

Wage rates in State awards that require attention

In preliminary discussions regarding this year's State Wage Case, the Western Australian Industrial Relations Commission (WAIRC) indicated it is interested in hearing about any rates of pay in awards that are below the award or statutory minimum, and other associated award wage issues.

The Minister for Industrial Relations (the Minister) has identified several issues that may warrant further consideration by the WAIRC, either as part of the State Wage Order, or as a separate matter to be dealt with after the State Wage Case has concluded. These issues are:

- Adult wages in State awards that are below the Minimum Adult Award Wage (and by extension, below the statutory minimum rate of pay for employees 21 years or older derived from s 12 of the *Minimum Conditions of Employment Act 1993* (MCE Act));
- Junior rates of pay in State awards that are below the statutory minimum for employees aged under 21 years determined pursuant to s 13 of the MCE Act; and
- One particular award where wages and allowances have not been varied since 2005.

The Minister has identified the above issues for the benefit of the WAIRC and other stakeholders, as the rates of pay are linked to the outcome of the State Wage Order. The Minister would be pleased to engage with relevant stakeholders to identify possible remedies to these issues if the WAIRC deems it appropriate.



Adult wages in State awards below the legal minimum

The following section identifies adult wage rates in State awards that are currently below the Minimum Adult Award Wage.

Aboriginal Communities and Organisations Western Australia Interim Award 2011

Schedule B (Salaries) of the Aboriginal Communities and Organisations Western Australia Interim Award 2011 contains minimum salary rates for employees. Rates of pay for a Level 1 employee are as follows:

Year of Service	Rate Per Year (\$)
Level 1	
First year	38450
Second year	38450
Third year	38450
Fourth year	38450
Fifth year	39268

Most of the Level 1 salaries are currently below the Minimum Adult Award Wage, as demonstrated in the table below:

Year of Service	Annual salary	Equivalent rate per week	Min Wage	Difference
Level 1				
First year	\$38,450	\$737.10	\$746.90	-\$9.80
Second year	\$38,450	\$737.10	\$746.90	-\$9.80
Third year	\$38,450	\$737.10	\$746.90	-\$9.80
Fourth year	\$38,450	\$737.10	\$746.90	-\$9.80
Fifth year	\$39,268	\$752.70	\$746.90	\$5.80

It appears that this award has contained rates of pay below the Minimum Adult Award Wage since it was first created in 2011.

Municipal Employees (Western Australia) Interim Award 2011

Clause 16 of the Municipal Employees (Western Australia) Interim Award 2011 outlines minimum wages for employees as follows:

16.1	Classification level	Relativity	Total maximum hourly rate	Total minimum weekly rate
		%	\$	\$
	level 1 (up to 38 hours)	78.5	19.16	728.20
	Above 38 hours	82.5	19.64	746.20
	Level 2	87.5	20.29	771.10
	Level 3	92.5	20.88	793.60
	Level 4	96.0	21.30	809.50
	Level 4A	100.0	21.83	829.70
	Level 5	102.5	22.13	841.10
	Level 6	110.0	23.11	878.00

16.2 State minimum wage

16.2.1 The state minimum wage

No employee shall be paid less than the state minimum wage.

16.2.2 Amount of state adult minimum wage

- (1) The state minimum wage for full-time adult employees not covered by 16.2.4 [special categories clause], is \$746.90 per week.
- (2) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in 16.2.2(1).
- (3) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in 16.2.2(1) according to the number of hours worked.

16.2.3 How the state minimum wage applies to juniors

- (1) The wage rates provided for juniors by this award continue to apply unless the amount determined under 16.2.3(2) is greater.
- (2) The state minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in 16.2.2.

...

16.3 Junior employees

Junior employees: (Wage per week is expressed as a percentage of the total minimum rate of pay for either level 1 or level 2).

Age	%
Under 16 years of age	55
At 16 years of age	65
At 17 years of age	75
At 18 years of age	85
At 19 years of age	Adult rate

As can be seen above, the rates of pay for Level 1 employees under Clause 16.1 of the award are below the Minimum Adult Award Wage (state minimum wage), which is currently \$746.90 per week. Although Clause 16.2 goes on to state that no employee shall be paid less than the state minimum wage, it raises the question as to why Clause 16.1 contains rates of pay that are below the minimum to begin with.

