

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.157 variation of modern awards

(AM2019/5259)

Review of certain C14 rates in modern awards

SUBMISSIONS & VARIATION PROPSALS FOR MULTIPLE AWARDS

**CONSTRUCTION, FORESTRY, MARITIME, MINING
AND ENERGY UNION
(MANUFACTURING DIVISION)**

(9 November 2023)

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(AM2019/5259)
s.157 – Variation of modern awards
Review of certain C14 rates in modern awards

Submissions & variation proposals by the
CFMMEU-Manufacturing Division

BACKGROUND

1. On 22 September 2023, a Statement¹ (**September 2023 Statement**)¹ was issued by the full bench in this matter, effectively broadening the scope of the review into C14 rates in certain modern awards and expanding the list of relevant awards to 43.²
2. The expansion of the C14 rates proceedings occurs in context of one of the outcomes of the Annual Wage Review 2022/2023, such that the AWR Expert Panel determined to *‘end the alignment between the NMW [National Minimum Wage] and the C14 classification rate which had existed since 1997’*, and instead aligned it with the current C13 classification rate in modern awards.
3. Further, the AWR Expert panel found the C14 rate *‘was only ever intended to constitute a transitional entry rate for new employees’* and *‘did not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.’*³
3. The September Statement sets out the *provisional* view of the C14 rates full bench at paragraph [8] stating that *‘the following principles should guide the completion of the 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 the 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 in the award).

¹ (C2019/5259) Review of certain C14 rates in modern awards, Statement [2023] FWCFB 168

² *Ibid*; at [2]

³ *Ibid*; at [6] – [7]

(3) *The transition period for the purpose of (2) should not exceed six months.*⁴

4. The September Statement issued the following direction [1] for the filing of material by interested parties by 3 November 2023:

- (a) *submissions in respect of the provisional view stated in paragraph [8] above;*
- (b) *submissions as to the accuracy of the table at **Attachment D**;*
- (c) *draft determinations or proposals for any specific award variations that might be necessary; and*
- (d) *evidence on which they rely.*⁵

5. On 3 November 2023, CFMMEU-Manufacturing Division (**CFMMEU-MD**) sought and was granted an extension to 8 November 2023 to file submissions and variation proposals for the awards in which it has an interest.

AWARDS IN WHICH THE CFMMEU (MANUFACTURING DIVISION) HAS AN INTEREST

6. Attachment D to the September Statement contains a list of modern awards below the C13 level.⁶ The CFMMEU-MD has a primary interest in the following modern awards contained in Attachment D:

- *Dry Cleaning and Laundry Industry Award 2020 (DC&LI Award)*⁷
- *Joinery and Building Trades Award 2020 (Joinery Award)*⁸
- *Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)*⁹
- *Textile, Clothing, Footwear and Associated Industries Award 2020 (TCF Award)*¹⁰
- *Timber Industry Award 2020 (Timber Award)*¹¹

⁴ Ibid; at [8]

⁵ Ibid; at [27]

⁶ Ibid; Attachment D – Minimum rates below the C13 level in modern awards; pp 11-29

⁷ Ibid; Attachment D – referenced on page 17

⁸ Ibid; Attachment D – referenced on page 19

⁹ Ibid; Attachment D – referenced on page 19

¹⁰ Ibid; Attachment D – referenced on page 26

¹¹ Ibid; Attachment D – referenced on pages 26-27

PROVISIONAL VIEW

7. The CFMMEU-MD supports the *provisional view* expressed by the full bench at paragraph [8] of the September Statement. We consider the provisional view is broadly consistent with the decision of the Expert Panel in the *Annual Wage Review Decision 2022-2023*.

ACCURACY OF THE TABLE AT ATTACHMENT D

8. On our review, with respect to the awards in which the CFMMEU-MD has an interest, the table at Attachment D is accurate other than in the following respects:

(a) DC&LI Award

- There is a numbering error in the right-hand column headed 'Next classification up' which states:
*'Laundry employee
Level 1 = \$900.50'*
- The correct reference should read:
*'Laundry employee
Level 2 = \$900.50'*
- This error was identified in the joint employer and union submission filed with respect to the DC&LI Award.¹²

(b) Joinery Award

- In the second column from the right, headed 'Comment' in relation to the Level 1 classification, it states:
'Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.
- In the submission filed by the CFMMEU (Construction & General Division) (**CFMMEU C&G**), it is contended:
'The industry allowance is not part of the minimum weekly classification rate in the award and therefor 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....that all purpose

¹² C2019/5259 – Review of certain C14 rates in modern awards; Joint submission of the Drycleaning Institute of Australia; Laundry Association Australia; CFMMEU-Manufacturing Division; Australian Workers Union and the United Workers Union (3 November 2023) at paragraph [9]

allowances do not form part of the properly fixed minimum classification rates.

