

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission in Reply

Undergraduate Qualifications Review
(C2019/5255)

4 October 2019

Ai
GROUP

C2019/5255 – UNDERGRADUATE QUALIFICATIONS REVIEW

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this reply submission in relation to the proposed Undergraduate Qualifications Review referred to in the Statement¹ (**Statement**) issued by the Fair Work Commission (**Commission**) in C2019/5255.
2. In our submission dated 20 September 2019, Ai Group set out its views in relation to the points listed in paragraph [17] of the Statement. Ai Group continues to rely on this submission.
3. Ai Group has considered the submissions of the other parties also made in response to the Statement and files this submission in reply to that of Australian Business Industrial and the NSW Business Chamber dated 20 September 2019 (**ABI Submission**).
4. At paragraphs [5.2] – [5.3], ABI reiterated the following points made in earlier submissions made on 4 March 2019 in the context of the claims of the Association of Professional Engineers, Scientists and Managers, Australia (**APESMA**) relating to the *Pharmacy Industry Award 2010*:
 - 5.2 As we stated in our submissions on 4 March 2019, the original “manufacturing formulation” and the C10 “reference point” was not itself the subject or arbitral consideration.
 - 5.3 It is therefore important that the Commission does not commence on the premise that the C10 “reference point” was an unalterable or unquestionable reference point and was constructed for a particular purpose at a transient time in industrial relations.
5. Ai Group disagrees with this aspect of the ABI submission and urges the Commission to exercise a significant degree of caution in undertaking any review which disconnects classifications, relativities and wage rates in the

¹ [2019] FWC 5934

award system from the C10 rate, which has since 1989 acted as an anchor around which other rates have been determined.

6. Since 1989, a vast amount of work has been done in achieving consistency and equity in the classifications and wage rates within and across awards. If the linkage between the C10 rate and the classification system across modern awards were fundamentally disturbed, this would destabilise the safety net and lead to widespread flow on claims.
7. The *April 1991 National Wage Case decision* provides the following account of the lack of fairness which existed in award classification structures and wage rates prior to 1989 and the problems which such inequity caused. The extract also explains the structural efficiency exercise which was embarked upon from 1989 to address the problems:² (emphasis added)

"The result is there exist in federal awards widespread examples of the prescription of different rates of pay for employees performing the same work but this is only part of the problem. For too long there have existed inequitable relationships among various classifications of employees. That this situation exists can be traced to features of the industrial relations system such as different attitudes adopted in relation to the adjustment of minimum rates and paid rates awards; different attitudes taken to the inclusion of overaward elements in awards, be they minimum rates or paid rates awards; the inclusion of supplementary payments in some awards and not others; and the different attitudes taken to consent arrangements and arbitrated awards.

There is a further dimension to the problem. Employers have introduced and will continue to introduce wage relativities both as between employees employed under the same award and employees covered by other awards in a particular establishment. These relativities can vary from workplace to workplace and may bear no resemblance to the relativities set in the award or awards concerned."

The Commission noted that this situation had inevitably caused feelings of injustice leading to industrial disputation and "flow-on" settlements and:

". . . has also led to economically unsustainable general wage increases, particularly when attempts have been made to move away from a highly centralised system, which have severely affected the state of the national economy."

² Print J7400, 19-20.

The Commission concluded that this situation had to be corrected; otherwise continuing instability within and between awards would seriously reduce the effect of moves to modernise those awards. Consequently it determined that:

". . . minimum rates awards will be reviewed to ensure that classification rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other minimum rates awards".

The Commission stated in its *August 1989 National Wage Case* decision that its decision had to be read in conjunction with the *August 1988 National Wage Case decision* and the *February 1989 Review decision*. It also elaborated on what had been said in the *February 1989 Review decision* about the requirement to review relationships between classification rates and supplementary payments in minimum rates awards, stating:

". . . we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be \$356.30 per week with a \$50.70 per week supplementary payment. The minimum classification rate of \$356.30 per week would reflect the final effect of the structural efficiency adjustment determined by this decision.

Minimum classification rates and supplementary payments for other classifications throughout awards should be set in individual cases in relation to these rates on the basis of relative skill, responsibility and the conditions under which the particular work is normally performed. The Commission will only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards. Before that requirement can be satisfied clear definitions will have to be established."

8. The outcomes of the structural efficiency exercise are embedded in the wage rates and classification structures in modern awards. To a large extent modern award wage and classification structures still bear a relationship to the wage rates and classification structure in the Metal Industry Award (and now those in the *Manufacturing and Associated Industries and Occupations Award 2010*).
9. The safety net should be as consistent as possible across industries. Such consistency is important in ensuring that the safety net remains "fair" (ss.3(b),3(c), 134(1) and 284(1) of the *Fair Work Act 2009*) and "stable" (s.134(1)(g)). Maintaining the connections across the award system with the C10 rate would remove the vital linchpin which ensures rates of pay remain stable.

