



# STATEMENT

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—National Training Wage—**

### **Award-specific Schedules**

(AM2016/15; AM2016/17)

## **BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2020**

[MA000020]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER

SYDNEY, 13 JULY 2022

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

[1] On 3 June 2022, the Full Bench in this matter issued a Statement<sup>1</sup> which dealt with outstanding issues concerning the National Training Wage (NTW) Schedule in the *Building and Construction General On-site Award 2020* (Building Award) arising from a draft NTW Schedule published on 15 August 2017.<sup>2</sup> In paragraph [5] of the Statement, the Full Bench noted that it had earlier confirmed, in a decision published on 9 June 2017,<sup>3</sup> that an award-specific NTW Schedule would be retained in the Building Award. The following outstanding issues were dealt with in the Statement:

(1) *Clause 19.10 of the Building Award*

The Full Bench noted that Master Builders Australia (MBA) had previously submitted that this provision (when it was clause 28 of the 2010 version of the Building Award) was anomalous and should be deleted. The Full Bench directed MBA to confirm whether this submission, in relation to clause 19.10, was pressed by 4.00 pm on 23 June 2022. The Full Bench also asked parties to consider whether the rates for full-time trainees currently appearing in clause 19.10 should be moved to the NTW Schedule (Schedule D). Parties were directed to confer about this and advise of the outcome of such discussion also by 4.00 pm on 23 June 2022.

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<sup>1</sup> [2022] FWCFCB 87

<sup>2</sup> [2017] FWCFCB 4457

<sup>3</sup> [2017] FWCFCB 3176

(2) *Non-agreed training packages*

The Full Bench referred to the training packages which were proposed to be assigned to wage levels in the 2017 draft NTW Schedule, and noted that the parties generally agreed that the *Metal and Engineering (Technical) Certificate III* should be added to the packages assigned to Wage Level A and that the *Resources and Infrastructure Training Package AQF I* should be moved from Wage Level A to Wage Level B. These agreed changes were incorporated in a revised NTW Schedule attached to the Statement. The Full Bench noted that there was disagreement about whether the following training packages should be assigned to wage levels in the NTW Schedule:

- *Transport and Logistics Certificate III* under Wage Level A;
- *Transport and Logistics Certificates I and II* under Wage level B;
- *Metal and Engineering (Technical) Certificate II* under Wage Level A; and
- *Civil Construction Certificate III* under Wage Level A and *Civil Construction Certificate II* under Wage level B.

The Full Bench expressed the *provisional* view that it was not necessary to add the *Civil Construction Certificate II* and *Civil Construction Certificate III* training packages to the NTW Schedule on the basis that a submission made by the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) that these were covered by the *Resources and Infrastructure Training Package* appeared to be correct. The Full Bench directed parties to confer in relation to this *provisional* view and in relation to the training packages in dispute, and to advise of the outcome of such discussion also by 4.00 pm on 23 June 2022.

[2] The Full Bench referred the finalisation of this matter to me.

[3] In relation to the first issue above, MBA advised in a submission dated 11 July 2022 that it no longer pressed its claim for the deletion of clause 19.10. Accordingly, clause 19.10 will remain in the Building Award.

[4] On 23 June 2022, the CFMMEU filed a report concerning discussions between the parties concerning the matters about which the parties were directed to confer. That report records that the parties agree with, or do not oppose, the following matters:

- (a) the movement of the rates for adult trainees from clause 19.10 to the NTW Schedule (subject to a caveat on the part of the CFMMEU and other unions that there may need to be drafting changes to make it clear that trainees undertaking a civil construction traineeship from the *Resources and Infrastructure Industry Training Package* should be paid the rates from clause 19.10(b) and not the rates from clause 19.10(c));
- (b) the *provisional* view that there is no need to include the *Civil Construction Certificate II* and *Civil Construction Certificate III* in the NTW Schedule; and

- (c) the inclusion of *Transport and Logistics Certificate III* under Wage Level A and *Transport and Logistics Certificates I and II* under Wage Level B.

[5] These matters will be incorporated in a further revised NTW Schedule attached as Attachment A to this Statement. The further revised NTW Schedule has contains rates of pay which have been updated in accordance with the *Annual Wage Review 2021-22* decision.<sup>4</sup>

[6] The CFMMEU reported that there remained a dispute as to whether the *Metal and Engineering (Technical) Certificate II* should be included under Wage Level A. The employer organisations supported its inclusion, but this is opposed by the CFMMEU and other unions.

[7] The CFMMEU also reported that the employer parties had stated:

“The primary position of the employer parties is that there is no evidence before the Commission that would necessitate an award-specific approach to the National Training Wage Schedule for the On-Site Award.

