



DECISION

Fair Work Act 2009

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

Review of C14 and C13 rates in modern awards

(C2019/5259)

JUSTICE HATCHER, PRESIDENT
DEPUTY PRESIDENT HAMPTON
COMMISSIONER DURHAM

SYDNEY, 16 APRIL 2024

Introduction

[1] This Review is concerned with modern awards containing a rate of pay at the ‘C14’ level (currently \$859.30 per week or \$22.61 per hour), or below the ‘C13’ level (currently \$882.80 per week or \$23.23 per hour), which applies other than on a transitional basis. ‘C14’ and ‘C13’ are, respectively, the lowest and second-lowest classification/pay levels in the *Manufacturing and Associated Industries and Occupations Award 2020*¹ (Manufacturing Award). In a process which was initiated in the *National Wage Case August 1989*² and most recently described in the *Aged Care work value case Stage 3 decision*,³ the key classifications and rates of pay in most federal awards were aligned with their deemed equivalents in the classification structure of the then *Metal Industry Award 1984* (Metals Award), a predecessor of the Manufacturing Award. From March 1990, the classification structure in the Metals Award consisted of 14 classifications, numbered from C14 to C1. This classification structure remains in the Manufacturing Award today (except that no rate is specified for the C1 classification). At all times since its inception the C14 classification has been transitional in nature, applying only while the employee is being trained to perform work at the C13 level (as explained later in this decision). The C13 classification is the lowest classification which may be applied on an ongoing basis.

[2] The Review had its origin in the *Annual Wage Review Decision 2018–19*,⁴ in which the Expert Panel considered a proposal advanced by the ACTU and another organisation to lift the C14 rate to a level above 60 per cent of median wages (the notional poverty line). A significant part of the context in which this occurred was that, from 1997, the Federal Minimum Wage (FMW) under the *Workplace Relations Act 1996* (Cth) and the National Minimum Wage (NMW) under the *Fair Work Act 2009* (Cth) (FW Act) were set at the same amount as the C14 rate. The Expert Panel rejected the proposal and, in doing so, stated:

[337] Regard must also be had to a ‘stepping stone’ effect. Low-paid employment is often temporary and can act as a ‘stepping stone’ to higher-paid work. Almost two-thirds of workers who enter low paid employment leave within one year and most move into higher paid work. The C14 (or NMW) rate of \$719.20 per week only features in 45 of the 122 modern awards (details of which are set out in Appendix 1). In 39 of those modern awards it is a transitional

rate from which employees progress after a period. For example, the *Hospitality Industry (General) Award 2010* provides for an introductory classification at the C14 rate:

‘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 three 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 three 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 three months is required for the employee to achieve competence for movement to level 1.’

[338] In 8 of those modern awards the transition to a higher rate occurs after 38 hours of induction training. In 18 of those modern awards the transition occurs after 3 months and the remaining 13 modern awards in which the NMW rate is transitional either other periods are specified or the relevant classification appears to be transitional but no particular period is specified.

[339] It follows that, for a proportion of the employees in the households which are the focus of the ACTU and ACBC submissions, the wage earner is likely to be transitioning through the C14 wage rate into a higher classification level.

[340] In the remaining 6 modern awards containing a C14 (or NMW) rate, the related classification is not a transitional level. It is not clear why these 6 modern awards prescribe a rate at this level, which is not a transitional rate. This is an issue which should be the subject of further examination in the current 4 yearly Review of modern awards.

[341] We would also observe that the remaining 77 modern awards only provide for wage rates above the C14 or NMW rate.

[3] Following the above decision, the then President of the Commission, Justice Ross, issued a Statement on 28 August 2019⁵ announcing ‘the review of modern awards which have classification rates at the C14 level which are either not transitional rates or where the transition period is not specified’.⁶ Fourteen awards were identified as containing classification rates of this description and were therefore to be referred to a Full Bench for review.⁷ Following a consultation process with the parties conducted by Deputy President Hampton, five of the 14 awards were excluded from further review on the basis that variations were not considered necessary. Because of the amalgamation of two of the awards and a variation to another award, only seven awards then remained the subject of the Review. The Deputy President continued the consultation process with interested parties to attempt to resolve consensually the position in the remaining seven awards. On 5 April 2023, the Deputy President provided a report to the Full Bench⁸ setting out the outstanding awards and issues in contention, 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 by reference to the Deputy President’s report.

[4] However, the *Annual Wage Review Decision 2022–23*⁹ (*AWR 2023 decision*) published on 2 June 2023 led to a change in the focus of the Review. In the *AWR 2023 decision*, the Expert Panel traced the history of the FMW and the NMW and said:

[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 ‘[u]p 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.

[5] The Expert Panel went on to say:

[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...

[6] The Expert Panel determined that, as an interim step, the NMW should be realigned with the C13 classification rate.

[7] In light of the above aspects of the *AWR 2023 decision*, the (then differently constituted) Full Bench in this matter issued a statement on 22 September 2023 (September statement) in which it expressed the following provisional view:

[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.

[8] The September statement also identified the need to widen the scope of the Review in three respects:

- (1) Closer consideration of the 43 awards listed at Attachment A to the September statement, which included the five awards earlier excluded from consideration in the Review, was required in order to ensure that the C14 rates therein were

genuinely transitional in nature consistent with the Expert Panel's statement in the *AWR 2023* decision.

- (2) An assessment of all classification rates in modern rates that fall below C13 but are higher than C14 was also required. A list of 14 modern awards in this category was contained in Attachment B to the September statement.
- (3) The Review would also include modern enterprise awards and State reference public sector modern awards. The 13 awards in this category with rates below C13 were listed in Attachment C to the September statement.

[9] The September statement included, in Attachment D, a table setting out all 101 classifications in 70 awards which prescribed rates below the C13 level and expressing a provisional view as to whether in each case the rate was transitional in nature. These provisions were divided into the following five categories:

- (i) transition to a higher classification level occurs after 38 hours' induction training;
- (ii) transition occurs after three months;
- (iii) the classification is transitional but a period other than three months is specified;
- (iv) the classification appears to be transitional, but no particular transition period is specified;
- (v) the classification is not transitional.

[10] Each of these categories identified the minimum period of training or service required to be undertaken at the classification before progression to the C13 rate or higher. However, for some awards, it was not clear whether an employee would automatically progress on completion of the period specified. For instance, some awards specify the requirement for a further period of structured training or the attainment of a specific competency before progression to the next level, which could pose a barrier to advancement, even after the specified timeframe has elapsed.

[11] The September statement made directions concerning the filing of submissions in respect of the provisional view in paragraph [8] of the statement and the accuracy of the table in Attachment D. The directions also provided for the filing of draft determinations or proposals for any specific award variations that might be necessary and evidence upon which any party sought to rely.

[12] The matter was the subject of a hearing before us, constituted as an Expert Panel for the Care and Community Sector, on 18 and 19 December 2023 in relation to all issues in contest arising from the September statement. This decision determines those contested issues. They fall into two categories: *first*, whether the provisional view stated in paragraph [8] of the September statement should be confirmed and, *second*, issues about how specific awards should be varied to give effect to the provisional view if confirmed.

Should the provisional view be confirmed?

Parties' positions

[13] The following organisations filed submissions supporting, or not opposing, the provisional view:

- the Australian Meat Industry Council (AMIC);
- the Australasian Meat Industry Employees' Union (AMIEU);
- the Association of Professional Engineers, Scientists and Managers, Australia (APESMA);
- the Australian Rail Tram and Bus Industry Union (RTBU);
- The Australian Workers' Union (AWU);
- the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU);
- the Construction, Forestry and Maritime Employees' Union (CFMEU);
- the Housing Industry Association (HIA);
- Master Builders Australia (MBA);
- the Motor Trades Organisations¹⁰ (MTOs); and
- the United Workers' Union (UWU).

[14] The following organisations filed submissions opposing the provisional view:

- Australian Business Industrial and New South Wales Business Chamber Ltd (ABI/BNSW);
- the Australian Fresh Produce Alliance (AFPA);
- The Australian Industry Group (Ai Group); and
- the Australian Manufacturing Workers' Union (AMWU).

[15] In addition, the National Farmers' Federation (NFF), while not expressing outright opposition to the provisional view, submitted that the approach proposed would be 'premature' in the absence of an in-depth analysis in each industry affected.

Submissions opposing the provisional view

[16] In their submissions, ABI/BNSW rejected the first principle in the provisional view as a general proposition. They submitted that while it is uncontroversial that the C14 classification in the Metals Award, which was continued into the current Manufacturing Award, was intended as an entry-level classification and not designed to be ongoing, this is not true for all C14 classifications across the awards system. ABI/BNSW submitted that some awards have developed over time to contain C14 classifications which are clearly not transitional. Minimum wages in modern awards should reflect the value of work undertaken by the relevant employees which might mean, in some instances, that it is appropriate for a modern award to contain a classification below the C13 rate that applies on an ongoing basis.

[17] ABI/BNSW traced the origin of the first principle of the provisional view to the *AWR 2023 decision* which, they submitted, made a range of observations about the C14 classification, but contained little consideration of the C13 classification, its role, or historical development.

To the extent that proposition proceeded on the basis that, because the C13 classification is the lowest classification applicable to ongoing employment in the majority of current modern awards, then that should be the case for all modern awards, ABI/BNSW opposed that view. For the same reasons, ABI/BNSW opposed the second principle. As to the third principle, ABI/BNSW submitted that there was no apparent rationale for six months being the proposed maximum transition period, and that progression within a classification structure would naturally depend on the induction/training/qualification requirements of the relevant industry or occupation and so should be considered having regard to the unique features of that particular industry or occupation. Where a classification structure is competency-based, the Commission should avoid placing an artificial temporal constraint on classification structures.

[18] The AFPA's submission specifically addressed the *Horticulture Award 2020*¹¹ (Horticulture Award) and the *Nursery Award 2020*¹² (Nursery Award). This submission is considered in the specific context of these awards later in this decision.

[19] The Ai Group submitted that the reasoning in the *AWR 2023 decision* upon which the provisional view was based misapprehended the operation of the C14 classification as it applies to the Manufacturing Award and previously to the Metals Award. It submitted that while the C13 classification applies to an employee who has completed up to three months' structured training, and the C14 classification includes reference to an employee undertaking structured training so as to enable them to work at the C13 level, the Manufacturing 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, the Ai Group submitted, perform work at the C14 classification indefinitely because an employee at that level may also be allocated 'routine duties essentially of a manual nature' or 'general labouring and cleaning duties'. It also submitted that it is not clear that the C14 rate in other awards was necessarily intended to be transitional in nature. In addition, the adoption of the C13 rate as the lowest rate for ongoing employment was not justified because, unlike employees to whom the NMW applies, award-covered employees on the C14 rate were entitled to a range of additional award benefits such as weekend penalty rates, overtime penalty rates, shift loadings and allowances (as observed in paragraph [108] of the *AWR 2023 decision*).

[20] The Ai Group also submitted that the consequences of the second principle in the provisional view were unclear, since it might result in employees being paid at the C13 rate while still performing C14 duties or alternatively require new employees to be continually engaged at the C14 level because of the incapacity to keep employees performing duties at that level beyond a restricted time period, and would lead to increased employment costs. The six-month time period proposed in the third proposition was, it was submitted, arbitrary, and any such time period should be determined on an award-by-award basis.

[21] The AMWU's opposition to the provisional view was confined to the maximum six-month period proposed in the third principle. It submitted that the C14 rate is not a probationary rate but is rather designed for initial training within the workplace and should only apply for an induction period which, ideally, should be no longer than 38 hours. It also submitted that the C13 classification 'should also properly be seen as' only a transitional classification. In support of its position, it relied upon a witness statement made by Paul Baxter, the National Co-ordinator Skills and Training for the AMWU and the AMWU's representative on the Manufacturing Industry Skills Alliances, which is the Jobs and Skills Council for the industry

and has responsibility for the development of the Manufacturing and Engineering Training Package (MEM). Mr Baxter, who was not required for cross-examination, said the following in his statement concerning the classification structure in the Manufacturing Award:

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.

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.

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.

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.

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.¹³

Consideration

[22] The C14 rate has, since the *National Wage Case August 1989*, played a significant role in the federal award system. In the manner explained in detail in the *Pharmacy Industry Award decision*,¹⁴ the *Aged Care work value case Stage 1 decision*¹⁵ and the *Aged Care work value case Stage 3 decision*,¹⁶ the classification structure in the Metals Award was assigned a central role in the award system whereby, in respect of key classifications, it served as the anchor point for relativities across the award system. This became entrenched to the extent that, in the *Paid Rates Review decision* of 1998,¹⁷ the proper fixation of minimum rates in federal awards required an examination of whether they equated to ‘rates in other awards which have been adjusted in accordance with the August 1989 approach with particular reference to the current rates for the relevant classifications in the [Metals Award]’.¹⁸ One of the anchor points established by the *National Wage Case August 1989* was the C14 classification (then described as ‘Metal industry worker, grade 1’), which was initially set at a relativity of 72–76 per cent of the tradesperson’s rate¹⁹ (and was subsequently set at 78 per cent²⁰). That the C14 classification was intended to be the lowest adult rate in the federal award system (leaving aside the position of employees with disability) was recognised in the *Safety Net Review — Wages — April 1997*

decision²¹ when the AIRC determined to equate the FMW with ‘the minimum classification rate in most federal awards; that is, the rate of the C14 classification in the [Metals Award]’.²² The AIRC said that this approach would lend ‘industrial realism’²³ to the FMW because it was linked to the classification established as a result of the *National Wage Case August 1989*, which decision had led to ‘the C14 rate in the [Metals Award] becoming the minimum classification rate in most federal awards’.²⁴

[23] The classification definitions for the C14 and C13 classifications in the Manufacturing Award (contained in clauses A.4.3 and A.4.4) are 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.

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.

[24] The text of the above classification definitions has not changed in substance since their introduction in 1991. On a plain reading of clause A.4.3(a)(i), an ‘Engineering/Manufacturing Employee—Level I’ at the C14 level is, by definition, an employee who is ‘undertaking up to 38 hours induction training’. An employee who is not undertaking such training therefore cannot be classified as this level. It may be accepted that undertaking such training does not need to be the sole function of an ‘Engineering/Manufacturing Employee—Level I’ and that such employees may also be allocated the basic manual duties specified in clause A.4.3(a)(ii) and required to undertake the structured training necessary to work at the C13 level. However, there is no basis to read the clause in the way proposed by the Ai Group so that, for example, a person may indefinitely be engaged to perform cleaning duties and paid at the C14 level. The classification is that of ‘Engineering/Manufacturing Employee’, which is not apt to describe a permanent cleaner or labourer, and the training requirements of the classification definition make it clear enough that this is an entry-level classification in which employees without qualifications or experience may be placed until they have a sufficient level of training to perform engineering/manufacturing functions at higher classification levels.

[25] Mr Baxter’s witness statement confirms that this is the way the industry applies the C14 classification in practice. We also consider that this is the way the classification was always intended to operate, as demonstrated by the ‘Award Restructuring Implementation Manual’ developed by the major industry parties in 1990 in conjunction with the introduction of the new classification structure.²⁵ This Implementation Manual set out the translation of existing classifications in the Metals Award to the new classifications. No substantive existing classification translated to the C14 level, only the miscellaneous ‘Employees not elsewhere classified’ and ‘Other employees with not less than three months experience’ classifications. The least-skilled existing manufacturing/engineering classifications, including that of process worker, translated to C13. The Implementation Manual otherwise makes it clear that progression to C13 would occur upon completion of the training necessary to perform work at that level.

