



DECISION

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—National Training Wage— Award-Specific Schedules (AM2016/15; AM2016/17)

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2020 [MA000020]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER

SYDNEY, 8 SEPTEMBER 2022

*4 yearly review of modern awards – National Training Wage – Plain Language – Building
and Construction General On-site Award 2020.*

Introduction and background

[1] On 13 July 2022 I issued a statement¹ (July Statement) which addressed outstanding issues in relation to the National Training Wage (NTW) Schedule in the *Building and Construction General On-site Award 2020* (Building Award). The issues addressed in the July Statement arose from an earlier statement² published by the Full Bench in this matter on 3 June 2022 and a subsequent report filed by the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) concerning discussions between the parties pursuant to directions in that statement. A further draft of the award-specific NTW Schedule was published with the July Statement (draft Schedule).

[2] Although there was some agreement between the parties in the report filed by the CFMMEU, there were some issues upon which the parties did not agree. This included whether the Metal and Engineering (Technical) Certificate II should be included under Wage Level A. The employer parties supported this being included, however the CFMMEU and other unions were opposed to this.³

[3] The employer parties submitted that a “*significant number*” of additional training packages were pertinent to the occupational classifications in the Building Award and should

¹ [\[2022\] FWC 1834](#)

² [\[2022\] FWC 87](#)

³ [\[2022\] FWC 1834](#) at [6]

be included in any award-specific version of the NTW Schedule.⁴ A document listing these additional training packages was published as Attachment B to the July Statement.

[4] I expressed the provisional view that the Metal and Engineering (Technical) Certificate II does not have a sufficient connection to any classification defined in Schedule A to the Building Award which would support its inclusion in the NTW Schedule. Any party opposing this provisional view was invited to file submissions demonstrating how this training package is relevant to any classification in the Building Award by 5:00 pm on 27 July 2022, with submissions in reply to be filed by 5:00 pm on 3 August 2022.⁵

[5] I also invited any party proposing the inclusion of any further training packages which were not already assigned a wage level in the further revised NTW Schedule (including those listed in Attachment B to the July Statement) to file submissions in accordance with the same timeframes set out in relation to the Metal and Engineering (Technical) Certificate II.⁶

Initial submissions

[6] Submissions were filed on 27 July 2022 by Master Builders Australia (MBA)⁷ and the Australian Industry Group (Ai Group).⁸ The CFMMEU filed submissions in reply on 3 August 2022.⁹

[7] MBA supported the provisional view and did not oppose the removal of the Metal and Engineering (Technical) Certificate II from the NTW Schedule. Likewise, the Ai Group submitted that although it had earlier agitated for such a reference to be retained, it no longer pressed its submission that this should remain in the NTW Schedule in the Building Award, and indicated that MBA and the Housing Industry Association also supported this submission. For completeness I note that no separate submissions were filed by the Housing Industry Association. The CFMMEU in reply also supported the provisional view.

[8] As to the issue of additional training packages to be included in the NTW Schedule, MBA submitted that there were several packages listed on the Australian Government's Training Portal which remain pertinent to the occupational classifications in the Building Award and should be included in the NTW Schedule. MBA listed these at Annexure A to its submissions (MBA annexure), which is reproduced as follows:

⁴ [Ibid](#) at [7]

⁵ [Ibid](#) at [10]

⁶ [Ibid](#) at [11]

⁷ [MBA Submission \(fwc.gov.au\)](#)

⁸ [Ai Group Submission \(fwc.gov.au\)](#)

⁹ [CFMMEU submission in reply \(fwc.gov.au\)](#)

Additional training packages identified by Master Builders which should be included in any award-specific schedule

Relevant qualification at AQF I, II and/or III	Occupation in Award	Wage Level	Award Classification Ref.
Metal and Engineering (MEM05)			
Cert III Engineering – Electrical/Electronic Trade	Electronics tradesperson	A	A.2.6 (d)
Transport and Logistics (TIL)			
Cert II Rail Infrastructure	Track laying, fixing or levelling machine worker	B	A.2.4 (d)
Cert III Mobile Crane Operations	Mobile Crane Driver	A	A.2.1 (e)
Agriculture, Horticulture and Conservation and Land Management (AHC)			
Cert II Landscaping	Landscaping labourer	C	A.2.1 (e)
Cert III Landscape Construction	Landscaper	C	A.2.2 (d)
Furnishing (MSF)			
Cert I Furnishings	Tradesperson’s labourer	B	A.2.1 (e)
Cert II Glass and Glazing	Tradesperson’s labourer	B	A.2.1 (e)
Cert III Flooring technology	Floor layer specialist	B	A.2.3 (d)
Manufacturing and Engineering (MEM)			
Cert I Engineering	Tradesperson’s labourer	B	A.2.1 (e)
Cert III Engineering – Fabrication Trade	Welder	A	A.2.3 (d)
Manufacturing (MSM)			
Cert III Surface Preparation and Coating Application	Sandblaster	A	A.2.3 (d) A.2.4 (d)
National Water (NWP)			
Cert II Water Industry Operations	Tradesperson’s labourer	B	A.2.1 (e)
Cert III Water Industry Operations	Pipelayer	A	A.2.3 (d)
Transmission, Distribution and Rail (UET)			
Cert II Transmission Line Construction	Linesworker	A	A.2.1 (e)
Cert III Transmission Overhead	Linesworker	A	A.2.1 (e)

