



Fair Work Commission

Modern Awards Review 2012 –
Apprentices, Trainees and Juniors

AM2012/18 & ors

Submission in reply

By the Australian Mines & Metals
Association (AMMA)

February 2013



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 94 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

First published in 2013 by

AMMA, Australian Mines and Metals Association

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1 Introduction

1. On 5 July 2012, Fair Work Australia (**FWA**) (as it was formerly known) published a statement setting out a timetable for the 2 year interim review of modern awards. Matters pertaining to Apprentice, Trainee and Junior terms and conditions were considered 'common' and were referred to a Full Bench.
2. On 10 December 2012, FWA issued directions setting out a timetable for proceedings.
3. AMMA has considered the submissions filed on 31 December 2013 by the ACTU (AM2012/18) and its affiliate the AMWU (AM2012/140). Both of these submissions seek to support union applications to increase both the junior and adult apprentice rates across a number of modern awards.
4. Modern awards of direct relevance to the resource industry that are subject to the ACTU application include: the *Coal Export Terminals Award 2010*, *Gas Industry Award 2010*, *Hydrocarbons Industry (Upstream) Award 2010*, *Mining Industry Award 2010*, *Oil Refining and Manufacturing Award 2010* and the *Stevedoring Industry Award 2010*. The AMWU application pertains exclusively to the *Black Coal Industry Award 2010*.
5. This submission in reply provides a response on behalf of the Australian resource industry to the ACTU and AMWU submissions. AMMA supports the submissions and evidence in reply which will be filed by the Australian Chamber of Commerce and Industry (**ACCI**) which is intervening in opposition to the ACTU applications.

2 Scope of the Review

6. The list of common matters is extensive and includes a wage claim for a very substantial wage increase. The ACTU application seeks an across-the-board increase in first year junior apprentice rates to 60% of the trade rate. For many awards affecting the resource industry, this represents a significant increase from 45% to 60% of the trade rate, an increase of one-third.
7. The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* mandates that in conducting the Review the FWC must consider whether the modern awards:
 - a. Achieve the modern awards objective; and
 - b. Are operating effectively, without anomalies or technical problems arising from the modernisation process.
8. The Full Bench decision on the approach to be taken to the modern award review process established that the interim review is intended to be narrower in scope than the 4 yearly reviews provided in s156 of the FW Act. It was stated

that the Tribunal would be unlikely to revisit issues considered as part of the 10A award modernisation process unless there are cogent reasons for doing so¹.

9. AMMA submits that the transitional nature of the transitional legislation indicates that its intent was not to provide an avenue through which broad ranging changes to wages should occur. As the Bench has noted:

The Review is a one-off process required by the transitional provisions and is being conducted a relatively short time after the completion of the award modernisation process ... The fact that the transition to modern awards is still occurring militates against the adoption of broad changes to modern awards as part of the Review².

10. These changes being sought by the ACTU are broad and appear inconsistent with earlier positions adopted by both the ACTU and the Federal Government that the modern award review should not be a forum to re-agitate substantive matters:

2.3 The Scope of the Review

[66] The Australian Government submitted that the Review is primarily intended to remove anomalies and technical problems arising from the award modernisation process, rather than providing an avenue for significant changes to award entitlements...

[67] The ACTU supported the Australian Government's submission that the Tribunal should exercise its discretion to adopt a high threshold for making any changes which revisit matters canvassed and determined during the Part 10A award modernisation process.³

11. During the award modernisation process submissions were made for a full review of apprentice wages. In deciding that award modernisation did not provide a proper opportunity to address a full apprentice wage review, the AIRC found that diverse apprentice rates reflected broader issues that need to be addressed across various State jurisdictions, including training arrangements:

We do not think that the award modernisation process provides a proper opportunity to address those issues. In reaching that conclusion, we have had regard to submissions of training organisations which advocate a fuller review of apprentice wages⁴.

12. AMMA submits that minimum rate increases are provided for and dealt with via the separate, annual National Minimum Wage Review process under Part 2-6 of the *Fair Work Act 2009* (FW Act) which includes scope for the Fair Work Commission (**FWC**), via its Minimum Wage Panel, to vary minimum wages in modern awards. To cut across this by determining a wage increase for apprentices outside of this process would be to add complexity and additional

¹ *Modern Awards Review 2012 FWAFB 5600* (29 June 2012), paragraph 86

² *Ibid*, paragraph 91

³ [Ibid](#)

⁴ [2008] [AIRC FB 1000](#), paragraph 134

process which is not consistent with the framework, objectives and intent of the FW Act.

13. The ACTU is seeking a comprehensive review of modern award wages. AMMA submits that such a review of apprentice wages is better placed within the annual wage review process rather than in the limited 2012 interim review. As such, the ACTU and AMWU applications do not properly fall within the scope of the Review and should be dismissed.

