



REPORT TO THE AWR EXPERT PANEL

Fair Work Act 2009
s.285 - Annual wage review

Annual Wage Review 2019-2020 – Apprentice Rates of Pay in the Rail Industry Award 2010. (C2020/1)

COMMISSIONER HAMPTON

ADELAIDE, 12 MARCH 2020

Annual Wage Review 2019-2020 – Apprentice Rates of Pay in the Rail Award.

1. What this report is about

[1] This Report concerns the issue of apprentice rates of pay under the *Rail Industry Award 2010* (Rail Award). The background to this matter is set out in the 2018–19 Annual Wage Review decision¹ and a subsequent [Background Paper](#)² issued by the Commission.

[2] The Annual Wage Review is conducted each year under the terms of the *Fair Work Act 2009* (FW Act).

[3] In broad terms, the Expert Panel conducting the 2018-19 Annual Wage Review undertook preliminary consideration of junior and apprentice rates in a number of modern awards where some of the wage rates were lower than the rates of pay for award free junior employees covered by the Special National Minimum Wage 3 (special NMW3) and apprentice rates that fall below the Special National Minimum Wage 4 (special NMW4) set out in the *National Minimum Wage Order 2018* (NMW order). Given the timing and nature of the proposals, the Expert Panel did not substantively deal with the issue, but subsequently invited interested parties that wished to pursue a relevant variation to advise the Commission on or before 30 September 2019.³

[4] The only correspondence received since that time in connection with this matter was from the Australian Rail, Tram and Bus Industry Union (RTBU) dated 11 July 2019. The RTBU sought to pursue a variation in apprentice rates in the Rail Award and for that matter to be considered during the 2019–20 Annual Wage Review. The basis of the proposed variation was

¹ [2019] FWCFCB 3500 at [418] and [419].

² Issued on 30 January 2020.

³ [2019] FWCFCB 3500 at [419].

stated to be “that it is inappropriate for any apprentice rates in a modern award to fall below those provided to award/agreement free employees.”⁴

[5] I have now conducted a conference of interested parties to explore the RTBU’s position. In advance of that conference, the Background Paper outlined that the issues for consideration at the conference might include:

1. Whether it is appropriate that any apprentice rates in the Rail Award be less than the equivalent apprentice rates provided for award-free employees in special NMW4?
2. To what extent should the particular circumstances of the Rail Award be taken into account in assessing issue 1? If a consideration of the particular circumstances is permitted, whether there are any historical developments relating to apprentice rates of pay within the Rail Award that provides context to this issue.
3. Where it is not appropriate for apprentice rates in the Rail Award to be less than the equivalent apprentice rates provided for award-free employees in special NMW4, what variations should be considered and when?
4. Is there any evidence or estimates on the proportion of apprentices that commenced their apprenticeships before 1 January 2014?
5. Whether this issue regarding apprentice rates occurs more generally in other modern awards?

[6] Submissions were filed by the RTBU⁵, Ai Group⁶ and a group of rail employers comprising Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd. (Rail Employers)⁷ represented by Lander & Rogers Lawyers, outlining their respective positions in response to the Background Paper.

[7] Each of these parties were represented at the conference conducted on 27 February 2020. The [transcript](#) of the conference has been made available.

[8] This Report summarises the positions advanced by the parties and provides an update on developments to assist the Commission to initially assess how this matter should be considered.

2. The positions of the parties

[9] The RTBU seeks that a determination be made to

- a. Vary the apprentice rates percentages in the Rail Award to the same percentages for apprentices under the *Miscellaneous Award 2010*

⁴ RTBU original submissions, 11 July 2019.

⁵ [20 February 2020](#).

⁶ [24 February 2020](#).

⁷ [26 February 2020](#).

(Miscellaneous Award) - applied to the existing key adult benchmark rates in the Rail Award for each class of apprentice.

- b. Vary clause 14.3(d) to apply to all apprentices regardless of commencement date of apprenticeship.
- c. Vary clause 14.3(e)(i) and (ii) to apply to all apprentices regardless of commencement date of apprenticeship.
- d. Remove clause 14.3(c) which contain the pre 2014 apprentice rates of pay.

