



Fair Work
Commission

Gender pay equity research

Aircraft Cabin Crew Award 2020

February 2025
Research report 3/2025



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Gender pay equity research: Aircraft Cabin Crew Award 2020

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All research undertaken or commissioned by the Fair Work Commission for the Annual Wage Review 2024–25 has been agreed by the Minimum Wages Research Group (MWRG). The MWRG comprises a Chair from the Fair Work Commission, and representatives nominated by:

- Australian Chamber of Commerce and Industry (ACCI);
- Australian Industry Group (Ai Group);
- Australian Council of Social Service (ACOSS);
- Australian Council of Trade Unions (ACTU);
- Australian Government; and
- State and territory governments.

An appropriate reference for this report is:

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A draft of this report was also workshopped with the MWRG prior to finalisation. The authors would like to thank the MWRG for its comments.

The contents of this report remain the responsibility of the authors, and the research has been conducted without the involvement of members of the Fair Work Commission.



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Glossary

ABS	Australian Bureau of Statistics
ACC Award	<i>Aircraft Cabin Crew Award 2020</i>
ACCI	Australian Chamber of Commerce and Industry
AFAA	Australian Flight Attendants' Association
Qantas Consolidated Award	<i>Airline Flight Attendants (Qantas) Award (Consolidated) 1986</i>
AFS Award	<i>Airline Flight Stewards' (Qantas) Award 1974</i>
Ai Group	Australian Industry Group
AICCA	Australian International Cabin Crew Association
ACTU	Australian Council of Trade Unions
AIRC	Australian Industrial Relations Commission
Ansett	Ansett Transport Industries
Ansett EA 1	<i>Ansett Transport Industries (Operations) Pty Ltd (Airline Operating Divisions Enterprise Bargaining) Agreement 1992–1994</i>
Australian Airlines EA 1	<i>Australian Airlines Limited Enterprise Bargaining Agreement 1992</i>
AWR	Annual Wage Review
CAC	Conciliation and Arbitration Commission
CASA	Civil Aviation Safety Authority
Commission or FWC	Fair Work Commission



DA Award	<i>Flight Attendants (Domestic Airlines) Award 1981</i>
FAAA	Flight Attendants' Association of Australia
FAAA-DR	Flight Attendants' Association of Australia – Domestic and Regional Division
FAAA-ID	Flight Attendants' Association of Australia – International Division
FWA	Fair Work Australia
FW Act	<i>Fair Work Act 2009 (Cth)</i>
iCC	iCabin Crew Connect
IR Act	<i>Industrial Relations Act 1988 (Cth)</i>
Qantas	Qantas Airways Ltd/Qantas Group
Qantas EA 1	<i>Qantas Enterprise Agreement (October 1992)</i>
Qantas FA Award	<i>Airline Flight Attendants' (Qantas) Award 1993</i>
Qantas LH Award	<i>Airline Operations – Flight Attendants' Long Haul – Qantas Airways Limited – Award 2000</i>
RAAA	Regional Aviation Association of Australia
RA Award	<i>Flight Attendants' (Regional Airlines and Charter Operators) Award 1990</i>
Review	Modern Awards Review 2023-24
TAA	Trans Australia Airlines
Transitional Amendments Act	<i>Fair Work (Transitional and Consequential Amendments) Act 2009 (Cth)</i>



1 Introduction

- [1] In the 2022-23 Annual Wage Review decision, the Expert Panel observed ‘there are significant issues concerning the potential undervaluation of work in modern award minimum wage rates applying to female-dominated industries and occupations’.¹ The Expert Panel later outlined a research program to identify occupations and industries where there was gender pay inequity and/or potential undervaluation of work and/or qualifications.²
- [2] Research was subsequently undertaken by the Social Policy Research Centre of the University of New South Wales. The research report, *Gender-based Occupational Segregation: A National Data Profile (Stage 1 report)*, was published on 15 November 2023.³
- [3] The Stage 1 report identified 144 occupational classifications that were over 60 per cent female including a broader ANZSCO unit group covering aircraft cabin crew.⁴ However the report focused on a subset of 29 occupations defined as being large (over 10,000 people), highly feminised (over 80 per cent female) and located within feminised industry groups (over 60 per cent female).⁵ The researchers noted that: ‘While the report provides a detailed, granular understanding of feminised occupations and industries, it does not identify all parts of the labour market affected by [gender] segregation.’⁶ Flight attendants were not among the ‘priority occupations’ identified.
- [4] Following publication of the Stage 1 report, Fair Work Commission (**Commission**) staff prepared research focusing on 12 modern awards which the Stage 1 report indicated were used to set pay

¹ [2023] FWCFB 3500 at [11].

² [2023] FWCFB 3500 at [137]–[139]; see also Fair Work Commission, *President’s statement*, dated 3 February 2023 at [17].

³ Natasha Cortis et al, ‘Gender-based occupational segregation: a national data profile’ (Final report, UNSW Social Policy Research Centre, 6 November 2023) (*Stage 1 Report*).

⁴ Table A.4 identifies that 76.1 per cent of ‘Travel Attendants’ are female. Travel Attendants are an ANZSCO unit group with 2 occupations: Travel Attendants (451799) and Flight Attendants (451711). The report does not include further information; *Stage 1 report* (n 3) at 89.

⁵ *Stage 1 report* (n 3) at 6–7.

⁶ *Stage 1 report* (n 3) at 22.



for the highly feminised occupations identified. This 'Stage 2' research sought to identify if 'the Commission (or its predecessors, or [...] State tribunals) [had] ever undertaken a comprehensive work value assessment of classifications within the awards'.⁷ These award histories were published on 4 April 2024. As a result of the parameters set during Stage 1, the *Aircraft Cabin Crew Award 2020* (ACC Award) was not among the 12 modern awards considered.⁸

- [5] In a submission to the 2023–24 Annual Wage Review, the Flight Attendants' Association of Australia (FAAA) expressed their strong interest in the Commission undertaking a similar review of the ACC Award.⁹ The latest data release from Jobs and Skills Australia demonstrates that flight attendants meet some criteria for a feminised occupation, with women making up approximately 77 per cent of the 6,100 flight attendants employed across Australia. Data also shows a higher-than-average share of part-time employment (64 per cent compared to 36 per cent).¹⁰
- [6] The FAAA argued that the ACC Award exhibited additional indicia of gender-based undervaluation as per the following:
- absence of a work value assessment since 1998;
 - a history of consent awards and enterprise arrangements;
 - historic occupational gender segregation;
 - low wages and enterprise agreements containing rates at or close to the award rate;
 - no award recognition or classification definitions reflecting the level of skill, training and responsibility mandated by the Civil Aviation Safety Authority (CASA);
 - an inadequate classification structure that undervalues employees' skills; and
 - the absence of allowances evident in male-dominated aviation awards, for example first aid, missed and other on duty meal allowances and/or late meal breaks.¹¹

⁷ Fair Work Commission, 'Gender pay equity research – Stage 2 research to be conducted' (President's statement, 5 December 2023) at [5].

⁸ Fair Work Commission, *Stage 2 report: Gender pay equity research* (4 April 2024) ('Stage 2 report').

⁹ FAAA, Reply submission in 2023–24 Annual Wage Review, C2024/1, dated 29 April 2024 at [2]–[3].

¹⁰ Jobs and Skills Australia, 'ANZSCO 451711 Flight Attendants', *Occupation and Industry Profiles* (November 2024).

¹¹ FAAA, Submission in 2023–24 Annual Wage Review, C2024/1, dated 29 April 2024 at [8].



- [7] In the 2023–24 Annual Wage Review decision the Expert Panel announced that the Commission would undertake research into the history of the ACC Award. The Expert Panel stated:

In the case of the matters raised by the FAAA, the Commission will undertake a research project concerning the history of the ACC Award which might assist in informing any future proceedings to vary that award.¹²

- [8] This research will identify, to the extent possible from available materials, the origin of minimum rates and classifications in the ACC Award. This research follows the history of significant pre-reform awards and seeks to identify any wage-fixing or work value assessments. Significant matters reviewed through the course of this research include award simplification, the 1998 Paid Rates Review, award modernisation, the 4-yearly review of modern awards and Modern Awards Review 2023-24. This research thereby provides a record of how pay rates and classifications in relevant airline awards developed over time, significant decisions and their impacts.

1.1 Research methodology

- [9] Staff at the Commission have prepared this research by conducting a thorough review of digital and archival materials from the mid-1980s until now. Some earlier materials have been reviewed where they were identified as relevant. This research has an overall focus on significant pre-reform awards, statements and submissions from a range of industrial parties. Commission staff identified decisions, statements, transcripts and other relevant materials by cross-referencing publication numbers with matter numbers and undertaking key-word searches via online databases.
- [10] Historical materials were primarily sourced from the Commission's own records. Other documents were located through databases including AustLII, National Archives Australia and the Parliament of Australia archives. Hard-copy case files for the *Flight Attendants (Domestic Airlines Award) 1985*, *Airline Flight Hostesses' (Qantas) Award 1974* and *Airline Flight Stewards' (Qantas) Award 1974* were also requested from National Archives Australia for completeness.
- [11] Researchers have prioritised pre-reform award materials from the mid-1980s onwards for several reasons. First, during the 1990s the Australian Industrial Relations Commission (**AIRC**) required a relevant 'datum point' to assess changes in work practices. The last work value assessment for

¹² [2024] FWCFB 3500 at [129].



aircraft cabin crew was undertaken in 1998. The datum point for this assessment was April 1991, following variations to the *Airline Flight Stewards (Qantas) Award 1974* and *Airline Flight Attendants (Qantas) Award (Consolidated) 1986*.¹³ Second, as a result of the Work Value Changes Principle established in the April 1991 National Wage Case,¹⁴ federal award rates that were fixed prior to 7 August 1989 according to former work value principles were excluded from future work valuations. This change effectively prevented retrospective consideration of work value. As such, investigating further back than the early-1980s is of limited relevance to this research.

1.2 Limitations with historical materials

- [12] As observed by the Expert Panel in the Work value case – Aged care industry Stage 3 decision (**Stage 3 decision**): ‘Most commonly, awards for particular occupations and industries developed over time through a combination of settlements and arbitrations, the complex history of which is often difficult to unravel now.’¹⁵ This is unfortunately true for the instruments examined in this research, while many historical materials remain difficult to access.
- [13] Prior to the changes made by the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) in 2006, federal awards were made in settlement of interstate industrial disputes.¹⁶ Arbitration was confined to matters that remained in dispute after conciliation. As a result, many awards were made by consent between the parties with little scrutiny.¹⁷ In some cases, the deliberations leading to the making of pre-reform awards were held in private conferences between the parties. In these scenarios, and in the making of consent awards, the outcomes of deliberations and the reasons for those outcomes are often not on the public record. Researchers identify where this occurs.
- [14] The AIRC undertook several significant reviews of federal awards during the 1990s that add further complexity to historical research. As amended by the *Industrial Relations Reform Act 1993* (Cth), s 150A of the *Industrial Relations Act 1988* (Cth) (**IR Act**) required the AIRC to review awards every 3 years and correct identified ‘deficiencies’. Reviews were undertaken between 1994 and

¹³ Print J7562, [1991] AIRC 324.

¹⁴ Print J7400, [1991] AIRC 281.

¹⁵ [2024] FWCFB 150 at [38].

¹⁶ *Industrial Relations Act 1988* (Cth) ss 112–113; see also *Workplace Relations Act 1996* (Cth) ss 88A, 89A(1)–(3).

¹⁷ *Stage 2 report* (n 8) at [19]–[20].



1997, with a review process set out in the September 1994 Safety Net Adjustment and Review decision.¹⁸ The AIRC was separately required under s 151 of the IR Act to review federal awards that had not been varied for 5 years and set them aside if they had no continuing operation. A total of 855 awards were set aside between 1994 and 2005.¹⁹ Following changes made by the *Workplace Relations and Other Legislation Amendment Act 1996* (Cth), the AIRC was again required to review all federal awards to ensure they only contained allowable award matters or provisions incidental to such matters and necessary for the effective operation of the award.²⁰ Principles for this review were set out in the 1997 award simplification decision.²¹ Between 1997 and 2005, 3,211 awards were examined with 1,264 awards simplified and 894 superseded or set aside.²²

1.3 Aircraft Cabin Crew Award 2020

[15] The ACC Award is an occupational award expressed to cover employers of aircraft cabin crew and their employees employed throughout Australia in the classifications listed in the award. The modern award was made on 4 September 2009.²³ The award was consolidated and reprinted on 30 April 2020 as the ACC Award 2020.²⁴ The classification and wage structure in the award is currently set out as follows:

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Cabin crew member	1012.20	26.64

¹⁸ Print L5300, [1994] AIRC 1476 at 4–6, 33–40; see also Print M5600, [1995] AIRC 2031 at 2–6.

¹⁹ Fair Work Commission, *4 yearly review of modern awards: guide to award stage*, dated 16 June 2014 at [7]–[8].

²⁰ *Workplace Relations and Other Legislation Amendment Act 1996* (Cth) ss 89A(2), 89A(6).

²¹ Print P7500 ('Award simplification decision').

²² Fair Work Commission, *4 yearly review of modern awards: guide to award stage*, dated 16 June 2014 at [9].

²³ PR988691; see also [2009] AIRC 826.

²⁴ PR718523.



Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Cabin crew supervisor (narrow-bodied aircraft, 4 or more crew)	1181.00	31.08
Cabin crew manager (wide-bodied aircraft)	1379.40	36.30

- [16] Excluding increases to rates made following Annual Wage Reviews,²⁵ pay and classifications in the ACC Award have not received substantive variations since the award was made.
- [17] The ACC Award has 3 schedules that provide additional entitlements for domestic, regional and international flying. In addition to the minimum weekly rate, domestic flying attracts a \$17.00 flying allowance paid per hour. This allowance is paid in lieu of travelling, uniform, grooming and other allowances.²⁶ International flying attracts an 'international incidentals allowance' payable at \$2.24 per block hour or part thereof.²⁷ There is no equivalent for regional flying. Schedule B – Regional Flying does provide specific grooming and uniform, travel, accommodation, meal, layover and telephone allowances.
- [18] The ordinary hours for full-time employees engaged on domestic or international routes is 1,872 hours per year.²⁸ Hours may be rostered over 13 periods of 28 days consisting of 144 duty hours, 12 calendar month periods of up to 156 duty hours or over a 14-day period of up to 72 hours.²⁹ All rostering structures allow for reasonable additional hours.³⁰ Although differing between domestic, regional and international cabin crew, overtime is broadly payable for:

²⁵ See PR997951; PR509078; PR522909; PR536712; PR551635; PR566719; PR579814; PR592145; PR606372; PR707457; PR718865; PR729305; PR740727; PR762156; PR773931.

²⁶ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule A.1.7.

²⁷ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule C.1.7.

²⁸ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule A.2.1, Schedule C.2.1.

²⁹ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule A.2.1, Schedule C.2.1.

³⁰ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule A.2.1, Schedule C.2.1.



- all hours worked in excess of 1,872 hours per annum;
- for all time worked above an employee's roster cycle; and
- where employees agree to unplanned extensions exceeding a daily limit.³¹

[19] Regional cabin crew must not fly or be rostered to exceed 100 hours in a 30 day period,³² 90 hours of a fortnight,³³ or 30 hours over any 7 day period.³⁴ Daily duty must not exceed 11 hours, with a maximum of 8 hours spent in flight. Both instances may be extended by a further hour.³⁵

³¹ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule A.6, Schedule C.6.

³² *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule B.2.1(a).

³³ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule B.2.3(a).

³⁴ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule B.2.2.

