



STATEMENT

Fair Work Act 2009
s.285—Annual wage review

Annual Wage Review 2021–22 (C2022/1)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
MR FERGUSON
PROFESSOR WOODEN
MS LABINE-ROMAIN

MELBOURNE, 28 JUNE 2022

AWR 2021-22 – correspondence from the Australian Council of Trade Unions – adult apprentices – national training wage rates.

[1] The *Annual Wage Review 2021-22* decision¹ was published on 15 June 2022 and our decision regarding the amount of increases to modern award minimum wages is set out at [192]:

‘We propose to increase modern award minimum wages by 4.6 per cent subject to a minimum increase to adult award classifications of \$40 per week. In effect modern award minimum wage rates above \$869.60 per week will receive a 4.6 per cent increase. Wage rates in adult award classifications that are below \$869.60 per week will be increased by \$40 per week.’

[2] We also said that:

‘Modern award minimum wages which are to be increased by \$40 increase per week and \$1.05 per hour (on the basis of a 38-hour week) will be adjusted using the same approach as used in the 2009–10 Review.² The Commission will seek further feedback from the relevant parties on a small number of awards where the award is silent on the method of calculation for a flat dollar increase and the approach used in the 2009–10 Review cannot be replicated.’³

¹ [2022] FWCFB 3500

² Including the National Training Wage. See [2010] FWAFB 4000.

³ [2022] FWCFB 3500, [452].

[3] [Draft determinations](#) giving effect to the decision were published on Monday 20 June 2022 and interested parties were invited to lodge comments on the draft determinations by 4 pm on Friday 24 June 2022.

[4] Submissions were received from:

- Australian Council of Trade Unions ([ACTU](#))
- Electrical Trade Union ([ETU](#))
- Mining and Energy Union a division of the Construction, Forestry, Maritime, Mining and Energy Union ([MEU](#)).

[5] The ACTU raises a concern as to how our decision applies to:

- adult apprentices, and
- national training wage rates which are applicable to adults.

[6] The ACTU submits the ‘draft determinations, as they presently are, do not ensure that a minimum increase of \$40 per week is afforded to all adult rates’ and that they ‘should be amended as necessary to ensure that all adult rates in modern awards (including those applicable to apprentices and to trainees) increase by \$40 per week.’⁴

Adult apprentices

[7] In most modern awards, the rates of pay for adult apprentices are set as a percentage of another specified adult award rate. The ACTU submission cites cl.16.4(b) of the *Electrical, Electronic and Communications Contracting Award 2020* as an example of this:

(i) Where a person has been employed by an employer under this award immediately before commencing their adult apprenticeship with that employer, for at least 6 months as a full-time employee, or 12 months as a part-time or regular casual employee, that person must not suffer a reduction in their minimum wage by virtue of commencing their adult apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum rate that applies to the classification specified in clause 16.2 in which the adult apprentice was engaged immediately before commencing their adult apprenticeship.

...

(v) Subject to clause 16.4(b)(i), adult apprentices commencing their apprenticeship on or after 1 January 2014 will be paid as set out in the following table:

From 1 January 2014	
Year of apprenticeship	
1st year	80% of the minimum rate for Electrical Worker Grade 5

⁴ ACTU submissions dated 24 June 2022 [5] and [3].

From 1 January 2014	
Year of apprenticeship	
2nd year	EW1
3rd year	EW1
4th year	EW1

[8] The ACTU submits that where the adult apprentice rate in a modern award is tied to a specified classification in a modern award (as a percentage thereof), the adult apprentice rate will rise by the same percentage increase applied to the underlying rate. However, the nominal increase will be less. It submits the effect of this, in circumstances where a \$40 minimum increase is applied to rates other than adult apprentice rates, is that adult apprentice rates are the only rates which will not rise by a minimum of \$40.⁵

[9] The ACTU contends that this outcome is counterintuitive and inconsistent with our decision because adult apprentices who receive award wages are paid wages which would see them counted amongst the low paid workers contemplated in our decision at paras [51], [71], [130], [141], [179], [183] and elsewhere throughout.⁶

[10] For this reason, the ACTU submits, ‘the Panel should determine to increase the nominal wages of adult apprentices by a minimum of \$40, to ensure that the rationale behind its decision is carried out fully.’⁷ ‘This would ensure that the wages of adult apprentices – who receive less than the minimum wage and are “low paid” within the meaning of ss 134(1)(a) and 284(1)(e) of the Act – would experience lesser reductions in their real wages in this currently inflationary environment.’⁸

[11] The ACTU submits that a mechanism for achieving their proposed outcome might be to reduce the relevant adult apprentice wage rates to nominal terms (as opposed to their current specification as a percentage of other wage rates) then increase that amount by \$40 in the relevant determinations.⁹

National Training Wage

[12] The ACTU submits the same issue arises in relation to national training wage rates which are applicable to adults. The ACTU submits ‘these are currently slated to increase by different amounts, owing to the manner in which each is set. The relevant draft determinations increase the highest rates in each category (A, B and C) by \$32 (being 80% of the \$40 amount by which the NMW increases). The draft determinations then provide for increases to the other rates in each category, based on their relationship to the highest rates of the category.’¹⁰ The ACTU submits that ‘the relevant determinations should be amended so as to provide that each

⁵ ACTU submissions dated 24 June 2022 [15].

