



# STATEMENT

*Fair Work Act 2009*  
s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—National Training Wage—Award Specific Schedules** (AM2016/15; AM2016/17)

### **BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2020** [MA000020]

Building, metal and civil construction industries

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER HUNT

MELBOURNE, 3 JUNE 2022

*4 yearly review of modern awards – National Training Wage – Plain Language – Building  
and Construction General On-site Award 2020.*

#### ***Background and submissions***

[1] This Statement deals with the National Training Wage (NTW) Schedule in the *Building and Construction General On-site Award 2020* (Building Award 2020).

[2] In a Statement<sup>1</sup> published on 6 July 2016, the Commission proposed that the NTW Schedule be standardised and removed from all modern awards except the *Miscellaneous Award 2010* (Miscellaneous Award) and that the NTW Schedule be incorporated into other awards by reference to the Miscellaneous Award. This Full Bench was constituted to deal with the proposal to standardise the NTW Schedule.

[3] In a Statement<sup>2</sup> published on 23 February 2017, we expressed the *provisional* view that, where parties requested that the NTW Schedule be tailored to a particular modern award, this should occur.

[4] The Australian Manufacturing Workers Union (AMWU) and the Construction, Forestry, Mining and Energy Union – Construction and General Division (CFMMEU) made

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<sup>1</sup> [2016] FWC 4495.

<sup>2</sup> [2017] FWCFB 1095.

applications to maintain award specific schedules in 9 modern awards, including the *Building and Construction General On-site Award 2010* (Building Award 2010).

[5] In a Decision<sup>3</sup> published on 9 June 2017, we confirmed that award-specific schedules would be maintained in the 9 awards including the Building Award 2010. We also said that the drafting of the award-specific schedules would be finalised after the plain language redrafting of the NTW Schedule in the Miscellaneous Award had been completed.

[6] The NTW Schedule to the Miscellaneous Award was finalised in a Decision published on 15 August 2017.<sup>4</sup> A draft award-specific NTW Schedule for the Building Award 2010 was annexed to a Statement published on 28 August 2017 (the draft NTW Schedule).<sup>5</sup>

[7] Submissions in relation to the draft NTW Schedule were received from:

- CFMMEU [submissions](#) dated 8 September 2017 and [submissions in reply](#) dated 22 September 2017
- Australian Industry Group (Ai Group) [submissions](#) dated 8 September 2017 and [submissions in reply](#) dated 25 September 2017
- Master Builders Australia (MBA) [submissions](#) dated 8 September 2017
- Housing Industry Association (HIA) [submissions](#) dated 8 September 2017
- AMWU [submissions](#) 8 September 2017 and [submissions in reply](#) dated 21 September 2017.

### **Clause 28**

[8] The finalisation of the NTW schedule in the Building Award 2010 was delayed due to an interaction issue between cl.28 in the Building Award 2010 and the NTW Schedule. The Building Award 2020 is now in force.

[9] Clause 28 has been renumbered as cl.19.10 in the Building Award 2020 and is set out below:

#### **‘19.10 National training wage**

(a) The provisions of Schedule D will apply in respect of traineeships, except that the following minimum wage rates will apply instead of those within clause D.5.1 of Schedule D—National Training Wage.

#### **(b) Civil construction traineeships**

The minimum weekly rate payable to civil construction trainees will be as follows:

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<sup>3</sup> [2017] FWCFB 3176.

<sup>4</sup> [2017] FWCFB 4174.

<sup>5</sup> [2017] FWCFB 4457.

<b>Item</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Base rate	699.22	741.02	791.12
Industry allowance— civil construction industry	53.97	53.97	53.97
Total weekly rate	753.19	794.99	845.09

**(c) Other traineeships**

- (i) Rates of pay for trainees in the general building and construction industry and the metal and engineering construction industry will be as follows:

<b>Item</b>	<b>Wage level B</b>	<b>Wage level A</b>
	<b>\$</b>	<b>\$</b>
Base rate	612.52	630.52
Industry allowance	53.97	53.97
Weekly rate	666.49	684.49

- (ii) Rates of pay for trainees in the residential building and construction industry will be as follows:

<b>Item</b>	<b>Wage level B</b>	<b>Wage level A</b>
	<b>\$</b>	<b>\$</b>
Base rate	612.52	630.52
Industry allowance	43.18	43.18
Weekly rate	655.70	673.70

- (iii) All other disability and expense-related allowances provided for in this award will be payable to trainees from time to time, if applicable, but no other allowances will apply.’