[10] The RTBU's position may be summarised as follows:

- Apprentices are part of the low-paid workforce and it is not appropriate that any apprentice rates in the Rail Award be less than the equivalent apprentice rates provided for award-free employees under the special *NMW4*.
- The wage rates are insufficient to meet community expectations of a reasonable standard of living. The current apprentice wage rates in the Rail Award are not a sustainable way for the apprenticeship system to continue and are not consistent with the modern awards objective in s.284 of the Act.
- The Miscellaneous Award provides an appropriate reference point for the minimum rates that should be paid to apprentices and it is inherently unfair that the apprentice rates are lower under the Rail Award.
- The RTBU is not aware that there are any apprentices who started before 1 January 2014 that have not already completed their apprenticeship. Even if there were still any serving apprentices who started before 1 January 2014 the number would be very low. The union submits that any reference to pre 2014 apprentice rates should be removed in its entirety due to its limited relevance in the Rail Award. This would mean that the apprentice rates that remain in the Rail Award should apply to all apprentices regardless of the date of commencement.

[11] The impact of the RTBU proposal for some of the post January 2014 apprentice rates in the Rail Award is illustrated in Attachment A, which has been prepared by the staff of the Commission solely for that purpose.

[12] Ai Group contends that there is no mandated relationship between modern award rates and the rates provided for award-free employees by the NMW Order. It further contends that the Miscellaneous Award was not intended to provide a minimum across the award system and any comparison of those rates with the Rail Award should recognise that additional payments apply under the Rail Award that are not found in the Miscellaneous Award.

[13] Ai Group further contends that:

“If the question of the appropriateness of minimum wage rates applicable to award-covered apprentices being below NMW4 is to impact the Rail Industry Award, the particular circumstances of the rail industry and the Award should be taken into account. Given the nature of the Annual Wage Review proceedings, it would be more appropriate for the RTBU to pursue an application under s.157 of the FW Act and bring a substantive

case in support of its position. Should this avenue be pursued, any increase in the minimum rates applicable to apprentices under this award would need to be supported by work value considerations consistent with s. 135 of the FW Act.”

[14] The Rail employers supported the submissions of Ai Group including that any consideration of the RTBU’s position should take place in the context of a s.157 application by the Union.

[15] The Rail employers opposed what it described as a blanket increase that would follow by adopting the year-level percentages from the Miscellaneous Award and also contended that:

- The proposal fails to acknowledge the distinction in qualifications between junior apprentices who have completed year 12 and those who have not. The Rail Award creates a distinction in rates of pay based on the possession of this qualification. It is inappropriate to this distinction by virtue of a blanket increase to the rates of pay for both types of junior apprentice.
- The proposed blanket increase is inconsistent with the actual intended operation of Special NMW4.
- Clause 14.2 of the Miscellaneous Award relevantly operates by reference to a "standard rate", that rate being the Level 3 minimum wage per week for an adult worker (**\$862.50**). The blanket percentage increase fails to acknowledge that the rate of pay for a Level 3 Operations (Op) worker in the Rail Award, being one of the relevant reference rates for determining apprentice rates of pay, is presently **\$872.10**. A blanket increase to the percentages for junior apprentices in clause 14.3(d) of the Rail Award for consistency with the Miscellaneous Award will have the practical effect of increasing the rate of pay for junior apprentices on a Level 3 Op rate to a level *above* the weekly rate in the Miscellaneous Award. Such a generalised approach should not be adopted in the absence of a substantive application brought pursuant to s. 157 of the FW Act as to the need for such a change.

[16] The Rail employers also did not support the RTBU’s proposal to remove any reference to pre-2014 apprentices.

[17] Following the conference, the RTBU advised that it was not intending to make an application under s.157 of the Act but continued to seek that the issue be considered by the Expert Panel in the 2019-20 Review⁸.

3. The considerations that might be relevant

[18] The present substantive provisions dealing with apprentices in the Rail Award were determined by the Commission as a result of the outcome⁹ of a significant review of Apprentices, Trainees and Juniors conducted by the Commission as part of the Modern Award

⁸ [Email correspondence 3 March 2020](#)

⁹ *Modern Awards Review 2012 – Apprentices, Trainees and Juniors* [2013] FWCFCB 5114.

Review 2012. This included establishing different rates for apprenticeships that commenced after 1 January 2014¹⁰ and this is reflected into many other modern awards.

[19] As a result, the question about whether pre-January 2014 rates and related provisions have any utility is likely to be a matter impacting upon modern awards more generally.

