

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Number:** C2019/5259

*Fair Work Act 2009*

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

**Review of certain C14 rates in modern awards  
(C2019/5259)**

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### SUBMISSION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION (CONSTRUCTION & GENERAL DIVISION)

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3<sup>rd</sup> November 2023

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## Introduction

1. On 22<sup>nd</sup> September 2023 the Full Bench dealing with the review of the classification rates at the C14 level in modern awards (C2019/5259) issued a Statement ([2023] FWCFB 168) in which they proposed to broaden the scope of the review.<sup>1</sup>
2. The Statement identified that in the *Annual Wage Review Decision 20222-2023 (AWR 2023 decision)* the Expert Panel decided to end the alignment between the National minimum Wage (NMW) and the C14 classification rate, as the C14 rate ‘was only ever intended to constitute a transitional entry rate for new employees’, and instead decided to align the NMW with the current C13 classification rate in modern awards. The Statement further explained that the Expert Panel’s conclusions had necessarily required a refocussing of the objective of this review.<sup>2</sup>
3. The Full Bench went on to express their provisional view that:
  - (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.<sup>3</sup>
4. The Full Bench noted that this approach would require an expansion of the scope of the review and that it would be necessary to consider more closely those Awards, set out in Attachment A to the Statement, that were previously excluded from the review on the basis they contained only transitional C14 rates.<sup>4</sup> The Full Bench issued directions for interested parties to file:
  - (a) submissions in respect of the provisional view stated in paragraph [8];
  - (b) submissions as to the accuracy of the table at Attachment D to the Statement;
  - (c) draft determinations or proposals for any specific award variations that might be necessary; and
  - (d) evidence upon which they intend to rely;

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<sup>1</sup> [2023] FWCFB 168 at paragraph [1]

<sup>2</sup> Ibid., paragraphs [6] to [8]

<sup>3</sup> Ibid., at paragraph [8]

<sup>4</sup> Ibid., at paragraphs [9] to [10]

by no later than Friday, 3 November 2023.<sup>5</sup>

5. The Construction, Forestry Maritime, Mining and Energy Union (Construction and General Division) (the CFMMEU C&G) has a substantial interest in the *Joinery and Building Trades Award 2020*, one of the awards listed in Attachment A, and makes this submission in accordance with the above mentioned directions.

### **Response to the Provisional View**

6. The level 1 minimum weekly rate in the *Joinery and Building Trades Award 2020* equates to the C14 rate in the *Manufacturing and Associated Industries and Occupations Award 2020* and the level 2 minimum weekly rate equates to the C13 rate.
7. The CFMMEU C&G supports the provisional view expressed in paragraph [8] of the Statement. This view is consistent with the intent of the parties when the classification structure currently contained in the *Joinery and Building Trades Award 2020* was first determined.
8. During the award modernisation proceedings, the AIRC Full Bench decision ([2009] AIRCFB 345) that made the modern *Joinery and building Trades Award 2010* determined that:

[113] The terms and conditions in the award largely reflect those in the *National Joinery and Building Trades Products Award 2002*.

9. The classification structure in the modern *Joinery and Building Trades Award 2020* is identical to that which existed in the *Joinery and Building Trades Products Award 2002* (see [AP817265](#) at clauses 17.1.2 and 17.3).
10. The genesis of this classification structure goes back to the *Joinery and Building Trades Products Award 1993*, made on 10<sup>th</sup> February 1993 (Print K6616), the predecessor award to the 2002 Award (see clause 9 of the 2002 Award). The *Joinery and Building Trades Products Award 1993* was the result of “a lengthy and somewhat chequered history” to consolidate seven awards covering the off-site fabrication sector of the building and construction industry.
11. Consolidating the awards required the determination of a new classification structure. This was ultimately decided on by Commissioner Grimshaw (in Print K6181):

### **“CLAUSE 9 RATES OF PAY**

*Essentially four main areas of disagreement exist with respect to rates of pay, one being the translation to new broadbanded classifications, the second being the*

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<sup>5</sup> *Ibid.*, at paragraph [27]

*alignment of classifications with new pay scales, thirdly the incorporation of past minimum rate adjustments and finally methods of paying the new rates.*

*In respect to the translation to the new broadbanded group, while much to-ing and fro-ing has occurred over the series of conferences and proceedings the basic differences centred around Assembler A and Assembler B. Mr Grozier for the New South Wales Chamber of Manufactures submitted he had reservations that the classification levels and pay relativities were correct or justified, additionally he urged that perhaps a three month trial may be appropriate although this approach was not supported by any other advocate from the employers' side. By agreement the parties deleted any reference to the proposed "new entrant" classification and the union amended its proposal for Assembler A (New South Wales, South Australia, Victoria, Queensland and Western Australia) to 3/4 and for Assembler B (New South Wales, South Australia, Victoria, Queensland and Western Australia) to 2/3.*

