

Digital Hearing Book

C2019/5259 – Review of C14 / C13 rates in certain awards

Comprising material from September 2023 onwards



FairWork
Commission

Before a Full Bench

Hearing dates: 18 and 19 December 2023

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STATEMENT

Fair Work Act 2009

s 157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of certain C14 rates in modern awards

(C2019/5259)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON

SYDNEY, 22 SEPTEMBER 2023

Review of the classification rates at the C14 level in modern awards – introductory rates – Annual Wage Review decision 2022-23 – alignment of the National Minimum Wage with the current C13 rate – scope of review broadened to encompass all classification rates below C13 level – provisional view.

Introduction

[1] The Commission has initiated a review of certain modern awards with classification rates at the C14 level which are either not transitional or where the transition period is not specified (the *review*). This statement concerns the finalisation of several awards currently subject to the review. For the reasons which follow, we also propose to broaden the scope of the review.

[2] The review arose following a statement issued on 28 August 2019¹ (the *August 2019 statement*). The *August 2019 Statement* referred to an extract from the *Annual Wage Review Decision 2018-19*² in which the Expert Panel commented that awards prescribing a rate at the C14 level, then equivalent to the National Minimum Wage (NMW), that is not transitional should be the subject of further examination. The Expert Panel identified 45 modern awards with a rate of pay at the C14 level. A list of the awards identified is set out at **Attachment A**. There are now only 43 awards as the *Cement and Lime Award 2010* has since been amalgamated with the *Quarrying Award 2010* and the *Broadcasting, Recorded Entertainment and Cinemas Award 2020* has been varied to clarify that the C14 rate only appears in the award for the purpose of calculating adult cadet rates.³

[3] The *August 2019 statement* divided the awards identified into the following five categories based on the transitional nature of the C14 classification:

- (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.

[4] The August 2019 statement proposed referring the awards in categories (iv) and (v) to a Full Bench for review.⁴ Following consultation with the parties, five of the awards initially identified as falling within these categories were excluded from further review on the basis that variations were not considered necessary.⁵ Seven awards remained the subject of the review. The progress of the review is comprehensively set out in earlier statements⁶ and a Report to the Full Bench dated 5 September 2022.⁷

[5] On 5 April 2023, Deputy President Hampton provided a Further Report to the Full Bench⁸ setting out the outstanding modern awards and issues, a summary of the parties' positions and suggested matters to be considered by the Full Bench. A directions hearing was held on 26 April 2023 to make arrangements for finalising the review.

The 2023 Annual Wage Review decision and provisional view

[6] On 2 June 2023, the *Annual Wage Review Decision 2022-2023 (AWR 2023 decision)* was published. In the *AWR 2023 decision*, the Expert Panel decided to end the alignment between the NMW and the C14 classification rate which had existed since 1997. The Expert Panel stated that the C14 rate 'was only ever intended to constitute a transitional entry rate for new employees' and as such 'does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.'⁹

[7] The Expert Panel decided to instead align the NMW with the current C13 classification rate in modern awards. The Expert Panel noted that this decision was an interim step, and that a wider review of the NMW was necessary:

[173] A wider review of the NMW in light of the budget standards research, the finalisation of the C14 review (which we anticipate will be completed later this year and will result in all C14 award classifications becoming genuinely transitional in nature) and other relevant matters (including the research being conducted as to gender segregation and undervaluation) is required. That wider review cannot be undertaken within the timeframe of the current Review. It is necessary therefore to identify an interim step that can be taken in this Review which gives appropriate weight to the needs of the low paid (s 284(1)(c)) but also balances this with the other mandatory considerations in the minimum wages objective. The step we will take is to align the NMW with the current C13 rate, which is the lowest award rate which, apart from exceptions in a small number of awards, may apply to employees in respect of ongoing employment. ...

[8] The Expert Panel's conclusions in the *AWR 2023 decision* have necessarily required a refocussing of the objective of this review. Consistency with the propositions stated in that 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). Accordingly, our *provisional* view is that the following principles should guide the completion of this review:

- (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.

- (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
- (3) The transition period for the purpose of (2) should not exceed six months.

Extended scope of the review

[9] The approach identified above will require an expansion in the scope of the review in some respects.

[10] *First*, it will be necessary to consider more closely the awards in **Attachment A** that were previously excluded from the review on the basis they contained only transitional C14 rates. The five awards initially identified as belonging to categories (iv) or (v) but subsequently excluded from the review following consultation with the parties will also form part of this further consideration. This further consideration will be undertaken to ensure all award classifications at the C14 level are genuinely transitional in nature consistent with the Expert Panel's statement in the *AWR 2023 decision*.¹⁰

[11] *Second*, it is also necessary to undertake an assessment in the review of all classification rates in modern awards that fall below the C13 level but are higher than the C14 rate. A list of modern awards which include these rates is provided at **Attachment B**.

[12] *Third*, we also propose to include modern enterprise awards and State reference public sector modern awards in the review. A list of modern enterprise awards and State reference public sector awards with minimum rates below the C13 level (including those at C14) is set out in **Attachment C**.

[13] A table setting out a list of all provisions in modern awards which prescribe rates below the C13 level (inclusive of those at the C14 level) is set out at **Attachment D**. The table includes information as to the relevant classification, the rate it attracts and *provisional* analysis as to whether the rate is transitional and to which of the five categories set out in paragraph [3] it belongs. The table also includes information as to whether the provisions provide for competency-based progression.

Awards currently the subject of the review

[14] Before issuing directions in respect of our *provisional* view, it is prudent to consider the seven awards that have been the focus of the review thus far. A summary of the parties' proposals in respect of the C14 rates in these awards is set out below.

Variation proposals with consensus

[15] For the following four awards, parties have reached a consensus position.

Dry Cleaning and Laundry Industry Award 2020 (Dry Cleaning Award)

[16] The Drycleaning Institute of Australia, Australian Business Industrial and NSW Business Chamber (ABI and NSWBC), Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division, Australian Workers’ Union (AWU) and United Workers’ Union (UWU) reached a common view on proposed variations to the Dry Cleaning Award. Broadly, the proposal involves varying the C14 classification in the Dry Cleaning Award (Dry cleaning employee Level 1) to limit its application to new entrants in the dry cleaning industry and to a period of up to 6 months. However, the consensus position does not address the classification of Laundry employee Level 1, which is above the C14 rate but below the C13 rate.

Funeral Industry Award 2020 (Funeral Award)

[17] The UWU, AWU, Australian Funeral Directors Association and ABI and NSWBC reached a common view on proposed variations to the Funeral Award. Broadly, the proposal involves varying the C14 classification in the Funeral Award to limit its application to new entrants in the funeral industry and to a period of up to 6 months.

Concrete Products Award 2020 (Concrete Products Award) and Sugar Industry Award 2020 (Sugar Award)

[18] The AWU reached what might be described as a conditional consensus with Ai Group and ABI and NSWBC on proposed variations to the Concrete Products Award and the Sugar Award.

[19] Broadly, the proposals for the Concrete Products Award and Sugar Award would create a ‘C13.5’ classification level and move the existing C14 classification descriptions into the new ‘C13.5’ level. A new C14 classification description is proposed for employees undertaking initial training duties.

[20] A directions hearing was held on 26 April 2023 to make arrangements for the finalisation of the proposed variations to the above four awards. The Commission proposed to issue a Statement expressing a provisional view that the agreed variations should be made and to invite any further comments on the variations. If there were no further objections, the awards would be varied. However, in light of the Expert Panel’s comments in the *AWR 2023 decision* about C14 rates and our *provisional* view, the parties’ proposals will need to be revisited.

Variation proposals without consensus

[21] For the following three awards, parties have advanced the following proposals without consensus.

Rail Industry Award 2020 (Rail Award)

[22] The Rail, Tram and Bus Union (RTBU) proposes changes to the Rail Award which are supported by the AMWU and AWU. Ai Group expresses concerns regarding the RTBU’s proposals. Broadly, the RTBU proposes varying the Rail Award to limit the application of the C14 classification to a period of one month.

Meat Industry Award 2020 (Meat Award)

[23] The Australian Meat Industry Employees Union (AMIEU) proposes changes to the Meat Award which are supported by AWU. The Australian Meat Industry Council (AMIC) objects to the unions' proposal and proposes an alternative variation to the Meat Award. Ai Group and ABI and NSWBC express concerns about the AMIEU's proposal.

[24] Broadly, the AMIEU proposes deleting the C14 classification from the Meat Award or, in the alternative, limiting its application to a period of one week.

[25] The AMIC proposes varying the C14 classification to apply to new entrants, defined as workers with less than 3 months continuous experience in the meat industry in the preceding 5 years, and to entitle workers to progress classifications after 6 months in the role.

Travelling Shows Award 2020 (Travelling Shows Award)

[26] The Showmen's Guild of Australia (SGA) proposes varying the Travelling Shows Award to limit the application of the C14 classification to new entrants to the industry and to a period of 3 months. This proposal was very recently made and interested parties have not yet been provided an opportunity to comment on it.

Next steps

[27] We issue the following directions in respect of this matter:

1. Interested parties are invited to file:
 - (a) submissions in respect of the *provisional* view stated in paragraph [8] above;
 - (b) submissions as to the accuracy of the table at **Attachment D**;
 - (c) draft determinations or proposals for any specific award variations that might be necessary; and
 - (d) evidence upon which they intend to rely;by no later than **Friday, 3 November 2023**.
2. Parties are to file evidence and submissions in reply to any material filed in accordance with direction 1 by no later than **Friday, 1 December 2023**.
3. A hearing will be listed for **Monday, 18 – Tuesday, 19 December 2023**.

[28] If parties wish for the Commission to conduct a conference in respect of any particular award prior to the hearing, that will be arranged on request to the chambers of Deputy President Hampton.

[29] As the awards that now fall within the scope of this review include awards in the Care and Community Sector, such as the *Nurses Award 2020*, the Full Bench (with the same composition) will be constituted as an Expert Panel for the Care and Community Sector for the purpose of any variation that might be required for awards falling in this category.



PRESIDENT

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Attachment A – Industry and occupational modern awards with classification rates at C14 level

Awards to be further considered (36 awards)

- Air Pilots Award 2020
- *Airline Operations – Ground Staff Award 2020*
- *Alpine Resorts Award 2020*
- *Amusement, Events and Recreation Award 2020*
- *Animal Care and Veterinary Services Award 2020*
- *Aquaculture Industry Award 2020*
- *Architects Award 2020*
- *Asphalt Industry Award 2020*
- *Cement, Lime and Quarrying Award 2020*
- *Cemetery Industry Award 2020*
- *Corrections and Detention (Private Sector) Award 2020*
- *Fitness Industry Award 2020*
- *Food, Beverage and Tobacco Manufacturing Award 2020*
- *Gardening and Landscaping Services Award 2020*
- *Graphic Arts, Printing and Publishing Award 2020*
- *Horse and Greyhound Training Award 2020*
- *Horticulture Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Joinery and Building Trades Award 2020*
- *Live Performance Award 2020*
- *Manufacturing and Associated Industries and Occupations Award 2020*
- *Miscellaneous Award 2020*
- *Nursery Award 2020*
- *Oil Refining and Manufacturing Award 2020*
- *Pastoral Award 2020*
- *Port Authorities Award 2020*
- *Racing Clubs Events Award 2020*
- *Racing Industry Ground Maintenance Award 2020*
- *Registered and Licensed Clubs Award 2020*
- *Restaurant Industry Award 2020*
- *Seafood Processing Award 2020*
- *Stevedoring Industry Award 2020*
- *Supported Employment Services Award 2020*
- *Textile, Clothing, Footwear and Associated Industries Award 2020*
- *Timber Industry Award 2020*
- *Vehicle Repair, Services and Retail Award 2020*

Variation proposals with consensus (4 awards)

- *Concrete Products Award 2020*
- *Dry Cleaning and Laundry Industry Award 2020*
- *Funeral Industry Award 2020*
- *Sugar Industry Award 2020*

Variation proposal without consensus (3 awards)

- *Meat Industry Award 2020*
- *Rail Industry Award 2020*

- *Travelling Shows Award 2020*

Attachment B – Industry and occupational modern awards with classification rates below C13 (excluding awards in Attachment A)

- *Australian Government Industry Award 2016*
- *Business Equipment Award 2020*
- *Children's Services Award 2010*
- *Cotton Ginning Award 2020*
- *Electrical, Electronic and Communications Contracting Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Maritime Offshore Oil and Gas Award 2020*
- *Nurses Award 2020*
- *Pest Control Industry Award 2020*
- *Premixed Concrete Award 2020*
- *Professional Diving Industry (Industrial) Award 2020*
- *Seagoing Industry Award 2020*
- *Wine Industry Award 2020*
- *Wool Storage, Sampling and Testing Award 2020*

Attachment C – Modern enterprise awards and State reference public sector modern awards containing rates below C13

- *Australia Post Enterprise Award 2015*
- *Australian Capital Territory Public Sector Enterprise Award 2016*
- *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016*
- *Christmas Island Administration Enterprise Award 2016*
- *Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015*
- *Northern Territory News Award 2015*
- *Northern Territory Public Sector Enterprise Award 2016*
- *Note Printing Australia Award 2016*
- *Nurses and Midwives (Victoria) State Reference Public Sector Award 2015*
- *Printing Industry – Herald & Weekly Times – Production Award 2015*
- *Reserve Bank of Australia Award 2016*
- *Victorian Local Government (Early Childhood Education Employees) Award 2016*
- *Victorian State Government Agencies Award 2015*

Attachment D – Minimum rates below the C13 level in modern awards

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Air Pilots Award 2020</i>	MA000046	C.9.1	Between 0–1000 flying hours experience	\$859.30 (at C14)	Category (iii) – based on flying hours experience in the industry (cl C.9.1).		Between 1001–2000 flying hours experience = \$886.00
<i>Air Pilots Award 2020</i>	MA000046	A.1.1	First Officers Second Pilots: Single engine UTBNI 1360 kg	\$859.38 (at C14) (\$44,688 per annum)	Category (v) – see clause B.6.	Current rate is marginally above C14 but considered to be on this rate as part of the C14 Review.	Captain: Single engine 1360 kg = \$995.48 (\$51,765 per annum)
<i>Air Pilots Award 2020</i>	MA000046	A.1.1	First Officers Second Pilots: Single engine 1360 kg–3359 kg	\$859.38 (at C14) (\$44,688 per annum)	Category (v) – see clause B.6.	Current rate is marginally above C14 but considered to be on this rate as part of the C14 Review.	Captain: Single engine 1360 kg–3359kg = \$1037.80 (\$53,965 per annum)
<i>Airline Operations – Ground Staff Award 2020</i>	MA000048	18.3	Maintenance and engineering stream: Aircraft Worker 1	\$859.30 (at C14)	Category (ii) – undertaking up to 38 hours of induction training so as to enable them to work at Level 2. A Level 2 is an employee who has completed up to 3 months structured training (cl A.3).		Aircraft Worker 2 = \$882.80 [^]
<i>Alpine Resorts Award 2020</i>	MA000092	18.1	Alpine resort workers: Training	\$859.56 (at C14) (\$22.62 per hour)	Category (iii) – maximum period of time at the Training Level is 7 weeks (cl A.1).	Current rate is marginally above C14 but considered to be on this rate as part of the C14 Review.	Resort Worker Level 1 = \$882.74 (\$23.23 per hour) [^]
<i>Amusement, Events and Recreation Award 2020</i>	MA000080	16.1	Introductory level employee	\$859.30 (at C14)	Category (ii) – transition occurs after 3 months (cl A.1).		Grade 1 = \$882.80 [^]

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Animal Care and Veterinary Services Award 2020</i>	MA000118	15.2	Practice managers, Veterinary nurses, Receptionists, Animal attendants and Assistants: Introductory level	\$859.30 (at C14)	Category (ii) – transition occurs after a period not exceeding 3 months (however, employee must attain the level of skill required to progress to Level 1) (cl A.2.1)		Level 1 = \$882.80 [^]
<i>Aquaculture Industry Award 2020</i>	MA000114	16.1	Aquaculture Attendant Level 1	\$859.30 (at C14)	Category (iii) – transition occurs after 4 months and in the case of the Shell Fish Stream, is capable of performing Level 1 tasks without constant supervision (cl. A.1–A.2)		Aquaculture Attendant Level 2 = \$871.20
<i>Aquaculture Industry Award 2020</i>	MA000114	16.1	Aquaculture Attendant Level 2	\$871.20 (between C14 and C13)	Category (v) – see clause A.2–A.3.		Aquaculture Attendant Level 3 = \$948.90
<i>Architects Award 2020</i>	MA000079	13.5(b)	Students of Architecture (21 years of age and over): Less than 3 years of experience	\$859.30 (at C14)	Category (iii)* – transition occurs after 3 years experience (cl 13.5(b)).	Students of Architecture are undertaking a Bachelor degree (see cl 2).	Students of Architecture (21 years of age and over): 3 rd year of experience = \$871.58
<i>Architects Award 2020</i>	MA000079	13.5(b)	Students of Architecture (21 years of age and over): 3 rd year of experience	\$871.58 (between C14 and C13)	Category (v) – see clause 13.5(b).	Rate (\$) is not presented in award but is calculated as 75% of the Level 1—Entry rate.	Level 1—Graduate of Architecture – Entry = \$1162.10
<i>Asphalt Industry Award 2020</i>	MA000054	15.1	Skill Level 1	\$859.30 (at C14)	Category (i) – undertaking up to 38 hours induction training (cl 12.4)	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry and inclement weather allowances exceeds C13.	Skill Level 2 = \$907.00

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Australia Post Enterprise Award 2015</i>	MA000137	23.1	Agency Assistant Grade 1	\$881.94 (between C14 and C13) (\$46,008 per annum)	Category (v)		Agency Assistant Grade 2 = \$891.58 (\$46,511 per annum)
<i>Australia Post Enterprise Award 2015</i>	MA000137	23.1	Trainee Mail Officer Level 1	\$881.94 (between C14 and C13) (\$46,008 per annum)	Category (v) – see clause 23.4.		Mail officer = \$920.55 (\$48,022 per annum)
<i>Australia Post Enterprise Award 2015</i>	MA000137	23.1	Trainee Postal Delivery Officer	\$881.94 (between C14 and C13) (\$46,008 per annum)	Category (v) – see clause 23.4.		Postal Delivery Officer = \$920.55 (\$48,022 per annum)
<i>Australia Post Enterprise Award 2015</i>	MA000137	23.1	Trainee Parcel Post Officer Level 1	\$881.94 (between C14 and C13) (\$46,008 per annum)	Category (v) – see clause 23.4.		Parcel Post Officer = \$944.66 (\$49,280 per annum)
<i>Australian Capital Territory Public Sector Enterprise Award 2016</i>	MA000146	A.1.1	Clerical, Technical and related classifications (36.75 hour week): Allied Health Assistant 1	\$779.00 (less than C14) (\$20.50 per hour)	Category (v)	Classification is less than C14, however, it is not clear if this is a non-adult rate (i.e. training rate)	Allied Health Assistant 2 = \$997.88 (\$26.26 per hour)
<i>Australian Government Industry Award 2016</i>	MA000153	I.17.4	AMSA Level 1: Minimum	\$859.56 (between C14 and C13) (\$22.62 per hour)	Category (v) – pay point progression is via an annual performance review and is not automatic (cl I.17.6).	Amount is inclusive of leave loading (17.5%).	AMSA Level 1: 1st Point = \$882.36 (\$23.22 per hour)
<i>Australian Government Industry Award 2016</i>	MA000153	I.17.4	AMSA Level 1: 1st Point	\$882.36 (between C14 and C13) (\$23.22 per hour)	Category (v) – pay point progression is via an annual performance review and is not automatic (cl I.17.6).	Amount is inclusive of leave loading (17.5%).	AMSA Level 1: 2nd Point = \$877.96 (\$23.89 per hour)

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Australian Government Industry Award 2016</i>	MA000153	J.5	Graduate trainee (Band 1)	\$872.59 (between C14 and C13) (\$45,520 per annum)	Category (iii)* –traineeship not exceeding 12 months (cl J.5).		Remuneration Band 1 = \$929.94 (\$48,512 per annum)
<i>Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016</i>	MA000144	10.1	CP Level 1	\$872.80 (between C14 and C13) (\$45,530 per annum)	Category (v) – Suitability for promotion will be assessed annually on merit with the relevant ANSTO work level descriptors, and subject to work being available at the higher level (cl A.1).		CP Level 2 = \$901.60 (\$47,034 per annum)
<i>Business Equipment Award 2020</i>	MA000021	14.2(a)(i)	Technical stream: Level 1	\$881.80 (between C14 and C13) (\$45,853 per annum)	Category (v) – see clause A.1.1.		Technical stream: Level 2 = \$914.50 (\$47,554 per annum)
<i>Cement, Lime and Quarrying Award 2020</i>	MA000055	16.2	Quarrying industry: Grade 1	\$859.30 (at C14)	Category (iv) – undertaking training to become competent in the Basic Quarry competency required at Grade 2 and above (cl B.1).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Quarrying industry: Grade 2 = \$882.30
<i>Cement, Lime and Quarrying Award 2020</i>	MA000055	16.2	Quarrying industry: Grade 2	\$882.30 (between C14 and C13)	Category (iv) – undertaking training to be assessed as competent in one or more core competencies (cl B.1).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Quarrying industry: Grade 3 = \$939.00

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Cement, Lime and Quarrying Award 2020</i>	MA000055	16.1	Cement and lime industry: Level 1	\$859.30 (at C14)	Category (iv) – undertaking the Basic competency training required at Level 2 and above. Employee will progress upon attaining the Basic competency and is developing the Yard competency and one element of the Production competency (cl A.1).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Cement and lime industry: Level 2 = \$902.20
<i>Cemetery Industry Award</i>	MA000070	14.1	Cemetery Employee Class 1	\$859.30 (at C14)	Category (iii) – less than 6 months service with an employer. At Class 2 and above (other than an Assistant Gravedigger), employee must hold appropriate licence and an accredited short course certificate (cl A.1–A.3).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Cemetery Employee Class 2 = \$914.90
<i>Children's Services Award 2010</i>	MA000120	14.1	Children's services employees: Level 1.1	\$878.00 (between C14 and C13)	Category (iii)* – will progress to the next level after 1 year, or earlier if they are capable of performing work at the next level (cl B.1.1).		Children's services employees: Level 2.1 = \$909.90
<i>Children's Services Award 2010</i>	MA000120	14.1	Support worker: Level 1.1	\$878.00 (between C14 and C13)	Category (iii)* – will progress to the next level after 12 months, or earlier if performing duties of next level (cl B.2.1).		Support worker: Level 2.1 = \$909.90
<i>Christmas Island Administration Enterprise Award 2016</i>	MA000149	10.4	GSO 2	\$871.34 (between C14 and C13) (\$22.93 per hour)	Category (v) – see clause A.3.		GSO 3 = \$911.24 (\$23.98 per hour)

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Christmas Island Administration Enterprise Award 2016</i>	MA000149	10.4	HSE (Level 1)	\$870.58 (between C14 and C13) (\$22.91 per hour)	Category (ii) – less than 3 months of work experience in the industry (cl A.6).		HSE (Level 2) = \$910.86 (\$23.97 per hour)
<i>Concrete Products Award</i>	MA000056	16.2	Level 1	\$859.30 (at C14)	Category (iv) – undertaking employer’s induction program. At Level 2 employees must have satisfactory completed training required at this Level (cl A.1–A.2).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 2 = \$882.70
<i>Concrete Products Award</i>	MA000056	16.2	Level 2	\$882.70 (between C14 and C13)	Category (v) – see clause A.2–A.3.	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 3= \$914.90
<i>Corrections and Detention (Private Sector) Award 2020</i>	MA000110	15.1(b)	Introductory	\$859.30 (at C14)	Category (ii) – up to 3 months other than where employer and employee agree to extend to a further 3 months in order to achieve competency at Level 1 (cl C.1).		Level 1: = \$882.80 [^]
<i>Cotton Ginning Award</i>	MA000024	17.1	CG1	\$867.50 (between C14 and C13)	Category (v) – see clause 13.	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the disabilities allowance exceeds C13.	CG2 = \$910.40

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Dry Cleaning and Laundry Industry Award 2020</i>	MA000096	18.1(a)	Dry cleaning employee Level 1	\$859.30 (at C14)	Category (v) – see Schedule A.		Dry cleaning employee Level 2 = \$882.80 [^]
<i>Dry Cleaning and Laundry Industry Award 2020</i>	MA000096	18.1(b)	Laundry employee Level 1	\$870.70 (between C14 and C13)	Category (iii) – 6-month transition period specified, however, must demonstrate competency at Level 2 to advance (cl B.1).		Laundry employee Level 1 = \$900.50
<i>Electrical, Electronic and Communications Contracting Award</i>	MA000025	16.2	Electrical worker grade 1	\$871.20 (between C14 and C13)	Category (v) – see clause A.2.	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Electrical worker grade 2 = \$900.70
<i>Fitness Industry Award 2020</i>	MA000094	15.1	Level 1	\$859.30 (at C14)	Category (ii) – to be classified at level 2, an employee must complete 456 hours of training at level 1. Employee may also be required to hold a swim and safety teacher or coach qualification or a Gymnastics Australia Coach Accreditation (Schedule A).		Level 2 = \$882.80 [^]
<i>Food, Beverage and Tobacco Manufacturing Award 2020</i>	MA000073	14.1(a)	Level 1	\$859.30 (at C14)	Category (ii) – less than 3 months experience; or for a seasonal employee less than 4 weeks experience or 152 hours for a casual employee (cl A.2.1).		Level 2 = \$882.80 [^]

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Funeral Industry Award 2020</i>	MA000105	15.1	Grade 1	\$859.30 (at C14)	Category (v) – see clause 12.		Grade 2 = \$882.80 [^]
<i>Gardening and Landscaping Services Award 2020</i>	MA000101	15.1	Introductory Level	\$859.30 (at C14)	Category (ii) – undertakes training of not more than 3 months to enable to work at Level 1 (cl A.1).		Level 1 = \$882.80 [^]
<i>Graphic Arts, Printing and Publishing Award 2020</i>	MA000026	17.2	Level 1	\$859.30 (at C14)	Category (i) – An employee at this level is undertaking up to 38 hours of induction training. On completion of required training they will be reclassified to Level 2 (cl A.1).		Level 2 = \$882.80 [^]
<i>Horse and Greyhound Training Award 2020</i>	MA000008	13.1	Stable employee (on commencement with employer)	\$859.30 (at C14)	Category (ii) – First 3 months only. Progress to Stablehand Grade 1 (after three months' continuous employment with the employer) (cl 13.1).		Stablehand Grade 1 (after 3 months' continuous employment with the employer) = \$882.80 [^]
<i>Horticulture Award 2020</i>	MA000028	15.1(a)	Level 1	\$859.30 (at C14)	Category (v) – Employee at Level 1 is undertaking 3-month induction training so as to advance to Level 2 (cl A.1–A.2), but no requirement for transition to Level 2 after 3 months.	Level 1 and Level 2 have distinct duties independent of the training requirement.	Level 2 = \$882.80 [^]
<i>Hospitality Industry (General) Award 2020</i>	MA000009	18.1	Introductory level	\$859.30 (at C14)	Category (ii) – transition occurs after 3 months, however, another 3 months can apply by mutual agreement in order for employee to achieve necessary competency (cl A.1).		Level 1 = \$882.80 [^]

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category ¹	Comment	Next classification up ²
<i>Joinery and Building Trades Award</i>	MA000029	19.1	Level 1	\$859.30 (at C14)	Category (i) – employee at this level will undertake up to 38 hours induction training. Employee must complete a competency assessment to perform Level 2 work (cl A.1.1–A.1.2).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 2 = \$882.80 [^]
<i>Live Performance Award 2020</i>	MA000081	11.1	Production and Support Staff Level 1 (Induction/Training)	\$859.30 (at C14)	Category (iii) – trainee employee who is undertaking 6 weeks of induction if full/part-time, or 228 hours if casual (cl A.1–A.2).		Level 2: Production and Support Staff Level 2 = \$930.70
<i>Manufacturing and Associated Industries and Occupations Award 2020</i>	MA000010	20.1(a)	C14 / V1	\$859.30 (at C14)	Category (i) – C14: up to 38 hours induction training. However, a C13 employee must also have completed up to 3 months’ structured training (cl A.4.3–A.4.4). V1: up to 38 hours induction training. However, a V2 employee must also met the requirements of a Certificate I (cl B.2–B.3).		C13 / V2 = \$882.80 [^]
<i>Marine Tourism and Charter Vessels Award 2020</i>	MA000093	15.2	Crew Level 1	\$860.80 (between C14 and C13)	Category (ii) – transition occurs after 3 months probationary period. Employee must also complete the Introduction Deckhand Course (which may occur within or outside probationary period) (cl 12.1–12.2).		Crew Level 2 = \$942.70

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Maritime Offshore Oil and Gas Award</i>	MA000086	13.1(e)	Self-propelled drilling vessels and thruster assisted vessel: Semi-submersible – Provisional IR— over 18 years	\$861.85 (between C14 and C13) (\$44,816 per annum)	Category (v) – see clause 13.2.	This record reflects the ‘Minimum Salary’ only. The ‘Aggregate Annual Salary’ of this classification is higher than the NMW.	Self-propelled drilling vessels and thruster assisted vessel: Semi-submersible – Integrated rating = \$1104.42 (\$57,430 per annum)
<i>Maritime Offshore Oil and Gas Award</i>	MA000086	13.1(e)	Self-propelled drilling vessels and thruster assisted vessel: Drill ships – Provisional IR— over 18 years	\$861.85 (between C14 and C13) (\$44,816 per annum)	Category (v) – see clause 13.2.	This record reflects the ‘Minimum Salary’ only. The ‘Aggregate Annual Salary’ of this classification is higher than the NMW	Self-propelled drilling vessels and thruster assisted vessel: Semi-submersible – Integrated rating = \$1160.19 (\$60,330 per annum)
<i>Maritime Offshore Oil and Gas Award</i>	MA000086	13.1(f)	Seismic survey vessels: Provisional IR— over 18 years	\$861.85 (between C14 and C13) (\$44,816 per annum)	Category (v) – see clause 13.2.	This record reflects the ‘Minimum Salary’ only. The ‘Aggregate Annual Salary’ of this classification is higher than the NMW.	Seismic survey vessels: Integrated ratings = \$1237.23 (\$64,336 per annum)
<i>Meat Industry Award 2020</i>	MA000059	16.1	MI 1	\$859.30 (at C14)	Category (iv) – undergoing on-the-job training for an initial period of at least 3 months (cl A.3.1).		MI 2 = \$888.10
<i>Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015</i>	MA000130	20.2(a)	Davies Brothers and Adelaide City Site: Not otherwise specified	\$871.00 (between C14 and C13)	Category (v)		Other publishing duties not otherwise specified = \$895.10

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Miscellaneous Award 2020</i>	MA000104	15.1	Level 1	\$859.30 (at C14)	Category (ii) – employed for a period of less than 3 months (cl 12.1)		Level 2 = \$914.90
<i>Northern Territory News Award 2015</i>	MA000129	17.1(a)	Level 1	\$859.30 (at C14)	Category (i) – undertaking between 4 and 38 hours introductory training during the first 4 weeks of employment (cl A.1.1).		Group level 2 = \$882.80
<i>Northern Territory Public Sector Enterprise Award 2016</i>	MA000151	10.4(a)	Nurses and Midwives: Pupil Nurse	\$874.70 (between C14 and C13) (\$45,630 per annum)	Category (v) – see clause F.6.		Nurse 1 (Enrolled Nurse) – Year 1 = \$980.65 (\$51,157 per annum)
<i>Note Printing Australia Award 2016</i>	MA000156	20.1	Level 1	\$859.30 (at C14)	Category (v) – see Schedule E.	Level 1 appears to apply to casual positions only (see clause E.1.2).	Level 2 = \$882.80 [^]
<i>Nursery Award 2020</i>	MA000033	15.1(a)	Grade 1A	\$859.30 (at C14)	Category (ii) – period of no longer than 3 months (cl A.1–A.2).		Grade 1B = \$882.80 [^]
<i>Nurses and Midwives (Victoria) State Reference Public Sector Award 2015</i>	MA000125	A.2	Trainee Enrolled Nurse: Year 1	\$867.90 (between C14 and C13)	Category (iii)* – progression appears to occur after one year (cl A.2).		Trainee Enrolled Nurse Year 2 = \$910.90
<i>Nurses Award 2020</i>	MA000034	15.1(b)(i)	Student enrolled nurse: Less than 21 years of age	\$867.90 (between C14 and C13)	Category (iv) – student undertaking study (unspecified period) to become an enrolled nurse (cl A.3).	Rate could be considered a junior rate, however, it is not fixed as a percentage of an adult rate.	Student enrolled nurse: 21 years of age and over = \$910.90

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Oil Refining and Manufacturing Award 2020</i>	MA000072	16.1	Refinery operations: Trainee operator (level 1)	\$877.80 (between C14 and C13)	Category (iv) – undergoing the necessary orientation and training. Note Level 2 must hold the relevant certificates of competency for their area (cl A.1.3).		Refinery operations: Outside operator (level 2) = \$950.50
<i>Oil Refining and Manufacturing Award 2020</i>	MA000072	16.1	Lubricants/bitumen plants and terminals: Trainee (level 1)	\$859.30 (at C14)	Category (iv) – undergoing the necessary orientation and training (cl A.1.4).		Lubricants/bitumen plants and terminals: Operator (competent) (level 2) = \$908.30
<i>Pastoral Award 2020</i>	MA000035	32.1	FLH1	\$859.30 (at C14)	Category (i), (iii) or (v)* – varies depending on occupation. For example, covers station hands and Dairy operators Grade 1A with less than 12 months experience (with progression to FLH3) and feedlot employees with less than 3 months experience (with progression to FLH2). No progression apparent for Station cooks (cl 31).		FLH2 = \$882.80 [^]
<i>Pastoral Award 2020</i>	MA000035	37.1	PA1	\$859.30 (at C14)	Category (i) – up to 38 hours induction training. However, a PA2 employee must have completed up to 3 months' structured training (cl 36).		PA2 = \$882.30
<i>Pastoral Award 2020</i>	MA000035	37.1	PA2	\$882.30 (between C14 and C13)	Category (v) – see clause 36.		PA3 = \$914.90
<i>Pastoral Award 2020</i>	MA000035	47.1	PW1	\$859.30 (at C14)	Category (iii)* – less than 12 months' experience in the industry (cl 46)		PW2 = \$895.00

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Pest Control Industry Award 2020</i>	MA000097	16.1	Level 1	\$868.00 (between C14 and C13)	Category (iii) –employed in the industry for less than 6 months. A Level 2 employee must also have applied for a licence (cl 12.1).		Level 2 = \$888.30
<i>Port Authorities Award 2020</i>	MA000051	15.1(a)	Level 1	\$859.30 (at C14)	Category (iv) – describes an employee having ‘completed induction’. Employees at Level 2 perform duties above Level 1 (cl A.1–A.2).		Level 2 = \$903.60
<i>Premixed Concrete Award</i>	MA000057	16.1	Level 1	\$882.50 (between C14 and C13)	Category (iii) – an employee without industry skills, training to be a batcher, allocator, testing or plant assistant. An employee may work at this level for up to 6 months (cl 12.4).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 2 = \$890.10
<i>Printing Industry – Herald & Weekly Times – Production Award 2015</i>	MA000126	16.1(a)	Production Assistant 1	\$877.10 (between C14 and C13)	Category (ii) – transitions after 3 months employment and is capable of performing duties of a Production Assistant 2 (cl 15.2).		Production Assistant 2 = \$935.40
<i>Professional Diving Industry (Industrial) Award 2020</i>	MA000108	32.1(a)	Diver's Attendant	\$864.50 (between C14 and C13)	Category (v) – see Schedule A	This record reflects the ‘Minimum weekly wage’. However, the ‘Total weekly rate’ of this record exceeds the NMW	Operator (ADS Operations) = \$988.70

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Racing Clubs Events Award 2020</i>	MA000013	17.1	Introductory level employee	\$859.30 (at C14)	Category (ii) – transition occurs after 3 months training, however, a further 3 months may apply if it is agreed further training is required (cl 13).		Grade 1 racecourse attendant = \$882.80 [^]
<i>Racing Industry Ground Maintenance Award 2020</i>	MA000014	15.1	Introductory level	\$859.30 (at C14)	Category (ii) – transition occurs after 3 months training, however, a further 3 months may apply if it is agreed further training is required (cl A.1).		Maintenance and Horticultural Employee Level 1 = \$893.10
<i>Rail Industry Award 2020</i>	MA000015	15.1(b)	Level 1 Rail Worker (Op)	\$859.30 (at C14)	Category (iv) – undertake and successfully complete induction training (see Schedule A).		Level 2 Rail Worker (Op) = \$910.90
<i>Rail Industry Award 2020</i>	MA000015	15.1(c)	Level 1 Rail Worker (TCI)	\$882.40 (between C14 and C13)	Category (v) – (see Schedule A).		Level 2 Rail Worker (TCI) = \$914.80
<i>Registered and Licensed Clubs Award 2020</i>	MA000058	18.3	Introductory	\$859.30 (at C14)	Category (ii) – transition occurs after 3 months training, however, a further 3 months may apply if it is agreed further training is required to meet competency at next level (cl A.1).		Level 1 = \$882.80 [^]
<i>Reserve Bank of Australia Award 2016</i>	MA000140	13.3	Level 1	\$881.64 (between C14 and C13) (\$45,992 per annum)	Category (v) – see clause A.1.		Level 2 = \$1,009.07 (\$52,640 per annum)

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category ¹	Comment	Next classification up ²
<i>Restaurant Industry Award 2020</i>	MA000119	18.1	Introductory Level	\$859.30 (at C14)	Category (ii) – undertakes 3 months training, with another 3 months training provided by mutual agreement to achieve the necessary competency (cl A.1).		Level 1: Food and beverage attendant grade 1 Kitchen attendant grade 1= \$882.80 [^]
<i>Seafood Processing Award 2020</i>	MA000068	15.1(a)	Process Attendant Level 1	\$859.30 (at C14)	Category (ii) – an employee remains at this level for the first 3 months or until they demonstrate competency at the current level (cl 12.1).		Process Attendant Level 2 = \$871.00
<i>Seafood Processing Award 2020</i>	MA000068	15.1(a)	Process Attendant Level 2	\$871.00 (between C14 and C13)	Category (v) – (see clause 12.2)		Process Attendant Level 3 = \$948.90
<i>Seagoing Industry Award 2020</i>	MA000122	A.1.1	Vessels Granted a Temporary Licence: OS/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward	\$859.40 (between C14 and C13)	Category (v)		Integrated rating/Able seaman/Fireman/Motorman/Pumpman/Oiler greaser/Steward = \$1013.40
<i>Stevedoring Industry Award 2020</i>	MA000053	16.1	Grade 1	\$859.30 (at C14)	Category (iv) – undergoing induction and initial training prior to appointment as a stevedoring employee Grade 2 (cl A.1).		Grade 2 = \$889.10
<i>Sugar Industry Award 2020</i>	MA000087	17.1	Field, experiment stations and cane tester employees: CPT (Inductee/Trainee)	\$867.20 (between C14 and C13)	Category (iii) – engaged for a maximum of 240 consecutive hours within the first 6 weeks of initial engagement in industry (cl A.2.1).		CP1 (Level 1) = \$929.00

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Sugar Industry Award 2020</i>	MA000087	17.1	Field, experiment stations and cane tester employees: CT1 (Level 1)	\$861.40 (between C14 and C13)	Category (v) – see clause A.5.1.		CP2 (Level 2) = \$959.70
<i>Sugar Industry Award 2020</i>	MA000087	19.1	Milling, distillery, refinery and maintenance employees: C14/L2	\$859.30 (at C14)	Category (v) – see clause B.1.1.		C13/L3 = \$882.80 [^]
<i>Sugar Industry Award 2020</i>	MA000087	21.1	Bulk terminal employees: BT1	\$859.30 (at C14)	Category (ii) – undertakes 3-month probation period (cl C.1).		BT2 = \$889.10
<i>Supported Employment Services Award 2020</i>	MA000103	15.2	Grade 1	\$859.30 (at C14)	Category (ii) – undertakes induction and/or training to perform work in Grade 2 or above for a period not exceeding 3 months (cl A.2.3)	Initially allocated to (i), however, transition period changed as result of PR749151 .	Grade 2 = \$882.80 [^]
<i>Textile, Clothing, Footwear and Associated Industries Award 2020</i>	MA000017	19.1	General Employees: Trainee	\$859.30 (at C14)	Category (ii) – up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required at Skill Level 1 (cl A.1).		Skill level 1 = \$882.80 [^]
<i>Textile, Clothing, Footwear and Associated Industries Award 2020</i>	MA000017	19.2	Wool and Basil Employees: General hand	\$859.30 (at C14)	Category (v) – see clause B.4.		Operator – Grade 3 = \$882.80 [^]
<i>Timber Industry Award 2020</i>	MA000071	20.1(a)	General Timber Stream: Level 1	\$859.30 (at C14)	Category (ii) – maximum 3 months unless 3 month extension agreed (cl A.1(f)).		General Timber Stream: Level 2 = \$882.80 [^]

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Timber Industry Award 2020</i>	MA000071	20.1(b)	Wood and Timber Furniture Stream: Level 1	\$859.30 (at C14)	Category (ii) – undertaking up to 3 months’ induction and skill development. Progression will occur on completion of induction and the core units of the Furnishing Industry Training Package and demonstrates competency to undertake Level 2 (cl B.1).		Wood and Timber Furniture Stream: Level 2 = \$882.80 [^]
<i>Travelling Shows Award 2020</i>	MA000102	16.1	Grade 1	\$859.30 (at C14)	Category (v) – see clause 12.2.		Grade 2 = \$914.90
<i>Vehicle Repair, Services and Retail Award 2020</i>	MA000089	16.2	Vehicle RS&R industry employee—Level 1	\$859.30 (at C14)	Category (i) – may be undertaking up to 38 hours of induction training. Note that a Level 2 employee is an employee who has completed 3 months structured training (cl A.1).		Vehicle RS&R industry employee—Level 2 = \$882.80 [^]
<i>Victorian Local Government (Early Childhood Education Employees) Award 2016</i>	MA000150	14.5	Educator (Unqualified): Level 1.1 On commencement	\$878.00 (between C14 and C13)	Category (iii)* – 12 months experience at level (or 24 months for employees who work 19 hours or less) and in-service training. Employee must meet competency at existing level and demonstrated ability to acquire skills at next level (cl 14.6(a)).		Educator (Unqualified): Level 2.1 On commencement = \$909.90

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category¹	Comment	Next classification up²
<i>Victorian State Government Agencies Award 2015</i>	MA000134	33.2	Trainee officer	\$859.28 (at C14) (\$44,836 per annum)	Category (v) – employees may be eligible to progress to next salary range after 12 months’ satisfactory occupancy of current step. Progression is not automatic and is dependent on demonstration and utilisation of new and enhanced skills. Advancement may also be based on availability of suitable vacancy (cl 9.6–9.7).	Marginally below current C14 rate.	Operational support officer = \$915.60 (\$47,775 per annum)
<i>Victorian State Government Agencies Award 2015</i>	MA000134	38.2	RW 1-1	\$879.31 (between C14 and C13) (\$45,881 per annum)	Category (v) – employees may be eligible to progress to next salary range after 12 months’ satisfactory occupancy of current step. Progression is not automatic and is dependent on demonstration and utilisation of new and enhanced skills (cl 9.6).		RW 1-2 = \$915.60 (\$46,582 per annum)
<i>Wine Industry Award 2020</i>	MA000090	15.1	Grade 1	\$871.20 (between C14 and C13)	Category (iii)* – trainee undertaking 3 month induction and training modules. Will progress to Grade 2 on completion and assessment of such training within 12 months of service (cl A.1.1).		Grade 2 = \$906.90
<i>Wool Storage, Sampling and Testing Award 2020</i>	MA000044	16.1	Wool Industry Worker Level 1 (Wool Storage)	\$878.40 (between C14 and C13)	Category (v) – see clause A.3.1.		Wool Industry Worker Level 2 (Wool Storage) = \$911.40

Award title	Award code	Clause	Classification	Weekly rate (or equivalent)	Transitional category ¹	Comment	Next classification up ²
<i>Wool Storage, Sampling and Testing Award 2020</i>	MA000044	16.1	Wool Industry Worker Level 1 (Wool Testing)—First 3 months	\$878.40 (between C14 and C13)	Category (ii) – transition occurs to higher pay point after 3 months (cl 16.1).		Wool Industry Worker Level 1 (Wool Testing)—After 3 months = \$895.00
<i>Wool Storage, Sampling and Testing Award 2020</i>	MA000044	16.1	Wool Industry Worker Level 1 (Skin and Hide Stores)—First 3 months	\$878.40 (between C14 and C13)	Category (ii) – transition occurs after 3 months (cl 16.1)		Wool Industry Worker Level 1 (Skin and Hide Stores)—After 3 months up until 12 months = \$895.00

Note: This table is limited to adult rates of pay and excludes junior, apprentice, trainee (under the NTW schedule), cadet and disability rates. Ordinary hourly rates and rates which are or form part of a piece rate or engagement rate are also excluded.

¹ The transitional categories are based on the categories set out at paragraph [3] of this statement.

A category (iii) assigned an asterisk (*) indicates that the transition period is greater than **6 months**.

² The following accent symbol (^) is used to indicate a rate which is equal to the C13 rate.

¹ [\[2019\] FWC 5863](#).

² [\[2019\] FWCFB 3500](#).

³ [PR749974](#).

⁴ [\[2019\] FWC 5863](#) at [5] and [6].

⁵ *Port Authorities Award 2020, Stevedoring Industry Award 2020, Cement, Lime and Quarrying Award 2020, Oil Refining and Manufacturing Award 2020 and Air Pilots Award 2020*; see [\[2022\] FWCFB 183](#) at [26] and [\[2022\] FWCFB 198](#) at [6]-[8].

⁶ In particular, see [\[2019\] FWC 5863](#), [\[2019\] FWC 8159](#), [\[2022\] FWC 1989](#), [\[2022\] FWCFB 198](#) and [\[2023\] FWC 202](#).

⁷ [\[2022\] FWC 2239](#).

⁸ [\[2023\] FWC 716](#).

⁹ [\[2023\] FWCFB 3500](#) at [8].

¹⁰ [\[2023\] FWCFB 3500](#) at [173].

AMENDED

Hearing location determined



Notice of Listing

Title of Matter: Review of certain C14 rates in modern awards

Section: s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

Matter Number: C2019/5259

Listing Details:

The above matter is listed for **hearing in person** before a Full Bench at:

10:00 AM
Monday, 18 December 2023
Fair Work Commission
Terrace Tower
80 William Street
East Sydney

10:00 AM
Tuesday, 19 December 2023
Fair Work Commission
Terrace Tower
80 William Street
East Sydney

Parties unable to appear in person may appear by video link using Microsoft Teams upon request. Please advise Hatcher J's chambers by **4:00 pm (AEDT) on Thursday, 30 November 2023** if you wish to do so.

Each party is further directed to advise Hatcher J's chambers by **4:00 pm (AEDT) on Wednesday, 6 December 2023** which of the other parties' witnesses (if any) it requires for cross-examination.

Inquiries:

All inquiries relating to this notice are to be directed to Edrea Venal / Mahmoud Al Rifai.
Phone: (02) 9308 1812 | Email: chambers.hatcher.j@fwc.gov.au

Fair Work Commission, 22 November 2023

IN THE FAIR WORK COMMISSION

SUBMISSIONS

**REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS
(C2019/5259)**

**FILED ON BEHALF OF:
AUSTRALIAN BUSINESS INDUSTRIAL
NSW BUSINESS CHAMBER (BNSW)**

3 NOVEMBER 2023

INTRODUCTION

1. These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**BNSW**).
2. ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and BNSW is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth).
3. The affected modern awards in which our clients have a material interest are set out in the Schedule to this submission.

RELEVANT BACKGROUND

4. In the 2018-19 Annual Wage Review, the Expert Panel identified that there were a small number of modern awards which have classification rates at the C14 level which are either not transitional rates or where the transition period applicable to the classification is not specified.¹ The Expert Panel observed that “This is an issue which should be the subject of further examination in the current 4 yearly Review of modern awards”.²
5. By a Statement issued on 28 August 2019, Justice Ross expressed the provisional view that 14 awards (those which were not explicitly expressed as being transitional in nature) should be referred to a Full Bench for review.³ The review was instituted on the Commission’s own motion pursuant to ss. 157(3) of the Act.
6. Part-way through that review process, the 2022-23 Annual Wage Review Decision was handed down (**2023 AWR Decision**).⁴ In the 2023 AWR decision, the Expert Panel decided to end the alignment between the National Minimum Wage (**NMW**) and the C14 classification rate. This alignment was said to have been in place since 1997.⁵ In that decision, the Expert Panel:
 - (a) observed that the alignment between the NMW and the C14 classification rate was ‘continued’ during the 2010 Annual Wage Review decision (the first annual wage review to have occurred under the *Fair Work Act 2009* (Cth)) which effectively adopted the approach that had been taken under the predecessor *Workplace Relations Act 1996* (Cth);⁶

¹ [2019] FWCFB 3500 at [337]-[340].

² [2019] FWCFB 3500 at [340].

³ [2019] FWC 5863 at [5].

⁴ [2023] FWCFB 3500.

⁵ [2023] FWCFB 3500 at [8] and [106]-[107].

⁶ [2023] FWCFB 3500 at [105].

- (b) observed that the C14 rate ‘was only ever intended to constitute a transitional entry rate for new employees’;⁷ and
- (c) held (for the reason outlined in (b) above) that the C14 rate did ‘not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.’⁸

7. The Expert Panel held at [108]:

We do not consider that the position whereby the NMW is simply set by reference to the C14 rate should continue. This is particularly the case when almost all modern awards which contain a classification with a C14 rate prescribe a limit on the period employees can be classified and paid at that level, after which employees move automatically to a higher classification and pay rate. Further, 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. A comprehensive review of the NMW should be undertaken by reference to the budget standards research and other relevant material to arrive at a NMW amount which is set having proper regard to the needs of the low paid and the other considerations in s 284. That is beyond the scope of the current Review, but we discuss later the interim measure we intend to take in this Review having regard to all the mandatory considerations in the minimum wages objective.

8. The Expert Panel then held at [173]:

A wider review of the NMW in light of the budget standards research, the finalisation of the C14 review (which we anticipate will be completed later this year and will result in all C14 award classifications becoming genuinely transitional in nature) and other relevant matters (including the research being conducted as to gender segregation and undervaluation) is required. That wider review cannot be undertaken within the timeframe of the current Review. It is necessary therefore to identify an interim step that can be taken in this Review which gives appropriate weight to the needs of the low paid (s 284(1)(c)) but also balances this with the other mandatory considerations in the minimum wages objective. The step we will take is to align the NMW with the current C13 rate, which is the lowest award rate which, apart from exceptions in a small number of awards, may apply to employees in respect of ongoing employment.

⁷ [2023] FWCFB 3500 at [8].

⁸ [2023] FWCFB 3500 at [8].

9. The 2023 AWR Decision, and in particular the conclusions outlined above, have then prompted a proposed broadening of the current review of C14 rates across the modern awards system.

THE STATEMENT AND THE PROVISIONAL VIEWS

10. In its Statement of 22 September 2023⁹ (**Statement**), a Full Bench of the Commission has proposed to broaden the scope of the review of C14 rates in modern awards from the 14 modern awards initially within the scope of the review to a much larger number of awards.¹⁰

11. The Full Bench observed at [8] that:

The Expert Panel's conclusions in the AWR 2023 decision have necessarily required a refocussing of the objective of this review. Consistency with the propositions stated in that 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).

12. The Statement then sets out a *provisional view* that the following principles should guide the completion of this review:

- (a) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate (**Provisional View One**).
- (b) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate) (**Provisional View Two**).
- (c) The transition period for the purpose of (b) should not exceed six months (**Provisional View Three**).

13. The Statement identifies that the expanded scope of the review will involve:

- (a) A review of all award classifications at the C14 level to ensure they are genuinely transitional in nature; and
- (b) A review of all classification rates in modern awards that fall below the C13 level but are higher than the C14 rate; and

⁹ [2023] FWCFB 168.

¹⁰ [2023] FWCFB 168 at [1].

- (c) A review of modern enterprise awards and State reference public sector modern awards.

GENERAL SUBMISSIONS IN RELATION TO THE CONDUCT OF THIS REVIEW

14. It was open to the Expert Panel, in conducting the 2023 annual wage review, to adjust the NMW (which applies to award/agreement free employees) and to move away from linking the NMW to the C14 rate of pay. However, we do not accept, as a general proposition, that the 2023 AWR Decision has ‘necessarily required a refocussing of the objective of this review’.
15. That said, it is of course open to the Commission to conduct a review, on its own motion, of certain classifications and rates of pay within modern awards.
16. The current review is being conducted under s. 157 of the FW Act.
17. Section 157 relevantly provides:

(1) *The FWC may:*

- (a) *make a determination varying a modern award, otherwise than to vary modern award minimum wages or to vary a default fund term of the award; or*
- (b) *make a modern award; or*
- (c) *make a determination revoking a modern award;*

if the FWC is satisfied that making the determination or modern award is necessary to achieve the modern awards objective.

Note 1: Generally, the FWC must be constituted by a Full Bench to make, vary or revoke a modern award. However, the President may direct a single FWC Member to make a variation (see section 616).

Note 2: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 3: If the FWC is setting modern award minimum wages, the minimum wages objective also applies (see section 284).

(2) *The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:*

(a) *the variation of modern award minimum wages is justified by work value reasons; and*

(b) *making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.*

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) **Work value reasons** *are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:*

(a) *the nature of the work;*

(b) *the level of skill or responsibility involved in doing the work;*

(c) *the conditions under which the work is done.*

(2B) *The FWC's consideration of work value reasons must:*

(a) *be free of assumptions based on gender; and*

(b) *include consideration of whether historically the work has been undervalued because of assumptions based on gender.*

18. Work value considerations arise where the Commission proposes to vary:

(a) existing rates of pay contained within modern awards; or

(b) classification definitions / descriptors where the effect of such a variation is to alter the minimum wages applying to particular employees (e.g. where certain employees who fell within a particular classification no longer fall within that level and instead fall into another classification).

19. In our submission filed on 27 September 2019 in this matter, we raised a number of issues that we consider relevant to any review of classification levels or rates of pay. We restate and reiterate those submissions as follows:

(a) First, the Commission should not proceed on an assumption that the C14 rate in modern awards can only ever be a 'temporary' rate.

(b) Second, the Commission must place primacy on the work actually being performed, and the value of that work properly determined.

- (c) Third, where a classification structure is truly competency-based, it is important that the Commission avoid placing an artificial temporal constraint on that structure.
 - (d) Fourth, any consideration of C14 rates in awards should only proceed where a party or the Commission has concerns that the rate does not properly reflect the value of work being performed.
 - (e) Fifth, an award should only be varied where the Commission is satisfied that the rate set for a particular level does not reflect the value of the work performed.
 - (f) Sixth, it follows that awards must be considered on an individual basis having regard to the actual work being performed (and the value of that work), and any transitional timeframe must be set having regard to the peculiarities of both the industry and the individual employee rather than imposing some arbitrary or uniform timeframe for transition. This is so because different industries will have different requirements for how (and how long it takes for) employees to become competent in a particular role.
20. Ultimately, the critical issue for determination is whether a particular rate of pay in a modern award properly reflects the value of the work performed by employees falling into that classification.
21. While we acknowledge the conclusions reached in the 2023 AWR Decision, those conclusions do not alter our view as to the principles to be applied in this review process.

OUR POSITION IN RESPECT OF THE PROVISIONAL VIEWS

22. For the reasons outlined in this submission, we do not agree that the principles outlined in paragraph [8] of the Statement 'should guide the completion of this review'.

Provisional View One

23. It is uncontroversial that the C14 classification in the *Metal Industry Award 1984* (and which has been continued into the current *Manufacturing and Associated Industries and Occupations Award 2020*) was intended as an entry level classification and was not designed to apply on an ongoing basis to an employee's employment.
24. However, this is not necessarily the case in respect of all C14 classifications across the awards system. Rather, some awards have developed over time to contain C14 classifications which are quite clearly not transitional.¹¹
25. As a statement of general principle, we do not necessarily agree with the provisional view that 'The lowest classification rate in any modern award applicable to ongoing employment

¹¹ See, for example, Cotton ginning employee level 1 (CG1) in the *Cotton Ginning Award 2020*.

- should be at least the C13 rate'. Rather, minimum wages in modern awards should reflect the value of work undertaken by the relevant employees. In a limited number of cases, it might be appropriate for a modern award to contain a classification and associated rate of pay that is below the C13 rate and which is capable of applying on an ongoing basis.
26. That said, we acknowledge that such a scenario may be rare and would need to be justified by work value reasons.
27. It is apparent that the genesis of Provisional View One comes from the 2023 AWR Decision. However, while that decision made a range of observations about the C14 classification, it contained very little consideration of the C13 classification or its role or purpose in classification structures or its historical development. The 2023 AWR Decision contains references in paragraphs [8] and [173] to the C13 classification wage rate as follows:
- (a) "in nearly all relevant awards [it] is the lowest modern award classification rate applicable to ongoing employment" (at [8]); and
 - (b) "[it is] the lowest award rate which, apart from exceptions in a small number of awards, may apply to employees in respect of ongoing employment" (at [173]).
28. Other than those observations, the 2023 AWR Decision does not contain any substantive consideration of the C13 classification level.
29. To the extent that Provisional View One has been formed on the basis of the notion that, because the C13 classification is the lowest classification applicable to ongoing employment in the majority of current modern awards, that should be the case for all modern awards, we would resist that line of thinking.
30. As stated above, we do not consider there to be anything inherently improper or problematic with certain classifications applying to employment on an ongoing basis and providing rates of pay below the C13 rate, so long as the rate of pay properly reflects the value of the work actually performed.
31. In the 2023 AWR Decision, the Expert Panel noted at [172] that:
- 'there is no requirement in the FW Act for the NMW to align with the lowest modern award adult rate, nor does the NMW operate as a floor to modern award minimum wage rates'. [emphasis added]
32. It is uncontroversial that modern awards can continue to contain classifications and associated rates of pay that sit below the NMW/C13 rate of pay. Further, it might be appropriate that such classifications / rates of pay not be transitional and continue to apply to ongoing employment. The assessment as to whether or not this is the case must be made on an award-by-award basis having regard to a range of considerations such as the

actual work performed by the employees falling into those classifications, the value of that work, and how that classification interacts with the wider classification structure in the award.

Provisional View Two

33. For the reasons outlined above, we also resist the proposition (as a general statement of principle) that any classification rate in a modern award which is 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 classification rate.
34. While it might be that the C14 classification in the *Metal Industry Award 1984* was not designed to apply to ongoing employment, it does not necessarily follow that any classification that contains a rate below C13 must be transitional.

Provisional View Three

35. It is unclear how the Full Bench has arrived at its provisional view that the relevant transition period for any classification containing a rate less than the C13 rate should be no more than six months. We are unclear as to the rationale for six months being the proposed maximum transition period.
36. Any time period that might apply in respect of an employee progressing from one classification to another within a classification structure is an issue that is inherently connected to the nature of the industry or occupation that is regulated by the relevant award. Any such time period might naturally depend on the induction / training / qualification requirements of the relevant industry / occupation and so should be considered having regard to the unique features of that particular industry or occupation.
37. Where a classification structure is competency-based, the Commission should avoid placing an artificial temporal constraint on classification structures. This is because the time period that it may take an employee to obtain the competencies necessary to progress throughout the classification structure is not temporal based but rather based on the individual.

FURTHER OBSERVATIONS

38. The table at Attachment D to the Statement identifies award classifications that fall into a few different categories.
39. Firstly, some of the award classifications in the table contain rates below the C13 level, however, are transitional in nature and provide for a transition to a higher classification

within a period which is less than 6 months.¹² Those award classifications do not appear to be inconsistent with the provisional views expressed in the Statement. Accordingly, absent some specific application or proposal advanced by a party, it would seem that those awards could be removed from the scope of the review.

40. Secondly, some of the award classifications contain rates that are supplemented by industry allowances which, when factored in, provide for wages that are in excess of the C13 rate.¹³ Those industry allowances are payable for all purposes and thereby have the effect of establishing new and higher base rates of pay for those employees. Further, those industry allowances are in place in recognition of the nature of the work being performed and/or the conditions under which the work is done (i.e. they are designed to ensure that the rates of pay are referable to the value of the work). Accordingly, absent some specific application or proposal advanced by a party (or a concern that the rates of pay do not reflect the value of the work), it would seem that these awards could also be removed from the scope of the review.
41. Thirdly, it might be the case that the review process will identify a small number of awards for which the classification descriptors (and, specifically, the way in which the transition from one classification to another is intended to operate) are imprecise or could benefit from some drafting modification to more clearly articulate how employees are to progress through the classification structure.
42. Notwithstanding the views expressed above in respect of what might be considered issues of principle, we acknowledge that it may be appropriate for some of the awards referred to in Attachment D to the Statement to be varied.
43. However, this should occur following a consideration of each individual award (having regard to the issues/features specific to that industry/occupation and the actual work performed). Further, the legislative framework may require an examination of the historical development of the award, and/or a consideration as to whether the rates of pay in the award in question have ever been subject to a work value assessment and, if so, the details of that assessment.

¹² See, for example, the Amusement, Events and Recreation Award 2020; Asphalt Industry Award 2020; Food, Beverage and Tobacco Manufacturing Award 2020; Gardening and Landscaping Services Award 2020; Graphic Arts, Printing and Publishing Award 2020; Hospitality Industry (General) Award 2020; Manufacturing and Associated Industries and Occupations Award 2020; Miscellaneous Award 2020; Nursery Award 2020; Pastoral Award 2020; Premixed Concrete Award 2020; Registered and Licensed Clubs Award 2020; Restaurant Industry Award 2020; Supported Employment Services Award 2020; Timber Industry Award 2020; Vehicle Repair, Services and Retail Award 2020.

¹³ See, for example, the Cement, Lime and Quarrying Award 2020; Concrete Products Award 2020; Cotton Ginning Award 2020; Electrical, Electronic and Communications Contracting Award 2020; Joinery and Building Trades Award 2020.

44. In some cases, there may also need to be some evidence before the Commission as to the nature of the work performed by employees falling into the relevant classifications under examination. Of course, the extent of evidence that might be required will vary depending on the specific variation sought/proposed and the significance of the proposed variation.
45. In some cases, it may be that the relevant interested parties are able to confer and reach agreement on appropriate variations to individual awards that meet the applicable legislative requirements.

Schedule 1 - Awards in which our clients have an interest

Our clients have an interest in the following awards that may fall within the scope of this review:

1. Amusement, Events and Recreation Award 2020
2. Asphalt Industry Award 2020
3. Cement, Lime and Quarrying Award 2020
4. Cemetery Industry Award 2020
5. Fitness Industry Award 2020
6. Food, Beverage and Tobacco Manufacturing Award 2020
7. Gardening and Landscaping Services Award 2020
8. Graphic Arts, Printing and Publishing Award 2020
9. Horticulture Award 2020
10. Hospitality Industry (General) Award 2020
11. Joinery and Building Trades Award 2020
12. Live Performance Award 2020
13. Manufacturing and Associated Industries and Occupations Award 2020
14. Marine Tourism and Charter Vessels Award 2020
15. Miscellaneous Award 2020
16. Nursery Award 2020
17. Pastoral Award 2020
18. Registered and Licensed Clubs Award 2020
19. Restaurant Industry Award 2020
20. Seafood Processing Award 2020
21. Supported Employment Services Award 2020
22. Textile, Clothing, Footwear and Associated Industries Award 2020
23. Timber Industry Award 2020
24. Vehicle Repair, Services and Retail Award 2020
25. Concrete Products Award 2020
26. Dry Cleaning and Laundry Industry Award 2020
27. Funeral Industry Award 2020
28. Sugar Industry Award 2020
29. Meat Industry Award 2020
30. Rail Industry Award 2020
31. Business Equipment Award 2020
32. Children's Services Award 2010

33. Cotton Ginning Award 2020
34. Electrical, Electronic and Communications Contracting Award 2020
35. Nurses Award 2020
36. Premixed Concrete Award 2020
37. Wine Industry Award 2020
38. Wool Storage, Sampling and Testing Award 2020

**SUBMISSIONS IN REPLY:
REVIEW OF CERTAIN C14
RATES IN MODERN
AWARDS**

C2019/5259

5 DECEMBER 2023

**BUSINESS
NSW**



**AUSTRALIAN
BUSINESS
INDUSTRIAL**

ABOUT BUSINESS NSW AND AUSTRALIAN BUSINESS INDUSTRIAL

Business NSW (**BNSW**) is the state's peak business organisation with nearly 100,000 business members in NSW and Australia, spanning all industry sectors and sizes. Operating across **metropolitan and regional NSW, we field senior local leadership and teams throughout the state**, representing the needs of business to all levels of government.

For nearly 200 years Business NSW (formerly the NSW Business Chamber) has been advocating to create a better NSW and Australia by representing the needs of businesses to create the economic conditions that allow our members to grow and drive NSW and the nation forward. Our experience has proven that planning and delivering with Government increases prosperity, creates new jobs, and builds better communities for everyone.

We work closely with our members, partners, stakeholders, local, state and federal government to advocate for practical policy solutions to ensure Australian businesses of all sizes can prosper.

Australian Business Industrial (**ABI**) is the industrial relations affiliate of BNSW.

ABI is federally registered under the *Fair Work (Registered Organisations) Act 2009* and engages in policy advocacy on behalf of its membership as well as engaging in industrial advocacy in State and Federal tribunals.

GENERAL SUBMISSIONS IN REPLY

1. Having reviewed the various submissions filed by parties in this matter, it appears that those submissions fall into the following categories:
 - (a) submissions which involve parties expressing support for the Provisional View;
 - (b) submissions which involve parties expressing an absence of opposition to the Provisional View (mainly in the context of having an interest in one or a small number of awards); and
 - (c) submissions which involve parties expressing opposition to the Provisional View and setting out various reasons for that view.
2. In respect of the submissions which express support for the Provisional View, the vast bulk of those submissions do not set out any detailed reasoning for their support for the Provisional View. In those circumstances, it is difficult for our clients to respond to those submissions beyond simply reiterating the matters raised in our previous submission of 3 November 2023.
3. It is also apparent that some of the union parties have proposed variations to certain awards which are not simply designed to make the award consistent with the Provisional View but instead seek to go beyond the scope of the Provisional View, including by seeking increases to rates of pay. In many cases, those proposals are not supported by any detailed submissions that set out a merit-based argument for that variation, or any consideration of why the variation is necessary to achieve the modern awards objective (or other elements of the applicable legal framework). For the most part, the proposals are unsupported by any evidence.
4. The Commission should exercise caution in entertaining proposals for variations that, if made, would have the effect of going well beyond what might be required to make the award consistent with the Provisional View. In our view, it is appropriate that the moving party articulate a proper merit-based argument for the variations sought by them. Depending on the nature of the variation sought, this may also require an evidentiary case and a consideration of work value principles.

The role of the C14 classification and the accuracy of a key proposition underpinning the Provisional View

5. We note that Ai Group have contested the accuracy of an important aspect of the *Annual Wage Review Decision 2022 – 2023* (the **2023 AWR Decision**), namely the

purpose or intention of the C14 classification in the *Metal Industry Award 1984* upon which the current C14 classification in the *Manufacturing and Associated Industries and Occupations Award 2020* is based.

6. In the Ai Group submission, they dispute the accuracy of paragraph [107] of the 2023 AWR Decision. Specifically, Ai Group dispute the notion that the C14 classification “has only ever intended to apply to an employee undertaking up to 38 hours induction training and was never intended to apply on an ongoing basis to a person’s employment”.
7. It is apparent that the genesis behind the broadening of this review, and the Provisional View expressed by the Commission, was the 2023 AWR Decision. It is therefore important to ensure that the assumptions, findings and propositions upon which the Commission has relied in reaching their Provisional View are accurate.

RESPONSE TO SUBMISSION OF AUSTRALIAN WORKERS UNION

8. The AWU submission involves proposals that would in many cases go well beyond the Provisional View and effectively involve proposals to increase rates of pay for certain classifications. We refer to paragraphs 3-4 above.
9. We have addressed the AWU proposals in respect of certain individual awards in more detail below.

RESPONSE TO SUBMISSION OF UNITED WORKERS UNION

10. The United Workers Union (**UWU**) have filed two submissions in this matter.¹ Their first submission of 3 November 2023 did not provide any substantive submissions beyond expressing support for the provisional view of the Commission.
11. In their subsequent submission of 11 November 2023, the UWU appear to seek variations that go materially beyond the Commission’s provisional view. Specifically, the UWU have:
 - (a) proposed that the introductory classification rate for classifications in the *Cemetery Industry Award 2020*, the *Nurses Award 2020*, the *Oil Refining and Manufacturing Award 2020* and the *Wine Industry Award 2020* be increased to the C13 rate, despite the classifications being transitional in nature and not applying to employees on an ongoing or indefinite basis;² and

¹ On 3 November 2023 and 11 November 2023.

² UWU submission, 11 November 2023 at [6].

- (b) proposed that the rates of pay applicable to two classification levels in the *Childrens Services Award 2020* be increased to reflect the C13 rate of pay, despite the classifications being transitional in nature and not applying to employees on an ongoing or indefinite basis.³
12. These proposals do not accord with, and go beyond the scope of, the Provisional View. Further, no justification has been advanced in support of the proposals other than a brief assertion that it would “avoid the need to amend the subsequent classification levels by removing or varying the certificate, competency or age requirements”.⁴
13. Given that the UWU propose that the rates of pay for these award classifications be increased, this will trigger work value considerations and ss. 157(2), 157(2A), 157(2B) and 284. In short, the variations are required to be justified on work value grounds, which involves an assessment of the value of the work being performed by employees in these Grades.
14. Further, the UWU have proposed that the transitional arrangements in six awards be varied to remove the existing ability for an employer and employee to extend the training period by mutual agreement.⁵ However, those transitional arrangements appear to be consistent, in their current form, with the Provisional View. As such, the UWU proposal goes beyond the Provisional View in the sense that the variations are not required in order to give effect to the Provisional View. Further, the UWU submission does not set out any basis for the variations beyond simply advancing the proposal. In the circumstances, it is difficult to understand why the variation is necessary to achieve the modern awards objective.

REPLY SUBMISSIONS REGARDING SPECIFIC AWARDS

Amusement, Events and Recreation Award 2020

15. In its current form, the award is consistent with the Provisional View. The ‘Introductory level employee’ classification is clearly expressed as a transitional classification level which applies to new entrants to the industry who do not demonstrate the competency requirements of a Grade 1 employee. The classification also contains a 3-month time limit before the employee progresses to Grade 1. On that basis, there is no issue with how the introductory classification is structured.

³ UWU submission, 11 November 2023 at [7].

⁴ UWU submission, 11 November 2023 at [6].

⁵ UWU submission, 11 November 2023 at [8]-[10].

16. We note the submission of the AWU in relation to the potential ambiguity or inconsistency between the 'Introductory level employee' classification and the Grade 1 classification.⁶ Our clients acknowledge the arguable inconsistency between the two grades. In the circumstances, it is open to the Commission to form the view that it may be appropriate to amend the Grade 1 descriptor to remove the apparent prerequisite of the employee having undertaken "at least" three months' training. Ultimately, if an employee is able to demonstrate the competencies to "work within the scope of" the Grade 1 level prior to the 3 month period, they should be classified into Grade 1. This issue could be resolved by replacing the words "at least" in A.2.1 with the words "up to".

Cement, Lime and Quarrying Award 2020

17. Both the Level 1 (cement and lime industry) and the Grade 1 (quarrying industry) classifications are expressed as entry-level classifications which only apply to employees without the necessary competency to be classified in Level 2/Grade 2. The award also sets out detailed information concerning the "basic competency" required to advance to Level 2/Grade 2.⁷
18. We also note that the rates payable to employees in these grades are above the C13 rate in any event once the industry disability allowance is taken into account.⁸
19. The AWU have proposed the introduction of a time limit for Level 1/Grade 1 of "up to 38 hours of induction", at which point it would require employees progressing to the next level. At this stage, we consider that such a proposal would likely be inconsistent with the "basic competency" training requirements set out in the award. In our view, a more detailed consideration of these training programs would be required in order to properly understand the implications of the AWU proposal and whether such a variation would be necessary to meet the modern awards objective.
20. Further, given that these classifications are already paid above the C13 rate by reason of the inclusion of an all-purpose allowance, the award in its current form is not inconsistent with the Provisional View and should therefore be excluded from the review.

⁶ See AWU submission at [60]-[62].

⁷ See Schedules A.2 and B.2.

⁸ See clause 18.2(b).

Cemetery Industry Award 2020

21. We are opposed to the proposal advanced by the UWU, for the reasons set out in paragraphs 10-14 above.
22. In response to the AWU submission⁹, we do not consider that the Cemetery Employee class 1 classification is inconsistent with the Provisional View, as the rate applicable to that classification exceeds the C13 rate once the industry allowance is taken into account.¹⁰ Further, the transitional period for progression is 6 months.

Concrete Products Award 2020

23. When the industry allowances are taken into account, the only cohort of employees for which the award provides rates of pay that are below the C13 rate is Level 1 employees working in factories whose sole purpose is the manufacture of tiles.
24. To the extent that the Commission forms the view that a variation to the classification structure is necessary in order to meet the modern awards objective, further consideration might need to be given to:
 - (a) the value of the work performed by Level 1 tile manufacturing employees; and/or
 - (b) the feasibility of converting the existing Level 1 classification into a transitional classification (in its current formulation, the classification applies to roles on an ongoing basis).

Cotton Ginning Award 2020

25. The CG1 level applies to “general workers” involved in the “cleaning of the yard and gin, general delivery work or manual labour” and who “require minimal training or experience to competently function in the role”.
26. The minimum rate for the CG1 level is currently \$22.83 per hour, which sits above the C14 rate of pay but below the C13 rate of pay. However, the award then provides for a number of ‘all-purpose allowances’ which are:

... included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave.¹¹

⁹ See AWU submission at [82].

¹⁰ See clause 16.2(b).

¹¹ See clause 19.2(a).

27. The disabilities allowances is one such all-purpose allowance, which is a \$33.06 weekly payment designed to compensate employees for “all disabilities experienced in this particular industry”.¹² Given that the disabilities allowance is payable for all-purposes, it effectively becomes part of the employees’ minimum or ordinary rate of pay. That being the case, the relevant rate paid to CG1 employees is \$23.69 per hour which is above the C13 rate. For this reason, we do not consider that the CG1 classification is inconsistent with the Provisional View.
28. Further, we do not consider there to be any need to amend the CG1 classification to make it transitional. This is particularly the case given that the classification captures employees engaged to do basic manual labour and cleaning, which in some cases would represent an ongoing role performed by employees on an ongoing basis rather than being designed as a training or transitional classification. In those circumstances, there would be real difficulties with converting the classification to one that operates only for a limited period.
29. In response to the submission of the AWU, we disagree that the CG1 level should be made transitional or time limited.¹³ This would likely create significant practical difficulties given the current classification structure and the work captured within CG1, CG2 and the broader structure.
30. We also disagree with the AWU submission that the rate applicable to the CG1 level should be increased.¹⁴ Any proposed variation to “modern award minimum wages” must be justified by work value reasons (see ss. 157(2)). The AWU have not advanced any submissions in relation to this legislative test. Further, the definition of “work value reasons” at ss. 157(2A) requires an assessment of the particular kind of work being performed, including the nature of the work and the conditions under which the work is done. When one factors in the disabilities allowance, the normal or ordinary hourly rates paid to employees at this level exceed the C13 rate.¹⁵ As such, this award operates harmoniously with the Provisional View.

¹² See clause 19.2(b)(i).

¹³ See AWU submission at [113].

¹⁴ See AWU submission at [112].

¹⁵ Given that the industry allowance is explicitly designed to compensate for the work conditions, it cannot be ignored in any consideration of a proposal to increase rates.

Dry Cleaning and Laundry Industry Award 2020

31. Our clients note the proposal contained within the joint submission made by the Drycleaning Institute of Australia, the Laundry Association Australia, the CFMEU (Manufacturing Division), the AWU and the UUU.
32. Although our clients are not parties to that joint submission (and notwithstanding our clients' position in relation to the Provisional View expressed by the Commission), we do not oppose the proposal contained therein and note that it would result in the award being consistent with the Provisional View.

Electrical, Electronic and Communications Contracting Award 2020

33. The Electrical worker grade 1 classification captures labourers who are not otherwise provided for in the other classifications of the award, and who are "doing labouring work and employed as such".
34. The minimum rate for the Electrical worker grade 1 classification is currently \$22.93 per hour, which sits above the C14 rate of pay but below the C13 rate of pay. However, the award then provides for a range of 'all-purpose allowances' which are:

... included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings including payments for overtime, payments while they are on all forms of paid leave, public holidays and pro rata payments on termination. The allowances in clause 18.3 are paid for all purposes under this award.¹⁶

35. One such all-purpose allowance is the industry allowance, which is a \$36.82 weekly payment designed to compensate employees for the nature of the work and the conditions under which the work is performed.¹⁷ Given that the industry allowance is payable for all-purposes, it effectively becomes part of the employees' minimum or ordinary rate of pay. That being the case, the relevant rate paid to Grade 1 employees is \$23.90 per hour which is above the C13 rate. For this reason, we do not consider that the Electrical worker grade 1 classification is inconsistent with the Provisional View.
36. Further, we do not consider there to be any need to amend the Electrical worker grade 1 classification to make it transitional. This is particularly the case given that the classification captures employees engaged to do basic labouring work, which in some

¹⁶ See clause 18.2(a).

¹⁷ See clause 18.3(a).

cases would represent an ongoing role performed by employees on an ongoing basis rather than being designed as a training or transitional classification. In those circumstances, there would be real difficulties with converting the classification to one that operates only for a limited period.

37. In response to the submission of the CEPU, we disagree with their assertion that the industry allowance is “an irrelevant consideration”.¹⁸ When one has regard to the legislative requirements applicable to any proposal to increase minimum rates, it is clear that any variation to “modern award minimum wages” must be justified by work value reasons (see ss. 157(2)) and the definition of “work value reasons” at ss. 157(2A) requires an assessment of the particular kind of work being performed, including the nature of the work and the conditions under which the work is done.
38. Given that the industry allowance is explicitly designed to compensate for some of the work conditions and specific work undertaken by these employees, it is difficult to understand the CEPU contention that the industry allowance should somehow be disregarded or ignored. Such a submission overlooks the applicable statutory framework and invites an approach that would depart from the requirements of the FW Act.
39. We also disagree with the AWU submission that the minimum wage for the Electrical worker grade 1 classification should be increased.¹⁹ Any proposed variation to “modern award minimum wages” must be justified by work value reasons (see ss. 157(2)). The AWU have not advanced any submissions in relation to this legislative test.

Fitness Industry Award 2020

40. The Level 1 classification in this award appears to be an entry-level classification paid at the C14 rate. However, on one reading of A.1.1, the classification potentially captures employees undertaking roles/duties on an ongoing basis, rather than employees undertaking training.
41. Under A.2.1, Level 2 contemplates employees having “completed 456 hours training at Level 1” so as to enable them to perform work within the scope of Level 2. For full-time employees, the relevant transition period would typically equate to 12 weeks. For

¹⁸ See CEPU submission at [9].

¹⁹ See AWU submission at [116].

casual or part-time employees, it might take a longer period of time in order to transition.

42. A closer examination of the classification structure and path for progression may be required. However, in response to the AWU submission that employees should not be paid at the Level 1 classification for any more than a period “three months’ employment in the industry”²⁰, we consider that the applicable maximum transition period should be sufficiently flexible to accommodate the variety of working arrangements in the sector (such as casual and part-time employment). In that regard, our current view is that a time period referable to hours’ experience rather than purely a number of months would seem more appropriate.

Funeral Industry Award 2020

43. There is a real difficulty with adopting the Provisional View in relation to the Funeral Industry Award 2020, as the existing Grade 1 classification (which equates to the C14 rate of pay) is expressed to apply to roles/duties that would constitute ongoing roles. For example, the Grade 1 classification includes employees working as a Funeral director’s assistant, coffin draper another role not otherwise specified in Grades 2-6.
44. For that reason, there are practical difficulties with converting Grade 1 to “a classification operating only for a limited period”.
45. The consent position that was advanced by the Australian Funeral Directors Association, the UWU, the AWU, and our clients overcame that issue by proposing:
- (a) the introduction of a new Introductory Level (linked to the C14 rate of pay) which would apply to new entrants to the industry for a period of up to 6 months while they undergo training to enable them to achieve the level of competence required to be classified at Grade 1 or above, and who perform routine duties of a basic nature, exercise minimal judgment and work under direct supervision; and
 - (b) varying the rate of pay applicable to Grade 1 so that they are paid at 50% of the difference between C14 and C13.

²⁰ See AWU submission at [84].

46. That proposal, if implemented, would have the effect of:
- (a) establishing a new Introductory level linked to C14 which is transitional in nature, and which has a transitional period of no more than 6 months (which is consistent with the Provisional View);
 - (b) increasing the rate of pay for Grade 1 employees from \$859.30 per week to (\$22.61 per hour) to \$871.05 per week (\$22.92 per hour); and
 - (c) not disturbing the positions that fall within the existing Grade 1 which are most likely ongoing roles.
47. It is acknowledged that the parties' consent proposal is not wholly consistent with the Provisional View (because the Grade 1 classification would remain below the C13 rate of pay). However, we consider that there would need to be a closer examination of the positions falling within Grade 1, the work performed by those employees, and an assessment of the value of that work prior to the rate of pay for Grade 1 being increased to the C13 level. Equally, any proposed increase to the Grade 1 rate of pay would need to be considered in the context of the need to maintain relativities between the classifications.
48. We also refer to the submissions of the AWU in respect of the *Funeral Industry Award 2020*. The AWU have proposed that:
- (a) the rate of pay for the Grade 1 classification be increased to the C13 rate (which is the current rate of pay for Grade 2 employees); and
 - (b) the rate of pay for the Grade 2 classification be increased to be 50% of the difference between the Grade 2 (C13) rate and the Grade 3 rate.²¹
49. The AWU proposal goes beyond the scope of the Provisional View and amounts to a proposal to increase the rates of pay for both Grade 1 and Grade 2 employees. Such an approach will necessarily require a consideration of ss. 157(2), 157(2A), 157(2B) and 284.
50. Other than the AWU submitting that its proposed variation "would be appropriate"²², it has not advanced any meaningful submissions in support of that proposal.

²¹ See AWU submission at [40].

²² See AWU submission at [40].

Hospitality Industry (General) Award 2020

51. The Introductory level of this award is in conformance with the Provisional View.
52. We note that the AWU have submitted that the classification definition should be varied to remove the ability to extend the initial 3-month period by mutual agreement in circumstances where an employee has not achieved the necessary competency to move to Level 1.²³
53. No explanation, rationale or justification has been provided in support of that proposed variation. With respect, it is difficult to understand why the AWU believe an employee should automatically progress to the next classification level in circumstances where they have not achieved the necessary competency to progress to that Level. Such an approach is inconsistent with a competency based classification structure. Such a variation would also likely have the unfortunate consequence of bringing forward employers' decisions around probationary periods (i.e. an employee might have their employment terminated at the 3 month period rather than at a later period), in lieu of an employer paying the employee a higher rate of pay in circumstances where they are not able to achieve the necessary competency. Under the AWU proposal, it would lead to situations where employees are required to be paid the same amount despite one of the employees not being competent to perform the same level of work as their colleague. For these reasons, the AWU proposal should be declined.

Marine Tourism and Charter Vessels Award 2020

54. The minimum rate of pay for the Crew Level 1 classification, for 'non-overnight charter employees', is \$22.65 per hour, which is less than the C13 rate of pay. However, the classification is quite clearly an introductory / entry-level classification. It is expressed to apply for the first three months of an employee's employment, during which it contemplates the employee may complete a 5 day introductory course.
55. The next classification (Crew Level 2) is then expressed to apply to employees "After completing the first 3 months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer".
56. In that context, we consider that the classification aligns to the Provisional View and no variation is required or warranted.

²³ See AWU submission at [90].

57. In response to submission of the CFMMEU – MUA Division, it appears they have misconstrued the terms of clause 12.1 of the award.²⁴ Contrary to their submission, clause 12 does not contain any precondition for progression on the basis that the employee has “completed the 5-day Introduction Deckhand Course”. Rather, clause 12.1 contemplates that an employee “may” complete the 5-day course but does not mandate it.
58. Clause 12.2 also does not contain a prerequisite that an employee has completed that course in order to move up to Crew Level 2. Pursuant to clause 12.2(a), Crew Level 2 will apply to employees after they have completed:
- “... the first 3 months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer”.* [emphasis added]
59. Where an employee does not undertake the 5-day Introduction Deckhand Course, in most cases they would presumably have obtained “relevant experience” during that 3 month period.
60. At this stage, we do not consider it necessary for the classification descriptors/definitions in the award to be varied. Further, the proposal advanced by the CFMMEU – MUA Division²⁵ may have the unintended consequence of obliging new employees to undertake the introductory course (potentially at their own cost) in circumstances where they may not wish to do so.

Meat Industry Award 2020

61. For the most part, the Meat Industry Level 1 classification conforms to the Provisional View. It is an entry-level classification applying to employees with no experience in the industry undergoing on-the-job training.
62. That said, we acknowledge that the Meat Industry Level 1 classification refers to the employee undergoing training for an initial period of “at least 3 months”, which does not provide for a maximum or outer-limit time period.
63. We note the proposal advanced by the Australian Meat Industry Council (AMIC), which involves varying A.3.1 of the award to introduce an outer limit of 6 months. Our clients

²⁴ See submission of CFMMEU – MUA Division at [6].

²⁵ See submission of CFMMEU – MUA Division at [6].

support that proposal and consider that it is a sensible amendment that results in the award conforming to the Provisional View.

Premixed Concrete Award 2020

64. When the industry allowance is accounted for, this award does not conflict with the Provisional View.
65. We disagree with the AWU submission regarding an automatic progression from Level 1 to Level 2 after three months' experience in the industry.²⁶ It is unclear how or why this arbitrary timeframe has been selected. The AWU have not advanced any submissions that would explain or justify the variation. Ultimately, the award provides for progression from Level 1 to Level 2 based on the nature of the work performed by an employee.

Registered and Licensed Clubs Award 2020

66. We refer to and restate the submissions at paragraphs 33-35 above in respect of the AWU submission about this award.²⁷ Our comments at paragraphs 33-35 above are apposite to the AWU submission in respect of this award.

Textile, Clothing, Footwear and Associated Industries Award 2020

67. The Trainee classification at A.1 of the award is an entry-level classification for new entrants to the industry. It provides for training "for a period of up to 3 months" so as to enable the employee to "achieve the level of competence required to be classified at Skill Level 1".
68. That classification conforms to the Provisional View, and on that basis we do not consider it necessary for the award to be varied in the manner proposed by the CFMMEU (Manufacturing Division).²⁸ We do not see any basis for any variation.
69. At clause 19.2, the award contains separate wage rates for "wool and basil" employees, including a "General hand" classification and various grades of operators and senior operators. At B.4, the award states that:

***Wool and basil employees** are employees who are required to work on pulling sheep skins, pie or piece picking, or any other class of work connected with wool scouring and carbonising.*

²⁶ See AWU submission at [119].

²⁷ See AWU submission at [119].

²⁸ See CFMMEU (Manufacturing Division) submission at [23]-[24].

70. However, it is not entirely clear what other classification descriptors (if any) are applicable to wool and basil employees.
71. It therefore appears that the “General hand” classification (for wool and basil employees) does not conform to the Provisional View, given that there does not appear to be any transitional arrangement or time period for progression to a higher level. However, in that context, it should also be noted that the General hand classification appears to be designed to apply to employees performing general hand duties, including (presumably) on an ongoing basis. It may therefore not be appropriate to simply morph the classification into a temporary level that employees transition off at the expiry of some arbitrary timeframe.
72. 97. We note the CFMMEU (Manufacturing Division) proposal to simply convert the existing classification into one that employees transition from after 38 hours of induction training. In the absence of any detailed submission or witness evidence in respect of the feasibility or implications of that proposal, we consider that further consideration should be given to the functions these employees actually perform, the value of that work, etc.

Timber Industry Award 2020

73. We refer to and restate the submissions at paragraphs 33-35 above in respect of the AWU submission about this award.²⁹ Our comments at paragraphs 33-35 above are apposite to the AWU submission in respect of this award.

Stevedoring Industry Award 2020

74. We note that the CFMMEU – MUA Division propose the deletion of the entry level grade in the Stevedoring Industry Award 2020.³⁰ This proposal is advanced on the basis of a contention that the “grade 1 award classification has no application throughout the industry”.³¹
75. In response, we make the following comments:
- (a) First, the grade 1 classification is clearly an introductory / entry-level grade that is expressed to apply to employees who are “undergoing induction and initial training prior to appointment as a stevedoring employee Grade 2”;

²⁹ See AWU submission at [1].

³⁰ See submission of CFMMEU – MUA Division at [15].

³¹ See Statement of Warren Smith.

- (b) Second, to the extent that the Commission forms the view that the existing Grade 1 classification descriptor should be varied, this could be achieved by including an outer-limit time period for which an employee can remain on Grade 1 before moving to Grade 2;
- (c) Third, it is not entirely clear what is meant by the assertion that the award classification “has no application throughout the industry”. This may, for example, refer to a high incidence of enterprise bargaining in the sector, or the fact that rates of pay actually paid in the sector might be significantly greater than the modern award rates of pay. However, from the perspective of the award as a safety net instrument, we do not consider that the Grade should simply be removed from the award. By way of example, Grade 1 is clearly intended to apply to new entrants to the industry undertaking training in order to be appointed as a Grade 2 employee. We anticipate that employers in the sector do from time to time engage new entrants to the industry who require initial training. As such, we are of the view that the classification level should remain in the award.

Prepared by Australian Business Lawyers & Advisors for Business NSW and Australian Business Industrial



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Fair Work Act 2009 s.157— FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of certain C14 rates in modern awards

Australian Fresh Produce Alliance

(Interested Party)

Outline of Submissions for AFPA

1. This submission is filed by the Australian Fresh Produce Alliance (**AFPA**), an association of Australian fresh produce growers and suppliers in accordance with directions issued by the Commission in a statement published on 22 September 2021¹ (**September Statement**) inviting interested parties to file submissions and evidence regarding the Commission's *provisional view* set out at [8] of the September Statement.
2. AFPA is not a registered organisation but is an "industrial association" within the meaning of the *Fair Work Act 2009* (**FW Act**). Its members (which include supply arrangements with over 1,000 partner growers) are covered by the *Horticulture Award 2020* (**Horticulture Award**) and the *Nursery Award (2020)* (**Nursery Award**). They are affected by the Commission's *provisional view*, giving AFPA sufficient interest in the proceeding.²
3. The Commission has expressed a provisional view that the following principles should guide its completion of the C14 Review:³
 - (a) the lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate;
 - (b) any classification rate in a modern award which is below the C13 rate (including the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification in the award (which must not be less than the C13 rate); and
 - (c) the transitional period for the purpose of (b) above should not exceed 6 months.

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¹ [2023] FWCFB 168.

² In the unlikely event that its standing is challenged, AFPA can file evidence and submissions on that issue.

³ September Statement at [8].

4. The premise upon which the Commission has expressed its *provisional view* is not readily apparent. AFPA does not agree with the principles outlined in paragraph [8] of the September Statement.
5. In summary, AFPA submits that both the Nursery Award and the Horticulture Award meet the modern awards objective and there is no need to vary either award. Further, to the extent that the Commission maintains the *provisional view*, the Nursery Award is consistent with it.
6. In the alternative, submits that the classification structure of the Horticulture Award requires further review to ensure that Level 1 is truly transitional but that the period of transition should be three months experience with the employer performing the task.

(A) The Commission’s Review

7. This review is being conducted by the Commission pursuant to section 157 of the FW Act which provides that the Commission may make a determination to vary a modern award, otherwise than to vary modern award minimum wages if the Commission is satisfied that making the determination is necessary to achieve the modern awards objective.
8. Section 134 of the FW Act sets out the modern awards objective:

134 The modern awards objective

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women’s full economic participation; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - (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.

This is the ***modern awards objective***.

When does the modern awards objective apply?

- (2) The modern awards objective applies to the performance or exercise of the FWC's **modern award powers**, which are:
- (a) the FWC's functions or powers under this Part; and
 - (b) the FWC's functions or powers under Part 2-6, so far as they relate to modern award minimum wages.
9. This review was commenced by the Commission on 28 August 2019⁴ at which time, the Commission expressed a provisional view that 14 awards that contained a rate of pay at the C14 level should be referred to a Full Bench for review (**C14 Review**). Importantly, neither the Horticulture Award or the Nursery Award were included in the Commission's review of C14 rates at that time.
10. The commencement of the review followed the *Annual Wage Review Decision 2018-19*⁵ (**AWR 2019**) in which the Expert Panel commented that awards prescribing a rate at the C14 level, then equivalent to the National Minimum Wage (**NMW**), that is not transitional should be the subject of further examination.⁶
11. Relevantly, at [359] of the AWR 2019, the Expert Panel commented (with emphasis):
- In our judgment the magnitude of the increase required in this Review to lift these household types above the relative poverty line would run a significant risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers. Further, it is not clear how many low-paid employees are in the household types which are the focus of the ACTU and ACBC submission. It is likely that a number of these employees are on a transitional modern award minimum wage from which they will progress after a relatively short period. Almost two-thirds of workers who enter low-paid employment leave within a year and most move into higher-paid work.*
12. In the *Annual Wage Review Decision 2022-2023* [2023] FWCFB 3500 (**AWR 2023**), the Expert Panel determined to realign the relativity of the NMW with the C13 classification (resulting in an increase to the NMW above the percentage increase applied to award rates). Relevantly, the Expert Panel determined:
- (a) At [8]:

The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. A wider review, including supporting research, concerning the needs and circumstances of lowpaid award/agreement free employees is required, but the interim step we have decided to take in this Review is to align the NMW with the current C13 classification wage rate, which in nearly all relevant awards is the lowest modern award classification rate applicable to ongoing employment.
 - (b) At [104]

The above analysis also takes no account of casual employees in receipt of the 25 per cent 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

⁴ [2019] FWC 5863.

⁵ [2019] FWCFB 3500.

⁶ *Ibid* at [340].

rates) or award overtime penalty rates, which are common incidents of modern award-reliant employment.

(c) At [108]

Further, 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.

(d) At [172]

There are two aspects to our consideration of the NMW. First, for the reasons set out in section 5 of our decision, we consider that the historic alignment between the NMW and the C14 rate should cease. We note in this connection that there is no requirement in the FW Act for the NMW to align with the lowest modern award adult rate, nor does the NMW operate as a floor to modern award minimum wage rates.

13. If the basis for the conclusion in the first sentence of paragraph [8] of the AWR 2023, that [t]he C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees, is said to be as set out in paragraph [107] of that decision, such a conclusion can only be limited to the classification as it appears in the Manufacturing and Associated Industries and Occupations Award and not in terms of its relativity to the NMW or other modern awards.
14. In the September Statement, the Commission proposed to broaden the scope of the C14 Review to include a number of other awards, including relevantly to AFPA, the Horticulture Award and the Nursery Award.
15. In doing so, and in expressing the *provisional view* summarised at paragraph 3 above, it appears that the Commission has not turned its mind to the Nursery Award or the Horticulture Award in any greater detail than as set out in Attachment D to the September Statement. That is, beyond a cursory consideration of whether the C14 equivalent classification in those Awards is transitional, the Commission has not considered the appropriateness of the *provisional view* to those Awards.
16. AFPA notes that the review has been ongoing in the Commission for a period of 4 years. AFPA has been provided with a period of 6 weeks in which to provide any material to the Commission in relation to variations to the Horticulture Award and the Nursery Award which may significantly and substantially affect its members.

(B) The Nursery Award

17. On 25 November 2019, the Commission made the Nursery Award⁷ having determined that the making of the award was necessary to achieve the modern awards objective.
18. The Nursery Award contains a C14 rate of pay equivalent in Grade 1A. Schedule A of the Nursery Award includes the classification description for a Grade 1A employee as follows (with emphasis):

Employees in this grade have no previous experience in the industry and no formal qualifications. They carry out general nursery and labouring duties of a routine and repetitive and/or manual nature, mainly under supervision, for a period of no longer than 3 months.

⁷ PR714160.