We maintain the view that the NTW Schedule should be removed from the On-Site Award and a signpost to the uniform Schedule contained within the Miscellaneous Award be inserted in its place.

Only if the Commission is not minded to find in favour of our primary position, we would argue that there are a significant number of additional training packages (included in the document attached) which remain pertinent to the occupational classifications within the award.”

[8] The “document attached” referred to above is contained in Attachment B of this decision.

[9] In respect of what is described as the “*primary position*” of the employer parties, I reiterate that the Full Bench in this matter determined in 2017 that an award-specific NTW Schedule would be retained in the Building Award. This determination will not be revisited now.

[10] In respect of the *Metal and Engineering (Technical) Certificate II*, my *provisional* view is that it does not have a sufficient connection to any classification defined in the Schedule A to the Building Award to support its inclusion in the NTW Schedule. Any party which opposes this provisional view may file submissions in support of this training package’s inclusion in the NTW Schedule by 5.00 pm AEST on 27 July 2022. Such submissions shall demonstrate how this training package is relevant to any classification in the Building Award. Any submissions in reply shall be filed by 5.00 pm on 3 August 2022.

[11] In respect of those training packages identified in Attachment B which are not already assigned a wage level in the further revised NTW Schedule in Attachment A, any party proposing the inclusion of any such training package in the NTW Schedule shall file

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<sup>4</sup> [2022] FWCFB 3500 at [452]

submissions in support of this position by 5.00 pm AEST on 27 July 2022. Such submissions shall demonstrate how any such training package is relevant to any classification in the Building Award. Any submissions in reply shall be filed by 5.00 pm on 3 August 2022.

[12] All submissions shall be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).

[13] If there is a consensus among the parties that a conference conducted by the Commission would assist in resolving the outstanding issues identified in this Statement, a request for such a conference may be made in writing to [Chambers.Hatcher.VP@fwc.gov.au](mailto:Chambers.Hatcher.VP@fwc.gov.au).



VICE PRESIDENT

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## ATTACHMENT A

### Schedule D—National Training Wage—Building and Construction General On-site Award 2020

#### D.1 Definitions

##### D.1.1 In this schedule:

**approved training**, in relation to a trainee, means the training specified in the training contract of the trainee.

**Australian Qualifications Framework (AQF)** means the national framework for qualifications in post-compulsory education and training.

**relevant State or Territory training authority** means a body in the relevant State or Territory that has power to approve traineeships, and to register training contracts, under the relevant State or Territory vocational education and training legislation.

**relevant State or Territory vocational education and training legislation** means the following or any successor legislation:

*Apprenticeship and Traineeship Act 2001 (NSW);*

*Education and Training Reform Act 2006 (Vic);*

*Training and Skills Development Act 2008 (SA);*

*Training and Skills Development Act 2016 (NT);*

*Training and Tertiary Education Act 2003 (ACT);*

*Training and Workforce Development Act 2013 (Tas);*

*Vocational Education and Training Act 1996 (WA);*

*Further Education and Training Act 2014 (Qld).*

**trainee** means an employee undertaking a traineeship under a training contract.

**traineeship** means a system of training that:

- (a) has been approved by the relevant State or Territory training authority; and
- (b) meets the requirements of a training package developed by the relevant Skills Service Organisation and endorsed by the Australian Industry and Skills Committee; and

- (c) leads to an AQF certificate level qualification.

**training contract** means an agreement for a traineeship made between an employer and an employee that is registered by the relevant State or Territory training authority.

**training package** means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills Committee, ~~and includes any relevant replacement training package.~~

**wage level** A or B, ~~A, B or C~~, see clause 19.10.

## **D.2 Coverage**

**D.2.1** Subject to clauses D.2.2, D.2.3, D.2.4 and to D.2.5, this schedule applies to an employee covered by this award who is undertaking a traineeship and whose training package and AQF certificate level are allocated to a wage level by clause D.6.

**D.2.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause D.6.

**D.2.3** This schedule does not apply to:

- (a) the apprenticeship system; or
- (b) qualifications not identified in training packages; or
- (c) qualifications in training packages that are not identified as appropriate for a traineeship.

**D.2.4** If this schedule is inconsistent with other provisions of this award relating to traineeships, the other provisions prevail.

**D.2.5** This schedule ceases to apply to an employee at the end of the traineeship.

## **D.3 Types of traineeship**

The following types of traineeship are available:

**D.3.1** A full-time traineeship based on 38 ordinary hours per week, with 20% of those hours being approved training;

**D.3.2** A part-time traineeship based on fewer than 38 ordinary hours per week, with 20% of those hours being approved training provided:

- (a) wholly on the job; or
- (b) partly on the job and partly off the job; or

- (c) wholly off the job.