[20] In the 2010-11 Annual Wage Review, the Expert Panel determined to adopt the provisions of the Miscellaneous Award as the basis for the Special National Minimum Wage for award/agreement free employees to whom training arrangements apply.¹¹ The Expert Panel also determined that the apprentice provisions in the Miscellaneous Award would be incorporated by reference into the National Minimum Wage Order.¹²

[21] In the 2014-15 Annual Wage Review, the Expert Panel decided to adopt the provisions of the Miscellaneous Award as the basis for the Special National Minimum Wage applicable to adult apprentices.¹³

[22] In making the Miscellaneous Award, the Australian Industrial Relations Commission, determined:¹⁴

“[153] We deal now with conditions of employment. Our approach to conditions of employment is influenced by the nature of the award’s coverage. We agree with those who have suggested that the coverage of the award is very narrow and likely to be limited in time where emerging industries are concerned or where the expansion of coverage of a modern award is involved. Accordingly we do not think the award should contain a comprehensive safety net designed for any particular occupation or industry. Rather it should contain basic conditions only, leaving room for the application of an appropriate safety net in another modern award in due course. That said, there is still room for the exercise of considerable discretion in formulating appropriate wages and conditions.”

[23] As outlined earlier, in the 2018-19 Review Decision,¹⁵ the Expert Panel considered a request from several Union parties to adjust junior rates in 19 modern awards that were below the rates in special NMW3. The Panel stated:

“[412] Age-based junior rates in modern awards are generally derived by applying a percentage for each age below 21 years (which may vary between modern awards) to a reference adult classification and associated wage rate specified in each modern award. The 19 modern awards identified in the Background Paper fall into two broad categories: first, those that use the same reference wage that is used in special NMW3 and, second, those that use a higher reference wage. In all 19 awards, the percentages adopted at some or all age levels are lower than those applied in respect of special NMW3 such as to

¹⁰ Ibid at [506] to [508].

¹¹ [2011] FWAFB 3400, [408].

¹² Ibid.

¹³ [2015] FWCFB 3500, [567].

¹⁴ [2009] AIRCFB 945, [153].

¹⁵ [2019] FWCFB 3500.

produce rates in those age levels which are lower than those for the corresponding age level in special NMW3.

[413] On 15 May 2019, Hampton C also conducted consultations with interested parties on behalf of the Panel concerning the issue raised by the AWU and the broader issue identified in the Background Paper. As a result of this process, a level of consensus has emerged between the AWU, AMWU and Ai Group at least as to how the VMRSR Award might be varied to deal with the identified difficulty. This would involve varying the relevant junior rates in the manufacturing stream. This arises in the context that, as a result of proceedings in the 4 yearly review of modern awards, the manufacturing stream of the VMRSR Award will be removed from the coverage of that modern award and placed into the Manufacturing and Associated Industries Award (Manufacturing Award). However, the Motor Traders' Association of New South Wales, the Motor Trade Association of South Australia, the Motor Trade Association of West Australia and the Victorian Automobile Chamber of Commerce (MTA Organisations) have more recently indicated that they are not prepared, at this stage, to agree to adjust the junior rates in the RS and R sector of the award as that might be out of step with the approach taken more generally by the Commission.

[414] There is also no common view as to whether special NMW3 should act as a minimum reference point for junior rates in modern awards, or if so, how any shortfall would be dealt with. The ACTU and affiliated unions participating in the consultation, contend that the special NMW3 (and other minimum wage orders) should act as an absolute minimum for all modern awards. To that end, the ACTU proposed an 'interim' solution which would involve adjusting the junior rates under each modern award where they were lower than special NMW3.

[415] Ai Group, supported by other employer interests, contend that the junior rates in modern awards should not be adjusted generally by reference to special NMW3 on the basis that:

- Special NMW3 was never intended to set a minimum floor for junior rates in modern awards, as the Panel in the 2010–11 Review decision deliberately determined to include minimum rates in special NMW3 that were higher than the existing minimum rates in some modern awards;
- the Act does not require that minimum wage rates for junior award-covered employees must be equal to or higher than the rates in special NMW3 or other such determinations;
- it would be inappropriate for the Panel to vary the junior rates in any other modern award in this manner without an understanding of which awards are affected and whether there are any award-specific, industry-specific or occupation-specific reasons which justify the existing pay rates; and
- an adjustment of the kind proposed by the ACTU would distort the scale of rates for junior employees under the awards concerned.

[416] We note that the broader issue concerning junior rates was only raised late in the consultation process, with the result that interested parties have not been afforded a full opportunity to contribute to our consideration of the matter.