19. The Grade 1B classification provides a rate of pay equivalent to the C13 rate of pay and in Schedule A of the Nursery Award relevantly provides (with emphasis):

A.2.1 *Employees in this grade have 3 months experience in the industry. They perform and are accountable for nursery tasks as directed within the skill levels set out below. They work within established routines, methods and procedures. Supervision is direct.*

...

20. The information pertaining to the Nursery Award in the table at Attachment D to the September Statement is accurate.
21. To the extent that the Commission maintains the *provisional view* in respect of the Nursery Award, the provisions of the Nursery Award relating to the C14 and C13 equivalent classifications are consistent with the Commission's *provisional view*.
22. No variation to the Nursery Award is necessary to meet the modern awards objective.

(C) The Horticulture Award

23. On 7 October 2019, the Commission made the Horticulture Award⁸ having determined that the making of the award was necessary to achieve the modern awards objective.
24. In the Horticulture Award:
- (a) the Level 1 classification rate is relative to the C14 classification rate; and
 - (b) the Level 2 classification rate is relative to the C13 classification rate.
25. The work within the scope of Level 2 is different to, and distinct from, that of Level 1. An employee engaged, for example, to perform duties of fruit or vegetable picking, thinning or pruning, is, in accordance with the classification descriptions in Schedule A of the Horticulture Award, classified as a Level 1 employee.⁹ There is no scope for picking, thinning, or pruning work in any other classification in the Horticulture Award.
26. There is no automatic requirement to transition a Level 1 employee to Level 2 after any period of time, other than where an employee is undertaking structured training so as to perform the duties of Level 2.
27. In this respect, information pertaining to the Horticulture Award in the table at Attachment D to the September Statement is accurate.
28. In *Application by The Australian Workers' Union to vary clause 15 of the Horticulture Award 2020* [2021] FWCFB 5554, a Full Bench of the Commission summarised the Horticulture Industry as follows (footnotes omitted):

[31] The Horticulture Award covers, in essence, the 'the sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural enterprise.' Horticultural crops are defined in clause 2 of the Award to include:

⁸ PR722499.

⁹ Witness Statement of Carl Phillips dated 10 November 2023 at [15] to [22]. Mr Phillips' evidence is that of Costa's approximately 10,750 workers, 10,000 performing predominantly Level 1 duties.

'all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a broadacre field crop in the Pastoral Award 2020.'

[32] The Horticulture Award does not cover the wine industry, silviculture and afforestation, sugar farming, cotton growing or harvesting and plant nurseries.

[33] In the horticulture industry, crop growth is seasonal and each crop has its own distinct picking season. The crop yield is lower at the beginning of the season, then ramps up during the middle of the season and tapers off in the late portion of the picking season.

...

[35] Due to the seasonality and picking windows, the size of the workforce at a particular site can vary significantly throughout the season. The demand for picking labour increases as the picking season progresses, peaks and then tapers off reflecting changes in crop yield.

[36] Work across the horticulture industry is labour intensive and predominantly seasonal.

[37] The workforce size and composition varies substantially over the course of the year and also varies from region to region.

[38] Horticulture farms tend to use relatively large amounts of casual and contract labour at key times of the year and the incidence of short term (seasonal) and casual employment is high, about 30% of the industry is employed on a casual basis and 38–47% is employed on a contract basis.

...

[40] The best estimate of the total horticulture workforce for 2019 is between 120,000 to 140,000. These figures capture employees in the industry regardless of the duration of their employment and the number of persons employed at any one time varies significantly from month to month. Seasonal labour demand increases significantly during November to March, a period during which many horticulture crops are harvested.

...

29. Mr Phillips' experience is that the workforce in the industry is often seasonal,¹⁰ and workers may work for one employer for a season and may then either not return, or not return until after a couple of seasons have passed.¹¹ Some employers, such as Costa, will specifically seek return workers in subsequent seasons from both direct labour and labour supply partners.¹² Employees who are paid according to the Horticulture Award classifications do not automatically transition from Level 1 to Level 2 unless they are employed for the purpose of duties set out in Level 2 and are undertaking training to enable them to perform those duties.¹³
30. In accordance with the terms of the Horticulture Award:
- (a) casual employees are paid a loading of 25%;¹⁴

¹⁰ Ibid at [16].

¹¹ Ibid at [18] to [20].

¹² Ibid at [17].

¹³ Ibid at [22].

¹⁴ Clause 11.2(a)(ii).

- (b) casual employees are entitled to penalty loadings for particular hours of work;¹⁵
 - (c) shiftworkers are entitled to penalty loadings for shift work;¹⁶
 - (d) the rate of pay for pieceworkers must be fixed so that pieceworkers competent at the piecework task, meaning a pieceworker who has at least 76 hours' experience performing the task, will earn at least 15% more per hour than the hourly rate;¹⁷
 - (e) pieceworkers are paid 200% of the piecerate for work on a public holiday;¹⁸
 - (f) where a pieceworker performs non-piecerate tasks, they are to be paid the hourly rate;¹⁹
 - (g) a pieceworker must be paid no less than the hourly rate;²⁰
 - (h) piecerate workers receive allowances in addition to the piecerates;²¹
 - (i) employees are entitled to allowances as applicable;²²
 - (j) hourly rate employees are entitled to overtime payments;²³ and
 - (k) employees receive annual leave loading of 17.5%.²⁴
31. Employees under the Horticulture Award are entitled to a range of additional earnings-enhancing benefits to which an employee on the NMW will not be entitled as was contemplated by the Expert Panel in the AWR 2019 and the AWR 2023.
32. The classification structure in the Horticulture Award appears primarily derived from the *Horticultural Industry (AWU) Award 2000*²⁵ (**2000 Award**). The classification definitions for Level 1 and Level 2 of the 2000 Award (the relevant classifications) are extracted at **Annexure A** to these submissions.
33. Relevantly, the 2000 Award, as with the Horticulture Award provides work within the scope of Level 2 classification that is different to, and distinct from, that of Level 1. There is no automatic requirement to transition a Level 1 employee to Level 2 after any period of time, other than where an employee is undertaking structured training so as to perform the duties of Level 2.
34. To the extent that employees otherwise progressed from Level 1 to Level 2 in the 2000 Award, such progression was based on the employee meeting certain promotional and

¹⁵ Clause 13.2.

¹⁶ Clause 13.3.

¹⁷ Clause 15.2(d).

¹⁸ Clause 27.3.

¹⁹ Clause 15.2(e).

²⁰ Clause 15.2(f).

²¹ Clause 15.2(g).

²² Clause 18.

²³ Clause 21.

²⁴ Clause 24.6.

²⁵ AP784867CRV.

competency criteria. Critically, these provisions were not included in the Horticulture Award.

35. An analysis, a summary of which is contained at **Annexure B**, of the remaining pre-modern awards which were affected by the making of the *Horticulture Award 2010 (2010 Award)* demonstrates that:
 - (a) 4 awards contain 1 classification only;
 - (b) 3 awards provide for no automatic progression from the lowest classification to the next;
 - (c) 3 awards contain classifications with progression after 12 months from the lowest classification to the next;
 - (d) 2 awards contain classifications with progression after 6 months from the lowest classification to the next.²⁶
36. It is clear that it has not been a common feature in the Horticulture Industry that an employee will automatically transition from the lowest classification to the next after a fixed period of time.
37. Indeed, while the 2000 Award, consistent with the 2010 Award and the Horticulture Award, contains a period in which a Level 1 employee may progress to Level 2, such progression is limited to circumstances where the employee is undergoing structured training in relation to the duties of a Level 2 employee, which is, as set out above, distinct from the duties of a Level 1 employee.
38. In any event, to the extent that any pre-modern awards provided for automatic progression for a period, the period of time was between 12 and 6 months.
39. A consideration of the history of the Horticulture Award does not support a conclusion that it was intended that the Level 1 rate of pay was only ever intended to be a transitional rate of pay.
40. It is evident that the Horticulture Award was, and historically has been, drafted in a way that the Level 1 classification is not intended to be a transitional classification to Level 2. Indeed, as above, fruit picking is a duty that is only referable to the Level 1 classification and no other, including specifically the Level 2 classification. This arrangement is not unsurprising given the nature of the industry, and in particular taking into account that workers are predominately seasonal, and a season will only last for part of a year. This is reflected in the application of the classifications by the industry.
41. Accordingly, the *provisional view* expressed by the Commission in the September Statement is not consistent with the provisions of the Horticulture Award. As above, it is apparent that the Commission did not consider the terms of the Horticulture Award when expressing the *provisional view*.
42. The Horticulture Award contains a number of features identified by the annual wage review Expert Panels, as set out above, which tend a conclusion that it is not necessary

²⁶ 1 award contains no rates of pay.

to apply the *provisional view* to the Horticulture Award in order to meet the modern awards objective.

(D) Alternative Horticulture Proposal

43. If the Commission takes the view that, notwithstanding the intention of the Horticulture Award, the *provisional view* should nevertheless apply, AFPA submits that the Horticulture Award should be varied so that an employee transitions from Level 1 to Level 2 after a period of experience with the employer performing the task.
44. The C14 equivalent rate remains appropriate in the Horticulture Award.
45. The difficulty with a variation to the Horticulture Award at this time is that a variation to the Level 1 classification to transition to a Level 2 classification requires a further review so that the classification truly operates on a transitional basis. This requires further consideration of the classification definitions, beyond the simple inclusion of a transitional period given that the duties that are relevant to employees that are presently correctly classified as a Level 1 are not expressed as being less proficient or competent than a Level 2 employee for the reasons set out above.
46. The Horticulture Award already contains a period in which employee may be undertaking training for the purpose of transitioning to Level 2. That period is three months. The Level 2 classification description contains duties which are more complex and require a greater level of competency and proficiency than is required of a Level 1 employee.
47. The evidence of Mr Phillips is that the average period of time in which it takes an employee to become proficient in their role varies depending on the nature of the produce. By way of example:
 - (a) berry picking may between take 3 to 12 months to become proficient in all the varieties of berries that Costa produces but the berry season usually only lasts 6 months;
 - (b) citrus picking may take up to 3 to 6 months given the nature of the season and number of varieties of fruit to become proficient;
 - (c) mushroom picking may take 12 months to become proficient. For the reasons I refer to above, it can be the most technical of the produce that Costa produces to correctly harvest.²⁷
48. Mr Phillips' experience is that:
 - (a) The workforce is often seasonal.²⁸
 - (b) Workers may work for one employer for a season and may then either not return, or not return until after a couple of seasons have passed.²⁹

²⁷ Witness Statement of Carl Phillips dated 7 November 2023 at [32].

²⁸ Ibid at [16].

²⁹ Ibid at [16] and [35].

- (c) Different producers will have different standards and requirements in respect of their produce depending on the:
 - (i) price negotiated with wholesalers or retailers for a product;
 - (ii) nature of the use of the produce (i.e. produce to be used for freezing, jamming or juicing will not need to be of the same quality as first-grade produce);
 - (iii) distance the produce is required to travel once it leaves the producer;
 - (iv) general operations of the producer.³⁰
 - (d) If produce does not meet the standards required by wholesalers or retailers, it may be rejected;³¹
 - (e) A high level of physical fitness is often required to perform the duties required.³²
 - (f) The amount of time it takes for a worker to become proficient at fruit picking or harvesting can vary greatly between 3 to 12 months depending on the type of produce;³³
49. AFPA accepts that it is an undesirable position for the Horticulture Award to include varying periods before transitioning to Level 2 based on produce. For this reason, AFPA seeks a period of transition taking in account a consideration of the varied amount of time it takes for employees to meet the required proficiency standards for various produce.
50. The Nursery Award, in a similar industry grouping, contains a transition period of three months to progress from Grade 1A to Grade 1B.
51. If the *provisional view* is to be applied to the Horticulture Award, AFPA submits that Levels 1 and 2 should be reviewed to ensure that the classification descriptors are truly transitional, and that the period of transition should be three months experience with the employer performing the task.

Conclusion

52. AFPA does not support the *provisional view* set out in the September Statement.
53. To the extent that the Commission upholds the *provisional view* in respect of the Nursery Award, the Nursery Award is already consistent with the *provisional view* and no variation is required.
54. The Commission should conclude that the *provisional view* is not consistent with, nor appropriate to apply to the Horticulture Award and no variation is therefore required.
55. To the extent that the Commission upholds the *provisional view* in respect of the Horticulture Award, the Horticulture Award requires further consideration as to the necessary amendments to the classification structure should be given so as to vary the

³⁰ Ibid at [35].

³¹ Ibid at [25].

³² Ibid at [8] to [14].

³³ Ibid at [32].

Horticulture Award as set out above in part (D) above to make the classifications truly transitional and ensure the intention of the *provisional view* and the matters set out in the AWR 2023. Should the Commission consider that the Horticulture Award should be varied in light of the *provisional view*, AFPA reserves its rights to present further evidence and submissions to the Commission.

Kingston Reid

**Solicitors for AFPA
10 November 2023**

Annexure A

24. CLASSIFICATIONS AND WAGE RATES (APPLYING TO SCHEDULE B AND C RESPONDENTS)

24.1 Classification definitions

24.1.1 Level 1 employee means an employee classified in accordance with the following criteria:

24.1.1(a) General description

An employee at this level:

- Undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance;
- Performs routine duties essentially of a manual nature and to the level of their training;
- Exercises minimal judgement;
- Works under direct supervision;
- Is responsible for the quality of their own work.

24.1.1(b) Points of entry

- New employee;
- Existing employee performing work within this grade who is undertaking in order to progress to Level 2.

24.1.1(c) Indicative duties

Indicative of the duties an employee may perform at this Level are:

- Performs general labouring duties;
- Fruit or vegetable picking, thinning or pruning;
- Operates small towing tractor engaged in transfer of produce bins and other containers during harvest;
- Performs a range of routing housekeeping tasks in premises and grounds;
- Sorting, packing or grading of produce where this requires the exercise of only minimal judgement;
- Performs basic recording functions related to work performed at this level;
- Provides assistance within the scope of this level to other employees as required;
- May be undertaking structured training to enable entry into Level 2.

24.1.1(d) Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 1 and Level 2 skills required at the enterprise and may then progress to Level 2 as a position becomes available.

24.1.2 Level 2 employee means an employee classified in accordance with the following criteria:

24.1.2(a) General description

An employee at this level:

- Has completed up to three months structured training so as to enable the performance of work within the scope of this level;
- Works under general supervision either individually or in a team environment;
- Works with established routines, methods and procedures;
- Performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- Exercises limited discretion;
- Is responsible for the quality of their own work;
- Receives training in Occupational Health and Safety standards and practices relevant to the site;
- Performs lower level tasks as required without loss of pay unless re-engaged to perform tasks at predominantly a lower skill level.

24.1.2(b) Points of entry

- An existing employee who advances by satisfying the promotional criteria defined at Level 1 and is selected by the employer to fill a position at this level;
- A new employee selected for a position at this level after demonstrating through assessment or appropriate certification to the employer's satisfaction, competence in the skills required in the establishment at this level.

24.1.2(c) Indicative duties

Indicative of the duties an employee may perform at this level are:

- Performs a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;
- Repetition work on automatic, semi-automatic or single purpose machines or equipment;
- Assembles/dismantles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- Irrigation, spraying or pruning under general supervision;

- Sorting, packing and grading beyond the scope of Level 1 duties;
- Maintains simple records;
- Uses hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- Operates tractors with engine capacity of up to 70 kW;
- General and routine product testing;
- Provides assistance within the scope of this level to other employees as required;
- Assists in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;
- May undertake training to enable entry into Level 3.

24.1.2(d) Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 3 skills required at the enterprise and may then progress to Level 3 as a position becomes available.

Annexure B

Award	Summary of progression
AP767376 - Agriculture, Forestry and Fishing Industry Sector Minimum Wage Order - Victoria – 1997	Did not contain any automatic progression from Level 1 to Level 2
AP784867CRV - Horticultural Industry (AWU) Award 2000	Cl. 24.1.1(d) <i>Promotional Criteria</i> An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 1 and Level 2 skills required at the enterprise and may then progress to Level 2 as a position becomes available.
AN160101 – The Dried Vine Fruits Industry Award, 1951	Cl. 22 Provided 1 rate of pay only.
AN160126 – Farm Employees' Award, 1985	Cl. 14 The lowest classification applied to a farm hand with less than 12 months experience in the industry. The next classification applied to a farm hand with 12 months experience in the industry.
AN170032 – Farming and Fruit Growing Award	Cl. 7. A farm and/or Orchard Hand Level 1 means a person with less than 6 months experience in the industry.
AN140126 – Fruit and Vegetable Growing Industry Award - State 2002	Cl. 5.1 Provided 1 rate of pay only.
AN160134 – The Fruit Growing and Fruit Packing Industry Award	Cl.24A Provided 1 rate of pay only.
AP811240 - Hop Industry Award 2001	Cl. 9.5 Hop industry hand grade 1 means an employee with less than six months experience in the industry. Cl. 9.6 Hop industry hand grade 2 means an employee with at least six months experience in the industry.
AN120247 – Horticultural Industry (State) Award	Cl. 3 A farm Employee Level two includes a Farm Employee Level One with at least twelve months experience in the industry.
AN170045 – Horticulturists Award	Cl. 8. Relevantly, contains rates for Horticultural Tradesman and an employee having less than one month's continuous service with their present employer.
AN120357 – Mushroom Industry Employees (State) Award	Cl. 2. Farm Employee Level 1 (83%). No automatic progression.

AN150104 – <i>Pastoral Industry (South Australia) Award</i>	Sch. 2 Station hand with less than 12 months experience in the industry. Station Hands with twelve months experience or more in the industry.
AP792378CRV – <i>Pastoral Industry Award 1998</i>	No rates included.
AN140295 – <i>Tea Industry Award - State 2003</i>	Cl. 5.1 – tea blender first years experience, second years experience. Tea picking – no progression.

Fair Work Act 2009 s.157 – FWC may vary etc. modern awards if necessary to achieve modern award objectives

Australian Fresh Produce Alliance
(Interested Party)

WITNESS STATEMENT OF CARL JOHN PHILLIPS

I, Carl John Phillips, Chief People Officer at Costa Group Holdings Ltd, of Level 5, 818 Bourke Street, Docklands, Victoria, state:

1. I make this statement based on my own direct observations and knowledge, or on the basis of information provided to me which, to the best of knowledge and belief, is correct.

My role and background

2. I am employed by a subsidiary of Costa Group Holdings Limited (**Costa**) as the Chief People Officer (**CPO**) and am based in Docklands, Victoria.
3. I commenced with Costa in 2014 and started in my role as CPO in February 2022. Before my role as CPO, I was employed as Group HR manager and then as HR Group Manager and Business Services. While my title changed during this period, my responsibilities remained largely the same.
4. In my role as CPO, I have overall responsibility and accountability for the company's people function, inclusive of Human Resources, Internal labour provision from Australian Government's regulated Pacific Australia Labour Mobility program (**PALM**), Workplace Health and Safety. At a high level, my duties include:
 - (a) closely managing and overseeing the workplace health and safety whilst accounting for the high risk profile associated with agriculture work;
 - (b) people accountabilities in relation to labour effectiveness, industrial relations requirements, payroll, talent, management and succession, remuneration equity plans of the Group and executive responsibility for the Human Resources and Remuneration Committee of the Board;
 - (c) controlling and monitoring the company's labour productivity including being accountable for the management of labour leakage such as through the payment of overtime or make up pay for piece rate workers;

- (d) ensuring labour compliance within all domestic and international operations;
 - (e) undertaking necessary reporting requirements including generating remuneration and labour reports and the presentation of these reports to the board.
5. Prior to my employment with Costa and throughout the course of my career I have held various Human Resources and Safety related roles. Most recently, I have worked in the following positions:
- (a) HR Manager - Senvion Australia Pty Ltd;
 - (b) Chief Executive Officer – 370 Degrees Group;
 - (c) Executive General Manage People – SKILLED Group; and
 - (d) Director of Safety – Australia – Alcoa.

Australian Horticulture Industry

6. The horticulture sector in Australia encompasses the growing, processing, marketing and exporting of a variety of fruit, vegetables and tree nuts. This produce includes but is not limited to:
- (a) all kinds of fruits such as berries, bananas, citrus, cucurbits, pineapples, mandarins, avocados, mangos, tomatoes, apples, pears, papayas, lychees, stone fruit, and grapes;
 - (b) vegetables such as potatoes, carrots, brussels sprouts, cauliflower, capsicums, zucchini, lettuce, spinach and rocket;
 - (c) herbs, including basil, parsley, and coriander;
 - (d) fungus, including various strains of mushrooms; and
 - (e) various types of nuts such as cashews, chestnuts, hazelnuts, macadamias, peanuts, pecans, pistachio and walnuts.
7. To my knowledge, the majority of Australian produce is grown in the following regions:
- (a) Goulburn Valley, Victoria;
 - (b) Murrumbidgee Irrigation Area, New South Wales;
 - (c) Sunraysia, Victoria and New South Wales;
 - (d) Riverland, South Australia;
 - (e) Northern Tasmania;
 - (f) Southwest Western Australia; and
 - (g) Coastal Northern New South Wales and Queensland.

Costa's Operations

8. Within the horticulture industry, Costa is the leading grower, packer and marketer of fresh fruit and vegetables, supplying majority of the country's major food retailers.
9. Costa operates primarily in five core categories, being berries (blueberries, raspberries, strawberries, and blackberries), mushrooms, glasshouse-grown tomatoes, citrus and avocados. In addition to the primary categories, Costa also grows, markets and distributes bananas and table grapes.
10. Currently, Costa operates out of approximately 60 locations through Australia based in Western Australia, South Australia, Queensland, New South Wales, Victoria and Tasmania. In total, produce is grown across 7200 hectares of farmland, 40 hectares of glasshouse facilities and three main mushroom growing facilities across the country. In addition to its domestic production, the company operates berry farms covering an estimated total of 750 hectares in Morocco and China.
11. Costa's produce limb is also supported by its interrelated logistics, wholesale, and marketing operations. The company currently has distribution centres located in Western Australia, Victoria, Tasmania and New South Wales and wholesale markets located in South Australia, Queensland, Western Australia and Victoria.
12. The revenue that Costa is able to generate is largely dependent upon the prices negotiated with retailers. These negotiations and pricing discussions may involve different time periods depending on the retailer and the particular produce. In some cases, prices may be negotiated on a weekly basis, and in others, on a 12 month basis or longer. Depending on the retailer and the type of produce, Costa may not have any real bargaining power and may simply need to take the price offered by the retailer as opposed to being able to bargain for a higher price.
13. The prices negotiated with retailers can also depend on the quality of the produce. The higher quality the produce, the better the price can be for Costa. It is therefore necessary that Costa is producing the best quality produce to sell to retailers. I deal with this in greater detail below.
14. There is a significant amount of forward planning to grow and harvest the produce prior to it being able to be picked. This includes determining, sometimes years in advance, how much of a particular type of produce to grow and then negotiating with our suppliers and ensuring that they are able to supply Costa with the amount of seed or number of plants required. This means that our suppliers themselves need to plan how much seed or how many plants to cultivate to sell to us. To ensure that the produce is planted at the correct time for the harvest, this process and the associated expenses can be planned years in advance of the actual time of harvest.

Costa's Workforce and Industrial Landscape

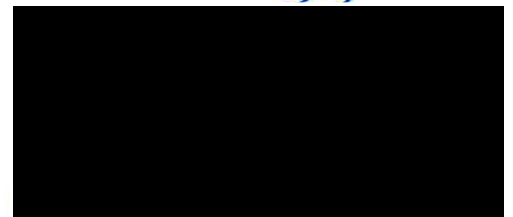
15. Each year, Costa's workforce is made up of approximately 10,750 workers. Of these workers, approximately 750 are permanent salaried employees working primarily in leadership or supervisory capacities.
16. Most of the remaining 10,000 workers form part of Costa's seasonal workforce and are engaged to harvest, process and pack fruit or "fruit pickers" at various times throughout the year depending on the harvest and produce season (**Seasonal Workers/Seasonal Workforce**).
17. The Seasonal Workforce is a combination of direct employees and labour hire workers. Currently, there are a greater number of Seasonal Workers who are Costa employees than those engaged via labour hire.
18. The Seasonal Workforce is made up of both local and transient workers. Where possible, Costa's preference is to engage local workers. Utilising local workers is beneficial for several reasons including managing labour expenses and mitigating the risks associated with transient labour such as social dislocation.
19. With that being said, the total percentage of local workers is low. As a result, the majority of the seasonal workers are either migrant workers or third-party labour. For the most part, Costa's third-party labour are workers from the Pacific Islands who live and work in Australia as part of PALM. In some operations, such as Costa's berry, citrus, and tomato operations, workers from the Pacific Islands are direct employees of Costa.
20. Generally, transient workers will work for Costa for anywhere between six to nine months. During this time, workers may move between different growing locations where they are skilled in picking different types of produce. For example, it is not unusual for workers to relocate from our Riverland citrus operations in South Australia at the end of the citrus season to our blueberry operations in Coffs Harbour New South Wales.
21. The general underpinning industrial instrument covering Costa's overall seasonal workforce is the *Horticulture Award 2020* (**Horticulture Award**). In other instances, seasonal workers may be covered by the terms of an enterprise agreement of the category such as berry or the site or duties such as in citrus. Where this is the case, the classifications and levels within the agreement typically reflect the classification structure in the Horticulture Award
22. Where the workers are employed under the Horticulture Award, they are always engaged at a Level 1 classification and are paid in accordance with this level. Unless the worker changes roles or is actively training in a skill which would see them move to a Level 2 classification, fruit pickers remain at a Level 1 classification.

Fruit Picking

23. The skills required to pick produce, and the time it takes for a worker to become proficient in picking produce are dependent largely on the type of produce the worker is picking as well as their overall fitness levels and the worker's previous experience in picking produce.
24. As Costa supplies directly to supermarkets and retailers, its produce is required to be the highest quality. This includes meeting any retail specifications around food safety, produce size, appearance and colour. These specifications are driven by the retailer or customer.
25. If produce does not meet these specifications, Costa runs the risk of the produce being rejected by retailers. The quality and standard of produce must also be maintained through the lengthy transportation from the regional areas where it is grown, through to metropolitan distribution centres and then onto stores.
26. As a result of these requirements, Costa's fruit pickers are required to pick produce in a manner which ensures it is of the highest quality from the time it leaves the grower to the time it arrives at the retailer.
27. When picking citrus, there are four different picking techniques that can be utilised depending on both the type of fruit and the end market for that fruit. When picking a navel orange, for retail sale pickers are required to examine the fruit to determine its quality and then twist and bring the fruit down from the tree. This technique is referred to as 'twist picking'.
28. Picking naval oranges for retail sale is different to picking juicing oranges which can be picked with less delicacy but with greater speed to maximise profit, this is referred to as 'strip picking'. Picking mandarins requires the worker to 'snip' or 'snap' the mandarin from the tree to prevent the rind of the mandarin from splitting and the technique will depend on the variety of mandarin. If this is not done correctly, the mandarin would spoil on transport from the grower to the retailer.
29. Picking citrus is significantly different to picking berries. When picking raspberries and blackberries pickers must be particularly dexterous to pick the fruit and prevent it from crushing before being placed on a tray for consumers. By contrast, blueberries must be pulled from a plant and can withstand more pressure as they are firmer than raspberries. However overall, when compared to citrus, berry picking is quite delicate in skill.
30. The requirement for picking mushrooms is more technical than the requirements for other produce. Mushrooms must be picked in a way that preserves their white or brown cap and does not bruise the fungus. Pickers must also be able to rapidly identify when a mushroom is ready for picking. If a mushroom is picked too soon, this reduces the harvest available for picking the following day resulting in an overall yield loss for Costa. To incentivise workers to pick mushrooms according to the required standards, the workers are paid an hourly rate with a

bonus based upon productivity. Overall, there is a greater level of training and experience that is required to learn how to pick a mushroom when compared to other produce such as citrus.

31. In addition to differing picking techniques, different types of produce are required to be picked according to different physical characteristics including size, shape, colour or level of ripeness. These desired characteristics vary between crop types and varieties. This requires fruit pickers to make an assessment of fruit characteristics prior to picking the produce.
32. Generally, it takes a fruit picker anywhere between 3 to 12 months to become proficient in picking any one type of produce. This timeframe includes the time it takes for the worker to obtain a level of physical fitness which allows them pick produce in a profitable manner. For example:
 - (a) berry picking may between take 3 to 12 months to become proficient in all the varieties of berries that Costa produces but the berry season usually only lasts 6 months;
 - (b) citrus picking may take up to 3 to 6 months given the nature of the season and number of varieties of fruit to become proficient;
 - (c) mushroom picking may take 12 months to become proficient. For the reasons I refer to above, it can be the most technical of the produce that Costa produces to correctly harvest.
33. By 'proficient' I mean that the worker is both able to consistently, accurately, and correctly execute the produce picking or harvesting technique in the way that they perform their work, and quick in the speed at which they are able to pick or harvest the produce.
34. Fruit picking is physical work which requires workers to have a relatively high level of physical fitness. For example, mushroom pickers are required to pick and move an average of 26 kilograms of produce every hour. Citrus pickers must be physically able to work out in the environment for extended periods of time while repeatedly climbing up and down a ladder and carrying bags of produce to the appropriate collection point. Generally, it takes pickers up to three weeks to acquire the level of fitness required to pick produce in a profitable manner.
35. Given the time it takes for workers to become proficient in picking one type of produce, Costa often tries to recruit the same workers to return the following season. However, given the transient nature of the workforce it is not uncommon for pickers to work for only one season or to be away for multiple seasons before returning. As a result, there is a continuous cycle of workers who are building up the skillset in fruit picking.



Carl Phillips

10 November 2023

Fair Work Act 2009 s.157— FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of certain C14 rates in modern awards

Australian Fresh Produce Alliance

(Interested Party)

Reply Submissions for AFPA

1. The following parties have filed materials in relation to the Horticulture Award 2020 (**Horticulture Award**) and the Nursery Award 2020 (**Nursery Award**) – the awards in which members of the AFPA have an interest:
 - (a) Australian Business Industrial and the NSW Business Chamber (**ABI & BNSW**), filed on 3 November 2023.
 - (b) Australian Industry Group (**AiG**), filed on 6 November 2023.
 - (c) Australian Workers Union (**AWU**), filed on 3 November 2023.
 - (d) National Farmers Federation (**NFF**), filed on 3 November 2023.
 - (e) United Workers Union (**UWU**), filed on 10 November 2023.
2. The AFPA responds to the materials filed by those parties.

Horticulture Award

3. AFPA supports the submissions of ABI & BNSW and AiG in respect of the correctness of the *provisional view* to the terms of Horticulture Award.
4. It is apparent that the Level 1 classification in the Horticulture Award is not, and was never intended to be, transitional to Level 2 after a period of time. AFPA relies on its submissions filed on 10 November 2023 in this regard.

AWU "Option 1"

5. The AWU, supported by the UWU, seeks a variation to the Horticulture Award and the Nursery Award in a manner that goes beyond what might be required to meet the Commission's *provisional view* in seeking that the minimum wages are increased for Level 1 and Level 2 employees under the Horticulture Award.

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6. At [5] of the AWU's submissions, it is suggested that such an approach is necessary in accordance with section 157(1) of the *Fair Work Act 2009 (Cth)* (**FW Act**). With respect, this is incorrect. Section 157(1) provides:

(1) The FWC may:

- (a) make a determination varying a modern award, **otherwise than to vary modern award minimum wages** or to vary a default fund term of the award; or
- (b) make a modern award; or
- (c) make a determination revoking a modern award;

if the FWC is satisfied that making the determination or modern award is necessary to achieve the modern awards objective.

(emphasis added)

7. The AWU's "Option 1" seeks to vary the modern award minimum wages. Such a variation is subject to the provisions of section 157(2), and subsequently subsection (2A)¹ which provide:

(2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:

- (a) the variation of modern award minimum wages is justified by work value reasons; and
- (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) **Work value reasons** are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.

8. As the note in section 157(2) sets out, the minimum wages objective applies. The minimum wages objective is set out in section 284(1) as follows:

(1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and

¹ Section 157(2B) appears to be not relevant in this matter.

- (aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and
- (b) promoting social inclusion through increased workforce participation; and
- (c) relative living standards and the needs of the low paid; and
- (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the *minimum wages objective*.

9. The AWU does not make out that case.
10. The Commission cannot be satisfied on the evidence or submissions before it that making the variation sought by the AWU in “Option 1” is either justified by work value reasons or is necessary to achieve the modern awards objective.
11. The matters set out in paragraph [9] of the AWU’s submissions are not relevant to any consideration of work value reasons or the minimum wages objective. Further, the AWU leads no evidence relevant to any of the factors the Commission must consider in varying modern award minimum wages outside of the annual wage review.
12. As to paragraph [10] of the AWU’s submissions, neither the comments of the annual wage review Expert Panel in the *Annual Wage Review Decision 2022-2023 [2023]* FWCFB 3500, nor the Full Bench in the September Statement, support the variation of the minimum rates of pay in the Horticulture Award for a number of reasons:
 - (a) the Expert Panel was not required to consider work value reasons;
 - (b) the Expert Panel did not consider the minimum rates of pay in the Horticulture Award in varying the modern award minimum wages;
 - (c) the Expert Panel had no regard to the particular kind of work being performed by the employees at Level 1 and Level 2.
13. At paragraphs [11] to [13] of the AWU’s submission, an increase to the Level 2 rate of pay is sought. For the reasons set out above there is no basis upon which the Commission can vary the Horticulture Award in this way. f
14. As an initial matter, the Commission ought to determine that it cannot make the variation to the Horticulture Award sought by the AWU in “Option 1”.

AWU “Option 2”

15. The AWU’s “Option 2” seeks that the Commission vary the Level 1 classification in the Horticulture Award to provide that an employee transitions from Level 1 to Level 2 after 76 hours in the industry.
16. The evidence relied on by the AWU in support of its submissions is largely irrelevant to the variations sought by the AWU and the task presently before the Commission. To the extent that any of the AWU’s evidence is relevant, it does not provide sufficient basis for the Commission to make the variation. The evidence of Carl Phillips in his statements of 10 November 2023 and 1 December 2023 is much more probative and

should be given greater weight that the unsupported opinions of the union officials relied on by the AWU.

17. The AWU relies on the findings of the Fair Work Commission in *Application by The Australian Workers' Union to vary clause 15 of the Horticulture Award 2020* [2021] FWCFB 5554 (**First Piece Rates Decision**) and *Application by The Australian Workers' Union to vary clause 15 of the Horticulture Award 2020* [2022] FWCFB 4 (**Second Piece Rates Decision**). Other than in respect of general observations in relation to the horticulture industry, the First Piece Rates Decision and Second Piece Rates Decision cannot be relied on to support a variation to the classifications of the Horticulture Award.
18. The First Piece Rates Decision and Second Piece Rates Decision dealt with an application made by the AWU to vary the Horticulture Award to provide a minimum rate floor for pieceworkers.
19. Firstly, it is not open to the Commission to determine that the findings in the First Piece Rate case as to “work value reasons” can simply be applied in respect of the matter presently before the Commission, particularly noting the Commission’s conclusions in the First Piece Rate case were limited as follows:

[547] Pieceworkers undertake the same work as those engaged on minimum hourly rates and perform that work under the same conditions; it is only the method of remuneration that differs. In these circumstances we are satisfied that the variation proposed, being the extension of the minimum hourly rate of pay to pieceworkers, is justified by ‘work value reasons’ as required by s.157(2)(a).

[emphasis added]

20. The AWU relies on the definition of “pieceworker competent at the piecework task” of 76 hour’s experience in performed a piecework task in clause 15.2(a)(i) which was inserted into the Horticulture Award by the Commission in the Second Piece Rate Decision in relation to the 15% uplift of piece rates in clause 15.2(d). A number of observations must be made about the variations made to the Horticulture Award following the Second Piece Rate Decision:
 - (a) the inclusion of the definition of “pieceworker competent at the piecework task” was a variation proposed at the Commission’s initiative;²
 - (b) the purpose of the inclusion of the definition was to address the findings of the Commission that:

*... the characteristics of the seasonal harvesting workforce in the horticulture industry render it vulnerable to exploitation. A substantial proportion of the seasonal harvesting workforce are engaged on piece rates and there is widespread non-compliance with clause 15.2 of the Horticulture Award. The industrial reality is that piece rates are not determined in accordance with the method prescribed by clause 15.2; they are set and varied unilaterally by the grower and offered to employees on a take it or leave it basis...*³
 - (c) the outcome of the variation in the Second Piece Rate Decision is not to guarantee a rate of pay to an employee after 76 hours experience, but rather to provide for the mechanism by which a piece rate must be set;

² First Piece Rates Decision at [561].

³ First Piece Rates Decision at [429].

- (d) in the First Piece Rates Decision, the Commission considered the issue of compliance with the Horticulture Award finding:

[455] Further, one of the considerations we are required to take into account in ensuring that modern awards, with the NES, provide a fair and relevant minimum safety net of terms and conditions is:

'the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.'

[560] As mentioned in section 4.6 of this decision, there is widespread non-compliance with clause 15.2; in particular:

- *many growers do not determine piece rates in accordance with the method prescribed by clause 15.2, as interpreted by the Federal Court in Hu (No.2) and the Hu Appeal;*
- *piece rates are set unilaterally by the grower and presented to the employee on a 'take or leave it' basis, rather than being the product of any genuine negotiation between the employer and employee;*
- *piece rates are adjusted unilaterally as required and are not the subject of negotiation; and*
- *pieceworkers are usually not provided with a written piecework agreement.*

[561] ...The draft clause is intended to make the pieceworker term simpler and easier to understand; to reduce regulatory burden, and to promote compliance. In particular, the draft clause removes the requirement for piecework arrangements to be the product of genuine negotiation and agreement, and removes the requirement for piecework rates to be determined in accordance with the method presently prescribed by clause 15.2, as interpreted by the Federal Court in Hu (No.2) and the Hu Appeal.

...

[569] The fixing of the piece rate under draft clause 15.2(d) is simpler than under existing award clause 15.2(b). Existing clause 15.2(b) requires the piece rate to be fixed so as to enable the 'average competent employee' to earn at least 15% more than the applicable minimum hourly rate under the Horticulture Award. As explained in Fair Work Ombudsman v Hu (No 2) this requires the piece rate to be set by reference to the performance of the hypothetical average competent employee in the workforce available or potentially available to the employer. In contrast, draft clause 15.2(d) requires the employer to fix the piece rate at a level that enables a 'pieceworker competent at the piecework task' concerned to earn at least 15% more than the applicable hourly rate.

[570] As mentioned above, for the purpose of setting the piece rate for a task under draft clause 15.2(d), a 'pieceworker is competent at the piecework task' if they have at least 2 weeks' experience performing the task.

...

(footnotes omitted)

- (e) in the Second Piece Rates Decision, the Commission considered:

[99] However, in light of the recent submissions there would be benefit in rewording the minimum piece rate requirement under draft cl. 15.2(d) by reference to the average

productivity of pieceworkers competent at the piecework task. We think this will set the minimum piece rate more precisely and at a level more closely aligned to the rate required under cl.15.2(b) of the Award as it is at present. We will also include a definition of average productivity...

[100] We envisage the process of fixing a piece rate under the reworded cl.15.2(d) will be similar in some respects to that required under the existing cl.15.2(b) as explained by the Court in Hu (No 2) and the Hu Appeal, but will be simpler. It will be simpler because competence is clearly defined and it will generally not be necessary for an employer to contemplate any of the attributes of a hypothetical competent employee other than their productivity. The minimum level of the piece rate will have been met during a pay period if the rate is fixed so that any pieceworker working at the average productivity during the pay period of the pieceworkers competent at the piecework task, will earn at least 15% more than their hourly rate under the Award. If the employer has no competent employees performing the piecework task, the average productivity will need to be estimated on the basis of the productivity of the competent employees available or potentially available to the employer.

- (f) an employee's piece rate earnings may be less than the minimum hourly rate based on their productivity, and in this case, the employer is obliged to provide the employee with payment of at least the minimum hourly rate for the hours worked each day.⁴

21. Paragraphs [20] and [21] of the AWU's submission should be treated with caution. The AWU purports to rely on a finding of the Commission in the First Piece Rates Decision by reference to paragraph [415] of that decision. Paragraph [415] is simply a summary of the submissions made by the AWU in that matter in relation to the issue of payments below the minimum hourly rate for the work.⁵ The conclusion at paragraph [27] of the AWU's submission therefore does not follow.

22. As to paragraph [32] of the AWU's submission, while the Commission in the Second Piece Rates Case was "not attracted" to the proposition that for the purpose of considering the 15% uplift of piece rates, experience with an employer should be considered because:

...such an amendment could result in employers failing to recognise the competence of pieceworkers⁶

the Commission considered the requirement to keep piece rate records could allow an employer to establish the relevant experience of a pieceworker. No consideration or regard was had to employees who are not pieceworkers.

23. The AWU has not established that it is appropriate, and necessary to meet the modern awards objective, that an employee with 76 hours experience in the industry should automatically progress from Level 1 to Level 2.⁷

24. It should also be borne in mind that progression of a piece worker from Level 1 to Level 2 will still entitle to the pieceworker to the 15% uplift (on the Level 2 rates) in accordance

⁴ Horticulture Award clause 15.2(d).

⁵ Similarly, the footnote to paragraph [31] of the AWU's submission is a reference to submissions made by 88 Days and Counting extracted in the Second Piece Rate Decision.

⁶ Second Piece Rates Decision at [74]

with clause 15.2 of the Horticulture Award, where presently a pieceworker earning piece rates at the 15% uplift level is earning above the Level 2 rate in any event.⁸

25. For these reasons, the AWU has not made out a case in support of its “Option 2” and the Commission cannot be satisfied that the variations proposed by the AWU are necessary to meet the modern award objective.
26. APFA accepts, however, consistently with its submissions of 10 November 2023, that if the Level 1 of the Horticulture Award is to be varied to be a transitional level, further consideration should be given as to the necessary amendments to the classification structure, including to Level 2.

Nursery Award

27. AFPA understands the AWU’s primary position to be that the Grade 1A rate of pay in the Nursery Award should be increased to the C13 rate of pay.
28. There is no material, submissions or evidence, before the Commission that would allow the Commission to make the variation sought as the AWU’s primary position.
29. The Commission ought to determine that it cannot make the variation sought by the AWU in respect of the Nursery Award.

Conclusion

30. Primarily, the *provisional view* is not consistent with, nor appropriate to apply to the Horticulture Award and no variation is therefore required.
31. The proposal by the AWU to vary the minimum rates of pay in the Horticulture Award and the Nursery Award is not supported by any cogent evidence or submission that would allow the Commission to be satisfied that such a variation is necessary to meet the modern awards objectives, work values reasons, or the minimum wage objectives.
32. The Commission ought to determine, as an initial matter, that it cannot make the variation proposed by the AWU and supported by the UJU.
33. As to the alternative position advanced by the AWU in relation to Level 1 in the Horticulture Award, the amendments sought to meet the *provisional view* are not supported by the evidence and go further than is necessary to meet the *provisional view* and the modern awards objective.
34. If the Commission is minded to vary the Horticulture Award in line with the *provisional view* the period of transition should be three months experience with the employer performing the task. In that circumstance, the classification structure of the Horticulture Award requires further review to ensure that Level 1 is truly transitional.

Kingston Reid

**Solicitors for AFPA
1 December 2023**

⁸ And presently above the Level 4 rate.

Fair Work Act 2009 s.157 –FWC may vary etc. modern awards if necessary to achieve modern award objectives

Australian Fresh Produce Alliance
(Interested Party)

**WITNESS STATEMENT OF CARL JOHN
PHILLIPS**

I, Carl John Phillips, Chief People Officer at Costa Group Holdings Ltd, of Level 5, 818 Bourke Street, Docklands, Victoria, state:

1. I make this statement based on my own direct observations and knowledge, or on the basis of information provided to me which, to the best of knowledge and belief, is correct.

Background

2. On 10 November 2023, I made a statement in these proceedings (**November Statement**).
3. I have read the Australian Workers' Union's Submissions (**Submissions**) and the statements of Mr Shane Roulstone (**Roulstone Statement**), Mr Anthony Bevan (**Bevan Statement**) and Mr Steven Carter (**Mr Carter**) (collectively, the **Statements**) filed in these proceedings on 3 November 2023.
4. I make this statement in response to the matters raised in the Statements and the Submissions. In this statement I adopt the meaning of the terms I defined in my first statement.

Training

5. At paragraph 23 of the Roulstone Statement, Mr Roulstone states that horticulture workers are typically expected to work productively from the first day or two of their employment.
6. At paragraph 17 the Bevan Statement, Mr Bevan states that the only training that pickers receive is induction training or on-arrival briefings and that the training typically goes on for a few hours and never exceeds one day. At paragraph 18, Mr Bevan goes on to say that pickers usually receive no training beyond their first induction session.

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7. At paragraph 23 of the Carter Statement, Mr Carter states that pickers do not receive structured training.
8. These statements are not an accurate representation of Costa's operations, or the training provided to workers. When fruit pickers commence work for Costa, they are firstly required undertake comprehensive induction training. During the induction, workers are trained in health and safety requirements, fruit picking methodology and technique, quality specifications, facilities management and employment expectations including employment related policies. Where workers' first language is not English other steps are taken to provide support and ensure workers understand the requirements outlined.
9. After the induction is complete and workers commence in the field, they receive ongoing training and coaching. On the job training is largely in relation to picking methodology and technique. In my experience, workers are usually not fully capable of picking fruit immediately after completing induction training. These skills often require refining which is done through coaching and mentoring once they start in the role.
10. Additionally, workers receive ongoing training and education around produce quality and standards and how to pick fruit in order to meet these specifications. It is necessary that this training is provided on an ongoing basis as supermarkets specifications regarding produce quality often fluctuate and the produce can be affected by different factors (for example frost) as the season goes on.
11. With regards to expectations around productivity, Costa does not expect that workers will operate at maximum productivity immediately following their induction. As I set out at paragraph 32 of my November Statement, it can take anywhere between 3 to 12 months for a worker to become proficient in picking any one type of produce. Accordingly, it would be unreasonable for Costa to expect workers to be proficient immediately. For example, Costa does not consider a mushroom picker to be highly proficient until after a period of 12 to 18 months.

Returning Workforce

12. At paragraph 15 of the Roulstone's Statement, Mr Roulstone states that a minority of casual horticulture employees return to their employer each year. At paragraph 16, Mr Roulstone goes on to say that most casual employees will need to move from farm to farm in search of good employers meaning that the majority of casual pickers never develop a mutually productive employment relationship in horticulture.
13. At paragraph 11 of the Carter Statement, Mr Carter states that the majority of workers engaged in harvest roles, move from farm to farm searching for a fair rate but eventually leave the industry within 12 months.
14. These statements do not accurately reflect Costa's experience in relation to return workers and do not provide the appropriate context as to why workers may leave and not return to the industry.
15. When engaging fruit pickers each season, Costa's primary goal is to utilise the greatest number of returning workers as possible. For example, Costa's currently aims for 80% of workers engaged through the PALM program to return from season to season. It is always preferable to utilise returning workers as they usually understand from their previous experience Costa's expectation on safety, quality, employment as well as picking methodology inclusive of Costa's systems and processes.

16. Currently, Costa's aim is for 80% of its workforce to have been employed by or have worked for Costa previously. At the moment, Costa is halfway to meeting this aim across domestic Australian operations with approximately 40% being returning workers. This figure changes depending on what seasons are currently in harvest. For example, in our tomato glass house operations, which is a more consistent workforce, the workforce is made up of approximately 69% returning workers. In the CY24 season we expect to move this number to over 90% with a small number of workers in the long-term PALM class engaged by labour hire.
17. In some instances, fruit pickers engaged by Costa move between Costa Farms. For example, in the past we have had fruit pickers move from Emerald in Central Queensland at the end of the citrus season to Corindi in New South Wales for the start of the berry season. Facilitating the relocation between farms enables international workers, usually either backpackers or PALM workers, to further their skillset and maximise their earning capacity while in Australia.
18. As majority the fruit pickers are international workers, their exit from the industry is typically associated with the conditions attached to their visa. Where the worker is residing in Australia on a Working Holiday Visa, they are required to complete 88 days farm work to extend their time in the country. As a result, these workers tend to leave the industry as soon as they have completed the requisite number of days.
19. PALM workers can work in Australia up to 9 months each year. These workers would usually return to their home country and families at the end of that period, although in my experience, some will return earlier because it is a long time for them to be away from their families and communities. As I set out above, Costa aims to have at least 80% of its PALM workers return each year. Again in my experience, PALM workers will only return for a limited number of years until they decide that they do not want to keep working away from their families and communities.

Cost impact

20. In their Submissions, the Australian Workers Union (**AWU**) proposes that Level 1 employees under the Horticulture Award 2010 (Award) be paid a C13 rate with an increase also to the Level 2 rate of pay, or in the alternative Level 1 employees progress to a Level 2 classification after completing 76 hours work in the industry.
21. An increase to the Level 1 and Level 2 rates of pay or the varying of the Level 1 classification to transitional classification will have a significant cost impact on Costa and other growers. In my experience, growers, including Costa plan their workforces and associated costs and budgeted 6 months in advance with labour making up 75% of Costa's current expenditure. Consequentially, current financial planning has not accounted for the significant cost increases associated with changes to the Level 1 classification.
22. Where the Level 1 classification is made transitional or the rate of pay is increased, Costa will be required to offset the cost impact elsewhere within its business. It is likely that these offsets will be via a reduction in worker numbers. As I set out in my November Statement it is not easy for Costa to pass on cost increases to its customers, and in my experience, end-consumers are unhappy with price increases being passed onto them.

23. The proposed changes will also require companies such as Costa to give greater consideration to cost effective methods of picking such as the use of machinery and automation.



Carl Phillips

1 December 2023

Australian Industry Group

Review of C14 Rates

Submission
(C2019/5259)

6 November 2023

Ai
GROUP

C2019/5259 REVIEW OF C14 RATES

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in response to the statement and directions ¹ issued by the Fair Work Commission (**Commission**) on 22 September 2023 (**Statement**). Specifically, this submission:
 - (a) Responds to the provisional view expressed by the Commission at paragraph [8] of the Statement; and
 - (b) Addresses Attachment D to the Statement.

2. THE PROVISIONAL VIEW

2. The Commission has expressed the provisional view that the following principles should guide the completion of these proceedings: (**Provisional View**)
 - (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate. (**Proposed Principle 1**)
 - (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate). (**Proposed Principle 2**)
 - (3) The transition period for the purpose of (2) should not exceed six months.² (**Proposed Principle 3**)(collectively, **Proposed Principles**)

¹ *Review of certain C14 rates in modern awards* [2023] FWCFB 168.

² Statement at [8].

3. The Provisional View is said to have been reached as a consequence of the decision issued by the Expert Panel in the Annual Wage Review 2022 – 2023 (AWR), including in particular, the following passages of that decision: (emphasis added)

[8] We have decided to take two steps in relation to the NMW. First, for the reasons set out in section 5 of this decision, we have decided to end the alignment between the NMW and the C14 classification wage rate in modern awards – an alignment which has existed since 1997. The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. A wider review, including supporting research, concerning the needs and circumstances of low-paid award/agreement free employees is required, but the interim step we have decided to take in this Review is to align the NMW with the current C13 classification wage rate, which in nearly all relevant awards is the lowest modern award classification rate applicable to ongoing employment. ...

...

[107] In short, the FMW was not established by reference to the needs of the low paid. It was simply aligned with the lowest classification rate established for what was then the Metal Industry Award 1984 –Part I (Metal Industry Award). The C14 classification which then appeared in the Metal Industry Award, and remains in the Manufacturing Award today, has only ever applied to an employee undertaking ‘up to 38 hours induction training’ and was never intended to apply on an ongoing basis to a person’s employment. Consistent with the approach taken in the *Safety Net Review – Wages – April 1997* decision, the quantum of the FMW remained aligned with the C14 classification rate while the *Workplace Relations Act 1996* (Cth) remained in effect and, by virtue of the 2009-10 Review decision, it was carried through when the FW Act came into operation. This approach has remained unchanged in every Review decision since.

[108] We do not consider that the position whereby the NMW is simply set by reference to the C14 rate should continue. This is particularly the case when almost all modern awards which contain a classification with a C14 rate prescribe a limit on the period employees can be classified and paid at that level, after which employees move automatically to a higher classification and pay rate. Further, 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. A comprehensive review of the NMW should be undertaken by reference to the budget standards research and other relevant material to arrive at a NMW amount which is set having proper regard to the needs of the low paid and the other considerations in s 284. That is beyond the scope of the current Review, but we discuss later the interim measure we intend to take in this Review having regard to all the mandatory considerations in the minimum wages objective.³

³ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8] and [107] – [108].

4. The following key propositions emerge from the Expert Panel’s decision:
- (a) The C14 classification level in the *Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)* and the *Metal Industry Award 1984 – Part I (Metals Award)* ‘has only ever applied to an employee undertaking [u]p to 38 hours induction training’ and was never intended to apply on an ongoing basis to a person’s employment’.⁴ (**Key Proposition 1**)
 - (b) The C14 rate, as it applies in the modern awards system more generally, ‘was only ever intended to constitute a transitional entry rate for new employees’.⁵ (**Key Proposition 2**)
 - (c) One of the distinguishing features between employees receiving the National Minimum Wage (**NMW**) and those entitled to the C14 rate under modern awards is that the latter ‘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’.⁶ (**Key Proposition 3**)

(collectively, **Key Propositions**)

5. Ai Group opposes the Commission’s Provisional View. It should not, in our submission, be adopted, for the reasons set out in this submission. In particular, as we explain below, Key Proposition 1 misapprehends the operation of the C14 classification definition in the Manufacturing Award and Metals Award. To that end, we contest a fundamental basis underpinning the Provisional View.
6. If the Commission is nonetheless minded to consider varying any awards in the context of these proceedings by reference to proposals advanced by other parties and / or of the Commission’s own motion, such awards should each be separately considered, having regard to the circumstances pertaining to the

⁴ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [107].

⁵ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8].

⁶ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [108].

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.

7. The particular circumstances associated with an award may warrant an approach that deviates from the Provisional View. Indeed, they may demonstrate that the award should not be varied at all. In such circumstances, it would not be appropriate for the Commission to decide in general terms that the Provisional View will apply to all awards. Parties should be afforded a reasonable opportunity to ventilate award-specific issues and the process adopted by the Commission should facilitate a detailed consideration of them.
8. In the submissions that follow, we set out our key concerns with the Provisional View, the Proposed Principles and the Key Propositions.

Key Proposition 1 misunderstands the operation of the C14 classification description in the Manufacturing Award and Metals Award

9. In our respectful submission, Key Proposition 1 misunderstands the operation of the C14 classification definition as it applies under the Manufacturing Award and as it previously applied under the Metals Award, to the extent that it assumes that they have only ever applied while an employee undertakes up to 38 hours of induction training.
10. The Manufacturing Award defines the C14 and C13 classification levels as follows: (emphasis added)

A.4.3 Wage Group: C14

(a) Engineering/Manufacturing Employee—Level I

- (i) An Engineering/Manufacturing Employee—Level I is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

- (ii) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
- performs general labouring and cleaning duties;
 - exercises minimal judgement;
 - works under direct supervision;
 - is undertaking structured training so as to enable them to work at the C13 level.

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee—Level II

- (i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to 3 months' structured training so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
 - works under direct supervision either individually or in a team environment;
 - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
 - understands and utilises basic statistical process control procedures;
 - follows safe work practices and can report workplace hazards.

11. In addition, clause A.5.2 lists indicative tasks in respect of the C13 level:

A.5.2 For the purposes of clause A.4.4 (level C13) the following are the indicative tasks which an employee at this level may perform:

- assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- repetition work on automatic, semi-automatic or single purpose machines or equipment;

- basic soldering or butt and spot welding skills or cuts scrap with oxyacetylene blow pipe;
- use selected hand tools;
- boiler cleaning;
- maintains simple records;
- repetitive packing in standard containers;
- uses hand trolleys and pallet trucks;
- assists in the provision of on-the-job training;
- non-trades cleaning up of wooden floors, punching of nails and sanding of wooden floors by machine or hand and/or application of all types of sealers and plastic coatings on wooden floors.

12. As can be seen from the above, an employee classified at C14 will be undertaking up to 38 hours induction training. In addition, an employee may be classified at C14 if:

- (a) They are *'undertaking structured training so as to enable them to work at the C13 level'*.⁷ When read with the C13 classification descriptor, at clause A.4.4(a)(i), it appears that such training may be completed over a period of up to three months; and / or
- (b) The employee is performing *'routine duties essentially of a manual nature'*, which require the employee to *'[exercise] minimal judgement'* and / or to work *'under direct supervision'*;⁸ and / or
- (c) The employee is performing *'general labouring and cleaning duties'*.⁹

⁷ Clause A.4.3(a)(ii) of the Manufacturing Award, final bullet point.

⁸ Clause A.4.3(a)(ii) of the Manufacturing Award, second and third bullet points.

⁹ Clause A.4.3(a)(ii) of the Manufacturing Award, first bullet point.

13. The award does not require that an employee classified at C14 *must* be undertaking training that will enable them to perform work at the C13 level. An employee classified at the C14 level can, therefore, be an employee who performs work of the nature described at paragraphs (b) and / or (c) above, indefinitely. Without seeking to comment on the incidence of employees being classified in this manner, we are aware of circumstances in which employees are, or have been, so classified. In such circumstances, they are generally engaged, on an ongoing basis, to perform unskilled work.
14. The corresponding classification descriptors in the Metals Award were in substantively the same terms.¹⁰ Accordingly, the same observations can be made about them.
15. To that end, we disagree with Key Proposition 1.

It is also not apparent that Key Proposition 2 is correct in respect of other awards

16. In its decision concerning the AWR, the Expert Panel observed that the C14 rate *'was only ever intended to constitute a transitional entry rate for new employees'*¹¹. In addition to our submissions above in relation to the Manufacturing Award; it is not clear that Key Proposition 2, which is cast more broadly, is true of other awards.
17. For example, the *National Electrical, Electronic and Communications Contracting Industry Award 1998*¹² prescribed a minimum wage that was only slightly higher than the C14 rate (and materially lower than the C13 rate) in relation to the lowest classification level (*'Electrical Worker Grade 1'*). An employee could be classified indefinitely at that level, as a labourer. It did not contemplate transitioning to the next level.¹³

¹⁰ Engineering/Production Employee - Level I and Engineering/Production Employee - Level II descriptors in Schedule D.

¹¹ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8].

¹² AP791396CRV.

¹³ Clause 15.1 of the award.

Key Proposition 3 tells against the adoption of Proposed Principle 1

18. In its decision about the AWR, the Expert Panel drew the following comparisons between employees receiving the NMW and those classified at the C14 level in the awards system: (emphasis added)

[108] We do not consider that the position whereby the NMW is simply set by reference to the C14 rate should continue. This is particularly the case when almost all modern awards which contain a classification with a C14 rate prescribe a limit on the period employees can be classified and paid at that level, after which employees move automatically to a higher classification and pay rate. Further, 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.

...¹⁴

19. We agree. Indeed, the total earnings of employees covered by an award may significantly exceed the base rate prescribed by the instrument, by virtue of the various additional components listed in the extract above. So much can be seen from the Commission's analysis at Attachment D to the Statement, which, by way of example, identifies that under some awards, employees are entitled to an all purpose allowance which, once added to the C14 rate, results in a rate that exceeds the minimum C13 wage.
20. Whilst in the AWR, the Commission concluded that the C14 rate '*does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment*'¹⁵, it does not necessarily follow that the lowest classification rate in a modern award applicable to ongoing employment should be at least the C13 rate, including for the reasons explained above.

¹⁴ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [108].

¹⁵ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8].

The consequences of Proposed Principle 2 are unclear

21. Proposed Principle 2 is in the following terms:

Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).¹⁶

22. Respectfully, the intended application of Proposed Principle 2 is unclear. The Commission has expressed the view that any rate below the C13 rate '*must ... [provide] a clear transition to the next classification rate in the award*'. In theory, this objective might be achieved in one of at least the following two ways:

- (a) An award might provide that an employee classified at the C14 level is, upon engagement, entitled to the C14 rate for a specified period of time, after which they are entitled to be paid the C13 rate (notwithstanding that they remain classified at the C14 level, having regard to the nature of the work they perform, the skills and / or competencies they possess, etc). In such circumstances, the relevant employee may continue to perform the same, or substantially the same work; however, they would become entitled to a higher rate after a specified period of time. **(Approach 1)**
- (b) Alternatively, an award might provide a pathway for reclassification from the C14 level to the C13 level in accordance with a prescribed timeframe. That reclassification would, by extension, require an employer to pay the employee at least the C13 rate. **(Approach 2)**

23. Absent an understanding of how an award is proposed to be varied to give effect to Proposed Principle 2, it is impracticable to properly evaluate the consequences that its implementation may have.

24. For example, the *Vehicle, Repair Services and Retail Award 2020* (**Vehicle Award**) prescribes the C14 rate for employees classified as '*Vehicle RS&R*

¹⁶ Statement at [8].

industry employee – Level 1.¹⁷ It defines a Level 1 employee as follows:
(emphasis added)

Vehicle industry RS&R—employee—Level 1 R1 (entry)

An employee at Level 1 is an employee who has undertaken little or no formal or informal training. A Level 1 employee may be undertaking up to 38 hours of induction training. The induction training may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

An employee at this level would acquire/possess skills relevant to the performance of routine duties essentially of a manual nature and to the level of their training:

- performs general labouring and/or cleaning duties;
- has basic numeracy skills;
- exercises minimal judgment;
- works to defined procedures and under direct supervision; and
- may be undertaking structured training so as to enable the employee to progress to a higher level.

Classifications contained within Level 1 R1

- Car cleaner/washer
- Workshop cleaner
- Car polisher—by hand
- Detailer—other
- Driveway attendant
- Office cleaner
- Parking attendant
- Process worker
- Tradesperson's assistant (see also Level 2)
- Employee not elsewhere prescribed

¹⁷ Clause 16.2 of the Vehicle Award.

25. As can be seen from the above, an employee may be classified indefinitely at the C14 level under the Vehicle Award. Whilst employees classified at that level *may* be undergoing training (i.e. induction training or '*structured training so as to enable the employee to progress to a higher level*'), the classification descriptor is not confined to such employees. Rather, it contemplates various roles that could be performed by employees indefinitely at the C14 level (e.g. '*[c]ar cleaner/washer*', '*[w]orkshop cleaner*' etc).
26. Approach 1 would, by way of example, result in a '*workshop cleaner*' classified at Level 1 receiving the rate prescribed by clause 16.1(a) for Level 1 for a specified period of time, after which they would receive the rate prescribed by the award for Level 2 (although they would, as such, remain classified at Level 1 and they would continue to perform the role of a workshop cleaner).
27. Approach 2 would require the definitions for Levels 1 and 2 to be fundamentally revisited, such that an employee could only be classified at the lower level for a specified period of time, after which they would be required to be reclassified to Level 2.
28. It is axiomatic that Approach 1 and Approach 2 would result in increased employment costs.¹⁸ The specific consequences that would flow from Approach 2, however, would depend upon the manner in which it is implemented. For example, would it result in a misalignment between the skills possessed by the employee and those contemplated by the C13 classification description? Would it result in employees classified at the C14 level routinely being reclassified to the C13 level, such that employers would continually need to employ new employees to perform work at the C14 level? This would further increase employment costs in relation to recruitment, training, onboarding etc.

¹⁸ Section 134(1)(f) of the Act.

The time limit created by Proposed Principle 3 is arbitrary

29. The Commission has proposed that the transitional period for any rate below the C13 rate should be no more than six months. The basis upon which an outer limit of six months has been deemed appropriate is not clear.
30. It would not be appropriate to apply a one-size-fits-all approach to the imposition of an outer limit to the application of the C14 rate. Any consideration of whether the C14 rate applies on a transitional basis and if so, the duration of that transitional period, should be determined on an award-by-award basis, where a specific variation is proposed, taking into account the circumstances in which that award applies and the impact that the proposed variations would have. For example, the seasonal nature of the work undertaken in certain sectors may be relevant to the Commission's consideration of the aforementioned matters. In others, it may be appropriate to have regard to the period of time in fact required for an employee to obtain the qualification(s), develop the skill(s), undertake the training, acquire the competencies and / or gain the experience required in order to be able to perform the work contemplated at the C13 level.

The potentially significant consequences for employers

31. As demonstrated by Attachment D to the Statement (and our analysis of it, attached to this submission), a number of awards do not conform with the Commission's Provisional View, including:
 - (a) The *Air Pilots Award 2020*;
 - (b) The *Airline Operations Ground Staff Award 2020*;
 - (c) The *Business Equipment Award 2020*;
 - (d) The *Cement, Lime and Quarrying Award 2020*;
 - (e) The *Concrete Products Award 2020*;
 - (f) The *Electrical, Electronic and Communications Contracting Award 2020*;
 - (g) The *Graphic Arts, Printing and Publishing Award 2020*;

- (h) The *Horticulture Award 2020*;
- (i) The *Joinery and Building Trades Award 2020*;
- (j) The Manufacturing Award;
- (k) The *Meat Industry Award 2020*;
- (l) The *Nurses Award 2020*;
- (m) The *Premixed Concrete Award 2020*;
- (n) The *Rail Industry Award 2020*;
- (o) The *Seafood Processing Award 2020*;
- (p) The *Sugar Industry Award 2020*;
- (q) The *Textile, Clothing, Footwear and Associated Industries Award 2020*;
- (r) The *Timber Industry Award 2020*;
- (s) The Vehicle Award;
- (t) The *Wine Industry Award 2020*; and
- (u) The *Wool, Storage, Sampling and Testing Award 2020*.

32. As explained earlier in this submission, it is not clear, at this stage in the proceedings, how Proposed Principle 2 might be implemented in the context of any award. Nonetheless, it can be observed that:

- (a) The relevant classification levels in some awards contemplate the performance of substantive roles on an indefinite basis. This includes the Manufacturing Award and Vehicle Award, as explained earlier in this submission. Other examples include the *Business Equipment Award 2020*, the *Electrical, Electronic and Communications Contracting Award 2020*, the *Joinery and Building Trades Award 2020*, the *Rail Industry Award 2020* and the *Sugar Industry Award 2020*. The implementation of the Provisional View

in relation to such awards is likely to have a significant impact upon employers covered by it.

- (b) Some awards provide for transition from the C14 level by reference to criteria that does not expressly refer to a specific period of time. For example, under the *Nurses Award 2020*, a ‘student enrolled nurse’ is ‘a student undertaking study to become an enrolled nurse’¹⁹. An employee cannot transition to being classified as an ‘enrolled nurse’ until they have completed the requisite training. Similarly, the *Meat Industry Award 2020* defines a Level 1 employee as ‘a person with no experience in the industry undergoing on-the-job training for an initial period of at least 3 months’²⁰. Any proposals to vary those awards would necessarily give rise to industry or occupation specific considerations, which should be carefully considered before determining whether and if so, how, they are varied.

33. It is trite that the Provisional View, if adopted, would in some contexts potentially result in significant changes to the relevant awards. Importantly, they may increase employment costs and the regulatory burden in a material way. A raft of other practical consequences might also flow. Without understanding the specific variations that would be made to the affected awards, however, the nature and extent of the impact cannot properly be assessed.

The application of the modern awards objective

34. The Commission can exercise its power to vary an award in these proceedings only if it is satisfied that the variation is necessary to achieve the modern awards objective.²¹ Section 134(1) of the *Fair Work Act 2009 (Act)* defines the modern awards objective and lists various matters that must be taken into account for the purposes of ensuring that the relevant award(s) provide a fair and relevant minimum safety net.

¹⁹ Clause A.3 of the award.

²⁰ Clause A.3.1 of the award.

²¹ Section 157(1) of the Act.

35. It has long been acknowledged that: (emphasis added)

[32] No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.

[33] There is a degree of tension between some of the s.134(1) considerations. The Commission's task is to balance the various s.134(1) considerations and ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions. The need to balance the competing considerations in s.134(1) and the diversity in the characteristics of the employers and employees covered by different modern awards means that the application of the modern awards objective may result in different outcomes between different modern awards.

[34] Given the broadly expressed nature of the modern awards objective and the range of considerations which the Commission must take into account there may be no one set of provisions in a particular award which can be said to provide a fair and relevant safety net of terms and conditions. Different combinations or permutations of provisions may meet the modern awards objective.²²

36. Thus, any proposal to vary an award such that it conforms with the Provisional View must be considered in light of the various competing considerations identified by s.134(1) of the Act. Specifically, any proposal to increase the wage rates payable to employees performing work at the C14 level, or to mandatorily require the reclassification of employees to the C13 level after a period of time, must be assessed having regard to the following considerations that may weigh against the making of the variation(s):

- (a) The need to ensure that the minimum safety net is fair for both employers and employees;²³
- (b) The need to encourage collective bargaining;²⁴
- (c) The need to promote flexible modern work practices and the efficient and productive performance of work;²⁵

²² 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 at [33] – [34].

²³ Section 134(1) of the Act.

²⁴ Section 134(1)(b) of the Act.

²⁵ Section 134(1)(d) of the Act.

(d) The likely impact on employers, including on productivity, employment costs and the regulatory burden;²⁶ and

(e) The need to ensure a simple, easy to understand, stable and sustainable awards system.²⁷

37. A proper examination of the circumstances of an award may warrant an approach that deviates from the Provisional View or indeed renders the Provisional View inappropriate.

The potential impact on internal wage relativities

38. The implementation of the Provisional View risks disturbing internal relativities.

39. Typically, the work contemplated for the C14 level is unskilled, performed under supervision and requires limited if any specialist training. If employees performing such work are entitled to the C13 rate, this would clearly undermine the maintenance of relativities between the minimum wages payable to those employees *vis-à-vis* those performing work that requires greater skills, experience, competencies and / or training.

The potential relevance of work value considerations

40. In some instances, variations advanced in these proceedings may enliven considerations associated with work value, by virtue of s.157(2) of the Act, or simply as a discretionary matter that should be taken into account by the Commission. We note that a variation to modern award minimum wages can be made *only if* the Commission is satisfied that the variation is justified by ‘*work value reasons*’ and that making the variation outside the system of annual wage reviews is necessary to achieve the modern awards objective.²⁸

²⁶ Section 134(1)(f) of the Act.

²⁷ Section 134(1)(g) of the Act.

²⁸ Section 157(2) of the Act.

41. For example, if it is proposed that an employee would be entitled to the C13 rate after being employed at the C14 level for a period of 6 months, whilst continuing to undertake the same work, it may be argued that the value of the work does not justify the variation, having regard to the nature of the work, the skills and / or responsibility involved in performing the work and the conditions under which the work is done. This is likely to give rise to the need to consider detailed evidence about each of the aforementioned matters.

Conclusion

42. The Commission should not adopt the Provisional View, for all of the reasons set out in this submission.
43. To the extent that the Commission is nonetheless minded to consider specific variations proposed by interested parties (and / or the Commission) to vary any awards that do not conform with the Provisional View, the process proposed by Ai Group should be adopted because it would:
- (a) Ensure that respondent parties are on notice of the manner in which the Provisional View is proposed to be implemented.
 - (b) Result in a process that allows parties to properly ventilate, and the Commission to consider, matters that are specific to a given award, industry and / or occupation, including:
 - (i) The manner in which the existing classification structure operates;
 - (ii) The impact that the variation(s) would have on employers and employees covered by the award;
 - (iii) The history preceding the relevant aspects of the award;
 - (iv) The criteria that should apply to determining the circumstances in which an employee is to transition from the C14 to the C13 level, if at all;
 - (v) The modern awards objective;

(vi) Internal wage relativities; and

(vii) Work value considerations.

3. ATTACHMENT D TO THE STATEMENT

44. In an **attachment** to this submission, we have advanced submissions in response to Attachment D to the Statement, in relation to various awards, including where we disagree with the manner in which the relevant award has been characterised by the Commission.

Attachment: Submissions regarding Attachment D to the Statement

Award title	Clause	Classification	Weekly rate (or equivalent)	Transitional category	FWC Comment	Next classification up	Ai Group Submission
<i>Airline Operations – Ground Staff Award 2020</i>	18.3	Maintenance and engineering stream: Aircraft Worker 1	\$859.30 (at C14)	Category (ii) [sic] – undertaking up to 38 hours of induction training so as to enable them to work at Level 2. A Level 2 is an employee who has completed up to 3 months structured training (cl A.3).		Aircraft Worker 2 = \$882.80^	We rely on our submissions concerning the Manufacturing Award at [9] – [15]. The C14 classification description is drafted in substantially similar terms in both awards.
<i>Asphalt Industry Award 2020</i>	15.1	Skill Level 1	\$859.30 (at C14)	Category (i) – undertaking up to 38 hours induction training (cl 12.4)	Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry and inclement weather allowances exceeds C13.	Skill Level 2 = \$907.00	The industry allowance is an all purpose allowance and is payable to all employees covered by the Award (see clause 17.2(b)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.

<i>Cement, Lime and Quarrying Award 2020</i>	16.2	Quarrying industry: Grade 1	\$859.30 (at C14)	Category (iv) – undertaking training to become competent in the Basic Quarry competency required at Grade 2 and above (cl B.1).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Quarrying industry: Grade 2 = \$882.30	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(a)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.
<i>Cement, Lime and Quarrying Award 2020</i>	16.2	Quarrying industry: Grade 2	\$882.30 (between C14 and C13)	Category (iv) – undertaking training to be assessed as competent in one or more core competencies (cl B.1).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Quarrying industry: Grade 3 = \$939.00	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(a)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.
<i>Cement, Lime and Quarrying Award 2020</i>	16.1	Cement and lime industry: Level 1	\$859.30 (at C14)	Category (iv) – undertaking the Basic competency training required at Level 2 and above. Employee will progress upon attaining	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into	Cement and lime industry: Level 2 = \$902.20	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(a)). Its inclusion results in employees receiving a rate for all purposes of the award

				the Basic competency and is developing the Yard competency and one element of the Production competency (cl A.1).	account payment of the industry allowance exceeds C13.		that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.
<i>Concrete Products Award</i>	16.2	Level 1	\$859.30 (at C14)	Category (iv) – undertaking employer’s induction program. At Level 2 employees must have satisfactory completed training required at this Level (cl A.1–A.2).	Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 2 = \$882.70	<p>This award should be allocated to category (v). The Level 1 classification is not transitory in nature. An employee could be engaged at that level on an indefinite basis.</p> <p>In any event, the industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(b)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.</p>

<i>Concrete Products Award</i>	16.2	Level 2	\$882.70 (between C14 and C13)	Category (v) – see clause A.2–A.3.	Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Level 3= \$914.90	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(b)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.
<i>Electrical, Electronic and Communications Contracting Award</i>	16.2	Electrical worker grade 1	\$871.20 (between C14 and C13)	Category (v) – see clause A.2.	Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.	Electrical worker grade 2 = \$900.70	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.3(a)). Its inclusion results in employees receiving a rate for all purposes of the award that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.

<p><i>Graphic Arts, Printing and Publishing Award 2020</i></p>	<p>17.2</p>	<p>Level 1</p>	<p>\$859.30 (at C14)</p>	<p>Category (i) – An employee at this level is undertaking up to 38 hours of induction training. On completion of required training they will be reclassified to Level 2 (cl A.1).</p>		<p>Level 2 = \$882.80[^]</p>	<p>This award should be allocated to category (v).</p> <p>The final sentence of the Level 1 classification descriptor at clause A.1 provides that an employee will be reclassified to level 2 ‘on completion of the required training’; that being ‘training so as to enable them to work at level 2’ (see last bullet point at A.1). The Award does not provide for a specific period within which such training must be completed or a specific period of time within which an employee must transition from Level 1 to Level 2.</p> <p>Moreover, the award does not require that an employee must undertake the aforementioned training and / or transition to Level 2.</p>
<p><i>Joinery and Building Trades Award</i></p>	<p>19.1</p>	<p>Level 1</p>	<p>\$859.30 (at C14)</p>	<p>Category (i) – employee at this level will undertake up to 38 hours induction training.</p>	<p>Reflects the ‘Minimum weekly wage’. However, the ordinary hourly rate of</p>	<p>Level 2 = \$882.80[^]</p>	<p>This award should be allocated to category (v). The Level 1 classification is not transitory in nature. An employee could be</p>

				Employee must complete a competency assessment to perform Level 2 work (cl A.1.1–A.1.2).	the classification taking into account payment of the industry allowance exceeds C13.		engaged at that level on an indefinite basis.
<i>Manufacturing and Associated Industries and Occupations Award 2020</i>	20.1(a)	C14 / V1	\$859.30 (at C14)	Category (i) – C14: up to 38 hours induction training. However, a C13 employee must also have completed up to 3 months' structured training (cl A.4.3–A.4.4). V1: up to 38 hours induction training. However, a V2 employee must also met the requirements of a Certificate I (cl B.2–B.3).		C13 / V2 = \$882.80^	For the reasons set out in our submission at [9] – [15], this award should be allocated to category (v).
<i>Premixed Concrete Award</i>	16.1	Level 1	\$882.50 (between C14 and C13)	Category (iii) – an employee without industry skills, training to be a batcher, allocator, testing or plant assistant. An employee may work at this	Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into	Level 2 = \$890.10	The industry allowance is an all purpose allowance and is payable to all employees covered by the award (see clause 18.2(b)). Its inclusion results in employees receiving a rate for all purposes of the award

				level for up to 6 months (cl 12.4).	account payment of the industry allowance exceeds C13.		that exceeds the C13 rate. Accordingly, this award should not form part of these proceedings.
<i>Timber Industry Award 2020</i>	20.1(b)	Wood and Timber Furniture Stream: Level 1	\$859.30 (at C14)	Category (ii) – undertaking up to 3 months’ induction and skill development. Progression will occur on completion of induction and the core units of the Furnishing Industry Training Package and demonstrates competency to undertake Level 2 (cl B.1).		Wood and Timber Furniture Stream: Level 2 = \$882.80^	Per clause B.1.7, an employee will transition from Level 1 to Level 2 if the employee has ‘ <i>demonstrated competency to undertake duties at Level 2</i> ’, in addition to the ‘ <i>successful completion of the induction program and the core units of the Furnishing Training Package</i> ’. Thus, reclassification to Level 2 is not guaranteed upon completion of the training.
<i>Vehicle Repair, Services and Retail Award 2020</i>	16.2	Vehicle RS&R industry employee—Level 1	\$859.30 (at C14)	Category (i) – may be undertaking up to 38 hours of induction training. Note that a Level 2 employee is an employee who has completed 3 months structured training (cl A.1).		Vehicle RS&R industry employee—Level 2 = \$882.80^	For the reasons set out in our submission at [25], this award should be allocated to category (v).

Australian Industry Group

Review of C14 Rates

Reply Submission (C2019/5259)

1 December 2023



C2019/5259 REVIEW OF C14 RATES

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1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in accordance with the directions¹ issued by the Fair Work Commission (**Commission**) on 22 September 2023. Specifically, in this submission, we respond to claims advanced by various parties for variations to the following modern awards:

- (a) The *Asphalt Industry Award 2020* (**Asphalt Award**);
- (b) The *Cement, Lime and Quarrying Award 2020* (**Cement Award**);
- (c) The *Concrete Products Award 2020* (**Concrete Products Award**);
- (d) The *Corrections and Detention (Private Sector) Award 2020* (**Corrections Award**);
- (e) The *Cotton Ginning Award 2020* (**Cotton Award**);
- (f) The *Electrical, Electronic and Communications Contracting Award 2020* (**Electrical Contracting Award**);
- (g) The *Food, Beverage and Tobacco Manufacturing Award 2020* (**Food Manufacturing Award**);
- (h) The *Horticulture Award 2020* (**Horticulture Award**);
- (i) The *Joinery and Building Trades Award 2020* (**Joinery Award**);
- (j) The *Manufacturing and Associated Industries and Occupations Award 2020* (**Manufacturing Award**);
- (k) The *Meat Industry Award 2020* (**Meat Award**);
- (l) The *Nurses Award 2020* (**Nurses Award**);

¹ Review of certain C14 rates in modern awards [2023] FWCFB 168.

- (m) The *Oil Refining and Manufacturing Award 2020* (**Oil Manufacturing Award**);
 - (n) The *Pest Control Industry Award 2020* (**Pest Control Award**);
 - (o) The *Premixed Concrete Award 2020* (**Premixed Concrete Award**);
 - (p) The *Rail Industry Award 2020* (**Rail Award**);
 - (q) The *Seafood Processing Award 2020* (**Seafood Award**);
 - (r) The *Sugar Industry Award 2020* (**Sugar Award**);
 - (s) The *Textile, Clothing, Footwear and Associated Industries Award 2020* (**Textile Award**);
 - (t) The *Timber Industry Award 2020* (**Timber Award**);
 - (u) The *Vehicle Repair, Services and Retail Award 2020* (**Vehicle Award**);
 - (v) The *Wine Industry Award 2020* (**Wine Award**); and
 - (w) The *Wool Storage, Sampling and Testing Award 2020* (**Wool Award**).
2. In relation to each of the above awards, we have identified our position as to which of the five categories identified in the Commission's statement of 22 September 2023² (**Statement**) at [3] is most relevant. At the conclusion of this submission, we also deal briefly with the issue of potential transitional arrangements.

² *Review of certain C14 rates in modern awards* [2023] FWCFB 168.

2. PRIMARY POSITION

3. Ai Group's primary position regarding the provisional view expressed by the Commission in relation to this matter (**Provisional View**) was summarised in our submission of 6 November 2023 (**November Submission**) at [5]:
 5. Ai Group opposes the Commission's Provisional View. It should not, in our submission, be adopted, for the reasons set out in this submission. In particular, as we explain below, Key Proposition 1 misapprehends the operation of the C14 classification definition in the Manufacturing Award and Metals Award. To that end, we contest a fundamental basis underpinning the Provisional View.
4. This submission deals with proposals, submissions and evidence advanced by parties in support of variations proposed to a number of awards, as contemplated by [6] – [7] of the November Submission:
 6. If the Commission is nonetheless minded to consider varying any awards in the context of these proceedings by reference to proposals advanced by other parties and / or of the Commission's own motion, 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.
 7. The particular circumstances associated with an award may warrant an approach that deviates from the Provisional View. Indeed, they may demonstrate that the award should not be varied at all. In such circumstances, it would not be appropriate for the Commission to decide in general terms that the Provisional View will apply to all awards. Parties should be afforded a reasonable opportunity to ventilate award-specific issues and the process adopted by the Commission should facilitate a detailed consideration of them.
5. The material we have sought to respond to, as well as these submissions, should be considered in the context described above.
6. As will be seen from the submissions we have advanced, in the vast majority of instances, the moving parties seeking variations to the above awards have advanced little, if any, material of probative value in support of their claims. Generally, they have filed nothing more than a short submission, unaccompanied by any evidentiary material. Despite the significant nature of the proposed changes, including the direct bearing they may have on employment costs and / or the manner in which they would alter the operation of the classification

structure, there is also little material before the Commission dealing with the likely practical implications of the variations.

7. Our submissions seek to respond to the material advanced by the moving parties, within the constraints of the timetable set by the Commission for this matter. In our view, each of the variations proposed warrant separate and detailed consideration, having regard to relevant historical considerations, the intention underpinning the existing classification structure, the manner in which it applies in practice, its interaction with relevant training programs and requirements, and the potential impact of the proposed changes on industry.
8. Where the material before the Commission does not make out a case for a given variation, or it does not enable the Commission to assess whether the proposed change is consistent with the relevant statutory criteria, it should decline to make the change.
9. If the Commission is nonetheless minded to vary an award in terms that differ from the variation(s) proposed by a moving party, or it is inclined to vary an award that is not the subject of a claim, it should afford interested parties an opportunity to be heard about the specific form of the change. We note in this regard that to some extent, without knowing the final form of a proposed variation, we are unable to comprehensively comment on the potential impact it may have on industry.

3. THE AUSTRALIAN MANUFACTURING WORKERS' UNION'S GENERAL POSITION

10. The Australian Manufacturing Workers' Union (**AMWU**) advances various general submissions, which it appears to rely upon in relation to a number of awards.
11. *First*, the AMWU submits that the C14 classification level is, *'at best, a placeholder that enables a worker with no relevant skills or experience to gain enough knowledge to be able to perform tasks'*.³ It argues that the C14 rate *'is not a probationary rate'*, but rather, *'it is designed for initial training within the workplace'*⁴ and on that basis, it should only apply for an induction period *'which, ideally, should be no longer than 38 hours'*⁵.
12. For the reasons set out at [9] – [15] of the November Submission, we strongly disagree. In particular, we advanced the following submissions regarding the Manufacturing Award, after extracting the C14 and C13 classification descriptions:
 12. As can be seen from the above, an employee classified at C14 will be undertaking up to 38 hours induction training. In addition, an employee may be classified at C14 if:
 - (a) They are *'undertaking structured training so as to enable them to work at the C13 level'*.⁶ When read with the C13 classification descriptor, at clause A.4.4(a)(i), it appears that such training may be completed over a period of up to three months; and / or
 - (b) The employee is performing *'routine duties essentially of a manual nature'*, which require the employee to *'[exercise] minimal judgement'* and / or to work *'under direct supervision'*;⁷ and / or
 - (c) The employee is performing *'general labouring and cleaning duties'*.⁸

³ AMWU submission dated 10 November 2023 at [7].

⁴ AMWU submission dated 10 November 2023 at [11].

⁵ AMWU submission dated 10 November 2023 at [11].

⁶ Clause A.4.3(a)(ii) of the Manufacturing Award, final bullet point.

⁷ Clause A.4.3(a)(ii) of the Manufacturing Award, second and third bullet points.

⁸ Clause A.4.3(a)(ii) of the Manufacturing Award, first bullet point.

13. The award does not require that an employee classified at C14 *must* be undertaking training that will enable them to perform work at the C13 level. An employee classified at the C14 level can, therefore, be an employee who performs work of the nature described at paragraphs (b) and / or (c) above, indefinitely. Without seeking to comment on the incidence of employees being classified in this manner, we are aware of circumstances in which employees are, or have been, so classified. In such circumstances, they are generally engaged, on an ongoing basis, to perform unskilled work.
 14. The corresponding classification descriptors in the Metals Award were in substantively the same terms.⁹ Accordingly, the same observations can be made about them.
13. Similarly, in our submission, the AMWU's proposition is untrue in respect of the remaining awards identified at [2] of its submission.
 14. Any variation that limits the application of the C14 classification level in these awards to 38 hours of induction training would amount to a significant variation, that would disrupt the longstanding operation of the awards. Such a change would:
 - (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;¹⁰
 - (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;¹¹
 - (c) Have an adverse impact on business, including on productivity and employment costs;¹²
 - (d) Be inconsistent with the need to ensure a stable awards system;¹³
 - (e) Not be necessary to ensure that the relevant awards achieve the modern awards objective;¹⁴

⁹ Engineering/Production Employee - Level I and Engineering/Production Employee - Level II descriptors in Schedule D.

¹⁰ Section 134(1) of the Act.

¹¹ Section 134(1)(d) of the Act.

¹² Section 134(1)(f) of the Act.

¹³ Section 134(1)(g) of the Act.

¹⁴ Section 138 of the Act.

- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.¹⁵
15. Accordingly, the union’s first proposition should not be adopted.
16. *Second*, the union contends that the C13 classification level ‘*should also be properly seen as a transitional qualification*’ in respect of most workplaces and most employees in the manufacturing industry.¹⁶
17. We disagree. The C13 classification level in the Manufacturing Award is in the following terms:

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee—Level II

- (i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to 3 months’ structured training so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
 - works under direct supervision either individually or in a team environment;
 - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
 - understands and utilises basic statistical process control procedures;
 - follows safe work practices and can report workplace hazards.¹⁷

¹⁵ Sections 157(2) and 157(2A) of the Act.

¹⁶ AMWU submission dated 10 November 2023 at [8].

¹⁷ Clause A.4.4 of the Manufacturing Award.

18. In no way do the terms of clause A.4.4 of the Manufacturing Award require or suggest that it applies on a transitional basis. Just as, in our submission, employees could be classified at the C14 level indefinitely; so too could an employee at the C13 level. Such an employee would have completed *'up to 3 months' structured training so as to enable the employee to perform work within the scope of [the] level'*.¹⁸ If the employee completed the training contemplated by clause A.4.5(a)(i) *'so as to enable the employee to perform work within the scope of'* the C12 classification level, they would be reclassified as such. If not, the employee would remain classified at the C13 level.
19. *Finally*, the AMWU advances the following submission:
12. The AMWU also notes that classifications should be written and interpreted based on skills and knowledge acquired or the time taken in structured training, not using arbitrary time frames. ...¹⁹
20. We agree that competency-based classification structures, or classification structures that operate by reference to employees' skills or knowledge, should not, as a product of these proceedings (**Review**) result in the introduction of new arbitrary timeframes that dictate how or when an employee is to be classified or reclassified. Such an approach could fundamentally undermine the purpose and integrity of such classification structures in a way that subverts a central feature of their design. It would potentially result in employees being reclassified to a higher level and being entitled to a higher minimum wage, in circumstances where they do not in fact possess the skills or knowledge required at that level.
21. The same can be said in respect of classification structures that contemplate that an employee will undertake certain structured training before progressing to the next level, as has been noted by the AMWU in the above passage. In some contexts, that training may require more than six months to complete. It would not be appropriate for such awards to be varied such that they require the reclassification of employees to a higher level, or payment at a higher rate, after an arbitrary period of time (e.g. six months, as per the Provisional View), in

¹⁸ Clause A.4.4(a)(i) of the Manufacturing Award.

¹⁹ AMWU submission dated 10 November 2023 at [12].

circumstances where the employee has not in fact completed the relevant training.

4. THE AUSTRALIAN WORKERS' UNION'S PRIMARY POSITION

22. The Australian Workers' Union (**AWU**) has advanced a general submission that the Commission '*should give continued consideration to increasing any modern award (adult) minimum rates that are below the C13 / national minimum wage*'.²⁰ In the alternate, it supports the Commission's Provisional View.²¹
23. The AWU's primary position amounts to a bare call for a variation (i.e. increase) to modern award minimum wages, of the nature contemplated by s.157(2) of the *Fair Work Act 2009 (Act)*. The Commission can make such a variation only if it is satisfied that it is justified by '*work value reasons*'.²² Work value reasons are reasons related to any of the following:
- (a) The nature of the work;
 - (b) The level of skill and responsibility involved in doing the work;
 - (c) The conditions under which the work is done.²³
24. In relation to the vast majority of instances in which the AWU advances this submission, there is no material before the Commission, whatsoever, about any of the aforementioned matters. Thus, the Commission cannot be satisfied that the increases sought by the union are justified by work value reasons. In the circumstances, it does not have power to make the variations proposed by the union. On this basis alone, the AWU's primary position in respect of the relevant awards should be dismissed.
25. In the submissions that follow, we deal with the AWU's alternate position(s) in respect of various awards in which we have an interest.

²⁰ AWU submission dated 3 November 2023 at [2].

²¹ AWU submission dated 3 November 2023 at [3].

²² Section 157(2)(a) of the Act.

²³ Section 157(2A).

5. THE ASPHALT AWARD (CATEGORY I)

26. The Asphalt Award prescribes an hourly rate that is less than the C13 rate in respect of employees classified at ‘*Skill Level 1*’.²⁴ The award defines an employee at this level as follows:

Skill level 1 is an employee who has no experience in the industry and who may be undertaking up to 38 hours induction training.²⁵

27. The AWU relies on its general submission. For the reasons articulated above, that submission should be rejected.
28. Moreover, the operation of the classification structure is consistent with the Commission’s Provisional View and a case has not been made out for departing from the extant approach adopted in the award.
29. In any event, as noted in the November Submission, the award requires the payment of an industry allowance of \$37.72 per week, to all employees.²⁶ It is an ‘*all purpose*’ allowance and therefore, it is ‘*included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave*’.²⁷
30. Once the industry allowance is added to the minimum hourly rate prescribed by the award for ‘*Skill Level 1*’, an employee is entitled to \$23.60 per hour. This is more than the C13 rate.
31. In the circumstances, the Asphalt Award should not form part of the Review. Employees can be classified at ‘*Skill Level 1*’ on a transitional basis only, for less than six months, and, in addition, for all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.

²⁴ Clause 15.1 of the Asphalt Award.

²⁵ Clause 12.4(a) of the Asphalt Award.

²⁶ Clause 17.2(b) of the award.

²⁷ Clause 17.2(a) of the award.

6. THE CEMENT AWARD (CATEGORY IV)

32. The Cement Award prescribes a rate that is less than the C13 rate in respect of:
- (a) Employees in the *'cement and lime industries'* at Level 1;²⁸
 - (b) Employees in the *'quarrying industry'* at Grade 1;²⁹ and
 - (c) Employees in the *'quarrying industry'* at Grade 2.³⁰
33. The minimum rate payable to employees in the *'quarrying industry'* at Grade 2 falls short of the C13 rate by only one cent. That is, the Grade 2 rate is \$23.22.³¹
34. In addition, all employees are entitled to an all purpose industry disability allowance.³² The allowance is to be included in an employee's rate of pay *'when calculating any penalties, loadings or payment while they are on annual leave'*.³³
35. All employees classified at the aforementioned levels are, in effect, entitled to an hourly rate for all purposes that exceeds the C13 rate:
- (a) Employees in the *'cement and lime industries'* at Level 1 are entitled to an *'ordinary hourly rate'* of \$24.52.
 - (b) Employees in the *'quarrying industry'* at Grade 1 are entitled to an *'ordinary hourly rate'* of \$23.44.
 - (c) Employees in the *'quarrying industry'* at Grade 1 are entitled to an *'ordinary hourly rate'* of \$24.05.
36. Accordingly, the Cement Award should be excluded from the Review.

²⁸ Clause 16.1 of the Cement Award.

²⁹ Clause 16.2 of the Cement Award.

³⁰ Clause 16.2 of the Cement Award.

³¹ Clause 16.2 of the Cement Award.

³² Clause 18.2(b) of the Cement Award.

³³ Clause 18.2(a) of the Cement Award.

37. The classification descriptions contained in the award operate by reference to employees gaining certain competencies. For example, a Grade 1 employee *'is an employee who is undertaking training to become competent in the Basic Quarry competency'*.³⁴ Once an employee is so competent, they will be classified at Grade 2 until they are *'competent in one core competency'* and they *'[perform] it as required by the employer'*.³⁵ The award provides that *'[a]ll training will be structured competency based training'*.³⁶ Clause B.3 lists the various core competencies.
38. The AWU argues that the Level 1 classification descriptor for the *'cement and lime industries'* and the Grade 1 classification description in the *'quarrying industry'* should be amended *'to limit their application to employees with no experience in the industry and who are undertaking up to 38 hours of induction training'*.³⁷
39. The union does not propose any consequential variations to account for the work presently contemplated by the Level 1 and Grade 1 classification descriptors. It is therefore unclear how such employees would be classified or what minimum hourly rate would be payable to them if the AWU's proposal were adopted.
40. In any event, we oppose the union's claim. There is no apparent basis for it (or so much as an attempt to establish a basis for it). To the extent that it would result in employees presently classified at Level 1 and Grade 1 becoming entitled to a higher minimum rate, this would:
- (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;³⁸

³⁴ Clause B.1.1 of the Cement Award.

³⁵ Clause B.1.2 of the Cement Award.

³⁶ Clause B.2.1(a) of the Cement Award.

³⁷ AWU submission dated 3 November 2023 at [80].

³⁸ Section 134(1) of the Act.

- (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;³⁹
- (c) Have an adverse impact on business, including on productivity and employment costs;⁴⁰
- (d) Be inconsistent with the need to ensure a stable awards system;⁴¹
- (e) Not be necessary to ensure that the relevant awards achieve the modern awards objective;⁴²
- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.⁴³

41. The union's claim should be dismissed.

³⁹ Section 134(1)(d) of the Act.

⁴⁰ Section 134(1)(f) of the Act.

⁴¹ Section 134(1)(g) of the Act.

⁴² Section 138 of the Act.

⁴³ Sections 157(2) and 157(2A) of the Act.

7. THE CONCRETE PRODUCTS AWARD (CATEGORY V)

43. The Concrete Products Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at 'Level 1'.⁴⁴ The award defines an employee at that level as follows:

A.1 Level 1

A.1.1 Undertaking the employer's induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, work health and safety and quality assurance.

A.1.2 Employees at this level perform routine duties essentially of a manual nature and to the level of their training;

- (a) perform general labouring and cleaning duties;
- (b) exercise minimal judgment;
- (c) work under direct supervision;
- (d) may undertake structured training so as to enable them to work at level 2; and
- (e) within the limitations of the skill levels as defined employees will be expected to be responsible for the quality of their own work.

