



BACKGROUND PAPER

Fair Work Act 2009
s.285—Annual wage review

Annual Wage Review 2019–20—Apprentice rates of pay in the Rail Award

C2020/1

ADELAIDE, 30 JANUARY 2020

Note: This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It has been prepared by staff of the Fair Work Commission and does not represent the views of the Expert Panel for annual wage reviews on any issue.

Introduction

[1] In the Annual Wage Review 2018–19 (2018–19 Review), the Australian Workers’ Union (AWU) submitted that certain junior rates of pay in the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (the VMRSR Award) are lower than the rates of pay for award free junior employees covered by the Special National Minimum Wage 3 (special NMW3) in the *National Minimum Wage Order 2018*¹ (NMW order).²

[2] A [Background Paper](#) on Junior rates of pay in modern awards was published and a conference was conducted by Commissioner Hampton on behalf of the Expert Panel for annual wage reviews (the Panel) on 15 May 2019 to consider the issue.³

[3] A submission from the [Australian Rail, Tram and Bus Industry Union](#) (RTBU) was received ahead of the conference (14 May 2019). The RTBU acknowledged that while junior rates under the *Rail Industry Award 2010* (Rail Award) do not fall below those provided in the NMW order, the apprentice rates in the Rail Award did fall below the Special National Minimum Wage 4 (special NMW4).⁴

[4] In the 2018–19 Review decision, the Panel considered that there had not been a proper opportunity to address these issues and reach a conclusion on whether to adjust the junior rates identified in the 19 modern awards as part of the Review.⁵

¹ [PR606629](#) at cl 8.2.

² AWU [submission](#), 18 March 2019 at para. 3

³ See [transcript](#).

⁴ RTBU [submission](#), 14 May 2019 at p. 1.

⁵ [2019] FWCFB 3500 at [419].

[5] The Panel directed any interested party that wished to pursue a variation of junior rates in the 19 modern awards in relation to Special NMW 3 as part of the *Annual Wage Review 2019–20* (2019–20 Review) to advise the Fair Work Commission (the Commission) on or before 30 September 2019.⁶

[6] The Panel stated that if such advice was received, the Commission would 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.⁷

[7] The only correspondence received since that time in connection with this matter was from the [RTBU](#) dated 11 July 2019. The RTBU sought to pursue a variation in apprentice rates in the Rail Award and for it to be considered during the 2019–20 Review.⁸

[8] This paper provides a brief summary of the issues raised in relation to apprentice rates in the Rail Award.

Apprentice rates in the Rail Award

[9] In the 2018–19 Review decision, the Panel acknowledged that the RTBU raised a similar issue as that advanced by the AWU concerning the relationship between special NMW4 and certain apprentice rates in the Rail Award.⁹ **Attachment A** to this background paper sets out apprentice rates in the Rail Award that fall below the special NMW4.

[10] The RTBU submitted that it is inappropriate for any apprentice rates, whether junior or adult, provided in a modern award to fall below those provided to award/agreement free employees.¹⁰

[11] The Panel made the following statement at [417] of the 2018–19 Review decision:

“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.”

[12] While these rates in the Rail Award were discussed at the conference on 15 May 2019,¹¹ it was apparent that employers from this sector were not present¹² and an audit confirming whether this same issue occurs in other awards (and if so, to what extent) has not been conducted.

⁶ Ibid.

⁷ Ibid.

⁸ RTBU [submission](#), 11 July 2019.

⁹ [2019] FWCFB 3500 at [418].

¹⁰ RTBU [submission](#), 14 May 2019 at p. 3.

¹¹ [Transcript](#), 15 May 2019 at PN167-PN203

¹² [Transcript](#), 15 May 2019 at PN179.

[13] At the conference, the RBTU proposed adjusting the percentages that set apprentice rates in the Rail Award where they produce apprentice rates that are lower than the equivalent wage rate under special NMW4.¹³ The RBTU conceded that there may be flow-on effects resulting from the proposed variation.¹⁴ In particular, this would lead to the alteration of the existing relativities, as not all apprentice rates in Rail Award are less than the special NMW4.

Next steps

[14] In light of the RTBU confirming its intention to advance this matter, a conference will be convened by Commissioner Hampton on behalf of the Panel on **Thursday 27 February 2020 at 2.30pm in Sydney** (with a video link to Adelaide and Melbourne and other locations if sought). A notice of listing will be issued in due course. Any person or body with an interest in these matters is invited to attend.

[15] The issues for consideration at the conference 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.¹⁵
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?

[16] Parties are encouraged to have discussions among themselves prior to the conference to explore whether a joint position can be reached on any of the issues identified above. Further, parties are also encouraged to provide a written outline of their position to the Commission prior to the conference. Any such outlines are to be provided to the Commission by 24 February 2020 and sent to amod@fwc.gov.au.