#### D.4 Minimum rates

##### D.4.1 Minimum weekly rates for full-time traineeships—~~see clause 28~~

~~(a) Minimum weekly rates for full-time trainees are set out in clause 19.10.~~

##### (a) Civil construction traineeships

The minimum weekly rate payable to civil construction trainees, including trainees undertaking a civil construction traineeship from the *Resources and Infrastructure Industry Training Package*, will be as follows:

<b>Item</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Base rate	732.34	774.14	824.24
Industry allowance— civil construction industry	56.45	56.45	56.45
Total weekly rate	788.79	830.59	880.69

##### (b) Other traineeships

(i) Rates of pay for trainees in the general building and construction industry and the metal and engineering construction industry will be as follows:

<b>Item</b>	<b>Wage level B</b>	<b>Wage level A</b>
	<b>\$</b>	<b>\$</b>
Base rate	645.64	663.64
Industry allowance	56.45	56.45
Weekly rate	702.09	720.09

(ii) Rates of pay for trainees in the residential building and construction industry will be as follows:

<b>Item</b>	<b>Wage level B</b>	<b>Wage level A</b>
	<b>\$</b>	<b>\$</b>
Base rate	645.64	663.64
Industry allowance	45.16	45.16

<b>Item</b>	<b>Wage level B</b>	<b>Wage level A</b>
	<b>\$</b>	<b>\$</b>
<b>Weekly rate</b>	<b>690.80</b>	<b>708.80</b>

(iii) All other disability and expense-related allowances provided for in this award will be payable to trainees from time to time, if applicable, but no other allowances will apply.

**(c) AQF Certificate Level IV traineeships**

The minimum rate for a **full-time** trainee undertaking a **full-time** AQF Certificate Level IV traineeship is the minimum rate for the relevant **full-time** AQF Certificate Level III traineeship (as set out in clause ~~2819.10~~**D.4.1**) increased by 3.8%.

**D.4.2 Minimum hourly rates for part-time traineeships**

**(a) Wage level A**

The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level I-III traineeship whose training package and AQF certificate levels are allocated to wage level A by clause D.6.1 is the relevant weekly rate from clause ~~2819.10~~**D.4.1** divided by 30.4.

**NOTE: See clause D.4.2(e) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect clause D.4.2(a).**

**(b) Wage level B**

The minimum hourly rate for a part-time trainee undertaking a AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level B by clause D.6.2 is the relevant weekly rate from clause ~~2819.10~~**D.4.1** divided by 30.4.

**NOTE: See clause D.4.2(e) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect clause D.4.2(b).**

**(c) School-based traineeships**

The minimum hourly rate for a part-time trainee who works ordinary hours and is undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage levels A or B by clause D.6 is the hourly rate in column 1 or 2 of **Table 1—Minimum hourly rate for part-time trainees (school-based AQF Certificate Level I–III traineeship)** according to the year of schooling of the trainee.



**Table 1—Minimum hourly rate for part-time trainees (school-based AQF Certificate Level I–III traineeship)**

<b>Column 1</b>	<b>Column 2</b>
<b>Year 11 or lower</b>	<b>Year 12</b>
<b>per hour</b>	<b>per hour</b>
<b>\$<u>11.42</u></b>	<b>\$<u>12.59</u></b>

~~NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect this paragraph.~~

NOTE: See clause D.4.2(e) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect clause D.4.2(c).

**(d) AQF Certificate Level IV traineeships**

The minimum hourly rate for a part-time trainee undertaking a part-time AQF Certificate Level IV traineeship is the minimum hourly rate for the relevant part-time AQF Certificate Level III traineeship (as calculated by clause D.4.2(a), D.4.2(b) or D.4.2(c)) increased by 3.8%.

NOTE: See clause D.4.2(e) for calculating the actual minimum wage. See also clause D.4.3 for other minimum wage provisions that affect clause D.4.2(d).

**(e) Calculating the actual minimum wage**

- (i)** If fewer than 38 (or an average of 38) ordinary hours of work per week is considered full-time at the workplace by the employer, the appropriate minimum hourly rate for a part-time trainee is obtained by multiplying the relevant minimum hourly rate in clauses D.4.2(a) to D.4.2(d) by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.
- (ii)** If the approved training for a part-time traineeship is provided wholly off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum hourly rate in clauses D.4.2(a) to D.4.2(d) applies to each ordinary hour worked by the trainee.
- (iii)** If 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 hourly rate in clauses D.4.2(a) to D.4.2(d) minus 20% applies to each ordinary hour worked by the trainee.