[9] There was some crossover with the list published as Attachment B to the July Statement, however not all packages identified in that list were reproduced in the MBA annexure. As can be seen, the MBA annexure identified corresponding Building Award classification references for each of the training packages it identified for inclusion in the NTW Schedule.

[10] In reply, the CFMMEU submitted that the MBA submissions in relation to additional training packages to be included in the NTW Schedule did not demonstrate how the additional training packages were relevant to any classification in the Building Award pursuant to paragraph [11] of the July Statement. It also submitted that the MBA had not provided any evidence to demonstrate that employers covered by the Building Award actually used the proposed classifications identified for each training package.

[11] The CFMMEU further submitted that a number of training packages identified in the MBA annexure should not be included in the NTW Schedule because they are either

apprenticeships (and therefore would not be covered by the revised NTW Schedule pursuant to clause D.2.3(a)) or are not relevant to work covered by the Building Award. In particular (using the terminology from the MBA annexure):

- Cert I Furnishings should not be included because this is a qualification for a product assembler;
- Cert II Glass and Glazing should not be included as this is a qualification for a glass processing worker;
- Cert I Engineering should not be included because this is a qualification for a metal production assistant or factory worker;
- Cert III Engineering – Fabrication Trade should not be included as this is an apprenticeship; and
- Cert II Water Industry Operations should not be included as this is a qualification for a waste water or water plant operator.

[12] The CFMMEU further submitted that should the Commission decide to include the remaining training packages in the NTW Schedule, clause D.6 should be amended, and it proposed a revised clause in its submissions.

Conference and further submissions

[13] The matter was the subject of a conference before me on 25 August 2022. At this conference, the following matters in the MBA annexure were resolved or clarified:

- The Transport and Logistics Certificate II in Rail Infrastructure and Certificate III in Mobile Crane Operations were already included in the draft Schedule which accompanied the July Statement.
- In relation to the Metal and Engineering Certificate III in Engineering – Electrical/Electronic Trade, MBA accepted that it was developed for apprentices. It was able to identify that, in Victoria, the Certificate III in Engineering – Technical is offered as a traineeship, but it conceded that the Certificate III in Engineering – Electrical/Electronic Trade was not offered as a traineeship in any jurisdiction.¹⁰
- The CFMMEU did not oppose the inclusion of the Agriculture, Horticulture, Conservation and Land Management Certificate II in Landscaping and Certificate III in Landscape Construction to the extent that it might be offered as a traineeship in some States. However, there was a disagreement about the wage rate which would apply. MBA submitted that it should be assigned to Level C, since this was the rate the package was assigned in the NTW Schedule in the *Miscellaneous Award 2020*. However, the CFMMEU contended that it should be assigned to Level B because clause 19.10 of the Building Award only allowed for Levels A and B to be paid under the award

¹⁰ As clarified by MBA in email correspondence dated 6 September 2022.

(notwithstanding the nominal reference to Level C in the current NTW Schedule in the Building Award).

- The CFMMEU accepted that the Furnishing Certificate III in Flooring Technology may have application to on-site work and therefore did not oppose its inclusion in the NTW Schedule.
- The CFMMEU accepted that the Manufacturing and Engineering Certificate III in Engineering - Fabrication Trade may have some application to work covered by the Building Award.
- MBA accepted that Manufacturing and Engineering Certificate I in Engineering was not currently available as a traineeship in any State or Territory.
- The CFMMEU did not oppose the inclusion of the Manufacturing Certificate III in Surface Preparation and Coating Application in the NTW Schedule.
- The CFMMEU accepted that National Water Certificate III in Water Industry Operations might have some application on-site.
- The CFMMEU did not oppose the Transmission, Distribution and Rail Certificate II in Transmission Line Construction and Certificate III in Transmission Overhead being included in the NTW Schedule.