³⁵ *Aircraft Cabin Crew Award 2020* [MA000047] at Schedule B.2.4.



2 Pre-modernisation

- [20] Aircraft cabin crew were covered by a range of instruments prior to 2010. As discussed in section 3 below, during award modernisation many pre-reform awards were categorised as enterprise awards and were not considered during initial proceedings. As such, there is no clear precursor instrument to the modern award.
- [21] Informed by award modernisation proceedings, including subsequent applications to make modern enterprise awards, this section outlines histories for the following instruments:
- Flight Attendants (Domestic Airlines Award) [F0070];
 - Flight Attendants' (Regional Airlines and Charter Operations) Award [F0154];
 - Airline Flight Attendants (Qantas) Award [A0022]; and
 - Airline Operations – Flight Attendants' Long Haul – Qantas Airways Limited – Award [A0023].
- [22] Research suggests that, while there are other pre-reform awards, the instruments identified above provide a sound basis for understanding the pre-modernisation landscape for aircraft cabin crew. Commission staff also observe that the FAAA identified the *Flight Attendants (Domestic Airlines) Award 1999* as a precursor instrument to the modern award in submissions to the Modern Awards Review 2023-24.³⁶

2.1 Domestic Airlines Award

- [23] The *Flight Attendants (Domestic Airlines) Award 1981 (DA Award)* was initially made by the Conciliation and Arbitration Commission (CAC) on 26 January 1982.³⁷ The initial parties bound by the award were the Airline Hostesses' Association, Ansett Transport Industries (**Ansett**) and Trans Australia Airlines (**TAA**). TAA were later replaced as a respondent to the award by Qantas Airways (**Qantas**) following a 1992 merger of the two airlines.

³⁶ FAAA, Submission in *Modern Awards Review*, AM2023/21, dated 12 March 2024; Transcript of proceedings, *Modern Awards Review 2023-24* (AM2023/21, O'Neill DP), 4 April 2024 at [PN319].

³⁷ Print E8133 [F0070], (1982) 269 CAR 773.



[24] Historically, the terms and conditions of domestic flight attendants employed by Ansett were set by specific enterprise awards, rather than through industry awards applying to the entire sector. The terms and conditions for Ansett employees covered by the DA Award were also different to those provided to other flight attendants, including specific enterprise-level provisions.

[25] In 1984, the DA Award was identified in a joint application from 23 unions. The application was made with respect to 24 awards covering most of the airline industry. The applicant unions sought a 6.43 per cent pay increase for flight attendants covered by the DA Award on the basis that such an adjustment was required for a 'catch up' to the metal industry standard.³⁸ In a statement, President Moore outlined the following:

It is alleged by the [Airline Hostesses Association] that there is a catch-up [required with the metal industry standard] to establish an equitable basis. Although the facts surrounding this application are somewhat different from an earlier matter which has been referred to a Full Bench, and it deals with the airlines generally, I think this matter should also be referred and should be dealt with at the same time by the same Bench. I add, however, publicly that this [Anomalies] Conference will not tolerate a series of successive cases which are all aimed at attempting an equitable basis. There must be one attempt to establish such a position.³⁹

[26] The matter was referred to a Full Bench comprised of Deputy President Isaac, Justice Marks and Commissioner Donaldson. Following the Anomalies Conference foreshadowed by the President, this Full Bench issued a decision on 21 September 1984 which confirmed that an anomaly did exist and required correction. The Full Bench also ordered that Commissioner Donaldson conduct a 'market survey' as the basis for determining appropriate classifications and pay rates for fitters, storemen and clerks covered by the 24 awards.⁴⁰

[27] The Full Bench issued a decision on 22 November 1984. Factoring in findings from the market survey, the Full Bench determined to adjust rates in all classifications in the awards under consideration, including the DA Award, by 4.3 per cent 'to establish an equitable base [...] in terms of Principle 7(c) and [...] Principle 6(a)(iv) [initially established in the 1983 National Wage Case]'.⁴¹

³⁸ Print F6739, [1984] 294 CAR 533 at 2–3.

³⁹ Print F6739, [1984] 294 CAR 533 at 2.

⁴⁰ Print F6739, [1984] 294 CAR 533.

⁴¹ Print F7091, [1984] 295 CAR 514 at 2; see also Print F2900, [1983] 291 CAR 3 at 51–53.



[28] On 17 February 1986, the DA Award was consolidated and reprinted as the *Flight Attendants (Domestic Airlines) Award 1985*.⁴² The award was expressed to cover flight attendants and pursers. Minimum weekly rates for flight attendants and pursers were set out as follows:⁴³

	Flight Attendant
1st year	\$304.75
2nd year	\$319.25
3rd year	\$333.00
4th year	\$347.25
5th year	\$361.00
6th year	\$375.15
7th year	\$389.50
8th year	\$403.55
	Purser
1st year	\$445.10
2nd year	\$465.35
3rd year	\$485.70

[29] These rates were replicated in Part B of the award, which applied to Ansett's Western Australian operations. This classification structure included an additional purser category (Purser Grade 2) starting at \$353.75.⁴⁴

[30] Hours were capped at 120 'duty hours' with a monthly maximum of 140 hours, subject to rest period exceptions outlined at clause 43.⁴⁵ Duty was defined in the award as 'all time spent as an operating flight attendant whilst in flight [... and] time spent on the ground between sign-on and sign-off'. Time on-ground between sign-on and sign-off was required to be no less than 45 minutes

⁴² Print G1648 [F0070].

⁴³ Print G1648 [F0070] at Part A, clause 6.A.

⁴⁴ Print G1648 [F0070] at Part B, clause 1.

⁴⁵ Print G1648 [F0070] at Part A, clause 43.A–43.B.



prior to departure and 15 minutes after engine shut down on arrival.⁴⁶ Hours averaged to between 1,440 to 1,680 ordinary hours per year. Overtime was paid on a daily basis at time-and-a-half for 8 to 10 hours and double-time for 10 or more hours.⁴⁷

[31] Through application of National Wage Case decisions, minimum rates in the award continued to rise though the 1980s and early-1990s.⁴⁸ Allowances and crew complements on specific aircraft also received minor variations during this period.⁴⁹ Following the April 1991 National Wage Case minimum rates for first-year flight attendants were \$400.60 per week and \$559.70 per week for first-year pursers.⁵⁰ Other rates were set out as follows:

Years of service	Salary per week
	\$
1st year	400.60
2nd year	416.90
3rd year	432.30
4th year	448.40
5th year	463.80
6th year	479.70
7th year	495.80
8th year	511.60
Purser (1st year)	559.70
Purser (2nd year)	583.80
Purser (3rd year)	608.00

⁴⁶ Print G1648 [F0070] at Part A, clause 3.

⁴⁷ Print G1648 [F0070] at Part A, clause 8.

⁴⁸ Print J1050; Print J6969.

⁴⁹ Print H7882; Print H5383; Print H9812; Print H9379.

⁵⁰ Print K0471 [F0070]. For April 1991 National Wage Case, see Print J7400, [1991] AIRC 281.



[32] Wage and salary rates in the DA Award underwent significant reorganisation in May 1996 after the FAAA and other airline industry unions applied to incorporate rates from expired enterprise agreements with Ansett, Qantas and TAA into awards.⁵¹ Identified agreements included:

- Ansett Transport Industries (Operations) Pty Ltd (Airline Operating Divisions Enterprise Bargaining) Agreement 1992–1994 (**Ansett EA 1**);
- Qantas Enterprise Agreement (October 1992) (**Qantas EA 1**); and
- Australian Airlines Limited Enterprise Bargaining Agreement 1992 (**Australian Airlines EA 1**).

[33] The applicant unions argued that the increase in rates sought reflected ‘movements in wages in the relevant market, as the increase in wage rates from enterprise bargaining in Ansett and Qantas have been broadly consistent with the increase in average weekly earnings in the transport and storage industry.’⁵² The application also claimed that ‘the awards relevant to these matters would be able to function as an effective safety net underpinning bargaining between Ansett or Qantas and the unions.’⁵³ Ansett and Qantas consented to the proposed changes.⁵⁴

[34] The Minister for Industrial Relations intervened on behalf of the Commonwealth to oppose the application. The Minister contended that the incorporation of expired agreements into the terms of awards would compromise the distinction between the safety net and enterprise bargaining. It was further submitted that incorporating enterprise agreement terms would constitute different treatment of workers under paid rates awards compared to minimum rates awards.⁵⁵

[35] The Full Bench made the decision to make the variations sought and observed:

We are satisfied we should vary the awards in the applications before us which are paid rates awards so that the wage rates in them reflect the wage rates arising from [the relevant enterprise agreements] as appropriate. To the extent that some of the awards in the applications before us are not paid rates awards

⁵¹ Print N1977, [1996] AIRC 799.

⁵² Print N1977, [1996] AIRC 799 at 5.

⁵³ Print N1977, [1996] AIRC 799 at 4.

⁵⁴ Print N1977, [1996] AIRC 799 at 8.

⁵⁵ Print N1977, [1996] AIRC 799 at 6–7. For the definition of a ‘paid rates award’ see *Colmalco Aluminium (Bell Bay) Ltd v O’Connor and Others* [1995] IRCA 540, 131 ALR 657, 61 IR 455.



[...] we note the applicant unions and the ACTU have foreshadowed [future] applications to remove the word minimum from each award.

[...]

Moreover, the wage rates actually paid to the employees covered by the awards will not rise with the variations as Ansett, Qantas and the unions who made the applications in these matters are now covered by further enterprise agreements with wage rates in excess of those in the variations. In those circumstances, we do not believe the variations will undermine enterprise bargaining between those parties.

We are also not persuaded the variations will create instability in the wages system or flow-on pressure. The variations maintain the existing wage relativities in the awards, are consent variations incorporating wage rates arising from past enterprise agreements between the parties to those agreements and vary awards which essentially only apply to Ansett and/or Qantas and the unions who made the applications in these matters.

We consider the variations will maintain the paid rates awards and, in our view, are in furtherance of the objects in the Act. We believe the variations to be compatible with the Commission's obligation to ensure, so far as it can, that the system of awards provides for secure, relevant and consistent wages and conditions of employment. In deciding to make the variations we consider we have had proper regard to the interests of the parties immediately concerned and of the Australian community as a whole.⁵⁶

[emphasis added]

[36] This variation increased rates for a first-year flight attendant to \$438.25 for Ansett aircraft and \$441.40 for Qantas aircraft. The award was also varied to remove 'minimum' from the pay rates in clause 6A and a new clause 6.2 inserted. These variations confirmed the DA Award as a paid rates award. The salary provision set out at clause 6 of the DA Award was divided into 2 streams applying to Ansett and Qantas employees respectively. 'Bands pay' was also introduced into the award.⁵⁷ As a result, cabin crew were paid a multiplier rate dependant on the time and day of duty.

[37] In November 1998, after negotiations between the parties and private conferences convened by the AIRC were unsuccessful in reaching an agreed outcome, Qantas and the FAAA requested that

⁵⁶ Print N1977, [1996] AIRC 799 at 8.

⁵⁷ Print N7045.



the AIRC issue a recommendation concerning rates of pay applicable for flight attendants. The parties also requested that these rates be based on a work value assessment.⁵⁸

[38] Commissioner Wilks observed that the applicable Work Value and Structural Efficiency principles (initially outlined in the August 1989 National Wage Case)⁵⁹ required ‘a comparison between the value of the work at the time of the assessment, and the value of the work at the time of implementation of award variation’.⁶⁰ The Commissioner identified this relevant ‘datum point’ was April 1991 following variations to the *Airline Flight Stewards (Qantas) Award 1974* and *Airline Flight Attendants (Qantas) Award (Consolidated) 1986*.⁶¹

[39] The Commissioner made the following observations:

Of particular interest to the parties in this matter was an agreement reached between the FAAA and Qantas in respect to the matter now before me. The agreement, having been reached between Qantas and FAAA at an official level had been referred to the members of FAAA for approval, but had been rejected by them. The evidence shows, and my own discussions with flight attendants during inspections confirms, that the membership of FAAA believed the agreement to be inadequate in at least 2 respects: Firstly the offer made and agreed to, differentiated the level of increase in rates of pay, a fact which was unacceptable to the level 1 and level 2 classifications, and, secondly the actual quantum of the increases agreed to at official level was inadequate.⁶²

[40] Commissioner Wilks examined a range of factors, as required by the *Workplace Relations Act 1996* (Cth). These factors included changes to qualifications and training, responsibilities, conditions under which the work was performed, skill exercised, required knowledge of aircraft and overall importance of the work performed to the business. Various witnesses also gave evidence as to the changes in the nature of work performed since 1991. The Commissioner found:

Having [given careful consideration to all of the material put to me] I have determined that there has been a significant net addition to work requirements of the degree required to meet the [work value] test and that there is no likelihood of flow-on or leap frogging.

⁵⁸ Print Q8926, [1998] AIRC 1540 at 1–2.

⁵⁹ Print H9100, [1989] AIRC 525 at 81–94.

⁶⁰ Print Q8926, [1998] AIRC 1540 at 5.

⁶¹ Print Q8926, [1998] AIRC 1540 at 5; see also Print J7562, [1991] AIRC 324.

⁶² Print Q8926, [1998] AIRC 1540 at 6.



However, the claim made by the FAAA for a uniform increase of 6% for each level is not supported by the material put to me.

A major factor in arriving at the conclusion that there has been a significant net addition to work requirements, is the change in the level of work responsibility and accountability involved, which is different in respect of each of the four classifications under assessment in this case.

The evidence shows, for example, that the increase in the level of responsibility and accountability of Customer Service Supervisors is in excess of the increase in the level of responsibility and accountability of Flight Attendants, but not as great as that of the Customer Service Managers who have an increased level of responsibility and accountability overall. This is greatly increased, because the ability to delegate functions to Cabin Supervisors is reduced due to the reduction in their number to only one Customer Service Supervisor.

That is not to say that there are not work value increases justified at the Flight Attendant level, clearly there are. The requirements to self-manage are increased, however, overall responsibility and accountability is spread across a greater number of people at this level. The introduction of Bar-Plus systems has also placed greater responsibility as Flight Attendants not so great however, as to warrant an increase of the order which would be appropriate for First Class Attendants, Customer Service Supervisors, or Customer Service Managers.

[...]

Similarly there has been an increase in responsibility and accountability for quality control in respect to the First Class Flight Attendants who are now self-managed teams dealing with a new product which requires greater attention to detail in, for example preparation and presentation of food and a commensurate increase in the responsibility for that quality and service. This should attract a small premium above a Flight Attendant. The evidence of Ms Nealon [a flight attendant] reveals that Qantas is now targeting a different type of person for recruitment. People who possess a greater aptitude for self-management and who possess relevant skills are being targeted, indicating a greater emphasis on responsibility and accountability at every level. However, as I have already pointed out the work value effects are different at each of these levels.⁶³

[41] The Commissioner determined that flight attendants would receive a 1.5 per cent increase, first-class flight attendants would receive a 2 per cent increase and that customer service supervisors and customer services managers would receive more significant increases of 4.5 and 6 per cent,

⁶³ Print Q8926, [1998] AIRC 1540 at 9–10.



respectively.⁶⁴ These increases were considered ‘appropriate’ and were awarded with effect from 10 November 1997. The DA Award remained largely unaltered after this variation until 1999.

