



Motor Trades Organisations

IN THE FAIR WORK COMMISSION

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

SUBMISSION IN REPLY ON BEHALF OF THE MOTOR TRADES ORGANISATIONS

1. This submission in reply is filed on behalf of the Victorian Automotive Chamber of Commerce, the Motor Traders' Association of NSW, the Motor Trade Association of South Australia and Northern Territory, the Motor Trades Association of Queensland, and the Motor Trade Association of Western Australia, (collectively, the Motor Trades Organisations) with reference to the above matter and in accordance with [8] of the Statement dated 22 September 2023¹ (**September 2023 Statement**).
2. The Motor Trades Organisations (**MTO**) also rely on their submission filed on 3 November 2023 in accordance with the September 2023 Statement.
3. The MTO submission in reply is limited to a response to the submission filed by the Australian Manufacturing Workers' Union (**AMWU**) on 10 November 2023 and the submission filed by Australian Industry Group (**Ai Group**) on 3 November 2023, in relation to those submissions that relate directly to the *Vehicle Repair, Services and Retail Award 2020 (Vehicle Award)*.

AMWU Submission

Provisional View

4. The AMWU Submission provides qualified support for the Commission's Provisional View in relation to the guiding principles.² For example, the AMWU states that it does not support that the transitional period should be a minimum of six months³ on the basis that:

*"The C14 rate is not a probationary rate ..."*⁴

¹ [2023] FWCFB 168

² AMWU Submission, [11]

³ Ibid.

⁴ Ibid.

and that

*“... classifications should be written and interpreted based on skills and knowledge acquired or the time taken in structured training, not using arbitrary timeframes...”*⁵

5. The MTO notes however, that despite this position, the AMWU submission ultimately expresses the view that:

*“... the C14 rate should only apply for an induction period which, ideally, should be no longer than 38 hours.”*⁶

6. The MTO opposes this view and considers it wholly inconsistent with a position that modern award classifications reflect the skills (and level of training) relevant to the performance of the tasks performed at a particular classification level, rather than being based on arbitrary timeframes.

Table at Attachment D

7. The MTO notes that whilst the AMWU Submission does not directly question the accuracy of the Table at Attachment D of the September 2023 Statement, it does express concern that:

*“... the Level 2 classification requires completion of a 3 month training period rather than a worker being able to demonstrate the necessary skills required for that classification level.”*⁷

Based on this view, the AMWU Submission proposes amendments to the Level 2 R2 classification.

8. The MTO submits that the AMWU’s proposed amendment should be rejected for two reasons: firstly, the AMWU’s concern is misplaced; and secondly, the proposed variation is neither directly relevant to, nor required by, the provisional views expressed in the September 2023 Statement.
9. In regard to the first reason, MTO submits that the AMWU’s concern is misplaced as the skill level definition provided at A.1.1 in Schedule A of the Vehicle Award does not require the completion of a 3-month training period in order to be classified at a Level 2. Rather, the Level 2 R2 classification clearly states:

*“An employee at Level 2 is an employee who has completed **up to 3 months structured training to enable** an employee to attain/possess job skills relevant to the tasks performed at this level and to the level of their training...”* [emphasis added].

10. The reference to “up to 3 months structured training” at A.1.1 of Schedule A therefore sets the maximum period of structured training applicable for an employee to demonstrate the necessary

⁵ Ibid., [12]

⁶ Ibid., [11]

⁷ Ibid., [19]

skills required for the tasks performed at the Level 2 R2 classification level. The provision clearly enables an employee to demonstrate that they have attained/possess the necessary skills in a lesser period.

11. In regard to the second reason, MTO notes that as the Level 2 R2 classification rate is not set below the current C13 rate, the Fair Work Commission should be satisfied that the AMWU's proposed amendment to Level 2 R2 is not relevant to the current review of certain C14 rates in modern awards. Rather, MTO submits that it is apparent that the AMWU's proposed change to Level 2 R2 is instead motivated by the policy objective expressed at [20] of the AMWU submission, being that:

"...progression through the [modern award] structure being based on the acquisition of skills and knowledge as it occurs; not necessarily tied to a specific time frame."

12. Accordingly, MTO respectfully submits that the AMWU's proposed amendment must be rejected.
13. Similarly, to the extent that it is relevant, MTO submits that firstly, it does not share the AMWU's belief that the C14 (or equivalent) should no longer be included in modern awards; and secondly, it opposes the AMWU's view that C14 (or equivalent) should be limited to 38 hours.
14. Further, the MTO brings to the attention of the Commission that the witness statement relied upon by the AMWU, provided by AMWU employee Paul Baxter, provides commentary that is limited to *the Manufacturing and Associated Industries and Occupations Award 2010* and the *Manufacturing and Associated Industries and Occupations Award 2020*. Accordingly, MTO submits that it is of no relevance to a consideration of the Vehicle Award.