This anomaly also impacts the calculation of junior rates of pay under the award, and necessitates a complex formula for junior wages that is not easy to follow.

It appears that this award has contained rates of pay below the Minimum Adult Award Wage since it was first created in 2011.

Commercial Travellers and Sales Representatives Award 1978

Clause 7 (Wages) of the Commercial Travellers and Sales Representatives Award 1978 outlines the minimum wages for employees as follows:

- (1) The following shall be the minimum weekly rates of wages payable to employees covered by this award with effect on and from the commencement of the first pay period on or after 1 July 2019.

(a)	Base Rate \$	Arbitrated Safety Net Adjustments \$	Award Rate \$
(i) Commercial Traveller/Sales Representative	417.20	433.70	850.90
(ii) Country Traveller/Sales Representative	451.60	437.60	889.20
...			
(b) During the first three months in the industry in which the employer is engaged, an employee classified in (i) or (ii) above, shall be paid 85% of the appropriate rate of pay rounded to the nearest ten cents.			
(c) (i) Probationary Commercial Traveller/Sales Representative			723.30
(ii) Probationary Country Traveller/ Sales Representative			755.80

The above "Probationary" rates are calculated by taking 85% of the appropriate rate in paragraph (a) above and rounding to the nearest ten cents.

The rate of pay for a Probationary Commercial Traveller / Sales Representative under subclause (1)(c)(i) of Clause 7 of the award (\$723.30 per week) is currently below the Minimum Adult Award Wage of \$746.90 per week, if it is based on a 38 hour week. It is noted the award does not prescribe any ordinary hours of duty, which makes it somewhat difficult to determine an employee's hourly rate of pay.

Building Trades (Construction) Award 1987

Clause 45 (Prohibition of Junior Employees) contains wage rates for some employees that are less than the Minimum Adult Award Wage. Clause 45(5) provides that:

An employee commencing in the industry after his 20th birthday shall be classed as an improver and shall be paid as provided in subclause (7) hereof, provided that after 2 years service an improver may request a trade test and if he passes shall receive full adult rates.

Clause 45(7) establishes the wage rates for 'improvers':

The ordinary rates of pay to be paid to improvers shall be in accordance with the percentages set out below applied to the sum of the tradesperson's weekly rate set out in Clause 8(2)(a) - Rates of Pay and the appropriate special allowance set out in Clause 8(5).

	%
First 6 months' service	60
Second 6 months' service	65
Second year of service	75
Third year of service	88
Thereafter	100

The terminology of 'improver' is not used elsewhere in the award, and Clause 45 defines an improver as someone who is age 20 or over when they commence in the industry.

The percentages of the tradesperson rates listed in this subclause provide wage rates less than the Minimum Adult Award Wage. Under the provisions of Clause 45, an improver who was 21 years or older would be entitled to 60% of the tradesperson's rate, plus 60% of the special allowance, in their first six months of service.

Using the Roof Tile Fixer tradesperson's rate as an example, 60% of the tradesperson's rate (\$851.00 per week) is \$510.60 per week, and 60% of the Special Allowance (\$7.70 per week) is \$4.62 per week. Totalled together, this equates to a weekly wage of \$515.22 per week. Even if an improver is entitled to a relevant percentage of the industry allowance and the tool allowance, the total weekly rate of pay would be well below the Minimum Adult Award Wage, which is currently \$746.90 per week.

It is noted that this award is currently subject to a s 40B award updating process pursuant to Application 6 of 2020. The issue outlined above may be resolved as part of the award updating process.

Junior wages in State awards below the legal minimum

The following section outlines junior rates of pay in State awards that are below the statutory minimum for employees aged under 21 years, as provided for under s 13 of the MCE Act.

Furniture Trades Industry Award

Clause 8 (Wages) of the Furniture Trades Industry Award outlines how junior rates of pay are calculated:

(5) Junior Employees

(a) The minimum rate of pay per week for a junior employee shall be the percentages shown in paragraph (b) herein, of the total rate of pay for a Furniture Making Employee Group 2, but in any event shall not be less than that provided in the Minimum Conditions of Employment Act.

