



Fair Work  
Commission

# Stage 2 report

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## Gender pay equity research

Annual Wage Review 2023–24

4 April 2024  
Fair Work Commission



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***This paper has been prepared by staff of the Fair Work Commission for consideration in the Annual Wage Review 2023–24 of the extent to which the gender-segregated occupations, industries and classifications (including undergraduate classifications) identified in the Stage 1 report have associated indicia that suggest they may also be subject to gender undervaluation. It does not represent the concluded view of the Commission on any issue.***



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## Glossary

ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
<i>ACT Child Care Decision</i>	<i>Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998 – re Wages rates PR954938 [2005] AIRC 28</i>
Ai Group	Australian Industry Group
ACTU	Australian Council of Trade Unions
AIRC	Australian Industrial Relations Commission
APESMA	Association of Professional Engineers, Scientists and Managers, Australia
ARA	Australian Retailers Association
ASU	Australian Services Union
AQF	Australian Qualifications Framework
AWR	Annual Wage Review
Closing Loopholes Bill	Fair Work Legislation Amendment (Closing Loopholes) Bill 2023
Commission or FWC	Fair Work Commission
FWA	Fair Work Australia
FW Act	<i>Fair Work Act 2009</i>
<i>Metals Casuals Decision</i>	<i>Re Metal, Engineering and Associated Industries Award, 1998 - Part 1 [2000] AIRC 722</i>
MRA	Minimum Rates Adjustment



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NRA	National Retail Association Limited, Union of Employers
NES	National Employment Standards
<i>Penalty Rates Review</i>	<i>Shop, Distributive and Allied Employees Association v The Australian Industry Group [2017] FCAFC 161</i>
<i>Pharmacy Decision</i>	<i>Four Yearly Review of Modern Awards – Pharmacy Industry Award 2010 [2018] FWCFB 7621</i>
PGA	Pharmacy Guild of Australia
SAIRC	South Australian Industrial Relations Commission
SDA	Shop, Distributive and Allied Employees Association
SJBP Act	<i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i>
Stage 1 report	<i>Gender-based Occupational Segregation: A National Data Profile</i>
Work Choices	<i>Workplace Relations Amendment (Work Choices) Act 2005</i>
WR Act	<i>Workplace Relations Act 1996</i>
WROLA Act	<i>Workplace Relations and Other Legislation Amendment Act 1996</i>



# 1 Introduction

- [1] On 3 February 2023, Justice Hatcher, President issued a Statement<sup>1</sup> announcing that, as a result of the amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (SJBPA Act), the Commission intended to engage in a research project on occupational segregation and gender undervaluation that would expand on the issues raised in the former President's Statement of 4 November 2022.<sup>2</sup>
- [2] The former President's statement, issued prior to the commencement of the SJBPA Act, set out a number of principles relating to gender-based undervaluation arising from the Work value case – Aged care industry stage 1 decision,<sup>3</sup> including that occupational segregation is one of the reasons for gender-based undervaluation.
- [3] The former President's statement identified other modern awards, outside the Work value case – Aged care industry matter, that may fall within the definition of a female-dominated or feminised industry and therefore may be subject to gender-based undervaluation<sup>4</sup>, however concluded that the Commission did not intend to take any further steps in relation to gender-based undervaluation in the identified modern awards on its own motion at that stage as it was apparent from the Aged Care case that 'the assistance of parties in making applications, gathering and testing evidence and making submissions is the most effective way of informing the Commission.'<sup>5</sup>
- [4] On 7 December 2022, the SJBPA Act amended the *Fair Work Act 2009* (Cth) (FW Act) requiring the Commission to give greater emphasis to the issues of gender equality. The object of the FW Act in section 3 was changed to include reference to the promotion of gender equality, while

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<sup>1</sup> Fair Work Commission, 'Pay equity and the Care and Community Sector' (President's statement, 3 February 2023).

<sup>2</sup> Fair Work Commission, 'Occupational segregation and gender undervaluation' (President's statement, 4 November 2022).

<sup>3</sup> Ibid [7]; [2022] FWCFB 200.

<sup>4</sup> Ibid [12]–[13].

<sup>5</sup> Ibid [33].



the need to achieve gender equality, including by eliminating gender-based undervaluation of work, was added to the modern awards objective in section 134(1) and the minimum wages objective in section 284(1) as an additional matter for consideration. The equal remuneration provisions in Part 2-7 now specify ‘gender equity considerations’ including whether historically the work under consideration has been undervalued on the basis of gender. Similarly, the Commission’s consideration of work value reasons for the purpose of varying modern award minimum wages must be free of assumptions based on gender and include consideration of whether historically the work has been undervalued.

- [5] In June 2023, the Expert Panel in the 2022-23 Annual Wage Review decision (*Annual Wage Review decision*) observed that ‘there are significant issues concerning the potential undervaluation of work in modern award minimum wage rates applying to female-dominated industries and occupations’ and that ‘the imperative of the amendments to the FW Act concerning gender equality made by the Amending Act is that these issues must be resolved in future Reviews or other Commission proceedings.’<sup>6</sup> They continued:

‘[...] any issues of unequal remuneration for work of equal or comparable value or gender undervaluation relating to modern award minimum wage rates can no longer be left to be dealt with on an application-by-application basis outside the framework of the Review process. Such issues, insofar as they may be identified, should now be dealt with in the Review process or in other Commission-initiated proceedings between Reviews.’<sup>7</sup>

- [6] Accordingly, the Expert Panel set out the details of a 2-stage research program:

‘The issues we have identified are obviously too broad and complex to be resolved within the limited timeframe of this Review, and their resolution will require a body of research to support it. As foreshadowed in the President’s statement of 3 February 2023 in relation to expert panels for pay equity and the Care and Community Sector, the Commission is undertaking a research project to identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications. This research will inform future Reviews. The research will take place in two stages. Stage 1 of the research project will soon commence. It involves an evidence-based process to identify

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<sup>6</sup> [2023] FWCFB 3500 at [11]

<sup>7</sup> Ibid at [120]



occupations and industries in which gender-based occupational segregation is prevalent, including at the classification level if possible. This stage is expected to identify:

- the modern awards that cover those occupations and industries;
- whether employees in those occupations and industries are predominantly award-reliant or receive above-award rates of pay by virtue of enterprise agreements or other wage arrangements;
- any common characteristics of employment in the relevant occupations and industries (including whether employment is insecure due to the prevalence of casual and/or non-ongoing employment); and
- whether employees within particular modern award classifications are more likely to receive award rates of pay than those classified at other levels within the same award.

A final report on that stage is expected by September of this year. Stage 2 of the research will build on the above expected findings by reporting on the extent to which the gender-segregated occupations, industries and classifications (including undergraduate classifications) identified in Stage 1 have associated indicia that suggest they may also be subject to gender undervaluation.

Once this research project has been completed and the research reports have been published, Commission proceedings will be initiated to consider and, if necessary, address the outcomes of the research project. Depending upon the timing, this may occur as part of or in association with the 2023–24 Review.’<sup>8</sup>

## 1.1 Background – the Stage 1 report

[7] The Stage 1 research was undertaken by the Social Policy Research Centre of the University of New South Wales. The report, *Gender-based Occupational Segregation: A National Data Profile* (the *Stage 1 report*) was published on 15 November 2023.<sup>9</sup> The report states that it:

‘[...] examines current patterns of segregation in Australia. Specifically, it identifies priority occupations and industries affected by high levels of feminisation, where undervaluation and pay equity issues are most likely to occur. It does so using a data-driven approach, analysing detailed information about occupations and industries which are highly feminised, based on the Australian Bureau of Statistics (ABS) 2021 Census of Population and Housing (Census) and the 2021 Survey of Employee Earnings and Hours

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<sup>8</sup> Ibid at [137]–[139].

<sup>9</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Final report, UNSW Social Policy Research Centre, 6 November 2023) 6.





(EEH). The analysis provides unprecedented granularity. It identifies highly feminised occupational units within segregated industry classes and provides information about their workforce characteristics. Insofar as data allow, it also provides an indication of pay levels and pay setting arrangements which characterise highly feminised occupations.<sup>1</sup>

[8] The Stage 1 report identifies 144 detailed occupational classifications of any size which were over 60 per cent female, and together employed nearly 4.7 million workers. However, it focuses on a subset of 29 priority occupations which met three criteria, in that they were:

- Large (containing over 10,000 people);
- Very highly feminised (over 80 per cent female); and
- Located within feminised industry classes (over 60 per cent female)

[9] Together, these large highly feminised occupations in feminised industries employ over 1.1 million workers, constituting over 9 per cent of the workforce.<sup>10</sup>

[10] The Stage 1 report suggests there are 13 modern awards that are used to set pay in the 29 large highly feminised occupations that were identified within feminised industries. Listed according to the size of the occupations to which they primarily relate, the identified awards (with the highly feminised occupations in brackets) are as follows:

- *Nurses Award 2020* (Midwives, Registered Nurses, Enrolled and Mothercraft Nurses, Nurse Managers)
- *Educational Services (Teachers) Award 2020* (Early Childhood (Pre-Primary School) Teachers; Primary School Teachers)
- *Children's Services Award 2010* (Child Carers)
- *Health Professionals and Support Services Award 2020* (Dental Assistants, Receptionists in Hospitals and General Practice, Medical Technicians, Psychologists)
- *Educational Services (Schools) General Staff Award 2020* (Education Aides)
- *Hair and Beauty Industry Award 2020* (Hairdressers and Beauty Therapists)
- *General Retail Industry Award 2020* (Clothing Retail Sales Assistants and Retail Managers)

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<sup>10</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 6.



- *Aged Care Award 2010* (Nursing Support and Personal Care Workers; Aged and Disabled Carers)
- *Social, Community, Home Care and Disability Services Industry Award 2010* (Aged and Disabled Carers)
- *Pharmacy Industry Award 2020* (Pharmacy Sales Assistants)
- *Legal Services Award 2020* (Conveyancers and Legal Executives)
- *Animal Care and Veterinary Services Award 2020* (Veterinary Nurses)
- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Award 2020* (Dental Assistants)

[11] The President acknowledged that the Stage 1 report highlights some of the limitations of the available data and that those limitations would be considered in future proceedings.<sup>11</sup>

## 1.2 Purpose and structure of the report

[12] The purpose of this report is to provide a foundation for the Commission to ‘determine whether the Commission (or its predecessors, or, where relevant, State tribunals) has ever undertaken a comprehensive work value assessment of classifications within the awards’<sup>12</sup> identified in the Stage 1 report.

[13] There were 13 modern awards identified in the Stage 1 report. This report sets out the history of wage fixation and work value assessments in 12 of these awards. The *Aged Care Award 2010* is not included, as the rates in this award are comprehensively dealt with in the Work value case – Aged care industry.

[14] Chapter 2 of this report provides a timeline and brief summary of the key decisions and inquiries relevant to gender valuation to provide some context to the award histories set out in the following chapter. It also refers in subsection 2.2 to some of the systemic issues regarding the

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<sup>11</sup> Fair Work Commission, ‘Gender pay equity research – Stage 1 report published’ (President’s statement, 15 November 2023) [9].

<sup>12</sup> Fair Work Commission, ‘Gender pay equity research – Stage 2 research to be conducted’ (President’s statement, 5 December 2023) [5].



way in which minimum wages in awards covering female-dominated industries and occupations have historically been set.

- [15] Chapter 3 sets out the award histories. The award histories identify the origin of the classifications and minimum rates (as far as possible from the available documents) in modern awards, as made during the award modernisation process in 2008–09. The histories also trace the development of pre-modern awards and State-based awards (where relevant), identifying the history of wage-fixing and work value assessments, and also noting where variations were made by consent. The histories are intended to aid the identification of any indicia of gender undervaluation, including the lack of a work value exercise undertaken by the Commission and its predecessors, or inadequate application of equal pay principles.<sup>13</sup>

### 1.3 Methodology of the research

- [16] Staff at the Fair Work Commission have developed this report through a thorough review of digital and archival materials including decisions, statements, transcripts, submissions by parties and secondary literature (where available and relevant). Materials were either available online, including in databases like AustLII, held by the Fair Work Commission or sourced from State libraries and archives. Unfortunately, many historical materials are not readily accessible; in particular, those relating to proceedings in State industrial tribunals and their equivalents. In some cases, the deliberations leading to the making of pre-reform awards were held in private conferences between the parties and, therefore, the outcomes of those deliberations, particularly in cases where consent was reached, are not on the public record.
- [17] This report focusses on pre-reform federal awards for two reasons. First, it reflects the priority given to federal instruments during the award modernisation process; second, materials produced by the Fair Work Commission and its predecessors were more accessible to Commission staff. In reviewing the materials, researchers sought to identify any awards used to structure or inform the current modern award.

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<sup>13</sup> Fair Work Commission, 'Gender pay equity research – Stage 2 research to be conducted' (President's statement, 5 December 2023) [4].



[18] Annexure A contains a reference list of materials cited in this report. Additional resources examined in the development of each award history are also provided for parties' reference and consideration. Materials are presented in chronological order. While not possible for all materials, given the above limitations and constraints, Commission staff have attempted to provide soft copies or hyperlinks to each resource wherever available.



## 2 Significant wage fixing case law and legislation

This section provides a timeline and overview of significant wage fixing, work value and equal remuneration decisions in the federal jurisdiction. Legislative changes and discussion of impacts are also included, where relevant. These significant cases and legislative changes inform subsequent award analyses.

### 2.1 History of wage-fixing and legislative change

[19] As outlined in the Work value case – Aged care industry stage 3 decision, gender assumptions have pervaded the federal industrial relations system since the beginning of the 20<sup>th</sup> century, when it was introduced. Early wage fixing proceeded on the assumption that the typical worker was a male married with three 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’.<sup>14</sup> The implications of this assumption for female workers can be seen in a range of early cases outlined further below.

[20] The making of federal awards from the beginning of the 20<sup>th</sup> century until Work Choices in 2006, were a function of the settlement of interstate industrial disputes. Disputes would arise from ambit claims, made by ‘male-dominated unions, and such claims often reflected the gender assumptions of the leadership of the unions involved’.<sup>15</sup> Arbitration of any disputes was confined matters that remained in dispute after conciliation. As a result, many awards were made by consent between the parties with little scrutiny of how margins for different award wages were fixed. The Expert Panel in Work value case – Aged care industry stage 3 decision makes the following observation:

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<sup>14</sup> [1907] CthArbRp12, 2 CAR 1 at 3.

<sup>15</sup> [2024] FWCFB 150 at [36].



'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.'<sup>16</sup>

- [21] An in-depth history of wage fixation is provided in the Work value case – Aged care industry stage 3 decision. This chapter provides a timeline and brief summary of the key decisions and inquiries relevant to gender valuation that were analysed in the Work value case – Aged Care Stage 3 Decision.<sup>17</sup>
- [22] Figure 1 on the following page plots the key events that shaped the federal industrial relations award wage fixation system on a timeline. Events include key decisions, national wage cases and pay which are summarised in the previous pages.

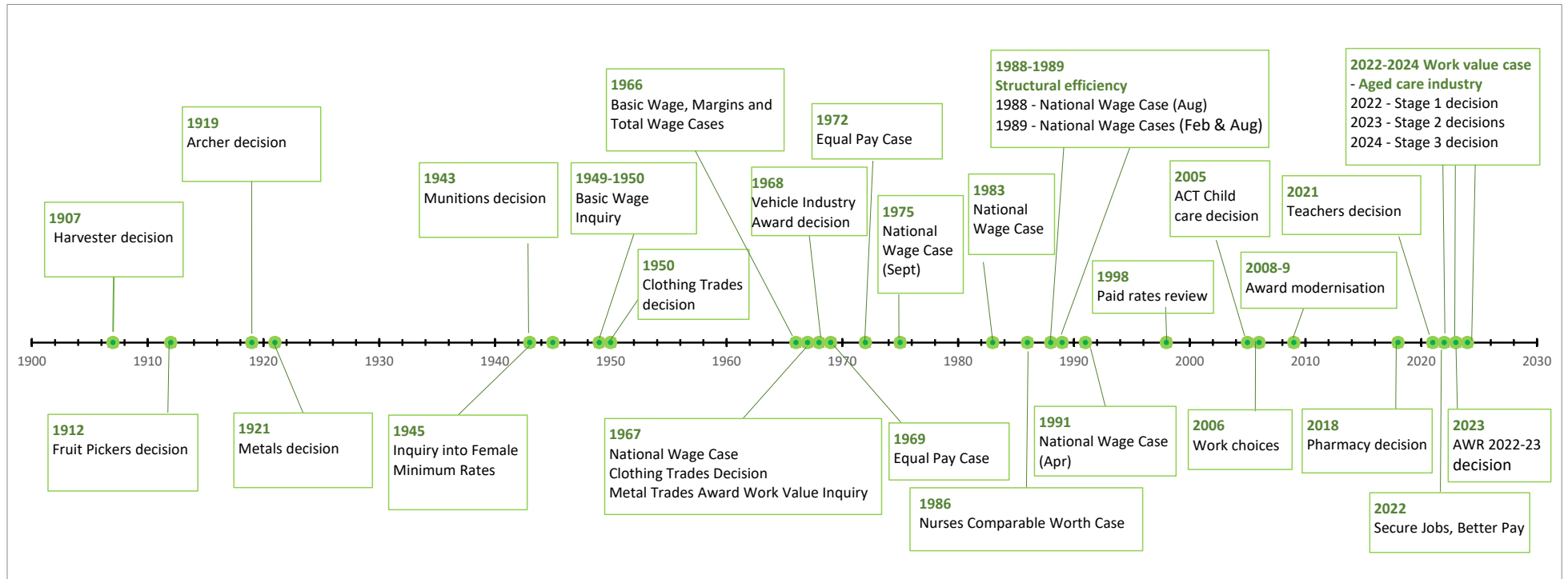
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<sup>16</sup> Ibid at [38].

<sup>17</sup> Ibid at [25]-[95].



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





[23] The following table provides a summary, drawn from the Work value case – Aged care industry stage 3 decision, of the key wage fixation and work value decisions and inquiries in the federal industrial relations system.

Key event	Summary
<b>Harvester decision (1907)</b> <sup>18</sup>	<ul style="list-style-type: none"><li>• Concept of a basic wage in the federal system was first conceived.</li><li>• Created the dual concept:<ul style="list-style-type: none"><li>○ Basic wage – for unskilled works based on needs for ‘humblest class and</li><li>○ Secondary wage – additional wages based on skill and other necessary qualifications.</li></ul></li><li>• Assumed typical worker was male, married with three children and required a wage to cover the normal needs of the average employee who was regarded as a human being needing to live in a civilised society.</li></ul>
<b>Fruit Pickers decision (1912)</b> <sup>19</sup>	<ul style="list-style-type: none"><li>• Making of first award for fruit pickers and packers.</li><li>• Wages set on basis that work was unskilled and cost of living was the primary consideration.</li><li>• Fruit pickers were primarily male and their basic wage was set by reference to Harvester decision.</li><li>• Fruit packers were predominately female and assumed to be not under any obligation to maintain a domestic life except in exceptional cases.</li><li>• Established equal pay for equal work principle: work performed by men and women should award the same margin for skill for the same work.</li><li>• However, principle not frequently not applied in practice.</li></ul>

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<sup>18</sup> *Ex parte H V McKay* [1907] CthArbRp12, 2 CAR 1

<sup>19</sup> *Rural Workers’ Union and United Labourers’ Union v Mildura Branch of the Australian Dried Fruits Association and Others* [1912] CthArbRp 33, 6 CAR 61





### Key event

### Summary

- Established more to protect men's employment in men's work, from being undercut by women, than because of any notion of gender equality.
- Assumptions for setting wages:
  1. Basic wage for any particular category or group of workers was dependent upon the predominant gender of the category or group.
  2. Where the category or group was predominantly male, basic wage was set according to the Harvester decision model, which would also apply to women in that category or group to ensure there was no undercutting of men by women based on wages.
  3. Where the gender was predominantly female, the basic wage was set based on the presumption that the worker had no dependents irrespective of their circumstances.
  4. The work performed itself and the skills involved were regarded as being gendered with certain types of work suited to men and others suited to women.
- On this basis wages for the female fruit packers were set at 75% of the (male dominated) pickers rate.

### Archer decision (1919)<sup>20</sup>

- Claim to establish minimum pay rates and conditions for employees in tailoring industry which sought lower rates of pay for women than for men.
- Established the norm for women's basic wages up until World War II as being set at around 54 per cent of the male basic wage for a range of occupations and industries.
- Included the concept of women's work based on assumptions about certain female traits.
- Setting of basic wage for men was different to women for the same category of work.

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<sup>20</sup> *The Federated Clothing Trades of the Commonwealth of Australia v J A Archer and Others* [1919] CthArbRp 99, 13 CAR 647



## Key event

## Summary

- Decision prescribed the minimum wage for an adult female as ‘on the basis of the reasonably necessary requirements of a woman living in a civilised community’, taking into account the cost of living for female workers.
  - Decision illustrates how the federal award system was based on the settlement of interstate industrial disputes, where ambit claims were made by male dominated unions, reflecting gender assumptions made established
- 1921**      **Metals**
- decision<sup>21</sup>**
- Making the first federal award for the metals and engineering industry.
  - Assumes a basic wage for a mere labourer and higher wages for a ‘skilled man’ based on their skills or other necessary qualifications.
- 1943**      **Munitions**
- Case<sup>22</sup>**
- Concerned potential industrial unrest in small arms manufacturing, where the percentage of women employed had greatly increased due to the war. These women were paid 60 per cent of adult male rate pursuant to a 1940 agreement.
- Anomaly arose between the 60 per cent rate in the agreement and a decision of the Women’s Employment Board which set the adult female rate (after probation) at 90 per cent of the male rate in other areas of arms manufacturing employing women for the first time during the war.
  - In setting the 90 per cent rate, the Women’s Employment Board had considered relative efficiency and productivity of women compared to men, inconsistent with method traditionally used by industrial tribunals to assess minimum wages.
  - The court found that the wages for female workers in small arms manufacture were not anomalous since they had been set according to the general rules of wage assessment.

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<sup>21</sup> *Amalgamated Society of Engineers and The Adelaide Steam-ship Company Limited* (1921) CthArbRp 57, 15 CAR 297

<sup>22</sup> *Arms Explosives and Munition Workers Federation of Australia v Director-General of Munitions* [1943] CthArbRp 379, 50 CAR 191 at [191]-[213].



Key event	Summary
<b>Inquiry into Female Minimum Rates (1945)</b> <sup>23</sup>	<ul style="list-style-type: none"><li>• Minimum wage rates set by fixing basic wage with marginal additions added having regard to relevant considerations including, skill and experience of the employee and physical conditions where work was carried out.</li><li>• Both implicit and explicit gender assumptions were applied in the fixing of marginal rates.</li><li>• Fixation of rates for ‘women’s work’ in the Metal Trades Award before World War II used to illustrate in this inquiry. Treated the skills exercised by women as inherent in their gender (‘found to be adept’) and having lesser value than a tradesman.</li><li>• Found female workers performing women’s work in a masculine industry were paid well above predominantly feminine industries.</li><li>• In some awards margins for females in different classifications of female work were not assessed, instead a flat margin was applied to all female workers regardless of relative skills.</li><li>• In other awards, such gender discrimination was more explicit, set without any apparent justification.</li></ul>
<b>Basic Wage Inquiry 1949–1950</b> <sup>24</sup>	<ul style="list-style-type: none"><li>• Unions sought a uniform basic wage for all adults irrespective of gender.</li><li>• The Court rejected the claim for a uniform basic wage and established a female basic wage set at 75 per cent of the male basic wage.</li><li>• This outcome was a partial departure from previous approach which was to set the female basic wage by an assessment of the needs of a single adult female with no dependants.</li><li>• Appears to have been a pragmatic assessment: the highest amount which the economy could sustain.</li></ul>

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<sup>23</sup> *Inquiry into Female Minimum Rates* [1945] CthArbRp 195, 54 CAR 613 at [623] per O’Mara J.

<sup>24</sup> [1950] CthArbRp 558, 68 CAR 698 at [816]-[840]



Key event	Summary
<b>Clothing Trades Decision 1950<sup>25</sup></b>	<ul style="list-style-type: none"><li>• By this time different margins for male and female workers performing work of the same nature and skill had been established despite guiding principle in <i>Fruit pickers decision</i>.</li><li>• Considered union claim that margins between men and women be equalised.</li><li>• Decision did not resolve all gender-based differences in margins for the precursor to the Clothing Trades Award 1964.</li></ul>
<b>Basic Wage, Margins and Total Wage Cases 1966<sup>26</sup></b>	<ul style="list-style-type: none"><li>• Economic considerations such as inflation and national productivity became the primary determinant in adjusting both basic wages and margins.</li><li>• Practice of considering and adjusting both basic wages and margins conjointly in the same proceedings development</li><li>• Adult minimum wage introduced, concept of the basic wage became largely redundant.</li></ul>
<b>National Wage Case 1967<sup>27</sup></b>	<ul style="list-style-type: none"><li>• Abolished dual concept of a basic wage to meet employee needs and (where applicable) margins based on skill (or work value).</li><li>• Replaced with total wage approach to express award wages as a single total wage.</li><li>• Adjustments of wages applied annually, with increases for economic reasons.</li><li>• The lower female basic wages were incorporated into a separate, total wage for females.</li><li>• Migrated the 25% wage differential for gender that was established at the <i>Basic Wage Inquiry of 1949-45</i>.</li></ul>

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<sup>25</sup> *Clothing and Allied Trades Union of Australia v A H Abbott and Co & Ors* [1950] CthArbRp 208, 66 CAR 481.

<sup>26</sup> [1966] CthArbRp 368, 115 CAR 93 at [107] per Wright J, 129 per Gallagher J and 229 per Winter C

<sup>27</sup> [1967] CthArbRp 504, 118 CAR 655.



### Key event

### Summary

#### **Clothing Trades decision 1967<sup>28</sup>**

- Re-consideration of rate differentials for men and women for the same classifications in the Clothing Trades Award 1967.
- Restatement of equal pay principle.
- Principle had, historically, not been applied.
- Principle only concerned work that was performed by both men and women.
- Did not address margins set for predominantly female work.
- Rectification process still approached comparisons of work based on gender assumptions. Clothing Trades Award retained separate classifications and marginal rates for male and female workers.

#### **Metal Trades Award Work Value Inquiry decision 1967<sup>29</sup>**

- The assessment of work value for the metal industry was first conceived.
- Assessment included the following indicia:  

‘...qualifications, training and skill, technological changes, changed conditions, changes in metals, alterations of methods of work, increased tempo of work, responsibilities individually and as a member of a team, availability for skilled work and the length of time which has elapsed since previous fixations...’
- Included a description of the ‘The Work of Females’ in the decision described using gender-based assumptions about the work of women.<sup>30</sup>

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<sup>28</sup> *Clothing and Allied Trades Union of Australia re Clothing Trades Award 1964* [1967] CthArbRp 406, 118 CAR at [286]–[290], [677]

<sup>29</sup> *Metal Trades Employers’ Association & Ors re Metal Trades Award, 1952* [1967] CthArbRp 1144, 121 CAR 587

<sup>30</sup> *Ibid* at 536-537; cited in Laura Bennett, ‘Equal Pay and Comparable Worth and the Australian Conciliation and Arbitration Commission’ (1988) 30(4) *Journal of Industrial Relations* 533.



Key event	Summary
<b>Vehicle Industry Award decision 1968<sup>31</sup></b>	<ul style="list-style-type: none"><li>• Systemised the indica from the <i>Metal Trades Award Work Value Inquiry decision 1967</i> into a list of criteria:<ol style="list-style-type: none"><li>1. The qualifications necessary for the job;</li><li>2. The training period required;</li><li>3. Attributes required for the performance of the work;</li><li>4. Responsibility for the work, material and equipment and for the safety of the plant and other employees;</li><li>5. Conditions under which the work is performed such as heat, cold, dirt, wetness, noise, necessity to wear protective equipment etc;</li><li>6. Quality of work attributable to, and required of, the employee;</li><li>7. Versatility and adaptability (e.g. to perform a multiplicity of functions);</li><li>8. Skill exercised;</li><li>9. Acquired knowledge of processes and of plant;</li><li>10. Supervision over others or necessity to work without supervision; and</li><li>11. Importance of work to the overall operations of plant.</li></ol></li><li>• Bennet identified historical gender biases implicit in a number of the Vehicle Industry Award decision work value criteria.<sup>32</sup></li></ul>
<b>1969 Equal Pay Case<sup>33</sup></b>	<ul style="list-style-type: none"><li>• Union applications to vary the Meat Industry Award and certain Commonwealth Public Service determinations.</li><li>• Sought to eliminate differences in current rates 'represented by the difference between the former male and female basic wages'.</li></ul>

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<sup>31</sup> *Re Vehicle Industry Award, 1953* [1968] CthArbRp 471, 124 CAR 295, at [308]

<sup>32</sup> *Equal Pay and Comparable Worth* at [536]-[539].

<sup>33</sup> [1969] CthArbRp 278, 127 CAR 1142, at [1142]-[1159].



## Key event

## Summary

- should be equal pay for equal work and remaining anomalies dealt with individually by awards and determinations.
- Accepted principle of equal pay for equal work but identified implementation difficulties due to the complexity of the wage system.
- Established 9 principles including:
  - males and female adult employees should be working under the same terms of the same determination or award (1),
  - work covered is performed by both males and females (2)
  - work covered and performed by both males and females is the same, or of like nature and of equal value (3)
  - equal pay should not be provided where work in question is usually or essentially performed by female workers but where men may also be employed (9)
- Implementation of any determination for equal pay was to be staggered up until 1 January 1972
- Case did not seek to address or remedy gender differentials in different awards or in awards where work was predominantly performed by females.
- Did not seek to address historical gender disparities in margins.
- approximately 18 per cent of females in workforce received a pay increase by 1972

## 1972 Equal Pay Case<sup>34</sup>

- Further development of principles established in *1969 Equal Pay Case*
- Established a further principle: 'award rates for all work should be considered without regard to the sex of the employee'.

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<sup>34</sup> [1972] CthArbRp 1420, 147 CAR 172, at [177]-[180].



### Key event

### Summary

- Full Bench believed the community was prepared to accept the concept of equal pay for females and should therefore be prepared accept the economic consequences of this decision.
- Male/female pay gap “in awards generally is greater than the gap, if any, in the comparative value of work performed by the two sexes because rates for female classifications in the same award have generally been fixed without a comparative evaluation of the work performed by males and females.”
- Where work in the award is performed exclusively by females, then a work value comparison with female classifications, or even male classifications, in different awards may be necessary (principle 5b)
- Recognised that there may be differences in male and female rates of pay which were not justified based on work value and required rectification.
- Phasing in increases over just over two and a half years
- Following this case, most federal awards were amended so that they contained no gender-based classification or pay rates (although this occurred later contemplated in the decision for some awards).
- Application of the new principle was more complex in the case of classifications or awards where the work was performed exclusively by females. This required work value comparisons within and across awards with other female or male classifications. Recognised the absence of a proper valuation of women’s work.
- Scant evidence that this aspect of the new principle 5 was ever implemented.

### National Wage Case September 1975<sup>35</sup>

- Introduced wage-fixing principles seeking to limit wage increases.
- Sought to limit wage increases on work value grounds - it was necessary to demonstrate changes in the nature of the work, skill and responsibility

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<sup>35</sup> [1975] CthArbRp 1544, 171 CAR at 79, at [84].





## Key event

## Summary

required, or the conditions under which the work is performed in order to justify wage increases on work value grounds.

- Restricted the data point for comparison in most cases as the last date at which the award rate was adjusted.
- Assumed the existence of award rate as evidence that the job had been valued.
- Did not accommodate claims based on comparative wage justice.

## National Wage Case 1983<sup>36</sup>

- Followed a period of extensive wage claims being prosecuted outside of wage indexation systems.
- Re-established wage fixation principles, coincided with the commencement of the Prices and Incomes Accord
- Intended to restrict wage increases.
- Women's groups submitted that implementation of the Commission's equal pay decisions had not been accompanied by a proper work value exercise.
- Such a work value exercise was rejected in this case, in part for economic reasons.
- Restated work value principle of 1975-81 (anomalies and inequities) except that the datum point became the last work value affecting the award, but no earlier than 1 January 1978.
- Equal pay cases could only be prosecuted under the 'Anomalies and Inequities' which only applied in exceptional circumstances.
- 'This restriction on the datum point did not allow for the type of fundamental work value reassessment in female-dominated occupations and industries contemplated by the 1972 Equal Pay Case and sought by women's groups in the National Wage Case 1983'.

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<sup>36</sup> [1983] CthArbRp 400, 291 CAR 3, 4 IR at [429]–[473].



Key event	Summary
<b>Nurses Comparable Worth Case 1986<sup>37</sup></b>	<ul style="list-style-type: none"><li>• Concerned wage claim for private nurses in ACT for equal pay for equal worth (comparable worth).</li><li>• Argued that the 1972 equal pay decision had not been applied to nurses.</li><li>• ‘principle allowed, in the case of female-dominated work, for comparisons to be made with female and male classifications in other awards, and with rates outside a particular occupation where such comparisons are not available within the occupation on the basis of ‘comparable worth.’</li><li>• Full Bench rejected notion of comparable worth based on gender neutral criteria as being inconsistent with the traditional concept of work value in the Australian industrial arbitration context.</li><li>• equal pay claims could still be pursued, this had to occur within the framework of the wage-fixing principles as ‘anomalies’ having regard to the risk of ‘flow-on’, the risk of flow in this case was viewed as likely.</li><li>• The claim on behalf of nurses was subsequently prosecuted pursuant to the Anomalies and Inequities principle.</li></ul>
<b>National Wage Case August 1988<sup>38</sup></b>	<ul style="list-style-type: none"><li>• Introduced structural efficiency principle.</li><li>• Objectives included:<ul style="list-style-type: none"><li>○ to ‘create appropriate relativities between different categories of workers within [each] award...’; and</li><li>○ to ‘include[e] properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments.’</li></ul></li></ul>

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<sup>37</sup> *Royal Australian Nursing Federation & Anor re Private Hospitals’ and Doctors’ Nurses (A.C.T.) Award, 1972* [1986] CthArbRp 64, 300 CAR 185, 13 IR 108, Print G2250 at [185]-[191].

