

His Honour Justice I.J.K. Ross AO
President, Fair Work Commission
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via e-mail: chambers.ross.j@fwc.gov.au

19 December 2019

Your Honour,

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

We refer to the above matter and to paragraph [10] of the Statement issued by your Honour on 2 December 2019.

As we referred to in the course of the conference on 29 November 2019, Chart 2.1 of the Australian Government's submission to the 2019 Annual Wage Review provides, *inter alia*, an overview of the number of employees paid at the national minimum wage, broken down by the method of setting pay. The analysis is said to be based on published and unpublished data included in the ABS survey of *Employee Earnings and Hours* (ABS 6306), as well as calculations performed by the Department of Jobs and Small Business.

The publicly available data from ABS 6306 does not enable users to view the distribution of earnings by method of setting pay, let alone isolate a particular rate of pay (or band of rates of pay), to determine the number of employees who receive that rate of pay. If that information were available, it would be possible to categorise those employees by industry, occupation and/or method of setting pay (subject to relative standard errors).

The ABS does however collect broader data as part of the 6306 series, as is evident from the listing of data items available for purchase on the relevant section of its website.¹ With that in mind, we have attempted below to describe the data queries that we believe would best capture the employees who were, at the time the survey was conducted, employed in the classifications the subject of the current proceeding. In developing these queries, we have referred to the relevant awards (including the coverage terms and classification terms) and ANZSCO² and ANZSIC³ descriptions.

¹ <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6306.0.55.001May%202018?OpenDocument>

² <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1220.0Search02013,%20Version%201.3?opendocument&tabname=Summary&prodno=1220.0&issue=2013,%20Version%201.3&num=&view=>

³ [https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1292.0Search12006%20\(Revision%202.0\)?opendocumen&tabname=Summary&prodno=1292.0&issue=2006%20\(Revision%202.0\)&num=&view=](https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1292.0Search12006%20(Revision%202.0)?opendocumen&tabname=Summary&prodno=1292.0&issue=2006%20(Revision%202.0)&num=&view=)

Whilst the national minimum wage was \$18.29 per hour at the relevant time, it might be preferable in the queries to treat the cut off wage as \$18.50 per hour, for comparability with Department's own estimates. In the below description of the queries we propose, the references in square brackets refer to the data items listed on the ABS website as referred to above.

We anticipate that the form of the queries may need some revision based on feedback from the ABS, the Commission's own research staff and other participants in these proceedings. For example, an issue that remains to be determined is the reliability of the of jurisdiction data item [JURIS]. We suspect that including [JURIS=1] and [JURIS=3] should eliminate known State system workers, however we are not certain of this and accordingly have not proposed at this time to include this as a filter in any of the queries. Similarly, there may be a better approach to identifying casual workers paid at the relevant rate than the one that we have proposed.

Query 1: Benchmarks (for comparison purposes)

- (a) Number of adult [ROP=1] non managerial employees [MGRSTAT=2], excluding owning managers [EMPSTAT=1], by method of setting pay [MOSP].
- (b) Number of adult [ROP=1] non managerial employees [MGRSTAT=2], excluding owning managers [EMPSTAT=1], at or below the "cut off wage" by method of setting pay [MSOP], where workers at the cut off wage are identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF], for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

Query 2: Air Pilots Award

- (a) Number of persons in query 1(a) above who are working in the "transport, postal and warehousing industry" [ANZSIC1=9] as "air and marine transport professionals" [ANZSCO3=231], by method of setting pay [MOSP]
- (b) Number of persons in query 2(a) above who are paid at or below the "cut off wage", by method of setting pay [MOSP], where the "cut off wage" is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

Query 3: Dry Cleaning and Laundry Award

- (a) Number of persons in query 1(a) above who are working in the "other services industry" [ANZSIC1=19] as "cleaners and laundry workers" [ANZSCO2=81], by method of setting pay [MOSP]
- (b) Number of persons in query 3(a) above who are paid at or below the "cut off wage", by method of setting pay [MOSP], where the "cut off wage" is identified in two ways*:

- I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
- II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

Query 4: Funeral Industry Award

- (a) Number of persons in query 1(a) above who are working in the “other services industry” [ANZSIC1=19] as “personal service and travel workers” [ANZSCO3=451], by method of setting pay [MOSP]
- (b) Number of persons in query 4(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

We acknowledge that this query will have a substantially broader scope than desired, however it is the most targeted methodology we could devise.

