

# CFMEU

## CONSTRUCTION

### IN THE FAIR WORK COMMISSION

**Matter Number:** C2019/5259

*Fair Work Act 2009*

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

**Review of certain C14 rates in modern awards  
(C2019/5259)**

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**REPLY SUBMISSION OF THE CONSTRUCTION, FORESTRY AND  
MARITIME EMPLOYEES UNION (CONSTRUCTION & GENERAL DIVISION)**

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1<sup>st</sup> December 2023

<b>Construction, Forestry and Maritime Employees Union (Construction and General Division)</b>  ABN 46 243 168 565	<b>Contact Person:</b>  Stuart Maxwell, Senior National Industrial Officer	<b>Address for Service:</b>  Level 1, 1 Miller Lane Pymont NSW 2009	<b>T:</b>  <b>E:</b>	(02) 8524 5800  <a href="mailto:smaxwell@cfmeu.org">smaxwell@cfmeu.org</a>
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## Introduction

1. On 22<sup>nd</sup> September 2023 the Full Bench dealing with the review of the classification rates at the C14 level in modern awards (C2019/5259) issued a Statement ([2023] FWCFB 168) in which they proposed to broaden the scope of the review.<sup>1</sup>
2. The Full Bench went on to express their provisional view that:
  - (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
  - (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
  - (3) The transition period for the purpose of (2) should not exceed six months.<sup>2</sup>
3. The Full Bench noted that this approach would require an expansion of the scope of the review and that it would be necessary to consider more closely those Awards, set out in Attachment A to the Statement, that were previously excluded from the review on the basis they contained only transitional C14 rates.<sup>3</sup> The Full Bench issued direction 1, for interested parties to file:
  - (a) submissions in respect of the provisional view stated in paragraph [8];
  - (b) submissions as to the accuracy of the table at Attachment D to the Statement;
  - (c) draft determinations or proposals for any specific award variations that might be necessary; and
  - (d) evidence upon which they intend to rely;by no later than Friday, 3 November 2023.<sup>4</sup>
4. The Full Bench also issued direction 2, for parties to file evidence and submissions in reply to any material filed in accordance with direction 1 by no later than Friday, 1 December 2023.
5. The Construction, Forestry Maritime, Mining and Energy Union (Construction and General Division), now the Construction Forestry and Maritime Employees Union (Construction and

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<sup>1</sup> [2023] FWCFB 168 at paragraph [1]

<sup>2</sup> Ibid., at paragraph [8]

<sup>3</sup> Ibid., at paragraphs [9] to [10]

<sup>4</sup> Ibid., at paragraph [27]

General Division) (the CFMEU C&G) filed a submission<sup>5</sup> on 3<sup>rd</sup> November 2023 in regard to the *Joinery and Building Trades Award 2020*.

6. The Australian Business Industrial and New South Wales Business Chamber Ltd (ABI/BNSW)<sup>6</sup>, AiG<sup>7</sup>, HIA<sup>8</sup> and MBA<sup>9</sup> also made brief submissions about the *Joinery and Building Trades Award 2020*. The CFMEU C&G makes this brief submission in reply to those submissions.

### **Response to the Provisional View**

7. The HIA does not oppose the provisional view and in its assessment the C14 equivalent rate in the *Joinery and Building Trades Award 2020* is transitional.<sup>10</sup> The MBA also agree that the C14 equivalent rate is transitional.<sup>11</sup> These positions are consistent with the view expressed by the CFMEU C&G.
8. The ABI/BNSW do not agree with the principles outlined in paragraph [8] of the Statement but make no specific comment on the transitional nature of the level 1/ C14 equivalent rate in the *Joinery and Building Trades Award 2020*.
9. The AiG also opposes the provisional view. The AiG go further and make the unsubstantiated observation that the relevant classification level in the *Joinery and Building Trades Award 2020* is not transitional<sup>12</sup> and contemplates the performance of substantive roles on an indefinite basis.<sup>13</sup> The AiG provide no evidence to support this observation and its position is clearly out of step with the major employer organisations that have an interest in the award, the HIA and MBA, and the unions.
10. More importantly the Expert Panel's decision of the Annual Wage Review 2018-19 has already recognised that the level 1 wage rate in the *Joinery and Building Trades Award 2020* is transitional,<sup>14</sup> as did the former President's Statement in [2019] FWC 5863<sup>15</sup>.

