

FAIR WORK COMMISSION

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)

Submission of the Drycleaning Institute of Australia

1. This submission is made on behalf of the Drycleaning Institute of Australia (**DIA**) – the peak industry association representing dry cleaning businesses in Australia.
2. The submission relates to the *Dry Cleaning and Laundry Industry Award 2020 (Dry Cleaning Award)* and is made in reply to the following submissions (**Unions' submissions**):
 - The 19 October 2022 submission of the Manufacturing Division of the Construction, Forestry, Maritime, Mining and Energy Union;
 - The 19 October 2022 submission of the United Workers Union; and
 - The 19 October 2022 submission of the Australian Workers Union.
3. The Unions' submissions propose an amendment to the Dry Cleaning Employee Level 1 classification descriptor in the Dry Cleaning Award which would:
 - Limit the classification to new entrants in the dry cleaning industry;
 - Limit the classification to the first three months of an employee's employment in the dry cleaning industry;
 - Impose substantial restrictions on the duties that an employee at Level 1 could perform by requiring that the work must be carried out "*under the following conditions: totally defined procedures and methods; constant direct supervision; constant direct training and progressive assessment and feedback*".

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4. As identified in the Commission's Background Paper for these proceedings, the dry cleaning classifications in the Dry Cleaning Award were based on the classifications in the *Dry Cleaning Industry Award 2000*. The classifications in this pre-modern award were:

Group Classification

- A *Tradesperson dry cleaner (Victoria only)*
- B *Invisible mender, tailor or tailoress*
- C *Presser, receiver and dispatcher in charge (namely a person in charge of a depot and responsible for the keeping of records and responsible for cash) Cleaner (operating dry cleaning machine)*
- D *Repairer (other than tailor or tailoress) Spotter presser (off-set press) Hand ironer receiver and/or dispatcher*
- E *Wet Cleaner, Steam air finisher, Examiner of garments, Assembler of garments, Sorter of garments*
- F *All others*

5. The current descriptor for the Dry Cleaning Employee Level 1 classification in the Dry Cleaning Award is:

A.1 Dry cleaning employee Level 1

An employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4.

6. It can be seen that neither the relevant classification descriptor (Group F) in the pre-modern award or the Dry Cleaning Employee Level 1 descriptor in the current award:

- Limit the classification to new entrants in the dry cleaning industry;
- Limit the classification to any specific period of an employee's employment in the dry cleaning industry; or

- Impose any substantial restrictions on the duties that an employee at Level 1 can perform (so long as the employee is not employed in one of the roles referred to in classifications 2 to 5).
7. The Dry Cleaning Employee Level 1 classification descriptor in the Dry Cleaning Award is being reviewed on the Commission's own motion. The unions' have filed no evidence in support of the substantial restrictions proposed in the Unions' submissions. In such circumstances, it is appropriate that the Dry Cleaning Employee Level 1 classification descriptor is only varied to the extent necessary to achieve the modern awards objective.
8. Such an approach accords with section 138 of the *Fair Work Act 2009* (Cth) (**FW Act**) which states:

Section 138 Achieving the modern awards objective

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

9. DIA proposes that the classification descriptor for a Dry Cleaning Employee Level 1 be amended to:

A.1 *Dry cleaning employee Level 1*

An employee who is undertaking training to enable the employee to work at Level 2. The employee performs routine duties of a manual nature, exercises minimal judgement and works under direct supervision.

10. The proposed descriptor would:
- Convert the Level 1 classification to a transitional classification;
 - Require that an employer provide training to an employee at Level 1 to enable the employee to work at Level 2 once the employee has been trained to carry out one or more of the roles referred to in the Level 2 classification descriptor. (The training would typically be relatively informal on-the-job training); and
 - Impose some reasonable requirements in relation to the type of duties, the level of discretion, and the level of supervision.

11. It is not appropriate to limit the Level 1 classification to new entrants in the dry cleaning industry and not appropriate to limit the classification to the first three months of an employee's employment in the industry. Different workplaces have different requirements, different machinery and different processes. Also, different employees have different capabilities. The unions' proposed 'one-size fits all' approach is not appropriate.

12. During the Review, the Full Bench has already decided that the following classifications operate on a transitional basis and do not require review:¹

- **Stevedoring Industry Award 2020:**

- A.1 Grade 1**

- A Grade 1 employee is an employee who is undergoing induction and initial training prior to appointment as a stevedoring employee Grade 2.*

- **Port Authorities Award 2020:**

- A.1 Level 1**

- *Completed induction*
 - *Works under detailed instruction*
 - *Basic civil/maintenance work, mooring deckhand, cleaning wharves and sheds*
 - *Operating small plant, fork lifts (up to 10,000 kg), bob cats, sweepers, line markers*

13. The Full Bench has also expressed the *provisional view* that the following classifications do not require review:²

- **Cement Lime and Quarrying Award 2020:**

- A.1.1 Level 1**

- A Level 1 employee is an entry level employee without the necessary competency to be classified in Levels 2 to 6 undertaking Basic competency training.*

¹ FWC Statement of 6 October 2022, [2022] FWCFB 183, [26].

² FWC Statement of 6 October 2022, [2022] FWCFB 183, [28].

- ***Oil Refining and Manufacturing Award 2020:***

***Trainee operator
(level 1)***

A trainee operator is a refinery employee undergoing the necessary orientation and training to enable safe and efficient performance as an operator.

14. The descriptors for the Level 1 classifications in the above awards have much in common with the descriptor proposed by the DIA for a Dry Cleaning Employee Level 1. None of the descriptors limit the classification:
 - To new entrants in the relevant industry; or
 - To any specific period of an employee's employment in the relevant industry.
15. DIA's proposed Dry Cleaning Employee Level 1 classification descriptor is consistent with the modern awards objective in section 134 of the FW Act. The proposed descriptor would:
 - Promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d));
 - Not have an adverse impact on business, including on productivity, employment costs or the regulatory burden (s.134(1)(f)); and
 - Result in a simpler, easier to understand award (s.134(1)(g)).
16. In contrast, the unions' proposed amendments to the Level 1 and 2 dry cleaning classification descriptors are not consistent with the above elements of the modern awards objective.



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