A.1.3 Classification descriptors

- Operator of concrete mixing machine with a rated capacity in excess of 0.4 cubic metres (1/2 cubic yard approximately)
- Automatic tile/ridge machine operator
- Maker by hand of tiles, ridges, apexes and starters
- Pipe machine operator
- Employee making pipe specials, i.e. concreting junctions, splays or other articles including the use of cortex and who may be required to work from plans and/or specifications
- Moulder special, employed working from plans and specifications
- Pre-stressed concrete—steel stressing operator

⁴⁴ Clause 16.2 of the Concrete Products Award.

- Automatic block/brick machine operator
- Off-bearer operator
- Operator bending, cutting and/or fixing bars, rods or reinforcement working from plans
- Exposed aggregate maker-finisher (includes control of washing off of wet concrete surfaces)
- Coating machine operator⁴⁵

44. In its Statement, the Commission noted that the AWU and Ai Group had reached a *'conditional consensus'* as to how the Concrete Products Award may be varied. It described the position reached between the parties as follows:

[19] Broadly, the proposals for the Concrete Products Award ... would create a 'C13.5' classification level and move the existing C14 classification descriptions into the new 'C13.5' level. A new C14 classification description is proposed for employees undertaking initial training duties.⁴⁶

45. The Commission went on to state that in light of its Provisional View, the aforementioned proposal would need to be revisited.⁴⁷

46. The AWU submits that the *'simplest way'* to ensure conformance with the Provisional View *'would be to replace the non-transitional C14 rates ... with the C13 rate and then increase the current C13 rates by 50% of the difference between that rate and the next highest rate'*.⁴⁸

47. The union's submission is, in substance, the same as the primary position it has advanced. For the reasons set out in section 4 of this submission, it should be rejected. Plainly, there is no evidence before the Commission about the value of any of the work contemplated by clause A.1, as extracted above. The same can be said of the work described by clause A.2, in respect of *'Level 2'*, for which the award prescribes the C13 rate.

⁴⁵ Clause A.1 of the Concrete Products Award.

⁴⁶ Statement at [19].

⁴⁷ Statement at [20].

⁴⁸ AWU submission dated 3 November 2023 at [45].

48. In the alternate, the union indicates that it is '*content to maintain the position*' previously reached between the parties, provided that:
- (a) The new C14 classification level is limited to employees with up to 76 hours' experience in the industry.⁴⁹
 - (b) The '*standard rate*', which is used for the purposes of calculating certain allowances, should be increased from the C13 rate, rather than the C14 rate.⁵⁰
 - (c) The implementation of the proposed variations should not be transitional or delayed.⁵¹
49. Ai Group opposes each of the above propositions.
50. There is no evidence before the Commission that might establish that 76 hours of experience in the industry would be sufficient, for the purposes of enabling an employee to perform the work contemplated at the extant '*Level 1*'. Prior to implementing such a timeframe, the Commission would need to be satisfied that it is appropriate, taking into account the nature of the work contemplated at the following classification level. There is no such material before the Commission.
51. The union has not articulated a purported justification for increasing the standard rate and, by extension, various allowances payable under the award. Further, there is no apparent basis for adopting the union's proposal. In the circumstances, it should plainly be dismissed.
52. Finally, we refer to the concluding section of this submission, in which we address the need for further consideration to be given to the implementation of transitional arrangements and / or the delayed commencement of variations made to awards in these proceedings.

⁴⁹ AWU submission dated 3 November 2023 at [47](a).

⁵⁰ AWU submission dated 3 November 2023 at [47](b).

⁵¹ AWU submission dated 3 November 2023 at [47](c).

53. The union's proposal would:

- (a) Not be fair to employers;⁵²
- (b) Not promote the efficient and productive performance of work;⁵³
- (c) Adversely affect employers, including in respect of productivity and employment costs;⁵⁴ and
- (d) Be inconsistent with the need to ensure a stable modern awards system.⁵⁵

54. Therefore, the union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

⁵² Section 134(1) of the Act.

⁵³ Section 134(1)(d) of the Act.

⁵⁴ Section 134(1)(f) of the Act.

⁵⁵ Section 134(1)(g) of the Act.

8. THE CORRECTIONS AWARD (CATEGORY II)

55. The Corrections Award prescribes a minimum hourly rate that is less than the C13 rate in respect of *'catering employees'* classified at the *'introductory level'*.⁵⁶ Such employees are defined as follows:

C.1 Introductory level

In respect of all classification streams, introductory level means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to 3 months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of 3 months from entry, an employee will move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to 3 months is required for the employee to achieve competence for movement to level 1.⁵⁷

56. The United Workers' Union (**UWU**) seeks the deletion of the underlined portion of the clause above. It proposes that it should be replaced with the following:

An employee will progress from the introductory level to level 1 after 3 months.⁵⁸

57. Ai Group opposes the UWU's claim.
58. Apart from expressing support for the Commission's Provisional View, the UWU has not advanced any material in support of its proposal. There is, as a result, nothing before the Commission that purports to justify the variation proposed. Plainly a case has not been made out for the variation sought. On that basis alone, the union's claim should fail.
59. In addition, the proposed variation should not be made for the following reasons:
- (a) The award provides that an employee will transition to Level 1 after three months, unless agreement is reached between the employer and employee that the employee will remain classified at the *'introductory level'* whilst they receive up to an additional three months' training. It does not allow an employer to unilaterally decide to extend the period over which an

⁵⁶ Clause 15.1(b) of the award.

⁵⁷ Clause C.1 of the award.

⁵⁸ UWU submission dated 10 November 2023 at [10].

employee can be classified at Level 1. This is an important and meaningful safeguard. There is no evidence that this has applied to employees unfairly or inappropriately.

- (b) The award does not contemplate a second extension to the initial three month period. This is another important safeguard.
- (c) The definitions for the following classification levels (i.e. *'food and beverage attendant grade 1'*,⁵⁹ *'kitchen attendant grade 1'*,⁶⁰ *'cook grade 1'*,⁶¹ or *'storeperson grade 1'*⁶²), contemplate the performance of work that would, on its face, require the employee to have specific training and / or to demonstrate relevant competencies. For example, the relevant classification descriptors include:
 - (i) *'setting up and/or wiping down tables'*,⁶³
 - (ii) *'assembling and preparing ingredients for cooking'*,⁶⁴
 - (iii) *'[receiving] and [storing] general and perishable goods'*.⁶⁵

Accordingly, it would not be appropriate for the award to require that employees be reclassified to the next level after three months of training, with nothing more. It may result in situations whereby an employee classified at the following level is not in fact competent to perform the work contemplated by the relevant classification definition.

⁵⁹ Clause C.2.1 of the Corrections Award.

⁶⁰ Clause C.3.1 of the Corrections Award.

⁶¹ Clause C.3.4 of the Corrections Award.

⁶² Clause C.4.1 of the Corrections Award.

⁶³ Clause C.2.1 of the Corrections Award.

⁶⁴ Clause C.3.1 of the Corrections Award.

⁶⁵ Clause C.4.1 of the Corrections Award.

60. The proposed variation:

- (a) Would not be fair to employers;⁶⁶
- (b) Would not promote the efficient and productive performance of work,⁶⁷ and
- (c) Would adversely affect employers, including in respect of productivity and employment costs.⁶⁸

61. The UWU's claim should be dismissed.

⁶⁶ Section 134(1) of the Act.

⁶⁷ Section 134(1)(d) of the Act.

⁶⁸ Section 134(1)(f) of the Act.

9. THE COTTON AWARD (CATEGORY V)

62. The Cotton Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified as 'CG1'.⁶⁹ The award defines such employees as follows:

Employees at this level:

(a) are general workers involved in the cleaning of the yard and gin, general delivery work or manual labour; and

(b) require minimal training or experience to competently function in the role.⁷⁰

63. The AWU argues that employees should remain at the existing rate *'for a very short period, for example, a maximum of 16 hours' work in the industry*'.⁷¹ This proposition should not be accepted, for the reasons that follow.

64. *First*, the proposed variation would need to be justified by work value reasons. For the reasons set out in section 4 of this submission, it should not be adopted.

65. *Second*, it would inappropriately result in the compression of internal wage relativities. The differential between the minimum rate prescribed for CG1 and CG2 would be reduced from \$1.13 to \$0.73.

66. *Third*, the Commission cannot be satisfied that it would be appropriate for an employee's rate to increase after a period of 16 hours, or any other specific time period. There is no material before the Commission in this regard.

67. *Fourth*, the award requires the payment of a disability allowance of \$33.06 per week, to all employees.⁷² It is an *'all purpose'* allowance and therefore, it is *'included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave'*.⁷³

⁶⁹ Clause 17.1 of the Cotton Award.

⁷⁰ Clause 13.1 of the Cotton Award.

⁷¹ AWU submission dated 3 November 2023 at [113].

⁷² Clause 19.2(b) of the award.

⁷³ Clause 19.2(a) of the award.

68. Once the disability allowance is added to the minimum hourly rate prescribed by the award for 'CG1', an employee is entitled to \$23.70 per hour. This is more than the C13 rate (i.e. \$23.23).
69. In the circumstances, the Cotton Award should not be subject to the Review. For all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.
70. *Fifth*, the proposed variation:
- (a) Would not be fair to employers;⁷⁴
 - (b) Would not promote the efficient and productive performance of work;⁷⁵ and
 - (c) Would adversely affect employers, including in respect of productivity and employment costs⁷⁶.
71. The AWU's claim should be dismissed.

⁷⁴ Section 134(1) of the Act.

⁷⁵ Section 134(1)(d) of the Act.

⁷⁶ Section 134(1)(f) of the Act.

10. THE ELECTRICAL CONTRACTING AWARD (CATEGORY V)

72. The Electrical Contracting Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at '*electrical worker grade 1*'.⁷⁷ Such an employee is defined as follows:

A.2.1 Electrical worker grade 1

An Electrical worker grade 1 is a labourer not otherwise provided for in this award, who is doing labouring work and employed as such.⁷⁸

73. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union (**CEPU**) and AWU seek an increase to the minimum hourly rate payable to grade 1 employees from \$22.93 per hour to the C13 rate.⁷⁹

74. Ai Group opposes the unions' claim, for the following reasons.

75. The unions are, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation *only* if it is satisfied that it is justified by '*work value reasons*'.⁸⁰ Work value reasons are reasons related to any of the following:

- (d) The nature of the work;
- (e) The level of skill and responsibility involved in doing the work; and
- (f) The conditions under which the work is done.⁸¹

⁷⁷ Clause 16.2 of the Electrical Award.

⁷⁸ Clause A.2.1 of the Electrical Award.

⁷⁹ CEPU submission dated 3 November 2023 at [10] and AWU submission dated 3 November 2023 at [116].

⁸⁰ Section 157(2)(a) of the Act.

⁸¹ Section 157(2A).

76. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the unions is justified based on work value reasons. In the circumstances, it does not have power to grant the unions' claim.
77. On this basis alone, the claim should fail. We advance the following arguments in the alternate.
78. *First*, the proposed variation would inappropriately compress internal wage relativities. A differential of a mere \$0.47 would remain between the minimum wages prescribed for 'electrical worker grade 1' and 'electrical worker grade 2'.
79. *Second*, the award requires the payment of an industry allowance of \$36.82 per week, to all employees.⁸² It is an 'all purpose' allowance and therefore, it is 'included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings including payments for overtime, payments while they are on all forms of paid leave, public holidays and pro rata payments on termination'.⁸³
80. Once the industry allowance is added to the minimum hourly rate prescribed by the award for 'electrical worker grade 1', an employee is entitled to \$23.90 per hour. This is more than the C13 rate (i.e. \$23.23).
81. In the circumstances, the Electrical Contracting Award should not be subject to the Review. For all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.
82. *Third*, at paragraph [8] of its submission, the CEPU argues that '[a]dult [a]pprentices currently in 2nd year to 4th year under the Electrical [Contracting] Award are earning less than the national minimum wage because their base rate of pay is tied to the classification of an Electrical Worker Grade 1'.

⁸² Clause 18.3(a) of the award.

⁸³ Clause 18.2(a) of the award.

83. We do not understand this submission. Adult apprentices' minimum wages are prescribed by clauses 16.4(b)(ii) and 16.4(b)(v). They are calculated by reference to the minimum hourly rate prescribed for '*electrical worker grade 5*' (not grade 1). The rates payable pursuant to these clauses all exceed the national minimum wage (i.e. \$23.23).⁸⁴
84. *Fourth*, in its decision concerning the Annual Wage Review 2022 – 2023, the Expert Panel observed that the C14 rate '*was only ever intended to constitute a transitional entry rate for new employees*'⁸⁵. In our submission, this was clearly not true in respect of the electrical contracting industry.
85. The *National Electrical, Electronic and Communications Contracting Industry Award 1998*⁸⁶ prescribed a minimum wage that was only slightly higher than the C14 rate (and materially lower than the C13 rate) in relation to the lowest classification level ('*Electrical Worker Grade 1*'). An employee could be classified indefinitely at that level, as a labourer. It did not contemplate transitioning to the next level.⁸⁷
86. Thus, the modern award reflects the longstanding position in relation to this sector. The material before the Commission does not justify departing from this approach.
87. *Fifth*, the proposed variation:
- (a) Would not be fair to employers;⁸⁸
 - (b) Would not promote the efficient and productive performance of work;⁸⁹

⁸⁴ Clause B.4.1 of the award.

⁸⁵ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8].

⁸⁶ AP791396CRV.

⁸⁷ Clause 15.1 of the award.

⁸⁸ Section 134(1) of the Act.

⁸⁹ Section 134(1)(d) of the Act.

- (c) Would adversely affect employers, including in respect of productivity and employment costs;⁹⁰ and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.⁹¹

88. The unions' claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

⁹⁰ Section 134(1)(f) of the Act.

⁹¹ Section 134(1)(g) of the Act.

11. THE FOOD MANUFACTURING AWARD (CATEGORY V)

89. The Food Manufacturing Award prescribes a minimum rate that is less than the C13 rate for employees classified at Level 1.⁹² The award defines such employees as follows: (emphasis added)

A.2.1 Level 1 (78% relativity to the tradesperson)

(a) An employee at Level 1 has less than 3 months' experience in the industry or enterprise and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. Provided that the length of service required to advance to Level 2 for a seasonal employee is 4 weeks and for a casual employee is 152 hours.

(b) Competencies

An employee at Level 1 performs general duties essentially of a manual nature, and:

- (i) exercises minimal judgment;
- (ii) works under direct supervision; and
- (iii) is undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.⁹³

90. The classification description for an employee at Level 2 is framed as follows: (emphasis added)

A.2.2 Level 2 (82% relativity to the tradesperson)

(a) An employee at Level 2 is an employee who has either:

- (i) completed a structured induction program over 3 months or for such shorter period as is necessary to reach the required level of competency for appointment to Level 2; or
- (ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

⁹² Clause 14.1(a) of the Food Manufacturing Award.

⁹³ Clause A.2.1 of the Food Manufacturing Award.

(b) Competencies

An employee at Level 2 performs a range of general duties essentially of a manual nature and to the level of the employee's competency, and:

- (i) exercises limited judgment;
- (ii) works under direct supervision;
- (iii) is undertaking structured training to enable the employee to work at Level 3.

91. An employee classified at Level 1 has less than three months' experience in the industry or enterprise and does not possess experience and / or skills that are sufficient for appointment to Level 2 or above. If an employee has three or more months of experience in the industry, or if they have experience or skills that warrant their classification at Level 2 or higher, the employee cannot be classified at Level 1.

The AMWU's Position

92. In its submissions, the AMWU states that it is its preference that the '*Level 1 classification be deleted in its entirety*'.⁹⁴

93. If the Level 1 classification level was deleted from the award, it appears that employees who meet the existing classification description, and who cannot properly be classified at Level 2 or higher, would no longer be covered by the award. Relevantly, clause 4.1 describes the coverage of the award as follows: (emphasis added)

4.1 This industry award covers employers throughout Australia in the **food, beverage and tobacco manufacturing industry** and their employees in the classifications in this award to the exclusion of any other modern award.

94. We doubt that it is the union's intent to exclude such employees from the coverage of the award and in any event, it would result in an anomalous outcome.

⁹⁴ AMWU submission dated 10 November 2023 at [15].

95. Further, the Commission would need to be satisfied such employees *'will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them'*.⁹⁵ We have not identified any other award that all such employees would be covered by.

96. Thus, the union's first proposal must fail.

97. In the alternate, the union argues that clauses A.2.1 and A.2.2 should be amended as follows:

A.2.1 Level 1 (78% relativity to the tradesperson)

(a) An employee at Level 1 has less than 3 months' experience (or 152 ordinary hours experience for a seasonal or casual employee) in the industry or enterprise and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. ~~Provided that the length of service required to advance to Level 2 for a seasonal employee is 4 weeks and for a casual employee is 152 hours.~~

(b) Competencies

An employee at Level 1 performs general duties essentially of a manual nature, and:

- (e) exercises minimal judgment;
- (ii) works under direct supervision; and
- (iii) is undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

A.2.2 Level 2 (82% relativity to the tradesperson)

- (a) An employee at Level 2 is an employee who has either:
- (i) completed a structured induction program ~~over 3 months or for such shorter period as is necessary~~ to reach the required level of competency for appointment to Level 2; or
 - (ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

⁹⁵ Section 163(1) of the Act.

(b) Competencies

An employee at Level 2 performs a range of general duties essentially of a manual nature and to the level of the employee's competency, and:

- (i) exercises limited judgment;
- (ii) works under direct supervision;
- (iii) is undertaking structured training to enable the employee to work at Level 3.

98. The proposals are advanced on the following bases:

- 13. The AMWU notes that the Level 1 Classification of this Award requires that an "employee is undertaking up to 38 hours' induction training ..."
- 14. However the Award provides that the transition from Level 1 to Level 2 can take up to 3 months. This provides an internal contradiction with Level 1 where seasonal and casual employees qualify for level 2 after 4 weeks or 152 hours respectively. The AMWU does not support this provision, given that the induction training is up to 38 hours long. Further, the progression to a higher level should be on completion of induction training, not based on an arbitrary time frame.⁹⁶

99. To the extent that the union argues that clauses A.2.1 and A.2.2 are inconsistent; we disagree. It is tolerably clear that an employee may be classified at Level 2 once they have completed structured training, which may take up to 3 months, as necessary, to ensure that they are competent to be appointed to Level 2. In the alternate, an employee may be eligible for classification at Level 2 by virtue of clause A.2.2(a)(ii). An employee is not automatically eligible for classification at Level 2 once they complete the 38 hours' induction training mentioned at clause A.2.1(b)(iii).

100. We also refer to and rely on our submissions at section 3.

⁹⁶ AMWU submission dated 10 November 2023 at [13] – [14].

12. THE HORTICULTURE AWARD (CATEGORY V)

101. Employees may be classified at Level 1 under the Horticulture Award on an ongoing and indefinite basis. Level 1 is defined by the award as follows:

A.1 Level 1

A.1.1 Level 1 employee means an employee classified in accordance with the following criteria:

A.1.2 General description

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.

A.1.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- sorting, packing or grading of produce where this requires the exercise of only minimal judgment;
- performing basic recording functions related to work performed at this level;

- providing assistance within the scope of this level to other employees as required;
- undertaking structured training so as to enable advancement to Level 2.⁹⁷

102. The minimum hourly rate prescribed by the award for such employees equates to the C14 rate.⁹⁸

103. It is the AWU's primary position that the minimum rate payable to Level 1 employees should be uplifted to the C13 rate and that, by extension, the minimum rate payable to Level 2 employees should also be increased.⁹⁹ We oppose the union's claim for the reasons set out in section 4 of this submission.

104. The variation can be made only if the Commission is satisfied that the minimum wage increases sought are justified by work value reasons. The material before the Commission falls well short of this threshold. Large parts of the evidence relied upon by the union do not go to the question of work value at all. The same can be said of its submissions.¹⁰⁰ Rather, it makes various assertions about the characteristics of employees (and, to some extent, employers) in the horticulture industry. It lacks a detailed examination of the nature of the relevant work, the level of skill and responsibility involved in doing the work or the conditions under which the work is done.¹⁰¹ Further, there is an absence of any analysis that might establish that the existing rates do not properly reflect the value of the work.

105. The grant of the claim would also inappropriately compress internal wage relativities. This raises the spectre of claims for wage increases in relation to higher classification levels and potential wage creep. This can already be seen to some extent in the union's claim to increase the Level 2 rate, for the purposes of ensuring that it remains higher than the Level 1 rate.¹⁰²

⁹⁷ Clause A.1 of the Horticulture Award.

⁹⁸ Clause 15.1(a) of the Horticulture Award.

⁹⁹ AWU submission dated 3 November 2023 at [9] and [11].

¹⁰⁰ For example, AWU submission dated 3 November 2023 at [9]0.

¹⁰¹ Section 157(2A) of the Act.

¹⁰² AWU submission dated 3 November 2023 at [11].

106. We also oppose the AWU's proposal in the alternate, which is to '*vary the classification structure in Schedule A to ensure that employees progress to Level 2 automatically, after completing 76 hours' of work in the industry*'.¹⁰³ The proposed variations seek to indirectly achieve an increase to the minimum wage payable to employees and as such, they should also not be granted in the absence of established work value reasons.

¹⁰³ AWU submission dated 3 November 2023 at [14].

13. THE JOINERY AWARD (CATEGORY V)

107. The Joinery Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at Level 1.¹⁰⁴ The award contains the following classification descriptor:

A.1.1 Level 1 [relativity to Level 5—78%]

- (a) An employee at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.
- (b) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
 - (i) performs work as directed;
 - (ii) performs routine duties essentially of a manual and repetitive nature;
 - (iii) is responsible for the quality of their own work subject to direct supervision;
 - (iv) works in a safe manner so as not to injure themselves or other employees;
 - (v) is able to solve basic problems associated with their work;
 - (vi) while undertaking structured training performs work within the scope of that training subject to safety and training requirements.
- (c) Indicative of the tasks which an employee at this level may perform are the following:
 - (i) general labouring and cleaning duties from written or verbal instructions;
 - (ii) assistance to other employees at this or other skill levels within their level of skill and training;
 - (iii) other tasks as directed in accordance with their level of skill and training.
- (d) Level 1 includes the following occupations:
 - (i) General hand.
 - (ii) Factory hand.

¹⁰⁴ Clause 19.1 of the Joinery Award.

108. An employee can plainly be classified at Level 1 on an ongoing or indefinite basis. It expressly refers to the ‘occupations’ of ‘general hand’ and ‘factory hand’.¹⁰⁵ Whilst an employee classified at Level 1 ‘will undertake up to 38 hours induction training’¹⁰⁶, the above clause also expressly states that an employee at this level performs ‘routine duties essentially of a manual nature’¹⁰⁷. Further, it describes various indicative tasks that may be performed at Level 1.¹⁰⁸
109. Despite this, the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) argues that an employee can be classified at Level 1 only whilst they undertake 38 hours of induction training and that to the extent that there is any doubt about this, the award should be amended to make this clear.¹⁰⁹ So far as the union relies on the *Metal Industry Award 1984*¹¹⁰, we refer to [9] – [15] of the November Submission.
110. The union proposes the following variations to ‘clarify’ the operation of the award:

A.1.1 Level 1 [relativity to Level 5—78%]

- (a) This level only applies to new employees. An employee at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance. Upon completion of the induction training a new employee will transition to level 2.
- (b) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
- ...
- (c) Indicative of the tasks which an employee at this level may perform are the following:
- ...

¹⁰⁵ Clause A.1.1 of the Joinery Award.

¹⁰⁶ Clause A.1.1(a) of the Joinery Award.

¹⁰⁷ Clause A.1.1(b) of the Joinery Award.

¹⁰⁸ Clause A.1.1(c) of the Joinery Award.

¹⁰⁹ CFMMEU – Construction and General Division submission dated 3 November 2023 at [13] and [16].

¹¹⁰ CFMMEU – Construction and General Division submission dated 3 November 2023 at [12].

(d) Level 1 includes the following occupations:

- (i) General hand.
- (ii) Factory hand.

A.1.2 Level 2 [relativity to Level 5—82%]

- (a) An employee to be classified at this level will have completed the required induction training or will have equivalent skills gained through work experience in accordance with the prescribed standards for this level. ~~In all cases the employee will be required to satisfactorily complete a competency assessment to enable the employee to perform work within the scope of this level.~~
- (b) An employee at this level performs work above and beyond the skills of an employee at Level 1 and to the level of their skill and training:
- (i) performs work as directed;
 - (ii) exercises limited discretion and utilises basic fault finding skills in the course of their work;
 - (iii) works in a safe manner so as not to injure themselves or other employees;
 - (iv) understands and undertakes basic quality control/assurance procedures subject to supervision;
 - (v) while undertaking structured training, performs work within the scope of that training subject to safety and training requirements.
- (c) Indicative of the tasks which an employee at this level may perform are the following:
- (i) repetitive fixing of pre-made components or parts of any article in predetermined ways, using basic written, spoken and/or diagrammatic instructions;
 - (ii) repetition work (including the feeding and removing of glass) on automatic, semi automatic or single purpose machines or equipment;
 - (iii) use of selected hand tools and hand operated power tools;
 - (iv) maintenance of simple records;
 - (v) manual handling skills;
 - (vi) use of hand trolleys and pallet trucks;
 - (vii) problem solving skills; and
 - (viii) handling of glass to and from cases, trucks, benches, pallets, stillages, bins, cages or racks.

(d) Subject to Schedule A.1.2 (e), Level 2 includes the following occupations:

(i) Assembler B.

(ii) Factory hand.

(iii) General hand.

(e) An employee currently classified as an Assembler B who is only required to perform the duties specified in Schedule A.1.2 must be paid in accordance with Level 2. Where such employee performs a wide range of duties including those more complex tasks identified for Level 3, then such employee must be paid in accordance with Level 3.

111. We oppose the union's claim. It would not clarify the operation of the award. Rather, it would fundamentally alter it. A case has not been made out for such change.

112. To the extent that the changes would result in '*factory hands*' and '*general hands*' being paid the Level 2 rate after completing induction training, they should be made only if justified by work value reasons. There is, however, a complete absence of any material about the value of such work. Therefore, the Commission cannot be satisfied that those variations should be granted.

14. THE MANUFACTURING AWARD (CATEGORY V)

113. The Manufacturing Award prescribes a rate that is less than the C13 rate in respect of employees classified at the C14 and V1 levels.¹¹¹

114. Clause A.4.3 of the award describes the C14 level as follows:

A.4.3 Wage Group: C14

(a) Engineering/Manufacturing Employee—Level I

- (i) An Engineering/Manufacturing Employee—Level I is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.
- (ii) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
 - performs general labouring and cleaning duties;
 - exercises minimal judgement;
 - works under direct supervision;
 - is undertaking structured training so as to enable them to work at the C13 level.

115. Clause B.2 describes the V1 level as follows:

B.2 V1—Vehicle industry/production employee Level 1

B.2.1 A Vehicle industry/production employee—Level 1 is an employee undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

B.2.2 An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- (a) performs general labouring and cleaning duties;
- (b) exercises minimal judgment;

¹¹¹ Clause 20.1(a) of the Manufacturing Award.

- (c) works under direct supervision; and
- (d) is undertaking structured training so as to enable them to work at V2 Level.

B.2.3 Classifications at Level V1:

- Assembler, cushion and squab including spring frame
- Dipper solder or tin
- Degreaser at liquid or vapour bath
- Electroplater—3rd class
- Garage attendant
- Greaser and/or oiler
- Grinder using fixed gear
- Heat treat attendant—first 3 months
- Janitor and/or convenience attendant
- Machinist (metal)—3rd class
- Packer other than as defined
- Paster trim
- Paintshop assistant
- Pickler
- Plastics developer (b) second class (2) first month's experience
- Pleat stuffer
- Press operators assistant
- Shot and/or sand blast operator
- Spring coil machinist not required to set up machine
- Washer using phenyl etc.

The AMWU's Position

116. The AMWU submits that clause A.4.3 should be deleted.¹¹²

117. If the C14 classification level was deleted from the award, it appears that employees who meet the existing classification description, and who cannot properly be classified at the C13 level or higher, would no longer be covered by the award. Relevantly, clause 4.1 describes the coverage of the award as follows: (emphasis added)

4.1 This award covers employers throughout Australia of employees in the Manufacturing and Associated Industries and Occupations who are covered by the classifications in this award and those employees.

118. We doubt that it is the union's intent to exclude such employees from the coverage of the award and in any event, it would result in an anomalous outcome.

119. Further, the Commission would need to be satisfied such employees '*will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them*'.¹¹³ We have not identified any other award that all such employees would be covered by.

120. Thus, the union's first proposal must fail.

121. In the alternate, the AMWU proposes the following amendments to clause A.4.4, which describes the C13 level:

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee—Level II

(i) An Engineering/Manufacturing Employee—Level II is an employee who has ~~completed up to 3 months~~;

a. Previously completed a structured training of at least three months duration or has equivalent experience in manufacturing;
or

¹¹² AMWU submission dated 10 November 2023 at [17].

¹¹³ Section 163(1) of the Act.

b. Completed the induction training program for the workplace

so as to enable the employee to perform work within the scope of this level.

- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
 - works under direct supervision either individually or in a team environment;
 - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
 - understands and utilises basic statistical process control procedures;
 - follows safe work practices and can report workplace hazards.

122. The union says that its proposed amendments are '*designed to ensure that the time periods are not seen as a qualifying time to progress to the C13 level, but a situation where it is appropriate to bypass the C14 level*'.¹¹⁴

123. We oppose the union's proposed amendments. They would:

- (a) Permit an employee to be classified at C13 once they have completed their induction training, irrespective of whether they have '*completed up to 3 months' structured training so as to enable the employee to perform work within the scope of*' the C13 level, as currently required by clause A.4.4(a)(i).
- (b) By extension, render the proposed clause A.4.4(a)(i)a. redundant, where induction training has been completed.

¹¹⁴ AMWU submission dated 10 November 2023 at [17].

124. We acknowledge that the concluding words of the provision (*'... so as to enable the employee to perform work within the scope of this level.'*) may be intended to limit the scope of clause A.4.4(a) to circumstances in which the training in fact results in an employee having the competencies required to perform work at the C13 level; however, this is not clear. On one view, those words go to the purpose or design of the training, as opposed to whether an employee is in fact able to perform work at the higher level after completing the training.
125. It is not clear whether the proposed changes would have the effect of requiring that an employee who has undertaken 38 hours of induction training *must* be classified at Level 2, or whether the award would continue to permit the classification of employees at the C14 level on an ongoing basis. We assume that the union's intent is consistent with the former proposition. We oppose any such variation for the reasons set out at section 3 of this submission.
126. In respect of the vehicle manufacturing stream, the AMWU proposes that clause B.3.1 be varied as follows:

B.3 V2—Vehicle industry/production employee Level 2

B.3.1 A Vehicle industry/production employee—Level 2 is an employee who has:

- (i) Completed the induction training program for the workplace; or
- (ii) Has previously met the requirements of the Certificate I in Automotive Manufacturing (AUM10113), or equivalent.

B.3.2 An employee at this level performs work above and beyond the skills of an employee at Level V1 and to the level of their training:

- (a) works under direct supervision either individually or in a team environment;
- (b) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults; and
- (c) understands and utilises basic statistical process control procedures.

B.3.3 Indicative of the tasks which an employee at this level may perform are the following:

- (a) repetition work on automatic, semiautomatic or single purposes machines or equipment;

- (b) assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- (c) basic soldering or butt and spot welding skills or cuts scrap with oxyacetylene blow pipe;
- (d) uses selected hand tools;
- (e) boiler cleaning; and
- (f) maintains simple records.

B.3.4 Classifications at Level V2:

...

127. We oppose the union's claim.

128. Currently, the V2 level is confined to employees who have '*met the requirements of the Certificate I in Automotive Manufacturing (AUM10113), or equivalent*'.¹¹⁵ An employee who has not completed this training could not be classified at the V2 level. The union's proposal seeks to subvert this requirement in its entirety, by rendering any employee who has completed induction training eligible to be classified as Level V2, irrespective of whether they have gained the competencies required to perform the work contemplated at the V2 level.

129. Both categories of variations proposed by the AMWU would:

- (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;¹¹⁶
- (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;¹¹⁷
- (c) Have an adverse impact on business, including on productivity and employment costs;¹¹⁸

¹¹⁵ Clause B.3.1 of the Manufacturing Award.

¹¹⁶ Section 134(1) of the Act.

¹¹⁷ Section 134(1)(d) of the Act.

¹¹⁸ Section 134(1)(f) of the Act.

- (d) Not be consistent with the need to ensure a stable awards system;¹¹⁹
- (e) Not be necessary to ensure that the Manufacturing Award achieves the modern awards objective;¹²⁰
- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.¹²¹

130. We also refer to and rely on section 3 of this submission.

131. The union's claims should therefore be rejected.

The AWU's Position

132. The AWU argues that the C14 and V1 levels should apply only in respect of the first 38 hours of induction training.¹²² For the reasons set out above in section 3 of this submission, this submission should be dismissed.

The CFMMEU's Position

133. The CFMMEU also contends that the C14 level should apply only for the first 28 hours of induction training.¹²³ We refer to and rely on the above submission in support of our position that this contention should be dismissed.

¹¹⁹ Section 134(1)(g) of the Act.

¹²⁰ Section 138 of the Act.

¹²¹ Sections 157(2) and 157(2A) of the Act.

¹²² AWU submission dated 3 November 2023 at [91] – [92].

¹²³ CFMMEU Manufacturing Division submission dated 9 November 2023 at [17].

15. THE MEAT AWARD (CATEGORY IV)

134. The Meat Award prescribes a minimum rate that is less than the C13 rate in respect of employees classified as *'Meat Industry Level 1'*.¹²⁴ The award defines such employees as follows: (emphasis added)

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry undergoing on-the-job training for an initial period of at least 3 months.¹²⁵

135. The classification descriptors describe employees at *'Meat Industry Level 2'* and higher by reference to indicative tasks.

136. The Australian Meat Industry Employees' Union (**AMIEU**) proposes that the level 1 classification and corresponding minimum rate should be deleted from the award.¹²⁶ In the alternate, it contends that the award should be varied such that an employee cannot be classified at level 1 for more than one week.¹²⁷

137. On the other hand, the Australian Meat Industry Council (**AMIC**) has proposed the following amendments to clause A.3.1 of the award:

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry (or less than 3 months continuous experience in the preceding 5 years) undergoing on-the-job training for no longer than six months ~~an initial period of at least 3 months~~.¹²⁸

138. Ai Group opposes the AMIEU's claims, for the reasons that follow.

139. *First*, the award is expressed to cover employers in the *'meat industry'*, as defined, *'and their employees in classifications in Schedule A'*. If the Level 1 classification was deleted from the award, it appears that employees undergoing on-the-job training, who are not performing any of the indicative tasks described by the other classification descriptors, would no longer be covered by the award.

¹²⁴ Clause 16.1 of the Meat Award.

¹²⁵ Clause A.3.1 of the Meat Award.

¹²⁶ AMIEU submission dated 10 November 2023 at [6].

¹²⁷ AMIEU submission dated 10 November 2023 at [7].

¹²⁸ AMIC submission dated 3 November 2023 at page 4.

We doubt that this is the union's intent and in any event, it would result in an anomalous outcome.

140. Further, the Commission would need to be satisfied such employees '*will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them*'.¹²⁹ We have not identified any other award that all such employees would become covered under.

141. Thus, the union's first proposal must fail.

142. *Second*, we do not agree that the maximum period of one week proposed by the union reflects '*the amount of on-the-job training that new employees typically receive*'.¹³⁰ This is unsurprising, given that the award expressly contemplates that employees at Level 1 will receive '*at least*' three months of initial on-the-job training. The Commission should proceed on the basis that, *prima facie*, employees classified at Level 1 receive no less than three months' training. In addition to the text of the award, this is supported by the evidence advanced by AMIC.

143. *Third*, the union argues that the tasks undertaken at Levels 2 and 3 are '*generally straightforward, routinised, and not overly complex*'.¹³¹ It submits that at Level 1, employees '*are being trained for basic labouring and packing roles in the industry*'¹³² and that '*typically*', after completing '*standard workplace inductions*' at Level 1, employees are classified at Level 3, whilst some will be classified at Level 2.

144. It is clear from the terms of the award that Level 1 is not confined to '*induction training*'. That is, it is not confined to training that relates to information about the workplace, basic health and safety matters, introductions to co-workers, workplace policies and procedures etc. Rather, it is described as applying where a person is undergoing '*on-the-job training*'.

¹²⁹ Section 163(1) of the Act.

¹³⁰ AMIEU submission dated 10 November 2023 at [7].

¹³¹ AMIEU submission dated 10 November 2023 at [20].

¹³² AMIEU submission dated 10 November 2023 at [10].

145. In our submission, an employee is to be classified at Level 1 whilst they are undergoing training to perform substantive tasks (i.e. the indicative tasks identified in the award's classification structure), that require some skill, knowledge and / or experience. Such training may include more experienced members of staff demonstrating how certain work is to be undertaken, health and safety training that is specific to the relevant work and the new employee performing the work under close supervision.
146. Moreover, self-evidently, on-the-job training may not be limited to '*basic labouring and packing roles*'. The Level 2 and Level 3 classification descriptors contemplate a range of other indicative tasks that involve skilled work. In that context, the union has not made out a case for limiting the application of Level 1 to one week.
147. *Fourth*, the union's case appears to proceed on the basis that an employee's on-the-job training is complete once they are able to perform the relevant work to any degree, including under close supervision. An important distinction must, however, be made between an employee having basic competencies *vis-à-vis* being able to competently perform a specific task, such that they are no longer undergoing on-the-job-training. The union's approach overlooks the latter proposition. Rather, it inappropriately assumes that once an employee exhibits an elementary ability to perform the relevant work, their on-the-job training will necessarily be complete and therefore, they should be classified at a higher level.
148. *Fifth*, the union alleges that some employers '*treat three months as the default period on which to remain at the introductory level rate*'.¹³³ We would first observe that the evidence before the Commission does not establish that any such practice is widespread or commonplace. In any event, if an employer inappropriately classifies an employee at Level 1 in circumstances where they are not receiving '*on-the-job training*', there exist various mechanisms for this to be disputed, including through the dispute resolution procedure prescribed by

¹³³ AMIEU submission dated 10 November 2023 at [21].

the award.¹³⁴ This does not, of itself, justify the variations proposed by the union to the award.

149. *Sixth*, the material filed by AMIC focuses on the emphasis placed on workplace health and safety in the meat industry. In addition to the nature of the work described at Levels 2 and 3 in the award, these safety-related concerns demonstrate the need to ensure that employees receive a sufficient period of training. A period of one week would not be satisfactory in this context.
150. Finally; in respect of the proposal advanced by AMIC, it is Ai Group's position that the proposed variation is not necessary in the relevant sense; however, we acknowledge that if it were adopted in lieu of the AMIEU's proposals, that would in large part allay our concerns.

¹³⁴ Clause 34 of the Meat Award.

16. THE NURSES AWARD (CATEGORY IV)

151. The Nurses Award prescribes a minimum hourly rate that is less than the C13 rate in respect of *'student enrolled nurses – other than aged care employees'*, who are less than 21 years of age.¹³⁵ A *'student enrolled nurse'* is defined as a *'student undertaking study to become an enrolled nurse'*.¹³⁶ This involves completing a Diploma in Nursing, which typically requires a period of 18 months to two years.

152. The UWU submits that the minimum rate prescribed by the award for student enrolled nurses should be increased to the C13 rate. It argues that this would *'avoid the need to amend the subsequent classification levels by removing or varying the'* extant requirements that must be satisfied in order for an employee to be classified at a higher level.¹³⁷ The union has not advanced any other material in support of its submission.

153. Ai Group opposes the UWU's claim, for the following reasons.

154. The union is, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by *'work value reasons'*.¹³⁸ Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work; and
- (c) The conditions under which the work is done.¹³⁹

¹³⁵ Clause 15.3(b)(i) of the Nurses Award.

¹³⁶ Clause A.3 of the Nurses Award.

¹³⁷ UWU submission dated 10 November 2023 at [6].

¹³⁸ Section 157(2)(a) of the Act.

¹³⁹ Section 157(2A).

155. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the union is justified based on work value reasons. In the circumstances, it does not have power to grant the union's claim.

156. On this basis alone, the claim should fail. Further, the proposed variation:

- (a) Would not be fair to employers;¹⁴⁰
- (b) Would not promote the efficient and productive performance of work;¹⁴¹
- (c) Would adversely affect employers, including in respect of productivity and employment costs;¹⁴² and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.¹⁴³

157. The UWU's claim should therefore be dismissed.

¹⁴⁰ Section 134(1) of the Act.

¹⁴¹ Section 134(1)(d) of the Act.

¹⁴² Section 134(1)(f) of the Act.

¹⁴³ Section 134(1)(g) of the Act.

17. THE OIL MANUFACTURING AWARD (CATEGORY IV)

158. The Commission's Statement identified that the Oil Manufacturing Award prescribes a minimum weekly rate for '*refinery operations – trainee operator (level 1)*' that is less than the weekly C13 rate.¹⁴⁴
159. Unlike many other awards, the minimum hourly rate prescribed by the Oil Manufacturing Award is calculated by dividing the weekly rate by 35¹⁴⁵, reflecting the maximum number of ordinary hours that may be worked in a week under the award. This results in a minimum hourly rate for the aforementioned classification level of \$25.08,¹⁴⁶ which exceeds the C13 rate. Noting that the Commission's Provisional View was expressed by reference to the hourly C13 rate,¹⁴⁷ the Oil Manufacturing Award falls beyond the scope of the Review and should, therefore, be excluded from the Commission's consideration.
160. In the event that our primary submission is not accepted by the Commission, we rely on the following in response to the UWU's claim.
161. The UWU submits that the minimum rate prescribed by the award for '*refinery operations – trainee operator (level 1)*' should be increased to the C13 rate. It argues that this would '*avoid the need to amend the subsequent classification levels by removing or varying the*' extant requirements that must be satisfied in order for an employee to be classified at a higher level.¹⁴⁸ The union has not advanced any other material in support of its submission.
162. Ai Group opposes the UWU's claim, for the following reasons.

¹⁴⁴ Statement at Attachment D.

¹⁴⁵ Clause 16.1, including footnote 1.

¹⁴⁶ Clause 16.1 of the Oil Manufacturing Award.

¹⁴⁷ Statement at [8].

¹⁴⁸ UWU submission dated 10 November 2023 at [6].

163. The union is, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by ‘*work value reasons*’.¹⁴⁹ Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work;
- (c) The conditions under which the work is done.¹⁵⁰

164. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the union is justified based on work value reasons. In the circumstances, it does not have power to grant the union’s claim.

165. On this basis alone, the claim should fail. Further, the proposed variation:

- (a) Would not be fair to employers;¹⁵¹
- (b) Would not promote the efficient and productive performance of work;¹⁵²
- (c) Would adversely affect employers, including in respect of productivity and employment costs,¹⁵³ and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.¹⁵⁴

166. The UWU’s claim should therefore be dismissed.

¹⁴⁹ Section 157(2)(a) of the Act.

¹⁵⁰ Section 157(2A).

¹⁵¹ Section 134(1) of the Act.

¹⁵² Section 134(1)(d) of the Act.

¹⁵³ Section 134(1)(f) of the Act.

¹⁵⁴ Section 134(1)(g) of the Act.

18. THE PEST CONTROL AWARD (CATEGORY III)

167. The Pest Control Award prescribes a rate that is less than the C13 rate in respect of employees classified at Level 1.¹⁵⁵ Clause 12.1(a) of the award defines an employee at Level 1 as follows:

A Level 1 employee is a person who has entered the industry with no previous experience and has yet to apply for a licence. An employee at this level has been employed in the industry for less than 6 months.

168. The Level 2 classification is defined as follows: (emphasis added)

A Level 2 employee is a person who has applied for a licence pursuant to relevant government regulation as either a Fumigator or a Pest Control Technician but has yet to be examined or licensed other than provisionally. Such an employee is presently undertaking an accredited course to obtain a pest operator's certificate.¹⁵⁶

169. The AWU argues that clause 12.1(a) should be varied '*to ensure that employees automatically progress from the 'Level 1' classification ... after obtaining 3 months' experience in the industry (rather than the current threshold of 6 months)*'.¹⁵⁷ The union also argues that '*there should be no requirement to have applied for a licence as a Fumigator or Pest Control Technician in order to progress from Level 1 to Level 2*'.¹⁵⁸

170. The union has not advanced any justification, or purported justification, whatsoever, for the proposed changes. Plainly, a case has not been made out for them. There is simply no material before the Commission that might support the variations or enable the Commission to assess their implications.

171. We would also observe that given that the award provides for progression to Level 2 after six months it, in effect, conforms with the Provisional View (subject to the requirement that an employee must apply for a licence) and on that basis, it should be excluded from the Review.

¹⁵⁵ Clause 16.1 of the Pest Control Award.

¹⁵⁶ Clause 12.1(b) of the Pest Control Award.

¹⁵⁷ AWU submission dated 3 November 2023 at [118](a).

¹⁵⁸ AWU submission dated 3 November 2023 at [118](b).

19. THE PREMIXED CONCRETE AWARD (CATEGORY III)

172. The Premixed Concrete Award prescribes a rate that is less than the C13 rate in respect of employees classified at *'Level 1'*, by one cent. That is, the level 1 rate is \$23.22.¹⁵⁹ In addition, all employees are entitled to an all purpose industry disability allowance.¹⁶⁰ The allowance is to be included in an employee's rate of pay *'when calculating any penalties, loadings or payment while they are on annual leave'*.¹⁶¹

173. Employees classified at Level 1 are in effect entitled to an hourly rate for all purposes that exceeds the C13 rate (i.e. it totals \$23.97). Accordingly, the Premixed Concrete Award should be excluded from the Review.

174. Further, the award defines the Level 1 classification as follows:

An employee without industry skills, training to be a batcher, allocator, tester or plant assistant. An employee may work at this level for up to 6 months.¹⁶²

175. As can be seen, an employee cannot be classified at Level 1 for more than six months. The award therefore accords with the Commission's Provisional View. This presents another reason why it should not form part of the Review.

176. In any event, the claim advanced by the AWU is without basis. It proposes that *'clause 12.4(a) should be varied to provide that an employee automatically progresses from the 'Level 1' classification ... after 3 months' experience in the industry (rather than the current 6 months of work threshold)'*. Once again, the union has not advanced any reason or potential justification for this change.

177. The union's claim should simply be rejected.

¹⁵⁹ Clause 16.1 of the Premixed Concrete Award.

¹⁶⁰ Clause 18.2(b) of the Premixed Concrete Award.

¹⁶¹ Clause 18.2(a) of the Premixed Concrete Award.

¹⁶² Clause 12.4(a) of the Premixed Concrete Award.

20. THE RAIL AWARD (CATEGORY V)

178. The Rail Award prescribes a minimum hourly rate that is less than the C13 rate in respect of:

- (a) 'Level 1 Rail Worker (Op)'; and
- (b) 'Level 1 Rail Worker (TCI)'.

Operations – Level 1

179. Level 1 in the 'Operations' stream is defined by reference to the tasks and functions that an employee may be required to perform at that level, as follows: (emphasis added)

Employees at this level undertake and successfully complete standard induction training and will be required to:

- Be responsible for personal safety and use the protective equipment provided to perform work safely.
- Undertake a range of functions with a basic knowledge of policies, procedures and guidelines using a sound level of skill to perform the functions.
- Perform routine customer service, presentation and operations duties requiring minimal judgment.
- Undertake tasks with direct supervision and guidance.¹⁶³

180. The Australian Rail, Tram and Bus Industry Union (RTBU) submits that the above classification definition should be amended as follows:

Employees at this level undertake and successfully complete standard induction training within the first month of employment. On completion of the required induction training the employee will be reclassified to level 2. and Employees at Level 1 will be required to:

- Be responsible for personal safety and use the protective equipment provided to perform work safely.
- Undertake a range of functions with a basic knowledge of policies, procedures and guidelines using a sound level of skill to perform the functions.

¹⁶³ Schedule A to the Rail Award.

- Perform routine customer service, presentation and operations duties requiring minimal judgment.
- Undertake tasks with direct supervision and guidance.¹⁶⁴

181. The union's claim would:

- (a) Confine the period of time within which induction training must be completed;
- (b) Mandate the reclassification of an employee to Level 2 after one month; and
- (c) Confine the circumstances in which the work contemplated at the bullet points in the above extract may be performed under the award to employees in their first month of employment, who are undertaking induction training.

182. Ai Group opposes the proposed variations.

183. Plainly, the classification descriptor for Level 1 contemplates the performance of work in addition to the satisfactory completion of induction training. The aforementioned part of Schedule A expressly states that in addition to completing such training, employees *'will be required to ... undertake a range of functions with a basic knowledge of policies, procedures and guidelines'* and to *'perform routine customer service, presentation and operations duties'*.

184. Further, the award does not require or suggest that employees are to be reclassified to Level 2 after a specified period of time or immediately after completing induction training. Tellingly, the Level 2 classification description states that employees at that level will be required to perform *'semi-skilled work'* and *'provide some supervision of staff'*.¹⁶⁵ Apart from Level 1, no other classification level in the *'Operations'* stream contemplates the performance of tasks that require minimal skills.

¹⁶⁴ RTBU submission dated 3 November 2023 at [19].

¹⁶⁵ Schedule A to the Award.

185. To that end, we disagree with the union's interpretation of the award.¹⁶⁶
186. The union's submissions and evidence proceed on the misapprehension that an employee can be classified at Level 1 only whilst they are undertaking induction training. By extension, their material focuses on the period of time required by an employee to complete induction training. It ignores, perhaps unwittingly, that an employee may be classified at Level 1 on an ongoing and indefinite basis, to perform basic, routine work.
187. A case has not been made for the variations advanced by the union. They would fundamentally change the manner in which the classification level applies. Critically, it may give rise to serious operational difficulties to the extent that employers would need to routinely employ new employees at Level 1 to perform the relevant work. This would result in various additional costs and increase the regulatory burden. It may also adversely impact productivity.
188. Further, the evidence does not establish that after one month of induction training, an employee will have the skills and experience required to perform the work described at Level 2. We contend that that would not necessarily be so. An employee may not be in a position to, for example, supervise other staff.
189. For all of these reasons, the RTBU's claim:
- (a) Would not be fair to employers;¹⁶⁷
 - (b) Would not promote the efficient and productive performance of work;¹⁶⁸
 - (c) Would adversely affect employers, including in respect of productivity and employment costs;¹⁶⁹ and

¹⁶⁶ RTBU submission dated 3 November 2023 at [14].

¹⁶⁷ Section 134(1) of the Act.

¹⁶⁸ Section 134(1)(d) of the Act.

¹⁶⁹ Section 134(1)(f) of the Act.

- (d) Would be inconsistent with the need to ensure a stable modern awards system.¹⁷⁰

190. The union's should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

Technical and Civil Infrastructure – Level 1

191. The Rail Award defines an employee at Level 1 in the '*Technical and Civil Infrastructure*' stream as follows: (emphasis added)

An employee at this level performs routine duties essentially of a manual nature and to the level of their training. These include:

- Performing general labouring and cleaning duties.
- Exercising minimal judgment.
- Working under direct supervision.
- Undertaking structured training so as to enable them to work at a Level 1.
- Observes and applies all relevant rules, regulations, and instructions including attendance policies and instructions, rostered hours, wearing protective clothing, footwear and equipment, and safety and safeworking notices or instructions.¹⁷¹

192. The RTBU argues that the above descriptor should be amended as follows:

An employee at this level performs routine duties essentially of a manual nature and to the level of their training. An employee cannot remain at level 1 for longer than 1 month. An employee at level 1 will be required to undertake duties that ~~These~~ include:

- Performing general labouring and cleaning duties.
- Exercising minimal judgment.
- Working under direct supervision.
- Undertaking structured training so as to enable them to work at a Level 1.
- Observes and applies all relevant rules, regulations, and instructions including attendance policies and instructions, rostered hours, wearing protective clothing, footwear and equipment, and safety and safeworking notices or instructions.¹⁷²

¹⁷⁰ Section 134(1)(g) of the Act.

¹⁷¹ Schedule A to the Rail Award.

¹⁷² RTBU submission dated 3 November 2023 at [19].

193. We oppose the union's proposals.

194. The union has not advanced any probative material in support of its case. As is accepted by the union, employees can be engaged at Level 1 on an ongoing and indefinite basis. It seeks to fundamentally alter the operation of the award in this respect, by confining the application of Level 1 to one month. We repeat the submissions made above against analogous variations sought to the '*Operations*' stream.

21. THE SEAFOOD PROCESSING AWARD (CATEGORY II & V)

195. The Seafood Processing Award prescribes a rate that is less than the C13 rate for employees classified at 'Process Attendant Level 1' and 'Process Attendant Level 2'.¹⁷³ These classification levels are defined as follows:

12.1 Process Attendant Level 1

(a) Point of entry

New employee.

(b) Skills/duties—indicative tasks

An employee in the first 3 months of duty undertakes training for any task including but not limited to sorting, grading, trimming, washing and packaging of fish, seafood and marine products and is under direct supervision.

(c) Promotional criteria

An employee remains at this level for the first 3 months or until they are capable of demonstrating competency in the tasks required at this level so as to enable them to progress to Level 2.

12.2 Process Attendant Level 2

(a) Point of entry

- (i)** Process Attendant Level 1; or
- (ii)** Proven and demonstrated skills, including industry certification as appropriate, at Level 2.

(b) Skills/duties—indicative tasks

Indicative of the tasks which an employee at Level 2 may perform are the following:

- (i)** Filleting,
- (ii)** Weighing,
- (iii)** Cleaning of fish and/or shellfish,
- (iv)** Precise grading, marking and inspection,
- (v)** Draining, tailing, pickling, crumbing and cooking of seafood,

¹⁷³ Clause 15.1(a) of the Seafood Processing Award.

- (vi) Chilling of fish and shellfish,
- (vii) Sealing, stopping and stamping of cartons,
- (viii) Bulk packaging and operation of single function fish processing equipment,
- (ix) Operation of a can closure machine,
- (x) Packing in a standard container,
- (xi) Recording and documentation as required,
- (xii) Cold storage chiller and freezer operations.

(c) Promotional criteria

An employee remains at this level until they have developed the skills to allow the employee to effectively perform the tasks required at this level and are assessed by the employer to be competent to perform effectively at a higher level so as to enable them to progress as a position becomes available.

196. The AWU has advanced the following submissions:

- (a) In relation to Level 1, clause 12.1(c) should be amended *'to make clear that 3 months is the maximum period and that it applies to 3 months' work in the industry, rather than with a particular employer'*.¹⁷⁴
- (b) The Commission should *'give consideration to lifting both rates'*, such that the Level 1 rate is lifted to the C13 rate and the Level 2 rate is increased to a rate that is *'half the difference between the Level 2 and Level 3 rates'*.¹⁷⁵
- (c) *'At a minimum'*, the Level 2 rate should be lifted to the C13 rate.

197. Ai Group opposes each of the above propositions.

198. In relation to paragraph (a) above; the union has not made out a case for the proposed change. Presently, an employee cannot be reclassified to Level 2 until they are competent in the tasks contemplated by the Level 1 descriptor. This is entirely appropriate in the context of a classification framework that features successive levels that each proceed on the basis that the employee is competent

¹⁷⁴ AWU submission dated 3 November 2023 at [74].

¹⁷⁵ AWU submission dated 3 November 2023 at [75].

in performing the work contemplated by the preceding level. The automatic reclassification of employees after three months would potentially result in employees being classified at Level 2 in circumstances where they do not in fact possess the skills to perform work at that level. That is an obviously undesirable and anomalous outcome.

199. Further, clause 12.1(c) appears to operate in the context of an employee's employment. Logically, this ensures that an employee has obtained the requisite period of experience in a particular work environment and in the context of a particular employer's expectations and requirements, before progressing to the next level. This is especially relevant given the breadth of the Level 1 classification description, which could result in an employee performing different types of work for different employers at the same level. The employer-specific application of clause 12.1(c) ensures that the employee has gained *relevant* experience before progressing.

200. The AWU's claims:

- (a) Would not be fair to employers;¹⁷⁶
- (b) Would not promote the efficient and productive performance of work;¹⁷⁷
- (c) Would adversely affect employers, including in respect of productivity and employment costs;¹⁷⁸ and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.¹⁷⁹

201. Therefore, they should be dismissed. They are not necessary to ensure that the award achieves the modern awards objective.

¹⁷⁶ Section 134(1) of the Act.

¹⁷⁷ Section 134(1)(d) of the Act.

¹⁷⁸ Section 134(1)(f) of the Act.

¹⁷⁹ Section 134(1)(g) of the Act.

202. In respect of paragraphs (b) and (c) above, we refer to and rely on section 4 of this submission.

22. THE SUGAR AWARD (CATEGORY III & V)

203. The Sugar Award prescribes the C14 rate for *'milling, distillery, refinery and maintenance employees'* classified at L2¹⁸⁰ and *'bulk terminal employees'* classified at BT1¹⁸¹.

204. In its Statement, the Commission noted that the AWU and Ai Group had reached a *'conditional consensus'* as to how the Sugar Award may be varied. It described the position reached between the parties as follows:

[19] Broadly, the proposals for the ... Sugar Award ... would create a 'C13.5' classification level and move the existing C14 classification descriptions into the new 'C13.5' level. A new C14 classification description is proposed for employees undertaking initial training duties.¹⁸²

205. The Commission went on to state that in light of its Provisional View, the aforementioned proposal would need to be revisited.¹⁸³

206. The AWU submits that the *'simplest way'* to ensure conformance with the Provisional View *'would be to replace the non-transitional C14 rates ... with the C13 rate and then increase the current C13 rates by 50% of the difference between that rate and the next highest rate'*.¹⁸⁴

207. The union's submission is, in substance, the same as the primary position it has advanced. For the reasons set out in section 4 of this submission, it should be rejected. Plainly, there is no evidence before the Commission about the value of any of the work contemplated by the relevant classification levels. The same can be said of the work described for the C13 levels.

¹⁸⁰ Clause 19.1 of the Sugar Award.

¹⁸¹ Clause 21.1 of the Sugar Award.

¹⁸² Statement at [19].

¹⁸³ Statement at [20].

¹⁸⁴ AWU submission dated 3 November 2023 at [45].

208. In the alternate, the union indicates that it is ‘*content to maintain the position*’ previously reached between the parties, provided that:

- (a) The new C14 classification level is limited to employees with up to 76 hours’ experience in the industry.¹⁸⁵
- (b) The ‘*standard rate*’, which is used for the purposes of calculating certain allowances, should be increased from the C13 rate, rather than the C14 rate.¹⁸⁶
- (c) The implementation of the proposed variations should not be transitional or delayed.¹⁸⁷

209. Ai Group opposes each of the above propositions.

210. There is no evidence before the Commission that might establish that 76 hours of experience in the industry would be sufficient, for the purposes of enabling an employee to perform the work contemplated at the extant ‘*Level 1*’. Prior to implementing such a timeframe, the Commission would need to be satisfied that it is appropriate, taking into account the nature of the work contemplated at the following classification level. There is no such material before the Commission.

211. The union has not articulated a purported justification for increasing the standard rate and, by extension, various allowances payable under the award. Further, there is no apparent basis for adopting the union’s proposal. In the circumstances, it should plainly be dismissed.

212. Finally, we refer to the concluding section of this submission, in which we address the need for further consideration to be given to the implementation of transitional arrangements and / or the delayed commencement of variations made to awards in these proceedings.

213. The union’s proposal would:

¹⁸⁵ AWU submission dated 3 November 2023 at [47](a).

¹⁸⁶ AWU submission dated 3 November 2023 at [47](b).

¹⁸⁷ AWU submission dated 3 November 2023 at [47](c).

- (a) Not be fair to employers;¹⁸⁸
- (b) Not promote the efficient and productive performance of work;¹⁸⁹
- (c) Adversely affect employers, including in respect of productivity and employment costs;¹⁹⁰ and
- (d) Be inconsistent with the need to ensure a stable modern awards system.¹⁹¹

214. Therefore, union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

¹⁸⁸ Section 134(1) of the Act.

¹⁸⁹ Section 134(1)(d) of the Act.

¹⁹⁰ Section 134(1)(f) of the Act.

¹⁹¹ Section 134(1)(g) of the Act.

23. THE TEXTILES AWARD (CATEGORY V)

215. The Textiles Award prescribes a rate that is less than the C13 rate in respect of *‘Wool and basil employee – General hand’*.¹⁹² *‘Wool and basil employees’* are those who are *‘required to work on pulling sheep skins, pie or piece picking, or any other class of work connected with wool scouring and carbonising’*.¹⁹³

216. The award does not define a *‘general hand’*. The CFMMEU proposes that the following definition be inserted:

B.4.1 General hand

(a) Employees at this level will:

- be new entrants into the wool and basil industry; and
- undertake up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety practices and procedures, equal employment opportunity and quality control/assurance; and

(b) At the completion of the induction training as per B.4.1(a) above, the employee will, at a minimum, transition to the level/classification *‘Operator, Grade 3’*.¹⁹⁴

217. Ai Group opposes the proposed variation. It would fundamentally alter the characterisation of the classification level. It appears that, at present, an employee may be engaged as a *‘general hand’* on an ongoing and indefinite basis. Typically, the role of a general hand includes an assortment of basic, miscellaneous duties that do not require specialised skills or training. This is a markedly different proposition to the one advanced by the union, which is to confine the relevant level to employees undertaking induction training for a finite period of time.

218. If the variations proposed by the union were adopted, the award would no longer expressly contemplate the performance of the type of work typically undertaken

¹⁹² Clause 19.2 of the Textile Award.

¹⁹³ Clause B.4 of the Textile Award.

¹⁹⁴ CFMMEU – Manufacturing Division’s submission dated 9 November 2023 at [32].

by a *'general hand'*. It would no longer be clear that employees performing such work are covered by the award. This would plainly be an anomalous outcome. Further, the Commission would need to be satisfied such employees *'will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them'*.¹⁹⁵ We have not identified any other award that all such employees would be covered by.

219. It is also necessary to consider whether employees will have the requisite skills and competencies after completing 38 hours of induction training to perform the role of an *'Operator – Grade 3'*. There is a complete absence of any material before the Commission about this. In the circumstances, it would plainly be inappropriate for the Commission to adopt the union's proposal.

¹⁹⁵ Section 163(1) of the Act.

24. THE TIMBER AWARD (CATEGORY II & IV)

220. The Timber Award prescribes a rate that is lower than the C13 rate for employees classified at Level 1 in the '*General Timber*'¹⁹⁶ stream and the '*Wood and Timber Furniture*'¹⁹⁷ stream.

General Timber Stream

221. The Level 1 classification in the '*General Timber*' stream is defined as follows:

A.1 Level 1 (relativity 78%)

A.1.1 General

- (a) An employee at this level:
 - (i) will complete a program of induction training;
 - (ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 1; and
 - (iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations prior to progression to the next level.
- (b) General description of skills required

A Level 1 worker will exercise the following skills:

 - (i) the ability to follow instructions;
 - (ii) manual handling skills; and
 - (iii) the ability to follow standards and procedures.
- (c) General description of knowledge required

A Level 1 worker will develop the following:

 - (i) broad knowledge of the industry sector and operations at the enterprise level;
 - (ii) broad understanding of all functions carried out in the enterprise;

¹⁹⁶ Clause 20.1(a) of the Timber Award.

¹⁹⁷ Clause 20.1(b) of the Timber Award.

- (iii) understanding of health and safety regulations and procedures relevant to the level;
- (iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;
- (v) knowledge of the resources used in the sector; and
- (vi) knowledge of the range and uses of basic hand tools.

(d) Induction training

Induction training will include the following:

- (i) basic work health and safety;
- (ii) first aid;
- (iii) conditions of employment; and
- (iv) company policies and objectives.

(e) Level of responsibility

Workers at Level 1 will work under direct supervision at all times and will be expected to exercise minimal judgment.

(f) Criteria for extension of term in Level 1 beyond 3 months

A worker who enters the industry and is unable to meet the competency requirements of Level 2 will remain in Level 1 for a maximum of 3 months unless an extension for up to a further 3 months is agreed by the employer and the employee, and the union where the employee is a union member. Extension of the term of Level 1 beyond 3 months will only be considered when:

- (i) the employee has participated in a structured and documented skill development programme which sets out and covers the standards of competence the Level 1 worker is required to achieve for progression to Level 2;
- (ii) any deficiencies in the performance of the employee during the skill development programme have been described clearly to the employee at the time they have occurred and standards for acceptable performance have been made clear to the employee;
- (iii) suitable conditions have been provided for training including sufficient time, appropriate environment and equipment and a skilled trainer; and
- (iv) given the above, the employee has not reached the standards of competence set down in the skill development programme.

(g) Process for extension of the term in Level 1 beyond 3 months

Where an employer proposes that the term an employee will spend in Level 1 should be extended beyond 3 months the following actions will be taken at least 3 weeks before the expiration of the initial 3 months:

- (i)** the employee will be advised in writing. This advice will set out clearly the areas where the employee has not reached the competency standards required for progression to Level 2 and are set out in the skill development program;
- (ii)** where the employee is a member of the union a copy of the advice to the employee will be sent to the relevant branch secretary of the union at the same time as it is provided to the employee;
- (iii)** subsequent to the advice of intention to extend the period in Level 1 beyond 3 months being issued, a meeting will be held between the employer and the employee and a full-time official of the union or their nominee where the employee is a union member. At this meeting the parties will develop and agree on a plan (including time frames) to assist the employee to develop competence to the required standard in the areas identified as deficient and agreed to by the employee. This plan will be documented and signed by all parties — that is the employer, the employee and the union official where the employee is a union member;
- (iv)** the employee (and the branch office of the union if the employee is a union member) will be notified immediately by the employer if any further problems arise during this extension period.

222. The CFMMEU submits that clause A.1 should be varied by deleting clauses A.1.1(f) and (g), and replacing them with the following:

- (f) An employee at this level will remain at Level 1 for a maximum of 3 months.¹⁹⁸

223. A similar variation is sought by the AWU. It is opposed by Ai Group.¹⁹⁹

224. The CFMMEU appears to rely primarily on the proposition that clause A.1.1 differs from the approach taken in the Manufacturing Award, in which the C14 rate is purportedly only payable whilst an employee undertakes up to 38 hours' induction training.²⁰⁰ For the reasons set out at [9] – [15] of the November

¹⁹⁸ CFMMEU – Manufacturing Division submission dated 9 November 2023 at [44].

¹⁹⁹ AWU submission dated 3 November 2023 at [110](a).

²⁰⁰ CFMMEU – Manufacturing Division submission dated 9 November 2023 at [40].

Submission, we disagree with the union's understanding of the manner in which the C14 classification in the Manufacturing Award applies.

225. In any event, even if the union's interpretation were found to be correct, that of itself would not of itself justify a variation to the safety net as it applies in the timber industry. A different set of permutations and combinations in different awards can achieve the modern awards objective.²⁰¹
226. It is also relevant that clauses A.1.1(f) and (g) permit an extension of the relevant three-month period in only very limited circumstances. They include a number of safeguards, including the need for employee agreement and union agreement where relevant. There is no evidence or other material to suggest that they are operating, in practice, in a manner that is unfair or inappropriate.
227. Finally, notwithstanding clauses A.1.1(f) and A.1.1(g), the classification level operates in a manner that is consistent with the Provisional View. As such, it should be excluded from the Review.
228. Accordingly, the union's claim should be dismissed.

Wood and Timber Furniture Stream

229. The Timber Award defines an employee in the '*Wood and Timber Stream*' at Level 1 as follows:

B.1 Timber furniture production employee, Level 1 (relativity 78%)

- B.1.1** A Timber furniture production employee, Level 1 is an employee new to the industry who is undertaking up to 3 months' induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.
- B.1.2** The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees, machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety instruction and quality assurance.

²⁰¹ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 at [34].

B.1.3 Duties

- (a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.
- (b) Indicative of the tasks an employee at this level may perform are the following:
 - (i) general labouring;
 - (ii) cleaning; and
 - (iii) other comparable tasks.

B.1.4 Responsibilities

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

B.1.5 Qualification

An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.

B.1.6 Training

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be provided with training to enable the employee to acquire the skills required of a Timber furniture production employee, Level 2.

B.1.7 Progression

A Timber furniture production employee, Level 1, will progress to Level 2 on the basis of the successful completion of the induction program and the core units of the Furnishing Industry Training Package, and has demonstrated competency to undertake duties at Level 2.

230. The CFMMEU describes the ability to transition to Level 2 under the above clause as being *'conditional'*.²⁰² We agree. Clause B.1.7 makes clear that an employee will progress only if the employee has completed the relevant training and *'has demonstrated competency to undertake duties at Level 2'*.

²⁰² CFMMEU – Manufacturing Division submission dated 9 November 2023 at [47].

231. The union proposes the following variations to clause B.1 for the purposes of ensuring consistency with the Provisional View (without more):²⁰³

B.1 Timber furniture production employee, Level 1 (relativity 78%)

B.1.1 A Timber furniture production employee, Level 1 is an employee new to the industry who is undertaking up to 3 months' induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.

B.1.2 The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees, machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety instruction and quality assurance.

B.1.3 Duties

(a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.

(b) Indicative of the tasks an employee at this level may perform are the following:

- (i) general labouring;
- (ii) cleaning; and
- (iii) other comparable tasks.

B.1.4 Responsibilities

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

~~B.1.5 Qualification~~

~~An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.~~

B.1.65 Training

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be

²⁰³ CFMMEU – Manufacturing Division submission dated 9 November 2023 at [52] – [53].

provided with training to enable the employee to acquire the skills required of a Timber furniture production employee, Level 2.

B.1.7 Progression

~~A Timber furniture production employee, Level 1, will progress to Level 2 since the successful completion of the induction program and the core units of the Furnishing Industry Training Package, and has demonstrated competency to undertake duties at Level 2.~~

B.1.6 An employee at this level will remain at Level 1 for a maximum of 3 months.

232. The AWU similarly submits that clause B.1 should be amended to *'remove any competency based requirements for progression from 'Wood and Timber Furniture Stream: Level 1', such that progression becomes automatic following 3 months' experience in the industry'*.²⁰⁴
233. Employees would thereafter be reclassified to Level 2, irrespective of whether they have demonstrated that they have the required competencies to perform work at that level. This is plainly inappropriate, having regard to the list of indicative duties for Level 2 listed at clause B.2.2, which contemplate the need for various specific skills.
234. Clearly, a case has not been made out for the proposed amendments. In addition, the proposed variations would
- (a) Would not be fair to employers;²⁰⁵
 - (b) Would not promote the efficient and productive performance of work;²⁰⁶
 - (c) Would adversely affect employers, including in respect of productivity and employment costs;²⁰⁷ and
 - (d) Would be inconsistent with the need to ensure a stable modern awards system.²⁰⁸

²⁰⁴ AWU submission dated 3 November 2023 at [110](b).

²⁰⁵ Section 134(1) of the Act.

²⁰⁶ Section 134(1)(d) of the Act.

²⁰⁷ Section 134(1)(f) of the Act.

²⁰⁸ Section 134(1)(g) of the Act.

235. The unions' claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

25. THE VEHICLE AWARD (CATEGORY V)

236. The Vehicle Award entitles employees classified at Level 1 to a minimum hourly rate that is less than the C13 rate.²⁰⁹ The award defines employees at Level 1 and Level 2 as follows:

A.1 Vehicle industry RS&R—employee—Level 1 R1 (entry)

An employee at Level 1 is an employee who has undertaken little or no formal or informal training. A Level 1 employee may be undertaking up to 38 hours of induction training. The induction training may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

An employee at this level would acquire/possess skills relevant to the performance of routine duties essentially of a manual nature and to the level of their training:

- performs general labouring and/or cleaning duties;
- has basic numeracy skills;
- exercises minimal judgment;
- works to defined procedures and under direct supervision; and
- may be undertaking structured training so as to enable the employee to progress to a higher level.

Classifications contained within Level 1 R1

- Car cleaner/washer
- Workshop cleaner
- Car polisher—by hand
- Detailer—other
- Driveway attendant
- Office cleaner
- Parking attendant
- Process worker
- Tradesperson's assistant (see also Level 2)
- Employee not elsewhere prescribed

²⁰⁹ Clause 16.2 of the Vehicle Award.

A.1.1 Vehicle industry RS&R—employee—Level 2 R2

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 tasks performed at this level and to the level of their training:

- works under direct supervision either individually or in a team environment;
- has some oral and written communication skills;
- can distinguish where a minor fault/error is made and undertake basic quality control of own work;
- is responsible for the quality of own work subject to routine supervision;
- has some input to job planning;
- can work from simple instructions;
- has some basic customer service skills;
- performs basic maintenance tasks;
- has basic knowledge of the range of services offered by the business;
- has simple numerical equipment skills; and
- may use selected hand tools.

Classifications contained within Level 2 R2

- Battery repairer
- Brake servicer—first 6 months
- Driver of courtesy car or vehicle in relation to sales or sales promotion or in the course of registration, collection from or delivery to customer—vehicles up to and including maker's capacity of 3 tonnes
- Exhaust repairers—first 6 months
- Grinder and/or buffer metal—using a portable machine
- Lubritorium attendant
- Operator on warming mill
- Operator detreading, buffing, gouging, etc.
- Roadhouse attendant, when required to cook take away meals only
- Spring service worker
- Tradesperson's assistant (see also Level 1)

- Tyre fitter

237. The AMWU has expressed a 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'*.²¹⁰ On that basis, it proposes the following amendments to clause A.1.1, in relation to Level 2 employees:

An employee at Level 2 is an employee who has:

- (i) Previously completed up to 3 months structured training or has equivalent experience performing such work; or
- (ii) Has completed the induction training at the workplace

so as to enable an employee to ~~attain~~/possess job skills relevant to tasks performed at this level and to the level of their training: ...²¹¹

238. We oppose the union's proposed amendments. They would:

- (a) Permit an employee to be classified at Level 2 once they have completed their induction training, irrespective of whether they have *'completed up to 3 months' structured training so to enable an employee to attain/possess job skills relevant to tasks performed at [Level 2] and to their level of training'* as currently required by clause A.1.1; and
- (b) By extension, render the proposed clause A.1.1(i) redundant, where induction training has been completed.

239. We acknowledge that the AMWU's proposed concluding words of the provision may be intended to limit the scope of clause A.1.1(i) to circumstances in which the training in fact results in an employee having the competencies required to perform work at the Level 2; however, this is not clear. On one view, those words go to the purpose or design of the training, as opposed to whether an employee is in fact able to perform work at the higher level.

240. We also refer to and rely on section 3 of this submission.

²¹⁰ AMWU submission dated 10 November 2023 at [19].

²¹¹ AMWU submission dated 10 November 2023 at [19].

26. THE WINE AWARD (CATEGORY III)

241. The Wine Award prescribes a rate that is less than the C13 rate for employees classified at Grade 1²¹² in each of the various classification streams covered by the award (i.e. the bottling, cellar, cellar door sales, laboratory, vineyard, warehouse and supply and coopers streams)²¹³.
242. The Grade 1 classification definition in each stream is largely in the same terms. For example, in respect of the *'bottling stream'* it appears in the following form:

A.1.1 Grade 1—Bottling stream

- (a) An employee at this level is a trainee undertaking a 3 month induction training program, followed by training in the modules essential to the Grade 2 level.
 - (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.²¹⁴
243. The award details a rigorous process for transitioning from Grade 1 to Grade 2, which is designed to ensure that an employee has the relevant competencies to perform the work required of an employee at Grade 2.
244. The UWU submits that the minimum rate prescribed by the award for Grade 1 should be increased to the C13 rate. It argues that this would *'avoid the need to amend the subsequent classification levels by removing or varying the'* extant requirements that must be satisfied in order for an employee to be classified at Grade 2.²¹⁵ The union has not advanced any other material in support of its submission.

²¹² Clause 15.1 of the Wine Award.

²¹³ Schedule A of the Wine Award.

²¹⁴ Clause A.1.1 of the Wine Award.

²¹⁵ UWU submission dated 10 November 2023 at [6].

245. The AWU similarly submits that the *'simplest approach to implementing the [Provisional View] is to retain the structure but lift the Grade 1 classification to C13'*.²¹⁶

246. Ai Group opposes the unions' claim, for the following reasons.

247. The unions are, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by *'work value reasons'*.²¹⁷ Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work;
- (c) The conditions under which the work is done.²¹⁸

248. There is no material before the Commission relating to the above matters. The evidence of Shane Roulstone, led by the AWU, does not deal with these matters. Thus, the Commission cannot be satisfied that the increase sought by the unions is justified based on work value reasons. In the circumstances, it does not have power to grant the unions' claim.

249. On this basis alone, the claims should fail. Further, the proposed variation:

- (a) Would not be fair to employers;²¹⁹
- (b) Would not promote the efficient and productive performance of work;²²⁰
- (c) Would adversely affect employers, including in respect of productivity and employment costs;²²¹

²¹⁶ AWU submission dated 3 November 2023 at [105].

²¹⁷ Section 157(2)(a) of the Act.

²¹⁸ Section 157(2A).

²¹⁹ Section 134(1) of the Act.

²²⁰ Section 134(1)(d) of the Act.

²²¹ Section 134(1)(f) of the Act.

- (d) Would be inconsistent with the need to ensure a stable modern awards system;²²² and
- (e) Would inappropriately compress internal wage relativities.

250. The unions' claims should therefore be dismissed.

²²² Section 134(1)(g) of the Act.

27. THE WOOL AWARD (CATEGORY II & V)

251. The Wool Award prescribes a rate that is less than the C13 rate for employees classified at Level 1 in the ‘*Wool Storage*’, ‘*Wool Testing*’ and ‘*Skin and Hide Stores*’ streams.²²³

252. Clause A.2 of the award deals with an employee’s progression through the classification structure:

A.2 Progression

An employee will progress through the classification levels subject to:

- (a) possessing the applicable skills for the level; and
- (b) being required by the employer to perform work at that level.

253. The award contemplates that an employee will progress through the various classification levels subject to the employee having the requisite skills and being required to perform work at the relevant level. It is not intended or envisaged that the classification structure will operate by reference to arbitrary time-based requirements or limitations.

Wool Storage – Level 1

254. The award defines an employee at Level 1 in the ‘*Wool Storage*’ stream as follows: (emphasis added)

A.3.1 Wool Industry Worker Level 1 (Wool Storage)

(a) Prerequisites

- basic interpersonal and communication skills; and
- basic literacy and numeracy skills.

(b) Skills/duties

- become familiar with company policies and procedures;
- responsible for quality of their own work subject to detailed direction;

²²³ Clause 16.1 of the Wool Award.

- obtain knowledge and apply appropriate manual handling skills and/or testing or sampling skills;
- ability to work in a team environment and/or under routine supervision;
- ability to exercise discretion within the limits of skills and/or training; and
- ability to undertake duties in a safe and responsible manner.

The following tasks are indicative of the tasks which an employee at this level may be required to perform:

- core sampling (non-mechanical);
- feeding wool into blending machines;
- head marking or branding of head bale at receipt or weighing;
- inserting lot plates or dividers;
- lobbing;
- opening or closing bales (including fadging and boodling);
- pushing into or taking from elevators or drops;
- sewing;
- wheeling baskets;
- hand trucking;
- use of non-licensed material handling equipment;
- operate wool bending machine; and
- responsible for housekeeping in own work environment.

(c) Promotional criteria

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

255. Clause A.3.1(c) is consistent with clause A.2. Employees will be eligible for progression to the next level only once they have acquired the relevant skills and their employer requires them to perform work at a higher level.

256. The AWU contends as follows:

As there is no clear time-based pathway for progression ... the rate should be increased to C13, or clause A.3.1(c) should be amended to provide that employees progress automatically after obtaining 3 months' experience in the industry.²²⁴

257. In relation to the first proposition advanced by the union, we refer to section 4 of this submission.

258. The notion that the award should be amended to provide that employees will progress automatically after gaining 3 months' experience in the industry ought to be rejected. It is plainly unworkable when considered in the context of the existing framework in Schedule A. Further, it would be entirely inappropriate for that framework to be upended by the union's proposal in the absence of any material before the Commission that supports the variations sought. Critically, nothing in the material before the Commission establishes that after three months of experience in the industry, an employee would have the skills necessary to perform the work contemplated by the Level 2 classification 2 description:

A.3.2 Wool Industry Worker Level 2 (Wool Storage)

(a) Prerequisites

Wool Industry Worker Level 1 or equivalent.

(b) Skills/duties

In addition to the skills/duties required of a Wool Industry Worker Level 1 the following skills/duties are required:

- able to work in a team environment under limited supervision;
- responsible for quality of own work; and
- appropriate licence to operate required materials handling equipment (other than crane or fork-lift rated in excess of 20,000 kg), (as required).

The following tasks are indicative of the tasks which an employee at this level may be required to perform:

²²⁴ AWU submission dated 3 November 2023 at [121](a).

- breaking out of specified bales for shipping, showing, pooling or blending;
- breaking out for rail trucks (including the use of mechanical aids);
- breaking down stacks of wool;
- port marking and branding of wool for shipment;
- operating and in charge of semi automatic dump press;
- operation of all appropriate materials handling equipment (other than crane or fork-lift rated in excess of 20,000 kg), not requiring ancillary or incidental clerical functions;
- sheetman or fossicker;
- wool pressing; and
- weight adjusting.

(c) Promotional criteria

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

259. In addition, the compulsory reclassification of employees after three months would potentially create a significant practical problem for employers. The Level 1 classification description contemplates the performance of various substantive tasks. The union's proposal raises the spectre of employers needing to routinely employ new employees at Level 1 to perform the relevant work once existing employees complete the three month period at Level 1. Self-evidently, this would result in various additional costs and increase the regulatory burden. It may also adversely impact productivity.

260. The AWU's claim:

- (a) Would not be fair to employers;²²⁵
- (b) Would not promote the efficient and productive performance of work;²²⁶

²²⁵ Section 134(1) of the Act.

²²⁶ Section 134(1)(d) of the Act.

- (c) Would adversely affect employers, including in respect of productivity and employment costs;²²⁷ and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.²²⁸

261. Therefore, union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

Wool Testing – Level 1 & Skin and Hide Stores – Level 1

262. Clause 16.1 states that a *'Wool Industry Worker Level 1 (Wool Testing)'* and a *'Wool Industry Worker Level 1 (Skin and Hide Stores)'* will be paid a sub-C13 rate for the *'first 3 months'*. The AWU argues that it should be made clear that an employee will progress to the next pay point *'automatically after obtaining 3 months' experience in the industry (rather than 3 months of employment with a particular employer)'*.²²⁹

263. We oppose the proposed change. Clause 16.1 appears to operate in the context of an employee's employment and thus, for the first three months during their employment with a particular employer, an employee will be entitled to the relevant minimum rate, after which they will be entitled to the higher rate.

264. Logically, this ensures that an employee has obtained the requisite period of experience in a particular work environment and in the context of a particular employer's expectations and requirements, before progressing to the next pay point. This is especially relevant given the breadth of the Level 1 classification descriptions, which could result in an employee performing different types of work for different employers at the same level. The employer-specific application of clause 16.1 would ensure that the employee has gained *relevant* experience before progressing.

²²⁷ Section 134(1)(f) of the Act.

²²⁸ Section 134(1)(g) of the Act.

²²⁹ AWU submission dated 3 November 2023 at [121](b) and [121](c).

28. TRANSITIONAL ARRANGEMENTS

265. In our November Submission, and in these submissions, we have outlined some of the adverse consequences that may face employers if the Commission varies awards in a manner that is consistent with the Provisional View and / or the claims advanced by various unions. They include impacts on employment costs, productivity and the regulatory burden.
266. Accordingly, if, notwithstanding our submissions, the Commission decides to vary any awards in these proceedings, it should grant interested parties an opportunity to be heard in respect of appropriate transitional arrangements. These may include delaying the operative date, phasing in the changes and / or implementing grandfathering arrangements. Naturally, the nature and form of any transitional arrangements will necessarily depend on the final form of any variations determined by the Commission. It is therefore impracticable to deal with the matter at this stage.



BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

Title of Matter: 4 yearly review of Modern Awards - Review of Certain C14 rates in Modern Awards

Matter Number: C2019/5259

Document: Submissions in Reply to the President's Statement – 22nd September 2023:

- In respect of the provisional view in para [8]
- To the accuracy of the table at Attachment D
- Draft proposals for specific award variations
- Evidence upon which AMIC intend to rely.

Pursuant to Directions: Filed Friday 3rd November 2023

Lodged By: Australian Meat Industry Council
Address for Service: PO Box 1208, Crows Nest, NSW, 1585

AMIC Response – Review of certain C14 rates in Modern Awards **(C2019/5259)**

1.0 Australian Meat Industry Council (AMIC)

1.1 AMIC is the peak meat industry body representing retailers, wholesalers, meat processors, and smallgoods manufacturers across Australia. It has more than 1500 members spread across all sectors of the industry.

2.0 Introduction

2.1 AMIC makes the provides the following submissions and materials in relation to the Review of certain C14 rates in modern awards in accordance with the requirement of the Statement by the President on 22 September 2023:

- (a) submissions in respect of the provisional view stated in paragraph [8] of the Statement issued by President Hatcher, Vice President Asbury, and Deputy President Hampton on 22/09/2023 in relation to the Review of Certain C14 rates in Modern Awards [2023] FWCB 168, which stated:

“[1] The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.

[2] Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period of time and provides a clear transition to the next classification rate in the award (which must be not less than the C13 rate).

[3] The transition period for the purpose of (2) should not exceed six months.”

- (b) submissions as to the accuracy of the table at Attachment D
- (c) draft determinations or proposals for any specific award variations that might be necessary; and
- (d) evidence upon which we rely to support our submission.

SECTION A

THE PROVISIONAL VIEW OF THE FULL BENCH

- 1) AMIC agrees that:
 - a) the lowest classification rate in a Modern Award applicable to ongoing employment should be at least the C13 rate; and that
 - b) a classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate); and that.
 - c) the transition period for the purpose of (b) should not exceed six months.

SECTION B

AMIC SUBMISSIONS AS TO THE ACCURACY OF ATTACHMENT D

As per below – Table Reflects Current State of C14

AMIC submits it is the accurate *current state* of the C14 wage rate in the Meat Industry Award 2020

<i>Meat Industry Award 2020</i>	MA000059	16.1	MI 1	\$859.30 (at C14)	Category (iv) – undergoing on-the-job training for an initial period of at least 3 months (cl A.3.1).	MI 2 = \$888.10
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16. Minimum rates

[Varied by [PR720159](#), [PR718877](#), [PR729317](#), [PR733854](#), [PR740742](#), [PR762168](#)]

16.1 Adult rates

[16.1 varied by [PR718877](#), [PR729317](#), [PR740742](#), [PR762168](#) ppc 01Jul23]

An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
MI 1	859.30	22.61
MI 2	888.10	23.37

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry undergoing on-the-job training for an initial period of at least 3 months.

SECTION C

AMIC SUBMISSIONS – PROPOSED AWARD VARIATIONS

PROPOSED SCHEDULE A – CLASSIFICATIONS – MEAT INDUSTRY AWARD 2020

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry (or less than 3 months continuous experience in the preceding 5 years) undergoing on-the-job training for no longer than six months.

SECTION D

EVIDENCE ON WHICH AMIC RELY TO SUPPORT OUR SUBMISSIONS

1.0 Outline of the evidence:

- 1.1 AMIC relies upon the statements of Cheryl Wolans and Lyle Ward filed in connection with this matter.
- 1.2 It is submitted that the contents of those statements demonstrate the following broad contentions made by AMIC in support of the proposed draft Award clause.
- 1.3 The Meat Industry Award covers a very wide variety of facilities, both in terms of the size and technological advancement of the employer's operations, but also the nature of the work being performed. The Award is expressed to cover meat processing establishments, meat manufacturing establishments, and wholesale and retail facilities, all of which are defined in the Award.
- 1.4 Businesses conducted under the Award can vary from a small handful of employees in a local retail butcher shop to several hundred or even thousands of employees in a world-class meat processing or meat manufacturing establishment.
- 1.5 The very substantial majority of the work of employees covered by the Award involves the use of machines, tools and processes which are designed for the cutting, movement and processing of meat, bones, hides and other by-products. Despite significant technological advancement in the past few decades, a large part of the work is done by the use of extremely sharp knives and other cutting implements, and is undertaken by hand, or by employees utilising cutting or processing machines of various kinds. There are usually a very substantial number of overhead chain systems and conveyor belts, all of which have a very high number of dangerous pinch points which can cause catastrophic injury if proper procedures are not followed.
- 1.6 Much of the work is extremely dangerous if not performed in accordance with definite and prescribed rules and procedures, and with rigorous compliance with safety standards, both as to personal safety and the safety of others working in the vicinity of the employee. A substantial amount of time is spent cleaning and maintaining the plant

to the high standards required, which often requires employees to work closely with running machinery and dangerous equipment, in order to ensure that it is properly cleaned. In those circumstances, non-compliance with safety rules in relation to exposure to such equipment, particularly where safety guards are required to be removed for cleaning purposes, can have extremely serious consequences for employees.

1.7 The work mostly concerns the production of edible food, so that compliance with the safety standards, export control standards, and general food hygiene principles is absolutely essential at all times, so that the product is safe and saleable.

1.8 A new entrant to the industry is highly unlikely to have any experience or background in a similar type or combination of dangerous equipment, tools, and environmental factors.

1.9 It is simply not possible or practicable to introduce a new entrant to the industry into such an environment without lengthy and thorough training and induction into the nature of the work they are required to perform, and the procedures which are devised to protect employees from the multiple dangers and hazards that they will encounter in the workplace in the ordinary course of their work.

1.10 No two meat processing or meat manufacturing facilities in Australia are the same in terms of layout, equipment, or the sophistication of technology and the processes or procedures for production, personal safety, and food safety. It would be very rare (if it exists at all) for any two meat processing or meat manufacturing establishments to produce the same meat products to the same cuts and specifications. If this did occur, it would almost certainly not be done in the same way, by the same processes.

1.11 As the C14 rate is accepted to be an initial training rate of pay, it is submitted that it is necessary that the Full Bench have regard to the training requirements of facilities covered by the Award. In that regard, the initial training requirements at a three-person retail butcher shop would of course be dramatically different from the initial training requirements at a meat processing establishment that employs many hundreds of people at any one time and kills several thousand head of livestock each week.

1.12 The new employee must be trained, or at the very least, made aware of the nature and workings of the extensive amounts of sophisticated and complex machinery that

would exist in the meat processing plant, all of which presents a potential workplace safety risk to an uninitiated new employee. In addition, the new employee must be trained and familiarised in the operation of the equipment tools or product which the new employee will be physically handling or encountering in their employment once the training and induction is completed.

- 1.13 It is submitted that the standard of initial training must be such that the employee can be relied upon to work within the work area to which they have been allocated, and to move in and about other work areas where they might be required to travel at any time during their work, without constant and direct supervision for the purposes of protecting their health and safety, the health and safety of employees around them, and ensuring that product safety is also ensured.
- 1.14 It is submitted that a safety response to such a vast array of potentially dangerous equipment that might be found in processing, manufacturing, and larger wholesale and retailing facilities, must be so well ingrained in the employee that it happens as a matter of instinct, rather than any other consideration.
- 1.15 That is to say, a mere introduction or mention of such equipment and its operation and effects would never be sufficient to ensure that the worker could then be engaged to work safely within that plant without constant and direct supervision. The rules and regulations surrounding the operation of that equipment, and the proper selection, wearing and maintenance of personal protective equipment, must be repeatedly reinforced over time to such an extent that an employee can be relied upon to react more or less instinctively as required, without direct supervision or instruction from another employee.
- 1.16 The time taken to attain this standard cannot be predicted in advance with any real certainty. It might be possible to say that it is likely to be a matter of a few weeks for a small retail butcher shop, because of the availability of constant supervision and limited amounts and variety of dangerous equipment. Evidence adduced also strongly suggests that it is highly likely to be well in excess of three months in meat manufacturing and meat processing establishments, which by their very nature are generally of a medium to large size, have a substantial array of dangerous equipment, routinely use knives and other cutting equipment, and have a workforce varying from less than 100 to several thousand.

1.17 Until that standard is achieved, the new employee is likely to be occupying a significant part of the time of another more experienced employee, in direct and constant supervision, whilst not being in a position to provide any significant return to the employer. Whilst this is an unavoidable feature of the training function, it is submitted that the recognition by the Commission of the continued existence of a transitional training wage indicates an acceptance that an employer who is providing the time of a trainer or mentor, and obtaining little or no return from the trainee, should be entitled to maintain a training wage such as the C14 rate for the actual period in which the training is occurring, rather than some nominal predetermined “one size fits all” rate which may have no application to the actual employment.

1.18 The Award clause submitted by AMIC is a diminution in the entitlements of the employer under the pre-existing clause, which was limited by “at least three months”, with no end date. The proposed clause allows for a transition of an employee to the C13 rate well short of the previous three months minimum, in circumstances such as those submitted above, where the relevant level of expertise or familiarity with the work environment reaches the minimum standard in a shorter time period. The clause however also maintains the ability of the employer to maintain an employee at the C14 rate in circumstances where the difficulty or the danger of the work or work area might require a longer period of training for an employee, where the employee may remain unproductive for a longer period.

1.19 It is further submitted that the period of a maximum of six months would allow the employer sufficient time to assess whether the trainee is likely to attain the relevant level of expertise at all, or whether it might be preferable to terminate the employment relationship, presumably during an equivalent probation period. If an employee had demonstrably not attained the relevant expertise at six months, the employer would be required to transfer the employee to the C13 rate and bear any additional cost, or to end the employment on the basis that it is unlikely to be mutually beneficial.

1.20 Any shorter mandatory period of transfer to the C13 rate before the employee has had an adequate opportunity to attain the relevant standards, may operate unfairly to the employee.

1.21 It is submitted that the proposed AMIC clause serves all of the purposes mentioned in the Statement by the Full Bench in its provisional conclusion, having regard to the somewhat unique circumstances of the meat processing industry and the disproportionately higher requirement for personal safety and food safety standards to be acquired and reinforced, before an employee can be trusted to work safely in what is often a very dangerous work environment.

1.22 The clause also permits the time for transition of an employee to be significantly less than the mandatory maximum, and AMIC is disposed to consider the possibility of introducing words into the present proposed draft clause to ensure that the clause is not automatically adopted as being a standard. Of six months, even in circumstances where the required level of expertise is reached before that time, as explained above.

Witness statement

Name	Cheryl Wolens
Position	General Manager – Workforce Services

Witness statement

My name is Cheryl Wolens, and I am employed by AMIC as the General Manager of Workforce Services. I have been asked to give evidence for AMIC in relation to the C14 rates in the Meat Industry Award 2020, to assist the Commission-initiated review of the C14 rates in the awards.

I am aware that AMIC opposes the Union suggestion of limiting the duration of C14 rates to one week, and AMIC has proposed an outer limit of 6 months.

I have experience in the industry (and in relation to training in the industry which directly relates to the question of C14 and the length of time until someone is deemed competent) which can assist and explain why in my opinion there needs to be the ability for an employer to have up to 6 months, before a new to industry employee moves classification up to the next level and is a productive and competent employee to perform the role without being a risk to personal and food safety.

I have worked in multiple plants Primo Foods Pty Ltd / JBS, Kilcoy Pastoral Company / Kilcoy Global Foods / Kilcoy Cuisine Solutions, and can speak from personal experience as to the significant diversity that presents itself in relation to training requirements across different meat plants and the many variables that would affect the length of training that is required before a new entrant is able to work unsupervised, or perform activities that go beyond on the job training and learning.

The Meat Industry itself presents many challenges that are not often found in general industry, in relation to food and personal safety, levels of automation within a plant, types of workers available, geographic dispersal, ethnic and language barriers and customer requirements. From a training perspective, every individual is different, and their learning styles are different, their literacy level, their understanding of languages used in the plant, their fitness, their understanding of a work environment generally, even their physical attributes can make those variables increase and training time increase.

In most cases, new (or almost new) entrants to an industry (in some instances new to the workforce generally) could never be permitted to walk around a plant unsupervised after a week with potentially 10 different items that could affect their safety or food safety. In relation to this review, AMIC are not suggesting that each and every company will utilise the full 6 months in order to get their employees up to the required standard, but in my opinion, the training period must have an outer limit which can accommodate all the many variables that would affect the length of training required, having regard to the very wide variety of businesses which are participants in this industry

There are several sources of the duties to which a Meat Industry employer is answerable.

I strongly believe, that at a minimum, it would require at least 3 months (depending on transferrable skill, learning aptitude, complexity of plant and other variables), and at a maximum outer limit of 6 months before an employee could be trusted to work in a meaningful task without constant close supervision.

Some of the considerations to which a meat industry employer must have regard are:

1.0 Workplace Health and Safety Laws.

PCBU Obligations.

