

*FAIR WORK COMMISSION*

*C2019/5259*

**REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS**

**Submission of the National Farmers' Federation**

*Introduction*

1. We refer to the statement of the President of the Fair Work Commission (**the Commission**) on 22 September 2023 (**the Statement**).
2. The Statement referred to an earlier decision of the Expert Panel of the Commission in the decision in the Annual Wage Review 2022-2023 (**the AWR 2023 Decision**), where the Expert Panel observed that a number of Modern Awards use the C14 rate, and that their use falls into one of five categories:
  - (i) *Transition to a higher classification level occurs after 38 hours induction training;*
  - (ii) *Transition occurs after 3 months;*
  - (iii) *The classification is transitional, but a period other than 3 months is specified;*
  - (iv) *The classification appears to be transitional, but no particular transition period is specified; and*
  - (v) *The classification level is not transitional.*
3. The Statement concluded that the scope of the matter should be expanded to include the review of a range of Modern Awards which were previously excluded, including the Horticulture Award 2020 and the Pastoral Award 2020, and made the following observation:

*Consistency with the propositions stated in [the AWR 2023 Decision] would suggest that, where a modern award contains a C14 rate (currently \$22.61 per hour), it should only operate for a defined transitional period, and the lowest rate applicable in any modern award to ongoing employment should be at least the C13 rate (currently \$23.23 per hour).*
4. Following from that conclusion, the Full Bench expressed the provisional view that:

- (1) The lowest classification rate in any modern award applicable to **ongoing** employment should be at least the C13 rate (at present, \$23.23 per hour);
- (2) Any rate below the C13 rate must be an entry-level rate which operates only for a limited period and provides a clear transition to the next rate; and
- (3) The transition period should not be more than 6 months.

**(the Provisional View)**

5. At Attachment D of the Statement is a list of Modern Awards, including the Horticulture Award 2020 and the Pastoral Award 2020, which stipulate a rate of pay below the C13 rate, together with analysis as to whether that rate is transitional and whether the relevant provisions provide for competency-based progression (**Attachment D**).
6. The Statement provides Next Steps for the conduct of the matter, including an invitation for interested parties to file submissions in respect of the Provisional View, the accuracy of Attachment D. The National Farmers Federation (**the NFF**) has an interest in the Pastoral and Horticulture Awards 2020 (collectively, **the Agricultural Awards**). Accordingly these submissions respond to the Full Bench's invitation in relation to those Awards.

*Background, Context and General Submissions on the Provisional View*

7. The NFF only played a limited role in the 2023 AWR Decision<sup>1</sup> and was not involved in this review of the C14 rates in modern awards until its scope was extend with the publication of the Statement.<sup>2</sup> As such, we only recently became aware of the relevant conclusions of the 2023 AWR Decision or the Commission's conduct of this matter.
8. As a consequence, we have not had a significant opportunity to properly analyse the Provisional View or consult with our membership cohort. We note that the Agricultural Awards cover a number of different industries<sup>3</sup> which, while sharing superficially similar outputs, each have different production systems and labour needs, and manage

---

<sup>1</sup> Filing a submission on 31 March 2023.

<sup>2</sup> Having become aware of the Statement on about 11 October 2023.

<sup>3</sup> Including fruit and vegetables growing, dairy, cotton production, grains, wool, sheep, cattle, chicken and pork meat production.

their workforces in different ways. As such, the impact of the Provisional View on these industries would be different, and each industry would therefore need to be properly consulted and represented in this matter. We further note that the agricultural sector is dispersed across the country, is typically based in remote or regional locations, and is presently entering its busiest period in the summer harvest. Each of these factors further complicates the consultation process.

9. For those reasons, the NFF has not yet reached an informed or final position on the Provisional View, or the conclusions drawn in the 2023 AWR Decision as to the suitability of the C14-equivalent or C13-equivalent Rates in Agricultural Awards, how those rates are currently utilised within those Modern Awards, and/or what transition period would be suitable within each of the classifications (and sub-classifications) which use the rates.
10. As such, at present we can only make limited and general comment on the Provisional View and other matters raised in the Statement, based largely on the analysis of the text of the Awards and publicly available information, largely to outline the potential significance of the change contemplated by the Provisional View.

