

CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION
Matter Number: AM2016/17

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

**4 yearly review of modern awards – National Training Wage Schedule
(AM2016/17)**

**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY
UNION (CONSTRUCTION & GENERAL DIVISION)**

28th July 2016

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Introduction

1. The Fair Work Commission (the Commission) is currently undertaking a 4 yearly review of modern awards (the Review) as required by s.156 of the *Fair Work Act 2009* (the FW Act). On the 6th July 2016 the President, Justice Ross, issued a Statement¹ regarding the National Training Wage Schedule (NTW Schedule) currently included in 103 of the modern awards. In the Statement the President advised that the Commission is assessing the NTW Schedule to determine whether it meets the modern awards objective in s.134 of the FW Act.
2. In the Statement the President also advised that the Commission was proposing to standardise the NTW Schedule, and to remove the NTW Schedule from all modern awards, save for the *Miscellaneous Award 2010*, and incorporate the NTW Schedule by reference into the other modern awards that currently contain the Schedule in full.² The Statement then set out how the proposed changes would be made, and invited interested persons to make written submissions on the proposals outlined in the Statement. Any submissions were required to be filed by 4pm on 28th July 2016.
3. The CFMEU (Construction & General Division) (the CFMEU C&G) is an interested party as we have members covered by awards that currently contain the NTW Schedule and we have members engaged as trainees under these awards. We also have a long history of involvement in matters related to the NTW Schedule (and the antecedent award) and training matters more generally. We therefore welcome the opportunity to make this submission in accordance with the timetable set out in the Statement.

Standardising the Schedule and Incorporation by Reference to the Schedule in the *Miscellaneous Award*

4. In the Statement the Commission proposes to create a standard NTW Schedule to be adopted in all modern awards, and to incorporate the NTW Schedule through reference to the schedule in the *Miscellaneous Award*. The CFMEU does not support this proposal for the reasons set out below.
5. The CFMEU C&G does not necessarily have an issue with using standard terms in awards where appropriate. What we see as problematic in this instance is including provisions in the NTW Schedule that have no application because of:
 - The coverage of the award
 - Other provisions of the award that deal with the subject matter

¹ [2016] FWC 4495

² Ibid at paragraph [5]

- Age restrictions on the qualifications for which a traineeship is being undertaken.
6. The coverage issue affects what parts of the NTW Schedule actually have any relevance to employees covered by an award. For example the *Mobile Crane Hiring Award 2010* only covers truck drivers, riggers, doggers, mobile hydraulic platform operators and mobile crane operators. The qualifications related to these occupations are covered by only two of the training packages covered by the NTW Schedule, i.e. the Construction, Plumbing and Services Integrated Framework and the Transport and Logistics training packages. None of the other training packages have any relevance to this award.
 7. The only wage levels in the NTW Schedule that are relevant to these two training packages are Wage level A and Wage level B. But this is not the full picture as the only qualifications from the Transport and Logistics training package that have any relevance are the certificate III qualifications or higher qualifications, therefore Wage level B has no application.
 8. As the occupations covered by the *Mobile Crane Hiring Award 2010* are also licensed occupations, as they predominately cover high risk work, there are age restrictions on who can obtain a license to do the work. A person seeking a license must be 18 years of age, therefore only 4 of the wage rates under wage level A could possibly apply and no school based trainees would be used. Consequently there are only a limited number of the terms of the NTW Schedule that can have any application under this award and a truncated version of the NTW Schedule could be used.
 9. We submit that this approach (i.e. to include a modified or truncated version of the NTW schedule) could then be used in all other awards where similar situations arise.
 10. In regards to awards that contain other provisions that deal with the subject matter, the *Building and Construction General On-site Award 2010* is a case on point. This award contains a separate clause that deal with the wage rates for trainees (see clause 28 of the award). The only wage provisions from the NTW Schedule that would have any application are the AQF Certificate Level 4 traineeship rates and the school-based traineeship rates. But even the AQF certificate Level 4 wage rates table would have limited application as all of the Certificate III qualifications in the relevant training packages for this award would fall within wage level A.
 11. As there would be no need to include the majority of the wage rates tables, and only refer to those training packages that have any relevance to the occupations covered by the award, the NTW Schedule provisions for this award could also be significantly reduced.