1.1 A person conducting a business or undertaking (PCBU) has a primary duty to ensure the health and safety of workers while they are at work in the business or undertaking and others who may be affected by the carrying out of work.

1.2 The primary duty of care requires [PCBUs](#) to ensure so far as is reasonably practicable that they:

- provide and maintain a safe work environment.
- provide and maintain safe plant and structures.
- provide and maintain safe systems of work.
- that they engage in safe use, handling and storage of plant, structures, and substances.
- provision of accessible and adequate facilities (for example access to washrooms, lockers, and dining areas)
- provide appropriate instruction, training, information, and supervision.
- monitor workers health and conditions at the workplace and
- maintain any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

2.0 Differing plants require different knowledge.

It is a well-known fact that no two meat processing or meat manufacturing plants in Australia are the same. This means that one company might have extremely simple and automated tasks (not as much to learn) whereas another company may engage in a number of onerous manual type tasks which all have to be learnt. This will have a significant effect on time required to train an employee to work productively and safely in a useful or meaningful task.

2.1 All sites, whilst similar in nature, have nuances specific to each site, department, and tasks. This could be from chain speed, to processing floor layout to intricacy of tasks, depth of knowledge on product and product/plant requirements, skill around certain tools, such as knives, saws, hooks etc. and day-to-day operational adjustments as required.

Differing and varying complexity of equipment.

2.2 Equipment, whilst often superficially similar, will require time to learn and use in different work operations and in a safe manner. Not all sites have all the same equipment nor usage due to size, scope, product, business requirements, financial resources, and deliverables.

Health and food sanitation laws and HACCP.

3.0 Health and Food Sanitation Laws

Hygiene

3.1 Hygiene knowledge and skill is key critical for all sites and products. The risk of failing to understand (or not undertaking sufficient training) and be competent in hygiene could see

a business temporarily stopped or permanently closed by health and quarantine authorities.

- 3.2 A food hygiene failure could cause brand and product damage which would not only impact on the site but inevitably the global market. It also impacts quality, shelf life and poses significant cost to business.

4.0 Health and Food Sanitation Laws

HACCP – Hazard Analysis Critical Control Points (Food Safety)

- 4.1 HACCP is a world-renowned [food and safety risk management](#) method, that is designed to ensure that catering, hospitality establishments, and organizations adhere to proper food safety regulations. This means serving customers with clean and safe, yet palatable food that is produced in sanitary conditions. In turn, this gives customers, regulators, and the public, peace of mind knowing that a proper food safety program is being followed and maintained at their preferred establishment.
- 4.2 The [HACCP program](#) is very important as it can directly mitigate incidences such as product recall or customer complaints, by effectively managing the risks associated with handling raw materials, different implements, and common errors, which can be extremely costly for industry.
- 4.3 The HACCP program also helps to increase awareness about these risks while improving the overall performance in implementing the different processes that go into creating the final product. Additionally, compliance with the HACCP program automatically places a business into alignment with the Food and Drug Administration’s Food Safety Modernisation Act, which is aimed at ensuring complete food safety and control.
- 4.4 No matter the plant, all workers need to be educated and trained in hygiene of self, tools, equipment, cleaning of PPE as well as the impacts that poor hygiene can have on the individual, product, brand, and consumer. This is difficult for our workers to understand and retain, as it is not necessarily a skill that they will have learned in any other industry, however, key elements of cleaning, cross contamination, and chilling must be known. There are different rules and protocols to be followed that are unique to each scenario and each plant, and you must adhere to them to maintain a hygienic workplace while providing safe food to your customers.

5.0 Site Specific Requirements

- 5.1 Each business will have its own site-specific requirements and as such, sufficient time must be allowed for these to be shared, understood, and adhered to. Duration of time varies based on individual needs such as language, literacy, and [rostering](#). This is by no means an exhaustive list but clearly demonstrates that one week is insufficient when a worker is new to industry or, has had only limited time in an operational environment. Even moving from one plant to another can require significant training. Entering the industry for the first time requires far more onerous training procedures.

6.0 Training time required for product, safety, quality, and literacy knowledge.

- 6.1 Training time for product, safety, literacy, and quality knowledge will be an ongoing process as new to industry employees learn and become proficient in one area upon commencement.

This is to assist with learning all the required information needed before learning a new skill or product. These basic tasks only position new employees to learn skills necessary to progress through the classifications. These tasks do **not** render them fully functional workers due to limited knowledge and time in industry.

6.2 **Brand**

Having adequately trained employees can substantially affect an employer's brand. New to industry need support, training and guidance and time to learn their craft, and will have tutors, buddies and supervisors who are all required to spend time shadowing the new employees closely until they are demonstrated to be competent and to have the confidence to be able to perform the task(s) with limited supervision.

6.3 **Cost and impost of training**

Intensive training (defined as extensive training in a short period of time), is certainly not best practice, nor the ideal in our industry for many reasons. Studies have shown that learning large volumes of information in short spaces of time is not conducive to solid and competent outcomes. Best practice is to afford an appropriate amount of time to learn across various platforms over the course of time, to ensure that the information has been absorbed and processed sufficiently to demonstrate competence. Intense training timeframes are not a feasible option for this industry. It would greatly increase our risk profile to do so, and I have seen this time and time again at every meat industry employer that I have worked for.

6.4 **Quality of training**

The industry must be able to demonstrate that the training provided is of substance and meets the training requirements and standards to ensure that our workforce is competent, compliant, and safe. One week is nowhere near sufficient time to be able to demonstrate competence, by any reasonable standard.

7.0 Workplace health and Safety

Incidents investigation

- 7.1 Unfortunately, incidents and accidents do occur in the industry. I have been witness to many of these unfortunate events. The first part of the investigation begins with being able to demonstrate that the people involved were adequately trained, and being able to prove competency that aligns to the task at hand and aligns to the time in role and industry. Very significant penalties, apart from the injuries to the worker, can apply in circumstances where it cannot be demonstrated that sufficient time was devoted to the proper training of an employee who has been allocated a particular task. A one-week training period could never be considered sufficient for a new entrant to the industry. A six-month period (as an outer limit) with a new to industry process is towards the lower limit of what might be expected, for the safety aspect alone.

8.0 General Observations

- 8.1 Many industries have guidelines in place to be able to have a consensus on required training time. Unfortunately, there are no across industry standards for training and competency in our sector. It may be that in the Meat Industry the variables and diversity in plants are so great, the level and variability of risk and safety concerns are so great that it is not possible to

- adequately define an accurate period. All that can be said in my opinion is that there is no possible chance that one week would be an adequate period.
- 8.2 In my opinion, it comes back to task, time in industry, individuals' ability to learn i.e., how they learn and type of learning. It also depends on the complexity of the task. The meat industry is quite a complex working environment and injuries are prevalent without the appropriate training and time to learn.
- 8.3 On my observation, employees generally come in as a new to the industry operator and have their first day completing a site induction. The second day they are taken to their designated area and then have another department/area induction and after this are then taken through work instructions, PPE, hazards, meet their supervisor, buddy and tutor who will be with them constantly for approximately eight to twelve weeks to ensure they are learning, have someone they know to ask questions, and someone to show them how things are done, from a single task to the whole process.
- 8.4 New employees must be shown what personal protective equipment (PPE) to wear and how to wear it, knife sharpening (which is an acquired skill and needs to be taught properly and safely), manual handling, stretching, along with where you can and cannot go in a plant, how to get around plant etc. The learning curve upon commencement is very steep for new to industry employees.
- 8.5 The training time per task can also significantly vary and some can achieve competency quicker, but some also can take longer, so an average time frame is applied across the sector as a rule of thumb. However, employers need to be sure that employees know what they are doing and are capable and competent to be able to perform the task on their own and meet the requirements of sector such as food hygiene, standards, quality, process, customer requirements, understanding product and equipment etc.
- 8.6 This is not a quick process and does take considerable time. It is easy for someone who has been in industry for some time to have a general opinion for a timeline, but the time required for training must always be regulated by the individual and their competency. The timeframe which is set must provide an outer limit which ensures the substantial majority of individuals will be competent, and is not as a *nice to have*, but as a *must have* for safety reasons (for both employees and the customers consuming the final product).
- 8.7 Maintaining new employees at a training wage for the period of their training is not merely a cost saving measure. The costs associated with injury and turnover are immense, insufficient training or too short a time for training can be costly all round, and quite often is. Time off work due to any type of injury, workers compensation, etc. is costly for the company, employee, and the employee's family, even the broader community.
- 8.8 In the situation where an injury has been sustained, compensation is costly for the employer, their brand, their bottom line, and their reputation in their industry. For the employee, dependent on the severity of the injury, the injury could greatly affect the employee's future capacity to earn a living to support themselves and their family. The compensation (again, dependent on the injury), is not always enough to support their family ongoing, which means the whole family's quality of living is affected, the employee's mental health can be affected, and the flow on effects can be quite catastrophic. No one wants to sustain injuries at work,

and everyone should have the right to return home each day healthy and safely. The costs to everyone involved are too great.

9 Safety Statistics

9.1 My research suggests that WorkSafe Queensland recorded between 2015 and 2020, and workers in red meat (including pork and game meat) processing workplaces lodged over 5000 injury claims. Thirty-nine percent of these were young workers, casuals, and labour hire. The type of mechanism of injuries included:

- 9.1.1 Muscular Stress when handling objects
- 9.1.2 Fractures and soft tissue injuries from being hit by falling and moving objects.
- 9.1.3 Cuts and lacerations from knives
- 9.1.4 Fractures from falls from heights
- 9.1.5 Amputation and fractures from between trapped between stationary and moving objects.

9.2 WorkSafe Queensland were so concerned that they brought about a campaign to focus on reducing and preventing injuries to workers at meat processing workplaces.

They worked with employers and employees placing a focus on:

- systems of work
- consultative arrangements
- hazards, risk management and reporting
- information, training, instruction, and supervision
- hazardous manual tasks
- fixed plant
- working at height and falling objects
- slips, trips, and falls at level.
- hazardous chemicals
- hand tools
- biological hazards.

9.3 All of the abovementioned safety and sanitation requirements (not to mention skill in the task) are what I believe to be non-negotiables. I do not believe it is only a one-week activity and supports a period of training time that allows these measures to be adhered to for the future betterment of our industry, attracting employees to work in a safe industry that provides solid training.

Witness statement

Name	Lyle Ward
Position	Training & Workforce Advisor

My name is Lyle Ward and I have over 25 years' experience in the meat industry. 14 of those years I spent specifically on training, tutoring and have been engaged in roles up to and including Training Manager r.

A "new to industry" employee requires considerable time to become fully competent in all aspects of their employment, even at the lowest classification. Meat processing and meat manufacturing in particular, involve the marshalling and killing of substantial numbers of livestock each day, and processing those carcasses into meat and meat products, and byproducts and hides, by use of a wide range of cutting, tearing and crushing devices.

The floors that are required to be walked on in many cases are slippery with blood and other products and the machinery that is used can cause very serious injuries to an employee, if they are not used properly and skilfully, or if an employee accidentally comes into contact with them.

At the outset, new to industry employee needs to learn to safely transversing around a production site, (carpark – amenities – work area). They then need to safely and hygienically get prepared for work (clothing/PPE/Equipment). After having accomplished these basic tasks, they must learn to safely and hygienically perform a range of operational tasks to appropriate standards to meet government (domestic & international)/customer/consumer and establishment standards). They must then learn at end of their shift, how to safely and hygienically get prepared to go home, again following all standards mentioned above. Because of the extraordinary risks and potential for very great harm to employees because of the nature of the work and the equipment being used, safety is always the first priority in everything that is taught and done in a plant, whether it be a small retail butcher shop or a very large meat processing plant.

There is a large number of tasks and activities which must be taught and learned properly, including the safety of themselves all the other employees. There also a large number of food hygiene and safety considerations, as industry must provide products safe for consumption. I then responsible for the implementation of programmes for new employees in three medium to large plants as well as at distribution centres/warehousing areas.

At a general level, after an initial induction program, the employee' s learning continues through to specific work instruction, tutors, a buddy system and on the job learning. I personally have instructed/shown new employees the correct way to get around the factory without risks to themselves and others, which can be a very complex and difficult exercise. From the car park, employees must learn the use of designated walkways and understand specific traffic management programs. They must walk through to the site laundry to collect work clothing, then to the change rooms, lunchrooms and then learn how to correctly use and maintain their PPE. After all those things have been achieved, the employees are able to enter the factory floor.

Processing plants have many restricted areas, where it is not safe for any worker other than those actually engaged in that area to enter. New employees may be prone to undertaking shortcuts when moving around the plant, which is extremely unsafe as they may travel through areas that could be very dangerous.

I have always stressed the importance of this first part (the training program) of a new employee's journey.

The next consideration is operational safety. An employer must ensure employees are equipped with relevant PPE for the worksite and particular tasks and new employees are also responsible for maintaining their PPE. This can take time for a new employee to fully understand, I have seen many times where an employee may misplace their PPE and then not followed up to obtain new equipment, putting themselves at risk.

There is also the consideration of having to replace the PPE, when worn or damaged, this requires tutors/supervisors and the like to constantly follow up and check whether the employees are reliably compliant. Safety, performance, and employees PPE, require constant supervision, and ensuring correct fit/fit for task and also wear and tear.

There is no uniform or achievable way of ascertaining in advance how long the teaching and reinforcement of these activities must continue before an employee can be safely allowed to work without constant close supervision.

The industry relies very much upon a large migrant workforce. These employees are coming in from overseas are often entirely unfamiliar with our requirements in safety/hygiene and everyday work practices we take for granted. All of these standards are required to be taught, in addition to the operational methods which are employed in the particular plant. In my many roles, I have spent many days instructing, correct work practices, constantly following up, helping new employees get the basics of meat processing.

As an industry we invest heavily in training/tutoring programs, including department tutors. A tutor is typically a FTE employee, not working on a production line, but has extensive experience in their said department. The tutor will follow up constantly with new employee, ensuring that the employee is receiving support and guidance both on the job and in all other areas as mentioned previously. Many employers may also use translators as needed for employees whose first language is not English. These translators work alongside tutors. It is simply impossible for all of these tasks to be able to be taught within the space of one week. The achievement of the required degree of awareness as to safety is effectively impossible.

A new employee can learn a particular task, but a fully competent person must check their product and perform final inspection on their work prior to product moving on. I have then used this philosophy throughout my time in industry to ensure a structured learning program and maintain appropriate food safety standards. The below table is an example of what occurs in a food safety sense, remembering along this schedule constant feedback is sourced by supervisors/QA's/Tutors & provided to all relevant parties.

Sample new entrant plan

% of Task	Competent Employee	New Employee	
Day 1	100%	0%	1st Day (on task) employee will watch process, perhaps assist moving product around on workstation
Day 2	97%	3%	2nd Day employee starts to undertake beginnings of task, once completed agreed proportion steps back, washes hands continues observation
Day 3	95%	5%	3rd Day employee starts to undertake beginnings of task, once completed agreed proportion steps back, washes hands continues observation
Day 4	90%	10%	Days 4/5 I would always keep these at same level of participation, remembering these are new to industry employees, by this time in 1st week, they are suffering from soreness in feet/hands & general body aches & pains.
Day 5	90%	10%	

Day 6	90%	10%	Coming back from weekend or rostered days off, I would keep at same participation as on their last day, this day would be a refresher day & not too strenuous on the body.
Day 7	85%	15%	Gaining more confidence in performing task
Day 8	85%	15%	Gaining more confidence in performing task
Day 9	80%	20%	Gaining more confidence in performing task
Day 10	75%	25%	After 1st 10 shifts a new to industry employee may be at the level of performing a quarter of a task to appropriate standards.

Day 11	70%	30%	As new employee progresses & gains confidence/experience in task they will gradually increase participation of said task
Day 12	65%	35%	Gaining more confidence in performing task
Day 13	60%	40%	Gaining more confidence in performing task
Day 14	55%	45%	Gaining more confidence in performing task
Day 15	55%	45%	Gaining more confidence in performing task

Day 16	55%	45%	Gaining more confidence in performing task
Day 17	50%	50%	Gaining more confidence in performing task
Day 18	50%	50%	Gaining more confidence in performing task
Day 19	45%	55%	Gaining more confidence in performing task
Day 20	45%	55%	Gaining more confidence in performing task

Day 21	40%	60%	Gaining more confidence in performing task
Day 22	40%	60%	Gaining more confidence in performing task
Day 23	35%	65%	Gaining more confidence in performing task
Day 24	30%	70%	Gaining more confidence in performing task
Day 25	30%	70%	Gaining more confidence in performing task

Day 26	25%	75%	Gaining more confidence in performing task
Day 27	25%	75%	Gaining more confidence in performing task
Day 28	20%	80%	Gaining more confidence in performing task
Day 29	15%	85%	Gaining more confidence in performing task
Day 30	15%	85%	Gaining more confidence in performing task

Day 31	10%	90%	
Day 32	10%	90%	
Day 33	5%	95%	Very close to full understanding in a food safety aspect of original task
Day 34	5%	95%	
Day 35	0%	100%	New employee's 1st day performing full task - competent person still conducting final checks

Day 36	0%	100%	
Day 37	0%	100%	
Day 38	0%	100%	
Day 39	0%	100%	
Day 40	0%	100%	After a week of performing full task with competent person doing final checks a supervisor/QA will review progress & seek/provide feedback to new employee/competent person/tutor & team

With all new to industry employees, I have always liaised with supervisors/managers/tutors on their requirements/positions needed filling and the suitability of new employees coming into their departments. We would often find and need to adjust planning, as new to industry employees would take some time to obtain a level of work fitness, so instead of going straight on to a proper task as may be listed in the Meat Industry Award or an establishment's Enterprise Agreement, new to industry employees would commence on a "soft landing" task, not adding value to production.

These types of tasks would include.

-
- Helping erect cartons
 - Maneuvering boxes along conveyers
 - Assist in moving product to different workstations/areas.
 - Condensation removal/cleaning – Condensation is moisture buildup/droplets on ceilings/walls, new employees may be required in a particular area to remove condensation using mops.
 - Cleaning – depending on areas of placement – for example if in warehouse area, before a new employee is placed into an area of stacking pallets of boxes of meat, they first will conduct cleaning tasks (sweeping etc.)
 - Collection & delivery of packaging materials within a designated work area.
 - Assisting in movement of pallets/cartons/materials from storage/delivery areas using pallet jacks
 - Collection of materials/products for correlation
 - Assisting in an establishment's laundry areas, putting clean clothes away, storage of new PPE, removal of old boots/dirty clothes from locker rooms
 - Collection & delivery of consumables to a department's storage area, e.g., latex gloves, hair nets, paper towel,
-

After a period of time, when a new employee can perform these tasks by themselves the employee will move to a new position to learn off another competent employee (most likely a production task as this employee has completed a work hardening program). The new employee will continue on these tasks until they are work fit and the next new employee commences, taking over from the previous new employee.

I have found this structured approach benefits both the new employee and establishment where they are employed. It also provides an opportunity for the department supervisors/QA's/Tutors to ascertain/plan where the new employees next position will be, along with providing the new employee time to adjust to employment within a meat processing facility.

This would take a minimum of 4-6 weeks/rosters before ready to move to next position, remembering that, when going into a production position, we would follow the previous table's philosophy regarding food safety, as

IN THE FAIR WORK COMMISSION

Title of Matter:	Review of certain C14 rates in modern awards
Section:	s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objectives
Subject:	Review of the classification rates at the C14 rate in modern awards
Matter Number:	C2019/5259

SUBMISSIONS ON BEHALF OF THE AUSTRALIAN MEAT INDUSTRY COUNCIL (AMIC) IN RESPONSE TO SUBMISSIONS BY THE AMIEU

1. The evidence and submissions filed by the AMIEU appear to contend for two alternative positions:
 - a) that the MI1 classification should be deleted altogether from the Award; or alternatively
 - b) That the MI1 classification should be limited in time to the period of time occupied (on their evidence) in learning one basic task, that is, for a period of approximately one week.
2. The two positions are not true alternatives. In practical terms, they achieve the same outcome, as the ability of the employer to pay an MI1 training wage whilst an employee is undertaking appropriate or necessary on-the-job training, would be effectively abolished in both cases.
3. The union submissions incorrectly assert that there are no functions assigned to employees engaged under the MI1 classification. The functions allocated to such employees are expressly delineated as being “on-the-job” training, expressed in the clause by reference to the period during which employees are undertaking such training. Training of this kind is a well-known and well understood work function, which attracts the appropriate C-14 rate of pay in many modern awards.
4. It is a deliberate and sensible part of the MI1 classification description that no specific tasks are mentioned in this context, as each business enterprise covered by the Award operates in a different manner, with different equipment, different types and species of livestock, very different geographic and climatic constraints, different types of fresh or manufactured output and product, and with a substantially different ethnic and educational diversity within its workforce.
5. Enterprises covered by the Award vary from those slaughtering and processing of livestock as diverse as crocodiles, camels and prime beef cattle and sheep, to those slaughtering and processing pigs and manufacturing ham, bacon, salami and other smallgoods, and large wholesale/ retail operations and small suburban two or three person butcher shops.
6. They conduct their businesses in a vast range of rural and regional areas, often with limited resources and shortages of labour, and in circumstances where the workforce may consist of

employees who, amongst their number, speak little or no English and primarily communicate in a wide variety of other languages, including Mandarin, Cantonese, Vietnamese, Portuguese, Tagalog, Swahili and Arabic, to mention but a few.

7. The equipment used is extremely diverse and varies significantly from plant to plant, and in many cases is designed and used to kill and dismember large animals. Accidental or unintended contact with such equipment can cause catastrophic injury and death to workers.
8. Because the products of all such enterprises is fresh food, extremely strict hygiene and food safety regulations apply in different measures to different parts of different plants and different products, dependent entirely upon the individual circumstances in which the worker is engaged.
9. As earlier submitted, it should be no surprise to the Commission that the training requirements for an employee engaged under this Award without any prior or recent experience, are as varied as the types of plant, the types of livestock, the nature of the equipment being used in the particular plant, the geographical location of the plant, the ethnic diversity and educational standards of the workforce, and a myriad of other combinations of variables which exist within this industry.
10. Despite all of these factors, of which the Union is well aware, the Union submissions and evidence in this matter have been confined to describing the singular example of one small area of a large metropolitan or large regional beef processing plant, and referencing an infinitesimally small number of simple tasks in that large beef plant, which are presumably undertaken by an employee who reads and understands the English language.
11. That microscopic and grossly simplistic example is apparently presented to the Commission as being in some way representative of the manner in which the MI1 classification operates in the industry which has the characteristics described in the preceding paragraphs of the submission. Nothing could be further from the truth that exists in this industry. The Union evidence is so unrepresentative as to be positively misleading.
12. Further, as the union submits, the MI2 classification covers a very restricted number of tasks, so that effectively, if the MI1 classification is emasculated or actually removed, as the Union contentions seek, a new starter to the industry and that plant will commence at level MI3.
13. Under the Award there are a significant number of indicative tasks and functions which a person employed at MI3 can be expected to perform. The union contention appears to provide that training in only one or none of the most simple of those functions is sufficient for a person to be engaged at MI3. AMIC emphatically opposes such a contention.
14. As earlier submitted, the training involved in bringing a new employee up to the level of competency such that they are entitled to be engaged and remunerated at MI3, involves general induction and familiarisation with the plant and its operations and imperatives (workplace safety and food safety), and thereafter, training and familiarisation in a sufficient number of roles or tasks in that plant such that the employee will be able to be safely moved through the necessary number of MI3 roles and tasks to be a useful and productive member of the plant workforce.

15. The Union submission entirely fails to address this fundamental requirement of the training of a new employee in the Meat Industry. The evidence and submissions focus solely on a new employee being placed in a particular area and being trained how to construct a packing box or remove skirts (but not both), which are basic and relatively unskilled tasks. The Union case is that competency in one of these very simple tasks (leaving aside plant induction and familiarisation with health and food safety requirements) is able to be achieved in a few days or a week.
16. Even assuming this to be so (which is not necessarily the case depending upon the particular task allocated to the new entrant), the new entrant is then treated as competent in only one task out of the wide variety of tasks to which the employee can be expected to be assigned in the ordinary course of employment at MI3.
17. The union case is that although the MI1 classification may be appropriate whilst that new entrant learns their first new task, their on-the-job training for all of the other tasks which form part of the role of an MI3 employee must be paid at the MI3 rate. This is said by the union, despite the fact that the employee concerned may have no competencies whatsoever in any of those many other MI3 areas and is still engaged in on-the-job training so as to carry out the MI3 role effectively.
18. Under the current Award provision, and under the provision contended for by AMIC, the period of on the job training is sufficiently flexible to accommodate all of the industry variables referred to in these submissions and to allow for the objective of a C 14 rate to be otherwise met in respect of the overall skills of employee whose next step on the classification ladder is MI3. That is to say, it permits reasonable time for the amount of on-the-job training necessary for the engagement at MI3 in all possible contingencies covered by the Award.
19. The union contention appears to be that the MI1 rate only applies, or should only be applied, to the first simple and unskilled task that is imparted to the employee, but that the remainder of the on the job training necessary to be undertaken so that the new entrant employee so as to justify their engagement at MI3, is to be undertaken at the MI3 rate, rather than the MI1 rate, as is presently the case. This contention is confirmed in the Union evidence that:

"I think it would be generous to say that some employees take about a week to be able to fully perform one of the jobs that entry level employees are given."
20. The Union evidence and contentions misunderstand the role of a C-14 classification, both generally, and in the context of the Meat Industry Award. The actual length of time required for the necessary on-the-job training cannot be sensibly prescribed in the Award because of the vast array of businesses and activities covered by this Award. The time required will depend upon whether the employer is a suburban butcher shop or a very large modern metropolitan beef processing plant, or one of the infinite variables of types and sizes of enterprises between those two extremes. The nature and types of MI3 skills which that each particular enterprise reasonably requires of their employees before they can be engaged at that level will be very different in very many cases, and the Award should accommodate those factors.
21. The MI1 classification is not intended to provide for only so much on-the-job training as would constitute new industry entrants as being a "one task employee". This would be destructive of the purpose of the C-14 classification in this industry and would be illogical and uneconomical.

Such an employee would arguably not be entitled to be engaged in the MI3 classification, and to the extent that they were so engaged as a matter of compulsion, much of their early time in that classification would be spent in training, in MI3 tasks at MI3 rates of pay, rather than a training rate of pay.

22. This would have a detrimental effect on the current hierarchical nature of the classification structure, and the rights and entitlements of existing experienced and productive MI3 level employees, who would not be entitled to be paid any more than an inexperienced and unproductive employee engaged in in-house training at the same establishment.
23. The AMIC proposal of limiting the period of in-house training to no more than six months, would place an upper limit on the time and extent of in-house training which an employer may impose upon a new employee, before that employee is deemed to have acquired sufficient skills to be entitled to be engaged at MI3. If an employer has been dilatory in training that employee, such that they do not have the requisite number of skills, that would be a matter in respect to which the employer must accept any additional cost associated with an inadequate amount of training in the permitted period.
24. As a matter of fact, in each enterprise in which an employee has acquired the customary, usual or necessary number of skills to match the skills and abilities of other MI3 employees in the plant, the new employee would become entitled to be engaged at MI3. These are matters that can and should be specified at the commencement of the employment of a new employee. An employer who fails to meet these standards and who sought to exploit these arrangements and maintain a properly trained and skilled employee on a discounted MI1 rate, would do so at their own risk.
25. The risks that the proposed one-week training timeframe presents to the industry are significant. As per the earlier submission by AMIC, the Union has failed to take into account the serious risks to the employer of attempting to make someone competent in food safety, sanitation, plant and equipment, site safety, and all the tasks required to be a competent employee in one week. The employers bear the cost by either paying the full rate whilst continuing to train their employee to the required standard or bear the cost of a semi-skilled new entrant and all of the risks that come with someone who is not competent in all of the above matters. Some of these include (but are not limited to) increased workplace injury claims, common law claims, contamination, audit failures, and at the extreme, plant shutdown or death.
26. The Union proposal set out in their submissions under reply should be rejected by the Commission. Their extraordinarily restricted evidence, ignores actual circumstances of the vast majority of the industry covered by the Award, and the Union seeks to effectively abolish appropriate levels of payment under the Award for periods of on-the-job training for unskilled, partly skilled and inadequately skilled new entrants to the industry with no prior or recent experience, so that they become entitled upon commencement, or one week thereafter, to the same rate of pay as an experienced and skilled MI3 employee.
27. By comparison, the AMIC proposal is an appropriately flexible provision designed to accommodate the vast variety of circumstances in which on-the-job training may be needed for significantly different times and in significantly different circumstances throughout the four corners of the industry. The AMIC proposal achieves this outcome without imposing unnecessary additional cost

on employers, whilst providing adequate safeguards for new employees against exploitation by employers who would seek to artificially delay the progression of new industry entrants in the classification levels.

Australian Meat Industry Council
30 November 2023

IN THE FAIR WORK COMMISSION

Matter number: C2019/5259

Matter title: 4 yearly review of Modern Awards - Review of Certain C14 rates in Modern Awards

SUBMISSIONS OF THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION

1. The Australasian Meat Industry Employees' Union (AMIEU) is a registered organisation of employees which represents workers in the meat industry in Australia, including the meat processing, meat manufacturing, and meat retailing sectors.
2. The AMIEU has an interest in the *Meat Industry Award 2020* ("the Award").
3. The Fair Work Commission issued a Statement in relation to the above matter on 22 September 2023. The Statement included directions, including a direction requiring interested parties to file:
 - (a) submissions in respect of the provisional view stated in paragraph [8] of the Commission's statement;
 - (b) submissions as to the accuracy of the table at Attachment D of the Commission's statement;
 - (c) draft determinations or proposals for any specific award variations that might be necessary; and
 - (d) evidence upon which they intend to rely.

Submissions in respect of the provisional view of the Commission

4. The AMIEU agrees with the provisional view of the Commission in relation to the principles which should guide the review of C14 rates. While accepting this

provisional view, the AMIEU would nevertheless submit that the duration of the transitional period of any entry level rate under the Meat Industry Award 2020 should be for a significantly shorter period than six months.

Submissions as to the accuracy of the table at Attachment D

5. The AMIEU agrees that the table at Attachment D of the Commission's statement is accurate insofar as it relates to the Meat Industry Award 2020. The table correctly records that the next level up from the entry-level C14 classification of Level MI1 is Level MI2, equivalent to the C13 rate. However, for the sake of completeness, the AMIEU does note that the Level MI2 classification applies to only a very limited number of tasks in the meat retailing and meat manufacturing sectors. In practical terms, most workers covered by the Meat Industry Award would progress from Level MI1 directly to a Level MI3 classification, for which the weekly rate of pay is currently \$898.80.

Draft determinations or proposals for any specific award variations

6. The AMIEU submits that, given the short periods of on-the-job training provided to entry-level employees new to the industry, there is no need for the Meat Industry Award 2020 to include a transitional C14 rate, and references to Level MI1 ought to be deleted from the Award.
7. In the alternative, the Award classification should be amended to ensure that, rather than remain open-ended, the definition of the Level MI1 classification should be amended to insert a maximum duration for the classification before transition occurs to the usual classifications. That maximum duration should be in the order of one week, reflecting the amount of on-the-job training that new employees typically receive.

Evidence of the AMIEU Witnesses

8. The AMIEU has provided witness statements from two of its officials, Justin Smith and Warren Roy Earle. Both officials have considerable experience both as workers in the meat industry and in representing workers as union representatives.
9. The evidence of the AMIEU witnesses detail their experience and knowledge of the training of entry-level employees who come to the meat industry without prior industry experience.
10. Employees in the Level MI1 classification are new employees to the workplace who are being trained for basic labouring and packing roles in the industry. The classification is not used for employees being trained into skilled roles. After standard workplace inductions, employees in the Level MI1 classification are assigned work tasks that are covered by higher classifications in the Award, typically Level MI3 work (or possibly Level MI2, but Level MI2 only applies to a rather narrow range of jobs).
11. In respect of employees who are new to the industry, on-the-job training is provided for only relatively short periods of time. Such training consists of:
 - (a) a general induction to the workplace and the industry
 - (b) a brief period of instruction in a specific task or tasks,
 - (c) being required to perform the task under the supervision of a more experienced employee; and
 - (d) being required to perform the task on their own but able to call on an experienced employee in the vicinity in case they need assistance.
12. Both Mr Smith and Mr Earle state that the length of time to train an employee in a particular entry-level job will vary according to the tasks required, ranging from a few

hours to a few days, with approximately one week being sufficient for an employee to reach the required standard in even the more complex or varied entry-level roles.

Submissions

13. The C14 Rate in the Meat Industry Award 2020 is the Level MI1 classification. The classification is defined in clause A.3.1 of Schedule A to the Award in the following terms:

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry undergoing on-the-job training for an initial period of at least three months.

14. The Award assigns no specific duties or tasks to this classification. The work tasks performed by Level MI1 employees invariably consists of duties that fall within higher classifications in the Award.
15. The first element of the classification description makes it clear that the classification is intended to apply only to those people with no experience in the industry.
16. The second element of the classification description indicates that the classification is intended to be used only while the person is undergoing on-the-job training.
17. The third element of the classification indicates that the classification is intended to be used only where the initial period of on-the-job training exceeds three months.
18. Finally, the classification description provides only for a minimum period of on-the-job training, with no upper limit proscribed.
19. The foregoing implies that the classification should not be available unless an employee is to be provided with at least three months of on-the-job training. The AMIEU considers it highly improbable that any employer in the industry provides anything like this amount of on-the-job training for new, entry-level employees.

20. Employees in the Level MI1 classification are new employees to the workplace who are being trained for basic labouring and packing roles in the industry. The classification is not used for employees being trained into skilled roles. After standard workplace inductions, employees in the Level MI1 classification are assigned work tasks that are covered by higher classifications in the Award, typically Level MI3 work (or possibly Level MI2, but Level MI2 only applies to a rather narrow range of jobs). These tasks, while repetitive and in some cases physically strenuous, are generally straightforward, routinised, and not overly complex. Attaining competence in the task involves being able to perform the job to the required standard of quality or accuracy, at the pace demanded by the workflows in the establishment. That standard and pace are achieved simply through repetitive performance increasing familiarity with the task. Competence in the assigned task is achieved within a period of time that ranges from a few hours to a week or so, depending on the task in question. witnesses
21. However, it is not uncommon for employers to treat three months as the default period on which to remain at the introductory level rate. This produces an inequitable consequence, in that new employees are performing the task the standard of a competent employee in a Level MI2 or Level MI3 classification, but are paid a lower rate of remuneration, ostensibly on the basis that they are still within some notional training period.
22. The brief periods of on-the-job training provided in the meat industry for employees who are new to the industry do not approach the amount or duration of training contemplated by the Level MI1 classification in the Award. Accordingly, it would be appropriate to conclude that the Level MI1 Classification is unnecessary to meet the Modern Awards objective in respect of the meat industry.
23. Alternatively, if the Commission were not minded to delete references to the MI1 classification from the Award, then the AMIEU submits that the Level MI1 rate should be amended to ensure that there is an appropriate maximum limit to the duration of the classification. Further, the AMIEU submits that maximum limit should reflect the actual amount of “on-the-job” training actually provided to employees who are new to the industry. Reflecting actual periods of time spent in

“on-the-job” training would mean that the Level MI classification would only apply to employees for a short period of time, in the order of approximately one week.

Submissions of the Australasian Meat
Industry Employees’ Union
10 November 2023

IN THE FAIR WORK COMMISSION

Matter number: C2019/5259

Matter title: 4 yearly review of Modern Awards - Review of Certain C14 rates in Modern Awards

WITNESS STATEMENT OF JUSTIN SMITH

I, Justin Smith, care of 13/26 Balook Drive, Beresfield, in the State of New South Wales, Union Official, state as follows:

1. I am the Federal President of the Australasian Meat Industry Employees' Union (AMIEU) and also the Secretary of the Newcastle, Northern New South Wales, and Tasmanian Branch of the AMIEU.
2. I became an organiser with the (then) Newcastle and Northern New South Wales Branch of the AMEIU in 2008. Prior to 2008 I worked for approximately nine years at the Wingham Beef Abattoir. I worked on the slaughter floor and am qualified as a Certificate III Slaughterer.
3. In the fourteen years I have worked as a union official, I have organized both meat processing and poultry processing establishments.
4. I am familiar with how the training of new employees was conducted while I worked at Wingham Beef. By "new employees" I am referring to employees who had not previously worked in meat processing.
5. When new employees are hired they are not assigned to skilled roles but to what the industry regards as unskilled or semi-skilled work. This includes a wide variety of jobs, such as work packing meat, making boxes or cartons in which meat is packed, cleaning work, or general labouring work which might include pushing carcasses into the chillers or moving product that has been packed to storage or distribution areas.

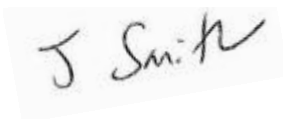
6. The first stage of on-the-job training would be a worksite induction. When I was working in the industry, the induction sessions generally lasted a full day. However, in more recent times, it has become common for more time to be devoted to induction training. This can be two full days, or even more at some establishments. In my experience, new employees are paid for the time spent in induction training.
7. When I worked on the slaughter floor, roles to which new employees would be assigned included the job of “floor boy” (an employee responsible for cleaning up dropped product or fat from the floor of the work area), the job of “peeling skirts” (this involves peeling the membrane off the thick skirt [diaphragm]) and putting the membrane into a box, placing tickets (when the body is moved on to the scales a ticket is printed and subsequently stuck onto the body), packing offal (in the “Offal Room” department of the slaughter floor), or packing tripe (in the “Gut Room” department).
8. Throughout my employment in the industry, the method of training of new employees remained unchanged. A supervisor would bring the new employee to what was to be their workstation or work area. The supervisor demonstrates how to perform the work, or might instruct another employee to show the new employee how to perform the job. After that, the new employee is required to do the work on their own, but with another worker in the area checking on them occasionally. Depending on the job, it might be an hour or two, or at most a day, before the new employee is doing the job on their own.
9. Some specific tasks might take a little longer to learn to perform fully. For example, a new employee might be assigned to another employee to perform the job of pushing beef carcasses from the chillers. Demonstrating the task of safely pushing the carcass would take a matter of ten minutes or so. The new employee would work with another more experienced employee who would indicate to the employee where he should push the carcass onto, and how to change rails. However, the carcasses are tagged with codes to show how and where they should be grouped, and it might take a few days or even a week to understand the various codes.

10. Since I have left the meat industry I have dealt with large numbers of meatworkers from a variety of different establishments throughout the Newcastle and Northern NSW region. From my understanding of the industry, I can say that the practices I observed when I was working at Wingham remain commonplace throughout the industry.

11. Most of the work in meat processing establishments is highly repetitive. For the jobs that new employees are given, the work is not complex, and it is a matter of repeatedly performing the task to learn how to perform it accurately and quickly. There are some jobs which would only take a matter of hours to learn to perform properly, while others might take a matter of days. The industry is focused on production levels, and employees are expected to get up to speed quickly. I think it would be generous to say that some employees take about a week to be able to fully perform one of the jobs that entry level employees are given.

12. I am not aware of any establishment in the industry which would provide new, entry-level employees with three, or even one, month of on-the-job training.

Dated this 9th day of November 2023



Signed:

.....

JUSTIN SMITH

IN THE FAIR WORK COMMISSION

Matter number: C2019/5259

Matter title: 4 yearly review of Modern Awards - Review of Certain C14 rates
in Modern Awards

WITNESS STATEMENT OF WARREN ROY EARLE

I, Warren Roy Earle, care of Level 1, 39 Lytton Road, East Brisbane, Union Official, state as follows:

1. I am the Lead Organiser with the Queensland Branch of the Australasian Meat Industry Employees' Union.
2. I have been an official with the AMIEU since 2007.
3. Prior to becoming an organiser with the AMIEU, I have spent most of my working life in the meat industry. I started working in the meat industry at the age of sixteen, when I started my apprenticeship as a retail butcher.
4. I am a trade-qualified retail butcher. I have worked as a butcher in both stand-alone butcher shops and supermarket meat departments. I briefly worked, for a period of about six months, at an abattoir in Cannon Hill, Brisbane. I was the manager of the meat department of a supermarket for approximately fourteen years.
5. In the course of my work in the industry, I have been responsible for training many employees. This has included training apprentice butchers, training employees new to the meat industry in a variety of roles, and also training butchers in the role of meat department manager.
6. As an organiser for the AMIEU I have organized and represented workers across the meat industry: those who work in meat processing, smallgoods (meat manufacturing), and meat retail establishments. In the sixteen years I have worked as an organiser I

have dealt with and assisted large numbers of workers about workplace issues and grievances, as well as enterprise bargaining and other collective disputes.

7. The majority of establishments which I attend in my capacity as an organiser are covered by enterprise agreements. Those enterprise agreements typically pay rates that are above the Award. However, the difference between Award rates and Enterprise Agreement rates are more significant for those performing skilled roles. For less-skilled roles like labouring and packing tasks, the difference between Award Rates and Enterprise Agreement rates are usually not as great.
8. The Meat Industry Award is the award which underpins these enterprise agreements, for instance, when making the assessment required by the Better Off Overall Test.
9. However, in the meat processing and meat manufacturing sector, most new employees to the industry are engaged through labour hire companies. This includes large numbers of migrant workers who have come to Australia under the PALMS (Pacific Australia Labour Mobility Scheme). These labour hire companies typically engage employees under the Meat Industry Award. Some labour hire companies have enterprise agreements that are long past their nominal expiry date, which means that their base rate of pay has fallen below that of the current rate of pay in the Meat Industry Award. These companies are required by the legislation to pay their employees a base rate of pay that is at least equal to the applicable award rate.

Meat Processing

10. In my experience, employees who are new to the industry are always used for unskilled roles in meat processing establishments. Employers do not train employees new to the industry in skilled roles such as slaughterer, boner, or slicer. When an employer requires employees in these skilled roles then the employer either recruits skilled workers either locally, through sponsored migration programs, or selects employees from its existing employees who have requested to train for skilled roles and whom the employer considers have demonstrated some ability or promise. While it used to be standard for the industry to train some of its existing labour pool into skilled roles, employers have looked increasingly to recruiting skilled workers from overseas. Employers do not generally want to train people in the industry unless they

consider the employee to have demonstrated good attendance, or some intention or commitment to remain in the industry.

11. New employees are typically assigned work in roles cleaning, packing, or general labouring-type work. These new employees typically undergo an induction process, during which employees are given information about the workplace itself, hygiene and food safety, workplace health and safety issues, amongst others. Sometimes the induction will include a tour of the workplace. The induction process typically takes one or even two days, depending upon the establishment and the practices of the particular employer. In most cases, employees are paid for the time they spend during the induction process. My understanding is there are some employers who regard induction as a 'pre-employment' process, and do not pay workers for the time they spend in induction.
12. When a new employee has completed induction, they are assigned to a particular job. The tasks on which new employees are trained are usually straightforward tasks which are highly repetitive. A supervisor will assign a new employee to a specific job. Either the supervisor will show the employee how to perform the task, or the supervisor will designate another employee to do so. The employee might observe the task being performed for a short period of time and will then be assigned the task. A more experienced employee will work alongside the new employee, assisting them to perform the work, and correcting them when required. Depending on the task, it would be common for a new employee to be performing the task within a matter of hours. Some more involved tasks might take a full day to learn.
13. After that, the new employee will largely be expected to complete the task on their own, but with another more experienced employee working in the immediate vicinity, who will periodically check on the new employee's work, or assist if they get into difficulty. After the brief period of instruction, there is little if anything further in the way on-the-job training unless the employee were assigned to work at another task. After being shown how to perform the work, the employee focuses on improving the accuracy and speed of their work to reach the pace required by the employer. For the tasks performed by new employees, employers and supervisors expect employees to

reach the required level of performance within a short time span. This time span might vary from as little as a few hours to a few days, or perhaps at most a week..

14. Some meat processing establishments have a policy of reclassifying entry-level employees into another classification once they are deemed competent to perform a job to which that classification applies. In such establishments, I commonly encounter employees who have been reclassified within a couple of weeks of their commencement. Other meat processing establishments consider they are entitled to pay employees at the entry-level rate for a period of three months irrespective of the employee's competence at a task.

Meat Manufacturing Establishments

15. The meat manufacturing establishments of which I have experience have operated in similar fashion to processing establishments in respect of their new employees. New employees are typically assigned to general labouring or processing tasks. A commonly assigned job for new employees is working on a production line or conveyor where they pack product into trays. The employee working alongside them assists them for a brief period, but a new employee would usually have learned the job within an hour.
16. The jobs requiring greater complexity or skill in meat manufacturing establishments are generally those of the machine operators. In my experience, employees who are new to the meat industry are not assigned to those jobs.

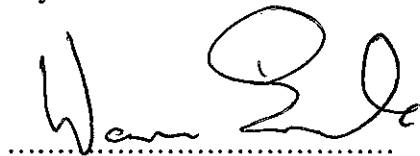
Meat Retailing Establishments

17. I have worked extensively in the meat retail sector and have often been involved in training new employees. In some cases, this has been training apprentices, but I have trained people in all of the roles performed in retail butcher shops or supermarket meat departments. Supermarket meat departments are covered by the General Retail Industry Award, but the work performed in these meat departments is essentially identical to that performed in a stand-alone retail store.
18. Again, with new employees the length of time it takes to train an employee in a particular task will vary with the task. New employees may be assigned work

cleaning, wrapping meat and placing it on display, dealing with customers and cashier work. Training consists of a brief period of instruction, and then observing the worker to assist if they make an error or need help. In my experience, a few days is generally sufficient to learn how to perform a job competently. However, in meat retail, unlike in processing and manufacturing, new employees packing or unpacking meat, or putting meat on display, often have to deal with all of the various cuts of meat. New employees doing this work might take a little longer to familiarize themselves with the various cuts, and these employees might take up to two weeks to learn the job adequately.

Dated this 10th day of November 2023.

Signed:

A handwritten signature in black ink, appearing to read "Warren Roy Earle", written over a horizontal dotted line.

WARREN ROY EARLE

IN THE FAIR WORK COMMISSION

Matter number: C2019/5259

Matter title: 4 yearly review of Modern Awards - Review of Certain C14 rates in Modern Awards

SUBMISSIONS IN REPLY OF THE

AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION

1. The Australasian Meat Industry Employees' Union (AMIEU) has previously filed submissions in respect of this matter and continues to rely upon those submissions.
2. The AMIEU seeks to make some brief submissions in reply in respect of the witness statements that have been filed in relation to this matter by the Australian Meat Industry Council; namely, those of Cheryl Wolens and Lyle Ward.
3. The AMIEU has also filed a further witness statement by a worker in the meat processing sector, Kaleb Cooper. Mr Cooper works in a meat processing establishment where terms and conditions of employment are regulated by an enterprise agreement, rather than an Award. Nevertheless, he relates his experience of the process of induction and training that he underwent when he commenced in the industry.

Witness Statement of Cheryl Wolens

4. Ms Wolens' statement describes the meat industry, the nature of the work in that industry, and various issues that must be addressed in the course of training a new employee. By contrast, there is little specific detail about the duration of on-the-job training needed for an employee to competently perform a job covered by a classification higher than Level MII. Her evidence as to the likely duration of training is given (at page 10 of the AMIC submissions):

"I strongly believe, that at a minimum, it would require at least 3 months (depending on transferable skill, learning aptitude, complexity of plant and

other variables), and at a maximum outer limit of 6 months before an employee could be trusted to work in a meaningful task without constant close supervision.

5. The above is not consistent with the evidence of the AMIEU witnesses, including the experience of Mr Cooper, which suggests that it is common for employees to be operating without “constant close supervision” in much shorter timeframes than those suggested by Ms Wolens.

Witness Statement of Lyle Ward

6. Mr Ward is a training and workforce advisor, and like Ms Wolens gives evidence about the nature of the industry and factors which impact upon the amount and type of training received by new employees. Mr Ward includes a sample plan for a new employee being assisted by a competent employee. The plan extends over a period of forty (40) working days.
7. The AMIEU makes two observations regarding Mr Ward’s evidence regarding the “sample new entrant plan.”
 - a. Firstly, the evidence of the AMIEU witnesses, including Mr Cooper, suggests that many tasks require significantly shorter timeframes from for employees to be trained to perform competently, and at the pace required of employees generally; and
 - b. Even the timeframes envisaged by Mr Ward (40 working days) is still significantly less than three months, and much less than the 6 month maximum contemplated by the AMIC proposal to vary the C14 classification.

Witness Statement of Kaleb Cooper

8. Mr Kaleb Cooper gives evidence of his experience as a new employee in a meat processing establishment. He describes the on-the-job training he received in

respect of an initial labouring task (pushing bones), and then a task which involved use of the Whizard knife. It is clear that he was expected to work on his own within a much shorter timeframe than envisaged by the AMIC witnesses, and while he was certainly supervised, it does not seem to be in the nature of the “*constant close supervision*” to which Ms Wolens refers.

9. Mr Cooper acknowledges that other employees took longer than he to achieve competency in tasks, or experienced more difficulties than he did.
10. The AMIEU acknowledges the importance of on-the-job training in the industry. However, it notes the C14 rate is intended to be a transitional rate for people with no prior industry experience until they are capable of performing the work required by a higher classification. The duration of the transitional period for the C14 rate in the meat industry, in the AMIEU’s submission, should reflect generally the period of time actually spent on on-the-job training. It should not become a mechanism to allow employers to pay employees the transitional rate for an extended period during which they are in fact performing a task covered by a higher classification rate.

Reply Submissions of the Australasian Meat
Industry Employees’ Union
1 December 2023

IN THE FAIR WORK COMMISSION

Matter number: C2019/5259

Matter title: 4 yearly review of Modern Awards - Review of Certain C14 rates in Modern Awards

WITNESS STATEMENT OF KALEB COOPER

I, Kaleb Cooper, of [REDACTED] in the State of Queensland, meatworker, state as follows:

1. I am a meatworker employed by the Oakey Beef Exports Pty Ltd ("Oakey Beef") at Oakey in Queensland.
2. I am also a member of the Australasian Meat Industry Employees' Union (AMIEU).
3. I have worked at Oakey Beef for approximately seven months.
4. My union has informed me that at Oakey Beef our pay and conditions are contained in an enterprise agreement, and not an Award
5. I have not worked in the meat industry before I started my job at Oakey Beef.
6. When I started work at Oakey Beef, I had to go through an induction. The induction lasted two full days. There were about seven or eight new employees in total in my induction. we completed a lot of paperwork with our personal details and other information that our employer needed. Over the next two days, there were training sessions to give us information about the industry, the workplace, including health and safety, and hygiene, as well as information about how we would be paid. There were sessions on safety on each of the first two days. Overall, I estimate at least half a day was spent talking about safety issues, including food safety. On the second day of the induction sessions, the new workers (including myself) were taken through and shown all of the meatworks.

7. I was paid for the two days spent on the induction.
8. The next working day after the induction, I and the other new workers were taken to the job we were going to be trained to do. First, the Training Officer told each of what job we were going to be given, and described what was involved. I was told that I was going to be pushing bones in the Boning Room.
9. I was then introduced to my supervisor. My supervisor spoke to me briefly and brought me to the area where I was going to be working. I was introduced to another worker, and that worker showed me the job that I was going to perform. When they are boning carcasses, the boners take the bones they remove and drop them on to a conveyor belt. The conveyor belt carries the bones to the end of the belt, where I and the other worker were stationed. I was shown how to take the bones off the belt, and put them in a tub. The tub is on wheels, and when the tub is full, I was shown to wheel the tub to the start of the boning line and empty the bones into a big plastic crate. Sometimes, the person doing this job must separate the larger and smaller bones, but at other times this is not required.
10. I started doing this job with the help of the worker who showed me how to do it. Normally only one person does this job. After doing the work for about two hours, I was able to do the job on my own, and the other worker went to do a different job. He told me if I was unsure about anything to ask the supervisor. At the start of each day I would usually ask the supervisor if I had to separate small and large bones that day. Apart from that, the only questions I had to ask the supervisor was if I was not sure whether a bone should be kept or not. Sometimes a bone might have a cyst which means it is not hygienic to keep and should be discarded. The supervisor was busy as and was not always in the area I was in. If there were bones, I was not sure about, I would put them to one side, and ask the supervisor when I saw him in the area I was working in. I would show the bones to the supervisor and he would make a call on whether they should be kept or discarded.
11. The training officer came up to me every couple of days. He might watch me work for a little while and then spoke to me briefly about how I was going. He did this over a period of about two weeks. I was then signed off by the training officer and my

supervisor as being competent in the bone pushing task. It might have been an extra week (perhaps three weeks in total) before I was actually signed off. However, I had been performing the job on my own after the first couple of hours at the task.

12. After being signed off as competent, I continued to do the job of pushing bones for about three months. The Training Officer asked me where I might like to work next. I expressed an interest in working on the Whizard Knife job.
13. A Whizard Knife operator works in the Boning Room, and uses an electrically powered knife to remove meat from between the ribs of the animal.
14. On the day I started this job, the Training Officer went through the Personal Protective Equipment (PPE) I was required to wear. When starting on this job, a Whizard Knife operator has to wear a full, sleeve-length mesh glove (it goes all the way to the shoulder). The Training Officer showed me where to collect the PPE and how to put it on. I estimate this took about twenty minutes.
15. I was then taken to a workstation in the Boning Room. At Oakey there are about seven or eight Whizard Knife operators in the Boning Room, and each has a separate bench or table as a workstation. I was at a table with another worker who showed me how to perform the job. I stood and watched him perform the job for about thirty minutes. After that, I did the work for the rest of the shift while the other worker stood at my shoulder and watched me.
16. From the second day on the Whizard Knife job, I was working on my own. I was told to ask my supervisor if I had any problems or if I was not sure about something. I do not remember having to do that for this job. The supervisor would walk up and down to check how we were going, but this was something he did for all of the Whizard Knife operators, not just the new workers. Again, the training officer would come and speak to me every couple of days over the next week or two.
17. Whizard Knife operators have to keep up with the pace of work of the Boning Room. They are also expected to collect one hundred kilograms (100 kg) or meat from the ribs in the course of a shift. Workers who have just started training in the job are told

that we were not required to remove 100 kg of meat, but we were encouraged to try and achieve this goal. I believe that I reached the target of 100kg on my third or fourth day working at the job. After that I generally reached the target every day. There were a couple of individual days where I did not reach the target, but I believe those were occasions that the Boning Room was boning types of cattle with less meat on the ribs.

18. Some people do take longer to reach the 100kg target. There were some people I saw being trained on the job who took a full week or even two before they could reach that target. When using a Whizzard Knife, the vibration of the knife can cause sore hands and it can take some people a couple of weeks to get used to it.
19. I was signed off as competent on the Whizzard Knife after I had been performing the job for about four weeks.

Dated this 30th day of November 2023

Signed:

[Redacted Signature]

KALEB COOPER

IN THE FAIR WORK COMMISSION

s.157 – Variation of Modern Awards

Matter no: AM2019/5259

Party: “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Union (AMWU)

REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS

OUTLINE OF SUBMISSIONS OF THE AUSTRALIAN MANUFACTURING WORKERS UNION

Introduction

1. On 22 September 2023 the Full Bench issued a Statement in this matter¹ (“September 2023 Statement”) which expanded the consideration of C14 rates to an additional 36 awards. Further, the Commission expressed provisional views that would limit the applicability of the C14 (and any classification below the C13 rate) to a limited time period, with C13 being the minimum classification rate for ongoing employment.²
2. The AMWU has an interest in the following Awards that are being considered by the Review:
 - a. Airline Operations – Ground Staff Award 2020
 - b. Architects Award 2020
 - c. Food, Beverage and Tobacco Manufacturing Award 2020
 - d. Graphic Arts, Printing and Publishing Award 2020
 - e. Joiner and Building Trades Award 2020
 - f. Manufacturing and Associated Industries and Occupations Award 2020
 - g. Oil Refining and Manufacturing Award 2020
 - h. Seafood Processing Award 2020
 - i. Sugar Industry Award 2020
 - j. Rail Industry Award 2020
 - k. Textile, Clothing, Footwear and Associated Industries Award 2020
 - l. Timber Industry Award 2020
 - m. Vehicle Repair, Services and Retail Award 2020
3. On 8 November 2022 the AMWU sought and obtained an extension to provide submissions and evidence to the Review in response to the September Statement. As such, this submission will mainly focus on the principle position concerning the C14 rate across Awards generally, and with specific reference to the classifications contained in the following Awards:
 - i. Food, Beverage and Tobacco Manufacturing Award 2020
 - ii. Manufacturing and Associated Industries and Occupations Award 2020
 - iii. Vehicle Repair, Services and Retail Award 2020

¹ [2023] FWCFB 168

² September 2023 Statement at [8]

Lodged by: AMWU

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4. The AMWU does not wish to add to its previous submissions in relation to either the Rail Industry Award 2020 or the Sugar Industry Award 2020.³
5. The AMWU has also filed a witness statement from Mr Paul Baxter, National Co-ordinator Skills and Training, in support of our position.

AMWU position on the C13 and C14 classification

6. The “C” Classification structure, as contained in the *Manufacturing and Associated Industries and Occupations Award 2020* (“Manufacturing Award”) is a skills based classification system which provides the ability of workers to progress to higher levels of pay as they acquire and use additional skills and knowledge in the workplace. It is a symbiotic relationship; generally work of higher value to the workplace requires the use of increased skills and knowledge. This should then be reflected in a higher classification for the worker, enabling them to earn higher wages.
7. The AMWU supports the Commission’s determination in the Annual Wage Review decision that the C14 rate of pay ‘does not constitute a proper minimum wage safety net.’⁴ In the AMWU’s opinion, the C14 classification has limited value as a stand-alone qualification. It is, at best, a placeholder that enables a worker with no relevant skills or experience to gain enough knowledge to be able to perform tasks. As Mr Baxter says in his statement “There are no skill qualifications required for the C14 classification.”⁵
8. In relation to the Manufacturing Award, the C13 classification is designed to apply to the performance of work with a 0-31 points weighting.⁶ As such, it can apply to a worker with no relevant skills or knowledge, up to a fairly rudimentary level of skill. In most workplaces and for most workers in the manufacturing industry it should also be properly seen as a transitional qualification.⁷
9. The AMWU notes that there is no uniformity in classification structures, and not all Awards have the classification above the minimum (whether C14, Level 1 or otherwise) as a similar transitional level where training is taken to progress to another level.⁸ As such, our support of the use of the C13 as the minimum classification for ongoing employment is somewhat qualified; if the C13 classification is seen as a transitional classification, it should continue to be treated as such and not be treated as an ongoing minimum rate of pay.

³ AMWU Submission dated 26 October 2022

⁴ September Statement at [6] quoting the *Annual Wage Review 2022-2023* [2023] FWCFB 3500 at [8]

⁵ Statement of Paul Baxter dated 10 November 2023 (“Baxter Statement”) at [6]

⁶ Baxter Statement at [6]

⁷ Baxter Statement at [9]

⁸ For example, although the Level 1 classification in the *Graphic Arts, Printing and Publishing Award 2020* is for a 38 hour induction period, there is no reference to the provision of training to allow progression from a Level 2 to a Level 3

Supported Wage Assessments under the Manufacturing Award

10. Although it is not strictly within the terms of the Review, the AMWU notes that the restriction of the C14 as a transitional classification of limited duration should prevent it from being used as the basis for determining a Supported Wage Assessment of workers with a disability. The AMWU finds it repugnant that workers with a disability should be paid a proportion of a wage that is less than the National Minimum Wage and requests that the Commission not approve any Supported Wage System Agreement which uses a classification below the National Minimum Wage for the basis of payment.

Response to the Commission's provisional principles for the Review

11. The AMWU supports the Commission's view that if the C14 rate is to be retained at all that it should only be a transitional classification. The AMWU does not support that the transitional period should be a minimum of six months. The C14 rate is not a probationary rate, it is designed for initial training within the workplace. It is the AMWU's view that the C14 rate should only apply for an induction period which, ideally, should be no longer than 38 hours.
12. The AMWU also notes that classifications should be written and interpreted based on skills and knowledge acquired or the time taken in structured training, not using arbitrary time frames. The reference to a certain number of months' experience should only be seen as being an indicator of whether an employee should be paid at a level below the C13 equivalent while they are being inducted; not a qualifying period of time before being eligible for the C13 (or equivalent) classification and rate of pay.

The Food, Beverage and Tobacco Manufacturing Award 2020

13. The AMWU notes that the Level 1 Classification of this Award requires that an "employee is undertaking up to 38 hours' induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance."⁹
14. However the Award provides that the transition from Level 1 to Level 2 can take up to 3 months.¹⁰ This provides an internal contradiction with Level 1 where seasonal and casual employees qualify for Level 2 after 4 weeks or 152 hours respectively.¹¹ The AMWU does not support this provision, given that the induction training is up to 38 hours long. Further, the progression to the higher level should be on completion of induction training, not based on an arbitrary time frame.
15. While it is the AMWU's preference that the Level 1 classification be deleted in its entirety, as an alternative the AMWU proposes that Clauses A.2.1 and A.2.3 be amended as follows:

⁹ *Food, Beverage and Tobacco Manufacturing Award 2020*, ("FBTM Award") Appendix A at A2.1

¹⁰ FBTM Award at A2.1(iii)

¹¹ FBTM Award at A2.1

A.2.1 Level 1 (78% relativity to the tradesperson)

(a) An employee at Level 1 has less than 3 months' experience (or 152 ordinary hours experience for a seasonal or casual employee) in the industry or enterprise and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. ~~Provided that the length of service required to advance to Level 2 for a seasonal employee is 4 weeks and for a casual employee is 152 hours.~~

A.2.2 Level 2 (82% relativity to the tradesperson)

(a) An employee at Level 2 is an employee who has either:

(i) completed a structured induction program ~~over 3 months or for such shorter period as is necessary~~ to reach the required level of competency for appointment to Level 2; or

(ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

Manufacturing and Associated Industries and Occupations Award 2020

16. The Manufacturing Award contains two separate classification structures, one for manufacturing in general and one specific to vehicle manufacturing.
17. In relation to the general manufacturing classification structure, it is the AMWU's position that the C14 classification (Clause 4.3) could be deleted in its entirety. If the Commission, however, believes that a classification below the C13 level is required, then the AMWU proposes the following amendments to Clause 4.4. These amendments are designed to ensure that the time periods are not seen as a qualifying time to progress to the C13 level, but a situation where it is appropriate to bypass the C14 level.

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee—Level II

- (i) An Engineering/Manufacturing Employee—Level II is an employee who has ~~completed up to 3 months structured training:~~
 - a. Previously completed a structured training program of at least three months duration or has equivalent experience in manufacturing; or
 - b. Completed the induction training program for the workplace so as to enable the employee to perform work within the scope of this level.

18. Similarly, in relation to the Vehicle Manufacturing Classification stream, there is a tension between the requirement that an employee needs a formal qualification to progress compared with an employee who holds a Certificate 1 being able to be placed at the C13 level automatically. As such, if the V1 classification is retained, the AMWU proposes the following amendments to Clause B.3.1

V2—Vehicle industry/production employee Level 2

B.3.1 A Vehicle industry/production employee—Level 2 is an employee who has:

- (i) Completed the induction training program for the workplace; or
- (ii) Has previously met the requirements of the Certificate I in Automotive Manufacturing (AUM10113), or equivalent.

Vehicle Repair, Service and Retail Award 2020

19. The AMWU is similarly concerned 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. The AMWU therefore proposes the following amendments to Clause A.1.1:

A.1.1 Vehicle industry RS&R—employee—Level 2 R2

An employee at Level 2 is an employee who has:

- (i) Previously completed up to 3 months structured training or has equivalent experience performing such work; or
- (ii) Has completed the induction training at the workplace

so as to enable an employee to ~~attain~~ possess job skills relevant to tasks performed at this level and to the level of their training:

Conclusion

20. The AMWU strongly supports the classification structures in Modern Awards representing both a strong safety net for workers, as well as progression through the structure being based on the acquisition of skills and knowledge as it occurs; not necessarily tied to a specific time frame.
21. As such, the AMWU believes that the C14 (or equivalent) should no longer be included in modern awards. If it must be used, it is solely to cover an induction period within the workplace, which should be limited to 38 hours. Further, the transition from this initial entry level should be based on the acquisition of the necessary skills; not time worked. We have therefore proposed amendments to three Awards to ensure that the transition to the National Minimum Wage equivalent occurs as quickly as possible.



Kathryn Presdee
Senior National Legal Officer
AMWU

10 November 2023

IN THE FAIR WORK COMMISSION

Matter no: AM2019/5259
Review of Certain C14 rates in Modern Awards

Party: “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (“AMWU”)

STATEMENT OF PAUL BAXTER

On 10 November 2023, I, Paul Baxter of 366 Upper Roma Street, Brisbane, Qld, state as follows:

Introduction

1. I am the National Co-ordinator Skills and Training for the AMWU. I have been in this position since August 2022. I have been employed by the AMWU since 2007.
2. During my 16 years at the AMWU I have been involved in the application, development and implementation of competency standards, particularly in relation to the Manufacturing Industry, and the interaction between those standards and the “C” classification structure contained in the *Manufacturing and Associated Industries and Occupations Award 2010* and the *Manufacturing and Associated Industries and Occupations Award 2020* (“Manufacturing Awards”). While most of my work has been involved with the classifications in the Manufacturing Awards, I have also provided advice and assistance in relation to classification disputes across different industries and Awards in the national, as well as State based jurisdictions.
3. I am also the AMWU representative on the Manufacturing Industry Skills Alliances, which is the Jobs and Skills Council for the industry, which has responsibility for the development of the Manufacturing and Engineering Training Package (MEM). I also represent the AMWU on other Jobs and Skills Councils including those for the Construction and Vehicle industries. I am also the AMWU representative of the Manufacturing Skills Queensland Advisory Group.

The C14 and C13 Classifications

4. The classification in the Manufacturing Awards is tied to the skills and knowledge that workers use to perform tasks in the workplace. Such skills and knowledge are reflected in competency standards that are determined through the MEM training package. For some of the classifications (C10 and above), the levels are tied to formal qualifications (such as a Certificate III in Engineering) and progression from one classification to the next requires the acquisition of skills and knowledge that could be counted towards a higher classification.

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5. For non-trades classifications (C11 – C14) the competency standards are reflected by a points weighting. The points weighting represents the value of those skills and knowledge in the workplace. The points weighting is determined by the industry partners when developing the MEM; it is not linked to any time-based training formula. The greater level of skills and knowledge required to perform a task, usually results in a higher value to the workplace and therefore a higher points weighting. As workers in non-trades roles perform more skilled work, it should be reflected in progression to a higher classification.
6. Both the C13 and C14 classifications can be used for people with no or little skills and knowledge of particular tasks. There are no skills qualifications required for the C14 classification and the C13 classification is appropriate for work that has a 0-31 points weighting for such skills and knowledge.
7. The C14 classification is a placeholder qualification and, realistically, does not need to be used by an employer at all. At best the C14 might cover an induction process, especially for someone who has no skills or experience in the industry. The limitation of 38 hours in the Manufacturing Awards should easily be sufficient to transition to the C13 level.
8. In the Manufacturing Awards there is no requirement for a worker to have completed accredited training to progress from C14 to C13. While some workers may have a Certificate I qualification at the C13 level, this should be seen as an entitlement to be employed at the C13 level on commencement of their employment, as it carries a points weighting of 16. The Certificate I is not a prerequisite for any qualification under the MEM.
9. In my experience with the AMWU, I have rarely seen ongoing employment that is performed at the C13 level. Such work would be in an extremely narrow and limited production environment with a worker performing minor tasks. As the Manufacturing Awards states that it is for workers who have completed up to three months of structured training; it should also be seen as a transitional classification for workers.



Paul Baxter
10 November 2023



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IN THE FAIR WORK COMMISSION

s.157 – Variation of Modern Awards

Matter no: AM2019/5259

Party: “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Union (AMWU)

REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS

SUBMISSIONS IN REPLY OF THE AUSTRALIAN MANUFACTURING WORKERS UNION (AMWU)

Introduction

1. On 22 September 2023 the Full Bench issued a Statement in this matter (“**September 2023 Statement**”)¹, and invited submissions by interested parties on its provisional views. These submissions are in response to the issues raised by other parties filed in this matter. The AMWU continues to rely on its earlier submission of 10 November 2023².

AiG Submission

2. The Australian Industry Group (**AI Group**) assertion that employees can indefinitely remain at the C14 level, performing unskilled tasks, is fundamentally at odds with the ethos and intent of the *Manufacturing and Associated Industries and Occupations Award 2022* (**Manufacturing Award**) to provide for workers to progress to higher levels of pay through acquisition of skills and knowledge. Mr. Baxter witness statement (at paragraph [6])³ highlights that both C13 and C14 classifications are for those with limited skills and knowledge, but these classifications are stepping stones to higher levels as skills and knowledge increase, not permanent placements.

¹ September 2023 Statement at [8]

² [AMWU submission](#) and Statement of Paul Baxter dated 10 November 2023

³ [Witness Statement of Paul Baxter](#) dated 10 November 2023 (“Baxter Statement”) at paragraph [6]

3. Contrary to the AI Group interpretation⁴, Mr. Baxter witness statement (at paragraphs [4] and [5])⁵ reinforces our assertion that the classification system is skill and knowledge-based. It is not, and should not be, a mechanism for indefinitely employing workers at the lowest possible wage scale without regard to skill acquisition or knowledge enhancement.
4. The AI Group interpretation of **Proposed Principle 1 and 2**⁶ lacks clarity and fails to consider the practical application within the workplace. the AMWU presses its submission that, is that progression from C14 to C13 does not necessitate formal training or certification but is based on the acquisition of skills and knowledge relevant to the workplace⁷.
5. The AMWU supports the view the Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division) (**CFMMEU**) proposed in their submission⁸ filed on 8 November 2023 in regard to the C14 classification in the Manufacturing Award . Our view is also that the C14 rate, if the Commission's view is to retain it, it should be limited in scope to a maximum of 38 hours induction only and that on completion of such induction an employee will transition automatically to the next level C13.
6. The AMWU also believe that the interpretation of AIG Group of the Vehicle, Repair Services and Retail Award 2020 (**Vehicle Award**) according to which an employee may be classified indefinitely at the C14 level under the Vehicle Award, it is not correct and should not be supported as explained in our previous submission of 10 November 2023⁹.

Conclusion

7. The AMWU maintains its position that the C14 classification, as currently utilised in the Manufacturing Award does not warrant inclusion as a long-term or ongoing employment rate. It serves, at most, as an induction classification, as evidenced in Mr. Baxter witness statement (Paragraph 7), which clearly outlines that the C14 classification might cover an

⁴ AIG submission dated 6 November 2023 at [13], [14] and [15].

⁵ Mr. Baxter statement at paragraph [4] and [5]

⁶ September 2023 Statement at [8], AIG submission dated 6 November 2023 at [9], [10], [11], [12], [13], [14], [15], [16] and [17].

⁷ [AMWU submission](#) and Statement of Paul Baxter dated 10 November 2023 at paragraph [6],[7], and [8]

⁸ Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division) (**CFMMEU**) submission dated 8 November 2023 at paragraph [17]

⁹ [AMWU submission](#) dated 10 November 2023 at paragraph [18] and [19]

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induction process, especially for inexperienced workers. This aligns with our view that the C14 classification is a transitional phase, not a sustainable employment level.

8. Mr. Baxter witness statement (Paragraph 9)¹⁰ indicates that ongoing employment at the C13 level is rare, reinforcing our position that the C13 classification should not be seen as an ongoing minimum rate but a stepping stone to a higher classification as employees acquire more skills and knowledge.



Luigi Amoresano
National Research Officer
AMWU
1 December 2023

¹⁰ Witness Statement of Paul Baxter dated 10 November 2023

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

Submissions by APESMA in relation to the Architects Award 2020

1. The Full Bench in the current *Review of certain C14 rates in modern awards* invited interested parties to provide our submissions on certain matters set out in the 22 September 2023 *Statement* [2023] FWCFB 168 (the Statement). Having considered the matters raised in the Statement, The Association of Professional Engineers, Scientists and Managers, Australia t/as Professionals Australia (APESMA) would like to make the following submissions with respect to the Architects Award 2020.

A. Submissions in respect of the *provisional view* set out in the Statement at paragraph [8].

2. APESMA supports the propositions set out in (1), (2) and (3) in paragraph [8] of the Statement which comprise the *provisional view*.
3. The propositions are in line with the conclusions reached by the Expert Panel set out at paragraph [6] of the Statement that the C14 rate was intended to be a transitional entry rate only and 'does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment'.
4. It follows that pay rates which are less than the C13 rate also fail to provide a proper minimum wage safety net for employees who are employed in ongoing employment under a modern award.
5. It is also relevant to note that the C13 rate is found in the Manufacturing and Associated Industries and Occupations Award 2020 as part of the C1-C14 skills-based classification structure that it contains. It is set at 82% of the qualified tradesperson's rate of pay. The descriptor for the C13 pay rate is that it applies to employees undergoing 'in house training'.¹

B. Submissions with respect to the accuracy of the table at Attachment D of the Statement

5. Our review of the entries set out for the Architects Award 2020 (MA000079) in the Table finds them to be accurate as follows:
 - i. there are two classifications which provide rates below the C13 rate of pay:
 - a) Students of Architecture (21 years of age and over): Less than 3 years of experience; and

¹ Refer to the table in Schedule A of the Manufacturing and Associated Industries and Occupations Award 2020.

- b) Students of Architecture (21 years of age and over); 3rd year of experience; and
 - ii. the rate of pay which is set out for each classification.
- 6. However, the characterisation of the classification of Student of Architecture (21 years of age and over): Less than 3 years of experience as a ‘transitional entry’ classification would appear to be applying a much broader definition of a ‘transitional entry’ classification than otherwise applies in modern awards. This is discussed further below.
- 7. The classification of Student of Architecture (21 years and over): 3rd year of experience is described in the Table as being ‘(v) the classification level is not transitional’ but has a rate of pay that is between the C13 and C14 rates of pay. We note that this is also an accurate description.
- 8. The Table does not mention the third category of the classification of Student of Architecture for those employees who hold a Bachelor degree which provide a pathway to the Masters of Architecture.² It is not suggested that this amounts to an omission from the Table - the pay rate which applies to this category within the classification is above the C13 rate.

C. Draft determinations or proposals for any specific award variations that might be necessary

- 8. However, it is our view that the existing categories which come within the classification of Student of Architecture need to be reviewed when the nature of the work performed under this Award along with the level of experience and qualifications held by the employees performing it are considered.
- 9. The Architects Award 2020 defines a Student of Architecture in clause 2 as follows:

Student of Architecture is an employee who is normally enrolled in a Bachelor’s Degree with a pathway to a Master of Architecture and who is employed to gain experience in the practice of architecture.
- 10. This definition of Student of Architecture is deficient in that it fails to recognise that a person may have attained a Bachelor’s degree and be working. This becomes apparent only when the category referred to in paragraph [8] above is taken into account.
- 11. The witness statement made by Melissa Cadwell (“the Witness Statement”) annexes a copy of the Accredited Architecture Qualifications which make clear that for the purposes of approved qualifications, a person must hold an approved Masters in Architecture qualification. It is also apparent from this document that previously an approved Bachelor’s degree sufficed.
- 12. It is evident from the Witness Statement that the Student of Architecture classification level is not solely for the purposes of work experience required to be undertaken as part of a university course or undertaken over the university vacation period as might otherwise be surmised from the classification’s name. It is a classification level used to extensively employ employees to perform drafting and other work.³

² Refer clause 13.5(c) of the Architects Award 2020

³ Paras [6] and [7] of the Witness Statement refers

13. We propose that the re-setting of the pay rates for the two Student of Architecture classification categories which are below the C13 rate cannot be properly set without a review of the third category which applies to those who hold a Bachelor's Degree (which provide a pathway to the Masters of Architecture) as well. This third category provides pay rates as follows:
- 1st year – 85% of the first year Graduate Architect rate
 - 2nd year – 90% of the first year Graduate Architect rate
 - 3rd year – 95% of the first year Graduate Architect rate⁴

The first year Graduate Architect rate is currently \$30.58 per hour or \$1162.10 weekly.⁵ Our calculations are that the hourly rate for the 1st year is \$25.99; 2nd year is \$27.52; and 3rd year is \$29.05.

14. Based on our calculations an employee working under this classification who holds a Bachelor degree (which provides a pathway to a Masters in Architecture) earns:
- the equivalent of between the C10 and C11 rates in their first year;⁶ this is less than the newly qualified Level 1 tradesperson earns under the Manufacturing and Associated Industries and Occupations Award;
 - the equivalent of between the C9 and C8 rates in their 2nd year;⁷ this is marginally above what the Level 1 tradesperson engaged in draughting work earns in their first year (C9)
 - the equivalent of between the C7 and C6 rates in their 3rd year;⁸ this is marginally above what the technical officer engaged in more detailed draughting work earns.

On this preliminary desk top analysis, the pay rates of those working under the classification of Student of Architecture who hold a relevant Bachelor's degree appear to be under-valued.

15. It is recognised that a more detailed analysis of the work undertaken by those employed in the different categories of the Student of Architecture is required for a proper work value assessment to be undertaken. We are pointing out these issues at this time because the current pay settings for this third category (which does not have pay rates below the C13 rate) nonetheless restricts the extent to which the current review can address properly the pay rates which should apply to the two categories within the Student of Architecture classification that currently have pay rates that are below the C13 rate.
16. It is our view that the classification of Student of Architecture needs more detail and possibly needs to include more categories to recognise the range of experience, knowledge and skills that it can cover.
17. It is also our view that the pay rates currently provided seemed to be based on a perception that employees working under this classification are primarily employed so they might gain experience as distinct from our experience that staff are

⁴ Refer to table in clause 13.5(c) of the Architects Award

⁵ Refer to table in clause 13.1 of the Architects Award

⁶ Refer to the table in clause 20.1 of the Manufacturing and Associated Industries and Occupations Award

⁷ *ibid*

⁸ *ibid*

extensively employed under this classification and provide skills, knowledge and experience of significant value to the architecture firms and when considered against classifications under other Awards.

18. In summary, APESMA proposes that it is appropriate to take immediate steps to lift the pay rates which apply to the two categories in question. To this end, we propose that:
- the C13 rate is the applicable 'transitional' rate for the first 3 months when it is seen in context as the rate for 'in-house training under the Manufacturing and Allied Industries and Occupations Award;
 - there is an interim determination made for the pay rates to apply to the 'Under 3 years' experience' and the '3rd year experience' categories of the classification pending a work value determination and review of the Student of Architecture classification.

The Association of Professional Engineers, Scientists and Managers, Australia t/as
Professionals Australia

3 November 2023

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

Architects Award 2020 (M000079)

WITNESS STATEMENT OF MELISSA CADWELL

I, Melissa Cadwell, of 152 Miller Street, West Melbourne in the State of Victoria state the following:

1. I make the statement from my own knowledge unless stated otherwise. Where I refer to matters within the statement on the basis of information and belief, I identify the source of that information and believe those matters to be true.
2. I am employed as a Senior Organiser in Victoria for The Association of Professional Engineers, Scientists and Managers, Australia trading as Professionals Australia (“the Union”). In this role, there are two parts to my responsibilities. One part relates to my organising responsibilities in various workplaces which includes the bargaining and negotiation of enterprise agreements. The other part which is relevant to making this statement is that I am the Executive Officer of the union’s Architects Divisional Committee.
3. The Architects Division is established under the rules of the union. The Architects Divisional Committee (“Committee”) is comprised of the offices of President, Vice-President, Secretary, Treasurer and six other committee members who are elected by the members of the Architects Division every 2 years. The practice of the Committee is to meet monthly and is usually open to all Architects Division members to attend.
4. My role as Executive Officer is to be the conduit between the Committee which sets the strategic direction and priorities for progressing the industrial interests of the architect members and the operational side of the union which seeks to implement these. I have been performing these duties since February 2022.
5. The Architects Award 2020 (“the Award”) is often the subject of discussion by the Committee and by members. Discussions will be about the provisions of the Award and also how it is applied by employers (architecture firms). The Award is of major significance to our members because to my knowledge there are no enterprise agreements which apply to architecture firms.
6. From my discussions with the committee and members, the classification of the Student of Architecture is one in which those studying towards becoming an architect are

engaged under by architecture firms to undertake drafting and other architectural duties. However, I have been informed on numerous occasions by members that they are not doing this as a course requirement for their university degrees. It is no more than the classification on which they are employed to work within an architecture firm.

7. I have also been advised that:
 - a. Our members employed in the classification of Student of Architecture are usually employed at the minimum award rate of pay;
 - b. They may be employed on either a casual, fixed term or an ongoing basis;
 - c. Their level of experience in performing the duties they are allocated will vary from when they are inexperienced first year students to experienced, ongoing employees. There are many experienced employees working in this capacity undertaking drafting and other architectural duties on a full time and regular part time basis;
 - d. They may be paid on the basis of an annual salary;
 - e. For the majority of those working towards becoming an Architect, it has become the practice to take at least a year off and work in an architecture firm. This is seen as necessary in order to obtain future employment as an Architect;
8. A person who is employed as a Student of Architecture remains in this classification while working for an architecture firm until they have attained a Masters in Architecture. This involves a minimum of 5 years full time tertiary level study. Annexed hereto and marked "A" is a copy of the Accredited Architecture Qualifications which sets out that a Masters level of qualifications are the approved level of qualifications required for undertaking the examination to become a Registered Architect.
9. For the reasons I have outlined briefly above, I have heard many stories from members who really struggle to make ends meet while working at the Student of Architecture classification level.

MELISSA CADWELL

3 November 2023

The Architecture Program Accreditation Procedure in Australia and New Zealand sets out the peer review process through which all architecture programs in Australia are assessed against the accreditation standard over five years or ten semester equivalence of learning cycle. This assessment is made by an independent Accreditation Review Panel, composed of practicing architects and academics, which then makes a recommendation on whether and for how long a program should be accredited.

The Procedure is administered by the Architects Accreditation Council of Australia (AACAA) on behalf of the State and Territory architect registration boards who are responsible for the regulation of architects via the State and Territory Architects Acts. The New Zealand Architects Registration Board licences the Accreditation Procedure from the AACAA for the purpose of accrediting architecture programs in New Zealand.

The eight state and territory architect registration boards have statutory responsibility for the accreditation of architectural programs of study within their jurisdictions. Accredited programs are recognised in all other states and territories (and New Zealand and Hong Kong). By agreement, architect registration boards are guided by the recommendations of the Accreditation Review Panel, however they are not bound to accept those recommendations.

All Australian qualifications accredited for the purpose of entry to the Architectural Practice Examination are listed in the table below, and continued on page 2.

Currently Accredited Australian Qualifications

Tertiary Education Provider	Currently Accredited Qualification and Course Code	Previously Accredited Qualification and Course Code
ACT		
University of Canberra	M Arch 913AA	B Arch
NSW		
University of Sydney	M Arch MAARCHIT-02	B Arch, MAARCHIT2000
University of New South Wales	M Arch 8143	B Arch
University of Technology, Sydney	M Arch C04235	B Arch; Advanced Dip in Arch (NSWIT)
University of Newcastle	M Arch 12060	B Arch
Western Sydney University	M Arch 3761 (from Nov 2021)	
QLD		
Bond University	M Arch SD-93017 M Arch (Prof) SD-93045 (from June 2022)	
The University of Queensland	M Arch 5429	B Arch (M Arch Studies, General Practice Stream – 1997)
Queensland University of Technology	M Arch DE80 M Arch DE83 (from Mar 2023)	M Arch AR49; B Arch; (Grad Dip Arch): Dip Arch)
Griffith University	M Arch 5558	
SA		
University of Adelaide	M Arch SATAC 3CM015 M Arch M Land Arch SATAC 3CM021 (from Nov 2022)	B Arch; (Dipi Tech [Arch])
University of South Australia	M Arch DMAE	B Arch; (Dipi Tech [Arch])

TAS

University of Tasmania M Arch D7C B Arch; (Grad Dip Arch); (Dip Arch)

VIC

Royal Melbourne Institute of Technology M Arch MC163 B Arch; (assoc & Fellowship Dips in Arch)

Deakin University M Arch S700 M Arch (DM) S711 (2018-2020)

M Arch (DM) S701

University of Melbourne MC-ARCH A05-DA or MC-ARCH2Y; M Arch A05-DB or MC-ARCH3Y

M Arch – Option C (052)*; B Arch. (*Students who have completed the 150 M Arch are advised to contact the Faculty of Architecture, Building & Planning to ascertain whether they meet the requirements for Option C)

MC-ARCHENG

(from Nov 2021)

Monash University M Arch F6001 (from 2016) M Arch 3120 (until 2015)

Swinburne University of Technology MA-ARC (from Jun 2021) MA-ARCHUD (from Jun 2021)

WA

University of Western Australia M Arch 25520

Curtin University M Arch MC-ARCH MC-ARCH 310460
B-ARCH; (assoc in Arch)

Curtin University delivered online through Open Universities Australia M Arch OM-ARCH (from Nov 2018)

University of Notre Dame, Australia M Arch 5152 (from Nov 2020)
(Fremantle Campus)

Currently Accredited International Qualifications

There are also a number of international academic qualifications in architecture or Board examinations from countries with which AACA has a mutual recognition agreement that allow entry to the Architectural Practice Examination. They are listed in the table below.

Tertiary Education Provider	Currently Accredited Qualification and Course Code	Previously Accredited Qualification and Course Code
New Zealand		
Auckland University of Technology	M Arch (Prof) AK1338	N/A
UNITECH Institute of Technology	M Arch (Prof) MARCP	B Arch
University of Auckland (University of New Zealand)	M Arch (Prof)** M Arch (Prof) HerCons * M Arch (Prof) UrbDes * M Arch (Prof) UrbPlan * M Arch (Prof) HousSt ** * from Sep 2016 ** discontinued from Jan 2024	B Arch; (Dip Arch)
Victoria University of Wellington	M Arch (Prof)	B Arch
Join NZIA/AERB Special Examination	Certificate	

Hong Kong

University of Hong Kong	M Arch (Dec 2010-2027)
	M Arch (Design) (2022-2024)
Chinese University Hong Kong	M Arch (Dec 2010-2025)
Chu Hai College of Higher Education Hong Kong Chu Hai College (from 2022)	M Arch (2017-2027)

Singapore

National University of Singapore	M Arch (Design) (from July 1999 – May 2028)
Singapore University of Technology and Design	M Arch (2023-March 2028)

Alternative Pathways to the Architectural Practice Exam

In addition to the accredited architecture qualifications listed in the earlier tables, there are a number of alternative pathways to the Architectural Practice Examination described below.

<u>Overseas Qualifications Assessment</u>	For practitioners who have completed an architectural qualification outside Australia
<u>National Program of Assessment</u>	A practical examination for experienced practitioners with relevant industry experience but no architectural qualification
<u>NSW Portfolio Program of Assessment</u> (from 2020)	Offered by the NSW Architect Registration Board, this is a competency based “assessment by portfolio” process that provides a pathway to the Architectural Practice Examination for those who have exemplary skills and substantial ‘Executive’ level industry experience in the architectural services profession, but no approved architectural qualification.
<u>NSW Built Work Program of Assessment</u> (until 2020)	
<u>UK Qualifications Recognition</u>	An accredited qualification from the United Kingdom that has been assessed by the AACA through the UK Qualifications Recognition.

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

SUBMISSIONS – THE AUSTRALIAN WORKERS’ UNION

Broad view

1. The Australian Workers’ Union (**AWU**) submits that the Full Bench should give continued consideration to increasing any modern award (adult) minimum rates that are below the C13 / national minimum wage (**NMW**) rate of \$23.23 per hour.¹
2. The need to lift sub-C13 rates is particularly apparent, for example, where an award provides for two progressive levels, both of which are below the C13 rate (for example, ‘Aquaculture Attendant Level 1’ and ‘Aquaculture Attendant Level 2’ under the *Aquaculture Industry Award 2020*). In these instances, the AWU submits that, at the very least, the Level 2 rate should be increased to the C13 rate.
3. In the alternative, where it is not determined to lift sub-C13 rates, the AWU is strongly supportive of the provisional view expressed at paragraph [8] of the Full Bench’s Statement of 22 September 2023 (**Statement**).
4. In light of the decision of the Expert Panel in the *Annual Wage Review Decision 2022-2023*² (**AWR 2023 decision**), and the C14 rate now falling below the NMW or C13, any remaining modern award classifications paid at below the C13 rate should be clearly delineated as being of a genuinely transitional, non-ongoing nature. After a maximum fixed period on any remaining sub-C13 rate, progression to at least the NMW should be automatic.
5. The AWU submits that both of these approaches are justified as being necessary to achieve the modern awards objective of providing a fair and relevant minimum safety net of terms and conditions, in accordance with s 157(1) of the *Fair Work Act 2009* (**FW Act**), and having regard to the considerations in s 134(1). They may also be found to be justified

¹ Note that an exception to this proposal is the joint submission made in relation to the *Dry Cleaning and Laundry Industry Award 2020*.

² [2023] FWCFB 3500.

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by 'work value reasons', as required under ss 157(2)-(2B), and consistent with the minimum wages objective of establishing and maintaining a safety net of fair minimum wages, in accordance with s 284.

Proposals in respect of specific awards

Horticulture Award 2020

6. Submissions with respect to the Horticulture Award are supported by the witness statements of Mr Shane Roulstone (AWU National Organising Director, dated 3 November 2023), Mr Steven Carter (AWU, NSW North Coast Organiser, dated 2 November 2023), and Mr Anthony Beven (AWU, Tasmanian Branch, Organiser, dated 2 November 2023).
7. The Horticulture Award should be varied to ensure that employees in the Horticulture industry cease to be paid at the Level 1 (C14) rate altogether or, in the alternative, cease to be paid at that rate on a routine and ongoing basis.
8. The AWU agrees with observations made in Attachment D to the Statement that the current classification structure in Schedule A of the Horticulture Award does not include any hard requirement to transition from Level 1 to Level 2 after 3 months, and that Levels 1 and 2 have distinct duties, independent of the training requirement.

Option 1 (preferred) - Vary Level 1 and Level 2 rates

9. Clause 15.1 of the Horticulture Award should be varied to provide that Level 1 employees are paid at the C13 rate. This is proposed for the following reasons:
 - a) It is well documented and was accepted by a Full Bench of the Commission in *Application by The Australian Workers' Union to vary clause 15 of the Horticulture Award 2020* [2020] FWCFB 5554 (***Piece rates decision***) that workers in the horticulture industry are particularly vulnerable to exploitation.³ The work is labour intensive and predominantly seasonal. There is a high proportion of casual and contract labour and more than half of the seasonal harvesting workforce are temporary migrant workers.⁴
 - b) The current classification structure does not provide for any clearly defined or secure pathway from Level 1 to Level 2. Level 1 employees are said to include "a new employee"⁵ but that term is left undefined, and "a new employee" may not be undertaking structured training.⁶ The reference to having "completed up to 3 months structured training" in the description of a Level 2 employee does not

³ *Piece rates decision* at [36]-[48], [280], [362], [429].

⁴ *Ibid.*

⁵ Horticulture Award, cl A.1.2.

⁶ Horticulture Award, cl A.1.3.

guarantee that the completion of any period of training will result in progression to Level 2.

- c) The existing structure provides ample scope to engage employees to undertake ongoing and productive work at the Level 1 classification. Level 1 employees are “responsible for the quality of their own work”, which may include, for example, “work of a manual nature”, “general labouring duties”, “fruit or vegetable picking, thinning or pruning”, “sorting, packing or grading of produce...”, or “operating a small towing tractor”.
- d) The “induction training” described in the first bullet point of clause A.1.2 is predominantly introductory and enterprise specific.
- e) Employees in the horticulture industry are not usually provided with structured training prior to undertaking ongoing and productive work.

10. Having regard to the *AWR 2023 decision*, the Statement and the above considerations, making this variation outside of the system of annual wage reviews is necessary to achieve the modern awards objective of providing a fair and relevant minimum safety net of terms and conditions, in accordance with s 157(1) of the FW Act and having regard to the considerations in s 134(1). The proposed variation is justified by ‘work value reasons’, as required under ss 157(2)-(2B), and is consistent with the minimum wages in s 284.

11. If that approach is amenable to the Full Bench, it is proposed that clause 15.1(a) also be amended to lift the Level 2 rate from \$23.23 to \$23.55. This is an increase of 1.38 per cent and would ‘split the difference’ as between the existing Level 2 and Level 3 rates.

12. In the AWU’s submission, raising the Level 2 rate outside of the system of annual wage reviews is consistent with the statutory requirements referred to above, particularly having regard to the labour intensive nature of the work and the level of skill and responsibility involved in working at the Level 2 level, as is evident from the existing classification structure.

13. A level 2 employee has necessarily undergone three months of structured training. Their indicative duties include, for example, the set up and operation of equipment, assembling/dismantling components using diagrammatic instructions, irrigation, spraying or pruning under general supervision, sorting, packing and grading beyond the scope of Level 1 duties, operating tractors with engine capacity of up to 70 kW, product testing, assisting other employees, and assisting in the provision of on-the-job training. Such duties clearly warrant a level of payment above the NMW.

Option 2 - Vary classification structure

14. If the Full Bench does not favour the approach of varying the Level 1 and Level 2 rates as part of the C14 Review, then in the alternative, the AWU submits that it is necessary to vary the classification structure in Schedule A to ensure that employees progress to Level 2 automatically, after completing 76 hours of work in the industry.
15. This approach is supported by the considerations referred to above at paragraph 9, above.
16. It is also consistent with the *AWR 2023 decision*, the Statement and the relevant statutory requirements referred to at paragraph 10, above.
17. This proposal would achieve the objects of the FW Act, the modern awards objective and the minimum wages objective because it serves to maintain a fair and relevant minimum safety net.⁷ In particular, it would support the “relative living standards and the needs of the low paid”,⁸ and the need to ensure modern awards are “simple”, “easy to understand”⁹ and “enforceable”¹⁰.
18. The proposal also finds support in the decision of a Full Bench in the *Piece rates decision* to vary clause 15.2 to include a new definition of “piecemaker competent at the piecework task”, as follows:¹¹
- piecemaker competent at the piecework task*** means a pieworker who has at least 76 hours’ experience performing the task (for example, picking apples, picking strawberries or pruning grape vines).
19. A strong implication from this variation is that workers in the horticultural industry become competent at their work after 76 hours of performing the task.
20. The *Piece rates decision* culminated from comprehensive evidence provided by government, employee and employer organisations, employees, employers and experts.
21. Evidence from multiple growers, led by the National Farmers’ Federation, indicated that it can take as little as a day, or 2-3 days, before a worker is able to start picking at the rate of a competent worker.¹²

⁷ Ss 134 and 284 of the FW Act.

⁸ Ss 134(1)(a) and 284(1)(c).

⁹ S 134(1)(g).

¹⁰ S (3)(b).

¹¹ Horticulture Award, cl 15.2(a)(iv); *Piece rates decision* at [559] and [564]; see also *Application by The Australian Workers’ Union to vary clause 15 of the Horticulture Award 2020* [2022] FWCFB 4 (*Second piece rates decision*) at [66]-[74].

¹² *Piece rates decision* at [415].

22. For example, the evidence of Ms Anna Reardon, a farmer in Tasmania, dated 9 June 2021, included: ¹³

“It usually takes a cherry Picker about a day to start picking at the rate of a competent worker and it usually takes an apple Picker about two days to start picking at the rate of a competent worker.”

23. Evidence of Mr Brent McClintock, a Senior Orchard Manager in Tasmania, dated 9 June 2021, included: ¹⁴

“Fruit picking is certainly not an ‘unskilled’ role. It is possible to become highly proficient through experience, fitness and practiced technique. I expect most pickers will reach a competent skill level within about a week, although this may vary from picker to picker. The difference between a worker who is not competent, who is competent, and who is proficient mostly comes down to their economy of movement and use of time for example knowing how to move about the tree and down the row, and use of techniques to minimise time such as placement of bags and ladders.”

24. Evidence of Mr Anthony Kelly, Chief Financial Officer for the N&A Group – a growing, distributing, wholesaling and exporting business, with operations for growing apples and berries in Batlow, NSW – dated 9 June 2021, included: ¹⁵

Our casual pickers reach competency with a few days and our pruners are generally competent within a day. Some workers are on hourly rates until they become competent. ...

Pruning is a skill that can be learned to a reasonable level of competence and productivity within a day.

25. Evidence of Mr Richard Eckersley, farmer in Western Australia, dated 9 June 2021, included: ¹⁶

Citrus fruit must be carefully picked or snipped off at the stem with some technique involved. Usually, it takes 2-3 days for a picker to become competent. We rely on the

¹³ *Piece rates decision* at [415]; Court Book ref CB2775 at [18]; the Court Book is available here: <https://www.fwc.gov.au/documents/awards/variations/2020/am2020104-courtbook-120721.pdf> ; Attachment SR-1 to Statement of Shane Roulstone, dated 3 November 2023.

