

ACTUS WORKPLACE LAWYERS

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Which award applies when two awards cover the work?

Two recent Federal Court decisions provide substantial guidance on the principles for determining the award that applies, in circumstances where two awards cover the work.

There are many areas of overlapping coverage amongst industry and occupational awards and most modern awards contain the following clause to address these circumstances:

If an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

It can be seen from the above clause, that where awards overlap it is necessary to determine the “most appropriate” award for the work performed by the employee and the environment in which they work.

The decision of Justice White of the Federal Court of Australia in [Bis Industries Limited v Construction, Forestry, Maritime, Mining and Energy Union](#) [2021] FCA 1374 provides a detailed account of the relevant principles that apply. Key issues for consideration are:

- What is the primary purpose of the employee’s employment?
- What range of tasks is the employee trained for?
- Which classification is the more comprehensive match for the work in question?
- Which classification is more specific to the work in question?
- When considering the “environment” in which the work is normally performed, this means the aggregate of surrounding things, conditions or influences and not simply the location or place.

Applying the above principles, White J decided that the *Manufacturing and Associated Industries and Occupations Award 2020* and not the *Black Coal Mining Industry Award 2020* applied to the relevant maintenance employees who worked on coal mine sites, even though the coverage clause of both awards included the work.

More recently, in [Health Services Union v Catering Industries \(NSW\) Pty Ltd](#) [2023] FCAFC 82, the Full Court of the Federal Court determined that the classifications in the *Hospitality Industry General Award 2020* were “more appropriate” than those in the *Aged*

Care Award 2020 for a group of employees of a catering business that provided catering services in aged care facilities. The Court commented:

Where, as here, the choice is between a classification structure that refers only tangentially or in passing to work that is under consideration (on the one hand) and a classification structure that identifies in detail indicative tasks that marry with that work to a not insubstantial degree (on the other), it will often be the case that the more specific classification structure should be preferred as “most appropriate”.

For advice on any modern award coverage issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.