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)).¹³

- We concur and adopt the submission of the CFMMEU C&G in this respect.

(c) TCF Award

- In relation to the classification, 'General Employees: Trainee' the September Statement categorises this Transitional category as Category (ii)¹⁴ which is defined under paragraph [3] of the September Statement as '*transition occurs after 3 months*' [emphasis added].
- This categorisation of the classification, 'General Employees: Trainee' is potentially misleading as clause A.1.1 of the TCF Award requires that employees at this level, amongst other requirements, '*for a period of up to 3 months undergo approved (including induction) training....*'
- That is, there is a distinction and difference in meaning, between the expression, 'after 3 months' as compared to the expression 'of up to 3 months.'
- In this context, the correct category may actually be (iii) 'the classification is transitional but a period other than 3 months is specified' unless category (ii) is taken to mean 'up to 3 months' as well as 3 months being the maximum period permitted.

DC&LI AWARD

9. The September Statement¹⁵ identified the following classifications which provide minimum rates below the C13 level in the DC&LI Award:

- Clause 18.1(a) – Dry cleaning employee Level 1
- Clause 18.1(b) – Laundry employee Level 1

¹³ C2019/5259 Review of certain c14 rates in modern awards, submission of the CFMMEU (Construction and General Division) (3 November 2023) at [14] – [15]

¹⁴ Op cit; Attachment D – at page 26

¹⁵ Op cit; Attachment D – at page 17

10. On 3 November 2023, a joint employer/union submission and variation proposal was filed on behalf of the Drycleaning Institute of Australia, the Laundry Association Australia, the CFMMEU-Manufacturing Division, the Australian Workers' Union and the United Workers' Union with respect to the DC&LI Award (**Joint Submission**).

11. We rely on the Joint Submission with respect to the DC&LI Award.

JOINERY AWARD

12. The September Statement¹⁶ identified the following classification which provides a minimum rate below the C13 level in the Joinery Award:

- Clause 19.1 – Level 1

13. The CFMMEU C&G has filed a submission¹⁷ and variation proposal in relation to paragraphs A.1.1(a), A.1.2(a) and A.1.2(d)¹⁸ of the Joinery Award.

14. The CFMMEU-MD supports and adopts the submissions and variation proposals as advanced by the CFMMEU C&G.

MANUFACTURING AWARD

15. The September Statement¹⁹ identified the following classification which provides a minimum rate below the C13 level in the Manufacturing Award:

- Clause 20.1(a) – C14/VI

16. In the third column from the right, under the sub-heading 'Transitional Category'

Attachment D states (as relevant to the CFMMEU-MD's coverage):

'Category (i) – C14: up to 38 hours induction training. However, a C13 employee must also have completed up to 3 months' structured training (cl A.4.3-A.4.4)...'

17. We submit that the governing principle in relation to the C14 rate is that C14 classification is limited in scope to a maximum of 38 hours induction only and that on completion of such induction an employee will transition automatically to the next level C13. We submit that the

¹⁶ Op cit; Attachment D – at page 17

¹⁷ Op cit;

¹⁸ Op cit; CFMMEU C&G Submission; at [16]

¹⁹ Op cit; Attachment D – at page 19

C14 rate/classification must be viewed in context of the overarching architecture of the classification structure of the Manufacturing Award with its emphasis on career pathways and movement between levels.

18. We understand the Australian Workers Union (AWU)²⁰ has filed a submission in this matter including variation proposals for classifications C14 and C13 in the Manufacturing Award. The CFMMEU-MD intends to file submissions in reply by 1 December 2023 in response to the AWU's variation proposal and any other variation proposals filed by other parties.

TCF AWARD

19. The September Statement²¹ identified the following 2 classifications in the TCF Award which provide a minimum rate below the C13 level:

- Clause 19.1 – General Employees: Trainee
- Clause 19.2 – Wool and Basil Employees: General hand

Clause 19.1 – General Employees: Trainee

20. In the September Statement in the column headed 'Transitional category' it states for this classification:

'Category (ii) – up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required at Skill Level 1 (cl A.1).