[42] The DA Award was consolidated on 11 October 1999.⁶⁵ In the decision accompanying the 1999 award, Commissioner Wilks identified that the DA Award required a review in the manner outlined in the Paid Rates Review decision and stated:⁶⁶

In order to comply with those principles the following process must be applied:

- a) Firstly a key classification must be identified.
- b) The identified key classification will be assessed on a proper work-value basis against the classification C10 in the Metals Award, (or another award which does contain properly fixed minimum rates and covers the same or similar work) to establish a proper external relativity.
- c) After establishing the proper minimum rate for the key classification in the award under review the other classifications will be adjusted, if necessary, so as to maintain existing internal relativities. (See page 17 of the Paid Rates Review Decision Print Q7661).
- d) If the properly fixed minima are lower than the existing rates, the difference must be identified as a residual amount, which will be absorbed against future safety net adjustments.
- e) Where the properly fixed minima are higher than the existing rates, the rates will be increased accordingly.⁶⁷

[43] This review was conducted in conference and between the parties in private. Commission staff were unable to find a written record of the proceedings but note the Commissioner’s commentary that: ‘The rates contained in this award have been reviewed on the above basis and when varied will be properly fixed minimum rates.’⁶⁸ The classification and wages structure in the DA Award 1999 was set out as follows:⁶⁹

⁶⁴ Print Q8926, [1998] AIRC 1540 at 11–12.

⁶⁵ Print R9933 [F0070].

⁶⁶ Print Q7661, [1998] AIRC 1413.

⁶⁷ Print R9932 at [8]–[9].

⁶⁸ Print R9932 at [10].

⁶⁹ Print R9933 [F0070]. A correction print was issued on 12 January 2000. This correction did not vary rates; see PR900218.



Years of service	Minimum salary per week	Residual amount	Total rate per week
	\$	\$	\$
Flight Attendant			
Year 1	460.60	-	460.60
Year 2	460.60	16.30	476.90
Year 3	460.60	31.70	492.30
Year 4	460.60	47.80	508.40
Year 5	460.60	63.20	523.80
Year 6	460.60	79.10	539.70
Year 7	460.60	95.20	555.80
Year 8	460.60	111.00	571.60
Purser/Cabin Manager			
Year 1	636.80	-	636.80
Year 2	636.80	27.00	663.80
Year 3	636.80	54.10	690.90

[44] In comparison, following the April 1999 Safety Net Review decision, the minimum rates in the *Metal, Engineering and Associated Industries Award, 1998 – Part I* were:⁷⁰

Wage group	Weekly award rate	Hourly rate
	\$	\$
Level C14	385.40	10.14
Level C13	402.10	10.58
Level C12	424.60	11.17
Level C11	445.50	11.72
Level C10	477.20	12.56
Level C9	498.10	13.11
Level C8	518.90	13.66
Level C7	537.80	14.15

⁷⁰ Print R5307.



Wage group	Weekly award rate	Hourly rate
	\$	\$
Level C6	577.50	15.20
Level C5	598.40	15.75
Level C4	619.20	16.29
Level C3	660.90	17.39
Level C2(a)	681.80	17.94
Level C2(b)	721.50	18.99
Level C1(a)	805.00	21.18
Level C1(b)	930.10	24.48

[45] The weekly rate of \$460.60 is equivalent to 96.5 per cent of the June 1999 C10 rate. The current minimum weekly rate for cabin crew employees is equivalent to 98 per cent of the current C10 rate.⁷¹ In the Stage 3 decision, the Expert Panel noted that the 1998 Paid Rates Review decision made alignment with the C10 rate a condition of an award being a ‘properly fixed’ minimum rates award.⁷² The Expert Panel observed the following issues with this approach:

First, the key element of the ‘consistent, coherent award structures’ to be established was ‘training and skills acquired’. Second, the ‘key awards’ upon which this system would be founded, namely those covering the building industry, metal workers, transport workers, storemen and clerks were, except for the last, all male-dominated. In short, the award system was to be integrated on the basis of the training and skill levels of male-dominated industries and occupations.⁷³

[46] The Expert Panel went on to observe:

The National Wage Case August 1989 never expressly required cross-award alignments to be based simply on equivalent qualifications and required that ‘relative skill, responsibility and the conditions under which the particular work is normally performed’ be taken into account. However, in practice, the implementation of the C10 Metals Framework Alignment Approach usually involved no more than identifying the ‘key classification’ in any award as that for which a Certificate III qualification under the

⁷¹ *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010] at clause 20.1.

⁷² For the 1998 Paid Rates Review decision, see Print Q7661, [1998] AIRC 1413.

⁷³ [2024] FWCFB 150 at [77].



[Australian Qualifications Framework; AQF], or the equivalent, was required and then aligning that with the C10 classification rate in the Metal Industry Award. This was most commonly done in consent arrangements by which the structural efficiency principle was implemented in the early 1990s but, as will be demonstrated in respect of the Aged Care Award, this continued to be done up until and during the award modernisation process conducted in 2008–9. This represented the abnegation of the type of cross-award work value comparisons contemplated by the 1972 Equal Pay Case.⁷⁴

- [47] Additional information on the C10 alignment approach and historical wage setting considerations is provided below at **Annexure A—History of wage-fixing and legislative change**. This reproduces relevant information published in the Stage 2 report.⁷⁵
- [48] The DA Award 1999 included allowances for employees working on wide- and narrow-bodied aircraft, bands payments and special rates for flight attendants with additional duties.⁷⁶
- [49] Other significant developments from this variation included the reintroduction of references to ‘minimum’ pay rates and the removal of separate pay scales for different airlines. However, while weekly wages were merged into a consistent rate, differences remained in certain features. For example, ‘band pay’ had been a Qantas condition and would not apply to Ansett employees who were instead to be paid a 10 per cent loading in lieu of a shift penalty.⁷⁷
- [50] The collapse of Ansett in September 2001 had a major impact on the scope of award coverage in the industry. This change effectively left Qantas as the only major carrier subject to the DA Award, noting that Qantas was also party to its own enterprise agreements and, by that time, the *Airline Operations – Flight Attendants’ Long Haul – Qantas Airways Limited – Award 2000*.⁷⁸
- [51] Excluding increases made as part of Safety Net Review decisions, the DA Award received few subsequent variations. By October 2005, weekly rates for first-year flight attendants were \$559.60.⁷⁹

⁷⁴ [2024] FWCFB 150 at [84].

⁷⁵ *Stage 2 report* (n 8) at [19]–[37].

⁷⁶ Print R9933 [F0070] at clauses 18–19.

⁷⁷ Print R9933 [F0070] at clause 18.

⁷⁸ Print S7006 [A0023].

⁷⁹ PR964131; see also PR955231; PR970100.



2.2 Regional Airlines and Charter Operators Award

[52] The *Flight Attendants' (Regional Airlines and Charter Operators) Award 1990 (RA Award)* was made on 23 July 1990 following an industrial dispute.⁸⁰ Initial employers bound by the RA Award were:

- Australian Regional Airlines Queensland;
- Eastern Australia Airlines;
- Hazelton Airlines;
- Kendall Aviation;
- Sunstate Mildura; and
- Sunstate Queensland.⁸¹

[53] Classifications and rates of pay in the RA Award were initially set as follows:⁸²

Classification	Salary
	\$
Probation	20020
Year 1	20800
Year 2	21320
Year 3	21840
Year 4	22360

[54] The RA Award was the subject of several proceedings during the 1990s largely involving increases from National Wage Case decisions and some variations to allowances and conditions.⁸³

[55] On 28 May 1992 the RA Award was varied by consent to apply the 1991 National Wage Case decision. Other provisions were also inserted at this time including definitions for a consultative

⁸⁰ Print J2622 [F0154].

⁸¹ Print J2622 [F0154] at Appendix 2.

⁸² Print J2622 [F0154] at clause 9.

⁸³ See Print K3122; Print K3121; Print K3123; Print L4343; Print M4000; Print M4007; Print R4163.



mechanism and special conditions.⁸⁴ This decision further varied the duties of flight attendants to enable an employer to direct employees to carry out additional duties within their level of skill, competence and training. The order provided for the following minimum annual salary to be paid to employees, irrespective of age:⁸⁵

Salary	
Classification	Per annum
	\$
Probation	21320
Year 1	22120
Year 2	22653
Year 3	23186
Year 4	23719

[56] Allowances in the award were subsequently increased through successive National Wage Case decisions.⁸⁶ On 22 July 1994 the RA Award was varied following decisions issued by the AIRC in the Review of Wage Fixing Principles.⁸⁷ The variation inserted supplementary payments and altered minimum annual salaries to be paid to flight attendants as follows:⁸⁸

Classification	Base Salary per annum	Supplementary payment per annum	Minimum total annual salary
	\$	\$	\$
Probation	21,320.00	416.00	21,736.00
Year 1	22,120.00	416.00	22,536.00

⁸⁴ Print K3122 at clause A(1).

⁸⁵ Print K3122 at clause A(2).

⁸⁶ Print K3122; Print K3123; Print L4343; Print T2746.

⁸⁷ Print L4343; see also Print K9700; Print K9940.

⁸⁸ Print L4343.



Classification	Base Salary per annum	Supplementary payment per annum	Minimum total annual salary
	\$	\$	\$
Year 2	22,653.00	416.00	23,069.00
Year 3	23,186.00	416.00	23,602.00
Year 4	23,719.00	416.00	24,135.00

[57] The supplementary payment at each classification level reflected the application of the arbitrated safety net adjustment principle in the Wage Fixing Principles decisions.⁸⁹

[58] The RA Award was varied on 12 September 1995 following an application by the FAAA to include provisions derived from the Family Leave Test Case.⁹⁰ The application was consented to by Sunstate Airlines Queensland, Eastern Australia Airlines, Southern Australia Airlines and Hazelton Air Services.⁹¹ Commissioner Foggo granted the application. The Commissioner stated that the variations sought were consistent with the September 1994 Safety Net Adjustments and Review decision,⁹² and ‘the principle [...] whereby standards established by test cases can be incorporated into awards’.⁹³

[59] This variation introduced new provisions to allow flight attendants to use sick leave entitlements to care for members of their family. The clause stipulated it could only be used for members of their immediate family or household and that the flight attendant must be responsible for their care. The clause defined ‘immediate family’ to include a spouse (including de facto partners, but only of the opposite sex) or a grandparent, parent, sibling, child or grandchild.⁹⁴ With their

⁸⁹ Print L4343.

⁹⁰ Print M4005, [1995] AIRC 1592; Print M5256, [1995] AIRC 1834.

⁹¹ Print M4000; see also Print J2622 [F0154].

⁹² Print L5300, [1994] AIRC 1476.

⁹³ Print M5256, [1995] AIRC 1834 at 1.

⁹⁴ Print M5256, [1995] AIRC 1834.



employer's consent, employees were also able to take unpaid leave to care for a family member who was ill.⁹⁵

[60] A separate order was issued at the same date increasing rates in the RA Award following the September 1994 Safety Net Adjustment and Review decision.⁹⁶ This order provided that: 'The rates of pay in this award include the first \$8 per week arbitrated safety net adjustment [... and] the second \$8 per week arbitrated safety net adjustment payable under the September 1994 decision'.⁹⁷ Other rates in the RA Award were increased as follows:⁹⁸

Classification	Base Salary per annum	Arbitrated safety net	Minimum total annual salary
	\$	\$	\$
Probation	21,320.00	832.00	22,152.00
Year 1	22,120.00	832.00	22,952.00
Year 2	22,653.00	832.00	23,485.00
Year 3	23,186.00	832.00	24,018.00
Year 4	23,719.00	832.00	24,551.00

[61] In April 1999 the RA Award was consolidated as the *Flight Attendants' (Regional Airlines and Charter Operators) Award 1999*.⁹⁹ The employers bound by the RA Award 1999 were:

- Eastern Australia Airlines;
- Hazelton Airservices;
- Kendell Airlines (Aust);
- Southern Australia Airlines; and

⁹⁵ Print M5256, [1995] AIRC 1834.

⁹⁶ Print M4007.

⁹⁷ Print M4007 at clause A.1–A.2.

⁹⁸ Print M4007 at clause A.1(a).

⁹⁹ Print R4161; Print R4163 [F0154].



- Sunstate Airlines (QLD).

[62] The award required a minimum roster of 4 consecutive duty hours for regular part-time flight attendants on any tour of duty or reserve duty.¹⁰⁰ Rates in the award were otherwise as follows:¹⁰¹

Classification	Minimum Rate Per Annum	Residual Per Annum	Total Rate Per Annum
	\$	\$	\$
Probation	23,816	Nil	23,816
Year 1	24,616	Nil	24,616
Year 2	24,616	533	25,149
Year 3	24,616	1,066	25,682
Year 4	24,616	1,599	26,215

[63] A new clause was inserted in December 2000 to include the arbitrated safety net adjustments payable as per the April 1998 and April 1999 Safety Net Review decisions.¹⁰² The order for this decision included the following minimum rates:¹⁰³

Classification	Minimum Rate Per Annum	Residual Per Annum	Total Rate Per Annum
	\$	\$	\$
Probation	24,440	Nil	24,440
Year 1	25,240	Nil	25,240
Year 2	25,240	Nil	25,240

¹⁰⁰ Print R4163 [F0154] at clause 16.3.6.

¹⁰¹ Print R4163 [F0154] at clause 19.1.

¹⁰² Print Q1998, [1998] AIRC 544; Print R1999, [1999] AIRC 414.

¹⁰³ Print T2746.



Classification	Minimum Rate Per Annum	Residual Per Annum	Total Rate Per Annum
	\$	\$	\$
Year 3	25,240	442	25,682
Year 4	25,240	975	26,215

[64] Commission records indicate that, excluding adjustments made as part of Safety Net Review decisions,¹⁰⁴ the RA Award did not receive further substantive variations. After the June 2005 Safety Net Review, the minimum rate for first-year flight attendants was \$29,588 per annum.¹⁰⁵

[65] The RA Award was terminated on 31 December 2013 in accordance with Item 9(4) of Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)* (**Transitional Amendments Act**).

2.3 Qantas Flight Attendants Awards

[66] Historically, the scope of Qantas as an employer in the aviation industry has been quite broad. As such, Qantas employees have been covered by dedicated awards at various points including:

- Airline Flight Stewards' (Qantas) Award [A0023];¹⁰⁶
- Airline Flight Attendants (Qantas) Award (Consolidated) [A0022];¹⁰⁷
- Airline Officers (Qantas Airways Limited) Award [A0562];¹⁰⁸
- Clerks' (Overseas Airlines) Award [C0030];¹⁰⁹
- A.D.S.T.E. Qantas Airways Limited Award [A0115];¹¹⁰

¹⁰⁴ PR953295; PR964231; see also PR970102.

¹⁰⁵ PR964231.

¹⁰⁶ Print C1833 [A0023], (1975) 167 CAR 371; Print C2628 [A0023]; Print F8064 [A0023].

¹⁰⁷ Print G3091 [A0022].

¹⁰⁸ Print J6271 [A0562]; see also Print F6009 [S0007].

¹⁰⁹ Print B3170 [C0030], (1967) 121 CAR 286; Print E7709 [C0030], (1981) 265 CAR 188.

¹¹⁰ Print C3841 [A0115], (1975) 171 CAR 165; Print G0873 [A0115].



- Qantas Airways Limited (Printing) Agreement [A0007];¹¹¹
- Technical Salaried Staff (Qantas Airways Limited) Award [T0167];¹¹² and
- Salaried Staff (Qantas Airways Limited) Award [S0007].¹¹³

[67] Qantas employees were also covered by enterprise agreements.¹¹⁴ This research does not examine the development of these agreements. Researchers highlight that Ansett and TAA enterprise agreements referenced the DA Award on silent conditions. The Qantas agreement referenced the *Airline Flight Attendants (Qantas) Award (Consolidated) 1986 (Qantas Consolidated Award)*.¹¹⁵

[68] Noting coverage of pre-reform awards and enterprise agreements, this section considers historical Qantas awards that are relevant to flight attendants, namely the Qantas Consolidated Award and *Airline Flight Attendants' (Qantas) Award 1993 (Qantas FA Award)*. From available materials, these appear to be the key instruments applying to flight attendants employed by Qantas.