[10] MBA submits that cl. 28—National Training Wage (now cl.19.10) is ‘anomalous’ and should be deleted.<sup>6</sup>

[11] The CFMMEU opposes the deletion of the clause.<sup>7</sup>

[12] This issue was initially referred to the Full Bench dealing with the substantive issues in the Building Award 2010 as part of the 4 yearly review (the Construction Group Full Bench),<sup>8</sup> but was referred back to this Full Bench and then delayed until the Construction Group Full Bench had determined the other issues in the award.

<sup>6</sup> MBA [submission](#) dated 2 March 2015.

<sup>7</sup> CFMMEU [submission](#) dated 10 March 2017

<sup>8</sup> AM2016/23.

[13] We note that the minimum rates for full-time trainees that are currently at cl. D.5.1 of the Building Award 2020 were removed from the draft NTW Schedule following a submission by the CFMMEU.<sup>9</sup> Clause D.4.1(a) of the revised draft schedule refers to the minimum rates set out in cl.19.10. Parties are asked to consider whether the rates at cl.19.10 should be moved to the NTW Schedule so that all of the relevant NTW information appears in the schedule. The parties' views on this issue should form part of the report back set out in the next steps below.

[14] It appears that the practical effect of the MBA proposal would be that the award would not provide wage rates for full-time trainees. MBA has not filed any submissions or evidence supporting its submission that the clause should be deleted. MBA is directed to confirm whether this submission is pressed by **4 pm on Thursday 23 June 2022**. If the submission is pressed, we will issue further directions for the filing of submissions and evidence.

[15] We also note that if cl. 19.10 remains in the Building Award 2020, some consequential amendments will be required for consistency with the re-drafted schedule.

### *Drafting issues – NTW Schedule*

#### *1. Definitions – training package*

[16] In the draft NTW Schedule published on 28 August 2017, training package was defined as follows:

**'training package** means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills, and includes any relevant replacement training package.'

[17] The CFMMEU submits that the words 'Committee and placed on the National Register of Vocational Training (VET) ([www.training.gov.au](http://www.training.gov.au)) with the approval of the COAG Industry and Skills Council (CISC)' are missing and should be inserted after 'the Australian Industry and Skills' appearing in clause A.1.1.<sup>10</sup>

[18] We note that the following definition has been inserted into each of the other awards that include an award-specific NTW Schedule:

**'training package** means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills Committee.'

[19] A revised draft schedule is attached to this statement, we have updated the definition of training package to be consistent with the definitions in the other award-specific schedules.

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<sup>9</sup> [Draft NTW Schedule](#) published on 28 August 2017, CFMMEU submission of [24 March 2017](#).

<sup>10</sup> CFMMEU [submission](#) dated 8 September 2017

## 2. Allocation of traineeships to wage levels

[20] The draft NTW Schedule set out the following allocations of traineeships to wage levels:

<b>Wage Level A</b>	
<b>Training package</b>	<b>AQF certificate level</b>
- Construction, Plumbing and Services Integrated Framework	-I, II, III
- Electrotechnology	- I, II, III (III in Western Australia only)
- MSL Laboratory Operations	-II, III
-Resources and Infrastructure Industry Training Package	-I, II, III
<b>Wage Level B</b>	
Resources and Infrastructure Industry Training Package	I

[21] Ai Group submits that the deletion of a relevant qualification from the NTW Schedule in an award could have the effect of removing trainees undertaking those qualifications from the coverage of the award. Ai Group submits that the deletion of a qualification from the NTW Schedule in an award, that had the effect of removing a trainee from the coverage of the award, would offend s.163(1) of the *Fair Work Act 2009*.<sup>11</sup> Ai Group submits that the Commission should take a cautious approach and that the following qualifications should be retained in the NTW Schedule to the Building Award 2020:<sup>12</sup>

<b>Wage Level A</b>	
- Civil Construction	- AQF III
- Metal and Engineering (Technical)	- AQF II and III
- Transport and Distribution	- AQF III
<b>Wage Level B</b>	
- Civil Construction	- AQF I
- Transport and Logistics	-AQF I and II

[22] Ai Group further submits that ‘Resources and Infrastructure Industry Training Package (AQF I)’ aligns with Wage Level B and should be deleted from Wage Level A.<sup>13</sup> The CFMMEU agrees with this submission of the Ai Group.<sup>14</sup> This amendment has been made in the attached revised draft schedule.