[emphasis added]

21. As outlined above at paragraph [8(c)] above, this is a different formulation than the description of category (ii) – '*transition occurs after 3 months*' contained in the September Statement. The actual words of the second dot point in clause A.1.1 of the TCF Award are:

- *'for a period of up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required to be classified at Skill Level 1;'*

22. It is evident that clause A.1.1 of the TCF Award currently contemplates that a full 3 months' training (including induction) period may not be necessary for every employee engaged at

²⁰ C2019/5259 – Review of certain C14 rates in modern awards, submission of the Australian Workers Union (AWU), 3 November 2023

²¹ Op cit; Attachment D – at page 26

the 'Trainee' classification, and that transition to a higher skill level may occur prior to the end of the 3 months.

23. The full text of clause A.1.1 of the TCF Award is extracted below:

A.1 Trainee

A.1.1 *Employees at this level will:*

- *be new entrants into the industry;*
- *for a period of up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required to be classified at Skill Level 1; and*
- *work under the following conditions: totally defined procedures and methods; constant direct supervision; constant direct training; progressive assessment and feedback.*

A.1.2 *Training for new entrants will be determined in accordance with the needs of the enterprise, but will involve instruction aimed at assisting trainees to achieve the range of competencies required at Skill Level 1, including:*

- *the knowledge and skills required to apply relevant Work Health and Safety practices and procedures;*
- *the knowledge and skills required to apply specified quality control standards to their own work;*
- *the knowledge and skills required to apply specified operation practices and procedures and to meet efficiency requirements; and*
- *the knowledge and skills required to apply minor equipment/machine maintenance relevant to the equipment involved in the performance of their own work.*

Unless an employee is transitioned earlier as permitted under this clause, the maximum period that an employee can remain on the classification of 'Trainee' is 3 months.

24. In circumstances where the Commission considers a variation is necessary to clause A.1.1 to clarify the outer limits of the training period, we submit that an additional sentence could be added as highlighted in red above.

Clause 19.2 – Wool and Basil Employees: General hand

25. In the September Statement²² in the column headed ‘Transitional category’ it states for this classification:

‘Category (v) – see clause B.4

26. Category (v) is described at paragraph [3] of the September Statement as, *‘(v) the classification level is not transitional’*.

27. Clause B.4 of the TCF Award provides the following description of ‘Wool and basil employees:

B.4 Wool and basil employees

Wool and basil employees are employees who are required to work on pulling sheep skins or piece picking, or any other class of work connected with wool scouring or carbonising.

28. Clause 19.2 of the TCF Award sets out the classifications and applicable minimum wage rates for Wool and basil employees, and provides as follows:

Employee Classification/Skill Level	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
General hand	\$859.30	\$22.61
Operator – Grade 3	\$882.80	\$23.23
Operator – Grade 2	\$914.60	\$24.07
Operator – Grade 1	\$947.10	\$24.92
Senior Operator – Grade 2	\$995.00	\$26.18
Senior Operator – Grade 1	\$1026.20	\$27.01

29. Outside of clauses 19.2 and clause B.4, the TCF Award contains no other terms which deal with the classifications or wage rates of wool and basil employees.

²² Op cit; Attachment D – at page 26

30. It is evident from the above that the classification, 'General hand' in the 'Wool and basil employees' stream contains no pathway at all for an employee to transition to a higher skill level classification within the TCF Award. In this context, the absence of a defined transitional period for this classification means that it is inconsistent with the propositions stated in the AWR Decision 2022/2023 and the *provisional* view expressed by the full bench.
31. It is submitted that an appropriate variation to the classification of 'General hand' in the 'Wool and basil sector', to address the absence of a transitional pathway to a C13 rate, would include the following key elements:
- apply to new employees in the wool and basil industry;
 - the employee is required to undertake up to 38 hours induction training;
 - the employee transitions to the higher skill level after the completion of the induction training
32. The CFMMEU-MD proposes the following variations to the TCF Award relating to the C14 rate for the classification, 'General hand' (variations in red):

B.4 Wool and basil employees

Wool and basil employees are employees who are required to work on pulling sheep skins or piece picking, or any other class of work connected with wool scouring or carbonising.