[69] The Qantas Consolidated Award was initially made as the *Airline Flight Hostesses' (Qantas) Provisional Award, 1974*.¹¹⁶ This instrument was expressed to apply to 'flight hostesses'. The award was reprinted as the *Flight Hostesses' (Qantas) Award 1974* in July 1974 and October 1985.¹¹⁷ In August 1983, new salary rates and classifications were introduced for 'flight attendants' by consent with effect from 8 June 1983.¹¹⁸ The award was later consolidated and reprinted as the *Airline Flight Attendants (Qantas) Award (Consolidated) 1986*.¹¹⁹ This print did not include pay and classifications for 'air hostesses'.

[70] The Qantas Consolidated Award was expressed to cover all employees in the occupations listed in the award. This included flight attendants, flight service directors, chief flight attendants and

¹¹¹ Print C3431 [A0007], (1974) 160 CAR 930.

¹¹² Print G2784 [T0167].

¹¹³ Print F6009 [S0007]; Print H3126 [S0007]; Print J2057 [S0007]; Print J4907 [S0007].

¹¹⁴ See, e.g., Print K4667, [1992] AIRC 969.

¹¹⁵ Print K5142 at Schedule 1.

¹¹⁶ Print C1768 [A0022], (1974) 167 CAR 360.

¹¹⁷ Print C7119 [A0022], (1975) 168 CAR 469; Print F8063 [A0022].

¹¹⁸ Print F2600; see also Print F4286; Print F4348; Print F6887.

¹¹⁹ Print G3091 [A0022].



senior flight attendants. The minimum salary for a flight attendant was \$294.62 per week after probation. The award otherwise provided the following pay and classification structure:

Designation	Per annum
	\$
Probationary Flight Attendant (under ground training)	12144
Probationary Flight Attendant (flying)	13860
Flight Attendant (after probation)	
1st year	15320
2nd year	15801
3rd year	16271
4th year	16745
5th year	17227
6th year	17691
7th year	18162
8th year	18633
9th year	19099
10th year	19579
Senior Flight Attendant	
1st year	20534
2nd year	21713
Chief Flight Attendant	
1st year	22881
2nd year	24045
Flight Service Director	
1st year	25214
2nd year	26377
3rd year	27550



[71] The Qantas Consolidated Award was the subject of proceedings during the 1980s and early-1990s. These matters involved increases from National Wage Case decisions or variations to allowances and conditions.¹²⁰

[72] In 1989 the Australian Flight Attendants Association (AFAA) and Qantas applied to vary the Qantas Consolidated Award and another instrument, the *Airline Flight Stewards' (Qantas) Award 1974 (AFS Award)*, to certify a consent agreement concerning salaries.¹²¹ The Full Bench also considered whether the March 1988 work rules decision¹²² was applicable with respect to payment of wages, additions to wages and whether variations were required following a new system of work introduced by Qantas. The Full Bench noted that:

The intention of the agreement now reached is to provide an equitable pay arrangement over each bid period to ensure that flight attendants do not experience a dramatic fluctuation of income when operating flying lines or reserve lines. The agreement in effect provides pay equalisation based on duty hour credits.

It was submitted by the parties that the original assessment, presented during the work rules proceedings, of flight attendants performing 9 flying lines and 1 reserve line had not eventuated and that flight attendants were performing more than the expected single reserve line, accordingly such assumption not being realised has caused negative adjustments to wages due to the inaccurate assessment.

The agreement does not represent any increase in salary but merely addresses what is an unforeseen [sic] anomaly and provides flight attendants with a minimum aggregate salary which still maintains the integrity of the work rules concept and provides [Qantas] with its required improvements in efficiency and productivity.

The parties have been previously advised that several allowances being paid to flight attendants and forming part of the pay rules document do not in my view satisfy the wage fixation requirements, all are outside the award, all are agreements negotiated between the parties and not subject to approval by this Commission.

¹²⁰ For national Wage Case decisions, see Print G449; Print G5040; Print G7760; Print H3149; Print H4705; Print H5621; Print J7992; Print J9616. For variations to allowances and conditions, see Print G5170; Print H9079; Print H9841; Print J8420; Print J7992; Print J8420; Print J9745; Print K2679.

¹²¹ [1989] AIRC 669.

¹²² Print F8064 [A0023].



Accordingly I propose to certify the agreement between the parties in respect to pay rules but [...] outside award allowances will not form part of that agreement.¹²³

[73] An agreement for variations to the AFS Award and Qantas Consolidated Award was presented to the AIRC in 1991 for approval. Variations were jointly proposed by the Australian International Cabin Crew Association (AICCA), FAAA and Qantas in accordance with the then-applicable structural efficiency principle.¹²⁴ The agreement included a new classification structure, wage scales, over award payments and allowances. Commissioner Leary approved the agreement while making the following observations:

The agreement between the parties proposes a new classification structure which achieves the objectives referred to when the first [structural efficiency principle] payment was approved, it was agreed that the current structure no longer meets the needs of the Company or its Flight Attendants and requires review. [...] The new structure provides flexibility and a more efficient spread of skills and responsibilities which will not only enhance the Company product but will also extend the duties of Flight Attendants, develop for them additional skills and qualities and provide more satisfying work for individual Flight Attendants. I have expressed some concern at the introduction of a skills based structure which incorporates an incremental system based on service only, but I am prepared to approve the structure at this time recognising that the previous structure was service based, but it will be subject to monitoring by the Commission to ensure its application and implementation provides the promised benefits to both the Company and to the employees.¹²⁵

[74] Commissioner Leary issued an order to give effect to his decision on 1 August 1991. This consent order did not include further changes to the agreed classification structure and allowances.¹²⁶

[75] The AFS Award remained in operation until superseded by the *Airline Flight Attendants' (Qantas) Award 1993 (Qantas FA Award)*.¹²⁷ The Qantas FA Award consolidated the AFS Award 1974 and

¹²³ [1989] AIRC 669 at 2.

¹²⁴ Print J7562, [1991] AIRC 324.

¹²⁵ Print J7562, [1991] AIRC 324 at 3.

¹²⁶ Print J8420.

¹²⁷ On 10 February 1992, following the 1989 National Wage Case [Print H9100, [1989] AIRC 525], classifications in the *Airline Flight Stewards' (Qantas) Award 1974* underwent significant variation; see Print J9692 [A0023]. This new classification structure was largely incorporated into the *Airline Flight Attendants' (Qantas) Award 1993*; see Print L0878 [A0023].



Qantas Consolidated Award 1986.¹²⁸ The Qantas Consolidated Award was later set aside by Commissioner Palmer with effect from 21 July 1993.¹²⁹

[76] The Qantas FA Award provided for the following pay and classification structure:¹³⁰

Designation	Pay (\$)
	Weekly rate
Flight Attendant (under initial training)	315.80
	Rate per duty hour credit
Level 1	
Year 1	20.87
Year 2	21.43
Level 2	
Year 1	22.93
Year 2	23.62
Year 3	24.33
Year 4	25.06
Year 5	25.81
Year 6	26.59
Level 3	
Year 1	29.91
Year 2	30.80
Year 3	31.73
Level 4	
Year 1	35.70
Year 2	36.77

¹²⁸ Print L0878 [A0023].

¹²⁹ Print L0989.

¹³⁰ Print L0878 [A0023] at clause 6.



Designation	Pay (\$)
	Weekly rate
Level 5	
Year 1	40.45

[77] As outlined at paragraphs [32]–[36] above, in May 1996 a Full Bench of the AIRC approved a new pay structure for a number of airline awards which included the DA Award and Qantas FA Award. The application had sought to incorporate wage rates from the Ansett EA 1 and Qantas EA 1 into the terms of paid rates awards covering Ansett and Qantas employees.¹³¹

[78] Deputy President Acton subsequently issued an order on 6 December 1996 to vary the Qantas FA Award to give effect to the May 1996 decision. In addition to clarifying that the award was a paid rates award,¹³² rates were increased as follows:¹³³

Designation	Pay (\$)
	Weekly rate
Flight Attendant (under initial training)	348.40
	Rate per duty hour credit
Level 1	
Year 1	23.02
Year 2	23.65
Level 2	
Year 1	25.30
Year 2	26.06
Year 3	26.84
Year 4	27.64
Year 5	28.47

¹³¹ Print N1977, [1996] AIRC 799 at 4.

¹³² Print N6950.

¹³³ Print N7111.



Designation	Pay (\$)
	Weekly rate
Year 6	29.33
Level 3	
Year 1	32.99
Year 2	33.98
Year 3	35.00
Level 4	
Year 1	39.38
Year 2	40.56
Level 5	
Year 1	44.62

[79] During the award simplification process, the Qantas FA Award underwent substantial review. On 13 June 2000 the award was varied and reprinted as the *Airline Operations – Flight Attendants’ Long Haul – Qantas Airways Limited – Award 2000* (Qantas LH Award).¹³⁴ This award provided a pay and classification structure which largely replicated terms from the 1993 award. Rates were as follows:

Category	Minimum rate per daily hour credit	Residential rate per duty hour credit	Total rate per duty hour credit	Minimum rate per week	Residential rate per week	Total rate per week
	\$	\$	\$	\$	\$	\$
Trainee FA	-	-	-	348.40	0	348.40
Level 1						
Year 1	19.54	3.48	23.02	446.60	79.40	526.00
Year 2	19.54	4.11	23.65	446.60	93.80	540.40
Level 2						
Year 1	21.48	3.82	25.30	490.80	87.30	578.10
Year 2	21.48	4.58	26.06	490.80	104.70	595.50

¹³⁴ Print S7006 [A0023].



Category	Minimum rate per daily hour credit	Residential rate per duty hour credit	Total rate per duty hour credit	Minimum rate per week	Residential rate per week	Total rate per week
	\$	\$	\$	\$	\$	\$
Year 3	21.48	5.36	26.84	490.80	122.50	613.30
Year 4	21.48	6.16	27.64	490.80	140.80	631.60
Year 5	21.48	6.99	28.47	490.80	159.70	650.50
Year 6	21.48	7.85	29.33	490.80	179.40	670.20
Level 3						
Year 1	28.01	4.98	32.99	640.00	113.80	753.80
Year 2	28.01	5.97	33.98	640.00	136.40	776.40
Year 3	28.01	6.99	35.00	640.00	159.80	799.80
Level 4						
Year 1	33.44	5.94	39.38	764.00	135.80	899.80
Year 2	33.44	7.12	40.56	764.00	162.80	926.80
Level 5						
Year 1	37.89	6.73	44.62	865.70	153.90	1019.60
Flight attendant (under initial training)	-	-	-	348.40	0	348.40

[80] Commission records indicate that the Qantas LH Award did not receive substantive variations in the early-2000s, excluding increases to rates following the June 2005 Safety Net Review decision. After this decision, weekly rates for first-year flight attendants (Level 1) reached \$557.60.¹³⁵

¹³⁵ See PR970700.



3 Award modernisation

[81] The award modernisation process was initiated pursuant to Part 10A of the *Workplace Relations Act 1996* (Cth) following a formal request from the Commonwealth Government dated 28 March 2008. This request required the AIRC to review and reduce the number of awards operating in the workplace relations system. The modernisation Full Bench stated:

The [award modernisation] request requires us to formulate awards which apply to corporations throughout Australia in the industry or occupation concerned, replacing many hundreds of federal and state awards containing a wide diversity of terms and conditions. In doing so we are to have regard to, among other things, the desirability of reducing the number of awards operating in the workplace relations system. We are required to complete the process by the end of [2009] so that the new system of bargaining can operate on the basis of the statutory elements of the safety net, the National Employment Standards (NES), and the terms of the applicable modern award. Clearly it is not possible to conduct a full reconsideration of all terms and conditions of employment in the course of this exercise. Rather, within the constraints of existing safety net award provisions, our approach has been to rationalise existing award provisions along logical industry and occupational lines.¹³⁶

[82] Award modernisation was conducted in 4 stages. The broader ‘airline operations’ industry was considered during Stage 3 proceedings which involved 39 occupations, industries and parts of industries not dealt with in earlier stages.

[83] The modernisation Full Bench published research in January 2009 that identified over 60 airline operations awards.¹³⁷ The indicative list of *non-enterprise awards* did not include any instruments covering flight attendants. The DA Award 1999 [AP781128], RA Award 1999 [AP781148] and Qantas LH Award 2000 [AP765517] were categorised as pre-reform *enterprise awards*. Other enterprise awards referencing flight attendants included:

- Airline Operations – Qantas Flight Attendant Divisional Transfer Award 2004 [AP836453];
- Flight Attendants (Ansett International) Award 2000 [AP781203];

¹³⁶ [2009] AIRCFB 800 at [3]; see also [2009] AIRCFB 345; *Workplace Relations Act 1996* (Cth) at ss 576A(2), 576B(2), 576C(1).

¹³⁷ [2009] AIRCFB 100 at Attachment B, 1–3.



- Flight Attendants' Association of Australia Australian Airlines Award 2002 [AP818229]; and
- Flight West Airlines Flight Attendants' Award 2000 [AP781217].

[84] The classification of these awards as enterprise awards may have had a significant impact on the final modern award. As outlined in the Explanatory Memorandum to the Transitional Amendments Act: 'Enterprise awards and NAPSAs that were derived from a State enterprise award are excluded from the award modernisation process that is being undertaken by the AIRC.'¹³⁸ Legislation required Fair Work Australia (**FWA**) deal with these awards in a separate process.¹³⁹ This process is outlined in detail in section 3.1.

[85] Ai Group's submission in Stage 3 award modernisation proceedings supported the classification of flight attendant awards as enterprise awards. Ai Group argued that 'there are no federal industry or occupational awards in existence that cover flight attendants.'¹⁴⁰ Qantas also submitted that award coverage in the industry was limited to enterprise awards for employees other than ground and administration staff.¹⁴¹ In contrast, FAAA submitted that the DA Award and RA Award were relevant *industry awards*, containing relevant salaries and conditions. The FAAA also observed that these instruments were used as the test for relevant workplace agreements.¹⁴²

[86] The FAAA highlighted that employment conditions for flight attendants were sufficiently distinct from those of airport ground-staff. These conditions included health and safety requirements, significant variance in hours of work and rest periods required for the performance of duties in-flight at altitude. The FAAA submitted that these conditions were also only loosely similar to those of pilots.¹⁴³ Qantas also submitted evidence of differences between flight attendants and pilots,

¹³⁸ Explanatory Memorandum, *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* at [218].

¹³⁹ [2009] AIRCFB 943 at [14]; see also *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) at Schedule 6, Item 2(1), Item 2(3) and Item 4.

¹⁴⁰ Australian Industry Group, Submission in *Award modernisation*, AM2008/25-63, dated 6 March 2009 at [61].

¹⁴¹ Qantas, Submission in *Award modernisation*, AM2008/25, dated 6 March 2009 at [4]; see also Qantas, Submission in *Award modernisation*, AM2008/25, dated 9 April 2009 at [3.2].

¹⁴² FAAA, Further submission in *Award modernisation*, AM2008/25, dated 27 April 2009 at [2].