(b)	Percentages	%
	Under 16 years	38
	Between 16 and 17 years	46
	Between 17 and 18 years	53
	Between 18 and 19 years	73
	Between 19 and 20 years	80
	Between 20 and 21 years	85

* The total rate of pay for a Furniture Making Employee group 2 is currently **\$765.00** per week.

Applying the above formula to calculate junior rates of pay results in the following:

Age	Junior %	Award Rate	Min Wage	Difference
Under 16 years of age	38	\$290.70	\$298.80	-\$8.10
16 years of age	46	\$351.90	\$373.50	-\$21.60
17 years of age	53	\$405.50	\$448.20	-\$42.70
18 years of age	73	\$558.50	\$522.90	\$35.60
19 years of age	80	\$612.00	\$597.60	\$14.40
20 years of age	85	\$650.30	\$672.30	-\$22.00

As can be seen, the junior rates formula in the award establishes rates of pay that are below the statutory minimum for employees aged under 16 years, 16 years, 17 years and 20 years.

While the award does state that wages shall not be less than that provided in the MCE Act, it would be desirable for the award to contain a formula for calculating junior rates that does not result in wages being below the MCE Act in the first place.

Gate, Fence and Frames Manufacturing Award

The First Schedule of the Gate, Fence and Frames Manufacturing Award outlines how junior wages are calculated:

FIRST SCHEDULE - WAGES

(4) Junior Employees:

(a) (Wages per week expressed as a percentage of the "Process Employees" rate).
%

Under 16 years of age	35
16 years of age	45
17 years of age	55
18 years of age	65
19 years of age	78.5
20 years of age	93

(b) For the purpose of subclause (a) of this clause "Process Employees" rate means the total wage for the classification "Process Employee" as set out in subclause (1) of this Schedule.

* The total wage for a Process Employee is currently **\$749.60** per week.

Applying the above formula to calculate junior rates of pay results in the following:

Age	Junior %	Award Rate	Min Wage	Difference
Under 16 years of age	35	\$262.40	\$298.80	-\$36.40
16 years of age	45	\$337.30	\$373.50	-\$36.20
17 years of age	55	\$412.30	\$448.20	-\$35.90
18 years of age	65	\$487.20	\$522.90	-\$35.70
19 years of age	78.5	\$588.40	\$597.60	-\$9.20
20 years of age	93	\$697.10	\$672.30	\$24.80

As can be seen, the junior rates formula in the award establishes rates of pay that are below the statutory minimum for all junior employees except for those who are 20 years of age.

Farm Employees' Award

Clause 14 (Wages) of the Farm Employees' Award outlines how junior rates are calculated:

(2) Junior Employees - other than Apprentices:

Percentage of the rate for a
Farm Hand with less than twelve
months experience

15 years of age	45%
16 years of age	50%
17 years of age	55%
18 years of age	65%
19 years of age	75%
20 years of age	90%

* The rate of pay for a Farm Hand with less than twelve months experience is **\$746.90** per week

Applying the above formula to calculate junior rates of pay results in the following:

Age	Junior %	Award Rate	Min Wage	Difference
Under 16 years of age	45	\$336.10	\$298.80	\$37.30
16 years of age	50	\$373.50	\$373.50	\$0.00
17 years of age	55	\$410.80	\$448.20	-\$37.40
18 years of age	65	\$485.50	\$522.90	-\$37.40
19 years of age	75	\$560.20	\$597.60	-\$37.40
20 years of age	90	\$672.20	\$672.30	-\$0.10

As can be seen, the junior rates formula in the award establishes rates of pay that are below the statutory minimum for junior employees who are aged 17 years, 18 years, 19 years and 20 years.

The minor (10 cent) difference for employees that are 20 years of age is due to a different rounding methodology being used in the MCE Act from the one used for State awards. This issue is discussed in further detail below in relation to the Plaster, Plasterglass and Cement Workers' Award.