[417] We consider that there is some force in the propositions advanced by Ai Group regarding the basis upon which we have been requested to adjust the junior rates in the 19 modern awards. As has been noted in previous Reviews, the review and variation of modern award minimum wages is a separate, though related, function to reviewing and making a NMW order. In exercising its powers to set, vary or revoke modern award minimum wages, the Panel ‘must take into account the rate of the national minimum wage that it proposes to set in the Review’, but there is no mandated relationship between wage rates set by a NMW order and modern award minimum wages and certainly no requirement that any particular modern award minimum wage rate be no less than a NMW rate. Without a proper consideration of the basis upon which the rates in the modern awards and NMW3 were set, we are unable to determine whether adjustments are justified, including whether any such adjustments would distort existing relativities.

[418] We also note that Rail, Tram & Bus Union Australia (RTBU) raised a similar issue about the relationship between special NMW4 and certain apprentice rates in the Rail Industry Award 2010. Many of the same issues arise.

[419] In circumstances where there has not been a proper opportunity to address the issues we have identified, we do not consider that it is appropriate to reach a conclusion concerning whether to adjust the junior rates in the 19 modern awards identified in the Background Paper as proposed by the ACTU and its affiliates as part of this Review. If any interested party seeks to agitate this matter further, this will need to be done as part of the 2019–20 Review to allow for it to be given proper consideration. We direct that any interested party which wishes to pursue a variation of junior rates in the 19 modern awards in relation to special NMW3 as part of the 2019–20 Review to advise the Commission on or before 30 September 2019. If such advice is received, the Commission will delegate to a single member of the Panel the task of receiving evidence and submissions concerning the matter prior to the commencement of the main part of the 2019–20 Review.” (references omitted)

[24] As previously indicated, only the RTBU has sought to take up the issue in light of the direction issued by the Expert Panel. However, I observe that any consideration of the relationship between the award rates for apprentices under the Rail Award and special NMW4 as the reference point, would have indirect consequences for all 19 modern awards discussed in the 2018-19 Review Decision.

[25] The Commission is nearing the completion of the Modern Awards Review 2014 and the Rail Award has been dealt with along with other modern awards in Tranche 2. In October 2019, a Full Bench published¹⁶ an exposure draft of the Rail Award, in effect, consolidating the import of previous decisions and setting out provisional views about the final form of the instrument.

¹⁶ [2019] FWCFB 6861, 14 October 2019.

In February 2020, the Full Bench published a decision¹⁷ dealing with outstanding issues involving the Tranche 2 awards, including the Rail Award, and will finalise the award shortly following consideration of submissions on the final exposure draft. The issue of apprentice rates and conditions in the Rail Award has not be agitated by any parties during the review and the only changes to clause 14 of that Award involve plain language revisions.

[26] At present there is no evidence before the Commission about the range of contextual and factual issues outlined in the most recent Discussion Paper and this includes:

- The detailed history and basis for the establishment of the apprentice rates in the Rail Award;
- The number of pre-2014 apprentices and the circumstances and extent of apprenticeships covered by the Rail Award; and
- The degree to which variations in the Rail Award would impact upon any relativities that may be relevant to broader safety net of wages and conditions applying as part of the modern awards more generally.

[27] The modern awards objective in s.134 and minimum wage objective in s.284 would be relevant to any review conducted by the Commission or by the Expert Panel. The course of action proposed by Ai Group and the Rail Employers would also involve work value considerations by virtue of s.157 of the Act which provides as follows:

“157 FWC may vary etc. modern awards if necessary to achieve modern awards objective

- (1) The FWC may:
- (a) make a determination varying a modern award, otherwise than to vary modern award minimum wages or to vary a default fund term of the award; or
 - (b) make a modern award; or
 - (c) make a determination revoking a modern award;

if the FWC is satisfied that making the determination or modern award is necessary to achieve the modern awards objective.

Note 1: Generally, the FWC must be constituted by a Full Bench to make, vary or revoke a modern award. However, the President may direct a single FWC Member to make a variation (see section 616).

Note 2: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

¹⁷ [2020] FWC 690.

Note 3: If the FWC is setting modern award minimum wages, the minimum wages objective also applies (see section 284).

- (2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:
- (a) the variation of modern award minimum wages is justified by work value reasons; and
 - (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

- (2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:
- (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.
- (3) The FWC may make a determination or modern award under this section:
- (a) on its own initiative; or
 - (b) on application under section 158.”