<sup>38</sup> [1988] AIRC 595, 25 IR 170, Print H4000, at [170]-[175].



### Key event

### Summary

#### **National Wage Case February 1989<sup>39</sup>**

- Explained means by which Commission would achieve its objective of structural efficiency.
- Structural efficiency sought to achieve consistent, coherent award classifications structures.
- Classification system in awards would have clear and appropriate work value relationships between one another based on training and skills acquired.
- to be achieved in key awards which were, with the exception of clerks, male-dominated industries and occupations: building industry, metal workers, transport workers, storemen and clerks.
- proposed to review minimum rates and supplementary payments to ensure that classifications had been properly valued across the award system

#### **National Wage Case August 1989<sup>40</sup>**

- Implementation of structural efficiency principles and the modernisation of awards
- was based 5 awards covering the building industry, metal industry, storemen and packers, transport workers and clerks.
- Intended to provide a 'stable basis for wage fixation'.
- Established the minimum classification rate and a supplementary payment for a metal industry and a building industry tradesperson.
- Each classification rate would be set relative to the tradesperson rate based on their relative skill, responsibility and conditions under which the work is normally performed.

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<sup>39</sup> [1989] AIRC 345, 27 IR 196, Print H8200 at [196]-[201].

<sup>40</sup> [1989] AIRC 525, 30 IR 81, Print H9100 at [81]-[94].



### Key event

### Summary

#### National Wage Case April 1991<sup>44</sup>

- the new 14-level classification structure introduced into the then *Metal Industry Award 1984*(*Metal Industry Award*)<sup>41</sup> on 20 March 1990 with the tradesperson set as the C10 rate.<sup>42</sup>
  - C10 rate required employee hold a recognised trade certificate or a relevant Certificate III qualification under the Australian Qualifications Framework (AQF).
  - Setting across award-alignments with the C10 rate is now referred to as the C10 Metals Framework Alignment Approach.<sup>43</sup>
  - Process of varying awards to establish alignments with C10 was known as the minimum rate adjustment (MRA) process.
  - Any 'structural efficiency exercises' in awards should incorporate all past work value considerations.
- 
- *Work Value Changes Principle* established.
  - Modified previous work value principle to establish new datum point requirements:
    - the date of operation of the second structural efficiency allowable under the 7 August 1989 National Wage case decision (unless there are extraordinary circumstances).
    - should ensure any previous work value adjustments or structural efficiency exercises are not included in any work valuation under this principle.

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<sup>41</sup> AW819234, Print F8925.

<sup>42</sup> [1990] AIRC 239, Print J1935.

<sup>43</sup> [2022] FWCFB 200, 319 IR 127

<sup>44</sup> [1991] AIRC 281, 36 IR 120, Print J7400.



### Key event

### Summary

#### **Paid Rates Review decision 1998<sup>45</sup>**

- Set out the correct approach to setting 'properly fixed minimum rates' in awards.
- convert a number of paid rates awards to minimum rates as part of the award simplification process
- application of the C10 Metals Framework Alignment Approach was a condition of an award being properly fixed minimum rates award awards requiring review would be reviewed.

#### **ACT Child Care decision 2005<sup>46</sup>**

- Engaged in a comprehensive consideration of the work of early childhood education and care workers covered by awards applicable in the ACT and Victoria.
- Applied Work Value Changes Principle where consideration of work value was confined to the identification of changes occurring since a datum point of 1990 and did not permit an *ab initio* assessment of the work value of early childhood education and care workers.
- Found 'significant net addition to work requirements'.
- Applied principles for the proper fixation of minimum rates set out in the *Paid Rates Review decision 1998* (now known as the C10 Metals Framework Alignment Approach)
- as a result, the rates were set by linking the classification rates in the ACT Award and Victorian Award to the classification levels in the *Metals Industry Award*
- This was despite the fact that the Full Bench found

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<sup>45</sup> [1998] AIRC 1413, 123 IR 240, Print Q7661.

<sup>46</sup> *Re Australian Liquor, Hospitality and Miscellaneous Workers Union* [2005] AIRC 28, PR954938.



### Key event

### Summary

- ‘ . . .the nature of the work performed by child care workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their *Metal Industry Award* counterparts’.<sup>47</sup>
- Employees should be receiving the same rate of pay for the same AQF levels.<sup>48</sup>
  - Decision only considered qualifications and training in its work value assessment.
  - Did not compare the nature of the work or the level of skill and responsibility involved in performing the work.
- Work Choices 2006**
- Regime of wage-fixing principles came to an end when *Workplace Relations Amendment (Work Choices) Act 2005* commenced on 27 March 2006.
  - AIRC stripped of minimum wage fixing functions.
  - Wage fixing powers transferred to a new statutory body: the Australian Fair Pay Commission although awards system remained.
- Award modernisation 2008–2009**
- Established the current modern award system.
  - process conducted in 2008–9 pursuant to Part 10A of the *Workplace Relations Act 1996* (Cth), as amended by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (Cth)
  - not constrained by previous wage fixing principles
  - in theory could involve a full *ab initio* work value assessment of any female-dominated occupation or industry in a modern award
  - not possible in practice as award modernisation required consolidation and streamlining of thousands of former federal and State awards into what became 122 modern awards by the end of 2009.

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<sup>47</sup> Ibid at [182]–[183].

<sup>48</sup> Ibid at [91].



### Key event

### Summary

- In practice, the classifications and rates of pay in most major modern awards were based on a precursor federal award, or in some cases a State award.
  - Where the C10 Metals Framework Alignment Approach had previously been applied, this was retained.
  - In some cases, it was applied for the first time.
  - Meant that historical gender biases that became embedded in federal awards migrated into modern awards
- Pharmacy decision 2018<sup>49</sup>**
- minimum wage rate for a degree-qualified pharmacist was (at time of decision) less than the C3 classification rate in the Manufacturing Award payable for an employee holding an Advanced Diploma or equivalent training,
  - found this constituted a potential work value issue.
- Teachers decision 2021<sup>50</sup>**
- Found 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),
  - found that at no level of seniority did modern award minimum wage rates for teachers reach the C1 relativity.
  - Full Bench concluded that the minimum wage rates in the Teachers Award ‘were not properly fixed minimum rates...’.
- Work value case – Aged care industry**
- Case dealt with to increase wages affecting the aged care sector in three modern awards: Aged Care Award, Nurses Award and the SCHADS Award, dealt with in three stages.

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<sup>49</sup> 4 yearly review of modern awards – Pharmacy Industry Award 2010 [2018] FWCFB 7621, 284 IR 121

<sup>50</sup> Application by Independent Education Union of Australia [2021] FWCFB 2051, at [563].



Key event	Summary
<b>stage 1 decision 2022</b> 51	<ul style="list-style-type: none"><li>• Stage 1 decision found that modern award minimum wage rates for 'direct care employees' in the aged care sector do not properly compensate for the value of the work performed.</li><li>• Determined that an interim increase of 15 per cent in modern award minimum wages for 'direct care employees' was justified by work value reasons.</li></ul>
<b>Secure Jobs, Better Pay 2022</b>	<ul style="list-style-type: none"><li>• <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)</i> (SJBPA Act) made a number of amendments to the FW Act to give greater emphasis to issues of gender equality.</li><li>• Included amendments to the minimum wages objective (s 284(1)) and the modern awards objective (134(1)) with broader concepts of gender equality than previously.</li><li>• Section 157(2) also amended – any consideration of a work value assessment must be free of assumptions based on gender (contemporary and historical).</li><li>• Amendments took effect 7 December 2022.</li></ul>
<b>Work value case – Aged care industry stage 2 decision</b> <sup>52</sup> <b>and reasons 2023</b> <sup>53</sup>	<ul style="list-style-type: none"><li>• Considered timing and phasing in of interim pay increase decided in stage 1 for direct care employees.</li><li>• Considered whether increase was necessary to achieve both the modern awards objective (s 134(1) and minimum wages objective (s 284(1)).</li><li>• Reached same conclusion for Head Chefs/Cooks and Recreational Activities Officers/Lifestyle Officers under the Aged Care Award.</li></ul>

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<sup>51</sup> [2022] FWCFB 200, 319 IR 127, at [50]-[54].

<sup>52</sup> [2023] FWCFB 40

<sup>53</sup> [2023] FWCFB 93





Key event	Summary
<b>Annual Wage Review Decision 2022–23</b> <sup>54</sup>	<ul style="list-style-type: none"><li>• Found that, the proper alignment of degree qualified employees with a theoretical C1 classification with relativities to C10 in the rate of 180–210 per cent was never through for most degree-qualified classifications in awards.</li><li>• Employees were never placed in the appropriate relativity to C10.</li></ul>
<b>Work value case – Aged care industry stage 3 decision 2024</b> <sup>55</sup>	<ul style="list-style-type: none"><li>• Determined whether further wage adjustments are justified on work value grounds for aged care sector employees not dealt with in stage 1 (indirect care employees).</li><li>• Provided more detailed consideration of the classification definitions and structures in the three awards.</li></ul>

## 2.2 Gender assumptions systemic in the industrial relations system

[24] The Expert Panel in the AWR 2022-23 decision stated that ‘[t]here 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.’<sup>56</sup>

[25] The Expert Panel indicated that there may be a systemic problem, of pre-FW Act origins, concerning the way in which modern award minimum wages in female-dominated industries have been set.

[26] The Expert Panel identified two potential gender-related difficulties with the structural efficiency wage fixing process which was introduced and implemented by the Commission during the period 1988-1992.

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<sup>54</sup> [2023] FWCFB 3500 at [134].

<sup>55</sup> [2024] FWCFB 150

<sup>56</sup> [2023] FWCFB 3500 at [120].



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

- the National Wage Case April 1991 effectively foreclosed retrospective reconsideration of work value in any federal award. Rates of pay in female-dominated awards which were fixed pre-1990 and consequently influenced by the gender-based assumptions about work value which were then prevalent, were prevented from being reviewed in accordance with contemporary standards of rates of pay.
- The establishment of benchmark 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.

[28] Another potential gender equity issue identified by the Expert Panel in the AWR 2022–23 relates to the non-implementation of the process by which employees with degree qualifications were to be aligned with a theoretical C1 classification.<sup>57</sup>

‘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

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<sup>57</sup> Ibid at [134], [136].



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.<sup>1</sup>

(Footnotes omitted)

[29] These issues were discussed further in the Stage 3 decision of the Work value case – Aged care industry. The Expert Panel in that matter set out a comprehensive history of gender assumptions in award wage fixation and observed that gender assumptions have pervaded the federal industrial relations system since its inception in the early 20<sup>th</sup> century.<sup>58</sup>

[30] The Expert Panel in the Work value case – Aged care industry made the following comments in relation to the C1 non-implementation issue:

‘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.’<sup>59</sup>

[31] In relation to the C10 alignment approach, the Expert Panel noted two things:<sup>60</sup>

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<sup>58</sup> [2024] FWCFB 150 at [25].

<sup>59</sup> Ibid at [94].

<sup>60</sup> Ibid at [77].



[...] 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.’

[32] The Expert Panel observed that the principles set out in the Paid Rates Review decision 1998 made the application of the C10 alignment approach a condition of an award being a properly fixed minimum rates award. They noted however that:<sup>61</sup>

‘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.’

(footnotes omitted)

[33] 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

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<sup>61</sup> Ibid at [84].



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.<sup>62</sup>

[34] The Expert Panel continued that the rate arrived in *Application by Independent Education Union of Australia* (Teachers decision)<sup>63</sup> is also 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.’<sup>64</sup>

[35] The C10 Metals Framework<sup>65</sup> is notable for its alignment to the Australian Qualifications Framework (AQF), which regulates qualifications in Australian education and training. The AQF consists of 10 levels:<sup>66</sup>

- AQF Level 1 – Certificate I
- AQF Level 2 – Certificate II
- AQF Level 3 – Certificate III
- AQF Level 4 – Certificate IV
- AQF Level 5 – Diploma

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<sup>62</sup> Ibid at [92].

<sup>63</sup> [2021] FWCFB 2051

<sup>64</sup> [2024] FWCFB 150 at [204].

<sup>65</sup> *Manufacturing and Associated Industries and Occupations Award 2020* at cl A.3.1.

<sup>66</sup> Australian Government, Department of Education, Australian Qualifications Framework, *AQF Qualifications*, accessed 18 March 2024, <<https://www.aqf.edu.au/framework/aqf-qualifications>>.



- 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

[36] Chapter 3 contains the current rates for the classifications in the examined awards. The classifications have been mapped to the AQF framework in the following way:

1. Checking which levels within the employee classification provisions (or in some cases minimum pay provisions) refer to a recognisable AQF qualification.
2. Checking that the AQF qualification has been referenced in order to indicate that the standard of the qualification is intended to correspond or align with the level of skill, duties or responsibilities typically required at that classification level or pay point.

[37] Using this methodology, the lowest aligning AQF qualification, if there is one, is shown against each rate for reference, as is the corresponding rate in the C10 Metals Framework. The Teachers rate (\$1,470.80 per week) is also shown against classifications aligning to AQF 7 (degree-qualified).



## 3 Award histories

The Stage 1 report identifies 13 awards that set pay in 29 large highly feminised occupations within feminised industries. This chapter provides a history of 12 of the awards identified in the Stage 1 report, excluding the *Aged Care Award 2010*.<sup>67</sup> An introduction is provided setting out the current rates of pay as against any rates that align with the Metals Framework rate C10/AQF classification structure, or in the case of degree qualification (AQF 7) alignment, the Teacher's rate.<sup>68</sup> The award history itself is then set out, examining whether the Fair Work Commission, its predecessors or, where relevant, State tribunals have ever undertaken comprehensive work value assessment the rates in these awards.

### 3.1 Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Award 2020

#### 3.1.1 Introduction

[38] The Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020 (Aboriginal and Torres Strait Islander Health Award) is an industry and occupational award which covers employers within the Aboriginal community controlled health services industry and employees engaged as Aboriginal and/or Torres Strait Islander health workers or practitioners, dental assistant and therapists, and administrative or ancillary employees, including caretakers, cleaners and drivers.

[39] As defined within the Award:

'Aboriginal community controlled health services are incorporated Aboriginal organisations, initiated and based in an Aboriginal community.'

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<sup>67</sup> An examination of the *Nurses Award 2020* is provided, however for an account of the historical development of the rates in this award, the reader is referred to [2024] FWCFB 150 at [111]-[135].

<sup>68</sup> See [2021] FWCFB 2051 at [653]-[657]. Where a given classification level aligns with a range of AQF/C10 levels, the lowest level is shown.



[40] Aboriginal community controlled health services are unique in that they are governed by a representative Aboriginal Board of Management which is elected by the local Indigenous community. And they are described in the award as delivering ‘holistic and culturally appropriate health and well-being services to the Aboriginal community which controls them.’

[41] The classification and wage structure in the current award are as follows.

***Aboriginal and/or Torres Strait Islander Health Worker/Aboriginal and/or Torres Strait Islander Community Health Worker employees***

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly
	\$	\$		\$ (relativity to C10)
<b>Grade 1</b>				
Level 1	949.60	24.99		
<b>Grade 2</b>				
Level 1	1017.00	26.76	2	
Level 2	1051.80	27.68	2	
<b>Grade 3</b>				
Level 1	1106.70	29.12	3	995 (111.23%)
Level 2	1164.60	30.65	3	995 (117.05%)
Level 3	1221.20	32.14	3	995 (122.73%)
<b>Grade 4</b>				
Level 1	1255.30	33.03	4	1085.60
Level 2	1289.10	33.92	4	1085.60
Level 3	1318.70	34.70	4	1085.60
<b>Grade 5</b>				
Level 1	1350.30	35.53	5	1164.10
Level 2	1382.00	36.37	5	1164.10
Level 3	1415.50	37.25	5	1164.10





**Administrative employees**

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
<b>Grade 1</b>		
Level 1	943.00	24.82
Level 2	946.10	24.90
Level 3	965.40	25.41
Level 4	979.10	25.77
Level 5	1007.50	26.51
<b>Grade 2</b>		
Level 1	1023.00	26.92
Level 2	1041.10	27.40
Level 3	1059.10	27.87
Level 4	1074.50	28.28
Level 5	1092.80	28.76
<b>Grade 3</b>		
Level 1	1112.50	29.28
Level 2	1132.40	29.80
Level 3	1144.60	30.12
Level 4	1165.20	30.66
<b>Grade 4</b>		
Level 1	1183.20	31.14
Level 2	1211.80	31.89
Level 3	1233.50	32.46
Level 4	1256.30	33.06
<b>Grade 5</b>		
Level 1	1281.30	33.72
Level 2	1307.80	34.42
Level 3	1335.20	35.14
<b>Grade 6</b>		
Level 1	1350.70	35.54
Level 2	1376.00	36.21
Level 3	1404.70	36.97
Level 4	1458.60	38.38
Level 5	1502.10	39.53
<b>Grade 7</b>		
Level 1	1537.70	40.47



Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Level 2	1579.40	41.56
<b>Grade 8</b>		
Level 1	1595.60	41.99
Level 2	1636.50	43.07
Level 3	1691.40	44.51
Level 4	1731.40	45.56

### *Dental employees*

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Teacher's benchmark weekly rate
	\$	\$		\$ (relativity)
<b>Dental Assistant</b>				
Grade 1	901.00	23.71		
Grade 2	918.70	24.18		
Grade 3	936.70	24.65		
Grade 4	995.00	26.18		
Grade 5	1028.70	27.07		
<b>Dental Therapist Grade 1</b>				
Level 1	1076.30	28.32	7	1470.80 (73.18%)
Level 2	1104.60	29.07	7	
Level 3	1140.00	30.00	7	
Level 4	1184.00	31.16	7	



Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Teacher's benchmark weekly rate
	\$	\$		\$ (relativity)
Level 5	1242.40	32.69	7	
Level 6	1299.80	34.21	7	
Level 7	1343.80	35.36	7	
<b>Dental Therapist Grade 2</b>				
Level 1	1362.90	35.87	7	
Level 2	1393.60	36.67	7	
Level 3	1423.30	37.46	7	
Level 4	1448.70	38.12	7	
Level 5	1481.50	38.99	7	

### Ancillary employees

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Cleaner	936.10	24.63
Driver—Grade 1	973.90	25.63
Driver—Grade 2	999.30	26.30
Caretaker	999.30	26.30

[42] Findings of the Stage 1 report identified dental assistants as a highly feminised occupation within the Aboriginal and Torres Strait Islander Health Award.<sup>69</sup> When combined with statistics for

<sup>69</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 9.



dental assistants working in a dental service covered by the Health Professionals Award, women account for 97.5% of all dental assistants.<sup>70</sup>

### 3.1.2 Pre-modernisation

#### *Health Services Union of Australia (Aboriginal Health Services) Award 1992*

[43] The classification structure and rates of pay in the Aboriginal and Torres Strait Islander Health Award originate in the *Health Services Union of Australia (Aboriginal Health Services) Award 1992* (HSU Award 1992). This award was the first federal instrument to regulate the Aboriginal healthcare sector across State boundaries. The award came about as a result of a letter of demand from the Hospital Employees Federation (the Health Services Union of Australia) served on a number of employers in the area of aboriginal health organisation in New South Wales, Victoria and Queensland. A number of other unions joined the claim and the employers formed a coordinating body called the National Aboriginal and Islander Health Organisation. The Award featured a distinctive clause on 'Aboriginal self determination' which was designed to recognise to cooperative 'nature of traditional Aboriginal relationships' and sought to be a 'genuine endeavour to weave the Aboriginal way into employer/employee relationship procedures usually found in industrial awards.'<sup>71</sup>

[44] Commissioner Turbet determined to install the operative wage rates in Victoria, sourced from the Victorian Aboriginal Health Service Agreement.<sup>72</sup>

'No specific evidence in the form of award provisions was provided in respect of NSW and Queensland...The Commission's attention was directed at two awards, the Central Australian Aboriginal Congress (Northern Territory) – Nurses Award 1983 and the Aboriginal Medical Service Employees Award 1987 of WA Industrial Relations Commission. The Federated Miscellaneous Workers Union of Australia is the union party to those awards. I am satisfied that it would be a proper application of the First Award Principle to rely on the rates prescribed in the Victorian Aboriginal Health Service Agreement.'<sup>73</sup>

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<sup>70</sup> Ibid 25.

<sup>71</sup> [1992] AIRC 342 Print K2782 at 1.

<sup>72</sup> Ibid at 5.

<sup>73</sup> Ibid at 4.



- [45] The rates prescribed in the Victorian Aboriginal Health Service Agreement would become operative in all organisations covered by the award by 1 January 1993, with an initial adjustment made on 1 September 1992 to align minimum rates of pay to within at least \$20 per week of the Victorian Aboriginal Health Service Agreement benchmarks.<sup>74</sup>
- [46] Commissioner Turbet raised some concerns regarding the appropriateness of the classification structure, specifically to include nine and ten year pay scales for Aboriginal health workers and dental officers.<sup>75</sup>

### **Structural efficiency**

- [47] The Award was subsequently restructured in 1995, following an application from the HSU to conclude the structural efficiency principle process, and provide for the previously unapplied wage adjustments in 1991 and 1994.<sup>76</sup>
- [48] Influenced by rates and structures derived from the *Pitjantjatjara Council Inc. and Associated Organisations Award 1991*,<sup>77</sup> 'Professional Officers Award (A.G.E) and a Victorian Award applying to dental officers' the HSU submitted a substantially expanded classification framework focused on creating skill-related paths and more detailed work level definitions.<sup>78</sup>
- [49] Until this point, wage progression within the HSU Award 1992 was strictly limited to years of service within a defined occupation. Consequently, the 1995 variation added another axis to the classification structure, inserting competency-defined levels and grading within the description of each role to Appendix 2.<sup>79</sup>
- [50] For example, in the HSU Award 1992, Aboriginal health workers were subject to a single pay scale operating from commencement to the "8<sup>th</sup> year of service or thereafter."<sup>80</sup> These employees were also covered by an all-encompassing classification description, which outlined

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<sup>74</sup> Ibid at 5.

<sup>75</sup> Ibid.

<sup>76</sup> [1995] AIRC 626 Print M0885.

<sup>77</sup> *Pitjantjatjara Council Inc. and Associated Organisations Award 1991* [Print J8996].

<sup>78</sup> [1995] AIRC 626 Print M0885 at 2.

<sup>79</sup> Ibid.

<sup>80</sup> *Health Services Union of Australia (Aboriginal Health Services) Award 1992* [Print K2833] cl 7(c).



the qualifications required, and broadly defined duty to “provide a range of health functions of a clinical, preventative, rehabilitative or promotional nature.”<sup>81</sup>

[51] Following the 1995 amendments, the Aboriginal health worker classification was re-organised into a framework of four grades, each containing three pay points for correlating years of service.<sup>82</sup> As aforementioned, these grades were accompanied by updated classification descriptors, which outlined the required qualifications, experience, competencies, and duties for progression through each level.<sup>83</sup>

[52] Notably, the initial certification requirement was adjusted to grade 2, effectively creating an entry level for those with no direct experience in the provision of Aboriginal health services.<sup>84</sup> These developments and the resulting wage adjustments are demonstrated in the table below:

<b>Year of Service</b>	<b>HSU (Aboriginal Health Services) Award 1992 (rates as at 01/01/93)</b>	<b>Grade – Year of Service</b>	<b>HSU (Aboriginal Health Services) Award 1992 (variation rates as at 09/03/1995)</b>
	\$		\$
1st Year	466.80	Grade 1 – 1st Year	396.60
2nd Year	487.40	Grade 1 – 2nd Year	439.90
3rd Year	509.00	Grade 1 – 3rd Year	463.10
4th Year	530.10	Grade 2 – 1st Year	501.80
5th Year	549.90	Grade 2 – 2nd Year	545.40
6th Year	571.40	Grade 2 – 3rd Year	588.60

<sup>81</sup> Ibid cl 7(m).

<sup>82</sup> [1995] AIRC 626 Print M0885 at cl 8(a).

<sup>83</sup> Ibid at Appendix 2(a).

<sup>84</sup> Ibid at Appendix 2(a)(i).



Year of Service	HSU (Aboriginal Health Services) Award 1992 (rates as at 01/01/93)	Grade – Year of Service	HSU (Aboriginal Health Services) Award 1992 (variation rates as at 09/03/1995)
	\$		\$
7th Year	592.60	Grade 3 – 1st Year	611.20
8th or thereafter	613.90	Grade 3 – 2nd Year	633.70
		Grade 3 – 3rd Year	655.60
		Grade 4 – 1st Year	678.60
		Grade 4 – 2nd Year	699.80
		Grade 4 – 3rd Year	722.10

[53] Successive safety net adjustments were also applied to minimum weekly rates later in 1995, twice in 1997 and each year from 1998-2002, before consolidation on 11 November 2002.<sup>85</sup>

### 3.1.3 Award modernisation

[54] Indigenous organisations and services were considered during Stage 4 of the award modernisation process. In their 25 September 2009 statement,<sup>86</sup> the award modernisation Full Bench declined to create a separate award to broadly cover indigenous organisations or services, however made an exception to create a separate award to cover Aboriginal community controlled health organisations.

[55] The Full Bench noted that:

<sup>85</sup> *Health Services Union of Australia (Aboriginal Health Services) Award 1992* [AW783526].

<sup>86</sup> [2009] AIRCFB 865 PR392009.



‘the nature of health services that are delivered in a culturally appropriate way is sufficiently different to justify a separate award. The difference is not only about the way the services are established and controlled but is critically seen in the way that employees of the services operate.’<sup>87</sup>

[56] Accordingly, an exposure draft of the *Aboriginal Community Controlled Health Services Award 2010* was published with the statement. The Full Bench acknowledged that it had largely adopted the draft provided by the National Aboriginal Community Controlled Health Organisation (NACCHO), albeit notably the Full Bench had removed the proposed coverage of doctors, nurses and dentists.<sup>88</sup>

[57] NACCHO decided not to include suggested minimum wage rates in their submissions, and instead proposed a collaborative effort with unions to develop an agreed classification framework.<sup>89</sup> The Full Bench decided to implement those weekly rates and classifications contained within the *Health Services Union of Australia (Aboriginal and Torres Strait Islander Health Services) Award 2002* (HSU Award 2002), which itself had already formed a substantive part of the NACCHO proposal.<sup>90</sup> The Full Bench noted this would be an interim arrangement, pending further consideration.<sup>91</sup>

[58] Through later consultation, the HSU drew attention to the proposed standard rates for dental assistants contained within the exposure draft, which were lower than those provided for the corresponding classification in the *Health Professionals Award*.<sup>92</sup>

[59] Specifically, the HSU identified that unqualified dental assistants commencing at grade 1 under the exposure draft would earn less than their counterparts classified as support service

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<sup>87</sup> Ibid at [124].

<sup>88</sup> Ibid at [125].

<sup>89</sup> Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/64, Raffaelli C, 10 August 2009) [PN323].

<sup>90</sup> National Aboriginal Community Controlled Health Organisation, Submission in *Award modernisation*, AM2008/64, 10 August 2009.

<sup>91</sup> [2009] AIRFCB 865 PR392009 at [128].

<sup>92</sup> [2009] AIRFCB 945 PR122009 at [98].





employees under the Health Professionals Award.<sup>93</sup> Whilst initially a minor deviation, the disparity was exacerbated further down the pay scale, with qualified support service employees at level 4 earning more than similarly credentialed dental assistants at grade 5, as proposed by the exposure draft.<sup>94</sup> This comparison is illustrated in the table below:

Level/ Grade	HPSS Award 2010 – Support Service Employees Minimum Weekly Rates	ATSI Health Exposure Draft – Dental Assistants Minimum Weekly Rates
1	580.00	573.00
2	605.00	585.50
3	630.00	598.10
4	637.60	610.60
5	660.00	623.10

[60] In their 4 December 2009 decision, the award modernisation Full Bench observed:

‘services provided by aboriginal community controlled health organisations are notably different from what might be called mainstream health services, including as to the work that is performed by its employees. A ready comparison with the (Health Professionals) Award is not easily made. However, on closer examination of the definitions, we have decided to adjust the higher grades (4 and 5) so that the rates accord with those found in the (Health Professionals) Award.’<sup>95</sup>

[61] The table below show the rates of pay for dental assistants as made by the award modernisation Full Bench (rates increased by the bench emphasised):

ATSI Health Award 2010 – Dental Assistants	Minimum Weekly Rates
Grade 1	573.00
Grade 2	585.50
Grade 3	598.10
<b>Grade 4</b>	<b>637.60</b>

<sup>93</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/64 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP, Smith C, 30 October 2009) [PN1922].

<sup>94</sup> Ibid [PN1923].

<sup>95</sup> [2009] AIRFCB 945 PR122009 at [98].



ATSI Health Award 2010 - Dental Assistants	Minimum Weekly Rates
Grade 5	660.00

#### 4 yearly review of modern awards

[62] As part of the 4 yearly review National Aboriginal and Torres Strait Islander Health Worker Association (NATSIHWA) and the HSU made substantive claims in relation to the *Aboriginal Community Controlled Health Services Award 2010*.<sup>96</sup> The rates for health workers in the award at the time of the claim were as follows:

#### Aboriginal Health Workers (as at October 2014)

	Per week
	\$
<b>Grade 1</b>	
Level 1	729.50
Level 2	781.80
Level 3	808.50
<b>Grade 2</b>	
Level 1	850.80
Level 2	895.20
Level 3	938.80
<b>Grade 3</b>	
Level 1	964.90
Level 2	990.90
Level 3	1013.70
<b>Grade 4</b>	
Level 1	1037.90
Level 2	1062.30
Level 3	

<sup>96</sup> National Aboriginal and/or Torres Strait Islander Health Worker Association, Submission in *Modern awards review*, AM2014/250, 14 October 2014.



- [63] In particular, NATSIHWA sought to move from a 4-grade classification structure to 6 grades.<sup>97</sup> NATSIHWA argued that the existing framework provided minimal description of the work actually performed, or guidance on movement between grades, ultimately contributing to a lack of adequate career progression within the Award.<sup>98</sup>
- [64] This proposal would involve splitting grade 1 into two grades and including a new grade 6 for senior health practitioners and coordinator care.<sup>99</sup> The claim was based on work value grounds and sought to raise the rate of pay for advanced health workers and practitioners from grade 4 to grade 5 and to include a new grade 6 classification.
- [65] NATSIHWA submitted that since creation of the Award, the nature of work performed, level of skill involved, and responsibility shouldered by Aboriginal and Torres Strait Islander health workers and practitioners had increased.<sup>100</sup> Specifically, they drew attention to the introduction of the annual registration requirement in 2012 which raised standards and accountability across the industry,<sup>101</sup> alongside the growing need for upskilling, and provision of more complex duties.<sup>102</sup>
- [66] Both the grade 5 and grade 6 work value claims were declined by the Full Bench.<sup>103</sup>
- [67] The Full Bench was however persuaded to separate grade 1 into two entry level positions, grade 1 and grade 2.<sup>104</sup> NATSIHWA, in a submission in response to how this would be achieved, raised an issue that the decision created crowding in grade 5 with both “Senior Health Practitioners”

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<sup>97</sup> Ibid.

<sup>98</sup> National Aboriginal and/or Torres Strait Islander Health Worker Association, Submission in *4 yearly review of modern awards*, AM2018/12, 18 June 2019, [79]–[80].

<sup>99</sup> National Aboriginal and/or Torres Strait Islander Health Worker Association, Submission in *Modern awards review*, AM2014/250, 14 October 2014, [15].

<sup>100</sup> National Aboriginal and/or Torres Strait Islander Health Worker Association, Submission in *4 yearly review of modern awards*, AM2018/12, 18 June 2019, [30].

<sup>101</sup> Ibid [104].

<sup>102</sup> Ibid [112]–[115].

<sup>103</sup> [2020] FWCFB 3827 at [180]–[190].

<sup>104</sup> National Aboriginal and/or Torres Strait Islander Health Worker Association, Submission in *4 yearly review of modern awards*, AM2018/12, 30 September 2020; cited in [2020] FWCFB 6535 at [52]–[53].



and their managers in the “Coordinator Care” role both being accommodated within the one grade.<sup>105</sup> The Full Bench was not persuaded to change their view on the proposal to add an additional grade and stated ‘it is not unusual for classification structures within modern awards to provide at particular classification levels for both technical specialists and persons with more senior responsibilities.’<sup>106</sup>

[68] This process also expanded the coverage of the *Aboriginal Community Controlled Health Services Award 2010* to include Aboriginal and/or Torres Strait Islander health workers and practitioners on an occupational basis, hence capturing those employees operating within private medical practice.<sup>107</sup> To reflect this change, the Award was subsequently re-titled to its current form.<sup>108</sup>

[69] Since those changes to the award were made there have been no other changes to the award that have impacted the classification structure or wages. Aside from the work value claim relating to the health workers, the rates applying to the other classification streams do not appear to have been assessed on work value grounds.

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<sup>105</sup> [2020] FWCFB 6535 at [49].