[23] The CFMMEU agrees with Ai Group’s submissions in relation to the inclusion of:

- Transport and Logistics Certificate III under Wage Level A

<sup>11</sup> Ai Group [submissions](#) dated 25 September 2017, [5]-[8].

<sup>12</sup> Ai Group [submission](#) dated 8 September 2017

<sup>13</sup> Ai Group [submission](#) dated 8 September 2017

<sup>14</sup> CFMMEU submission dated 22 September 2017, [9].

- Transport and Logistics Certificates I and II under Wage level B, and
- Metal and Engineering (Technical) Certificate III level under Wage level A.<sup>15</sup>

[24] The CFMMEU opposes the inclusion of Metal and Engineering (Technical) Certificate II under Wage Level A. They submit the certificate II qualifications under the Metal and Engineering training package (MEM05) relate to production and process workers which have no direct relevance to on-site construction work.<sup>16</sup> The CFMMEU further submits that there is no need to add the Civil Construction qualifications under Wage Level A and B as they are already included. They submit there is no longer a separate civil construction training package and the civil construction qualifications are now covered by the Resource and Infrastructure Industry training package.

[25] AMWU agrees with Ai Group's proposal to include the 'Civil Construction AQF III' and the 'Metal and Engineering (Technical) AQF III' qualifications. AMWU submits the other qualifications included in the Ai Group submission do not lead to a classification contained within the Building Award 2020 and on that basis are not relevant or necessary for inclusion in the award-specific schedule.<sup>17</sup>

[26] It appears that there is general agreement that the Metal and Engineering (Technical) Certificate III level under Wage level A should be added to the NTW Schedule to the Building Award 2020. This training package has been added to the table in the attached revised draft schedule.

[27] There does not appear to be any agreement about the inclusion of the following training packages:

- Transport and Logistics Certificate III under Wage Level A
- Transport and Logistics Certificates I and II under Wage level B,
- Metal and Engineering (Technical) Certificate II under Wage Level A, and
- Civil Construction Certificate III under Wage Level A and Certificate II under Wage level B.

[28] The CFMMEU submission in relation to Civil Construction training package being covered by the Resource and Infrastructure Industry training package appears to be correct (see <https://training.gov.au/Training/Details/RII>).<sup>18</sup> It is our *provisional* view that it is not necessary to add the Civil Construction Certificate II and III training packages to the NTW Schedule.

[29] The parties are directed to confer in relation to the training packages in dispute as set out at [27] and our *provisional* view at [28] and to report back on their discussions by **4 pm on Thursday 23 June 2022**.

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<sup>15</sup> CFMMEU [submission](#) dated 22 September 2017, [10]-[11].

<sup>16</sup> CFMMEU [submission](#) dated 22 September 2017, [12].

<sup>17</sup> AMWU submission dated 21 September 2017 [4]-[5].

<sup>18</sup> CFMMEU [submission](#) dated 22 September 2017, [13]

3. *Minor drafting issues*

[30] Ai Group submits that the table in cl. 28.3(a) should be varied so that the words ‘Skill Level A’ and ‘Skill Level B’ are changed to ‘Wage Level A’ and ‘Wage Level B’. The HIA, CFMMEU and MBA support Ai Group’s submission.<sup>19</sup> This issue was resolved during the finalisation of the technical and drafting issues and no further action is required.

[31] Other minor drafting updates that have been made to the revised draft schedule are as follows:

- References to cl.28 have been changed to refer to cl.19.10.
- The definition of ‘wage level A, B or C’ has been updated to ‘wage level A or B’ as the schedule does not include wage level C.
- Minimum hourly rates have been updated to reflect the current rates in the Building Award 2020.
- References to ‘minimum wage’ have been updated to read ‘minimum rate’ for consistency with the Building Award 2020.
- Cross references to other clauses have been updated to reflect plain language styles.
- The note below cl.D.4.2(c) has been moved to cl.D.4.2(d).

