

Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2018-2019

**Junior Rates of Pay in Modern
Awards**

16 May 2019

Ai
GROUP

Junior Rates of Pay in Modern Awards

Introduction

On 15 May 2019, Commissioner Hampton conducted a Conference of interested parties concerning the issue of junior rates of pay in modern awards. At the conclusion of the Conference, Ai Group and other parties with an interest in the junior rates of pay in the *Vehicle Manufacturing, Repair, Service and Retail Award 2010 (Vehicle Award)* were invited to clarify their positions on an AMWU proposal to increase the rates of pay for juniors aged 17 years and 20 years in clause 33.7(c) of the Award.

Ai Group advises that it opposes the proposal for the same reasons that it opposes union proposals to increase all junior rates in all awards to ensure that they are no less than the junior rates for award/agreement-free juniors in Special National Minimum Wage 3 (**SNMW 3**). The reasons are outlined below.

SNMW 3 was not intended to set a floor on junior rates in modern awards

In its *Annual Wage Review 2009-10 Decision*, the Expert Panel decided to defer setting special national minimum wages for award-free junior employees and award-free employees to whom training arrangements apply until the *Annual Wage Review 2010-11*.¹

In its submission to the *Annual Wage Review 2010-11*, Ai Group set out the junior rates in the *Graphic Arts, Printing and Publishing Award 2010* (which were the lowest rates that Ai Group had identified in the modern award system) and argued that such rates should be adopted for SNMW 3. The relevant extract from Ai Group's submission is reproduced below: (emphasis added)

Award/agreement free junior employees

145. The special national minimum wage set for award/agreement free juniors is likely to have very limited application given that juniors are typically employed in industries covered by modern awards.
146. Notwithstanding the relatively small number of employees to whom the special national minimum wage for award/agreement free juniors would apply, it would not be workable to have one special national minimum wage for all juniors regardless of age. The appropriate approach would be to incorporate a scale of wage rates based upon age in the special national minimum wage. A somewhat similar approach has been adopted within Special National Minimum Wage 2 for employees with disability, with different minimum rates applying depending upon the employees assessed capacity.

¹ [2010] FWAFB 4000, [406].

147. The minimum wage rates within the special national minimum wage for award/agreement free juniors should be set at a level no higher than the junior rates in any modern award.
148. For example, the main scale of junior rates in the *Graphic Arts, Printing and Publishing Award 2010* is currently:

Age	Percentage of Level 2 rate (\$586.50)	Minimum wage rate \$
Under 16	30	176.00
Between 16 and 17	40	234.60
Between 17 and 18	50	294.00
Between 18 and 19	60	351.90
Between 19 and 20	75	439.90
Between 20 and 21	90	528.00

149. The junior rates for manufacturing employees in the *Vehicle Manufacturing, Repair, Service and Retail Award 2010* are currently:

Age	Percentage of Level 1 rate (\$569.90)	Minimum wage rate \$
Under 16	35	199.50
Between 16 and 17	45	256.50
Between 17 and 18	55	313.40
Between 18 and 19	65	370.40
Between 19 and 20	78.5	447.40
Between 20 and 21	95	541.40

150. The main scale of junior rates in the *Manufacturing, Engineering and Associated Industries and Occupations Award 2010* is currently:

Age	Percentage of C13 (\$586.50)	Minimum wage rate \$
Under 16	36.8	215.80
Between 16 and 17	47.3	277.40
Between 17 and 18	57.8	339.00
Between 18 and 19	68.3	400.60
Between 19 and 20	82.5	483.90
Between 20 and 21	97.7	573.00

151. Ai Group proposes the following special national minimum wage for award/agreement free juniors which adopts the relativities in the *Graphic Arts, Printing and Publishing Award 2010*:

“X. SPECIAL NATIONAL MINIMUM WAGE FOR AWARD/ AGREEMENT FREE JUNIOR EMPLOYEES

X.1 *The special national minimum wage for award/agreement free junior employees applies to employees under the age of 21 who are award/agreement free, other than:*