<sup>106</sup> *Ibid* at [52].

<sup>107</sup> [2020] FWCFB 3827 at [113].

<sup>108</sup> [2020] FWCFB 6535 at [19].



## 3.2 Animal Care and Veterinary Services Award 2020

### 3.2.1 Introduction

[70] The *Animal Care and Veterinary Services Award 2020* (Animal Care Award) is an industry award covering employers throughout Australia in the veterinary surgery and animal care industries and their employees, classified in 3 streams as set out in the tables below.

[71] The animal care and veterinary services industries were considered during Stage 4 of the award modernisation process. At that time, the Full Bench published an indicative list of awards and NAPSAAs covering the animal care and veterinary services industries.<sup>109</sup>

[72] The following awards ended up forming the basis of the classification structure and minimum wage rates in the modern award for Practice manager, Veterinary nurses, Receptionists, Animal attendants and Assistants, and for Veterinary surgeons:

- *Veterinary Practice Employees' Award – State* (the Queensland NAPSA)<sup>110</sup>
- *Veterinary Surgeons Award 2001*<sup>111</sup>

[73] Classifications for Animal care inspectors were added late in the award modernisation process. Award coverage was expanded as a result of submissions received after the exposure draft was published<sup>112</sup> and that change was confirmed in the Full Bench decision issued on 4 December 2009 (December 2009 decision).<sup>113</sup> Rates for animal care industry inspectors were inserted in the modern award published on 4 December 2009. The minimum wage rates were based on the

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<sup>109</sup> [2009] AIRCFB 641 PR262009 at Attachment B.

<sup>110</sup> [AN140313](#).

<sup>111</sup> [AP808971](#).

<sup>112</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/82 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 October 2009) [PN1211]–[PN1288]; Liquor, Hospitality and Miscellaneous Union, Submission in *Award modernisation*, AM2008/82, 15 October 2009; Royal Society for the Prevention of Cruelty to Animals Australia, Submission in *Award modernisation*, AM2008/82, 16 October 2009; Association of Professional Engineers, Scientists and Managers Australia, 'Exposure draft', Submission in *Award modernisation*, AM2008/82, 16 October 2009; Australian Federation of Employers and Industries, Amended submission in *Award modernisation*, AM2008/82, 16 October 2009.

<sup>113</sup> [2009] AIRCFB 945 PR122009 at [11]–[14].



Veterinary surgeon minimum rates. It is not clear where the classification structure for this stream originated.

[74] The Animal Care Award was published on 4 December 2009 and came into operation on 1 January 2010.<sup>114</sup> The current classification structure and minimum wage rates in the Animal Care Award are as follows:

<b>Animal care industry inspectors</b>		
<b>Classification</b>	<b>Minimum annual Salary \$</b>	<b>Minimum hourly rate \$</b>
Inspector Level 1	60,082	30.41
Inspector Level 2	63,388	32.08
Senior Inspector Level 3	68,484	34.66

<b>Practice managers, Veterinary nurses, Receptionists, Animal attendants and Assistants</b>				
<b>Classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>	<b>AQF level</b>	<b>Metals framework C10 equivalent weekly</b>
	<b>\$</b>	<b>\$</b>		<b>\$(relativity to C10)</b>
Introductory level	859.30	22.61		
Level 1	882.80	23.23		
Level 2	954.00	25.11		
Level 3	995.00	26.18	3	995 (100%)
Level 4	1085.60	28.57	4	1085.60
Level 5—Practice manager	1140.70	30.02		

<b>Veterinary surgeons</b>				
<b>Classification</b>	<b>Minimum weekly salary</b>	<b>Minimum hourly rate</b>	<b>AQF level</b>	<b>Teacher's benchmark weekly rate</b>
	<b>\$</b>	<b>\$</b>		<b>\$(relativity)</b>
Level 1A	60,082	30.41	7	1470.80 (78.56%)

<sup>114</sup> *Animal Care and Veterinary Services Award 2010 (MA000118) [PR991085]*.



Veterinary surgeons				
Classification	Minimum weekly salary	Minimum hourly rate	AQF level	Teacher's benchmark weekly rate
	\$	\$		\$ (relativity)
Level 1B	63,388	32.08	7	
Level 2	68,484	34.66	7	
Level 3	75,237	38.08	7	
Level 4	84,985	43.01	7	

[75] The occupation of veterinary nursing was identified in the Stage 1 report as being highly feminised, with women making up 96.4 per cent of veterinary nurses in the veterinary services industry.<sup>115</sup>

[76] The Stage 1 report noted distinct characteristics of veterinary nursing, including:

- Earnings of veterinary nurses were low relative to the wider workforce, on average \$1053.20 per week with 48.9% earning under \$1000.<sup>116</sup>
- Part-time work was high, with veterinary nurses working on average 29.8 paid hours per week.<sup>117</sup>
- Expectations of growth for veterinary nursing are high, with a projection of growth by 15.4% from 2021 to 2026 and there are existing national skill shortages.<sup>118</sup>
- Certificate IV in Veterinary Nursing has long been accepted as the main qualification for veterinary support staff, however the emerging para-profession of Veterinary Technicians, which requires a Bachelor degree is growing. Veterinary technicians fill a gap between vocational veterinary nursing and veterinary medicine, although job tasks of veterinary technicians and nurses may overlap.<sup>119</sup>

<sup>115</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 50.

<sup>116</sup> Ibid 52.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid 75.

<sup>119</sup> Ibid 76.



- Veterinary nurses have been identified as subject to psychosocial pressures and at high risk of occupational stress and burnout.<sup>120</sup>

### 3.2.2 Pre-modernisation

#### *Veterinary Surgery, Clinic and Practice Employees Award – State and Veterinary Practice Employees’ Award – State*

- [77] The *Veterinary Surgery, Clinic and Practice Employees Award – State* (the 1980 Queensland Award) was a new award which took effect from 13 October 1980. It applied to all employees of Veterinary Clinics and/or surgeries and/or practices, who were engaged partly or wholly in animal husbandry and/or animal health and/or animal welfare and/or artificial insemination of stock. It excluded employees of the State Government, Professionals and Veterinary Students.
- [78] On 24 October 2002, the 1980 Queensland Award was repealed and a new award, the *Veterinary Practice Employees’ Award – State* (Queensland NAPSA) commenced on 1 January 2003.<sup>121</sup>
- [79] The simple classification in the 1980 Queensland Award which included ‘Veterinary Assistant unqualified’ (including junior rates) and ‘All Certificated Assistant’, was replaced with a 5-level structure in the Queensland NAPSA with an introductory rate through to a Level 4 rate.
- [80] Appendix 1 of the Queensland NAPSA included a classification structure and definitions which described the relative skills, responsibilities and conditions under which employees at each level would work. The following relativities were set:

Level 1	(82%)
Level 2	(87%)
Level 3	(92%)
Level 4	(100%)

- [81] The wages and classification structure for practice managers, veterinary nurses, assistants, reception staff and attendants in the Animal Care Award were based on the Queensland NAPSA.

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<sup>120</sup> Ibid 77.

<sup>121</sup> The former Queensland State Award (V0060) became a NAPSA on 27 March 2006 (AN140313).





### ***Veterinary Surgeons—Interim Award 1998 and Veterinary Surgeons Award 2001***

- [82] The wages and classification structure for veterinary surgeons in the Animal Care Award were based on the classifications and rates for veterinary surgeons set out in the federal *Veterinary Surgeons Award 2001*.<sup>122</sup>
- [83] There was no federal award regulating veterinary surgeons prior to 1998. In 1996, a formal finding of dispute between APESMA and a number of veterinary practices was made by the Commission. Negotiations between the parties began after an appeal of the dispute finding, on behalf of the veterinary practices, in relation to eligibility, was dismissed. The result of negotiations was the consent award, *Veterinary Surgeons Interim Award 1998*.<sup>123</sup>
- [84] The basis of wage fixation in the interim award was set out in the transcript of the hearing on 26 May 1998. The rates contained in the interim award were derived from the *Professional Scientists Award 1981* because of the education and skill levels and work of veterinarians, both as scientists and as professionals. The four-level structure in the Professional Scientists Award was reproduced in the interim award and structured specifically around the work of veterinarians. A sub-level 1B was added to facilitate a smooth progression from the commencement level to level 2 and to reflect the intensity of on-the-job training provided in this industry. The work level descriptors were rewritten and simplified to make them recognisable and useful for the veterinary profession; however, they still provided the same basis of progression by skill acquisition according to opportunity.<sup>124</sup>
- [85] The *Veterinary Surgeons—Interim Award 1998* award was reviewed pursuant to Item 51 of Part 2 of Schedule 5 of the WROLA Act. In the award simplification decision<sup>125</sup> the Commission stated that the review had been conducted in accordance with the principles enunciated in the Paid

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<sup>122</sup> [AP808971](#).

<sup>123</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in *Award modernisation*, AM2008/82, 24 July 2009; see also [1996] AIRC 1621 Print N4141; [1996] AIRCFB 1616 Print N7589; [2001] AIRC 698 PR906425; *Veterinary Surgeons – Interim Award 1998* (V0337) [Print Q1259].

<sup>124</sup> Transcript of proceedings, *Veterinary Surgeons – Interim Award 1998* (Australian Industrial Relations Commission, C32511/1996, McDonald C, 26 May 1998).

<sup>125</sup> [2001] AIRC 698 PR906425.



Rates Review Decision<sup>126</sup> and that it was satisfied that the rates contained in the simplified award were properly fixed minimum rates. The result of award simplification was the *Veterinary Surgeons Award 2001*, which came into effect on 11 July 2001 and was later declared common rule in the Australian Capital Territory and Victoria. In addition to applying common rule in the ACT and Victoria, the award had approximately 1,300 named respondents.<sup>127</sup> No records, transcripts or submissions have been identified setting out the reasoning for wage fixation for veterinary surgeons in the *Veterinary Surgeons Award 2001*.

### 3.2.3 Award modernisation

#### *Practice manager, Veterinary nurses, Receptionists, Animal attendants and Assistants*

[86] During the award modernisation process, the AFEI submitted a draft award which reflected agreement between the Veterinary Nurses Council of Australia (VNCA), the Australian Veterinary Association (AVA) and the AFEI.<sup>128</sup> In proceedings before the Commission, the AFEI noted that the classification and wage structure was modelled substantially on the 2002 Queensland Award (the Queensland NAPSA), with some modification.<sup>129</sup>

[87] The Australian Liquor, Hospitality and Miscellaneous Union (LHMU) submitted a draft award with rates based on the pre-reform federal *Veterinary Assistants and Animal Attendants (Victoria) Interim Award 2000*<sup>130</sup> however, parties opposed basing the modern award on the pre-reform

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<sup>126</sup> [1998] AIRC 1413 Print Q7661 ('Paid rates review decision').

<sup>127</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in *Award modernisation*, AM2008/82, 24 July 2009; *Veterinary Surgeons Award 2001* (PR906397) [AW808971]; [2001] AIRC 698 PR906425; PR910752 ('ACT common rule declaration'); PR953507 ('Victorian common rule declaration').

<sup>128</sup> Australian Veterinary Association Limited, Supplementary submission in *Award modernisation*, AM2008/82, 7 September 2009; Veterinary Nurses Council of Australia, Submission in *Award modernisation*, AM2008/82, 7 September 2009; Australian Federation of Employers and Industries, Submission in *Award modernisation*, AM2008/82, 4 September 2009.

<sup>129</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/82 Smith C, 11 August 2009) [PN88]–[PN92]; see also Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/23 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 October 2009) [PN1276]–[PN1277].

<sup>130</sup> [AP811336CRV](#); Liquor, Hospitality and Miscellaneous Union, 'Draft award', Submission in *Award modernisation*, AM2008/82, 20 August 2009.



federal award and the classification structures in that award, instead advocating for the Queensland NAPSA. The AVA submitted that the pre-reform federal award “contains a classification system that is outdated”.<sup>131</sup> The VNCA submitted that the classification structure in the Queensland NAPSA was most applicable “given its comprehensiveness, relationship to appropriate nationally recognised qualifications and the ease in classifying relevant employees’ roles”.<sup>132</sup>

- [88] After raising concerns about classifying and paying a veterinary nurse at the Certificate III level despite having a Certificate IV qualification in the September 2009 statement, the award modernisation Full Bench considered the subsequent written submissions and those made in transcript relating to the classification structure.<sup>133</sup> The award modernisation Full Bench confirmed the relativity in the December 2009 decision and the Animal Care Award:<sup>134</sup>

‘[15] In our statement of 25 September 2009 we also invited parties to comment on the correct relativity for a veterinary nurse. At the entry level veterinary nurses require a certificate IV. No justification was advanced to classify them at the certificate III level of \$637.60. We are satisfied that the correct approach is to classify them at the level above \$637.60.’

- [89] A comparison of Veterinary Practice Managers, Nurses, Receptionists and Assistants rates in the base award and the Animal Care Award published on 4 December 2009 are set out in the following table:

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<sup>131</sup> Australian Veterinary Association Limited, Supplementary submission in *Award modernisation*, AM2008/82, 7 September 2009.

<sup>132</sup> Veterinary Nurses Council of Australia, Submission in *Award modernisation*, AM2008/82, 24 July 2009.

<sup>133</sup> [2009] AIRCFB 865 PR392009 at [17]; Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/23 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 October 2009) [PN1232]–[PN1281]; Liquor, Hospitality and Miscellaneous Union, Submission in *Award modernisation*, AM2008/82, 15 October 2009; Australian Federation of Employers and Industries, Amended submission in *Award modernisation*, AM2008/82, 16 October 2009; Veterinary Nurses Council of Australia, Submission in *Award modernisation*, AM2008/82, 26 October 2009; Liquor, Hospitality and Miscellaneous Union, Supplementary submission in *Award modernisation*, AM2008/82, 28 October 2009.

<sup>134</sup> [2024] FWCFB 945 PR122009; *Animal Care and Veterinary Services Award 2010* (MA000118) [PR991085].



Classification	Veterinary Practice Employees' Award – State (Queensland) (AN140313)  (2008 AIRC W&AR increases applied) Minimum weekly rate \$	Classification	Animal Care and Veterinary Services Award 2010 – 4 December 2009 (MA000118)	
			Minimum weekly rate \$	Minimum hourly rate \$
Introductory (less than 3 months)	543.80	Introductory level	543.90	14.31
Level 1	551.06	Level 1	560.50	14.75
Level 2	576.71	Level 2	610.00	16.05
Level 3	602.36	Level 3	637.60	16.78
Level 4	643.40	Level 4	698.20	18.37
		Level 5— Practice Manager	734.90	19.34

[90] Prior to the *Veterinary Assistants and Animal Attendants (Victoria) Award 2001* being declared 'Common Rule' in 2001, there were only State-based awards providing minimum terms and conditions for people employed in veterinary nursing with little attention being given to the proper fixation of minimum wages in accordance with the Commission's principles.<sup>135</sup>

[91] There do not appear to be relevant records available setting out the reasoning for wage fixation for employees other than veterinary surgeons in the Queensland NAPSA; however, in setting out their reasons for basing the modern award on the Queensland NAPSA and not the pre-reform federal award, the VNCA made submissions at the beginning of the award modernisation proceedings which provide insight into the history of the Queensland NAPSA and explanation of wages and relativities:<sup>136</sup>

"Veterinary Practice Employees' Award – State

(e) This Award was made after extensive consultation between the Australian Veterinary Association (AVA), VNCA and the Australian Workers Union (AWU) in 2003.

<sup>135</sup> Veterinary Nurses Council of Australia, Submission in *Award modernisation*, AM2008/82, 24 July 2009; Liquor, Hospitality and Miscellaneous Union, Submission in *Award modernisation*, AM2008/82, 15 October 2009.

<sup>136</sup> Ibid.



- (f) The Award makes appropriate reference to AQF qualifications and the associated training packages determined on an Australia wide basis.
- (g) The Award's classification descriptors are comprehensive, well considered and universal in their application across the Veterinary Services industry.
- (h) The classification structure has appropriate relativities, and provides for a three month introductory level which is equivalent in value to the current 'Animal Attendant' classification in the federal Award, supporting a period of evaluation by both parties as to the suitability of the employee to the work and the industry.
- (i) Junior rates are clearly defined in the Award as applying to Level 1, and as such, are not incorporated into classifications which relate to employees undertaking training to attain the relevant AQF qualifications.
- (j) Training rates under this Award are devised by relativity i.e. 85% of the applicable qualified rate. These current arrangements may be superseded by the operation of the National Training Wage provisions that will appear as a Schedule to the Modern Award."

### ***Veterinary surgeons***

- [92] During the award modernisation process, both APESMA and AFEI submitted that the *Veterinary Surgeons Award 2001* was an appropriate basis for formulating the terms and conditions to apply to veterinary surgeons in a modern award, with APESMA noting that the award attended to the specific needs of veterinary surgeons<sup>137</sup> and AFEI noting that the award is the principal federal award and applies in all States and Territories.<sup>138</sup>
- [93] A comparison of rates for veterinary surgeons in the *Veterinary Surgeons Award 2001* (as at 1 October 2008) and Animal Care Award published on 4 December 2009 is set out in the following table:

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<sup>137</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in *Award modernisation*, AM2008/82, 24 July 2009; Association of Professional Engineers, Scientists and Managers Australia, 'Exposure draft', Submission in *Award modernisation*, AM2008/82, 16 October 2009.

<sup>138</sup> Australian Federation of Employers and Industries, Submission in *Award modernisation*, AM2008/82, 27 July 2009; Australian Federation of Employers and Industries, Amended submission in *Award modernisation*, AM2008/82, 16 October 2009.



Classification	Veterinary Surgeons Award 2001 (AP808971CAV)		Animal Care and Veterinary Services Award 2010 – 4 December 2009 (MA000118)	
	Minimum annual Salary \$	Minimum hourly rate \$	Minimum annual Salary \$	Minimum hourly rate \$
Level 1A	38,721	19.59	38,721	19.59
Level 1B	40,925	20.71	40,925	20.71
Level 2	44,324	22.43	44,324	22.43
Level 3	48,829	24.71	48,829	24.71
Level 4	55,330	28.00	55,330	28.00

### ***Animal care industry inspectors***

[94] The stream relating to animal care industry inspectors was added to the Animal Care Award as a result of the RSPCA’s submissions<sup>139</sup> made in response to the September 2009 statement and the exposure draft published on 25 September 2009.<sup>140</sup> Consideration of coverage was also given to the submissions made in proceedings before the award modernisation Full Bench.<sup>141</sup> In the December 2009 decision, the Full Bench stated:

[14] We have altered the classification descriptors to make them more generic, covering all employees of private veterinary practices and animal care establishments. We have also included an inspector classification to cover RSPCA inspectors. Because of the nature of the work of inspectors, and the authorities they hold, we have used the veterinarian’s rates to strike a relativity.’

[95] The classifications and rates for Inspectors as compared to veterinary surgeons in the Animal Care Award published on 4 December 2009 are set out in the following table:

<sup>139</sup> Royal Society for the Prevention of Cruelty to Animals Australia, Submission in *Award modernisation*, AM2008/82, 16 October 2009; see also Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/23 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 October 2009) [PN1211]–[PN1281].

<sup>140</sup> [2009] AIRCFB 865 PR392009; Exposure Draft, *Veterinary Services Award 2010* (September 2009).

<sup>141</sup> Royal Society for the Prevention of Cruelty to Animals Australia, Submission in *Award modernisation*, AM2008/82, 16 October 2009; see also Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/23 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 October 2009) [PN1211]–[PN1281].



Classification	Veterinary Surgeons		Classification	Animal Care Industry Inspectors	
	Minimum annual Salary \$	Minimum hourly rate \$		Minimum annual Salary \$	Minimum hourly rate \$
Level 1A	38,721	19.59	Inspector Level 1	38,721	19.59
Level 1B	40,925	20.71	Inspector Level 3	40,925	20.71
Level 2	44,324	22.43	Senior Inspector Level 3	44,324	22.43
Level 3	48,829	24.71			
Level 4	55,330	28.00			

[96] There do not appear to be relevant records available setting out the history for wage fixation for inspectors in pre-reform awards or NAPSAs. In their submission regarding coverage, the RSPCA noted that staff, including inspectors, were employed by member Societies (State bodies) which traditionally had their own agreements and/or awards to work within, including NAPSAs and federal awards.<sup>142</sup> Only one award mentioned by the award modernisation Full Bench at Attachment B of their initiating statement issued on 29 June 2009 contains a classification detailing duties of an inspector, that being the *Animal Welfare Industry Award*.<sup>143</sup>

## 4 yearly review of modern awards

[97] During the 4 yearly review of the Animal Care Award<sup>144</sup> the Australian Veterinary Association (AVA) proposed a “review of minimum wages relating to veterinary surgeons to reflect appropriate relativities between different classifications within the Animal Care Award”.<sup>145</sup> In a

<sup>142</sup> Royal Society for the Prevention of Cruelty to Animals Australia, Submission in *Award modernisation*, AM2008/82, 16 October 2009.

<sup>143</sup> [AN160012](#).

<sup>144</sup> See, e.g., AM2014/199.

<sup>145</sup> Australian Veterinary Association Limited, ‘Outline of issues’, Submission in *4 yearly review of modern awards*, AM2014/199, 25 November 2014.





submission dated 28 January 2015, the AVA provided results of a member survey relating and submitted in support of a review of wages:

‘There are some anomalies in the current award in that there are no penalty rates or shift allowances for veterinarians within the award, while there are for those other than veterinary surgeons. If these penalties are not applied to veterinary surgeons then there needs to be a greater difference in the minimum wages between the veterinary surgeons and those covered under 14.2 (Practice managers, veterinary nurses, receptionists, animal attendants and assistants) to allow appropriate relativities between their total remuneration based on their qualifications and responsibilities in the workplace.

For example, a fairly typical working roster in a veterinary hospital has both veterinarians and veterinary nurses working 1 weekend in 3 with 2 days rostered off during the week following working the weekend. If we compare the remuneration for a newly AQF4 qualified veterinary nurse (Level 4 veterinary nurse in this award) with a new veterinary graduate with a AQF7 qualification (Level 1A veterinary surgeon under this award) the veterinary nurse will be paid more than the veterinary surgeon by about \$1000 a year.

To obtain a veterinary science degree requires 5 to 7 years of study depending on the university you attend. If we look at the Professional Employees Award for an new graduate with a 4 to 5 year scientific degree the minimum wage at a Level 1 Pay Point 1:2 (4 to 5 year degree) is \$45,696 which is above a Level 1A veterinary surgeon.

Another indicator that the minimum wages for veterinary surgeons needs reviewing is the change over the recent years in their remuneration levels compared with other professionals with comparable degrees. When looking at information contained on the Graduate Careers Australia site that ranks starting salary across graduate degrees, veterinary graduates starting salaries rank has fallen significantly since the introduction of the award covering veterinary surgeons in 2001. Veterinarians were ranked 9th highest in 2001 while in 2013 they have fallen to 20<sup>th</sup>.<sup>146</sup>

[98] In a further submission dated 15 July 2015, the AVA stated in relation to their proposal:

‘The AVA understands that for the FWC to consider a variation of modern award minimum wages during the 4 yearly modern award review a work value case would need to be put forward and justified. While the AVA believes that the minimum wages for veterinary surgeons should be reviewed and has given the reasons why we support this in our first submission, as a non-industrial professional body that represents

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<sup>146</sup> Australian Veterinary Association Limited, ‘Exposure draft: Animal Care and Veterinary Services Award 2014’, Submission in 4 yearly review of modern awards, AM2014/199, 28 January 2015.





both employees and employers we are not in the position to undertake this work. The union that represents veterinarians, APESMA has indicated that it will not be undertaking this work at this time.<sup>147</sup>

[99] In proceedings before the 4 yearly review Full Bench, the AVA confirmed that they would not be pursuing a wages adjustment on the basis of work value, because they would not be able to put a work value case together.<sup>148</sup>

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<sup>147</sup> Australian Veterinary Association Limited, 'Response to exposure draft', Submission in *4 yearly review of modern awards*, AM2014/199, 15 July 2015.

<sup>148</sup> Transcript of proceedings, *4 yearly review of modern awards* (Fair Work Commission, AM2014/199, Ross J, Hatcher VP, Hamberger SDP, Bull DP and Roe C, 7 October 2015) [PN57].



### 3.3 Children’s Services Award 2010

#### 3.3.1 Introduction

[100] The *Children’s Services Award 2010* (Children’s Award) is an industry award expressed to cover preschool and childcare services, excluding those provided by a school or university-qualified Early Childhood Teachers (who fall within the Teachers Award). Coverage includes employers and their employees in the early childhood education industry, excluding employers whose primary functions are covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*, *Local Government Industry Award 2020*, *Higher Education Industry – General Staff – Award 2020* or *Educational Services (Schools) General Staff Award 2020*.<sup>149</sup>

[101] The current wage and classification structure in the award is as follows:

Classification	Level	Min. weekly rate (\$)	Min. hourly rate (\$)	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)
<b>Support Worker</b>					
on commencement	1.1	878.00	23.11		
on commencement	2.1	909.90	23.94		
after 1 year in the industry	2.2	939.80	24.73		
on commencement	3.1	995.00	26.18	3	995 (100%)
<b>Children’s Services Employee</b>					
on commencement	1.1	878.00	23.11		
on commencement	2.1	909.90	23.94	2	
after 1 year in the industry	2.2	939.80	24.73	2	
on commencement	3A.1*	979.70	25.78		

<sup>149</sup> *Children’s Services Award 2010* (MA000120) clause 4.



Classification	Level	Min. weekly rate (\$)	Min. hourly rate (\$)	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)
after 1 year in the industry	3A.2*	995.00	26.18		
on commencement	3.1	995.00	26.18	3	995 (100%)
after 1 year in the industry	3.2	1029.30	27.09	3	
after 2 years in the industry	3.3	1061.70	27.94	3	
Diploma-qualified	3.4	1120.40	27.94	3	
on commencement	4A.1	1061.70	27.94		
after 1 year in the industry	4A.2	1076.50	28.33		
after 2 years in the industry	4A.3	1091.20	28.72		
after 3 years in the industry	4A.4	1106.50	29.12		
after 4 years in the industry	4A.5	1172.00	30.84		
on commencement	4.1	1172.00	30.84	4	1085.60
after 1 year in the industry	4.2	1190.00	31.32	4	1085.60
after 2 years in the industry	4.3	1207.70	31.78	4	1085.60
on commencement	5A.1	1225.60	32.25		
after 1 year in the industry	5A.2	1243.40	32.72		
after 2 years in the industry	5A.3	1261.00	33.18		
on commencement	5.1	1225.60	32.25	5	1164.10
after 1 year in the industry	5.2	1243.40	32.72	5	1164.10
after 2 years in the industry	5.3	1261.00	33.18	5	1164.10



Classification	Level	Min. weekly rate (\$)	Min. hourly rate (\$)	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)
Advanced Diploma-qualified**	5.4**	1265.50	33.30	5	1164.10
on commencement	6A.1	1413.30	37.19		
after 1 year in the industry	6A.2	1430.90	37.66		
after 2 years in the industry	6A.3	1448.50	38.12		
<b>Children's Services Employee - Director</b>					
on commencement	6.1	1413.30	37.19	5	1164.10
after 1 year in the industry	6.2	1430.90	37.66	5	1164.10
after 2 years in the industry	6.3	1448.50	38.12	5	1164.10
on commencement	6.4	1502.60	39.54	5	1164.10
after 1 year in the industry	6.5	1516.30	39.90	5	1164.10
after 2 years in the industry	6.6	1534.50	40.38	5	1164.10
on commencement	6.7	1552.80	40.86	5	1164.10
after 1 year in the industry	6.8	1570.50	41.33	5	1164.10
after 2 years in the industry	6.9	1588.20	41.79	5	1164.10
* Former Western Australian 'E' worker classification.					
** An Assistant Director who holds an Advanced Diploma (AQF 6/3 year qualified) must be paid no less than Level 5.4					



- [102] The Children’s Award was made on 4 December 2009.<sup>150</sup> It came into operation on 1 January 2010.
- [103] The Stage 1 report highlights that the Childrens Award covers the highly feminised occupation of Child Carers. Preschool Education remains highly gender segregated, with women comprising 97.2 per cent of Child Care workers.<sup>151</sup>
- [104] The Stage 1 report noted some distinct characteristics of child carers working in Pharmaceutical, Cosmetic and Toiletry Goods Retailing. These characteristics include:
- [105] The median hourly pay rates for Child Carers are low at \$28.50 per hour, compared to the median ‘all employees’ rate of \$35.70. In contrast, Primary School Teachers and Early Childhood Teachers were found to have much higher hourly rates (\$55 per hour and \$48 per hour, respectively).<sup>152</sup>
- [106] While predominantly government funded, 98.7 per cent of child carers and 94.6 per cent of Early Childhood Teachers are employed in the private sector.<sup>153</sup>
- [107] Education Aides, Child Carers and employees in out-of-school-hours care, vacation care and day care were found to be much less likely to hold a Bachelor’s degree (or higher) than teachers.<sup>154</sup>
- [108] Early childhood education is shared between the Teachers Award and Children’s Award. This mirrors a professional distinction between teachers and other educators, largely occurring as a result of historical differences in qualifications, responsibilities and duties when these awards were initially developed.

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<sup>150</sup> [2009] AIRCFB 945 PR122009; PR991088.

<sup>151</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Final report, UNSW Social Policy Research Centre, 6 November 2023) 45.

<sup>152</sup> Ibid 48, 103.

<sup>153</sup> Ibid 46. See also Kelvin Yuen and Josh Tomlinson, ‘A profile of employee characteristics across modern awards’ (Research report, No 1/2023, Fair Work Commission, 3 March 2023): Analysis of Employee Earnings and Hours (EEH) data, published by the Commission in March 2023, suggests very few workers in the industry are reliant on the Children’s Award; at 50.

<sup>154</sup> Ibid 100, 66.



### 3.3.2 Pre-modernisation

[109] As with other educational settings, preschool and childcare have traditionally been regulated by State industrial systems with various awards in operation prior to award modernisation. Consideration of work value in childcare specifically can be traced to a Commission decision of 14 September 1990; the *Child Care Anomalies decision*.<sup>155</sup> With few alterations, the classification structure and wage relativities established through this decision persisted in pre-modern awards until the 2005 ACT *Child Care decision*.<sup>156</sup> Revised classifications and rates established in this case were subsequently carried over into the modern award. Classifications and relativities can therefore be traced (primarily) to those in the *Children's Services (Australian Capital Territory) Award 2005* and *Child Care (Long Day Care) WA Award 2005*, as varied through the 2005 work value decision.

#### The Child Care Anomalies decision 1990

[110] The childcare industry was considered in an Anomalies Conference of 31 August 1988, with outstanding issues referred to Commissioner Laing for inquiry. The Commissioner reported back on 11 July 1990, after which a Full Bench was constituted. On 14 September 1990, this Full Bench issued its decision with respect to the *Child Care Industry (Australian Capital Territory) Award 1985* and *Child Care Industry (Northern Territory) Award 1986*.<sup>157</sup>

[111] The Full Bench observed:

'Little comment on [childcare] wage levels is necessary. It is enough to say that members of this industry's workforce, from whom the community expects so much, have been disadvantaged. They form part of that class of lower paid workers whose position was recognised by the decision in the National Wage Case March 1987 and who qualify for special attention according to the principle providing adjustment of minimum rates which was published by the Full Bench in the National Wage Case August 1989. The awards fall into the category to which the national wage Full Bench referred when it stated "there is no

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<sup>155</sup> [1990] AIRCFB 996.

<sup>156</sup> [2005] AIRC 28.

<sup>157</sup> [1990] AIRCFB 996 Print J4316 at 1.



doubt that the current award wage system contains irregularities in rates of pay which must be dealt with.”

A further indication of the unsatisfactory state of the awards may be seen in the fact that rates of pay were never varied to give effect to the adjustment of 4% which was available under the principles published by the Full Bench in the National Wage Case March 1987, although the first increase of 3% as a structural efficiency increase was approved on 22 December 1989. The latter adjustment followed the conclusion by the Full Bench that it was dealing with a special matter within the meaning of the decision in the National Wage Case August 1989.<sup>158</sup>

(citations omitted)

[112] The Full Bench was further satisfied as to the following evidence:

- award rates had not been adequately established;
- workers performing similar work were being paid different rates;
- significant changes had occurred in the childcare industry, including training of childcare workers, with commensurate increase in skills, responsibilities and expectations; and
- awards required restructuring to provide better training and career pathways.<sup>159</sup>

[113] While reaffirming the *1989 National Wage Case* minimum rates adjustment (MRA) process, the Bench outlined how the Metal Industry Award relativity should be interpreted for the industry:

‘It is apparent that the decision in the National Wage Case August 1989 did not require that direct comparisons of skill, responsibility and work conditions had to be found before relativities could be approved; if this as required, very few categories of worker in awards other than the trades awards would qualify. In order to conform with the National Wage Case guidelines, the parties adopted as a basis for comparison the training experience which the two classifications of worker must undertake. It has been shown that both must have work experience to complement their academic studies and both are taught a range of skills which must be applied in circumstances calling for the exercise of responsibility. The evidence showed also that the student in child care studies will have had approximately twice the number of hours of academic training as will the student pursuing the trade certificate course in the metal and engineering industry. Finally, we note that two year courses in child care studies are rated in the Register of Australian Tertiary Education at levels higher than the levels for which certificate trade courses are

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<sup>158</sup> Ibid at 2–4.

