



STATEMENT

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of C14 and C13 rates in modern awards

(C2019/5259)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON
COMMISSIONER DURHAM

SYDNEY, 30 AUGUST 2024

Review of C14 and C13 rates in modern awards – introductory rates – draft determinations issued for comment.

[1] This Review is concerned with modern awards containing a rate of pay at the ‘C14’ level (currently \$891.50 per week or \$23.46 per hour) or below the ‘C13’ level (currently \$915.90 per week or \$24.10 per hour) which applies other than on a transitional basis. The background and procedural history of this Review is set out in the decision issued on 16 April 2024 (April 2024 Decision).¹

[2] On 24 April 2024, the President constituted an Expert Panel for the Care and Community Sector to exercise award powers in this matter given that the affected awards include awards covering employers and employees in the care and community sector.² The Expert Panel is constituted of the same Members as the previous Full Bench with the addition of Vice President Asbury.

[3] In the April 2024 Decision, the previously-constituted Full Bench dealing with this matter confirmed its provisional view that the following principles should guide the completion of this Review:

- (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
- (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
- (3) The transition period for the purpose of (2) should not exceed six months.³

[4] In the April 2024 Decision, the Full Bench expressed its provisional views regarding the necessary amendments to specific awards to give effect to the confirmed principles above. The Full Bench outlined variations to 47 awards in the decision. These awards are listed in Attachment A for reference.

[5] Draft determinations have been prepared to give effect to these provisional views. In a few cases, which we set out below, we have departed slightly from the provisional views. In addition, minor drafting amendments have been made to ensure changes conform to award styles. We have also adjusted the rates in the determinations for the 2023–24 Annual Wage Review decision.⁴

[6] We note that a number of awards in this matter contain annual rates. In order to calculate an annual figure based on the weekly C13 rate we have used the conversion methodology for each award that is followed for updating awards for the Annual Wage Review. Each award has its own methodology for annual rates conversion based on how rates have historically been adjusted in those awards and their predecessor instruments. As a result of these differing methodologies the annual figures based on the weekly C13 rate also differ.

Additional matters

[7] In relation to the *Victorian State Government Agencies Award 2015* our provisional view was that clause 33.2 should be varied to add a requirement that an employee should not be engaged and paid at the Trainee officer level for longer than six months.⁵ To give effect to the intention of this provisional view we have included this requirement in the preceding clause, at clause 32.2(b) as follows:

An employee may not be engaged and paid at the Trainee officer level for a period in excess of 6 months and must be reclassified as an Operational support officer thereafter.

[8] In relation to the *Horticulture Award 2020* the provisional view in the April 2024 Decision was that the indicative duties of a Level 1 employee in clause A.1.3, with the exception of ‘undertaking structured training so as to enable advancement to Level 2’ should be included under the indicative duties of a Level 2 employee in clause A.2.3.⁶

[9] In giving effect to this it became apparent that there was substantial overlap in Level 2 with some of the indicative duties from Level 1. Where a clear overlap exists, we have not copied the Level 1 indicative duties into Level 2.⁷ The draft determination published with this statement indicates which of the Level 1 indicative duties have been included in Level 2.

[10] The provisional view in relation to the *Cotton Ginning Award 2020* was that there should be an additional rate added to the CG1 classification to ensure that the ‘C14 rate’ would only apply to the first six months of employment and that the C13 rate would apply thereafter.⁸ In fact, the rate applicable to CG1 is slightly higher than the C14 rate. For clarity, we do not intend to lower this rate to the C14 rate. Rather, it will apply only to the first six months of employment, and we will introduce an additional rate at the C13 level to apply thereafter.

[11] The draft determination for the *Funeral Industry Award 2020* departs slightly from the provisional view set out in the April 2024 decision⁹ in that the additional wording limiting employment at Grade 1 to six months’ duration sits at the beginning of clause 12.1 instead of the end.

Operative date

[12] Consistent with the provisional view in the April 2024 Decision,¹⁰ the operative date proposed in the draft determinations is 1 January 2025. We note that, pursuant to ss 165(3) and

166(5) of the *Fair Work Act 2009* (Cth), the determinations would not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 January 2025.

Next steps

[13] Interested parties will have four weeks to file submissions commenting on the provisional views in the April 2024 Decision and the terms of the draft determinations published together with this Statement. Submissions should be sent to awards@fwc.gov.au by **4:00 pm (AEST) on Friday, 27 September 2024**.

[14] As noted in the April 2024 Decision,¹¹ this matter will then be determined on the papers unless we agree to any request for a further hearing.



PRESIDENT

Attachment A: Awards to be varied

Air Pilots Award 2020
Airline Operations—Ground Staff Award 2020
Amusement, Events and Recreation Award 2020
Animal Care and Veterinary Services Award 2020
Aquaculture Industry Award 2020
Architects Award 2020
Australia Post Enterprise Award 2015
Australian Capital Territory Public Sector Enterprise Award 2016
Australian Government Industry Award 2016
Business Equipment Award 2020
Cement, Lime and Quarrying Award 2020
Children’s Services Award 2010
Christmas Island Administration Enterprise Award 2016
Concrete Products Award 2020
Cotton Ginning Award 2020
Dry Cleaning and Laundry Industry Award 2020
Electrical, Electronic and Communications Contracting Award 2020
Fitness Industry Award 2020
Food, Beverage and Tobacco Manufacturing Award 2020
Funeral Industry Award 2020
Graphic Arts, Printing and Publishing Award 2020
Horticulture Award 2020
Joinery and Building Trades Award 2020
Live Performance Award 2020
Manufacturing and Associated Industries and Occupations Award 2020
Marine Tourism and Charter Vessels Award 2020
Meat Industry Award 2020
Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015
Northern Territory Public Sector Enterprise Award 2016
Note Printing Australia Award 2016
Nurses and Midwives (Victoria) State Reference Public Sector Award 2015
Pastoral Award 2020
Pest Control Industry Award 2020
Port Authorities Award 2020
Printing Industry – Herald & Weekly Times – Production Award 2015
Rail Industry Award 2020
Seafood Processing Award 2020
Seagoing Industry Award 2020
Sugar Industry Award 2020
Textile, Clothing, Footwear and Associated Industries Award 2020
Timber Industry Award 2020
Travelling Shows Award 2020
Vehicle Repair, Services and Retail Award 2020
Victorian Local Government (Early Childhood Education Employees) Award 2016
Victorian State Government Agencies Award 2015
Wine Industry Award 2020
Wool Storage, Sampling and Testing Award 2020

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¹ *Review of C14 and C13 rates in modern awards* [\[2024\] FWCFB 213](#) ('April 2024 Decision').

² The Expert Panel was constituted pursuant to ss 617(8), 618(2) and 620(2) of the *Fair Work Act 2009* (Cth).

³ April 2024 Decision (n 1) [7], [30].

⁴ See *Annual Wage Review 2023–24* [\[2024\] FWCFB 3500](#) and [Determinations for the Annual Wage Review 2023–24](#).

⁵ April 2024 Decision (n 1) [228].

⁶ *Ibid* [132].

⁷ For example, the Level 1 indicative duty of 'sorting, packing or grading of produce where this requires the exercise of only minimal judgment' clearly overlaps with 'sorting, packing and grading beyond the scope of Level 1 duties' and has not been included under Level 2.

⁸ April 2024 Decision (n 1) [102].

⁹ *Ibid* [124].

¹⁰ *Ibid* [234].

¹¹ *Ibid* [235].