¹⁴³ FAAA, Submission in *Award modernisation*, AM2008/25, dated 6 March 2009 at [1]–[4].



including that flight attendant's hours of work were not determined by Civil Aviation Safety Authority (**CASA**) regulations.¹⁴⁴

- [87] The general consensus from initial submissions in award modernisation proceedings was that occupational rather than industry coverage was necessary for flight attendants. This coverage would better accommodate flight attendants' distinct working conditions in comparison to other areas of the airline industry.¹⁴⁵
- [88] After the initial hearing for airline operations the FAAA and Qantas were directed to undertake private discussions to prepare a draft modern award for the AIRC's consideration.¹⁴⁶ The FAAA claimed that these discussions stalled. Both parties later filed separate drafts.¹⁴⁷
- [89] The Domestic and Regional Division of the FAAA (**FAAA-DR**) relied heavily on the DA Award and RA Award as the foundation for their draft modern award. The FAAA-DR observed in their submission that, should the AIRC not view these instruments as relevant industry awards, they nevertheless had been adopted by the industry as important 'benchmark' instruments.¹⁴⁸
- [90] The FAAA-DR proposed a refined classification structure which flattened increases for years of experience. Cabin crew rates were equivalent to 98 per cent of the C10 rate, aligned to relativities established in the DA Award following award simplification. Cabin crew manager rates were set at 115 per cent of the C10 rate for Level 1 and 135 per cent for Level 2.¹⁴⁹
- [91] The FAAA-DR sought a maximum of 120 rostered hours in any roster period with an extension to a maximum of 140 ordinary hours in certain circumstances to be worked within each roster period.¹⁵⁰ This would have effectively extended the operation of DA Award entitlements.¹⁵¹ The

¹⁴⁴ Qantas, Submission in *Award modernisation*, AM2008/25, dated 6 March 2009 at [8.2].

¹⁴⁵ Transcript of proceedings, *Award modernisation* (AM2008/25, Watson VP), 19 March 2009 at [PN210]–[PN212].

¹⁴⁶ Transcript of proceedings, *Award modernisation* (AM2008/25, Watson VP), 19 March 2009 at [PN338].

¹⁴⁷ FAAA ID, Submission in *Award modernisation*, AM2008/25, dated 27 April 2009 at [1]–[2].

¹⁴⁸ FAAA-DR, Submission in *Award modernisation*, AM2008/25, dated 12 June 2009 at [2].

¹⁴⁹ FAAA-DR, *Cabin Crew Occupational (Draft) Award 2010*, dated 27 April 2009 at clause 19.

¹⁵⁰ FAAA-DR (n 144) at Schedule A.1.1.

¹⁵¹ FAAA-DR (n 144) at Schedule A.1.1.



FAAA-DR draft set ordinary hours at between 1,440 and 1,680 per annum, subject to rostering, operational requirements and any unforeseen variables in airline travel.¹⁵²

- [92] The initial Qantas draft award was similar to the FAAA-DR draft award. The cabin crew member rate was also equivalent to 98 per cent of the C10. However, the Qantas draft contained slight classification differences for cabin crew supervisors and managers. Qantas draft rates for these classifications were equivalent to 115 per cent and 135 per cent of the C10 rate respectively.¹⁵³
- [93] The Qantas draft award outlined 1,976 ordinary hours per year for domestic and international crew members or the equivalent of a 38-hour week. Planned duty hours were to be rostered either over 13 periods of 28 days at 152 hours, over 12 calendar months at 164.67 duty hours, or over a 14-day period of up to 76 hours per fortnight. The draft included 'reasonable additional hours'.¹⁵⁴
- [94] The international division of the FAAA (**FAAA-ID**) strongly rejected Qantas' proposal for 1,976 ordinary hours per annum. The FAAA-ID argued this proposal failed to consider the exceptional working environment of cabin crew members or the health and safety considerations involved.¹⁵⁵
- [95] The FAAA-ID submitted that duty limitations for international cabin crew (or employees who fly both domestic and international routes) should replicate those agreed by Qantas in the *QF Cabin Crew Australia Pty Limited Workplace Agreement 2007*. This agreement included a maximum 1,560 hours per annum (approximately 130 hours per month, 120 hours per 28-day period or 60 hours per fortnight).¹⁵⁶ The FAAA-ID also recommended separate rates of pay and classifications for international flight crews, mirroring the enterprise agreement rate for flight attendants of \$35,514 per annum.¹⁵⁷ The proposed structure also provided for a trainee flight attendant rate of \$29,504.
- [96] Both the FAAA-DR and FAAA-ID opposed Qantas' approach to overtime on the basis it would not be paid on a defined daily basis for international or domestic crew.¹⁵⁸ Qantas proposed that

¹⁵² FAAA-DR (n 144) at Schedule A.1.

¹⁵³ Qantas, *Cabin Crew Occupational Award 2010*, dated 27 April 2009 at clause 18.

¹⁵⁴ Qantas (n 148) at Schedule A, Schedule C.

¹⁵⁵ FAAA ID (n 142) at 22.

¹⁵⁶ FAAA ID (n 142) at 22.

¹⁵⁷ FAAA ID (n 142) at 49. Hourly rates were calculated by dividing the per annum rate by 1,560 ordinary hours.

¹⁵⁸ FAAA-ID (n 142) at 51–52.



overtime be paid for all time worked in excess of the maximum ordinary hours in a year, specified roster cycle, or where unplanned extensions exceed the daily limit and further extension is agreed to by the cabin crew.¹⁵⁹ The FAAA-ID favoured overtime for all work in excess of 9 hours and 30 minutes per day for domestic cabin crew and where 'actual flight duty' extended beyond 12 hours for international cabin crew.¹⁶⁰

[97] Parties generally agreed that overtime provisions would not apply to regional flying. These conditions were similar to identified pre-reform awards. The approach towards overtime was also endorsed by the Regional Aviation Association of Australia (RAAA).¹⁶¹ The RAAA submitted that the modern award should draw on the RA Award with respect to conditions for flight attendants on regional airlines. In the RAAA's view: 'In doing this the [AIRC] would not disadvantage flight attendants employed by regional airlines but also not increase costs to regional airlines who employ flight attendants.'¹⁶²

[98] The award modernisation Full Bench published exposure drafts for Stage 3 proceedings on 22 May 2009. The initial draft appears to largely replicate the Qantas draft. In a September 2009 decision the Full Bench made the following observations with respect to the ACC Award:

[12] The parties agreed on a number of variations which we have reflected in the final award. A large number of variations sought were justified by reference to an award which only applied to one employer – either Qantas or an airline which has since gone out of existence, Ansett Airlines. In general we have not had particular regard to the contents of enterprise awards.

[13] On the question of hours of work for domestic and international flying there was considerable debate as to the appropriate number of weekly hours. The employers submitted that the annual equivalent of a 38 hour week (1976 hours) is appropriate and is currently the limit applying to low cost airlines established in recent years. It appears however that practices do not reflect this level of working hours although they could if traffic increases. We have decided that a lesser figure of 1872 hours (a 36 hour week) is more reflective of current practices and award provisions in this area of employment.

¹⁵⁹ Qantas (n 148) at A.6.1, C.6.1.

¹⁶⁰ FAAA-ID (n 142) at 52.

¹⁶¹ RAAA, Submission in *Award modernisation*, AM2008/25, dated 24 April 2009 at 7.

¹⁶² RAAA (n 156) at 5–6.



[14] A number of increased entitlements were sought by the Flight Attendants' Association of Australia (FAAA). We do not consider that a sufficient case has been made out for their inclusion.¹⁶³

[emphasis added]

[99] The *Aircraft Cabin Crew Award 2010* was made on 4 September 2009.¹⁶⁴ Classifications and rates in the modern award were consistent with drafts from Qantas¹⁶⁵ and the FAAA-DR.¹⁶⁶ The degree of overlap may reflect the significance of the DA Award in setting the value of the work of flight attendants. Final rates in the ACC Award 2010 were:

Classification	Minimum weekly wage
	\$
Cabin crew member	624.80
Cabin crew supervisor (narrow-bodied aircraft, four or more crew)	733.20
Cabin crew manager (wide-bodied aircraft)	860.80

[100] At the conclusion of award modernisation, 122 modern awards had been created to replace 1,560 federal and state awards.¹⁶⁷ The Expert Panel in the Aged Care Stage 3 decision observed that:

¹⁶³ [2009] AIRCFB 826 at [12]–[14].

¹⁶⁴ *Aircraft Cabin Crew Award 2010* [MA000047] PR988691.

¹⁶⁵ Qantas Group, *Cabin Crew Occupational Award 2010*, dated 27 April 2009 at clause 18. The draft included the following:

Classification	Minimum wage
Cabin crew member	98% of C10
Cabin crew supervisor (narrow-bodied aircraft, four or more crew)	115% of C10
Cabin crew manager (wide-bodied aircraft)	135% of C10

¹⁶⁶ FAAA-DR (n 144) at clause 19.

¹⁶⁷ [2009] AIRCFB 945.



The award modernisation process was not constrained by the previous wage-fixing principles and, in theory, could have involved a full *ab initio* work value assessment of any female-dominated occupation or industry that was to be the subject of a modern award. However, in practice, this was not possible because the statutorily mandated process required the consolidation and streamlining of thousands of former federal and State awards into what ultimately became 122 modern awards by the end of 2009.¹⁶⁸

[101] In their submission to the 2023-24 Annual Wage Review the FAAA observed the following with respect to the award modernisation process:

12. Pre modernisation, industrial awards covering cabin crew were predominantly employer-based enterprise arrangements. New industry entrants such as Jetstar were award free with some covered by enterprise agreements. Due to company failures and amalgamations, the primary domestic short haul occupational award, The Flight Attendants (Domestic Airlines) Award 1999 (the 'Domestic Award') had only one named remaining respondent, QANTAS, at the time of modernisation, the other respondent, ANSETT, having gone into receivership.

13. Prior to award modernisation, there was no occupational award covering international flying. The Flight Attendants (Ansett International) Award 2000 had no work to do following the company's demise. Qantas had a series of enterprise awards. When making the ACCA the Commission stated that in general it did not have regard to the contents of enterprise awards. The Commission eschewed conditions in the Domestic Award as being 'enterprise'.

14. Decades of negotiated and arbitral conditions were lost. The building of the ACCA for short and long-haul cabin crew virtually commenced from a table rasa. The ACCA, Schedule B applying to cabin crew flying for regional operations, did maintain some conditions based on the premodern Flight Attendants (Regional Award and Charter Operators) Award.¹⁶⁹

[102] On 8 December 2009 the FAAA-ID and FAAA-DR applied to vary the ACC Award 2010.¹⁷⁰ Both applications referred to an amendment to the award modernisation request made by the Minister for Employment and Workplace Relations on 9 November 2009. This amendment inserted the following new paragraphs into the request:

¹⁶⁸ [2024] FWCFB 150 at [95].

¹⁶⁹ FAAA (n 11) at [12]–[14].

¹⁷⁰ For additional materials relating to these applications, please refer to AM2009/149 and AM2009/150.



55. Where a modern award covers airline cabin crew, the Commission should ensure that hours of work and rostering provisions appropriately balance the objectives of:

- recognising the need to assist employees to balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce;
- promoting the safety, health and welfare of employees; and
- promoting flexible modern work practices and the efficient and productive performance of work having regard to the needs of employers in the airline industry, including the need for employers to be able to re-schedule work efficiently and effectively where changes to flying schedules occur.

56. The Commission should consider whether to include provisions in the modern award applying to aircraft cabin crew to supplement the National Employment Standards in respect of parental leave and related provisions (such as the provision of alternative duties during pregnancy) having regard to:

- the nature of duties performed by aircraft cabin crew;
- any risks to the health, safety and welfare of employees associated with flying during pregnancy;
- the nature and scope of coverage of existing award entitlements; and
- whether such provisions are necessary in order to provide a fair minimum safety net of employment conditions for aircraft cabin crew.¹⁷¹

[103] The then Minister for Employment and Workplace Relations issued additional directions in an accompanying letter. This letter stated as follows:

Aircraft Cabin Crew Award 2010

The Flight Attendants Association of Australia (the Association) has raised concerns over the hours of work and rostering arrangements in the Aircraft Cabin Crew Award 2010.

The airline industry is subject to weather conditions and other variable factors, including commercial considerations, which cause changes to scheduled flights, flight cancellations or delays. It is well accepted that airlines need special flexibilities to manage rostering arrangements. In this regard, I note paragraph 1(c) of the consolidated award modernisation request provides that modern awards should be “economically sustainable and promote flexible modern work practices and the efficient and productive performance of work”.

However, this need for flexibility should be balanced against the need to provide reasonable certainty for employees over their working arrangements. I note that in this regard, the Commission is required to have

¹⁷¹ [2010] FWA 629 at [2].



regard to other relevant factors in my award modernisation request, including the need to assist employees to balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce (paragraph 3(f)) and the safety, health and welfare of employees (paragraph 3(g)).

I am concerned that the proposed award for aircraft cabin crew may not presently achieve a fair balance of these factors. For example, as presently drafted the modern award would allow an employer to cancel a rostered single-day trip and substitute it at late notice with a multi-day trip involving overnight stays, making it very difficult for an employee to make arrangements to care for dependants.

Accordingly I am amending my request to include some additional factors to be considered by the Commission in relation to the hours of work and rostering arrangements for airline cabin crew.

The Association has also raised concerns that the proposed modern award does not provide for conditions supplementing the National Employment Standards in respect to the provision of alternative duties during pregnancy.

As the Commission is aware, the National Employment Standards provide for unpaid parental leave and entitlements to a transfer to a safe job, subject to certain pre-requisites being met.

I note that paragraph 32 of my request provides as follows:

Subject to paragraph 34 below, a modern award may supplement the NES where the Commission considers it necessary to do so to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to the terms of this request and the existing award provisions (including under NAPSAs) for those employees, such as small business redundancy entitlements or the rate of pay at which various types of leave is taken. The Commission may only supplement the NES where the effect of these provisions is not detrimental to an employee in any respect, when compared to the NES.

I understand that the provision of unpaid leave and alternative duties during pregnancy are entitlements that have historically been dealt with in some awards and NAPSAs for airline cabin crew, as it is generally accepted that flying during pregnancy is not desirable given the health and welfare hazards entailed and the difficulties in performing some of the physical requirements of this work (such as being able to carry out safety procedures).

I have varied my request to specifically enable the Commission to consider whether supplementation of the NES is warranted in this case having regard to these factors in order to form a fair minimum safety net of employment conditions for employees.



The Government recognises that both the modern award for ground staff and cabin crew have already been made by the Commission and notes that these variations to my request may require the Commission to re-examine the provisions of these modern awards.¹⁷²

[104] The FAAA applications sought a variation to the ACC Award 2010 to reduce annual hours from 1,872 per year (36 per week) to 1,560 hours per year (30 hours per week). The FAAA also sought a maximum of 130 duty hours per month. This arrangement was based on conditions included in the *Flight Attendants' Association of Australia – International Division, Qantas Airways Limited and QF Cabin Crew Australia Pty Limited Workplace Agreement 2007*.¹⁷³

[105] A Full Bench considered these two applications together. In their decision dated 2 February 2010 the Full Bench stated:

We have considered the terms of the Minister's amended request. It requires us to ensure that the hours of work and rostering arrangements appropriately balance certain factors. Those factors are generally encompassed within the award modernisation objectives and were considered by us in determining the hours provisions in the modern award. We previously determined that the ordinary hours should be equivalent to 36 per week or 156 duty hours per month. We do not believe that a case has been made out to reduce this further. We add that the existence of a provision in an enterprise agreement applying to one employer which may be covered by the modern award does not, of itself, justify the adoption of that provision in a common rule safety net award.¹⁷⁴

[emphasis added]

[106] The FAAA was successful in varying the modern award to limit the circumstances where an employer could reassign employees to alternative duty during a roster period. The Full Bench observed that it was appropriate that any reassignment be based on 'a valid operational reason'.¹⁷⁵

[107] The FAAA also sought to vary the clause related to rostered days off. The FAAA argued that 'such a clause could have adverse implications for balancing of work and family responsibilities because it creates a unilateral right of employers to determine a substitute day'.¹⁷⁶ Qantas proposed their

¹⁷² [2010] FWAFB 629.