[28] Based upon present indications, it appears that the RTBU’s proposition remains firmly centred upon the relationship between the modern award rates and special NMW4, rather than expressly upon a broader work value foundation or the particular circumstances of the Rail Award.

4. Future consideration of the matter

[29] Given:

- The decision of the RTBU not to make a s.157 application and the basis upon which it seeks to advance the variation of the apprentice rates in the Rail Award;
- The fact that the circumstances of other modern awards have not been raised by the parties with an interest in awards generally; and
- The potential implications for other modern awards associated with this issue,

the Expert Panel will need to resolve how to deal with the RTBU’s position as part of the 2019-20 Review.

[30] I understand that the Annual Wage Review Expert Panel for the 2019-20 Review has not at this point been convened pending the appointment of the required¹⁸ (part-time) Expert Panel Members. There is however capacity under s.582 for the President to give directions as to how the Commission is to perform its functions, exercise its powers and deal with matters, including in relation to the Annual Wage Review.¹⁹

The image shows a handwritten signature in black ink on the left, and the official seal of the Fair Work Commission of Australia on the right. The seal is circular with the text 'THE SEAL OF THE FAIR WORK COMMISSION' around the top and 'AUSTRALIA' at the bottom. In the center of the seal is the Australian coat of arms, featuring a kangaroo and an emu flanking a shield with a seven-pointed star above it.

COMMISSIONER

Appearances:

M Davis of the Australian Rail, Tram and Bus Industry Union.

H Harrington of The Australian Industry Group.

K Veloso of Lander & Rogers Lawyers on behalf of Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd.

Conference details:

2020

Adelaide with Video link to Sydney

February 27.

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¹⁸ Section 620(1) of the FW Act.

¹⁹ Section 582(2)(c) of the FW Act.

Apprentice rates of pay in the Rail Award – Illustration of RTBU position

The Australian Rail, Tram and Bus Union (RTBU) submission of 20 February 2020 stated, in effect, that ‘[i]t is not appropriate that any apprentice rates in the [Rail Award] be less than the equivalent apprentice rates provided for award-free employees under the special NMWO4’.²⁰ It submitted that the Expert Panel should:

- vary the apprentice rates percentages in the Rail Award to the same percentages for apprentices under the *Miscellaneous Award*;
- vary clause 14.3(d) to apply to all apprentices regardless of commencement date of apprenticeship;
- vary clause 14.3(e)(i) and (ii) to apply to all apprentices regardless of commencement date of apprenticeship; and
- remove clause 14.3(c) which contain the pre 2014 apprentice rates of pay.²¹

The RTBU also submitted that ‘any reference to pre 2014 apprentice rates should be removed in its entirety due to its limited relevance in the Rail Award. This would mean that the apprentice rates that remain in the Rail Award should apply to all apprentices regardless of the date of commencement.’²²

The following tables compare apprentice rates in the Rail Award with the applicable rates for special NMWO4 and the rates proposed by the RTBU.

The rates provided in the final column of the tables are based on the RTBU proposal and apply the NMWO relativities to the applicable weekly rate as provided in the Rail Award. Where this is below the ‘NMWO weekly rate’, the NMWO weekly rate has been presented. For some adult apprentice weekly rates, this also results in a rate *below* the current Rail Award weekly rate. Where this is the case, the current Rail Award weekly rate is presented.

Rates for apprentices who commenced their apprenticeship before 1 January 2014 have been included.

This comparison is being undertaken for illustrative purposes only and does not purport to represent the detail of the RTBU’s proposals that it may ultimately advance.

Apprentices who commenced on or after 1 January 2014 and who have not completed year 12*

Clause 14.3(d) of the Rail Award states that apprentices who commenced their apprenticeship on or after 1 January 2014 and who have not completed year 12 will be entitled to the

²⁰ RTBU submission, 20 February 2020 at para. 8.

²¹ Ibid at para. 13.