#### *Cursory Analysis and Prima Facie Conclusions*

11. The underlying basis for the Provisional View, as we understand it from our reading of the Statement and the AWR 2023 Decision, is the conclusion that a significant portion of single income families who rely on the C14 Rate will not be able to achieve the Minimum Income for a Healthy Living standard. We note that the modelling set out at Table 14 of the AWR 2023 Decision which supports that conclusion was qualified with the following:

*The above analysis also takes no account of casual employees in receipt of the 25 percent loading (noting that casual employees constitute almost half of the modern award-reliant cohort). To the extent that the analysis may be applied to modern award-reliant employees on the C14 rate, it does not account for additional earnings by way of award penalty rates payable for ordinary-time work (such as evening or weekend penalty rates) or award overtime penalty rates, which are common incidents of modern award-reliant employment.<sup>4</sup>*

---

<sup>4</sup> [2023] FWCFB 3500 at [104]

12. In contrast, the Expert Panel acknowledged that:

*an employee classified at the C14 rate under a modern award may be entitled to a range of additional earnings-enhancing benefits such as weekend penalty rates, overtime penalty rates, shift loadings and allowances to which an employee on the NMW will not be entitled.*<sup>5</sup>

13. In our submission, the impact of loadings, allowances, and penalty rates, and other benefits on earnings capacity are relevant considerations for the purposes of this matter. As such, the rationale and financial modelling set out by the Expert Panel in the AWR 2023 decision for ceasing the alignment between the NMW and the C14 classification wage rate are not comprehensive enough to inform whether or not the C14 rate of pay in modern awards provides a fair and relevant safety net. At least in the agricultural context, the base rate is just the starting point. Employees have the potential to earn significantly more than the base rate e.g. the potential to earn more with loadings, penalties and piece rates. In addition, employees (including those on Level 1 rates) are frequently provided with non-wage benefits such as accommodation, meals, and fuel and electricity. As such, without in depth analysis of each industry, in our view, the proposed approach outlined in the Provisional View is premature.

14. In our submission, any proposed variation should be tested within the industrial context of the Horticulture Award and the Pastoral Awards, with evidence advanced to support that change. As the Expert Panel observed in the 2018-19 Annual Wage Review Decision:

*These things matter, because it is important to identify with some precision the number of employees who are sought to be the beneficiaries of a particular policy. If it turns out that the number of employees in the household types below the relative poverty line is very small or that they are transitioning to higher-paid jobs then it raises a real question about whether the minimum wage system is the appropriate instrument to address these pockets of disadvantage. As the Panel has observed in the past, ‘increases in minimum wages are a blunt instrument for addressing the needs of the low paid ... [and] the tax-transfer system can provide more targeted assistance to low-income households and is a more efficient means of addressing poverty.’<sup>6</sup>*

15. It is our submission that these considerations mitigate against reaching a decision in this matter until all of the factors are properly understood.

---

<sup>5</sup> [2023] FWCFB 3500 at [108]

<sup>6</sup> [2019] FWCFB 3500 at [342]. Cited by the President in [2019] FWC 5863 at [2].

16. Indeed, while in principle a change in the progression from C14 to C13-equivalent Rates may be a net positive to some individual employees, it may also have a stifling effect on the capacity for business to employ and therefore on the employability of all workers.<sup>7</sup> Therefore, in addition to potentially negative consequences for business, it may have negative consequences for employees.
17. It is our primary submission that no change should be made without a proper understanding of these issues.

### ***Existing Transition Arrangements in Agricultural Awards***

18. We further note that each one of the (sub)classifications<sup>8</sup> in the Agricultural Awards includes a starting or basic classification which is remunerated at the C14-equivalent Rate. With one exception, those (sub)classifications “transition” from that C14 equivalent Rate to a higher rate which is at or exceeds the C13 Rate. The exception is to the subclassifications Station Cook and Station Cook Offsiders, which do not include any transitional arrangements. As such, a person employed in those roles will remain at the FLH1 classification and paid at the C14-equivalent Rate.
19. Putting that exception aside, the remaining (sub)classifications create pay structures which require transition to rates at or exceeding C13.
20. In a few cases those transitions are purely based on employment length. For example, a Station Hand FLH1 will transition to Station Hand FLH3 once they have acquired 12 months of experience in the industry and no other criteria for transition is stipulated. However, in most cases the transition is not necessarily or solely time based i.e. quantity of experience or duration of employment. Instead, the transition is — solely or in part — based on one or more other factors, including the employee’s degree of autonomy, level of accountability, and/or their duties. Prima facie, those existing transition arrangements — including but not limited to those related to the period of time working in the industry — are based on the experience of employment within the farm sector,