⁶ Ibid [16].

⁷ Ibid [17].

⁸ Ibid [18].

⁹ ACTU submissions dated 24 June 2022, [20].

¹⁰ Ibid [23].

pay point of the National Training Wage Rates which is applicable to adults is increased by the flat rate of \$40.’¹¹

[13] The ETU supports the submission of the ACTU and notes that in its experience:

‘(a) the recent increase in CPI and cost-of-living pressures have had significant consequences for its apprentice members given their low pay and, in particular, its adult apprentice members given that they are more likely to have dependents and other financial responsibilities; and

(b) the financial pressures facing apprentices and their low pay is often a key reason for its apprentice members, and particularly its adult apprentice members, leaving their apprenticeships prior to completion.’

[14] The MEU makes a similar submission in relation to adult apprentices in the *Black Coal Mining Industry Award 2020*. MEU submits that cl.A.6.8(b)(ii) should be amended as follows:

Adult apprentices	\$ per week
Stage 1	754.4
Stage 2	916.5
Stage 3	916.5

[15] The MEU further submits that the Commission should extend the minimum increase of \$40 to all award classifications. They submit that the decision to limit the minimum increase of \$40 to adult award classifications is inconsistent with the Commission’s reasoning in Annual Wage Review.¹²

[16] Interested parties were invited to respond to the issues raised by the ACTU by 4 pm on 27 June 2022. Submissions were received from:

- Australian Industry Group ([Ai Group](#))
- Australian Manufacturing Workers’ Union ([AMWU](#))

[17] The AMWU supports the submission of the ACTU.

[18] Ai Group opposes the submission of the ACTU and submits:

- Such an approach would disturb the Commission’s existing longstanding approach to adjusting apprentice and trainee wage rates in Annual Wage Reviews.
- Such an approach would disturb the relativities between adult apprentice wage rates and other apprentice wage rates, as determined by the Commission in the major *Apprentices and Trainees Case* during the Modern Awards Review 2012.

¹¹ Ibid [24].

¹² MEU submissions dated 24 June 2022, [7]-[8].

- Such an approach would disturb the relativities between adult trainee wage rates and other trainee wage rates, as contained within the National Training Wage Schedules in modern awards.
- In the past, when the Commission and its predecessors have awarded flat dollar increases in Safety Net Review / Annual Wage Reviews, the approach proposed by the ACTU was not adopted.
- The ACTU's proposed approach is inconsistent with the *Annual Wage Review 2021-22 Decision*. There is nothing in the decision which indicates that the Expert Panel intended to disturb the longstanding existing approach to flowing on the decision to apprentice and trainee wage rates. The fact that the draft determinations issued by the Commission, do not depart from the longstanding existing approach shows that the approach proposed by the ACTU does not align with the Commission's intentions.
- Very few employers would have seen the ACTU's submission or had a realistic opportunity to respond to it. If the Commission were to depart from its longstanding existing approach to adjusting apprentice and trainee wage rates in Annual Wage Reviews, based on the ACTU's submission, this would not afford procedural fairness to the thousands of employers who would be impacted by any such changed approach.

Consideration

[19] We do not propose to amend the determinations in the manner proposed by the ACTU. The draft determinations reflect the historical approach to adjusting apprentice and trainee rates and preserve the relativities between those rates and the other award rates and on the material presently before us we are not persuaded to depart from that approach at this time.

[20] We are also conscious that these issues have been raised late in the process. Two points can be made about this, firstly, we are required by the *Fair Work Act 2009* to publish final determinations before 1 July 2022 and we are conscious that this statutory deadline is imminent. Secondly, as raised by Ai Group, the ACTU's proposal, if adopted, would affect many employers and employees who have not had an opportunity to make submissions about the issues raised by the ACTU.

[21] The issues raised by the ACTU can be raised in submissions to the Annual Wage Review 2022-23. The Commission will issue a background paper dealing with these issues prior to the commencement of the Annual Wage Review 2022- 23.

PRESIDENT

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