

Transitional Review of Modern Awards — Apprentices, Trainees and Juniors: Common Claims AM2012/135 and 15 others

1. The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Fair Work Commission must conduct a review of all modern awards as soon as practicable after 1 January 2012 (the Transitional Review). Applications relating to apprentices, trainees and juniors were referred to this Full Bench.
2. The Australian Apprenticeships system is an important mechanism supporting the training and development of a skilled, productive and flexible workforce which can meet the needs of business and the national economy. There were 514,900 apprentices and trainees in training as at 30 June 2012.
3. This decision relates to “common claims” that affect multiple awards. The claims include:
 - a. Applications by the Australian Council of Trade Unions and affiliated unions to increase rates of pay for apprentices and adult apprentices;
 - b. Applications by unions to introduce provisions for competency based wage progression into various awards;
 - c. Applications by unions to insert “model clauses” relating to apprenticeships into awards, including provisions dealing with training requirements, training costs, probationary periods, suspension and cancellation of training contracts, and dispute settlement;
 - d. An application by the Australian Industry Group to vary the National Training Wage Schedule; and
 - e. Proposals by the Commonwealth Government to insert the model school-based apprenticeship schedule into several awards, and to vary the schedule to provide for competency based wage progression.
4. The need for a review of modern award provisions relating to apprentices was recognised by the Apprenticeship Expert Panel and the Award Modernisation Full Bench.
5. A wide range of parties made submissions and presented evidence during the proceedings before the Full Bench, which extended over three months from early March to May 2013. Other parties provided written submissions only and did not appear in the proceedings. Witness evidence was presented from employers, apprentices, union officials, academics and policy experts. The Full Bench was also referred to a wide range of reports, research and survey

evidence. Submissions were made in relation to the jurisdiction of the Commission in conducting the Transitional Review and the merits of the variations sought.

6. The Full Bench determined that it had jurisdiction to consider the applications before it as part of the Transitional Review. It also determined that a range of variations to modern awards should be made, consistent with the modern awards and minimum wages objectives in the *Fair Work Act 2009*, and to take into account the significant changes which have occurred in relation to apprenticeships in Australia.
7. In particular, the Full Bench decided that:
 - the minimum award rates of pay for first and second year apprentices should be increased;
 - special provisions should be made in relation to rates of pay and wage protection for adult apprentices;
 - provision should be made for competency based wage progression to be introduced into several modern awards and for consideration to be given to its introduction into other modern awards;
 - adjustments should be made in relation to apprentice conditions of employment including those relating to travel costs, training time, timely payment of training fees, and attendance at training; and
 - The model school-based apprentice schedule should be inserted into several modern awards which do not contain it, and the schedule in all modern awards should be varied to provide for competency based wage progression.
8. The Full Bench considered that these changes were appropriate having regard to the purpose and objective of the Transitional Review, and were necessary to ensure that the apprenticeship system met the needs of business and the Australian economy and was both relevant and attractive to modern day apprentices.
9. In relation to apprentice wages, the Full Bench noted that current wage structures were set when most apprentices were 14, 15 or 16 years of age on commencement. Many are now 17 or older and have completed Year 12 schooling, and are already undertaking part-time or casual work with higher wages than they receive under an apprenticeship. In some trade areas, a significant number of apprentices have completed a vocational qualification prior to commencing an apprenticeship. The Full Bench considered that increased rates may assist to improve the attractiveness of apprenticeships compared to other training or employment options for young people. Only about half of all apprentices complete their apprenticeship and increased wage rates may also assist in improving completion rates. The Full Bench decided that there should be differential rates for first and second year apprentices on the basis of completion of Year 12 schooling. The introduction of these differentials will protect the position in the labour market of early school leavers whilst encouraging Year 12 completion.
10. The main changes to modern awards will include the following:

Apprentice rates of pay

- a. Rates for apprentices will be increased. Presently, a typical wage structure for a four year apprenticeship is 42% - 55% - 75% - 88% with the C10 or equivalent tradesperson classification as the benchmark. The ACTU and the unions sought to increase the first year apprentice rate of pay to 60% of the C10 award rate. The Full Bench decided that the rate for a first year apprentice who has completed Year 12 schooling will be 55% of the C10 award rate (otherwise 50%), being \$398.50 per week or \$10.49 per hour. The rate for a second year apprentice who has completed Year 12 schooling will be 65% (otherwise 60%). This will result in a four year wage structure in many modern awards approximating 55% (or 50%) - 65% (or 60%) - 75% - 88% of the C10 rate.

Adult apprentices

- b. Adult apprentice rates will be introduced into a number of awards which do not currently contain them. Almost half of all new apprentices are now aged 21 years or over. However many awards have not made provision for adult apprentices having regard to their skills, work experience and special needs.
- c. Minimum award rates for adult apprentices will be increased so that the rate of pay for a first year adult apprentice will be 80% of the C10 award rate, while a second year adult apprentice will receive the higher of the national minimum wage or the lowest adult classification rate in the award.
- d. An employee who has worked full-time for an employer for at least six months, or for 12 months as a part-time or casual employee, before commencing an adult apprenticeship with the same employer, will not suffer a reduction in their minimum rate of pay.