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<sup>5</sup> <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-cfmmeu-cg-031123.pdf>

<sup>6</sup> <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-abinswbc-031123.pdf>

<sup>7</sup> <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-aig-061123.pdf>

<sup>8</sup> <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-hia-031123.pdf>

<sup>9</sup> <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-mba-031123.pdf>

<sup>10</sup> HIA submission, 3<sup>rd</sup> paragraph.

<sup>11</sup> MBA submission, paragraph 8.

<sup>12</sup> Attachment to the AiG submission at p.5.

<sup>13</sup> AiG submission, paragraph 32(a).

<sup>14</sup> [2019] FWCFB 3500 at paragraph [338] and footnote 376

<sup>15</sup> [2019] FWC 5863 at paragraph [4]

11. The CFMEU C&G also notes that in the earlier proceedings the AiG were invited by the former President to comment on the list of awards, identified in the Presidents Statement, in which the C14 rate was not transitional.<sup>16</sup> In its various submissions prior to 6<sup>th</sup> November 2023 the AiG never once challenged the view of the FWC that the level 1 classification rate in the *Joinery and Building Trades Award 2020* was a transitional rate. It is therefore disingenuous of the AiG to now raise a challenge to a point it has previously accepted.
12. The AiG submission demonstrates that the AiG has little knowledge or understanding of the history and implementation of the classification structure in the *Joinery and Building Trades Award 2020*, or indeed what classifications are utilised by employers covered by this award.
13. As submitted in the CFMEU C&G 3<sup>rd</sup> November 2023 submission, the majority of the awards that existed prior to the 1993 consolidation did not contain any classifications at the level 1 broadbanded group. This was reflected in clause 9.1(c) of the *National Joinery and Building Trades Products Award 1993*:

“(c) *The classifications covered by this award and the appropriate broadbanded group for such classifications shall be as follows:*

<i>Classification</i>	<i>Broadbanded Group</i>
<i>Carpenter and/or Joiner (NSW)</i>	6
<i>Joiner-Setter Out (SA, VIC)</i>	6
<i>Joiner Special Class (NSW)</i>	6
<i>Prefab Setter (VIC, QLD, WA)</i>	6
<i>Carpenter and Joiner (SA, VIC, TAS)</i>	5
<i>Carpenter and/or Joiner (SA)</i>	5
<i>Joiner (NSW, SA, VIC)</i>	5
<i>Painter (VIC, QLD, WA)</i>	5
<i>Prefab Tradesperson (VIC, QLD, WA)</i>	5
<i>Tradesperson</i>	
<i>(Precast Concrete Manufacture SA)</i>	5
<i>Assembler A (NSW, SA, VIC, QLD, WA)</i>	3/4
<i>Machinist</i>	
<i>(Precast Concrete Manufacture SA)</i>	4
<i>Terrazzo Assistant (SA)</i>	4
<i>Assembler B (NSW, SA, VIC, QLD, WA)</i>	2/3

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<sup>16</sup> Ibid., at paragraph [10]

<i>Primer (SA, VIC)</i>	3
<i>General Hand (SA, VIC)</i>	1
<i>Factory Hand (SA)</i>	1
<i>Adult Trainee Terrazzo Worker (SA)</i>	
<i>First 6 months</i>	1
<i>Second 6 months</i>	3
<i>Second year</i>	4

*Provided that:*

- (i) *an employee currently classified as an Assembler A who is only required to perform the duties specified in subclause 8.1 shall be paid in accordance with broadbanded group 3. Where such employee performs a wider range of duties including those more complex tasks identified for broadbanded group 4, then such employee shall be paid in accordance with broadbanded group 4.*
- (ii) *an employee currently classified as an Assembler B who is only required to perform the duties specified in subclause 8.2 shall be paid in accordance with broadbanded group 2. Where such employee performs a wider range of duties including those more complex tasks identified for broadbanded group 3, then such employee shall be paid in accordance with broadbanded group 3.”<sup>17</sup>*

14. The application of the classification of factory hand was further limited through the following definition:

“8.9 *"Factory Hand" means an employee in South Australia engaged in precast concrete manufacture who is responsible for cleaning the work area as necessary, loading of trucks, general labouring (including stoning down and bagging) and assisting other production workers other than as a "Factory Hand".*”<sup>18</sup>

15. At the time of the making of the 1993 award, the level 1 classification was limited to general hands in South Australia and Victoria, factory hands engaged in precast concrete manufacture in South Australia, and adult trainee terrazzo workers in South Australia during the first 6 months.