3 Substantive issues

3.1 Junior apprentice rates

14. With respect to the various awards affecting the resource industry, the ACTU is seeking an increase from 45% to 60% of the trade rate for first year junior apprentices. No justification on work value grounds has been provided by the ACTU.
15. The ACTU has argued that:
 - a. An increase in apprentice wages is “sustainable and affordable, and will not have an adverse impact on employers or the wider economy”; and
 - b. An increase in wages will in fact improve commencements and completion rates in addition to improving their attractiveness.
16. With respect to the first proposition, National Centre for Vocational Education Research has observed that the major constraint on the supply of skilled workers is the lack of apprenticeships and traineeships, not the lack of people willing to undertake them⁵.
17. While an increase in wage rates may make the commencement of an apprenticeship more attractive to some job seekers, “any such increase would also reduce the number of employers willing to offer apprenticeships and traineeships”⁶. In other words, higher wages for apprentices can reduce employer demand and hence the long-term formation of skills.
18. The NCVER paper warns that “one would be very nervous about increasing the minimum wages of apprenticeships and traineeships if there were any concerns about the output of the system.”
19. The resource industry is amongst those employers that already pay above-award wages to their apprentices and trainees. However, this is not feasible in every industry and an across-the-board increase in first year apprentice rates will reduce employer demand for apprenticeships. As one AMMA member cautioned:

We pay our apprentices under our enterprise agreement which is based on site rates well above the award rates. But a 15% increase to the first year in another

⁵ NCVER Report 4, The Economics of Apprenticeships and Traineeships, January 2011

⁶ Ibid

industry may deter some employers from putting on apprentices or reduce the number they put on at any one time⁷.

20. The ACTU submission argues that apprentices' wages are a key factor impacting both commencement and completion rates. However, the ACTU acknowledges that there are a whole range of other factors which contribute to non-completion. Indeed, the NCVER 2010 Apprentice and Trainee Destinations Survey shows that only 4% of trades apprentices are non-completers and only 3% of all non-completers reported that their pay was too low.
21. A number of factors determine completion rates and there is considerable variation across occupations and industries. AMMA members have found that high quality recruitment is crucial to ensure the completion of an apprenticeship. Trade assistants who graduated from AMMA's Skills Connect initiative cited mentoring and leadership development as fundamental to their program completion.
22. An across-the-board increase in first year rates cannot guarantee higher completion rates but is likely to reduce employer demand for apprentices. AMMA therefore submits that the applicant's claims should not be acceded to.

3.2 Adult apprentice rates – 'no reduction' claim

23. The ACTU application also seeks to increase adult apprentice rates to at least the relevant minimum trade rate. It also appears to seek to guarantee adult apprentices any higher rate associated with any role held prior to undertaking an apprenticeship with that same employer.
24. AMMA members are strongly opposed to this claim. Whether adult apprentices retain prior wages from different roles while undertaking training is ultimately a decision for the enterprise and should not be enshrined in modern awards.
25. It is already costly for employers to take on apprentices, as employers incur substantial costs in supervision, administration, extra maintenance and materials. These on-costs apply to both junior and adult apprentices and tend to be concentrated in the first two years of the apprenticeship.
26. An apprentice's employment, adult or otherwise, is subject to a training contract, with all that entails, including the costs of training and supervision by the employer, the low productive value of an apprentice particularly in the first two years, and the apprentice's acceptance that their commencing wages are offset by their earning capacity and career opportunities upon completion. One AMMA member expressed this need for progression as follows:

We gladly develop young people into trade roles and adults to a higher level of competency. The trade is an opportunity to learn and grow therefore it is linked to salary as they develop. Tracked productivity and behaviour against the

⁷ AMMA survey on 'Apprentices under modern awards', 2012

*growth of the individual shows a natural progression towards becoming a highly productive member of your organisation.*⁸

27. Adult apprentices already receive higher rates than junior apprentices and this reflects the work and life experience they bring to the role. However, there are multiple variables an employer must account for in determining whether an adult apprentice maintains their prior rate.
28. As one AMMA member stated, determining adult apprentice rates “*is highly dependent upon the individual, their productivity, potential and future with the organisation*”. This is a decision to be made at the enterprise level and should not be enshrined in modern awards.
29. Finally, the high wage outcomes being experienced across skilled and unskilled roles in the resources sector means it will not always be practical for employers to maintain adult apprentices on full prior rates while they undertake training. As one AMMA member reported:

*I understand why this would be a different situation for a small business based in Perth trying to recruit an adult apprentice, but coming from the construction industry where the apprentices are all earning at least on \$130 000 per annum I don't see why there would be a need to make that a mandatory requirement.*⁹

30. Overall, adult apprentices are already provided higher rates relative to junior apprentices and it is already costly for employers to absorb the additional supervision, maintenance and materials costs associated with their training.
31. Employers need to consider factors unique to their business and the potential apprentice candidate in determining whether adult apprentices retain prior rates in the organisation while undertaking training. This flexibility is required in order to sustain ongoing demand for adult apprentices.

4 Conclusion

32. The ACTU claim for a general wage increase for first year apprentices across a multiplicity of Modern Awards should be refused. The AMWU claim for a general wage increase for first year apprentices and nominated increases for years two, three and four in the Black Coal Industry Award 2010 should also be refused.

⁸ AMMA survey on 'Apprentices under modern awards', 2012

⁹ Ibid