B.4.1 General hand

(a) Employees at this level will:

- *be new entrants into the wool and basil industry; and*
- *undertake up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety practices and procedures, equal employment opportunity and quality control/assurance; and*

(b) At the completion of the induction training as per B.4.1(a) above, the employee will, at a minimum, transition to the level/classification 'Operator – Grade 3'.

33. The proposed variation outlined above, would ensure that the classification of ‘General hand – wool and basil employees’ is:

- an entry level classification of limited duration;
- objectively transitional in nature and provides a clear pathway to the next level;
- consistent with the Expert Panel’s AWR 2023 Decision, such that, the lowest rate applicable in any modern award to ongoing employment should be at least the C13 rate.

TIMBER AWARD

34. The September Statement²³ identified the following 2 classifications which provide a minimum rate below the C13 level in the Timber Award:

- Clause 20.1(a) – General Timber Stream: Level 1
- Clause 20.1(b) – Wood and Timber Furniture Stream: Level 1

Clause 20.1(a) – General Timber Stream: Level 1

35. This classification is described in the September Statement under the heading ‘Transitional category’ as:

‘Category (ii) – maximum 3 months unless 3 month extension agreed (cl A.1(f))’²⁴

36. Category (ii)’ is described at paragraph [3] of the September Statement as:

‘(ii) transition occurs after 3 months’²⁵

37. Clause A.1.1 of the Timber Award provides a classification ‘Level 1 (relativity 78%)’ and provides, inter alia, and as relevant to the transition period, as follows:

A.1 Level 1 (relativity 78%)

A.1.1 General

(f) Criteria for extension of term in Level 1 beyond 3 months

‘A worker who enters the industry and is unable to meet the competency requirements of Level 2 will remain in Level 1 for a maximum of 3 months unless an extension for up to a further 3 months is agreed by the employer and the employee, and the union where the employee is a union member. Extension of the term of Level 1 beyond 3 months will only be considered:

²³ Op cit; Attachment D – at pages 26-27

²⁴ Op cit; Attachment D – at page 26

²⁵ Op cit; at [3]

- (i) *The employee has participated in a structured and documented skill development programme which sets out and covers the standards of competence the Level 1 worker is required to achieve for progression to Level 2;*
- (ii) *Any deficiencies in the performance of the employee during the skill development programme have been described clearly to the employee at the time they have occurred and standards for acceptable performance have been made clear to the employee;*
- (iii) *Suitable conditions have been provided for training including sufficient time, appropriate environment and equipment and a skilled trainer; and*
- (iv) *Given the above, the employee has not reached the standards of competence set down in the skill development programme.*

38. This classification (with an attached C14 rate of pay) has a relativity of 78% as compared to the next skill levels under this stream of the Timber Award - Level 2 (relativity 82%) [clause A.2], Level 3 (relativity 87.4%) [clause A.3], Level 4 (relativity 92.4%) [clause A.4] and Level 5 (relativity 100%) [clause A.5].

39. These relativities are relevantly identical to the hierarchy of levels/classifications contained in the Manufacturing Award – i.e., Level C14 (relativity 78%), Level C13 (relativity 82%), Level C12 (relativity 87.4%), Level C11 (relativity 92.4%) and Level C10 (relativity 100%).²⁶

40. However, in the Manufacturing Award, the entry level classification (C14) (clause A.4.3) only requires an employee to undertake ‘*up to 38 hours induction training*’ as compared to Level 1 (General Timber Stream) of the Timber Award which provides for a default maximum of 3 months, with the capacity of a further 3 months extension.

41. The entry level classification (Level 1 – General Timber Stream) (clause A.1) also does not clearly clarify at the outset of the clause that the classification only applies to new employees or new entrants in the General Timber sector. At clause A.1.1(f) there is a reference to ‘*A worker who enters the industry...*’; however, in our submission this element should be expressed up

²⁶ Manufacturing and Associated Industries and Occupations Award 2020, clause A.3.1

front at the commencement of the classification. As outlined at paragraph [6] of the September Statement:

“In the AWR 2023 decision, the Expert Panel decided to end the alignment between the NMW and the C14 classification rate which had existed since 1997. The Expert Panel stated that the C14 rate ‘was only ever intended to constitute a transitional entry rate for new employees’ and as such ‘does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.’”²⁷

42. In context of the findings made by the Expert Panel in the AWR Decision 2023, it is submitted that it necessary to vary clause A.1 to clarify that the classification ‘Level 1 (relativity 78%)’ only applies to new employees in the General Timber sector.