²² Ibid at para. 11.

percentages of the Level 4 Rail Worker (T.C.I) rate (\$862.50) or the Level 3 Rail Worker (Op) rates (\$872.10) as shown in the tables below.²³

Clause 9.2 of the NMW order 2019 provides:

‘An employer of an employee to whom special national minimum wage 4 applies must pay the employee a base rate of pay that at least equals the amount set out in cl.14.2—Apprentice minimum wages of the *Miscellaneous Award 2010*’.²⁴

Clause 14.2 sets out the percentages of the standard rate in which an apprentice must be paid, which are also provided in the tables below.²⁵ The standard rate in the *Miscellaneous Award 2010* means the minimum weekly wage for Level 3 in clause 14.1 (\$862.50).²⁶

Table 1: Technical and Civil Infrastructure (T.C.I.) stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	50%	55%	\$431.25	\$474.38	\$474.38
2 nd year	60%	65%	\$517.50	\$560.63	\$560.63
3 rd year	75%	80%	\$646.88	\$690.00	\$690.00
4 th year	88%	95%	\$759.00	\$819.38	\$819.38

Table 2: Operations (Op) stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	50%	55%	\$436.05	\$474.38	\$479.66
2 nd year	60%	65%	\$523.26	\$560.63	\$566.87
3 rd year	75%	80%	\$654.08	\$690.00	\$697.68
4 th year	88%	95%	\$767.45	\$819.38	\$828.50

Apprentices who commenced on or after 1 January 2014 and who have completed year 12*

Clause 14.3(d) of the Rail Award states that apprentices who commenced their apprenticeship on or after 1 January 2014 and who have completed year 12 will be entitled to the following percentages of the Level 4 Rail Worker rate (T.C.I) (\$862.50) or the Level 3 Op (\$872.10) rates.²⁷

²³ [MA000015](#) at cl 14.3(d).

²⁴ [PR709079](#) at cl 9.2.

²⁵ [MA000104](#) at cl 14.2.

²⁶ [MA000104](#) at cl 14.2(b).

²⁷ [MA000015](#) at cl 14.3(d).

As stated above, clause 9.2 of the NMW order 2019 refers to clause 14.2 of the *Miscellaneous Award 2010*. Clause 14.2 sets out the percentages of the standard rate in which an apprentice must be paid, which are also provided in the tables below.²⁸ The standard rate in the *Miscellaneous Award 2010* means the minimum weekly wage for Level 3 in clause 14.1 (\$862.50).²⁹

Table 3: T.C.I. stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	55%	55%	\$474.38	\$474.38	\$474.38
2 nd year	65%	65%	\$560.63	\$560.63	\$560.63
3 rd year	75%	80%	\$646.88	\$690.00	\$690.00
4 th year	88%	95%	\$759.00	\$819.38	\$819.38

Table 4: Op stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	55%	55%	\$479.66	\$474.38	\$479.66
2 nd year	65%	65%	\$566.87	\$560.63	\$566.87
3 rd year	75%	80%	\$654.08	\$690.00	\$697.68
4 th year	88%	95%	\$767.45	\$819.38	\$828.50

Adult Apprentices who commenced on or after 1 January 2014*

Clause 14.3(e)(i) of the Rail Award states that an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be paid 80% of the rate prescribed for either Level 4 Rail Worker (TCI) (\$862.50) or Level 3 (Op) (\$872.10) (whichever is applicable), or the rate prescribed by clause 14.3(d) for the relevant year of the apprenticeship, whichever is the greater.³⁰

Clause 14.3(e)(ii) of the Rail Award provides that the minimum wage of an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 14.1, or the rate prescribed by clause 14.3(d) for the relevant year of the apprenticeship, whichever is the greater.³¹

In Tables 5 and 6, the lowest adult classifications in clause 14.1, being a Level 1 Rail Worker (T.C.I.) (\$761.70) and Level 1 Rail Worker (Op) (\$740.80), are greater than the rates prescribed by clause 14.3(d). As such, the respective relativities are not applicable (denoted by n/a).

²⁸ [MA000104](#) at cl 14.2.

²⁹ [MA000104](#) at cl 14.2(b).

³⁰ [MA000015](#) at cl 14.3(e)(i).

³¹ [MA000015](#) at cl 14.3(e)(ii).

As stated above, clause 9.2 of the NMW order 2019 refers to clause 14.2 of the *Miscellaneous Award 2010*. Clause 14.2 sets out the percentages of the standard rate (being Level 3 (\$862.50)) in which an apprentice must be paid.³² Clause 14.2(c) of the *Miscellaneous Award 2010* provides that an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate for the lowest adult classification in clause 14.1, or the rate prescribed by clause 14.2(a) for the relevant year of the apprenticeship, whichever is the greater.³³ In Tables 5 and 6, the rate prescribed for the lowest adult classification in clause 14.1, being a Level 1 employee (\$740.80), is greater than the rates prescribed by clause 14.2(a). As such, the respective relativities are not applicable (denoted by n/a).

