

IN THE FAIR WORK COMMISSION

Title of Matter:	Review of certain C14 rates in modern awards
Section:	s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objectives
Subject:	Review of the classification rates at the C14 rate in modern awards
Matter Number:	C2019/5259

SUBMISSIONS ON BEHALF OF THE AUSTRALIAN MEAT INDUSTRY COUNCIL (AMIC) IN RESPONSE TO SUBMISSIONS BY THE AMIEU

1. The evidence and submissions filed by the AMIEU appear to contend for two alternative positions:
 - a) that the MI1 classification should be deleted altogether from the Award; or alternatively
 - b) That the MI1 classification should be limited in time to the period of time occupied (on their evidence) in learning one basic task, that is, for a period of approximately one week.
2. The two positions are not true alternatives. In practical terms, they achieve the same outcome, as the ability of the employer to pay an MI1 training wage whilst an employee is undertaking appropriate or necessary on-the-job training, would be effectively abolished in both cases.
3. The union submissions incorrectly assert that there are no functions assigned to employees engaged under the MI1 classification. The functions allocated to such employees are expressly delineated as being “on-the-job” training, expressed in the clause by reference to the period during which employees are undertaking such training. Training of this kind is a well-known and well understood work function, which attracts the appropriate C-14 rate of pay in many modern awards.
4. It is a deliberate and sensible part of the MI1 classification description that no specific tasks are mentioned in this context, as each business enterprise covered by the Award operates in a different manner, with different equipment, different types and species of livestock, very different geographic and climatic constraints, different types of fresh or manufactured output and product, and with a substantially different ethnic and educational diversity within its workforce.
5. Enterprises covered by the Award vary from those slaughtering and processing of livestock as diverse as crocodiles, camels and prime beef cattle and sheep, to those slaughtering and processing pigs and manufacturing ham, bacon, salami and other smallgoods, and large wholesale/ retail operations and small suburban two or three person butcher shops.
6. They conduct their businesses in a vast range of rural and regional areas, often with limited resources and shortages of labour, and in circumstances where the workforce may consist of

employees who, amongst their number, speak little or no English and primarily communicate in a wide variety of other languages, including Mandarin, Cantonese, Vietnamese, Portuguese, Tagalog, Swahili and Arabic, to mention but a few.

7. The equipment used is extremely diverse and varies significantly from plant to plant, and in many cases is designed and used to kill and dismember large animals. Accidental or unintended contact with such equipment can cause catastrophic injury and death to workers.
8. Because the products of all such enterprises is fresh food, extremely strict hygiene and food safety regulations apply in different measures to different parts of different plants and different products, dependent entirely upon the individual circumstances in which the worker is engaged.
9. As earlier submitted, it should be no surprise to the Commission that the training requirements for an employee engaged under this Award without any prior or recent experience, are as varied as the types of plant, the types of livestock, the nature of the equipment being used in the particular plant, the geographical location of the plant, the ethnic diversity and educational standards of the workforce, and a myriad of other combinations of variables which exist within this industry.
10. Despite all of these factors, of which the Union is well aware, the Union submissions and evidence in this matter have been confined to describing the singular example of one small area of a large metropolitan or large regional beef processing plant, and referencing an infinitesimally small number of simple tasks in that large beef plant, which are presumably undertaken by an employee who reads and understands the English language.
11. That microscopic and grossly simplistic example is apparently presented to the Commission as being in some way representative of the manner in which the MI1 classification operates in the industry which has the characteristics described in the preceding paragraphs of the submission. Nothing could be further from the truth that exists in this industry. The Union evidence is so unrepresentative as to be positively misleading.
12. Further, as the union submits, the MI2 classification covers a very restricted number of tasks, so that effectively, if the MI1 classification is emasculated or actually removed, as the Union contentions seek, a new starter to the industry and that plant will commence at level MI3.
13. Under the Award there are a significant number of indicative tasks and functions which a person employed at MI3 can be expected to perform. The union contention appears to provide that training in only one or none of the most simple of those functions is sufficient for a person to be engaged at MI3. AMIC emphatically opposes such a contention.
14. As earlier submitted, the training involved in bringing a new employee up to the level of competency such that they are entitled to be engaged and remunerated at MI3, involves general induction and familiarisation with the plant and its operations and imperatives (workplace safety and food safety), and thereafter, training and familiarisation in a sufficient number of roles or tasks in that plant such that the employee will be able to be safely moved through the necessary number of MI3 roles and tasks to be a useful and productive member of the plant workforce.