<sup>159</sup> Ibid at 4–5.



accredited. We consider that the process followed by the parties is an acceptable means of carrying out the exercise required to set appropriate minimum classification rates and supplementary payments; it is to be noted that this exercise was carried out as an integrated process with the exercise in structural efficiency.<sup>160</sup>

[114] The base rate for a Child Care Worker Level 3, appropriate for a worker with minimum education requirements, was established at \$400.00 per week.<sup>161</sup> The Commission's determination accounted for the 4 per cent minimum rates adjustment, as provided for by the Full Bench in their decision of 22 December 1987, and the second 3 per cent structural efficiency increase.<sup>162</sup> Other rates were established as per the following classification structure:

Classification	Weekly rate \$			
	% base rate	Commt.	>1 year	>2 years
Child care worker (Level 1)	80	324.50	334.50	344.50
Child care worker (Level 2)	85	346.00	356.00	366.00
Child care worker (Level 3)	98	400.00	407.00	417.00
Child care worker (Level 4)	110	447.00	457.00	467.00
Child care worker (Level 5)	117	477.00	-	-
Director (Level 1)	145	590.00	600.00	610.00
Director (Level 2)	157	640.00	650.00	660.00
Director (Level 3)	165	670.00	680.00	690.00
Child care support worker (Level 1)	80	324.50	334.50	344.50
Child care support worker (Level 2)	85	346.00	356.00	366.00

## The Early Childhood Teachers Award 2004

[115] The Commission made the *Victorian Independent Schools – Early Childhood Teachers – Award 2004* (ECT Award) by consent following an application by the IEU on 18 June 2004. In making the award, Senior Deputy President Watson observed that early childhood teachers engaged in

<sup>160</sup> Ibid at 9–10.

<sup>161</sup> Ibid at 11.

<sup>162</sup> Ibid at 13.





independent preschools were then award free (excluding primary school teachers employed under the *Independent Teachers Award 1998*).<sup>163</sup>

[116] In his decision, Senior Deputy President Watson observed the following:

'I am satisfied that the minimum wages prescribed in Part 4 of the proposed award are properly fixed minimum wages having regard to relevant minimum wage rates in other awards. The rates are based on and reflect those fixed in the *Victorian Independent Schools – Teachers – Award 1998* in respect of similarly qualified employees performing teaching duties in the schools. There is nothing to suggest that the early childhood context would warrant different rates. Accordingly, the wage relativities are properly based on skill, responsibility and the conditions under which the work is performed. Further, the minimum rates proposed fall within the range of rates for classifications for similarly qualified employees in the *Metal, Engineering and Associated Industries Award, 1998 Part I*.'<sup>164</sup>

(underlining added)

[117] The decision identified clear relativities between the subject awards. Evidence provided in the hearing, for instance, outlined annual salary rates for Levels 1 and 9 at \$36,838 and \$50,301, respectively. In contrast, annual salary rates for Independent Teachers Award Levels 3 and 12 were \$36,757 and \$50,049. Senior Deputy President Watson further noted alignment with the C1(a) and C1(b) rates in the Metal Industry Award.<sup>165</sup> The Senior Deputy President was also satisfied that incremental progression was consistent with work value and other requirements, including those established through the 1998 Paid Rates Review decision.<sup>166</sup>

[118] In 2021, a Full Bench observed that it appears incorrect that minimum rates established under the ECT Award 'fall within the range of rates for classifications for similarly qualified employees'. This subsequent Full Bench decision stated: 'It cannot be said therefore that the ECT Award rates were properly fixed as minimum rates of pay in accordance with the principles stated in the 2005 *ACT Child Care decision*.'<sup>167</sup>

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<sup>163</sup> [2004] AIRC 599 PR948154 at [2].

<sup>164</sup> Ibid at [6].

<sup>165</sup> [2004] AIRC 599 PR948154 at [6].

<sup>166</sup> Ibid at [7].

<sup>167</sup> [2021] FWCFB 2051 at [555].



## The ACT Child Care Decision

[119] On 13 January 2005, a Commission Full Bench engaged in a comprehensive consideration of the work of early childhood education and care workers covered by the *Child Care Industry (Australian Capital Territory) Award 1998* and *Children's Services (Victoria) Award 1998*.<sup>168</sup> The case followed separate applications from the LHMU, joined by consent on 4 December 2003, which sought to establish a new classification structure, rates of pay and allowances in the awards. Assessment was made pursuant to the then-applicable Work Value Changes Principle, which required identification of any changes that had occurred since a datum point of 1990.<sup>169</sup>

[120] In assessing work value, the Full Bench was required to consider whether there had been a significant net addition to the nature of the work since this datum point in order to justify changes in classifications or rates. The Full Bench did determine that, since the previous work value assessment, there had been significant changes to the content and structure of childcare.<sup>170</sup> Changes had also been accompanied by new accreditation, education and training requirements:

'[365] We have reached two broad conclusions in respect of the claims before us. The first relates to work value change. In this regard the time from which work value changes should be measured is the date of operation of the 1990 Full Bench decision. This decision directly effected the classification structure in the ACT Award and was clearly instrumental in the determination of the classification structure in the Victorian Award.

[366] We are satisfied that the changes in the nature of the work [...] constitute a significant net addition to work requirements within the meaning of the work value principle.<sup>171</sup>

(underlining added)

[121] Under the work value changes principle, the proper fixation of rates was also determined based on alignments with classifications requiring equivalent qualifications in the *Metal, Engineering and Associated Industries Award, 1998 - Part I*.<sup>172</sup> The Full Bench, in this instance, aligned the AQF

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<sup>168</sup> [2005] AIRCFB 28 PR954938

<sup>169</sup> See, e.g. [2024] FWCFB 150 at [90], [83].

<sup>170</sup> [2005] AIRCFB 28 PR954938; see also [2021] FWCFB 2051 at [340].

<sup>171</sup> [2005] AIRCFB 28 PR954938 at [365]–[366].

<sup>172</sup> See [2024] FWCFB 150 at [83], [90].



Diploma level with the Metal Industry Award C5 rate and Certificate III level with the C10 rate.<sup>173</sup>

As summarised by the Full Bench:

[182] We have considered all of the evidence and submissions in respect of this issue. In our view the rate at the AQF Diploma level in the *ACT* and *Victorian Awards* should be linked to the C5 level in the *Metal Industry Award*. It is also appropriate that there be a nexus between the CCW level 3 on commencement classification in the *ACT Award* (and the Certificate III level in the *Victorian Award*) and the C10 level in the *Metal Industry Award*.

[183] In reaching this conclusion we have considered – as contended by the Employers – the conditions under which work is performed. But contrary to the Employers' submissions this consideration does not lead us to conclude that child care workers with qualifications at the same AQF level as workers under the *Metal Industry Award* should be paid less. If anything the nature of the work performed by child care workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their *Metal Industry Award* counterparts.<sup>174</sup>

(underlining added)

[122] The Full Bench also said:

[367] The second broad conclusion concerns the proper fixation of rates for the key classification levels in the child care awards. In our view the rate at the AQF Diploma level should be linked to the C5 level in the *Metal Industry Award*. Further, it is appropriate that there be a nexus between the CCW level 3 on commencement classification in the *ACT Award* (and the certificate III level in the *Victorian Award*), and the C10 level in the *Metal Industry Award*. [...]

[372] Prima facie, employees classified at the same AQF levels should receive the same minimum award rate of pay unless the conditions under which the work is performed warrant a different outcome. Contrary to the employer's submissions the conditions under which the work of child care workers is performed do not warrant a lower rate of pay than that received by employees at the same AQF level in other awards. Indeed if anything the opposite is the case. Child care work is demanding, stressful and intrinsically important to the public interest.<sup>175</sup>

(underlining added)

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<sup>173</sup> [2005] AIRCFB 28 PR954938 at [142]–[172].

<sup>174</sup> Ibid at [182]–[183].

<sup>175</sup> Ibid at [367]–[372].



[123] As observed by the Expert Panel in the *Work value case – Aged care industry* decision, the C10 Metals Framework Alignment Approach operated to inhibit the proper valuation of women’s work. Further, the Work Value Changes Principle ‘did not permit an *ab initio* assessment of the work value of early childhood education and care workers.’<sup>176</sup> The Expert Panel further observed:

‘[92] A Full Bench of this Commission observed in *Application by United Voice and the Australian Education Union* that the *ACT Child Care decision* 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.<sup>177</sup>

(underlining added)

[124] In the *ACT Child Care decision*, conciliation conferences were held on 25 January, 28 February, 1 March and 11 March 2005. A report outlining the key outcomes of conciliation was presented to the Full Bench, as constituted, on 17 March 2005 by Commissioner Simmonds.<sup>178</sup> Parties reached agreement on the title of the awards, classification titles and descriptions and wage rates.<sup>179</sup> The report to the Full Bench also set out proposed relativities in pay levels as follows:<sup>180</sup>

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<sup>176</sup> [2024] FWCFB 150 at [90]; see also [2018] FWCFB 177 at [35].

<sup>177</sup> [2024] FWCFB 160 at [92]

<sup>178</sup> [2005] AIRC 225 PR956632

<sup>179</sup> Agreement did not include proposed Level 6 as it applied to Directors and the wage rate applicable to a person holding an AQF Diploma and not working in charge of a group of children (CSE 3.5) or a Level 3 employee who has completed either 50 per cent of the AQF Certificate IV (CSE 3.4). Parties were also unable to reach consensus on the provision of a fist aid allowance, whether progression should be based on years or quantum of service, transition to the new award structure, timing and method of any wage increases, and the operative date of variation; see [2005] AIRCFB 311 PR957259 at [9], [23].

<sup>180</sup> [2005] AIRC 225 PR956632.



Pay level	Rate of pay (\$)	Relativity (%)
1.1	480.60	83.1
2.1	502.90	87.9
2.2	523.80	92.4
3.1	561.20	100 (C10)
3.2	584.46	105
3.3	605.72	110
3.4	621.80	115 (Metals)
3.5	684.40	100 (C5)
4.1	684.40	100 (C5)
4.1	696.20	102
4.2 or 4.3	707.90	104
5.1	720.30	106.1
5.2	732.10	108.1
5.3	743.80	110
5.4	746.10	100 (Metals C3)
6.1	850.70	128.6
6.2	862.45	130.6
6.3	874.22	132.6
6.4	910.10	138.7
6.5	919.50	140.3
6.6	931.30	142.3
6.7	943.60	144.4
6.8	955.40	146.4
6.9	967.20	148.4

[125] Two additional decisions were issued by the Full Bench after this report on 13 April 2005 and 10 May 2005.<sup>181</sup> These decisions finalised orders to give effect to the decisions of 13 January and 13 April, including transitional arrangements, operative dates, allowances, classification titles, descriptors and rates. Positions agreed between parties contained an entry-level rate of \$480.60 per week.<sup>182</sup> With respect to the Metal Industry Award alignment, the Full Bench stated:

[15] In respect of the Children’s Services Employee Level 3 classification the parties have agreed to an ‘on commencement’ rate of \$561.20 per week – the current *Metals* C10 rate. This is pay level 3.1. The parties have agreed on two further increments, each of five percent, pay points 3.2 and 3.3. These pay points are said to reflect the comments in the January 2005 decision at paragraph 377 that ‘the extent of

<sup>181</sup> See [2005] AIRCFB 311 PR957259; [2005] AIRCFB 409 PR957914.

<sup>182</sup> Ibid at [10].



*work value change evidenced in [the] proceedings* may warrant the 'after 1 year' rate being set at 105 percent of the base rate and the 'after 2 years' increment at 110 percent.

[16] Proposed classification 5 (which covers Assistant Directors and Coordinators) reflects the existing alignments in the *ACT Award* and the rates derived from the application of the *Clerks (Breweries) Award Decision* formula to existing Level 4 in that *Award*.<sup>183</sup>

[126] The *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) disrupted finalisation of the transitional arrangements. Because the awards were categorised differently by the Work Choices legislation, a complete alignment in rates was never achieved and a small disparity remained in relation to the Diploma level/C5 classifications.<sup>184</sup>

### 3.3.3 Award modernisation

[127] During the award modernisation process, the Children's Award was considered primarily in Stage 4 proceedings.<sup>185</sup> However, childcare was initially considered alongside other educational services awards including the *Educational Services (Teachers) Award* and *Educational Services (Schools) General Staff Award*. In a decision of 22 May 2009, the Full Bench outlined a general approach to educational services stating: 'We do not consider it appropriate to attempt to encompass all [educational services] operations in one industry-wide award and indeed none of the submissions received suggested that this was possible.'<sup>186</sup> The Bench also highlighted the following considerations concerning early childhood and preschool teachers:

'[55] The Commission received a number of submissions concerning the appropriate award coverage for preschool teachers. Some of these submissions argued that preschool and early childhood teachers should be covered by a children's services industry award and that consideration of this should be deferred to Stage 4 when consultation concerning the childcare industry will occur. On the other hand, a number of submissions argued that preschool teachers should be covered by an education industry award.

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<sup>183</sup> Ibid at [15]–[16].

<sup>184</sup> See [2018] FWCFB 177 at [17].

<sup>185</sup> [2009] AIRCFB 641 PR262009.

<sup>186</sup> [2009] AIRCFB 450 PR052009 at [54].



[56] Currently classifications for preschool teachers can be found in teachers' awards, preschool teachers' awards and in awards covering other children's services. A person with a degree in early childhood education can teach in either a dedicated preschool, a childcare centre, or in a school, including in the lower primary grades.

[57] We have decided, at this stage, to include preschool teachers working in services operated by a school in the draft *Educational Services (Teachers) Award 2010*. We will defer for further consideration, in Stage 4, the question of award coverage for preschool teachers working in preschools, kindergartens and childcare centres. Our decision to do so should not be taken as indicating that we have formed a final view in relation to award coverage for those teachers'<sup>187</sup>

(underlining added)

[128] The Liquor, Hospitality and Miscellaneous Union (LMHU) submitted an exemplar Children's Services Award on 6 March 2009 based on the following 4 awards:

- *Children's Services (Australian Capital Territory) Award 2005*;
- *Children's Services (Northern Territory) Award 2005*;
- *Children's Services (Victoria) Award 2005*;
- *New South Wales Notional Agreements Preserving State Award (NAPSA)*.

[129] The Commission published an exposure draft of the Children's Services Award on 25 September 2009 which included rates as follows:

Classification	Pay level	Min. weekly rate (\$)	Min. hourly rate (\$)
<b>Support Worker Level 1</b> on commencement	1.1	557.00	14.66
<b>Support Worker Level 2</b> on commencement	2.1	579.30	15.24
after 1 year in the industry	2.2	600.20	15.79
<b>Support Worker Level 3</b> on commencement	3.1	637.64	16.78
<b>Children's Services Employee Level 1</b> on commencement	1.1	557.00	14.66
<b>Children's Services Employee Level 2</b> on commencement	2.1	579.30	15.24
after 1 year in the industry	2.2	600.20	15.79

<sup>187</sup> Ibid at [55]–[57].



### Children's Services Employee Level 3

on commencement	3.1	637.64	16.78
after 1 year in the industry	3.2	660.44	17.38
after 2 years in the industry	3.3	682.10	17.95
Diploma-qualified	3.4	721.24	18.98

### Children's Services Employee Level 4

on commencement	4A.1	682.10	17.95
after 1 year in the industry	4A.2	691.98	18.21
after 2 years in the industry	4A.3	701.86	18.47
after 3 years in the industry	4A.4	712.12	18.74
after 4 years in the industry	4A.5	722.00	19.00
on commencement	4.1	755.82	19.89
after 1 year in the industry	4.2	767.60	20.20
after 2 years in the industry	4.3	779.38	20.51

### Children's Services Employee Level 5

on commencement	5A.1	791.54	20.83
after 1 year in the industry	5A.2	803.32	21.14
after 2 years in the industry	5A.3	815.10	21.45
on commencement	5.1	791.54	20.83
after 1 year in the industry	5.2	803.32	21.14
after 2 years in the industry	5.3	815.10	21.45
Advanced Diploma-qualified**	5.4	818.14	21.53

### Children's Services Employee Level 6

on commencement	6A.1	916.56	24.12
after 1 year in the industry	6A.2	928.34	24.43
after 2 years in the industry	6A.3	940.12	24.74

### Children's Services Employee – Director

on commencement	6.1	916.56	24.12
after 1 year in the industry	6.2	928.34	24.43
after 2 years in the industry	6.3	940.12	24.74
on commencement	6.4	976.22	25.69
after 1 year in the industry	6.5	985.34	25.93
after 2 years in the industry	6.6	997.50	26.25
on commencement	6.7	1009.66	26.57
after 1 year in the industry	6.8	1021.44	26.88
after 2 years in the industry	6.9	1033.22	27.19

\*\*An Assistant Director who holds an Advanced Diploma (AQF 6/3 year qualified) must be paid no less than Pay Level 5.4. Where an employee is appointed to act as the Director of a Centre or Supervising Officer, they will be paid for the entire period at the applicable rate.





[130] The Bench elaborated on proposed award coverage in an accompanying statement:

[93] We publish a draft *Children’s Services Award 2010*. The classification structures for childcare employees have, in recent times, been the subject of work value assessments by the Commission and this is reflected in the exposure draft. The structure includes family day care coordinators. We recognised that these classifications may also be included in the exposure draft for the *Social, Community, Home Care and Disability Services Industry Award 2010*. Award coverage will depend on the industry of the employer.

[94] We have not included family day care works in the draft award. The only award currently covering these workers is confined in its operation to the Australian Capital Territory.<sup>188</sup>

(underlining added)

[131] The Children’s Award was made on 4 December 2009. Final rates and classifications were almost identical to those published in the initial exposure draft, with the addition of two classifications for Children’s Services Employees Level 3A.1 and 3A.2.<sup>189</sup> These were added to correct an error, as stated in a decision of 4 December 2009:

[69] Following submissions and consultations on the exposure draft changes have been made to [the Children’s] award to reflect the consensus of the major parties on span of hours, minimum shift lengths, overtime for part-time employees and junior rates. We have also rectified an error in the classification structure concerning the level for employees classified as ‘E’ workers under the Western Australian transitional award-based instrument and limited the application of non-contact time to employees with programming responsibilities. There are also some minor changes to allowances.

[70] We have taken into account the views of the parties with respect to the transitional provisions. This has resulted in some modification of the model clause. We have also taken into account the position of non-teaching staff in pre-schools who currently work according to the same provisions, with respect to

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<sup>188</sup> [2009] AIRCFB 865 PR392009; see also *Family Day Care (Australian Capital Territory) Award 1999* (AP781398) [Print R3178].

<sup>189</sup> [2009] AIRCFB 945 PR122009; PR991088.



school vacations, as teachers. The exposure draft has been altered in some other respects to make the conditions of teachers and children’s services employees in the same workplace more consistent.<sup>190</sup>

(underlining added)

[132] The minimum rates for Children’s Services Employees Level 3A.1 and 3A.2 were set at \$627.38 and \$637.64 per week respectively and were drawn from the *Child Care (Long Day Care) WA Award 2005*.<sup>191</sup> Level 3A.2 was set at the same substantive rate as Level 3.1. ‘E’ classifications can be traced to an order of 6 March 2006, in which Commissioner Smith varied the award following an application by the LHMU which sought to reflect the findings of the Full Bench in the ACT Child Care decision.<sup>192</sup>

[133] When the modern award was developed, classifications and rates were largely taken from the awards considered in the 2005 ACT *Child Care decision*. Consequently, relativity with the C10 and C5 rates established through this decision was maintained in the modern award. As observed by a Full Bench of the Commission in the Equal Remuneration and Work Value Case, rates in the Children’s Services Award remained aligned with the C10 and C5 rates as follows.<sup>193</sup>

Classification	Minimum weekly rate \$	Minimum hourly rate \$
<u>Children’s Services Award</u>		
Level 3.1	809.10	21.29
Level 4.1	953.00	25.08
<u>Metal Industry Award</u>		
C10	809.10	21.29
C5	946.50	24.91

## Equal Remuneration and Work Value Case 2013–21

[134] On 15 July 2013, United Voice and the Australian Education Union (AEU) lodged applications for an equal remuneration order for employees performing work in long day care centres and/or

<sup>190</sup> Ibid at [69]–[70].

<sup>191</sup> *Child Care (Long Day Care) WA Award 2005* (AP846963) [PR969192] at Schedule A.

<sup>192</sup> Ibid; see also PR968525; PR967855.

<sup>193</sup> [2018] FWCFB 177 at [17]–[19].



preschools, pursuant to s 302 of the FW Act.<sup>194</sup> Further applications were filed on 23 September 2013, 27 November 2013 and 3 September 2015.

[135] An additional application was made by the Independent Education Union of Australia (IEU) on 28 November 2013 seeking equal remuneration for ‘early childhood teachers (including early childhood teachers appointed as directors) [...] covered by the *Educational Services (Teachers) Awards 2010*’.<sup>195</sup> After a Full Bench decision of 30 November 2015, a third and final application was lodged by the IEU on 17 August 2018.<sup>196</sup>

[136] The IEU submitted that historical wage rate gains by early childhood teachers had been eroded over time with changes to industrial regulation and legislation, including the move to a federal awards system. The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) saw minimum rates under previous State-based awards transitioned to federal Pay Scales.<sup>197</sup> The IEU outlined the following key considerations in support of its claim:

- early childhood teacher shortages were due to both increased demand resulting from industry changes and differences in remuneration between early childhood and primary teachers;
- addressing the shortage of early childhood teachers was in the public interest;
- wages for early childhood teachers were clearly below that of school teachers;
- early childhood employers with better remuneration had been motivated by a desire to improve their capacity to recruit and retain early childhood teachers;
- there were gender-based perceptions that early childhood education is of lower value and/or work that women are inherently capable of doing, itself warranting proper work value;
- increasing wages was not unaffordable in a sector experiencing growth; and

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<sup>194</sup> Application, *Equal remuneration order* (United Voice and the Australian Education Union Victorian Branch, 15 July 2013).

<sup>195</sup> Application, *Equal remuneration order* (Independent Education Union of Australia, 28 November 2013) at [2] Annexure B.

<sup>196</sup> Application, *Equal remuneration order* (Independent Education Union of Australia, 17 August 2018).

<sup>197</sup> Application, *Equal remuneration order* (Independent Education Union of Australia, 28 November 2013) [46]–[47].



- compression in teachers' salaries caused by flat-rate wage increases meant that work value acquired through years of experience in teaching had not been appropriately rewarded.<sup>198</sup>

[137] The IEU emphasised gender-based dimensions of work undervaluation in teaching. In particular, the IEU contended that undervaluation of early childhood education reflected broader perceptions that this work involved 'soft skills' or was an extension of unpaid domestic or care work (typically performed by women). Assumptions that these skills are 'natural' to women, rather than involving expertise and/or qualifications, contributed to low value recognition.<sup>199</sup>

[138] The ACTU and IEU supported the IEU's work value application. The ACTU submitted that the Teachers Award contained unfair and inadequate rates, significantly below the threshold necessary to achieve the modern awards objective.<sup>200</sup> With respect to work value changes, the ACTU and AEU both noted that there had been significant changes in the work of early childhood teachers since the mid-1990s due to increased professionalisation, work complexity and work intensity. Parties further reinforced the low cultural value of early childhood teaching and its association with gendered undervaluation of particular kinds of work.<sup>201</sup>

[139] A summary of parties' submissions in relation to identified issues was published on 16 April 2014, identifying 24 issues relevant to the equal remuneration order.<sup>202</sup> The Commission issued a decision addressing fundamental legal and conceptual issues on 30 November 2015.<sup>203</sup> In broad terms, the Full Bench established that provisions in the FW Act relating to equal remuneration required the Commission to issue these orders only in circumstances where employees subject to the order receive less remuneration than identified employees of the opposite gender who perform work of equal or comparable value.<sup>204</sup> The Bench noted that:

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<sup>198</sup> [2021] FWCFB 2051 at [233].

<sup>199</sup> Ibid at [82].

<sup>200</sup> Ibid at [534].

<sup>201</sup> Ibid at [534]–[535].

<sup>202</sup> Fair Work Commission, *Summary of submissions in relation to identified issues* (C2013/5139 and C2013/6333, 16 April 2014).

<sup>203</sup> [2015] FWCFB 8200

<sup>204</sup> Ibid at [195]–[200]; see also [2017] FWCFB 2690 at [3]–[4].



[292] Our conclusion that Part 2–7 requires a comparator group of the opposite gender does not exclude the capacity to advance a gender-based undervaluation case under the FW Act. We see no reason in principle why a claim that the minimum rates of pay in a modern award undervalue the work to which they apply for gender-related reasons could not be advanced for consideration under s.156(3) or s.157(2). Those provisions allow the variation of such minimum rates for ‘work value reasons’, which expression is defined broadly enough in s.156(4) to allow a wide-ranging consideration of any contention that, for historical reasons and/or on the application of an indicia approach, undervaluation has occurred because of gender inequity. There is no datum point requirement in that definition which would inhibit the Commission from identifying any gender issue which has historically caused any female-dominated occupation or industry currently regulated by a modern award to be undervalued. The pay equity cases which have been successfully prosecuted in the NSW and Queensland jurisdictions and to which reference has earlier been made were essentially work value cases, and the equal remuneration principles under which they were considered and determined were likewise, in substance, extensions of well-established work value principles. It seems to us that cases of this nature can readily be accommodated under s.156(3) or s.157(2). Whether or not such a case is successful will, of course, depend on the evidence and submissions in the particular proceeding.<sup>205</sup>

[140] On 6 February 2018, a Full Bench dismissed the United Voice and AEU equal remuneration application.<sup>206</sup> In dismissing the application, the Full Bench observed the following:

[55] The applicant unions accepted, consistent with paragraph [26] of the 2017 [FWCFB 2690] Decision and their correspondence to the Commission of 27 July 2017, that the logical consequence of a negative answer to the preliminary question [of a male comparator group] was that their application had to be dismissed. However, lest it be said that in light of this outcome the system for the achievement of equal remuneration established by the FW Act is ineffective, we consider it necessary to make three observations. The first is that the applicant unions elected to place all their forensic eggs in one basket by seeking to demonstrate the required equality or comparability in work value between its selected male and female comparator groups by reference only to the 2005 [ACT Child Care] Decision and the subsequent historical pay nexus without calling any evidence whatsoever. They could have taken a different course, such as relying on the 2005 Decision and the subsequent pay nexus together with contemporary evidence concerning the work of employees in the two comparator groups to demonstrate the necessary equivalency in work value. As we have earlier stated, although the 2005 Decision and the pay nexus do not alone conclusively demonstrate this, they may nonetheless have formed significant and

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<sup>205</sup> Ibid at [290]–[292].

<sup>206</sup> [2018] FWCFB 177



persuasive elements of a case of much larger evidentiary dimensions. However by deciding to eschew the need for evidence and have the matter determined, as the IEU put it, “on the papers”, the applicant unions have necessarily fallen short in attempting to satisfy the jurisdictional prerequisite for the making of an equal remuneration order.

[56] The second observation is that the applicant unions' third further amended application included a contention that the wages paid to employees in the childcare sector – which are primarily at the award level – have been subject to gender-based undervaluation. [...]

[57] We pointed out in the 2017 Decision, and do so again here, that the 2015 [FWCFB 8200] Decision expressly contemplated that a case of the nature pleaded above could be advanced under s 156(3) or s 157(2) (rather than under Pt 2-7):

“[292] Our conclusion that Part 2–7 requires a comparator group of the opposite gender does not exclude the capacity to advance a gender-based undervaluation case under the FW Act. We see no reason in principle why a claim that the minimum rates of pay in a modern award undervalue the work to which they apply for gender-related reasons could not be advanced for consideration under s.156(3) or s.157(2). Those provisions allow the variation of such minimum rates for ‘work value reasons’, which expression is defined broadly enough in s.156(4) to allow a wide-ranging consideration of any contention that, for historical reasons and/or on the application of an indicia approach, undervaluation has occurred because of gender inequity. There is no datum point requirement in that definition which would inhibit the Commission from identifying any gender issue which has historically caused any female-dominated occupation or industry currently regulated by a modern award to be undervalued. The pay equity cases which have been successfully prosecuted in the NSW and Queensland jurisdictions and to which reference has earlier been made were essentially work value cases, and the equal remuneration principles under which they were considered and determined were likewise, in substance, extensions of well-established work value principles. It seems to us that cases of this nature can readily be accommodated under s.156(3) or s.157(2). Whether or not such a case is successful will, of course, depend on the evidence and submissions in the particular proceeding.”

[58] Additionally, the contentions in the third further amended application concerning changes to the work value of employees under the *Children’s Services Award* to which we have referred earlier in this decision could equally have been advanced as a conventional work value case under s 156(3) or s 157(2).



However, for reasons which they have not explained, the applicant unions have chosen not to progress these aspects of their application in the current proceedings.<sup>207</sup>

[141] The Commission held that gender-based undervaluation, central to the grounds submitted by the IEU, was not relevant to application of s 302(5) of the FW Act. Rather, after concluding that the employees or groups of employees being compared are performing work of equal or comparable value, the Commission must be further satisfied that there is not equal remuneration.

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<sup>207</sup> Ibid at [55]–[58].



## 3.4 Educational Services (Schools) General Staff Award 2020

### 3.4.1 Introduction

[142] The *Educational Services (Schools) General Staff Award 2020* (Schools Award) is an industry award expressed to cover the school education industry, including Classroom Support Services, Curriculum/Resources Services, Preschool/Childcare Services, School Administration, School Operational Services, Instructional and other roles. The Schools Award does not cover teachers, principals or deputy principals, business managers or recognised religious teachers.

[143] The Schools Award was made on 4 September 2009.<sup>208</sup> Educational services awards were considered during Stage 3 proceedings of the award modernisation process. The classification and wage structure in the current award are as follows:

Employee classification level	Annual salary (full-time employee)	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly	Teacher's benchmark rate
	\$	\$	\$		\$ (relativity to C10)	\$ (relativity)
<b>Level 1</b>						
1.1	46,065	882.80	23.23			
1.2	47,739	914.90	24.08			
1.3	49,414	947.00	24.92			
<b>Level 2</b>						
2.1	49,780	954.00	25.11	1		
2.2	51,314	983.40	25.88	1		

<sup>208</sup> PR988936; see also [2009] AIRCFB 826 PR092009 at [59].





Employee classification level	Annual salary (full-time employee)	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly	Teacher's benchmark rate
<b>Level 3</b>						
3.1	51,950	995.60	26.20	2		
3.2	52,879	1013.40	26.67	2		
<b>Level 4</b>						
4.1	54,836	1050.90	27.66	3	995 (105.62%)	
4.2	57,586	1103.60	29.04	3		
<b>Level 5</b>						
5.1	59,459	1139.50	29.99	4	1085.60	
5.2	62,303	1194.00	31.42	4	1085.60	
<b>Level 6</b>						
6.1	64,541	1236.90	32.55	7		1470.80 (84.10%)
6.2	68,930	1321.00	34.76	7		
<b>Level 7</b>						
7.1	70,949	1359.70	35.78	7		
7.2	73,229	1403.40	36.93	7		
7.3	75,494	1446.80	38.07	7		
<b>Level 8</b>	82,215	1575.60	41.46	8		



[144] The highly feminised occupation identified in the Stage 1 report in the Schools Award is Education Aides, with women comprising approximately 88 per cent of workers in this occupation. The report notes the following other characteristics of the industry:

- Feminisation is higher in particular educational settings. For instance, the Stage 1 report highlights that in Primary Education settings, 92.9 per cent of Education Aides are female. In contrast, 82.1 per cent of Education Aides in Secondary Education are female.<sup>209</sup>
- Education Aides report a very high share of part-time work (over 67 per cent). Education Aides also reported high rates of unpaid care for people with disability, long-term illness, old age and/or children aged under 15.<sup>210</sup>
- Earnings for were also observed to be low when compared to the wider workforce; just \$31 per hour against the hourly rate of \$35.70 for all employees.<sup>211</sup>
- As with other educational services, 66.5 per cent of Education Aides in Primary Education and 61.3 per cent of Education Aides in Secondary Education are employed in the public sector.<sup>212</sup> Consequently, relatively few Education Aides are award-reliant with approximately 95.6 per cent having pay and conditions set through collective agreements.<sup>213</sup>

### 3.4.2 Pre-modernisation

[145] Classifications in the Schools Award do not appear to have a direct correlation to any pre-modern award; unlike in other industries, a principal federal award may not have been available to draw from in setting rates and classifications. As observed by the Associations of Independent Schools in a 28 March 2009 submission to the Commission Full Bench:

'31. Award regulation has developed independently in each state and territory. There has been no national co-ordination or representation at any time in history. In each state, independent school employers,

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<sup>209</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 8, 28–29.

<sup>210</sup> Ibid 46.

<sup>211</sup> Ibid 48.

<sup>212</sup> Ibid 46.

<sup>213</sup> Ibid 48.



through their representative organisations, have been directly involved with the making and varying of awards with the relevant state tribunal, or in the case of Victoria and the territories the Commission, on a state or territory specific basis. The awards have generally been made by consent following negotiation and consultation between the relevant state/territory branch of the [Independent Education Union of Australia] and the representative of the independent school employers, usually the relevant Association of Independent Schools. On occasion, arbitration has been necessary.