---

<sup>7</sup> As highlighted in the Expert Panel’s review from the 2019 statement there is a “risk of disemployment effects and adversely affecting the employment opportunities of low-skilled and young workers.”( [2019] FWCFB 3500 at [344]) Quoted by the president in this matter in [2019] FWC 5863 at [1].

<sup>8</sup> By “(sub)classification” we refer to both the classifications proper (e.g. FLH1) and the roles which are described under classifications e.g. Feedlot Employee Level 1A which is one if the roles described under and forming part of the FLH1 classification.

economic and commercial considerations, the needs of workers, the needs of farms and farmers and their production and business systems<sup>9</sup>, the broader economic and social impact, and other important and complex factors. As such, in our submission those arrangements should not be disturbed without a thorough analysis of relevant facts, and significant consultation with affected parties.

### ***Setting a Transition Period***

21. The Statement expresses the provisional view that no transition should be for a period longer than 6 months. The Statement does not appear to specify — and the NFF is not aware of — the basis for settling on a period of 6 months as the upper limit. However, as noted above, to the extent that the transition is dependent on acquisition of a degree of skill and expertise, the classifications frequently already specify a presumptive timeframe. It may be concluded that those existing timeframes are based on industry experience, practice, and/or need such as the cycle of seasonal farming operations, gestation periods of animals, et cetera.
22. For example, prima facie, a Station Hand employee requires a full 12 months to experience the entirety of the annual production cycle on a mixed farm and therefore the full range and scope of the job's requirements. The 12-month experience would cover sowing of new crops including fodder crops through to harvest, “joining” (mating) both cattle and sheep, shearing, lambing and calving, lamb marking and cattle marking, and weaning of cattle and lambs.
23. Similarly, from the perspective of the dairy industry the Pastoral Award already provides for an automatic transitional period of 12 months' experience “in the industry” between the two lowest classifications of Dairy Operator Grade 1A (FLH1) — which reflects the C14 pay rate — to Dairy Operator Grade 1B (FLH3) — which is currently at a rate higher than the C13. The indicative duties are the same for both, but there is an expectation that the level of competence for each task and the degree of understanding of the whole farm system will increase during the first year of employment. The dairy industry is characterised by seasonality and tasks which span a 12-month period from “joining” to drying off over a 9-month period, an intense period of calving and then tending to young stock with evolving nutrition needs. Understanding the complexities

---

<sup>9</sup> Which are themselves characterised by plants, animals-biological systems.

of the milking process requires time and there are crops to be sown and harvested over a 6-month period, silage to be prepared, fences to be attended to, along with a myriad of other tasks all of which take time to master.

24. Against that analysis, imposing another, arbitrary (e.g. 6 month) transition would be inappropriate without evidence to the contrary. In our submission, an alternative timeframe would at least need to be tested (inter alia) against a range of factors, including the timeframe required to enable the employee to acquire the skills/capabilities criteria of the job.
25. For abundant caution, we would also note that in the case of a number of the (sub)classifications, while the descriptions identify a time period or quantity of experience which the employee must possess in order to transition to the higher level, they include other criteria which should also be considered. In those cases, the period is not expressed to be determinative of the transition and other factors are to be taken into account. For example, a Level 2 employee under the Horticulture Award will have undertaken “3 months structure training” but the description includes a range of additional criteria. In our submission that period cannot, without more analysis and evidence, be simply adopted as a firm time period for transition. The existing timeframe is not necessarily adequate to ensure that the employee has reached that ‘higher’ Classification level. Prima facie, if a time frame is to be specified then that time frame must be long enough to at least enable, if not ensure, the acquisition of the additional capabilities.

