries and Occupations Award 2010* states:

(c) Tool allowance—tradespersons and apprentices

- (i) Except as provided elsewhere in clause 32.1(c), a tradesperson must be paid \$15.29 per week extra for supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- (ii) The allowance in clause 32.1(c)(i) does not apply to an employer who had a practice as at 5 November 1979 of providing all tools required by a tradesperson or an apprentice in the performance of their work. Such an employer is entitled to continue this practice.
- (iii) In relation to an employer not referred to in clause 32.1(c)(ii), such an employer may reach agreement with an individual tradesperson or apprentice to provide all of the tools required in the performance of their work. In such circumstances, the tool allowance is not payable.

- (iv) The allowance in clause 32.1(c)(i) applies to an apprentice on the same percentage basis as set out in Column 1 of clause 25.5 or Column 1 of clause 25.6 as applicable.
- (v) An employer is to provide for the use of a tradesperson or an apprentice all necessary power tools, special purpose tools, precision measuring instruments and, for a sheet metal worker, snips used in the cutting of stainless steel, monel metal and similar hard metals.
- (vi) A tradesperson or apprentice is to replace or pay for any tools supplied by their employer which are lost as a result of negligence on the part of the employee.
- (vii) The provision of tools under the Federal government **tools for your trade scheme** does not constitute the provision of all tools by the employer for the purposes of clauses 32.1(c)(ii) and (iii).

10. The above clause results in the following tool allowances for apprentices covered by the Manufacturing Award:

| Stage of Apprenticeship | % of \$15.29 allowance | Tool allowance (\$) |
|-------------------------|------------------------|---------------------|
| 1 | 50 | 7.65 |
| 2 | 60 | 9.17 |
| 3 | 75 | 11.47 |
| 4 | 88 | 13.46 |

11. If the Commission decides that it is necessary for a tool allowance clause for apprentices to be inserted into the Sugar Award, in order for the Award to meet the modern awards objective in accordance with ss.134 and 138 of the *Fair Work Act 2009*, the clause:

- Should not be more generous than the clause in the Manufacturing Award, because the tools used by apprentices in the Sugar Industry are not more expensive than the tools used by apprentices in the Manufacturing Industry; and
- Should not disturb existing arrangements for employers who are providing all tools that their apprentices require in performing their work.

12. The following draft subclause would be consistent with the above principles:

Tool Allowance – Apprentices

- (a) Apprentices must be paid the relevant weekly allowance in the following table for supplying and maintaining tools ordinarily required in the performance of their work:

| Stage of Apprenticeship | Tool allowance per week (\$) |
|-------------------------|------------------------------|
| 1 | 7.65 |
| 2 | 9.17 |
| 3 | 11.47 |
| 4 | 13.46 |

- (b) The allowances in the above table do not apply to an employer who provides all tools required by apprentices in the performance of their work.
- (c) An apprentice is to replace or pay for any tools supplied by their employer which are lost as a result of negligence on the part of the apprentice.