Plaster, Plasterglass and Cement Workers' Award No. A29 of 1989

Clause 13 (Wages) of the Plaster, Plasterglass and Cement Workers' Award outlines the minimum weekly rates of pay for junior employees:

(2) Junior Employees Under 21 years of age	\$672.20
Under 20 years of age	\$597.50
Under 19 years of age	\$522.80

The above rates of pay for junior employees are all 10 cents per week below the statutory minimum, as shown in the table below:

Age	Award rate	Min Wage	Difference
Junior Employees Under 21 years of age	\$672.20	\$672.30	-\$0.10
Under 20 years of age	\$597.50	\$597.60	-\$0.10
Under 19 years of age	\$522.80	\$522.90	-\$0.10

The reason the above rates of pay are below the statutory minimum by 10 cents per week is due to rounding. Under the rounding conventions applied to State awards, weekly rates of pay are rounded to the nearest 10 cents. However, under s 13 of the MCE Act, minimum weekly rates of pay for employees aged under 21 are calculated as a prescribed percentage of the adult minimum wage, **rounded up to the nearest 10 cents.**

13. Minimum weekly rate of pay for employees aged under 21

The minimum weekly rate of pay applicable at a particular time to an employee —

- (a) who is of the age mentioned in the first column in the Table to this section; and
- (b) who is not an apprentice,

is the percentage, set out opposite that age in the second column in the Table, of the rate referred to in section 12 in effect at that time, rounded up to the nearest 10 cents.

Table	
Age	Percentage of 21 year old rate
20 years	90%
19 years	80%
18 years	70%
17 years	60%
16 years	50%
Under 16 years	40%

In several awards, this anomaly in rounding methodologies can result in rates of pay for junior employees being slightly below the statutory minimum.

Radio and Television Employees' Award

Clause 29 (Wages) of the Radio and Television Employee's Award outlines how junior rates of pay are calculated:

(4) Junior Employees -

(Wage per week expressed as a percentage of the "Assembler" rate as shown in subclause (1) of this clause).

	%
Under 16 years of age	35
Between 16 and 17 years of age	45
Between 17 and 18 years of age	55
Between 18 and 19 years of age	65
Between 19 and 20 years of age	75
Between 20 and 21 years of age	90

* The rate of pay for an Assembler is currently **\$763.40** per week.

Applying the above formula to calculate junior rates of pay results in the following:

Age	Junior %	Award Rate	Min Wage	Difference
Under 16 years of age	35	\$267.20	\$298.80	-\$31.60
16 years of age	45	\$343.50	\$373.50	-\$30.00
17 years of age	55	\$419.90	\$448.20	-\$28.30
18 years of age	65	\$496.20	\$522.90	-\$26.70
19 years of age	75	\$572.60	\$597.60	-\$25.00
20 years of age	90	\$687.10	\$672.30	\$14.80

As can be seen, the junior rates formula in the award establishes rates of pay that are below the statutory minimum for all junior employees except for those who are 20 years of age.

State award wages that have not been adjusted

The following section identifies a State award containing wages that have not been adjusted for many years.

Shearing Contractors' Award of Western Australia 2003

Clause 4.2 of the Shearing Contractors' Award of Western Australia 2003 (the State Shearing Award) outlines the pay and allowances for shearers working in the State industrial relations system. The pay and allowances in Clause 4.2 have not been varied since 2005, and are now significantly out-of-date.

Clause 4.3 of the State Shearing Award creates a linkage between the pay and allowances in that award and the pay and allowances in the federal Pastoral Industry Award 1998 as follows:

4.3 - EFFECT OF PASTORAL INDUSTRY AWARD ON RATES OF PAY

The rates of pay, allowances and deductions provided in Clause 4.2 of this Award shall be adjusted from time to time in accordance with, and from the same operate date, as movements of the corresponding rates of pay, allowances and deductions in the Pastoral Industry Award 1998, an award made pursuant to the provisions of the Commonwealth Workplace Relations Act 1996.

The Pastoral Industry Award 1998 was a pre-reform award in the federal jurisdiction that has since been repealed. Shearers in the federal jurisdiction are now covered by a national modern award known as the Pastoral Award 2010.

As the Pastoral Industry Award 1998 no longer exists, there is currently no mechanism for adjusting pay and allowances in the State Shearing Award. Many of the pay rates in the State Shearing Award are piece rates calculated using complex formulas specific to the shearing industry.

It may be desirable to link the pay and allowances in the State Shearing Award with those in the Pastoral Award 2010 and provide for the automatic adjustment of such rates during each year's State Wage Case. In particular, the Pastoral Award 2010 contains the same piece rate formulas that were previously contained in the Pastoral Industry Award 1998 and which are still used in the State Shearing Award.