[26] It may be that there is a drafting lacuna between the C14 and C13 classifications in the Manufacturing Award, in that an employee at C14 must be undertaking up to 38 hours of induction training and may also be undertaking an unspecified period of ‘structured training’, while an ‘Engineering/Manufacturing Employee – Level II’ classified at the C13 level is defined as ‘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’. It may be that, reading the two classifications together, an employee who has not yet completed the ‘structured training’ over a period not exceeding three months necessary for classification at C13 is to be classified at C14. We will discuss this specific potential ambiguity later in this decision. However, this does not change the character of C14 as a transitional entry-level classification and, on any view, progression to C13 would follow after a period not exceeding three months. The Ai Group’s submission that the provisional view is based on a misapprehension concerning the nature of the C14 classification is therefore rejected.

[27] The entrenchment of the entry-level, transitional C14 classification as the anchor point for cross-award relativities at the bottom end of the federal award system necessarily calls into question whether any classification in a modern award with the C14 rate which applies to non-entry-level, ongoing work has a properly fixed minimum rate of pay. Although, as explained in the *Aged Care work value case Stage 1 decision*²⁶ and the *Aged Care work value case Stage 3*

decision,²⁷ the ‘C10 Metals Framework Alignment Approach’ referred to in paragraph [22] above operates on a presumptive basis which may be displaced by a fuller consideration of the work value of the award classification in question, no party has identified any substantive reason why any form of ongoing employment under any award should be assessed as having no higher work value than a temporary, entry-level position for a person with no qualifications or experience under the C14 classification in the Manufacturing Award, or lesser work value than the C13 classification in that award.

[28] Further, it is not just a case of a work comparison with the Manufacturing Award but with all other awards which, consistent with the *Paid Rates Review decision*, have aligned the bottom-end rates with those in the Manufacturing Award. A paradigmatic example of this is the *Miscellaneous Award 2020*,²⁸ which was established during the award modernisation process to cover employees not covered by any other modern award. Under this award, the lowest Level 1 classification applies to an employee ‘who has been employed for a period of less than 3 months and is not carrying out the duties of a level 3 or level 4 employee’ (who must be trade-qualified or above). The rate for Level 1 is the C14 rate, namely \$859.30 per week. The Level 2 classification applies to an employee ‘who has been employed for at least 3 months and is not carrying out the duties of a level 3 or level 4 employee’. The rate for Level 2, which is the first classification applicable to ongoing employment, is the C12 rate of \$914.90 per week. Other major awards applicable to significant numbers of employees without any industry-specific qualifications such as the *General Retail Industry Award 2020*²⁹, the *Fast Food Industry Award 2020*³⁰, the *Hospitality Industry (General) Award 2020*³¹, the *Restaurant Industry Award 2020*³² and the *Clerks—Private Sector Award 2020*³³ all have their lowest classification applicable to ongoing employment with a rate of pay that is at the C13 level or higher. In this context, we do not consider that any work value reason has been identified or exists as to why a different position should apply in any other award.

[29] The six-month transition period identified in the provisional view was intended to be a maximum period rather than the standard and, in those awards which contain a transitional entry-level classification, the period is commonly set at three months. While the proposed six-month period is necessarily arbitrary, it represents a conservative approach which allows more than a sufficient period of time for an employee to move from the entry-level or induction stage of employment to a level where they are suitable for ongoing employment.

[30] For the above reasons, we confirm the provisional view. We shall henceforth refer to it as the ‘confirmed view’. In reaching this view and the approaches outlined below, we have applied the modern awards objective and the minimum wages objective in ss 134(1) and 284(1) of the FW Act respectively. For convenience, these statutory objectives are addressed at the end of this decision.

Application of the confirmed view

[31] We next consider the application of the confirmed view to those specific awards containing classifications with a rate below the C13 rate. We note that at least some parties advanced proposals for variation of awards which went beyond the scope of the provisional view and the issue of ensuring that C14 rates only operate on a transitional basis. For example, in respect of a number of awards, the AWU submitted that classifications with the C14 rate should be abolished altogether, and the UUU submitted that some C14 classifications which

provided for transitional periods consistent with the provisional view should nonetheless have those transitional periods reduced. We do not propose to consider these submissions further since they fall outside the scope of this Review. If parties wish to pursue variations of this nature, they may do so by separate application under s 158 of the FW Act.

[32] For the purpose of this part of the decision, the 70 awards containing provisions identified in Schedule D to the September statement may be broken up into the following categories:

- (1) Awards not requiring any variation where it is not in dispute that the relevant provisions are already consistent with the confirmed view (Category 1).
- (2) Awards where interested parties have agreed to a variation to render them consistent with the confirmed view (Category 2).
- (3) The Manufacturing Award and awards with similarly drafted entry-level classifications (Category 3).
- (4) Awards where there is a dispute about whether they conform to the confirmed view and/or what, if any, variations should be made to apply the confirmed view (Category 4).
- (5) Awards in relation to which no submissions were received (Category 5).

Category 1: Awards not requiring any variation

[33] In respect of the following 20 awards containing provisions listed in Schedule D to the September statement, there was no substantive dispute, and we are satisfied that the relevant provisions are already consistent with the confirmed view. These awards are:

1. *Alpine Resorts Award 2020* [[MA000092](#)]
2. *Asphalt Industry Award 2020* [[MA000054](#)]
3. *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016* [[MA000144](#)]³⁴
4. *Cemetery Industry Award 2020* [[MA000070](#)]³⁵
5. *Corrections and Detention (Private Sector) Award 2020* [[MA000110](#)]
6. *Gardening and Landscaping Services Award 2020* [[MA000101](#)]
7. *Horse and Greyhound Training Award 2020* [[MA000008](#)]
8. *Hospitality Industry (General) Award 2020* [[MA000009](#)]
9. *Maritime Offshore Oil and Gas Award 2020* [[MA000086](#)]³⁶
10. *Miscellaneous Award 2020* [[MA000104](#)]
11. *Northern Territory News Award 2015* [[MA000129](#)]
12. *Nursery Award 2020* [[MA000033](#)]³⁷
13. *Premixed Concrete Award 2020* [[MA000057](#)]
14. *Professional Diving Industry (Industrial) Award 2020* [[MA000126](#)]³⁸
15. *Racing Clubs Events Award 2020* [[MA000013](#)]
16. *Racing Industry Ground Maintenance Award 2020* [[MA000014](#)]
17. *Registered and Licensed Clubs Award 2020* [[MA000058](#)]

18. *Reserve Bank of Australia Award 2016* [[MA000140](#)]³⁹
19. *Restaurant Industry Award 2020* [[MA000119](#)]
20. *Supported Employment Services Award 2020* [[MA000103](#)]

[34] No variation is required to the above awards and they need not be considered further.

Category 2: Agreed variations

[35] In relation to four awards, the interested parties who participated in the Review agreed both as to the necessity of a variation to render the award consistent with the confirmed view and the terms of that variation, or at least adopted a substantially common position in these respects. We deal with each of these awards in turn below.

Amusement, Events and Recreation Award 2020

[36] Clause 16.1 of the *Amusement, Events and Recreation Award 2020*⁴⁰ provides for an ‘Introductory level employee’ classification at the C14 rate and a Grade 1 classification at the C13 rate. The former classification is defined in clause A.1 as being:

... an employee who enters the industry and who has not demonstrated the competency requirements of a Grade 1 employee. An employee at this level will undergo training for up to 3 months before progressing to Grade 1.

[37] As defined, this classification would appear to be consistent with the confirmed view. However, the definition for the Grade 1 classification in clause A.2 provides that it applies to 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’ (underlining added). This may indicate, in apparent contradiction to clause A.1, that progression to Grade 1 may occur at any time after three months’ employment.

[38] The AWU has proposed in its submissions that clauses A.1 and A.2 be varied to clarify that employees engaged at the ‘Introductory level employee’ classification must automatically progress to Grade 1 after three months of working in the industry and that this progression can occur before three months if they have demonstrated the necessary competence. The UWU supports this position. ABI/BNSW submit that the current provisions are not ambiguous and are consistent with the provisional view but, in any event, propose that clause A.2 be varied to replace the words ‘at least’ with ‘up to’ to place an upper limit of time on training for the introductory level of 3 months. This is, we consider, the same proposal in substance as that of the AWU. The variation proposed by ABI/BNSW is appropriate to remove any ambiguity or contradiction which may be perceived to exist and ensure that the relevant provisions are consistent with the confirmed view.

Dry Cleaning and Laundry Industry Award 2020

[39] The *Dry Cleaning and Laundry Industry Award 2020*⁴¹ (DCLI Award) contains two classifications which arise for consideration in this Review:

- (1) Clause 18.1(a) provides for a classification of Dry cleaning employee Level 1 with the C14 rate. Clause A.1 provides that an employee at this level is '[a]n employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4'. The classification is therefore not transitional. The next classification up is at the C13 rate.
- (2) Clause 18.1(b) provides for a classification of Laundry employee Level 1 with a rate of \$870.70 per week (\$22.91 per hour) with is above the C14 rate but below the C13 rate. Clause B.1.1 defines this classification as '[a]n employee in the first 6 months of employment with no previous experience in the industry'. However, clause B.1.5 provides that an employee at this level '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'. This arguably means that demonstration of competence is a requirement for advancement to Level 2 which overrides the six month limitation in clause B.1.1

[40] A joint written submission made by the Drycleaning Institute of Australia, the Laundry Association of Australia, the CFMEU, the AWU and the UWU proposes amendments to the above provisions in order to ensure that they are consistent with the confirmed view. *First*, in relation to the classification of Dry cleaning employee Level 1, and in addition Level 2, the submission proposes that the definitions of these classifications in clauses A.1 and A.2 respectively be altered to read:

A.1 Dry cleaning employee Level 1 (Introductory level)

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.

[41] *Second*, in respect of the classification of Laundry employee Level 1, it is proposed that this additional sentence be added to clause B.1.5: 'The maximum period that an employee can remain at Level 1 is 6 months'.

[42] We accept the parties' submissions, and the DCLI Award will be varied in the terms proposed in the joint submission.

Meat Industry Award 2020

[43] Clause 16.1 of the *Meat Industry Award 2020*⁴² (Meat Award) sets out the minimum adult rates for each classification in the award. The lowest paid classifications are Meat Industry Level 1 (MI 1), which prescribes the C14 rate, and Meat Industry Level 2 (MI 2), which prescribes a rate slightly above the C13 rate. The classification definition of MI 1 in clause A.3.1 is:

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.

[44] This definition plainly does not contain an upper limit upon the time period during which a person may be undergoing on-the-job training and thus may be classified at MI 1. The AMIC submitted that it agreed with the confirmed view and initially proposed an amendment to the above definition so that it would read:

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.

[45] The AMIEU likewise supported the confirmed view, but proposed that the MI 1 classification be deleted altogether or, alternatively, that its application be limited to the first week of employment. It should be noted that, independent of this Review, the AMIEU has filed an application for variation of the classification structure in the Meat Award (AM2021/57). The variation sought would involve a restructuring of most classifications in the Meat Award. This application has been programmed for the filing of evidence and submissions, and it is anticipated that it will be heard in the second half of this year.

[46] After we had heard evidence adduced by the parties in support of their respective positions, we proposed to the parties that, given the AMIEU's award variation application would involve a comprehensive review of the classification structure in the Meat Award, it might be appropriate to adopt, as an interim and 'without prejudice' outcome pending the hearing and determination of the AMIEU's application, a variation to the classification definition for MI 1 which confines its application to a period of six months. The AMIEU and the AMIC agreed to this, and it was not opposed by the Ai Group, ABI/BNSW or the AWU.⁴³

[47] We consider that the most straightforward way to effect this interim consent position would be to vary the definition of the MI 1 classification as follows:

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. An employee may not be engaged at this level for longer than 6 months.

Travelling Shows Award 2020

[48] Clause 16.1 of the *Travelling Shows Award 2020*⁴⁴ provides for a Grade 1 classification with the C14 rate. The definition of this classification in clause 12.2 provides that an employee at this level is employed as a ‘ride attendant and includes employees not otherwise classified’ and specifies duties in following paragraphs (a) to (i) which may be performed at this level. It is not time-limited in its application and is plainly not transitional in nature.

[49] The Showmen’s Guild of Australia (SGA) has submitted that the Grade 1 definition in clause 12.2 be altered to provide:

12.2 Grade 1

An employee at this level is a new entrant to the travelling shows industry and is employed as a ride attendant and includes employees not otherwise classified. An employee at this level:

- (a) has less than 3 months experience in the travelling shows industry; ...

[50] The existing paragraphs (a) to (i) of clause 12.2 would then follow, redesignated as paragraphs (b) to (j). The SGA also proposes that the definition of Grade 2 in clause 12.3 be altered to provide, at paragraph (a), ‘has less than 3 months experience in the travelling shows industry’, with the existing paragraphs (a) to (k) in the definition then following and redesignated as (b) to (l).

[51] The AWU supported this position. No party opposed it. The proposed variations are appropriate to render the *Travelling Shows Award 2020* consistent with the confirmed view and will be made.

Category 3: Manufacturing Award and other similar awards

[52] We have earlier described the position applying in the Manufacturing Award and the potential ambiguity associated with progression from the C14 to the C13 classification. There are other awards which have classification structures modelled on that in the Manufacturing Award which present the same or a similar problem. Two awards have a reference to the employee ‘undertaking up to 38 hours of induction training’ in the C14 classification and to the employee having ‘completed up to 3 months structured training’ to enable the employee to work at the level of the C13 classification:

1. *Airline Operations – Ground Staff Award 2020*⁴⁵ (Airline Operations Award): the classifications in the Maintenance and engineering stream of ‘Aircraft Worker 1’ and ‘Aircraft Worker 2’ (see clauses 18.3 and A.3.1–A.3.2).
2. *Vehicle Repair, Services and Retail Award 2020*⁴⁶ (Vehicle RS&R Award): classifications of Vehicle industry RS&R Levels 1 and 2 (see clauses 16.2 and A.1–A.2).

[53] Two further awards have the former reference but not the latter:

3. *Graphic Arts, Printing and Publishing Award 2020*⁴⁷ (Graphic Arts Award): Level 1 and Level 2 classifications (clauses 17.2 and A.1–A.2).
4. *Joinery and Building Trades Award 2020*⁴⁸: Level 1 and Level 2 classifications (clauses 19.1 and A.1.1–A.1.2).

[54] We will deal with the *Joinery and Building Trades Award 2020* separately later in this decision because it involves another issue concerning industry allowances.

[55] We have earlier referred to, and rejected, the submissions made by the Ai Group with respect to whether the C14 classification in the Manufacturing Award is transitional in nature. The Ai Group made the same submission in respect of the Airline Operations Award and the Vehicle RS&R Award. In respect of the Vehicle Award, the MTOs and ABI/BNSW submitted, contrary to the Ai Group’s position, that the Vehicle industry RS&R Level 1 classification conformed to the confirmed view and did not require variation. We reject the submissions of the Ai Group with respect to the Airline Operations Award and the Vehicle RS&R Award for the same reasons as stated earlier in relation to the Manufacturing Award.

[56] In relation to the Graphic Arts Award, clause A.1 defines a Level 1 employee as follows:

A.1 Level 1

An employee at this level is undertaking up to 38 hours of induction training. This does not restrict or limit the employment of new employees at a higher level should they be accepted as possessing experience or skills appropriate to a higher level.

An employee at this level:

- performs elementary routine duties of a repetitive nature;
- works under direct supervision;
- is aware of the tasks required at level 2;
- observes safe work practices;
- undertakes literacy and numeracy training (if required) to perform tasks functionally; and
- undertakes training so as to enable them to work at level 2.

On the completion of the required training, the employee will be reclassified to level 2.

[57] ABI/BNSW submitted that the Level 1 classification is transitional in nature, providing for transition in less than six months, and can therefore be removed from the scope of the Review. Consistent with its submissions concerning the Manufacturing Award, the Ai Group submitted that Level 1 may apply to ongoing employment and does not conform to the confirmed view.