32. Therefore, the provisions in awards reflect applicable terms and conditions of employment in the relevant state or territory rather than having been derived from any principal award. The awards are a product of their history in different industrial jurisdictions and reflect custom and practice in the sector, although some terms and conditions are similar to those in the relevant state or territory's government schools and Catholic schools. The award-making process varies according to the state or territory. In most states and in the territories, awards operate as a safety net, with employers providing terms and conditions of employment on an above-award basis or through an enterprise agreement. The process is different in New South Wales, with negotiated awards prior to WorkChoices forming the primary instruments for determining terms and conditions of employment.<sup>214</sup>

(underlining added)

[146] A submission from the IEU regarding Stage 3 proceedings identified the following nine awards relevant to non-teaching school staff:

- *Victorian Independent Schools – Clerical/Administrative Employees – Award 2004;*
- *Victorian Independent Schools – School Assistants – Award 1998;*
- *Victorian Catholic Schools and Catholic Education Offices Award 1998;*
- *Independent Schools' Support Staff (ACT) Award 1999;*
- *Independent Schools (Northern Territory) Award 2002;*
- *School Support Staff (Independent Schools) (State) Award 2007;*
- *Independent Schools Administrative and Technical Officers Award 1993;*
- *School Assistants (Non-Government Schools) Award; and*
- *Independent Schools (Non Teaching Staff) Award.*

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<sup>214</sup> Associations of Independent Schools, Submission in *Award modernisation*, AM2008/13, 28 March 2009, [31]–[32].



[147] The 9 pre-modern awards listed above share similar classifications and rate structures, predominantly set through determinations issued in the 1990s.<sup>215</sup> For example, the *Victorian Independent Schools – School Assistants – Award 1998*, *Independent Schools Administrative and Technical Officers Award 1993*, *School Support Staff (Independent Schools) (State) Award 2004*, *Independent Schools’ Support Staff (ACT) Award 1999* and *School Assistants (Non-Government Schools) Award* shared similar pay rates and classifications. The *Victorian Independent Schools – School Assistants – Award 1998* provides an example of these pay and classification structures as follows:

	Weekly rate (\$)	Annual salary (\$)
<b>Grade 1</b>		
in first year	527.90	27544
in second year	539.30	28139
in third year	550.90	28744
in fourth year	561.80	29313
in fifth year	573.50	29924
<b>Grade 1A</b>		
in first year	588.10	30686
in second year+	598.30	31218
<b>Grade 2</b>		
in first year	598.30	31218
in second year	609.70	31813
in third year	621.10	32408
in fourth year	630.50	32408
in fifth year	641.90	33494
in sixth year+	653.30	34089
<b>Grade 3</b>		
in first year	653.30	34089
in second year	667.00	34803
in third year	680.80	35523
in fourth year	694.60	36243
in fifth year	708.30	36957
in sixth year	722.00	37672
<b>Grade 4</b>		
in first year	694.60	36243
in second year	708.30	36957
in third year	722.00	37672
in fourth year	735.80	38392
in fifth year	749.50	39107
in sixth year	763.20	39822

<sup>215</sup> See, e.g., [1994] AIRC 526 Print L2794.



[148] In general, pre-modern awards applying to non-teaching school staff provided for a three or four level classification structure with pay progression based on years worked in the industry. However, this is not the structure of the modern award.

### 3.4.3 Award modernisation

[149] The school education industry was considered during Stage 3 proceedings of the award modernisation process. Exposure drafts for the Teachers Award and Schools Award were published alongside a decision of 22 May 2009.<sup>216</sup> With respect to the proposed Schools Award, the Full Bench observed the following:

[61] Coverage of non-teaching staff in schools has been sporadic and no existing award covers all of the types of employment which may exist in a school. In developing the exposure draft we have taken into account minimum rates and classification descriptions for similar classifications in other modern awards, the need for appropriate relativities between teachers and non-teaching staff and other matters dealt with in submissions. The classification structure in the draft award contains some very detailed lists of typical duties. We are of the view that these could be rationalised and invite submissions on how this might be done.<sup>217</sup>

(underlining added)

[150] Rates and classifications in the draft award were set out as follows:<sup>218</sup>

	Weekly rate (\$)	Annual salary (\$)
<b>Level 1</b>		
1.1	560.50	29247
1.2	583.00	30421
1.3	605.00	31569
<b>Level 2</b>		
2.1	610.00	31830
2.2	630.00	32874
<b>Level 3</b>		
3.1	638.00	33300
3.2	650.00	33917

<sup>216</sup> [2009] AIRCFB 450 PR052009 at [54]-[64].

<sup>217</sup> Ibid at [60]-[61].

<sup>218</sup> Exposure Draft, *Educational Services (Schools) General Staff Award 2010* (22 May 2009).



	Weekly rate (\$)	Annual salary (\$)
<b>Level 4</b>		
4.1	675.00	35222
4.2	710.40	40201
<b>Level 5</b>		
5.1	734.00	38283
5.2	770.40	40201
<b>Level 6</b>		
6.1	799.00	41701
6.2	855.00	44597
<b>Level 7</b>		
7.1	881.00	45993
7.2	910.00	47493
7.3	939.00	48993
<b>Level 8</b>	1025.00	53493

[151] The draft award further set out ‘commencement levels’ for different occupations:

Classification	Commencement level
School operations services grade 1	Level 1.1
School administration services grade 1	Level 1.2
Classroom support services grade 1 Preschool/childcare services grade 1	Level 1.3
Classroom support services grade 2 Curriculum/resources services grade 1 Preschool/childcare services grade 2 Boarding supervision services grade 1 Wellbeing services grade 1 School administration services grade 2 School operational services grade 2	Level 2.1
Classroom support services grade 3 Curriculum/resources services grade 2 Preschool/childcare services grade 3 Boarding supervision services grade 2 School administration services grade 3 School operational services grade 3	Level 3.1



Classification	Commencement level
Curriculum/resources services grade 3 Preschool/childcare services grade 3A Boarding supervision services grade 3 Wellbeing services grade 2 School administration services grade 4 School operational services grade 4	Level 4.1
Instructional services grade 1	Level 4.2
Curriculum/resources services grade 4 Preschool/childcare services grade 4 Boarding supervision services grade 4 School administration services grade 5 School operational services grade 5 Instructional services grade 2	Level 5.1
Preschool/childcare services grade 5 Instructional services grade 3 Wellbeing services grade 3 Nursing services grade 1 School administration services grade 6 School operational services grade 6	Level 6.1
Wellbeing services grade 4 Nursing services grade 2 School administration services grade 7	Level 7.1
Preschool/childcare services grade 6 (1–39 places)	Level 7.2
Preschool/childcare services grade 6 (40–59 places)	Level 7.3
Nursing services grade 3 Preschool/childcare services grade 6 (60+ places) Wellbeing services grade 5 School administration services grade 8	Level 8

[152] Rates, classifications and commencement levels set out in the draft award were unchanged in the final award as made on 4 September 2009.<sup>219</sup> In a decision issued at the same date, the Full Bench provided no commentary on rates or classifications in the Schools Award.<sup>220</sup>

[153] It appears that the classifications, but not the rates, in the modern award have been derived in principal from a draft submitted by the Associations of Independent Schools (AIS) on

<sup>219</sup> PR988936.

<sup>220</sup> [2009] AIRCFB 826 PR092009 at [59].



28 March.<sup>221</sup> A supplementary draft was submitted on 27 April 2009 after a non-government schools' conference held on 24 March and meeting between the IEU and AIS on 1 April.<sup>222</sup> In response to claims submitted by the IEU in their draft award of 10 March 2009, the AIS observed the following:

'156. The [Independent Education Union of Australia; IEUA] has adopted the structure from the *Victorian Catholic Schools and Catholic Education Offices Award 1998* [...] for some employees and adopted the structure put forward by the Associations for three classification streams: preschool, child care and outside school hour care employees, boarding supervision services employees and school operational services employees [...]. It is difficult to understand why the Associations' proposed structure is acceptable for some employees and not for others.

157. The Victorian Catholic structure has been developed specifically for Catholic school employers in Victoria. The concerns with this structure from the Associations' perspective are as follows:

- (a) *Number of increments*: The IEUA clause includes a significant number of increments, ranging from five to eight increments, in Levels 2 to 6. It is recognised that the award will apply to classifications of employees in some states and territories whose conditions of employment have not previously been provided by awards. In some awards, there is a minimum rate of pay per classification. It is unreasonable, inappropriate and potentially costly, to impose a structure with a high number of increments, based upon service, in a modern award, particularly where such structures have not applied in the past.
- (b) *Overlapping classifications*: The classifications overlap in terms of their rates of pay. This approach lacks clarity for employers and employees.
- (c) *Typical activities*: The list of typical activities for each classification is extensive and detailed rather than being indicative. The list is indicative of a job description particular to one employer rather than a guide to classifying a position.
- (d) *Number of levels*: The IEUA structure has six levels rather than the eight levels suggested by the Associations. The Associations submit that the additional two levels will be relevant to some larger schools.

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<sup>221</sup> Associations of Independent Schools, 'Party's draft award – Independent Schools General Employees Award 2010', Submission in *Award modernisation*, AM2008/13, 27 April 2009.

<sup>222</sup> Associations of Independent Schools, Supplementary submission in *Award modernisation*, AM2008/13, 27 April 2009, [154].





(e) *Rates of pay*: The IEUA rates of pay vary from \$28,380 to \$48,933 per year. The Associations' structure proposes rates of pay from \$28,390 to \$53,440, which incorporate the two additional levels.

(f) *Potential cost increases*: The Victorian Catholic structure, if placed in a modern award for the non-teaching employees of independent schools, would result in increases due to overlapping classifications and increments. It is, in effect, a structure that suits the operations of one school system employer. It bears little relationship to a minimum rates structure and does not withstand comparisons with other awards where the work is similar. When attempting to classify positions, there is potential to classify a position at more than one level, which may result in disputes.

158. Schedule B of the IEUA draft award (10 March 2009) kept the eight levels and rates of pay proposed by the Associations but provided classifications only for six levels. There are some differences in the descriptors adopted by the IEUA.

159. The Associations' submit that their proposed classification structure is comprehensive, comparable with other relevant sectors, relatively straightforward and easier to use, particularly with the classification grid provided in Schedule A. Whilst it will require all employers in all states and territories to reclassify employees from the commencement of 2010, a minimum rates structure, with one minimum rate of pay per classification level, will be simpler for both employers and employees. The amount of time that reclassification will require will be significant without having two entirely different classification structures in the one award, with increments in one structure but not in the other.<sup>1223</sup>

[154] The revised AIS draft contained an 8-level table of classifications and rates that closely resemble the classification and structure now appearing in the modern award.

[155] In their initial submission of 28 March 2009, which included the same classification and pay structure at Annexure B, the AIS outlined their rationale as follows:

'170. The eight-level classification structure is a minimum rates structure. Levels 2, 3, 4, 5, 7 and 8 have a single pay point. Level 1 and Level 6 each have three discrete pay points which recognise the skill of particular classification streams (in relation to Level 1) and the duties of the directors of child care facilities attached to or operated by schools (in relation to Level 6). As the structure does not mirror any classification structure in current awards applying to independent schools, incremental progression within each of the eight levels based upon service has not been applied.

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<sup>223</sup> Associations of Independent Schools, Supplementary submission in *Award modernisation*, AM2008/13, 27 April 2009, [156]-[159].



171. The Associations submit that this structure will result in the positions of non-teaching employees being reclassified. It is possible that the structure's rates of pay will result in an increase in pay for some employees, due to the diversity of occupations and differences in award coverage. It is acknowledged that the cost impact of this structure will be greatest upon smaller schools located in the regional and rural areas of Australia.

172. Level 3 of the structure is regarded as the Standard Rate. It is the rate of pay for a qualified tradesperson. The rate of pay selected, which is \$642.31 per week, is slightly higher than the current rate of \$637.60 per week. The 'level of training or qualifications' dimension in Schedule A [of the draft award] explains how qualifications pertain to the eight levels of the classification structure. The structure is therefore able to be compared to the metal industry classification structure. In referring to the awards applying to the non-teaching employees employed by independent schools, the impact of the metal industry classification structure is not immediately evident.<sup>224</sup>

(underlining added)

[156] It is not certain whether rates were subject to consultation or negotiation between parties after 27 April 2009. From available materials, rates and classifications do not appear to have been contested further.

[157] The classification structure and rates in the Schools Award are substantively the same as those established during award modernisation. There is no clear history of the rates and classifications in this award having been through an assessment on work value grounds.

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<sup>224</sup> Associations of Independent Schools, Submission in *Award modernisation*, AM2008/13, 28 March 2009, [170]–[172].



## 3.5 Educational Services (Teachers) Award 2020

### 3.5.1 Introduction

[158] The *Educational Services (Teachers) Award 2020* (Teachers Award) is expressed to cover employers and their employees in the school education, children’s services and early childhood education industries. Coverage includes Preschool Teachers, Early Childhood (Pre-primary School) Teachers, Primary School Teachers and High School Teachers. University-qualified Early Childhood Teachers, tertiary education, childcare, preschool or kindergarten workers, daycare and/or out of school hours care employees are not covered by the award.<sup>225</sup>

[159] The Teachers Award was made by the Commission on 4 September 2009.<sup>226</sup> Educational services as a whole, including non-teaching staff and childcare, were considered during the award modernisation Stage 3 proceedings, with an initial exposure draft published on 22 May 2009.<sup>227</sup>

[160] Current classifications in the Teachers Award set out a 5 level structure as follows:

Classification	Criteria	Minimum FTE rates (\$)			
		Weekly (preschools and schools)	Annual salary (preschools and schools)	Weekly (long day care centres)	Annual rate (long day care centres)
Level 1	Graduate and all other teachers (as defined) including those holding provisional or conditional accreditation/registration	1293.80	67513	1345.60	70214
Level 2	Teacher with proficient accreditation/registration or equivalent	1414.20	73793	1470.80	76745
Level 3	Teacher with proficient accreditation/registration or equivalent after 3 years’ satisfactory service at Level 2	1539.60	80334	1601.10	83547

<sup>225</sup> *Educational Services (Teachers) Award 2020* (MA000077) clause 4.

<sup>226</sup> [2009] AIRCFB 826 PR092009.

<sup>227</sup> [2009] AIRCFB 450 PR052009 at [54].



Classification	Criteria	Minimum FTE rates (\$)			
		Weekly (preschools and schools)	Annual salary (preschools and schools)	Weekly (long day care centres)	Annual rate (long day care centres)
Level 4	Teacher with proficient accreditation/registration or equivalent after 3 years' satisfactory service at Level 3	1664.90	86876	1731.50	90351
Level 5	Teacher with Highly Accomplished/Lead Teacher accreditation/ registration or equivalent	1790.30	93416	1861.90	97153

- [161] Wage-related allowances provided for in the award include a director's allowance payable to early childhood or preschool teachers appointed as Director and leadership allowance for teachers in schools required to perform additional administrative, educational or pastoral care duties. The quantum of these allowances is calculated on the size of the school or centre.
- [162] The Stage 1 report identified that women make up 78.2 per cent of Preschool and School Education employees. The most highly feminised occupations in the Teachers Award are Child Carers (Preschool), Early Childhood (Pre-Primary School) Teachers, Primary School Teachers and Education Aides.<sup>228</sup> In addition to characteristics, the report identified gender-based segregation between different education subsectors and occupations.
- [163] Approximately 51.4 per cent of educational services employees have pay set by an award. However, collective agreements appear the main method of pay setting for Primary School Teachers (97.5 per cent), Education Aides (95.6 per cent) and Early Childhood Teachers (69.2 per cent).<sup>229</sup> Overall, 66 per cent of Primary School Teachers and 66.5 per cent of Education Aides in primary education are employed in the public sector.

<sup>228</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 45.

<sup>229</sup> Ibid 48.



[164] Compared to the workforce as a whole, a relatively high proportion of employees in the identified occupations from the Stage 1 report and at [158], work part-time and/or provide unpaid care.<sup>230</sup> Bachelor degree and other post-school qualifications were also found to be very common among Primary School Teachers (95 per cent) and Early Childhood (Pre-Primary School) Teachers (81 per cent). In contrast, the workforce average for holding a Bachelors' level degree or higher was 37 per cent.

### 3.5.2 Pre-modernisation

[165] As observed by a Full Bench of the Commission during the Teachers Equal Remuneration Case, federal award coverage of non-tertiary teachers is a relatively recent phenomenon.<sup>231</sup> Whether working in government, Catholic or independent schools, preschools or childcare settings, teachers have traditionally been regulated by State systems. Various federal and State awards were therefore in operation for different educational services prior to modernisation.

[166] This section examines the history of wage fixing for teachers. Historical rates of pay and classifications in the Teachers Award can be traced back to the *Teachers (Victorian Government Schools Interim) Award 1993*.<sup>232</sup> While varied at multiple points, most recently following the Teachers equal remuneration case, this award history begins at 1993.

[167] It should be observed that, alongside the development of early childhood education, the regulation of child carers under various awards changed significantly over time. While teaching and childcare cases are often interrelated, this history retains those distinctions developed during the Award Modernisation process. Accordingly, childcare decisions are predominantly canvassed above in subsection 3.3 which examines the Children's Award.

## The Victorian Teachers Case decisions 1993–95

[168] In the 1980s and early-1990s, government-school teachers in Victoria were covered by the *Teachers (Government Teaching Service) Award (Government Teaching Award)*. The Government

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<sup>230</sup> Ibid 46–47.

<sup>231</sup> [2021] FWCFB 2051 at [540].

<sup>232</sup> See, e.g., *ibid*.



Teaching Award was initially created by the Industrial Relations Commission of Victoria pursuant to the *Industrial Relations Act 1979* (Vic). Different collective agreements were also in effect. Agreements supplemented award conditions, including additional provisions for matters like staffing arrangements, class sizes, and teaching hours.

- [169] The first ‘Conditions and Staffing Agreement’ for Victorian teachers was negotiated in 1983. This agreement was successively updated. Typically, the AEU would bring forward a log of claims with respect to teachers’ salaries and conditions. Claims would be subject to arbitration and negotiation for a new agreement. This system was in effect for Victorian teachers until the agreement for 1990–93 was brought to a premature end by legislative action.<sup>233</sup>
- [170] Under the *Employee Relations Act 1992* (Vic), the Industrial Relations Commission of Victoria was effectively abolished. Awards made by this commission were deemed to expire on 1 March 1993.<sup>234</sup> Under the *Public Sector Management Act 1992* (Vic), the Victorian Government also terminated key provisions concerning teaching hours and class sizes in then-applicable collective agreements.<sup>235</sup>
- [171] Teachers formerly covered by State awards were transitioned to individual agreements, which contained the terms and conditions of the previous award unless a new award or agreement was made. The Government Teaching Award expired in accordance with this legislation. Following this, the AEU brought a dispute to the Commission.
- [172] On 15 December 1993, Senior Deputy President Riordan determined to make an *Interim Government Schools Award*.<sup>236</sup> This award largely preserved the employment terms and conditions of Victorian Government school teachers established 20 October 1993.<sup>237</sup> On appeal,

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<sup>233</sup> See, e.g., [1995] AIRC 2498 Print L8274 at 5.

<sup>234</sup> *Employee Relations Act 1992* (Vic) ss 172, 177. The Industrial Relations Commission of Victoria was superseded by the Employee Relations Commission, established under section 82 of the *Employee Relations Act 1992* (Vic). The Employee Relations Commission ceased operations on 31 December 1996 when its powers and functions were transferred to the Commonwealth in accordance with the provisions of the *Commonwealth Powers Act 1996* (Vic).

<sup>235</sup> *Public Sector Management Act (No. 68) 1992* (Vic) s 104; see also [2021] FWCFB 2051 at [540].

<sup>236</sup> [1993] AIRC 1620 Print L0454; [1993] AIRC 1636 Print L0553.

<sup>237</sup> [1993] AIRC 1636 Print L0553; see also [1993] AIRC 1620 Print L0454.



a Full Bench of the Commission varied the Interim Government Schools Award to clarify its operation by including specific provisions from the former Government Teaching Award.<sup>238</sup>

## The Teachers' Conditions decision 1995

[173] In 1993, the Commission had declined to include provisions relating to teaching hours or class sizes, instead broadly maintaining provisions in operation under collective agreements.<sup>239</sup> However, the Commission had outlined that: 'This [decision] is not to say that these matters may not, after proper inquiry, be made the subject of regulation by way of an interim or final award.'<sup>240</sup> In light of this commentary, and with active disputes around teachers' working hours and workloads, the AEU applied for a finding of an industrial dispute and new award relating to teachers' workloads. This application was revised and heard by a Full Bench. A decision was issued on 24 February 1995.<sup>241</sup>

[174] The AEU sought the following award provisions:

- maximum workloads for primary teachers (22.5 hours of rostered teaching duty per week);
- maximum workloads for secondary teachers (18 hours of rostered teaching duty per week);
- class size ratios (27:1 for years 1–6 and 25:1 for years 7–12 or other year levels);
- non-teaching 'pupil free' days for curriculum and professional development; and
- grievance processes for dealing with workload issues.<sup>242</sup>

[175] As observed by the Full Bench in their February decision:

'The application by the AEU would, if awarded, restore the regulation of, and the restriction on, teachers' workloads which previously existed in Victorian government schools as a result of agreements negotiated with the Victorian State Government in 1982 and subsequently, these agreements appear to have covered a wider range of matters than the question of the workload that a teacher may reasonably be

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<sup>238</sup> [1994] AIRC 2438 Print L2535.

<sup>239</sup> Ibid at 25.

<sup>240</sup> Ibid at 26.

<sup>241</sup> [1995] AIRC 2498 Print L8274.

<sup>242</sup> Ibid at 3–4, 16–17.



required to undertake. The latest of such agreements to be negotiated operated from 1990 to 1993 with respect to primary school teachers and from 1991 to 1993 with respect to secondary school teachers.’<sup>243</sup>

(underlining added)

[176] In evidence and submissions, the Full Bench heard that teachers were consistently expected and/or required to work long hours under pressure.<sup>244</sup> In setting reasonable workloads, the Full Bench highlighted the influence of class size, teacher-student ratios, required hours of face-to-face teaching, administrative requirements, and presence or absence of other support services.<sup>245</sup>

[177] The Full Bench gave particular attention to changing regulation and teaching within a contemporary educational context, including expectations of a ‘fair and equitable’ workload.<sup>246</sup> The Full Bench were satisfied as to the general terms of the award sought by the AEU, noting the following:

‘We have decided on a course which should provide a proper basis to ensure that teachers are treated fairly and are not improperly exploited by an overload of work being required of them.

There will be a general direction contained in the award which will specify that no teacher is to be required to perform an unreasonable or excessive workload. Where a disagreement arises with respect to a requirement that the AEU or the individual teacher might consider to be unreasonable the matter is to be resolved by the process of conciliation. We prefer to allow the AEU to be involved in the initial stage because it could have an interest on behalf of other members which may not be apparent to an individual teacher who may agree to undertake an unreasonable workload for extraneous reasons.

Should it transpire that the issue cannot be resolved by the processes of conciliation the matter may be referred by either party to a Board of Reference for determination. In order that there will be guidance available and to ensure that there is a proper measure of consistency we intend to prescribe a maximum standard number of hours per week of face-to-face teaching during the 200 working day Victorian school year which will be in accordance with the maximum which applies in the New South Wales State education system.

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<sup>243</sup> Ibid at 4.

<sup>244</sup> Ibid at 14.

<sup>245</sup> Ibid at 37.

<sup>246</sup> Ibid at 18–19, 32.





The evidence given in these proceedings leads to the conclusion that in New South Wales government schools the maximum face-to-face teaching hours for primary school teachers are set at 21 hours 45 minutes per week. The maximum hours are set at 20 hours per week for secondary school teachers unless the teachers supervise sporting activities of students on a structured basis for a period of two hours per week in which case the face-to-face teaching hours are set at 18 hours 40 minutes per week.

In setting such maximum limits on face-to-face teaching hours for Victorian teachers we have in mind that those hours are the maximum face-to-face teaching hours for work during the current 200 day school year in Victoria.<sup>247</sup>

[178] Parties were instructed to confer with a view to reaching agreement on the terms of settlement of the award. The AEU lodged a draft award on 19 April 1995, with hearings held on 27 April and 4 May 1995. Two ‘procedural issues’ were unable to be resolved, being referred to Munro J. A decision issued on 23 May explored the two outstanding issues concerning settlement.<sup>248</sup> With reference to the prior Full Bench decision, his Honour considered it was appropriate the award be made as a final award. The final order was referred to the Full Bench for determination. This Bench established the *Teachers’ (Victorian Government Schools) Conditions of Employment Award 1995 (Conditions Award)* in two decisions issued 11 July 1995.<sup>249</sup> No substantial changes were made from the earlier determination of Justice Munro.

## The National Training Wage Case 1995

[179] In 1995, the Independent Education Union of Australia (IEU) applied to vary seven awards, later revised down to six, to reflect provisions in the *National Training Wage Interim Award 1995* and ensure the subject awards were essentially identical in their terms. Awards examined covered non-government school employees including those employed under the *Victorian Catholic Schools and Catholic Education Offices Award 1994*, *Independent Education (Victoria) Interim Award 1994* and *Victorian Independent Schools (Interim) Award 1993*.<sup>250</sup> Recognising that a substantial

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<sup>247</sup> Ibid at 23.

<sup>248</sup> [1995] AIRC 947 Print M2054.

<sup>249</sup> [1995] AIRC 958 Print M3409; *Teachers’ (Victorian Government Schools) Conditions of Employment Award 1995 (T0652)* [Print M3410].

<sup>250</sup> [1996] AIRC 102 Print M8909 at 2.



number of employees worked part-time, the variations sought to make allowances for part-time traineeships, a proportionate weekly wage and remove references to shift work.<sup>251</sup> In a decision of 31 January 1996, Deputy President Williams endorsed the proposed variations with only minor changes.<sup>252</sup>

## The Victorian Teachers Special Case 1995–96

[180] Shortly after the Conditions Award determination, the AEU sought to vary the *Teachers (Victorian Government Schools – Interim) Award 1994* (Interim Teaching Award) with respect to salary increases and a new career structure for school teachers.<sup>253</sup> During the course of proceedings, the AEU's application was varied to include the Conditions Award itself. The Full Bench, constituted of the same members, initially observed the following:

'the Commission inclines to the view, but has not decided, that the *Teachers (Victorian Government Schools – Interim) Award, 1994* is a safety net award made as a first award. The rates were set in 1991 by the Industrial Relations Commission of Victoria (IRCoV) on an "actual rates" basis after a Special Case component of an industrial arbitration process which adopted a national benchmark for teachers' salary in the IRCoV State Teachers Award and the Australian Industrial Relations Commission's ACT Teaching Service Award. The rates set for the [Interim Teaching Award] have not been independently evaluated by the Commission for changes since 1991, other than by the addition of two safety net adjustments. For the purpose of an interim application there is no adequate reason for contending the rates should now be adjusted unless it be accepted that there is a compelling special case, or at least a strong case based on some other available provision of the Statement of Principles. The Commission accepts that changes to teaching arrangements and requirements in Victoria since 1992 are among factors which may relevantly be taken into account for purposes of an enterprise agreement, or under the work value changes principle, or as part of a special case.'<sup>254</sup>

(underlining added)

[181] The Bench further found:

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<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> [1995] AIRC 2101 Print M6311.

<sup>254</sup> Ibid at 2.



'We are satisfied that on the material presented to this point, an increase of that dimension to award classification salary points is justifiable by reference to considerations of significant net additions to work value. There is no issue about there having been work changes since October 1992; it is the character and impact of the general changes in application to the work value principle which are challenged [...]. We consider that there is a strong case that there have been significant net additions to work of a character which demonstrably have warranted consideration as factors consistent with upgrading within the existing attenuated classification structure for teachers under the Award. The [Directorate of School Education] has acknowledged that work value changes are among the factors taken into account in the decision to introduce the new PRP classification structure as an overaward payment available on election by individual teachers. We note that the effect of an increase of about that size will be that the rates of employees at award classification level will have been adjusted by about 4% over the period which has elapsed since the first arbitrated safety net adjustment of the rates in the Award in December 1994. The annual salary of such employees will be just below the current salary Level 2-11 of the PRP classification structure. Two \$8.00 safety net adjustments are also reflected in but absorbed in the PRP classification structure rates currently on offer.'<sup>255</sup>

(underlining added)

[182] While less than the 4 per cent increase sought by the AEU, the Commission granted a 1.8 per cent increase to minimum rates. The Full Bench noted that this increase was appropriate in the context of changes in teaching since the previous work value assessment. The Full Bench also observed that the Professional Recognition Program (PRP) operating in Victoria was acting 'as an agent of structural change' impacting teaching arrangements and requirements.<sup>256</sup>

[183] Following a report by Commissioner Frawley, in a decision of 1 March 1996, the Full Bench determined to vary the Conditions Award to provide a new classification and pay structure. With only minor modifications, this structure replicated the PRP operating in Victoria.<sup>257</sup>

[184] The final form of variation was initially heard by Commissioner Frawley and eventually referred back to a similarly constituted Full Bench. In a decision of 5 July 1996, the Full Bench finalised the form of variation to both the Conditions Award and Interim Award.<sup>258</sup> Giving effect to their

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<sup>255</sup> Ibid at 3.

<sup>256</sup> [1996] AIRC 212 Print M9746 at 5.

<sup>257</sup> Ibid.

<sup>258</sup> [1996] AIRC 1226 Print N2940.



earlier decision of 1 March, this variation drew extensively from submissions from the AEU and Victorian Directorate of School Education. The decision introduced a three-level classification structure and salary increases. Level 1 was divided into 12 sub-classifications or ‘sub-divisions’, with annual progression subject to one ‘hard barrier’ after five years’ service. The entry level for a 4-year trained teacher was Sub-division 3.<sup>259</sup> The varied Conditions Award and Interim Award came into effect on 4 March 1996 for a 12-month period.<sup>260</sup>

## The Victorian Independent Teachers Award 1996

[185] The *Victorian Independent Schools – Teachers – Award* (Independent Teachers Award) was made by consent on 20 December 1996 by Commissioner Frawley.<sup>261</sup> The Independent Teachers Award shared comparable rates to the *Conditions Award 1995*, effectively aligning Victorian public and independent school teachers’ pay and conditions. On 29 June 1998, Commissioner Smith issued an order to vary the Independent Teachers Award to reflect a decision issued in transcript, the 1997 and 1998 *Safety Net Review decisions*<sup>262</sup> and 1998 *Paid Rates Review decision*.<sup>263</sup> This order increased pay rates under the 1998 version of the award and outlined other changes to pay for part-time and emergency teachers. Incremental pay rate changes for 1996–98 were outlined as follows:

### *Victorian Independent Schools – Teachers – Award*

Level	Annual rate of pay (FTE) \$			
	1 Feb 1996 <sup>a</sup>	28 Oct 1996 <sup>a</sup>	1 Feb 1997 <sup>a</sup>	29 Jun 1998 <sup>b</sup>
1	26680	27961	28400	29548
2	27655	28984	29500	30648
3	28480	29849	30600	31748
4	29962	31402	32100	33248

<sup>259</sup> Ibid at 6–7.

<sup>260</sup> Ibid at 12.

<sup>261</sup> *Victorian Independent Schools – Teachers – Award 1996* (V0247) [Print N6751].

<sup>262</sup> [1997] AIRC 1389 Print P1997; [1998] AIRC 544 Print Q1998 (‘1998 safety net review’); Print Q1509.

<sup>263</sup> [1998] AIRC 1413 Print Q7661 (‘Paid rates review decision’).



*Victorian Independent Schools – Teachers – Award*

Level	Annual rate of pay (FTE) \$			
	1 Feb 1996 <sup>a</sup>	28 Oct 1996 <sup>a</sup>	1 Feb 1997 <sup>a</sup>	29 Jun 1998 <sup>b</sup>
5	31110	32607	33600	34748
6	32268	33818	33600	36248
7	33802	35428	36600	37644
8	35336	37038	38100	39144
9	36876	38647	38600	40644
10	38410	40257	41100	42144
11	39652	41560	42600	43644
12	40507	42452	44100	45144

<sup>a</sup> Print N6751 at clause 15.1.1

<sup>b</sup> Print Q1509 at clause 15.1.1

[186] The Independent Teachers Award was varied again by Commissioner Lewin in November 1998.<sup>264</sup> After this substantive variation, the award underwent a number of minor wage and allowance variations.<sup>265</sup> These variations did not have significant impacts on pay rates or classifications. The final variation affecting pay rates occurred on 7 November 2005 as a result of the final Safety Net Review issued by the Commission on 7 June. This variation increased the minimum rate for a Level 1 teacher under the award to \$679.30 per week and other rates to the following:<sup>266</sup>

*Victorian Independent Schools – Teachers – Award 1998*

Level	Per annum salary (FTE) \$
	20 Aug 2005
1	35444
2	36544
3	37644

<sup>264</sup> See *Victorian Independent Schools – Teachers – Award 1998* (V0247) [Print Q5701].

<sup>265</sup> See, e.g., [1999] AIRC 323 Print R3605; [2004] AIRC 1273 PR954319.

<sup>266</sup> [2005] AIRC 508 PR962314.



Level	Per annum salary (FTE) \$
	20 Aug 2005
4	39144
5	40644
6	42040
7	43436
8	44936
9	46436
10	47936
11	49436
12	50936

### 3.5.3 Award Modernisation

[187] Educational services were considered during the award modernisation Stage 3 proceedings. An exposure draft of the *Educational Services (Teachers) Award* was published on 22 May 2009.<sup>267</sup> Rates in the draft and final award were as follows:

#### *Educational Services (Teachers) Award*

Level	Per annum salary (FTE) \$	
	22 May 2009	4 Sep 2009
1	38283	38283
2	39101	39101
3	40201	40201
4	41701	41701
5	43201	43201
6	44597	44597
7	45993	45993
8	47493	47493
9	48993	48993
10	50493	50493
11	51993	51993
12	53493	53493

<sup>267</sup> See [2009] AIRCFB 450 PR052009 at [54].