¹⁷³ [2010] FWAFB 629 at [7].

¹⁷⁴ [2010] FWAFB 629 at [9].

¹⁷⁵ [2010] FWAFB 629 at [10].

¹⁷⁶ [2010] FWAFB 629 at [12].



own variation to the clause in response. The Full Bench considered the changes proposed by Qantas to be 'fair and reasonable and appropriately give effect to the Minister's amended request.'¹⁷⁷ The ACC Award 2010 was varied to allow employers to request an employee work on a rostered day off while also giving effect to a right to reasonably refuse having regard to health and safety circumstances. Qantas further proposed that substituted days off could be assigned in the next roster period.¹⁷⁸

[108] The FAAA sought to extend the rest period after planned duty periods of more than 14 hours to a minimum of 24 hours.¹⁷⁹ This proposal was rejected by the Full Bench. The Full Bench observed that: 'The normal rest period between shifts is 10 hours. We are not satisfied that the rest periods in the modern award are unreasonable and no basis to increase the rest period to 24 hours has been made out.'¹⁸⁰ The Full Bench did vary clause D.3.5 of the ACC Award 2010 to give effect to provisions regulating in-flight rest periods to clarify employee entitlements.¹⁸¹

[109] The FAAA sought payment of overtime at double time for between 12 to 14 hours per day and double time and a half for work extending beyond 14 hours.¹⁸² This was strongly opposed by Qantas. The Full Bench was not persuaded that a case had been made to make the changes sought, observing that 'international cabin crew work necessarily involves long periods of duty.'¹⁸³

[110] The FAAA sought to clarify the definition of full-time hours.¹⁸⁴ The Full Bench observed the following with respect to this request from the FAAA:

[30] The FAAA seeks to define a full time employee as one rostered for between 1680 and 1872 hours per annum and reduce the ordinary hours from 1872 per annum (36 per week) to 1680 per annum (30

¹⁷⁷ [2010] FWAFFB 629 at [14].

¹⁷⁸ [2010] FWAFFB 629 at [11]–[14].

¹⁷⁹ [2010] FWAFFB 629 at [15].

¹⁸⁰ [2010] FWAFFB 629 at [17].

¹⁸¹ [2010] FWAFFB 629 at [18].

¹⁸² [2010] FWAFFB 629 at [19].

¹⁸³ [2010] FWAFFB 629 at [19]–[21].

¹⁸⁴ [2010] FWAFFB 629 at [30].



per week) in line with the [DA] Award 1999. Other changes are sought to the number of ordinary hours for fortnights and months including a reduction in the total monthly hours from 156 hours to 140 hours.

[31] Qantas Group strongly opposes the changes. It submits that in order to comply with a requirement of 140 total hours Team Jetstar would need to build rosters based on 120 hours a month. It says that low cost operators are able to roster hours above 140 per month at the moment, in some cases in accordance with collective union agreements with FAAA. Team Jetstar estimates the cost of the change would be \$1.3m per annum because it would require the engagement of additional employees.

[32] We do not believe the change is justified. The position is similar to our reasons in relation to a similar claim in the international sector. A strong case is needed to justify requiring significant changes to staff levels and operational practices. The reliance on the award which is essentially now an enterprise award is not a sufficient basis. The claim is rejected.¹⁸⁵

[emphasis added]

[111] The FAAA also sought a reduction in the daily planned and unplanned hour limitations in the ACC Award 2010. The Full Bench rejected the FAAA's proposals stating:

It is significant that the terms of the proposed variations require changes to operational practices in the low cost sector. In our view, the case presented by the FAAA falls well short of establishing that the existing practices are unfair or unsafe as would support such an outcome. We have given further consideration to all relevant matters and the Minister's amended request and reject the FAAA claims.¹⁸⁶

[emphasis added]

[112] A determination was subsequently issued on 2 February 2010 varying the ACC Award 2010 in accordance with the Full Bench decision.¹⁸⁷

3.1 Modernisation of enterprise awards

[113] As outlined above, the AIRC conducted the award modernisation process between 2008 and 2009 making 122 modern awards. Enterprise instruments were not considered as part of that process.

¹⁸⁵ [2010] FWA FB 629 at [30]–[32].

¹⁸⁶ [2010] FWA FB 629 at [33]–[35].

¹⁸⁷ PR993117.



[114] The Transitional Amendments Act required FWA to terminate modernisable instruments as soon as practicable once modern awards were made. Modernisable instruments that were classified as an enterprise instrument or State reference public sector transitional award (or award that covered employees also covered by an enterprise instrument or State reference public sector transitional award) could not be terminated at this stage. Parties were required to apply by 31 December 2013 if they sought to modernise an enterprise instrument.

[115] Before granting an application to modernise an enterprise instrument, FWA had to consider Item 4(5) of Schedule 6 to the Transitional Amendments Act. These provisions provided that when deciding whether or not to make a modern enterprise award, and in determining the content of that award, the Commission was required to take into account the following:

- the circumstances that led to the making of the enterprise instrument rather than an instrument of more general application;
- whether there is a modern award (other than the miscellaneous modern award) that would, but for the enterprise instrument, cover the persons who are covered by the instrument, or whether such a modern award is likely to be made in the award modernisation process;
- the content, or likely content, of the relevant modern award;
- the terms and conditions of employment applying in the industry in which the employees covered by the enterprise instrument operate, and the extent to which those terms and conditions are reflected in the instrument;
- the extent to which the enterprise instrument provides enterprise-specific terms and conditions of employment;
- the likely impact on the persons covered by the enterprise instrument, and the persons covered by the relevant modern award, of a decision to make, or not make, the modern enterprise award, including any impact on the ongoing viability or competitiveness of any enterprise carried on by those persons; and
- the views of the persons covered by the enterprise instrument.



[116] No enterprise awards covering flight attendants were considered in the first termination of modernisable instruments decision dated 22 December 2010.¹⁸⁸

[117] Commission records show that the FAAA-ID and Qantas both made applications to make a modern enterprise award. Applications were made to modernise the DA Award and Qantas LH Award.¹⁸⁹ These applications were made on 20 December and 23 December 2013 respectively. Both parties supported the making of modern enterprise awards.

[118] In support of their application, Qantas made the following submissions:

- they were the largest airline industry employer in Australia;
- there were significant changes to the competitive environment in which Qantas operated;
- there had been extensive bargaining over the years in relation to the Qantas LH Award;
- as a result of this industrial history, the terms and conditions of the Qantas LH Award were generally set above the safety net contained in the relevant modern award; and
- they had never sought to terminate the Qantas LH Award.¹⁹⁰

[119] Qantas further claimed that, 'historically, the terms and conditions under the [Qantas LH Award] reflected the public sector environment in which the airline operated' and were more generous than the modern award.¹⁹¹ Qantas argued that the ACC Award 2010 'does not reflect the enterprise-specific terms and conditions relevant to Qantas'.¹⁹²

[120] On 8 July 2014, in proceedings before a Full Bench comprised of Vice President Watson, Deputy President Smith and Commissioner Lee, parties provided additional evidence in support of making a modern enterprise award. Proceedings considered both the Qantas LH Award and DA Award.

[121] Qantas was questioned in the proceedings about the structure and purpose of modernising the Qantas LH Award. Qantas' representative stated that their competitors were not bound by

¹⁸⁸ [2010] FWAFB 9916.

¹⁸⁹ See EM2013/118; EM2013/144.

¹⁹⁰ Qantas, Submission in EM2013/144, dated 14 March 2014 at [7].

¹⁹¹ Qantas (n 185) at [15].

¹⁹² Qantas (n 185) at [18].



enterprise instruments and instead relied on the modern award.¹⁹³ In oral submissions, Qantas observed the following:

[...] the relevant award that would apply if this award was not modernised is the [ACC] Award 2010, and that award is very significantly different to the enterprise instrument that we're dealing with today. In particular, this instrument, the [Qantas LH] award, has a more complex classification structure. It has complex arrangements in relation to the allocation and scheduling of duties. It has a very complicated system in relation to duty hours and how payments are made which I will briefly take the commission to, but ultimately the terms and conditions under the long haul award are more generous to employees than the relevant industry award, the [ACC] Award, and whilst the classification structures don't line up directly, and for the lower end of the classification structure the rates of pay under the enterprise instrument are slightly lower than the industry modern award, once you get into the higher classification levels their rates of pay under the enterprise award are higher than under the industry award.¹⁹⁴

[122] Qantas also stated that:

Should the employees revert to the industry modern award, that standard or minimum standard would [...] be lower for the purposes of the BOOT, but [...] the [Qantas enterprise agreement] does replicate most of the terms of this award and the rates of pay and conditions are significantly above even the industry award.¹⁹⁵

[123] Both Qantas and the FAAA observed that there were more generous allowances, rest periods, arrangements for hours of work and other provisions in the DA Award and Qantas LH Award compared to the relevant modern award. Rates were also observed to be generally higher.¹⁹⁶ The Full Bench noted that many of the provisions highlighted would be better dealt with in an enterprise agreement rather than an award.¹⁹⁷

¹⁹³ Transcript of proceedings, *Application by Qantas Airways Limited* (EM2013/155, Watson VP, DP Smith, C Lee), 8 July 2014 at [PN33]–[PN53] ('EM2013/155 Transcript').

¹⁹⁴ EM2013/155 Transcript (n 188) at [PN96].

¹⁹⁵ EM2013/155 Transcript (n 188) at [PN166].

¹⁹⁶ EM2013/155 Transcript (n 188) at [PN126]–[PN132], [PN281].

¹⁹⁷ EM2013/155 Transcript (n 188) at [PN134].



[124] In their oral submissions, the FAAA-ID stated the following with respect to the Qantas LH Award:

[...] going to the issue of pay protection for these employees, it's quite significant that [historic] provisions should be carried across into the modern instrument, because they cover [...] issues associated with protecting income as foreshadowed under section 139 of the Act. So I think the commission, if it was minded to, could deal fairly straightforwardly with this proposition to incorporate those provisions going forward, unless, of course, you have a question or can see some obstacle that I haven't anticipated as yet. Going forward, we submit notwithstanding that all cabin crew are employed by Qantas, the bulk of them, as I've said, with about 600 employed by QCCA, this instrument would effectively be the safety net that covers the bulk of Qantas's long haul employees. We think, accordingly, that the commission should be minded to modernise this instrument.¹⁹⁸

[emphasis added]

[125] With respect to the DA Award, the national division of the FAAA stated:

The [FAAA], for its part, insisted that the commission should still see [the DA Award] as an industry standard for the purposes of making the modern award for two reasons: [first] it was an industry standard, albeit respondent, in terms of employers, [there] hasn't been one since 2001, but perhaps equally as important and relevant at the time as far as we were concerned was that it was the award that had been used to underpin the various tests that had applied for the making of enterprise agreements, [and] would be the favoured award, the [DA] Award, for the making of those agreements. Now, it would not be fair to say that the commission in making the modern award dismissed all of those arguments in the decision, but certainly the determination by the bench favoured, if I can put it that way, [...] the submissions of Qantas in that regard as to the status of the [DA] Award.

[...]

That said, as far as the wages are concerned, as far as the modern award is concerned, it's important, I think, for the bench to note in the differences it might be applying in terms of the rates as to which one is right and which one is wrong. When we examine the rates for the modern award, bearing in mind we're talking about an industry standard for cabin crew in this country to be covered by that proposed award, it was the first time that you saw rates of pay in an award applying on equal status, if I can put it that way, regardless of whether someone was engaged or working internationally, domestically or regionally. Traditionally, award rates for cabin crew in this country would have seen - rightly or wrongly, [...] no work value assessment that I'm aware of, but international cabin crew base rates would have been higher,

¹⁹⁸ EM2013/155 Transcript (n 188) at [PN250].



domestic slightly lower and regional lower again. So with the modern award, and I say in a positive way, it was the first time that cabin crew, regardless of the aircraft type or where they operated, were on the same rate of pay. So what was factored into the making of the rates, a consideration, your Honour, was those factors, because we had a myriad of awards and variations to consider.¹⁹⁹

[emphasis added]

[126] The Full Bench dismissed the applications to make modern enterprise awards from either instrument in a decision dated 17 July 2014.²⁰⁰ The Full Bench decision noted the following with respect to modernising the Qantas LH Award:

The content of the modern award is different from the provisions of the Qantas [LH] Award. The wage rates are higher in the modern award at the classification levels at or below Level 2 Year I and lower for classifications above that level. As some classifications in the different instruments appear to involve the same skill and responsibilities but have different wage rates, a question arises as to whether the rates in one or the other award contain properly fixed minimum rates. Terms and conditions in the Qantas [LH] Award are more generous to employees with respect to allowances, flight duty period limitations, rest periods, minimum duty hour credits, pay protection, notice of termination of employment and personal leave.²⁰¹

[127] Additional reasons for dismissing the applications included that the Qantas LH Award had been made in 'quite different circumstances than apply today'.²⁰² The Full Bench stated: 'The industrial relations system at the time was centred on awards. Now it is centred on agreements. Awards provide a safety net and a basis for fair agreement making'.²⁰³ The Full Bench determined that terminating the Qantas LH Award would therefore not result in any employees losing coverage.²⁰⁴

[128] The Full Bench also determined that a sufficient case had not been made out for the making of a modern DA Award. The decision outlined that 'although the making of a modern enterprise award

¹⁹⁹ EM2013/155 Transcript (n 188) at [PN342], [PN346].

²⁰⁰ [2014] FWCFB 4584.

²⁰¹ [2014] FWCFB 4584 at [9].

²⁰² [2014] FWCFB 4584 at [17].

²⁰³ [2014] FWCFB 4584 at [17].

²⁰⁴ [2014] FWCFB 4584 at [18].



is agreed between Qantas and the FAAA' the Full Bench considered that the circumstances did not warrant a modern enterprise award:

[...] the Domestic Flight Attendants Award operates more as an instrument maintaining historical terms and conditions for a group of employees which is reducing in number and does not include all cabin crew employed on Qantas aircraft and which applied in totally different circumstances than that which pertains today [...] the termination of the Domestic Flight Attendants Award will not lead to any detrimental effects for employees. They have the protection of a more generous enterprise agreement and a modern award that applies to the remainder of the industry including other cabin crew in the enterprise.²⁰⁵

[129] The Full Bench found that a case had not been made out for the creation of a modern enterprise award covering 'this discrete area' of employment within the industry.²⁰⁶ The decision included the following reasons in support of this conclusion:

- a modern enterprise award would continue the 'segmentation' of the workforce, as the instrument would not include all flight attendants employed by Qantas on its aircraft or any other group of Qantas employees;
- a modern enterprise award in the terms sought would create differences in the safety net between employees performing similar roles within the same enterprise; and
- a modern industry award, the ACC Award, had already been made having regard to the industry and its generic features (and in which Qantas had made submissions).²⁰⁷

[130] Pursuant to Item 9(3) of Schedule 6 to the Transitional Amendments Act the Qantas LH Award was terminated at the date of the decision. The DA Award was terminated on 31 December 2013.

²⁰⁵ [2014] FWCFB 4584 at [18]–[19].

²⁰⁶ [2014] FWCFB 4584 at [21]. During proceedings on 8 July 2014, Vice President Watson had also observed that: 'The instrument here is an enterprise instrument because it's confined to an enterprise, but it's also confined to a group of employees within the enterprise'; see *EM2013/155 Transcript* (n 188) at [PN195].

²⁰⁷ [2014] FWCFB 4584 at [21].