[14] Following the conference, MBA filed a further, unsolicited submission concerning the inclusion of the Level C wage rate in the NTW Schedule. In this submission, MBA contended that, in a decision of the NTW Full Bench published on 10 September 2020¹¹ (September 2020 decision), “*the question of whether wage rates within Wage Level C should be generally retained was resolved in the affirmative*”. In a submission filed by the CFMMEU in reply, it was reiterated that Level C wage rates had never applied in the Building Award by virtue of clause 19.10, in contrast to the *Joinery and Building Trades Award 2020* (Joinery Award) which was dealt with in the September 2020 decision.

Conclusions

[15] Consistent with the parties’ positions at the 25 August 2022 conference, the following training packages at the identified certificate levels, in addition to those referred to in the draft Schedule, will be included in the NTW Schedule in the Building Award and assigned the wage levels proposed in the MBA annexure:

- Furnishing - Certificate III;
- Manufacturing and Engineering - Certificate III;
- Manufacturing - Certificate III;
- National Water - Certificate III;
- Transmission, Distribution and Rail Sector - Certificate II; and
- Transmission, Distribution and Rail Sector - Certificate III.

¹¹ [2020] FWCFB 4833

[16] The Manufacturing and Engineering - Certificate I and the Metal and Engineering - Certificate III (Electrical/Electronic Trade) will not be included in the NTW Schedule on the basis of MBA's concession that these are not currently offered as traineeships in any State or Territory.

[17] The Agriculture, Horticulture, Conservation and Land Management – Certificates II and III will be included based upon the agreement of the parties as to their relevance, but a disagreement has emerged about the wage level to which they should be assigned. As the CFMMEU has contended, the Building Award (including the 2010 version first made on 3 April 2009¹²) has never contained an operative wage level C for trainees, and in this respect has always been distinct from the position applying under other modern awards. The draft Schedule which accompanied the July Statement did not include wage level C for this reason. No party, in response to the July Statement, made any specific submission that the NTW Schedule in the Building Award should, as a departure from the historic position, be varied to include wage level C. The September 2020 decision upon which MBA now relies was concerned with the specific circumstances of the Joinery Award which, unlike the Building Award, has always provided for training packages to which wage level C applies. No persuasive case has been advanced for the Building Award to now contain a wage level C for trainees. Accordingly, the Agriculture, Horticulture, Conservation and Land Management Certificates II and III will be assigned to wage level B.

[18] My conclusions as to the remaining training packages which MBA seeks to have included in the NTW Schedule, on the basis of the limited information placed before me, are as follows:

- (1) Furnishing Certificate I in Furnishings is for the role of a product assembler. I am not satisfied that it has relevance to work covered by the Building Award, so it shall not be included in the NTW Schedule.
- (2) Furnishing Certificate II in Glass and Glazing may have application to on-site work in respect of glass repair and glazing connected with the restoration and repair of buildings. It will be included in the NTW Schedule and assigned to wage level B.
- (3) National Water Certificate II in Water Industry Operations applies to the occupations of "*Bore Field Operator, Maintenance Assistant (Water Industry), Assistant Networks Operator, Assistant Groundwater Extraction Operator (Groundwater Operator), Assistant Operator (water treatment), Groundwater Extraction Operator, Stormwater, Drainage and Sewerage Labourer, Wastewater Collection System Operator*".¹³ Because the *Water Industry Award 2020* does not cover the "*installation, maintenance and repair of ... water, sewerage or drainage services within buildings, structures or facilities that are not part of the water industry as defined in clause 4.2; or ...the mains, drains*

¹² PR986361

¹³ Australian Industry Standards, "Companion Volume Implementation Guide – NWP National Water Training Package, Release 4.3", page 36

*and lines immediately connecting to such buildings, structures or facilities*¹⁴ unless the employer is otherwise within the water industry, I am narrowly persuaded that it is possible that a “*Stormwater, Drainage and Sewerage Labourer*” may work on-site and be covered by the Building Award. Therefore this training package will be included in the NTW Schedule and assigned to wage level B.

[19] A variation determination to give effect to this decision will be published in conjunction with this decision. In this determination:

- (1) The rates of pay have been updated to reflect the 2021-22 *Annual Wage Review* decision.¹⁵
- (2) A default wage rate provision in the terms set out below has been included as clause D.4.4 of the NTW Schedule:

“The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause D.6 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to wage level B.”

This provision is in the same terms as clause E4.4 in the NTW Schedule in the *Miscellaneous Award 2020*, and a clause in the same terms is included in all other awards which have retained a NTW Schedule.

[20] The operative date of the determination will be 1 November 2022.



VICE PRESIDENT

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¹⁴ *Water Industry Award 2020* clause 4.3(b)

¹⁵ [2022] FWCFB 3500