[188] Proposed pay rates and classifications, including annual progression and the 12-level classification structure, broadly reflected the Independent Teachers Award.<sup>268</sup> Rates in the Independent Teachers Award were viewed as having been properly set by the Commission through previous determinations in the 1990s. As Commissioner Whelan observed during proceedings on 24 March 2009, shortly before the release of the exposure draft:

‘going back and having a look [at] award histories, certainly in this sector, the Victorian and the ACT awards have been found by this Commission to be properly fixed minimum rates. There’s a very big question mark about whether the New South Wales awards ever were or are properly fixed minimum rates [...] but that’s obviously another issue in terms of what this exercise has to do, which is that a starting point has got to be what are properly fixed minimum rates in terms of [including] things’.<sup>269</sup>

[189] Rates in the exposure draft reflected the last safety net adjustment of 20 December 2005, decisions of the Australian Fair Pay Commission and aligned closely with the draft award submitted by the Association of Independent Schools on 27 April 2009. Proposed rates set out in the exposure draft, including a base rate of \$733.70 per week,<sup>270</sup> were accordingly not disputed. The AEU, for instance, outlined that they were ‘not seeking to change the provisions of the *Teachers Award* with respect to salary rates or award conditions.’<sup>271</sup>

[190] The Commission also considered the issue of whether early childhood teachers in long day care centres and preschools should be covered by the *Teachers Award* or a separate modern award.<sup>272</sup> The Full Bench initially noted that:

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<sup>268</sup> *Victorian Independent Schools – Teachers – Award 1996* (V0247) [Print N6751].

<sup>269</sup> Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/33, Whelan C, 24 March 2009) [PN1139].

<sup>270</sup> Exposure draft, *Educational Services (Teachers) Award 2010* (September 2009) clause 14.1. The draft outlines that: ‘The weekly rate of pay for an employee will be determined by dividing the annual rate by 52.18 and the fortnightly rate by dividing the annual rate by 26.09’ with part-time employees paid on a pro rata basis; at clause 14.3.

<sup>271</sup> Australian Education Union, Submission in *Award modernisation*, AM2008/70 and AM2008/77, July 2015, [37].

<sup>272</sup> See, e.g., Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/33, Giudice J, 26 June 2009); Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/70, AM2008/77, Whelan C, 4 August 2009); Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/33, Whelan C, 24 March 2009); etc.



[57] We have decided, at this stage, to include preschool teachers working in services operated by a school in the draft *Educational Services (Teachers) Award 2010*. We will defer for further consideration, in Stage 4, the question of award coverage for preschool teachers working in preschools, kindergartens and childcare centres. Our decision to do so should not be taken as [...] a final view'.<sup>273</sup>

[191] The Bench further observed:

[61] Coverage of non-teaching staff in schools has been sporadic and no existing award covers all of the types of employment which may exist in a school. In developing the exposure draft we have taken into account minimum rates and classification descriptions for similar classifications in other modern awards, the need for appropriate relativities between teachers and non-teaching staff and other matters dealt with in submissions. The classification structure in the draft award contains some very detailed lists of typical duties. We are of the view that these could be rationalised and invite submissions on how this might be done.<sup>274</sup>

[192] In a later decision, the Bench outlined the following considerations:

[58] The issue of appropriate award coverage for preschool teachers was raised when the Full Bench was considering educational services – other than universities, in Stage 3. The decision was made at that time to defer consideration of this issue until children’s services were being considered in Stage 4. This would enable all interested parties who might have a view to provide input to our deliberations.

[59] Currently the nature of award coverage for preschool teachers is variable. For the most part they have been covered by specific early education teachers’ awards and, to a limited extent, by awards covering other teachers. In other cases they are covered by awards which also cover other employees in the child care industry or other employees in preschools or kindergartens.

[60] There was strong support for the inclusion of preschool teachers in awards covering the “children’s services and early childhood education industry”. Equally there were strong arguments put that preschool teachers should be covered by an occupational award.

[61] After considering the submissions and the proposals advanced by the interested parties we have decided at this stage that it is more appropriate to include preschool teachers in an occupational award covering both primary and secondary school teachers. We have taken into consideration in reaching this view, the qualifications required by early childhood education teachers, their capacity to work in schools

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<sup>273</sup> [2009] AIRCFB 450 PR052009 at [57].

<sup>274</sup> Ibid at [61].





and preschools as well as childcare centres, the lack of any relationship between teaching and children's services employees in terms of classification structures and the differences in conditions of employment.<sup>275</sup>

(underlining added)

[193] Minor variations were subsequently made to the award exposure draft, largely concerning hours of work and coverage for early childhood teachers employed in an early childhood service operated by a school.<sup>276</sup> The *Educational Services (Teachers) Award 2010* was published on 4 September 2009.<sup>277</sup> Further amendments, concerning coverage for preschool teachers in settings other than schools, were proposed in a decision of 25 September 2009. A revised exposure draft was also issued at this time.<sup>278</sup> Rates and classification structures in the final award, however, can be traced to the Victorian Independent Teachers and Conditions of Employment Awards.

[194] While a substantive claim to vary allowances and the definition of teacher to include directors, ordinary hours, non-contact time and minimum payments in the Teachers Award was considered in as part of the 4 yearly review of modern awards, a Full Bench declined to make the variations.<sup>279</sup>

## Equal Remuneration and Work Value Case 2013–21

[195] On 15 July 2013, United Voice and the AEU lodged applications for an equal remuneration order for employees performing work in long day care centres and/or preschools, pursuant to s 302 of the FW Act.<sup>280</sup> An additional equal remuneration application was made by the Independent Education Union of Australia (IEU) on 8 October 2013 and amended 28 November 2013.<sup>281</sup> Revised applications were filed on 23 September 2013, 27 November 2013, 17 August 2018 and

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<sup>275</sup> [2009] AIRC 865 PR392009 at [58]–[61].

<sup>276</sup> [2009] AIRCFB 826 PR092009 at [56]–[58]; [2009] AIRC 865 PR392009 at [63]; [2009] AIRCFB 945 PR122009 at [40].

<sup>277</sup> See [2009] AIRCFB 826 PR092009; PR988937.

<sup>278</sup> [2009] AIRCFB 865 PR392009 at [58].

<sup>279</sup> [2020] FWCFB 3011 at [488], [522]–[523], [531]; see also [2022] FWCFB 105; [2022] FWCFB 141; [2022] FWCFB 164.

<sup>280</sup> Application, *Equal remuneration order* (United Voice and the Australian Education Union Victorian Branch, 15 July 2013).

<sup>281</sup> Application, *Equal remuneration order* (Independent Education Union of Australia, 28 November 2013) at Annexure B [2].



3 September 2015 The IEU claim sought salary increases of about 36% for a graduate early childhood teacher and about 54% for an early childhood teacher at the top of the pay scale.

[196] The Full Bench dismissed the IEU equal remuneration application on 19 April 2021. However, this decision also determined that an adjustment of minimum rates for teachers employed under the Teachers Award was justified on work value grounds.<sup>282</sup> The Commission made the following observations with respect to the Teachers Award:

[645] We are satisfied that an adjustment to the minimum rates of teachers covered by the [Teachers] Award is justified by the following work value reasons:

(1) The rates for teachers under the [...] Award and its federal predecessors have never been fixed on the basis of a proper assessment of the work value of teachers nor are they properly fixed minimum rates. In particular, the rates of pay do not recognise that teachers are degree-qualified professionals and accordingly do not have an appropriate relativity with the Metal Industry classification structure.

(2) There have been substantial changes in the nature of the work of teachers and the level of their skills and responsibility since 1996. This constitutes a significant net addition to their work value which has not been taken into account in the rates of pay in the [...] Award.<sup>283</sup>

[197] The Full Bench further observed:

[653] We consider that the correct approach is to fix wages in accordance with the principles stated in the *ACT Child Care decision*. As earlier set out, this requires us to identify a key classification or classifications, align it with the appropriate classifications in the Metal Industry classification structure, and then set other rates for other classifications based on internal relativities that are assessed as appropriate. As earlier stated, we consider that the current classification structure with its annual increments is anachronistic and does not properly relate to the work value of teachers. We consider that a new classification structure should be established which is anchored upon the professional career standards established by the APST and is tied to teacher registration (where applicable).<sup>284</sup>

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<sup>282</sup> [2021] FWCFB 2051.

<sup>283</sup> Ibid at [645].

<sup>284</sup> Ibid at [653].



- [198] The previous 12-level classification structure inherited from the Independent Teachers Award was varied in a series of decisions dated 19 April 2021,<sup>285</sup> 11 October 2021<sup>286</sup> and 1 November 2021.<sup>287</sup> Overall, changes reflected the classification and pay structure outlined by the Full Bench in their equal remuneration decision.<sup>288</sup> The revised classification and rate structure links pay with teacher educational attainment, registration requirements and accomplishment.<sup>289</sup> The key classification in this case was a ‘proficient’ qualified teacher, and the work value assessment was recognised as free of assumptions based on gender.<sup>290</sup>
- [199] The 1 November 2021 supplementary decision affirmed resolutions proposed by the IEU, Australian Childcare Alliance and ABI with respect to classification descriptions for Levels 3 and 4, transitional provisions outlined at clause H.3 of Schedule H and amending classifications in clause 17.1 to align better with clause 14.1.<sup>291</sup> A determination giving these variations effect was issued with the decision, taking effect from 1 January 2022.
- [200] Given overlaps between the Teachers Award and Children’s Award, additional, detailed discussion of the Equal Remuneration and Work Value Case is provided below at subsection 3.3.

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<sup>285</sup> *Ibid.*

<sup>286</sup> [2021] FWCFB 6021

<sup>287</sup> PR735270.

<sup>288</sup> [2021] FWCFB 2051 at [656]–[657].

<sup>289</sup> PR735270; see also [2021] FWCFB 2051 at [656]–[657].

<sup>290</sup> [2024] FWCFB 150 at [204].

<sup>291</sup> [2021] FWCFB 6038 at [4].



## 3.6 General Retail Industry Award 2020

### 3.6.1 Introduction

[201] *The General Retail Industry Award 2020* (Retail Award) is an industry award covering employers in the general retail sector as well as their employees classified in Schedule A of the award. The Commission published the Retail Award on 19 December 2008, and it came into operation on 1 January 2010.

[202] The Retail Award is one of the top 5 most applied modern awards. Approximately 11 per cent of all modern award-dependent employees are paid a rate specified in the Retail Award.<sup>292</sup> The Stage 1 report highlights that Sales Assistants and Retail Managers in clothing retailing are highly feminised occupations with female representation being 85.5 per cent and 80.9 per cent respectively.<sup>293</sup>

[203] The Retail Award currently contains the following classification structure with indicative job titles and minimum weekly wage rates for retail workers:

Employee classification:	Minimum weekly full- time rate (\$)	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)
Retail Employee Level 1	939.60		
<ul style="list-style-type: none"> <li>• Shop assistant; clerical assistant; check-out operator; store worker; reserve stock hand; driver; boot or shoe repairer (not qualified); window dresser (not qualified); loss prevention officer; photographic employee; store greeter; assembler; ticket writer (not qualified); trolley collector; video hire worker; telephone order salesperson; door-to-door salesperson or retail outdoor salesperson; demonstrator or merchandiser not elsewhere classified.</li> </ul>			
Retail Employee Level 2	961.60		
<ul style="list-style-type: none"> <li>• Forklift operator; ride on equipment operator.</li> </ul>			

<sup>292</sup>Kelvin Yuen and Josh Tomlinson, 'A profile of employee characteristics across modern awards' (Research report, No 1/2023, Fair Work Commission, 3 March 2023) 28.

<sup>293</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 54.



<b>Employee classification:</b>	<b>Minimum weekly full-time rate (\$)</b>	<b>AQF level</b>	<b>Metals framework C10 equivalent weekly \$ (relativity to C10)</b>
Retail Employee Level 3	976.00		
<ul style="list-style-type: none"> <li>Machine operators; second-in-charge to department manager; senior salesperson (including designated second-in-charge of a section); corsetiere; driver selling stock; cook (not qualified) in a cafeteria; senior loss prevention officer, including an armed loss prevention officer; loss prevention officer supervisor; designated second-in-charge to a service supervisor; person employed alone, with responsibilities for the security and general running of a shop.</li> </ul>			
Retail Employee Level 4	995.00	3	995 (100%)
<ul style="list-style-type: none"> <li>Assistant, deputy, or second-in-charge shop manager of a shop without departments; butcher, baker, pastry cook or florist (for an employee who is required to utilise the skills of a trade qualification for the majority of the time in a week); qualified auto parts and accessories salesperson; window dresser (Certificate III or equivalent experience); boot or shoe repairer (Certificate III); shiftwork supervisor; department or section manager with up to 2 employees (including self); service supervisor of up to 15 employees; nightfill supervisor or leader.</li> </ul>			
Retail Employee Level 5	1035.90		
<ul style="list-style-type: none"> <li>Tradesperson in charge of other tradespersons within a department or section; service supervisor (more than 15 employees).</li> </ul>			
Retail Employee Level 6	1050.90		
<ul style="list-style-type: none"> <li>Department or section manager with 5 or more employees (including self); manager or duty manager in a shop without departments or sections (may be under direction of a person not exclusively involved in shop management); assistant or deputy or second-in-charge to a shop manager of a shop with departments or sections; Clerical Officer Level 3.</li> </ul>			
Retail Employee Level 7	1103.60	5	1164.10
<ul style="list-style-type: none"> <li>visual merchandiser (Diploma); Clerical Officer Level 4.</li> </ul>			
Retail Employee Level 8	1148.40	5	1164.10
<ul style="list-style-type: none"> <li>shop manager of a shop with departments or sections; Clerical Officer Level 5</li> </ul>			



[204] The Stage 1 report noted some distinct characteristics of Sales Assistants and Retail Managers working in clothing retailing. These characteristics include:

- Sales Assistants are more likely to be under the age of 24 than the overall workforce (46.6 per cent and 14.3 per cent, respectively).
- A higher percentage than average of Sales Assistants and Retail Managers have not completed at least a Certificate III (62.5 per cent and 47.3 per cent, respectively).
- A higher-than-average proportion of workers in these occupations were born in Australia.
- Sales Assistants are more likely to work part-time (60.1 per cent) and on a casual basis (53.4 per cent) than the overall workforce.
- A higher percentage of Sales Assistants were lone parents than the overall workforce (14.5 per cent and 9.2 per cent, respectively).<sup>294</sup>

[205] Furthermore, the Stage 1 report also highlights that Sales Assistants' mean and median pay rates were lower than the overall average. Sales Assistants had mean weekly cash earnings of \$565.90, the lowest earning decile for all employees.<sup>295</sup>

### 3.6.2 Pre-modernisation

[206] Prior to 1994, employment in general retail was governed by a number of federal and State awards. Federal awards were in operation in the Northern Territory and the Australian Capital Territory, whereas State-based retail awards prevailed in all the states. Some State awards were broad in their coverage, while other State awards had narrower coverage based on geographical location or the nature of goods sold.<sup>296</sup> It is in this context that the Shop, Distributive and Allied Employees Association (SDA) negotiated rate adjustment agreements with parties throughout each State and Territory in the early 1990s as part of the new structural efficiency process.

[207] Following these agreements, variation applications were raised in State industrial commissions and the Commission to bring these agreements into fruition. The result was the national

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<sup>294</sup> Ibid 54-55.

<sup>295</sup> Ibid 56.



alignment of the shop assistant classifications with 92.14 per cent of the metal tradesperson's C10 rate, which equated to \$375 per week. A subsequent dispute in the Industrial Commission of South Australia (Fairweather C) confirmed<sup>297</sup> that the negotiated rate in that State equated to 92.14 per cent of the G10 metal tradesperson's wage rate and in the proceedings the SDA representative argued that in the negotiations 'the wage of the shop assistant would be 92.14% of the metal tradesperson classification G10'.<sup>298</sup> The G10 classification corresponded to the C10 classification and rate contained in the Metals Award.<sup>299</sup> In South Australia, the agreement included 4 adjustments to the shop assistant classification from 1 August 1990 to 1 February 1992. The minimum rate became \$375 per week. Similarly, the Northern Territory saw a 4-stage process to raise the minimum rate to \$375 per week.<sup>300</sup> Similar processes occurred in Western Australia and New South Wales from 10 August 1990 to 1 April 1992, and 26 September 1990, respectively. In Tasmania in 1992, the Industrial Commission approved a consent variation to the Retail Trades Award's wage and classification structure for the completion of the minimum rates adjustment process. The new structure included a specific 92.1% relativity for the classification of Retail Employee Grade 2, which refers to the shop assistant classification. This relativity was aligned with the C10 rate of Retail Employee Grade 4 classification.<sup>301</sup>

[208] The origins of and reasoning for the 92.14 per cent relativity are unclear. Based on the available material, the 92.14 per cent amount appears to have been negotiated and agreed between the SDA and major employer representatives. It is not apparent what considerations went into determining this percentage.

## 1993 Clerks (Retail Industry) New Relativities and Classification Structure

[209] In 1993, the Federated Clerks' Union of Australia (Clerks' Union) applied to the SAIRC for the implementation of a new classification structure and relativities for the Clerks (Retail Industry)

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<sup>297</sup> [1992] SAIRComm 48.

<sup>298</sup> [1992] SAIRComm 48.

<sup>299</sup> This can be seen in Print J6229 where levels G8, G9, and G10 are under 'Level 10' which becomes the C10 classification in the Metals Award.

<sup>300</sup> [1990] AIRC 1106 Print J4925.

<sup>301</sup> [T3816 and T3819](#).



Award. The SDA supported this application.<sup>302</sup> According to the Commissioner, the parties had 'laboured long and hard' to reach agreement on a range of matters. The parties agreed on a new 5-level classification structure, but they could not reach agreement on the relativities for 'Class 1 First Year' and Classes 3, 4, and 5. The Clerks' Union proposed a relativity of 93 per cent for 'Class 1 First Year', while the employers claimed a relativity of 92.14 per cent. Proposed relativities for the other classifications also showed a significant difference between the views of the Clerks' Union and the employers.

- [210] Commissioner Stevens investigated the historical relationship between clerks in retail and shop assistants and observed a modest margin between the pay rates of both roles most of the time. However, the SAIRC clarified that it was not bound to follow past relativities when determining future rates. The Commissioner stated that 'the Commission is by no means bound to pay slavish regard to past relativities'. The SAIRC concluded that keeping the margin was no longer appropriate, and the lowest clerk level should not be paid less than the shop assistant.
- [211] For the Class 1 First Year classification, the Commissioner agreed with the employer's proposed equation of the two rates and did not accept the Clerks' Union's alternative position which proposed accelerated progression for employees who were previously shop assistants as it was inconsistent with work value principles. The SAIRC adopted the employers' proposal for the Class 1 relativity of 92.14 per cent with increments of 2.5 per cent for each year of service up to 3 years.
- [212] For the Classes 3, 4, and 5, the Commissioner concluded that the relativities proposed by the employers had no basis at all, stating that 'it is very difficult for the Commission to fathom just how those proposed relativities were arrived at. Certainly they could not be justified on work value grounds'. For Class 3, the Commissioner determined that there was no warrant to have a lesser rate than that found in the equivalent classification of the Clerks (SA) Award, or higher than the leading hand level C8 in the Metal Industry Award. The Commissioner had regard to the Victorian Clerical and Administrative Employees Award Grade 5 classification when setting these rates. The SAIRC determined the relativities for Class 3 to be at 105 per cent and 110 per cent for the first and second year thereafter.

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<sup>302</sup> [1993] SAIRCComm 97.





[213] For Class 4, the relativities were fixed at 113 per cent and 118 per cent for the first and second year thereafter. For Class 5, the relativities were fixed at 122.5 per cent and 127.3 per cent for the first and second year thereafter.

## Retail award regulation from 1992 to award modernisation 2008–09

[214] The primary federal award at the time of award modernisation was the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000* (Victorian Shops Award 2000). The Victorian Shops Award 2000 has its origins in a federal retail award, the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 1994* (Victorian Shops Interim Award 1994). The Victorian Shops Interim Award 1994 was 1 of 3 retail federal awards created following the expiry of all Victorian awards on 1 March 1993 as a result of the enactment of the Employee Relations Act 1992 (Vic). These federal awards would transfer and maintain the working conditions of the pre-existing State retail awards for Victorian retail workers.

[215] On 23 May 1994, the SDA's applications in the Commission led to the establishment of 3 retail interim awards: the Victorian Shops Interim Award 1994, the *Shop, Distributive and Allied Employees Association (Food and Liquor Stores) Interim Award 1994*, and the *Shop, Distributive and Allied Employees Association (Booksellers and Stationers) Interim Award 1994*.<sup>303</sup> The intention was for these federal awards to remain in force for 6 months.<sup>304</sup> In a decision on 22 April 1994, Commissioner Lewin indicated that he intended to consolidate the three awards however this did not occur until the award simplification process in 2000, which is discussed further below.<sup>305</sup>

[216] The Victorian Shops Interim Award 1994 had a classification structure which consisted of a range of generalist and more specific classifications. These classifications were subsequently carried over into the Victorian Shops Award 2000. The generalist classifications were as follows: Retail Worker Grade 1, canvassers and collectors, and Retail Worker Grade 2. Retail Worker Grade 1 included shop assistants, salespersons, assemblers, demonstrators, ticket writers, window dressers, and merchandisers. Retail Worker Grade 2 included employees who were required to

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<sup>303</sup> [1994] AIRC 776 Print L3443.

<sup>304</sup> Ibid.

<sup>305</sup> [1994] AIRC 597 Print L3048.



use the skills of a trades qualified person, or an employee who had a formal qualification equivalent to a 2-year Certificate in Visual Merchandising.<sup>306</sup> The other classifications pertained to department managers and shop managers. However, the pay rates of these managers were dependent on whether they fell into one of four categories: (1) clothing and footwear shops, (2) electrical, furniture and hardware shops, (3) food shops, and (4) general shops. The pay rates differed further depending on whether the manager was in charge of two or more persons, or if they worked singly or in charge of one person.<sup>307</sup>

[217] On 16 March 2000, Commissioner Hingley created the Victorian Shops Award 2000 as a part of the award simplification process. The process involved combining the three interim awards into one award, along with several other retail awards. The decision to combine and create the Victorian Shops Award 2000 was based on 3 prior decisions of the Commission.

[218] *First*, on 27 January 1999, the Commission reviewed the 3 interim retail awards and determined to focus on the Victorian Shops Interim Award 1994 as all 3 contained similar provisions. In the decision, the Commissioner stated:

‘The additional words proposed by SDA for insertion in Clause 4 Wages, are in my view not allowable nor incidental and necessary for the effective operation of the award, viz: *“The classifications set out above and the relativities between the classifications reflect the work performed, the manner in which work is performed and the technology used in the performance of work as at 1990.”*

The clause will reflect new rates of pay which operate from 7 May 1998, set out in the appropriate minimum rates format, pursuant to the principles established in the Full Bench Paid Rates decision of 20 October 1998 [Print Q7661].<sup>308</sup>

[219] The review did not appear to have assessed the work value or adult minimum wage rates in the award. The decision mainly centred on the application of junior rates.<sup>309</sup>

[220] *Second*, on 10 June 1999, the Commission concluded the award simplification review of the 3 interim retail awards, which led to the creation of the *Shop, Distributive and Allied Employees*

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<sup>306</sup> *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 1994* (S0492) [Print L3448] clause 4.

<sup>307</sup> *Ibid.*

<sup>308</sup> [1998] AIRC 1739 Print Q9229.

<sup>309</sup> *Ibid.*



*Association – Victorian Shops Interim Award 1999* (Victorian Shops Interim Award 1999), which would become the Victorian Shops Award 2000 the following year. In the June 1999 decision, the Commission stated that the consolidated award was a minimum rates award and did not require review under Item 51(4) of the WROLA Act and does not contain incremental pay rates rises for service. The parties submitted that the award had undergone processes to satisfy the Minimum Rates Adjustment principle and had received only National Wage case safety net adjustments.<sup>310</sup> The Victorian Shops Interim Award 1999 consolidated and superseded 29 retail awards in total.

[221] *Third*, on 21 February 2000, the Commission issued another decision after hearing further submissions from the parties involved and finalised the orders for a consolidated award.<sup>311</sup> This decision concerned several main issues that the parties requested the Commission to determine if the awards were to be consolidated: the definition of Class A Exempt Shops, the wording of clause 38 in relation to public holidays, the form of severance pay prescription, and the applicable rates of pay for casuals on Saturdays particularly pertaining to Retail Worker Grade 1.<sup>312</sup> Throughout this process, the Commission did not conduct a work value assessment or a consideration of the minimum rates of pay in the awards. The Victorian Shops Award 2000 came into operation on 16 March 2000.

[222] The classification structure of the Victorian Shops Award 2000 carried over the classification structure from the Victorian Shops Interim Award 1994, with only one alteration: the 'Food Shops' category became 'Food, Grocers and Liquor Shops'.<sup>313</sup>

[223] A series of 'roping in' applications were made in the early 2000s to expand its employer coverage. An application by the SDA to rope in 17,628 employers into the Victorian Shops Award 2000 was addressed by an Commission Full Bench decision issued on 17 January 2003.<sup>314</sup> The

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<sup>310</sup> [1999] AIRC 669 Print R5283.

<sup>311</sup> [2000] AIRC 916 Print S3125.

<sup>312</sup> *Ibid* at [7].

<sup>313</sup> *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000 [Transitional]* [AT796250] clause 14.

<sup>314</sup> [2003] AIRC 46 PR926620.



Commission granted the application but decided to rope in employers in stages.<sup>315</sup> The main issues considered by the Commission in this case were the conditions that apply to Sunday work, Saturday work, the minimum payment for evening work during the week, and exempt shop provisions, including trading hours and penalty rates.<sup>316</sup> The Commission concluded that some of the provisions in relation to trading hours and penalty rates in the Victorian Shops Award 2000 were not appropriate for the roped-in employers.<sup>317</sup> However, the minimum rates contained in this award were not considered by the Commission throughout this process. On March 4, 2003, a roping-in award was made known as the *Shop, Distributive, and Allied Employees' Association - Victorian Shops Interim (Roping-in No. 1) Award 2003*.<sup>318</sup> A Commission Full Bench decision issued on December 3, 2003, addressed further issues in relation to the Sunday penalty rate.<sup>319</sup>

[224] In 2005, the SDA applied to the Commission for a common rule declaration to be made for the Victorian Shops Award 2000 pursuant to ss 141 and 493A of the *Workplace Relations Act 1996*. On 3 August 2005, the Victorian Shops Award 2000 was declared a common rule award in Victoria in decision by Senior Deputy President Watson.<sup>320</sup>

### 3.6.3 Award Modernisation

[225] The Commission considered a total of 118 pre-reform retail awards and NAPSAs during the making of the Retail Award.<sup>321</sup> The main federal and State retail awards that were identified by the Commission are listed in the table below.

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<sup>315</sup> Ibid at [78], [100].

<sup>316</sup> Ibid at [79].

<sup>317</sup> [2003] AIRC 1504 PR941526 at [3].

<sup>318</sup> *Shop, Distributive and Allied Employees' Association - Victorian Shops Interim (Roping-in No. 1) Award 2003* [AW796250].

<sup>319</sup> [2003] AIRC 1504 PR941526.

<sup>320</sup> [2005] AIRC 676 PR960972.

<sup>321</sup> [2008] AIRCFB 550 PR062008 at Attachment B.



State/ Territory:	Award/NAPSA:		Weekly rate for the base- level shop assistant adult classification FTE (\$): <sup>322</sup>
New South Wales	Shop Employees (State) Award (NAPSA)	AN120499	601.92
Victoria	SDA – Victorian Shops Interim Award (pre-reform award)	AP796250	602.68
Queensland	Retail Industry Interim Award – State (NAPSA)	AN140257	602.68
South Australia	Retail Industry (SA) Award (NAPSA)	AN150130	602.68
Western Australia	Shop & Warehouse (Wholesale and Retail Establishments) State Award (NAPSA)	AN160292	603.44
Tasmania	Retail Trades Award (NAPSA)	AN170088	602.30
Australian Territory	Capital Retail & Wholesale Industry – Shop Employees – ACT Award (pre-reform award)	AP794740	601.92
Northern Territory	Retail, Wholesale & Distributive Employees (NT) Award (pre-reform award)	AP794741	602.68

[226] The retail industry was dealt with in the priority industries and occupations process in award modernisation. Initially, the Commission aimed to create a comprehensive retail award that would cover various sectors such as general retail, fast food, community pharmacy, and hairdressing and beauty. In response, the SDA proposed a single award for the retail industry containing a wages and classification structure with clearly defined streams for the retail, community pharmacy, clerical administrative and hairdressing and beauty industries.<sup>323</sup>

<sup>322</sup> Shop, Distributive and Allied Employees Union, 'Shop Assistant/Salesperson wage rates', Submission in *General Retail Industry Award variation*, AM2010/33, 26 March 2010.

<sup>323</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/10, Watson VP, 8 August 2008) [PN478]–[PN490]; see also [2008] AIRCFB 717 PR092008 at [84], [91].



[227] During pre-drafting consultations before the award modernisation Full Bench the SDA submitted that the levels in their 4-stream, skills-based structure had been classified in line with National Quality Council systems and standards.<sup>324</sup>

[228] The exposure draft for the retail industry was published on 12 September 2008.<sup>325</sup> In a statement issued with the exposure draft,<sup>326</sup> the award modernisation Full Bench made note of the pre-drafting consultations and of the SDA's draft award.<sup>327</sup> In relation to the wages and classification structure set out in the published exposure draft, the Full Bench stated:

'[89] The terms and conditions in the draft award have been set having regard to the disparate terms and conditions currently in awards and NAPSAs. Those instruments contain a variety of different obligations and entitlements. Differences exist between the rates and conditions in different States, different parts of the industry and even between different groups of employers within the same part of the industry.

...

[91] We have incorporated key features of areas of employment from existing instruments including the classification structures from various sectors such as community pharmacies, clerical employment and hairdressing services.<sup>328</sup>

[229] Parties continued to press for separate awards and in further proceedings before the award modernisation Full Bench, parties made submissions on the draft wages and classification structure.

[230] After some agitation from employer groups, the Commission abandoned the idea of an all-encompassing retail award and instead aimed to create 4 awards. The Commission published an exposure draft of the Retail Award on 12 September 2008. Significantly, the Commission

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<sup>324</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/10, Watson VP, 8 August 2008) [PN1010]–[PN1014].

<sup>325</sup> Exposure Draft, *Retail Industry Award 2010* (12 September 2008).

<sup>326</sup> [2008] AIRCFB 717 PR092008.

<sup>327</sup> *Ibid* at [84]–[86].

<sup>328</sup> *Ibid* at [89]–[91].



determined that the ‘main federal industry award’ precursor to the *General Retail Industry Award 2010* was the Victorian Shops Award 2000.<sup>329</sup>

[231] In a decision issued on 19 December 2008, the award modernisation Full Bench explained their reasons for making separate awards.<sup>330</sup> The Full Bench noted that the contents of the separate awards were derived from the existing awards and NAPSAs applying to the different sectors but generally followed the main federal industry awards where possible, with regard to all other applicable instruments.<sup>331</sup>

[232] SDA’s proposed award was largely based on the Victorian Shops Award 2000, but the classification structure was significantly influenced by the *Tasmanian Retail Trades Award* (Tasmanian Award) classification structure. In drafting its proposed classification structure, the SDA acknowledged that it drew heavily from the Tasmanian Award.<sup>332</sup> According to the SDA, the reason for this was:

‘[T]he Tasmanian Retail Award is the only retail award in which any effort has been made to apply proper skills-based career progression methodology to fixing a classification and wage rate structure. All other State and Federal awards have been created on the basis of ensuring a rate for a shop assistant with such rates being set on the basis of a skill relativity with trades classifications but without applying the previous Structural Efficiency Principle methodology to establishing skills-based classification and wage rates for all classifications above that of a shop assistant’.<sup>333</sup>

[233] The SDA submitted that it had adopted an approach of incorporating, as much as possible, any skills-based allowances into the classification and wage rate structure in its draft.<sup>334</sup> Furthermore, it extracted the language used by the Tasmanian Award for its higher classification levels.<sup>335</sup> The

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<sup>329</sup> [2017] FWCFB 1001 at [1480]; *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000* (AP796250).

<sup>330</sup> [2008] AIRCFB 1000 PR122008.

<sup>331</sup> *Ibid* at [286]–[287].

<sup>332</sup> Transcript of Proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/10, Watson VP, 8 August 2008) [PN853].

<sup>333</sup> *Shop, Distributive and Allied Employees Union, Submission in Award modernisation*, AM2008/10, July 2008, 6.

<sup>334</sup> *Ibid*.

<sup>335</sup> *Ibid* 7.



SDA extracted classifications and descriptions not covered by the Tasmanian Award from other State and federal awards, which were not specified.<sup>336</sup> However, the shop manager classification appears to have been derived from the Victorian Shops Award 2000.

[234] The Tasmanian Award's classification structure was introduced into the award by consent between the SDA and the Tasmanian Confederation of Industries in the *State Wage case 1989*<sup>337</sup>, reflecting the 1989 wage fixing principles. In evidence given to the Tasmanian Industrial Commission in a hearing of 25 June 1992, the SDA put forward the following relativities for a new classification structure: Grade 4 was identified as the base rate, with a revised weekly rate of \$417.20. Rates were further set against the tradespersons' rate. The exception to this benchmark was Grade 7 and above, applying to managerial staff, where rates were set with reference to the Clerical and Administrative Employees Award.<sup>338</sup> These relativities were maintained in a decision of 30 June 1992.<sup>339</sup> The revised Tasmanian Award included the following rates and classifications:

Classification	Relativity (%)	Rate (\$)
Grade 1	85	354.60
Grade 2	92.1	384.10
Grade 3		
3A	92.1 (at 1 Jul 1992)	384.10
	93.5 (at 1 Dec 1992)	390.40
	95 (at 1 Sep 1993)	396.50
	96 (at 1 Jun 1994)	400.50
3B	96 (at 1 Jul 1992)	400.50
Grade 4	100	417.20
Grade 5	105	438.10
Grade 6	110	458.90

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<sup>336</sup> Ibid 7.