¹⁴ *Piece rates decision* at [415]; Court Book ref CB2958 at [16]; Attachment SR-2 to Statement of Shane Roulstone, dated 3 November 2023.

¹⁵ *Piece rates decision* at [415]; Court Book ref CB2780 at [13] and CB2781 at [22]; Attachment SR-3 to Statement of Shane Roulstone, dated 3 November 2023.

¹⁶ *Piece rates decision* at [415]; Court Book ref CB3056 at [19]; Attachment SR-4 to Statement of Shane Roulstone, dated 3 November 2023.

Australian Fresh Citrus Harvest Handbook to train our staff. A copy of the handbook is annexed hereto and marked "A". Some will need more training in technique and talking it through.

26. The evidence of Mr Michelle Distill, who operates an orchard in Spreyton, Tasmania, was also referred to, as follows:¹⁷

The orchard's seasonal pickers are all pieceworkers. When they arrive at the orchard, workers are told what the work is, what the piece rate is, and they sign a pieceworker agreement. They are inducted on site at the same time, and start work that day.

27. It follows that in order to ensure the modern awards objective is met, after a short period of familiarization with the work, employees should be paid at least the equivalent of the NMW.

28. It is appropriate to vary the classification structure in Schedule A of the Horticulture Award to provide that Level 1 becomes a temporary 'Introductory level', akin to, for example, clause A.1 of Schedule A of the *Hospitality Industry (General) Award 2020*.

29. It was observed in *Fair Work Ombudsman v Hu (No 2)*¹⁸ and in the *Piece rates decision*¹⁹ that notwithstanding previous prescription for piece work rates to be negotiated or agreed to by workers, piece rates have generally been determined unilaterally by employers on a 'take it or leave it' basis.

30. Because similar considerations apply here and because of the transient and temporary nature of work in the industry, a cautious approach should be taken to varying the Level 1 classification. The Level 1 Introductory level should therefore not include any ability to be extended beyond the minimum period of 76 hours by agreement and should recognize prior experience in the industry.

31. The variation sought would also reflect that individual fruit harvest seasons may be as short as 2 weeks.²⁰

32. When considering draft variations following the *Piece rates decision*, a Full Bench rejected various proposals made by employer organisations to require the 76 hours' experience to have been acquired with the particular employer's enterprise.²¹

¹⁷ *Piece rates decision* at [341].

¹⁸ [2018] FCA 1034 at [25].

¹⁹ *Piece rates decision* at [94], [97] and [336]-[338].

²⁰ *Second piece rates decision* at [73].

²¹ *Ibid* at [70]-[74].

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33. Consequential amendments to the description and indicative duties for Level 2 would be required.
34. It is acknowledged that a difficulty with this approach is that it may result in inequities between relatively new entrants to the horticultural industry and more experienced workers as both cohorts would become entitled to the same Level 2 rate. The issue could be revisited at a later stage. Note that Option 1 avoids the problem.
35. Draft proposed variations, implementing Option 2, are included at **Annexure A**.

Dry Cleaning and Laundry Industry Award 2020

36. A separate joint submission has been made by the Drycleaning Institute of Australia, Laundry Association Australia, Australian Business Industrial and the NSW Business Chamber (**ABI and NSWBC**), Construction, Forestry, Mining and Energy Union (Manufacturing Division), the AWU and the United Workers' Union (**UWU**).

Funeral Industry Award 2020

37. As referred to at paragraph [17] of the Statement, prior to the *AWR 2023 decision*, the UWU, AWU, Australian Funeral Directors Association and ABI and NSWBC reached a joint proposed position.
38. That position was outlined in correspondence from the UWU to the Chambers of Deputy President Hampton, dated 8 December 2022.²² It involved:
- a) the creation of a new Introductory Level (clause 12.1), paid at the C14 rate, for new entrants to the funeral industry, under which they undergo appropriate training, including induction, for “up to (6) months” to enable them to achieve the level of competence required to be classified at Grade 1;
 - b) a variation to the description of the Grade 1 classification (clause 12.2), referring to an “adult employee with at least six (6) months’ experience in the funeral industry who is not mentioned elsewhere in any of Grades 2 to 6”;
 - c) a proposal that Grade 1 then be paid at 50% of the difference between the old C14 rate / NMW and Grade 2 rate, which would then have amounted to \$21.68 per hour.

²² Correspondence from the UWU to the Commission, dated 8 December 2022, is available here: <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-corr-uwu-ors-reply-fwc-091222.pdf>

39. Given the finding by the Expert Panel in the *AWR 2023 decision* that the C14 rate “does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment”,²³ there are difficulties with maintaining this approach.

40. The AWU submits that it would be appropriate to vary the Funeral Award, as follows:

- a) Continue to create a new Introductory Level paid at the C14 rate (\$22.61) but limit its application to employees with less than 3 months’ experience in the funeral industry;
- b) Grade 1 to be paid at the new C13 / NMW rate (a movement from \$22.61 to \$23.23);
- c) Grade 2 to be paid at 50% of the difference between the Grade 2 and Grade 3 rates (a movement from \$23.23 to \$23.66).

Concrete Products Award 2020 and Sugar Industry Award 2020

41. Submissions in relation to the Sugar Industry Award are supported by the Statement of Mr Travis Phillips (AWU, Organiser, Queensland Branch, dated 2 November 2023).

42. As referred to at paragraphs [18] to [20] of the Statement, the AWU reached a conditional consensus with Ai Group and ABI and NSWBC on proposed variations to the Concrete Products Award and the Sugar Industry Award.

43. The proposals are set out in a submission of the AWU, dated 17 March 2023,²⁴ and are broadly to create a new introductory C14 classification for employees undertaking initial training duties or training to gain competency to progress to the next classification, and move existing C14 classification descriptions into a new ‘C13.5’ level. It was understood that the Ai Group’s and ABI and NSWBC’s support for the variations was conditional upon them commencing to operate from six months after a variation decision.

44. Given the finding by the Expert Panel in the *AWU 2023* concerning the C14 rate,²⁵ this approach needs to be reconsidered.

45. The simplest way to address the issue would be to replace the non-transitional C14 rates in both awards with the C13 rate and then increase the current C13 rates by 50% of the difference between that rate and the next highest rate.

²³ *AWR 2023 decision* at [8].

²⁴ The AWU’s submission, dated 17 March 2023, is available here:

<https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-awu-170323.pdf>

²⁵ *AWR 2023 decision* at [8].

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46. This could be viewed as necessary to achieve both the modern awards objective, consistent with the minimum wages objective, and justified by work value reasons, in light of the imperative of avoiding employees being paid below the NMW.
47. In the alternative, should the focus of the C14 Review remain on ensuring that sub-C13 rates are genuinely transitional, then the AWU is content to maintain the position set out in its earlier submission of 17 March 2023, subject to the following qualifications:
- a) The new Introductory Level C14 classification should be limited in its application to employees with up to a maximum of 76 hours' experience in the industry – there is currently no upper limit, which is inconsistent with the preliminary view set out in the Full Bench's Statement;
 - b) The definitions of 'standard hourly rate' and 'standard weekly rate' in clause 2 of the Concrete Products Award, which apply for the purpose of calculating certain allowances, should refer to the Level C13 / Level 1 rate, not the Introductory Level C14 rate;
 - c) There should not be a 6 month 'lag time' between the variation decision and the commencement of the variations.
48. Under the Concrete Products Award, the new Introductory Level minimum hourly rate to be included at cl 16.2 would be \$22.61 (C14). The Level 1 rate would become \$23.23 (C13). The Level 2 rate would in turn become \$23.66 (an increase based on half the difference between the Level 2 and Level 3 rates).
49. Under the Sugar Industry Award, the new Introductory level minimum hourly rate at clause 19.1 would be \$22.61 (C14/L1). The L2 rate (currently, the lowest rate at \$22.61) would become \$23.23. The L3 rate would in turn become \$23.66 (an increase based on half the difference between the L4 and L3 rates).
50. Under the Sugar Industry Award, the junior rates in cl 19.5 should continue to be calculated on the basis of the Level 2 rate but this would be based on the C13, rather than C14 rate.

Rail Industry Award 2020

51. The AWU continues to support the position of the Rail, Tram and Bus Union, which we understand to be that the C14 classification in the Rail Industry Award (Level 1 Rail Worker (op)) should be limited in its application to a period of one month.
52. It is noted that the minimum hourly rate for a Level 1 Rail Worker (TCI) at clause 15.1(c) is currently referred to as being \$23.22, one cent below the NMW.

Meat Industry Award 2020

53. The AWU continues to support the position of the Australian Meat Industry Employees Union, which is to remove the C14 classification from the Meat Industry Award or, alternatively, limit its application to a period of one week's experience in the industry.

Travelling Shows Award 2020

54. The Showmen's Guild of Australia has proposed to limit the application of the Grade 1/C14 classification in the Travelling Shows Award to new entrants to the industry and to a period of three months.²⁶

55. The Grade 2 classification currently attracts a minimum hourly rate of \$24.08.

56. The AWU supports the proposal for progression to Grade 2, following 3 months' experience in the industry.

57. On this approach, further amendments to the Grade 2 classification at clause 12.3 are likely to be needed to clarify that it incorporates 'ride attendants' with more than 3 months' experience in the industry, and is not limited to those employees that are engaged as assistants to Grade 3 employees.

Alpine Resorts Award 2020

58. As indicated at Attachment D of the Statement, the Training Level at clause A.1 of the Alpine Resorts Award (paid at C14) applies for a maximum period of seven weeks while staff are:

- a) undergoing training prior to being deemed competent to undertake their substantive role at the appropriate Resort Worker Level; or
- b) attending orientation or induction programs.

59. Given the generally unskilled nature of the work described in the Resort Worker Level 1 classification, the AWU submits that application of the Training Level should be limited to a maximum period of one week for employees whose substantive role falls within the Resort Worker Level 1 classification.

Amusement, Events and Recreation Award 2020

60. Clause A.1 of the Amusement, Events and Recreation Award provides that an 'Introductory level employee', paid at the C14 rate, means "an employee who enters the industry and who has not demonstrated the competency requirements of a Grade 1

²⁶Submission, Showmen's Guild Australasia, 8 June 2023, available here: <https://www.fwc.gov.au/hearings-decisions/major-cases/review-certain-c14-rates-modern-awards>

employee. An employee at this level will undergo training for up to 3 months before progressing to Grade 1” (emphasis added).

61. Clause A.2 (Grade 1), by contrast provides that “[a]n employee at this level is an employee who has completed at least 3 months training which will include successfully undertaking accredited courses of study or on-the-job training in all of the relevant day-to-day operating processes so as to enable the employee to perform work within the scope of this level” (emphasis added).

62. The AWU submits that the above two clauses should be varied to ensure internal consistency and to clarify that:

- a) an employee must automatically progress from the Introductory level to Grade 1 after a period of 3 months in the industry;
- b) an employee can be classified as Grade 1 on the basis of demonstrated competency prior to undertaking 3 months of training.

Animal Care and Veterinary Services Award 2020

63. In the AWU’s view, the Introductory Level at clause A.2.1 of Schedule A of the Animal Care and Veterinary Services Award (paid at the C14 rate) is appropriately qualified. It is limited to new entrants to the industry and to a maximum duration of 3 months. There is also scope for faster competency-based progression.

64. Nonetheless, the Commission may still consider it appropriate and consistent with the relevant statutory requirements to vary the minimum rates in clause 15.2 (Practice managers, Veterinary nurses, Receptionists, Animal attendants and Assistants) such that the Introductory level would be lifted from C14 to C13, and Level 1 would be lifted from C13 to \$24.17 (i.e. by half the difference between the Level 2 and Level 1 rates).

Aquaculture Industry Award 2020

65. Submissions in relation to the Aquaculture Industry Award are supported by the Statement of Mr Danny Munday (AWU Organiser, Tasmanian Branch, dated 2 November 2023).

66. The classification structure in the Aquaculture Award should be broadly retained but the rates for Aquaculture Attendant Level 1 and Aquaculture Attendant Level 2, both of which are below the C13 / National Minimum Wage, should be lifted.

67. On this approach clause 16.1 would be amended to lift the Level 1 classification from C14 to C13 and the Level 2 classification from \$22.93 to \$23.95 (i.e. half the difference between the Level 3 and Level 2 rates).

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68. At a minimum, the Level 2 rate should be lifted to the C13 rate. This is because the Level 2 classification squarely applies to ongoing work, and progression from Level 2 to Level 3 is not based on time spent in the role or industry.
69. Further amendments should also be made to Schedule A to ensure progression from Level 1 to Level 2 occurs after a maximum of 3, rather than 4 months.
70. Clause A.1.1 (Level 1 - Finfish stream) should be amended to refer to employment “in the industry” to ensure consistency with cl A.1.2 (Level 1 – Shellfish stream) but noting that the same purpose may be achieved by the words “with one or more employer” [sic] in cl A.2.1.
71. Clause A.2.2 should be amended to replace the words “and in addition is capable of performing, without constant supervision, some or all of the following functions” with the words “and who performs some or all of the following functions”. This would ensure there is no requirement to establish competency at the end of the maximum period in order to progress from Level 1.

Seafood Processing Award 2020

72. The Seafood Processing Award also includes two rates below the C13 or NMW rate, Process Attendant Level 1 (C14) and Process Attendant Level 2 (\$22.92).
73. Employees remain at Level 1 “for the first 3 months or until they are capable of demonstrating competency in the tasks required at this level so as to enable them to progress to Level 2”.²⁷
74. Clause 12.1(c) should be amended to make clear that 3 months is the maximum period and that it applies to 3 months’ work in the industry, rather than with a particular employer.
75. The Commission should give consideration to lifting both rates, in which case Process Attendant Level 1 would be increased to C13 and Process Attendant Level 2 would be increased to \$23.95 (i.e. by half the difference between the Level 2 and the Level 3 rates).
76. At a minimum, the AWU submits that the Level 2 rate should be lifted to C13, given that no timeframe is provided for progression from Level 2.

Asphalt Industry Award 2020

77. Other than the broad contention that sub-C13 rates would ideally be removed from all modern awards, the AWU makes no submission in relation to the Asphalt Industry Award.
78. Skill Level 1 (paid at the C14 rate) is limited in its application to employees undertaking up to 38 hours of induction training.²⁸ As noted in Schedule D to the Statement, the all-

²⁷ Seafood Processing Award, cl 12.1(c).

²⁸ Asphalt Industry Award, cls 12.4(a) and 15.1.

purpose industry allowance and inclement weather allowance in clauses 17.2(b) and (c) also lift the Level 1 rate above C13.

Cement, Lime and Quarrying Award 2020

79. Aside from the broad contention that sub-C13 rates should be removed, the AWU makes the following submissions in relation to the Cement, Lime and Quarrying Award.
80. Clause A.1.1 (Level 1 – Cement and lime industry) and clause B.1.1 (Grade 1 – Quarrying industry), paid at the C14 rate, should be amended to limit their application to employees with no experience in the industry and who are undertaking up to 38 hours of induction training. It is noted that these classifications are paid above C13 if the industry allowances in clause 18.2(b) are accounted for.
81. Note also that the rate payable for Grade 2 (Quarrying industry) is \$23.22, one cent lower than the NMW.

Cemetery Industry Award 2020

82. The AWU intends to support the position of the Australian Services Union in relation to the Cemetery Industry Award. The Cemetery Employee Class 1 classification can currently apply for up to 6 months or longer if certain accreditations are not obtained and it is paid at C14 (excluding the additional industry allowance). This is inconsistent with the Full Bench's preliminary view.

Fitness Industry Award 2020

83. The Fitness Industry Award currently requires the completion of 456 hours of training, as well as the achievement of certain competencies, qualifications or accreditations to progress beyond the Level 1 classification, which is paid at C14.
84. In the alternative to the broad contention that C14 rates should be removed, the AWU submits that payment at C14 under the Fitness Industry Award should be limited to a maximum of no more than three months' employment in the industry.

Food, Beverage and Tobacco Manufacturing Award 2020

85. In the alternative to the broad contention for removing C14 rates, the AWU submits that payment at the Level 1 (C14) rate under the Food, Beverage and Tobacco Manufacturing Award should continue to be limited to fixed maximum periods (including for seasonal employees and casuals) that include prior industry experience.
86. Clause A.2.2 should be amended to make clear that an employee automatically progresses to Level 2 after the relevant maximum period of "experience in the industry", rather than when they have "recognised enterprise or industrial experience".

Gardening and Landscaping Services Award 2020

87. In the alternative to the broad contention referred to above, the AWU submits that payment at the Introductory Level (C14) under the Gardening and Landscaping Services Award should continue to be limited to a fixed maximum period.

Horse and Greyhound Training Award 2020

88. In the alternative to the broad contention referred to above, the AWU submits that payment at the 'Stable employee' (C14) rate under the Horse and Greyhound Training Award should continue to be limited to a fixed maximum period.

89. Clauses A.1.1 to A.2.3 should be amended to provide that progression from Stable employee to 'Stablehand Grade 1' occurs after a period of experience in the industry, rather than a period of "continuous employment with the employer".²⁹

Hospitality Industry (General) Award 2020

90. In the alternative to the broad contention for removing C14 rates, the AWU submits that payment at the Introductory Level under the Hospitality Industry (General) Award, insofar as it attracts the C14 rate, should not be capable of being extended for a further period by agreement between the employer and employee in order for the employee to achieve the necessary competency.³⁰

Manufacturing and Associated Industries and Occupations Award 2020

91. In the alternative to the broad contention referred to above, the AWU submits that payment at the C14/VI classification level under the Manufacturing and Associated Industries and Occupations Award should be clearly delineated as being limited to employees who are undertaking up to 38 hours of induction training. Progression to the C13 rate should be automatic upon the completion of that training.

92. This is likely to require the removal of, or amendment to, the last bullet point in clause A.4.3(a)(ii), which refers to an Engineering/Manufacturing Employee, Level 1, "undertaking structured training so as to enable them to work at the C13 level", as well as clause A.4.4(a)(i) and (ii), which refers to a Level 2 employee having completed up to 3 months' structured training and having achieved certain skills and competencies.

93. The same issue arises and similar amendments would be required in relation to clauses B.2.2(d) and B.3.1-B.3.2 (Vehicle industry/production employees Levels 1 and 2).

²⁹ Horse and Greyhound Training Award, cl A.1.1.

³⁰ Hospitality Industry (General) Award, cls 18.1 and A.1.

Nursery Award 2020

94. In the alternative to the broad referred to above, the AWU submits that payment at the Grade 1A, C14 classification rate under the Nursery Award should continue to be limited to a fixed maximum period of experience in the industry.

Oil Refining and Manufacturing Award 2020

95. The AWU makes no submission in relation to this Award but notes that the sub-C13 weekly rates for 'Trainee operator (level 1) and 'Trainee (level 1)', at clause 16.1, and as referred to in Attachment D to the Statement, are based on a 35 hour week. If reduced to minimum hourly rates, they are higher than C13. The Level 1 classifications are limited in their application to employees undergoing necessary orientation and training, albeit that progression is dependent on achieving certain competencies, including relevant certificates.

Pastoral Award 2020

96. The AWU's submissions in relation to the Pastoral Award are supported by the Statement of Shane Roulstone (AWU National Organising Director, dated 3 November 2023).

97. In the alternative to the broad contention for removing instances of sub-C13 rates from modern awards, the AWU submits as follows.

98. For the 'Farm and livestock hand level 1' classification, paid at the C14 rate:³¹

- a) Station hands should only fall under the classification if they have less than 3 months' experience in the industry (rather than the current 12 month threshold);
- b) Station cooks (for whom there is currently no progression) should be paid at C13 upon commencement;
- c) Station cook's offsiders should only fall under the classification if they have less than 3 months' experience in the industry;
- d) Cattle farm workers, Grade A, should similarly be limited to less than 3 months' experience in the industry;
- e) Dairy operators, Grade 1A, should be limited to less than 3 months' experience in the industry (rather than the current 12 month threshold).

99. The application of the 'Piggery attendant level 1' classification, paid at C14,³² should continue to be limited to 38 hours' induction training and clause 36.3(a) should be

³¹ Pastoral Award, cls 31.1 and 32.1.

³² Pastoral Award, cls 36.2, 36.3 and 37.1

amended to make clear that progression to 'Piggery attendant level 2 (PA2)' is not dependent on the completion of structured training or obtaining competencies.

100. The rate paid for the PA2 classification (currently between C14 and C13, at \$23.22) should be lifted to at least C13.

101. The application of the 'Poultry farm worker level 1 (PW1)' classification,³³ paid at C14, should be limited to employees with less than 3 months' experience in the industry (rather than the current 12 months).

Wine Industry Award 2020

102. The AWU's submissions in relation to the Wine Industry Award are supported by the Statement of Shane Roulstone (AWU National Organising Director, dated 3 November 2023).

103. The Grade 1 classification, which attracts a minimum hourly rate of \$22.93 (between C14 and C13) is included in the Bottling stream, Cellar stream, Cellar door sales stream, Laboratory stream, Vineyard stream, Warehouse and supply stream and Coopers stream.³⁴

104. In all cases, the Grade 1 designation applies to a trainee undertaking a 3 month induction training program, followed by further training, and an assessment to be completed within 12 months from the date of employment, the passing of which is a pre-requisite for progressing to Grade 2.

105. Given the extensive provisions for training and assessment set out in this classification structure, the AWU submits that the simplest approach to implementing the Full Bench's provisional view, as set out in the Statement, is to retain the structure but lift the Grade 1 classification to C13.

106. If needed, a new Introductory Level could be introduced for any period in which an employee is undertaking structured induction or training prior to performing productive work. In the AWU's view, for similar reasons as set out above in relation to the Horticulture Award, any such Introductory Level should be limited in its application to employees with up to 76 hours' experience the industry.

Racing Clubs Events Award 2020

107. In the alternative to the broad contention for removing C14 rates from modern awards, the AWU submits that clause 13.1 of the Racing Clubs Events Award should be

³³ Pastoral Award, cls 46.1, 46.2 and 47.1.

³⁴ Wine Industry Award, Sch A.

amended to remove the ability for an employee and employer to agree to extend the 3 month period in which the employee remains at the Introductory Level.

Racing Industry Ground Maintenance Award 2020

108. In the alternative to the broad contention referred to above, the AWU submits that clause A.1 of the Racing Industry Ground Maintenance Award should be amended to remove the ability for an employee and employer to agree to delay progression from the Introductory Level to Level 1 for a further period of up to 3 months.

Registered and Licensed Clubs Award 2020

109. In the alternative to the broad contention referred to above, the AWU submits that clause A.1.1 of the Registered and Licensed Clubs Award should be amended to remove the ability for an employee and employer to agree to delay progression from the Introductory Level to Grade 1 for a further period of up to 3 months.

Timber Industry Award 2020

110. In the alternative to the broad contention that C14 rates should be removed, the AWU submits that the following changes should be made to the Timber Industry Award:

- a) Clause A.1.1 should be varied to remove the ability for an employer, employee and union (where relevant) to agree to a 3 month extension of the period in which the employee remains at 'General Timber Stream: Level 1', and to ensure that progression to Level 2 is automatic following 3 months of experience in the industry;
- b) Clause B.1 should be amended to remove any competency based requirements for progression from 'Wood and Timber Furniture Stream: Level 1', such that progression becomes automatic following 3 months' experience in the industry.

Cotton Ginning Award 2020

111. The 'Cotton ginning employee level 1 (CG1)' classification is paid at \$22.83 (between C14 and C13) and is described at clause 13.1 as involving "cleaning of the yard and gin, general delivery work or manual labour" and requiring "minimal training or experience to competently function in the role". There is no clear pathway for progression from CG1 to CG2.

112. Accordingly, the AWU submits that the CG1 rate should be increased to C13.

113. Alternatively, employees should remain at the existing sub-C13 CG1 rate for a very short period, for example, a maximum of 16 hours' work in the industry.

114. It is noted that the CG1 rate is higher than C13 if the all purpose disabilities allowance in cl19.2(b) is accounted for.

Electrical, Electronic and Communications Contracting Award 2020

115. The 'Electrical worker grade 1' classification attracts a rate of \$22.93 (between C14 and C13) and is described as "a labourer not otherwise provided for in this award, who is doing labouring work and employed as such".³⁵ It is noted that if the all purpose industry allowance in clause 18.3(a) is accounted for, the hourly rate exceeds C13.

116. Given there is no clear pathway for progression to 'Electrical worker grade 2', the AWU submits that the 'Electrical worker grade 1' rate should be lifted to C13.

Marine Tourism and Charter Vessels Award 2020

117. In the alternative to the broad contention for removing sub-C13 rates, the AWU makes the following submissions in relation to the Marine Tourism and Charter Vessels Award:

- a) Clauses 12.1 to 12.2 should be varied to ensure that an employee automatically progresses from 'Crew Level 1' (paid \$22.65 per hour, i.e., between C14 and C13) to 'Crew Level 2' after a maximum period of 3 months' work in the industry, rather than with a particular employer;
- b) there should be no competency or qualification-based requirements for progression beyond the sub-C13 rate.

Pest Control Industry Award 2020

118. In the alternative to the broad contention referred to above, the AWU makes the following submission in relation to the Pest Control Industry Award:

- a) Clause 12.1 should be varied to ensure that employees automatically progress from the 'Level 1' classification (\$22.84 per hour) after obtaining 3 months' experience in the industry (rather than the current threshold of 6 months);
- b) There should be no requirement to have applied for a licence as a Fumigator or Pest Control Technician in order to progress from Level 1 to Level 2 (noting that licensing only becomes a hard requirement under the Level 3 classification).

³⁵ Electrical, Electronic and Communications Contracting Award 2020, cl A.2.1.

Premixed Concrete Award

119. In the alternative to the broad contention for removing sub-C13 rates, the AWU makes the following submission in relation to the Premixed Concrete Award:

- a) Clause 12.4(a) should be varied to provide that an employee automatically progresses from the 'Level 1' classification (\$23.22 per hour) after 3 months' experience in the industry (rather than the current 6 months of work threshold).

120. It is noted that if the industry allowance in clause 18.2(b) is accounted for, then the 'Level 1' rate exceeds C13.

Wool Storage, Sampling and Testing Award 2020

121. In the alternative to the broad contention for removing sub-C13 rates, the AWU makes the following submissions in relation to the Wool Storage, Sampling and Testing Award:

- a) As there is no clear time-based pathway for progression from the 'Wool Industry Worker Level 1 (Wool Storage)' classification (\$23.12 per hour), the rate should be increased to C13, or clause A.3.1(c) should be amended to provide that employees progress automatically after obtaining 3 months' experience in the industry;
- b) Clause 16.1 and/or clause A.3.7 should be amended to clarify that progression from 'Wool Industry Worker Level 1 (Wool Testing) – First 3 months' (\$23.12 per hour) occurs automatically after obtaining 3 months' experience in the industry (rather than 3 months of employment with a particular employer);
- c) Clause 16.1 and/or clause A.3.12 should be amended to clarify that progression from 'Wool Industry Worker Level 1 (Skin and Hide Stores) – First 3 months' (\$23.12 per hour) occurs automatically after obtaining 3 months' experience in the industry (rather than 3 months of employment with a particular employer).

THE AUSTRALIAN WORKERS' UNION

3 November 2023

Annexure A

A.1 **Level 1 – Introductory Level**

A.1.1 Introductory level is for an employee who enters the horticulture industry and does not demonstrate the competency requirements of Level 2. The employee remains at the Introductory level until they have 76 hours' experience undertaking work or training in the industry. At the end of that period, the employee must move to Level 2. Level 1 employee means an employee classified in accordance with the following criteria:

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A.1.2 **General description**

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee with less than 76 hours' experience undertaking work or training in the industry; ~~or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.~~

A.1.3 **Indicative duties**

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- sorting, packing or grading of produce where this requires the exercise of only minimal judgment;

- performing basic recording functions related to work performed at this level;
- providing assistance within the scope of this level to other employees as required;
- undertaking structured or on-the-job training ~~so as to enable advancement to Level 2.~~

A.2 Level 2 employee

A.2.1 Level 2 employee means an employee classified in accordance with the following criteria:

A.2.2 General description

An employee at this level:

- has 76 hours' experience undertaking work or training in the industry completed up to 3 months structured training so as to enable the performance of work within the scope of this level;
- works under direct or general supervision either individually or in a team environment;
- works with established routines, methods and procedures;
- performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- exercises limited discretion;
- is responsible for the quality of their own work;
- receives training in work health and safety standards and practices relevant to the site;
- performs lower level tasks as required without loss of pay ~~unless re-engaged to perform tasks at predominantly a lower skill level.~~

A.2.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties
- fruit or vegetable picking, thinning or pruning
- performing a range of housekeeping tasks in premises and grounds;
- performing a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;

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- repetition work on automatic, semi-automatic or single purpose machines or equipment;
- assembling/dismantling components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- irrigation, spraying or pruning under general supervision;
- sorting, packing ~~or~~ grading ~~of produce beyond the scope of Level 1 duties;~~
- maintaining simple records;
- using hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- operating tractors with engine capacity of up to 70 kW;
- general and routine product testing;
- providing assistance within the scope of this level to other employees as required;
- assisting in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;
- undertaking further training so as to enable advancement to Level 3.

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

STATEMENT OF SHANE ROULSTONE

I, Shane Roulstone, of 16 Good Street Granville NSW, National Organising Director with the Australian Workers' Union (**AWU**), make the following statement:

Background

1. I commenced employment with the AWU, National Office, in October 2017.
2. My current position is National Organising Director.
3. I have recently been seconded to undertake an organising campaign in the Pilbara.

Knowledge of the horticulture industry

4. Between March 2018 and October 2023 I regularly engaged with and assisted workers in the horticulture industry.
5. My duties included campaigning, planning, organising, enforcement and stakeholder engagement in the horticulture industry.
6. My role required regular engagement with horticultural members, employees and employers.
7. I am keenly aware of the issues workers in the horticulture industry face and the ways in which employers respond to these issues.
8. Between March 2018 and October 2023, I attended many farms including horticultural farms in every major horticultural region, including
 - a) Central Western NSW, apple and cherry farms in 2018, 2020 and 2021;
 - b) Bundaberg Queensland, potato, sugar farms in 2018, 2020, 2022 and 2023.
 - c) New England NSW, vegetable farms in 2018, 2019 and 2022.
 - d) Yarra Valley Victoria, vegetable and strawberry farms in 2018 and 2019;
 - e) Wide Bay region Queensland, citrus and vegetable farms in 2019 and 2023.
 - f) Stanthorpe Queensland, stone fruit and vegetable farms in 2019, 2021 and 2023
 - g) Shepparton Victoria, apple farms in 2019, 2020, 2021 and 2023

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- h) Mildura Victoria, citrus and grape farms in 2019, 2020, 2022 and 2023.
 - i) Northern Rivers NSW, blueberry and vegetable farms in 2020 and 2023.
 - j) The Atherton Tablelands Queensland in 2020, 2021, 2022 and 2023.
 - k) Darwin and Surrounding areas in 2021.
9. I have been involved in a number of industry bodies including
- a) The Agriculture Production Horticulture Industry Reference Committee;
 - b) Multiple PALM Workers Stakeholder Groups;
 - c) The Agricultural Workforce Working Group; and
 - d) Farm Safe Australia committee.

Working conditions

10. A large proportion of the thousands of workers in the horticultural industry that I have engage with over the past five and half years are vulnerable to exploitation due to being of non-English speaking backgrounds, visa conditions, casualization, labour hire arrangements, working in remote locations and the itinerant and temporary nature of their work.
11. Employees in the horticultural sector come from mixed backgrounds with the permanent employees typically coming from local Australian or recently arrived migrant backgrounds.
12. The majority of casual employees are overseas workers, which are mainly backpackers, followed by recently arrived migrants, seasonal worker program participants, pacific labour scheme participants, overseas students and local Australians making up the rest.
13. Horticulture employment turnover is very high with the employer/employee relationships changing frequently depending on the type of work being undertaken.
14. Permanent employees will tend to develop normal productive employment relationships. Good farm hands, maintainers, packers and planters are normally relatively well looked after and will often stay with one farm for several years.
15. For pickers, the work is normally casual and seasonal by nature. Seasonal work is normally intensive and physically demanding. A minority of casual horticultural employees will return to the same employer each year as they know that this farmer/employer will pay and treat them well.

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16. Unfortunately, most casual employees will need to move from farm to farm in search of good employers and this means the majority of casual pickers will never develop a mutually productive employment relationship in horticulture.
 17. The horticultural industry routinely employs tens of thousands of undocumented workers who have questionable work rights. These workers are nearly always engaged effectively as casuals on a cash-in-hand basis. Most of these workers are paid between \$10 and \$14 an hour without any superannuation payments or workers' compensation cover.
 18. Fruit and vegetable picking by its nature is very physically demanding work, that requires long hours for consecutive days over the picking season.
 19. In my role with the AWU I have observed that horticultural pickers routinely work in excess of 10 hours a day for six days a week.
 20. Accommodation and transport costs are often used by employers in the industry to offset/deduct payments made to workers.
 21. Casual workers who raise concerns around working conditions are routinely starved of work until they leave. This is the standard practice across the industry.

Training

22. In my discussions with horticultural workers, I have found that the vast majority do not receive any structured training when they commence in the industry.
23. Horticultural workers and are typically expected to work productively from the first day or two of their employment.

Continued engagement at Level 1

24. The vast majority of horticultural workers that I have had discussions with remain engaged at the Level 1 level or have piece rates based on Level 1 while they are engaged to work for an employer in the industry.
25. A worker's level is sometimes unclear due to the prevalence of pieceworkers, underpaid workers, itinerant workers and employers that do not keep clear or proper employee records.
26. Prior to the decision in *Application by the Australian Workers' Union to vary clause 15 of the Horticulture Award 2020* [2020] FWCFB 554 (**Piece rates decision**) coming into effect in early 2022 and creating a minimum wage floor for pieceworkers, in my discussions, the vast majority of piece rates workers were being paid between \$8 and \$12 per hour.

Piece rates decision material

27. I made a Statement in support of the AWU's application in the *Piece rates decision*.

28. I have had regard to the Statements of several employers or managers that were submitted by the National Farmers' Federation in that matter.

29. The Statement of Ms Anna Reardon, a farmer in Tasmania, dated 9 June 2021, is attached to this Statement and marked **SR-1**.

30. The Statement of Mr Brent McIntock, a Senior Orchard Manager in Tasmania, dated 9 June 2021, is attached to this Statement and marked **SR-2**.

31. The Statement of Mr Anthony Kelly, Chief Financial Officer of the N&A Group, dated 9 June 2021, is attached to this Statement and marked **SR-3**.

32. The Statement of Mr Richard Eckersley, a farmer in Western Australia, dated 9 June 2021, is attached to this Statement and marked **SR-4**.

Pastoral industry

33. My role with the AWU has included regularly engaging with and assisting workers in the pastoral industry across the country.

34. This has included attending pastoral operations, stations and farms in Western NSW, the Riverina in NSW, the Mallee region in Victoria, the WA Wheatbelt, South Western Queensland, Western Queensland, and Tasmania.

35. In my experience, lower-level workers in the pastoral industry frequently undertake difficult work, in harsh conditions and are often from low socio-economic backgrounds with limited career opportunities.

36. Entry-level pay rates are often insufficient to attract workers to the industry.

37. Ideally, there should be no rates in the Pastoral Award 2020 beneath the National Minimum Wage. Otherwise, below National Minimum Wage rates should be limited to employees with less than 3 months' work experience in the industry.

38. Three months should be the absolute upper limit for the amount of time required for new entrants to the industry to achieve competency.

Wine industry

39. My role with the AWU has also included regular engagement with and assisting workers in the wine industry.

40. This has included attending vineyards in the Hunter Valley, Swan Hill, Barossa Valley, Margaret River and Tasmania.

41. In my experience, a large proportion of lower-level workers in the wine industry are vulnerable to exploitation on account of being casuals and/or from non-English speaking backgrounds.

42. To become a competent and productive entry-level worker in the wine industry, particularly in viticulture, should require no more than 76 hours of work in the industry.



Shane Roulstone

3 November 2023

IN THE FAIR WORK COMMISSION**Matter No.: AM2020/104****Re Application by Australian Workers Union****Statement of Anne Kathleen Reardon**

On 9 June 2021, I, Anne Kathleen Reardon, farmer, of [REDACTED] in the State of Tasmania, STATE

1. I run a farm business (**the Farm**) in partnership with my husband Anthony Michael Reardon under the name AM & AK Reardon (ABN 11 655 014 156), growing apples and cherries across about 10 hectares and 3 farms in the Huon Valley, in Southern Tasmania.
2. I have been working on the Farm continuously since 1976 when I married my husband, Anthony.
3. Prior to working on the Farm, I was a full-time schoolteacher and I have a bachelor's degree in Special Education.

My duties

4. While my principal responsibility is the Farm's the administration, bookkeeping and business management, I will also work in the orchard, supervising staff and doing 'hands-on' farm work when necessary.
5. The Farm's annual turnover is roughly \$1,000,000, and our annual wage bills is roughly \$250,000.
6. The Farm's picking season starts at the end of December and runs through March/April of the following year.
7. There is a roughly one-week window within which our apples and cherries have matured and must be picked in order for them to be acceptable to a buyer. As a summary:
 - a. apples – we have mainly Fuji and Galas as our apple varieties. These mature fairly close together in timeframe: the Fujis are generally sold almost immediately – and Galas are put into storage. Our destination for apples has altered over the years: we used to sell all of our produce into Victoria, and since the pandemic this has not been possible; and
 - b. cherries – this varies a bit, being usually in January, but is very seasonal and dependent on weather. Some years (if the weather is cool) we don't start picking until February.
8. We also need to be careful about the weather and other conditions when we pick. For example, cherries will split if they are picked when there is a lot of moisture in the

atmosphere and will get soft in high heat so can only be picked when the moisture levels and temperature is right. That we have very small windows in which to harvest the fruit and so need sufficient motivated workers (at the right particular time) who can get the fruit picked within those timeframes.

9. Not including myself and my husband, the Farm has two permanent employees:
 - a. One of those two employees works fulltime managing the orchards; and
 - b. The other of those two employees works part-time permanent doing ‘odd jobs’ such as spraying, running the cattle, etcetera.
10. To do the thinning/pruning of the fruit trees and picking the cherries and apples the Farm engages roughly 72 casual employees over the course of the harvest season, an average of 20 casual employees at any one-time.

Picking

11. Depending on a number of external factors such as weather and temperature and other considerations such as access to freight and transport, picking on the Farm usually starts at about 7am and finishes at about 2pm.
12. We pay piece rates to the seasonal/casual workers who pick cherries and apples (**Pickers**), but pay hourly rates for thinning and pruning.
13. Before this last harvest season, about 90% of the Pickers were backpackers, mostly from Europe, Asia, and in recent years from Argentina, Brazil and Chile. The remainder are drawn from the local community and include students during school holiday, retirees, and occasionally (but rarely) the otherwise unemployed.
14. Before this last harvest season, we directly employed all of our seasonal workers but because of the border closures there have been fewer backpacker and other workers available so we have had to rely on labour hire providers who access worker through the seasonal worker program.
15. There is some skill involved in the picking work to ensure the fruit is kept to a marketable standard; for example, to prevent bruising and ensure that the stems on the fruit are intact.
16. When picking cherries the Picker’s thumb and forefinger are positioned at the very top of the cherry stalk, the stem is carefully pinched away leaving the buds intact — without being pulled or yanked to avoid bud damage of future crops — and the cherries are placed in the lug carefully to avoid bruising.
17. When picking apples, the Pickers hold the apples in the palm of their hand without undue pressure from their fingers (which can cause bruising). They twist the apple to remove it from the branch without dislodging the stalk, and then place it into a padded picking bag. When the bag is full, the picker empties it very carefully into a bin with his/her name on it.

18. It usually takes a cherry Picker about a day to start picking at the rate of a competent worker and it usually takes an apple Picker about two days to start picking at the rate of a competent worker.
19. Each Picker is trained by the farm in how to pick for approximately an hour when he/she starts work and is paid at the hourly rate for that time spent in training.
20. Cherries are picked into a 9 kg 'lugs' (which is essentially a rectangular shaped plastic boxes) and apples are picked into a 46 square inches bins.
21. Pickers move down rows of fruit, from tree to tree, and their bins or lugs are transported with them by another employee who is operating a tractor.
22. Sometimes the Pickers have to use ladders to reach fruit at the top of trees, but this is rare because the trees are kept small.
23. Usually, Pickers are supervised by one of the permanent staff. If there is more than about 22 Pickers working at the same time then they are divided into two (or more) teams and we assign a returning worker to supervise the other team.
24. In determining the piece rate for apple picking, the Farm is assisted by indicative guidance based on past years' performance which is published each harvest season by Primary Employers Tasmania (**PET**), as follows:
 - a. PET is a not-for-profit organisation that provides industrial relations advice to farmers who operate in Tasmania.
 - b. This year PET's guidance indicates that in order to ensure the average competent Pickers can earn a rate which exceed the requirements of clause 15.2 of the Horticulture Award 2020:
 - i. "Strip picking" (that is picking all apples from the tree regardless of their condition) should be paid at a rate of about \$43.00 per bin; and
 - ii. "Select picking" (that is where the picker only picks apples of a specific type e.g. specified by colour or size) should be paid at a rate of \$47 per bin.
 - c. Based on that guidance and the conditions on the Farm we determined that the average competent picker could earn an hourly rate which *exceeds* \$27.78 (i.e. 15% more than the minimum wage) if they were paid \$47 per bin when *strip* picking and so offered our Pickers that rate.
25. That said, we will make other adjustments to the piece rate depending on the picking conditions. For example, in the 2020 harvest season we grew apples on an older orchard where the trees are taller and so the picking was slower. We added an additional 10% on the piece rate, which I knew was more than enough to account for these slower picking conditions.
26. To determine the piece rate for cherry picking which will exceeds the rate required by the clause 15.2 of the Award, at the beginning of each season the Farm:

- a. Directs a worker who we have assessed to represent the average competent worker on our farm to pick cherries for an hour
 - b. Divide the amount of \$30.42 — which is the minimum casual rate plus 15% plus another 10% — by the number of lugs the worker picked.
27. This year we pay cherry pickers \$9.85 per lug.
 28. Annexed and marked “A” is a copy of the piece rate agreement we use.
 29. The Farm monitors the rate at which the Farms’ our pickers work. If they are being too slow then a supervisor will draw it to their attention and suggest how they may increase their work rate. For example, if they are being more careful than is required then the supervisor would let them know that the level of caution should not be necessary.
 30. If they are still working too slow then we will usually suggest they move on to work, for example, in one of the local packing sheds.
 31. We do not use piece rates where the rate would have to be unprofitable high because the rate of picking would be very slow irrespective of the competency of the worker. For example, we do not pick apples from the pollinator trees, which are dispersed throughout the orchards amongst the usual growing trees, until the end of the harvest season. Because the trees are spread out, the picking rate is very slow so we pay hourly rates for that work.
 32. When I started working on the Farm, I found Pickers to be quite competitive amongst themselves as to the work rate and number of lugs or bins they picked. They would celebrate when they have picked more than their co-workers.
 33. However, I have noticed this has changed in the past decade or so. There is very little competition and celebrating at being the fastest or best. This may be because most backpackers are now primarily motivated to qualify for a 2nd or 3rd year visa rather than by earnings.
 34. The Farm use piece rates to promote productivity. In addition to helping the Farm manage its wages bill, it also helps to make sure that produce is picked, packed and shipped when it is at its best: fruit is perishable and therefore needs to be harvested within a small window. That means that we need motivated employees who are incentivised to work their fastest during that window.
 35. Our experience is that pickers who are on hourly rate are significantly less productive. For example, on 19 March 2021 (the last day of picking) we paid 4 employees hourly rates because they wanted to work together as a group and we were very short staffed so the orchard manager agreed. This meant that we could not pay them piece rates. Those employees only picked a total of 2 bins when I would have expected those same employees to each pick 3 or 4 bins individually. Unfortunately, we had to leave fruit on the trees at the end of the day.
 36. If the AWU application to install a floor on piece rates was successful, we would probably look at using more automation. For example, we would start using picking

platforms which cost about \$150,000 each but would allow us to use much fewer pickers who we would be able to pay by the hour. We would also be much less tolerant of less-productive workers.

.....

Anne Kathleen Reardon

.....

Date

"A"

AM & AK REARDON

CASUAL PIECEWORK AGREEMENT

This agreement is made between (NAME)

who is engaged as a casual piecework apple picker

and the Employer AM & AK Reardon, [REDACTED]

AWARD: Horticulture Award 2010

CLASSIFICATION: Casual Pieceworker

DUTIES: Picking apples

RATE OF PAY: The casual pieceworker will be paid \$47 for each bin picked.
Fruit must meet the supervisor's requirements.

PIECEWORK LOADING: The piecework rate fixed by agreement between the employer and the employee must enable the average competent worker to earn at least 15% more per hour than the minimum hourly rate prescribed in the award for the type of employment and the classification level of the employee.

PIECEWORK AGREEMENT: The piecework agreement must be in writing, made without coercion or duress, signed by both employer and employee and the employee must receive a copy of the agreement.
Nothing in the Award or this agreement guarantees an employee on a piecework rate will earn at least the minimum ordinary time hourly wage in the award for the type of employment and the classification level of the employee, as the employee's earnings depend on their productivity.

ACCEPTANCE OF POSITION: This is a casual position without any guarantee of ongoing employment or fixed hourly rate. It is conditional upon you being capable of performing the duties as required to a satisfactory standard.

I have read and understand the Employment Agreement and I accept the position and agree to follow the requirements of the job.

Employee:

Signed: Date:

Employer:

Signed: Date

IN THE FAIR WORK COMMISSION**Fair Work Act 2009 (Cth)****Matter No.: AM2020/104****Re Application by:** Australian Workers Union

In respect of the MA000028 Horticultural Award

STATEMENT OF BRENT RUSSELL MCCLINTOCK

On 9 June 2021, I, Brent Russell McClintock, Senior Orchard Manager, of [REDACTED]
[REDACTED] in the State of Tasmania, **STATE:**

Background

1. I am currently the Senior Orchard Manager for Pinnacle Fine Foods ('**Pinnacle**') based in Tamar Valley, Northern Tasmania.
2. I possess a Diploma of Horticulture and I am the current Treasurer for an association of fruit growers in Tasmania, Fruit Growers Tasmania Inc.
3. I have been working on orchards for 27 years, growing apples, cherries and berries in Australia and New Zealand. I have worked in Australia for approximately 9 years and for Pinnacle for almost 4 years.
4. The primary orchard for which I am responsible consists of approximately 100 hectares, with two other properties: one of about 70 hectares and another of about 30 hectares. The farms are located in the Tamar Valley in Tasmania.

Farm finances

5. The turnover of our orchards is approximately \$10 million per annum.

6. Our expenditure on wages, including for the labour of pickers and packers is usually in the range of 30-50% of our annual turnover. Labour costs for Pinnacle are pretty typical for horticulture – it is by far the largest expense in the growing cycle.

Peak Seasons and Seasonal Work

7. Our peak season for the cherry harvest runs from December to January. Peak season for apples is primarily from March to May, with a minor secondary peak from November to December.

Employment details

8. We currently employ 15 to 20 permanent workers during any given year who primarily perform management, supervisory and support (e.g. spraying or driving) tasks. They will occasionally pick fruit if the farm is orchards are short of workers. In previous years, this picking by permanent employees amounted to about one or two days per season, but given the worker shortages we are experiencing this season it has amounted to a couple of weeks.
9. In addition to the permanent workers, Pinnacle hires a substantial number of temporary casual workers over the course of the year for peak seasonal work.
10. The core component of our casual orchard workforce is made up of local residents. This usually consists of some 30 people working as orchard workers and packers.
11. To pick apples we engage a further 50 to 60 temporary workers. To pick and pack cherries we engage approximately 200 more temporary workers. Most of those temporary workers are backpackers and working holidaymakers. These make up the vast majority of our workforce during harvest times.
12. All of our cherry pickers are sourced through labour hire arrangements with labour hire providers, Link Employment and AgriLabour. Those labour hire providers are the employers of the cherry pickers, have piece work agreements with the pickers, and pay them directly. The business pays the labour hire providers the piece rates which were agreed to with the picker, plus the ‘on cost’ (which include super, tax, and commission) of roughly 30%.

13. We do not currently utilise workers sourced through the Seasonal Worker Program, but we anticipate that we may aim to do so in the future.
14. All fruit is hand-picked with ladder and containers provided.
15. Cherry pickers are paid by kilogram of cherries picked, and apple pickers are paid per bin of apples. A bin holds 360-440kg of apples depending on variety and dimensions. We use 46-inch bins that typically hold 360-400kg of fruit.
16. Fruit picking is certainly not an 'unskilled' role. It is possible to become highly proficient through experience, fitness and practiced technique. I expect most pickers will reach a competent skill level within about a week, although this may vary from picker to picker. The difference between a worker who is not competent, who is competent, and who is proficient mostly comes down to their economy of movement and use of time for example knowing how to move about the tree and down the row, and use of techniques to minimise time such as placement of bags and ladders.

Use of Piece Rates and Employee Earnings

17. All of our pickers, and approximately 50% of our packers are on piece rates.
18. We shifted towards piece rates over the past year predominantly as a means of attracting workers and increasing productivity with our available workforce.
19. An average, competent worker of reasonable skills is capable of harvesting 6-8 bins of apples in a working day within 2 weeks of commencing.
20. For some people, 6-8 bins will simply not be possible due to the required physicality and level of technique involved. In particular, the work requires reasonably high levels of fitness and strength to move about the trees and up and down ladders, carry 400g buckets, and stay on their feet all day.
21. To set piece rates:
 - a. At the beginning of each season we set what we believe to be a rate which complies with the Horticulture Award, informed by our knowledge and experience and the guidance which is published by industry bodies such as Primary Employers Tasmania.

- b. With the employees' agreement, we make adjustments to the rate at the being of each workday and on the basis of difficulty, weather conditions, etc.
 - c. Pickers will be monitored from start to finish, and we are highly responsive to standards and conditions in the orchards.
 - d. We will then check the amounts which each worker has earned on a daily basis and if a significant number of the workforce, roughly half, are not earning the minimum hourly rate then we increase the piece rate for all workers to ensure at least half do make the minimum rate.
 - e. This is not just a concern from the perspective of ensuring that the business complies with its legal obligations. It is also important to ensure the business maintains a reputation as a good employer to attract an adequate workforce.
22. In the case of underperformance or lower-than-desirable productivity, we will provide oversight and retraining to ensure employees receive the necessary attention to be capable of earning at a higher rate. Those who are not capable of doing so are generally offered an option to remain or leave.

AWU Application

23. Piece rates are used and favoured because they attract motivated workers with a high rate of retention due to the high potential for earning when compared to the ordinary hourly rate.
24. If the Fair Work Commission were to set a 'floor' on the piece rate payments as the AWU's application contemplates then it would have a significant impact on the management, and ultimately the viability of the business. We would certainly have to consider whether to continue to offer piece rates. On the one hand, we would have access to smaller labour pool because fewer potential workers would accept a job on hourly rate but on the other hand, we know that workers on hourly rates are roughly 30% less productive than the same workers on piece rates.
25. Australian residents are typically sceptical of piece rates initially but prefer them once they have realised the higher earning potential they offer.

- 26. Previous attempts to start workers on an hourly rate before moving them onto piece rates once proficient has led to a loss of workers in the past and led to productivity issues.

Introduction of a minimum hourly rate

- 27. The introduction of a minimum ‘floor’ rate for piece rates would cause a major loss of productivity and significantly increase the demand for workers.
- 28. If the AWU application were to succeed, it would add significantly to the administrative burden of managing the workforce as it would require us to check the earnings of every worker each day to ensure they earned at least the minimum hourly rate. I would estimate about 2 to 3 minutes for each worker per week which at its peak could amount to about 9 or 10 hours per week during harvest season.
- 29. If the AWU application succeeds, then it is likely that Pinnacle would increase its high density farming (essentially planting more trees per acre) which is less labour intensive but also result in smaller yields. In addition to impacting our profitability it would mean that we would not have sufficient quantity of produce to justify maintaining a packing shed.
- 30. This would represent a major threat to the continuing viability of our business, as a productivity loss of 10-20% (with substantial labour costs) would eat into our margin.

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Brent Russell McClintock

Date

IN THE FAIR WORK COMMISSION**Matter No.: AM2020/104****Re Application by: Australian Workers Union****Statement of Anthony Thomas Kelly**

On 9 June 2021, I, Anthony Thomas Kelly, Chief Financial Officer, of Building Q, First Avenue, Sydney Markets, Homebush West in the State of New South Wales, **STATE:**

Background

1. I am currently the Chief Financial Officer for the N&A Group, a position which I have held since November 2006, but I have more than 15 years of experience with fruit and vegetable farming.
2. The N & A Group is a vertically integrated growing, distributing, wholesaling, and exporting business, which has been operating since 1956 and has been owned and operated by the same family for three generations.
3. We primarily grow apples and berries out of our growing operation in Batlow. There are three separate properties within a roughly 10km radius. This consists of a total of 400 hectares of which approximately 100 hectares is currently farmed.
4. The turnover of the farming component of N & A Group is approximately \$6m per annum.
5. Our employment costs, including wages, is usually at least 50% of our annual costs of production.
6. Apples and berries are a time sensitive product. Apples have around 10 days and berries have about 2 days from the time they mature until the time they have to be picked.

Peak Seasons and Seasonal Work

7. Our peak seasons for apple harvest are from mid-February through to mid-May.

8. Most of our harvest workers will work from 7am to 3pm. On occasions this will include weekends and public holidays depending on fruit maturity and weather conditions. This involves variable hours and days, depending on weather and other factors.

Employee details

9. We employ 15 full-time permanent employees in management, administrative roles, and as long-term senior farm workers.
10. We use a combination of labour hire and casual employees through the year for picking, as well as pruning and thinning work. This is similar to picking – but without working to as tight a timeframe as picking.
11. During harvest, picking season our pickers are a mixture of directly employed casual employees, and labour hire contractors.
12. Our casual workers are sourced from a variety of backgrounds. At present we have 13 local residents, with the remainder typically consisting of overseas, itinerant workers and backpackers.
13. Our casual pickers reach competency with a few days and our pruners are generally competent within a day. Some workers are on hourly rates until they become competent.
14. We have recently struggled to get the numbers of workers that we ordinarily might as a result of the COVID-19 pandemic.

Use of Piece Rates and Employee Earnings

15. At present our pickers are mostly paid piece rates.
16. Apple pickers pick by hand. Each picker is allocated a ladder and an apron (satchel) which hangs from their neck, the satchel is periodically emptied into a bin (each picker has its own bin). The pickers use a ladders to access the higher fruit, although some of our fruit is grown on trellises which minimises the need to climb ladders
17. We are currently trialling the use of motorised ‘platforms’ which can be raised and lowered. A set of two employees (four employees total) are stationed on each side of

the platform, and a large bin resides between them where the picked fruit is stored. The platform rolls between rows of apple trees, setting the pace at which the picker work. Pickers working on platforms are paid by the hour because their productivity is determined by the speed of the machine rather than how good the individual is. The work is less physically demanding, making it suitable to a large number of people. At present the platforms can only operate in some areas of the orchards,

18. Determination of the rate to be paid for apples is made by consultation with senior supervisors who has an extensive history with the industry and is knowledgeable of the crop, the terrain, and the conditions in the field on a given day.
19. A rate is assigned which would allow the average competent worker to earn well above the 15% hourly rate on that basis.
20. We are constantly monitoring the work rate of our pickers. We also vary the piece rates depending on the location within the orchard, the variety of the fruit, the orchard structure and the load on the trees.
21. Our pruners are also paid by piece rates.
22. Pruning is a skill that can be learned to a reasonable level of competence and productivity within a day.
23. Trees are planted and grown in 'blocks' with each block being of the same variety, planted at the same time, grown under similar conditions, and managed in the same way. As such, each tree in a block is very similar. In addition, the process of pruning across one block of trees is the same but may be different from block to block. For that reason, we set piece rates by blocks, varying the rate depending on the work load, from block to block
24. In having reviewed back-calculations on piece rate earnings amongst pickers, very rarely does anyone earn below the award minimum rate, and typically 80% earned above the award minimum rate +15%.
25. We use piece rates because they remove the need to supervise the productivity of our pickers. We are happy for them to work at their own rate and are comfortable if they are not picking at a rate we would consider competent, although we are also confident

that they will generally work in their own interest at a good rate of productivity and that those who do not meet this standard will not incur excessive expense.

26. Some of our more experienced pickers earn at a rate in excess of \$50 per hour. Now produced to me and marked 'A' is a sample wages spreadsheet which incorporates piece rate workers for the period 28 April to 3 May 2021.
- Column 'C' indicates whether the person is an employee or contractor.
 - Column 'G' indicates the type of work performed. 'PI' means that it is picking piece-rate work. There are also codes for work paid on an hourly basis, with 'PR' indicating pruning, etc.
 - Column 'J' identifies the particular farm or property where the individual is working.
 - Column 'K' indicates the code used in our payroll system. This data from our accounting system (ERP) creates a file used in the payment process.
 - Column 'AJ' and the post-mortem rate refer to the mid-point rate earned – the 50% mark.
27. At present, if a picker is not working at a pace which we consider adequate then, after trying to assist them to increase their pace, we will try to move them to an area of work which is paid hourly and individual productivity is not such a factor. In addition to taking care of the worker and ensuring our compliance with the Award requirements, this helps us control our costs as a less productive worker gives us a worse return on our wage investment and brings down the work rate of the “average competent worker” which means that we have to increase the piece rate across the board.

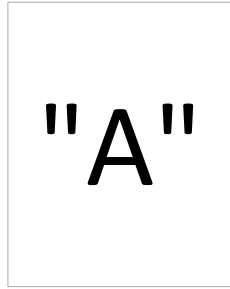
Introduction of a minimum hourly rate

28. The introduction of a minimum floor would have a negative impact on N&A group and our existing model of self-managed productivity.
29. Even if we were move largely to a picking-platform model in which workers are paid an hourly rate, we will always need piece workers as these platforms cannot be used in all areas on farm.

- 30. Our expectation is that if the ‘floor’ was introduced, the productivity levels of many of the pickers who are content with the minimum wage would fall drastically as there is little incentive for them to pick at a faster rate.
- 31. In addition, we would move all workers who are unproductive into work which is paid by the hour if we could, for example into picking-platform work or, if we couldn’t find any of hourly work for them, we would let them go. .
- 32. If the AWU application is successful, then our relationship to the labour used in picking changes. Where a worker is not productive, and yet is entitled to a minimum hourly rate, this becomes a management issue, that we need to do something about. That something might include alternative work (if that work is available). There is limited other work opportunities on N&A properties. Formerly, we had a packing shed, but this is the first year we don’t have that work available. If productivity became an issue, we would need:
 - a. more supervision in the orchard, to check on the progress of pickers. This is so, as the pickers are spread over a reasonably large area.
 - b. in some instances, to terminate those employees who were not productive, so as not to enlarge the cost of labour for the whole of the picking season.
- 33. I note the AWU’s earlier assertion that most piece rate workers earn well below the minimum hourly rate, which contrasts starkly with a separate statement asserting that many farm businesses pay piece workers above the minimum wage. This seems contradictory.

.....
 Anthony Thomas Kelly

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 Date



Level 1 casual rate	\$24.80	Piece target (total all records)	\$27,393.46
Piece work target hourly rate (LVL1CAS+15%)	\$28.52	Piece actual (total all records)	\$33,395.00
Piece work average hourly rate (all records)	\$34.77	Variance (total all records)	\$6,001.54 22%
Piece work minimum average hourly rate	\$15.00	Piece actual (total all records)	\$33,395.00
Piece work maximum average hourly rate	\$73.33	Piece post mortem (all records)	\$27,446.00
Piece work median average hourly rate	\$35.00	Variance (total all records)	\$5,920.72 18%

Percentage of payroll records paid above Piece target	76.0%
Percentage of payroll records paid below piece target	24.0%

Note: the Piece target is calculated as what would be required to pay all piece work at 15% above the level 1 casual rate. Based on the award we are only required to make sure half the people working on a given task reach this threshold. The post mortem amount is what we could have paid (all things being equal) for each task to meet the award

Records	
Clarissa	14
Rob	72
Steve	85
	171

\$27,446.00

Work Date	Transaction Description	Block	Dimens	Quantity	Rate	Unit of Me	Start Time	Finish Time	Break	Payment type	Start time V2	Finish time V2	Approx amt	Orig order	Calc hours	Round hrs	Piece target	Piece actual	Piece variance	Piece result	Pieces per hr	Piece equiv hourly	Post mortem rank	Post mortem rate	Post mortem total	Post mortem hourly	Post mortem result
28/04/2021	Picking Bins	AR-01-RL		2.5		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$112.50	174	3.00	3.00	\$85.56	\$112.50	\$26.94	Above targ	0.83	\$37.50	1	\$48.00	\$120.00	\$40.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2.5		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$112.50	175	3.00	3.00	\$85.56	\$112.50	\$26.94	Above targ	0.83	\$37.50	2	\$48.00	\$120.00	\$40.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2.5		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$112.50	179	3.00	3.00	\$85.56	\$112.50	\$26.94	Above targ	0.83	\$37.50	3	\$48.00	\$120.00	\$40.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2.5		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$112.50	178	3.00	3.00	\$85.56	\$112.50	\$26.94	Above targ	0.83	\$37.50	4	\$48.00	\$120.00	\$40.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$90.00	177	3.00	3.00	\$85.56	\$90.00	\$4.44	Above targ	0.67	\$30.00	5	\$48.00	\$96.00	\$32.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$90.00	173	3.00	3.00	\$85.56	\$90.00	\$4.44	Above targ	0.67	\$30.00	6	\$48.00	\$96.00	\$32.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$90.00	180	3.00	3.00	\$85.56	\$90.00	\$4.44	Above targ	0.67	\$30.00	7	\$48.00	\$96.00	\$32.00	Above target
28/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	3:30 00 PM	30	PIECE	12:00:00 PM	3:30:00 PM	\$90.00	176	3.00	3.00	\$85.56	\$90.00	\$4.44	Above targ	0.67	\$30.00	8	\$48.00	\$96.00	\$32.00	Above target
28/04/2021	Picking Bins	AR-10-RL		3		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$165.00	167	5.00	5.00	\$142.60	\$165.00	\$22.40	Above targ	0.60	\$33.00	9	\$48.00	\$144.00	\$28.80	Above target
28/04/2021	Picking Bins	AR-10-RL		3		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$165.00	162	5.00	5.00	\$142.60	\$165.00	\$22.40	Above targ	0.60	\$33.00	10	\$48.00	\$144.00	\$28.80	Above target
28/04/2021	Picking Bins	AR-10-RL		3		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$165.00	168	5.00	5.00	\$142.60	\$165.00	\$22.40	Above targ	0.60	\$33.00	11	\$48.00	\$144.00	\$28.80	Above target
28/04/2021	Picking Bins	AR-10-RL		3		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$165.00	159	5.00	5.00	\$142.60	\$165.00	\$22.40	Above targ	0.60	\$33.00	12	\$48.00	\$144.00	\$28.80	Above target
28/04/2021	Picking Bins	AR-10-RL		3		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$165.00	161	5.00	5.00	\$142.60	\$165.00	\$22.40	Above targ	0.60	\$33.00	13	\$48.00	\$144.00	\$28.80	Above target
28/04/2021	Picking Bins	AR-10-RL		2.5		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$137.50	166	5.00	5.00	\$142.60	\$137.50	-\$5.10	Below targ	0.50	\$27.50	14	\$48.00	\$120.00	\$24.00	Below target
28/04/2021	Picking Bins	AR-10-RL		2.5		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$137.50	164	5.00	5.00	\$142.60	\$137.50	-\$5.10	Below targ	0.50	\$27.50	15	\$48.00	\$120.00	\$24.00	Below target
28/04/2021	Picking Bins	AR-10-RL		1.5		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$82.50	170	5.00	5.00	\$142.60	\$82.50	-\$60.10	Below targ	0.30	\$16.50	16	\$48.00	\$72.00	\$14.40	Below target
28/04/2021	Picking Bins	AR-10-RL		1.5		55 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$82.50	172	5.00	5.00	\$142.60	\$82.50	-\$60.10	Below targ	0.30	\$16.50	17	\$48.00	\$72.00	\$14.40	Below target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	181	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	1	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	185	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	2	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	187	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	3	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	186	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	4	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	188	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	5	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		8		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$360.00	182	8.00	8.00	\$228.16	\$360.00	\$131.84	Above targ	1.00	\$45.00	6	\$39.00	\$312.00	\$39.00	Above target
28/04/2021	Picking Bins	AR-15-RL		6		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$270.00	184	8.00	8.00	\$228.16	\$270.00	\$41.84	Above targ	0.75	\$33.75	7	\$39.00	\$234.00	\$29.25	Above target
28/04/2021	Picking Bins	AR-15-RL		6		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$270.00	183	8.00	8.00	\$228.16	\$270.00	\$41.84	Above targ	0.75	\$33.75	8	\$39.00	\$234.00	\$29.25	Above target
28/04/2021	Picking Bins	AR-15-RL		5.5		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$247.50	189	8.00	8.00	\$228.16	\$247.50	\$19.34	Above targ	0.69	\$30.94	9	\$39.00	\$214.50	\$26.81	Below target
28/04/2021	Picking Bins	AR-15-RL		5.5		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$247.50	190	8.00	8.00	\$228.16	\$247.50	\$19.34	Above targ	0.69	\$30.94	10	\$39.00	\$214.50	\$26.81	Below target
28/04/2021	Picking Bins	AR-15-RL		4		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$180.00	191	8.00	8.00	\$228.16	\$180.00	-\$48.16	Below targ	0.50	\$22.50	11	\$39.00	\$156.00	\$19.50	Below target
28/04/2021	Picking Bins	AR-15-RL		4		45 BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$180.00	192	8.00	8.00	\$228.16	\$180.00	-\$48.16	Below targ	0.50	\$22.50	12	\$39.00	\$156.00	\$19.50	Below target
29/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	2:00 00 PM	30	PIECE	12:00:00 PM	2:00:00 PM	\$90.00	221	1.50	1.50	\$42.78	\$90.00	\$47.22	Above targ	1.33	\$60.00	1	\$29.00	\$58.00	\$38.67	Above target
29/04/2021	Picking Bins	AR-01-RL		2		45 BIN	12:00 00 PM	2:00 00 PM	30	PIECE	12:00:00 PM	2:00:00 PM	\$90.00	222	1.50	1.50	\$42.78	\$90.00	\$47.22	Above targ	1.33	\$60.00	2	\$29.00	\$58.00	\$38.67	Above target
29/04/2021	Picking Bins	AR-01-RL		1.5		45 BIN	12:00 00 PM	2:00 00 PM	30	PIECE	12:00:00 PM	2:00:00 PM	\$67.50	223	1.50	1.50	\$42.78	\$67.50	\$24.72	Above targ	1.00	\$45.00	3	\$29.00	\$43.50	\$29.00	Above target
29/04/2021	Picking Bins	AR-01-RL		1.5		45 BIN	12:00 00 PM	2:00 00 PM	30	PIECE	12:00:00 PM	2:00:00 PM	\$67.50	224	1.50	1.50	\$42.78	\$67.50	\$24.72	Above targ	1.00	\$45.00	4	\$29.00	\$43.50	\$29.00	Above target
29/04/2021	Picking Bins	AR-01-RL		1		45 BIN	12:00 00 PM	2:30 00 PM	30	PIECE	12:00:00 PM	2:30:00 PM	\$45.00	225	2.00	2.00	\$57.04	\$45.00	-\$12.04	Below targ	0.50	\$22.50	5	\$29.00	\$29.00	\$14.50	Below target
29/04/2021	Picking Bins	AR-15-RL		6		45 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$270.00	219	5.00	5.00	\$142.60	\$270.00	\$127.40	Above targ	1.20	\$54.00	1	\$36.00	\$216.00	\$43.20	Above target
29/04/2021	Picking Bins	AR-15-RL		5		45 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$225.00	220	5.00	5.00	\$142.60	\$225.00	\$82.40	Above targ	1.00	\$45.00	2	\$36.00	\$180.00	\$36.00	Above target
29/04/2021	Picking Bins	AR-15-RL		4		45 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$180.00	216	5.00	5.00	\$142.60	\$180.00	\$37.40	Above targ	0.80	\$36.00	3	\$36.00	\$144.00	\$28.80	Above target
29/04/2021	Picking Bins	AR-15-RL		2.5		45 BIN	7:00:00 AM	12:00 00 PM		PIECE	7:00:00 AM	12:00:00 PM	\$112.50	217	5.00	5.00	\$142.60	\$112.50	-\$30.10	Below targ	0.50	\$22.50	4	\$36.00	\$90.00	\$18.00	

30/04/2021	Picking Bins	AR-13-RL	9	50	BIN	7:00:00 AM	4:00 00 PM	30	PIECE	7:00:00 AM	4:00:00 PM	\$450.00	243	8.50	8.50	\$242.42	\$450.00	\$207.58	Above targ	1.06	\$52.94	1	\$36.00	\$324.00	\$38.12	Above target
30/04/2021	Picking Bins	AR-13-RL	8	50	BIN	7:00:00 AM	4:00 00 PM	30	PIECE	7:00:00 AM	4:00:00 PM	\$400.00	244	8.50	8.50	\$242.42	\$400.00	\$157.58	Above targ	0.94	\$47.06	2	\$36.00	\$288.00	\$33.88	Above target
30/04/2021	Picking Bins	AR-13-RL	4.5	50	BIN	10:30:00 AM	4:00 00 PM	30	PIECE	10:30:00 AM	4:00:00 PM	\$225.00	248	5.00	5.00	\$142.60	\$225.00	\$82.40	Above targ	0.90	\$45.00	3	\$36.00	\$162.00	\$32.40	Above target
30/04/2021	Picking Bins	AR-13-RL	4.5	50	BIN	10:30:00 AM	4:00 00 PM	30	PIECE	10:30:00 AM	4:00:00 PM	\$225.00	249	5.00	5.00	\$142.60	\$225.00	\$82.40	Above targ	0.90	\$45.00	4	\$36.00	\$162.00	\$32.40	Above target
30/04/2021	Picking Bins	AR-13-RL	4	50	BIN	10:30:00 AM	4:00 00 PM	30	PIECE	10:30:00 AM	4:00:00 PM	\$200.00	246	5.00	5.00	\$142.60	\$200.00	\$57.40	Above targ	0.80	\$40.00	5	\$36.00	\$144.00	\$28.80	Above target
30/04/2021	Picking Bins	AR-13-RL	4	50	BIN	10:30:00 AM	4:00 00 PM	30	PIECE	10:30:00 AM	4:00:00 PM	\$200.00	247	5.00	5.00	\$142.60	\$200.00	\$57.40	Above targ	0.80	\$40.00	6	\$36.00	\$144.00	\$28.80	Above target
30/04/2021	Picking Bins	AR-13-RL	3.5	50	BIN	11:00:00 AM	4:00 00 PM	30	PIECE	11:00:00 AM	4:00:00 PM	\$175.00	250	4.50	4.50	\$128.34	\$175.00	\$46.66	Above targ	0.78	\$38.89	7	\$36.00	\$126.00	\$28.00	Below target
30/04/2021	Picking Bins	AR-13-RL	3.5	50	BIN	11:00:00 AM	4:00 00 PM	30	PIECE	11:00:00 AM	4:00:00 PM	\$175.00	251	4.50	4.50	\$128.34	\$175.00	\$46.66	Above targ	0.78	\$38.89	8	\$36.00	\$126.00	\$28.00	Below target
30/04/2021	Picking Bins	AR-13-RL	3	50	BIN	11:00:00 AM	4:00 00 PM	30	PIECE	11:00:00 AM	4:00:00 PM	\$150.00	252	4.50	4.50	\$128.34	\$150.00	\$21.66	Above targ	0.67	\$33.33	9	\$36.00	\$108.00	\$24.00	Below target
30/04/2021	Picking Bins	AR-13-RL	5	50	BIN	7:00:00 AM	4:00 00 PM	30	PIECE	7:00:00 AM	4:00:00 PM	\$250.00	245	8.50	8.50	\$242.42	\$250.00	\$7.58	Above targ	0.59	\$29.41	10	\$36.00	\$180.00	\$21.18	Below target
30/04/2021	Picking Bins	GC-3-RL	3	50	BIN	7:00:00 AM	11:00:00 AM		PIECE	7:00:00 AM	11:00:00 AM	\$150.00	138	4.00	4.00	\$114.08	\$150.00	\$35.92	Above targ	0.75	\$37.50	1	\$40.00	\$120.00	\$30.00	Above target
30/04/2021	Picking Bins	GC-3-RL	2.5	50	BIN	7:00:00 AM	10:30:00 AM		PIECE	7:00:00 AM	10:30:00 AM	\$125.00	139	3.50	3.50	\$99.82	\$125.00	\$25.18	Above targ	0.71	\$35.71	2	\$40.00	\$100.00	\$28.57	Above target
30/04/2021	Picking Bins	GC-3-RL	2.5	50	BIN	7:00:00 AM	10:30:00 AM		PIECE	7:00:00 AM	10:30:00 AM	\$125.00	141	3.50	3.50	\$99.82	\$125.00	\$25.18	Above targ	0.71	\$35.71	3	\$40.00	\$100.00	\$28.57	Above target
30/04/2021	Picking Bins	GC-3-RL	2.5	50	BIN	7:00:00 AM	10:30:00 AM		PIECE	7:00:00 AM	10:30:00 AM	\$125.00	140	3.50	3.50	\$99.82	\$125.00	\$25.18	Above targ	0.71	\$35.71	4	\$40.00	\$100.00	\$28.57	Above target
30/04/2021	Picking Bins	GC-3-RL	2.5	50	BIN	7:00:00 AM	10:30:00 AM		PIECE	7:00:00 AM	10:30:00 AM	\$125.00	142	3.50	3.50	\$99.82	\$125.00	\$25.18	Above targ	0.71	\$35.71	5	\$40.00	\$100.00	\$28.57	Above target
30/04/2021	Picking Bins	GC-3-RL	2	50	BIN	7:00:00 AM	11:00:00 AM		PIECE	7:00:00 AM	11:00:00 AM	\$100.00	143	4.00	4.00	\$114.08	\$100.00	-\$14.08	Below targ	0.50	\$25.00	6	\$40.00	\$80.00	\$20.00	Below target
30/04/2021	Picking Bins	GC-3-RL	2	50	BIN	7:00:00 AM	11:00:00 AM		PIECE	7:00:00 AM	11:00:00 AM	\$100.00	144	4.00	4.00	\$114.08	\$100.00	-\$14.08	Below targ	0.50	\$25.00	7	\$40.00	\$80.00	\$20.00	Below target
30/04/2021	Picking Bins	WB-K-RL	2	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$110.00	29	1.50	1.50	\$42.78	\$110.00	\$67.22	Above targ	1.33	\$73.33	1	\$43.00	\$86.00	\$57.33	Above target
30/04/2021	Picking Bins	WB-K-RL	1.5	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$82.50	30	1.50	1.50	\$42.78	\$82.50	\$39.72	Above targ	1.00	\$55.00	2	\$43.00	\$64.50	\$43.00	Above target
30/04/2021	Picking Bins	WB-K-RL	1	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$55.00	31	1.50	1.50	\$42.78	\$55.00	\$12.22	Above targ	0.67	\$36.67	3	\$43.00	\$43.00	\$28.67	Above target
30/04/2021	Picking Bins	WB-K-RL	1	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$55.00	32	1.50	1.50	\$42.78	\$55.00	\$12.22	Above targ	0.67	\$36.67	4	\$43.00	\$43.00	\$28.67	Above target
30/04/2021	Picking Bins	WB-K-RL	1	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$55.00	34	1.50	1.50	\$42.78	\$55.00	\$12.22	Above targ	0.67	\$36.67	5	\$43.00	\$43.00	\$28.67	Above target
30/04/2021	Picking Bins	WB-K-RL	1	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$55.00	33	1.50	1.50	\$42.78	\$55.00	\$12.22	Above targ	0.67	\$36.67	6	\$43.00	\$43.00	\$28.67	Above target
30/04/2021	Picking Bins	WB-K-RL	3	55	BIN	7:00:00 AM	1:30 00 PM	30	PIECE	7:00:00 AM	1:30:00 PM	\$165.00	37	6.00	6.00	\$171.12	\$165.00	-\$6.12	Below targ	0.50	\$27.50	7	\$43.00	\$129.00	\$21.50	Below target
30/04/2021	Picking Bins	WB-K-RL	0.5	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$27.50	36	1.50	1.50	\$42.78	\$27.50	-\$15.28	Below targ	0.33	\$18.33	8	\$43.00	\$21.50	\$14.33	Below target
30/04/2021	Picking Bins	WB-K-RL	0.5	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$27.50	35	1.50	1.50	\$42.78	\$27.50	-\$15.28	Below targ	0.33	\$18.33	9	\$43.00	\$21.50	\$14.33	Below target
30/04/2021	Picking Bins	WB-K-RL	0.5	55	BIN	7:00:00 AM	8:30:00 AM		PIECE	7:00:00 AM	8:30:00 AM	\$27.50	38	1.50	1.50	\$42.78	\$27.50	-\$15.28	Below targ	0.33	\$18.33	10	\$43.00	\$21.50	\$14.33	Below target
30/04/2021	Picking Bins	WB-L-PL	4	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$240.00	43	6.00	6.00	\$171.12	\$240.00	\$68.88	Above targ	0.67	\$40.00	1	\$49.00	\$196.00	\$32.67	Above target
30/04/2021	Picking Bins	WB-L-PL	4	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$240.00	45	6.00	6.00	\$171.12	\$240.00	\$68.88	Above targ	0.67	\$40.00	2	\$49.00	\$196.00	\$32.67	Above target
30/04/2021	Picking Bins	WB-L-PL	4	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$240.00	44	6.00	6.00	\$171.12	\$240.00	\$68.88	Above targ	0.67	\$40.00	3	\$49.00	\$196.00	\$32.67	Above target
30/04/2021	Picking Bins	WB-L-PL	4	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$240.00	47	6.00	6.00	\$171.12	\$240.00	\$68.88	Above targ	0.67	\$40.00	4	\$49.00	\$196.00	\$32.67	Above target
30/04/2021	Picking Bins	WB-L-PL	3.5	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$210.00	40	6.00	6.00	\$171.12	\$210.00	\$38.88	Above targ	0.58	\$35.00	5	\$49.00	\$171.50	\$28.58	Above target
30/04/2021	Picking Bins	WB-L-PL	3.5	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$210.00	39	6.00	6.00	\$171.12	\$210.00	\$38.88	Above targ	0.58	\$35.00	6	\$49.00	\$171.50	\$28.58	Above target
30/04/2021	Picking Bins	WB-L-PL	1	60	BIN	1:30 00 PM	3:30 00 PM		PIECE	1:30:00 PM	3:30:00 PM	\$60.00	48	2.00	2.00	\$57.04	\$60.00	\$2.96	Above targ	0.50	\$30.00	7	\$49.00	\$49.00	\$24.50	Below target
30/04/2021	Picking Bins	WB-L-PL	2.5	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$150.00	42	6.00	6.00	\$171.12	\$150.00	-\$21.12	Below targ	0.42	\$25.00	8	\$49.00	\$122.50	\$20.42	Below target
30/04/2021	Picking Bins	WB-L-PL	2.5	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$150.00	41	6.00	6.00	\$171.12	\$150.00	-\$21.12	Below targ	0.42	\$25.00	9	\$49.00	\$122.50	\$20.42	Below target
30/04/2021	Picking Bins	WB-L-PL	2	60	BIN	8:30:00 AM	3:00 00 PM	30	PIECE	8:30:00 AM	3:00:00 PM	\$120.00	46	6.00	6.00	\$171.12	\$120.00	-\$51.12	Below targ	0.33	\$20.00	10	\$49.00	\$98.00	\$16.33	Below target
1/05/2021	Picking Bins	AR-13-RL	8	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$400.00	264	8.00	8.00	\$228.16	\$400.00	\$171.84	Above targ	1.00	\$50.00	1	\$36.00	\$288.00	\$36.00	Above target
1/05/2021	Picking Bins	AR-13-RL	7	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$350.00	263	8.00	8.00	\$228.16	\$350.00	\$121.84	Above targ	0.88	\$43.75	2	\$36.00	\$252.00	\$31.50	Above target
1/05/2021	Picking Bins	AR-13-RL	7	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$350.00	267	8.00	8.00	\$228.16	\$350.00	\$121.84	Above targ	0.88	\$43.75	3	\$36.00	\$252.00	\$31.50	Above target
1/05/2021	Picking Bins	AR-13-RL	7	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$350.00	268	8.00	8.00	\$228.16	\$350.00	\$121.84	Above targ	0.88	\$43.75	4	\$36.00	\$252.00	\$31.50	Above target
1/05/2021	Picking Bins	AR-13-RL	6.5	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$325.00	269	8.00	8.00	\$228.16	\$325.00	\$96.84	Above targ	0.81	\$40.63	5	\$36.00	\$234.00	\$29.25	Above target
1/05/2021	Picking Bins	AR-13-RL	6.5	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$325.00	270	8.00	8.00	\$228.16	\$325.00	\$96.84	Above targ	0.81	\$40.63	6	\$36.00	\$234.00	\$29.25	Above target
1/05/2021	Picking Bins	AR-13-RL	6	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$300.00	266	8.00	8.00	\$228.16	\$300.00	\$71.84	Above targ	0.75	\$37.50	7	\$36.00	\$216.00	\$27.00	Below target
1/05/2021	Picking Bins	AR-13-RL	5	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$250.00	271	8.00	8.00	\$228.16	\$250.00	\$21.84	Above targ	0.63	\$31.25	8	\$36.00	\$180.00	\$22.50	Below target
1/05/2021	Picking Bins	AR-13-RL	5	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$250.00	272	8.00	8.00	\$228.16	\$250.00	\$21.84	Above targ	0.63	\$31.25	9	\$36.00	\$180.00	\$22.50	Below target
1/05/2021	Picking Bins	AR-13-RL	4	50	BIN	7:00:00 AM	3:30 00 PM	30	PIECE	7:00:00 AM	3:30:00 PM	\$200.00	265	8.00	8.00	\$228.16	\$200.00	-\$28.16	Below targ	0.50	\$25.00	10	\$36.00	\$144.00	\$18.00	Below target
1/05/2021	Picking Bins	WB-G-RL	1.5																							

2/05/2021 Picking Bins	AR-03-RL	2	50 BIN	9:30:00 AM	3:30 00 PM	30 PIECE	9:30:00 AM	3:30:00 PM	\$100.00	293	5.50	5.50	\$156.86	\$100.00	-\$56.86	Below targ	0 36	\$18.18	8	\$40.00	\$80.00	\$14 55	Below target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	278	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	1	\$29.00	\$29.00	\$29 00	Above target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	282	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	2	\$29.00	\$29.00	\$29 00	Above target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	283	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	3	\$29.00	\$29.00	\$29 00	Above target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	280	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	4	\$29.00	\$29.00	\$29 00	Above target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	281	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	5	\$29.00	\$29.00	\$29 00	Above target	\$21.00 OVER
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	8:00:00 AM	PIECE	7:00:00 AM	8:00:00 AM	\$50.00	279	1.00	1.00	\$28.52	\$50.00	\$21.48	Above targ	1 00	\$50 00	6	\$29.00	\$29.00	\$29 00	Above target	
2/05/2021 Picking Bins	AR-13-RL	2	50 BIN	7:00:00 AM	9:30:00 AM	PIECE	7:00:00 AM	9:30:00 AM	\$100.00	285	2.50	2.50	\$71.30	\$100.00	\$28.70	Above targ	0 80	\$40 00	7	\$29.00	\$58.00	\$23 20	Below target	
2/05/2021 Picking Bins	AR-13-RL	1	50 BIN	7:00:00 AM	9:00:00 AM	PIECE	7:00:00 AM	9:00:00 AM	\$50.00	284	2.00	2.00	\$57.04	\$50.00	-\$7.04	Below targ	0 50	\$25 00	8	\$29.00	\$29.00	\$14 50	Below target	
2/05/2021 Picking Bins	WB-G-RL	4.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$292.50	90	7.50	7.50	\$213.90	\$292.50	\$78.60	Above targ	0 60	\$39 00	1	\$62.00	\$279.00	\$37 20	Above target	
2/05/2021 Picking Bins	WB-G-RL	4.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$292.50	91	7.50	7.50	\$213.90	\$292.50	\$78.60	Above targ	0 60	\$39 00	2	\$62.00	\$279.00	\$37 20	Above target	
2/05/2021 Picking Bins	WB-G-RL	4	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$260.00	93	7.50	7.50	\$213.90	\$260.00	\$46.10	Above targ	0 53	\$34.67	3	\$62.00	\$248.00	\$33 07	Above target	
2/05/2021 Picking Bins	WB-G-RL	4	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$260.00	87	7.50	7.50	\$213.90	\$260.00	\$46.10	Above targ	0 53	\$34.67	4	\$62.00	\$248.00	\$33 07	Above target	
2/05/2021 Picking Bins	WB-G-RL	4	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$260.00	88	7.50	7.50	\$213.90	\$260.00	\$46.10	Above targ	0 53	\$34.67	5	\$62.00	\$248.00	\$33 07	Above target	
2/05/2021 Picking Bins	WB-G-RL	4	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$260.00	92	7.50	7.50	\$213.90	\$260.00	\$46.10	Above targ	0 53	\$34.67	6	\$62.00	\$248.00	\$33 07	Above target	
2/05/2021 Picking Bins	WB-G-RL	3.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$227.50	89	7.50	7.50	\$213.90	\$227.50	\$13.60	Above targ	0 47	\$30 33	7	\$62.00	\$217.00	\$28 93	Above target	\$3.00 OVER
2/05/2021 Picking Bins	WB-G-RL	3.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$227.50	96	7.50	7.50	\$213.90	\$227.50	\$13.60	Above targ	0 47	\$30 33	8	\$62.00	\$217.00	\$28 93	Above target	
2/05/2021 Picking Bins	WB-G-RL	3	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$195.00	86	7.50	7.50	\$213.90	\$195.00	-\$18.90	Below targ	0 40	\$26 00	9	\$62.00	\$186.00	\$24 80	Below target	
2/05/2021 Picking Bins	WB-G-RL	3	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$195.00	85	7.50	7.50	\$213.90	\$195.00	-\$18.90	Below targ	0 40	\$26 00	10	\$62.00	\$186.00	\$24 80	Below target	
2/05/2021 Picking Bins	WB-G-RL	3	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$195.00	97	7.50	7.50	\$213.90	\$195.00	-\$18.90	Below targ	0 40	\$26 00	11	\$62.00	\$186.00	\$24 80	Below target	
2/05/2021 Picking Bins	WB-G-RL	2.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$162.50	95	7.50	7.50	\$213.90	\$162.50	-\$51.40	Below targ	0 33	\$21.67	12	\$62.00	\$155.00	\$20 67	Below target	
2/05/2021 Picking Bins	WB-G-RL	2.5	65 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$162.50	94	7.50	7.50	\$213.90	\$162.50	-\$51.40	Below targ	0 33	\$21.67	13	\$62.00	\$155.00	\$20 67	Below target	
3/05/2021 Picking Bins	AR-10-RL	5.5	55 BIN	7:00:00 AM	3:00 00 PM	30 PIECE	7:00:00 AM	3:00:00 PM	\$302.50	307	7.50	7.50	\$213.90	\$302.50	\$88.60	Above targ	0 73	\$40 33	1	\$46.00	\$253.00	\$33 73	Above target	
3/05/2021 Picking Bins	AR-10-RL	5.5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$302.50	300	8.00	8.00	\$228.16	\$302.50	\$74.34	Above targ	0 69	\$37 81	2	\$46.00	\$253.00	\$31 63	Above target	
3/05/2021 Picking Bins	AR-10-RL	5.5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$302.50	305	8.00	8.00	\$228.16	\$302.50	\$74.34	Above targ	0 69	\$37 81	3	\$46.00	\$253.00	\$31 63	Above target	
3/05/2021 Picking Bins	AR-10-RL	5.5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$302.50	302	8.00	8.00	\$228.16	\$302.50	\$74.34	Above targ	0 69	\$37 81	4	\$46.00	\$253.00	\$31 63	Above target	
3/05/2021 Picking Bins	AR-10-RL	5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$275.00	298	8.00	8.00	\$228.16	\$275.00	\$46.84	Above targ	0 63	\$34 38	5	\$46.00	\$230.00	\$28 75	Above target	
3/05/2021 Picking Bins	AR-10-RL	5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$275.00	313	8.00	8.00	\$228.16	\$275.00	\$46.84	Above targ	0 63	\$34 38	6	\$46.00	\$230.00	\$28 75	Above target	\$9.00 OVER
3/05/2021 Picking Bins	AR-10-RL	5	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$275.00	315	8.00	8.00	\$228.16	\$275.00	\$46.84	Above targ	0 63	\$34 38	7	\$46.00	\$230.00	\$28 75	Above target	
3/05/2021 Picking Bins	AR-10-RL	4	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$220.00	309	8.00	8.00	\$228.16	\$220.00	-\$8.16	Below targ	0 50	\$27 50	8	\$46.00	\$184.00	\$23 00	Below target	
3/05/2021 Picking Bins	AR-10-RL	4	55 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$220.00	311	8.00	8.00	\$228.16	\$220.00	-\$8.16	Below targ	0 50	\$27 50	9	\$46.00	\$184.00	\$23 00	Below target	
3/05/2021 Picking Bins	AR-10-RL	3	55 BIN	7:00:00 AM	2:00 00 PM	30 PIECE	7:00:00 AM	2:00:00 PM	\$165.00	296	6.50	6.50	\$185.38	\$165.00	-\$20.38	Below targ	0 46	\$25 38	10	\$46.00	\$138.00	\$21 23	Below target	
3/05/2021 Picking Bins	WB-G-RL	5.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$357.50	113	8.00	8.00	\$228.16	\$357.50	\$129.34	Above targ	0 69	\$44.69	1	\$51.00	\$280.50	\$35 06	Above target	
3/05/2021 Picking Bins	WB-G-RL	5.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$357.50	114	8.00	8.00	\$228.16	\$357.50	\$129.34	Above targ	0 69	\$44.69	2	\$51.00	\$280.50	\$35 06	Above target	
3/05/2021 Picking Bins	WB-G-RL	4.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$292.50	110	8.00	8.00	\$228.16	\$292.50	\$64.34	Above targ	0 56	\$36 56	3	\$51.00	\$229.50	\$28 69	Above target	
3/05/2021 Picking Bins	WB-G-RL	4.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$292.50	109	8.00	8.00	\$228.16	\$292.50	\$64.34	Above targ	0 56	\$36 56	4	\$51.00	\$229.50	\$28 69	Above target	
3/05/2021 Picking Bins	WB-G-RL	4.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$292.50	111	8.00	8.00	\$228.16	\$292.50	\$64.34	Above targ	0 56	\$36 56	5	\$51.00	\$229.50	\$28 69	Above target	\$14.00 OVER
3/05/2021 Picking Bins	WB-G-RL	4	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$260.00	112	8.00	8.00	\$228.16	\$260.00	\$31.84	Above targ	0 50	\$32 50	6	\$51.00	\$204.00	\$25 50	Below target	
3/05/2021 Picking Bins	WB-G-RL	3.5	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$227.50	108	8.00	8.00	\$228.16	\$227.50	-\$0.66	Below targ	0 44	\$28.44	7	\$51.00	\$178.50	\$22 31	Below target	
3/05/2021 Picking Bins	WB-G-RL	3	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$195.00	116	8.00	8.00	\$228.16	\$195.00	-\$33.16	Below targ	0 38	\$24 38	8	\$51.00	\$153.00	\$19 13	Below target	
3/05/2021 Picking Bins	WB-G-RL	3	65 BIN	7:00:00 AM	3:30 00 PM	30 PIECE	7:00:00 AM	3:30:00 PM	\$195.00	115	8.00	8.00	\$228.16	\$195.00	-\$33.16	Below targ	0 38	\$24 38	9	\$51.00	\$153.00	\$19 13	Below target	

IN THE FAIR WORK COMMISSION**Fair Work Act 2009 (Cth)****Matter No.: AM2020/104****Re Application by:** Australian Workers Union

In respect of the MA000028 Horticultural Award

STATEMENT OF RICHARD GURNEY ECKERSLEY

On 9 June 2021, I, Richard Eckersley, farmer, of [REDACTED] in the State of Western Australia, **STATE**

Background

1. I currently own and operate Yambellup Estate, a horticultural operation in Harvey WA.
2. I am a 4th generation farmer, was born on the farm, and have been working on farms for 26 years and have owned and operated the farm since 2008.
3. I currently possess a Certificate III in Horticulture.
4. I have previously been the Chair of WA Citrus and have stood on the Regional Horticulture Advisory Committee.
5. The farm consists of approximately 100 hectares of citrus fruit (mandarins, oranges and lemons), avocados and wine grapes. Of the citrus fruit, the main one is mandarins.

Farm finances

6. The annual turnover of my farming interests is approximately \$2m per annum.
7. Our employment expenses are about 30-40% of our annual turnover.

Peak Seasons and Seasonal Work

8. Our peak seasons for harvest citrus and avocados are from May through to November for citrus and avocados, with pruning and thinning of grapes taking place June/July.
9. Generally speaking, Citrus has about a 4 week period from the time it is mature to the time it has to be sold. We attempt to have the crop picked and shipped within 48 hours. Unlike apples, which can be picked and stored, citrus fruit are not forgiving.

Employment details

10. All administrative work on the farm is handled by me.
11. We currently employ three permanent employees as supervisors and plant (tractor) operators.
12. For the citrus fruit and avocado, we employ 20 to 30 temporary workers as pickers and about 10 temporary packers on a seasonal basis.
13. Most of our seasonal pickers are engaged through labour hire operators, whereas the packers are directly employed.
14. Prior to the closing of international borders as a result of COVID 19, the vast majority of the temporary workers that we employ are backpackers. However, given border closures there are few backpackers looking for picking work and so we have also recently begun using the Seasonal Worker Program to source workers via the labour hire provider, the Job Shop.
15. Pickers general start work at around 7am and end at about 4pm. This strict start time and end time is dependent upon weather, and particularly rain. Because citrus is a winter harvest, winter rain can affect us.
16. We generally do not struggle to find employees, and usually have a good number of multi-year backpackers who return for multiple seasons. This is advantageous, as the more experienced they are, the more productive and highly paid they are.
17. Pickers and pruners are provided with tractors equipped with trailers, bins, ladders, and clippers.

18. Pruners maintain trees, which are kept from growing too tall by a canopy. This allows for safer conditions for pickers.
19. Citrus fruit must be carefully picked or snipped off at the stem with some technique involved. Usually, it takes 2-3 days for a picker to become competent. We rely on the Australian Fresh Citrus Harvest Handbook to train our staff. A copy of the handbook is annexed hereto and marked "A". Some will need more training in technique and talking it through.
20. Pruning is a more specialised role, for which we have a multi-season team of workers of permanent migrants from Afghanistan who return season-on-season. In addition to these workers, we have some others, including Tongans.

Use of Piece Rates and Employee Earnings

21. Our permanent staff are all paid an hourly rate, as are packing shed staff.
22. The work picking citrus fruit and avocados and pruning the grape vines paid piece rates.
23. Annexed hereto and marked "B" is a copy of the piece rate agreement we use.
24. The initial piece rates are established with reference to what we have paid in previous seasons, what is industry standard, as well as our own experience and knowledge of what is achievable for an average competent worker. However, we review the rate we are paying regularly — on a daily basis at the start of the season — with the use of spreadsheets which track hours worked and the quantity of fruit picked by bin.
25. Less productive workers will be provided with the opportunity to retrain, and if there is no improvement, they will be advised that they may want to take the opportunity to move on to more suitable work.
26. It is generally disadvantageous to have someone picking at a lower rate, although piece rates make it more feasible to keep such workers on for a longer period and provide them with opportunities to improve.
27. We use piece rates because they stimulate productivity within our workforce, which is typically comprised of workers who do not have much experience with the work and

are not interested in long term employment with the farm, in a way that an hourly rate typically does not.