10. At paragraph 3.23 of its 4 March 2019 submission relating to APESMA's claims pertaining to the *Pharmacy Industry Award 2010*, ABI claimed that the 'C10 arrangement' resulted from a consent position between the Metal Trades Industry Association (**MTIA**) and the Metal Trades Federation of Unions (**MTFU**) in the *National Wage Case April 1991* (1991) 36 IR 120.³ This is incorrect.
11. In the course of the *August 1989 National Wage Case*, rates of pay were established for a Metal Industry Tradesperson and a Building Industry Tradesperson in an effort to set benchmark rates which would constitute a reference point for other classifications throughout the award system. These rates were not arbitrary or applied as a result of a consent position as contended by ABI. The rates were set in the context of the implementation of the 'structural efficiency principle' by the Australian Industrial Relations Commission (**AIRC**). The principle was described in the *August 1988 National Wage Case decision* in the following manner: ⁴ (emphasis added)

We have decided therefore to provide a structural efficiency principle which will be the key element in a new system of wage fixation. That new principle will provide incentive and scope within the wage fixation system for parties to examine their awards with a view to:

- establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;
- eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;
- creating appropriate relativities between different categories of workers within the award and at enterprise level;
- ensuring that working patterns and arrangements enhance flexibility and meet the competitive requirements of the industry;
- including properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;
- updating and/or rationalising the list of respondents to awards;

³ AM2016/28, [ABI Submission](#), 4 March 2019, [3.23].

⁴ Print H4000, 6.

- addressing any cases where award provisions discriminate against sections of the work-force.

8. The rates set by the AIRC in the *August 1989 National Wage Case decision* were determined in accordance with the structural efficiency principle:⁵

Subject to what we say later in this decision, we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be \$356.30 per week with a \$50.70 per week supplementary payment. The minimum classification rate of \$356.30 per week would reflect the final effect of the structural efficiency adjustment determined by this decision.

Minimum classification rates and supplementary payments for other classifications throughout awards should be set in individual cases in relation to these rates on the basis of relative skill, responsibility and the conditions under which the particular work is normally performed. The Commission will only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards. Before that requirement can be satisfied clear definitions will have to be established.

We are not prepared to approve specific wage relativities proposed by the ACTU on behalf of the trade union movement. Nevertheless, we consider it appropriate for relativities to be established for both minimum classification rates and supplementary payments for the following key classifications within the ranges set out below:

% of the tradesperson rate

Metal industry worker, grade 4	90-93
Metal industry worker, grade 3	84-88
Metal industry worker, grade 2	78-82
Metal industry worker, grade 1	72-76
Storeman/packer	88-92
Driver, 3-6 tonnes	88-92

9. The AIRC also stated that it envisaged that in the future minimum classification rates would not alter their respective positions unless warranted on work value grounds.⁶

⁵ Print H9100, 12

⁶ Print H9100, 14.

10. In the *April 1991 National Wage Case decision*,⁷ the AIRC Full Bench stated:
(emphasis added)

We now also reaffirm the Commission's intention that minimum classification rates, once reviewed and fixed in an appropriate relationship, will not be moved from that relative position unless changes are warranted on work value grounds. The question whether work value claims should be considered on a co-ordinated basis is dealt with separately in the context of the work value principle.

11. The *Wage Fixation Principles* that were attached to the *April 1991 National Wage Case decision*,⁸ included the following principle: (emphasis added)

WORK VALUE CHANGES

- (a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this principle.

- (b) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.
- (c) The time from which work value changes in an award should be measured is, unless extraordinary circumstances can be demonstrated in special case proceedings, the date of operation of the second structural efficiency adjustment allowable under the 7 August 1989 National Wage Case decision.
- (d) Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this principle.
- (e) Where a significant net alteration to work value has been established in accordance with this principle, an assessment will have to be made as to how that alteration should be measured in money terms. Such assessment should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, where appropriate, comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards provided the same changes have occurred.

⁷ Print J7400.

⁸ Print J7400.

- (f) The expression "the conditions under which the work is performed" relates to the environment in which the work is done.
 - (g) The Commission should guard against contrived classifications and overclassification of jobs.
 - (h) Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other principle, shall not be taken into account in any claim under this principle.
12. A Work Value Principle was included within each set of Wage Fixation Principles published with each National Wage Case and Safety Net Review decision up to the implementation of the Work Choices legislation in 2006. The relevant paragraph in the final published version, as attached to the *Safety Net Review – Wages – June 2005 Decision*, was:
- (d) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the *August 1989 National Wage Case decision* (August 1989 National Wage Case) [Print H9100; (1989) 30 IR 81].
13. The C10 rate continues to underpin the classifications, wage rates and relativities across the modern award system and is a vital point of reference in the context of Annual Wage Review proceedings.
14. Ai Group continues to rely on the submissions that we made on 20 September 2019 that the proposed wide review of classifications requiring an undergraduate qualification in modern awards should either not take place or be postponed.