<sup>337</sup> [1989] TasIRComm T1699/T1814; Transcript of proceedings, *Retail trades award* (Tasmanian Industrial Commission, T3816 and T3819, Westwood P, 12 June 1992); Transcript of proceedings, *Retail trades award* (Tasmanian Industrial Commission, T3816 and T3819, Westwood P, 25 June 1992).

<sup>338</sup> Transcript of proceedings, *Retail trades award* (Tasmanian Industrial Commission, T3816 and T3819, Westwood P, 25 June 1992).

<sup>339</sup> [1989] TasIRComm T1699/T1814.





Grade 7

rates as per Clerical and Administrative  
Employees (Private Sector) Award

[235] The key classification contained in the Tasmanian Award was the Retail Employee Grade 4 classification which was aligned with the C10 rate. The table below further outlines the classifications found in the Tasmanian Award and the SDA's proposed draft award, including the employment categories within each grade and their respective wage rate relativities:

<b>Tasmanian Retail Trades Award Classifications:</b> <sup>340</sup>	<b>Relativity (%)</b>	<b>SDA's Draft Retail Stream:</b>
<u>Retail Employee Grade 1</u> Sales Assistant up to 6 months experience; Cleaner.	85	<u>Retail Worker Level 1</u> Shop Assistant; Check-out Operator; Store Worker; Reserve Stock Hand; Driver; Boot / Shoe Repairer (Not Qualified); Window Dresser (Not Qualified); LPO; Photographic Employee; Store Greeter; Assembler; Ticket Writer (Not Qualified); Trolley Collectors; Video Hire Worker; Fast Food Worker; Boot/Shoe Repairer(Not Qualified); Take Away Food Delivery Driver; Telephone Order Salesperson; Door-to-door Salesperson; and, Demonstrator and/or Merchandiser not elsewhere classified (including a Demonstrator and/or Merchandiser who is not a direct employee of the retailer).
<u>Retail Employee Grade 2</u> Sales Assistant more than 6 months experience; Clerical Assistant; Storeperson.	92.1	
No equivalent classification		<u>Retail Worker Level 2</u> Forklift Operator; Ride on Equipment Operator; Slicer; Small goods maker in a butcher shop.
<u>Retail Employee Grade 3</u> Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop; Storeperson with supervisory role; Floristry tradesperson; General clerical officer, typist; Corsetiere.	96	<u>Retail Worker Level 3</u> Machine operators; 2IC to Dept Manager; Senior Salesperson; Corsetiere; Driver Selling Stock; Cook (Not Qualified) in a cafeteria; Senior LPO, including an armed LPO; LPO Supervisor; Minilab Operator; Designated second-in-charge of a section (i.e. senior sales assistant); Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop; boner.
<u>Retail Employee Grade 4</u> Section/Department manager with 2 employees (including self);	100	<u>Retail Worker Level 4</u> An employee who is required to utilise the skills of a trades qualified person for the

<sup>340</sup> Retail Trades Award (AN170088) at clause 7.



<b>Tasmanian Retail Trades Award Classifications:</b> <sup>340</sup>	<b>Relativity (%)</b>	<b>SDA's Draft Retail Stream:</b>
Service Supervisor of up to 15 employees; Night fill supervisor; Tradesperson (other than floristry); Senior clerical officer.		majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist.  An employee who that has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work: Qualified Auto Parts and Accessories Salesperson; Window Dresser (Cert III or equivalent experience); Boot/Shoe Repairer (Cert III); Shift Work Supervisor; Section/Department manager with up to 2 employees (including self); Service Supervisor of up to 15 employees; Nightfill supervisor/leader.
No equivalent classification		<u>Retail Worker Level 5</u> A tradesperson in charge of other tradespersons within a section or department
<u>Retail Employee Grade 5</u> Section/Department manager with up to 4 employees (including self); Service Supervisor (more than 15 employees); Clerical officer in charge of up to 4 clerical staff (including self).	105	<u>Retail Worker Level 6</u> Section/Department manager with up to 4 employees (including self); Service Supervisor (more than 15 employees).
<u>Retail Employee Grade 6</u> Section/Department manager in charge of 5 or more employees (including self); Administration officer in charge of 5 or more employees (including self).	110	<u>Retail Worker Level 7</u> Section/Department manager with 5 or more employees (including self); Assistant or Deputy or 2IC Shop Manager; Deputy or 2IC Shop manager.
<u>Retail Employee Grade 7</u> This applies to senior level administration officers. The definitions and wage rates applicable to Administration Officer Grade 6 and 7 of the <i>Clerical and Administrative Employees (Private Sector) Award</i> shall be applied.	-	No equivalent classification
No equivalent classification	-	<u>Retail Worker Level 8</u> Visual Merchandiser.
No equivalent classification		<u>Retail Worker Level 9</u> A shop manager; Butcher in charge of a retail butcher shop.



[236] During the award modernisation process, the SDA proposed a draft award based on pre-reform instruments but ignored the wage rates in State awards applying to entities that were not constitutional corporations while creating the wage rate structure. The below table compares the pay rates contained in the SDA draft award, the exposure draft, and final Retail Award:

<b>SDA Draft Award:</b>		<b>Exposure Draft:</b>		<b>General Retail Industry Award 2010:</b>	
Classifications:	Weekly wage (\$):	Classifications:	Weekly wage (\$):	Classifications:	Weekly wages (\$)
Retail Worker Level 1	603.00	Retail Employee Level 1	600.00	Retail Employee Level 1	600.00
Retail Worker Level 2	613.00	Retail Employee Level 2	615.00	Retail Employee Level 2	615.00
Retail Worker Level 3	624.00	Retail Employee Level 3	630.00	Retail Employee Level 3	625.00
Retail Worker Level 4	638.00	Retail Employee Level 4	637.60	Retail Employee Level 4	637.60
Retail Worker Level 5	658.00	Retail Employee Level 5	665.00	Retail Employee Level 5	665.00
Retail Worker Level 6	665.00				
Retail Worker Level 7	684.00	Retail Employee Level 6	675.00	Retail Employee Level 6	675.00
Retail Worker Level 8	719.00	Retail Employee Level 7	710.00	Retail Employee Level 7	710.00
Retail Worker Level 9	733.00	Retail Employee Level 8	740.00	Retail Employee Level 8	740.00

[237] As shown above, the proposed rates and classifications broadly align with the SDA's draft proposal. The Commission's exposure draft appears to have merged the SDA draft's Retail Worker Levels 5 and 6 into a single level.

[238] The specific classifications and rates that comprise the final Retail Award's structure, were a combination and condensation of several retail awards and classifications. In submission concerning the modernisation proceedings for the wholesale and storage industry, the SDA submitted that 'the wage levels determined by the Commission for the General Retail Industry Award have been artificially constructed in some areas'.<sup>341</sup>

<sup>341</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/63 and AM2008/55, 6 March 2009, 5.



### **Retail Employee Level 1**

[239] The Commission determined the minimum Retail Award adult rate to be \$600 per week. This is close to the \$601.92 to \$603.44 per week range found in the pre-reform awards and is higher than the 94.12 per cent relativity established in the pre-reform awards.

[240] The Level 1 pay rate was not taken directly from the pre-reform awards. The main issue raised by the SDA later was that the final Retail Award's Level 1 rate was lower than those of the pre-existing pay scales for retail workers employed under these awards.<sup>342</sup> In decision issued on 28 April 2010, Vice President Watson determined that the 'resultant award took into account a wide range of disparate provisions from a large number of instruments' and that '[i]t involved striking a balance' and '[m]any compromises were involved in determining the terms and conditions'.<sup>343</sup> It is not clear from the material what specific trade-offs were involved. During the award modernisation process, the Full Bench of the Commission stated that they have 'generally followed the main federal industry awards where possible' with the exposure draft that was published.<sup>344</sup>

[241] It is difficult to determine the exact origins of this pay rate. During the modernisation process, the SDA claimed that a reasonable starting point for shop assistants would be a weekly rate of \$603, as this was within the range of rates paid across the country.<sup>345</sup> Additionally, the proposed rate was consistent with similar positions in the other proposed streams in its draft award.

[242] In 2010, the SDA provided further reasoning behind its proposal to set its draft rate at \$603 per week. The SDA submitted that the *Victorian Shops Award 2000* weekly rate of \$602.68 was the most commonly paid rate in Australia and that the unweighted average of Level 1 weekly rates was \$602.75.

[243] The table above shows the origin of Level 1's pay rate in the modern Retail Award. This rate was proposed in the exposure draft published by the Commission. However, it is unclear why a \$600

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<sup>342</sup> [2010] FWA 3413 at [7].

<sup>343</sup> *Ibid* at [15]–[16].

<sup>344</sup> [2008] AIRCFB 1000 PR122008 at [286].

<sup>345</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, July 2008, 6.



per week rate was proposed, as there was no substantial commentary on this rate by any party or the Commission. The only submission on the rate was made by the SDA, as follows:

'The SDA has a concern over the proposed rate set for Level 1. The draft sets \$600.00 as the weekly rate. This is the level at which shop assistants have been placed. The rate of \$600 is below that of any shop assistant in any award or NAPSA. There is a range of rates and the SDA would see that the rate from the Victorian Federal Shops Award should be adopted. This rate is \$602.68, which could for simplicity be rounded to \$603.00.'

[244] The SDA mentioned nothing further about this in its submissions nor did any other party. Instead, the primary debate between the parties centred on weekend penalty rates. In separate award variations proceedings a few years later, an SDA representative recalled that 'we did have lengthy hearings' but 'there was one issue which was not debated between the parties to any great degree and that was the rate for the base shop assistant; the level 1 person'.<sup>346</sup>

[245] In these award variation proceedings, the SDA applied to vary the Level 1 pay rate. In its submission, the SDA stated:

'Now, at present the rate of \$600 for the level 1 employee is not established by reference to any relevant APCS, NAPSA or any state award. It is a complete new rate which was inserted into the Retail Award. We say that on looking at the various awards which were issued under the award modernisation process, there didn't appear to be a new figure – a dollar figure – that emerged in any other industry. They were all based in other areas which came after the priority area, because retail was a priority area'<sup>347</sup>

### **Retail Employee Level 2**

[246] The Commission established the Retail Employee Level 2 rate at \$615 per week. The Level 2 classification is derived from the SDA's draft retail award, but it is unclear what influenced this draft classification and where it came from. It is not specifically found in the Tasmanian Award or the Victorian Shops Award 2000. Therefore, it is necessary to look at other State and Territory awards to identify similar classifications.

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<sup>346</sup> Transcript of proceedings, *Application to vary the General Retail Industry Award 2010* (Fair Work Australia, AM2010/33, Watson VP, 13 April 2010) [PN26].

<sup>347</sup> *Ibid* [PN20].



[247] Several State awards contain classifications or allowances for employees working with forklifts. For instance, the *NSW Shop Employees (State) Award (NSW Award)* contains ‘employees driving a forklift or using mechanical equipment’ under its lowest classification level – ‘Group No. 1’.<sup>348</sup> The *Retail Industry (SA) Award* contained a forklift truck allowance.<sup>349</sup> The *WA Shop & Warehouse (Wholesale and Retail Establishments) State Award (WA Award)* contained both classifications – Storeperson Operator Grades 1 and 2 – and an allowance for employees working with forklifts and ride-on equipment.<sup>350</sup> The Tasmanian Award specified a ‘Storeperson’ as being contained at Retail Employee Grade 2 which is the main operating classification in the Award, which *may* have included forklift operators.<sup>351</sup>

[248] It appears unlikely that the SDA drew inspiration for its draft classification from the NSW Award or the Tasmanian Award as these are incorporated into standard shop assistant classifications. The SDA’s draft classification sits slightly above the classification for shop assistants. As such, it is probably the case that the SDA derived its draft classification from either the WA Award’s classification or the SA Award’s allowance. As mentioned previously, the SDA submitted that a key methodology it employed when constructing its draft classification structure was to incorporate wage related allowances into the minimum rates of pay.<sup>352</sup>

[249] In terms of the Level 2 classification’s pay rate, it is a slight increase on the SDA’s proposed rate of \$613 per week. However, there was no reasoning or explanation provided by the SDA for its proposed rate, nor is there any reasoning or explanation provided by the Commission for the final rate of \$615 per week.

### **Retail Employee Level 3**

[250] The Commission determined the Retail Employee Level 3 rate to be \$625 per week. The Commission extracted this classification from the SDA’s draft award, which itself largely used the Tasmanian Award’s Retail Worker Grade 3 classification. For instance, the Tasmanian Award’s

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<sup>348</sup> *Shop Employees (State) Award (AN120499)* at Part B, Table 1 – Wages.

<sup>349</sup> *Retail Industry (South Australia) Award (AN150130)* at clause S10.1.

<sup>350</sup> *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 (AN160292)* at clause 28.

<sup>351</sup> *Retail Trades Award (AN170088)* at clause 7.

<sup>352</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, July 2008, 6.



Grade 3 lists the following as descriptors: corsetiere, designated second-in-charge of a section, and person employed alone with responsibilities for the security and general running of a shop. These descriptors make up a large proportion of the classification descriptions in the SDA’s draft – as can be seen below.<sup>353</sup>

[251] The below table compares the indicative tasks for each of classifications contained in the Tasmanian Award, the SDA draft award, the Commission’s exposure draft, and the final Retail Award. It also shows the progression of the weekly wage for the latter 3.

<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
<u>Retail Employee Grade 3</u> Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop; Storesperson with supervisory role; Floristry tradesperson; General clerical officer, typist; Corsetiere.	<u>Retail Worker Level 3</u> Machine operators; 2IC to Dept Manager; Senior Salesperson; Corsetiere; Driver Selling Stock; Cook (Not Qualified) in a cafeteria; Senior LPO, including an armed LPO; LPO Supervisor; Minilab Operator; Designated second-in-charge of a section (i.e. senior sales assistant); Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop; boner.	<u>Retail Employee Level 3</u> Machine operators; 2IC to Dept Manager; Senior Salesperson; Corsetiere; Driver Selling Stock; Cook (Not Qualified) in a cafeteria; Senior LPO, including an armed LPO; LPO Supervisor; Minilab Operator; Designated second-in-charge of a section (i.e. senior sales assistant); Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop; boner.	<u>Retail Employee Level 3</u> Machine operators; 2IC to Dept Manager; Senior Salesperson; Corsetiere; Driver Selling Stock; Cook (Not Qualified) in a cafeteria; Senior LPO, including an armed LPO; LPO Supervisor; Designated second-in-charge of a section (i.e. senior sales assistant); Designated second-in-charge to a service supervisor; Person employed alone, with responsibilities for the security and general running of a shop.
<u>Weekly rate (\$):</u>	<u>624.00</u>	<u>630.00</u>	<u>625.00</u>

[252] In relation to the final Level 3 rate of \$625 per week, this is a slight decrease from the rate proposed in the Commission’s exposure draft rate of \$630 per week, and a very slight increase on the SDA’s draft proposal. There was no commentary on any of these rates of pay in the available transcripts or submissions.

<sup>353</sup> Retail Trades Award (AN170088) at clause 7.





### **Retail Employee Level 4**

[253] The Commission determined the Retail Employee Level 4 rate to be \$637.60 per week. This classification was aligned with the C10 metal tradesperson’s rate of pay and was directly derived from the SDA’s draft award proposal, which, in turn, was mostly derived from the Tasmanian Award’s Retail Employee Grade 4 classification.

[254] The below table compares the indicative tasks for each of classifications contained in the Tasmanian Award, the SDA draft award, the Commission’s exposure draft, and the final Retail Award. It also shows the progression of the weekly wage for the latter 3.

<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
<u>Retail Employee Grade 4</u>	<u>Retail Worker Level 4</u>	<u>Retail Employee Level 4</u>	<u>Retail Employee Level 4</u>
Section/Department manager with 2 employees (including self); Service Supervisor of up to 15 employees; Night fill supervisor; Tradesperson (other than floristry); Senior clerical officer	An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist.  An employee who that has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work. Qualified Auto Parts and Accessories Salesperson; Window Dresser (Cert III or equivalent experience); Boot/ Shoe Repairer (Cert III) ,Shift Work Supervisor; Section/Department manager with up to 2 employees (including self); Service Supervisor of up to 15 employees; Nightfill supervisor/leader.	An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist,  An employee who that has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work. Qualified Auto Parts and Accessories Salesperson; Window Dresser (Cert III or equivalent experience); A Boot/Shoe Repairer (Cert III); Shift Work Supervisor; Section/Department manager with up to 2 employees (including self); Service Supervisor of up to 15 employees; Nightfill Supervisor/Leader,	An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist,  An employee who has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work; Qualified Auto Parts and Accessories Salesperson; Window Dresser (Cert III or equivalent experience); A Boot/Shoe Repairer (Cert III); A Shiftwork Supervisor; Section/Department manager with up to 2 employees (including self);





<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
			Service Supervisor of up to 15 employees; Nightfill Supervisor/Leader,
<u>Weekly rate (\$):</u>	<u>638.00</u>	<u>637.60</u>	<u>637.60</u>

[255] The term ‘Section Manager’ in the Tasmanian Award was clarified in a Tasmanian Industrial Commission (TIC) decision issued on 13 February 1989.<sup>354</sup> The TIC clarified that a Section Manager is someone who must be in direct contact with customers, be appointed by management to be responsible for the day to day operation of a defined section or department, be responsible for the supervision of at least one other employee, and be responsible for keeping stock. The final Level 4 rate of \$637.60 per week was aligned with the C10 rate in the Manufacturing Award.

#### **Retail Employee Level 5**

[256] The Commission determined the Retail Employee Level 5 rate to be \$665 per week. The classification and the rate remained unchanged from the Commission’s exposure draft. The Commission combined the Retail Worker Levels 6 and 7 classifications from the SDA’s draft award and applied the SDA’s proposed rate for the Retail Worker Level 6 classification.

[257] The SDA based its draft Retail Worker Level 6 classification on the Tasmanian Award’s Retail Employee Grade 5 classification.<sup>355</sup>

[258] The below table compares the indicative tasks for each classification contained in the Tasmanian Award, the SDA draft award, the Commission’s exposure draft, and the final Retail Award. It also shows the progression of the weekly wage for the latter 3.

<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
Retail Employee Grade 5 Section/Department manager with up to 4	Retail Worker Level 5 A tradesperson in charge of other tradespersons within a section or department.	Retail Employee Level 5 A tradesperson in charge of other tradespersons within a section or	Retail Employee Level 5 A tradesperson in charge of other tradespersons within a section or

<sup>354</sup> [1989] TasIRComm T1699/T1814.

<sup>355</sup> *Retail Trades Award* (AN170088) at clause 7.



<b>Tasmanian Award</b>	<b>SDA Draft Award</b>	<b>Retail Exposure Draft</b>	<b>Retail Award 2010</b>
employees (including self) Service Supervisor (more than 15 employees) Clerical officer in charge of up to 4 clerical staff (including self)	Retail Worker Level 6 Section/Department manager with up to 4 employees (including self) , Service Supervisor (more than 15 employees).	department; Section/Department manager with up to 4 employees (including self); Service Supervisor (more than 15 employees),	department; Service Supervisor (more than 15 employees).
Weekly rate (\$):	658.00 (Level 5) 665.00 (Level 6)	665.00	665.00

[259] It is unclear why the SDA proposed the Level 6 rate as \$665 per week. No commentary in the available transcripts or submissions discuss this rate of pay.

#### ***Retail Employee Level 6***

[260] The Commission determined the Retail Employee Level 6 rate to be \$675 per week, which remained unchanged from the Commission's exposure draft.

[261] The Commission derived the Retail Employee Level 6 classification from the SDA's draft Retail Worker Grade 7 classification. In turn, the SDA drew this classification mostly from the Tasmanian Award's Retail Employee Grade 6 classification.<sup>356</sup>

[262] The below table compares the indicative tasks for each of classifications contained in the Tasmanian Award, the SDA draft award, the Commission's exposure draft, and the final Retail Award. It also shows the progression of the weekly wage for the latter 3.

<b><u>Tasmanian Award</u></b>	<b><u>SDA Draft Award</u></b>	<b><u>Retail Exposure Draft</u></b>	<b><u>Retail Award 2010</u></b>
<b><u>Retail Employee Grade 6</u></b> Section/department manager with 5 or more employees (including self); Administration officer in charge of 5 or more employees (including self)	<b><u>Retail Worker Level 7</u></b> Section/Department manager with 5 or more employees (including self), Assistant or Deputy or 2IC Shop Manager, Deputy or 2IC Shop manager.	<b><u>Retail Employee Level 6</u></b> Section/Department manager with 5 or more employees (including self); Assistant or Deputy or 2IC Shop Manager; Deputy or 2IC Shop Manager; Clerical Officer Level 3.	<b><u>Retail Employee Level 6</u></b> Section/Department manager with 5 or more employees (including self); Manager/Duty Manager in a shop without Departments/Sections (may be under

<sup>356</sup> Ibid.



<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
			direction of person not exclusively involved in shop management); Assistant or Deputy or 2IC Shop Manager; Deputy or 2IC Shop Manager; Clerical Officer Level 3.
<u>Weekly rate (\$):</u>	<u>684.00</u>	<u>675.00</u>	<u>675.00</u>

[263] The final Level 6 rate of \$675.00 per week was unchanged from the exposure draft and was a slight decrease on the SDA's proposed rate. As no commentary is apparent from the available transcripts and submissions in relation to this rate, it is unclear why the Commission decreased the amount proposed by the SDA.

#### ***Retail Employee Level 7***

[264] The Retail Employee Level 7 classification and was based on the SDA's draft Retail Worker Grade 8 classification. The SDA explained that the purpose of its draft classification was to establish a diploma qualification standard for the retail classification structure, which would be applicable to visual merchandisers.<sup>357</sup>

<u>Tasmanian Award</u>	<u>SDA Draft Award</u>	<u>Retail Exposure Draft</u>	<u>Retail Award 2010</u>
<u>No equivalent classification</u>	<u>Retail Worker Level 8 Visual merchandiser.</u>	<u>Retail Employee Level 7 Visual Merchandiser (diploma); Clerical Officer Level 4.</u>	<u>Retail Employee Level 7 Visual Merchandiser (diploma); Clerical Officer Level 4.</u>
<u>Weekly rate (\$):</u>	<u>719.00</u>	<u>710.00</u>	<u>710.00</u>

[265] It is unclear why the Commission set the rate for the Retail Employee Level 7 classification at \$710 per week. The available transcripts and submissions do not contain any discussions on this rate.

<sup>357</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, July 2008, 7–8.



### **Retail Employee Level 8**

- [266] The Retail Award's classification for Retail Employee Level 8 was based on the SDA's proposal for the Retail Worker Level 9 classification. The SDA used the *Victorian Shops Award 2000* to create this proposed classification by condensing the shop manager classifications found in the *Victorian Shops Award 2000*. It is important to note that no other award had a separate shop manager classification, except for arguably Queensland's award which contains an ambiguous term. It is unclear how the Level 8 rate of \$710 per week was derived.
- [267] The Australian Retailers Association submitted that the shop manager's rate of pay proposed by the Commission 'does not appear to have been drawn from current award or NAPSA conditions and themselves result in an increase, a significant increase in labour costs' (underline added).<sup>358</sup> The *Victorian Shops Award 2000* had different rates of pay for shop managers depending on the type of shop they managed. This award had 4 separate categories of shop managers: General Shops, Food, Grocers and Liquor Shops, Electrical, Furniture and Hardware Shops, and Clothing and Footwear Shops. The rates of pay varied depending on whether the shop manager was in charge of two or more persons, or fewer.

### **After Award Modernisation 2010 - present**

- [268] Shortly after award modernisation, the SDA applied to the Commission (formerly Fair Work Australia) to vary the pay rate for Retail Employee Level 1 from \$600 per week to \$602.88 per week. The reason for this was that the existing \$600 per week rate did not match the pay rates for retail workers before award modernisation. The SDA argued that the typical pay scale for a retail worker ranged from \$601.92 to \$603.44 per week. Master Grocers Australia opposed the application, stating that the proposed wage increase was not justified on work value grounds.
- [269] Vice President Watson reached the conclusion that there was no justification to implement the SDA's proposed variation and observed that several concessions had been made in regards to terms and conditions during the award modernisation process. Vice President Watson stated that the 'rates in this award were set after lengthy and exhaustive processes before a Full Bench

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<sup>358</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/2, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP and Smith C, 28 July 2009) [PN625].



of the AIRC during the award modernisation process'.<sup>359</sup> In these proceedings, there was no apparent discussion or analysis of the work value for the Level 1 employee.

[270] There were no further matters involving a work value assessment following the making of the modern award.<sup>360</sup>

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<sup>359</sup> [2010] FWA 3413 at [14].

<sup>360</sup> While not a work value case, the ARA, NRA and Master Grocers sought to reduce penalty rates payable for workers on a Sunday, which, was opposed by the SDA and UV. They argued that it would disproportionately impact on women, see [2017] FWCFB 1001.



## 3.7 Hair and Beauty Industry Award 2020

### 3.7.1 Introduction

[271] The *Hair and Beauty Industry Award 2020* (Hair and Beauty Award) is an industry award covering employers throughout Australia in the hair and beauty services industry and employees performing hairdressing services and beauty therapy and related services. The current classification structure and wage rates are as follows:

	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly
	\$	\$		\$ (relativity to C10)
Hair and beauty employee level 1	939.60	24.73		
Hair and beauty employee level 2	961.10	25.29	2	
Hair and beauty employee level 3	995.00	26.18	3	995 (100%)
Hair and beauty employee level 4	1013.40	26.67	4	1085.60
Hair and beauty employee level 5	1043.80	27.47	4	1085.60
Hair and beauty employee level 6	1081.00	28.45	5	1164.10

[272] The occupations of hairdressing and beauty therapy were identified in the Stage 1 report as being highly feminised, with women making up 83.5% of hairdressers and 97.2% of beauty therapists employed in hairdressing and beauty services.

[273] The Stage 1 report noted distinct characteristics of hairdressing and beauty therapy, including:

- The industry is highly award-reliant, with 69.7% of beauty therapists, in particular, estimated to have pay set by an award rather than by a collective agreement.
- The industry is affected by a national skills shortage.
- Both hairdressers and beauty therapists have above average rates of part-time work, with 41.6% of hairdressers and 51.6% of beauty therapists working part-time.
- The industry has a young workforce, with 69% of hairdressers and 80% of beauty therapists aged under 45 years.



- Earnings of hairdressers are low compared to the wider workforce, with more than 70% earning below \$1000 per week. The average total weekly ordinary time earnings was \$750.30, placing them in the bottom quartile of earnings distribution for all employees.
- Earnings of beauty therapists are also low compared to the wider workforce, also with more than 70% earning below \$1000 per week. The average total weekly ordinary time earnings was \$839, placing them also in the bottom quartile of earnings distribution for all employees.
- Both occupations employ high proportions of apprentices and trainees. Apprentice and trainee rates were more common among hairdressers (17.9%) than beauty therapists (9.8%), but both much higher than among all employees (1.9%).<sup>361</sup>

### 3.7.2 Pre-modernisation

#### *Pre-award modernisation*

[274] Prior to award modernisation there were federal awards and NAPSAs in each State regulating the hairdressing and beauty therapy industries, with the main federal award being the *Hairdressing and Beauty Services – Victoria – Award 2001*.<sup>362</sup>

[275] In 1996 the *Hairdressing and Beauty Services—Victoria—Interim Award 1996*<sup>363</sup> (interim award) was made as a result of the finding of a dispute between the SDA and a number of employers in the hair and beauty industry. In a decision issued in transcript on 20 December 1996, the interim award was made to operate from 28 December 1996 for a period of twelve months.<sup>364</sup>

[276] The interim award contained definitions of the classifications of employees in the hair and beauty industry at clause 6. Importantly, clause 6 also set out the wage relativities of each classification relative to the Hairdresser (C5) classification.

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<sup>361</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 58-60

<sup>362</sup> *Hairdressing and Beauty Services – Victoria – Award 2001* (AP806816).

<sup>363</sup> *Hairdressing and Beauty Services – Victoria – Interim Award 1996* (H0570) [Print N7865].

<sup>364</sup> Transcript of proceedings, *Hairdressing and Beauty Services – Victoria – Interim Award 1996* (Australian Industrial Relations Commission C35351/1996, Gay C, 20 December 1996).



[277] Each classification and its relativity to the Hairdresser (C5) classification listed in clause 6 of the interim award is set out in the table below:

<b>Hairdressing and Beauty Services—Victoria—Interim Award 1996 (H0570)</b>		
<b>Classification</b>		<b>Relativity</b>
Salon assistant	C9	85%
Wigmaker	C8	87%
Beauty Worker	C8	87%
Short-term apprentice	C7	92.5%
Hairdressing trainee		
Hairdressing graduate	C7	92.5%
Electrologist	C6	95%
Beautician or cosmetologist	C6	95%
Hairdresser	C5	100%
Beauty therapist (less than 12 months)	C4	105%
Advanced hairdresser	C3	108%
Beauty therapist	C2	110%
Advanced beauty therapist	C1	120%
Hairdresser technician	C1	120%
Salon Manager or Principal	Grade 1	
Salon Manager or Principal	Grade 2	

[278] In relation to the classifications inserted in the interim award, the SDA stated on transcript at the proceedings on 29 November 1996 that the proposed award contained the majority of clauses found in the pre-existing State Award.<sup>365</sup> Later, the Retail Traders' Association of Victoria confirmed that the classifications in the interim award were those in the pre-existing award.<sup>366</sup> There was no further consideration of the classification relativities. There are no available Commission records setting out the reasons for wage fixation in the interim award.

<sup>365</sup> Transcript of proceedings, *Hairdressing and Beauty Services - Victoria - Interim Award 1996* (Australian Industrial Relations Commission, C35351/1996, Gay C, 26 November 1996) 13.

<sup>366</sup> *Ibid* 28.





- [279] The interim award was reviewed pursuant to Item 51 of Part 2 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* (WROLA Act) (award simplification). In the award simplification decision,<sup>367</sup> the Commission stated that the award had been reviewed pursuant to the award simplification principles.<sup>368</sup> The Commission also stated that, for the most part, the terms of the new award would reflect the draft tendered by the Australian Retailers Association (Victoria) and that the SDA had expressed agreement with that draft.
- [280] The federal award, known as the *Hairdressing and Beauty Services – Victoria – Award 2001*<sup>369</sup>, was made as a result of the award simplification decision and commenced operation from 27 April 2001 for a period of six months. The classifications and wage relativities set out in the award were carried over from the interim award.
- [281] The *Hairdressing and Beauty Services – Victoria – Award 2001* was declared common rule pursuant to ss 141 and 493A of the *Workplace Relations Act 1996* on 1 January 2005<sup>370</sup> (the pre-reform federal award).
- [282] The wage relativities listed for all classifications remained the same in the pre-reform federal award; however, the classifications were varied.
- [283] A comparison of the wage relativities to the Hairdresser (C5 classification) set out in clause 6 of the interim award against those set out in clause 4 the pre-reform federal award is set out in the table below:

Hairdressing and Beauty Services—Victoria—Interim Award 1996 (H0570)			Hairdressing and Beauty Services – Victoria – Award 2001 ( <a href="#">AP806816CRV</a> )		
Classification		Relativity	Classification		Relativity
Salon assistant	C9	85%	Salon assistant	C9	85%
Beauty Worker	C8	87%	Beauty worker	C8	87%
Wigmaker	C8	87%	Hairworker	C8	87%

<sup>367</sup> [2001] AIRC 330 PR903099.

<sup>368</sup> [1998] AIRC 1413 Print Q7661 ('Paid rates review decision').

<sup>369</sup> *Hairdressing and Beauty Services – Victoria – Award 2001 [Transitional]* (AT806816).



Hairdressing and Beauty Services—Victoria—Interim Award 1996 (H0570)			Hairdressing and Beauty Services - Victoria - Award 2001 (AP806816CRV)		
Classification		Relativity	Classification		Relativity
			Make-up artist	C7	92.5%
			Nail technician	C7	92.5%
Short-term apprentice	C7	92.5%	Short-term apprentice	C7	92.5%
Hairdressing trainee			Hairdressing trainee		
Hairdressing graduate	C7	92.5%	Hairdressing graduate	C7	92.5%
Electrologist	C6	95%	Electrologist	C6	95%
			Nail technician (small business)	C5	100%
Beautician or cosmetologist	C6	95%	Beautician or cosmetologist	C5	100%
Hairdresser	C5	100%	Hairdresser	C5	100%
Beauty therapist (less than 12 months)	C4	105%	Beauty therapist (less than 12 months)	C4	105%
Advanced hairdresser	C3	108%	Advanced hairdresser	C3	108%
Beauty therapist	C2	110%	Beauty therapist	C2	110%
Advanced beauty therapist	C1	120%	Advanced beauty therapist	C1	120%
Hairdresser technician	C1	120%	Hairdresser technician	C1	120%
Salon Manager or Principal	Grade 1		Salon Manager or Principal	Grade 1	
Salon Manager or Principal	Grade 2		Salon Manager or Principal	Grade 2	

### 3.7.3 Award modernisation

[284] The Hair and Beauty Award was made as a result of consideration of hair and beauty services during the award modernisation priority industries and occupations proceedings.