Table 5: T.C.I. stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	80%	80%	\$690.00	\$690.00	\$690.00
2 nd year	n/a	n/a	\$761.70	\$740.80	\$761.70 [#]
3 rd year	n/a	n/a	\$761.70	\$740.80	\$761.70 [#]
4 th year	n/a	95%	\$761.70	\$819.38	\$819.38

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate and the previous Rail Award weekly rate. The highest rate (Rail Award) is presented.

Table 6: Operations (Op) stream of the Rail Award vs special NMW4

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	80%	80%	\$697.68	\$474.38	\$697.68
2 nd year	n/a	n/a	\$740.80	\$740.80	\$740.80 [#]
3 rd year	n/a	n/a	\$740.80	\$740.80	\$740.80 [#]
4 th year	n/a	95%	\$740.80	\$819.38	\$828.50

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate and the previous Rail Award weekly rate. The highest rate (Rail Award/NMWO weekly rate) is presented.

* There is no applicable adult weekly wage provided in clause 14.3(d) of the Rail Award that relates to the Clerical, Administration and Professional (C.A.P.) stream.

Apprentices who commenced their apprenticeships before 1 January 2014

In their submission of 20 February 2020, the RTBU stated that they are not aware of any apprentices who started before 1 January 2014 who are yet to complete their apprenticeship, and that if there was to be any apprentices in this situation that the number would be very low.³⁴

³² [MA000104](#) at cl 14.2.

³³ [MA000104](#) at clause 14.2(c).

³⁴ RTBU [submission](#), 20 February 2020 at para. 11.

As such, they further submitted that any reference to pre-2014 apprentice rates be removed.³⁵ The following tables provide the weekly rates based on the RTBU’s claim for apprentices who commenced their apprentices before 1 January 2014.

Clause 14.3(c) of the Rail Award provides the percentages of the applicable adult weekly wage for apprentices who commenced their apprenticeships before 1 January 2014.

Clause 9.3 of the NMW order 2019 provides:

‘Despite cl.9.2, an employer of an employee who is an adult apprentice to whom special national minimum wage 4 applies must pay the employee a base rate of pay that at least equals \$622.20 per week (calculated on the basis of a week of 38 ordinary hours, or \$16.37 per hour), if the employee:

- was engaged before 1 July 2014; and
- is in Year 1 of their apprenticeship.’³⁶

There is limited scope for the apprentice rates in clause 14.3(c) and clause 9.3 of the NMW Order 2019 to apply. Any apprenticeship that commenced before 1 January 2014 (in the Rail Award) and 1 July 2014 would have been completed before 1 January 2018 and 1 July 2018 respectively, unless the apprenticeship had been suspended.

A range of classifications for the Rail Award classification streams have been selected below.

Clerical, Administration and Professional (C.A.P.)

Level 1 Rail Worker (C.A.P.) (minimum weekly rate = \$780.90)

Table 7: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$351.41	\$474.38	\$474.38 [#]
2 nd year	55%	65%	\$429.50	\$560.63	\$560.63 [#]
3 rd year	75%	80%	\$585.68	\$690.00	\$690.00 [#]
4 th year	88%	95%	\$687.19	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

Table 8: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$351.41	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$429.50	\$740.80	\$780.90 [^]

³⁵ Ibid.

³⁶ [PR709079](#) at cl 9.3.

3 rd year	75%	80%	\$585.68	\$740.80	\$780.90 [^]
4 th year	88%	95%	\$687.19	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 5 Rail Worker (C.A.P.) (minimum weekly rate = \$995.50)

Table 9: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$447.98	\$474.38	\$547.53
2 nd year	55%	65%	\$547.53	\$560.63	\$647.08
3 rd year	75%	80%	\$746.63	\$690.00	\$796.40
4 th year	88%	95%	\$876.04	\$819.38	\$945.73

Table 10: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$447.98	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$547.53	\$740.80	\$780.90 [^]
3 rd year	75%	80%	\$746.63	\$740.80	\$796.40
4 th year	88%	95%	\$876.04	\$819.38	\$945.73

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 9 Rail Worker (C.A.P.) (minimum weekly rate = \$1528.40)*

Table 11: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$687.78	\$474.38	\$840.62
2 nd year	55%	65%	\$840.62	\$560.63	\$993.46
3 rd year	75%	80%	\$1,146.30	\$690.00	\$1,222.72
4 th year	88%	95%	\$1,344.99	\$819.38	\$1,451.98

Table 12: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$687.78	\$622.20	\$840.62
2 nd year	55%	65%	\$840.62	\$740.80	\$993.46
3 rd year	75%	80%	\$1,146.30	\$740.80	\$1,222.72
4 th year	88%	95%	\$1,344.99	\$819.38	\$1,451.98

* Level 9 is the first rate that adult apprentices in the Rail Award across all years earn more than the special NMW4. For juniors, this begins from Level 6.