43. In addition, it is submitted that the capacity for an extension of a further 3 months to be undertaken (i.e., a potential total of 6 months) by an employee at Level 1, prior to the transition to Level 2 (relativity 82%) should be deleted. That is, transition to Level 2 should occur automatically on completion of the induction training, whether this is prior to the conclusion of the 3 months period (which appears to be contemplated by the current formulation in clause A.1.1(f)) but no later than after the end of the prescribed 3-month period.

44. The CFMMEU-MD’s proposed variations with respect to the classification, Level 1 (General Timber Scheme) is as follows (in red):

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

A.1 Level 1 (relativity 78%)

A.1.1 General

(a) An employee at this level will be a new entrant to the General timber industry, and:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 1; and

²⁷ Op cit; at [6]

(iii) where required by statute or regulation will obtain the necessary licences, permits or other authorisations as part of the progression to the next level.

(b) Delete clauses A.1.1(f) and A.1.1(g) and replace them with the following:

(f) An employee at this level will remain at Level 1 for a maximum of 3 months.

Clause 20.1(b) – Wood and Timber Furniture Stream: Level 1

45. This classification is described in the September Statement under the heading ‘Transitional category’ as:

‘Category (ii) – undertaking up to 3 months’ induction and skill development. Progression will occur on completion of induction and the core units of the Furnishing Industry Training Package and demonstrates competency to undertake Level 2 (cl B.10.’²⁸

46. Category (ii)’ is described at paragraph [3] of the September Statement as:

‘(ii) transition occurs after 3 months’²⁹

47. However, despite this, a number of other terms in clause B.1.1 seem, on its face, to make such transition conditional.

48. The full text of clause B.1 (B.1.1 to B.1.7) of the Timber Award is reproduced below:

B.1 Timber furniture production employee, Level 1 (relativity 78%)

B.1.1 *A Timber furniture production employee, Level 1, is an employee new to the industry who is undertaking up to 3 months induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.*

B.1.2 *The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees,*

²⁸ Op cit; Attachment D – at page 27

²⁹ Op cit; at [3]

machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety and quality assurance.

B.1.3 Duties

(a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.

(b) Indicative of the tasks an employee at this level may perform are the following:

(i) general labouring;

(ii) cleaning; and

(iii) other comparable tasks.

B.1.4 Responsibilities

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

B.1.5 Qualification

An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.

B.1.6 Training

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be provided with training to enable the employee to obtain the skills required of a Timber furniture production employee, Level 2.

B.1.7 Progression

A Timber furniture production employee, Level 1, will progress to Level 2 on basis of the successful completion of the induction program and the core units of the Furniture Industry Training Package, and has demonstrated competency to undertake duties at Level 2.

49. Clauses B.1.5 (Qualification) and B.1.7 (Progression) of the Timber Award in combination, appear to link competency-based requirements to progression to the next level. This is despite the terms of clause B.1.1 which, inter alia, provides an outer limit of 3 months' induction and skill development to be undertaken by an employee on this level and in light of the nature of the duties outlined in clause B.1.2.

50. The terms of clauses B.1.5 and B.1.7 make progression 'conditional' to the next level and are therefore both inconsistent with clause B.1.1 and result in clause B.1 not being truly transitional in nature.

51. In this context, the CFMMEU-MD submits that clause B.1 should be varied to remove competency-based progression requirements from Level 1 and to ensure that progression to Level 2 in the Wood and Timber Furniture stream becomes automatic after an employee undertakes up to 3 months induction and skill development (as per clause B.1.1).

52. The CFMMEU-MD's proposed variations with respect to the classification 'Timber furniture production employee, Level 1 (relativity 78%) is as follows:

- (a) Delete clause B.1.5;
- (b) Delete clause B.1.7 and replace it with the following:
B.1. 6 An employee at this level will remain at Level 1 for a maximum of 3 months
- (c) Consequential variations - renumber clauses B.1.5 to B.1.6 after deletion of current clause B.15.

53. The CFMMEU-MD submits the proposed variations to clause B.1 as outlined above are consistent with the provisional view expressed by the full bench in the September Statement.

Filed on behalf of the:

**Construction, Forestry, Maritime, Mining and Energy Union
(Manufacturing Division)**

(8 November 2023)