28. Annexed and marked “C” is a copy of sample pick and pay records.

Introduction of a minimum hourly rate

29. The introduction of a minimum floor for piece rates would impact negatively on our business. If the floor for piece rates caused picking to slow, given the narrow space of time, for citrus fruit, this could pose a danger to the viability of Yambellup Estate This poses a series of serious challenges.
30. The first is adjusting to a slower picking strategy. If workers including those currently paid piece rates pick slower (which is likely), then there is likely to be a move away from sensitive produce. Citrus given its narrow timeframe, would be likely to play no part in the future of Yambellup Estate. This is because we are a local market producer only, with no scale sufficient for wider distribution or export. The time and wages cost would be beyond what this farm could bear.
31. The fruit mix would be under considerable pressure if the cost of citrus fruit increased. Other fruit which could be explored – at great expense – includes wine grapes, table grapes and kiwifruit has much mechanisation. The investment necessary to move to different crops is substantial, and likely to be in the millions of dollars. Most farms won't survive it.
32. Prior to the global financial crisis 68% of our crops were wine grapes, and wine grape growers in the Margret River did a lot of exporting.
33. A 20 to 30% increase in our labour bill would absorb our profit margin and would make the business unviable.
34. Our productivity may be substantially reduced and it is highly likely that we would need to assess (and if necessary cease to employ) those employees who are not able to quickly achieve a high rate of productivity. In order to assess productivity, this would be an administrative burden –it would require some greater degree of supervision of work productivity, including examining how much work each individual picker is performing.

- 35. We would look at getting rid of citrus fruits and grow more grapes as the grapes are mechanically harvested whereas the citrus is very labour intensive.

- 36. In the area of southern WA where Yambellup Estate is located, there have been several farming and horticultural upheavals, such as is likely to follow from the undermining of piece rates in the AWU Application. One such was the dairy industry deregulation – in 2000. That saw many farmers cease making money from dairy and move to horticulture. Yambellup Estate ceased our family dairy operation in 2003 due to the deregulation in 2000. Dairy farmers at the beginning of the 21st century planted crops, some moved to fruit produce and others went to fodder for horses. It is likely that the undermining of piece rates will amount to a similar turning point for horticulture in my region.

.....

.....

Richard Gurney Eckersley

Date

AUSTRALIAN FRESH CITRUS HARVEST HANDBOOK



**2016 Pre-release
version**



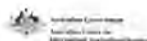
Department of
Primary Industries

2016 Pre-release 19/4

Australian Fresh Citrus Harvest Handbook

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This booklet is funded by the Pakistan ACIAR project
and NSW Department of Primary Industries funded
project.



Department of
Primary Industries



Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (March 2016). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent advisor. Recognising that some of the information in this document is provided by third parties, the State of New South Wales, the author and the publisher take no responsibility for the accuracy, currency, reliability and correctness of any information included in the document provided by third parties.

ISSN TBA
[Reference number TBA]

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Introduction

Harvesting citrus in Australia occurs mainly from late autumn to late spring. It requires special care to ensure that consumers receive a safe high quality fruit.

Citrus can be easily bruised or damaged by mishandling. This causes fruit blemish or rotting during transport to the market. Harvesting citrus involves working outdoors, around machinery and climbing ladders.

This booklet will provide the relevant information so you can successfully harvest citrus in the correct and safe manner.

This is a pre-release version to be used by citrus pickers, growers and packers in the 2016 harvest season. Please circulate and use this guide. The final version will be printed in March 2017. Please provide your suggestions and feedback to Steven Falivene: Ph 0427208611 Email steven.falivene@dpi.nsw.gov.au

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-1-

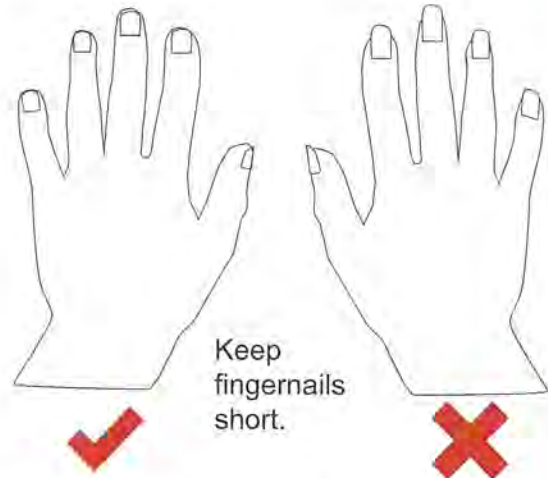
Preparation Clothes, bags & gloves

Wear appropriate clothing



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Always wear gloves when handling fruit. Replace gloves when worn or broken. Gloves are either provided by the employer or can be purchased from an agricultural store.



Keep fingernails short.

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-3-

On farm

Check with your supervisor of any special requirements to work in the orchard. This is normally in an farm induction document and includes information about:

- Specific safety requirements (i.e. Hi Vis clothing).
- Car parking areas.
- Emergency procedures.
- Behaviour & hygiene policy.
- Speed limits.



No children on farm

- No children or pets.
- Children are at great danger from tractors and machinery.



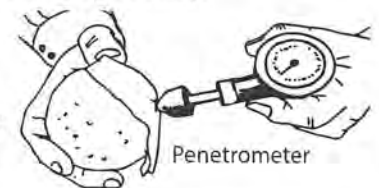
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Start picking

Check with your supervisor each morning when and where to harvest. Conditions can change overnight and during the day.



- Only pick rows allocated to you, when finished ask for further instruction.
- On cold (i.e. winter) days harvest often starts between 10am to 12 pm until dew on trees has dried and favourable weather conditions are present.
- Harvest may cease any time due to changing weather conditions.
- On some days harvest may not occur (i.e. too cold, heavy dew/fog or rain).
- Orchardists often use a penetrometer to check if fruit are able to be harvested.
- Harvest can commence early morning in summer if fruit are dry.



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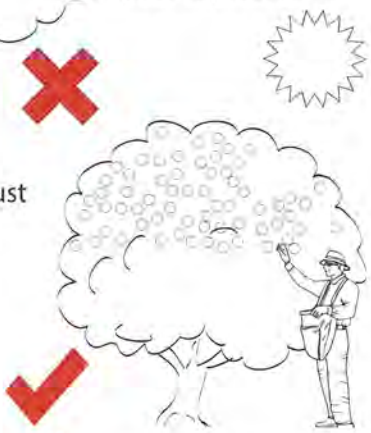
-5-

Fruit is damaged or weakened when harvested in unfavourable conditions (oleocellosis, p 52).



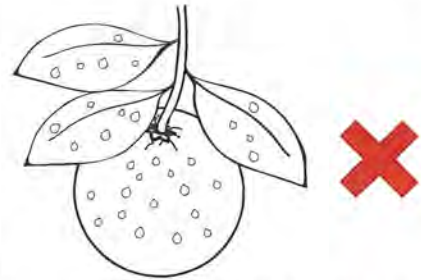
Do not harvest oranges when it is wet (rain or dew). Some snip picked (p16) mandarin varieties can be harvested when wet, check with your supervisor.

Fruit must be dry.



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If fruit are wet report it to your supervisor.



Do not harvest if temperature is less than 12°C. In summer start early morning to avoid the heat of the day and drink lots of water.



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Picking Equipment

Picking bags

Fruit must be picked into picking bags. Bags come in two sizes: 1 case (~ 16kg) and 1 ½ case (~ 22kg). Use a bag that suits your carrying capacity.



Orchard Quarantine



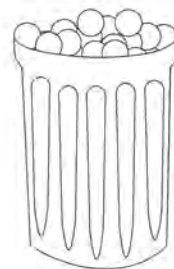
Orchard damaging insect can fall in bags. Shake out picking bags at the end of day or before moving onto a new block or farm.



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Do not use buckets

Do not pick into buckets or garbage bins. Fruit can be damaged (p 52) when thrown into buckets or when buckets are unloaded into bins.

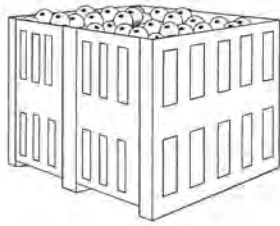


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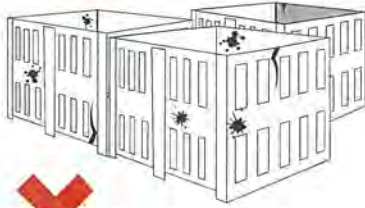
Bins

Fruit are unloaded from picking bags into plastic bins.

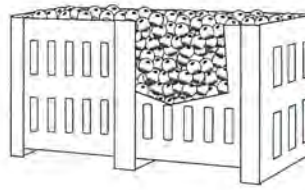


Remove any seed thorns, insects, sticks, mud, rubbish, pieces of old or damaged fruit etc.

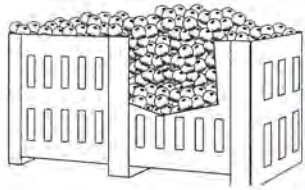
Put aside and report any broken, very dirty or chemically contaminated bins to your supervisor.



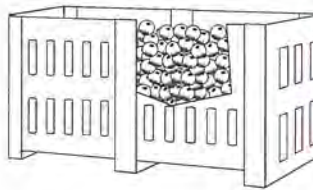
Fill bins properly



Fruit should just reach top of bin (water level).



Do not overfill bins.



Do not under fill bins.

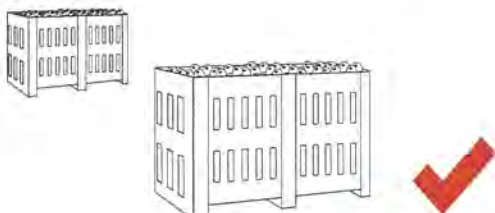
Moving empty bins

Ask for a forklift if you need to move bins a considerable distance. Only attempt to move bins if within your safe lifting limit, if not ask for help.

Rolling bins on side can sometimes be easier than dragging.

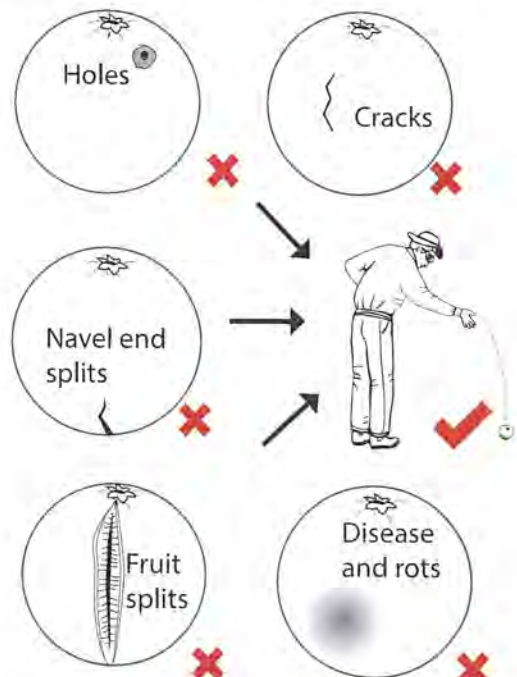


Ensure bin fork holes are facing along the row.



Picking Practices

Fruit with broken or opened skin must be thrown to the ground.

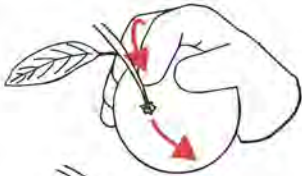


Snap picking

Mostly used with oranges, grapefruit, lemons, limes and some mandarins.



TWIST. Hold fruit firmly but do not squeeze fruit hard (fruit bruising p 52).



TILT to horizontal position.

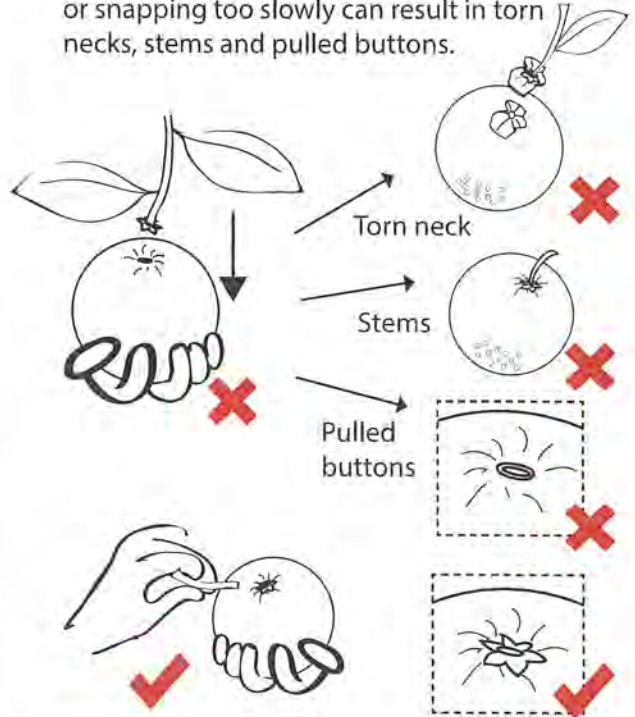


SNAP sharply at right angles to stem by pulling quickly downwards.



The twist, tilt and snap action is done in one swift quick action.

Inadequate twisting and/or tilting of fruit or snapping too slowly can result in torn necks, stems and pulled buttons.

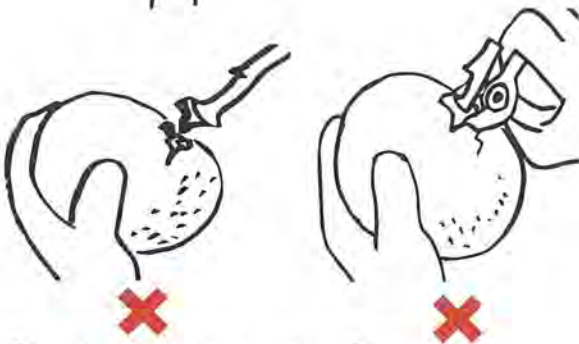


Twist, tilt and pull off the stem if on the fruit.

Buttons must remain on the fruit

Single snip picking

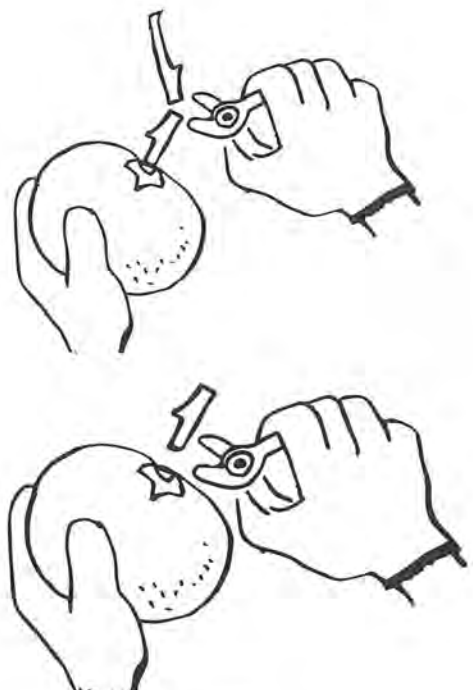
Most mandarins are snip picked and check with your supervisor if required for other varieties.



Do not to tear, scrape or cut fruit.

Double snip picking

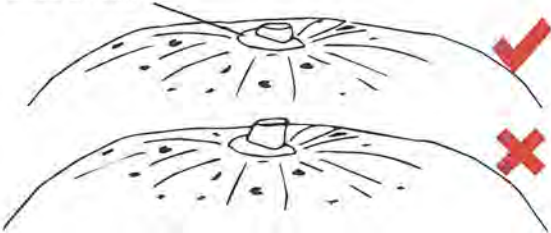
Use when first learning snip picking and or when fruits are not within comfortable reach.



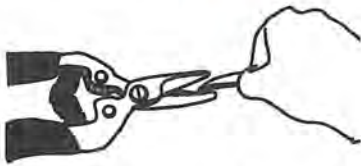
Snip finish

Stems must be short, flat and about 1mm from base of button. Long stems can damage other fruit. Some stem (about 1mm) must remain on fruit because trying to cut stems too short risk cutting fruit.

Base of button



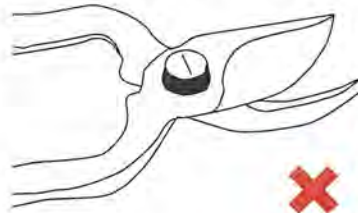
Cut must be flat.



Keep snips sharp.

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Types of snips



Wide blade snips are not suitable. They are difficult to cut short stems and are prone to cut fruit.



Narrow, slightly curved and blunt end fruit and vegetable snips are suitable.



Blunt end narrow nose snips are best.

Snips can be provided by the employer or purchased from agriculture supply stores.

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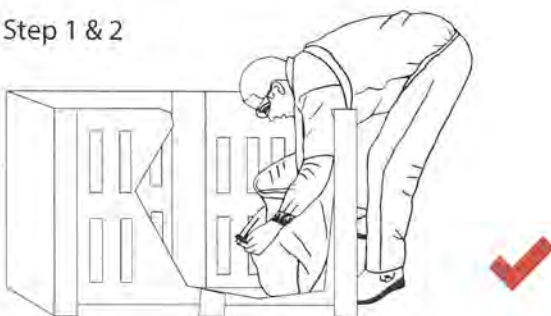
Picking in bags

Citrus fruit can damage or bruise easily (oleocellosis p 52), handle fruit carefully.

Place fruit gently into bins

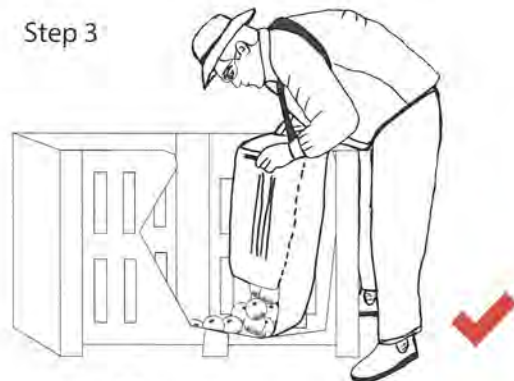
1. Bend over to place filled bag on bottom of bin or on fruit in bin.
2. When the bag is resting unhook the straps.
3. Lift the bag up slowly to allow fruit to roll out of the bag (use hand and leg support if required, p 22).
 - Do not let fruit drop/fall out, fruit should flow or roll out of the bag.

Step 1 & 2



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Step 3



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Tip

To help reduce the load on your back when unloading fruit you can hold onto the bin and bend your arms and legs as you lower the bag into the bin and raise the bag to unload fruit. Take the load off your back and onto your arms and legs. Unloading from the edge of the bin can sometime be easier, find what suits you best.



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Do not overfill bags.

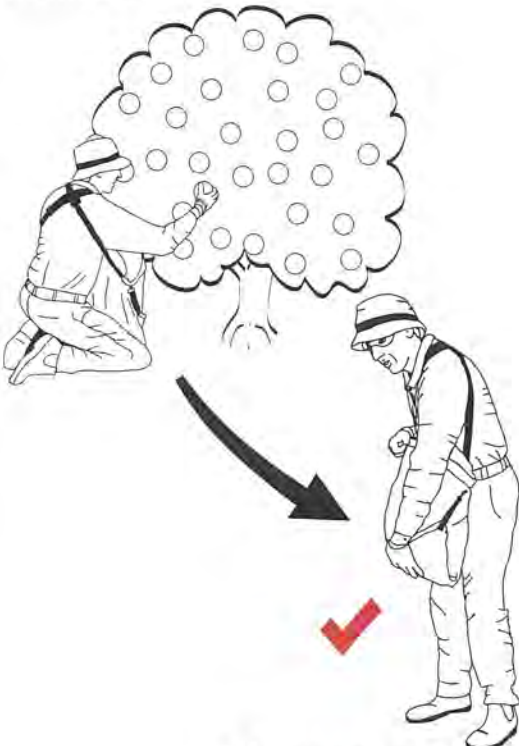
Do not place filled bags of fruit on the edge of the bin, place it directly and carefully into the bin (p 20).



2016 Pre-release 19/4

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When picking small trees, brush underside of bag if it touches the ground to remove seed thorns and other debris.



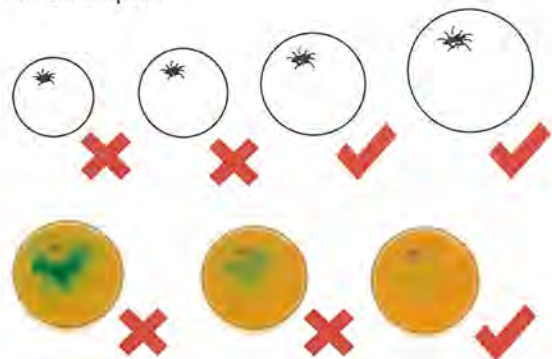
-24- 2016 Pre-release 19/4

Select picking

Sometimes fruit are picked according to colour (rind maturity) or size to better meet market requirements.

If select picking, your supervisor will demonstrate the fruit to pick and not to pick according to size and/or colour specifications.

For example:



Select picking is slower than strip picking (picking the whole tree at once).

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-25-

Harvest practices

Pick all fruit within the reach of a ladder before moving to the next tree.



Never pick fruit off the ground. **Do not** pick up dropped fruit.



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Do not throw fruit into bins.

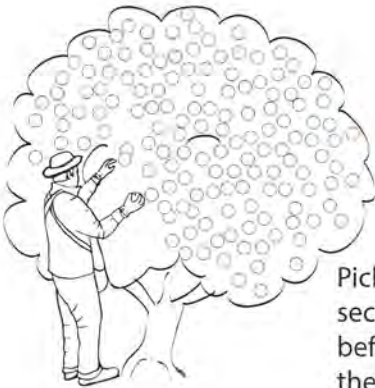


Climb up ladder with an empty bag and down with a filled bag to unload fruit.



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Pick bottom section of tree before using the ladder. The ladder can damage fruit on bottom section.



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Do not walk in between trees of unharvested fruit.



First harvest fruit to make a clear path and pick and complete one tree at a time.



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Ladders

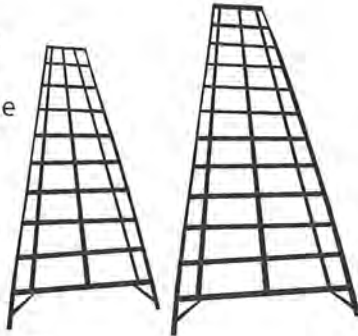
Use a ladder suitable for the size and strength of the trees.

Stool and platform ladders are commonly used on medium size trees and mandarins.

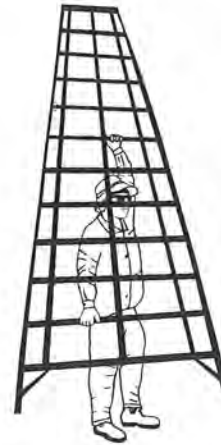


Tripod ladders are used for trees with weak or sparse branches that are too weak to support a bow ladder. Commonly used on mandarins.

Bow ladders are commonly used on mature orange trees. There are two common sizes, 3 m (10 rung) and 3.6 m (12 rung).



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Best to carry ladders in a upright position with one arm holding the lower rung and the other holding an upper rung.

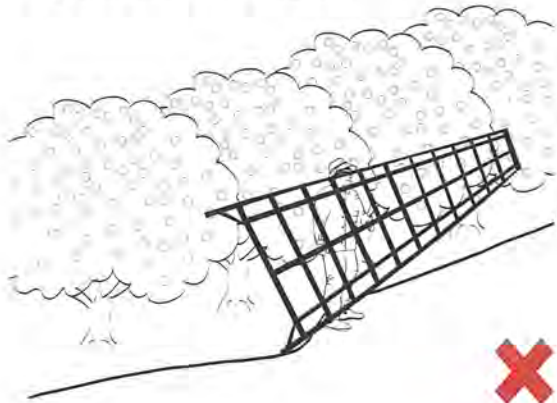


Ladders can be carried horizontally, however they can easily bump into other people or machinery.



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Be careful not to push over sprinklers or drag irrigation lines with ladders.



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Put back moved irrigation lines or pushed over sprinklers.



Be careful not to puncture irrigation lines with ladders. Report punctures.



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Place bow ladders with arch facing outwards and face the ladder towards the centre of the tree.



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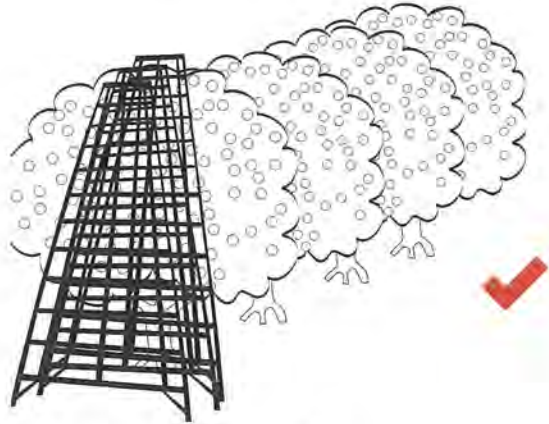
Finishing the day

Report any broken equipment to supervisor.

Place ladders out of the way of tractors that need to pick up fruit in rows or move bins.

Ask supervisor where to put ladders:

- In between trees, or
- end of rows, or
- on ladder trailer or truck.



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Machinery

Tractors

Only operate a tractor after being authorised and trained by the supervisor.

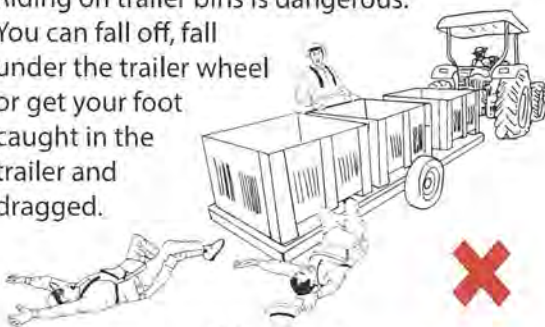
- Follow safe tractor use procedures indicated by the supervisor.
- Only one person to travel in a tractor
- Watch out for people and drive slowly and carefully down rows.
- Follow farm speed limits.

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Do not place personal items (e.g. lunch, drinks, hand bags) next to bins, tractor or forklift drivers may not see them.

Riding on trailer bins is dangerous.

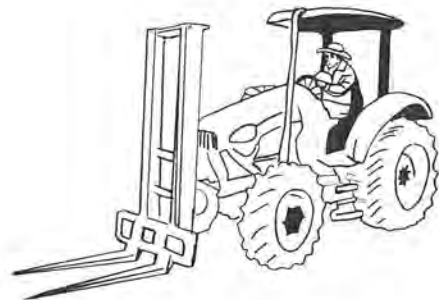
You can fall off, fall under the trailer wheel or get your foot caught in the trailer and dragged.



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Forklifts

Some states require a forklift licence to operate a tractor with a forklift mast implement. For other states only operate a forklift if authorised and trained by the supervisor.



- Follow tractor and or forklift safety requirements.
- All bins of fruit must be collected by the end of the day.
- If a bin is left overnight put it aside and advise the supervisor.

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Safety

Ladder & picking safety

Position your ladder carefully

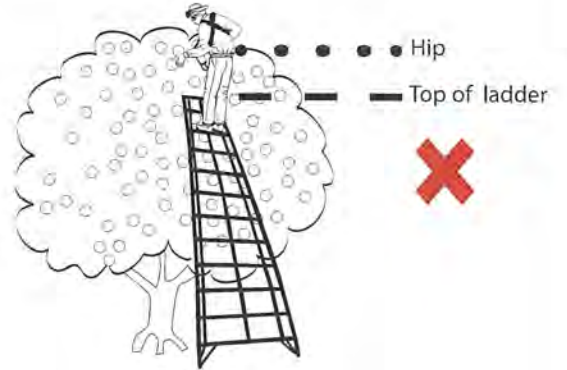
Use a ladder and position it in a stable manner. Ensure it is braced against strong branches and will not fall through the tree.

Do not bend over too far from the ladder.



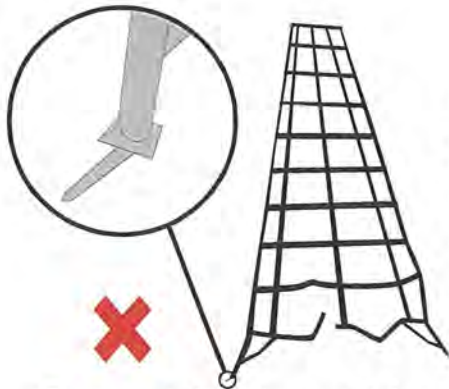
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Do not stand on the top rungs of the ladder. Top of ladder must not be below hip.



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Do not use a faulty or broken ladder.

Do not stand on bins to pick fruit, use a ladder.



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Do not place ladder feet on mounds. Ladder must be in a horizontal position.



Do not climb trees. Do not harvest fruit out of ladder reach.



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Machinery

Watch out and listen for tractors and machinery

- Stay clear of tractors, assume they cannot see you.
- You are able to see and hear them before they can you.
- Be especially careful when tractors move down rows whilst you are picking.



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Personal health



Do not work if injured, sick or incapable of manual work.

Do not work under the influence of drugs or alcohol.



Bring adequate food and plenty of water. Take regular breaks and keep hydrated.

An adult needs to drink 2-3 L of fluids per day and more if active or in hotter climates.
<https://www.nrv.gov.au/nutrients/water>

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Accidents

In case of accident or injury:

1. Prior to starting work check with your supervisor who is responsible for first aid, how to contact them quickly and any other accident policy procedures.
2. Do not put yourself in danger to help an injured person, wait until the danger has been removed or stopped.
3. Take the injured person away from any danger. Try not to move them if they have a possible neck or spine injury, wait for professional first aid.
4. For a major injury immediately phone 000 and call the supervisor, for other injuries report to your supervisor and seek first aid.

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Food safety

Wash hands with soap after using the toilet.



Cover all cuts and wounds.



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Manual lifting

- Warm up your muscles (i.e. stretching),
- Ensure the load does not exceed your acceptable lifting weight. If too heavy ask for help.
- Do not lift if you have an injury.
- Lift by bending your knees and keeping your back straight, do not lift by bending over and lifting with your lower back muscles.
- Keep the load close to your body.
- Do not twist your back whilst carrying the load, reposition legs to move around.
- Regularly stretch your back (stretching exercises p 48).

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Do not curve the back.



Ask for help when necessary.



Back is straight, arms and legs lift the load (bend the knees).



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Exercises

Carrying fruit works the back muscles. Prior to starting work conduct stretching exercises. The "touch sky stretch" is advised to be conducted at least every hour.

Holding a stretch for 10 seconds starts to stretch the muscle (minimum time for stretch), 30 seconds is reasonable and 60 seconds or more is optimal.



Touch sky stretch

Raise arms, stretch upward to "touch the sky" and arch back backwards. This exercise is good to conduct every hour during picking.

Shoulder stretch

Hold back each arm.



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Arm stretch

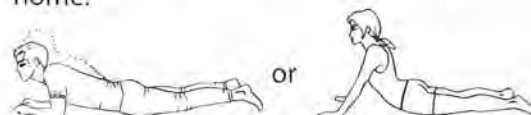
Push arms forward.

Calf stretch

Lean forward and stretch hamstring and calf for each leg.



The following exercises can be done at home.



Stretching before and after manual work can reduce muscle soreness (increased circulation).

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Harvest Tips

- Picking is physical work, do not be discouraged if your muscles ache in the first few days. Take your time to build up your pace and strength.
- Improving your fitness with daily exercise for at least 4 weeks before commencing work will help you adapt more quickly (i.e. walking up stairs/hills, jogging etc.)
- Follow the suggested fruit unloading arm bracing method when unloading fruit from bags to reduce the load on your back muscles (p 22).
- When commencing picking take your time in the first few days and then build up your pace.
- Work availability: Aust. Gov. website (www.harvesttrail.org.au), there are other private harvest websites. See Harvest Trail Guide for more information on work, pay regulations and other harvest related matters.
- Harvest contractors are a popular source of employment. A harvest contractor

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arranges work for pickers. They charge a fee and some provide accommodation and transport.

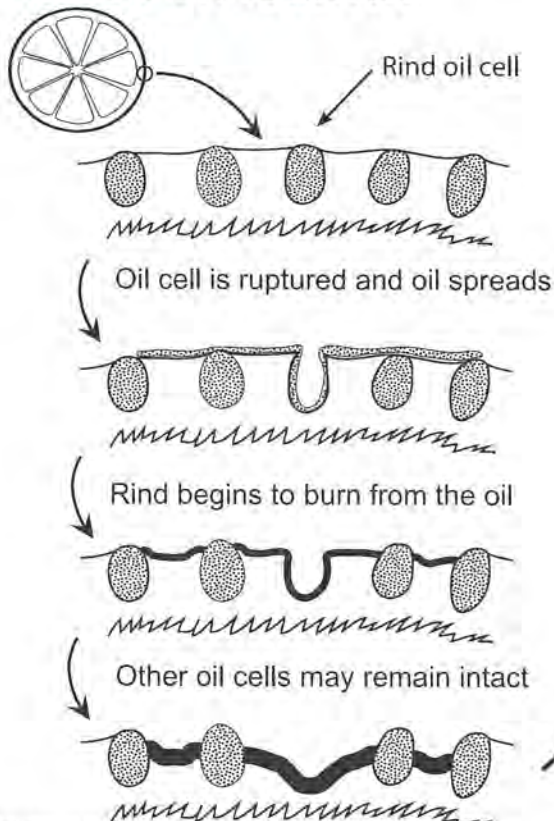
- Check if the employer is a registered Australian business at the ASIC web site <https://connectonline.asic.gov.au>
- Talk to others about employer reliability (i.e. pay and regularity of work).
- Clearly understand all employer charges (accommodation, transport, management fee etc.) and pay rates.
- Record bins picked or hours each day.
- For unresolved pay disputes contact the fair work ombudsman <http://www.fairwork.gov.au/> Ph 13 13 94 .

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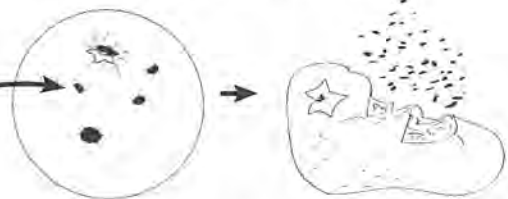
Fruit bruising

What is Oleocellosis?



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- Oleocellosis is a rind injury that can occur when harvesting too roughly (i.e. fruit squeezed or bumped) or during unsuitable weather conditions.
- It is caused when rind oil cells break and the oil burns the rind. A dark blemish on the rind with a slightly sunken surface appears within two to four days. Raised intact oil cells may be visible in the damaged area.



- Damage can lead to fruit decay.
- Fruit are most susceptible when the rind is turgid (swollen with water) from:
 - Cold weather,
 - Water on fruit (rain or morning dew),
 - Recent irrigation or rain (tree is charged with water).

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Acknowledgements

Numerous growers and packers have contributed to this guide. The author is thankful and grateful for their contributions and recognises that without the support of these organisations, people and the citrus industry this guide would not be possible.

Thanks is provide to Andrew Creek (NSW DPI Citrus Development Officer, MIA) and Myles Parker (NSW DPI Leader Southern Horticulture) for their development and management support.

Thanks is provided to Clint Lamb (formerly NSW DPI Safety Specialist) for contributing to health and safety information and to Jennifer Cooke (Mildura Physiotherapy & Rehabilitation Clinic) for contributing to the exercise information.



Piecework Agreement Casual Employee

Agreement between:

HARVEST WORKFORCE

(Employer)

and

(Employee) (Print Full Name)

The Employer and the Employee agree to enter into this Piecework Agreement (**Agreement**) under clause 15 (Pieceworkers) of the *Horticulture Award 2010 [MA000028]* (**Award**). The Employer and Employee mutually agree as follows:

1. The work to be performed under this Agreement is as described below (**Work**):

Fruit Picking

2. The minimum piecework rate/s which must be paid by the Employer to the Employee for performing the Work is as specified in **Schedule A, B & C** to the Agreement.
3. The Employee is employed as a: **CASUAL EMPLOYEE**
4. The date this agreement starts is: _____ (**Enter Date**)

Employer Name:

Employee Print Full Name:

X

X

Employer Signature

Employee Signature

Date: _____

Date: _____



SCHEDULE A

Piecework Rates

Starting date of piece Rate: 01/07/2020

Property name: Yambellup Estate

Property address: [REDACTED]

	Piecework rate 1:	Piecework rate 2:	Piecework rate 3:
\$ per unit	\$90 Per Bin	\$40 Per Bin	\$80 Per Bin
Crop type:	Imperial Mandarin	Hickson Mandarin (Pull Picking)	Afourer Mandarin
Variable(s)*	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learning picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking 	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learner picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking 	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learning picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking
	Piecework rate 4:	Piecework rate 5:	Piecework rate 6:
\$ per unit	\$40 Per Bin	\$40 Per Bin	_____ Per Bin
Crop type:	Mystique Mandarin	Oranges	Lemons
Variable(s)*	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learning picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking 	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learning picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking 	<ul style="list-style-type: none"> - Weather (Rainy / Very hot day - Slow pace of Work - Learning picker (inexperienced) - Sick - Bin type - Type of picking (Stripping) - Size of tree - Density of tree - Snip picking

How piece rate payment is determined

Piece Rate Min. Labour Rate					
FY 2020 /2021			38 HOUR WEEK		PER HOUR
Horticulture Award Rate		Statutory Req.	\$ 753.80		\$ 19.84 Per Hour
Casual Rate Loading	25%	Statutory Req.	\$ 188.45		\$ 4.96 Per Hour
Piece Rate Loading	15%	Statutory Req.	\$ 113.07		\$ 2.98 Per Hour
Workers Pay: Per Day /Week			\$ 1,055.32	Per Week	\$ 27.77 Per Hour
					\$ 211.06 Per Day Work

Average Bin Weight :	350			
Type of Fruit	Competent Worker Bins Picked in a 7.6 HR Day	KG	Bin Rate Paid To Workers	KG PRICE
Mandarin Bin 350kg	1	350	\$ 211.06	\$ 0.60
Mandarin Bin 350kg	1.5	525	\$ 140.71	\$ 0.40
Mandarin Bin 350kg	2	700	\$ 105.53	\$ 0.30
Mandarin Bin 350kg	2.5	875	\$ 84.43	\$ 0.24
Mandarin Bin 350kg	3	1050	\$ 70.35	\$ 0.20
Mandarin Bin 350kg	3.5	1225	\$ 60.30	\$ 0.17
Mandarin Bin 350kg	4	1400	\$ 52.77	\$ 0.15
Mandarin Bin 350kg	4.5	1575	\$ 46.90	\$ 0.13
Mandarin Bin 350kg	5	1750	\$ 42.21	\$ 0.12
Mandarin Bin 350kg	5.5	1925	\$ 38.38	\$ 0.11
Mandarin Bin 350kg	6	2100	\$ 35.18	\$ 0.10
Mandarin Bin 350kg	6.5	2275	\$ 32.47	\$ 0.09
Mandarin Bin 350kg	7	2450	\$ 30.15	\$ 0.09
Mandarin Bin 350kg	7.5	2625	\$ 28.14	\$ 0.08
Mandarin Bin 350kg	8	2800	\$ 26.38	\$ 0.08
Mandarin Bin 350kg	8.5	2975	\$ 24.83	\$ 0.07
Mandarin Bin 350kg	9	3150	\$ 23.45	\$ 0.07
Mandarin Bin 350kg	9.5	3325	\$ 22.22	\$ 0.06
Mandarin Bin 350kg	10	3500	\$ 21.11	\$ 0.06
Mandarin Bin 350kg	10.5	3675	\$ 20.10	\$ 0.06
Mandarin Bin 350kg	11	3850	\$ 19.19	\$ 0.05

Example: Calculating piecework rates

Webber and Sons Orchards plan to enter into a piecework agreement with Fiona, an adult casual picker. The piecework rate for Fiona is calculated as follows:

- Weekly wage rate level 1 (see clause 14): \$694.90
- Plus 25% casual loading: \$173.73 (\$694.90 x 25%)
- Plus 15% piecework loading: \$104.24 (\$694.90 x 15%)
- Total: \$972.87
- Daily wage rate: \$194.57 (\$972.87 ÷ 5 days)

The daily rate is then divided by the bin or kilogram rate per day that an average competent pieceworker can achieve to determine the piecework rate.

For example, if an average competent pieceworker can pick 15 bins of fruit over a daily picking shift of 7.6 hours (approximately 2 bins per hour) the piecework rate is:

Daily wage rate (\$194.57) ÷ 15 bins = \$12.97 per bin.

If 2 bins are picked per hour by an average competent pieceworker, this is effectively \$25.94 per hour.

This is higher than the award hourly rate + (25% casual loading + 15% piecework loading) (\$25.60).

SAMPLE: Payslip related to (sample 2) 9 bins in 2 work days

HARVEST WORKFORCE

Harvest Workforce

ABN: 58727166500

Pay Period: 13/07/2020 to 19/07/2020

Paid on: 23/07/2020

Taxable Earnings	Rate	Hours	Amount
Normal	0.00	0.00	0.00
Afourer Bin - Yambellup Estate	80.00	9.00	720.00
Total pay			\$720.00
Taxable earnings			\$720.00
Less PAYG			\$108.00
Take home pay			\$612.00

Employer Super Guarantee

COMMONWEALTH ESSENTIAL SUPER

Member #



Contribution \$68.40

WK3 FY2020/2021

Take home pay is paid to:

CBA



612.00

Summary	This pay	YTD
Gross	\$720.00	\$2,971.20
PAYG	\$108.00	\$446.00
Take home	\$612.00	\$2,513.53

SAMPLE 1: Afourer mandarin timesheet 7.6-hour day, number of bins picked. \$82 Per Bin

Harvest Workforce Picking Sheet									
Week : 2	Date:	6/07/2020	7/07/2020	8/07/2020	9/07/2020	10/07/2020	11/07/2020	12/07/2020	
Picking Mandarin @ Yambellup Richard	Day:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
Employee Name									
A TEAM TRACTOR									
			3						3
			3	2					5
			3	2					5
									0
			3						3
			3						3
				2					2
			2						2
A TEAM TRACTOR TOTAL		0	17	6	0	0	0	0	23
TRACTOR 1 GREEN TRACTOR									
									0
			4	3					7
			3.5	2.5					6
			3.5	2.5					6
			5	3					8
			3	3					6
			3.5	3					6.5
			3.5	2					5.5
			1	2					3
TRACTOR 1 GREEN TRACTOR		0	27	21	0	0	0	0	48
TRACTOR 2 BLUE TRACTOR									
			3	1					4
				2					2
			5	3					8
				2					2
									0
			3	2					5
			2	1					3
			3	2					5
				2					2
TRACTOR 2 BLUE TRACTOR TOTAL		0	16	15	0	0	0	0	31

SAMPLE 2: Afourer mandarin timesheet 7.6-hour day, number of bins picked. \$82 Per Bin

Harvest Workforce Picking Sheet									
Week : 3	Date:	13/07/2020	14/07/2020	15/07/2020	16/07/2020	17/07/2020	18/07/2020	19/07/2020	
Picking Mandarin @ Yambellup Richard	Day:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
Employee Name									
A TEAM TRACTOR									
							3	2	5
							3	3	6
							3	3	6
									0
									0
								3	3
									0
							3	2	5
								3	3
A TEAM TRACTOR TOTAL		0	0	0	0	0	12	16	28
TRACTOR 1 GREEN TRACTOR									
									0
							4	3	7
							3	2	5
							3	2	5
									0
									0
									0
							1.5	1.5	3
							1.5	1.5	3
							1.83	1.5	3.33
							2.34	2	4.34
							1.83	1.5	3.33
TRACTOR 1 GREEN TRACTOR		0	0	0	0	0	19	15	34
TRACTOR 2 BLUE TRACTOR									
							2	2	4
							3	2	5
							5	4	9
							3.5	2.5	6
									0
							3.5	2.5	6
									0
							3	2	5
									0
TRACTOR 2 BLUE TRACTOR TOTAL		0	0	0	0	0	20	15	35

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SAMPLE 3: **Afourer** mandarin timesheet 7.6-hour day, number of bins picked. \$82 Per Bin

Harvest Workforce Picking Sheet

Week : 4	Date:	20/07/2020	21/07/2020	22/07/2020	23/07/2020	24/07/2020	25/07/2020	26/07/2020	
Picking Mandarin @ Yambellup Richard	Day:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
Employee Name							SeedLess	SeedLess	
A TEAM TRACTOR									
		3		3	0.5				6.5
		3		3	2		3	4	15
		3		3	0.5		1.5	3	11
		3		3	2		3	3	14
		3		3	3		3	3	15
		3	3.25	3			3.83	3	16.08
							3.83	2	5.83
							2.34	2	4.34
		3		3	2		0		8
		3	2	3	2		1.5	3	14.5
A TEAM TRACTOR TOTAL		24	5.25	24	12	0	22	23	110.25
TRACTOR 1 GREEN TRACTOR									
			3	4	2		4	4	17
			3	3	2		3	3	14
			2	3	2		3	3	13
			2	2	1.5		2.5		8
			2	2	1.5		2.5		8
			2	2	1.5		2.5		8
			3	3	2		3		11
			2	2	1.5		2.5		8
TRACTOR 1 GREEN TRACTOR		0	19	21	14	0	23	10	87
TRACTOR 2 BLUE TRACTOR									
		2.5	2	2	1		3	2	12.5
			3	3	2		3		11
			4.25	4	3		4	4	19.25
			3	3	2		3.5	3	14.5
			3	3	2		3.5	3	14.5
		2.5	2	2	1				7.5
			3	3	2		3		11
TRACTOR 2 BLUE TRACTOR TOTAL		5	20.25	20	13	0	20	12	90.25
TRACTOR 3 WHITE TRACTOR									
		4	5	3	2.5		4		18.5
		3	3	3	1.5		3	3	16.5
		4	4	3	3		4	3	21
			3						3
			2						2
			3	3	2		3		11
			1.25	2	1.5		3		7.75
			1.25	2	1.5		3		7.75
			3	3081	2				8
TRACTOR 3 WHITE TRACTOR TOTAL		11	25.5	19	14	0	20	6	95.5

SAMPLE 4: **Hickson** mandarin timesheet 7.6-hour day, number of bins picked. \$40 Per Bin

Harvest Workforce Picking Sheet									
Week : 7	Date:	10/08/2020	11/08/2020	12/08/2020	13/08/2020	14/08/2020	15/08/2020	16/08/2020	
Picking Mandarin HICKSON @ Yambellup Richard	Day:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
Employee Name: Location		OFF RAIN	OFF RAIN	HICKSON \$40 BIN	HICKSON \$40 BIN	HICKSON \$40 BIN			
				7					7
				5.5					5.5
				5.5					5.5
				6	7				13
				8.5					8.5
				3					3
									0
									0
				6.5					6.5
				6					6
									0
									0
									0
				3					3
				3					3
				4					4
				7					7
				3.5					3.5
				7	6				13
				6	5				11
				5	7				12
									0
				4.5					4.5
				5.5					5.5
									0
				3.5					3.5
				7					7
				6					6
									0
									0
NET TOTAL		0	0	113	25	0	0	0	138

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

STATEMENT OF Anthony Beven

I, Anthony Beven, of 321-323 Main Road, Glenorchy in Tasmania, Organiser with the Australian Workers' Union (**AWU**), make the following statement:

Background

1. I commenced employment with the AWU, Tasmanian Branch, on 15 February 2018.
2. My current position is Organiser and my duties include negotiating agreements, recruiting members and attending work sites.

Knowledge of the horticulture industry

3. I have been responsible for assisting AWU members who work in the horticulture industry in Tasmania since I started with the AWU in February 2018.
4. During my employment, I have attended horticultural farms at locations including the following:
 - a) Costa Berries – a blueberry farm;
 - b) Hillwood Berries – a strawberry farm;
 - c) Burlington Berries – a strawberry farm;
 - d) Tasmanian Berries – raspberries and strawberries.
5. Some Costa maintenance employees work under an enterprise agreement. The remainder of the employees work under the Horticulture Award and contracts of employment.

Work in the horticulture industry

6. Most of the employees I have observed working in the horticultural industry have been seasonal workers and backpackers.
7. Casual labour hire makes up the majority of the workforce at the sites I have attended. Some maintenance workers have been converted to full time employment.
8. Returning seasonal workers are known to continue to return to the same farm with some being in their fourth or fifth year.

-
9. The Seasonal Worker Program, through companies such as Costa, employs approximately 3500 employees in Tasmania per year.
 10. Employees on the farms I have attended regularly work in excess of 10 hours per day.
 11. There is minimal protection from the elements and workers are expected to have their lunch at the entry or exit to the tunnels (plastic domes in which berries are grown).
 12. The managers at the farms are very demanding in terms of their expectations of the workers.
 13. For the overseas workers, the accommodation arranged for them is very basic and often overcrowded and not fit for purpose.
 14. There are a range of significant deductions that I have seen regularly made from employees' earnings, including for accommodation, transport, airfares, health insurance and visa costs.
 15. The poor working conditions in the horticultural industry are currently a barrier to attracting local workers.

Training

16. Currently, based on the discussions I have regularly had with pickers in the berry industry across Tasmania, they come in and generally always remain on Level 1 for the entire duration of their employment.
17. The only training pickers get is induction training or on-arrival briefings. That training typically goes on for a few hours and never exceeds one day.
18. Pickers usually receive no training beyond that first induction session.
19. In some very limited cases there may be a few employees hand-picked and offered further training so that they can work in a more supervisory role. This is usually based on their communication and language skills. I am uncertain whether those employees are ever progressed to Level 2.
20. I have not observed any employers providing pickers with structured training to allow progression from Level 1 to Level 2.
21. I am not aware of any employees engaged as pickers having asked their employer for training to progress to Level 2. This probably does not occur because of the fear of retribution.



Anthony Beven

2 November 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

STATEMENT OF STEVEN CARTER

I, Steven Carter, of [REDACTED] NSW [REDACTED] Union Organiser, make the following statement:

Background

1. I commenced employment with the Australian Workers' Union (**AWU**), NSW Branch, in August 2012.
2. My current position is NSW North Coast Organiser whereby I visit members' workplaces within my area which extends between Port Macquarie and the Queensland border.
3. My routine duties include bargaining, providing support and advice to members regarding various workplace matters and the recruitment of members.

Knowledge of the horticulture industry

4. I have responsibility for assisting AWU members who work in the horticulture industry in my region. I predominantly assist workers on blueberry farms in the Coffs Harbour and Grafton areas. I have been involved in assisting workers in the horticulture industry since 2012.
5. Since 2012, I have attended horticultural farms at the following locations:
 - a) Ozgroup Blueberry Group Farms, which includes approximately 100 farms throughout the Coffs Harbour and Grafton regions that employ a significant amount of itinerate and casual workers;
 - b) Costa Berry Exchange located at Corindi which employs a majority of itinerate workers with a smaller localised permanent workforce;
 - c) Owen Pacific Workforce, which supplies labour to Costa Berry Exchange in Corindi – this labour is sourced from various Pacific Island countries under the 'Pacific Australia Labour Mobility' scheme'; and
 - d) Golden Eagle Blueberry Farm, which is a smaller employer within the Grafton area.

-
6. I have significant membership within the blueberry industry. These workers are predominately paid piece rates to pick and prune blueberry, raspberry and blackberry bushes on the various farms.

Work in the horticulture industry

7. There are two main categories of farm workers within the horticultural industry: maintenance and harvest employees.
8. Maintenance employees perform pruning work and occasionally work on machinery. Employees performing pruning work are usually paid piecework rates and are paid according to measures about the number of trees or branches that are pruned. These employees are engaged casually within the various Award classifications and work regular hours of work subject to weather and seasonal factors.
9. Harvest roles including picking roles are typically filled by a majority of itinerate workers such as younger backpackers or ethnic workers with limited understanding of their workplace rights.
10. In my experience across the farms I have visited, I would estimate there would be a 90% casual and 10% permanent engagement of labour.
11. In my experience, the majority of workers engaged in harvest roles, move from farm to farm searching for a fair rate but eventually leave the industry within 12 months.
12. I live within the local blueberry industry area. I regularly interact with countless backpackers who are engaged with Costa and other co-operative blueberry farms throughout the area.
13. In those discussions, I have asked about their rates of pay. Arrangements I have observed include:
- a) \$10 cash per hour;
 - b) piece rate arrangements which result in \$10 to \$20 an hour.
14. The primary motivation in most cases relates to their goal of undertaking the mandatory three months' work in order for them to access an extension to their stay in Australia.
15. I have raised the exploitation issues related to these workers and the common response is that they know they are being exploited but are not that worried as they just want to get their three months' work signed off.

-
16. Most workers will not raise concerns with employers for fear that they will not get further work given the insecure nature of their employment.
17. The working conditions in the horticulture industry are the toughest out of all the industries I deal with, yet the earnings are the worst.
18. Some of the conditions I have observed on local farms are:
- a) Extensive working hours;
 - b) Work in extreme heat and when it is cold and raining;
 - c) No personal protective equipment and pressure to still produce;
 - d) Physically demanding work on difficult terrain;
 - e) Labour hire companies charging exorbitant accommodation and transport costs to Pacific Island workers;
 - f) Disregard of workers' compensation legislation; and
 - g) Farm supervisors continually bullying and harassing labour hire and migrant workers to improve output.

Continued engagement at Level 1 and training

19. In my experience, a significant majority of employees in the berry industry, at least 70 to 80 per cent, are categorised as Level 1 employees or on piece rate work.
20. This includes pickers, pruners, packers and general labourers.
21. The majority of workers in the industry are usually pickers.
22. For pickers, there is no ability to progress to Level 2 because their work is not covered by the indicative duties in that classification.
23. In my experience, pickers do not receive any structured training and do not progress to Level 2.
24. For packers and pruners, in theory, there is an ability to progress to Level 2 following completion of 3 months' training.
25. However, this is rarely acknowledged or applied by any employers in the industry that I have dealt with.
26. In enterprise bargaining negotiations with one of the better employers, CostaExchange Pty Ltd (**Costa**), for the *Costa (Berry Category) Enterprise Agreement 2019-2023* (**Costa Agreement**) – and in more recent negotiations for a replacement agreement – there has never been any acceptance or acknowledgement by Costa that employees

progress to Level 2 after three months of training. Under the Costa Agreement there is, for example, progression from Level 1A to Level 1B for pruners, following 12 months' service, and to Level 2 when deemed competent in specified pruning activities. No such progression is available in relation to, for example, pickers, packers and planters. Confusion about how this relates to the classification structure under the Horticulture Award was dealt with via an undertaking provided to the Fair Work Commission in the following terms ([2019] FWCA 8448):

No employee will be disadvantaged by the application of the classification structure in Schedule A to the Agreement in place of the classifications structure in Schedule B to the Horticulture Award 2010.



Steven Carter

2 November 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

STATEMENT OF Danny Munday

I, Danny Munday, of 321-323 Main Road, Glenorchy in Tasmania, Organiser with the Australian Workers' Union (**AWU**), Tasmanian Branch, make the following statement:

Background

1. I commenced employment with the AWU, Tasmanian Branch, in October 2018.
2. My current position is Organiser and my duties include negotiating agreements, recruiting members and attending work sites.

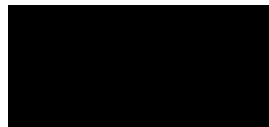
Knowledge of the aquaculture industry

3. Since I started with the AWU in October 2018, I have been responsible for assisting AWU members who work in the aquaculture industry.
4. During that time I have had discussions with workers undertaking work for the following companies and attended those companies' operations:
 - a) Tassal – Salmon farming – South East Tasmania;
 - b) Huon Aquaculture – Salmon farming – South East Tasmania;
 - c) Sea Forest – Production of seaweed – East Tasmania.
5. The majority of the employees I speak with are under enterprise agreements negotiated with the AWU.
6. Enterprise agreements typically pay significantly more than the Aquaculture Industry Award 2020 (**Award**) and when negotiating enterprise agreements, the wage rates in the Award are often used as a reference point by the employer.
7. Two key examples of enterprise agreements are the Huon Aquaculture – Marine Operations (Tasmania) Agreement 2023 and the Tassal Operations Pty Ltd (Marine Operations) Enterprise Agreement 2022.

Award rates and classification structure

8. In my experience those employees in the industry that are award-reliant are usually engaged as casuals.

-
9. I am aware of the classification structure in the Award.
 10. The duties under the Finfish classification can include some or all of operating boats (including loading and unloading), mooring pens, washing and changing nets, moving materials and equipment and preparing product for market/transport.
 11. The duties under the Shellfish classification can include some or all of operating boats or punts, loading, unloading, moving, packing and constructing shellfish culture mediums (including baskets, cages, droplines and oyster racking), recording data and operating mechanical equipment, preparation of product for market/transport, and general maintenance duties.
 12. In my view, it would be appropriate for award-reliant employees to progress from Level 1 to Level 2 automatically after 3 months.
 13. I take this view because of the low and unfair rates of pay, by comparison to the larger companies that have higher rates under enterprise agreements.
 14. In my view, 3 months should give employers enough time to provide the training for employees to be able to automatically progress to Level 2.



Danny Munday

2 November 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

STATEMENT OF TRAVIS PHILLIPS

I, Travis Phillips, of 331 / 337 Sturt Street, Townsville, 4810, Organiser with the Australian Workers' Union (**AWU**), Queensland Branch, make the following statement:

Background

1. I commenced employment with the AWU, Queensland Branch, Northern District, in July 2022.
2. My current position is Organiser and my duties include negotiating agreements, recruiting members and attending work sites.
3. Prior to that I was a delegate in the sugar industry, working for Wilmar Sugar. I commenced as a delegate in June 2018.

Knowledge of the sugar industry

4. I have been assisting AWU members who work in the sugar industry in Queensland since I started as a delegate in June 2018.
5. Since commencing with the AWU, I have been attending the following sugar mills, owned by Wilmar Sugar:
 - a) Kalamia Mill;
 - b) Pioneer Mill;
 - c) Invicta Mill;
 - d) Inkerman Mill;
 - e) Macknade Mill;
 - f) Victoria Mill;
 - g) Plane Creek Mill;
 - h) Proserpine Mill.

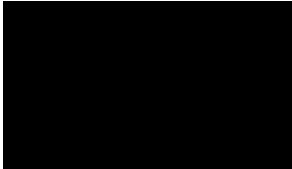
Working conditions

6. A significant proportion of workers in the sugar industry are seasonal workers.

-
7. Work in the industry is frequently physically demanding and undertaken in harsh conditions.
 8. For example, a general mill worker may be asked to shovel cane billets underneath the cane tippler, which can be under extreme heat without much air flow. They are asked to crawl into confined spaces, and to do inspection inside the Bagasse bin, which is also under extreme heat. I note that they are paid an allowance and there are procedures around regular breaks. They are also asked to shovel loads of mud that falls from the belts.
 9. Most, if not all, of the workers I engage with are employed under the Wilmar Sugar Enterprise Agreement 2020. It uses a similar classification structure for mill workers as that under the award. This is provided for in Schedule 2-1 of the Agreement at cl 1.1.5 (General Operator Level 2).

Training

10. In my experience as an employee, Delegate and Organiser, induction training for new entrants to the industry working at the sugar mills at the Level 2 classification has always taken one day.
11. Any induction training under the Award should therefore be limited to a maximum of one day.
12. From my observations, training to achieve competence to perform work as a Level 2 general mill worker takes a maximum of three 8 hour shifts. This is typically training on-the-job, accompanied by an experienced employee.
13. Training to achieve competence to perform the work of the other indicative roles listed at cl B.1.1(b) of the Award does not take any longer than five ordinary days of on-the-job training (some of the roles, e.g., Bagasse reclaimer operator, are now rarely used).

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2 November 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

SUBMISSIONS IN REPLY – THE AUSTRALIAN WORKERS’ UNION

Response to matters raised by Ai Group, and Australian Business Industrial and NSW Business Chamber

Additional entitlements under modern awards

1. The Ai Group and Australian Business Industrial and NSW Business Chamber (**ABI**) have referred to modern awards, unlike the National Minimum Wage Order (**NMW**), including a range of additional entitlements that enhance earnings, for example, overtime rates, penalties, loadings and allowances.¹
2. The Australian Workers’ Union (**AWU**) submits that such additional entitlements are fundamentally not relevant to the C14 review, which is focused on classification structures and base rates of pay. The additional benefits referred to are typically contingent entitlements and relate to particular disabilities of employment or expenses.
3. The submissions made below in respect of additional entitlements payable under the Horticulture Award 2020 serve to illustrate how many lower level modern award-reliant workers are rarely afforded such entitlements, with the exception of the casual loading (which extends to employees covered by the NMW).

Work value considerations

4. To the extent any variations made as part of the C14 Review are to minimum wages, it is acknowledged that the FWC must be satisfied the variations are justified by work value reasons, in accordance with s 157(2)(a) of the *Fair Work Act 2009* (**FW Act**).² ‘Work value reasons’ relate to the nature of the particular kind of work, the level of skill or responsibility involved and the conditions under which the work is done.³

¹ Ai Group Submission, 6 November 2023, at [4] and [18]-[20]; ABI Submission, 3 November 2023, at [7].

² As referred to in Ai Group Submissions, 6 November 2023, at [40]-[43] and ABI Submission, 3 November 2023, at [17] and [43].

³ FW Act, s 157(2A).

Lodged by	Contact: Alex Giordano
The Australian Workers Union	Telephone: 1300 040 482
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PO Box 20	Email: alex.giordano@nat.awu.net.au
Granville NSW 2142	

-
5. In the context of the C14 Review, work value considerations should be applied in light of the findings of the Expert Panel in the *Annual Wage Review Decision 2022 (AWR 2023 Decision)*. The Expert Panel concluded that the C14 rate “does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment”.⁴
 6. In performing the statutory task of establishing and maintaining a safety net of fair minimum wages, taking into account the broad range of matters in s 284(1) of the FW Act, the Expert Panel determined that the NMW should be aligned with the C13 rate.
 7. That conclusion was drawn without regard to the value of any specific kind of work. It is noted in that regard that it is difficult to discern the extent to which the NMW applies and which work it applies to, particularly in light of the broad scope of the Miscellaneous Award 2020.⁵
 8. In the AWU’s submission, the clear implication of the *AWR 2023 decision* is that all ongoing productive work is of a value that justifies payment of at least the C13 rate.
 9. There is considerable overlap between the minimum wages objective and the modern awards objective. The relative living standards and the needs of the low paid, as well as economic and business considerations, are core considerations under both objectives.⁶ In the AWU’s submission, ensuring minimum rates for ongoing employment do not dip below the NMW is necessary to ensure that the modern award minimum safety net remains “fair and relevant”.⁷
 10. The finding in the *AWR 2023 decision* that all ongoing productive work justifies payment of at least the C13 rate is consistent with the Full Bench’s provisional view in the C14 Review, as set out in its Statement of 22 September 2023.
 11. It follows that the Full Bench should not need to adopt an overly forensic approach to satisfying itself that variations intended to move ongoing employees to at least the C13 rate are justified by work value reasons.

Response to matters raised by the Australian Fresh Produce Alliance in relation to the Horticulture Award

12. The AWU makes the following submissions in respect of the Horticulture Award and in response to the submissions made by the Australian Fresh Produce Alliance (**AFPA**) and

⁴ *AWR 2023 Decision* at [8].

⁵ *4 Yearly Review of Modern Award – Miscellaneous Award 2010* [2020] FWCFB 754; [2020] FWCFB 1589; PR717774.

⁶ FW Act, ss 134(1) and 284(1).

⁷ FW Act, s 134(1).

statement of Mr Carl John Phillips, Chief People Officer at Costa Group Holdings Ltd (**Costa**), dated 10 November 2023.

13. The AWU continues to rely on its earlier submissions, dated 3 November 2023, and the witness statements of Mr Shane Roulstone (AWU National Organising Director, dated 3 November 2023), Mr Steven Carter (AWU, NSW North Coast Organiser, dated 2 November 2023), and Mr Anthony Beven (AWU, Tasmanian Branch, Organiser, dated 2 November 2023).

14. Mr Roulstone has also made a second statement, dated 29 November 2023 (filed with these submissions).

Fruit and vegetable picking (but not pruning) fall exclusively within Level 1

15. At paragraph 25 of the AFPA's submissions, it is stated in respect of the Level 1 (C14) classification that "[t]here is no scope for picking, thinning, or pruning work in any other classification in the Horticulture Award".

16. This is incorrect in the case of pruning, which at least in theory can fall within Level 2. The list of indicative duties at clause A.2.3 includes "pruning under general supervision".

17. Paragraphs 26, 29 and 40 of the AFPA's submission include similar assertions that fruit and vegetable pickers ordinarily cannot progress beyond Level 1.

18. The AWU submits that to the extent that the classification structure does not allow any progression beyond Level 1, this restriction lends strong support for the proposals to lift the Level 1 rate to C13 or require progression after 76 hours' work in the industry.

Additional entitlements beyond the base rate

19. At paragraphs 30 and 31, the AFPA refers to a range of "additional earnings-enhancing benefits" under the Horticulture Award which do not apply to award/agreement free employees covered by the NMW.

20. In the AWU's view, the additional entitlements are not relevant to the C14 Review, which is fundamentally about classification structures and base rates of pay.

21. The 25% casual loading, as referred to by the AFPA, is intended to compensate employees for the loss of entitlements available to permanent employees, including paid leave, and in any event, also applies to employees covered by the NMW.

22. The recently introduced requirement for minimum hourly rates to underpin piece rates, also referred to by the AFPA, can only be a relevant consideration insofar as it underscores the need to ensure base rates provide an appropriate safety net.

-
23. The availability of penalty rates and overtime rates for Level 1 employees in the Horticultural sector is highly limited.
24. It is telling that Mr Phillips, at paragraph 4(c) of his statement, dated 10 November 2023, has referred to the payment of overtime rates as “labour leakage”.
25. A significant majority of Level 1 employees in the industry are engaged on a casual basis, as a consequence of which they are not entitled to annual leave loading, and are generally only entitled to overtime or penalty rates if they work between 8.31 pm and 4.59 am, for more than 12 hours in a shift, or for more than 304 hours over an eight week period.⁸
26. Further, Costa’s longstanding practice is to purport to enter into ‘arrangements’ with its workforce under which its much smaller cohort of permanent employees are not generally entitled to overtime payments for working on Saturdays or between 8 and 12 hours per shift.⁹
27. The allowances in clause 18 under the Horticulture Award are not all-purpose and are available in a narrow range of circumstances. The leading hand allowance in clause 18.2(a) is only paid to employees designated as being in charge of other employees. The wet work allowance in clause 18.2(c) applies on an hourly basis when an employee’s clothing becomes saturated or when they have to stand in water or slush so that their feet become wet. The first aid allowance in clause 18.2(d) appears to be payable where an employee is both qualified and appointed to perform first aid duty. Other allowances are expense related and confined. For example, the meal allowance in clause 18.2(c) only applies where overtime is worked without adequate notification and is not payable to pieceworkers.¹⁰
28. Moreover, the additional benefits under the Horticultural Award that the AFPA has referred to should be afforded little, if any, weight when considering the need to lift employees to at least the C13 rate.

Economic outlook for horticultural sector

29. At paragraph 12 of Mr Phillips’ statement, he refers to Costa’s revenue being dependent on prices negotiated with retailers and Costa sometimes having a lack of real bargaining power in its dealing with retailers.

⁸ Horticulture Award, cl 13.2.

⁹ Horticulture Award, cl 13.1; see cl15.1 of the *Costa (Berry Category) Enterprise Agreement 2019-2023*; see also proposed cl 15.1 of the proposed *Costa (Berry Category) Enterprise Agreement 2023-2027 (AG2023/4025)*.

¹⁰ Horticulture Award, cl 15.2(g).

30. Information concerning the current economic outlook for the horticultural industry, published on 5 September 2023 by the specialist Australian Bureau of Agricultural and Resource Economics and Sciences (**ABARES**), within the Department of Agriculture, Fisheries and Forestry, is attached to Mr Roulstone's second witness statement and marked **SR-5**.

31. Key take-aways from ABARES' 'Outlook for Horticulture' are as follows:

- a) Gross value of production to rise to \$17.6 billion in 2023–24 driven by higher production, up by 6% from the previous financial year;
- b) Exports to rise by 9% to \$3.7 billion in 2023–24 driven by higher production;
- c) Drier conditions are unlikely to have a major impact on Australian horticulture production;
- d) Growth in global supply expected to outpace global demand in 2023–24.

THE AUSTRALIAN WORKERS' UNION

1 December 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (**C14 Review**)

SECOND STATEMENT OF SHANE ROULSTONE

I, Shane Roulstone, of 16 Good Street Granville NSW, National Organising Director with the Australian Workers' Union (**AWU**), make the following statement:

Background

1. The details of my employment with the AWU and knowledge of the horticultural industry are set out in my earlier statement of 3 November 2023.
2. This second statement is in response to the submission made by the Australian Fresh Produce Alliance (**AFPA**) and the statement of Mr Carl John Phillips, Chief People Officer at Costa Group Holdings Ltd, dated 10 November 2023.

Additional entitlements under the Horticulture Award

3. At paragraphs 30 and 31 of its submission, the AFPA refers to a range additional benefits under the Horticulture Award.
4. In my experience, businesses in the horticultural industry that are members of the AFPA, such as Costa, are extremely adept at avoiding paying overtime to Level 1 workers.
5. This arises as a result of a heavily casualised workforce and the various flexibilities built in to the Horticulture Award. For example, casuals generally only become entitled to overtime if they work more than 12 hours in a shift or 304 hours in eight weeks.
6. In my experience, Level 1 workers in the industry rarely get paid overtime or penalties.
7. Smaller businesses sometimes pay overtime because they can't structure their business in such a way that the large providers can.
8. The only time overtime payments tend to arise is when there is a large crop that unexpectedly needs to be picked earlier for environmental reasons.
9. Some large employers pay a leading hand allowance but this is a small sum which in practice only gets paid if the employee is supervising or managing 20 or 30 workers and in circumstances where they should really be progressed to a higher classification.
10. In my experience, Costa and other members of the AFPA simply do not pay the travel allowance referred to in clause 18.3(a) of the Award.

11. Prior to the introduction of a minimum wage floor for pieceworkers in early 2022, the vast majority of piece rates workers I spoke to were getting paid between \$8 and \$12 per hour.

Training and time to become a proficient worker

12. At paragraph 26 of the AFPA's submission there is a reference to employees "undertaking structured training so as to perform the duties of Level 2". In my experience, the vast majority of Level 1 workers do not receive any structured training. Managerial staff and tradies receive training but new workers get a 'buddy' or 'mentor' on the job, usually for the first few days.

13. At paragraphs 47 and 48 of the AFPA's submission and from paragraph 26 of Mr Phillips' statement, it is asserted that it takes between 3 to 12 months to become proficient at fruit picking or harvesting, depending on the type of produce.

14. From my observations in the industry, this is simply not true, and it is not consistent with Costa's practice of performance managing underperforming employees out after one month. At Costa workplaces, an underperforming employee who is not picking correctly and at the right quantity after around two weeks will receive some form of on-the-job coaching. If they have not reached the required standard after a month, the employee will be moved out of that employment.

15. To become proficient at 'twist picking' of oranges takes 2-3 days.

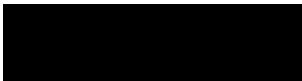
16. To become proficient at 'strip picking' oranges, or 'snipping' or 'snapping' mandarins, takes 2 to 3 days.

17. To gain proficiency at picking various types of berries takes less than 2 weeks. You need to be kind and gentle with the berries and if you are not competent after that time, you are unlikely to ever be competent.

18. To become proficient at picking mushrooms takes 2 weeks.

Economic Outlook

19. I have had regard to the recent 'Outlook for Horticulture', published on 5 September 2023 by the Australian Bureau of Agricultural and Resource Economics and Sciences (**ABARES**), within the Department of Agriculture, Fisheries and Forestry. It is attached to this statement and marked **SR-5**.



Shane Roulstone
29 November 2023

Outlook for Horticulture

Christian Creed

\$18b

Value of
production
in 2023–24



Horticulture

Value of horticulture
production reaches new
record.



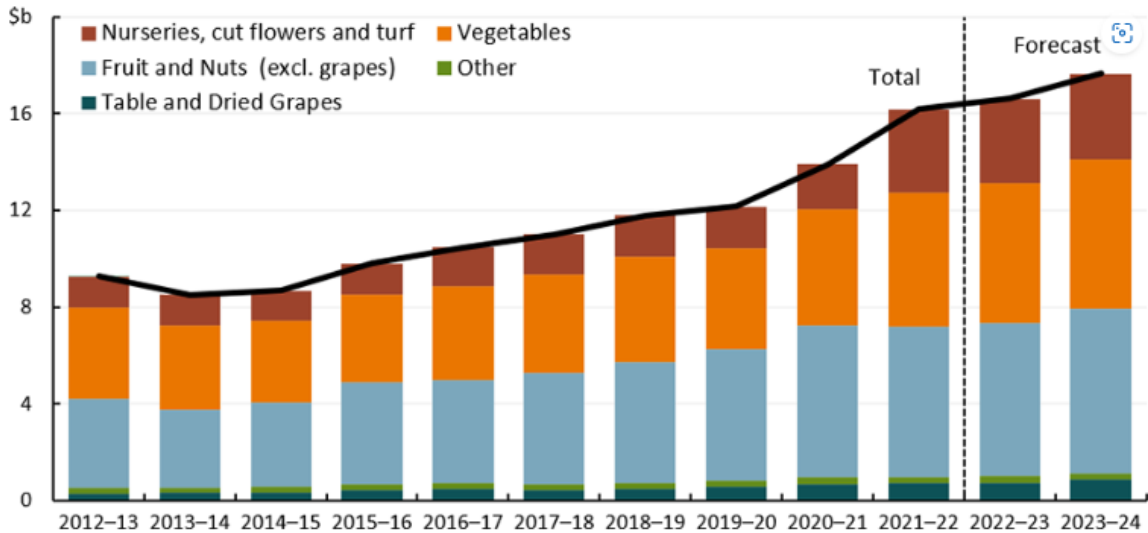
Key points

- Gross value of production to rise to \$17.6 billion in 2023–24 driven by higher production.
- Exports to rise by 9% to \$3.7 billion in 2023–24 driven by higher production.
- Drier conditions are unlikely to have a major impact on Australian horticulture production.
- Growth in global supply expected to outpace global demand in 2023–24.

Higher production volumes push up production values

In 2023–24, the gross value of horticulture production is forecast to rise to a record \$17.6 billion, up by 6% from \$16.6 billion in 2022–23 (Figure 1.1). The expected rise in production value reflects higher production volumes. Despite drier seasonal conditions expected in major horticultural regions, high water levels and improving labour availability are expected to boost production volumes throughout 2023–24.

Figure 1.1 Annual value of horticultural production



Note: Data to the right of the dotted line indicate estimates and forecasts.

Source: ABARES; ABS

The increase in horticulture production value in 2023–24 is driven by:

- Fruit and nuts (excluding table grapes), forecast to increase by 8% to \$6.8 billion.
- Vegetables, forecast to grow by 6% to \$6.2 billion.

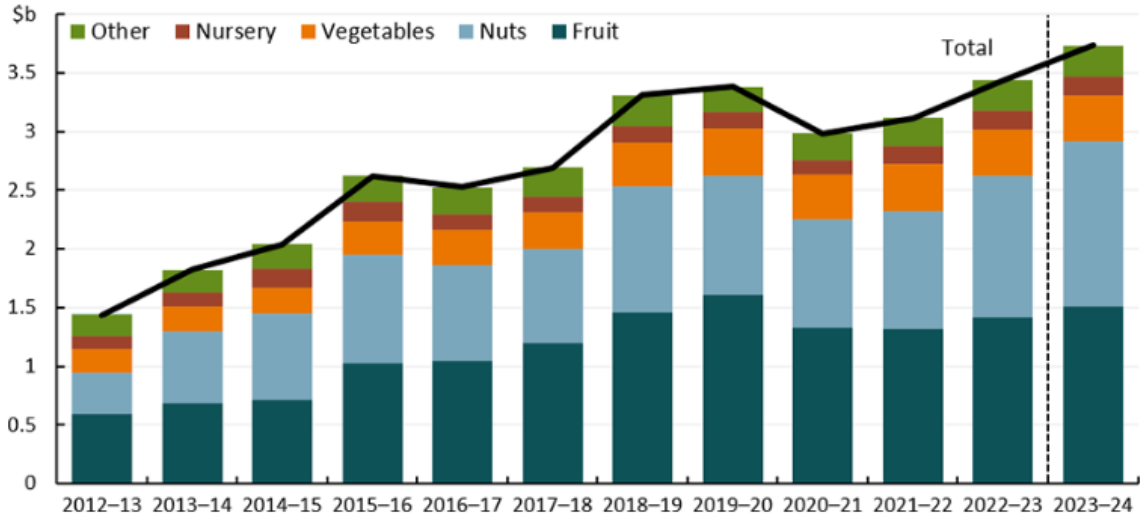
The gross value of horticulture production forecast for 2023–24 is around \$500 million lower than expectations in the *June Agricultural Commodities Report*. This reflects a slight downwards revision to production volumes accounting for lower expected yields for some fruit and vegetables.

Higher export volumes push export values to record high



The value of horticulture exports in 2023–24 is expected to rise by 9% to a record \$3.7 billion, driven by higher horticultural production volumes (Figure 1.2). A low Australian dollar, relative to currencies of other major trading partners and export competitors, is also expected to support demand for Australian horticultural products in 2023–24. The value of fruit and nut exports are expected to see the largest rise, growing by 6% and 17% respectively.

Figure 1.2 Annual value of horticultural exports



Note: Data to the right of the dotted line indicates forecasts.

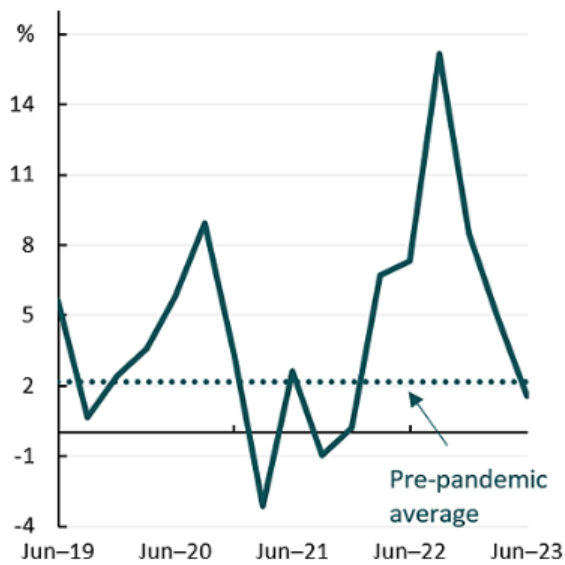
Source: ABARES; ABS

National fruit and vegetable inflation returning to pre-flood growth

Nationally, growth in fruit and vegetable prices has declined considerably. In 2021–22, severe flooding in key horticulture regions of Queensland and New South Wales reduced the availability of some fresh fruit and vegetables, driving up domestic price growth.

However, the effects of the flooding on production have subsided, leading to a moderation in price growth. Quarterly data for June 2023 shows that year-ended fruit and vegetable inflation is currently at 1.6%. This is broadly in line with the pre-pandemic year-ended average quarterly inflation growth of 1.4% (Figure 1.3).

Figure 1.3 Quarterly fruit and vegetable inflation, year-on-year change

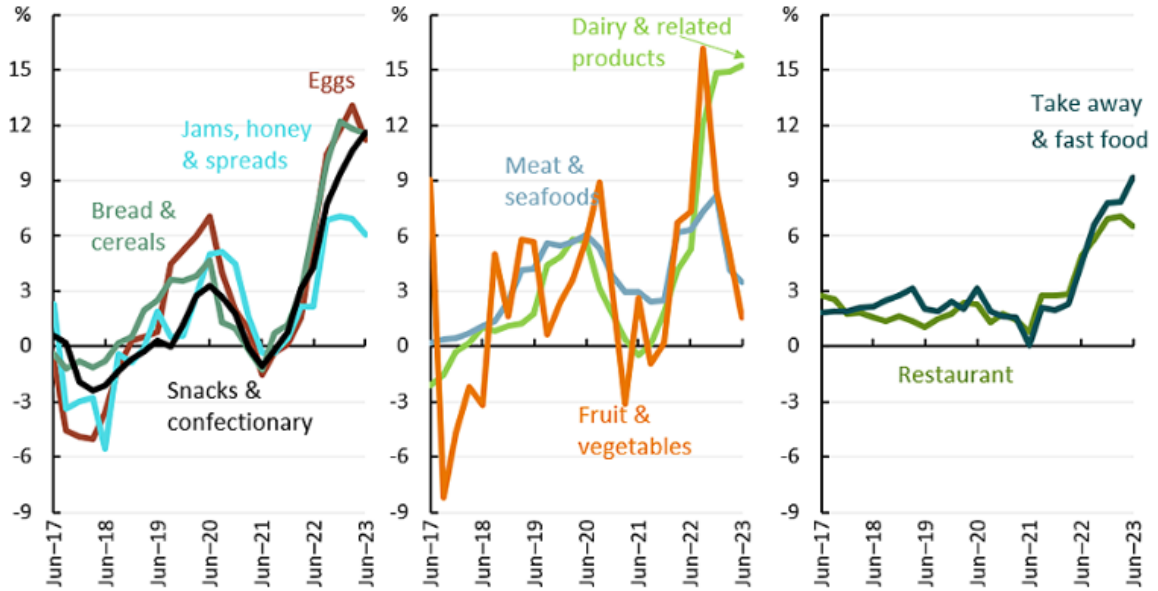


Note: *5-year year-ended quarterly average to Dec-2019.

Source: ABS

While the level of current fruit and vegetable inflation is still high, growth is lower than other food categories (Figure 1.4). Easing fruit and vegetable prices relative to other food options are likely to support demand for these products; ongoing price growth differences could see some consumers substitute away from other food groups such as breads and cereals towards fresh produce.

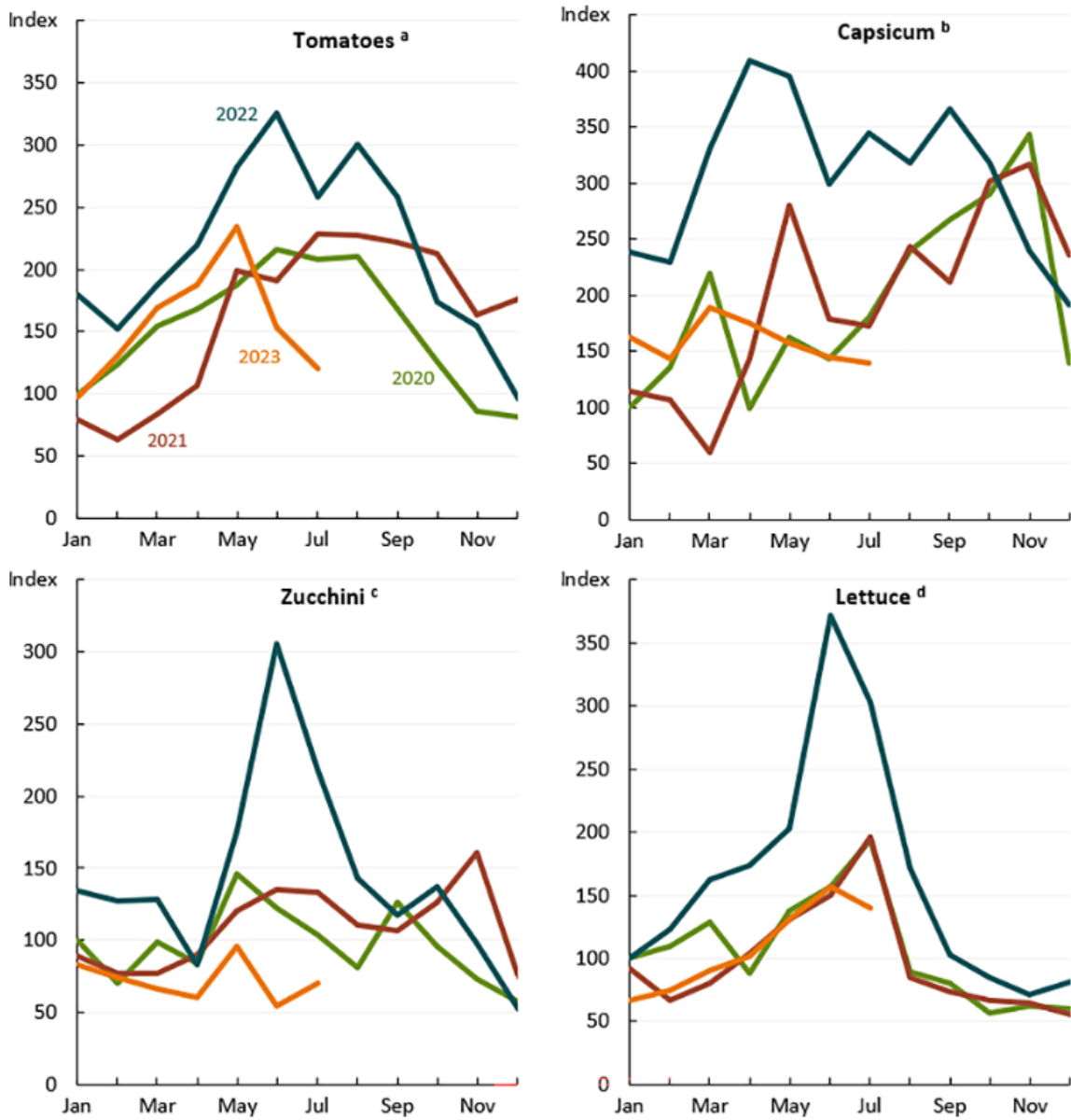
Figure 1.4 Quarterly Australian food inflation, year-on-year change



Source: ABS

Although fruit and vegetable prices are still increasing, some retail prices of individual products are lower in 2023 compared to 2020 to 2022 (Figure 1.5). This is likely to further support demand for these products.

Figure 1.5 Monthly retail fruit and vegetable prices, selected produce



Note: Index 100 = Jan 2020; a) 5kg truss tomato carton; b) 10kg red capsicum carton; c) 10kg green zucchini carton; d) Carton Iceberg.
Source: ABARES; Data fresh

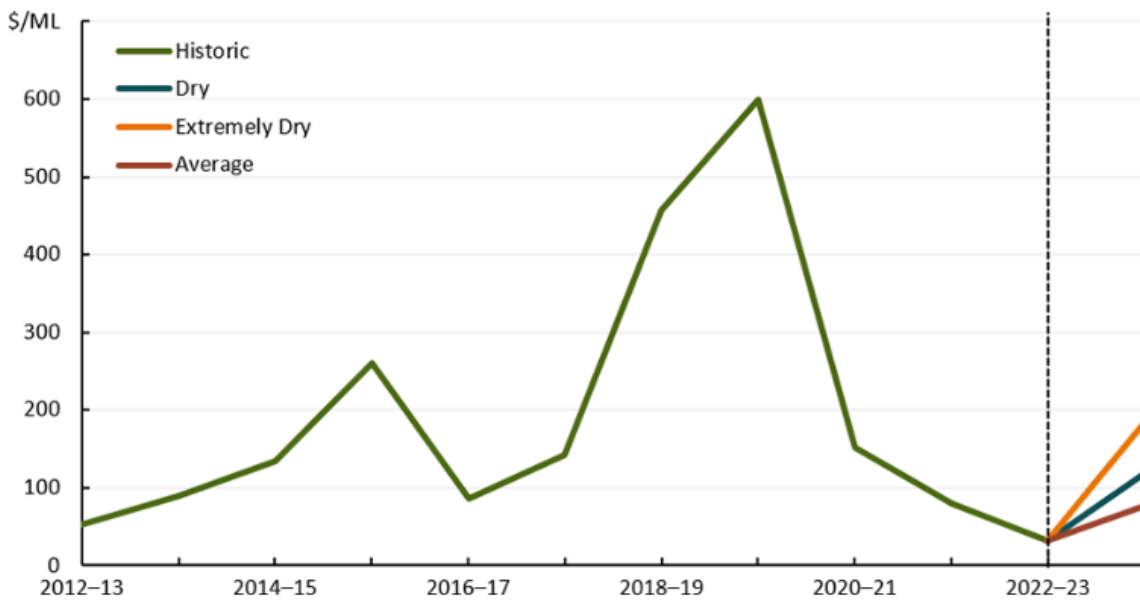


Horticultural production volumes are expected to rise by 7% in 2023–24. This is underpinned by a 7% increase in vegetable production to 2,808 thousand tonnes. Historically low water prices and high water storage levels to date, will help mitigate the impacts on yield from expected drier seasonal conditions in 2023–24. Other factors supporting production include improved labour availability and strong expected demand from overseas markets for key products such as almonds.

Historically low water prices will mitigate the impact of drier conditions

The expected onset of El Niño in 2023–24 is likely to lead to drier conditions across Australia, particularly across much of Eastern Australia. Drier conditions are likely to put upwards pressure on water prices. However, historically low water prices and high water storage levels currently observed are expected to moderate the pressure on water prices. ABARES' latest [Water Market Outlook](#) reported that under the likely average scenario, average water allocation prices are expected to remain well below recent highs (Figure 1.6). Ongoing low water prices will continue to support horticultural production.

Figure 1.6 Annual Australian water allocation price, varying climate scenarios



Source: ABARES

Note: ABARES Scenario analysis refers to the average water allocation price for all regions in the Murray-Darling Basin and is based on rainfall and inflows to storages of the following percentiles: Average scenario - Rainfall is in the 50th percentile of historical levels and, in 50 years out of 100, inflows to storages exceed those experienced in this scenario. Dry Scenario - Rainfall is in the 10th percentile of historical levels and, in 90 years out of 100, inflows to storages exceed those experienced in this scenario. Extreme Dry Scenario - Rainfall is in the 1st percentile of historical levels and, in 99 years out of 100, inflows to storages exceed those experienced in this scenario.

A recovery in horticultural labour supply to boost production

The recovery of the seasonal workforce to pre-pandemic levels is expected to support a rise in horticultural production in 2023-24. In 2019-20 and 2020-21, COVID-19-induced border closures constrained horticultural production by reducing the availability of seasonal workers; this impacted horticultural labour supply given the sector's reliance on the short-term seasonal workforce:

- Worker availability for short periods during the year is critical for labour-intensive operations (such as planting and harvest) on many horticulture farms.
- These short-term periods when labour-intensive operations occur can suit the labour availability of some overseas workers, such as Working Holiday Makers (WHM).

The Working Holiday Maker (WHM) visa approval rate fell sharply at the start of the pandemic, reaching a low of around 3,000 approvals in September 2021. During 2021-22, labour shortages in horticulture resulted in reduced volumes of harvested produce in some regions, with around [17% of horticulture farms](#) indicating lack of labour as a leading cause of crop loss in that year. WHM visa holder numbers have recovered following the reopening of international borders and have now exceeded pre-pandemic levels (Figure 1.7).

Figure 1.7 Working Holiday Maker Visa approvals



Source: Department of Home Affairs

The expansion of the **Pacific Australia Labour Mobility (PALM)** scheme over the last two years has also boosted labour supply for agriculture. Current estimates suggest that roughly 30 thousand PALM scheme workers are employed across agriculture.

While horticultural labour supply has improved overall in recent years, broadening the scope of occupations for WHM regional work requirements to accommodate economy-wide labour shortages has reduced the number of WHM visa holders in horticulture. Pre-COVID-19 estimates for WHM visa holders employed in agriculture were around 25–30% and post COVID estimates are around 15%, with horticulture using around 90% of WHM-labour in agriculture. Compounding this, the Australia-UK Free Trade Agreement (A-UKFTA), entered into force on 31 May 2023, removed the requirement for British backpackers to complete farm work as previously required; this has also reduced the availability of short-term labour from the seasonal workforce.

While labour supply has improved, labour costs have also increased across the economy (see [Economic Overview](#)). Ongoing high labour and other input costs are pressuring some farm margins which could temper the expected increase in horticultural production in 2023–24.

Free trade agreements and other trade initiatives to boost Australian exports

Horticulture export volumes are expected to increase by 6% to 787 thousand tonnes in 2023–24, driven by higher production volumes. Recent free-trade agreements that have improved market access through lower tariffs and higher quotas will also support export volume growth:

- The A-UKFTA saw the immediate elimination of tariffs often larger than 10% on most Australian horticultural exports.
- The Australia-India Economic Cooperation and Trade Agreement (ECTA) which entered into force on 29 December 2022 includes reduced tariffs for key horticultural exports (for example, citrus fruits, almonds, macadamia nuts, avocados, and berries).

In addition, a new government-industry partnership is expected to invest \$130 million to support export biosecurity measures and market access for Australian horticultural exports through the Fresh and Secure Trade Alliance (FASTA). This program is expected to enhance Australian horticultural producers' biosecurity surveillance and detection procedures, data collection processes and risk management strategies. All of these measures are expected to improve market access for horticultural exporters.



World supply expected to increase

Global horticulture supply is anticipated to rise modestly, primarily driven by better growing conditions in major producing countries. Changing weather patterns towards conditions associated with an El Niño weather system are likely to support overall production volumes. However, conditions are likely to have varying effects on the different major horticultural producers and exporters. Over the next three months, horticultural regions across parts of India are likely to experience drier than average conditions. However, much of China, the EU as well as southern parts of the US are predicted to record average or better than average rainfall. This will ultimately impact the yield and production of horticulture in these regions.

US citrus supply affected by a production shock

Despite improved growing conditions and rising global supply, the gross value of horticultural production in the United States is not expected to grow strongly over the next few years. This is largely attributed to shifting consumer preferences towards more competitively priced fruit and vegetable imports.

In addition, some US horticultural industries have faced challenges recently; the US citrus crop fell by 26% in 2022–23, after a colder-than-average season and Hurricane Ian affected production volumes. An outbreak of citrus greening is also forecast to deplete the 2023–24 crop, reducing production volumes by around 50% from 2022–23. This is likely to reduce US citrus export volumes for 2023–24.

World horticulture demand expected to grow modestly

Global demand for horticultural commodities is expected to increase modestly in 2023–24 but be outpaced by growth in global supply. Steadily rising populations and real incomes across several emerging markets will support increases in demand. However, ongoing high inflation in many advanced economies will weigh on real incomes of consumers, partially offsetting this rise.



Major export markets present opportunities for growth

Changes to global citrus production opens opportunities for Australian exporters

Falling citrus production in major producing markets has provided an opportunity for Australian exporters to meet excess demand in regions such as the United States. Additionally, lower export volumes from the major producers provides a large opportunity for Australian exporters in other key citrus export markets such as Japan, Canada, and the Republic of Korea.

Extreme weather events endanger horticultural growing regions

High rainfall over the previous three years has led to exceptional [growing conditions for vegetation](#) in many agricultural areas. Wetter years have also made it more difficult to conduct hazard reduction burns. As such, fire warnings have highlighted the increased likelihood of bushfires throughout southeastern Australia and much of northern NSW, key growing regions for horticulture. Bushfire risk presents ongoing challenges for horticultural and other agricultural producers.

IN THE FAIR WORK COMMISSION

C2019/5259 - Review of certain C14 rates in modern awards

Electrical, Electronic and Communications Contracting Award

Submissions of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

1. These Submissions are made by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ('CEPU') in accordance with the directions issued in the Statement by the Fair Work Commission ('Commission') on 22 September 2023.¹
2. The Statement advised that the Commission is extending the review originally initiated in August 2019² with respect of modern awards with classification rates at the C14 level which are either not transitional or where the transition period is not specified, due to conclusions drawn in the Annual Wage Review Decision 2022-2023.³
3. At paragraph [8] of the Statement, the Commission expressed its provisional views, outlining the following guiding principles for the review:
 1. the lowest classification rate in any modern award for ongoing employment should be at least the C13 rate;
 2. any classification rate below the C13 rate should be an entry-level rate for a limited period with a clear transition to the next rate (not less than C13); and
 3. the transition period for entry-level rates should not exceed six months.
4. The CEPU has an interest in the Electronic and Communications Contracting Award (**Electrical Award**) as identified in Attachment B of the Statement. This submission pertains solely to this Award.
5. The CEPU supports the provisional views expressed by Commission in so far as they relate Electrical Award for the reasons outlined below.

¹[\[2023\] FWCFB 168](#), (the Statement).

²[\[2019\] FWC 5863](#)

³[\[2023\] FWC 1255](#), (AWR 2023 Decision).