¹³ [Transcript](#), 15 May 2019 at PN177

¹⁴ [Transcript](#), 15 May 2019 at PN177.

¹⁵ [Transcript](#), 15 May 2019 at PN182.

ATTACHMENT A

The following tables compare apprentice rates in the Rail Award with the applicable rates for special NMW4.

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 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.¹⁶

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*’.¹⁷

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.¹⁸ The standard rate in the *Miscellaneous Award 2010* means the minimum weekly wage for Level 3 in clause 14.1 (\$862.50).¹⁹

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	Difference per week
1 st year	50%	55%	\$431.25	\$474.38	-\$43.13
2 nd year	60%	65%	\$517.50	\$560.63	-\$43.13
3 rd year	75%	80%	\$646.88	\$690.00	-\$43.12
4 th year	88%	95%	\$759.00	\$819.38	-\$60.38

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	Difference per week
1 st year	50%	55%	\$436.05	\$474.38	-\$38.33
2 nd year	60%	65%	\$523.26	\$560.63	-\$37.37
3 rd year	75%	80%	\$654.08	\$690.00	-\$35.92
4 th year	88%	95%	\$767.45	\$819.38	-\$51.93

¹⁶ [MA000015](#) at cl 14.3(d).

¹⁷ [PR709079](#) at cl 9.2.

¹⁸ [MA000104](#) at cl 14.2.

¹⁹ [MA000104](#) at cl 14.2(b).

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.²⁰

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.²¹ The standard rate in the *Miscellaneous Award 2010* means the minimum weekly wage for Level 3 in clause 14.1 (\$862.50).²²

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	Difference per week
1 st year	55%	55%	\$474.38	\$474.38	\$0
2 nd year	65%	65%	\$560.63	\$560.63	\$0
3 rd year	75%	80%	\$646.88	\$690.00	-\$43.12
4 th year	88%	95%	\$759.00	\$819.38	-\$60.38

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	Difference per week
1 st year	55%	55%	\$479.66	\$474.38	\$5.28
2 nd year	65%	65%	\$566.87	\$560.63	\$6.24
3 rd year	75%	80%	\$654.08	\$690.00	-\$35.92
4 th year	88%	95%	\$767.45	\$819.38	-\$51.93

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 (T.C.I) (\$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.²³

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

²⁰ [MA000015](#) at cl 14.3(d).

²¹ [MA000104](#) at cl 14.2.

²² [MA000104](#) at cl 14.2(b).

²³ [MA000015](#) at cl 14.3(e)(i).

greater.²⁴ In Tables 5 and 6, the lowest adult classifications in clause 14.1, being a Level 1 Rail Worker (T.C.I.) (\$740.80) and Level 1 Rail Worker (Op) (\$761.70), are greater than the rates prescribed by clause 14.3(d). As such, the respective relativities are not applicable (denoted by n/a).

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.²⁵ 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.²⁶ 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	Difference per week
1 st year	80%	80%	\$690.00	\$690.00	\$0
2 nd year	n/a	n/a	\$761.70	\$740.80	\$20.90
3 rd year	n/a	n/a	\$761.70	\$740.80	\$20.90
4 th year	n/a	95%	\$761.70	\$819.38	-\$57.68

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	Difference per week
1 st year	80%	80%	\$697.68	\$474.38	\$223.30
2 nd year	n/a	n/a	\$740.80	\$740.80	\$0
3 rd year	n/a	n/a	\$740.80	\$740.80	\$0
4 th year	n/a	95%	\$740.80	\$819.38	-\$78.58

* 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

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

²⁴ [MA000015](#) at cl 14.3(e)(ii).

²⁵ [MA000104](#) at cl 14.2.

²⁶ [MA000104](#) at clause 14.2(c).

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.²⁷

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.

For the purposes of this background paper, a range of classifications for the Rail Award classification streams have been selected.

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	Difference per week
1 st year	45%	55%	351.41	\$474.38	-\$122.97
2 nd year	55%	65%	429.50	\$560.63	-\$131.13
3 rd year	75%	80%	585.68	\$690.00	-\$104.32
4 th year	88%	95%	687.19	\$819.38	-\$132.19

Table 8: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$351.41	\$622.20	-\$270.79
2 nd year	55%	65%	\$429.50	\$740.80	-\$311.30
3 rd year	75%	80%	\$585.68	\$740.80	-\$155.12
4 th year	88%	95%	\$687.19	\$819.38	-\$132.19

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	Difference per week
1 st year	45%	55%	\$447.98	\$474.38	-\$26.40
2 nd year	55%	65%	\$547.53	\$560.63	-\$13.10
3 rd year	75%	80%	\$746.63	\$690.00	\$56.63
4 th year	88%	95%	\$876.04	\$819.38	\$56.66

²⁷ [PR709079](#) at cl 9.3.