[58] In our view, while we do not consider that the above Level 1 definition contemplates ongoing employment by reason of the requirement in the last sentence to reclassify an employee to Level 2 ‘[o]n completion of the required training’. The lack of any time limitation upon that training (which would include ‘training so as to enable [the employee] to work at level 2’ in addition to the 38 hours of induction training) may potentially permit an employee to remain at the Level 1 classification for a period in excess of six months, contrary to the confirmed view.

[59] We consider that the relevant classification definitions in the Manufacturing Award, the Airline Operations Award and the Vehicle RS&R Award should be varied to remove the ambiguity identified in paragraphs [26] and [52] above. The Graphic Arts Award should also be varied to ensure that progression from the C14 rate to the C13 rate occurs within a timeframe consistent with the confirmed view. Our *provisional* view, consistent with the timeframe indicated in the C13 classification in the first three of these awards, is to vary all of the awards to require progression from the C14 to the C13 classification in each case. In the case of the Manufacturing Award, this would require the following variations:

1. The addition of the following to the definition of the C14 classification in clause A.4.3:
 - (iii) Within a period of 3 months, the employee will be reclassified to Engineering/Manufacturing Employee – Level II.
2. The replacement of paragraph (i) of the definition of the C13 classification in clause A.4.4 with the following:
 - (i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to 3 months’ employment at Level I so as to enable the employee to perform work within the scope of this level.

[60] Consistent with the *provisional* view above, variations in equivalent terms would be made to the Airline Operations Award and the Vehicle RS&R Award. In the Graphic Arts Award, a variation equivalent to first variation above would be made to the last sentence of clause A.1.

Category 4: Disputed awards

[61] Submissions were received in relation to the following awards putting into issue whether the awards conformed to the confirmed view and/or how the awards should be varied, if at all, in the application of the confirmed view.

Animal Care and Veterinary Services Award 2020

[62] Clause 15.2 of the *Animal Care and Veterinary Services Award 2020*⁴⁹ sets out classifications and minimum pay rates for practice managers, veterinary nurses, receptionists, animal attendants and assistants. The pay rates for the ‘Introductory level’ classification is the C14 rate. The next classification, Level 1, has the C13 rate. Clause A.2.1 defines the Introductory level classification as follows:

An employee who has had no experience in this industry will initially be engaged at the introductory level until the employee has performed satisfactory service for a period not exceeding 3 months. During this period the employer will provide on - the-job training to assist the employee to gain the appropriate skills. If the employee attains the level of skill required, the employee will progress to Level 1.

Employees at this level will perform routine tasks involving adherence to determined procedures and with only minimal scope for deviation from these procedures.

[63] The last sentence of the first paragraph of the definition arguably conditions the requirement in the first sentence that engagement at the Introductory level classification must not exceed a period of three months.

[64] The AWU submitted that there is scope for faster competency-based progression for the Introductory Level at clause A.2.1, rather than the current three-month stipulation. Additionally, the AWU proposed lifting the Introductory Level rate from C14 to C13 and the Level 1 rate from C13 to \$24.17 per hour, which is half the difference between the current Level 2 and Level 1 rates. The UWU supported the AWU's proposal.

[65] The AWU's proposed variation goes beyond what is necessary to apply the confirmed view. Our *provisional* view is that, in order to remove the ambiguity we have identified, the final sentence of the first paragraph should be amended to read: 'The employee will progress to Level 1 after a period not exceeding 3 months'.

Aquaculture Industry Award 2020

[66] Clause 16.1 of the *Aquaculture Industry Award 2020*⁵⁰ provides for the adult classification and minimum rates of pay in this award. The classification of 'Aquaculture Attendant Level 1' is at the C14 rate, while the weekly rate for 'Aquaculture Attendant Level 2' is \$871.20, which is below the C13 rate. The classification definitions in Schedule A divide each classification into a 'Finfish stream' and a 'Shellfish stream'. Clause A.1.1 provides that the Level 1 employee in the Finfish stream is a person who has been employed for less than four months to perform specified functions, and clause A.2.1 provides that the Level 2 employee is a person with more than four months' service with one or more employer who is employed to perform specified functions. The Finfish stream clearly allows for progress to Level 2 within a period of no more than four months. However, in the Shellfish stream, while the Level 1 employee must have been employed for less than four months in the industry to perform specified functions, the Level 2 employee must have 'completed at least 4 months' service as a shellfish attendant Level 1 and in addition is capable of performing, without constant supervision, some or all of the following [specified] functions:...'. In apparent contradiction to the Level 1 definition, this definition would appear to permit an employee not to progress to Level 2 until a period in excess of four months' service (and potentially in excess of six months' service) at Level 1 has been completed.

[67] The AWU submitted that consistency with the confirmed view should be obtained by increasing the Level 1 rate to the C13 rate and increasing the Level 2 rate to a rate that is halfway between the existing Level 2 and Level 3 rates. However, we consider that this proposal involves more than is necessary to apply the confirmed view to this award.

[68] Our *provisional* view is that the following two variations to this award are required to conform to the confirmed view:

1. The minimum rate of pay for the Level 2 classification should be increased to the C13 rate.
2. The Level 2 classification definition for the Shellfish stream should be amended to read: 'A shellfish attendant Level 2 means an employee who has been employed for

4 months or more in the industry. Such an employee may be required to perform, without constant supervision, some or all of the following functions:...

Architects Award 2020

[69] Clause 13.5(b) of the *Architects Award 2020*⁵¹ provides:

- (b) Students of Architecture 21 years of age and over will be paid the following minimum rate or percentage of the first year Graduate of Architecture rate of payment:

Service	MINIMUM RATE OR % OF LEVEL 1—ENTRY RATE
Less than 3 years of experience	\$859.30 per week
3rd year of experience	75%

[70] The rate for the ‘3rd year of experience’ is quantified at \$871.58 (75 per cent x the entry-level rate for a Level 1 – Graduate of 1162.10 prescribed in clause 13.1). This is below the C13 rate. Progression to this rate is unclear. The lower rate would appear to operate for a period of up to three years, but the higher rate appears to operate after the first two years since it applies to the third year. In any view, progression may occur after six months’ employment.

[71] The APESMA submits that, pending a broader analysis of the work value of this classification, the two rates should be combined into a single rate set at the C13 level. There was no submission specifically opposing this course or proposing any alternative.

[72] Our *provisional* view is, consistent with the APESMA proposal, that clause 13.5(b) should be varied to provide: ‘Students of Architecture 21 years of age and over will be paid a minimum rate of \$882.80 per week’.

Business Equipment Award 2020

[73] In clause 14.2(a)(i) of the *Business Equipment Award 2020*,⁵² the minimum weekly rate of pay for a Technical Employee Level 1 is \$881.80, slightly below the C13 rate. The Ai Group and ABI/BNSW submitted, and we accept, that this classification does not conform to the confirmed view because it contemplates the performance of substantive roles on an indefinite basis. Our *provisional* view is that, for consistency with the confirmed view, this will be increased to the C13 rate of \$882.80, with corresponding adjustments to the prescribed annual salary and minimum hour rate for this classification.

Cement, Lime and Quarrying Award 2020

[74] Clause 16.1 of the *Cement, Lime and Quarrying Award 2020*⁵³ (CLQ Award) prescribes minimum rates of pay for classifications in the cement and lime industry. The Level 1 classification is at the C14 rate. Clause A.1.1 defines a Level 1 employee as being ‘an entry level employee without the necessary competency to be classified in Levels 2 to 6 undertaking Basic competency training’. Clause A.1.2 relevantly provides that a Level 2 employee must have attained the ‘Basic competency’. The award does not prescribe any time period as

applicable to Basic competency training. Clause A.2.2(g) defines the Basic competency as follows:

(g) Basic

Elements:

- (i) working safely and follow work health and safety policies and procedures;
- (ii) conducting local risk control;
- (iii) communicate in the workplace;
- (iv) contribute to quality work outcomes; and
- (v) operate light vehicles.

[75] Clause 16.2 of the award sets out the minimum rates of pay for classifications in the quarrying industry. The Grade 1 classification is at the C14 rate, while the Grade 2 classification has a minimum weekly rate of \$882.30, which is slightly below the C13 rate. Clause B.1.1 defines a Grade 1 employee as ‘an employee who is undertaking training to become competent in the Basic Quarry competency’, while a Grade 2 employee must, among other things, ‘be competent in the Basic Quarry competency’. There is likewise no time period prescribed in connection with the Basic Quarry competency. It is defined in clause B.3.1 as follows:

B.3.1 Basic Quarry Competency

An employee must be competent in the following elements:

- (a) Work safely & follow OHS policies and procedures;
- (b) Conduct local risk control;
- (c) Communicate in the workplace;
- (d) Contribute to quality work outcomes; and
- (e) Operate light vehicles.

[76] The AWU proposed an amendment to the definitions of Level 1 classification in the Cement and Lime industry and the Grade 1 classification in the Quarrying industry to limit their application to employees undertaking up to 38 hours of induction training.

[77] The Ai Group and ABI/BNSW submitted that this award did not require consideration as part of the Review because clause 18.2(b) provides for an industry disability allowance which has the effect of ensuring that all employees under the award enjoy a minimum all-purpose weekly rate of pay that is in excess of the C13 rate. Clause 18.2(b) provides:

(b) Industry disability allowance

The following disability allowances are payable to employees engaged in work covered by this award to compensate for the disabilities of the industry and are paid for all purposes.

Industry	\$ per week
Cement and lime industry	72.47
Quarrying industry	31.39

[78] Additionally, ABI/BNSW submitted that the AWU's proposal is inconsistent with the basic competency training requirements established in the award and that more detailed consideration is required to understand the implications of the AWU's proposal. The Ai Group also opposed the AWU's proposal and claimed detrimental effects would follow if it were adopted, such as compression of internal wage relativities and adverse impacts on business and productivity. The Ai Group also contended that such an approach is inconsistent with the need to ensure that the safety net is fair for the employee and employer, promote flexible work practices, and ensure a stable awards system.

[79] We reject the submission of ABI/BNSW that the industry disability allowances prescribed by clause 18.2(b) should be taken into account for this purpose of the Review. Our adoption of the confirmed view is intended to achieve a logical alignment of bottom-end minimum rates of pay in the modern award system based on work value reasons. The allowances in clause 18.2(b) plainly have the purpose of compensating employees for the disabilities associated with the industries covered by this award and have no connection with the value of the work performed by employees.

[80] We likewise reject the AWU's proposal that the application of the Level 1 classification in the Cement and Lime industry and the Grade 1 classification in the Quarrying industry be confined a period of up to 38 hours for induction training. That proposal would operate to disrupt the skills-based classification structure for each industry which is established by the award.

[81] Our *provisional* view is that the appropriate course is to make variations to ensure that progression from Level 1 to Level 2 or Grade 1 to Grade 2 must occur in a period of six months or less. Having regard to the elements for the achievement of the Basic competency in each industry, we consider that that six months would always be a sufficient period to achieve that competency for any employee who is to be engaged beyond their probationary period. Accordingly, the Level 1 definition in clause A.1.1 should be varied to provide:

A Level 1 employee is an employee who is undertaking Basic competency training for a period not in excess of six months.

[82] The Level 2 classification in clause A.1.2 should also be varied to add the following additional sentence:

An employee who has been employed for a period in excess of six months must be classified at Level 2 or higher.

[83] Equivalent variations to the definitions of Quarrying industry Grade 1 and Grade 2 in clauses B.1.1 and B.1.2 respectively would also be made. In addition, the rate of pay for the Grade 2 classification in clause 16.2 should be increased to align with the C13 rate.

Children's Services Award 2010

[84] Clause 14.1 of the *Children's Services Award 2010*⁵⁴ contains two classifications with a minimum weekly rate of \$878.00, below the C13 rate. The first is Support Worker Level 1.1. Clause B.2.1 provides that 'this is an untrained, unqualified employee ... who will work under supervision with guidance and direction'. Clause B.2.1(b) provides that progression to Support

Worker Level 2 will occur after 12 months, or earlier if the employee is performing the duties of a Level 2 employee. Clause B.2.2 provides that a Level 2 employee performs the same indicative duties as a Level 1, but possesses higher skills, training and experience and ‘works under routine and exercises discretion consistent with their skills and experience’. Clause 14.1 provides two minimum weekly pay rates for the Level 2 employee: \$909.90 for Level 2.1 and \$939.80 for Level 2.2. Progression from Level 2.1 to 2.2 occurs after one year.

[85] The second is Children’s Services Employee Level 1.1. Clause B.1.1 defines this classification as follows:

B.1.1 Level 1

This is an employee who has no formal qualifications but is able to perform work within the scope of this level. The employee will work under direct supervision in a team environment and will receive guidance and direction at all times. The employee will receive structured and regular on-the-job training to perform the duties expected at this level. Normally an employee at this level will not be left alone with a group of children.

(a) Indicative duties

- Learning and implementing the policies, procedures and routines of the service.
- Learning how to establish relationships and interact with children.
- Learning the basic skills required to work in this environment with children.
- Giving each child individual attention and comfort as required.
- Basic duties including food preparation, cleaning and gardening.

(b) Progression

A Level 1 employee will progress to the next level after a period of one year or earlier if the employer considers the employee capable of performing the work at the next level or if the employee actually performs work at the next level.

[86] As with the Support Worker classifications, the Children’s Services Employee Level 2 classification has two minimum weekly pay rates: \$909.90 for Level 2.1 and \$939.80 for Level 2.2. Progression from Level 2.1 to 2.2 occurs after one year.

[87] It is apparent that the above classifications in this award do not conform to the confirmed view since they permit employment below the C13 rate for a period of a year. The UWU submits the rate of pay for the two classification levels should be increased to the C13 rate. ABI/BNSW submitted that this proposal went beyond the scope of the confirmed view and would need to be justified on work value grounds.

[88] There are two alternative courses to render this award consistent with the confirmed view. The first is that proposed by the UWU, which would involve an increase of \$5.80 per week. The second would be to reduce the period of time that an employee may be classified at Support Worker Level 1.1 or Children’s Services Employee Level 1.1 to a period of six months. However, this latter course would move the employee at the Level 2.1 rate of \$909.90 to the Level 2.2 rate of \$939.80 six months earlier, and thus potentially disrupt the skills progression path in the award’s classification structure and would cost the employer more than the first proposal. Accordingly, our *provisional* view is that the minimum rates of pay for Support

Worker Level 1.1 and Children's Services Employee Level 1.1 should be increased to the C13 rate.

Concrete Products Award 2020

[89] Clause 16.2 of the *Concrete Products Award 2020*⁵⁵ provides for a Level 1 classification with a minimum weekly rate of \$859.30, which is the C14 rate. The Level 2 classification has a minimum weekly rate of \$882.70, which appears to have dropped very slightly below the C13 rate because of a rounding error at some point. The classification definition of Level 1 is set out in clause A.1. Clause A.1.1 provides that a person at this level is '[u]ndertaking 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'. Clause A.1.2 provides:

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.

[90] Clauses A.1.1 and A.1.2, taken alone, may be understood as describing an entry-level classification. However, clause A.1.3 then sets out a series of 'Classifications descriptors' which appear to refer to relatively advanced equipment operation and other functions (for example, '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') which might be performed at this level indefinitely. Clause A.1.3 is difficult to align with clauses A.1.1 and A.1.2.

[91] The AWU proposes that the award should be varied to create a new introductory classification aligned with the C14 rate, which should be limited to employees with up to a maximum of 76 hours of industry experience. The Level 1 rate would then be aligned with the C13 rate, and Level 2 would be \$23.66 per hour.

[92] The Ai Group submitted that when the award's industry allowance is taken into account, the award rates exceed the C13 rate, and the award should therefore not arise for consideration in the Review. The Ai Group also submitted that the AWU's proposal should be rejected because it has not presented any justification for increasing the rates of pay in the award. ABI/BNSW likewise submitted that once the industry allowances are taken into account, only Level 1 employees working in factories whose sole purpose is the manufacture of tiles are below the C13 rate. Noting this, ABI/BNSW propose that the Commission give further consideration to the value of work these employees perform as well as the feasibility of converting this classification into a transitional classification.