***Modern Awards Objective and Minimum Wage Objective.***

26. In our submission, if the Commission varies the base classifications, and therefore the application of the base rates, in the Agricultural Awards then it will be exercising functions and powers under Part 2 of the *Fair Work Act 2009* (**the Act**). Accordingly, the Commission should consider the Modern Awards Objective at s 134 of the Act.
27. Again, without knowing exactly what change is contemplated or having consulted adequately with our membership, it is difficult to state with any certainty how the Modern Awards Objective would be impacted, enhanced, or undermined by the change.

28. That said, prima facie, the objectives described at subs. 134 (aa), (ab), (c), (da), and (g) are irrelevant to the present matter and are therefore neutral considerations.
29. The aspects of the objective which would (again noting the limited analysis and evidence) appear to be relevant to the proposal and our superficial response are as follows.

*(a) the relative living standards and the needs of the low paid.*

This objective appears to be central and supports the case for change. However, without more evidence and analysis it is not clear what change would best serve this consideration, particularly in the context of the other considerations below.

Indeed, from one perspective the change could frustrate the consideration. Level 1 Rates are typically associated with introductory work and roles and provide an ‘on-ramp’ to the industry which facilitate and enable businesses to offer unskilled, unemployed persons an entry point to work in agriculture.<sup>10</sup> For example, the Dairy Operator Grade 1A classification (FLH1) is widely used for school leavers, junior employees and backpackers who come to the industry without any prior experience. An automatic transition in less than 6 months would likely discourage businesses from providing that entry point where they are concerned that the new employee may not acquire the skills necessary to justify the Grade 1B Rate (FLH3) within that 6 months.

*(b) the need to encourage collective bargaining.*

If this consideration is not neutral then, in our submission, it should mitigate against making the change. Prima facie, a need to tailor terms and conditions where the Award is inappropriate — including a need for training, the timing of transition from minimum rates, and the making of other adjustments where necessary — would stimulate collective bargaining.

*(d) the need to promote flexible modern work practices and the efficient and productive performance of work.*

Again, to the extent this is not neutral it mitigates against change. Arrangements which provide for automatic transition would not promote the acquisition of skills, the development of the capacity of the workforce, or the capacity of employers to

---

<sup>10</sup> Refer to comments at footnote 7 above.



manage and maintain productivity while engaging an inexperienced or under-skilled (i.e. in respect of the needs of the role) workforce.

*(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.*

Prima facie, this consideration mitigates against the provisional view. The changes will increase wage — and therefore employment — costs without any corresponding productivity gain. In addition, the imposition of an arbitrary transitional period — after, for example, 6 months employment in place of the current 12-month transitional period in the dairy, poultry, broadacre cropping and livestock industries — would in itself create a further regulatory burden on employers.

*(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

Prima facie, this consideration mitigates against the provisional view. An increase in labour costs without any productivity gains will likely have a negative effect on the chain of food production and therefore the national economy. In addition, a possible response to the additional costs and administrative burden which this variation contemplates will be a resort to low-intensive farming, use of technology and selective hiring all of which will reduce employment growth within the sector.

30. Further, under s 157(2)(b) the Commission must be satisfied that a “variation of modern award minimum wages is justified by work value reasons” and “making the determination [varying modern award minimum wages] outside the system of annual wage reviews is necessary to achieve the modern awards objective”. Section 157(2A) defines “work value reasons” as “reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to” “the nature of the work”, “the level of skill or responsibility involved in doing the work” or “the conditions under which the work is done”. Again, further consideration is required to establish how these considerations are best addressed in the context of this review.

### *Summary of Submission on Provisional View*

31. In short, it is the submission of the NFF that the Provisional View notwithstanding:
- (a) With the exception of Station Cook roles, the Agricultural Awards currently provide a methodology for a transition from the C14-equivalent to the C13-equivalent (and higher) Rates albeit not necessarily in the way contemplated by the Provisional View.
  - (b) Prima facie, the changes contemplated by the Provisional View could — and, indeed, probably would — have a significant impact on not only farm businesses but on farm workers.
  - (c) The case for change has not been made specifically in the agricultural context and in relation to the Agricultural Awards.
  - (d) The NFF has not had an adequate opportunity to understand and respond to any changes which the provisional views anticipate.

