



14 November 2018

Our Ref: 20140522

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Dear Associate

4 YEARLY REVIEW OF MODERN AWARDS - CONSTRUCTION AWARDS AM2016/23

We refer to the Full Bench decision¹ for the Construction Awards on 26 September 2018 and confirm that we act on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**).

In the decision dated 26 September 2018, the Full Bench declined to amend the classification for a CW/ECW2 in the *Building and Construction General Onsite Award 2010 (Building Award)* in accordance with the claim made by the Australian Workers' Union (**AWU**)². However, the Full Bench noted that the coverage clause³ in the Building Award refers to "testing of soil, concrete and aggregate" and as such invited the parties to file further submissions as to whether, without disturbing the coverage of either the Building Award or *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)*, a variation should be made to the classification structure in the Building Award or, alternatively, whether the reference to "testing of soil, concrete and aggregate" should be removed from the coverage clause in the Building Award.

Our clients submit that the classification structure in the Building Award should not be varied because it would be inconsistent with the modern awards objective and in particular, it would likely result in:

1. confusion as to whether employees undertaking testing work are covered by the Building Award or Manufacturing Award, with this issue already settled by the Coffey Decision;

¹ [2018] FWCFB 6019.

² Specifically, the AWU sought to amend the classification descriptor by inserting a reference to 'tester - soil, concrete and aggregate' in an attempt to overturn the Full Bench decision in *The Australian Workers' Union v. Coffey Information Pty Ltd* [2013] FWCFB 2894 (**Coffey Decision**).

³ see clause 4.10(b)(v) of the Building Award

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2. increased complexity for workplaces to determine correct award coverage;
3. award coverage for employees undertaking testing work being complex, difficult to understand and unstable, which is contrary to section 134(1)(g) of the *Fair Work Act 2009* (**FW Act**);
4. unnecessary overlap of modern awards, namely the Building Award and the Manufacturing Award; and
5. an increased regulatory burden for businesses which is inconsistent with section 134(1)(f) of the FW Act.

Accordingly, our clients submit that it would not be appropriate to vary the classification for a CW/ECW2 in the Building Award, taking into account all relevant circumstances. Instead, our clients submit that clause 4.10(b)(v) of the Building Award should be removed because this will meet the modern award objectives. In particular, the removal of this clause will likely result in:

1. the issue of award coverage being settled;
2. the Build Award being easy to understand; and
3. there being no increase to the regulatory burden placed on businesses.

If you have any questions, please contact Louise Hogg on (07) 3218 0905.

Yours sincerely

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