[93] As with the CLQ Award, we reject the proposition that the all-purpose industry allowances for which the award provides should be taken into account for the purpose of assessing whether the award conforms to the confirmed view. Clause 18.2(b) provides:

(b) Industry allowance

(i) Concrete products employees—other than in the manufacture of tiles

An industry allowance of **\$25.78** per week will be payable to an employee working in the concrete products industry, with the exception of employees working in factories whose sole purpose is the manufacture of tiles. This allowance will be in addition to all other payments, and will be paid for all purposes of this award.

(ii) Tile manufacturing employees

An industry allowance of **\$17.19** per week will be paid to employees working in factories whose sole purpose is the manufacture of tiles. This allowance will be in addition to all other payments, and will be paid for all purposes of this award.

[94] Although these are not explicitly stated to be disability allowances, it is apparent that their purpose is to compensate for industry disabilities.⁵⁶ The allowances do not therefore relate to the work value reasons underlying the confirmed view. In addition, as recognised by ABI/BNSW, the second allowance would leave the rate of Level 1 employees engaged in the manufacture of tiles to whom the allowance applied below the C13 rate.

[95] Our *provisional* view is that clause A.1.1 should be varied to provide that an employee may not be classified at Level 1 for a period in excess of six months. We invite parties, in any response to this *provisional* view, to consider whether this requires any consequential adjustment to the ‘Classifications descriptors’ for Level 1 set out in clause A.1.3.

[96] We also consider that the rate for the Level 2 classification should be marginally adjusted to properly align with the C13 rate.

Cotton Ginning Award 2020

[97] In clause 17.1 of the *Cotton Ginning Award 2020*⁵⁷, the classification Cotton ginning employee 1 (CG1) has a minimum weekly rate of \$867.50, which is above the C14 rate but below the C13 rate. The next classification, CG2, has a weekly rate of \$910.40, above the C13 rate. Clause 13 defines these classifications as follows:

13.1 Cotton ginning employee level 1 (CG1)

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.

13.2 Cotton ginning employee level 2 (CG2)

Employees at this level:

- (a) are workers who are in charge of operating a piece of machinery (mobile plant or gin machinery) where greater OH&S considerations exist compared with CG1 roles; and
- (b) may require external tickets or internal assessment before operating this kind of machinery, excluding the requirement of a standard driver's licence.

[98] The AWU submitted that there is no clear progression pathway from CG1 to CG2, so that the rate for the former should be increased to the C13 rate. However, in the alternative, the AWU submitted that if the Level 1 rate was to remain below C13, then this classification should be limited to a maximum of 16 hours of experience in the industry before automatic progression to Level 2.

[99] ABI/BNSW submitted that the CG1 rate is not below the C14 rate once the all-purpose disability allowance in clause 19.2(b) is taken into account and should therefore be excluded from consideration in the Review. Clause 19.2(b) provides:

(b) Disabilities allowance

- (i) Employees will be paid an allowance of \$ 33.06 per week. This allowance will be in compensation for all disabilities experienced in this particular industry.
- (ii) This amount will be in addition to all other amounts payable, and is payable for all purposes under this award.

[100] Furthermore, ABI/BNSW rejected the notion that the CG1 classification needs to be transitional in nature as the duties listed in the description, such as manual handling and cleaning, are ongoing duties provided on an ongoing basis. Noting this, ABI/BNSW contended that converting this classification into a transitional or time-limited arrangement would pose significant practical difficulties. They rejected the AWU's proposal to increase the CG1 rate as the AWU did not justify this proposal on work value grounds, which is the relevant legislative test.

[101] The Ai Group made submissions to the same effect and also submitted that the AWU's primary proposal would result in a compression of internal wage relativities between CG1 and CG2. As to the AWU's alternative proposal, the Ai Group submitted that the AWU had not justified the specific time period of 16 hours, the proposal would not be fair to employers nor promote efficient and productive work, and it would impact employers adversely.

[102] For the same reasons as already stated with respect to the CLQ Award, we reject the submission that the disability allowance in clause 19.2(b) should be taken into account in determining whether this award conforms to the confirmed view. We agree with the AWU's submission that the CG1 classification and rate does not conform to the confirmed view because it provides no path of progression to the C13 rate and permits an employee to be engaged at the CG1, performing the CG1 duties, indefinitely. Our *provisional* view is that the appropriate course is to vary clause 17.1 to provide for two rates of pay for the CG1 classification: the existing C14 rate would apply for the first six months of employment, and the C13 rate would then apply thereafter. This requires no change to be made to the classification definitions of CG1 or CG2.

Electrical, Electronic and Communications Contracting Award 2020

[103] Clause 16.2 of the *Electrical, Electronic and Communications Contracting Award 2020*⁵⁸ contains a classification of Electrical worker grade 1 with a minimum weekly rate of \$871.20 per week, which is above the C14 rate but below the C13 rate. The grade 2 classification has a minimum weekly rate of \$900.70. Clause A.2.1 provides that ‘An Electrical worker grade 1 is a labourer not otherwise provided for in this award, who is doing labouring work and employed as such’. A grade 2 employee is relevantly defined as ‘an employee who is engaged in assisting a tradesperson...’. There is no prescribed method of progression from grade 1 to grade 2, and grade 1 appears to contemplate that the duties at that level may be performed indefinitely.

[104] The CEPU submitted that the Electrical worker grade 1 classification 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. It also pointed that 2nd to 4th year adult apprentices under the award earn less than the C14 rate because their base rate of pay is tied to the classification of an Electrical worker grade 1. The CEPU proposed that the grade 1 be increased to the C13 rate. The AWU advanced the same position.

[105] The Ai Group submitted that the grade 1 classification was not contemplated to be transitional in nature, and an employee can be classified at this grade indefinitely. It also submitted that when the industry allowance in clause 18.3(a) is taken into account, the award should not be the subject of consideration in the Review as all rates exceed the C13 rate. Clause 18.3(a) provides:

(a) Industry allowance

An all-purpose allowance of **\$36.82** per week will be paid as compensation for the following disabilities associated with on-site work:

- (i) climatic conditions when working in the open on all types of work;
- (ii) the physical disadvantage of having to climb stairs or ladders;
- (iii) the disability of dust and fumes blowing in the wind, brick dust and drippings from newly poured concrete;
- (iv) sloppy and muddy conditions associated with the initial stages of on-site construction work;
- (v) the disability of working on all types of scaffolding, excluding swing scaffolding; and/or
- (vi) the lack of usual permanent amenities associated with factory work.

[106] The National Electrical and Communications Association and ABI/BNSW made the same submission concerning the industry allowance. ABI/BNSW also submitted that the grade 1 classification captures workers undertaking basic labouring work, which represents an ongoing role performed on an ongoing basis. As such, ABI/BNSW contend it would be challenging to convert this classification into a transitional arrangement.

[107] As with the CLQ Award, we reject the submission that the industry allowance in clause 18.3(a) should be taken into account for the purpose of assessing whether this award conforms

to the confirmed view. The allowance is plainly a disability allowance for on-site work and does not relate to the work value reasons underlying the confirmed view.

[108] It is common ground that the classification of Electrical worker grade 1 is not a transitional classification but is intended to apply to any labouring work performed under the award. It is not therefore possible to convert it into a transitional classification operating on a time-limited basis without engaging in a wider reconsideration of the classification structure. For the reasons we have earlier stated, there is no proper work value reason for ongoing employment in on-site labouring under this award to have a minimum rate lower than the C13 rate. The grade 1 rate in this award may usefully be compared to the minimum weekly rate for an on-site tradesperson's labourer (CW/ECW 1) under the *Building and Construction General On-site Award 2020*⁵⁹: \$901.00 at entry, \$918.70 after three months industry experience, and \$931.10 after 12 months' industry experience. Our *provisional* view therefore is that the rate for the Electrical worker grade 1 classification should be increased to the C13 rate.

Fitness Industry Award 2020

[109] In clause 15.1 of the *Fitness Industry Award 2020*⁶⁰, the Level 1 classification has the C14 rate and the Level 2 classification has the C13 rate. The definitions of these classifications are contained in clauses A.1 and A.2 respectively. Clause A.1 provides that a Level 1 employee may perform specified basic duties and undertake 'structured training/learning' in other more advanced specified duties. In respect of Level 2, clause A.2.1 provides that an employee at this level must have either 'completed 456 hours' training at Level 1 so as to enable the employee to perform work within the scope of this level' or hold certain specified qualifications or perform duties 'which include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning'. For a full-time employee, 456 hours equates to ordinary hours for 12 weeks. However, in the case of part-time or casual employees, it may not be the case that 456 hours' training could be completed within six months.

[110] The AWU submitted that the payment of the C14 rate at Level 1 should be limited to a maximum of no longer than 3 months of industry experience. The UWU supported this proposal. ABI/BNSW submitted that the Level 1 classification potentially captures employees on an ongoing basis, rather than those just undertaking training and that the current reference to hours of experience is preferable to the AWU's suggestion of three months.

[111] We do not consider that we should interfere with the reference to the completion of 456 hours' training but we think that this should be subject to a cap of six months' employment at Level 1. Our *provisional* view therefore is that clause A.2.1 should be varied to provide as follows:

A.2.1 An employee at this level has:

- (a) completed the lesser of 456 hours training or 6 month's employment at Level 1 so as to enable the employee to perform work within the scope of this level;

...

Food, Beverage and Tobacco Manufacturing Award 2020

[112] Clause 14.1(a) of the *Food, Beverage and Tobacco Manufacturing Award 2020*⁶¹ prescribes the C14 rate for the Level 1 classification and the C13 rate for the Level 2 classification. The Level 1 classification is defined in clause A.2.1. Clause A.2.1(a) provides:

- (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.

[113] The above provision indicates that a person must have less than three months' industry or enterprise experience in order to progress to Level 2. That is consistent with the confirmed view. However, in the Level 2 definition in clause A.2.2, clause A.2.2(a) provides:

- (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.

[114] The words 'a structured induction program over 3 months' (underlining added) in the above provision may be ambiguous. The better view is that this is to be read as referring to an induction program lasting for three months. If so, this is consistent with clause A.2.1(a). However, an alternative view might be that 'over' three months means in excess of three months, which would be inconsistent with clause A.2.1(a).

[115] The AMWU submitted that the transition period of three months is excessive because the induction training takes up to 38 hours to complete, and proposed that progression to Level 2 should be automatic upon completion of this induction training. The AWU submitted that Level 1 should be omitted entirely, or alternatively that progression to Level 2 should be automatic after some maximum period of experience in the industry. The UWU supported the AWU's position.

[116] ABI/BNSW submitted that the Level 1 classification is transitional in nature and provides for a transition within a period which is less than six months, and is therefore consistent with the confirmed view. The Ai Group submitted that clauses A.2.1 and A.2.2 are not inconsistent and that, once an employee has completed structured training, which may take up to three months, they progress to Level 2. An employee may also be eligible for classification at Level 2 by virtue of clause A.2.2(a)(ii), but 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).

[117] We consider that, subject to the resolution of the potential ambiguity, this award is consistent with the confirmed view. To resolve the ambiguity, our *provisional* view is that clause A.2.2(a)(i) should be varied by deleting the words 'over 3 months' and replacing them

with ‘over a period not exceeding 3 months’. The proposals advanced by the AMWU, the AWU and the UWU go beyond what is necessary to apply the confirmed view and therefore do not arise for consideration in this Review.

Funeral Industry Award 2020

[118] Clause 15.1 of the *Funeral Industry Award 2020*⁶² provides that the Grade 1 classification has the C14 rate and the Grade 2 classification has the C13 rate. Clauses 12.1 and 12.2 define these classifications as follows:

12.1 Grade 1

- (a) Funeral director’s assistant;
- (b) coffin draper; or
- (c) adult employee not mentioned elsewhere in any of Grades 2 to 6.

12.2 Grade 2

- (a) Funeral director’s assistant engaged in preparation work;
- (b) unqualified embalmer in training or under supervision; or
- (c) adult employee engaged in coffin staining, including puttying, filling and sanding or buffing by mechanical means or operating a spray gun, applying stains, fillers and/or undercoats.

[119] It does not appear that Grade 1 is intended to be a transitional classification and there is no prescribed progression path from Grade 1 to Grade 2.

[120] The AWU submitted that the award should be varied as follows:

- create a new introductory level aligned to the C14 rate but limited to employees with less than six months of industry experience.
- Grade 1 to be paid at the C13 rate.
- Grade 2 to be paid at 50 per cent of the difference between Grade 2 and Grade 3.

[121] The UWU supported the AWU’s proposal.

[122] ABI/BNSW submitted that the Grade 1 classification applied to ongoing roles, and as such, there is difficulty in adopting the confirmed view in this situation. ABI/BNSW stated that a consent position had previously been reached between themselves, the Australian Funeral Directors Association, the UWU, and the AWU which proposed:

- an introductory level aligned to the C14 rate, where training is undertaken for up to 6 months; and
- varying the Grade 1 rate, so it is 50 per cent of the difference between C14 and C13.

[123] ABI/BNSW acknowledged that this proposal only partially aligns with the confirmed view, as Grade 1 would remain below the C13 rate. However, the position depends on a closer

analysis of the value of the work performed by Grade 1 employees before any increase to the C13 rate. ABI/BNSW opposed the AWU's proposal outlined above.

[124] It is common ground that the Grade 1 classification is currently intended to apply to ongoing work and is not transitional in nature. Increasing the rate of the Grade 1 classification structure to the C13 rate, as the AWU proposes, would require a consequential increase to the Grade 2 rate to an amount above the C13 rate, which we consider goes further than is necessary to apply the confirmed view. It is preferable, we consider, that Grade 1 should become a transitional rate. To the extent that the duties in Grade 1 are required to be performed on an ongoing basis, they can be duties which may also be performed at Grade 2. Our *provisional* view is therefore that clauses 12.1 and 12.2 should be varied to provide:

12.1 Grade 1

- (a) Funeral director's assistant;
- (b) coffin draper; or
- (c) adult employee not mentioned elsewhere in any of Grades 2 to 6.

An employee may only be employed at this grade for a maximum period of six months.

12.2 Grade 2

- (a) Funeral director's assistant engaged in preparation work;
- (b) unqualified embalmer in training or under supervision;
- (c) adult employee engaged in coffin staining, including puttying, filling and sanding or buffing by mechanical means or operating a spray gun, applying stains, fillers and/or undercoats; or
- (d) the duties of a Grade 1 employee after the first six months of employment.

Horticulture Award 2020

[125] Clause 15.1(a) of the Horticulture Award prescribes the C14 rate for the Level 1 classification and the C13 rate for the Level 2 classification. The full definition of the Level 1 classification in clause A.1 is 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.

[126] The Level 2 definition in clause A.2 provides, among other things, that an employee at that level ‘has completed up to 3 months structured training so as to enable the performance of work within the scope of this level’ (clause A.2.2). Reading clauses A.1 and A.2 together, the progression path from Level 1 to Level 2 is left unclear. On one view, it is intended that progression is to occur after the completion of ‘structured training’ not exceeding three months in duration. However, the indicative duties prescribed in clause A.1.3 are substantive (notably, fruit or vegetable picking), and are distinct from those prescribed for Level 2.

[127] The AWU submitted that, ideally, rates below the C13 level should be removed entirely. In the alternative, it advanced two proposals. The first was the Level 1 rate should be set at the C13 rate and Level 2 lifted to a rate halfway between the existing Level 2 and Level 3 rates. The second was that clause A.1 should be varied to ensure automatic transition from Level 1 to Level 2 after completing 76 hours of work in the industry. The AWU submitted that this temporal constraint reflected that individual fruit harvest seasons may be as short as two weeks. It referred to the Full Bench *Piece Rates Decision*⁶³ to support the proposition that 76 hours was sufficient for workers to obtain proficiency in the horticulture industry. The UWU supported the AWU’s position.