Ai Group Submission

Provisional view

15. The MTO notes that the Ai Group Submission opposes the Commission's Provisional View.⁸
16. In doing so, the Ai Group Submission provides an analysis of what it considers the key propositions emerging from the Expert Panel's decision in the Annual Wage Review 2022-2023⁹ – and in particular, highlights what it believes is misapprehension by the Expert Panel of the operation of the C14 classification definition in the *Manufacturing and Associated Industries and Occupations Award 2020* and the *Metal Industry Award 1984 – Part 1*.¹⁰ Accordingly, Ai Group:

*"... contest a fundamental basis underpinning the Provisional View."*¹¹

⁸ Ai Group Submission, [5]

⁹ Ibid., [4] and [5]

¹⁰ Ibid., [5]

¹¹ Ibid.

17. The Ai Group Submission further notes that in the event that the Commission is minded to consider varying any modern awards as part of the current Review:

“... such awards should each be separately considered, having regard to the circumstances pertaining to the relevant industry or occupation covered by them, the terms of the awards (including the way in which the C14 classification definition is expressed and how it intersects with other classification definitions), the value of the relevant work, the specific variations proposed and the impact that the variations would have on employers and employees covered by the awards.”¹²

The MTO supports this aspect of the Ai Group Submission.

Table at Attachment D

18. Consistent with its interpretation of the Commission’s Provisional View, the Ai Group Submission provides an analysis of the Table at Attachment D of the September 2023 Statement. Based on this analysis (and the further reasoning set out at [25] of the Ai Group Submission), the Ai Group submits that 20 modern awards, including the Vehicle Award, “... do not conform with the Commission’s Provisional View...”¹³ and that the Vehicle Award “... should be allocated to category (v).”¹⁴

19. The MTO notes that Ai Group’s categorisation of the Vehicle Award is at odds with the MTO’s previous submission with respect to the accuracy of the Table at Attachment D of the September 2023 Statement. In this regard, the Ai Group’s categorisation also appears to be at odds with both the AMWU Submission and the submission made by the Australian Business Lawyers and Advisors, filed on behalf of Australian Business Industrial and the New South Wales Business Chamber Limited (**ABLA Submission**).

20. The MTO notes, for example, the ABLA Submission’s suggestion that the Vehicle Award classification (along with the other modern awards referenced) could be removed from the scope of the review as:

“... Those award classification do not appear to be inconsistent with the provisional views expressed in the [September 2023] Statement...”¹⁵

This suggestion is consistent with the views expressed in the MTO’s previous submission.

21. The MTO further notes that the Ai Group Submission details the practical consequences that would flow from the adoption of its re-categorisation of modern awards based on their interpretation of the Commission’s Provisional View¹⁶ – as well as raising a number of further process-related considerations, including the application of the modern awards objective¹⁷, the

¹² Ibid., [6]

¹³ Ibid., [31]

¹⁴ Ibid., Attachment: Submissions regarding Attachment D to the Statement

¹⁵ ABLA Submission, [39]

¹⁶ Op. Cit., see [32] and [33].

¹⁷ Ibid., see [34]-[37]

potential impact on internal wage relativities¹⁸, and the potential relevance of work value considerations.¹⁹

22. Accordingly, the MTO submits that in the event that the Commission is persuaded by Ai Group's analysis and proposed re-categorisation of the Vehicle Award, that this is predicated upon, and consequential to, an acceptance of the Ai Group's primary submission of the need for a reconsideration of the Commission's Provisional View.

Conclusion

23. MTO notes that in relation to the Vehicle Award, the relevant submissions made have provided either qualified support, or opposed, the Provisional View expressed in the September 2023 Statement. The MTO further notes that none of the relevant submissions have proposed any amendment to the Level 1 R1 (C14 equivalent) classification rate in the Vehicle Award as being required.
24. Accordingly, MTO submits that the Commission should be satisfied that the Vehicle Award be removed from the scope of the current review.
25. In the event that the Commission determines otherwise, the MTO would adopt the relevant submissions of the Ai Group as summarised at [17] of this submission, regarding the process by which any proposed amendment to the Vehicle Award should be considered. The MTO notes that such an approach is consistent with those proposed by interested parties in relation to other affected modern awards.²⁰

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¹⁸ Ibid., see [38] and [39]

¹⁹ Ibid., see [40] and [41].

²⁰ See for example, ABLA Submission; Submission of the National Farmers' Federation, 3 November 2023; and Submission of Australian Fresh Produce Alliance, 10 November 2023.