**D.4.3 Other minimum wage provisions**

- (a)** Clause D.4.3 applies despite anything to the contrary in clause D.4.2.

- (b) An employee who was employed by an employer immediately before becoming a trainee with that employer must not suffer a reduction in their minimum rate of pay because of becoming a trainee.
- (c) For the purpose of determining whether a trainee has suffered a reduction as mentioned in ~~paragraph (b)~~ clause D.4.3(b), casual loadings are to be disregarded.
- (d) 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-rate provided in this schedule, if a higher minimum wage-rate is provided for the new AQF certificate level.

## D.5 Employment conditions

- D.5.1 A trainee undertaking a school-based traineeship may agree to be paid an additional loading of 25% on all ordinary hours worked instead of being paid annual leave, paid personal/carer’s leave, paid compassionate leave and paid absence on public holidays. However, if the trainee works on a public holiday, the public holiday provisions of this award apply.
- D.5.2 A trainee is entitled to be released from work without loss of pay and without loss of continuity of employment to attend any training and assessment specified in, or associated with, the training contract.
- D.5.3 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, 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.
- D.5.4 The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is wholly off-the-job is determined by clauses D.4.2(e)(ii) and D.4.2(e)(iii) and not by clause D.5.3.
- D.5.5 Subject to clause D.2.4, this award applies to a trainee in the same way that it applies to an employee who is not a trainee, except as otherwise expressly provided by this schedule.

## D.6 Allocation of traineeships to wage levels

The wage levels applying to training packages and their AQF certificate levels are:

### D.6.1 Wage level A

Training package	AQF certificate level
Construction, Plumbing and Services Integrated Framework	I, II, III

<b>Training package</b>	<b>AQF certificate level</b>
Electrotechnology	I, II, III (III in Western Australia only)
<u>Metal and Engineering (Technical)</u>	<u>III</u>
MSL Laboratory Operations	II, III
Resources and Infrastructure Industry Training Package	<del>I</del> , II, III
<u>Transport and Logistics</u>	<u>III</u>

#### D.6.2 Wage level B

<b>Training package</b>	<b>AQF certificate level</b>
Resources and Infrastructure Industry Training Package	I
<u>Transport and Logistics</u>	<u>I, II</u>

## ATTACHMENT B

**Packages identified by the Employer Parties which should be included in any award-specific schedule**

Relevant qualification at AQF I, II and/or III	Occupation	Wage level
<b>Construction, Plumbing and Services (CPC)</b>		
Cert I Construction	Labourer	A
Cert II Construction Pathways	Assistant Carpenter	A
Cert III Carpentry	Carpenter	A
<b>Electrotechnology (UEE)</b>		
Cert I ElectroComms Skills	Labourer	A
Cert II Data and Voice Communications	Telecommunications cabling labourer	A
Cert III Electrotechnology Electrician	Electrician	A
<b>Laboratory Operations (MSL)</b>		
Cert II Sampling and Measurement	Field sampler	A
Cert III Laboratory Skills	Laboratory technician	A
<b>Resources and Infrastructure Industry (RII)</b>		
Cert I Resources and Infrastructure Operations	Labourer	B
Cert II Bituminous Surfacing	Road surfacer	A
Cert III Civil Construction	Road constructor	A
<b>Metal and Engineering (MEM05)</b>		
Cert III Engineering – Electrical/Electronic Trade	Electrical engineering trades workers	A
<b>Transport and Logistics (TLI)</b>		
Cert II Rail Infrastructure	Track worker and installer	B
Cert III Mobile Crane Operations	Crane Operator	A
<b>Agriculture, Horticulture and Conservation and Land Management (AHC)</b>		
Cert II Landscaping	Landscaping labourer	C
Cert III Landscape Construction	Landscaper	C
<b>Furnishing (MSF)</b>		
Cert I Furnishings	Flooring labourer	B
Cert II Glass and Glazing	Assistant Glazier	B
Cert III Flooring technology	Floor laying specialist	B
<b>Manufacturing and Engineering (MEM)</b>		
Cert I Engineering	Metal work labourer	B
Cert III Engineering – Fabrication Trade	Welder	A
<b>Manufacturing (MSM)</b>		
Cert III Surface Preparation and Coating Application	Sandblaster	A
<b>National Water (NWP)</b>		
Cert II Water Industry Operations	Labourer	B
Cert III Water Industry Operations	Civil Construction operations	A
<b>Transmission, Distribution and Rail (UET)</b>		
Cert II Transmission Line Construction	Transmission Line Construction Worker	A

Cert III Transmission Overhead	Overhead Transmission Lineworker	A
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