4 4-yearly review of modern awards

[131] The ACC Award was reviewed again during the 4-yearly review of modern awards by a Full Bench comprised of Justice Ross, Deputy President Clancy and Commissioner Bissett. The ACC Award was considered as part of Group 4 modern awards.²⁰⁸

[132] Initial submissions were received from Ai Group and iCabin Crew Connect (iCC) between March and May 2015.²⁰⁹ The iCC submission raised several substantive issues related to classifications and rates of pay.²¹⁰ iCC merged with the FAAA in October 2016. The Commission wrote to the FAAA seeking clarification regarding iCC submissions. The FAAA responded that they would not press the substantive issues raised by iCC.²¹¹

[133] An initial exposure draft prepared by the Commission based on the ACC Award 2010 (as at 31 May 2016) was published on 1 June 2016.²¹² The classifications and minimum wages in the initial 2016 exposure draft did not differ from the 2010 award.²¹³ Submissions related to the exposure draft were received from Qantas, Ai Group, iCC and the FAAA between June 2016 and September 2019.²¹⁴ Revised exposure drafts were published on 5 January 2017,²¹⁵ 23 March 2018,²¹⁶ and

²⁰⁸ [2014] FWCFB 1788 at Attachment A.

²⁰⁹ Fair Work Commission, *Summary of submissions – technical and drafting*, AM2014/253, dated 30 November 2016.

²¹⁰ iCabin Crew Connect, Submission in 4-Yearly Review, AM2014/253, dated 15 May 2015.

²¹¹ [2018] FWCFB 4175 at [51].

²¹² Fair Work Commission, *Exposure draft – Aircraft Cabin Crew Award 2016*, AM2014/253, dated 1 June 2016.

²¹³ Fair Work Commission, *Comparison document – Aircraft Cabin Crew Award 2016*, AM2014/253, dated 1 June 2016.

²¹⁴ See Fair Work Commission, *Revised summary of submissions – technical and drafting*, AM2014/253, dated 5 January 2017; Fair Work Commission, *Summary of proposed substantive variations*, AM2014/253, dated 6 January 2017; Fair Work Commission, *Revised summary of submissions – technical and drafting*, AM2014/253, dated 14 February 2017; Fair Work Commission, *Revised summary of submissions – technical and drafting*, AM2014/253, dated 8 August 2017; Fair Work Commission, *Summary of proposed substantive variations*, AM2014/253, dated 13 November 2017.

²¹⁵ Fair Work Commission, *Exposure draft – Aircraft Cabin Crew Award 2016 – revised*, AM2014/253, dated 5 January 2017.

²¹⁶ Fair Work Commission, *Exposure draft – Aircraft Cabin Crew Award 2016 – further revised*, AM2014/253, dated 23 March 2018.



15 March 2019.²¹⁷ The exposure drafts incorporated rate updates as a result of Annual Wage Reviews, technical and drafting issues, and updates on common issues identified in the 4-yearly review. Common issues included: annual leave in advance and cashing out of annual leave;²¹⁸ time off in lieu instead of overtime;²¹⁹ part-day public holidays;²²⁰ leave to deal with family and domestic violence;²²¹ part-time employment and casual employment;²²² flexible working arrangements;²²³ and payment of wages on termination.²²⁴

[134] On 18 April 2019 the FAAA made a submission addressing the exposure drafts and issues arising from the prior inclusion of hourly rates of pay in the ACC Award 2010.²²⁵ The FAAA provided submissions on a range of issues including the definition of calendar year, excessive annual leave, overtime and rostered day off provisions, and overtime for casuals.²²⁶ Regarding the inclusion of hourly rates of pay in the exposure draft, the FAAA submitted:

[29] Clause 14.2 of the Exposure Draft contains a ‘minimum hourly rate’. The minimum hourly rate has been derived based on a 38 hour week (i.e. by dividing the minimum weekly rate for each classification by 38).

[30] The FAAA disagrees with this calculation. It appears the calculation has been based on a 38 hour week contained in the National Employment Standards instead of the ordinary hours of work outlined for cabin crew in the current Award.

²¹⁷ Fair Work Commission, *Exposure draft – Aircraft Cabin Crew Award – revised*, dated 15 March 2019.

²¹⁸ [2016] FWCFB 3953; PR582954.

²¹⁹ [2016] FWCFB 4258; PR584068.

²²⁰ [2015] FWC 7248; PR580863.

²²¹ [2018] FWCFB 3936; PR609364.

²²² [2018] FWCFB 4695; PR700534.

²²³ [2018] FWCFB 6863; PR701449.

²²⁴ [2018] FWCFB 4735; PR610073.

²²⁵ FAAA, Submission on exposure draft in *4-Yearly Review*, AM2014/253 and AM2014/15, dated 23 April 2019 at [3]; see also [2015] FWCFB 4658.

²²⁶ FAAA (n 220) at 3-7.



[31] The ordinary hours of work for international and domestic cabin crew is 1872 hours per year. The ordinary weekly hours of work based on a 52 week is 36 hours (1872/52). The FAAA therefore submits that the minimum hourly rate for international and domestic flying employees should be based on a 36 hour week.²²⁷

[135] On 24 September 2019 Qantas made a submission in reply to the FAAA submissions and the revised exposure draft of 15 March 2019.²²⁸ Qantas opposed the FAAA's proposed changes to hourly rates of pay stating:

[17] The Aircraft Cabin Crew Award was published with hours of work of 1872 hours per year for domestic and international flying. Importantly, the 1872 hours are planned hours. It is a feature of the airline operations industry that the hours of work for cabin crew includes both planned and unplanned hours (see clause A.5.1. of the Exposure Draft Award). Unplanned hours do not count towards a cabin crew member's monthly (etc) maximum hours.

[18] In this way, weekly rates of pay are not directly linked to the number of planned hours which are able to be rostered by an employer. It does not follow that the hourly rate is to be derived by dividing the weekly rate by 36.²²⁹

[136] In support of their submissions, Qantas referred to stakeholders' 'extensive consideration' of hours of work in the award modernisation proceedings.²³⁰ Qantas submitted that 'the submissions now made by the FAAA confuse and blur the distinction between hours of work (which are rostered) and minimum rates of pay.'²³¹ Qantas noted that the AIRC Full Bench had found that FAAA had not made a 'sufficient case' for the inclusion of particular award entitlements, including hours of work, rates and allowances, duty limitations, rest periods and overtime.²³² Qantas further stated:

[21] It is also relevant to note that following publication of the Aircraft Cabin Crew Award in 2009, the FAAA (both the International Division and the Domestic/Regional Division) made applications to vary the Aircraft Cabin Crew Award in respect of the ordinary hours of work (among other matters). Those claims

²²⁷ FAAA(n 220) at [29]-[31].

²²⁸ Qantas, Submission in reply - exposure draft in 4-Yearly Review, AM2014/253, dated 24 September 2019.

²²⁹ Qantas (n 223) at [17]-[18].

²³⁰ Qantas (n 223) at [15].

²³¹ Qantas (n 223) at [15].

²³² FAAA-ID (n 142); see also [2009] AIRCFB 826 at [14], Qantas (n 223) at [16].



were rejected, and the provisions in relation to ordinary hours of work were undisturbed. We refer to the submissions filed by the Qantas Group in those proceedings (AM2009/150) dated 11 December 2009. In responding to the FAAA's application, we made submissions to the effect that a (further) reduction in the hours of work for cabin crew (as proposed by the FAAA) would drive up the hourly rate of pay for a flight attendant unless it was made clear that the hourly rate was determined by dividing by 38, consistent with existing clauses 13.6 and 14.2.

[22] The effect of the FAAA's proposal is to increase the hourly rate of pay for employees covered by the Aircraft Cabin Crew Award for all employees. This is opposed by the Qantas Group. We respectfully submit (including having regard to the extensive history which led to the making of the Aircraft Cabin Crew Award) that the FAAA's proposal should be considered a substantive issue, and not a technical or drafting matter.²³³

[137] The changes sought by the FAAA and the responses by Qantas and Ai Group were considered in a report to the Full Bench prepared by Commissioner Bissett dated 23 December 2019.²³⁴ This report identified 3 substantive issues raised in relation to the ACC Award exposure draft:

- overtime for full-time and part-time regional aircraft crews;
- the appropriate divisor for determining the hourly rate of pay; and
- overtime for casuals.²³⁵

[138] The Commissioner observed the following:

[5] From the conferences conducted with the parties it would appear that there is complexity in the Award which is then replicated in the Exposure Draft. These matters go to maximum working hours and that interaction with flying hours and the determination of the number of ordinary hours to be worked per week and the appropriate hourly rate to be inserted into the Exposure Draft. They are all interrelated.

[6] Further, there does appear to be a real issue as to whether the Exposure Draft (and Award) meets the modern awards objective given that there is no additional remuneration for regional flying crew working overtime and whether it is inconsistent with the NES. Once these questions are asked the other issues outlined above will come to the fore.

²³³ Qantas (n 223) at [21]–[22].

²³⁴ Fair Work Commission, *Report to the Full Bench* (AM2019/17, Bissett C), dated 23 December 2019.

²³⁵ Fair Work Commission (n 229).



[7] There is a detailed history to the Award and it may be effected by regulatory overlays.

[...]

[9] If the matters raised in this Report are to be referred to a separately constituted Full Bench the directions issued in relation to this Award by the Overtime for Casuals Full Bench should be set aside. Further, such a separately constituted Full Bench should finalise the review of this Award including the resolution of any drafting and technical issues.²³⁶

[139] A subsequent statement issued by the Full Bench on 14 February 2020 noted the following:

Each of the matters outlined in the Report have now been referred to a separately constituted Full Bench with matter number AM2020/3. The referral to the AM2020/3 Full Bench includes the matters that were previously before the Overtime for Casuals Full Bench (AM2017/51).²³⁷

[140] The Commission published a draft determination and revised exposure draft of the ACC Award on 29 January 2020.²³⁸ A decision issued 27 April 2020 noted that the award was 'uncontentious'.²³⁹ This decision stated that submissions received regarding the exposure draft or draft determination did not identify issues besides minor drafting errors.²⁴⁰

[141] A determination was subsequently issued on 30 April 2020, with a minor correction issued on 16 July 2020.²⁴¹ These orders set out the revised terms and structure of the ACC Award 2020. Final rates of pay were calculated based on previous exposure drafts and were not varied with respect to the submissions provided. These rates were as follows:²⁴²

²³⁶ Fair Work Commission (n 229) at [5]–[9].

²³⁷ [2020] FWCFB 769 at [5].

²³⁸ Fair Work Commission, *Draft award variation determination - Aircraft Cabin Crew Award*, AM2014/253, dated 29 January 2020; Fair Work Commission, *Exposure draft - Aircraft Cabin Crew Award - changes tracked*, AM2014/253, dated 29 January 2020.

²³⁹ [2020] FWCFB 2124 at [12].

²⁴⁰ [2020] FWCFB 2124 at [12].

²⁴¹ PR718523; PR720156.

²⁴² PR720156 at clause 14.2.



Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Cabin crew member	845.70	22.26
Cabin crew supervisor (narrow-bodied aircraft, 4 or more crew)	986.70	25.97
Cabin crew manager (wide-bodied aircraft)	1152.40	30.33

[142] A Full Bench was constituted to resolve the remaining substantive issues identified by the FAAA:

- the appropriate divisor for the hourly rate;
- appropriate ordinary hours, overtime and days off provisions for regional flying;
- passport expense reimbursement for regional flying; and
- casual overtime provisions.²⁴³

[143] This matter was subsequently vacated on 1 July 2020 following a request from the FAAA.²⁴⁴ The FAAA outlined that they were unable to dedicate adequate resources to the award review due to the COVID-19 pandemic.²⁴⁵ Qantas further supported the vacation of the hearing dates on the basis that ‘proceedings were agitated by the FAAA and concern substantive proposed variations to the *Aircraft Cabin Crew Award 2020* (Award). The Qantas Group has, and continues to, oppose the variations sought.’²⁴⁶

[144] No further ACC Award materials were published in the 4-yearly review proceedings.

²⁴³ FAAA, Correspondence in 4-Yearly Review, AM2020/3, dated 23 June 2020 at [3].

²⁴⁴ FAAA (n 238) at [10].

²⁴⁵ FAAA (n 238) at [4]–[7].

²⁴⁶ Qantas, Correspondence in 4-Yearly Review, AM2020/3, dated 29 June 2020.



5 Modern Awards Review

[145] On 12 September 2023 the President of the Fair Work Commission received correspondence from the Minister for Employment and Workplace Relations which expressed the Government's interest in the Commission initiating a targeted review of modern awards. A review of modern awards arose from the 2022 Jobs and Skills Summit, changes made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth), workplace recommendations of the National Cultural Policy and the Final Report of the Senate Select Committee on Work and Care.

[146] In a statement issued on 15 September 2023 the President determined to initiate an award review on the Commission's own motion to consider several 'priority' matters. The Modern Awards Review 2023-24 (**Review**) was conducted along four streams aligned with these priorities. The Work and Care stream of the Review involved a research and consultation process to consider balancing work and care in the context of workplace relations settings in modern awards.

[147] Staff at the Commission published the Work and Care discussion paper on 29 January 2024.²⁴⁷ A literature review prepared by Western Sydney University was published on 8 March 2024.²⁴⁸ A data profile prepared by Commission staff was published on 28 March 2024.²⁴⁹ Submissions were invited for each document. Consultations were also held by Deputy President O'Neill through the period 3 April 2024 to 11 April 2024. Following consultations, a work and care survey prepared by the Social Research Centre was published on 31 May 2024.²⁵⁰

²⁴⁷ Fair Work Commission, 'Discussion paper – Work and care' (Pay Equity and Awards Team, 29 January 2024).

²⁴⁸ Meg Smith and Sara Charlesworth, 'Literature review for the Modern Awards Review 2023-24 relating to the workplace relations settings within modern awards that impact people when balancing work and care' (Literature review, Western Sydney University, 8 March 2024).

²⁴⁹ Fair Work Commission, 'Work and care data profile' (Economic Analysis Team, 28 March 2024).

²⁵⁰ Elizabeth Killen, Renee Wright, Lachlan Watson, Catherine Wayman and Julie Connolly, 'Modern Awards Review 2023-24: Work and care survey' (Final Report, Social Research Centre, 30 May 2024).



[148] The FAAA provided submissions to the Work and Care stream as well as an additional bundle of materials in support of their submissions. The FAAA submission outlined extensive changes to the ACC Award including (but not limited to):

- overtime for duty hours above planned duty up to a daily limit;
- an overtime penalty for regional flying;
- a missed meal allowance and missed rest break penalty;
- an option for employees to convert accrued days to annual leave or be paid out after 6 months of substitute days off (SDOs) not being used;
- a paid allowance for working on a rostered day off (RDO);
- changing the value of reserve conditions when an employee is called out;
- clarifying the definition of ‘duty’ contained in the ACC Award;
- limiting the total time between reserve sign on and allocated duty sign off;
- reducing the requirement for an employee to be at sign-on within 90 minutes;
- increasing annual leave entitlements in lieu of public holidays;
- increasing the quantum of paid carers’ leave;
- varying classifications and minimum rates of pay in the ACC Award, based on the 36-hour week, to renumerate entry-level cabin crew at a Certificate III or equivalent level with a skills-based classification structure as follows:²⁵¹

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate	Percentage
	\$	\$	%
Cabin Crew Year 1	995.00	27.64	100
Cabin Crew Year 2	1044.75	29.02	105
Cabin Crew Year 3	1094.50	30.40	110
Cabin Crew Year 4	1,144.25	31.78	115

²⁵¹ FAAA (n 31) at [173]–[180].

