

From: Stephen Crawford <stephen.crawford@nat.awu.net.au>
Sent: Thursday, 18 August 2022 4:09 PM
To: AMOD <AMOD@fwc.gov.au>
Subject: C2019/5259 - AWU outline of position

Dear Award Modernisation Team,

Please find attached an outline of the AWU's position in Matter C2019/5259.

Regards,

STEPHEN CRAWFORD
ACTING ASSISTANT NATIONAL SECRETARY
SENIOR NATIONAL LEGAL OFFICER
M +61 425 303 265 | stephen.crawford@nat.awu.net.au
P 02 8863 8900 LEVEL 1, 16-20 GOOD STREET
GRANVILLE NSW 2142 WWW.AWU.NET.AU



I acknowledge the ancestors and traditional custodians of the land on which our offices stand and pay respect to Elders past and present.



The information transmitted in this message and its attachments (if any) is intended only for the person or entity to which it is addressed. The message may contain intellectual property, copyright material, and confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information, by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete this e-mail and associated material from any computer and destroy any printed associated material. The intended recipient of this e-mail may only use, reproduce, disclose or distribute the information contained in this e-mail and any attached files, with the authority or permission of the sender. We do not accept liability in connection with computer virus, data corruption, delay, interruption, unauthorised access or unauthorised amendment.

NATIONAL OFFICE

Level 1, 16 - 20 Good Street, Granville NSW 2142
T: 1300 040 482 E: members@nat.awu.net.au W: www.awu.net.au
Daniel Walton National Secretary



ABN 28 853 022 982

Fair Work Act 2009

FAIR WORK COMMISSION

- s. 157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective – Review of certain C14 rates in modern awards

AWU INITIAL OUTLINE OF POSITION

BACKGROUND

1. On 27 July 2022, the President of the Fair Work Commission, Justice Ross, issued a Statement¹ which confirmed a review on the Commission's own motion pursuant to s 157 of the *Fair Work Act 2009* (“**FW Act**”) will be undertaken regarding the operation of C14 classification levels in 10 modern awards.
2. The Australian Workers' Union (“**AWU**”) has an interest in the following modern awards within the 10 being reviewed:
 - *Cement, Lime and Quarrying Award 2020*
 - *Concrete Products Award 2020*
 - *Meat Industry Award 2020*
 - *Oil Refining and Manufacturing Award 2020*
 - *Rail Industry Award 2020*
 - *Dry Cleaning and Laundry Industry Award 2020*
 - *Funeral Industry Award 2020*
 - *Sugar Industry Award 2020*
3. In Directions issued by Commissioner Hampton on 29 July 2022, interested parties were directed to file a written outline of their position by 5pm on 18 August 2022. The AWU's current position is outlined below for the eight awards listed above.

Cement, Lime and Quarrying Award 2020

4. The minimum adult rates for the Cement and Lime Industry – Level 1 and Quarrying Industry – Level 1 classifications are both aligned to the National Minimum Wage.

¹ [2022] FWC 1989.

5. Although the wording differs slightly, both classifications appear intended to only apply where an employee is undertaking basic competency training. Although there is no fixed outer limit on the duration that an employee can remain in these classifications, an employer would seemingly contravene the award if an employee was paid at the Level 1 rates after completing basic competency training. Therefore, it is unlikely that an employee could be legitimately paid the Level 1 rates for a lengthy period.
6. The AWU is open to considering improvements to the current wording but does not consider there is a substantial problem with the existing provisions.

Concrete Products Award 2020

7. The Level 1 classification in this award is aligned to the National Minimum Wage and the existing wording for the classification is problematic.
8. Schedule A.1.1 and A.1.2 refer to an employee undertaking an induction programme and performing routine tasks under direct supervision.
9. However, Schedule A.1.3 then lists classification descriptors which are not linked to training and constitute meaningful and productive work tasks. There is a significant prospect that the Level 1 rate is not appropriate for an employee performing the listed tasks and the AWU supports a substantive review of this provision.

Meat Industry Award 2020

10. The AWU supports the position of the AMIEU.

Oil Refining and Manufacturing Award 2020

11. Although the full-time Lubricants/Bitumen and Terminals – Trainee Level 1 rate corresponds with the National Minimum Wage of \$812.60, this is based upon a 35-hour week: clause 16.1. The minimum hourly rate for this classification is \$23.22 compared to the National Minimum Wage hourly rate of \$21.48.
12. For that reason, the AWU is not currently convinced a further review into the existing provision is necessary.

Rail Industry Award 2020

13. The AWU supports the position of the RTBU.

Dry Cleaning and Laundry Industry Award 2022

14. The Dry Cleaning - Level 1 rates reflect the National Minimum Wage and the classification description reads: 'An employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4.'
15. The AWU considers this wording to be ambiguous and may permit an employee to indefinitely remain in the Level 1 classification if they do not fall squarely within the Level 2 to 4 descriptions. The AWU supports a substantive review of this provision.

Funeral Industry Award 2020

16. The Grade 1 rates reflect the National Minimum Wage and the classification description states the following employees fall within this grade:
 - Funeral director's assistant
 - Coffin draper
 - Adult employee not mentioned elsewhere in any of the Grades 2 to 6.
17. The AWU considers this wording to be deficient because it permits a funeral director's assistant and coffin draper to remain at the National Minimum Wage rate indefinitely along with an employee that does not fall squarely within the Grades 2 to 6. The AWU supports a substantive review of this provision.

Sugar Industry Award 2020

18. The Milling General Operator – Level 2 (C14) rate reflects the National Minimum Wage and it does not appear to be an introductory classification. Schedule B.1.1(b) lists several productive and substantive roles that can be performed by a worker in this classification.
19. There is a significant prospect that the Level 1 rate is not appropriate for an employee performing the listed tasks and the AWU supports a substantive review of this provision.
20. The Bulk Terminals Employee Level 1 (BT1) rate reflects the National Minimum Wage and the classification description reads:

New starter – basic labouring duties. This is the level for a new terminal technician who undertakes a 3 month probation period whilst training and performing basic labouring duties.
21. This classification is confined to a 3 month probation period and it appears an employer would contravene the award if an employee remained in this classification for a lengthier period.

22. As a result, the AWU is not currently convinced a further review into the existing provision is necessary.

A handwritten signature in black ink, appearing to read 'SC', is positioned above the typed name.

Stephen Crawford
SENIOR NATIONAL LEGAL OFFICER

18 August 2022