15. The Union submission entirely fails to address this fundamental requirement of the training of a new employee in the Meat Industry. The evidence and submissions focus solely on a new employee being placed in a particular area and being trained how to construct a packing box or remove skirts (but not both), which are basic and relatively unskilled tasks. The Union case is that competency in one of these very simple tasks (leaving aside plant induction and familiarisation with health and food safety requirements) is able to be achieved in a few days or a week.
16. Even assuming this to be so (which is not necessarily the case depending upon the particular task allocated to the new entrant), the new entrant is then treated as competent in only one task out of the wide variety of tasks to which the employee can be expected to be assigned in the ordinary course of employment at MI3.
17. The union case is that although the MI1 classification may be appropriate whilst that new entrant learns their first new task, their on-the-job training for all of the other tasks which form part of the role of an MI3 employee must be paid at the MI3 rate. This is said by the union, despite the fact that the employee concerned may have no competencies whatsoever in any of those many other MI3 areas and is still engaged in on-the-job training so as to carry out the MI3 role effectively.
18. Under the current Award provision, and under the provision contended for by AMIC, the period of on the job training is sufficiently flexible to accommodate all of the industry variables referred to in these submissions and to allow for the objective of a C 14 rate to be otherwise met in respect of the overall skills of employee whose next step on the classification ladder is MI3. That is to say, it permits reasonable time for the amount of on-the-job training necessary for the engagement at MI3 in all possible contingencies covered by the Award.
19. The union contention appears to be that the MI1 rate only applies, or should only be applied, to the first simple and unskilled task that is imparted to the employee, but that the remainder of the on the job training necessary to be undertaken so that the new entrant employee so as to justify their engagement at MI3, is to be undertaken at the MI3 rate, rather than the MI1 rate, as is presently the case. This contention is confirmed in the Union evidence that:

"I think it would be generous to say that some employees take about a week to be able to fully perform one of the jobs that entry level employees are given."
20. The Union evidence and contentions misunderstand the role of a C-14 classification, both generally, and in the context of the Meat Industry Award. The actual length of time required for the necessary on-the-job training cannot be sensibly prescribed in the Award because of the vast array of businesses and activities covered by this Award. The time required will depend upon whether the employer is a suburban butcher shop or a very large modern metropolitan beef processing plant, or one of the infinite variables of types and sizes of enterprises between those two extremes. The nature and types of MI3 skills which that each particular enterprise reasonably requires of their employees before they can be engaged at that level will be very different in very many cases, and the Award should accommodate those factors.
21. The MI1 classification is not intended to provide for only so much on-the-job training as would constitute new industry entrants as being a "one task employee". This would be destructive of the purpose of the C-14 classification in this industry and would be illogical and uneconomical.

Such an employee would arguably not be entitled to be engaged in the MI3 classification, and to the extent that they were so engaged as a matter of compulsion, much of their early time in that classification would be spent in training, in MI3 tasks at MI3 rates of pay, rather than a training rate of pay.

22. This would have a detrimental effect on the current hierarchical nature of the classification structure, and the rights and entitlements of existing experienced and productive MI3 level employees, who would not be entitled to be paid any more than an inexperienced and unproductive employee engaged in in-house training at the same establishment.
23. The AMIC proposal of limiting the period of in-house training to no more than six months, would place an upper limit on the time and extent of in-house training which an employer may impose upon a new employee, before that employee is deemed to have acquired sufficient skills to be entitled to be engaged at MI3. If an employer has been dilatory in training that employee, such that they do not have the requisite number of skills, that would be a matter in respect to which the employer must accept any additional cost associated with an inadequate amount of training in the permitted period.
24. As a matter of fact, in each enterprise in which an employee has acquired the customary, usual or necessary number of skills to match the skills and abilities of other MI3 employees in the plant, the new employee would become entitled to be engaged at MI3. These are matters that can and should be specified at the commencement of the employment of a new employee. An employer who fails to meet these standards and who sought to exploit these arrangements and maintain a properly trained and skilled employee on a discounted MI1 rate, would do so at their own risk.
25. The risks that the proposed one-week training timeframe presents to the industry are significant. As per the earlier submission by AMIC, the Union has failed to take into account the serious risks to the employer of attempting to make someone competent in food safety, sanitation, plant and equipment, site safety, and all the tasks required to be a competent employee in one week. The employers bear the cost by either paying the full rate whilst continuing to train their employee to the required standard or bear the cost of a semi-skilled new entrant and all of the risks that come with someone who is not competent in all of the above matters. Some of these include (but are not limited to) increased workplace injury claims, common law claims, contamination, audit failures, and at the extreme, plant shutdown or death.
26. The Union proposal set out in their submissions under reply should be rejected by the Commission. Their extraordinarily restricted evidence, ignores actual circumstances of the vast majority of the industry covered by the Award, and the Union seeks to effectively abolish appropriate levels of payment under the Award for periods of on-the-job training for unskilled, partly skilled and inadequately skilled new entrants to the industry with no prior or recent experience, so that they become entitled upon commencement, or one week thereafter, to the same rate of pay as an experienced and skilled MI3 employee.
27. By comparison, the AMIC proposal is an appropriately flexible provision designed to accommodate the vast variety of circumstances in which on-the-job training may be needed for significantly different times and in significantly different circumstances throughout the four corners of the industry. The AMIC proposal achieves this outcome without imposing unnecessary additional cost

on employers, whilst providing adequate safeguards for new employees against exploitation by employers who would seek to artificially delay the progression of new industry entrants in the classification levels.

Australian Meat Industry Council
30 November 2023