

FAIR WORK COMMISSION

S.157 – FWC may vary etc. modern awards if necessary to achieve the modern award objective

(C2019/5259)

Review of certain C14 rates in modern awards

**SUBMISSION OF THE  
CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION  
(MANUFACTURING DIVISION)**

**In response to  
Statement [2019] FWC 5863 (29 August 2019)**

(27 September 2019)

<b>CFMEU – Manufacturing Division</b>	<b>Contact Person:</b>  Vivienne Wiles Senior National Industrial Officer	<b>Address:</b>  165 Bouverie Street, Carlton VIC, 3053	<b>Tel:</b>  <b>Email:</b>	0419 334 102  <a href="mailto:vwiles@cfmeumd.org">vwiles@cfmeumd.org</a> <a href="mailto:industriamd@cfmeu.org.au">industriamd@cfmeu.org.au</a>
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## BACKGROUND

1. On 28 August 2019, a Statement was issued [2019] FWC 5863<sup>1</sup> (*August 2019 Statement*) regarding the review of modern awards which have classification rates at the C14 level which are either not transitional rates or where the transition period is not specified.<sup>2</sup>
2. As outlined in the August 2019 Statement, the issue of C14 classification rates in modern awards was identified by the Expert Panel in the Annual Wage Review 2018 – 2019.<sup>3</sup>
3. At paragraph [5] of the *August 2019 Statement*, Justice Ross, President provides a provisional view that the awards contained in category (iv)<sup>4</sup> and category (v)<sup>5</sup> (as outlined in paragraph [5]) be referred to a Full Bench for review.
4. The Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (“CFMMEU – MD”) has an interest in the *Dry Cleaning and Laundry Industry Award 2010* (“DC&LI Award”) listed in category (v).

## QUESTIONS IN STATEMENT

5. At paragraph [10] of the August 2019 Statement, interested parties are invited to comment on 4 questions.
  1. *The provisional view at [5] above.*
  2. *Whether the list of awards identified in categories (iv) and (v) above (at [5]) is an accurate list of the modern awards in each of the categories?*

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<sup>1</sup> (C2019/5259) Review of certain C14 rates in modern awards, Statement [2019] FWC5863 (28 August 2019)

<sup>2</sup> *Ibid*; paragraph [3]

<sup>3</sup> *Ibid*, paragraphs [1] – [3]

<sup>4</sup> Category (iv) – 8 modern awards in which the C14 classification appears to be transitional but no particular transition period is specified

<sup>5</sup> Category (v) – 6 modern awards in which the C14 classification is not a transitional level.

3. *In relation the 8 modern awards listed in category (iv) – i.e. those which do not appear to specify a particular transition period – what transition period does the interested party propose?*
4. *In relation to the 6 modern awards listed in category (v) – i.e. those in which the C14 classification levels in those awards provide a fair and reasonable safety net? Has there been any work value determination of these classifications?*

**Question 1: The provisional view at [5] above**

6. The CFMMEU – MD agrees with the provisional view that the awards listed in categories (iv) and (v) should be reviewed.
7. The Commission has power under section 157(2) to vary modern award minimum wages if it satisfied:
  - (a) *the variation of modern award minimum wages is justified by work value reasons; and*
  - (b) *making the determination outside the system of annual wage reviews and the system of 4 yearly reviews of modern awards is necessary to achieve the modern awards objective.*

**Question 2: Whether the list of awards identified in categories (iv) and (v) above (at [5]) is an accurate list of the modern awards in each of these categories**

8. As far as we can identify, the awards listed in categories (iv) and (v) are an accurate list with respect to those awards in which the CFMMEU – MD has an interest.

**Question 3: In relation to the 8 modern awards listed in category (iv) – i.e. those which do not appear to specify a particular transition period – what transition period does the interested party propose?**

9. As indicated above, the CFMMEU – MD does not have an interest in any of the awards in category (iv).

**Question 4: In relation to the 6 modern awards listed in category (v) i.e. those in which the C14 classification level is not a transitional level – do the C14 classification levels in those awards provide a fair and relevant safety net? Has there been any work value determination of these classifications?**

10. As a matter of general principle, the CFMMEU – MD submits that modern awards which contain a C14 classification with no outer limit of operation (i.e. no transitional period to a higher classification), do not represent a fair and relevant safety net for those employees.
11. For many of these employees, they are effectively ‘frozen’ indefinitely at a wage rate equivalent to the National Minimum Wage, with no realistic prospect of ‘stepping’ up to a higher skill level within the overall scheme of classifications in the particular award.

*Dry Cleaning and Laundry Industry Award*

12. In relation to the dry-cleaning industry, the DC&LI Award contains the following classifications:
- (B.1) *Dry cleaning employee Level 1*
  - (B.2) *Dry cleaning employee Level 2*
  - (B.3) *Dry cleaning employee Level 3*
  - (B.4) *Dry cleaning employee Level 4*
  - (B.5) *Dry cleaning employee Level 5* [i.e. includes tradesperson dry cleaner classification]
13. The relevant C14 classification in the DC&LI Award is *Dry cleaning employee Level 1* (clause B.1) which provides as follows:

***B.1 Dry cleaning employee Level 1***

*An employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4.*

14. As is evident from the wording above, classification *Dry cleaning employee Level 1* is minimalist in its description, seeming, on its face to capture all employees who do not 'fit' within any of the higher classifications. That such a classification can apply to an employee indefinitely (at the C14 level) results in a failure to provide a fair and relevant safety net for the dry-cleaning industry.
15. In response to the second part of question 4 above, at this stage, the CFMMEU – MD is not able to advise whether there has been any work value determination/s for the classification *B.1 Dry cleaning employee Level 1*.

Filed on behalf of:

**Construction Forestry Maritime Mining and Energy Union  
(Manufacturing Division)**

Vivienne Wiles

Senior National Industrial Officer and Co-ordinator

27 September 2019