(a) *an employee to whom a training arrangement applies; or*

(b) *an employee with a disability.*

X.3 *An employer of an employee to whom the special national minimum wage for award/agreement free junior employees applies must pay the employee a base rate of pay that at least equals the rate calculated in accordance with the following table:*

Age	Percentage of the National Minimum Wage
<i>Under 16</i>	<i>30</i>
<i>Between 16 and 17</i>	<i>40</i>
<i>Between 17 and 18</i>	<i>50</i>
<i>Between 18 and 19</i>	<i>60</i>
<i>Between 19 and 20</i>	<i>75</i>
<i>Between 20 and 21</i>	<i>90</i>

The above submission of Ai Group clearly demonstrates that the Expert Panel made a conscious decision in the *Annual Wage Review 2010-11* to include minimum wage rates in SNMW 3 for award/agreement free juniors that were higher than the minimum wage rates in various modern awards and saw no difficulty with this approach. This is further demonstrated by the following extract in the *Annual Wage Review 2010-11 Decision* which summarises the submissions made by the parties: (emphasis added)

[389] Different proposals were advanced as to what the minimum wage for juniors should be. The ACTU proposed that we should adopt a single rate of pay for award/agreement free juniors under the age of 18, equivalent to 75 per cent of the national minimum wage. The ACTU noted this rate is higher than the junior rates contained in a number of awards, including the *Miscellaneous Award 2010*, but argued award free employees do not receive entitlements such as penalty rates applicable to award covered junior workers. The ACTU further submitted that junior employees aged 18 and over should receive the national minimum wage.

[390] ABI disagreed with the ACTU's proposal that award/agreement free juniors should receive the national minimum wage when they turn 18 and submitted:

“Junior employees have significantly higher levels of unemployment than the workforce generally. For junior employees the first challenge for improving their social inclusion is not so much to encourage them into the labour market as to get them into jobs.”

[391] ACCI, CCIWA and the Australian Government recommended we adopt the junior wage percentage scale in the *General Retail Industry Award 2010* for award/agreement free junior employees, applied to the national minimum wage. ACCI submitted that the scale applying in the retail industry is appropriate because the majority of award regulated juniors are employed in the retail industry.

[392] The Australian Government submitted that although the age scale in the *Miscellaneous Award 2010* is relevant to consider (as it contains a junior rates scale with age gradation), the *General Retail Industry Award 2010* may be preferable as it includes non-whole number percentages and its wage

scale is consistent with the age gradations in other awards.

[393] Ai Group submitted that the rates should not be set higher than the junior rates in any modern award. It proposed the rates and relativities for juniors in the *Graphic Arts, Printing and Publishing Award 2010* should be applied to the national minimum wage.

[394] ABI and Business SA proposed that the percentage scale for juniors in the Miscellaneous Award 2010 should be adopted. ABI further submitted that providing the same percentages for juniors covered by the special national minimum wage and the Miscellaneous Award 2010 would help reduce complexity and promote community understanding of a fair minimum for junior employees not covered by the mainstream industry/occupational system.

[395] In response to models which attached junior percentage scales to the national minimum wage, the ACTU opposed each of these proposals, submitting that the resulting rates would be too low and that its approach ensured that juniors would have an appropriate safety net.

After considering the submissions made by interested parties, the Expert Panel decided to adopt the relativities in the *Miscellaneous Award 2010* for SNMW 3:

[396] We have decided to adopt the junior wage percentage scale in the *Miscellaneous Award 2010* as the special national minimum wage for award/agreement free junior employees. Given the nature of the minimum wage order, there is no reason to use a wage other than the national minimum wage as the base upon which the percentages should be calculated.

SNMW 3 was identified by the Expert Panel as having a very limited coverage, as explained in the following extract from the *Annual Wage Review 2010-11 Decision*: (emphasis added)

[387] Most parties pointed to the difficulty in ascertaining who would be covered by the order, although there was general agreement that coverage is likely to be very limited. In relation to junior employees the Australian Government submitted that:

“[I]t is unclear to what extent junior employees are actually employed in award/agreement free industries or occupations. For example, while it would appear that a tattoo artist is an award/agreement free occupation (because no applicable modern award applies to this occupation) there is no data available that indicates how many tattoo artists are in fact junior employees. Additionally, while lawyers are award/agreement free occupations it would be very unlikely for a junior employee to be employed in this occupation due to the time necessary to complete university studies and other professional entry requirements in order to enter the profession, following the completion of high school studies.”