Cabin Crew Supervisor (narrow-bodied aircraft, four or more crew)	1,194.00	33.17	120
Cabin Crew Manager (wide-bodied aircraft)	1,357.30	37.70	136

- introducing layover and international flying allowances;
- introducing a minimum engagement period for casual employees;
- providing a clear definition for 'operational reasons' and 'displacements';
- limiting the types of duties a cabin crew member may be reassigned to;
- limiting the number of single days an employee can be rostered to manage fatigue; and
- introducing the standard provision for changing regular patterns of work.²⁵²

[149] The FAAA in their oral submissions on day two of Work and Care proceedings emphasised the great significance of the prior DA Award with respect to aircraft cabin crew. The FAAA stated:

[...] it's important to note some of the historical significance of the prior domestic award. Pre-modernisation, the domestic award covered domestic cabin crew. However, due to airline collapses and amalgamations – for instance, Ansett – this award only had one remaining respondent, that being Qantas [...] at the time the Fair Work Commission declined to make a modern [award] – to sort of turn that award into the modern award because it was deemed to be an enterprise-level award. This resulted in decades of those arbitral conditions that were put into the old award not being included into the new modern award.²⁵³

[150] Qantas filed a submission in the Work and Care stream outside the timetable for the Review. This submission identified the following:

The Qantas Group does not consent to the variations proposed by the FAAA to the ACCA.

²⁵² See FAAA (n 31).

²⁵³ Transcript of proceedings, *Modern Awards Review 2023-24* (AM2023/21, O'Neill DP), 4 April 2024 at [PN973].



It is our understanding that while industry specific matters may be raised by stakeholders as part of the consultation process, the Commission will not be considering variations to awards such as the ACCA at this stage of the Awards Review. In this regard, many of the variations proposed by the FAAA were the subject of extensive submission by interested stakeholders during the making of the ACCA and subsequent reviews of the ACCA, including by the Qantas Group.

We understand the next step will involve the Commission publishing its final report in the Awards Review. The Qantas Group will continue to monitor the process. In the event the Commission wishes to consider the matters raised by the FAAA regarding the ACCA at this stage of the Awards Review, we respectfully request the opportunity to make submissions, and that provision be made for this in any subsequent timetable for the Awards Review.²⁵⁴

[151] In the Final Report of the Review the Full Bench identified the new cases to be initiated on the Commission's own motion.²⁵⁵ The ACC Award 2020 was not identified in these priority matters. With respect to the FAAA's submissions in the Review, the Full Bench noted that: 'It is not clear that the FAAA's submissions and proposal fall within the scope of this review.'²⁵⁶ The Full Bench further noted that the 2023-24 Annual Wage Review decision had already determined research would be undertaken and that this would address claims raised during the Review.

²⁵⁴ Qantas, Submission in *Modern Awards Review 2023-24*, AM2023/21, dated 9 May 2024.

²⁵⁵ Fair Work Commission, 'Final Report of the Modern Awards Review 2023-24' (AM2023/21, 18 July 2024) at [167].

²⁵⁶ Fair Work Commission (n 250) at [130].



Annexure A—History of wage-fixing and legislative change

[153] An in-depth history of wage fixation and inquiries relevant to gender valuation was provided in the Work value case – Aged care industry Stage 3 decision (**Stage 3 decision**). This annexure reproduces information initially published in the Stage 2 report to provide contextual information for the above award analysis. Changes have been made to remove non-essential detail.

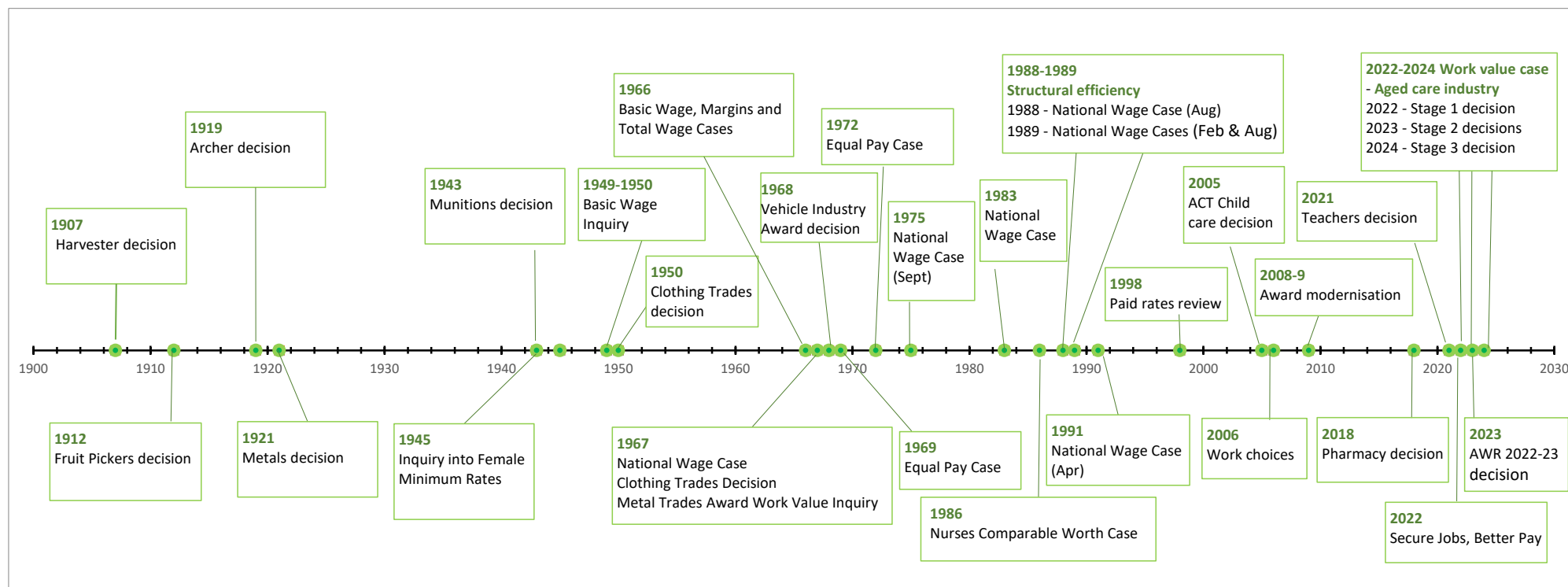
[154] Drawing from the Stage 3 decision,²⁵⁷ the Stage 2 research included a table that provided a summary of key wage fixation and work value decisions and inquiries in the federal industrial relations system between 1907 and 2024.²⁵⁸ Figure 1 on the following page plots key events that shaped the federal industrial relations wage fixation system during the same period.

²⁵⁷ [2024] FWCFB 150 at [25]–[95].

²⁵⁸ *Stage 2 report* (n 8) at [13]–[38].



Figure 1—Timeline of key wage fixation and work value decisions and inquiries in the federal industrial relations system



Gender assumptions systemic in the industrial relations system

[155] Gender assumptions have pervaded the federal industrial relations system since the beginning of the 20th century. Wage fixing initially proceeded on the assumption that a typical worker was a married man with 3 children, and it was on this basis that a wage was fixed to cover the ‘normal needs of the average employee, regarded as a human being living in a civilized society’.²⁵⁹ The implications of this assumption for female workers can be seen in a range of early cases.

[156] The Expert Panel in the 2022-23 Annual Wage Review decision stated that:

There is some basis to think that, across modern awards, there is an issue as to whether minimum wage rates for female-dominated work are equal to minimum wage rates for male-dominated work of equal or comparable value or are based on a valuation of work that is free from gender considerations.²⁶⁰

[157] The Expert Panel indicated that there may be a systemic problem, predating the FW Act, in the way in which award minimum wages in female-dominated industries were set. The Expert Panel identified 2 potential gender-related difficulties with the structural efficiency wage fixing process introduced and implemented by the AIRC during the 1988–1992 period.

[158] The 2 issues identified relate to systemic issues around the way in which minimum wages in female-dominated awards have historically been set:

- the April 1991 National Wage Case effectively foreclosed retrospective reconsideration of work value in any federal award. Rates of pay in female-dominated awards that were fixed pre-1990, and consequently influenced by the gender-based assumptions about work value which were then prevalent, could not be reviewed in accordance with contemporary rates.
- The establishment of benchmarks rates and relativities were derived solely from male-dominated occupations and industries and accordingly, their application to female-dominated awards may have involved gender-based assumptions about relative work value.

²⁵⁹ [1907] 2 CAR 1 at 3.

²⁶⁰ [2023] FWCFB 3500 at [120].

[159] Another potential gender equity issue identified by the Expert Panel in the 2022–23 Annual Wage Review relates to the non-implementation of the process whereby employees with degree qualifications were to be aligned with a theoretical C1 classification:

There is a further work value issue which may also have implications for the minimum wage rates of modern award-reliant females on higher award classifications, particularly those which apply to persons holding undergraduate degrees. We have earlier described the process whereby across-award relativities were established by reference to the classification structure in the then Metal Industry Award. Under this structure, employees with degree qualifications were meant to be aligned with a theoretical C1 classification, with relativities to C10 in the range of 180-210 per cent. However, for most degree-qualified classifications in awards, this process was never carried through and they were never placed in the appropriate relativity to C10. For example, it was observed in the Pharmacy Decision that the minimum wage rate for a degree-qualified pharmacist was (at the time of the decision in 2018) less than the C3 classification rate in the Manufacturing Award payable for an employee holding an Advanced Diploma or equivalent training, with the Full Bench stating that this constituted a potential work value issue. Similarly, the Full Bench in its 2021 decision in Application by Independent Education Union of Australia (Teachers Decision) found that the then minimum commencement wage rate for a 4-year degree qualified teacher under the Educational Services (Teachers) Award 2020 (Teachers Award) was equivalent only to the C4 rate in the Manufacturing Award (80 per cent towards an Advanced Diploma or equivalent), and at no level of seniority did modern award minimum wage rates for teachers reach the C1 relativity. This finding contributed to the Full Bench's conclusion that the minimum wage rates in the Teachers Award were not properly fixed minimum rates. The Full Bench ultimately established a new classification structure and pay rates for the Teachers Award founded upon an alignment between the new Proficient Teacher classification and the notional C1 classification.

[...]

The gender dimension of this issue is apparent in two related ways. First, women are more award-reliant than men and there is evidence that the proportion of women in the award-reliant workforce is at its highest level at higher-paid classifications including those requiring undergraduate qualifications. That is, 58.7 per cent of higher-paid award-reliant employees are women; by contrast, 41.3 per cent of higher-paid award-reliant employees are men. Second, as was pointed out in the Gender undervaluation statement, there is a considerable overlap between the 29 modern awards containing undergraduate classifications and those applying to female-dominated industries.²⁶¹

²⁶¹ [2023] FWCFB 3500 at [134], [136].

[160] The Expert Panel in the Stage 3 decision made the following comments:

The failure to properly implement the C1 classification rate as part of the C10 Metals Framework Alignment Approach particularly disadvantaged female workers for two reasons. First, women are more award-reliant than men, with the proportion of female award-reliance being at its largest at higher-paid award classifications including those requiring undergraduate qualifications. Second, there is a considerable overlap between those awards containing classifications requiring an undergraduate degree and those applying to female-dominated industries.²⁶²

[161] In relation to the C10 alignment approach, the Expert Panel noted 2 things:

First, the key element of the 'consistent, coherent award structures' to be established was 'training and skills acquired'. Second, the 'key awards' upon which this system would be founded, namely those covering the building industry, metal workers, transport workers, storemen and clerks were, except for the last, all male-dominated. In short, the award system was to be integrated on the basis of the training and skill levels of male-dominated industries and occupations.²⁶³

[162] The Expert Panel observed that the principles set out in the 1998 Paid Rates Review decision made the application of the C10 alignment approach a condition of an award being a properly fixed minimum rates award. They noted however that:

The National Wage Case August 1989 never expressly required cross-award alignments to be based simply on equivalent qualifications and required that 'relative skill, responsibility and the conditions under which the particular work is normally performed' be taken into account. However, in practice, the implementation of the C10 Metals Framework Alignment Approach usually involved no more than identifying the 'key classification' in any award as that for which a Certificate III qualification under the AQF, or the equivalent, was required and then aligning that with the C10 classification rate in the Metal Industry Award. This was most commonly done in consent arrangements by which the structural efficiency principle was implemented in the early 1990s but, as will be demonstrated in respect of the Aged Care Award, this continued to be done up until and during the award modernisation process conducted in 2008–9. This represented the abnegation of the type of cross-award work value comparisons contemplated by the 1972 Equal Pay Case.²⁶⁴

²⁶² [2024] FWCFB 150 at [94].

²⁶³ [2024] FWCFB 150 at [77].

²⁶⁴ [2024] FWCFB 150 at [84].

[163] The Expert Panel observed that the C10 alignment process constrained the proper work value assessment of female-dominated work:

A Full Bench of this Commission observed in *Application by United Voice and the Australian Education Union (United Voice)* that the ACT Child Care decision, insofar as it compared the work of early childhood education and care workers and employees under the Metal Industry Award, only considered the qualifications and training required and did not purport to otherwise compare the nature of the work or the level of skill and responsibility involved in performing the work. This is, we consider, illustrative of the way in which the C10 Metals Framework Alignment Approach constrained the proper work value assessment of female-dominated work by requiring, as at least as the prima facie position, alignment with the classifications for male-dominated work in the Metal Industry Award based on a bare comparison of training qualifications. The Full Bench in the ACT Child Care decision made it tolerably clear, in our view, that unconstrained by the C10 Metals Framework Alignment Approach it would have assessed the key classifications in the early childhood education and care awards under consideration as having higher work value than the identified equivalents in the Metal Industry Award.²⁶⁵

[164] The Expert Panel continued that the rate arrived at in the *Application by Independent Education Union of Australia* matter is applicable as a benchmark rate for registered nurses working in aged care under the *Nurses Award 2020*:

The proper application of the C10 Metals Framework Alignment Approach in a manner free from gender assumptions and consistent with the principles stated by the Full Bench in the Teachers Decision (see paragraph [955] of the Stage 1 decision) would result in this rate being set at \$1470.80 per week, with this becoming the benchmark rate for the fixation of minimum wages for registered nurses in aged care. We consider that this is a rate justified by the work value reasons identified in the Stage 1 decision and this decision. Having regard to our earlier discussion concerning the ERO applicable to social and community services employees under the SCHADS Award, the fixation of this rate could confidently be regarded as one free from gender assumptions since it approximately equates to the rate (\$1466.77 per week) for a four-year degree-qualified social and community services employee under the ERO.²⁶⁶

[165] The C10 framework aligns with the Australian Qualifications Framework (AQF) which regulates qualifications in Australian education and training. The AQF consists of 10 levels:

- AQF Level 1 – Certificate I

²⁶⁵ [2024] FWCFB 150 at [92].

²⁶⁶ [2024] FWCFB 150 at [204]; [2021] FWCFB 2051.

- AQF Level 2 – Certificate II
- AQF Level 3 – Certificate III
- AQF Level 4 – Certificate IV
- AQF Level 5 – Diploma
- AQF Level 6 – Advanced Diploma, Associate Degree
- AQF Level 7 – Bachelor Degree
- AQF Level 8 – Bachelor Honours Degree, Graduate Certificate, Graduate Diploma
- AQF Level 9 – Masters Degree
- AQF Level 10 – Doctoral Degree.²⁶⁷

²⁶⁷ To view the C10 framework, see *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010] at cl A.3.1. To view the levels of the Australian Qualifications Framework, see Australian Government, Department of Education, 'Australian Qualifications Framework', *AQF Qualifications* (Webpage).