### *Submission on the accuracy of Attachment D*

32. The Statement also invited interested parties to make submissions with regards to the analysis found at Attachment D. The NFF makes the following submissions in relation to the Agricultural Awards.

#### *Horticulture Award — Level 1*

33. The NFF agrees with the provisional analysis, expressed at Attachment D, that a Level 1 Horticulture Worker Classification is not transitional — i.e. the Classification falls into Category (v).
34. While a Level 1 Worker undertakes “induction training”<sup>11</sup> and one of their “Indicative Duties” will be “structured training so as to enable advancement to Level 2”<sup>12</sup> there is nothing requiring that advancement to be made once the training is completed.

---

<sup>11</sup> Schedule A, clause A.1.2 of the Horticulture Award 2020.

<sup>12</sup> Schedule A, clause A.1.3 of the Horticulture Award 2020.

35. Furthermore, while the General Description<sup>13</sup> for the Classification as a Level 2 Worker states that the employee will have “completed up to 3 months structured training”, in our view that is a *necessary* but not *determinate* prerequisite for classification at Level 2.
36. Furthermore, Attachment D expresses the view that “Level 1 and Level 2 have distinct duties independent of the training requirement.” Again, the NFF agrees with this Provisional analysis. The Indicative duties listed, respectively, for Level 1<sup>14</sup> and Level 2<sup>15</sup> are qualitatively different. Significantly, Level 1 is focused on lower-skilled activities such as picking and packing with little reliance on complex tools or machinery. Level 2 is focused on higher level functions such as pruning and spraying (i.e. using chemicals), and operating machinery.
37. In short, in the NFF’s view the Award provides for progress from Level 1 to Level 2 to be dependent on the employee’s competency, level of independence, and the duties they are assigned, and not on the amount of experience in the industry or length of service in the role.

*Pastoral Award — Station Cook (FLH1)*

38. The Statement does not specify which of the five Categories the subclassification of Station Cooks and Station Cooks Assistant should fall into. However, it states that there is “[n]o progression apparent for Station cooks”<sup>16</sup> The clear inference is that Category (v) applies to Station Cooks and Station Cooks Offsiders, and that the Pastoral Award does not mandate any progression or increase in base salary from C14 for employees in those roles. The NFF agrees with that conclusion.

*Pastoral Award — Station Hand (FLH1)*

39. The Statement does not express a clear view on Station Hands or assign them to a Category.

---

<sup>13</sup> Schedule A, clause A.2.2 of the Horticulture Award 2020.

<sup>14</sup> Schedule A, clause A.1.3 of the Horticulture Award 2020.

<sup>15</sup> Schedule A, clause A.2.3 of the Horticulture Award 2020.

<sup>16</sup> Pg 22

40. Nonetheless, it appears relatively clear that the Award intends that a Station Hand with less than 12 months experience in the industry remains at FLH1 classification and is entitled to a minimum base rate of \$22.61/hour. When and if they have acquired 12 months experience in the industry, the Station Hand will be assigned (or progress to) FLH3 and be entitled to a minimum base rate of \$23.55/hour.
41. There is not a clear distinction in duties between a FLH1 Station Hand and a FLH3 Station Hand. Length of experience in the industry is the sole and determinative factor. As such, the progression from the former to the latter happens if and when the employee acquires 12 months experience and — save that having acquired 2 years-experience and performing the duties specified at 31.5(b) they will progress to FLH5 — does not depend on a change of in the duties, competencies, or expectations of the Employer.
42. It follows, in the NFF’s view, that the Station Hands subclassification falls into Category (iii).

*Pastoral Award — Cattle Farm Worker (FLH1)*

43. The Statement does not provide any commentary or analysis specifically with regards to the Cattle Farm Workers subclassification of FLH1.
44. The Pastoral Award does not stipulate any timeframes or time-based levels of experience for progression, either indicative or otherwise. However, the Award does anticipate progression from Grade A to Grade B: it provided distinct competencies, levels of independence and supervision, and indicative duties. As such, in the NFF’s view this subclassification falls within category (iv).