*Next steps*

[32] As set out at [13], MBA is directed to confirm whether its submission in relation to cl.19.10 is pressed by **4 pm on Thursday 23 June 2022**.

[33] The parties are directed to confer in relation to:

- training packages in dispute as set out at [27],
- our *provisional* view at [28] and
- the placement of the minimum rates for full-time trainees (see [13]).

[34] A report back on the progress of discussions should be filed by **4 pm on Thursday 23 June 2022**.

[35] All submissions shall be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).

[36] This matter will be referred to Vice President Hatcher for finalisation.

PRESIDENT

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<sup>19</sup> HIA [submission](#) dated 8 September 2017; CFMMEU [submission](#) dated 22 September 2017; MBA [submission](#) dated 8 September 2017.

## **Schedule D—National Training Wage—Building and Construction General On-site Award 2020**

### **D.1 Definitions**

#### **D.1.1 In this schedule:**

**approved training**, in relation to a trainee, means the training specified in the training contract of the trainee.

**Australian Qualifications Framework (AQF)** means the national framework for qualifications in post-compulsory education and training.

**relevant State or Territory training authority** means a body in the relevant State or Territory that has power to approve traineeships, and to register training contracts, under the relevant State or Territory vocational education and training legislation.

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

*Apprenticeship and Traineeship Act 2001 (NSW);*

*Education and Training Reform Act 2006 (Vic);*

*Training and Skills Development Act 2008 (SA);*

*Training and Skills Development Act 2016 (NT);*

*Training and Tertiary Education Act 2003 (ACT);*

*Training and Workforce Development Act 2013 (Tas);*

*Vocational Education and Training Act 1996 (WA);*

*Further Education and Training Act 2014 (Qld).*

**trainee** means an employee undertaking a traineeship under a training contract.

**traineeship** means a system of training that:

- (a) has been approved by the relevant State or Territory training authority; and
- (b) meets the requirements of a training package developed by the relevant Skills Service Organisation and endorsed by the Australian Industry and Skills Committee; and
- (c) leads to an AQF certificate level qualification.



**training contract** means an agreement for a traineeship made between an employer and an employee that is registered by the relevant State or Territory training authority.

**training package** means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills Committee, and includes any relevant replacement training package.

**wage level** A or B, A, B or C, see clause 19.10.

## **D.2 Coverage**

**D.2.1** Subject to clauses D.2.2, D.2.3, D.2.4 and to D.2.5, this schedule applies to an employee covered by this award who is undertaking a traineeship and whose training package and AQF certificate level are allocated to a wage level by clause D.6.

**D.2.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause D.6.

**D.2.3** This schedule does not apply to:

- (a) the apprenticeship system; or
- (b) qualifications not identified in training packages; or
- (c) qualifications in training packages that are not identified as appropriate for a traineeship.

**D.2.4** If this schedule is inconsistent with other provisions of this award relating to traineeships, the other provisions prevail.

**D.2.5** This schedule ceases to apply to an employee at the end of the traineeship.

## **D.3 Types of traineeship**

The following types of traineeship are available:

**D.3.1** A full-time traineeship based on 38 ordinary hours per week, with 20% of those hours being approved training;

**D.3.2** A part-time traineeship based on fewer than 38 ordinary hours per week, with 20% of those hours being approved training provided:

- (a) wholly on the job; or
- (b) partly on the job and partly off the job; or
- (c) wholly off the job.

## D.4 Minimum rates

### D.4.1 Minimum weekly rates for full-time traineeships—~~see clause 28~~

~~(a)~~ Minimum weekly rates for full-time trainees are set out in clause 19.10.

~~(a)~~(b) AQP Certificate Level IV traineeships

The minimum rate for a full-time trainee undertaking a ~~full-time~~ AQP Certificate Level IV traineeship is the minimum rate for the relevant ~~full-time~~ AQP Certificate Level III traineeship (as set out in clause ~~28~~19.10) increased by 3.8%.

### D.4.2 Minimum hourly rates for part-time traineeships

(a) **Wage level A**

The minimum hourly rate for a part-time trainee undertaking an AQP Certificate Level I-III traineeship whose training package and AQP certificate levels are allocated to wage level A by clause D.6.1 is the relevant weekly rate from clause ~~28~~19.10 divided by 30.4.