Competency based wage progression

- e. There is a high level of consensus that modern awards should provide for competency based wage progression and that its introduction into awards will promote productivity through facilitation of a more skilled workforce. Provisions for competency based wage progression will be introduced into the awards where applications have been made. A model clause should be developed to facilitate the introduction of CBWP into other awards.

Apprentice conditions of employment

- f. Various provisions relating to the conditions of employment of apprentices will be varied or inserted into awards, including provisions for payment by employers of apprentices' excess travel costs for attendance at block release training at a distant location; timely reimbursement by employers in relation to training fees and textbooks; provisions that time spent by apprentices in off-the-job training and assessment is to be regarded as time worked for the purposes of wages, weekly ordinary hours, and leave entitlements; and provisions to ensure that, except in an emergency, apprentices cannot be required to work overtime or shiftwork if doing so would interfere with their attendance at training. Clauses which purport to exclude apprentices from some provisions of the National Employment Standards will be deleted from awards.

School-based apprentices

- g. The model school-based apprentices schedule will be inserted into several awards which do not currently contain it. The schedule will be varied in all modern awards before the Full Bench to allow for competency based progression.
- 11. A number of other proposed variations were before the Full Bench. The Full Bench decided that it is not appropriate to make those variations in the Transitional Review.
 - 12. In particular, the Full Bench did not adopt many of the award variations sought by the unions in relation to apprentice conditions of employment and training requirements. This was not because it did not accept the principles and good practices which the variations were directed at achieving. Indeed the Full Bench noted that it was important to ensure that there was high quality on-the-job training for apprentices and that they are given appropriate and relevant work in their employment. However, many of the proposed changes would duplicate obligations already provided in the standard training contract and/or under State and Territory arrangements. To also provide for such matters in awards would risk adding unnecessary complexity in circumstances where there was inadequate evidence that current arrangements were not working satisfactorily. The Full Bench decided that, particularly in the absence of

broad agreement between the major stakeholders in the apprenticeship system about the need for greater uniformity in relation to such matters, it would not make the award variations.

13. The provisions proposed by the unions with respect to mentoring were considered by the Full Bench to provide a model for good practice in supporting apprentices. However it decided that mentoring might best be promoted through the development of guidelines and encouraging employers and group training organisations to adopt such practices, rather than by award prescription.
14. In relation to the application by the Ai Group to vary the National Training Wage Schedule, the Full Bench decided that the variations were not needed having regard to recent court decisions.
15. The Full Bench was mindful in determining the various matters of the impact of the changes on business and the economy, and the possible adverse impact that any increases might have on the willingness of employers to take on apprentices. It accepted that apprentice wages should be regarded as “training wages” and that it is appropriate for the rates to be discounted to take account of the fact that, during the course of an apprenticeship, apprentices will be engaged in both training and productive work.
16. The Full Bench did not consider that the level of wage increases sought by the ACTU and the unions was justified. However it was decided that some increases were appropriate. It was considered that the costs of the wage increases and other changes determined could and should be accommodated in the interests of providing a better functioning apprenticeship system and a more relevant set of award minimum wages and conditions for apprentices. In this regard, the Full Bench said that the overall cost impact must be considered in light of the benefits for industry and the economy which might be achieved through a better skilled workforce and overcoming or avoiding skills shortages.
17. The Full Bench accepted the submissions of several employer groups that any increases in apprentice wages should be phased in over time in order to mitigate their cost impact. The increases to apprentice rates of pay will be phased in and take effect as follows:
 - a. If the relevant increase is equal to or less than a 5% increase in the relevant percentage of the award reference rate (whether the equivalent of the C10 tradesperson rate or otherwise), then the full increase shall apply from 1 January 2014;
 - b. If the relevant increase is more than a 5% increase in the relevant percentage of the award reference rate, then the percentage or rate shall be increased by 5% from 1 January 2014, with the remainder of the increase to take effect from 1 January 2015.
18. It was also decided that the new rates of pay shall apply only to apprentices who commence their apprenticeship on or after 1 January 2014.
19. The phasing arrangements shall apply to increases in apprentice rates of pay, and to increases in first year adult apprentice rates in awards that already contain adult rates. In relation to the introduction of adult apprentice rates into awards, the Full Bench decided that it is impractical to phase them in, noting that these rates only apply to apprentices commencing on or after 1 January 2014.
20. The variations dealing with apprentice conditions of employment will apply to all apprentices (regardless of commencement date) from 1 January 2014.

The parties are to confer about the variations necessary to give effect to the decision and provide draft variations to the Full Bench by 30 September 2013. The Full Bench will make the determinations varying the modern awards.

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- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.*

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