*Pastoral Award — Feedlot Employee (FLH1)*

45. The Statement does not express a clear view about the Category which the Feedlot Employees subclassification fall into. It states that the FLH1 (i.e. the C14 Rate) covers “feedlot employees with less than 3 months experience (with progression to FLH2).” In our view there is a clear transition to FLH2 after 3 months: clause 31.1 expressly provides that FLH1 covers “[f]eedlot employee[s] level 1 with **less than** 3 months’ experience in the industry”, while clause 31.2(b) provides that FLH2 applies to a “[f]eedlot employee grade 1 with **more than** 3 months’ experience in the industry who

works under direct supervision with regular checking of their work” (emphasis added). It is therefore relatively apparent that a Feedlot Employee transitions from FLH1 to FLH2 after acquiring 3 months experience. It follows that Feedlot Employees fall into category (ii)

*Pastoral Award — Dairy Operator (FLH1)*

46. The Statement does not specify a category for Dairy Operators. However, it indicates that FLH1 covers Dairy Operators Grade 1A with less than 12 months experience, with progression to Grade 1B (FLH3) where the employee acquires 12 months experience in the industry.
47. In the NFF’s submission, the Award clearly intends for the employee to progress automatically from Grade 1A to Grade 1B after acquiring 12 months experience in the industry. The indicative duties for both roles are identical but inherent in these classifications are an increased understanding of and competence with each task and how each task fits within the whole farm operation, which cannot be attained in under 12 months. Dairy Operators Grade 1A should thus fall within Category (iii).

*Pastoral Award — Piggery Attendant (PA1 and PA2)*

48. The Statement indicates that:
  - (a) The minimum base rate of pay for the PA1 classification is at the C14 Rate of \$22.61/hour;
  - (b) The PA1 falls into category (i) i.e. employees in this classification transition to a higher level PA2 after (at most) 38 hours induction training, but that “a PA2 employee must have completed up to 3 months’ structured training (cl 36)”;
  - (c) The minimum base rate of pay is \$23.22 for PA2, and is therefore between C14 and C13; and
  - (d) The PA2 classification falls into category (v).
49. The NFF agrees that the base rates of pay for Classification PA1 and PA2 are, respectively \$22.61 per hour and \$23.22 per hour, and consequently are lower than the C13 Rate.

50. With respect to the transition between PA1, PA2, and to PA3 it would appear that the Award provides that an employee covered by *Part 7— Pig Breeding and Raising* of the Pastoral Award will be performing the duties specified at clause 36.1(a). From that ‘cohort’ of persons:
- (a) An employee will be classified as PA1 when they are undertaking induction training<sup>17</sup> and not performing the tasks/duties of their substantive role.
  - (b) In addition, irrespective of the duration of employment/experience, an employee will be classified PA1 if they are “employed as [a] general hand in a general capacity to perform basic tasks such as moving the stock from place to place, cleaning the establishment and the feeding of stock”<sup>18</sup>.
  - (c) An employee will be classified PA2 where:
    - i. They are “appointed by the employer to this level”; and
    - ii. They have “completed up to 3 months’ structured training so as to enable the employee to work within the scope of this level”; and
    - iii. They perform their duties with the level of skill and independence contemplated at clause 36.3(b).
  - (d) An employee will be classified PA3 where they are appointed to that Level by the Employer and perform their duties with the level of skills, expertise and independence contemplated by clause 36.4; i.e. there is no time/experience-based component to the PA3 classification.
51. As such, the NFF does not agree with Attachment D to the extent that it concludes that the transition from PA1 to PA2 automatically “occurs after 38 hours induction training”. An employee will remain at PA1 as contemplated at the second bullet point of clause 36.2(a) of the Pastoral Award.

*Pastoral Award—Poultry Farm Worker (PW1)*

52. A PW1 Worker is an employee with less than 12 months experience in the industry and is paid a base rate which is at the C14 level and less than the C13 level. Furthermore,

---

<sup>17</sup> as specified in clause 36.2(a))

<sup>18</sup> Clause 36.2(a) – second bullet point

the transition from PW1 to PW2 is automatic after the employee has acquired 12 months experience and is not dependant on duties or appointment.

53. We agree with the Statements' conclusion that a Poultry Farm Workers PW1 falls within Category (iii).

DATED: 3 November 2023



**Ben Rogers**

**National Farmers Federation**