(b) **Wage level B**

The minimum hourly rate for a part-time trainee undertaking a AQP Certificate Level I-III traineeship whose training package and AQP certificate levels are allocated to wage level B by clause D.6.2 is the relevant weekly rate from clause ~~28~~19.10 divided by 30.4.

(c) **School-based traineeships**

The minimum hourly rate for a part-time trainee who works ordinary hours and is undertaking a school-based AQP Certificate Level I-III traineeship whose training package and AQP certificate levels are allocated to wage levels A or B by clause D.6 is the hourly rate in column 1 or 2 of **Table 1—Minimum hourly rate for part-time trainees (school-based AQP Certificate Level I-III traineeship)** according to the year of schooling of the trainee.

**Table 1—Minimum hourly rate for part-time trainees (school-based AQP Certificate Level I-III traineeship)**

Column 1 Year 11 or lower per hour	Column 2 Year 12 per hour
\$ <del>11.42</del> <u>10.27</u>	\$ <del>12.59</del> <u>11.32</u>

~~NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect this paragraph.~~

**(d) AQF Certificate Level IV traineeships**

The minimum hourly rate for a part-time trainee undertaking a part-time AQF Certificate Level IV traineeship is the minimum hourly rate for the relevant part-time AQF Certificate Level III traineeship (as calculated by clause D.4.2(a), D.4.2(b) or D.4.2(c)) increased by 3.8%.

NOTE: See clause D.4.2(e) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect clauses D.4.2(a) to D.4.2(d).

**(e) Calculating the actual minimum wage**

- (i)** If fewer than 38 (or an average of 38) ordinary hours of work per week is considered full-time at the workplace by the employer, the appropriate minimum hourly rate for a part-time trainee is obtained by multiplying the relevant minimum hourly rate in clauses D.4.2(a) to D.4.2(d) by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.
- (ii)** If the approved training for a part-time traineeship is provided wholly off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum hourly rate in clauses D.4.2(a) to D.4.2(d) applies to each ordinary hour worked by the trainee.
- (iii)** If the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum hourly rate in clauses D.4.2(a) to D.4.2(d) minus 20% applies to each ordinary hour worked by the trainee.

**D.4.3 Other minimum wage provisions**

- (a)** Clause D.4.3 applies despite anything to the contrary in clause D.4.2.
- (b)** An employee who was employed by an employer immediately before becoming a trainee with that employer must not suffer a reduction in their minimum rate of pay because of becoming a trainee.
- (c)** For the purpose of determining whether a trainee has suffered a reduction as mentioned in ~~paragraph (b)~~clause D.4.3(b), casual loadings are to be disregarded.
- (d)** If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage rate provided in this schedule, if a higher minimum wage rate is provided for the new AQF certificate level.

**D.5 Employment conditions**

- D.5.1** A trainee undertaking a school-based traineeship may agree to be paid an additional loading of 25% on all ordinary hours worked instead of being paid annual leave, paid personal/carer’s leave, paid compassionate leave and paid absence on public holidays. However, if the trainee works on a public holiday, the public holiday provisions of this award apply.
- D.5.2** A trainee is entitled to be released from work without loss of pay and without loss of continuity of employment to attend any training and assessment specified in, or associated with, the training contract.
- D.5.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee’s wages and determining the trainee’s employment conditions.
- D.5.4** The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is wholly off-the-job is determined by clauses D.4.2(e)(ii) and [D.4.2\(e\)\(iii\)](#) and not by clause D.5.3.
- D.5.5** Subject to clause D.2.4, this award applies to a trainee in the same way that it applies to an employee who is not a trainee, except as otherwise expressly provided by this schedule.

**D.6 Allocation of traineeships to wage levels**

The wage levels applying to training packages and their AQF certificate levels are:

**D.6.1 Wage level A**

<b>Training package</b>	<b>AQF certificate level</b>
Construction, Plumbing and Services Integrated Framework	I, II, III
Electrotechnology	I, II, III (III in Western Australia only)
<a href="#">Metal and Engineering (Technical)</a>	<a href="#">III</a>
MSL Laboratory Operations	II, III
Resources and Infrastructure Industry Training Package	<del>I</del> , II, III

**D.6.2 Wage level B**

<b>Training package</b>	<b>AQF certificate level</b>
Resources and Infrastructure Industry Training Package	I