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<sup>17</sup> Print K6616, pp.10-11

<sup>18</sup> Print K6616, p.7

16. In determining the new classification structure for the award, the parties agreed that the level 1 classification would only apply to a new employee for the limited 38 hour induction period during which a worker would only perform general labouring duties. The reasoning behind it was that the parties recognised that in practice there were no real jobs at this level on an ongoing basis, and employers preferred to quickly upskill new entrants so that they could be more productive and perform a wider range of tasks. This agreement resulted in the following broadbanded group definition and skill level description for the level 1 classification:

*BROADBANDED GROUP/LEVEL 1*

*[Relativity to Broadbanded Group/Level 5: 78%]*

*An employee at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance.*

*An employee at this level performs routine duties essentially of a manual nature and to the level of their training:*

- 1. performs work as directed;*
- 2. performs routine duties essentially of a manual and repetitive nature;*
- 3. is responsible for the quality of their own work subject to direct supervision;*
- 4. works in a safe manner so as not to injure themselves or other employees;*
- 5. is able to solve basic problems associated with their work;*
- 6. whilst undertaking structured training performs work within the scope of that training subject to safety and training requirements.*

*Indicative of the tasks which an employee at this level may perform are the following:*

- \* carry out general labouring and cleaning duties from written or verbal instructions.*
- \* provides assistance to other employees at this or other skill levels within their level of skill and training.*
- \* any other tasks as directed in accordance with their level of skill and training.<sup>19</sup>*

17. Apart from some minor wording changes and the addition of a paragraph on the occupations included in this skill level the equivalent description now found in clause A.1.1 of the *Joinery*

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<sup>19</sup> Print K6616, at page 72.

*and Building Trades Award 2020* is identical. There can therefore be no doubt that the level 1 classification rate is a transitional rate for the first 38 hours.

18. The AiG also make the unsubstantiated claim that the implementation of the provisional view, in relation to the *Joinery and Building Trades Award 2020*, is likely to have a significant impact upon employers covered by it. Again, the AiG provide no evidence to support this claim.
19. The CFMEU C&G is not aware of any specific figures for the number of employees engaged at the level 1 classification wage rate under the *Joinery and Building Trades Award 2020*, but based on the 2019 Department of Jobs and Small Business estimate that “*around 180 200 employees are paid the adult C14 rate*”<sup>20</sup> and the 2018-19 Annual Wage Review comment that “*While not an insignificant number of employees it only represents 1.7 per cent of all employees*”<sup>21</sup>, it is arguably less than 1.7%.

#### **Accuracy of the Table at Attachment D to the Statement**

20. The ABI/BNSW, AiG, HIA and MBA submissions all refer to the payment of the industry allowance in the *Joinery and Building Trades Award 2020* resulting in a worker at the level 1 classification being paid more than the C13 equivalent rate.
21. As noted in the CFMEU C&G’s earlier submission the industry allowance in this award is not paid to all employees, only employees engaged on:
  - (a) joinery work, shopfitting, stonemasonry or outside work, or
  - (b) a glazier or an apprentice glazier, engaged other than on factory glazing

This means that not all employees at the level 1 classification are paid above the C13 equivalent rate. In any case, as the level 1 rate is transitional, the payment of the industry allowance is immaterial for this award in these proceedings.

22. The CFMEU C&G would however take issue with the ABI/BNSW submission that suggests that industry allowances are “*designed to ensure that the rates of pay are referable to the value of the work*”<sup>22</sup>. This is incorrect, as clause 21.3(b) of the award clearly states the allowance is paid “*to compensate for the disabilities associated with the industry*” and has nothing to do with the value of the work.

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<sup>20</sup> [2019] FWCFB 3500 at paragraph [336]

<sup>21</sup> Ibid

<sup>22</sup> ABI/BNSW submission, paragraph 40.