Operations (Op)

Level 1 Rail Worker (Op) (minimum weekly rate = \$740.80)

Table 13: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$333.36	\$474.38	\$474.38 [#]
2 nd year	55%	65%	\$407.44	\$560.63	\$560.63 [#]
3 rd year	75%	80%	\$555.60	\$690.00	\$690.00 [#]
4 th year	88%	95%	\$651.90	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

Table 14: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$333.36	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$407.44	\$740.80	\$740.80 [^]
3 rd year	75%	80%	\$555.60	\$740.80	\$740.80 [^]
4 th year	88%	95%	\$629.68	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 4 Rail Worker (Op) (minimum weekly rate = \$956.70)

Table 15: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$430.52	\$474.38	\$526.19
2 nd year	55%	65%	\$526.19	\$560.63	\$621.86
3 rd year	75%	80%	\$717.53	\$690.00	\$765.36
4 th year	88%	95%	\$841.90	\$819.38	\$908.87

Table 16: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$430.52	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$526.19	\$740.80	\$740.80 [^]
3 rd year	75%	80%	\$717.53	\$740.80	\$765.36
4 th year	88%	95%	\$841.90	\$819.38	\$908.87

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 6 Rail Worker (Op) (minimum weekly rate = \$1119.80)

Table 17: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$503.91	\$474.38	\$615.89
2 nd year	55%	65%	\$615.89	\$560.63	\$727.87
3 rd year	75%	80%	\$839.85	\$690.00	\$895.84
4 th year	88%	95%	\$985.42	\$819.38	\$1,063.81

Table 18: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$503.91	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$615.89	\$740.80	\$740.80 [^]
3 rd year	75%	80%	\$839.85	\$740.80	\$895.84
4 th year	88%	95%	\$985.42	\$819.38	\$1,063.81

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Technical and Civil Infrastructure (T.C.I.)

Level 1 Rail Worker (T.C.I.) (minimum weekly rate = \$761.70)

Table 19: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$342.77	\$474.38	\$474.38 [#]
2 nd year	55%	65%	\$418.94	\$560.63	\$560.63 [#]
3 rd year	75%	80%	\$571.28	\$690.00	\$690.00 [#]
4 th year	88%	95%	\$670.30	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

Table 20: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$342.77	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$418.94	\$740.80	\$761.70 [^]
3 rd year	75%	80%	\$571.28	\$740.80	\$761.70 [^]
4 th year	88%	95%	\$670.30	\$819.38	\$819.38 [#]

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 4 Rail Worker (T.C.I.) (minimum weekly rate = \$862.50)

Table 21: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$388.13	\$474.38	\$474.38
2 nd year	55%	65%	\$474.38	\$560.63	\$560.63
3 rd year	75%	80%	\$646.88	\$690.00	\$690.00
4 th year	88%	95%	\$759.00	\$819.38	\$819.38

Table 22: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$388.13	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$474.38	\$740.80	\$761.70 [^]
3 rd year	75%	80%	\$646.88	\$740.80	\$761.70 [^]
4 th year	88%	95%	\$759.00	\$819.38	\$819.38

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.

Level 7 Rail Worker (T.C.I.) (minimum weekly rate = \$1015.10)

Table 23: Junior apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	55%	\$456.80	\$474.38	\$558.31
2 nd year	55%	65%	\$558.31	\$560.63	\$659.82
3 rd year	75%	80%	\$761.33	\$690.00	\$812.08
4 th year	88%	95%	\$893.29	\$819.38	\$964.35

Table 24: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	RTBU claim
1 st year	45%	n/a	\$456.80	\$622.20	\$622.20 [#]
2 nd year	55%	65%	\$558.31	\$740.80	\$761.70 [^]
3 rd year	75%	80%	\$761.33	\$740.80	\$812.08
4 th year	88%	95%	\$893.29	\$819.38	\$964.35

[#]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. The NMWO weekly rate is presented.

[^]The proposed calculation based on NMWO relativities is below the NMWO weekly rate. As per cl. 14.3(e)(ii) of the Rail Award, the Level 1 rate is applied.