

## *Fair Work Act 2009*

### FAIR WORK COMMISSION

- s. 157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective – Review of certain C14 rates in modern awards

### **AWU SUBMISSION IN RESPONSE TO STATEMENT DATED 28 AUGUST 2019**

#### **BACKGROUND**

1. On 28 August 2019, the President of the Fair Work Commission, Justice Ross, issued a Statement<sup>1</sup> which expressed a provisional view that a Full Bench should be constituted to conduct a review, initiated on the Commission's own motion pursuant to s 157 of the *Fair Work Act 2009* (“**FW Act**”), of the operation of C14 classification levels in 14 modern awards.
2. The Commission has identified that the 14 relevant modern awards either:
  - contain unclear provisions about when an employee must transition out of the C14 classification; or
  - do not specify when an employee must transition out of the C14 classification.
3. The Statement invites interested parties to comment on the following matters by 4pm on Friday, 27 September 2019:
  - (i). The *provisional* view at [5] above.
  - (ii). Whether the list of awards identified in categories (iv) and (v) above (at [5]) is an accurate list of the modern awards in each of these categories.
  - (iii). In relation to the 8 modern awards listed in category (iv) – i.e. those which do not appear to specify a particular transition period – what transition period does the interested party propose?

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<sup>1</sup> [2019] FWC 5863.

(iv). In relation to the 6 modern awards listed in category (v) – i.e. those in which the C14 classification level is not a transitional level – do the C14 classification levels in these awards provide a fair and relevant safety net? Has there been any work value determination of these classifications?

4. The Australian Workers' Union (“**AWU**”) has an interest in the following awards amongst the 14 that will potentially be part of the review:

Category (iv)

- *Cement and Lime Award 2010;*
- *Concrete Products Award 2010;*
- *Meat Industry Award 2010;*
- *Oil Refining and Manufacturing Award 2010;*
- *Quarrying Award 2010;*
- *Rail Industry Award 2010;* and
- *Stevedoring Industry Award 2010.*

Category (v)

- *Dry Cleaning and Laundry Industry Award 2010;*
- *Funeral Industry Award 2010;* and.
- *Sugar Industry Award 2010.*

5. The AWU's comments on the questions posed in paragraph [10] of the Statement appear below.

## **AWU RESPONSE**

**(i) The provisional view at [5] above.**

6. The AWU supports the provisional view that the 14 relevant awards should be referred to a Full Bench for review.

**(ii) Whether the list of awards identified in categories (iv) and (v) above (at [5]) is an accurate list of the modern awards in each of these categories.**

7. The awards that the AWU has an interest in have been categorised accurately.

**(iii) In relation to the 8 modern awards listed in category (iv) – i.e. those which do not appear to specify a particular transition period – what transition period does the interested party propose?**

8. The AWU proposes a maximum transition period of three months for the awards it has an interest in falling within the Commission's 'Category (iv)'. However, the AWU reserves its right to argue for a shorter maximum transition period based on any award-specific factors that are subsequently identified.

**(iv) In relation to the 6 modern awards listed in category (v) – i.e. those in which the C14 classification level is not a transitional level – do the C14 classification levels in these awards provide a fair and relevant safety net? Has there been any work value determination of these classifications?**

9. As identified in the Statement, the Annual Wage Review 2018-19 rejected a claim by the Australian Council of Trade Unions (“**ACTU**”) and the Australian Catholic Bishops Conference (“**ACBC**”) to increase the C14 rate to a level that lifts hypothetical single earner household types above the 60 percent relative poverty line.

10. One of the main reasons identified by the Commission for rejecting the claim was the existence of a ‘stepping-stone’ effect which arises because employees generally only remain in the C14 classification for relatively short periods.

11. It is inherently unfair and unjust for employees classified at the C14 level to be denied the wage increase sought by the ACTU and the ACBC on the basis that the C14 classification is a transitional level but then to remain in that classification level for lengthy periods of time.

12. This outcome results in the relevant awards failing to provide a fair and relevant safety net of conditions and enlivens the Commission's jurisdiction to address the issue pursuant to s 157 of the FW Act.



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27 SEPTEMBER 2019