[128] The AFPA, as earlier stated, opposed the adoption of the confirmed view, both generally and in its application to this award. It submitted that the Commission has not considered the appropriateness of the confirmed view in respect of the Horticulture Award beyond a ‘ cursory consideration’ of whether the C14 equivalent classifications in awards are transitional. The AFPA submitted that the 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, which is not surprising given the nature of the industry and the fact that workers are predominantly seasonal. Fruit picking, it submitted, is a duty that is only referable to the Level 1 classification and no other, including the Level 2 classification, and that it was not mandatory to provide the structured training that would be necessary to advance to Level 2.

[129] The AFPA opposed any variation to the award, including the variations proposed by the AWU. In the alternative, should the Commission maintain the confirmed view in respect of the Horticulture Award, the AFPA submitted that the period of transition from Level 1 to Level 2 should be three months' experience. The NFF similarly submitted that no variation to the award should be made without further analysis and an understanding of the context of these awards. The Ai Group also opposed the AWU's proposed variations.

[130] It is apparent that although the Horticulture Award contemplates progression from Level 1 to Level 2 upon the completion of three months' structured training, it equally contemplates that employees may be engaged indefinitely under the Level 1 classification to perform the duties assigned to that classification. In this latter respect, the functions of fruit and vegetable picking are overwhelmingly performed by casual employee engaged seasonally and paid on the basis of the Level 1 (C14) rate.

[131] For the reasons explain earlier in this decision in respect of our confirmation of the provisional (now confirmed) view, there is no proper basis for employees engaged in longer term employment who have gained basic proficiency in their duties to remain indefinitely at the C14 rate. We consider that the confirmed view should be applied to this award so as to allow automatic progression from Level 1 to Level 2 in prescribed circumstances. However, there is some difficulty associated with the application of the confirmed view having regard to both the seasonal and itinerant nature of fruit and vegetable picking work and the diversity of skills that might be required to pick different types of crop. The AWU relied on the *Piece Rates Decision* to support the proposition that the operation of Level 1 should be confined to the first 76 hours of employment because this was all that was found to be necessary to gain the requisite level of proficiency. However, it is important to note that the approach taken in the *Piece Rates Decision* was based on acquired proficiency in a particular task. This is now reflected in clause 15.2(a)(iv), which defines the expression 'pieceworker competent at the piecework task' to mean 'a pieceworker who has at least 76 hours' experience performing the task (for example, picking apples, picking strawberries or pruning grape vines)'. It does not necessarily apply to all the tasks (whether under Level 1 or 2) which an employee might be required to perform under the award.

[132] Taking these matters into account, our *provisional* view is that two variations to the award should be made to ensure that it conforms to the confirmed view:

1. The definition of Level 1 in clause A.1 should be varied to add a requirement that progression for Level 1 to Level 2 must occur after three months' industry experience. A consequential amendment should be made to the first item in clause A.2.2.
2. The indicative duties for Level 2 in clause A.2.3 should be varied to include, by way of reference, the indicative duties for Level 1 specified in clause A.1.3 (except 'undertaking structured training so as to enable advancement to Level 2). This will ensure, for example, that fruit and vegetable picking work can be done at Level 2 as well as Level 1 (which we consider to be already implicitly permissible).

Joinery and Building Trades Award 2020

[133] The position in respect of the C14 and C13 classifications in the *Joinery and Building Trades Award 2020*⁶⁴ is similar to that in the Graphic Arts Award, as earlier discussed. The Level 1 definition in clause A.1.1 refers, in paragraph (a), to an employee at this level undertaking up to 38 hours induction training but also, in paragraph (b), refers to the employee performing ‘routine duties essentially of a manual nature ... while undertaking structured training’. Paragraph (d) also refers to Level 1 including the ‘occupations’ of general hand and factory hand. The definition of Level 2 in clause A.1.2 includes the following:

- (a) An employee to be classified at this level will have completed the required 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.

[134] ABI/BNSW, MBA and the HIA each submitted that once the all-purpose industry allowances in clause 21.3(b) are taken into account, there is no classification for which the minimum rate is below the C13 rate and that, accordingly, no further consideration of this award in the Review is required. Clause 21.3(b) provides:

(b) Industry allowance

- (i) An employee engaged on **joinery work, shopfitting, stonemasonry** or *outside work* must be paid \$ **37.28** per week extra to compensate for the disabilities associated with the industry.
- (ii) A glazier or an apprentice glazier, engaged other than on factory glazing, must be paid \$ **0.99** per hour extra while engaged other than on factory glazing to compensate for the disabilities associated with the industry, provided that:
- in respect of public holidays not worked (where payment is otherwise due), paid leave and attendance by apprentices at prescribed technical training, the disability allowance must also be paid for each hour the employee would have been engaged other than on factory glazing during such period; and
 - in the case of an employee proceeding on paid leave or receiving payment instead of leave on termination where it cannot be established to what extent they would have been engaged on other than factory glazing during the period, the disability allowance paid is to be pro rata of the disability allowance they were paid in the preceding 12 weeks.

[135] As with the CLQ Award, we reject the submission that the above industry allowances should be taken into account for the purpose of assessing whether this award conforms to the confirmed view. The allowances are expressly stated to be for the purpose of compensating for industry disabilities and do not relate to the work value reasons on which the confirmed view is based.

[136] The CFMEU proposed variations to clauses A.1.1(a) and A.1.2(a) of the award to clarify that Level 1 only applies to new entrants for the first 38 hours of employment and that after the completion of induction training, that employee automatically transitions to level 2. It also

submitted that clause A.1.2(a) should be varied to clarify that the required training for this level is the induction training and to remove the competency assessment requirement as there is no national competency standard.

[137] This was opposed by MBA and the HIA, which both submitted that the Level 1 classification is transitional in nature and did not require variation to conform to the confirmed view. However, contrary to the position of MBA and the HIA, the Ai Group submitted that the award allows for ongoing and indefinite employment under Level 1, even after the specified training has been completed, and opposed any variation which would alter that situation.

[138] Although the position is not pellucidly clear, we prefer the view that Level 1 is transitional in nature. The key indicator of this is that clause A.1.1(b)(vi) makes it clear that the performance of work at this level is undertaken ‘while undertaking structured training’ and that any such work must be ‘within the scope of that training subject to safety and training requirements’. That is, the provision does not contemplate the performance of the indicative tasks with the specified occupations once the relevant structured training has been completed. Consistent with this, clause A.1.2(a) (set out above) relevantly requires that a Level 2 employee is one who has ‘completed the required training or will have equivalent skills gained through work experience...’. However, there is no prescription of any time limit upon the transition from Level 1 to Level 2, which means that the award permits conformity with the confirmed view. Consistent with the approach we have taken concerning the Manufacturing Award, the Airline Operations Award, the Vehicle RS&R Award and the Graphic Arts Award, our *provisional* view is that there should be a limitation of three months upon the period during which an employee may be classified at Level 1. Two variations are required to effect this. First, the following additional paragraph should be added to clause A.1.1:

- (e) Within a period of 3 months, the employee will be reclassified to Level 2.

[139] Second, paragraph (a) of clauses A.1.2 should be varied to provided:

- (a) An employee to be classified at this level will have completed the required training or will have up to three months’ work experience at Level 1.

Live Performance Award 2020

[140] Clause 11.1 of the *Live Performance Award 2020*⁶⁵ prescribes the C14 rate as the minimum rate for the classification of ‘Production and Support Staff Level 1 (Induction/Training)’. Clause A.1.1(a) provides:

- (a) A Production and Support Staff Level 1 employee is a trainee employee who is undertaking:
 - (i) 6 weeks induction training in the case of a full-time or part-time employee; or
 - (ii) 228 hours induction training in the case of a casual employee.

[141] The definition of the next classification, ‘Production and Support Staff Level 2’, in clause A.2.1(a), relevantly provides that an employee at this level ‘has completed the Level 1 induction training or possesses other equivalent experience so as to enable them to perform work within the scope of this level’.

[142] The difficulty which arises is the period of employment in which the induction training may be completed, noting that clause A.1.1(c) contemplates that an employee at Level 1 may also be required to perform routine duties. Having regard to the limited period of training that may be required, our *provisional* view is that this difficulty can be remedied by adding a requirement to clause A.1.1(a) that an employee may not be engaged at the Production and Support Staff Level 1 (Induction/Training) classification for a period in excess of three months.

Marine Tourism and Charter Vessels Award 2020

[143] Clause 15.2 of the *Marine Tourism and Charter Vessels Award 2020*⁶⁶ provides for the classification of ‘Crew Level 1’ with a minimum weekly rate of \$860.80, which is between the C14 and C13 rates. The definition for this classification is contained in clause 12.1. Clause 12.1(a) provides:

This wage level is for the first 3 months of employment (probationary period). During this timeframe the 5 day Introduction Deckhand Course may be completed by the new employee.

[144] The above provision makes it apparent that the Crew Level 1 classification is intended to be transitional. However, the definition of the Crew Level 2 classification in clause 12.2(a) provides:

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’ [sic] wage level will rise to that of the Crew Level 2 wage.

[145] This provision appears to make classification at Level 2 conditional upon completion of the Introduction Deckhand Course or an assessment of ‘experience/qualifications’ by the employer. The CFMEU submitted that there needs to be more clarity as to what happens to employees who have not completed this course by the time the three month period has lapsed. It proposed that clause 12.1(a) be varied to replace ‘may be completed by the new employee’ with ‘is to be completed by the new employee unless the employee has previously completed it or had other acceptable experience/qualifications’.

[146] The AWU proposed that the Crew Level 1 employee should automatically transition to Crew Level 2 after three months in the industry and that there should be no competency or qualification-based requirements for progression beyond Crew Level 1.

[147] MIAL submitted that no ambiguity exists, and that it is clear that if the course is not undertaken, then it is determined by the employer after three months whether the employee has the relevant skills or experience to progress to Crew Level 2. MIAL therefore opposed the variation proposed by the CFMEU. ABI/BNSW submitted that the Crew Level 1 classification already aligns with the confirmed view and accordingly no variation is necessary.

[148] We agree with the CFMEU that ambiguity arises because of clause 12.2(a). Our *provisional* view is that this ambiguity should be removed by varying clause 12.2(a) to provide:

After completing the first 3 months of employment (probationary period), the employee will be classified at Level 2.

Nurses Award 2020

[149] Clause 15.1(b)(i) of the *Nurses Award 2020*⁶⁷ provides that the minimum weekly rate for a student enrolled nurse who is less than 21 years of age is \$867.90, while the rate for those who are 21 years of age and over is \$910.90. The UWU submitted that the former rate should be increased to the C13 rate. The Ai Group submitted that the under-21 classification does not conform with the confirmed view, but opposed any variation without further careful consideration taking into account industry/occupation-specific considerations. ABI/BNSW opposed any adjustment to the rate.

[150] We do not agree that the classification of student enrolled nurse is inconsistent with the confirmed view. By setting separate rates for those at least 21 years of age and those under, clause 15.1(b)(i) is in substance, if not in terms, setting a junior and adult rate. The ‘adult’ rate is above the C13 rate. The ‘junior’ rate amounts to approximately 95 per cent of the ‘adult’ rate. In these circumstances we do not consider that any variation is required.

Oil Refining and Manufacturing Award 2020

[151] There are two classifications of relevance in this Review in clause 16.1 of the *Oil Refining and Manufacturing Award 2020*:⁶⁸

- (1) The classification of ‘Refinery Operations — Trainee operator (level 1)’ has a minimum weekly rate of \$877.80 and a minimum hourly rate of \$25.08.
- (2) The classification of ‘Lubricants/bitumen plants and terminals — Trainee (level 1)’ has a minimum weekly rate of \$859.30 and a minimum hourly rate of \$24.55.

[152] The AWU noted in its submission that the apparently sub-C13 weekly rates for these classification are based on a 35-hour week. Accordingly, the minimum hourly rates are higher than the C13 rate. Each classification is limited in its application to employees undergoing necessary orientation and training, albeit that progression is dependent on achieving certain competencies, including relevant certificates. The UWU submitted that the classification rates should be increased to the C13 level. ABI/BNSW opposed this.

[153] As submitted by the AWU, clause 13.1(b) of this award provides that a full-time employee works 35 ordinary hours a week. The hourly rates for the two classifications are above the C13 rate. Taking this into account, we consider that this award conforms to the confirmed view and that no variation to the award is required.

Pastoral Award 2020

[154] There are four provisions requiring consideration in the *Pastoral Award 2020*.⁶⁹ We will deal with them in three categories below.

[155] First, clause 32.1 provides for the minimum rates of pay applying to adult farm and livestock hands in broadacre farming and livestock operations. The classification Farm and

livestock hand level 1 (FLH1) is assigned the C14 rate and FLH2 the C13 rate. The definition of the FLH1 classification in clause 31.1 is as follows:

31.1 Farm and livestock hand level 1 (FLH1)

An employee at this level includes:

- (a) Station hand with less than 12 months' experience in the industry;
- (b) Station cook;
- (c) Station cook's offsider; and
- (d) Cattle farm worker grade A who:
 - 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; and
 - understands and utilises basic statistical process control procedures.

Indicative of the tasks which an employee at this grade may perform are the following:

- routine mustering;
- routine fence repairs;
- aerial stock sighting;
- repetitive packing and/or unpacking; and
- kitchen/cooking assistance not involving food preparation.
- (e) Feedlot employee level 1 with less than 3 months' experience in the industry.
- (f) Dairy operator grade 1A with less than 12 months' experience in the industry who:
 - uses their knowledge and skills to perform set procedures such as milking and attending to livestock, haymaking, fencing.

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

- operate milking plant and equipment in a safe manner;
- identify and report equipment not operating normally;
- work co-operatively as part of a team;
- read and record instrument information i.e. milk vat temperatures and cow numbers; and
- understand the principles of safe working.

[156] The category of employees in paragraph (e) above will transition to FLH2 in a period of three months, consistent with the confirmed view. Employees in paragraphs (a) and (f) will transition to FLH2 or FLH3 in a period of 12 months, which is in excess of the six-month period in the confirmed view. For employees falling within paragraphs (b), (c) and (d), it appears that indefinite engagement at FLH1 is contemplated. It may be noted that the roles of Station cook and Station cook's offsider have no equivalent in any higher classification.

[157] The AWU submitted that, to achieve consistency with the confirmed view, the FLH1 classification definition in clause 31.1 should be varied so that:

- Station hands should only be at this level if they have less than three months of industry experience, rather than the current 12-month stipulation.
- Station cooks should be paid at the C13 rate immediately upon commencement, as there is no progression from this classification.

- Station cook's offsidiers should only fall under this classification if they have less than three months of industry experience.
- Cattle farm workers Grade A should be limited to those with less than three months of industry experience.
- Dairy operators Grade 1A should be limited to those with less than three months of industry experience, rather than the current 12-month stipulation.

[158] The NFF opposed the AWU's proposals on the basis that they were not supported by a substantial argument for change nor were they justified on work value grounds, the modern awards objective, or any other legislative grounds. The NFF also noted that the roles of station hand and dairy operator progress from FLH1 to FLH3, not FLH2, thus justifying the requirement for at least 12 months' of experience. The NFF submitted that it was unclear what the AWU envisaged should happen to an employee with more than three months' but less than 12 months' experience. The NFF maintains that the current transition arrangements in the award reflect the current practices in the industry and are informed by the history, practice, and experience of the industry. As such, it submits no changes should be made. It also noted that station cooks and off-siders are non-transitional. The NFF did not advance any proposal itself to achieve conformity with the confirmed view.