Table 10: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$447.98	\$622.20	-\$174.22
2 nd year	55%	65%	\$547.53	\$740.80	-\$193.27
3 rd year	75%	80%	\$746.63	\$740.80	\$5.83
4 th year	88%	95%	\$876.04	\$819.38	\$56.66

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	Difference per week
1 st year	45%	55%	\$687.78	\$474.38	\$213.40
2 nd year	55%	65%	\$840.62	\$560.63	\$279.99
3 rd year	75%	80%	\$1,146.30	\$690.00	\$456.30
4 th year	88%	95%	\$1,344.99	\$819.38	\$525.61

Table 12: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$687.78	\$622.20	\$65.58
2 nd year	55%	65%	\$840.62	\$740.80	\$99.82
3 rd year	75%	80%	\$1,146.30	\$740.80	\$405.50
4 th year	88%	95%	\$1,344.99	\$819.38	\$479.76

* 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	Difference per week
1 st year	45%	55%	\$333.36	\$474.38	-\$141.02
2 nd year	55%	65%	\$407.44	\$560.63	-\$153.19
3 rd year	75%	80%	\$555.60	\$690.00	-\$134.40
4 th year	88%	95%	\$651.90	\$819.38	-\$167.48

Table 14: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$333.36	\$622.20	-\$288.84
2 nd year	55%	65%	\$407.44	\$740.80	-\$333.36
3 rd year	75%	80%	\$555.60	\$740.80	-\$185.20
4 th year	88%	95%	\$629.68	\$819.38	-\$167.48

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	Difference per week
1 st year	45%	55%	\$430.52	\$474.38	-\$43.86
2 nd year	55%	65%	\$526.19	\$560.63	-\$34.44
3 rd year	75%	80%	\$717.53	\$690.00	\$27.53
4 th year	88%	95%	\$841.90	\$819.38	\$22.52

Table 16: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$430.52	\$622.20	-\$191.68
2 nd year	55%	65%	\$526.19	\$740.80	-\$214.61
3 rd year	75%	80%	\$717.53	\$740.80	-\$23.27
4 th year	88%	95%	\$841.90	\$819.38	\$22.52

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	Difference per week
1 st year	45%	55%	\$503.91	\$474.38	\$29.53
2 nd year	55%	65%	\$615.89	\$560.63	\$55.26
3 rd year	75%	80%	\$839.85	\$690.00	\$149.85
4 th year	88%	95%	\$985.42	\$819.38	\$166.04

Table 18: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$503.91	\$622.20	-\$118.29
2 nd year	55%	65%	\$615.89	\$740.80	-\$124.91
3 rd year	75%	80%	\$839.85	\$740.80	\$99.05
4 th year	88%	95%	\$985.42	\$819.38	\$166.04

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	Difference per week
1 st year	45%	55%	\$342.77	\$474.38	-\$131.61
2 nd year	55%	65%	\$418.94	\$560.63	-\$141.69
3 rd year	75%	80%	\$571.28	\$690.00	-\$118.72
4 th year	88%	95%	\$670.30	\$819.38	-\$149.08

Table 20: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$342.77	\$622.20	-\$279.43
2 nd year	55%	65%	\$418.94	\$740.80	-\$321.86
3 rd year	75%	80%	\$571.28	\$740.80	-\$169.52
4 th year	88%	95%	\$670.30	\$819.38	-\$149.08

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	Difference per week
1 st year	45%	55%	\$388.13	\$474.38	-\$86.25
2 nd year	55%	65%	\$474.38	\$560.63	-\$86.25
3 rd year	75%	80%	\$646.88	\$690.00	-\$43.12
4 th year	88%	95%	\$759.00	\$819.38	-\$60.38

Table 22: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$388.13	\$622.20	-\$234.07
2 nd year	55%	65%	\$474.38	\$740.80	-\$266.42
3 rd year	75%	80%	\$646.88	\$740.80	-\$93.92
4 th year	88%	95%	\$759.00	\$819.38	-\$60.38

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	Difference per week
1 st year	45%	55%	\$456.80	\$474.38	-\$17.58
2 nd year	55%	65%	\$558.31	\$560.63	-\$2.32
3 rd year	75%	80%	\$761.33	\$690.00	\$71.33
4 th year	88%	95%	\$893.29	\$819.38	\$73.91

Table 24: Adult apprentices

Years of Apprentice	Rail Award Relativity	NMWO Relativity	Rail Award weekly Rate	NMWO weekly Rate	Difference per week
1 st year	45%	n/a	\$456.80	\$622.20	-\$165.40
2 nd year	55%	65%	\$558.31	\$740.80	-\$182.49
3 rd year	75%	80%	\$761.33	\$740.80	\$20.53
4 th year	88%	95%	\$893.29	\$819.38	\$73.91