

Australian Industry Group

Review of C14 Rates

Submission
(C2019/5259)

18 August 2022



C2019/5259 REVIEW OF C14 RATES

1. The Australian Industry Group (**Ai Group**) files this submission in relation to a statement¹ issued by the Fair Work Commission (**Commission**) on 27 July 2022 (**Statement**) and in response to the notice of listing issued on 29 July 2022.
2. For the purposes of the proceedings listed before the Commission on 23 August 2022, various aspects of Ai Group's position are outlined in the submissions that follow.
3. *First*, any review of C14 rates should proceed by reference to specific variations sought by interested parties to the relevant awards. This would ensure that all interested parties have a clear understanding, from the outset, of the potential outcome(s) that may flow from these proceedings. This may, in turn, have a bearing on the extent to which respondent parties choose to participate in these proceedings, the position(s) that they take in the matter and the nature of any material that they seek to file.
4. We of course acknowledge that, ultimately, the Commission would not be bound by any proposals that are advanced by interested parties. That is, it may open to the Commission to form the view that a relevant award should be varied in a manner that differs from that which has been sought by a party. In such circumstances, however, the Commission should, in our respectful submission, first put the parties on notice of the prospect that the award may be varied in a different way and give parties an opportunity to be heard in relation to it.
5. Accordingly, for the purposes of programming the matter, parties should first be given an opportunity to identify any variations that they seek to the awards identified in the Statement. This should be done by filing draft determinations that articulate the specific changes sought.

¹ *Review of certain C14 rates in modern awards* [2022] FWC 1989.

6. *Second*, the nature of this review does not appear to lend itself to a wholesale or collective consideration of all of the awards that have been identified by the Commission.
7. As demonstrated by Attachment A to the Statement, the awards relevant to these proceedings take varying approaches to describing the C14 classification level. Some specify the period of time for which an employee may be classified at that level whilst others do not do so. Further, some operate by reference to an employee's competency,² some require a consideration of the tasks and duties undertaken by the employee,³ whilst others refer to the employee's level of experience⁴.
8. Given the divergent approaches adopted in these awards, the matter should potentially proceed on an award-by-award basis. This would enable the parties and the Commission to take into account matters particular to each award, such as the terms of the relevant pre-modern awards, developments during the Part 10A award modernisation process and any arbitrated outcomes concerning the classification structures that may have had a bearing on the manner in which the C14 classification levels are now framed.
9. *Third*, it would be premature to issue directions requiring the filing of materials until the nature of any proposed variations is known. Accordingly, other than requiring interested parties to file draft determinations articulating any variations they seek, the Commission should not at this stage require the filing of other materials. Rather, the matter should be listed for a conference or directions hearing once all draft determinations have been filed. Parties should, at that time, be given an opportunity to be heard as to how the matter ought to proceed.

² See for example the *Cement, Lime and Quarrying Award 2020*.

³ See for example the *Concrete Products Award 2020*.

⁴ See for example the *Meat Industry Award 2020*.