[159] Having regard to the submissions that have been made, our *provisional* view concerning each role specified in clause 31.1 is that the following variations should be made:

- FLH1 should apply only to a station hand with not more than six months' employment in the industry (clause 31.1(a)). A station hand with 6–12 months experience should be added to FLH2.
- FLH1 should only apply to station cooks and station cooks' offsidiers with not more than six months' experience (clauses 31.1(b) and (c)), with station cooks and station cooks' offsidiers being added to FLH2.
- It should be a requirement of a cattle farm worker grade A in FLH1 (clause 31.1(d)) that they have no more than six months' experience in the industry.
- The requirement for a dairy operator grade 1A for 12 months' industry experience (clause 31.1(f)) should be changed to six months. A dairy operator with 6–12 months experience should be added to FLH2.

[160] Second, clause 37.1 provides for the minimum rates for adult piggery attendants. The classification of Piggery attendant level 1 (PA1) is assigned the C14 rate, and a Piggery attendant level 2 (PA2) is assigned a minimum weekly rate of \$882.30, which is slightly (\$0.50) below the C13 rate. The definitions of PA1 and PA2 in clauses 36.2 and 36.3 respectively reflect the model for the C14 and C13 classifications in the Manufacturing Award. Thus, clause 36.2 provides:

36.2 Piggery attendant level 1 (PA1)

- (a) A piggery attendant level 1 (PA1) 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, farm layout, production program, work and record keeping procedures and work health and safety; or
 - any person employed as 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.
- (b) An employee at this level:
- is generally a new recruit to the industry who performs simple or routine tasks essentially of a manual nature and to the level of their training;
 - exercises minimal skills, knowledge and decision making;
 - works under direct supervision, and is given regular direction or guidance and whose results are constantly monitored;
 - is undertaking structured training so as to enable them to work at PA2 level; and
 - after adequate instruction the employee, may be required to undertake any task(s) listed in clause 36.1.

[161] In the definition of PA2 in clause 36.3, paragraph (a) provides:

- (a) A piggery attendant level 2 (PA2) is:
- an employee appointed by the employer to this level who has completed up to 3 months' structured training so as to enable the employee to work within the scope of this level.

[162] The AWU submitted that the PA1 classification should continue to be limited to 38 hours of induction training and that clause 36.3(a) should be amended so that progression to PA2 is not dependent on completing structured training or obtaining competencies. It further submitted that PA2 should be paid at the C13 rate. This was opposed by the NFF, which submitted that transition to PA2 does not currently occur automatically after the completion of 38 hours' induction training.

[163] Because the definitions of PA1 and PA2 reflect the C14 and C13 classifications in the Manufacturing Award, our *provisional* view is that they should be varied in a way equivalent to that proposed for the Manufacturing Award in paragraph [59] above. This will ensure progression from PA1 to PA2 within a period not exceeding three months.

[164] Third, clause 47.1 provides that the classification of Poultry worker level 1 (PW1) has minimum rates equal to the C14 rate. PW2 is above the C13 rate. Clause 46.1(b) relevantly provides that an employee classified at PW1 must have less than 12 months' experience in the industry, while clause 46.2(a)(i) relevantly requires that an employee at PW2 must have more than 12 months' experience in the industry. Thus, PW1 is clearly a transitional classification but the transition period is in excess of the six months allowed by the confirmed view.

[165] The AWU submitted that the PW1 classification should be limited to employees with less than three months of industry experience, rather than the current 12 months. This was opposed by the NFF.

[166] Our *provisional* view is that, in order to achieve consistency with the confirmed view, the references in clauses 46.1(b) and 46.2(a) to 12 months' industry experience should be altered to six months.

Port Authorities Award 2020

[167] Clause 15.1(a) of the *Port Authorities Award 2020*⁷⁰ provides that the minimum rate of pay for an adult employee classified at Level 1 is the C14 rate. The minimum weekly rate for a Level 2 employee is \$903.60. Clause A.1 defines a Level 1 employees as follows:

A.1 Level 1

- Completed induction
- Works under detailed instruction
- Basic civil/maintenance work, mooring deckhand, cleaning wharves and sheds
- Operating small plant, fork lifts (up to 10,000 kg), bob cats, sweepers, line markers

[168] Clause A.2 relevantly requires a Level 2 employee to be performing duties above Level 1. We note however that the preamble in Schedule A provides that an employee at each level 'will undertake lower level duties as well as performing tasks incidental to work at their level'.

[169] Clause A.1 is not, in terms, a transitional classification nor is there any prescribed path of progression to Level 2. The CFMEU proposed that this problem could be remedied by deleting Level 1 completely and amending clause A.2 to remove the requirement to perform duties above Level 1.

[170] We consider that the CFMEU's proposal goes further than is necessary to resolve the identified problem. Our *provisional* view is that a requirement should be added to clause A.1 that an employee may not be engaged at the Level 1 classification for more than six months. To the extent that the Level 1 classification contemplates the performance of the specified duties on an ongoing basis, such duties may be performed by a Level 2 employee having regard to the 'lower level duties' requirement contained in the preamble to Schedule A.

Pest Control Industry Award 2020

[171] Clause 16.1 of the *Pest Control Industry Award 2020*⁷¹ provides that the Level 1 classification has a minimum weekly rate of \$868.00, which is above the C14 rate but below the C13 rate. The Level 2 minimum rate is slightly above the C13 rate. Clause 12.1 of the award defines the Level 1 and 2 classifications as follows:

(a) Level 1

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.

(b) Level 2

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.

[172] The Level 1 definition contemplates that an employee at this level must have less than six months' industry experience. Level 2 appears to operate on the presumption that an employee under the award will at some stage apply for a relevant licence and undertake the required course. However, the requirement to have applied for a licence and undertake a course may, arguably, mean that an employee may be engaged at Level 1 on the C14 rate for a period of more than six months if no such application has been made.

[173] The AWU submitted that clause 12.1 should be varied to ensure automatic progression for employees from Level 1 after they acquire three months of industry experience, and that there should be no requirement to have applied for a licence at Level 2, as licensing is only a hard requirement at Level 3. The Ai Group submitted in response that the AWU has not advanced any justification for its proposed variations and that, given the award provides for progression to Level 2 after six months, it conforms to the confirmed view and no further consideration is required.

[174] For the reasons stated, we do not consider that this award, on its face, conforms to the confirmed view. In order to remedy this, our *provisional* view is that clauses 12.1(a) and (b) should be varied to provide as follows:

(a) Level 1

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 may only be classified at this level if they have been employed in the industry for less than 6 months.

(b) Level 2

A Level 2 employee is a person who has:

- (i) been employed in the industry for 6 months or more; or
- (ii) 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.

Rail Industry Award 2020

[175] Clause 15.1(b) of the *Rail Industry Award 2020*⁷² provides that the minimum rate for the classification of ‘Level 1 Rail Worker (Op)’ is the C14 rate. Schedule A provides that employees in this classification have the following tasks and functions:

- 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.

[176] The RTBU submitted that this classification is inconsistent with the confirmed view and should be subject to a transition period of one month since it is only intended to apply during basic induction training. It submitted that this time period was consistent with the fact that many training providers offer the opportunity to complete all components of standard induction or structured training within one day and that at least one operator only allows an employee a period of only 80 hours within which to complete entry-level training. The AWU supported the RTBU’s position. The Ai Group submitted that this classification was one which permitted the performance of a substantive role on an ongoing basis and that the implementation of the confirmed view would be likely to have a significant impact upon employers covered by the award.

[177] We consider that this classification is inconsistent with the confirmed view since it is not time-limited and provides no obvious path to progression to Level 2. Our *provisional* view is that the description of the classification in Schedule A should be varied to require progression to Level 2 Rail Worker (Op) after three months’ employment.

[178] There is one further classification in the award which is below the C13 rate. Clause 15.1(c) provides for the classification of Level 1 Rail Worker (TCI) with a minimum weekly rate of \$882.40, which is \$0.40 below the weekly C13 rate. The classification description in Schedule A provides that the tasks and functions of this position include general labouring and cleaning duties, which suggests that the classification may be intended to apply to ongoing employment. Our *provisional* view is that the rate of this classification should be increased by the minor amount necessary to match the C13 rate.

Seafood Processing Award 2020

[179] The classifications in clause 15.1(a) of the *Seafood Processing Award 2020*⁷³ include two classifications below the C13 rate. First, the classification of ‘Process Attendant Level 1’ is assigned the C14 rate. The definition of this classification in clause 12.1 provides, in paragraphs (a) and (b), that it applies to a new employee who is undertaking training in their first three months of employment. However, clause 12.1(c) provides:

(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.

[180] The above provision appears to contemplate that an employee may in fact remain in the Level 1 classification for more than three months and, conceivably, could remain there for longer than six months if they do not demonstrate the requisite competency. To this extent, the classification does not conform to the confirmed view.

[181] Secondly, the classification of ‘Process Attendant Level 2’ has a minimum weekly rate of \$871.00, which is below the C13 rate. The definition of this classification in clause 12.2 is as follows:

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,
- (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.

[182] The above definition makes it clear that the classification may apply to ongoing employment.

[183] The AWU proposed the amendment of clause 12.1(c) to make it clear that three months is the maximum period at this level, and a further amendment which refers to work in the ‘industry’ rather than work for a particular employer. Additionally, the AWU submitted that the Commission should consider lifting Process Attendant Level 1, which currently aligns with

C14, to C13, and lifting Process Assistant Level 2 to a rate which is half the difference between the current Level 3 and Level 2 rates. Alternatively, it submitted that, at the very least, the Level 2 rate should be lifted to C13 as no timeframe is provided to progress from this level. The Ai Group opposed each of these proposals, submitting that the AWU has not made out a case for the proposed change and noting an employee cannot be reclassified to Level 2 until they are competent in the tasks contemplated by the Level 1 descriptor. It submitted that it is entirely appropriate in the context of a classification framework that features successive levels that each would proceed on the basis that the employee is competent 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.

[184] In respect of clause 12.1(c), our *provisional* view is that it should be amended to impose an outer limit of six months on the period during which an employee may be engaged at Level 1. The provision would therefore read:

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, provided that an employee may not be classified at this level for a period in excess of 6 months.

[185] As to the Level 2 classification, our *provisional* view is the rate should be increased to the C13 rate. The classification requires ‘proven and demonstrated skills, including industry certification as appropriate’, and the skills and duties indicated require that it at least be aligned with the C13 classification in the Manufacturing Award.

Seagoing Industry Award 2020

[186] Clause A.1 of schedule A of the *Seagoing Industry Award 2020*⁷⁴ prescribes minimum rates of pay for vessels granted a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth). The minimum weekly rate for the combined classification of ‘OS [ordinary seaman]/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward’ is slightly (\$0.10) above the C14 rate. There is no indication in the award that this is a transitional classification.

[187] The CFMEU submitted that that the classifications of ordinary seaman, wiper, deckboy, catering boy, 2nd cook and messroom steward are discrete and do not transition into other classifications. Additional requirements, such as sea time and competency tests, are used to transition. As such, the CFMEU proposed a variation to clause A.1.1 whereby the C14 rate would be payable for the first three months and the C13 rate would be payable thereafter.

[188] Maritime Industry Australia Limited (MIAL) submitted that, as a matter of proper context, Schedule A applies to ships granted a temporary licence who have, in the previous 12 months, completed at least two voyages pursuant to a temporary licence. As such, almost all vessels to which Schedule A applies are foreign, and the award applies to them only intermittently. The classifications were intended to be transitional for periods generally in the range of 6-12 months. MIAL submitted that, on that basis, the classification in question is not inconsistent with the confirmed view and no variation is required. In the alternative, MIAL

submitted that if a variation was considered to be necessary, the transition period should be six months.

[189] We consider that the classification is inconsistent with the confirmed view although we accept that the circumstances in which this might have practical consequences are likely to be relatively unusual. Our *provisional* view is that clause A.1.1 should be varied so that the C14 rate would apply for the first six months of employment as a ‘OS/Wiper/Deckboy/Catering Boy/2nd Cook/Messroom Steward’ and the C13 rate applies thereafter.

Stevedoring Industry Award 2020

[190] Clause 16.1 of the *Stevedoring Industry Award 2020*⁷⁵ prescribes the C14 rate as the minimum weekly rate for a Stevedoring Employee Level 1. However, the hourly rate for this classification is \$24.55 because clause 13.1(a) provides that ordinary hours are 35 per week. Clause A.1 defines a Grade 1 employee as ‘an employee who is undergoing induction and initial training prior to appointment as a stevedoring employee Grade 2’. There is no prescribed time limitation on the application of Level 1.

[191] The CFMEU submitted that the Grade 1 classification should be deleted altogether. This submission was supported by a witness statement made by Warren Smith, the Deputy National Secretary of the MUA Division of the CFMEU, which asserted that the Grade 1 classification ‘has no application throughout the industry’.⁷⁶ ABI/BNSW contested this assertion and opposed the deletion of the classification, submitting that if a variation was required, the Commission should place a temporal outer limit on it.

[192] We do not consider that the Grade 1 classification is inconsistent with the confirmed view because, having regard to the fact that the award provides for a 35-hour week, the rate for this classification is above the C13 rate. Accordingly, no variation is required to this award.

Sugar Industry Award 2020

[193] The *Sugar Industry Award 2020*⁷⁷ contains four classifications that are below the C13 rate:

- (1) Clause 17.1 prescribes minimum rates for adult field, experiment stations and cane tester employees. In the Cultivation/Cane Production stream, the classification of ‘CPT (Inductee/Trainee)’ has a minimum weekly rate of \$867.20. The definition of this classification in clause A.2.1 describes it as applicable to an employee ‘who is engaged for a maximum of 240 consecutive hours within the first 6 week period from such employee’s initial engagement in the industry’. This classification is plainly transitional in nature and conforms to the confirmed view.
- (2) Also in clause 17.1, in the Cane Testers Stream, the classification of ‘CT1 (Level 1)’ has a minimum weekly rate of \$861.40, which is above the C14 rate but below the C13 rate. The definition of this classification in clause A.5.1 includes:

An employee appointed by the employer to carry out established cane testing requirements in accordance with the operational requirements of the employer; completes

procedural tasks under general supervision; more complex tasks needing theory and more motor skills are completed under direct supervision.

Clause A.5.1(c) also provides that an employee at CT1 must hold a Certificate in Laboratory Chemistry (Sugar) or an equivalent certificate as recognised by the employer. The CT1 classification is not transitional but rather involves ongoing employment at that level, and therefore does not conform to the confirmed view.

- (3) Clause 19.1 prescribes minimum rates for adult milling, distillery, refinery and maintenance employees. The C14 rate applies to the classification of 'C14/L2', and the C13 rate applies to the next classification of 'C13/L3'. Schedule B provides separate definitions for these classifications in each of the milling, distillery, refinery and maintenance streams. For the milling stream, the classification contains a description of the skills and responsibilities required and a list of 'indicative classifications' (job titles). The definitions for the distillery and refinery streams merely contain the same skills/responsibilities descriptors as for the corresponding milling stream classifications, with no specified indicative job titles. In the maintenance stream, the classification is defined in terms equivalent to the C14 classification in the Manufacturing Award (including the reference to 'up to 38 hours induction training')⁷⁸ and is plainly an entry-level one. In the other three streams the classification is not transitional but applies to ongoing employment, and does not conform to the confirmed view.
- (4) Clause 21.1 prescribes minimum rates for bulk terminal employees. The C14 rate applies to the 'BT1' classification. The classification is defined in clause C.1 as follows:

New starter—basic labouring duties. This is the level for a new terminal technician who undertakes a 3 month probation period whilst training and performing basic labouring duties.

The BT1 classification is time-limited to a three-month period and therefore conforms to the confirmed view.