Query 5: Travelling Shows Award

- (a) Number of persons in query 1(a) above who are working in the “Arts and Recreation Services Industry” [ANZSIC1=18] as “machine operators” [ANZSCO3=711] or “miscellaneous labourers” [ANZSCO3=899], by method of setting pay [MOSP]
- (b) Number of persons in query 5(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

Query 6: Cement and Lime Award, Concrete Products Award and Oil Refining and Manufacturing Award.

- (a) Number of persons in query 1(a) above who are working in the “manufacturing industry” [ANZSIC1=3] as “miscellaneous factory process workers” [ANZSCO3=839] or “miscellaneous labourers” [ANZSCO=899], by method of setting pay [MOSP]
- (b) Number of persons in query 6(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

We acknowledge that this query will have a substantially broader scope than desired, however it is the most targeted methodology we could devise.

Query 7: Meat Industry Award

- (a) Number of persons in query 1(a) above who are working in the “manufacturing industry” [ANZSIC1=3] as “food process workers” [ANZSCO3=831], by method of setting pay [MOSP]
- (b) Number of persons in query 7(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

We acknowledge that this query will have a substantially broader scope than desired, however it is the most targeted methodology we could devise.

Query 8: Quarrying Award

- (a) Number of persons in query 1(a) above who are working in the “mining industry”⁴ [ANZSIC1=2] as “construction and mining labourers” [ANZSCO3=821] or “miscellaneous labourers” [ANZSCO3=899], by method of setting pay [MOSP]
- (b) Number of persons in query 8(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

Query 9: Rail Industry Award

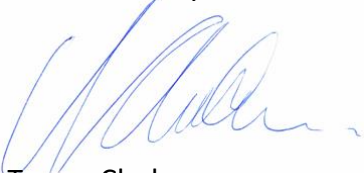
- (a) Number of persons in query 1(a) above who are working in the “transport, postal and warehousing industry” [ANZSIC1=9] as “miscellaneous labourers” [ANZSCO3=899] or “inquiry clerks and receptionists’ [ANZSCO2=54], by method of setting pay [MOSP]
- (b) Number of persons in query 9(a) above who are paid at or below the “cut off wage”, by method of setting pay [MOSP], where the “cut off wage” is identified in two ways*:
 - I. Weekly ordinary time cash earnings [WORTCE] divided by weekly ordinary time hours paid for [WORHPF] for permanent and fixed term employment [TYPEEMP=1];
 - II. As above, save that the cut-off wage is inflated by 25% and the group is limited to casual employees [TYPEEMP=2] who received the casual loading [CASLOAD=1].

⁴ It may be appropriate to also include employees in the Manufacturing Industry, to capture paragraph (b) of the definition of the “Quarrying industry” in the award, however this broadens the scope of employees captured by a considerable margin and also overlap with the scope of proposed query 6.

We acknowledge that this query will have a substantially broader scope than desired, however it is the most targeted methodology we could devise.

Due to the exclusion of the Agriculture, Forestry and Fishing Industries from *Survey of Employee Earnings and Hours*, we have not proposed a query for the relevant employees covered by the Sugar Industry Award. The ABS *labour force survey* does not capture rates of pay (either for ordinary hours of work or otherwise) and we have been unable to identify a suitable substitute data survey to capture this information for the relevant employees covered by the Sugar Industry Award.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Trevor Clarke', is written over a light blue circular stamp.

Trevor Clarke

Australian Council of Trade Unions

*The basis for approaching this issue in two ways is an assumption that “ordinary time cash earnings” [WORTCE] includes the casual loading.