[388] ABI pointed out that some junior employees identified as potentially being award/agreement free by the Australian Government may instead be covered by the *Miscellaneous Award 2010*. It submitted:

“Juniors employed by an employer for whom there is no industry modern award (or whose employer’s activities are excluded from coverage of an industry award) may, if there is no occupational modern award, fall within the coverage of the Miscellaneous Award. Juniors whose employer is covered by an industry modern award but whose work is covered by neither its classifications nor an occupational modern award will not be covered by the Miscellaneous Award. They will be award/agreement free and covered by the forthcoming Special NMW.”

Statutory framework

The *Fair Work Act 2009* does not require that the minimum wage rates for junior award-covered employees must be equal to or higher than SNMW 3 for award/agreement free junior employees. Indeed, there is nothing in the Act to suggest that such an approach is intended or suggested.

The two cohorts of junior employees are different and there is no logical reason why the minimum wage rates for award covered junior employees should be higher than the minimum wage rates for award/agreement free junior employees. As identified in the extract from the *Annual Wage Review 2010-11 Decision*, the ACTU argued that the rates in SNMW 3 should be higher than junior rates in modern awards:

[389]The ACTU noted this rate is higher than the junior rates contained in a number of awards, including the *Miscellaneous Award 2010*, but argued award free employees do not receive entitlements such as penalty rates applicable to award covered junior workers....”.

The ACTU succeeded in convincing the Expert Panel to adopt the approach of including higher rates in SNMW 3 than the minimum rates in many modern awards, and to reject Ai Group’s argument that the rates in SNMW 3 should be set at a level that is no higher than the level in any modern award. It would be unfair upon employers for the Expert Panel to now entertain union arguments to increase rates for award-covered juniors on the premise that the wage rates in SNMW 3 are intended to set a floor for award rates. The above developments highlight that this argument is clearly unsustainable and wrong.

The concept of increasing award wage rates for juniors of some ages to align with SNMW 3 is illogical and would distort the scale of rates for juniors under the relevant award

The scale of junior rates in each award is designed to reflect an appropriate graduated scale of rates for the relevant industry. Similarly, the scale of junior rates in SNMW 3 is designed to reflect an appropriate graduated scale of rates for award/agreement free juniors.

To increase wage rates for award-covered juniors of particular ages who are covered by particular awards just because their award wage rate is less than the rate for a junior of an equivalent age under SNMW 3 would be illogical and unnecessary. Such a “cherry picking” approach would distort the scale of rates for juniors under the relevant awards.

Conclusion

Union claims to increase wage rates for juniors to align with those for award/agreement free juniors should be rejected. This issue was dealt with by the Expert Panel in its *Annual Wage Review 2010-11 Decision* and there is no need for, or merit in, the issue being revisited.

With regard to the junior rates for Vehicle Manufacturing Employees in section 2 of the Vehicle Award, the above submission does not disturb the position set out in Ai Group's Reply Submission of 12 April 2019 in response to Question 5.1. The position in that submission has been agreed upon by Ai Group due to the exceptional circumstances associated with the lengthy and constructive negotiations that have taken place between Ai Group and the AMWU over the past two years to implement the Fair Work Commission's decision to incorporate the manufacturing stream of the Vehicle Award into the *Manufacturing and Associated Industries and Occupations Award 2010* (**Manufacturing Award**). The scale of junior wage rates for Vehicle Manufacturing Employees, referred to in our 12 April 2019 submission would only apply from 1 July 2019 up until the time when the new awards arising from the 4 Yearly Review process come into operation. At that time the Manufacturing Award junior wage rates will apply to all juniors, including those in the Vehicle Manufacturing stream.