[194] With respect to the second and third classifications above, the AWU advanced various proposals to adjust the rates to conform to the confirmed view. The Ai Group submitted that it is not clear how the confirmed view might be implemented, given that the relevant classification levels contemplate the performance of substantive roles on an indefinite basis and that implementation of the confirmed view is likely to have a significant impact upon employers covered by it.

[195] In relation to the CT1 (Level 1) classification, we do not consider that it is practicable to convert this classification to a transitional one. A classification of this nature, which requires the holding of a specific qualification, should never have been assigned a minimum rate of pay below the C13 level. Indeed, a classification requiring an equivalent qualification under the Manufacturing Award would be at the C12 level or higher. Our *provisional* view is that, for work value reasons, the rate for the CT1 (Level 1) classification should be increased to the C13 rate, noting that the minimum weekly rate for the CT2 (Level 2) classification is \$911.90.

[196] As to the C14/L2 classification for milling, distillery, refinery and maintenance employees, our *provisional* view is that the classification should become an entry-level classification drafted in terms equivalent to that for the C14 classification in the Manufacturing Award, as proposed to be modified in paragraph [59] above. In the milling stream, the existing indicative classifications contained in the definition in clause B.1.1 should be merged into those for the C13/L3 classification in clause B.1.2.

Textile, Clothing, Footwear and Associated Industries Award 2020

[197] There are two classifications to which the C14 rate applies in the *Textile, Clothing, Footwear and Associated Industries Award 2020*.⁷⁹ The first is the classification of Trainee in the ‘General rates’ set out in clause 19.1. The definition of this classification in clause A.1.1 makes it clear that this is a purely entry-level training classification that is limited to an initial three-month period. The CFMEU submitted that the definition should be varied to clarify that an employee may only remain on this classification for a maximum period of three months. Against this, ABI/BNSW submitted that such a variation is not warranted for the trainee classification as it is bounded by the prescribed three-month period and therefore conforms to the confirmed view. We agree with ABI/BNSW.

[198] The second classification is that of ‘General hand’ in the rates for ‘Wool and basil employees’ prescribed by clause 19.2. ‘Wool and basil employees’ are defined in clause B.4 as ‘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’, but there is no specific definition of what constitutes a General hand. The CFMEU submitted that this classification should be amended so that it only applies to employees undergoing up to 38 hours of induction training. ABI/BNSW acknowledged that it the classification did not appear to conform to the confirmed view as it is not transitional, but submitted that because it is implicit that it applies to general work performed on an ongoing basis, it is not appropriate to alter this classification into a temporary level based on an arbitrary timeframe. The Ai Group opposed the CFMEU’s proposed variation because the classification captures ongoing work.

[199] The lack of any definition of the ‘General hand’ classification leaves open the possibility that the classification applies to ongoing work and, as such, it does not conform to the confirmed view. Our *provisional* view is that that the title of the classification in clause 19.2 should be modified to be: ‘General hand – first 3 months of employment only’. This will render the classification consistent with that of Trainee in clause 19.1.

Timber Industry Award 2020

[200] There is a dispute about whether the *Timber Industry Award 2020*⁸⁰ conforms to the confirmed view. There are two classifications in the award for which the C14 rate is the prescribed minimum. The first is the Level 1 classification in the ‘General Timber Stream’ in clause 20.1(a). The definition of this classification in clause A.1 makes it clear, at A.1.1(a)–(d), that this is a training classification. Clause A.1.1(f) provides that ‘[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’, and establishes criteria for such an extension. In relation to Level 2, to which the C13 rate applies,

the chapeau to clause A.2.1 provides: ‘An employee at this level performs work above and beyond the skills of a Level 1 employee and is competent to perform work within the scope of this level’. We consider that this classification conforms to the confirmed view in that it requires progression to the C13 rate after the upper limit of six months employment is reached. The CFMEU submitted that the definition of the Level 1 classification should be varied to make clear that it only applies to new entrants to the general timber industry, and both the CFMEU and the AWU submitted that the capacity for a three-month extension at Level 1 should be removed, but we do not consider that either such variation is necessary within the scope of this Review.

[201] Second, the Level 1 classification in the ‘Wood and Timber Furniture Stream’ in clause 20.1(b). This classification is defined in clause B.1. Clause B.1.1 provides that an employee at this level 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’. This appears to limit application of the classification to a period of three months. However, clause B.1.7 provides:

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.

[202] This provision appears to establish a competency test for progression to Level 2 (which has the C13 rate), with the potential result that a person may be classified at Level 1 for a period in excess of three, or perhaps six, months. The definition of Level 2 in clause B.2.1 establishes a similar competency test for progression.

[203] The CFMEU submitted that the competency requirement means that progression to Level 2 is conditional. The Ai Group accepted this, and the HIA also ultimately accepted this in oral submissions. ABI/BNSW submitted that the industry allowance in clause 22.3 ensures that all rates exceed the C13 rate, but this allowance only applies to work performed in forests and is plainly a disability allowance.

[204] In our view, Levels 1 and 2 in the Wood and Timber Furniture Stream do not conform to the confirmed view. Our *provisional* view is that clause B.1.7 should be varied to provide:

B.1.7 Progression

A Timber furniture production employee, Level 1, will progress to Level 2 after a period of three months.

[205] Clause B.2.1 should also be varied to provide:

B.2.1 A Timber furniture production employee, Level 2, is an employee who has successfully completed the induction program and skill development consistent with national competency standards so as to enable the employee to perform duties within the range specified for this level or who was been employed at Level 1 for a period of three months.

Wine Industry Award 2020

[206] Clause 15.1 of the *Wine Industry Award 2020*⁸¹ provides for a Grade 1 classification with a weekly pay rate of \$871.20, which is above the C14 rate but below the C13 rate. The Grade 2 classification has a minimum weekly rate of \$906.90. The classification definitions in Schedule A of the award are divided into the ‘Bottling stream’, the ‘Cellar stream’, the ‘Cellar door sales stream’, the ‘Laboratory stream’, the ‘Vineyard stream’, the ‘Warehouse and supply stream’ and the ‘Coopers stream’. In each stream, the Grade 1 classification is defined as follows (see clauses A.1.1, A.2.1, A.3.1, A.4.1, A.5.1, A.6.1 and A.7.1):

- (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.

[207] The above definition plainly contemplates that an employee may remain on a sub-C13 rate for a period in excess of six months.

[208] The AWU submitted that the existing classification structure should be retained but the Grade 1 classification rate should be lifted to align with the C13 rate. The AWU further submitted that if it is determined that a new introductory level is needed, this should be limited to 76 hours of industry experience before progression to the next level. The UJU supported the AWU’s position. The Ai Group opposed the AWU’s proposal on the basis that the proposed increases in pay have not been justified on work value grounds and would be unfair and adverse to employers. The Ai Group did not advance any alternative proposal.

[209] Because it is unclear as to how long it may take to complete the ‘training in the modules essential to the Grade 2 level’ for each stream, we do not consider it appropriate to endeavour to alter the Grade 1 classification definitions to provide for a transition to Grade 2 within six months. Accordingly, our *provisional* view is clause 15.1 should be varied so that there are two rates for the classification, with the existing rate applying for the first six months of employment and the C13 rate applying thereafter.

Wool Storage, Sampling and Testing Award 2020

[210] There are three classifications in clause 16.1 of the *Wool Storage, Sampling and Testing Award 2020*⁸² with a minimum weekly rate of \$878.40, which is below the C13 rate. For two of these, namely ‘Wool Industry Worker Level 1 (Wool Testing)—First 3 months’ and ‘Wool Industry Worker Level 1 (Skin and Hide Stores)—First 3 months’, there is a clear transition after three months’ employment to a higher Level 1 rate that is above the C13 rate. However, the position is different in respect of the classification of ‘Wool Industry Worker Level 1 (Wool Storage)’. The definition of this classification in clause A.3.1 makes it apparent that it is not a transitional classification and is intended to allow for ongoing employment performing the ‘skills/duties’ specified in clause A.3.1(b). Clause A.3.1(c), Promotional criteria, provides: ‘[a]n 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’.

[211] We do not consider that it is practicable for this classification to be converted into a transitional classification. Therefore, consistent with the position of the first two classifications referred to, our *provisional* view is that there should be a transition to a higher Level 1 rate after three months' employment. The higher rate will be the C13 rate.

Category 5: Awards in relation to which no submissions were received

[212] In relation to a number of award provisions referred to in Schedule D of the September statement, no submissions specific to those provisions were received from any party. Accordingly, in relation to these awards, we will state our *provisional* view as to the form of variation that is necessary and then give interested parties a further opportunity to make submissions about this.

Air Pilots Award 2020

[213] There are three classifications at, or very near to, the C14 rate in the *Air Pilots Award 2020*⁸³. Clause A.1.1 provides for the classifications of First Officers and Second Pilots in airlines/general aviation flying a 'single engine UTBNI 1360 kg' and a 'single engine 1360 kg–3359 kg' with an annual salary of \$44,688. Using a 52-week divisor to derive a weekly rate, this is within ten cents of the C14 rate. These are clearly not transitional rates. Clause C.9.1 provides for the minimum weekly salaries for pilots involved in aerial application operations, with differential rates for hours of flying experience. For 1–1000 flying hours, the weekly rate is the C14 rate while, for 1001–2000 flying hours, the rate is slightly above the C13 rate (\$886.00). This seems to allow for the possibility that the pilot might remain on the C14 rate for longer than six months.

[214] No specific submissions were made about this award. The Ai Group simply made a general submission that this award was one of a number of awards which did not conform to the confirmed view.

[215] Our *provisional* view is that:

1. For the identified classifications in clause A.1.1, the annual salary should be increased to \$46,029 (C13 weekly rate x 52.14, rounded to the nearest dollar).
2. For the classifications in clause C.9.1, a provision should be added entitling any employee with more than six months' industry experience to the rate for 1001–2000 flying hours (i.e. the C13 rate).

Australia Post Enterprise Award 2015

[216] Clause 23.1 of the *Australia Post Enterprise Award 2015*⁸⁴ provides for four classifications with a minimum annual salary of \$46,008: Agency Assistant Grade 1, Trainee Mail Officer Level 1, Trainee Postal Delivery Officer, and Trainee Parcel Post Officer Level 1. This salary equates to a weekly rate which is higher than C14 but approximately \$0.40 per week lower than C13. None of these classifications is transitional in nature. Our *provisional* view,

given the minimal amounts involved, is that the award should be varied to increase the annual salary in each case to \$46,029 (C13 weekly rate x 52.14, rounded to the nearest dollar).

Australian Capital Territory Public Sector Enterprise Award 2016

[217] Clause A.1.1 of the *Australian Capital Territory Public Sector Enterprise Award 2016*⁸⁵ provides for a classification of Allied Health Assistant 1 with a minimum hourly rate of \$20.50 and a minimum annual salary rate of \$39,301. This is based on working hours of 36.75 per week. The hourly rate is below the C14 hourly rate. There is no classification definition and there is no provision limiting the time during which an employee may be paid under this classification. Our *provisional* view is that the hourly rate should be increased to the C13 hourly rate of \$23.23, and the annual salary rate should be increased to \$44,535, using the calculation formula specified in clause 11.2 (Annual Salary = Minimum Hourly Pay Rate x ordinary hours of work per fortnight x (313/12), rounded to the nearest dollar).

Australian Government Industry Award 2016

[218] There are two classifications in the *Australian Government Industry Award 2016*⁸⁶ which are inconsistent with the confirmed view. These are contained in Schedule I, which applies to the Australian Maritime Safety Authority. The classification grade of AMSA Level 1 in clause I.17.4 has four pay levels. The bottom two of these are 'Minimum', with an hourly rate of \$22.62 and an annual salary of \$43,365, and '1st point', with an hourly rate of \$23.22 and an annual salary of \$44,516. Clause I.17.6 provides that progression through salary points is subject to an annual performance review and is not automatic. The 'Minimum' hourly rate is one cent per hour above the C14 rate, while the '1st point' is one cent per hour below the C13 rate. Our *provisional* view is that the following variations should be made to render these provisions consistent with the confirmed view:

- (1) Clause I.17.6 should be varied so that an employee in the AMSA Level 1 grade must progress from the 'Minimum' salary point to the '1st point' not later than six months after the commencement of employment.
- (2) The hourly rate for '1st point' should be increased to \$23.23 per hour and the annual salary increased to \$44,535, using the calculation formula specified in clause I.17.3 (Annual Salary = Minimum Hourly Pay Rate x ordinary hours of work per fortnight x (313/12), rounded to the nearest dollar).

[219] Schedule D to the September statement identified a third classification as being problematic. It is contained in Schedule J, which applies to the Australian Prudential Regulation Authority. In clause J.5, the minimum annual salary for a Graduate trainee (Band 1) is \$45,520. Using the formula contained in clause 12.2 (Annual Salary = Minimum Hourly Pay Rate x 73.50 x (313/12)), which applies to clause J.5 by virtue of clause J.1.2, this translates to an hourly rate of \$23.74 which is above the C13 rate. No variation of this provision is therefore required.

Christmas Island Administration Enterprise Award 2016

[220] The *Christmas Island Administration Enterprise Award 2016*⁸⁷ contains two classifications with pay rates below the C13 rate (but above the C14 rate). Clause 10.4 provides that a General Service Officer at level GSO 2 has a minimum hourly rate of \$22.93 (and an annual salary of \$45,455) and that a Hospital Service Employee at HSE (Level 1) has a minimum hourly rate of \$22.91 (and an annual salary of \$45,415). There is no explicit time limitation on the application of these pay levels, although the classification structure as a whole appears to operate by way of annual increments within each classification band.

[221] Our *provisional* view is that, in order to achieve consistency with the confirmed view, a requirement should be added to clause 10 that a person cannot be classified and paid a GSO 2 or HSE (Level 1) for a period in excess of six months.

Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015

[222] Clause 20.2(a) of the *Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015*⁸⁸ sets out the classifications applicable at 'Davies Brothers and Adelaide City Site'. At the end of the list of specified classifications is a rate of \$871.00 per week for 'Not otherwise specified'. This rate is below the C13 rate and there is no apparent path for progression unless the employee's role changes. Our *provisional* view is that it is necessary to increase the weekly pay rate for this classification to the C13 rate in order to apply the confirmed view.

Northern Territory Public Sector Enterprise Award 2016

[223] Clause 10.4 of the *Northern Territory Public Sector Enterprise Award 2016*⁸⁹ includes a classification of 'Pupil Nurse' with a minimum annual salary of \$45,630. Applying the formula specified in clause 10.1(b) (fortnightly pay = annual salary x 12/313), this translates to a weekly rate of \$874.70, which is below the C13 rate. There is no limitation upon the period at which an employee may be classified at this grade, nor is there any basis to conclude that the requisite training period which must be completed before a nurse can progress to the next classification of Enrolled Nurse is six months or less. Accordingly, our *provisional* view is that it is necessary to increase the annual salary for this classification to \$46,053 (rounded to the nearest dollar) so that it equates to the C13 rate.

Note Printing Australia Award 2016

[224] Clause 20.1 of the *Note Printing Australia Award 2016*⁹⁰ includes, in table 1, classifications in the 'Regular pay stream' and the applicable minimum pay rates. The lowest paid classification is Level 1, to which the C14 rate applies, while Level 2 has the C13 rate. Clause E.1.2 provides that the 'Regular pay stream' is used for positions that do not require formal qualifications. Level 2 is described as the 'entry level for permanent employees', while Level 1 is only for casual positions. The award does not contain any limitation on the period for which casual employees may be engaged, and the classification structure therefore appears to permit a casual employee to be engaged indefinitely at the Level 1 C14 rate. Our *provisional* view is that clause E.1.2 should be varied so as to provide that no employee may be engaged at Level 1 for a period in excess of six months.

