
IN THE FAIR WORK COMMISSION

FWC No. C2019/1

Annual Wage Review 2018/19

AWU Submission to the Expert Panel

Introduction

1. This submission is made by The Australian Workers' Union (the **AWU**) to the Expert Panel (the **Panel**) conducting the Annual Wage Review 2018/19 (the **Review**) in relation to a specific issue concerning modern award minimum wages for unapprenticed junior employees.
2. The AWU supports the submissions of the Australian Council of Trade Unions in relation to the general Review.
3. The AWU wishes to draw the Panel's attention to an issue regarding minimum wage rates for junior employees covered by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (the **VMRSR Award**). It appears most junior employees in the vehicle manufacturing and vehicle repair, service and retail streams of the VMRSR Award currently receive a lower wage rate than award-free junior employees covered by the *National Minimum Wage Order 2018* (the **NMWO**).
4. The issue arises as a result of two factors:
 - (a) first, the adult wage rate for entry-level employees in the vehicle manufacturing and vehicle repair, service and retail streams in the VMRSR Award is equal to the adult national minimum wage; and
 - (b) second, the relevant junior rate percentages in the VMRSR Award are lower than those in the NMWO (derived from the *Miscellaneous Award 2010*).
5. The tables below demonstrate the disparity in junior rates for employees covered by the VMRSR Award (in both the manufacturing stream and the repair, services and retail stream) and award-free employees whose rates are set by the NMWO. An adult level 1 award employee and an employee on the minimum wage are both entitled to an \$18.93 hourly rate.¹

¹ See clauses 33.4 and 45.5 of the VMRSR Award and clause 4.1 of the NMWO.

6. The first table shows the difference between the rate for an unapprenticed junior employee in the manufacturing stream of the VMRSR Award and an award-free junior employee.²

Table 1

Age	Award Relativity	NMWO Relativity	Award Hourly Rate	NMWO Hourly Rate	Difference (\$) per hour
U/16 years	35.0%	36.8%	\$6.63	\$6.97	-\$0.34
At 16 years	45.0%	47.3%	\$8.52	\$8.95	-\$0.43
At 17 years	55.0%	57.8%	\$10.41	\$10.94	-\$0.53
At 18 years	65.0%	68.3%	\$12.30	\$12.93	-\$0.63
At 19 years	78.5%	82.5%	\$14.86	\$15.62	-\$0.76
At 20 years	95.0%	97.7%	\$17.98	\$18.49	-\$0.51

7. The second table shows the differences between the rates for a junior employee in the vehicle repair, service and retail stream of the VMRSR Award and an award-free junior employee.³

Table 2

Age	Award Relativity	NMWO Relativity	Award Hourly Rate	NMWO Hourly Rate	Difference (\$) per hour
U/16 years	47.5%	36.8%	\$8.99	\$6.97	\$2.02
At 16 years	47.5%	47.3%	\$8.99	\$8.95	\$0.04
At 17 years	50.0%	57.8%	\$9.47	\$10.94	-\$1.47
At 18 years	62.5%	68.3%	\$11.83	\$12.93	-\$1.10
At 19 years	75.0%	82.5%	\$14.20	\$15.62	-\$1.42
At 20 years	87.5%	97.7%	\$16.56	\$18.49	-\$1.93

² Junior rates for manufacturing employees are set by clause 52 of the VMRSR Award.

³ Junior rates for repair, service and retail employees are set by clause 33.7 of the VMRSR Award.

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8. Junior employees covered by these two streams in the VMRSR Award are worse off than award-free employees – except for employees aged 16 years or younger in the vehicle repair, service and retail stream.
 9. In the case of a 20-year-old junior employee in the repair, service and retail stream, the difference is almost \$2.00 per hour.
 10. This analysis does not consider any allowances or other benefits payable under the VMRSR Award – it is restricted to a direct comparison of its minimum base rates of pay to those in the NMWO.

Jurisdiction

11. Sections 135 and 285 of the *Fair Work Act 2009* (the **Act**) provides that the power to set and vary minimum wages in modern awards is vested in the Panel, with certain exceptions. Those exceptions are variations on work-value grounds and variations to correct errors.
12. The Panel has power to vary junior rates, as the term ‘modern award minimum wages’ is defined in s 284(3) of the Act to mean “*the rates of minimum wages in modern awards*”, including, inter alia, “*wage rates for junior employees*”.

Principles and Merit

13. In setting and varying modern award minimum wages, the Panel is to have regard to both the minimum wages objective and the modern awards objective.
14. The minimum wages objective requires the Commission to “*maintain a safety net of fair minimum wages, taking into account [...] providing a comprehensive range of fair minimum wages to junior employees*”.⁴
15. As part of the modern awards objective, the Commission is required to “*provide a fair and relevant minimum safety net of terms and conditions, taking into account [...] the needs of the low paid*”.⁵
16. Junior employees receiving rates of pay ranging from 35% to 95% of the adult national minimum wage clearly constitute part of the low-paid workforce referred to in the modern awards objective.

⁴ *Fair Work Act 2009* s 284(1).

⁵ *Fair Work Act 2009* s 134(1).

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17. Both the modern awards objective and the minimum wages objective support the view that the junior rates set by modern awards should not permit unapprenticed junior employees to fall below the rates set by the special national minimum wage for junior employees. It is also contrary to the policy and objectives of the Act more broadly for modern awards to create inferior pay and conditions of employment to the NMWO.
18. In the decision in which the special national minimum wage for junior employees was first set, the Panel did not address the issue of award-covered employees falling below the rate of pay for award-free junior employees.⁶ The absence of any such consideration suggests that the Panel did not turn its mind to the issue. This tells in favour of the Panel addressing and resolving the issue in the present review.

Outcome Sought

19. For the foregoing reasons, the Panel should vary the unapprenticed junior percentages in the VMRSR Award to ensure that all junior employees covered by the instrument receive a wage rate at least equal to that set by the special national minimum wage for junior employees in the *National Minimum Wage Order 2019*.⁷

THE AUSTRALIAN WORKERS' UNION

18 March 2019

⁶ *Annual Wage Review 2010-11* [2011] FWAFB 3400, [386]-[396].

⁷ The AWU has not conducted a review to identify whether this issue may apply to junior rates in other awards.