*Whilst being urged to proceed with caution the Commission is mindful that much of the assessments, the determining of groupings and pay relativities have all been strongly influenced by those who conducted skills audits and other related matters in the building and metals industries and whilst acknowledging there may be teething problems, I am none the less confident that subject to adequate monitoring the proposed rates of pay clause 9.1(a) (b) (c) (d) contained in Exhibit CFMEU 10 should apply. Further, turning to another disputed issue over the incorporation of past unpaid minimum rates adjustments, I am satisfied that not only has there been an acknowledgement by all major employer organisations who have been involved with this consolidation over many months that the adjustments were an employer liability to the employees, and the adjustments could and would be made when the awards were consolidated, indeed it was submitted by the unions that the employers' real concerns had been the fear real or otherwise of a disruption of the final relativities.*

*Messrs Grazier and Simpson urged the Commission to phase in the new rates however I am satisfied that no responsible employer or employer's representative can claim not to have known for a long time that concurrent with this most significant award consolidation and industry modernisation came wage adjustments. I have decided the new rates should apply from the date of this decision."*

12. The compromise reached by the parties, on the deletion of the proposed 'new entrant' classification, was to instead adopt a modified version of the wording from the C14 classification in the *Metal Industry Award 1984* for the Level 1 classification, on the

understanding that once the 38 hours of induction training had been completed a new worker would progress to the level 2 wage rate. The reasoning behind this understanding was that the majority of the awards that existed prior to the 1993 consolidation did not contain any classifications at the level 1 broadbanded group.

13. The CFMMEU C&G therefore submits that the provisional view of the Full Bench in these proceedings is consistent with the intended approach for what is now the level 1 classification in the *Joinery and Building Trades Award 2020* and that a new entrant at the Level 1 classification should transition to the level 2 classification rate after the completion of the 38 ordinary hours of induction training.

#### **Accuracy of the Table at Attachment D to the Statement**

14. The CFMMEU C&G takes issue with the comment column in Attachment D and its reference to the industry allowance payable under the *Joinery and Building Trades Award 2020*. The industry allowance is not part of the minimum weekly classification rate in the award and therefore should not be taken into consideration as to whether the classification rate exceeds the C13 rate. It has been well established since the award modernisation decisions (see [2009] AIRCFB 50 at paragraphs [45]-[46] and [2009] AIRCFB 345 at paragraph [94]) that all purpose allowances do not form part of the properly fixed minimum classification rates.
15. We would further point out that the industry allowances in the *Joinery and Building Trades Award 2020* are not payable to all employees and are only payable when employees are engaged on certain work (see clause 21.3(b)).

#### **Award Specific Variations**

16. The CFMMEU C&G submits that to remove any ambiguity that currently exists in the *Joinery and Building Trades Awards 2020*, it would be appropriate to vary the award in the following manner (changes highlighted in red):

- (a) Delete paragraph A.1.1(a) and replace it with the following:

(a) **This level only applies to new employees.** An employee employed at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance. **Upon completion of the induction training a new employee will transition to level 2.**

(b) Delete paragraph A.1.2(a) and replace it with the following:

(a) An employee to be classified at this level will have completed the required **induction** training or will have equivalent skills gained through work experience in accordance with the prescribed standards for this level. ~~In all cases the employee will be required to satisfactorily complete a competency assessment to enable the employee to perform work within the scope of this level.~~

(c) Delete paragraph A.1.2(d) and replace it with the following:

(d) Subject to Schedule A.1.2 (e), Level 2 includes the following occupations:

- (i) Assembler B.
- (ii) **Factory Hand.**
- (iii) **General Hand.**

17. The changes to A.1.1(a) clarify that the level 1 classification only applies to new entrants and for the first 38 hours of employment, and that after the induction training an employee transitions to level 2.
  18. The change to A.1.2(a) clarifies that the required training is the induction training referred to in A.1.1(a). The requirement to in all cases satisfactorily complete a competency assessment is removed because there is no national competency standard to be assessed against for induction training for the off-site sector of the building and construction industry.
  19. The insertion of Factory Hand and General Hand in A.1.2(d) clarifies that employees in these classifications, other than new entrants, are to be paid at level 2.
  20. The CFMMEU C&G submits that the above proposed changes will meet the provisional view of the Full Bench and be consistent with the decision of the Expert Panel to align the NMW with the C13 classification rate in modern awards.
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