Nurses and Midwives (Victoria) State Reference Public Sector Award 2015

[225] Clause A.2 of the *Nurses and Midwives (Victoria) State Reference Public Sector Award 2015*⁹¹ provides that the rate of pay for a Trainee Enrolled Nurse in Year 1 is \$867.90 per week (above the C14 rate but below the C13 rate), while the rate for year 2 is \$910.90. Because we consider that it would be inappropriate to interfere with the training period for a trainee enrolled nurse by limiting the period at which the current Year 1 rate may be applied to six months, our *provisional* view is that the Year 1 rate should be increased to the C13 rate of \$882.80 per week.

Printing Industry – Herald & Weekly Times – Production Award 2015

[226] Clause 16.1(a) of the *Printing Industry – Herald & Weekly Times – Production Award 2015*⁹² provides for a classification of Production Assistant 1 with a minimum weekly rate of \$877.10, which is above the C14 rate but below the C13 rate. Clause 15.2(a) provides that a ‘Production Assistant (I)’ (which we assume is meant to be a reference to the same classification) ‘is to be trained in all aspects of non-trades duties’ (which are then specified on a non-exhaustive basis). Clause 15.2(b) provides that a ‘Production Assistant (II)’, the next classification up, ‘is a person who after three months employment is capable of carrying out all the duties of a Production Assistant (I) and who may hold a current licence to operate a fork lift and/or current rigging and scaffolding certificate and/or current crane chasers certificate’. On one view, this provision is to be read as meaning that an employee may remain at the Production Assistant 1 rate if they are adjudged to be not yet capable of performing all the duties of that classification. Our *provisional* view is that clause 15.2(a) should be varied to provide that an employee may not be classified and paid at the Production Assistant 1 level for a period in excess of three months.

Victorian Local Government (Early Childhood Education Employees) Award 2016

[227] Clause 14.5 of the *Victorian Local Government (Early Childhood Education Employees) Award 2016*⁹³ sets out the classification and minimum pay rates for educators. The lowest classification is for an ‘Educator (unqualified)’ at Level 1.1, with a minimum weekly rate of \$878.00, below the C13 rate. The next classification is Level 2.1, with a minimum weekly rate of \$909.90. Clause A.1.1 defines the ‘Level 1 (Unqualified)’ Educator classification, which we presume is the same as the Level 1.1 classification in clause 14.5. It sets out in detail training requirements and indicative duties at this level, and provides that a ‘Level 1 employee will progress to the next level after a period of one year or earlier if the employer considers the employee capable of performing the work at the next level or if the employee actually performs work at the next level’. Our *provisional* view is that rather than interfere with the initial training period contemplated by this award, the most straightforward course is to increase the Level 1.1 rate in clause 14.5 to the C13 rate.

Victorian State Government Agencies Award 2015

[228] There are two classifications of concern in the *Victorian State Government Agencies Award 2015*⁹⁴. First, clause 33.2 provides for the classification of ‘Trainee Officer’ in the Emergency Services Telecommunications Authority (ESTA). The minimum rate of pay, which is expressed in annual, fortnightly and hourly amounts, equals the C14 rate calculated on a

weekly basis. There is no specific provision limiting the period of time during which an employee may remain at this classification and pay rate. Clause 9.6(b) provides that an employee will be eligible ‘to progress to the next step after 12 months’ satisfactory occupancy of the current step on the basis of acquiring and utilising skills’ and clause 9.7 provides that ‘[a]dvancement to a higher work level must be based on promotion and the availability of a suitable vacancy’, but clause 32.1 provides that clause 9 does not apply to the ESTA. Our *provisional* view is that clause 33.2 should be varied to add a requirement that an employee may not be engaged and paid at the Trainee Officer level for a period in excess of six months.

[229] Second, clause 38.2 provides for classifications applicable to the Field Division of VicRoads. For Road Workers, the lowest classification is RW1-1, which has minimum rates specified as annual, fortnightly and hourly amounts. On a weekly basis, the rate is \$879.30, slightly below the C13 rate. Clauses 9.6(b) and 9.7 appear to be applicable (see clause 38.1), meaning that an employee may remain on the RW1-1 rate for a period of 12 months or more. Our *provisional* view is that the RW1-1 rates of pay should be varied to align with the C13 rate.

Conclusions

Modern awards objective and minimum wages objective

[230] Our *provisional* conclusion is that we are satisfied that the proposed variations outlined above are, for the purpose of s 138 of the FW Act, necessary to achieve the modern awards objective in s 134(1). For the reasons earlier stated in this decision, we consider as a general proposition that a fair and relevant safety net of terms and conditions requires that the C13 rate be the lowest rate applicable to ongoing employment that extends beyond an initial phase of induction, training and basic skills acquisition. In reaching this conclusion, we have taken into account the considerations specified in s 134(1) in the following way (using the paragraph designations in the subsection):

Paragraph (a): Using the measure of ‘low paid’ as being two-thirds of median adult ordinary-time earnings for full-time employees, the ‘low paid threshold’ may be calculated as \$1066.67 per week (using the Australian Bureau of Statistics (ABS) Characteristics of Employment (COE) data for August 2023) or \$1131.33 per week (using the ABS Employee Earnings and Hours (EEH) data for May 2023). Employees who receive a weekly income equivalent to the C13 weekly rate are, on either of these measures, to be classed as low-paid. To the extent that, as a result of the proposed variations, the rate of any employee will move from a sub-C13 rate to the C13 rate (whether immediately upon the variations taking effect or within a period not more than six months afterwards), that will improve the employee’s relative living standards, albeit the employee will not cease being low paid. This weighs in favour of the proposed variations.

Paragraph (aa): There is no material before us which suggests that the proposed variations will have any appreciable effect on access to secure work across the economy. This is therefore a neutral consideration.

Paragraph (ab): Because 58.1 per cent of award reliant employees are female, any adjustment to minimum award rates of pay will disproportionately benefit the female

workforce and is likely to narrow the gender pay gap.⁹⁵ Any such effect in this case will, however, only be minor. This consideration weighs in favour of the proposed variations to a small degree.

Paragraph (b): There is no basis to consider that the proposed variations will any effect on collective bargaining. We therefore treat this as a neutral factor.

Paragraph (c): There is no probative material before us which indicates that the proposed variations will have any effect on workforce participation. This is therefore a neutral consideration.

Paragraph (d): We do not consider that this is a relevant consideration in this matter.

Paragraph (da): We do not consider that this is a relevant consideration in this matter.

Paragraph (f): The proposed variations will, in some cases, cause an increase in employment costs. However, because this is likely to affect only a small proportion of the award-reliant workforce, and the amount of any increases to award rates of pay are small, this only weighs against the proposed variations to a small degree.

Paragraph (g): Consistency in the alignment of award entry-level rates of pay and the lowest rates of pay applicable to ongoing employment will make the modern award system simpler, easier to understand and more stable. This weighs in favour of the proposed variations.

Paragraph (h): There is no basis for us to conclude other than that the proposed variations will not have any discernible effect on the national economy. We will therefore treat this as a neutral factor.

[231] We likewise *provisionally* conclude that the proposed variations are consistent with and necessary for the achievement of the minimum wages objective. In respect of the considerations in ss 284(1)(a), (aa), (b) and (c), we make the same findings as in relation to ss 134(1)(h), (ab), (c), and (a) respectively. Section 284(1)(e) is not relevant to this matter.

Work value reasons

[232] To the extent that the proposed variations would increase minimum award wages, we are satisfied for the purpose of s 157(2) of the FW Act that:

- (1) for the reasons set out earlier in this decision, particularly in paragraphs [22]–[30] above, there are work value reasons within the meaning of s 157(2A) which justify the proposed variations; and
- (2) having regard to the reasons set out in paragraph [230] above, making the proposed variations outside the system of annual wage reviews is necessary to achieve the modern awards objective (noting that the *AWR 2023 decision* expressly contemplated the outcome of this Review adopting the confirmed view⁹⁶).

[233] We affirm that our consideration of the work value reasons justifying the proposed variations has been free of assumptions based on gender. There is no material before us suggesting the work the subject of the award classifications considered in this Review has historically been undervalued because of assumptions based on gender. However, we cannot positively conclude that this has not occurred in respect of all the awards classifications which we have considered.

Operative date

[234] Having regard to the requirement for employers to make some changes to classification and payment systems if the variations proposed above are made, and the fact the variations are likely to cause some additional cost, albeit small, for some employers, our *provisional* view is that the variations should take effect on 1 January 2025.

Next steps

[235] Draft determinations that would give effect to the *provisional* views and conclusions stated in this decision will be published in due course. Once those draft determinations are published, interested parties will be allowed a period of four weeks to file submissions commenting on the *provisional* views in this decision and the terms of the draft determinations. The matter will thereafter be determined on the papers unless we decide to accede to any request that is made for a further hearing.



PRESIDENT

Appearances:

M Buchanan for The Association of Professional Engineers, Scientists and Managers, Australia.

C Buckley for The Australasian Meat Industry Employees Union.

M Davis for the Australian Rail, Tram and Bus Industry Union.

A Giordano for The Australian Workers' Union.

Y Abousleiman for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

S Maxwell, V Wiles and N Keats for the Construction, Forestry and Maritime Employees Union.

K Scott for Australian Business Industrial and Business NSW.

S Amendola and E Baxter, solicitors, for the Australian Fresh Produce Alliance.

R Bhatt and C Chang for The Australian Industry Group.

A Herbert, counsel, with *K Hartmann* for the Australian Meat Industry Council.

M Adler for the Housing Industry Association.

R Sostarko for Master Builders Australia.

B Rogers for the National Farmers' Federation.

D Houlihan, solicitor, for The Showmen's Guild of Australasia.

D Hodges for the Motor Traders' Association of NSW, the Motor Trades Association of Queensland, the Motor Trade Association of South Australia and Northern Territory, the Motor Trade Association of Western Australia and the Victorian Automotive Chamber of Commerce.

Hearing details:

2023.

Sydney with video links using Microsoft Teams:
18 and 19 December.

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¹ MA000010.

² [1989] AIRC 525, 30 IR 81, Print H9100.

³ [\[2024\] FWCFB 150](#) at [79]–[84].

⁴ [\[2019\] FWCFB 3500](#).

⁵ [\[2019\] FWC 5863](#).

⁶ Ibid at [3].

⁷ Ibid at [5]–[6].

⁸ [\[2023\] FWC 716](#).

⁹ [\[2023\] FWCFB 3500](#).

¹⁰ The Motor Traders' Association of NSW, the Motor Trades Association of Queensland, the Motor Trade Association of South Australia and Northern Territory, the Motor Trade Association of Western Australia and the Victorian Automotive Chamber of Commerce.

¹¹ MA000028.

¹² MA000033.

¹³ [Witness statement of Paul Baxter, 10 November 2023](#) at [5]–[9].

¹⁴ [\[2018\] FWCFB 7621](#) at [150]–[162].

¹⁵ [\[2022\] FWCFB 200](#) at [176]–[192].

¹⁶ [\[2024\] FWCFB 150](#) at [76]–[92].

¹⁷ [1998] AIRC 1413, 123 IR 240, Print Q7661.

¹⁸ Ibid at 256.

¹⁹ (1989) 30 IR 81 at 94.

²⁰ See *Manufacturing and Associated Industries and Occupations Award 2020* clause A.3.1.

²¹ [1997] AIRC 1401, 71 IR 1, Print P1997.

²² Ibid at 60.

²³ Ibid.

²⁴ Ibid.

²⁵ See [1995] AIRC 284, Print L9835 (2 March 1995).

²⁶ [\[2022\] FWCFCB 200](#), 319 IR 127 at [179].

²⁷ [\[2024\] FWCFCB 150](#) at [82]-[84]

²⁸ MA000104.

²⁹ MA000004.

³⁰ MA000003.

³¹ MA000009.

³² MA000119.

³³ MA000002.

³⁴ The classification of ‘CP Level 1’ in clause 10.1 of this award has a weekly rate of \$872.50, which is nominally below the C13 rate. However, this is based on a working week of 36.75 hours. The hourly rate is \$23.75, which is above the C13 rate.

³⁵ An employee must transition from Cemetery Employee Class 1 (at the C14 rate) to Cemetery Employee Class 2 (above the C13 rate) after six months’ service. No qualification is required to perform the functions of an assistant gravedigger at Class 2): see clauses A.1–A.3.

³⁶ Clause 13.1 provides for rates of salary for all classifications consisting of three elements: the ‘Minimum salary (full-time employee)’, the ‘Aggregate overtime component’ and the ‘Aggregate annual salary’. The last component is the sum of the first two components. The prescribed ‘Minimum salary’ for the classification of ‘Provisional IR – over 18 years’ in clauses 13.1(e) and (f) is \$44,816 which, on a weekly basis, is about the same as the C14 rate. The classifications are not defined in the award itself (see clause 13.2). However, clause 13.1 requires the employer to pay the prescribed ‘Aggregate annual salary’ for each classification as the minimum salary irrespective of hours worked. The aggregate salary for the Provisional IR is \$71,435 in clause 13.1(e) and \$71,373 in clause 13.1(f), which is well above the C13 rate.

³⁷ We accept the AFPA’s submission in respect of this award.

³⁸ Clause 32.1(a) provides that a Diver’s Attendant has a minimum weekly rate of \$864.50. However, clauses 32.1(a) and (b) provide that the amount payable for ‘ordinary hours’ is the ‘total weekly rate’, which is the sum of the minimum weekly rate plus the ‘aggregate weekly factor’. Clause 32.1(c) provides that the ‘aggregate weekly factor’ includes payments for various rosters, overtime, penalties and conditions of employment, but the ‘total weekly rate’ is payable regardless of hours worked. The total weekly rate for a Diver’s Attendant is \$1798.16.

³⁹ The Level 1 classification for employees other than cadets and graduates in clause 13.3 of this award has a minimum annual salary of \$45,992. On a weekly basis, this amount is slightly below the C13 rate. However, clause 17.1 provides for a 37-hour week, with the result that the hourly rate for the Level 1 classification is above the C13 rate.

⁴⁰ MA000080.

⁴¹ MA000096.

⁴² MA000059.

⁴³ Transcript, 19 December 2023 at PNs 1037–1066.

⁴⁴ MA000102.

⁴⁵ MA000048.

⁴⁶ MA000089.

⁴⁷ MA000026.

⁴⁸ MA000029.

⁴⁹ MA000118.

⁵⁰ MA000114.

⁵¹ MA000079.

⁵² MA000021.

⁵³ MA000055.

⁵⁴ MA000120.

⁵⁵ MA000056.

⁵⁶ See, e.g. [2009] AIRCFB 450 at [28].

⁵⁷ MA000024.

⁵⁸ MA000025.

⁵⁹ MA000020.

⁶⁰ MA000094.

⁶¹ MA000073.

⁶² MA000105.

⁶³ [\[2021\] FWCFB 5554](#).

⁶⁴ MA000029.

⁶⁵ MA000081.

⁶⁶ MA000093.

⁶⁷ MA000034.

⁶⁸ MA000072.

⁶⁹ MA000035.

⁷⁰ MA000051.

⁷¹ MA000097.

⁷² MA000015.

⁷³ MA000068.

⁷⁴ MA000122.

⁷⁵ MA000053.

⁷⁶ [Witness statement of Warren Smith, 26 October 2023](#) at [8].

⁷⁷ MA000087.

⁷⁸ Ibid clause B.4.2.

⁷⁹ MA000017.

⁸⁰ MA000071.

⁸¹ MA000090.

⁸² MA000044.

⁸³ MA000046.

⁸⁴ MA000137.

⁸⁵ MA000146.

⁸⁶ MA000153.

⁸⁷ MA000149.

⁸⁸ MA000130.

⁸⁹ MA000151.

⁹⁰ MA000156.

⁹¹ MA000125.

⁹² MA000126.

⁹³ MA000150.

⁹⁴ MA000134.

⁹⁵ *Annual Wage Review 2022–23* [\[2023\] FWCFB 3500](#) at [53], [117] and [166].

⁹⁶ Ibid at [103].