6. The Electrical Award falls within the category of Awards listed in Attachment B of the Statement, that is, it contains a classification (Electrical Worker Grade 1), that falls below the C13 rate but is higher than the C14 rate. Specifically:
 - a. an Electrical Worker Grade 1 is paid \$22.93 per hour under the Electrical Award;
 - b. The C14 rate is \$22.61 per hour, \$0.32 per hour less than that provided by the Electrical Award; and
 - c. The C13 rate is \$23.23 per hour, \$0.30 per hour more than that provided by the Award.
7. The classification of Electrical Worker Grade 1 in the Electrical Award does not serve as a transitional entry rate of pay nor does it provide a clear transition to the next classification rate in the Award.
8. Additionally, Adult Apprentices currently in 2nd year to 4th year under the Electrical Award are earning less than the national minimum wage because their base rate of pay is tied to the classification of an Electrical Worker Grade 1. This warrants another need to raise the Electrical Worker Grade 1 to the C13 rate.
9. It is also worth noting that the reference to the industry allowance in Attachment B of the Statement, concerning the Electrical Award, is, in our view, an irrelevant consideration when assessing the current rate of pay of the Electrical Worker Grade 1 classification in comparison to the C14 and C13 rates. This is because the rates under consideration are fundamentally base pay rates and do not include any all-purpose allowances.
10. Having regards to the above, and consistent with conclusions made in the AWR 2023 Decision⁴ and the provisional views of the Commission⁵, the CEPU submits that the rate of pay for an Electrical Worker Grade 1 under the Electrical Award should be aligned to that of the national minimum wage, which is the current C13 rate.
11. Accordingly, should the CEPU's position be accepted it proposes the following draft determination at Attachment A.

CEPU

⁴ Ibid at [173].

⁵ The Statement at [8].

3 November 2023

MA000025 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009
s.156—4 yearly review of modern awards

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

ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING AWARD [MA0000250]

Electrical contracting industry

SYDNEY, XX MONTH 2023

Review of the classification rates at the C14 level in modern awards – introductory rates – Annual Wage Review decision 2022-23 – alignment of the National Minimum Wage with the current C13 rate – scope of review broadened to encompass all classification rates below C13 level – provisional view

A. Further to the decision issued by the Full Bench on XX MONTH 2023 [[2023] FWCFB XXX], the above award is varied as follows:

1. By deleting the rate of pay for an Electrical worker grade 1 in clause 16.2 and inserting the following:

Classification level	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Electrical worker grade 1	882.80	23.23

2. By deleting the rate of pay for an Electrical worker grade 1 in table B.2.1 and inserting the following:

	Ordinary hours	Public holiday
	% of ordinary hourly rate ¹	
	100%	250%
	\$	\$
Electrical worker grade 1	24.20	60.50

3. By deleting the rate of pay for an Electrical worker grade 1 in table B.2.2 and inserting the following:

	Monday to Saturday ¹		Sunday ¹	Public holiday ¹
	First 2 hours	After 2 hours		
	% of ordinary hourly rate ²			
	150%	200%	200%	250%
	\$	\$	\$	\$
Electrical worker grade 1	36.30	48.40	48.40	60.50

4. By deleting the rate of pay for an Electrical worker grade 1 in table B.2.3 and inserting the following:

	After-noon or night ¹	Non-successive afternoon or night ²		Perma-nent night ³	Satur-day	Sunday ⁵	Public holiday	
		First 2 hours	After 2 hours				Continuous shiftwork	Other than continuous shiftwork
	% of ordinary hourly rate ⁴							
	115%	150%	200%	130%	150%	200%	200%	250%
	\$	\$	\$	\$	\$	\$	\$	\$
Electrical worker grade 1	27.83	36.30	48.40	31.46	36.30	48.40	48.40	60.50

5. By deleting the rate of pay for an Electrical worker grade 1 in table B.2.4 and inserting the following:

	Monday to Sunday				Public holiday	
	Continuous shiftwork		Other than continuous shiftwork		Continuous shiftwork	Other than continuous shiftwork
		First 2 hours	After 2 hours			
	% of ordinary hourly rate ¹					
	200%	150%	200%	200%	200%	250%

	\$	\$	\$	\$	\$
Electrical worker grade 1	48.40	36.30	48.40	48.40	60.50

6. By deleting the rate of pay for an Electrical worker grade 1 in table B.3.1 and inserting the following:

	Day	Public holiday
	% of ordinary hourly rate ¹	
	125%	312.5%
	\$	\$
Electrical worker grade 1	30.25	75.63

7. By deleting the rate of pay for an Electrical worker grade 1 in table B.3.2 and inserting the following:

	After-noon or night ¹	Non-successive afternoon or night ²		Perma- nent night ³	Satur- day	Sunday	Public holiday	
		First 2 hours	After 2 hours				Contin- uous shift- worker	Non- contin- uous shift- worker
	% of ordinary hourly rate ⁴							
	140%	187.5%	250%	155%	187.5%	250%	250%	312.5%
	\$	\$	\$	\$	\$	\$	\$	\$
Electrical worker grade 1	33.88	45.38	60.50	37.51	45.38	60.50	60.50	75.60

CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION

Matter Number: C2019/5259

Fair Work Act 2009

s. 157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

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

SUBMISSION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION (CONSTRUCTION & GENERAL DIVISION)

3rd November 2023

Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) ABN 46 243 168 565	Contact Person: Stuart Maxwell, Senior National Industrial Officer	Address for Service: Level 1, 1 Miller Lane Pyrmont NSW 2009	T: E:	(02) 8524 5800 smaxwell@cfmeu.org
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Introduction

1. On 22nd September 2023 the Full Bench dealing with the review of the classification rates at the C14 level in modern awards (C2019/5259) issued a Statement ([2023] FWCFB 168) in which they proposed to broaden the scope of the review.¹
2. The Statement identified that in the *Annual Wage Review Decision 20222-2023 (AWR 2023 decision)* the Expert Panel decided to end the alignment between the National minimum Wage (NMW) and the C14 classification rate, as the C14 rate ‘was only ever intended to constitute a transitional entry rate for new employees’, and instead decided to align the NMW with the current C13 classification rate in modern awards. The Statement further explained that the Expert Panel’s conclusions had necessarily required a refocussing of the objective of this review.²
3. The Full Bench went on to express their provisional view that:
 - (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
 - (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
 - (3) The transition period for the purpose of (2) should not exceed six months.³
4. The Full Bench noted that this approach would require an expansion of the scope of the review and that it would be necessary to consider more closely those Awards, set out in Attachment A to the Statement, that were previously excluded from the review on the basis they contained only transitional C14 rates.⁴ The Full Bench issued directions for interested parties to file:
 - (a) submissions in respect of the provisional view stated in paragraph [8];
 - (b) submissions as to the accuracy of the table at Attachment D to the Statement;
 - (c) draft determinations or proposals for any specific award variations that might be necessary; and
 - (d) evidence upon which they intend to rely;

¹ [2023] FWCFB 168 at paragraph [1]

² Ibid., paragraphs [6] to [8]

³ Ibid., at paragraph [8]

⁴ Ibid., at paragraphs [9] to [10]

by no later than Friday, 3 November 2023.⁵

5. The Construction, Forestry Maritime, Mining and Energy Union (Construction and General Division) (the CFMMEU C&G) has a substantial interest in the *Joinery and Building Trades Award 2020*, one of the awards listed in Attachment A, and makes this submission in accordance with the above mentioned directions.

Response to the Provisional View

6. The level 1 minimum weekly rate in the *Joinery and Building Trades Award 2020* equates to the C14 rate in the *Manufacturing and Associated Industries and Occupations Award 2020* and the level 2 minimum weekly rate equates to the C13 rate.
7. The CFMMEU C&G supports the provisional view expressed in paragraph [8] of the Statement. This view is consistent with the intent of the parties when the classification structure currently contained in the *Joinery and Building Trades Award 2020* was first determined.
8. During the award modernisation proceedings, the AIRC Full Bench decision ([2009] AIRCFB 345) that made the modern *Joinery and building Trades Award 2010* determined that:

[113] The terms and conditions in the award largely reflect those in the *National Joinery and Building Trades Products Award 2002*.

9. The classification structure in the modern *Joinery and Building Trades Award 2020* is identical to that which existed in the *Joinery and Building Trades Products Award 2002* (see [AP817265](#) at clauses 17.1.2 and 17.3).
10. The genesis of this classification structure goes back to the *Joinery and Building Trades Products Award 1993*, made on 10th February 1993 (Print K6616), the predecessor award to the 2002 Award (see clause 9 of the 2002 Award). The *Joinery and Building Trades Products Award 1993* was the result of “a lengthy and somewhat chequered history” to consolidate seven awards covering the off-site fabrication sector of the building and construction industry.
11. Consolidating the awards required the determination of a new classification structure. This was ultimately decided on by Commissioner Grimshaw (in Print K6181):

“CLAUSE 9 RATES OF PAY

Essentially four main areas of disagreement exist with respect to rates of pay, one being the translation to new broadbanded classifications, the second being the

⁵ Ibid., at paragraph [27]

alignment of classifications with new pay scales, thirdly the incorporation of past minimum rate adjustments and finally methods of paying the new rates.

In respect to the translation to the new broadbanded group, while much to-ing and fro-ing has occurred over the series of conferences and proceedings the basic differences centred around Assembler A and Assembler B. Mr Grozier for the New South Wales Chamber of Manufactures submitted he had reservations that the classification levels and pay relativities were correct or justified, additionally he urged that perhaps a three month trial may be appropriate although this approach was not supported by any other advocate from the employers' side. By agreement the parties deleted any reference to the proposed "new entrant" classification and the union amended its proposal for Assembler A (New South Wales, South Australia, Victoria, Queensland and Western Australia) to 3/4 and for Assembler B (New South Wales, South Australia, Victoria, Queensland and Western Australia) to 2/3.

Whilst being urged to proceed with caution the Commission is mindful that much of the assessments, the determining of groupings and pay relativities have all been strongly influenced by those who conducted skills audits and other related matters in the building and metals industries and whilst acknowledging there may be teething problems, I am none the less confident that subject to adequate monitoring the proposed rates of pay clause 9.1(a) (b) (c) (d) contained in Exhibit CFMEU 10 should apply. Further, turning to another disputed issue over the incorporation of past unpaid minimum rates adjustments, I am satisfied that not only has there been an acknowledgement by all major employer organisations who have been involved with this consolidation over many months that the adjustments were an employer liability to the employees, and the adjustments could and would be made when the awards were consolidated, indeed it was submitted by the unions that the employers' real concerns had been the fear real or otherwise of a disruption of the final relativities.

Messrs Grazier and Simpson urged the Commission to phase in the new rates however I am satisfied that no responsible employer or employer's representative can claim not to have known for a long time that concurrent with this most significant award consolidation and industry modernisation came wage adjustments. I have decided the new rates should apply from the date of this decision."

12. The compromise reached by the parties, on the deletion of the proposed 'new entrant' classification, was to instead adopt a modified version of the wording from the C14 classification in the *Metal Industry Award 1984* for the Level 1 classification, on the

understanding that once the 38 hours of induction training had been completed a new worker would progress to the level 2 wage rate. The reasoning behind this understanding was that the majority of the awards that existed prior to the 1993 consolidation did not contain any classifications at the level 1 broadbanded group.

13. The CFMMEU C&G therefore submits that the provisional view of the Full Bench in these proceedings is consistent with the intended approach for what is now the level 1 classification in the *Joinery and Building Trades Award 2020* and that a new entrant at the Level 1 classification should transition to the level 2 classification rate after the completion of the 38 ordinary hours of induction training.

Accuracy of the Table at Attachment D to the Statement

14. The CFMMEU C&G takes issue with the comment column in Attachment D and its reference to the industry allowance payable under the *Joinery and Building Trades Award 2020*. The industry allowance is not part of the minimum weekly classification rate in the award and therefore should not be taken into consideration as to whether the classification rate exceeds the C13 rate. It has been well established since the award modernisation decisions (see [2009] AIRCFB 50 at paragraphs [45]-[46] and [2009] AIRCFB 345 at paragraph [94]) that all purpose allowances do not form part of the properly fixed minimum classification rates.
15. We would further point out that the industry allowances in the *Joinery and Building Trades Award 2020* are not payable to all employees and are only payable when employees are engaged on certain work (see clause 21.3(b)).

Award Specific Variations

16. The CFMMEU C&G submits that to remove any ambiguity that currently exists in the *Joinery and Building Trades Awards 2020*, it would be appropriate to vary the award in the following manner (changes highlighted in red):

- (a) Delete paragraph A.1.1(a) and replace it with the following:

(a) **This level only applies to new employees.** An employee employed at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance. **Upon completion of the induction training a new employee will transition to level 2.**

(b) Delete paragraph A.1.2(a) and replace it with the following:

(a) An employee to be classified at this level will have completed the required **induction** training or will have equivalent skills gained through work experience in accordance with the prescribed standards for this level. ~~In all cases the employee will be required to satisfactorily complete a competency assessment to enable the employee to perform work within the scope of this level.~~

(c) Delete paragraph A.1.2(d) and replace it with the following:

(d) Subject to Schedule A.1.2 (e), Level 2 includes the following occupations:

- (i) Assembler B.
- (ii) **Factory Hand.**
- (iii) **General Hand.**

17. The changes to A.1.1(a) clarify that the level 1 classification only applies to new entrants and for the first 38 hours of employment, and that after the induction training an employee transitions to level 2.
 18. The change to A.1.2(a) clarifies that the required training is the induction training referred to in A.1.1(a). The requirement to in all cases satisfactorily complete a competency assessment is removed because there is no national competency standard to be assessed against for induction training for the off-site sector of the building and construction industry.
 19. The insertion of Factory Hand and General Hand in A.1.2(d) clarifies that employees in these classifications, other than new entrants, are to be paid at level 2.
 20. The CFMMEU C&G submits that the above proposed changes will meet the provisional view of the Full Bench and be consistent with the decision of the Expert Panel to align the NMW with the C13 classification rate in modern awards.
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CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION

Matter Number: C2019/5259

Fair Work Act 2009

s. 157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

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

**REPLY SUBMISSION OF THE CONSTRUCTION, FORESTRY AND
MARITIME EMPLOYEES UNION (CONSTRUCTION & GENERAL DIVISION)**

1st December 2023

Construction, Forestry and Maritime Employees Union (Construction and General Division) ABN 46 243 168 565	Contact Person: Stuart Maxwell, Senior National Industrial Officer	Address for Service: Level 1, 1 Miller Lane Pymont NSW 2009	T: E:	(02) 8524 5800 smaxwell@cfmeu.org
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 - (3) The transition period for the purpose of (2) should not exceed six months.²
3. The Full Bench noted that this approach would require an expansion of the scope of the review and that it would be necessary to consider more closely those Awards, set out in Attachment A to the Statement, that were previously excluded from the review on the basis they contained only transitional C14 rates.³ The Full Bench issued direction 1, for interested parties to file:
 - (a) submissions in respect of the provisional view stated in paragraph [8];
 - (b) submissions as to the accuracy of the table at Attachment D to the Statement;
 - (c) draft determinations or proposals for any specific award variations that might be necessary; and
 - (d) evidence upon which they intend to rely;by no later than Friday, 3 November 2023.⁴
4. The Full Bench also issued direction 2, for parties to file evidence and submissions in reply to any material filed in accordance with direction 1 by no later than Friday, 1 December 2023.
5. The Construction, Forestry Maritime, Mining and Energy Union (Construction and General Division), now the Construction Forestry and Maritime Employees Union (Construction and

¹ [2023] FWCFB 168 at paragraph [1]

² Ibid., at paragraph [8]

³ Ibid., at paragraphs [9] to [10]

⁴ Ibid., at paragraph [27]

General Division) (the CFMEU C&G) filed a submission⁵ on 3rd November 2023 in regard to the *Joinery and Building Trades Award 2020*.

6. The Australian Business Industrial and New South Wales Business Chamber Ltd (ABI/BNSW)⁶, AiG⁷, HIA⁸ and MBA⁹ also made brief submissions about the *Joinery and Building Trades Award 2020*. The CFMEU C&G makes this brief submission in reply to those submissions.

Response to the Provisional View

7. The HIA does not oppose the provisional view and in its assessment the C14 equivalent rate in the *Joinery and Building Trades Award 2020* is transitional.¹⁰ The MBA also agree that the C14 equivalent rate is transitional.¹¹ These positions are consistent with the view expressed by the CFMEU C&G.
8. The ABI/BNSW do not agree with the principles outlined in paragraph [8] of the Statement but make no specific comment on the transitional nature of the level 1/ C14 equivalent rate in the *Joinery and Building Trades Award 2020*.
9. The AiG also opposes the provisional view. The AiG go further and make the unsubstantiated observation that the relevant classification level in the *Joinery and Building Trades Award 2020* is not transitional¹² and contemplates the performance of substantive roles on an indefinite basis.¹³ The AiG provide no evidence to support this observation and its position is clearly out of step with the major employer organisations that have an interest in the award, the HIA and MBA, and the unions.
10. More importantly the Expert Panel's decision of the Annual Wage Review 2018-19 has already recognised that the level 1 wage rate in the *Joinery and Building Trades Award 2020* is transitional,¹⁴ as did the former President's Statement in [2019] FWC 5863¹⁵.

⁵ <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-cfmmeu-cg-031123.pdf>

⁶ <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-abinswbc-031123.pdf>

⁷ <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-aig-061123.pdf>

⁸ <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-hia-031123.pdf>

⁹ <https://www.fwc.gov.au/documents/sites/rates-c14-review/c20195259-sub-mba-031123.pdf>

¹⁰ HIA submission, 3rd paragraph.

¹¹ MBA submission, paragraph 8.

¹² Attachment to the AiG submission at p.5.

¹³ AiG submission, paragraph 32(a).

¹⁴ [2019] FWCFB 3500 at paragraph [338] and footnote 376

¹⁵ [2019] FWC 5863 at paragraph [4]

11. The CFMEU C&G also notes that in the earlier proceedings the AiG were invited by the former President to comment on the list of awards, identified in the Presidents Statement, in which the C14 rate was not transitional.¹⁶ In its various submissions prior to 6th November 2023 the AiG never once challenged the view of the FWC that the level 1 classification rate in the *Joinery and Building Trades Award 2020* was a transitional rate. It is therefore disingenuous of the AiG to now raise a challenge to a point it has previously accepted.
12. The AiG submission demonstrates that the AiG has little knowledge or understanding of the history and implementation of the classification structure in the *Joinery and Building Trades Award 2020*, or indeed what classifications are utilised by employers covered by this award.
13. As submitted in the CFMEU C&G 3rd November 2023 submission, the majority of the awards that existed prior to the 1993 consolidation did not contain any classifications at the level 1 broadbanded group. This was reflected in clause 9.1(c) of the *National Joinery and Building Trades Products Award 1993*:

“(c) *The classifications covered by this award and the appropriate broadbanded group for such classifications shall be as follows:*

<i>Classification</i>	<i>Broadbanded Group</i>
<i>Carpenter and/or Joiner (NSW)</i>	6
<i>Joiner-Setter Out (SA, VIC)</i>	6
<i>Joiner Special Class (NSW)</i>	6
<i>Prefab Setter (VIC, QLD, WA)</i>	6
<i>Carpenter and Joiner (SA, VIC, TAS)</i>	5
<i>Carpenter and/or Joiner (SA)</i>	5
<i>Joiner (NSW, SA, VIC)</i>	5
<i>Painter (VIC, QLD, WA)</i>	5
<i>Prefab Tradesperson (VIC, QLD, WA)</i>	5
<i>Tradesperson</i>	
<i>(Precast Concrete Manufacture SA)</i>	5
<i>Assembler A (NSW, SA, VIC, QLD, WA)</i>	3/4
<i>Machinist</i>	
<i>(Precast Concrete Manufacture SA)</i>	4
<i>Terrazzo Assistant (SA)</i>	4
<i>Assembler B (NSW, SA, VIC, QLD, WA)</i>	2/3

¹⁶ Ibid., at paragraph [10]

<i>Primer (SA, VIC)</i>	3
<i>General Hand (SA, VIC)</i>	1
<i>Factory Hand (SA)</i>	1
<i>Adult Trainee Terrazzo Worker (SA)</i>	
<i>First 6 months</i>	1
<i>Second 6 months</i>	3
<i>Second year</i>	4

Provided that:

- (i) *an employee currently classified as an Assembler A who is only required to perform the duties specified in subclause 8.1 shall be paid in accordance with broadbanded group 3. Where such employee performs a wider range of duties including those more complex tasks identified for broadbanded group 4, then such employee shall be paid in accordance with broadbanded group 4.*
- (ii) *an employee currently classified as an Assembler B who is only required to perform the duties specified in subclause 8.2 shall be paid in accordance with broadbanded group 2. Where such employee performs a wider range of duties including those more complex tasks identified for broadbanded group 3, then such employee shall be paid in accordance with broadbanded group 3.”¹⁷*

14. The application of the classification of factory hand was further limited through the following definition:

“8.9 *"Factory Hand" means an employee in South Australia engaged in precast concrete manufacture who is responsible for cleaning the work area as necessary, loading of trucks, general labouring (including stoning down and bagging) and assisting other production workers other than as a "Factory Hand".*”¹⁸

15. At the time of the making of the 1993 award, the level 1 classification was limited to general hands in South Australia and Victoria, factory hands engaged in precast concrete manufacture in South Australia, and adult trainee terrazzo workers in South Australia during the first 6 months.

¹⁷ Print K6616, pp.10-11

¹⁸ Print K6616, p.7

16. In determining the new classification structure for the award, the parties agreed that the level 1 classification would only apply to a new employee for the limited 38 hour induction period during which a worker would only perform general labouring duties. The reasoning behind it was that the parties recognised that in practice there were no real jobs at this level on an ongoing basis, and employers preferred to quickly upskill new entrants so that they could be more productive and perform a wider range of tasks. This agreement resulted in the following broadbanded group definition and skill level description for the level 1 classification:

BROADBANDED GROUP/LEVEL 1

[Relativity to Broadbanded Group/Level 5: 78%]

An employee at this level will undertake up to 38 hours induction training which may include information on the company, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- 1. performs work as directed;*
- 2. performs routine duties essentially of a manual and repetitive nature;*
- 3. is responsible for the quality of their own work subject to direct supervision;*
- 4. works in a safe manner so as not to injure themselves or other employees;*
- 5. is able to solve basic problems associated with their work;*
- 6. whilst undertaking structured training performs work within the scope of that training subject to safety and training requirements.*

Indicative of the tasks which an employee at this level may perform are the following:

- * carry out general labouring and cleaning duties from written or verbal instructions.*
- * provides assistance to other employees at this or other skill levels within their level of skill and training.*
- * any other tasks as directed in accordance with their level of skill and training.¹⁹*

17. Apart from some minor wording changes and the addition of a paragraph on the occupations included in this skill level the equivalent description now found in clause A.1.1 of the *Joinery*

¹⁹ Print K6616, at page 72.

and Building Trades Award 2020 is identical. There can therefore be no doubt that the level 1 classification rate is a transitional rate for the first 38 hours.

18. The AiG also make the unsubstantiated claim that the implementation of the provisional view, in relation to the *Joinery and Building Trades Award 2020*, is likely to have a significant impact upon employers covered by it. Again, the AiG provide no evidence to support this claim.
19. The CFMEU C&G is not aware of any specific figures for the number of employees engaged at the level 1 classification wage rate under the *Joinery and Building Trades Award 2020*, but based on the 2019 Department of Jobs and Small Business estimate that “*around 180 200 employees are paid the adult C14 rate*”²⁰ and the 2018-19 Annual Wage Review comment that “*While not an insignificant number of employees it only represents 1.7 per cent of all employees*”²¹, it is arguably less than 1.7%.

Accuracy of the Table at Attachment D to the Statement

20. The ABI/BNSW, AiG, HIA and MBA submissions all refer to the payment of the industry allowance in the *Joinery and Building Trades Award 2020* resulting in a worker at the level 1 classification being paid more than the C13 equivalent rate.
21. As noted in the CFMEU C&G’s earlier submission the industry allowance in this award is not paid to all employees, only employees engaged on:
 - (a) joinery work, shopfitting, stonemasonry or outside work, or
 - (b) a glazier or an apprentice glazier, engaged other than on factory glazing

This means that not all employees at the level 1 classification are paid above the C13 equivalent rate. In any case, as the level 1 rate is transitional, the payment of the industry allowance is immaterial for this award in these proceedings.

22. The CFMEU C&G would however take issue with the ABI/BNSW submission that suggests that industry allowances are “*designed to ensure that the rates of pay are referable to the value of the work*”²². This is incorrect, as clause 21.3(b) of the award clearly states the allowance is paid “*to compensate for the disabilities associated with the industry*” and has nothing to do with the value of the work.

²⁰ [2019] FWCFB 3500 at paragraph [336]

²¹ Ibid

²² ABI/BNSW submission, paragraph 40.

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.157 variation of modern awards

(AM2019/5259)

Review of certain C14 rates in modern awards

SUBMISSIONS & VARIATION PROPSALS FOR MULTIPLE AWARDS

**CONSTRUCTION, FORESTRY, MARITIME, MINING
AND ENERGY UNION
(MANUFACTURING DIVISION)**

(9 November 2023)

CFMMEU (Manufacturing Division)	Contact Person: Vivienne Wiles Senior National Industrial Officer	Address: Level 2, 165 Bouverie Street Carlton VIC 3053	Tel: Email:	0419 334 102 vwiles@cfmeumd.org industrial@cfmeumd.org
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(AM2019/5259)
s.157 – Variation of modern awards
Review of certain C14 rates in modern awards

Submissions & variation proposals by the
CFMMEU-Manufacturing Division

BACKGROUND

1. On 22 September 2023, a Statement¹ (**September 2023 Statement**)¹ was issued by the full bench in this matter, effectively broadening the scope of the review into C14 rates in certain modern awards and expanding the list of relevant awards to 43.²
2. The expansion of the C14 rates proceedings occurs in context of one of the outcomes of the Annual Wage Review 2022/2023, such that the AWR Expert Panel determined to *‘end the alignment between the NMW [National Minimum Wage] and the C14 classification rate which had existed since 1997’*, and instead aligned it with the current C13 classification rate in modern awards.
3. Further, the AWR Expert panel found the C14 rate *‘was only ever intended to constitute a transitional entry rate for new employees’* and *‘did not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.’*³
3. The September Statement sets out the *provisional* view of the C14 rates full bench at paragraph [8] stating that *‘the following principles should guide the completion of the review’*:

‘(1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.

(2) Any classification rate in the modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate in the award).

¹ (C2019/5259) Review of certain C14 rates in modern awards, Statement [2023] FWCFB 168

² *Ibid*; at [2]

³ *Ibid*; at [6] – [7]

(3) The transition period for the purpose of (2) should not exceed six months.⁴

4. The September Statement issued the following direction [1] for the filing of material by interested parties by 3 November 2023:

- (a) submissions in respect of the provisional view stated in paragraph [8] above;*
- (b) submissions as to the accuracy of the table at **Attachment D**;*
- (c) draft determinations or proposals for any specific award variations that might be necessary; and*
- (d) evidence on which they rely.⁵*

5. On 3 November 2023, CFMMEU-Manufacturing Division (**CFMMEU-MD**) sought and was granted an extension to 8 November 2023 to file submissions and variation proposals for the awards in which it has an interest.

AWARDS IN WHICH THE CFMMEU (MANUFACTURING DIVISION) HAS AN INTEREST

6. Attachment D to the September Statement contains a list of modern awards below the C13 level.⁶ The CFMMEU-MD has a primary interest in the following modern awards contained in Attachment D:

- *Dry Cleaning and Laundry Industry Award 2020 (DC&LI Award)⁷*
- *Joinery and Building Trades Award 2020 (Joinery Award)⁸*
- *Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)⁹*
- *Textile, Clothing, Footwear and Associated Industries Award 2020 (TCF Award)¹⁰*
- *Timber Industry Award 2020 (Timber Award)¹¹*

⁴ Ibid; at [8]

⁵ Ibid; at [27]

⁶ Ibid; Attachment D – Minimum rates below the C13 level in modern awards; pp 11-29

⁷ Ibid; Attachment D – referenced on page 17

⁸ Ibid; Attachment D – referenced on page 19

⁹ Ibid; Attachment D – referenced on page 19

¹⁰ Ibid; Attachment D – referenced on page 26

¹¹ Ibid; Attachment D – referenced on pages 26-27

PROVISIONAL VIEW

7. The CFMMEU-MD supports the *provisional view* expressed by the full bench at paragraph [8] of the September Statement. We consider the provisional view is broadly consistent with the decision of the Expert Panel in the *Annual Wage Review Decision 2022-2023*.

ACCURACY OF THE TABLE AT ATTACHMENT D

8. On our review, with respect to the awards in which the CFMMEU-MD has an interest, the table at Attachment D is accurate other than in the following respects:

(a) DC&LI Award

- There is a numbering error in the right-hand column headed 'Next classification up' which states:
*'Laundry employee
Level 1 = \$900.50'*
- The correct reference should read:
*'Laundry employee
Level 2 = \$900.50'*
- This error was identified in the joint employer and union submission filed with respect to the DC&LI Award.¹²

(b) Joinery Award

- In the second column from the right, headed 'Comment' in relation to the Level 1 classification, it states:
'Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.
- In the submission filed by the CFMMEU (Construction & General Division) (**CFMMEU C&G**), it is contended:
'The industry allowance is not part of the minimum weekly classification rate in the award and therefor should not be taken into consideration as to whether the classification rate exceeds the C13 rate. It has been well established since the award modernisation decisions....that all purpose

¹² C2019/5259 – Review of certain C14 rates in modern awards; Joint submission of the Drycleaning Institute of Australia; Laundry Association Australia; CFMMEU-Manufacturing Division; Australian Workers Union and the United Workers Union (3 November 2023) at paragraph [9]

allowances do not form part of the properly fixed minimum classification rates.

We would further point out that the industry allowances in the Joinery and Building Trades Award 2020 are not payable to all employees and are only payable when employees are engaged on certain work (see clause 21.3(b)).¹³

- We concur and adopt the submission of the CFMMEU C&G in this respect.

(c) TCF Award

- In relation to the classification, 'General Employees: Trainee' the September Statement categorises this Transitional category as Category (ii)¹⁴ which is defined under paragraph [3] of the September Statement as '*transition occurs after 3 months*' [emphasis added].
- This categorisation of the classification, 'General Employees: Trainee' is potentially misleading as clause A.1.1 of the TCF Award requires that employees at this level, amongst other requirements, '*for a period of up to 3 months undergo approved (including induction) training....*'
- That is, there is a distinction and difference in meaning, between the expression, 'after 3 months' as compared to the expression 'of up to 3 months.'
- In this context, the correct category may actually be (iii) 'the classification is transitional but a period other than 3 months is specified' unless category (ii) is taken to mean 'up to 3 months' as well as 3 months being the maximum period permitted.

DC&LI AWARD

9. The September Statement¹⁵ identified the following classifications which provide minimum rates below the C13 level in the DC&LI Award:

- Clause 18.1(a) – Dry cleaning employee Level 1
- Clause 18.1(b) – Laundry employee Level 1

¹³ C2019/5259 Review of certain c14 rates in modern awards, submission of the CFMMEU (Construction and General Division) (3 November 2023) at [14] – [15]

¹⁴ Op cit; Attachment D – at page 26

¹⁵ Op cit; Attachment D – at page 17

10. On 3 November 2023, a joint employer/union submission and variation proposal was filed on behalf of the Drycleaning Institute of Australia, the Laundry Association Australia, the CFMMEU-Manufacturing Division, the Australian Workers' Union and the United Workers' Union with respect to the DC&LI Award (**Joint Submission**).

11. We rely on the Joint Submission with respect to the DC&LI Award.

JOINERY AWARD

12. The September Statement¹⁶ identified the following classification which provides a minimum rate below the C13 level in the Joinery Award:

- Clause 19.1 – Level 1

13. The CFMMEU C&G has filed a submission¹⁷ and variation proposal in relation to paragraphs A.1.1(a), A.1.2(a) and A.1.2(d)¹⁸ of the Joinery Award.

14. The CFMMEU-MD supports and adopts the submissions and variation proposals as advanced by the CFMMEU C&G.

MANUFACTURING AWARD

15. The September Statement¹⁹ identified the following classification which provides a minimum rate below the C13 level in the Manufacturing Award:

- Clause 20.1(a) – C14/VI

16. In the third column from the right, under the sub-heading 'Transitional Category'

Attachment D states (as relevant to the CFMMEU-MD's coverage):

'Category (i) – C14: up to 38 hours induction training. However, a C13 employee must also have completed up to 3 months' structured training (cl A.4.3-A.4.4)...'

17. We submit that the governing principle in relation to the C14 rate is that C14 classification is limited in scope to a maximum of 38 hours induction only and that on completion of such induction an employee will transition automatically to the next level C13. We submit that the

¹⁶ Op cit; Attachment D – at page 17

¹⁷ Op cit;

¹⁸ Op cit; CFMMEU C&G Submission; at [16]

¹⁹ Op cit; Attachment D – at page 19

C14 rate/classification must be viewed in context of the overarching architecture of the classification structure of the Manufacturing Award with its emphasis on career pathways and movement between levels.

18. We understand the Australian Workers Union (AWU)²⁰ has filed a submission in this matter including variation proposals for classifications C14 and C13 in the Manufacturing Award. The CFMMEU-MD intends to file submissions in reply by 1 December 2023 in response to the AWU's variation proposal and any other variation proposals filed by other parties.

TCF AWARD

19. The September Statement²¹ identified the following 2 classifications in the TCF Award which provide a minimum rate below the C13 level:

- Clause 19.1 – General Employees: Trainee
- Clause 19.2 – Wool and Basil Employees: General hand

Clause 19.1 – General Employees: Trainee

20. In the September Statement in the column headed 'Transitional category' it states for this classification:

'Category (ii) – up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required at Skill Level 1 (cl A.1).

[emphasis added]

21. As outlined above at paragraph [8(c)] above, this is a different formulation than the description of category (ii) – '*transition occurs after 3 months*' contained in the September Statement. The actual words of the second dot point in clause A.1.1 of the TCF Award are:

- *'for a period of up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required to be classified at Skill Level 1;'*

22. It is evident that clause A.1.1 of the TCF Award currently contemplates that a full 3 months' training (including induction) period may not be necessary for every employee engaged at

²⁰ C2019/5259 – Review of certain C14 rates in modern awards, submission of the Australian Workers Union (AWU), 3 November 2023

²¹ Op cit; Attachment D – at page 26

the 'Trainee' classification, and that transition to a higher skill level may occur prior to the end of the 3 months.

23. The full text of clause A.1.1 of the TCF Award is extracted below:

A.1 Trainee

A.1.1 *Employees at this level will:*

- *be new entrants into the industry;*
- *for a period of up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required to be classified at Skill Level 1; and*
- *work under the following conditions: totally defined procedures and methods; constant direct supervision; constant direct training; progressive assessment and feedback.*

A.1.2 *Training for new entrants will be determined in accordance with the needs of the enterprise, but will involve instruction aimed at assisting trainees to achieve the range of competencies required at Skill Level 1, including:*

- *the knowledge and skills required to apply relevant Work Health and Safety practices and procedures;*
- *the knowledge and skills required to apply specified quality control standards to their own work;*
- *the knowledge and skills required to apply specified operation practices and procedures and to meet efficiency requirements; and*
- *the knowledge and skills required to apply minor equipment/machine maintenance relevant to the equipment involved in the performance of their own work.*

Unless an employee is transitioned earlier as permitted under this clause, the maximum period that an employee can remain on the classification of 'Trainee' is 3 months.

24. In circumstances where the Commission considers a variation is necessary to clause A.1.1 to clarify the outer limits of the training period, we submit that an additional sentence could be added as highlighted in red above.

Clause 19.2 – Wool and Basil Employees: General hand

25. In the September Statement²² in the column headed ‘Transitional category’ it states for this classification:

‘Category (v) – see clause B.4

26. Category (v) is described at paragraph [3] of the September Statement as, *‘(v) the classification level is not transitional’*.

27. Clause B.4 of the TCF Award provides the following description of ‘Wool and basil employees:

B.4 Wool and basil employees

Wool and basil employees are employees who are required to work on pulling sheep skins or piece picking, or any other class of work connected with wool scouring or carbonising.

28. Clause 19.2 of the TCF Award sets out the classifications and applicable minimum wage rates for Wool and basil employees, and provides as follows:

Employee Classification/Skill Level	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
General hand	\$859.30	\$22.61
Operator – Grade 3	\$882.80	\$23.23
Operator – Grade 2	\$914.60	\$24.07
Operator – Grade 1	\$947.10	\$24.92
Senior Operator – Grade 2	\$995.00	\$26.18
Senior Operator – Grade 1	\$1026.20	\$27.01

29. Outside of clauses 19.2 and clause B.4, the TCF Award contains no other terms which deal with the classifications or wage rates of wool and basil employees.

²² Op cit; Attachment D – at page 26

30. It is evident from the above that the classification, 'General hand' in the 'Wool and basil employees' stream contains no pathway at all for an employee to transition to a higher skill level classification within the TCF Award. In this context, the absence of a defined transitional period for this classification means that it is inconsistent with the propositions stated in the AWR Decision 2022/2023 and the *provisional* view expressed by the full bench.
31. It is submitted that an appropriate variation to the classification of 'General hand' in the 'Wool and basil sector', to address the absence of a transitional pathway to a C13 rate, would include the following key elements:
- apply to new employees in the wool and basil industry;
 - the employee is required to undertake up to 38 hours induction training;
 - the employee transitions to the higher skill level after the completion of the induction training
32. The CFMMEU-MD proposes the following variations to the TCF Award relating to the C14 rate for the classification, 'General hand' (variations in red):

B.4 Wool and basil employees

Wool and basil employees are employees who are required to work on pulling sheep skins or piece picking, or any other class of work connected with wool scouring or carbonising.

B.4.1 General hand

(a) Employees at this level will:

- *be new entrants into the wool and basil industry; and*
- *undertake up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety practices and procedures, equal employment opportunity and quality control/assurance; and*

(b) At the completion of the induction training as per B.4.1(a) above, the employee will, at a minimum, transition to the level/classification 'Operator – Grade 3'.

33. The proposed variation outlined above, would ensure that the classification of ‘General hand – wool and basil employees’ is:

- an entry level classification of limited duration;
- objectively transitional in nature and provides a clear pathway to the next level;
- consistent with the Expert Panel’s AWR 2023 Decision, such that, the lowest rate applicable in any modern award to ongoing employment should be at least the C13 rate.

TIMBER AWARD

34. The September Statement²³ identified the following 2 classifications which provide a minimum rate below the C13 level in the Timber Award:

- Clause 20.1(a) – General Timber Stream: Level 1
- Clause 20.1(b) – Wood and Timber Furniture Stream: Level 1

Clause 20.1(a) – General Timber Stream: Level 1

35. This classification is described in the September Statement under the heading ‘Transitional category’ as:

‘Category (ii) – maximum 3 months unless 3 month extension agreed (cl A.1(f))’²⁴

36. Category (ii)’ is described at paragraph [3] of the September Statement as:

‘(ii) transition occurs after 3 months’²⁵

37. Clause A.1.1 of the Timber Award provides a classification ‘Level 1 (relativity 78%)’ and provides, inter alia, and as relevant to the transition period, as follows:

A.1 Level 1 (relativity 78%)

A.1.1 General

(f) Criteria for extension of term in Level 1 beyond 3 months

‘A worker who enters the industry and is unable to meet the competency requirements of Level 2 will remain in Level 1 for a maximum of 3 months unless an extension for up to a further 3 months is agreed by the employer and the employee, and the union where the employee is a union member. Extension of the term of Level 1 beyond 3 months will only be considered:

²³ Op cit; Attachment D – at pages 26-27

²⁴ Op cit; Attachment D – at page 26

²⁵ Op cit; at [3]

- (i) *The employee has participated in a structured and documented skill development programme which sets out and covers the standards of competence the Level 1 worker is required to achieve for progression to Level 2;*
- (ii) *Any deficiencies in the performance of the employee during the skill development programme have been described clearly to the employee at the time they have occurred and standards for acceptable performance have been made clear to the employee;*
- (iii) *Suitable conditions have been provided for training including sufficient time, appropriate environment and equipment and a skilled trainer; and*
- (iv) *Given the above, the employee has not reached the standards of competence set down in the skill development programme.*

38. This classification (with an attached C14 rate of pay) has a relativity of 78% as compared to the next skill levels under this stream of the Timber Award - Level 2 (relativity 82%) [clause A.2], Level 3 (relativity 87.4%) [clause A.3], Level 4 (relativity 92.4%) [clause A.4] and Level 5 (relativity 100%) [clause A.5].

39. These relativities are relevantly identical to the hierarchy of levels/classifications contained in the Manufacturing Award – i.e., Level C14 (relativity 78%), Level C13 (relativity 82%), Level C12 (relativity 87.4%), Level C11 (relativity 92.4%) and Level C10 (relativity 100%).²⁶

40. However, in the Manufacturing Award, the entry level classification (C14) (clause A.4.3) only requires an employee to undertake ‘*up to 38 hours induction training*’ as compared to Level 1 (General Timber Stream) of the Timber Award which provides for a default maximum of 3 months, with the capacity of a further 3 months extension.

41. The entry level classification (Level 1 – General Timber Stream) (clause A.1) also does not clearly clarify at the outset of the clause that the classification only applies to new employees or new entrants in the General Timber sector. At clause A.1.1(f) there is a reference to ‘*A worker who enters the industry...*’; however, in our submission this element should be expressed up

²⁶ Manufacturing and Associated Industries and Occupations Award 2020, clause A.3.1

front at the commencement of the classification. As outlined at paragraph [6] of the September Statement:

“In the AWR 2023 decision, the Expert Panel decided to end the alignment between the NMW and the C14 classification rate which had existed since 1997. The Expert Panel stated that the C14 rate ‘was only ever intended to constitute a transitional entry rate for new employees’ and as such ‘does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment.’”²⁷

42. In context of the findings made by the Expert Panel in the AWR Decision 2023, it is submitted that it necessary to vary clause A.1 to clarify that the classification ‘Level 1 (relativity 78%)’ only applies to new employees in the General Timber sector.

43. In addition, it is submitted that the capacity for an extension of a further 3 months to be undertaken (i.e., a potential total of 6 months) by an employee at Level 1, prior to the transition to Level 2 (relativity 82%) should be deleted. That is, transition to Level 2 should occur automatically on completion of the induction training, whether this is prior to the conclusion of the 3 months period (which appears to be contemplated by the current formulation in clause A.1.1(f)) but no later than after the end of the prescribed 3-month period.

44. The CFMMEU-MD’s proposed variations with respect to the classification, Level 1 (General Timber Scheme) is as follows (in red):

(a) Delete clause A.1.1(a) and replace it with the following:

A.1 Level 1 (relativity 78%)

A.1.1 General

(a) An employee at this level will be a new entrant to the General timber industry, and:

(i) will complete a program of induction training;

(ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 1; and

²⁷ Op cit; at [6]

(iii) where required by statute or regulation will obtain the necessary licences, permits or other authorisations as part of the progression to the next level.

(b) Delete clauses A.1.1(f) and A.1.1(g) and replace them with the following:

(f) An employee at this level will remain at Level 1 for a maximum of 3 months.

Clause 20.1(b) – Wood and Timber Furniture Stream: Level 1

45. This classification is described in the September Statement under the heading ‘Transitional category’ as:

‘Category (ii) – undertaking up to 3 months’ induction and skill development. Progression will occur on completion of induction and the core units of the Furnishing Industry Training Package and demonstrates competency to undertake Level 2 (cl B.10.’²⁸

46. Category (ii)’ is described at paragraph [3] of the September Statement as:

‘(ii) transition occurs after 3 months’²⁹

47. However, despite this, a number of other terms in clause B.1.1 seem, on its face, to make such transition conditional.

48. The full text of clause B.1 (B.1.1 to B.1.7) of the Timber Award is reproduced below:

B.1 Timber furniture production employee, Level 1 (relativity 78%)

B.1.1 *A Timber furniture production employee, Level 1, is an employee new to the industry who is undertaking up to 3 months induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.*

B.1.2 *The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees,*

²⁸ Op cit; Attachment D – at page 27

²⁹ Op cit; at [3]

machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety and quality assurance.

B.1.3 Duties

(a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.

(b) Indicative of the tasks an employee at this level may perform are the following:

(i) general labouring;

(ii) cleaning; and

(iii) other comparable tasks.

B.1.4 Responsibilities

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

B.1.5 Qualification

An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.

B.1.6 Training

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be provided with training to enable the employee to obtain the skills required of a Timber furniture production employee, Level 2.

B.1.7 Progression

A Timber furniture production employee, Level 1, will progress to Level 2 on basis of the successful completion of the induction program and the core units of the Furniture Industry Training Package, and has demonstrated competency to undertake duties at Level 2.

49. Clauses B.1.5 (Qualification) and B.1.7 (Progression) of the Timber Award in combination, appear to link competency-based requirements to progression to the next level. This is despite the terms of clause B.1.1 which, inter alia, provides an outer limit of 3 months' induction and skill development to be undertaken by an employee on this level and in light of the nature of the duties outlined in clause B.1.2.

50. The terms of clauses B.1.5 and B.1.7 make progression 'conditional' to the next level and are therefore both inconsistent with clause B.1.1 and result in clause B.1 not being truly transitional in nature.

51. In this context, the CFMMEU-MD submits that clause B.1 should be varied to remove competency-based progression requirements from Level 1 and to ensure that progression to Level 2 in the Wood and Timber Furniture stream becomes automatic after an employee undertakes up to 3 months induction and skill development (as per clause B.1.1).

52. The CFMMEU-MD's proposed variations with respect to the classification 'Timber furniture production employee, Level 1 (relativity 78%) is as follows:

- (a) Delete clause B.1.5;
- (b) Delete clause B.1.7 and replace it with the following:

B.1. 6 An employee at this level will remain at Level 1 for a maximum of 3 months
- (c) Consequential variations - renumber clauses B.1.5 to B.1.6 after deletion of current clause B.15.

53. The CFMMEU-MD submits the proposed variations to clause B.1 as outlined above are consistent with the provisional view expressed by the full bench in the September Statement.

Filed on behalf of the:

**Construction, Forestry, Maritime, Mining and Energy Union
(Manufacturing Division)**

(8 November 2023)

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.157 variation of modern awards

(C2019/5259)

Review of certain C14 rates in modern awards

REPLY SUBMISSIONS

**CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION
(MANUFACTURING DIVISION)**

(5 December 2023)

Construction, Forestry and Maritime Employees Union (Manufacturing Division)	Contact Person: Vivienne Wiles Senior National Industrial Officer	Address: Level 2, 165 Bouverie Street Carlton VIC 3053	Tel: Email:	0419 334 102 vwiles@cfmeumd.org industrial@cfmeumd.org
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(AM2019/5259)
s.157 – Variation of modern awards
Review of certain C14 rates in modern awards

Reply Submissions
CFMEU-Manufacturing Division

BACKGROUND

1. On 22 September 2023, a Statement¹ (**September 2023 Statement**)¹ was issued by the full bench in this matter, effectively broadening the scope of the review into C14 rates in certain modern awards and expanding the list of relevant awards to 43.²

2. At paragraph [27] of the September 2023 Statement, directions were issued in respect of the expanded proceedings, including at [27.1]:

- *submissions in respect of the Commission’s provisional view at paragraph [8];*
- *submissions as to the accuracy of the table at Attachment D of the September 2023 Statement;*
- *draft determinations or proposals for any specific award variations that might be necessary; and*
- *evidence upon which they intend to rely.*³

3. The September 2023 Statement set out the *provisional* view of the C14 rates full bench at paragraph [8] stating that ‘*the following principles should guide the completion of the review*’:

‘(1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.

(2) Any classification rate in the modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate in the award).

¹ (C2019/5259) Review of certain C14 rates in modern awards, Statement [2023] FWCFB 168

² *Ibid*; at [2]

³ *Ibid*; at [27.1]

(3) The transition period for the purpose of (2) should not exceed six months.⁴

2. On 9 November 2023, the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (CFMMEU-MD) filed submissions and/or proposed variations⁵ to a number of modern awards in which it has an interest, including the:

- *Dry Cleaning and Laundry Industry Award 2020 (DC&LI Award)⁶*
- *Joinery and Building Trades Award 2020 (Joinery Award)⁷*
- *Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)⁸*
- *Textile, Clothing, Footwear and Associated Industries Award 2020 (TCF Award)⁹*
- *Timber Industry Award 2020 (Timber Award)¹⁰*

3. In the CFMMEU-MD submissions (9 November 2023) we stated at [7]:

‘The CFMMEU-MD supports the provisional view expressed by the full bench at paragraph [8] of the September Statement. We consider the provisional view is broadly consistent with the decision of the Expert Panel in the Annual Wage Review Decision 2022-2023.’¹¹

4. We continue to rely on our 9 November 2023 submissions previously filed.

REPLY SUBMISSIONS

4. Direction [2] of the September 2023 Statement provided:

- *Parties to file evidence and submissions in reply to material filed in accordance with direction 1 by no later than Friday 1 December 2023.¹²*

5. On 1 December 2023, the CFMEU-MD was granted an extension to file its Reply Submission by 5pm, 5 December 2023.

⁴ Ibid; at [8]

⁵ (C2019/5259) Submission of the Construction, Forestry, Maritime, Mining and Energy Union-Manufacturing Division (9 November 2023)

⁶ Op cit; Statement, Attachment D – referenced on page 17

⁷ Op cit; Statement, Attachment D – referenced on page 19

⁸ Op cit; Statement, Attachment D – referenced on page 19

⁹ Op cit; Statement, Attachment D – referenced on page 26

¹⁰ Op cit; Statement, Attachment D – referenced on pages 26-27

¹¹ Op cit; Submission of the CFMMEU-MD at [7]

¹² Op cit; Statement at [27]

6. The CFMEU-Manufacturing Division (**CFMEU-MD**)¹³ files these Reply submissions specifically in relation to the awards in which it has an interest in response to the submissions filed on behalf of the:
- Australian Industry Group (**AIG**)¹⁴
 - Australian Business Industrial NSW Business Chamber (**BNSW**)¹⁵
 - Australian Workers Union (**AWU**)¹⁶ and Australian Manufacturing Workers Union (**AMWU**)¹⁷ with respect to the Manufacturing Award.

SUBMISSIONS OF THE AIG AND BNSW

The AWR 2023 Decision

7. The position contended by the AIG, on its face, seems to seek to challenge the Commission's *provisional* view in this matter by attacking its foundations in the Annual Wage Review 2022/2023 (**AWR 2023**)¹⁸. We submit that the findings and decision of the Expert Panel in the AWR 2023 are not open to challenge in these proceedings.
8. What the Commission has sought comment on in the September 2023 Statement is its *provisional* view that “*..principles should guide the completion of this [C14 rates] review*”. Further, it has set out its *provisional* view as what those principles should be and sought comment on them.¹⁹
9. Whilst we endorse and support both the view that principles should guide this review and the principles themselves, we recognise that principles need not be prescriptive or hard and fast rules and there is room for exceptions argued on a reasoned basis. In this context, the **AIG's contentions at paragraphs [22]-[28], [32]-[33] and [38]-[39]** of its submission to the effect that the *provisional* view should not be adopted because they do not enable the outcome of the review to be predicted with certainty, are respectfully not really to the point.

¹³ Note: the name of the relevant registered employee organisation changed to the 'Construction, Forestry and Maritime Employees Union' from 1 December 2023, consequent of the demerger of the Mining and Energy Division from the CFMMEU.

¹⁴ (C2019/5259) Submission of the Australian Industry Group (6 November 2023)

¹⁵ (C2019/5259) Submission of the Australian Business Industrial NSW Business Chamber (3 November 2023)

¹⁶ (C2019/5259) Submission of the Australian Workers Union (3 November 2023)

¹⁷ (C2019/5259) Submission of the Australian Manufacturing Workers Union (10 November 2023)

¹⁸ (C2019/5259) Submission of the Australian Industry Group (6 November 2023) at [9]-[17]

¹⁹ Op cit; Statement at [8]

Relevantly, the Commission has in the more recent period, erred on the side of adopting a principled rather than prescriptive or “mechanistic” approach to wage fixation.²⁰

Work Value Considerations

10. Both the AIG and BNSW raise the issue of ‘work value’ as an issue of concern as to the Commission’s *provisional* view in these proceedings – see **AIG submission at [40]-[41]**²¹ and the **BNSW submission at [14]-[32]**.²² In our submission, these concerns are misplaced and detract from the clear purpose of the expanded C14 rates proceedings currently before the Commission.

11. It is important to consider that the “interim step” taken in the AWR 2023 was to re-set the level of the National Minimum Wage (**NMW**). In the Annual Wage Review 2023/2023 Decision (**AWR 2013 Decision**), the Expert Panel in relation to the NMW determined as follows:

“[8] We have decided to take two steps in relation to the NMW. *First*, for the reasons we set out in section 5 of this decision, we have decided to end the alignment between the NMW ad C14 classification wage rate in modern awards – an alignment which has existed since 1997. The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. A wider review, including supporting research, concerning the needs and circumstances of low paid award/agreement free employees is required, but the interim step we have decided to take in this Review is to align the NMW with the current C13 classification wage rate, which in nearly all modern awards is the lowest modern award classification rate applicable to ongoing employment. Second, we have decided to further increase the NMW by 5.75 per cent having regard to the circumstances relevant to the considerations in s 284(1). These increases will take effect from 1 July 2023...”²³
[emphasis added]

²⁰ Annual Wage Review 2013-2014; [2014] FWCFB 3500 at [6]

²¹ (C2019/5259) Submission of the Australian Industry Group (6 November 2023) at [40]-[41]

²² (C2019/5259) Submission of the Australian Business Industrial NSW Business Chamber (3 November 2023) at [14]-[32]

²³ Annual Wage Review 2022/2023, [2023] FWCFB 3500 at [8]

12. Annual Wage Reviews have consistently faced an evidential barrier in identifying exactly who receives the NMW, the work such employees actually perform and the characteristics of their employment. The AWR 2023, which re-set the NMW and uncoupled it from the C14 benchmark award rate, was no different.²⁴ In the AWR 2023 Decision, the Expert Panel relevantly observed: [citations not included]

“[47] The proportion of the Australian employee workforce which is award/agreement free and to which the NMW rate applies (‘NMW reliant’) is small. Based on 2021 data, it appears that only 0.7 per cent of the employee workforce falls into this category and thus would be directly affected by any adjustment made to the NMW. Beyond this data, it is difficult to identify in practical terms any occupations or industries in which NMW-reliant employees are engaged. In previous Commission proceedings, parties have been unable to identify with precision any such award free employees. Further, the number of such low-paid, award free employees is likely to have diminished sine the coverage of the Miscellaneous Award 2020 was adjusted effective from 1 July 2020. Accordingly, it cannot be concluded that any adjustment to the NMW considered in isolation will have discernible macroeconomic effects. Further, although any adjustment to the NMW is likely to have an effect upon a small segment of employers and employees, we are not in a position to identify any particular characteristics of such employers and employees beyond stating that any employee reliant on the NMW will (as we discuss later) necessarily be low paid and likely to be experiencing difficulty in meeting day-to-day living expenses.” [emphasis added]

13. This underscores the fact that the NMW is not set by reference to any particular work value considerations. There is obviously an assumption that there must be “some” nominal work value in order for a job to exist at all, but beyond this there is no actual assessment.

14. In this context, we submit it would be a highly inequitable outcome to permit a situation whereby job roles classified under awards that had been assigned particular work value were paid less than those unknown national minimum wage jobs that were merely assumed to have nominal work value.

²⁴ See AWR 2022/2023, Transcript of Consultations (17 May 2023) at PN [74]-[75]

15. The inequity of such an approach is particularly stark in circumstances where the key concern identified with the NMW in the AWR 2023 was that it “..was not established by reference to the needs of the low paid” and “...was simply aligned with the lowest classification rate established for what was then the *Metal Industry Award 1984 – Part 1* (Metal Industry Award)²⁵. [emphasis added]
16. Further, it is evident from the extract of the 1997 Safety Net Review decision set out at paragraph [107] of the AWR 2023 decision that not only was the FMW predecessor of the NMW established without a link to a measure of needs, but the C14 rate also lacked such benchmarking.
17. The current statutory framework requires, as part of the minimum wages objective (s.284) that, amongst other factors, the “relative living standards and the needs of the low paid” be considered in setting and maintaining both the NMW and modern award minimum wages. Whilst the Fair Work Act 2009 (**FW Act**) does not explicitly require the NMW to act as a floor for modern award minimum wages generally, considerations of equity and fairness weigh strongly in favour of such an outcome in respect of adult wages.
18. These systemic equity considerations are important to the overriding obligations to maintain a “fair and relevant safety net” and “safety net of fair minimum wages” expressed in the modern awards objective (s.134) and minimum wages objective (s.284).²⁶
19. Additionally, and in response to **paragraph [18] of the BNSW submission**, the extent to which work value considerations arise under section 157(2) are conditioned by the meaning of “modern award minimum wages” in section 284(3), which refers to “rates of minimum wages” and “wage rates”, but not classification descriptors. In this respect, we do not accept that the Commission in these proceedings is, in the way suggested by BNSW, constrained in making variations to classification descriptors in modern awards, should it determine it is necessary to do so. [emphasis added]

Additional award benefits issue

20. The **AIG at paragraphs [18] – [20]** of its submission, contend (in summary) that the fact that employees classified at C14 may receive additional ‘earnings enhanced benefits’ under

²⁵Annual Wage Review 2022/2023, [2023] FWCFB 3500 at [107]

²⁶ See [2013] FWCFB 4000 at [76]-[77], [2016] FWCFB 3500 at [634]-[636]

modern awards is a relevant consideration to whether ‘the lowest classification rate in a modern award applicable to ongoing employment should be at least the C13 rate, including for the reasons explained above’.²⁷

21. We oppose this contention. Whilst we accept that the take home pay of award reliant workers may sometimes exceed those of a NMW worker on the same base rate of pay (due to the payment of additional award benefits such as overtime, penalty rates, loadings or allowances) the AIG submission fundamentally mischaracterises the primary purpose of such additional award benefits.
22. The additional amounts award reliant workers receive are related to particular disabilities, disutility or expenses not compensated for in the base rate of pay. That is, they are contingent benefits, compensatory in nature and apply and operate with independent justification. We submit such additional award benefits should not be accounted for as satisfying an adequacy test with respect to base rates of pay in awards.
23. In this context, the Commission reinforced during the 4 Yearly Review of Modern Awards that the needs of low paid employees are best met through award minimum rates (considered separately from other award benefits). This approach was confirmed in the *Penalty Rates* decision in 2017 where the full bench found:

“[823] The ‘needs of the low paid’ is a consideration which weighs against a reduction in Sunday penalty rates. But it needs to be borne in mind that the primary purpose of such penalty rates is to compensate employees for the disutility associated with working on Sundays rather than to address the needs of the low paid. The needs of the low paid are best addressed by the setting and adjustment of modern awards minimum rates of pay (independent of penalty rates).”²⁸
24. In a similar vein, we disagree with the **BNSW submission at paragraph [40]** which provides a minimalist account of the purpose of industry allowances in awards and fails to properly reflect, that historically variable disability considerations have played a part in the

²⁷ (C2019/5259) Submission of the Australian Industry Group (6 November 2023) at [18]-[20]

²⁸ 4 Yearly Review of Modern Awards – Penalty Rates; [2017] FWCFB 1001 (23 February 2017) at [823] – where the Commission was considering, amongst other applications, an employer claim for the reduction of Sunday penalty rates in the *Hospitality Industry (General) Award 2010*.

determination of such allowances.²⁹ The **BNSW submits further at [40]** that ‘absent some specific application or proposal advanced by a party (or a concern that the rates of pay do not reflect the value of the work)’ a group of awards (including the Joinery Award) could be removed from the scope of the C14 Review.³⁰ In our view such a course should not be adopted by the Commission, given the Commission’s provisional views [2] and [3] (which we support).

Manufacturing Award

25. The **AIG submission at paragraphs [9] – [15]** make certain contentions regarding the C14 and C13 classifications of the Manufacturing Award. Specifically, the AIG take issue with one of the principles (which it categorises as ‘Key Proposition 1’) emerging from the AWR 2023 decision described as:

“4.(a) The C14 classification level in the *Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)* and the *Metal Industry Award 1984-Part 1 (Metals Award)* ‘has only ever applied to an employee undertaking [up] to 38 hours induction training’ and was never intended to apply on an ongoing basis to a person’s employment’ (Key Proposition 1).”³¹

26. The AIG submit that the Expert Panel has effectively misunderstood ‘the operation of the C14 definition as it applies under the Manufacturing Award and as it previously applied under the Metals Award.’³² The **AIG submission at paragraphs [10]-[15]** proceeds to set out an alternative construction of the C14 classification in order to support its contention at **paragraph [13]** that ‘An employee classified at the C14 level, can therefore, be an employee who performs work of the nature of the work described at paragraphs (b) or (c) above, indefinitely.’ However, despite this contention, the AIG makes no ‘comment on the incidence of employees being classified in this manner’ but ‘are aware of circumstances in which employees are, or have been, so classified’ and ‘they are generally engaged, on an ongoing basis, to perform unskilled work.’³³

²⁹ For example, see *Re Hydro-Electric Commission of Tasmania Carpenters and Painters Award 1979 (1982)* 269 CAR 23

³⁰ (C2019/5259) Submission of the Australian Business Industrial NSW Business Chamber (3 November 2023) at [40] which refers to a group of awards at footnote 13.

³¹ (C2019/5259) Submission of the Australian Industry Group (6 November 2023) at [4]

³² *Ibid*; at [9]

³³ *Ibid* at [13]

27. In our submission, both AIG's alternative construction of the C14 classification descriptors and the conclusion sought to be drawn are flawed and should not be accepted by the Commission. We note that the C14 classification descriptors as set out in clause A.4.3 of the Manufacturing Award do not use the words 'or' or 'and/or' between the descriptors contained in sub-clauses A.4.3(a)(i) and (ii). The 4 dot points in sub-clause A.4.3(a)(ii) are not, in our submission, separate and distinct grounds which permit an employer to engage an employee on the C14 classification and rate, let alone to do so on an indefinite basis.
28. Further, the AIG make no attempt to provide any evidence (either witness or otherwise) to support its statement that employees have been engaged on the C14 rate on an ongoing basis to perform unskilled work. Even if this has occurred in the circumstances alleged by AIG, it may well be more reflective of an employer misclassifying an employee by not transitioning such employee to the C13 classification, rather than evidence of how the C14 descriptors are intended to apply in practice.
29. Additionally, we submit that the Ai Group's challenges to the Annual Wage Review characterisation of the classification description for the C14 rate in the *Manufacturing Award* and its predecessors do not sit well with the position it has taken in these proceedings to date. It is to be remembered that the present proceedings were initiated by way of a Statement³⁴ on 28 August 2019 which specifically invited comment on whether the lists of Awards the President had identified as either those "in which the C14 classification appears to be transitional but no particular transition period is specified" or alternately those "in which the C14 classification is not a transitional level".
30. In its submission responding to that Statement on 29 September 2019, the AIG took no issue with the Manufacturing Award not being identified in either category. It did however indicate, at paragraph [27] of that submission, that it had "...not had an opportunity to give sufficient consideration" to the issue. It did have such opportunity in the ensuing 4 years to make the point it now seeks to make in **paragraphs [13] and [25]** of its most recent submission regarding the Manufacturing and Vehicles Awards respectively. In this context, its current position should be viewed with some scepticism.

³⁴ (C2019/5259) Review of certain C14 rates in modern awards, Statement, [2019] FWCFB 5863 (28 August 2019)

AIG submission and responses to Attachment D to the September 2023 Statement

31. In its submission, the AIG provide a response to the accuracy of Attachment D to the 2023 Statement. Specifically, the AIG contest the accuracy of Attachment D with respect to the following awards in relation to the awards in which the CFMEU-MD has an interest:

- Joinery Award³⁵
- Manufacturing Award³⁶
- Timber Award³⁷

Joinery Award

32. Attachment D to the September 2023 Statement states that Level 1 of the Joinery Award comes within category 1 (i.e., transition to a higher classification occurs after 38 hours induction training). The AIG oppose this, and instead submit this award should be allocated to category (v), the Level 1 classification is not transitory in nature and an employee could be engaged at that level on an indefinite basis. Category (v) is described in the September 2023 Statement at paragraph [3] as ‘the classification level is not transitional’.

33. We submit the position of the AIG with respect to the Joinery award should not be accepted for the reasons outlined in the Reply submission of the CFMEU-Construction and General Division³⁸ (CFMEU-C&G) which we support and adopt.

Manufacturing Award

34. Attachment D to the September 2023 Statement states the C14/V1 classification of the Manufacturing Award comes within category (i) (i.e., transition to a higher classification occurs after 38 hours induction training). The AIG oppose this, and instead submit, “For the reasons set out in our submission [9] – [15], this award should be allocated to category (v).

35. We submit the position of the AIG with respect to the Manufacturing Award should not be accepted for the reasons outlined above at paragraphs [25]-[30] of the CFMEU-MD’s Reply submissions.

³⁵ (C2019/5259) Submission of the Australian Industry Group (6 November 2023), Attachment D at pages 5-6

³⁶ Ibid; Attachment D at page 6

³⁷ Ibid; Attachment D at page 7

³⁸ (C2019/5259) Reply Submission of the CFMEU Construction & General Division (1 December 2023)

Timber Award

36. Attachment D to the September 2023 Statement states the classification ‘Wood and Timber Furniture Stream; Level 1’ comes within category (ii) (i.e., transition occurs after 3 months). The AIG submit that “Per clause B.1.7, an employee will transition from Level 1 to Level 2 if the employee has *‘demonstrated competency to undertake duties at Level 2’ in addition to the ‘successful completion of the induction program and the core units of the Furnishing Training Package.’* Thus, reclassification to Level 2 is not guaranteed upon completion of the training.”
37. The CFMEU-MD in its initial submission (9 November 2023) at paragraphs [45]-[53]³⁹ raised its concerns regarding the descriptors for the classification ‘Wood and Timber Furniture Stream; Level 1’ which, despite the 3 months outer limit, seemed on its face to make the transition to Level 2 otherwise conditional. We proposed a variation to clause B.1 to address this issue and to ensure the Level 1 classification was truly transitional in its operation. We continue to press the proposed variation as set out in paragraph [52] of the CFMEU-MD’s (9 November 2023) submission.

SUBMISSIONS OF THE AWU & AMWU – MANUFACTURING AWARD

38. In its submission (3 November 2023) the AWU’s primary argument is that the Commission “should give continued consideration to increasing any modern award (adult) minimum rates that are below the C13/national minimum wage (NMW) rate of \$23.23 per hour”.⁴⁰ The AWU’s alternative submission is “that where it is not determined to lift sub C13 rates” it supports the provisional view expressed at paragraph [8] of the September 2023 Statement.⁴¹
39. Specifically, in relation to the C14/V1 classification levels in the Manufacturing Award, the **AWU submit at paragraph [91]-[92]:**
- “[91] In the alternative to the broad contention referred to above, the AWU submits that payments at the C14/v1 classification level under the *Manufacturing and Associated Industries and Occupations Award* should be clearly delineated as being limited to employees who are undertaking up to 38 hours of induction training.

³⁹ (C2019/5259) Submission of the CFMEU-Manufacturing Division (9 November 2023) at [45]-[53]

⁴⁰ (C2019/5259) Submission of the AWU at [1]

⁴¹ *Ibid*; at [3]

Progression to the C13 rate should be automatic upon the completion of that training.

[92] This is likely to require the removal of, or amendment to, the last bullet point in clause A.4.3(a)(ii), which refers to an Engineering/Manufacturing Employee, Level 1, ‘undertaking structured training so as to enable them to work at the C13 level’, as well as clause A.4.4(a)(i) and (ii) which refers to a Level 2 employee having completed up to 3 months’ structured training and having certain skills and competencies.”⁴²

40. The **AMWU submission at paragraphs [6]-[9]** sets out its position with respect to the current Manufacturing Award C14 and C13 classifications:[citations not included]

“[6] The “C” Classification structure, as contained in the *Manufacturing and Associated Industries and Occupations Award 2020* (“Manufacturing Award”) is a skills-based classification system which provides the ability of workers to progress to higher skills and knowledge in the workplace. It is a symbiotic relationship; generally, work of higher value to the workplace requires the use of increased skills and knowledge. This should then be reflected in a higher classification for the worker, enabling them to earn higher wages.

[7] The AMWU supports the Commission’s determination in the Annual Wage Review decision that the C14 rate of pay ‘does not constitute a proper minimum wage safety net.’ In the AMWU’s opinion, the C14 classification has limited value as a stand alone qualification. It is, at best, a placeholder that enables a worker with no relevant skills or experience to gain enough knowledge to be able to perform tasks. As Mr Baxter says in his statement “There are no skill qualifications required for the C14 classification”.

[8] In relation to the Manufacturing Award, the C13 classification is designed to apply to the performance of work with 0-31 points weighting. As such, it can only apply to a worker with no relevant skills or knowledge, up to a rudimentary level of

⁴² Ibid; at [91]-[92]

skill. In most workplaces and for most workers in the manufacturing industry, it should also be properly seen as a transitional qualification.”⁴³

41. The AMWU further contend at **paragraph [11]** of its submission (in response to the Commission’s *provisional* view):

“[11] The AMWU supports the Commission’s view that if the C14 rate is to be retained at all that it should only be a transitional classification. The AMWU does not support that the transitional period should be a minimum of 6 months. It is the AMWU’s view that the C14 rate should only apply for an induction period which, ideally should be no longer than 38 hours.”⁴⁴

42. The AMWU do not specifically propose an amendment to the C14 classification at clause A.4.3 of the Manufacturing Award, however, proposes a variation to the C13 classification as outlined at paragraph [17] of its submission:

“[17] In relation to the general manufacturing classification structure, it is the AMWU’s position that the C14 classification (Clause 4.3) [A.4.3] could be deleted in its entirety. If the Commission, however, believes that a classification below the C13 level is required, then the AMWU proposes the following amendments to Clause 4.4 [A.4.4]. These amendments are designed to ensure that the time periods are not seen as a qualifying time to progress to the C13 level, but a situation where it is appropriate to bypass the C14 level.

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee-Level II

(i) An Engineering/Manufacturing Employee-Level II is an employee **who has completed up to 3 months training:**

a. previously completed a structured training program of at least three months duration or has equivalent experience in manufacturing; or

b. Completed the induction training program for the workplace

so as to enable the employee to perform work within the scope of this level.”⁴⁵

⁴³ (C2019/5259) Submission of the AMWU at [6]-[8]

⁴⁴ Ibid; at [11]

⁴⁵ Ibid; at [17]

43. In summary, a number of key contentions regarding the C14 and C13 classifications/rates in the Manufacturing Award emerge respectively from the AWU and AMWU submissions, including:

- As a primary contention, the C14 general classification in the Manufacturing Award has little utility and could be deleted and/or the C14 rate should otherwise be uplifted to at least the C13 rate;
- In the alternative, if the Commission determines in these proceedings to retain the C14 classification in the Manufacturing Award, it should be limited to employees who undertake up to 38 hours induction training with progression to C13 to be automatic on such completion.

44. The CFMEU-MD agrees and supports these contentions.

Proposed variation to the C14 classification of the Manufacturing Award

45. In circumstances where the Commission determines to retain the C14 classification in the Manufacturing Award we concur with the submission of the **AWU at paragraph [92]** of its submission, that the last bullet point of clause A.4.3(a)(ii) (i.e., “is undertaking structured training so as to enable them to work at the C13 level”) should be removed or amended.

46. The CFMEU-MD submits that the entire 4th dot point should be deleted, consistent with the general submission above that the C14 classification should be expressly limited to a requirement of up to 38 hours induction only.

Proposed variations to the C13 classification in the Manufacturing Award

47. The AWU (in general terms) and the AMWU (specifically) both seek an effective consequential variation to the C13 classification in clause A.4.4 (Engineering/Manufacturing Employee-Level 2) in context of their positions in relation to C14.

48. The CFMEU-MD agrees that a consequential variation to the C13 classification is necessary if a variation to C14 is accepted by the Commission. At this point, the CFMEU-MD does not hold a settled view on the form of a proposed variation to the C13 classification and considers that there may be some utility in further discussions between the 3 unions regarding a proposed agreed union formulation.

Filed on behalf of the:

**Construction, Forestry and Maritime Employees Union
(Manufacturing Division)**

Vivienne Wiles
Senior National Industrial Officer
CFMEU-Manufacturing Division

(5 December 2023)

IN THE FAIR WORK COMMISSION

MATTER NO: C2019/5259

Review of certain C14 rates in modern awards

SUBMISSIONS OF CFMMEU-MUA DIVISION

1. On 22 September 2023 the Full Bench of the Fair Work Commission (**FWC**) issued a Statement.¹ In that statement the Full Bench expressed a provisional view and invited interested parties to file evidence and submissions.
2. These submissions are in response to that invitation.
3. The CFMMEU-MUA Division is an interested party in relation to the following modern awards referred to in the Statement:
 - Marine Tourism and Charter Vessels Award 2020;
 - Maritime Offshore Oil and Gas Award 2020;
 - Port Authorities Award 2020;
 - Professional Diving Industry (Industrial) Award 2020;
 - Seagoing Industry Award 2020; and
 - Stevedoring Industry Award 2020.

Provisional view expressed in paragraph [8] of the Statement

4. The CFMMEU-MUA Division is supportive of the provisional view of the Full Bench as expressed in paragraph [8] of the Statement.

¹ [2023] FWCFB 168.

Lodged by: McNally Jones Staff Lawyers on behalf of the CPSU	Telephone:	(02) 9233 4744
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	Ref:	NK:TM:5585

Accuracy of the table in Attachment D to the Statement

5. The CFMMEU-MUA Division submits that in relation to the modern awards for which it is an interested party that the table in attachment D to the Statement is accurate.

Marine Tourism and Charter Vessels Award 2020

6. The award provides that transition from Crew Level 1 to Crew Level 2 occurs after 3 months providing the employee has completed the 5-day Introduction Deckhand Course. It is not clear, however, what occurs if the employee has not completed the course and the 3-month probationary period has elapsed. The CFMMEU-MUA Division submits that the following variation to the award should be made to resolve this issue:

In clause 12.1 delete the words “may be completed by the new employee” and insert in its place the words “is to be completed by the new employee unless the employee has previously completed it or has other acceptable experience/qualifications.”

Maritime Offshore Oil and Gas Award 2020

7. The chapeau to clause 13.1 provides an overriding rule that “an employer must pay employees the following aggregate annual salaries.” In determining whether any particular rate is at or below C13 the relevant rate is the aggregate annual salary which for every classification is above C13.
8. No variation to the award is sought.

Port Authorities Award 2020

9. In light of the evidence of Warren Smith filed with these submissions the CFMMEU-MUA Division submits that clause A.1 should be deleted, together with the related row in the table in clause 15.1(a) and the first dot point in clause A.2.

Professional Diving Industry (Industrial) Award 2020

10. Clause 32.1 provides that an employer is to pay full time employees a total weekly rate (minimum weekly rate plus aggregate weekly factor). In determining whether any particular rate is at or below C13 the relevant rate is the total weekly rate which for every classification is above C13.
11. No variation to the award is sought.

Seagoing Industry Award 2020

12. The rates in clause A.1.1 only apply to vessels granted a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. These licences enable a vessel to engage in coastal trading over a 12 month period.²
13. The classifications of OS (ordinary seaman), wiper, deckboy, catering boy, 2nd cook and messroom steward are discrete classifications that do not transition to another classification. Instead additional requirements must be met such as sea time and passing certificate of competency tests to transition.
14. In order to be consistent with the provisional view of the Full Bench expressed in paragraph [8] of the Statement the CFMMEU – MUA Division proposes that the table in clause A.1.1 be deleted and replaced with the following table:

Classification	Minimum weekly rate (full-time employee)
	\$
Master	1553.70
Chief engineer	1528.10
First mate/First engineer	1324.80
Second mate/Second engineer/Radio Officer/Electrical Engineer	1226.30
Third mate/Third engineer	1175.30
Chief integrated rating/Bosun/Chief cook/Chief steward/Carpenter/Fitter/Repairer/Donkeyman/Electrician	1112.10
Integrated rating/Able seaman/Fireman/Motorman/Pumpman/Oiler greaser/Steward	1013.40
OS/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward (first 3 months)	859.40
OS/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward (after 3 months)	882.74

² s 28 *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

Stevedoring Industry Award 2020

15. In light of the evidence of Warren Smith filed with these submissions the CFMMEU-MUA Division submits that:
- (a) clause A.1 should be deleted;
 - (b) The first row in the table in clause 16.1 should be deleted;
 - (c) The words “Grade 1 to 5” in the table in clause 18.2(j)(i) be replaced with the words “Grade 2 to 5”; and
 - (d) The words “Grade 1 to 5” in the table in clause B.1.1 be replaced with the words “Grade 2 to 5”;

Dated: 3 November 2023



Nathan Keats
Solicitor for the CFMMEU – MUA Division

IN THE FAIR WORK COMMISSION

MATTER NO: C2019/5259

Review of certain C14 rates in modern awards

STATEMENT OF WARREN SMITH

I WARREN SMITH of Level 2, 365 Sussex Street, Sydney, Deputy National Secretary, say:

1. I am the Deputy National Secretary of the MUA Division of the Construction, Forestry, Maritime, Mining and Energy Union (**Union**) and I am authorised to make this affidavit on the Union's behalf.
2. I have been in this role since 25 January 2021. I was the Assistant National Secretary of the Union from 2009 until 24 January 2021. I was the Secretary of the Maritime Union of Australia (**MUA**) Sydney Branch from 2007 to 2009 and the Assistant Secretary of the MUA Sydney Branch from 2003 to 2007, which was my first position with the MUA as an official.
3. From 1990 to 2003, I was employed by P&O Ports in Sydney and performed Stevedore work in the bulk and general area and in terminals from time to time.

Port Authorities Award 2020

4. I have National responsibility and oversight for the Union's members employed in the classifications covered by the Port Authorities Award 2020.
5. All employers who are port operators as defined in clause 4.2 (ie employers that have a statutory or contractual right to manage or control a port, provides access to the port and that provides port services) are covered by enterprise agreements.
6. To my knowledge there is no application of the level 1 award classification in port authorities and all wages are paid through collective agreements.

Lodged by: McNally Jones Staff Lawyers on behalf of the CFMMEU - MUA Division	Telephone:	(02) 9233 4744
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Stevedoring Industry Award 2020

7. I have National responsibility and oversight for the Union's members employed in the classifications covered by the Stevedoring Industry Award 2020.
8. The grade 1 award classification has no application throughout the industry.

Dated: 26 October 2023

A handwritten signature in black ink, appearing to read 'W. Smith', with a large, sweeping flourish extending to the right.

Warren Smith

s 157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of certain C14 rates in modern awards

(C2019/5259)

JOINT SUBMISSION

1. This submission relates to the above proceedings and is made jointly by:
 - Drycleaning Institute of Australia;
 - Laundry Association Australia;
 - Construction, Forestry, Mining and Energy Union (Manufacturing Division);
 - Australian Workers' Union; and
 - United Workers' Union.
2. The above parties have consulted about the issues raised in the Fair Work Commission's [Statement](#) of 22 September 2023¹ (**Statement**) in relation to the *Dry Cleaning and Laundry Industry Award 2020* (**Award**).
3. In the Statement (at paragraph [8]), the Full Bench expressed the *provisional* view that the following principles should guide the completion of this review:
 - (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
 - (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
 - (3) The transition period for the purpose of (2) should not exceed six months.

¹ [2023] FWCFB 168.

4. At paragraph [16] of the Statement, the Full Bench stated:

Dry Cleaning and Laundry Industry Award 2020 (Dry Cleaning Award)

[16] The Drycleaning Institute of Australia, Australian Business Industrial and NSW Business Chamber (ABI and NSWBC), Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division, Australian Workers’ Union (AWU) and United Workers’ Union (UWU) reached a common view on proposed variations to the Dry Cleaning Award. Broadly, the proposal involves varying the C14 classification in the Dry Cleaning Award (Dry cleaning employee Level 1) to limit its application to new entrants in the dry cleaning industry and to a period of up to 6 months. However, the consensus position does not address the classification of Laundry employee Level 1, which is above the C14 rate but below the C13 rate.

5. With regard to the Dry Cleaning Employee Level 1 and Level 2 classifications, we continue to support the following proposed amendments, as set out in the [joint correspondence](#) of 5 December 2022:

A.1 Dry cleaning employee Level 1 (Introductory level)

~~An employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4.~~

An employee at this level will:

- (a) be a new entrant to the dry cleaning industry;
- (b) for up to six (6) months undergo appropriate training, (including induction), so as to enable them to achieve the level of competence required to be classified at Dry cleaning employee Level 2;
- (c) perform routine duties of a basic nature, exercise minimal judgment and work under direct supervision.

A.2 Dry cleaning employee Level 2

An employee who is employed as:

- (a) a wet cleaner;
- (b) a steam air finisher;
- (c) an examiner of garments;
- (d) an assembler of garments; ~~or~~
- (e) a sorter of garments; or
- (f) an employee with at least six (6) months’ experience in the dry cleaning industry who is not a tradesperson dry cleaner and is not otherwise employed in the above roles or within Levels 3 to 4.

6. The above amendments are consistent with the principles set out in the Statement.

7. With regard to the Laundry Employee Level 1 classification, Attachment D of the Statement identifies that:
- The wage rate for the Laundry Employee Level 1 classification is \$870.70 (between C14 and C13); and
 - A 6-month transition period is specified but an employee must demonstrate competency at Level 2 to advance to this classification.
8. The parties propose the following amendment to the classification descriptor for Laundry Employee Level 1, which would ensure that the classification is consistent with the principles set out in the Statement:

B.1 Laundry employee Level 1

B.1.1 An employee in the first 6 months of employment with no previous experience in the industry.

B.1.2 An employee at this level must possess the following skills and abilities:

- (a) be responsible for their own work subject to detailed instructions;
- (b) work under routine supervision;
- (c) carry out duties in a safe, responsible and efficient manner; and
- (d) possess basic communication and interpersonal skills.

B.1.3 An employee at this level must be able to perform basic tasks as a result of skills that should have been gained from basic education or gained in the course of everyday living or readily learn such basic tasks including, but not limited to, the following:

- (a) be able to identify and classify items of linen/garments and associated simple tasks;
- (b) be able to load and unload drying machines; and
- (c) be capable of simple keyboard operations.

B.1.4 An employee at this level will be trained in one of the following Work Brackets:

(a) **Bracket 1**

- (i) perform all ironing machine functions either manually or with the aid of semi-automatic or automatic feeding, folding and preparing equipment;
- (ii) perform all manual or machine folding/hanging operations on linen/garments;

- (iii) operate a tunnel finisher; and
 - (iv) use a heat seal or heat marking machine or mark linen with any other type of machine or manually.
- (b) **Bracket 2**
- (i) operate any washing, drying and extracting equipment; and
 - (ii) operate towel unwinding equipment.
- (c) **Bracket 3**
- (i) operate any textile pressing machine.
- (d) **Bracket 4**
- (i) manual or machine repair of garments or linen.

B.1.5 Provided that an employee with experience in the bracket the employee was employed for will advance to Level 2 within 6 months upon demonstrating that the employee has attained and can perform at the desired level of efficiency in that bracket. The maximum period that an employee can remain at Level 1 is 6 months.

9. In addition to inviting parties to submit proposed variations to relevant awards, the Statement invited parties to advise of any errors in the table at Attachment D. The following minor error appears on page 17:

Next classification up
Laundry employee Level 4 <u>2</u> = \$900.50

Dated: 3 November 2023



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3 November 2023

Justice Hatcher, President
Vice President Asbury
Deputy President Hampton

By email: chambers.hatcher.j@fwc.gov.au

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

HIA expresses an interest in the *Joinery and Building Trades Award 2020* (Joinery Award) and the *Timber Industry Award 2020* (Timber Award) and provides this brief correspondence in response to paragraph 27 of the statement issued on 22 September in matter C2019/5259¹ (Statement).

In HIA's view Attachment D to the Statement is accurate in respect of the Joinery and Timber Awards.

HIA does not oppose the *provisional* view. Further it is HIA's assessment that in both awards the C14 rates are transitional, further, and in respect of the Joinery Award, the actual rate of pay including the industry allowance would be greater than the C14 rate.

As such, and on the basis of the *provisional* view HIA does not see these proceedings having any substantive work to do in respect of these modern awards.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Melissa Adler
Executive Director – Industrial Relations and Legal Services

¹ [2023] FWCFB 168



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1 December 2023

Justice Hatcher, President
Vice President Asbury
Deputy President Hampton

By email: chambers.hatcher.j@fwc.gov.au

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

HIA expresses an interest in the *Joinery and Building Trades Award 2020* (Joinery Award) and the *Timber Industry Award 2020* (Timber Award) and provides this brief correspondence in response to the submissions of the CFMEU (CFMEU Submission) dated 3 November in accordance with paragraph 27 of the statement issued on 22 September in matter this matter¹ (Statement).

Paragraph 16 of the CFMEU Submission proposes a number of changes to the Joinery Award. HIA opposes these award specific variations on the following grounds:

- The proposal pre-empts the consideration of the Joinery Award provision by the Commission.
- Such an approach is unnecessary given the nature and operation of the current provision.
- HIA disagrees with the assertion at paragraph 15 of the CFMEU Submission that not all employees under the Joinery Award are entitled to an industry allowance. Further, this claim is unsubstantiated.

HIA refers to and continues to rely on the correspondence from the HIA dated 3 November.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Melissa Adler
Senior Executive Director – Compliance and Workplace Relations

¹ [2023] FWCFB 168

BEFORE THE FAIR WORK COMMISSION

S.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

MATTER NO: C2019/5259 – Review of certain C14 rates in modern awards -- Joinery and Building Trades Award 2020.

SUBMISSIONS OF MASTER BUILDERS AUSTRALIA

INTRODUCTION

1. This submission is filed by Master Builders Australia ('Master Builders') with reference to the above matter and the Statement of 22 September 2023¹ ('the September Statement') and, in particular, its application to the *Joinery and Building Trades Award 2020* ('Joinery Award').
2. We make these submissions in response to paragraph [27] of the September Statement and the Commission's *provisional* analysis as referenced therein and with respect to the Joinery Award².

BACKGROUND

3. The September Statement notes that in the Annual Wage Review Decision 2022-23 ('AWR 2023 decision'), the Expert Panel decided to end the alignment between the National Minimum Wage ('NMW') and the C14 classification rate.³
4. Further, the September Statement notes that the Expert Panel decided to align the NMW with the current C13 classification rate in modern awards and that the decision was an interim step, as part of a wider review of the NMW.
5. Master Builders position outlined herein addresses the Commission's *provisional* analysis of minimum rates and their application under the Joinery Award.

MASTER BUILDERS RESPONSE TO THE COMMISSION'S PROVISIONAL ANALYSIS

6. At section 1. (b) of paragraph [27], the Commission has sought submissions on the accuracy of the table at **Attachment D** of the September Statement.
7. **Attachment D** includes a table of awards which prescribe rates below the C13 level (inclusive of those at the C14 level). The table includes information as to the relevant classification, the rate it attracts and a *provisional* analysis as to whether the rate is transitional and to which of the five categories set out in paragraph [3] (of the September Statement) to which it belongs.
8. Master Builders does not oppose the Commission's *provisional* analysis, as outlined at **Attachment D**, with respect to the Joinery Award in terms of its transitional category being:

Category (i) – employee at this level will undertake up to 38 hours induction training. Employee must complete a competency assessment to perform Level 2 work (cl A.1.1–A.1.2).

And further, the Commissions comment with respect to competency-based progression;

Reflects the 'Minimum weekly wage'. However, the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13.

CONCLUSION

9. On the basis of the Commission's *provisional* analysis of the Joinery Award as summarised herein, Master Builders submits that no amendments are necessary to give effect to the AWR 2023 decision.

MASTER BUILDERS AUSTRALIA
3 NOVEMBER 2023

¹ [\[2023\] FWCFB 168](#)

² *Ibid*

³ *Ibid* at paragraph [6]

BEFORE THE FAIR WORK COMMISSION

S.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

MATTER NO: C2019/5259 – Review of certain C14 rates in modern awards – Joinery and Building Trades Award 2020.

REPLY SUBMISSIONS OF MASTER BUILDERS AUSTRALIA

INTRODUCTION

1. This submission is filed by Master Builders Australia ('Master Builders') with reference to the above matter and the Statement of 22 September 2023¹ ('the September Statement'), in particular its application to the *Joinery and Building Trades Award 2020* ('Joinery Award').
2. We make these submissions in reply in accordance with paragraph [27] of the September Statement and in response to the submissions of the Construction, Forestry, Maritime, Mining and Energy Union (Construction & General Division) ('CFMMEU') of 3rd November 2023.
3. We continue to rely on our submissions made in this matter of 3rd November 2023 and our position outlined therein.²

MASTER BUILDERS' RESPONSE TO THE CFMMEU'S SUBMISSION

4. At paragraph [14] and [15] of its submission, the CFMMEU disputes the Commission's commentary within **Attachment D** of the September Statement and its reference to the industry allowance payable under the Joinery Award.³
5. Master Builders maintains its position in response to the Commission's *provisional* analysis, with respect to the Joinery Award, that the ordinary hourly rate for a Level 1 employee exceeds both the C14 and C13 rates taking into account payment of the industry allowance.
6. In response to paragraph [15] of the CFMMEU's submission, we are not aware of any occupations covered by the Joinery Award that are not entitled to the industry allowance as prescribed under clause 21.3(b) and note that the CFMMEU has neglected to identify or provide any evidence of same.
7. Master Builders submits that the changes proposed by the CFMMEU at paragraph [16] of its submission are redundant in light of the Commission's analysis of the operation of the Joinery Award, taking into account the industry allowance and its application to Level 1 employees.
8. Master Builders therefore maintains the position that no amendments to the Joinery Award are necessary to give effect to the Commission's Annual Wage Review Decision with respect to C14 rates as referenced therein.⁴

MASTER BUILDERS AUSTRALIA
1 DECEMBER 2023

¹ [\[2023\] FWCFB 168](#)

² [Submissions of Master Builders Australia - Review of certain C14 rates in modern awards - Joinery and Building Trades Award 2020 - 3 November 2023](#)

³ [Submission of the Construction, Forestry, Maritime, Mining and Energy Union \(Construction & General Division\) 3 November 2023](#)

⁴ [Annual Wage Review Decision 2022-23 - 2 June 2023](#)

4 Yearly Review of Modern Awards

Award: Seagoing Industry Award

Matter Number: C2019/5259

Date 1 December 2023

Submission in Response from Maritime Industry Australia Ltd (MIAL) in relation to Submission on behalf of the Maritime Union of Australia (MUA) Division of the CFMMEU

1. Maritime Industry Australia Ltd (MIAL) is an industry peak body whose members employ persons engaged in the seagoing industry who are covered by the Seagoing Industry Award 2020 (SIA), including operators of vessels granted a Temporary Licence under Schedule A of the SIA. MIAL also represents vessel owners and operators covered by the Marine Tourism and Charter Vessels Award, The Maritime Offshore Oil and Gas Award.
2. MIAL did not initially consider this matter would directly impact maritime awards in which MIAL's members had an interest, although MIAL has recently become aware of the provisional view of the Fair Work Commission to expand the awards subject to this review as well as the Submission made on behalf of the MUA division of the CFMMEU.

Maritime Offshore Oil and Gas Award

3. MIAL notes the submissions advanced on behalf of the MUA in relation to the Maritime Offshore Oil and Gas Award that the award does not require amendment and agrees with that submission. The position of Provisional Integrated Rating is by its nature transitional as progression towards the position of Integrated Rating and in any event, as submitted on behalf of the MUA, the aggregated salary exceeds the C13 rate.

Marine Tourism and Charter Vessel Award

4. In respect to the submissions insofar as they relate to the Marine Tourism and Charter Vessel Award, in the MUA's submission, it states that it is not clear whether the employee transitions from crew level 1, to crew level 2 if the employee has not completed the 5 day introduction to Deckhand Course and proposes an amendment to clause 12.1 (which describes the duties of crew level one).
5. Clause 12.2(a) states:

“ After completing the first 3 months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer, the employees' wage level will rise to that of the Crew Level 2 wage”

6. In MIAL's submission this is clear and unambiguous in terms of the transitional nature of the rate of crew level 1 to crew level 2. Where a deckhand course is not undertaken the relevant skills and experience to transition is determined by the employer after 3 months. The proposed amendment on behalf of the MUA would in MIAL's submission create ambiguity where none exists.
7. Accordingly, MIAL opposes the proposed variation and submits that no variation is required as the existing award clearly articulates the transitional, time limited nature of the crew level 1 wage rate.

Seagoing Industry Award

8. The MUA submits that the occupations listed in the table attached to the Statement of the Full Bench in matter C2019/5959 [2023] FWBFC 168 are discrete classifications that do not transition to another classification on ships granted a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.
9. To provide the Commission further context, the provisions of Schedule A of the SIA apply to ships granted a temporary licence who have, in the previous twelve months completed at least two voyages pursuant to a temporary licence.¹ This means that almost all vessel to which Schedule A applies are foreign vessel who are covered by the SIA only intermittently. This differs from other parts of the SIA which consistently capture the operation of Australian flagged or crewed ships operating in the seagoing industry.
10. The unique nature of Schedule A (previously Part B of the SIA when originally made) was demonstrated at the time it was made pursuant to the then Ministers' Award Modernisation Request under s576C(1) of the Workplace Relations Act 1996, which requested that in making of award conditions that covered permit ships² the AIRC have regard to employers and employees regularly moving in and out of the Australian jurisdiction. Ships granted temporary licences do move in and out of the Australian jurisdiction.
11. Engagement of seafarers working on ships does not operate in the same way in the international shipping industry (ships covered by Schedule A would generally be considered part of the international shipping industry) as it does in the Australian industry. While conditions vary, MIAL understands that generally seafarers are engaged in a particular role or classification for the duration of their engagement on board that vessel (usually between 4-9 months and not more than 11 months) after which they will usually take a period of leave and then may rejoin another vessel in the operators fleet, potentially in a more senior capacity. Seafarers will be asked to

¹ Regulation 1.15B of the Fair Work Regulations 2009

² Permit ships referred to ships issued either a Single Voyage Permit or Continuing Voyage Permit pursuant to the Navigation Act 1912 (now repealed) which predated the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and temporary licences.

sign a seafarers employment agreement that covers the duration of their engagement on that vessel which among other things sets out the classification in which they are engaged.³

12. The classifications identified in the FWC statement table as being below the C13 rate were, amongst other classifications, inserted in the SIA via application to vary by the MUA as part of the Two Year Modern Award Review in matter number AM2012/326.⁴
13. As part of that proceeding, a witness statement by Mr Dean Summers who attested he was the International Transport Workers Federation (ITF) Flag of Convenience National Co-ordinator for Australia, was provided to the Commission. The witness statement was submitted in support of the variation sought by the MUA in matter number AM2012/326 and is attached as **Annex 1** to this submission.
14. Mr Summers in his statement gave a brief summary description of the classification positions which were sought to be included. In so far as classifications that are the subject of the proposed variation by the MUA under this matter the witness statement highlights that at least some of the classification descriptions are transitional in nature, including:
 - a. Deck boy being a classification for a seafarer in their first 12 months at sea performing duties directed by the bosun;
 - b. Catering boy being a trainee messroom steward performing duties as directed by the messroom steward;
 - c. Wiper is a trainee oilmen or greaser and is engaged in this position for the first 6 months performing duties at the direction of the donkeyman doing tasks set by the engineer in the engine room.
 - d. The ordinary seaman is a person who has been at sea for 12 months as a deck boy but does not yet have enough time to be qualified as an Able Seaman.⁵
15. Each of these descriptions indicates that the classifications are transitional in nature with opportunities for seafarers to progress with further experience.
16. While MIAL does recognise the provisional view expressed by the Full Bench that the minimum rate in any award should be the C13 rate and that any rate below it ought to be on a transitional basis, with that transitional period not to exceed 6 months, MIAL also submits that:
 - a. Schedule A of the SIA is unique in that it applies to workers who live and work on foreign ships and who almost exclusively reside outside of Australia;

³ The Maritime Labour Convention 2006, regulation 2.1, Standard A2.1.4 _ Australia has ratified the Maritime Labour Convention and has implemented its terms in domestic law.

⁴ Schedule 5, Item 6 Review of All Modern Awards (Other Than Modern Enterprise Awards and State Public Sector Awards) within the first two years.

⁵ Annex 1 Witness Statement of Dean Summers dated 24 October 2012.

- b. The operation of the Fair Work Regulations means that this schedule of the Award applies to employees and employers on ships granted a temporary licence intermittently;
 - c. The industry to which these vessels below operate in such a way that the crew compliment is set according to the Maritime Authority in the flag state and is consistently applied meaning progression to different ranks on board would usually happen at the conclusion of a seafarers' tour of duty;
 - d. At least some of the occupations which the Statement highlights have been identified as transitional in nature at the time that that the SIA was varied to include them.
 - e. Where there is clear transitional arrangements to the next classification level, notwithstanding some may exceed the time frame contained in the provisional view of the FWC, these are long standing and clearly understood progressions within the international maritime industry, which is the industry to which Schedule A of the SIA applies.
17. Based on the above, MIAL is of the view that the positions described as OS (ordinary seaman), Wiper, Deck Boy, Catering Boy, Second Cook, Messroom Steward are transitional and accordingly to maintain the existing table in clause A.1.1 is not inconsistent with the Expert Panel's conclusions in the AWR 2023 decision referenced in paragraph 8 of the Statement from the FWC dated 22 September 2023.

