

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

C2019/5259

5 DECEMBER 2023

**BUSINESS
NSW**



**AUSTRALIAN
BUSINESS
INDUSTRIAL**

ABOUT BUSINESS NSW AND AUSTRALIAN BUSINESS INDUSTRIAL

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

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

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

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

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

GENERAL SUBMISSIONS IN REPLY

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

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

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

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

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

RESPONSE TO SUBMISSION OF AUSTRALIAN WORKERS UNION

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

RESPONSE TO SUBMISSION OF UNITED WORKERS UNION

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

¹ On 3 November 2023 and 11 November 2023.

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

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

REPLY SUBMISSIONS REGARDING SPECIFIC AWARDS

Amusement, Events and Recreation Award 2020

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

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

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

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

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

Cement, Lime and Quarrying Award 2020

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

⁶ See AWU submission at [60]-[62].

⁷ See Schedules A.2 and B.2.

⁸ See clause 18.2(b).

Cemetery Industry Award 2020

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

Concrete Products Award 2020

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

Cotton Ginning Award 2020

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

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

⁹ See AWU submission at [82].

¹⁰ See clause 16.2(b).

¹¹ See clause 19.2(a).

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

¹² See clause 19.2(b)(i).

¹³ See AWU submission at [113].

¹⁴ See AWU submission at [112].

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

Dry Cleaning and Laundry Industry Award 2020

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

Electrical, Electronic and Communications Contracting Award 2020

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

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

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

¹⁶ See clause 18.2(a).

¹⁷ See clause 18.3(a).

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

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

Fitness Industry Award 2020

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

¹⁸ See CEPU submission at [9].

¹⁹ See AWU submission at [116].

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

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

Funeral Industry Award 2020

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

²⁰ See AWU submission at [84].

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

²¹ See AWU submission at [40].

²² See AWU submission at [40].

Hospitality Industry (General) Award 2020

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

Marine Tourism and Charter Vessels Award 2020

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

²³ See AWU submission at [90].

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

Meat Industry Award 2020

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

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

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

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

Premixed Concrete Award 2020

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

Registered and Licensed Clubs Award 2020

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

Textile, Clothing, Footwear and Associated Industries Award 2020

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

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

²⁶ See AWU submission at [119].

²⁷ See AWU submission at [119].

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

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

Timber Industry Award 2020

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

Stevedoring Industry Award 2020

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

²⁹ See AWU submission at [1].

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

³¹ See Statement of Warren Smith.

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

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