12. For completeness we would add that the definitions contained in the Schedule could be reduced in line with the changes that were made to apprenticeship provisions in awards arising from the Apprentices Case³ in the 2012 Transitional Review (also noting that a number of the organisations currently referred to in the NTW Schedule no longer exist).
13. We recognise that the above comments may not be applicable to some awards that do not meet any of the criteria identified in paragraph 5 above and they may need a more comprehensive NTW Schedule. We would suggest however that these awards would be in the minority.
14. Attached is a draft of how a truncated NTW Schedule would look in the *Mobile Crane Hiring Award 2010*. In this example the total schedule is significantly reduced and is less than 4 pages long (compared to the 14 pages in the current NTW Schedule).
15. The benefit of the approach identified above is that it maintains the approach of using common clauses where relevant, but only includes those provisions needed for the individual award. It also makes it easier for both employers and employees to find the traineeship conditions by only having to refer to the one award rather than the award and the schedule in the *Miscellaneous Award*.
16. The updating of the wage rates would not be a difficult task as in this instance there are only 12 in total and these would be common with equivalent rates in other awards.
17. When changes are made to training packages (which is highly likely with the new arrangements for approval of training packages under the Australian Industry and Skills Committee⁴ and the replacement of Industry Skills Councils by Industry Reference Committees⁵ serviced by Skills Service Organisations) only those awards covering the training packages would need to be varied.

Conclusion

18. The CFMEU C&G submits that employers, employees and industry parties would benefit by retaining a NTW Schedule in those awards covering industries that actually engage trainees. The contents of the NTW Schedule in these awards should however be modified to only include those parts of the current Schedule that are necessary. This approach should be adopted for the *Building and Construction General On-site Award 2010*, *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*.

³ [2013] FWCFB 5411

⁴ <https://www.aisc.net.au/>

⁵ <https://www.aisc.net.au/ircs>

Draft NTW Schedule for the Mobile Crane Hiring Award 2010

Schedule A—National Training Wage

A.1 Title

This is the *National Training Wage Schedule*.

A.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A.

approved training means the training specified in the contract of training

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year in which a year of schooling is completed

trainee is an employee who is bound by a contract of training registered with the appropriate State or Territory training authority.

traineeship means a system of training under a contract of training which has been approved by the relevant State or Territory training authority for an AQF certificate level qualification which meets the requirements of a nationally endorsed training package.

contract of training means an approved agreement for training registered with the appropriate State or Territory training authority or under the provisions of the appropriate State or Territory training legislation

training package means the Construction, Plumbing and Services Integrated Framework or the Transport and Logistics training package.

year 10 includes any year before Year 10

A.3 Coverage

A.3.1 Subject to clauses A.3.1 to A.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship.

A.3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is provided for in the training package.

A.3.3 This schedule does not apply to the apprenticeship system.

A.3.4 This schedule does not apply to qualifications not identified in the training packages.

A.3.5 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

A.3.6 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

A.4 Types of Traineeship

The following types of traineeship are available under this schedule:

A.4.1 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

A.4.2 a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

A.5 Minimum Wages

(a) Wage Level A

Subject to clause A.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship are :

	Highest year of schooling completed		
	Year 10 per week	Year 11 per week	Year 12 per week
	\$	\$	\$
School leaver	n/a	n/a	396.50
Plus 1 year out of school	n/a	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) AQF Certificate Level IV traineeships

(i) Subject to clause A.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clause A.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship per week	Second and subsequent years of traineeship per week
	\$	\$
Wage Level A	638.50	663.20

A.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses A.5.2(c) and A.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship are:

	Highest year of schooling completed		
	Year 10 per hour	Year 11 per hour	Year 12 per hour
	\$	\$	\$
School leaver	n/a	n/a	13.05
Plus 1 year out of school	n/a	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) AQF Certificate Level IV traineeships

(i) Subject to clauses A.5.2(c) and A.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses A.5.2(c) and A.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82

(c) Calculating the actual minimum wage

(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses A.5.2(a)–(b) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

(ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses A.5.2(a)–(b) of this schedule applies to each ordinary hour worked by the trainee.

(iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses A.5.2(a)–(b) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

A.5.3 Other minimum wage provisions

- (a)** An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b)** If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

A.6 Employment conditions

A.6.1 A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

A.6.2 Time spent by a trainee, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause A.5.2(c)(ii) and not by this clause.

A.6.3 Subject to clause A.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.