Alternative Submission

18. In the event that notwithstanding the explanation provided in the witness statement from Mr Summers the FWC is minded to transition classifications in the manner described in the MUA's submission at paragraph 14, MIAL submits that period described after which a different wage rate is payable for the existing classifications in receipt of a rate aligned with the C14 rate is 6 months from commencement of their position on board the vessel. This would be a closer reflection of the understanding of the role descriptions and transitional time frames articulated about each classification when they were inserted in the SIA on application by the MUA.

Annex 1 Witness Statement of Dean Summers

FAIR WORK AUSTRALIA

SCHEDULE 5 ITEM 6 – REVIEW OF ALL MODERN AWARDS (OTHER THAN MODERN ENTERPRISE AWARDS AND STATE PUBLIC SECTOR AWARDS) AFTER THE FIRST TWO YEARS

SEAGOING INDUSTRY AWARD 2010 AM 2012/326

STATEMENT OF DEAN SUMMERS

On the 24th day of October 2012 I, Dean Summers of
in the State of New South Wales, say as follows:

1. I am the International Transport Workers' Federation (ITF) Flag of Convenience National Co-ordinator for Australia and have been since 2001.
2. The ITF is an International Trade Union Federation of Transport Workers' Unions. It represents the interests of Transport Workers' unions before bodies which take decisions affecting jobs, employment conditions or safety in the transport industry such as the International Labour Organisation, and the International Maritime Organisation.
3. My role is to coordinate the Flag of Convenience campaign in Australia. This is a campaign to protect the entitlements of Seafarers employed on Flag of Convenience vessels. A flag of convenience vessel is one that flies the flag of a country other than the country of ownership.
4. I am responsible for 3 Inspectors and 2 formally trained contacts around Australia. In addition, I am responsible for volunteers provided by affiliated unions.
5. As part of my duties I inspect vessels that come into Australian ports on a weekly basis. In addition I read reports prepared by my inspectors, contact

and volunteers following inspections they have performed. As part of each of these inspections the ITF collects a number of documents including:

- (a) The Ships particulars. This is a document that sets out the technical aspects of the vessel. It covers its dimensions, cargo capacity, engine details and IMO number.
 - (b) A crew list. This is a document that itemises the classifications of seafarers employed on the vessel and the names of the individuals so employed; and
 - (c) The minimum safe manning certificate. This document provides the minimum number of persons to be employed on a vessel when at sea and their classifications.
6. There is no single set of conditions that applies to the foreign flagged vessels the ITF Australian inspectorate has inspected. The most common, however, is the *ITF Uniform TCC Collective Agreement*.
 7. This year the Minister for Infrastructure and Transport issued a Determination under the *Shipping Registration Act 1981* that the wages for the classifications set out in the *ITF Uniform TCC Collective Agreement* be set as minimum wages for vessels registered on the Australian International Shipping Register. Those classifications are the ones employed on vessels operating under permits issued under the *Navigation Act 1912* and which will now operate under temporary licences issued under the *Coastal Trading (Revitalising Australian Shipping) Act 1912*.
 8. The determination lists twelve (12) classifications that are not referred to in Part B of the *Seagoing Industry Award 2010* but are employed on the vessels the ITF Australian inspectorate has inspected. Those classifications are: radio officer, electrical engineer, electrician, carpenter, fitter/repairer, donkeyman, second cook, mess room steward, ordinary seaman, wiper, deck boy and catering boy.

9. In addition to the classifications referred to in the determination ships sometime employ persons in other classifications. For example gas carriers usually employ a cryogenic engineer and larger vessels employ riding gangs of maintenance personnel.
10. It is also the case that some manning agencies use different titles for the classifications referred to in the determination.
11. A short description of the worked performed by the 12 additional classifications is as follows:
 - (a) The **Radio Officer** is in charge of all electrical communications for a vessel and reports directly to the Master. They are typically employed on vessels that have a lot of communication equipment.
 - (b) The **Electrical Engineer** is usually employed on vessels which have refrigerated containers. They are there to ensure that the power is continuously maintained to those containers.
 - (c) The **Electrician** is responsible for the generator and main power supply for the vessel.
 - (d) The **Carpenter** is a traditional position on a vessel that is not seen very often any more. When employed that perform the work of a general handyman doing odd jobs on the vessel.
 - (e) The **Fitter/repairer** usually is skilled in welding. They perform heavy ship maintenance such as repairing hatches and cranes.
 - (f) The **Donkeyman** is the leading man in the engine room and is responsible for the oiler, greaser, motorman and fireman.
 - (g) The **Second Cook** assists the Cook in their duties as required.
 - (h) The **Mess room Steward** cleans the dishes, serves the food to the officers and cleans the mess room.

- (i) The **Ordinary Seaman** is a person who has been at sea for 12 months as a deck boy but does not yet to have enough sea time to be qualified as an Able Seaman. They do the same duties as an Able Seaman.
- (j) The **Wiper** is trainee greaser or oilman. It is the classification given to greasers or oilmen in their first 6 months. They work as directed by the donkeyman doing the tasks set by the engineer in the engine room.
- (k) The **Deck Boy** is a seafarer in their first 12 months at sea. They work under the direction of the Bosun and assist them in their duties.
- (l) The **Catering Boy** is a trainee Mess room Steward and performs duties as directed by the Mess room Steward.

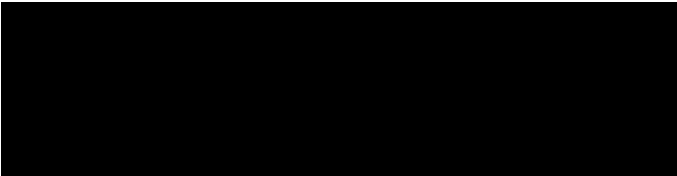
Able Seaman

12. The able seaman is responsible for:

- (a) the general mooring and unmooring of vessels under the direction of a Deck Officer.
- (b) facilitating the unloading and loading of cargo, but not the actual unloading or loading of the cargo. For example, they would open or close hatches and ensure adequate lighting and the rigging of ships gear.
- (c) security aboard the vessel under the direction of the designated security officer.
- (d) performing fabric maintenance of the vessel such as chipping and painting.
- (e) performing repair work such as chipping, painting, overhauling deck equipment and maintaining safety equipment.
- (f) performing watches at sea they under the direction of a Deck Officer.
- (g) Ensure the safety and integrity of the gangway system.

- (h) Tend and maintain appropriate safe mooring practices while the ship is moored in port.
- (i) Keeping the ship neat and tidy.

Dated: 24th October 2012



Dean Summers



Motor Trades Organisations

IN THE FAIR WORK COMMISSION

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

SUBMISSION ON BEHALF OF THE MOTOR TRADES ORGANISATIONS

1. This submission 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 paragraph [8] of the Statement dated 22 September 2023¹ (**September 2023 Statement**).
2. The Motor Trades Organisations (**MTO**) maintain an interest in the *Vehicle Repair, Services and Retail Award 2020 (Vehicle Award)*.

Provisional View

3. The MTO does not in-principle oppose the *provisional view* stated in paragraph [8] of the September 2023 Statement.

Table at Attachment D to the September 2023 Statement

4. The Annual Wage Review Decision 2018-19 categorised the *Vehicle Manufacturing Repair, Services and Retail Award 2010 (VMRSR Award)* as a category (i) modern award.² The subsequent statement issued on 28 August 2019 maintained this categorisation.³

¹[2023] FWCFB 168

² [2019] FWCFB 3500, footnote 376.

³ [2019] FWC 5863, paragraph [4].

5. The MTO notes that from 29 May 2020, the Vehicle Award superseded the VMRSR Award, with the change in coverage of vehicle manufacturing employees to the *Manufacturing and Associated Industries and Occupations Award 2020* being the only substantive change to C14 classifications.
6. Consistent with the above, MTO notes that the table at Attachment D of the September 2023 Statement reflects the category (i) status hitherto provided to the Vehicle Award. The MTO also notes that the table accurately references Schedule A.1 of the Vehicle Award, which provides that a Vehicle RS&R industry employee – Level 1 “... *may be undertaking up to 38 hours of induction training.*” and that a Level 2 employee “... *is an employee who has completed up to 3 months structured training ...*”
7. The MTO further notes that the remainder of the detail provided in the table in relation to the Vehicle Award appears accurate.

MOTOR TRADES ORGANISATIONS

3 November 2023



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

MOTOR TRADES ORGANISATIONS

1 December 2023

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.

National Electrical and Communications Association - Submission

Modern Awards Review 2023–24

October 2023

Justice Hatcher, President
Fair Work Commission
80 William Street
East Sydney NSW 2011
By email: chambers.hatcher.j@fwc.gov.au

Introduction

The National Electrical and Communications Association (NECA) is the peak body for Australia's electrical and communications industry, which employs 344,370 people and turns over more than \$82bn annually. NECA represents over 6,500 businesses performing works including the design, installation, and maintenance of electrical and electronic equipment in the construction, mining, air conditioning, refrigeration, manufacturing, communications, and renewable energy sectors.

NECA has advocated on behalf of the electrotechnology industry for over 100 years and helps its members and its industry to operate in an efficient, safe, and regulatorily compliant manner. NECA represents the interests of electrical and communication businesses to all levels of government and in regulatory, legislative and industry development forums. It is also a foundation member of the Australian Chamber of Commerce and Industry (ACCI).

NECA members make an essential economic contribution – connecting businesses, homes, and infrastructure – encouraging investment, improving reliability and energy security, and delivering affordable, environmentally sustainable outcomes. The safety and reputation of the electrical industry is critical to tradespeople, consumers, and the community.

NECA and its members are highly engaged in this space, particularly in the energy and electrotechnology sector and the design, installation and maintenance of the relevant infrastructure required for Australia's transition.

In regard to the specifics raised in the review NECA submit the following for your consideration:

Firstly, find below the rates and allowances in the *Electrical, Electronic and Communication Contracting Award 2020 (Award)* and the national minimum wage rates (NMW).

Classification	Hourly minimum	Wely rate	Above C13	Clause
C13 - minimum wage rate	23.23	882.74	N/A	N/A
Grade 1 - minimum rate	22.93	871.20	No	16.2
Grade 1 - ordinary rate	23.90	908.20	Yes	Sch B
Grade 2 - minimum rate	23.70	900.70	Yes	16.2
Grade 2 - ordinary rate	24.67	937.46	Yes	Sch B

Allowances	Wely	Hourly	Clause
Industry allowance	36.82	0.97	18.3(a)
Tool allowance	21.81	0.57	18.3(g)

NECA note that Appendix A (National Minimum Wage Order 2023) of the Fair Work Order dated 20 June 2023 (**NMW Order**) states the following:

- At clause 4.1 – “*The national minimum wage is \$882.80 per week, calculated on the basis of a week of 38 ordinary hours, or \$23.23 per hour.*” Notably, this calculation appears to be incorrect as \$23.23 multiplied by 38 ordinary hours is \$882.74 and not \$882.80.
- At clause 4.2 – “*The national minimum wage applies to an award/agreement free employee.*”
- At clause 4.3 – “*An employer of an employee to whom the national minimum wage applies must pay the employee a base rate of pay that at least equals the national minimum wage.*” Where base rate of pay is defined in the *Fair Work Act 2009* as the rate of pay payable to the employee for his or her ordinary hours of work, but not including things such as monetary allowances.

NECA would further mention:

- Clause 16.2 of the Award shows the minimum rates for an employee other than an apprentice (without allowances). The Electrical worker grade 1 minimum rate is currently lower than the C13 NMW by \$0.30c per hour.

- Clause 2.3 of the Award defines the ordinary hourly rate as the minimum weekly rate for an employee's classification specified in clause 16.2, plus the industry allowance and any applicable additional all purpose allowances divided by 38.
- Given the ordinary hourly rate includes the minimum weekly rate, the industry allowance and any applicable additional all purpose allowances divided by 38 (including tool allowance) it could be argued that given all workers covered by the Award are entitled to the industry allowance, the minimum wage for an employee at the Electrical worker grade 1 pay rate is in excess of the C13 NMW rate and that to increase the minimum ordinary hour further would increase the ordinary hourly rate even further above the C13 rate.
 - We note that the NMW Order states that an employee should be paid a 'base rate of pay' which as mentioned does not include allowances.
- However, an argument could be made that the NMW is set for award/agreement free employees who are generally only entitled to the National Employment Standard (**NES**) minimum entitlements and would generally not be entitled to allowances and other entitlements set out in the Award (such as the industry allowance in this case). Further, we note that the other entitlements set out in the Award sufficiently compensate or offset the Electrical worker grade 1 more than the \$0.30 difference between their minimum rate of pay and the NMW.
- Regarding the accuracy of the Table in Attachment D, the weekly pay rates appear to align with those in the Award, However, in the comments section of the table it states that "the ordinary hourly rate of the classification taking into account payment of the industry allowance exceeds C13". Although this is true, Schedule B – Summary of Hourly Rates of Pay in the Award states that the ordinary hourly rate in Schedule B (to which they reference) includes both the industry allowance and the tool allowance. However, given an Electrical worker grade 1 is defined as a labourer, NECA are of the view that the Electrical worker grade 1 may not be eligible for the tool allowance.

Conclusion

NECA are of the view that:

- although the minimum rate of pay is \$0.30 below that of the NMW C13 rate, the ordinary rate of pay under the Award (which includes at a minimum the industry

allowance) for each and every employee in the Electrical and Communication industry is sufficient to more than cover this difference;

- the NMW was set and deemed sufficient by the Fair Work Commission who understood that employees that the NMW relates to are not covered by an applicable award or agreement and as such are only entitled to the minimum standards set out in the NES, and not any additional entitlement such as those found in the Award; and
- without any change to the Electrical worker level 1 minimum pay rate, an employee at this level is better off than an employee covered by the NMV.

Based on the above it is the view of NECA that no changes be made to the Electrical worker rate 1 minimum pay to bring it in line with the NMW as the Award sufficiently covers any difference through an industry wide allowance and other entitlements.

Should you wish to discuss any matter relating to the submission, please contact NECA's Head of Government Relations and Regulatory Affairs, Kent Johns, at kent.johns@neca.asn.au or on 0467 660 110.

Yours sincerely



Oliver Judd
Chief Executive Officer
National Electrical and Communications Association

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 Decision¹ 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.² 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 industries³ which, while sharing superficially similar outputs, each have different production systems and labour needs, and manage

¹ Filing a submission on 31 March 2023.

² Having become aware of the Statement on about 11 October 2023.

³ 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.⁴

⁴ [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.*⁵

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.’⁶

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

⁵ [2023] FWCFB 3500 at [108]

⁶ [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.⁷ 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)classifications⁸ 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,

⁷ 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].

⁸ 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 systems⁹, 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

⁹ 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.¹⁰ 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

¹⁰ 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”¹¹ and one of their “Indicative Duties” will be “structured training so as to enable advancement to Level 2”¹² there is nothing requiring that advancement to be made once the training is completed.

¹¹ Schedule A, clause A.1.2 of the Horticulture Award 2020.

¹² Schedule A, clause A.1.3 of the Horticulture Award 2020.

35. Furthermore, while the General Description¹³ 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 1¹⁴ and Level 2¹⁵ 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”¹⁶ 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.

¹³ Schedule A, clause A.2.2 of the Horticulture Award 2020.

¹⁴ Schedule A, clause A.1.3 of the Horticulture Award 2020.

¹⁵ Schedule A, clause A.2.3 of the Horticulture Award 2020.

¹⁶ 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 training¹⁷ 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”¹⁸.
 - (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,

¹⁷ as specified in clause 36.2(a))

¹⁸ 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

FAIR WORK COMMISSION

C2019/5259

REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS

**National Farmers' Federation —
Submissions in Reply**

Introduction.

1. We refer to the above and the statement published by the President of the Fair Work Commission (**the Commission**) on 22 September 2023 (**the Statement**) which invited (inter alia) interested parties to file submissions-in-reply in this matter.
2. The National Farmers Federation (**the NFF**) has an interest in the Pastoral Award 2020 (**the Pastoral Award**) and the Horticulture Award 2020 (**the Horticulture Award**) and accordingly these submissions respond to the Full Bench's invitation in relation to those Awards.

Reply to submissions filed by employer interests.

3. On 03 November 2023 the NFF filed submissions (**the NFF's Submissions**) which made the following contentions.
 - (a) The current terms of the Pastoral Award and the Horticulture Award (collectively **the Agricultural Awards**), and pay rates and classifications in particular, should not be varied lightly.
 - (b) A change in the nature of the provisional view which the Statement expressed¹ (**the Provisional View**) has potential to significantly affect the farming industry and would therefore need to be carefully considered and ventilated.
 - (c) A case for change within the Agriculture Awards has not been articulated other than in very broad and general terms and not, in our submission, in a way which responds to the requirements of the Fair Work Act 2009 (**FWA**).

¹ At paragraph [8].

- (d) As such, no change should be made without a very detailed examination of existing provisions, including their history and current operation, and any proposals, and their possible impact on business, workers, and the broader economy.
4. There is nothing in the materials which were filed in this matter after 03 November 2023 — including within the submissions made by the AWU and UWU as detailed below — which have caused the NFF to alter or depart from those contentions.
 5. On 06 November 2023, the Ai Group filed submissions (**AIG Submissions**) which:
 - (a) Made certain observations about the accuracy of the Statement and the Provisional View; and
 - (b) Concluded that the Commission should not adopt the Provisional View² or,
 - (c) If the Commission decided to maintain the Provisional View, to conduct a discrete and fulsome review of any proposed variation to an Award which may follow.
 6. On 03 November 2023 the Australian Business Lawyers and Advisors filed submissions in this matter (**ABI Submissions**) which are in similar terms to the AIG Submissions, and which stressed that the rates of pay which the Award stipulate must reflect the value of the associated work, and this should be considered on an award-by-award basis.
 7. The NFF agrees with the AIG Submissions and the ABI Submissions.
 8. On 10 November 2023 the Australian Fresh Produce Alliance filed submissions (**AFPA Submissions**) which:
 - (a) Assert that the Provisional View is not consistent with the provisions of the Horticulture Award; and
 - (b) Observe that automatic, time/experienced based progression from Level 1 to Level 2 was not a historical feature of the industrial instruments used in the horticulture sector or the practice of the horticulture industry.
 - (c) Observe that different farms will have different standards and requirements which are in turn a function of the nature of the crop, logistics, commercial realities, and expectations of suppliers.
 9. The NFF agree with these aspects of the AFPA Submissions.

² Paragraph 42 of the AIG Submissions.

Reply to “Broad view” submissions filed by AWU.

10. On 3 November 2023 AWU filed submissions in chief in this matter (**AWU Submissions**).
11. The AWU Submissions make the broad claim that all Modern Award minimum rates should be equivalent to C13 or provide for a time-based transition from C14 to C13.³
12. For the reasons given in the NFF Submissions and these submissions-in-reply, the NFF disputes that claim in so far as it relates to the Agricultural Awards⁴, and submits that it is not supported by substantive reasons or probative evidence.
13. As has been observed by the Commission, “[v]ariations to modern awards must be justified on their merits”, and that the weight of the argument in justification and evidence in support will vary depending on the nature of the variation.⁵
14. It is the NFF’s position that any change which may arise from these proceedings in relation to the Agricultural Award could, prima-facie, be a substantial variation on both an individual farm-business level and across the industry — *Kleyn [26] to [28]; Guthrey [10] to [12]; Munro [11] to [13]; Cumming [25] to [28]; Grub [19] to [20]; Rowntree [25]; Finch [22] to [24]*
15. It follows that there should be significant evidence and compelling arguments justifying any such change.

Horticulture Award — Reply to submissions filed by AWU.

16. With specific reference to the Horticulture Award, the AWU makes two “proposals”:
 - (a) Firstly, that Level 1 should be set at a rate which is C13 equivalent (**the First AWU Proposal**); or
 - (b) Secondly, and in the alternative, that Level 1 employees should transition to Level 2 within 2 weeks (**the Second AWU Proposal**).
17. In relation to the First AWU Proposal, the AWU makes the following submissions.
 - (a) Firstly:

³ AWU Submission, paragraph 2 to 5.

⁴ i.e. in as much as that assertion calls for a change to current transitional arrangements which, for example, in the case of Dairy Operator Grade 1A provide for the transition to occur after 12 months.

⁵ 4 yearly review of modern awards – Penalty Rates [2017] FWCFB 1001, 265 IR 1 at [269].

- i. The AWU makes contentions about the horticulture workforce, including that workers are “particularly vulnerable to exploitation”, the work is labour intensive and seasonal, and that there is a high proportion of casual and contract labour and temporary migrant workers during harvest.⁶
 - ii. In reply, without admitting or denying these contentions, the NFF observes that their application to the First AWU Proposal⁷ and/or to the Provisional View are not specified and, in the NFF’s submission, *even if true*, are at best tangentially relevant to this matter in as much (only) as they may inform the picture of the horticultural workforce generally.
- (b) Secondly:
- i. The AWU observes that there is no system mandating that employers promote Level 1 to Level 2, whether via training or with reference to duties and competencies.⁸
 - ii. In reply the NFF notes that, while Level 1 workers who are more capable and required to work at Level 2 will progress from Level 1 to 2 as a matter of practice — *Kleyn statement at [24]* — the NFF agrees that there is no mandatory, time-based progression built into the Horticulture Award classifications⁹.
- (c) Thirdly, the AWU claims that a variation which is consistent with the First AWU Proposal:
- is necessary to achieve the modern awards objective of providing a fair and relevant minimum safety net of terms and conditions, in accordance with s 157(1) of the FW Act and having regard to the considerations in s 134(1). The proposed variation is justified by ‘work value reasons’, as required under ss 157(2) - (2B), and is consistent with the minimum wages in s 284.¹⁰
- (d) In reply, the NFF observes that these are unsupported assertions which are not informed by any analysis or evidence and should not, without more, be accepted by the Commission.

18. The AWU also submits, as a consequential amendment, that Level 2 rates should be lifted to \$23.55 because it ‘splits the difference’ between existing Level 2 and Level 3 rates¹¹

⁶ AWU Submissions, paragraph 9(a).

⁷ Or indeed the Second AWU Proposal.

⁸ AWU Submissions, paragraph 9(b) – (e).

⁹ As indicated in the NFF’s Primary Submissions at paragraph [37].

¹⁰ AWU Submissions, paragraph 10.

¹¹ AWU Submissions, paragraph 11.

and is consistent with statutory requirements having regard to the labour-intensity of the work, and level of responsibility and skill required.¹²

19. In response the NFF notes that “splitting the difference” is not a work value reason or a consideration under the Modern Awards Objective, and any change as to the rates of pay to Level 2 employees are not supported by the annual wage review decision (AWR), the Statement, the Provisional View or any work value assessment. It should therefore not be accepted.
20. In relation to the Second AWU Proposal, the AWU contends that this approach is also supported by the matters it raised in support of the First AWU Proposal.¹³ For the reasons given above at paragraphs 17 and 19, the NFF disputes that contention.
21. In addition, the AWU submits that its second proposal is consistent with the Statement and relevant statutory requirements.¹⁴ The NFF notes that those contentions are, again, not supported by analysis or evidence, and are disputed by the NFF.
22. Finally, in relation to the Second AWU Proposal, the AWU contends that evidence and findings from other matters considering the Horticulture Award give rise to a “strong implication ... that workers in the horticultural industry become competent at their work after 76 hours of performing the task”.¹⁵
23. In reply the NFF notes the following:
 - (a) The evidence to which the AWU refers describes the experiences of a particular witness at a particular farm in relation to a particular task (e.g. picking of particular crop) and production system. It did not comment on the broader horticulture sector or make claims about “workers in the horticultural industry” and their competency generally.
 - (b) Furthermore, the evidence was tendered to demonstrate — and the findings were made — with respect to discrete factual circumstances and for a limited purpose i.e. to establish a piece rate formula and the piece rate calculations which followed. They cannot be said to have universal relevance.
 - (c) As such, the Commission should find that those findings and evidence carry no weight in the context of these proceedings.

¹² AWU Submissions, paragraph 12 – 13.

¹³ AWU Submissions, paragraph 15.

¹⁴ AWU Submissions, paragraph 16 and 17.

¹⁵ AWU Submissions, paragraph 18 to 26.

- (d) In addition, it goes without saying that the *existing* Award classification system (along with the balance of the Awards’ terms) were based on findings made by the Commission in the Award modernisation process. Those findings, made specifically in relation to the provisions under consideration in this matter, should carry far greater weight.
24. In contrast:
- (a) Level 1 Workers at a single farm are expected to have a variety of skills beyond picking one particular crop on one particular farm and will include workers who (are expected to) pack, sort, grade, prune, record, clean, load, etc — *Kleyn [10] to [13]; Guthrey [8] and [9]*.
 - (b) Furthermore, there are differences in the role, as different commodities, different farms, and different production systems have different requirements e.g. apple picking is different to avocado, broccolini, asparagus, lemon, mango or mushroom picking.
 - (c) The AWU Submissions appear to acknowledge the scope of work potentially covered by Level 1, observing that the Horticulture Award provides “ample scope to engage employees to undertake ongoing and productive work at the Level 1 classification.”¹⁶
25. In short, workers at Level 1 need to be capable at a variety of tasks in a variety of contexts and the classification scheme must be flexible enough to accommodate that need.
26. In addition, the evidence indicates that:
- (a) Level 1 provides an entry point, allowing workers who do not have experience or are re-entering the workforce without posing a significant financial, business or administrative risk for the farm — *Kleyn [19] to [27]*.
 - (b) There is frequently a transition from Level 1 to Level 2 and Level 3. Workers who demonstrate value to the farm (and stay beyond a harvest) will be promoted to Level 2 to perform different, more senior work. — *Kleyn [24]*.
 - (c) Employees at Level 1 are entitled to various loadings and penalties, in addition to earning various bonuses, such that while their base rate is C14-equivalent their actual pay is frequently much greater — *Guthrey [7]; Kleyn [7], [15]*

¹⁶ AWU Submissions, paragraph 9(c).

27. In summary, the AWU Submissions do not make a compelling case for any variation to the Horticulture Award in accordance with the Provisional View or provide any probative evidence in support of such change.

Horticulture Award — Reply to submissions filed by UWU.

28. The United Workers Union filed submissions:
- (a) On 03 November 2023 which noted its support for the Provisional View; and
 - (b) On 10 November 2023 which noted its support for “the proposals of the AWU in relation to the” Horticulture Award.
- (collectively, **the UWU Submissions**)
29. In the NFF’s submission, the UWU Submissions do not advance the argument for change.

Pastoral Award — Reply to submissions filed by AWU.

30. In relation to the Pastoral Award, the AWU Submissions “in the alternative to the broad contention for removing instances of sub-C13 rates from modern awards”¹⁷ make the following assertions:
- (a) FLH1 Station Hands, FLH1 Cattle Farm Workers, FLH1 Dairy Operators Grade 1A, and FLH1 Poultry Farm Workers should “only fall under that classification” if they have less than 3 months experience in the industry.
 - (b) Station Cooks should be paid the C13 Equivalent rate — and presumably therefore classified at FLH2 — upon commencing in that role.
 - (c) Station Cook’s Offsiders should only fall under the classification if they have less than 3 months experience in the industry.
 - (d) Piggery Assistant PA1 should “continue” to be limited to employees who are undertaking a 38-hour induction training.
 - (e) Piggery Assistant PA2 employees should be paid a base rate equivalent to C13 of \$23.23/hour.
31. As noted above at paragraph [13]: “Variations to modern awards must be justified on their merits”, and the weight of the argument in justification and evidence in support will vary

¹⁷ Paragraph 97 of the AWU Submissions.

depending on the nature of the variation.¹⁸ It follows that there should be compelling arguments and significant evidence justifying any significant change.

32. In our submission, the AWU Submissions regarding the Pastoral Award¹⁹ do not:
 - (a) Provide any substantial arguments for change or refer to any probative evidence in support of such arguments.
 - (b) Provide any basis in fact, or industrial practice or history, for a change in the classifications or transition periods.
 - (c) Justify the change on the basis of work value, the modern awards objective, or any other legislative grounds.
33. Furthermore, the AWU Submissions fail to indicate how the changes which they propose in relation to specific classifications should be given effect in the Award or how it could operate in practice.
34. In particular, the submissions do not account for the fact that, in a number of cases, the Awards do not provide a pathway which would accommodate the AWU's proposal.
 - (a) For instance, the AWU Submission indicate that FLH1 Station Hands and FLH1 Dairy Operators Grade 1A should only cover workers "if they have less than 3 months experience in the industry"²⁰ without indicating what should happen at the point a worker acquires 3 (or more) months experience.
 - (b) FLH1 Station Hands and FLH1 Dairy Operators Grade 1A do not progress to FLH2 i.e. to the next Farm and Livestock Hand classification level. Instead, the transition is straight to FLH3 (a process which followed the progression methodology and language of the industrial award which was the basis for the modern Pastoral Award).²¹
 - (c) Furthermore, both FLH3 Station Hand and FLH3 Dairy Operator Grade 1B are expressly described as applying to employees with at least 12 months experience in the industry.

¹⁸ *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [269].

¹⁹ At paragraphs 96 to 101 of the AWU Submissions.

²⁰ At paragraphs 98(a), 98(e), 101 of the AWU Submissions.

²¹ the Pastoral Industry Award 1998 (and all previous versions) AP792378CRV.

- (d) Therefore, it is unclear what the AWU proposes should happen to a worker with more than 3 months and less than 12 months experience.
35. There is a related difficulty with Poultry Farm Worker PW1. Workers in that role transition to PW2 (inter alia) after 12 months experience where they are paid at a minimum (base) rate of \$23.55/hour. It is notable that the pay rate is equivalent to the FLH3 and higher than C13 so that in practice the problem is the same.
36. Within these constraints and given that they cannot be easily accommodated by the existing award classification structure, it is unclear how the AWU's proposal should operate.
37. In relation to the Piggery Attendant Roles, the AWU proposes that PA1 should:
continue to be limited to 38 hours' induction training and clause 36.3(a) should be amended to make clear that progression to 'Piggery attendant level 2 (PA2)' is not dependent on the completion of structured training or obtaining competencies.²²
38. In response, the NFF reiterates our comments at paragraph 50 of the NFF Submission, that:
- (a) PA1 applies to (1) those employees who are undertaking induction training and (2) those employees who are "employed as general hand in a general capacity to perform basic tasks..." and satisfies the criteria specified at clause 36.2(b).
- (b) As is the case with all classifications in the Pastoral Award, the Piggery Attendant classifications reflect industry practice and award history and should not be varied without proper analysis and consultation.

Pastoral Award — Reply to Statement of Shane Roulstone (AWU)

39. In support of its submission in relation to the Pastoral Award the AWU has filed a statement of Shane Roulstone dated 3 November 2023 which simply states that "in his experience" (which is not described with any precision):
- (a) "lower-level workers in the pastoral industry" undertake difficult work in harsh conditions and are from low-socio economic backgrounds with limited career opportunities; and
- (b) entry-level pay rates are often insufficient to attract workers to the industry.

²² Paragraph 99 of the AWU Submissions.

40. In response to the observations of Mr Roulstone, the NFF makes the following submissions:
- (a) Without admitting these claims, queries their relevance (even if accurate) as anything other than tangentially related to this matter or the points at issue.
 - (b) Those submission notwithstanding, and while rejecting any implication that a rational increase in pay rates would have a substantial impact on the number of workers available to the industry, the NFF accepts that as a general statement the industry continues to experience significant workforce shortages — *Rowntree [6]; Cumming [8], [23]; Finch [8]; Burk [4] to [6]*

Pastoral Award — Support for existing classifications

41. In contrast, and without conceding that it is necessary to raise an argument, the NFF makes the following observations in support of the current provisions.
- (a) The current transitional arrangements in the Pastoral Award reflect the historical position. To the extent that the Pastoral Industry Award 1998²³ (which was the basis for the modernised Pastoral Award in 2010) and other pre-modern awards and NAPSAs specified time-based or experience-based transitions, they are by-and-large consistent with current arrangements in the Pastoral Award for transition between levels.
 - (b) The current transitional arrangements are consistent with practice within the industries covered by the Pastoral Award. The evidence demonstrates that:
 - i. Employees are engaged at the first level of the Pastoral Award while they are being exposed to the entire cycle of production on farm, learning the basic capabilities, and developing necessary experience — *Finch [10] to [14], [20]; Cummings [9] to [11], [18]; Rowntree [9] to [11]; Grubb [10] to [11]*.
 - ii. The farming cycle which a new employee needs to become familiar with will (depending on what is farmed) frequently last an entire year as the farm passes through each season with its different requirements and needs — *Grubb [10] to [14]; Tully [17] to [20]*.
 - iii. There is a range of tasks performed by the first level employees which, while not extremely technical, require training and the oversight of a more senior employee — *Cummings [17]; Munro [7] to [8]; Burke [18]; Rowntree [10]*.

²³ AP792378CRV

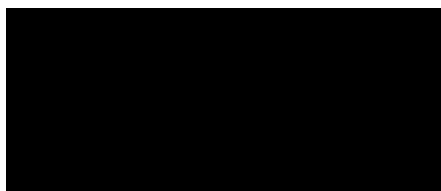
- iv. The employees at the first levels work in support of the farmer or more senior employees and/or under the direct supervision and frequently with the direct assistance of managers and senior workers — *Munro [7]; Rowntree [10]; Burk [8]*.
 - v. Very often, the first levels enable the employer to offer the new workers an introduction to the industry and a ‘foothold’ in the job market without the employer bearing too much risk — *Burke [7.]*
- (c) If an employee at the first level were to perform their work without adequate supervision or experience, then they would:
- i. Create risk for their health and safety of themselves, co-workers, and other persons attending the farm — *Finch [16]; Cummings [16]; Grubb [12]; Tully [10]*.
 - ii. Pose a significant risk to the health and wellbeing of livestock and farm animals — *Finch [16]; Grubb [12]; Burke [12]; Rowntree [12] to [14]*.
 - iii. Create significant financial and other risk to the farm business — *Finch [13] to [17]; Cummings [14]; Burke [4]*.
42. It may also be observed that employees at the first level require much more of the time and focus of their employers, which is a business expense which the employer has to absorb — *Cummings [15]; Munro [7]*.
43. Employees during the first years acquire valuable skills (many of which could only be acquired through practical experience) which they will be able to use in future roles, even those not in the same industry — *Tully [10]; Rowntree [15] to [16]*.
44. Furthermore, the evidence indicates that pay rates at the first level do not require a change for the reason contemplated by the AWR and the Statement:
- (a) employees working at lower level are frequently paid more than the base (e.g. C14) rate; for example they earn casual loadings, overtime pay, non-wage benefits, performance bonuses, and above-award pay rises — *Finch [21]; Cummings [22] to [23]; Munro [10]; Grubb [15] to [18]; Rowntree [20] to [23]; Burke [11]*.
 - (b) Employees working at the first levels under the Pastoral Award are often young people, such as school children, school leavers, and backpackers — *Cumming [5] to [6]; Finch [6] to [7]; Munro [4], [6]; Tully [7]; Rowntree [8]* — who, in addition to having no farming experience, typically do not have dependants or family responsibilities.

45. An increase to the first level pay rates or change (reduction) in the timing of the transition to higher levels would have serious and problematic implications for farm businesses — *Finch [23] to [24]; Cummings [25] to [27]; Munro [11] to [13]; Burke [13] to [14]; Tully [21]*.
46. The totality of the evidence leads to the conclusion, at least on a prima facie basis, that any change to the current classification or pay rates is not necessary to reflect the value of the work performed by employees and the requirements of business.
47. It follows, in the NFF’s submission, that not only is there no basis within the legal framework for the Commission to make the variations sought by the AWU — or any which may be extrapolated from the Provisional View — but that any change at this point in time would be contrary to that framework.

Summary and conclusion

48. In summary, in the NFF’s respectful submission:
 - (a) There is not a compelling case for a variation to the Agricultural Awards in accordance with the Provisional View.
 - (b) The statutory framework has not been addressed in the context of any such variation and there is no probative evidence in support of any such change.
 - (c) In contrast the evidence would support the retention of the current arrangements.
49. It follows, in our view, that at present the burden of proving a need for change is not found in the submissions of the AWU, UWU or otherwise, and no such change should be made.

DATED 5 December 2023



Ben Rogers
National Farmers Federation

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259 Review of certain C14 rates in modern awards

Re: Submission by National Farmers' Federation

STATEMENT OF ANDREE ROWNTREE

On the 5th December 2023, I, Andree Rowntree of [REDACTED]
[REDACTED] in the State of New South Wales, make the following statement:

1. I am a co-owner and operator of Windridge Farms, a diverse family farming business located in the NSW south western slopes region near the town of Young. Our business encompasses pigs, pastoral and cropping operations and a feed mill.
2. My family has been farming in the area for a number of generations and is involved in a number of local community and school groups. I have been a member of the NSW Farmers Pork Committee for 10 years and am a Delegate for Australian Pork Limited. I am also a partner at a regional law firm.
3. Our piggery has operated since the 1970's and has expanded and modernized over time. We currently house 4200 sows across 3 sites near Young in NSW and a contract grower site. Our pigs are raised for pork which goes to supermarkets, butchers and restaurants. We generate power from pig manure, which helps run our feed mill, and are a Registered Carbon Farm under the Emission Reduction Fund. Pig waste is also used as a fertiliser on the farm.
4. Our piggery operation engages 40 full time staff across pigs sheds and maintenance.
5. Last financial year Windridge Farms piggery operations had a turnover of about \$26.7 million, wage related expenses of \$3.7 million and total costs of production of about \$25.5 million.
6. Labour and skills shortages are a longstanding issue for the Australian pork industry and regional areas, a situation which was exacerbated by the COVID-19 pandemic. Shortages exist across different skill (classification) levels and roles in the industry. Our business provides opportunities for all people to develop a career in the pig production and agriculture more broadly.

Background on employees employed at level 1 (PA1) and development of PA1 employees

7. We have a well established team of skilled staff working in our piggery. Lower

classification levels are only utilized for a small proportion of employees as an entry level role, before transitioning through to higher levels.

8. At present we have 4 to 5 employees classified as PA1. These employees typically commence with the business with very little or no work skills and experience, no experience with pigs and are initially engaged to undertake simple tasks under direct supervision. They may be young people that have not finished school, longer term unemployed people, or older people seeking employment. Sometimes they are referred to us by local employment agencies. They are almost all employed on a full time basis.
9. Upon commencement, employees engaged at PA1 would undertake induction which includes information on the enterprise, production processes, use of equipment, WHS, work and record keeping procedures. A key part of this is introducing employees to the company's biosecurity protocols. Piggeries maintain strict biosecurity standards and operate under Biosecurity Management Plans, to protect against the entry and spread of pests and diseases. Standards must be upheld by all staff and visitors.
10. Following initial induction, PA1 employees would continue to learn on the job and build understanding of the pig farming operations. They would be undertaking simple tasks of a manual nature, under direct supervision with regular feedback. Tasks may include assisting moving pigs, checking and tending to pigs, pig feeders and drinkers, cleaning and assisting with basic maintenance. As well as being taught simple record keeping procedures, with results checked frequently.
11. At the PA1 level, a period of time undertaking structured training beyond immediate induction is important to ensure employees are able to progress to higher levels with less intense supervision. We support new entrants acquiring skills quickly via theoretical and practical means, however structured training takes time given the complex nature of pig farming and importance of ensuring all people working with pigs achieve required competencies and understanding of animal behavior.
12. Pigs must be cared for by personnel who are skilled in pig husbandry and are competent to maintain the health and welfare of the animals in accordance with animal welfare standards, or are under direct supervision of such personnel. This is required by state legislation and a code of practice.
13. Our business supports our staff to further their skills, from when they commence. We typically put all new piggery staff through a Certificate III in Pork Production, delivered on-site. This covers safe handling of pigs, animal health care and welfare, workplace health and safety, quality assurance and biosecurity measures. Mastering these skill

minimizes animal handling stress, improves animal welfare, and job satisfaction.

Development of PA1 employees, transition from PA1

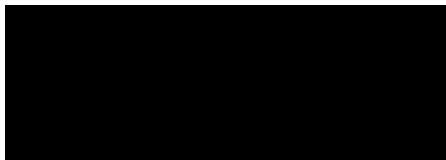
14. The intensive nature of raising pigs and high standards of animal care and biosecurity that must be maintained means we need appropriately skilled, reliable and committed staff in our team. Absences of people in the workplace can create welfare and hygiene issues, and can present a biosecurity risk.
15. During their time as a PA1, we would be working with the individual to provide structured training so as enable them to work at PA2 or higher, and ascertaining their skill development and commitment to the role in order to offer ongoing employment and reclassification accordingly.
16. Whilst employees' individual skills and performance are being continuously assessed, given the nature of undertaking structured training in the workplace and closely supervised work for new entrants, we ideally need a 6 month window to undertake this. This aligns with a probation period and my understanding is that this is common in the industry.
17. Generally by this stage the employee would transition to PA2 as minimum or higher and from there to higher classifications again, with associated pay increases and responsibilities.
18. At higher levels, less direct and frequent supervision is needed and responsibility for the quality of the individual's work increases.
19. As a business with many employees it is our preference to review all staff salaries once a year at or about 30 June.

PA1 wages, consequence of early transition

20. With competition in the labour market, employers may pay above award rates. Employees may also work additional overtime or weekends which attract penalty rates.
21. An amount of weekend work is required at piggeries, with staff working sometimes every second weekend, sometimes every third weekend depending on number of staff at the site or in that team and other staff absences. These are shorter days and penalty rates are paid at time and a half for the first two hours on Saturdays and double time after 2 hours and on Sundays. We try to arrange the work week so less work and less complicated tasks are undertaken on weekends.
22. Additionally, Windridge Farms pays all piggery staff a production-based bonus every

quarter once they have been employed for 6 months. Typically this payment is about the equivalent of an additional weeks pay (or an additional months pay over 12 months).

23. Staff that work at our site out of town are also paid a daily travel allowance.
24. The industry is accustomed to the classifications in the Pastoral Award 2020 and any change to classifications should be done with widespread industry consultation to avoid unintended consequences and give the industry time to adapt.
25. A 38 hour induction period before transitioning to a higher level seems to me to make the PA1 entry level pointless and would create additional upfront costs and administration. Further, when an employee transitions from one award level to another we like to discuss this promotion with them, explain why they are being promoted and what they are doing well and what additional roles and responsibilities they will have on the next award level.
26. I know the facts above to be true unless it otherwise appears.



Signature
Andree Rowntree

Date: 5/12/2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (C14 Review)

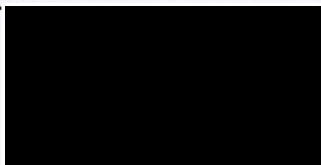
STATEMENT OF Benjamin F Grubb

I, Benjamin Grubb, of [REDACTED] Tasmania make the following statement:

1. I am a farmer running a mixed farming enterprise across two properties in northern Tasmania.
2. The current enterprise mix is superfine merino sheep, commercial Angus cattle, primeline composite sheep, Australian stock horses, and irrigated cropping of potatoes, cereals and fodder.
3. I have a Commerce degree from Melbourne University where I majored in Agricultural Business Management and Marketing.
4. Prior to returning to the family farm, I spent 13 years working in senior management roles for Elders Rural Services in North-East Victoria, Southern Riverina area of New South Wales and Tasmania.
5. I am currently the Vice-President of Primary Employers Tasmania, a registered employer organisation. I also serve as Vice-President of the Tasmanian Angus Breeders Group.
6. As such I am constantly in touch with our members and other agriculture producers across various commodities in relation to employment matters and staffing issues.
7. Our business currently employs one full-time and two casual staff.
8. No matter the experience of any employee when starting at a new farm it takes substantial time and supervision for the employee to learn about the farm and its operations as no two farms are alike due to climate, topography, facilities, stock numbers and commodities grown or produced.
9. There is an acute shortage of local workers across all classifications agriculture in Tasmania which means that farmers are having to employ inexperienced staff to meet the demands on farm.
10. Agriculture is a seasonal industry with the duties of employees varying from season to season, particularly in a mixed farming enterprise. It takes a full year for an employee to experience all the duties that are required, and direct supervision is required until the employee is able to perform the duties alone or as part of an unsupervised team.
11. The typical year on our farm is as follows:
 - January- Cereal Harvest & foot pairing of merino sheep, spraying gorse
 - February- Sowing of new crops under irrigation, pregnancy testing cows, shearing composite ewes
 - March- Calf Weaning
 - April- Merino ewe shearing, Autumn sowing of pastures, rams out to ewes, harvesting of potatoes
 - May- Ground preparation for winter cereals
 - June- Fencing and general farm maintenance, pregnancy scanning of cross-bred composite ewes
 - July- Fencing and general farm maintenance, pregnancy scanning Merino ewes, calving commences, pre-lambing drench and vaccinate composite ewes
 - August- Pre-lambing drench and vaccinate Merino ewes, cross-bred lambing begins
 - September- Merino ewes lambing, thistle spraying

- October- Bulls out with cows, cross-bred lamb marking, shearing Merino wethers, calf marking, sowing potatoes
 - November- Lamb marking merino lambs, gorse spraying, crutching cross-bred ewes,
 - December- Weaning of cross-bred lambs (including jetting of all lambs and ewes etc), weaning merino lambs, crutching merino ewes.
12. For a new employee these tasks require significant supervision and training to ensure a basic understanding of the duties involved and to ensure that eventually they can work safely on their own, not put other employees at risk, or risk injury or even death of animals.
 13. It takes a full twelve months for a new farm employee to experience the full gambit of tasks and duties.
 14. Part of the training in the employee's first year on the job is ensuring that the employee understands how the various tasks and seasonal duties fit into the whole farm system. Only then, after training and supervision over the full twelve months is the worker is ready to move to the FLH3 classification level where they can work with minimal supervision and a trust by the employer that they can operate safely and for the benefit of the farm.
 15. To attract staff many of our members and other farmers I talk to offer above award wages and other benefits such as free housing, free electricity, firewood and even private use of farm vehicles. Many are also provided with meat on a regular basis.
 16. Experience has also shown that many choose working in farming due to the nature of outdoor work, an affinity to working with animals and recreational activities that are available to them on the farm such as hunting or fishing.
 17. Employees who live on farm also appreciate the lifestyle it provides for their family and the experiences it offers their children.
 18. Due to the seasonal fluctuations and periods of peak demand, for instance during harvest, calving or lambing, additional hours of work are available, all paid at overtime rates.
 19. If the FLH1 level was restricted to only six months this would cost an additional \$928.72 per employee in the first year of employment, without taking into account superannuation, workers compensation and overtime.
 20. To consider such an increase in labour costs when the industry is currently severely affected by low farmgate prices for meat and crops, high interest rates on farm borrowings and increased input costs would put enormous strain on many farms in Tasmania.
 21. I know the facts above to be true unless it otherwise appears.

.....
Benjamin Grubb:



.....
Date:

30TH NOVEMBER, 2023

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259 Review of certain C14 rates in modern awards

Re: Submission by National Farmers' Federation

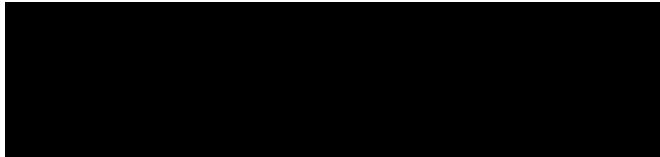
STATEMENT OF BRETT GUTHREY

On 1 December 2023, I, Brett Guthrey of [REDACTED] New South Wales, state as follows:

1. I am a persimmon grower and am a member of the NSW Farmers Horticulture Committee and on the Persimmons Australia Inc Committee.
2. I am the 3rd generation of our family to farm the current site at [REDACTED] NSW. The farm was purchased in 1958. Initially vegetables were grown then stonefruit and now persimmons. I have 3 adult sons, 2 are working in the horticulture industry but not at the grower level. Our orchard would be suitably classified as a small family farm. It is just less than 100 acres in size and turnover typically around \$500,000. It is situated in the Sydney basin and has required innovative and adaptive skills to maintain its presence.
3. The orchard primary operates in the "niche" market. Most fruits are sold in the East Coast (Sydney, Melbourne, Brisbane) through boutique fruit shops in high value areas. Approximately 30% of our product is sold direct to consumers.
4. We grow, pick, grade, pack store and sell our persimmons on the orchard property. This allows the efficient migration of labour to be focused where needed during harvest period, which can last between 6 to 8 weeks. The entire yearly farm income is dependent on the outcome of harvest.
5. For the duration of the year, my wife and I work on the farm assisted by casual employees as needed from time to time.
6. During harvest, we employ around 15 casual employees. Some of these are returning workers from prior years. This cohort is made up of members of the local community and backpackers, they predominantly perform picking, sorting and packing tasks.
7. Most of these workers are accommodated on site at a heavily subsidised rate of \$5 per person per night which includes the supply of fresh produce. They are paid at level 1 casual rate as prescribed in the *Horticulture Award 202*, with the exception of two individuals who perform tractor driving and forklift driving duties. Pay rate for the worker performing tractor driving duties is aligned to level 2 casual pay rate, while pay rate for the worker performing forklift driving duties is aligned to level 3 casual pay

rate.

8. Picking tasks include using snips to cut the fruit, picking into a harness, using a ladder. It is low skilled but physical labour tasks.
9. There is a lot of training involved with training employees to be able to sort and pack the fruits according to a prescribed standard. Full training is around 2 days, where there would be little packing output achieved during this time. Thereafter, constant supervision will be applied for the duration of the season. From time to time there would be workers deemed not suitable for this job and they would be reassigned to other tasks where possible. The fruits go through a grader which washes and sorts the fruits according to sizes, thereafter packers have to pack the fruits into the boxes to ensure optimal quality and presentation.
10. Last season, I reviewed the labour costs involved in washing buckets that we use as part of the harvest operation. It is more expensive to pay staff wages to wash the buckets than to replace with buckets with new ones.
11. Increasing labour costs, with no proportional increase in revenue, is one of the key reasons that we have decided this year to sell the farm.
12. The administrative burden involved with employing staff for a small business like mine is enormous, the proposed changes to the *Horticulture Award* will increase the complexities even more. The fear of getting something wrong is debilitating.



Signature
Brett Guthrey

Date: 1/12/23

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259 Review of certain C14 rates in modern awards

Re: Submission by National Farmers' Federation

STATEMENT OF KATE MUNRO

On 1 December 2023, I, Kate Munro of [REDACTED] New South Wales, state as follows:

1. I co-manage HE Kater & Sons with my husband since 1997. HE Kater & Sons is a mixed farming operation encompassing merino stud, broadacre cropping, commercial sheep, fat lambs and cattle. Recently we have also started growing cotton. I perform several functions in the business which include human resource management, administration, and management of facilities.
2. We currently employ around 26 employees, of which 8 are jackaroos, 4 casual employees and 14 permanent staff across the various operations. Jackaroos are trainee workers who are completing Certificate II or III.
3. We believe in training of our workforce and progress them within the business as much as possible. Jackaroos who stay beyond their two years will generally be aligned to Farm and Livestock Hand (FLH) level 5 classification if they can prove to have the ability to work unsupervised.

Background on employees employed at level 1 (FLH 1) and development of FLH 1 employees

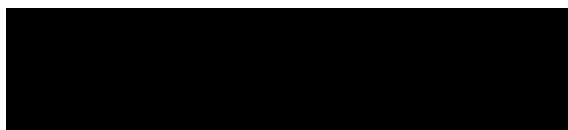
4. We assign new recruits with no background in the industry, who are employed to perform general labouring duties that require low skills or basic duties, to level 1. Those recruited to level 1 roles are generally backpackers (workers with a working holiday maker visa) employed as general farm hand on a temporary basis. From time to time, we may also employ a permanent employee on level 1 if the individual is unskilled and inexperienced. Promotion to higher classification and pay is dependent upon experience and the ability to work without constant supervision.
5. When we employ station cook, who perform home cooking duties to feed the employees, the role is aligned to level 1. There is no classification progression for station cook as we believe the expected skill set, responsibilities and accountabilities remain static therefore it is justified for the role to continue to be classed at level 1.
6. Currently we have 3 employees who are classified and paid as FLH 1 classification of the *Pastoral Award*. They are all casual temporary staff with a working holiday maker visa.
7. There is regular supervision and checking involved with the employment of level 1 staff. Our approach is to assign a senior manager assigned to train and supervise the individual.
8. Tasks generally performed by level 1 employees include basic labouring duties, cleaning, irrigation work (moving, starting and stopping water siphon), ploughing, which are performed under supervision.
9. While backpackers are generally employed for six months or less due to their visa conditions, we believe progression beyond the level 1 classification should require up to 12 months experience. It is a suitable timeframe to adequately facilitate training, opportunity for the employee to perform the tasks repetitively to gain and exhibit competency to a level where they no longer require regular supervision.

FLH 1 wages and consequence of early transition

10. All employees of the Company are provided with on-farm accommodation in addition to their wages. The Company also provides backpackers and jackaroos with cooked meals for no charge.
11. Labour costs make up about 25% of total cost of production and the percentage is likely to increase due to the tight labour market and significant minimum wage increases.
12. Should there be earlier step up required, it will increase both labour costs and administration costs for the business. It should be noted that any increase to the base wage will have a multiplier effect in workers compensation, superannuation and payroll tax.
13. I estimate that the cost of a transition from FLH 1 to FLH 3 after 3 months at the current award rates, with the company's pattern of work, would be \$8,500 per annum, equivalent to 1 Ag Motorbike a year. The figure is based on assumption that we employ 6 level 1 employees during the year.
14. We will likely consider an earlier assessment of new inexperienced employees to ensure that the individual has attained required competency to warrant the higher pay. While we would prefer to avoid shortening the time period for an employee to show their progression, the Company will need to ensure the operation is financially viable.

General comments

15. Cost of inputs for farm production is escalating at an incredible rate. Return on commodity has significantly declined in the past year & productivity is in reverse.
16. We are being squeezed from all 4 corners of the ring. High inflation, low commodity prices, scarcity of 'practical' skilled labour, escalating cost with protecting our land from feral pests, noxious weeds & trespassers.
17. Good reliable skilled labour is built through time. Senior management spending time to train, mentor & oversee. In our experience it is a rarity for this to be achieved in 3 months.



Signature
Katherine Munro

Date:1st December 2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (C14 Review)

STATEMENT OF MATTHEW KLEYN

I, Matthew Kleyn of [REDACTED] Queensland, make the following statement.

Background

1. I am an avocado farmer with 25 years-experience growing avocados, and the North Queensland Director of Avocados Australia.
2. I married into farming, so although I consider it to be my vocation, career, lifestyle and identity, I have a varied work history prior to farming, including 5 years a spell as a penal officer at Lotus Glen Correctional Facility.
3. I currently own five avocado farms in Atherton Tablelands with my wife, Louise, along with three other farms which we lease.
4. In total, our operation covers roughly 520 hectares (1285 acres) of which 250 ha are Avocados. This year we will grow about 3 million kilograms of avocados, but we have begun an expansion and are on track to grow 5 million by 2025.
5. We also own and operate a centralised avocado packing facility in Tolga in North Queensland which processes all of our produce together with that of 6 other farming organisations.

Employment on the Farm

6. Across our business we currently have 30 permanent employees, 28 of whom are full time, 2 part time. We also have 2 ongoing casuals. The roles range across managers, marketers, mechanics, supervisors, general farm labourers and packing shed operators.
7. All of our farm business's employees are engaged under the Horticulture Award 2020 (**the Horticulture Award**) and their classifications range from level 5 to Level 1.
8. Those on-going workers are classified at all levels under the Horticulture Award, depending on their duties, capabilities, and experience. However, they are all paid in excess of the base rate specified for their Classification/Level, taking into account the quality of their work and value to the business.
9. We have engaged Five employees initially at Level 1 through the Federal government's program to help give long term unemployed people a start. We currently have one of them still with us who is at Level 2.

10. The duties which our Level 1 staff performs year-round will include, in addition to picking, packing and pruning, slashing, spraying, and other general agricultural tasks such as cleaning, spreading mulch and basic tree care and maintenance.
11. In the off-season — i.e. when avocados are not being harvested — we engage Level 1 workers to “tip” branches and inject trees with phosphonic acid to protect them from root disease. At present we have 27 casual employees engaged in this work.
12. During the peak season when avocados are harvested, from February to July, we engage an extra 40 staff (or about 100 employees in total) to do the picking, packing, and pruning.
13. The fruit picking is performed by workers classified at Levels 1, 2 and 3. The Level 1 workers collect avocados from ground level, Level 2 workers operate cherry pickers to collect avocado above ground level, and the Level 3 worker are their supervisors.
14. Avocado picking is not rocket science, but there is skill involved. Avocados have to be picked carefully as they are easily damaged and to ensure they meet the strict criteria set by retailers, allowing for packing and transport time.
15. All of our peak season workers are paid the Award rates, including (as they are engaged as casual employees) the 25% casual loading and overtime as per the Horticulture award. They would average 38-42 hrs per week.
16. We don’t use piece rates at all because I am concerned that it encourages pickers to work too fast, which risks damaging the fruit. Instead, workers who are not productive enough are simply moved on.
17. In addition, a high proportion of those peak-season workers are engaged under the Pacific Labour Mobility (AKA “PALM”) scheme.
18. Some roles at our packing shed are staffed by casual employees. In our offseason to get them to stick around to the next season we find tasks to keep them employed, some of which are tipping new shoots, which is helpful but not essential. These staff are manly local level 1 over 38 hours per week.

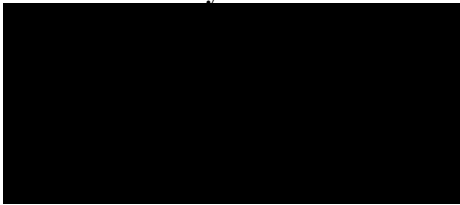
Observations about Level 1 and Proposed Change

19. As a very general statement, Level 1 duties are quite low skilled and while the roles which they fill are collectively very important to the success of the business, in isolation, the farm will not be crippled if they are not performed on an individual/isolated basis.
20. For the example of “tipping” (which is snapping the end 25mm off new branches, which is to shape trees and encourage growth), it doesn’t matter if it’s not done exactly right or exactly on time, so it isn’t critical if, for example the worker fails to do the work with 100% precision or accuracy, or if they are absent for a day or two due to unreliability.

21. Also, I don't need to rely on Level 1 employees to the same extent as higher-level employees so if they don't show-up for work or prove to be unreliable on the job — which is not an unusual occurrence — I can find someone else to do the job within the relatively flexible time frames the work can allow.
22. At higher classification, stuff ups can be very costly. For example, if our irrigation system, which is operated and controlled by a Level 3 Worker with a diploma in Horticulture, is not properly interpreted and operated then it could cost the business more than \$500,000 in a week.
23. In my view, Level 1 classification provides an entry point into employment and the industry for unskilled workers and/or those who may find it difficult to demonstrate their reliability and work ethic which an employer can rely upon. They represent a less risky investment by the business.
24. In my experience, good, reliable employees who are interested in the work and want on-going employment transition up through the classifications from Level 1 to Level 2 and 3. That is our practice and how we find and keep good employees on the farm, and how we have acquired a large proportion of our level 2 and three, on-farm employees.
25. Many of our permanent staff have worked for us for over 3 years and we have had two employees who have been with us for 13years, one of which has just left to take his family travelling around Australia.
26. If there is a significant change to the classification structures (for example to mandate a transition from Level 1 to Level 2 rates within less than 6 months) then I will need to rethink about how I manage labour on our farms.
27. I will probably be significantly more selective about who I offer jobs to. This may affect the number of people we employ, or if not at least the number of people without reliable work history that we give chances to. This will be disappointing, as this principle is one of the things, I like most about owning a large business. There are many risks every employer takes when committing to employ someone. This just makes it more risky. It may also have some effect on the ways I engage people, where I look for employees, and type of employment programs we use. For example, I will be much less likely to engage with government programs I referred to in paragraph 9 above, if I know the employees have to transition to Level 2 after a short period.
28. It may also impact on the growth of the business. For example, if I had known about this change when I chose to expend the operation, then I may have thought twice. Two of our farms are yet to be developed and Avocados planted. The burden on businesses is growing exponentially and thus we will not go ahead unless things change.
29. I would also note that I already find the Horticulture Award quite complicated, and difficult to understand and apply.

30. I am very scrupulous to make sure we pay all employees properly (with as background as a penal officer, I am highly sensitive to the way the farmers are portrayed and viewed) but I do find it difficult and stressful to stay on top of.
31. At least, at present I have managed to understand the Horticulture Award with some help along the way. A further change to the Award to require transition away from Level 1 after a fixed, arbitrary time frame will make staff management even more complicated and time consuming. I am sure this is true for other growers too.
32. Any change to classifications should at least be done with industry consultation to avoid unintended consequences and give the industry time to adapt to the changes and increased cost.

Matthew Kleyn



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Date: 1st December 2023

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259 Review of certain C14 rates in modern awards

Re: Submission by National Farmers' Federation

STATEMENT OF NARELLE BURKE

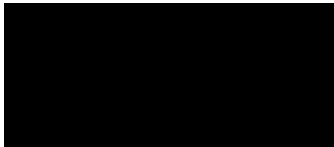
On the 30th November 2023, I, Narelle Burke of [REDACTED]
[REDACTED] New South Wales, state as follows:

1. My husband and I own and operate Glenwarrie Partnership, a mixed farming enterprise based in Tamworth. The business has been in operation since the 1980s, we are involved in poultry egg production, pullet rearing (raising day old chicks until the point of lay), cropping, feed milling and some livestock (cattle and sheep).
2. We operate a circular production model. Manure and mortalities from the chickens is composted and used as fertilizer on the farm for cropping activities. The crops we harvest are put through the feed mill for livestock feed. We crop around 2500 to 3000 acres per year, and have around 106,000 laying hens, 27,000 pullets, 800 ewes and 100 head of cattle.
3. In the business, I perform all functions relating to employment related matters, including attraction, retention, training, staff management, rostering and payroll. It is not uncommon for me to be involved in operational activities, including packing eggs, when there is shortage of workers. Being in a regional area, attracting and retaining staff is very difficult.
4. Currently, we employ ten employees in the poultry egg operation, eight of whom are casual employees. Our poultry operation requires 3 employees every day for egg packing and 2 employees working with the birds, seven days of the week. Most of the egg packing work is done by machine, the employees are mainly involved in sorting, palletising or packing into cartons and recording, maintaining and cleaning machinery. Employees working in with the poultry are involved in cleaning, manure removal, bird husbandry (welfare checks). While we would like to employ more staff, recruiting suitable workers who are willing to work has been challenging.
5. The cropping and broadacre livestock operation of the business employs 6 employees, both permanent and casual.
6. Shortages of workers across the economy is also affecting our business. It has been challenging for our business to attract and retain staff in the poultry operation. We try

- to give everyone a chance, including those with low skill base and low education. We have employed those who have been unemployed long term through employment support agencies. The literacy and numeracy skills of job applicants are generally low.
7. The people we have employed in the past have been typically those who have been unemployed for extended periods and occasionally working holiday visa holders. Initially part of the training is to develop a work ethic, i.e. to turn up to work when rostered, if unable to come to notify employer, ensure that they bring food and water for lunch.
 8. The main tasks involved in egg packing operation are sorting eggs, identification of 2nd quality eggs, candling, palletising and packing into cartons, while keeping the packing machine going, identifying problems (when they occur) with the packing machine and/or equipment and problem solving, safely using pallet jacks, and accurately recording information from the days pack. During this period the new employees need supervision all the time. When an employee achieves these competencies without constant supervision then they move up to a level 2, for some employees they have not achieved these within the first 12 months, it is for this reason that they cannot work without supervision.
 9. Ideally, we would prefer for employees employed in the poultry operation to have the skills to be transferrable between egg packing work and working with the birds. Employees who show potential receive training to undertake tasks relating to the birds, however some employees are just incapable of grasping the skills despite months of training. We currently have an employee who has just passed the 12 months service with the business. While we have elevated his pay to level 2 in accordance with the Award, his work performance is still limited to straight forward egg packing tasks with little or no discretion required. Another employee who has not progressed to palletising, although he has been there for 15 months, his limit is candling, packing boxes and some cleaning, and needs constant supervision.
 10. We provide both in-house training and external training, including bird husbandry, Egg Start, forklift license. Certain employees find formal training intimidating, especially when they are literacy and/or numeracy challenged. We have had experienced employees resigning when we've started to put them through training (usually due to low literacy levels).
 11. Although the award does not have weekend penalty rates we pay an increased wage for working on weekends to incentivise and motivate our workers.
 12. There will be costs imposed on our business should there be changes to the *Pastoral*

Award that require an automatic step up of pay after a period of experience that is shorter than 12 months.

13. It should be highlighted that in poultry egg production, we've experienced significant cost increases, from feed inputs, repairs, maintenance, fuel, electricity. Drier conditions may lead to the business having to purchase grain externally. These increases have certainly exceeded inflation, and producers like us are not in the position to pass on the full costs increases.
14. In recent times we have been adversely affected by 2 years of drought, Covid (where we lost one third of our market overnight when lockdowns occurred) and a mouse plague all of which have brought about significant losses of which we have not been able to recoup during this period.
15. Changes to the award will be another impost on our resources and may stop us from employing those with low skills, as we are not getting adequate value for the higher rate, especially considering the added time and cost of training required for these workers during their first year of employment.



Signature
Narelle Burke

Date: 30.11.2023

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (C14 Review)

STATEMENT OF RACHAEL FINCH

I, Rachael Finch of [REDACTED] Victoria make the following statement:

1. I am a retired dairy farmer, with 25 years dairy farming experience, and 8 years as a dairy human resource management consultant, located in the Gippsland region of Victoria.
2. I currently assist dairy farmers with end-to-end recruitment of employees with differing levels of experience. The current labour market frequently necessitates recruiting staff with no dairy farming experience.
3. When dairy farming, I milked 950 cows across 2 dairy farms of 855 hectares in total.
4. I employed 11 employees of various Pastoral Award 2020 classifications including a manager.

Background of FLH1 employees

5. Every season, I would employ 1 to 2 junior employees at the FLH1 classification.
6. These employees come from varying backgrounds. They may have been school leavers. They may have been older employees who want a career change in the dairy industry.
7. We would also engage casual and seasonal employees at this classification to assist us at very busy seasonal times. They would usually have no experience of working on a dairy farm and needed to be inducted into all of the basic requirements for working on a farm including farm safety, machinery and stock handling and the myriad of tasks which are part of life on a dairy farm.
8. There is an acute labour shortage of Australian workers across all classifications in the dairy industry which means that all dairy farmers are competing for the small pool of experienced dairy workers and need to engage more entry level employees than they would wish to.
9. As a result of the labour shortage backpackers fill an essential role in dairying businesses and most of them come with no prior dairying experience. These employees begin on the FLH1 classification and if they stay on, with extended visas, they will move to the FLH3 classification after 12 months learning about the farm, its systems, and what's required of its workers.

FLH1 duties generally

10. The dairy industry is a seasonal industry with tasks and duties which may vary from season to season over a year, each taking many months to master, and all of which require close supervision until competence is achieved.
11. A full 12 month period of intense supervision and training is essential to developing a basic understanding of all tasks to a level where the employee can work with a degree of self-reliance and safety without risk to their own and other employee's safety, risk to animal welfare and risk to productivity and farm income.
12. Part of the training which is undertaken in the first year is the gradual development of a basic understanding of how the various tasks and seasonal duties fit into the whole farm system and the role of the employee at the appropriate skill level. Once this is achieved the worker is ready to transition to the FLH3 classification and then from there to the higher classifications and hopefully managerial status.
13. The consequence of inexperience which is not supervised can be very costly for a dairy business so we need the full year to train up employees who are new to the industry.
14. The tasks the FLH1 will assist with performing under close supervision, will include: use and basic maintenance of plant and machinery (e.g application of milking cups, cleaning sheds and yards and learning to operate small and large farm machinery); animal care and welfare (e.g. bring cows to and from the paddock, and monitoring animal health and welfare); observing the process of mating and calving, assisting with drafting animals and care of calves which is a 12 month cycle.
15. All of this can be complex and technical so requires close supervision while developing exposure and 'learning the ropes', which takes at least a year through the production cycle.
16. Risks include health and safety of employees (especially when dealing with machinery, chemicals, and large, heavy and unpredictable animals), animal health and welfare (e.g. milk contamination, disease, etc), and consequential financial and business risk.
17. For instance, if a sick cow's milk is not kept separate from the main milking vat (because a treated cow is accidentally cupped on while milking the main herd by an unsupervised or insufficiently experienced worker) and this milk is collected by the milk company tanker with antibiotics detected in the tanker, I will be charged up to \$15,000.00 for that milk which has to be dumped.

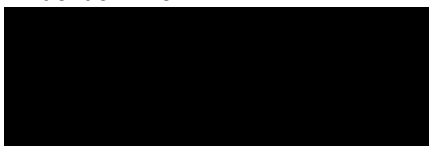
Transition from FLH1 to FLH3 and consequence of early transition

18. It is expected that by the time the FLH1 employee transitions to the FLH3 classification the employee will have developed over the first year a clear understanding of the seasonal feeding

regime including grass feeding, the making of quality hay and silage, and the use of supplement feeding with grain.

19. Once the first year had passed, we would transition the FLH1 employee to FLH 3 along with a pay rise and increased responsibilities.
20. It is critical to dairy farming businesses that the transitional period for the FLH1 employee remain at 12 months. A three month period would mean that the employee has learnt little about the operation of the dairy farm. A six month transitional period would not even enable the employee to work through a whole joining and pregnancy/calving cycle.
21. Due to labour shortages in the dairy industry, dairy farmers may at times pay above the award rate for our employees. They also work regular overtime mostly at the rate of time and a half so their take home pay is in reality greater than the minimum award rate.
22. The dairy industry has become accustomed to the classifications in the Pastoral Award 2020 since they were imposed in 2010. Any change to classifications should be done with widespread industry consultation to avoid unintended consequences and give the industry time to adapt to the changed classification and the increased cost given that many businesses engage more than one FLH1 employee.
23. I estimate that the cost to the industry of a transition from FLH1 to FLH3 after 3 months at the current award rates without including overtime payments would be \$5,585.00 per business per year for one FLH1 employee and \$33,510,000.00 annually to the dairy industry of approximately 6,000 dairy businesses. It is important to note that many businesses engage more than one FLH1 employee.
24. I estimate that the cost to the industry of a transition from FLH1 to FLH3 after 6 months at the current award rates, without including overtime payments, would be \$4,561.00 per business per year for one FLH1 employee and \$27,366,000.00 annually to the dairy industry of approximately 6000 dairy businesses. It is important to note that many businesses engage more than one FLH1 employee.
25. I know the facts above to be true unless it otherwise appears.

Rachael Finch



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Date

01/12/23

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IN THE FAIR WORK COMMISSION

Matter No.: C2019/5259

Review of certain C14 rates in modern awards

Statement of Renata Cumming

On 01 December 2023, I, Renata Cumming of [REDACTED] Victoria make the following statement:

1. I am a dairy farmer with my partner Matt Grant.
2. I have worked within the Dairy Industry both as a farmer or service provider since completing Agricultural studies at The University of Melbourne.
3. We milk 500 cows and employ 2-3 permanent employees and most of the year we employ backpackers for 3-6 month fixed term contracts.
4. My role as a service provider was in the capacity of Area Manager for milk processor Fonterra or as a private nutrition and business support consultant, where employment of staff was often discussed as part of farmers' wider businesses.

Background of FLH1 employees

5. In an average year we employ 3 backpackers to fill labour shortages and on average they stay with us for around three months
6. We have employed several high school students with no farming experience.
7. Both backpackers and school students come to us with no farming experience and need to be inducted and trained for all tasks we will employ them to complete including operating dairy plant, small and large machinery, working with cattle and all other tasks on a busy farming operation.
8. The labour shortage we are experiencing has forced us to employ people with limited experience whilst competing against other dairy farmers.
9. We believe it is fundamental for a FLH1 employee to experience an entire year on a dairy farm so they can understand the mechanics of a season which includes things like harvesting the excess feed during spring and then feeding it out during the height of summer and depth of winter when feed has stopped growing as well as the reproductive cycle of a cow with joining, pregnancy, dry off, lead feeding, calving and peak lactation. These cycles are fundamental to understanding our decision making processes and the impact it can have on the business.

FLH1 duties generally

10. The dairy industry is a seasonal industry with task that may vary at different times of the year, with many tasks requiring many months to master and requiring close supervision.
11. We believe it takes a minimum of twelve months for an employee with no farming experience to witness and learn all aspects of a full season of farming to become competent in at least the minimum skills to work on a dairy farm.

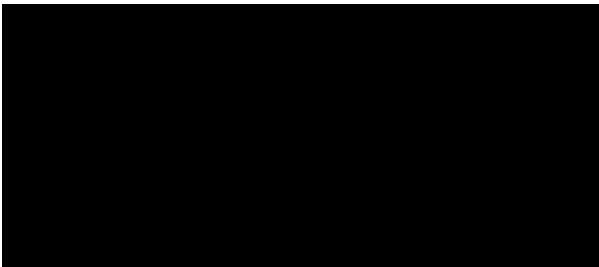
12. With many FLH1 employees having never seen a cow let alone operated farm machinery we must heavily supervise them to begin with to see what they will be capable of achieving and their aptitude for learning new skills.
13. Any new task starts with the assumption that they know nothing and that we will have to explain not only how to do something but why we do it and the impact on other tasks.
14. For example, they need to be aware of a specific sound they must listen for when they run the dairy wash for the milking plant that shows the wash is operational because if they do not hear that sound the wash is not working properly and can cause milk quality issues that our business can be financially penalised for. It is also not good food handling practice.
15. Training up an employee with no experience is costly for our business because of the level of supervision and training required. We do not take on this role lightly and will only advance an individual's training when we deem them competent and capable enough to advance as if we advance them too quickly it can have costly consequences.
16. Safety of the individual and all others within our business is of paramount importance and we must ensure at all times during a training period that an individual is not taking any risks and is not completing a task they are not capable of achieving. This must be done through observation because some individuals believe they are more capable than they in fact are and are not aware of the risk they may be taking or consequences of those risks.
17. Throughout the year the tasks required of a FLH1 employee include but are not limited to operating small and large farm machinery, bringing the cows to the dairy from the paddock, setting up the dairy, applying the cups whilst keeping an eye on the movements of the animals around them, monitoring for health issues in the animals, cleaning the dairy, yards and other machinery, setting up calf pens, training calves to drink milk, feeding calves, setting up gates and paddocks for animals to move around the farm, reporting issues with fences, troughs, machinery, feeding cows using heavy machinery, etc.

Transition from FLH1 to FLH3 and consequence of early transition

18. It is expected that by the time the FLH1 employee transitions to the FLH3 classification the employee will have developed over the first year a clear understanding of the seasonal feeding regime including grass feeding, the making of quality hay and silage, and the use of supplement feeding with grain.
19. An FLH3 employee would be expected to be competent enough to erect fences and gates and set up a temporary strip grazing fence, while an FLH1 would only be expected to set up gates and roll up temporary strip fences whilst learning how to make small repairs and understand how to set up temporary strip fences.
20. Once an FLH1 transitions to a FLH3 there is an expected base knowledge they will have and they will be rewarded with a pay increase.
21. It is important that an employee does not prematurely advance particularly if they apply for a new job on a different farm believing they are an FLH3 when in fact they are still

an FLH1 which may mean their new employer believes they are employing someone more competent so they are not only paying above what is reasonable but there is a significant safety risk because they will expect this individual to be more capable and competent than they in fact are.

22. As employers we are quite happy to provide a pay increase to individuals who are showing exceptional promise ahead of a planned pay increase, but this does not mean they have necessarily moved from a FLH1 to FLH3, simply that we believe in them and want to financially reward their skill, work ethic and attitude.
23. Due to labour shortages in the dairy industry I and other dairy farmers may at times pay above the award rate for our employees. They also work regular overtime at the rate of time and a half so their take home pay is in reality greater than the minimum award rate.
24. The dairy industry has become accustomed to the classifications in the Pastoral Award 2020 since they were imposed in 2010. Any change to classifications should be done with widespread industry consultation to avoid unintended consequences and give the industry time to adapt to the changed classification and the increased cost given that many businesses engage more than one FLH1 employee.
25. We estimate that the cost to the industry of a transition from FLH1 to FLH3 after 3 months at the current award rates without including overtime payments would be \$5,585.00 per business per year for one FLH1 employee and \$33,510,000.00 annually to the dairy industry of approximately 6,000 dairy businesses.
26. I estimate that the cost to the industry of a transition from FLH1 to FLH3 after 6 months at the current award rates, without including overtime payments, would be \$4,561.00 per business per year for one FLH1 employee and \$27,366,000.00 annually to the dairy industry of approximately 6000 dairy businesses.
27. It is important to note that many businesses engage more than one FLH1 employee, so the cost is likely to be greater for many businesses.
28. The increase in pay may not seem significant but in some years where cashflow is extremely tight we may simply not be able to pay a FLH1 employee at the FLH3 rate. This may then affect retention rates.
29. I know the facts above to be true unless it otherwise appears.



Renata Cumming

IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of certain C14 rates in modern awards (C14 Review)

STATEMENT OF STEPHEN TULLY

I, Stephen Tully of [REDACTED] Queensland make the following statement.

1. I have been working in the Sheep and Wool Industry for 37 years, the last 25 years of which as as the owner and manager of a sheep, wool, goat and cattle operation in the Quilpie district of south-west Queensland.
2. We have 10 000 merino sheep for production of wool and meat, 10 000 rangeland goats for meat and a 300 head breeding beef cattle herd. Extensive grazing production is carried out on 78 000 ha with individual paddocks ranging in size from 2 000 ha to 12 000 ha.
3. We have installed and maintain an extensive pipe and trough system of 100 km for the purpose of watering livestock.
4. We install approximately 20 km of new fencing a year and maintain 250 km of fences.
5. We carry out all mechanical work and servicing of vehicles and plant.
6. I have employed nine employees for approximately three years each over the last 25 years and currently employ one full-time employee.
7. I generally employ young people with very limited skills and train them over 3 years before assisting them to gain further employment.
8. Most of these employees have come from large regional towns and straight out of school or one year in basic employment in various areas other than in the Pastoral Industry.
9. FLH1 entry level employees with no experience in the industry have to be directly supervised for the first 12 months of work.
10. A major factor to be taken into account is workplace health and safety. Every task on a farm is potentially dangerous. For example, in the first stage of employment employees have to be taught ride a motor bike and to be familiar with the property. [REDACTED] is 78,000 ha and paddocks range in size from 2000 ha to 12000 ha. Teaching them to ride safely, make sensible decisions, take note of their surroundings, having sufficient water and fuel etc., are all time consuming. Basic vehicle maintenance is also taught during this initial stage of employment.
11. The next stage is teaching them how to handle stock which involves safety aspects and best animal welfare and husbandry practices.
12. Stock work is about animal welfare and low stress. FLH1 employees are taught low stress stock handling.
13. Yard work involves drafting up to 10 000 thousand sheep and basic instruction includes how to work with dogs, where to walk/stand and why.
14. We have approximately 10 000 rangeland goats. These animals are very unforgiving and one mistake can set you back hours. We teach the why and how to do it better.

Cattle can be aggressive and dangerous. Employees at FLH1 level are taught how to keep cattle calm and what to do if they do become aggressive.

15. Lamb marking referred to at paragraph 18 is a range of sheep animal husbandry procedures including tail docking, castration of males, ear marking, ear tagging, and vaccination.
16. Tasks taught and carried out at a basic level by FLH1 employees include fencing construction and maintenance, checking and maintenance of water points for animals, livestock processing, yard work, low-level maintenance of vehicles and plant, chainsaw operation, working with tools and equipment etc. and safe use of chemicals.
17. All of the skills associated with these tasks are not taught in blocks but are accumulated over a period of 12 months before full proficiency is achieved.
18. This is because the farming cycle involves different operations being carried out over a 12 month period.
19. Major periods of work activities throughout the year include shearing, lamb marking, crutching, branding, weaning, and mustering livestock for sales and are usually scheduled as follows:-

• February	Crutching sheep	3 weeks
• February/March	Branding cattle	2 weeks
• March	Mustering sheep for shearing	3 weeks
• April	Shearing sheep	3 weeks
• May/June/July	Work associated with sheep and goat sales	8 weeks
• August	Weaning cattle	1 week
• October	Lamb marking	4 weeks

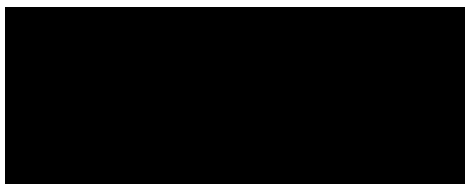
Goats are also mustered over the year which involves a total of approximately 4 weeks.

The timing of all these events are subject to change mainly due to climatic conditions.

20. An FLH1 employee with no experience cannot be exposed to the full range of work activities carried out and consequently gain required skills in a period of less than 12 months, and certainly not over a period of, for example, 6 months.
21. All employees regardless of experience, are provided free of charge with on-property air-conditioned accommodation and electricity (valued at \$150 per week), meals (valued at \$150 per week), fuel (valued at \$100 per week) with a total value of \$300 per week.

STEPHEN TULLY

1 DECEMBER 2023



STEPHEN TULLY

Fair Work Act 2009

FAIR WORK COMMISSION

s. 157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective – Review of certain C14 rates in modern awards

C2019/5259

Australian Rail Tram and Bus Industry Union Outline of Submissions

Overview

1. The Australian Rail Tram and Bus Industry Union makes the following submission in response to the statement issued by the Fair work Commission on 22 September 2023 (September Statement)
2. The Expert Panel conclusions in the Annual Wage Review Decision 2022-2023 (AWR 2023 decision) have necessarily required a refocusing of the objective the review initially commenced.
3. The September Statement identified that it would be necessary to consider the following:
 - a. Consider more closer awards that were previously excluded from the view on the basis that they contained only transitional C14 rates.
 - b. Undertake an assessment in the review of all classifications rates in modern award that fall below the C13 level but are higher than the C14
 - c. Propose to include modern enterprise awards and state reference public sector modern awards into the review
4. At paragraph [8] of the September 2023 Statement, the Full Bench set out directions inviting interested parties to file
 - a. submissions in respect of the provisional view stated in paragraph [8]

above;

- b. submissions as to the accuracy of the table at Attachment D;
- c. draft determinations or proposals for any specific award variations that might be necessary; and
- d. evidence upon which they intend to rely;

by no later than Friday, 3 November 2023

RTBU's Response

a. provisional view stated in paragraph [8] above;

- 5. The RTBU has an interest in the *Rail Industry Award 2020* (Rail Award)
- 6. The RTBU agrees with the provisional views expressed by the Full Bench in the September Statement at paragraph [8].
- 7. However, while we agree that transition period should not exceed six months, we are of the view that it is more appropriate for the transition period to not exceed 1 month for the purposes of the Rail Award for the following reasons.
- 8. Level 1 Rail Operations is competency based and employees at that level undertake and successfully complete standard induction training.
- 9. Level 1 Technical and Civil Infrastructure (TCI) is also competency based and employees at this level undertake structured training to enable them to work within the confines of this level.
- 10. Undertaking standard induction or structured training consists for both classifications of the following requirements general requirements:¹
 - a. General Construction Industry Induction Card (White Card) (Mandatory)
 - b. Safely Access the Rail Corridor Course (Previously known as RISI)
(Mandatory)

¹ Talbot Statement, paragraph [12]

c. Current Railway Medical (Mandatory)

11. An employee can complete their White Card and Safely Access the Rail Corridor course through a training course. There are multiple Registered Training Organisations (RTO) that provide for one day training². There is even an RTO that provides training that includes Railway Medical, Safely Access to the Rail Corridor and White Card training to be completed all on the same day.³
12. Then an employee is required to undertake a rail medical which consists of attending an appointment with a medical practitioner.
13. The RTBU is aware that there are Rail Operators who provide for as little as 80 hours for entry level training to be completed.⁴ This shows that entry level training can be obtained quickly.⁵
14. It is clear that the rail operations level 1 classification appears to have only intended to apply where an employee is undertaking basic standard induction training. Although there is no fixed outer limit on the duration that an employee can remain in these classifications, an employer would seemingly contravene the award if an employee was paid at the Level 1 rates after completing basic competency training. However, the lack of clarity on the transitional period does not represent a safe and relevant safety net for those employees.
15. The TCI level 1 classification is not currently a transitional level, and the applicable wage rate sits below the C13 rate of pay but is higher than the C14 rate.
16. Regard must always be had to a 'stepping stone' effect. Low-paid employment is often temporary and can act as a 'stepping stone' to higher-paid work. A

² Ibid, [14] – [15]

³ Ibid, [17]

⁴ Ibid, [18]

⁵ Ibid, [13]

classification with no transitional period undermines the ability of employees to progress and be appropriately remunerated for their increased capacity and proficiency

17. Therefore, the RTBU is of the view that defined transitional period should be no more than 1 month given that the entry level training that is required to be able to work within the confines of the respective level 1 classification in the Rail Award can be undertaken within a day.

b. Accuracy of the table at Attachment D

18. The RTBU can confirm the accuracy of the list of awards is accurate regarding the Rail Award.

Proposal

19. In light of the above, the RTBU proposal to vary the classifications in Schedule A is as follows

Operations Classifications

Level	Task and function
1	<p>Employees at this level undertake and successfully complete standard induction training <u>within the first month of employment. On completion of the required induction training the employee will be reclassified to level 2. Employees at Level 1 will be required to</u></p>
	<ul style="list-style-type: none"> • Be responsible for personal safety and use the protective equipment provided to perform work safely. • Undertake a range of functions with a basic knowledge of policies, procedures and guidelines using a sound level of skill to perform the functions. • Perform routine customer service, presentation and operations duties requiring minimal judgment. • Undertake tasks with direct supervision and guidance.

Technical and Civil Infrastructure Classification

Level	Task and function
1	<p>An employee at this level performs routine duties essentially of a manual nature and to the level of their training. <u>An employee cannot remain at level 1 for longer than 1 month. An employee at level 1 will be required to undertake duties that include:</u></p>
	<ul style="list-style-type: none">• Performing general labouring and cleaning duties.• Exercising minimal judgment.• Working under direct supervision.• Undertaking structured training so as to enable them to work at a Level 1.• Observes and applies all relevant rules, regulations, and instructions including attendance policies and instructions, rostered hours, wearing protective clothing, footwear and equipment, and safety and safeworking notices or instructions.

On behalf of the Australian Rail Tram and Bus Industry Union

Minna Davis

RTBU National Industrial Officer

3 November 2023

Fair Work Act 2009

FAIR WORK COMMISSION

s. 157 – FWC may vary etc. modern awards if necessary to achieve modern awards

objective – Review of certain C14 rates in modern awards

C2019/5259

Witness Statement of Gary Talbot

I Gary Talbot of 5.01/377-383 Sussex Street Sydney NSW 2000, National Manager, Industry Skills and Standards of the Rail, Tram and Bus Union affirm:

1. In or about 1985 I became a linesman for State Rail Authority
2. In or about 1987 I became a workplace representative for the Australian Rail, Tram and Bus Industry Union (RTBU)
3. In or about 2000 I became an Organiser for the New South Wales Branch of the RTBU
4. In or about 2010, I became National Organiser for the RTBU
5. In or about 2022, I became National Manager, Industry Skills and Standards for the RTBU
6. As a National Organiser, I was responsible for negotiating national and state rail enterprise agreements. I negotiated approximately 12 agreements per year.
7. In my current role, I am responsible for overseeing skills, national qualifications, and competencies in the rail industry.
8. Throughout my time bargaining for enterprise agreements, I gained an in depth understanding of the nature of work required for the different classifications under the Rail Industry Award 2020 (Rail Award)

9. Under the Rail Award, Level 1 Rail Operations Classification is competency based. Level 1 Rail Operations employees must undertake and successfully complete standard induction training.

10. In order to successfully complete standard induction training employees are required to undertake and complete the following:

- a. General Construction Industry Induction Card (White Card)
(Mandatory)
- b. Safely Access the Rail Corridor course (Previously known as RISI)
(Mandatory)
- c. Current Railway Medical (Mandatory)

11. Under the Rail Award, Level 1 Technical and Civil Infrastructure Classification (TCI) is competency based. Level 1 TCI employees must perform routine duties essentially of a manual nature and to the level of their training. This consists of undertaking structured training to enable them to work at a level 1.

12. Structured training at level 1 consists of the following:

- a. General Construction Industry Induction Card (White Card)
(Mandatory)
- b. Safely Access the Rail Corridor course (Previously known as RISI)
(Mandatory)
- c. Current Railway Medical (Mandatory)

13. All of the above competencies are easy to learn and can be obtained quickly.

14. I am aware of the following registered training organisations (RTO) that provide one day training to obtain a Safely Access the Rail Corridor course.

- a. Urban Rail Safety
- b. GoTrain

c. Pinnacle Safety

15. I am aware of the following RTO's that provide one day training to obtain a White Card

a. EOT Express Online Training

b. TCP Training

c. Edway Training

16. Obtaining a current Railway medical consists of attending an appointment with a doctor.

17. I am also aware that the RTO Training Ahead Australia provide a single day of training that includes Railway Medical, Safely Access to the Rail Corridor and White Card training.

18. I previously negotiated an Enterprise agreement for Taylor Rail that stipulated a timeframe of 80 hours to successfully complete entry level training along with site familiarity before transitioning to a higher classification (Annexure GTI)

19. I believe the contents in this statement are true and correct to the best of my knowledge.

Gary Talbot

3 November 2023

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259

Review of certain C14 rates in modern awards

SUBMISSIONS OF THE UNITED WORKERS UNION

1. These submissions are made pursuant to the Statement published by Full Bench on 22 September 2023 (**the September 2023 Statement**).
2. In the September 2023 Statement, the Full Bench proposed extending the scope of review to take into account matters raised during the *Annual Wage Review Decision 2022-2023* (**AWR 2023 decision**).
3. Specifically, the Full Bench has proposed to expand the scope of review as follows:
 - (a) By revisiting awards that had initially been excluded from the review, to consider whether those awards containing classifications at the C14 level are genuinely transitional in nature consistent with the AWR 2023 decision; and
 - (b) Through the inclusion of modern enterprise awards and State reference public sector modern awards in the review that contain minimum rates below the C13 level.
4. Taking into account the extended scope of review, the United Workers Union (**UWU**) has an interest in the following modern awards being considered for review:
 - (a) *Amusement, Events and Recreation Award 2020*;

Lodged by

The United Workers Union

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- (b) *Animal Care and Veterinary Services Award 2020;*
- (c) *Cemetery Industry Award 2020;*
- (d) *Children's Services Award 2020;*
- (e) *Corrections and Detention (Private Sector) Award 2020;*
- (f) ***Dry Cleaning and Laundry Industry Award 2020¹;***
- (g) *Fitness Industry Award 2020;*
- (h) *Food, Beverage and Tobacco Manufacturing Award 2020;*
- (i) ***Funeral Industry Award 2020²;***
- (j) *Horticulture Award 2020;*
- (k) *Hospitality Industry (General) Award 2020;*
- (l) *Manufacturing and Associated Industries and Occupations ASward 2020;*
- (m) *Miscellaneous Award 2020;*
- (n) *Nurses Award 2020;*
- (o) *Oil Refining and Manufacturing Award 2020;*
- (p) *Racing Clubs Events Award 2020;*
- (q) *Racing Industry Ground Maintenance Award 2020;*

¹ UWU has filed a joint proposal along with AWU, CFMMEU, DIA and ABI in relation to the Dry Cleaning and Laundry Industry Award on 5 December 2022, with further joint submissions filed in relation to this award on 3 November 2023.

² UWU has filed a joint proposal along with AWU, AFDA and ABI in relation the Funeral Industry Award 2020 on 8 December 2022.

- (r) *Registered and Licensed Clubs Award 2020;*
- (s) *Restaurant Industry Award 2020;*
- (t) *Supported Employment Services Award 2020; and*
- (u) *Wine Industry Award 2020.*

5. Directions issued in the September 2023 Statement invited interested parties to file:
 - (a) Submissions in respect of the provisional view stated in paragraph [8] of the September 2023 Statement;
 - (b) Submissions as to the accuracy of the table at Attachment D;
 - (c) Draft determinations or proposals for any specific award variations that might be necessary; and
 - (d) Evidence upon which the party intends to rely.
6. These submissions address directions (a) and (b) above, with draft determinations or proposals to be provided at a later date pursuant to the extension granted on 3 November 2023.

The Provisional View

7. Uwu supports the provisional view of the Full Bench expressed at paragraph [8] of the September 2023 Statement. Specifically, Uwu supports the view that:
 - (a) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
 - (b) Any classification rate in a modern award which is below the C13 rate should be entry-level only and operate for a limited period of time, with a clear transition to

the next classification rate in the award and that such transition should not exceed six months.

Accuracy of the table at Attachment D

8. Uwu has not identified any errors in the table contained in Attachment D.

**Filed on behalf of the
United Workers Union
3 November 2023**

IN THE FAIR WORK COMMISSION

Matter No: C2019/5259

Review of certain C14 rates in modern awards

SUBMISSIONS OF THE UNITED WORKERS UNION

1. These submissions are made pursuant to the Statement published by Full Bench on 22 September 2023 (**the September 2023 Statement**).
2. The United Workers Union (**UWU**) has an interest in a number of awards subject to the extended scope of review, as outlined at paragraph [4] of our submission of 2 November 2023.
3. UWU makes the following proposals in relation to each award in which it has an interest.

Awards where competency is required to progress

4. There are a number of awards where the introductory or trainee classification is paid at a rate between the C13 and C14 rate, with the subsequent classification level requiring attainment of a certain level of competency, a certificate, qualification or age requirement.
5. These awards are:
 - (a) *Cemetery Industry Award 2020*
 - (b) *Nurses Award 2020*

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(c) *Oil Refining and Manufacturing Award 2020*

(d) *Wine Industry Award 2020*

6. In relation to the above awards, UWU proposes that the introductory classification rate be increased to the C13 rate. This proposal avoids the need to amend the subsequent classification levels by removing or varying the certificate, competency or age requirements.
7. Similarly, the rate of pay for Level 1 – Children’s Services Employees and Level 1 – Support Worker under the *Children’s Services Award 2020* should be increased to the C13 rate, noting that both classifications permit an employee to remain at that level for up to 12 months.

Awards where employee can agree to extend the introductory classification

8. There are certain awards where the introductory classification level requires that an employee undergo up to three months of training prior to progression and the employee and employer may agree to extend that period for a further three months.

9. Those awards are:

(a) *Corrections and Detention (Private Sector) Award 2020*

(b) *Hospitality Industry (General) Award 2020*

(c) *Racing Clubs Events Award 2020*

(d) *Racing Industry Ground Maintenance Award 2020*

(e) *Registered and Licensed Clubs Award 2020*

(f) *Restaurant Industry Award 2020*

10. In relation to these awards, UWU proposes that they should be varied such that the ability to agree to an extension of the training period be removed and an additional line added to each of the introductory classifications as follows:

An employee will progress from the introductory level to level 1 after 3 months.

Other proposals

11. UWU does not propose any variation in relation to the following awards:

(a) *Miscellaneous Award 2020*

(b) *Supported Employment Services Award 2020*

12. The above awards require transition from the introductory level to the subsequent level after three months of employment and as such appear to comply with the *provisional view*.

13. UWU has had an opportunity to consider the submissions of the Australian Workers Union (**AWU**) dated 3 November 2023, and supports the proposals of the AWU in relation to the following awards:

(a) *Amusements, Events and Recreation Award 2020*

(b) *Animal Care and Veterinary Services Award 2020*

(c) *Fitness Industry Award 2020*

(d) *Food, Beverage and Tobacco Manufacturing Award 2020*

(e) *Funeral Industry Award 2020*

(f) *Horticulture Award 2020*

(g) *Racing Clubs Events Award 2020*

(h) *Racing Industry Ground Maintenance Award 2020*

(i) *Registered and Licensed Clubs Award 2020*

(j) *Wine Industry Award 2020*

Dry Cleaning and Laundry Industry Award 2020

14. A joint submission has been filed by the Drycleaning Institute of Australia, Laundry Association Australia, Australian Business and Industrial and the NSW Business Chamber (**ABI and NSWBC**), Construction, Forestry, Mining and Energy Union (Manufacturing Division) (**CFMMEU-MD**) and the AWU. UWU relies on the Joint Submission with respect to the *Dry Cleaning and Laundry Industry Award 2020*.

Filed on behalf of the

United Workers Union

10 November 2023