[285] As noted at [226], the Full Bench considered making a single award for the retail industry that would include hair and beauty services, but the proposal was later abandoned by the Full Bench after evaluating the impact and concerns raised by parties.

[286] The SDA noted that the classification structure in the exposure draft reflected the National Quality Council and Service Skills Australia approach to defining hair and beauty industry



material.<sup>371</sup> The parties also made further written submissions for the Full Bench's consideration.<sup>372</sup> Hair and Beauty Australia (HBA) made the following submission regarding the proposed classification structure, and therefore wage relativities in the exposure draft:<sup>373</sup>

'HBA submits that the classification levels and relative minimum wage rates as contained in the draft Award are not entirely appropriate for employees working in hair and beauty establishments. In particular:

(a) Despite the minimum qualification of a Hairdresser being Certificate III, and the minimum qualification of a Beauty Therapist being Certificate IV, these two trades are commonly treated as being at the same level of skill, and this is not reflected in Schedule A of the draft Award;

(b) The classification level for a Nail Technician Level 2 is far too high, particularly considering that such a person is not considered a 'tradesperson' who has completed a full apprenticeship;

(c) The classification levels for more 'senior' Hairdressers and Beauty Therapists (Level 7) are too high when compared to the classification levels that currently exist in Notional Agreements Preserving A State Award across Australia;

(d) The classification level of a Hair Salon Manager is too high, particularly given that:

(i) such a person is not required to hold any formal qualifications;

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<sup>371</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/10 and ors, Giudice J, Lawler VP, Watson VP, Harrison SDP, Watson SDP, Action SDP, Smith C, 5 November 2008) [PN3732]; Exhibit SDA19.

<sup>372</sup> See Hair and Beauty Association of South Australia, Submission in *Award modernisation*, AM2008/10, 6 October 2008; National Retail Association, Submission in *Award modernisation*, AM2008/10, 10 October 2008; Australian Retailers Association, Submission in *Award modernisation*, AM2008/10, 10 October 2008; Business SA, Submission in *Award modernisation*, AM2008/10, 9 October 2008; Australian Federation of Employers and Industries, Submission in *Award modernisation*, AM2008/10, 15 October 2008; Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, 30 October 2008; Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, 7 November 2008; National Retail Association, Submission in *Award modernisation*, AM2008/10, 11 November 2008; Hair and Beauty Association of South Australia, Submission in *Award modernisation*, AM2008/10, 1 December 2008; Hair and Beauty Australia, Submission in *Award modernisation*, AM2008/10, 5 December 2008; Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, 11 December 2008.

<sup>373</sup> Hair and Beauty Australia, Submission in *Award modernisation*, AM2008/10, 5 December 2008.



(ii) it is common for a person ‘managing or supervising’ a salon to be paid an additional monetary allowance, rather than be allocated a separate classification; and

(iii) it is extremely common for a ‘Hair Salon Manager’ to be the proprietor of the business, and thus not being covered under an industrial instrument.”<sup>374</sup>

[287] HBA proposed an alternative classification structure. In response, the SDA submitted:<sup>375</sup>

‘Employment in the Hairdressing and Beauty industries is largely determined by skills and qualifications obtained. The relevant skills and qualifications are set out in the Hairdressing and Beauty Training Packages developed by Service Skills Australia and approved by the National Quality Council. The NQC approves Training Package qualifications based on their conformity to the Australian Qualifications Framework.

‘The AQF has seven levels which set out in broad terms the skills required at a particular qualification level. To a certain degree this ensures that all qualifications at a particular level, regardless of the industry are at a broadly comparable level (eg all apprenticeships are broadly at the same level, namely level 3 in the AQF).

‘The oral submission of the SDA on the draft exposure concerning the classification system included an exhibit that demonstrated that the proposed classification structure was consistent with the National Training Packages for Hairdressing and Beauty. This was in response to a number of submissions made opposing the classification structure in the draft exposure award.

...

‘The SDA submits that the proposed classification structure places all qualifications at their correct AQF Level. This is in line with the Training Packages and the AQF.

...

‘Re 5c of HBA submission. The wage levels struck by the AIRC are reasonable compared to state awards with some awards above and some below the proposed rates. The AIRC has previously determined that the qualification structure in Victoria and the wage rates applicable thereto are fair and reasonable. The rates proposed by HBA would lead to major wage reductions in some states (such as Victoria and the ACT) for employees.

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<sup>374</sup> Hair and Beauty Australia, Submission in *Award modernisation*, AM2008/10, 5 December 2008.

<sup>375</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, 11 December 2008.



Re 5d and 7. In the Victorian award managers are paid 5% or 10% extra dependant on whether they hold a formal qual. The 5-10% is also based on the highest rate paid of the supervised employees. This is results in a range of \$ being paid to salon managers. The SDA had proposed two levels for salon managers to cover this scenario. However the AIRC draft exposure set the rate the same as a shop manager, and the SDA accepted this. The HBA proposal to pay only 5% of the standard rate would undermine greatly the current allowance level paid. It also steps away from having an all encompassing classification structure.'

[288] A separate Hair and Beauty Award was published on 19 December 2008<sup>376</sup> containing a classification structure in line with the National Quality Council and Service Skills Australia training packages and wage relativities in line with the main federal pre-reform award in the hair and beauty industry at the time, the *Hairdressing and Beauty Services – Victoria – Award 2001*.<sup>377</sup> The classification of salon manager or principal was removed and replaced by an allowance paid to an employee in charge of a hair and/or beauty establishment for a full week.

[289] Variations were made to the Hair and Beauty Award before it came into operation.<sup>378</sup> Amendments affecting the classification structure and definitions were:

- Deleting the classification “short-term apprentice” from Hair and Beauty Employee Level 1.
- Deleting the classification of a beauty therapist who holds a Diploma in Beauty Therapy (or equivalent) from Hair and Beauty Employee Level 5.
- Inserting a new classification level, Hair and Beauty Employee Level 6, for a beauty therapist who holds a Diploma in Beauty Therapy (or equivalent).<sup>379</sup>

[290] In relation to the new classification level, the amendment was proposed in order to recognise the additional skills and experience of the holder of a Diploma in Beauty Therapy. In a decision issued on 25 September 2009,<sup>380</sup> the award modernisation Full Bench decided to vary the award in accordance with the proposal supported by the SDA, which included inserting a new level for beauty therapists who hold a Diploma in Beauty Therapy (or equivalent). The full Bench noted

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<sup>376</sup> PR985115.

<sup>377</sup> *Hairdressing and Beauty Services – Victoria – Award 2001* (AP806816).

<sup>378</sup> [2009] AIRCFB 800 PR282009; [2009] AIRCFB 863 PR989446; [2009] AIRCFB 925 PR990761.

<sup>379</sup> PR989447.

<sup>380</sup> AM2009/1 and AM2009/2; see [2009] AIRCFB 863 PR989446; PR989447.



that \$695 per week was appropriate for the new level considering the existing award relativities, the nature of the study involved and the rates of other awards and NAPSAs.

[291] The Hair and Beauty Award, as published on 19 December 2008 and varied by the award modernisation Full Bench, came into operation on 1 January 2010.<sup>381</sup>

[292] A comparison of the wage rates and classifications for hair and beauty industry employees set out in clause 15 of the *Hairdressing and Beauty Services – Victoria – Award 2001* against those set out in clause 17 in the Hair and Beauty Award operative from 1 January 2010 (including the National Quality Council for Hairdressers quality standards are set out in the following table):

Hairdressing and Beauty Services – Victoria – Award 2001 ( <a href="#">AP806816CRV</a> ) Pre-Reform rate as at 27 March 2006 with 2006, 2007 and 2008 AIRC W&AR increases applied			Hair and Beauty Industry Award 2010 – 1 January 2010 ( <a href="#">PR988391</a> ; <a href="#">PR989447</a> )			National Quality Council
Classification		Base rate per week (\$)	Classification		Per week (\$)	Classification
			Receptionist	Level 1		
Salon assistant	C9	573.00	Salon assistant	Level 1	600.00	Certificate II in Hairdressing
Hairworker	C8	581.30				
Beauty worker	C8	581.30	Unqualified beautician or cosmetologist	Level 2	615.00	
Make-up artist	C7	604.30	Make-up artist (Cert II)	Level 2	615.00	Certificate II in Makeup Services
Nail technician	C7	604.30	Nail Technician (Cert II)	Level 2	615.00	Certificate II in Nail Technology
Short-term apprentice	C7	604.30				
Electrologist	C6	614.80				
Beautician	C5	637.60	Beautician (Cert III)	Level 3	637.60	Certificate III in Hairdressing
Nail technician (small business)	C5	637.60				
Hairdresser	C5	637.60	Hairdresser (Cert III)	Level 3	637.60	Certificate III in Hairdressing

<sup>381</sup> PR985115; PR988391; PR989447; PR990545; PR990531.



Hairdressing and Beauty Services – Victoria – Award 2001 ( <a href="#">AP806816CRV</a> ) Pre-Reform rate as at 27 March 2006 with 2006, 2007 and 2008 AIRC W&AR increases applied			Hair and Beauty Industry Award 2010 – 1 January 2010 ( <a href="#">PR988391</a> ; <a href="#">PR989447</a> )			National Quality Council
Classification		Base rate per week (\$)	Classification		Per week (\$)	Classification
Beauty therapist (less than 12 months)	C4	658.50	Beauty therapist (Cert IV)	Level 4	650.00	Certificate IV in Beauty Therapy
Advanced hairdresser	C3	671.00	Hairdresser (Cert IV) Trichologist – hairdresser (Cert IV)	Level 5	670.00	Certificate IV in Hairdressing (Senior Hairdresser) Certificate IV in Trichology
Beauty therapist	C2	679.30	Beauty therapist (Dip)	Level 6	695.00	Diploma of Beauty Therapy
Advanced beauty therapist	C1	719.00				
Hairdresser technician	C1	719.00				
						Diplomas of Hairdressing Salon Management

[293] There were no variation applications or major cases involving a work value assessment following the making of the modern award.<sup>382</sup> The award history for the Hair and Beauty Award indicates that wages were not generally subject to a systematic work value assessment. Nor can it be said that where a work value assessment was conducted, it was free of gender-based assumptions. Instead, the research suggests that wages were largely fixed by consent between interested parties.

<sup>382</sup> While not a work value case, Ai Group sought to vary the Hair and Beauty Award to reduce the Sunday and public holiday penalty rates for full-time, part-time and casual employees. In that case the Full Bench hearing the claim declined to make the variation: see [2020] FWCFB 39; [2017] FWCFB 1001.



## 3.8 Health Professionals and Support Services Award 2020

### 3.8.1 Introduction

[294] The *Health Professionals and Support Services Award 2020* (Health Professionals Award) is an industry and occupational award covering employers in the health industry and their employees in the classifications set out in the award. The award also covers employers not in the health industry who engage an employee in one of the award’s health professional employee classifications.<sup>383</sup>

[295] The Health Professionals Award was originally published by the Commission on 3 April 2009.<sup>384</sup> The award modernisation Full Bench sought, in the salary structure and level of salaries, to accommodate all health professionals (except doctors and nurses) employed in both the health industry and industry generally.<sup>385</sup>

[296] The classification and wage structure in the current award are as follows:

#### **Support services employees:**

Employee classification	Minimum weekly rate (full-time employee)	AQF level	Metals framework C10 equivalent weekly
	\$		\$ (relativity to C10)
Level 1	910.90		
Level 2	947.00		
Level 3	983.40		
Level 4	995.00	3	995 (100%)
Level 5	1028.70	3	
Level 6	1084.10	4	1085.60
Level 7	1103.60	4	1085.60
Level 8—pay point 1	1141.10		
Level 8—pay point 2	1171.10		
Level 8—pay point 3	1253.30		
Level 9—pay point 1	1275.80		
Level 9—pay point 2	1321.00		
Level 9—pay point 3	1331.60		

<sup>383</sup> *Health Professionals and Support Services Award 2020* (MA000027) clause 4.1.

<sup>384</sup> See [2009] AIRCFB 345 PR042009 at [145]; PR986368.

<sup>385</sup> [2009] AIRCFB 50 PR012009 at [78].





**Health Professionals:**

	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly	Teacher's benchmark rate
	\$	\$		\$ (relativity to C10)	\$ (relativity)
<b>Level 1</b>					
Pay point 1 (UG 2 qualification)	1043.80	27.47	6		
Pay point 2 (3 year degree entry)	1084.10	28.53	7		1470.80 (73.71%)
Pay point 3 (4 year degree entry)	1132.10	29.79	8		
Pay point 4 (Masters degree entry)	1171.10	30.82	9		
Pay point 5 (PhD entry)	1275.80	33.57	10		
Pay point 6	1321.00	34.76			
<b>Level 2</b>					
Pay point 1	1550.40	40.80			
Pay point 2	1593.80	41.94			
Pay point 3	1628.10	42.84			
Pay point 4	1700.40	44.75			
Pay point 5	1763.20	46.40			
<b>Level 3</b>					
Pay point 1	1550.40	40.80			
Pay point 2	1593.80	41.94			
Pay point 3	1628.10	42.84			
Pay point 4	1700.40	44.75			
Pay point 5	1763.20	46.40			
<b>Level 4</b>					
Pay point 1	1877.20	49.40			
Pay point 2	2003.30	52.72			
Pay point 3	2178.50	57.33			
Pay point 4	2404.90	63.29			

[297] The Stage 1 report identified the following highly feminised hospital occupations covered by the Health Professionals Award: Dental Assistants, Receptionists in Hospitals and General Practice



Medical Services, Medical Technicians and Psychologists.<sup>386</sup> Notably, for Dental Assistants and Receptionists women comprise over 90% of the workforce.

[298] The Stage 1 report also identified the following in respect of these occupations:

- Compared to the wider workforce, a relatively high proportion of employees in the identified occupations work part-time.<sup>387</sup>
- The proportion of employees in these occupations with unpaid child-care responsibilities is also higher than the total workforce average, except for Dental Assistants who have a younger age profile.<sup>388</sup>
- The median hourly rates of pay for each of these occupations was lower than for the workforce as a whole, except for Psychologists for whom this pay information was not available.

### 3.8.2 Pre-modernisation

[299] Prior to the 2008–09 award modernisation process employees falling within coverage of the Health Professionals Award were covered by a wide range of State and federal pre-reform instruments. There is very little information available on the public record to indicate how the classifications and wage rates were set in the pre-reform instruments. During award modernisation, the Full Bench published an indicative list of awards covering the whole of the health sector. The following list is a subset, only including the instruments relevant to the making of the Health Professionals Award:

<b>State/ Territory:</b>	<b>Award/NAPSA:</b>	
VIC	<i>Dental (Private Sector Victoria) Award 1998</i>	AP779110
VIC	<i>Health and Allied Services - Private Sector - Victoria Consolidated Award 1998</i>	AP783872
VIC	<i>Health Services Union of Australia (Health Professional Services - Private Sector Victoria) Award 2004</i>	AP835426
VIC	<i>Health Services Union of Australia (Private Pathology - Victoria) Award 2003</i>	AP830802

<sup>386</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 8.

<sup>387</sup> Ibid 7.

<sup>388</sup> Ibid 8, 103.



<b>State/ Territory:</b>	<b>Award/NAPSA:</b>	
VIC	<i>Health Services Union of Australia (Private Radiology - Victoria) Award 2003</i>	AP830017
VIC	<i>Health Services Union of Australia (Victoria - Private Sector - Medical Scientists, Psychologists and Pharmacists) Award 200</i>	AP833755
VIC	<i>Hospital Specialists and Medical Administrators Award 2002</i>	AP816036
VIC	<i>The Private Hospital Administrative Officers - Victoria Award 2005</i>	AP838706
SA	<i>Health Services Union of Australia (South Australia - Private Sector) Award 2003</i>	AP829781
SA	<i>Medical Scientists (South Australian Public Sector) Award</i>	AN150080
ACT	<i>Private Pathology Industry (ACT) Award 2001</i>	AP811669
NSW/ACT	<i>Health Services Union of Australia (NSW/ACT Private Medical Imaging) Award 2004</i>	AP839843
NSW	<i>Dental Assistants and Secretaries (State) (NSW)</i>	AN120179
NSW	<i>Private Hospital Employees' (State) Award</i>	AN120434
NSW	<i>Private Hospital Professional Employees (State) Award</i>	AN120436
NSW	<i>Private Pathology Laboratories (State) Award</i>	AN120439
QLD	<i>Clerical Award - Private Hospitals - State 2003</i>	AN140065
QLD	<i>Dental Assistants (Private Practice) Award - State</i>	AN140090
QLD	<i>Medical Imaging and Radiation Therapy Employees (Private Sector) Award - State 2002</i>	AN140168
QLD	<i>Physiotherapists' Award - State 2003</i>	AN140209
WA	<i>Hospital Salaried Officers (Private Hospitals) Award, 1980</i>	AN160167
WA	<i>Health Attendants Award, 1979</i>	AN160154
WA	<i>Hospital Salaried Officers (Nursing Homes) Award 1976</i>	AN160166
WA	<i>Private Hospital Employees' Award, 1972</i>	AN160154
WA	<i>Health Attendants Award, 1979</i>	AN160154
TAS	<i>Hospitals Award</i>	AN170046
TAS	<i>Medical Diagnostic Services (Private Sector) Award</i>	AN170060

[300] The history of wage setting in relation to three key pre-reform awards from the above list (covering dental assistants other health care professionals and support services) is set out below.

### **Dental Assistants' (Private Practice) Award – State**

[301] The first award to cover dental assistants in Queensland was the *Dental Attendants' Award – State (Exclusive of Public Hospitals)* which was made in 1952 by consent. It defined a dental attendant



as a “female employee who is required to attend to and waits on a Dentist in his surgery or any other place in which work is performed”.<sup>389</sup> The female characterisation of dental assistants continued until 1989 when gender specific language was removed.<sup>390</sup> The term dental attendant was replaced with dental assistant in 1996.<sup>391</sup> The *Dental Assistants’ Award – State (Exclusive of Public Hospitals)* was replaced by the *Dental Assistants’ (Private Practice) Award – State* on 17 August 2001.

[302] In 2003, the Australian Liquor, Hospitality and Miscellaneous Union brought a case seeking pay equity for dental assistants employed under the award.<sup>392</sup> The Queensland Industrial Relations Commission (QIRC) accepted that undervaluation of work had occurred and that the work of dental assistants who possessed Certificate III qualifications were equal to those of tradespersons.<sup>393</sup>

[303] In reaching their conclusion, QIRC considered a survey of the working conditions of dental assistants, work inspections, a case study of the work of dental assistants published in *Worth Valuing*<sup>394</sup>, analysis of the award history, classification structure and qualifications, together with information about the remuneration of comparable groups, both within Queensland and interstate. The evidence revealed a female dominated occupation, primarily engaged in small workplaces, with high levels of casualisation and low levels of unionisation.<sup>395</sup> Consent arrangements characterised changes to the award and the QIRC found that no work value case had been conducted in the past for dental assistants in either the public or private sector.<sup>396</sup> The QIRC also found dental assistants had been disadvantaged by incomplete or inappropriate application of wage adjustment processes.

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<sup>389</sup> [2005] 180 QGIG 187 at [56].

<sup>390</sup> [1989] 130 QGIG 480.

<sup>391</sup> [1966] 62 QGIG 48.

<sup>392</sup> See [2005] 180 QGIG 187.

<sup>393</sup> *Ibid* at [84], [155].

<sup>394</sup> Queensland Industrial Relations Commission, *Worth Valuing: A report of the Pay Equity Inquiry* (Pay Equity Inquiry, No B1568, 30 March 2001) section 5.

<sup>395</sup> *Ibid* at [63].

<sup>396</sup> *Ibid* at [48], [63].



[304] To redress the undervaluation, the QIRC applied a two-part increase to the basic pay rates as specified in the award. The first part was a one-off 11 per cent increase (which was phased in), to compensate for the inability of dental assistants in private practice to successfully negotiate enterprise agreements or other over award payments. The second was a 1.25 per cent per year Equal Remuneration Component, which was to compensate for dental assistants' likely ongoing inability to increase their wages through collective bargaining.<sup>397</sup> The classification structure was also amended to recognise the career path of dental assistants and the role of practice managers. Relativities were aligned with the *Engineering Award – State* which was the traditional benchmark for award wages in Queensland.

[305] The pay rates applying to dental assistants under the *Dental Assistants' (Private Practice) Award – State* as 1 September 2009 were as follows:<sup>398</sup>

Wage Level	% Relativity	Base Rate	Equal Remuneration Component	Total Award Rate
		\$	\$	\$
Dental Assistants				
1	87.4	686.25	8.60	694.85
2	91.4	710.30	8.90	719.20
3	100	748.90	9.40	758.39
4	115	818.70	10.20	828.90
Practice Managers				
1	115	818.70	10.20	828.90
2	125	866.55	10.80	877.35
3	130	889.90	11.10	901.00

## Health and Allied Services - Private Sector - Victoria Consolidated Award 1995 and 1998

[306] This *Health and Allied Services – Private Sector – Victoria Award 1995* (HAS Victorian Award 1995) was made on 6 March 1996 following an application by the HSU. A formal decision was not

<sup>397</sup> Ibid at [192]–[197].

<sup>398</sup> *Dental Assistants (Private Practice) Award – State 2006 (B/2009/41 and B/2009/42) – General Ruling Amendment*.



handed down and the award appears to have been settled through a consent process. In this 1995 award, the classifications and wage rates were expressed as follows:<sup>399</sup>

Classification	Occupations	Amount (\$)
Wage/Skill Group 1	<p><b>Food services</b> Food and domestic services assistant Other cook</p> <p><b>General services</b> Laundryhand Sorter/packer of linen Carpark attendant Seamsperson Lift attendant Incinerator attendant Assistant gardener Maintenance/handyperson (unqualified) All other employees not elsewhere provided for</p> <p><b>Technical, clinical and personal care</b> Theatre attendant Darkroom processor Recording attendant (including ECG and EEG) Nursing attendant Social work/welfare aide Animal house attendant Laboratory assistant Grade 1 Orthotic technician 1</p>	395.20
Wage/Skill Group 2	<p><b>General services</b> Storeperson Seamsperson who cuts and fits garments Gardener (non-trade) Housekeeper Cleaner cleaning windows Laundry operator</p> <p><b>Technical, clinical and personal care</b> Allied health assistant (unqualified) Orthotic technician 2</p>	410.60

<sup>399</sup> *Health and Allied Services - Private Sector - Victoria Consolidated Award 1998 (H0488) [Print Q2805] at 15-20; see also Appendix A - Skill level and classification definitions at 79-102.*



Classification	Occupations	Amount (\$)
Wage/Skill Group 3	<p><b>Food services</b> Cook employed alone Dietary supervisor Sweets cook Pastry cook (other)</p> <p><b>General services</b> Hospital attendant Storeperson alone Driver 1.25 tonnes or less</p> <p><b>Technical, clinical and personal care</b> Laboratory assistant Grade 2 Orthotic technician 3 Personal care worker Grade 1.</p>	420.90
Wage/Skill Group 4	<p><b>Administrative/clerical</b> General clerk Typist Library clerk</p> <p><b>Food services</b> Food monitor</p> <p><b>Technical, clinical and personal care</b> Theatre technician Grade 1 Laboratory assistant Grade 3</p>	426.00
Wage/Skill Group 5	<p><b>General services</b> Security officer Grade 1 Driver 1.25 tonnes to 3 tonnes Other motor ambulance driver or assistant</p> <p><b>Technical, clinical and personal care</b> Allied health assistant (qualified) Instructor trades (unqualified)</p>	436.20
Wage/Skill Group 6	<p><b>Administrative/clerical</b> Pay clerk Medical records clerk Audio typist (other) Stenographer (other) Ward clerk Casualty clerk Patient fees clerk In patient/out patient clerk</p>	441.40



Classification	Occupations	Amount (\$)
	<p>Switchboard operator Receptionist</p> <p><b>General services</b> Driver over 3 tonnes Motor ambulance driver or assistant who is required to hold a St Job First Aid Certificate</p> <p><b>Technical, clinical and personal care</b> Orthotic technician 4 First aid attendant in an industrial or commercial undertaking Pathology technician Grade 1 [plus \$12.80 for each postmortem)</p>	
Wage/Skill Group 7	<p><b>Administrative/clerical</b> Computer clerk Library technician in training</p> <p><b>Food services</b> Pastry cook Trade cook Butcher Second cook Grade D</p> <p><b>General services</b> Maintenance/handyperson – trade Gardener – trade Printer – trade Driver articulated 12-13 tonnes Security officer Grade 2</p> <p><b>Technical, clinical and personal care</b> Pathology collector Grade 1 Theatre technician Grade 2</p>	452.60
Wage/Skill Group 8	<p><b>Administrative/clerical</b> Secretary Medical stenographer Medical audio typist Interpreter (unqualified)</p> <p><b>Food services</b> Chef Grade D Second cook Grade C</p>	461.90





Classification	Occupations	Amount (\$)
	<b>Technical, clinical and personal care</b> Orthotic technician 5 Pharmacy technician Grade 1	
Wage/Skill Group 9	<b>Administrative/clerical</b> Pay clerk advanced Computer clerk advanced Library technician  <b>Food services</b> Chef Grade C Second cook Grade B  <b>General services</b> Maintenance/handyperson advanced Printer advanced Gardener advanced  <b>Technical, clinical and personal care</b> Pathology Collector Grade 2 Pharmacy Technician Grade 2 Anaesthetic technician Pathology technician Grade 2 Personal care worker Grade 2	474.20
Wage/Skill Group 10	<b>Food services</b> Chef Grade B Second cook Grade A  <b>Technical, clinical and personal care</b> Instructor trades (qualified) Year 1	502.90
Wage/Skill Group 11	<b>Administrative/clerical</b> Clerical supervisor Private secretary Interpreter (qualified)  <b>Food services</b> Chef Grade A Food services supervisor  <b>General services</b> General services supervisor Gardener superintendent	528.50



Classification	Occupations	Amount (\$)
	<b>Technical, clinical and personal care</b> Technical, therapy and personal care supervisor Personal care worker supervisor/coordinator Instructor trades (qualified) Year 2 and after.	
Group Supervisor Year 1	-	423.60
Group Supervisor Year 2	-	427.40
Group Supervisor Year 3	-	433.40
Day Centre Aide Year 1	-	393.80
Day Centre Aide Year 2	-	397.50
Day Centre Aide Year 3	-	402.40

[307] The *HAS Victorian Award 1995* was superseded by the *Health and Allied Services - Private Sector - Victoria Consolidated Award 1998* (HAS Victoria Award 1998).<sup>400</sup> The making of the 1998 Award on 30 June 1998 by Commissioner Hingley was a result of the award simplification process, by consent.<sup>401</sup> The support service employee classifications in the Health Professionals modern award appear to be based on the HAS Victorian Award. The rates in the award subject to safety net wage increases over time, including in April 2007.<sup>402</sup> The classification structure and rates in April 2007 order are as follows:<sup>403</sup>

Stream	Occupations	Classification	Amount (\$)
<b>Administrative/clerical services</b>			
1	- General clerk - Typist - Library clerk	Wage/skill group 4	569.00
2	- Pay clerk - Medical records clerk - Business machine operator - Audio typist - Stenographer - Casualty clerk	Wage/skill group 6	586.40

<sup>400</sup> *Health and Allied Services - Private Sector - Victoria Consolidated Award 1998* (H0488) [Print Q2805].

<sup>401</sup> Print Q2510, cited in [2024] FWCFB 150 at [173].

<sup>402</sup> PR976742; see also [2006] AIRCFB 789 PR002006 at [9]–[12].

<sup>403</sup> *Health and Allied Services - Private Sector - Victoria Consolidated Award 1998* (H0488) [Print Q2805] part 5, clause 19.



Stream	Occupations	Classification	Amount (\$)
<b>Administrative/clerical services</b>			
	<ul style="list-style-type: none"> <li>- Patient fees clerk</li> <li>- In patient/out patient clerk</li> <li>- Switchboard operator</li> <li>- Receptionist</li> </ul>		
3	<ul style="list-style-type: none"> <li>- Computer clerk</li> <li>- Library technician</li> </ul>	Wage/skill group 7	597.60
4	<ul style="list-style-type: none"> <li>- Secretary</li> <li>- Medical stenographer</li> <li>- Medical audio typist</li> <li>- Interpreter (unqualified)</li> </ul>	Wage/skill group 8	606.90
5	<ul style="list-style-type: none"> <li>- Pay clerk advanced</li> <li>- Computer clerk advanced</li> <li>- Library technician</li> </ul>	Wage/skill group 9	619.20
6	<ul style="list-style-type: none"> <li>- Clerical supervisor</li> <li>- Private secretary</li> <li>- Interpreter (qualified)</li> </ul>	Wage/skill group 11	671.50
<b>General services</b>			
1	<ul style="list-style-type: none"> <li>- Laundryhand</li> <li>- Sorter/packer of linen</li> <li>- Seamsperson</li> <li>- Carpark attendant</li> <li>- Orderly or cleaner</li> <li>- Lift attendant</li> <li>- Incinerator attendant</li> <li>- Assistant gardener</li> <li>- Maintenance/handyperson</li> <li>- All other employees not elsewhere provided for</li> </ul>	Wage/skill group 1	538.20
2	<ul style="list-style-type: none"> <li>- Storeperson</li> <li>- Seamsperson who cuts/fits garments</li> <li>- Gardener (non-trade)</li> <li>- Housekeeper</li> <li>- Cleaner cleaning windows</li> <li>- Laundry operator</li> </ul>	Wage/skill group 2	553.60
3	<ul style="list-style-type: none"> <li>- Hospital attendant</li> <li>- Storeperson alone</li> <li>- Driver 1.25 tonnes or less</li> </ul>	Wage/skill group 3	563.90
4	<ul style="list-style-type: none"> <li>- Security officer grade 1</li> <li>- Driver 1.25–3 tonnes</li> <li>- Other motor ambulance driver or assistant</li> </ul>	Wage/skill group 5	581.20



Stream	Occupations	Classification	Amount (\$)
<b>Administrative/clerical services</b>			
5	- Diver over 3 tonnes - Motor ambulance driver or assistance required to hold a St John first-aid cert.	Wage/skill group 6	586.40
6	- Maintenance/handyperson (trade) - Gardener (trade) - Storeperson advanced - Printer (trade) - Driver articulate 12-13 tonnes - Security officer grade 2	Wage/skill group 7	597.60
7	- Maintenance/handyperson advanced - Printer advanced - Gardener advanced	Wage/skill group 9	619.20
8	- General services supervisor - Gardener superintendent	Wage/skill group 11	671.50
<b>Food services</b>			
1	- Food and domestic services assistant - Other cook	Wage/skill group 1	538.20
2	- Cook employed alone - Dietary supervisor - Diet cook - Sweets cook - Pastry cook (other)	Wage/skill group 3	563.90
3	- Food monitor	Wage/skill group 4	569.00
4	- Pastry cook - Trade cook - Butcher - Second cook grade D	Wage/skill group 7	597.60
5	- Chef grade D - Second cook grade C	Wage/skill group 8	606.90
6	- Chef grade C - Second cook grade B	Wage/skill group 9	619.20
7	- Chef grade B - Second cook grade A	Wage/skill group 10	665.90
8	- Chef grade A - Food services supervisor	Wage/skill group 11	671.50



Stream	Occupations	Classification	Amount (\$)
<b>Administrative/clerical services</b>			
<b>Technical, clinical and personal care</b>			
1	<ul style="list-style-type: none"> <li>- CSSD attendant</li> <li>- Theatre attendant</li> <li>- Darkroom processor</li> <li>- Recording attendant</li> <li>- Nursing attendant</li> <li>- Social work/welfare aide</li> <li>- Animal house attendant</li> <li>- Laboratory assistant grade 1</li> <li>- Orthotic technician</li> </ul>	Wage/skill group 1	538.20
2	<ul style="list-style-type: none"> <li>- Allied health assistant (unqualified)</li> <li>- Orthotic technician 2</li> <li>- Instrument technician grade 1</li> </ul>	Wage/skill group 2	553.60
3	<ul style="list-style-type: none"> <li>- Laboratory assistant grade 2</li> <li>- Orthotic technician 3</li> </ul>	Wage/skill group 3	563.90
4	<ul style="list-style-type: none"> <li>- Theatre technician grade 1</li> <li>- Laboratory assistant grade 3</li> </ul>	Wage/skill group 4	569.00
5	<ul style="list-style-type: none"> <li>- Allied health assistant (qualified)</li> <li>- Instructor trades (unqualified)</li> </ul>	Wage/skill group 5	581.20
6	<ul style="list-style-type: none"> <li>- Orthotic technician 4</li> <li>- First aid attendant in an industrial or commercial undertaking</li> <li>- Pathology technician grade 1</li> <li>- Instrument technician grade 2</li> </ul>	Wage/skill group 6	586.40
7	<ul style="list-style-type: none"> <li>- Pathology collector grade 1</li> <li>- Theatre technician grade 2</li> <li>- Radiotherapy technician</li> <li>- Instrument technician grade 3</li> </ul>	Wage/skill group 7	597.60
8	<ul style="list-style-type: none"> <li>- Orthotic technician 5</li> <li>- Pharmacy technician grade 1</li> </ul>	Wage/skill group 8	606.90
9	<ul style="list-style-type: none"> <li>- Pathology collector grade 2</li> <li>- Pharmacy technician grade 2</li> <li>- Anaesthetic technician grade 2</li> </ul>	Wage/skill group 9	619.20
10	<ul style="list-style-type: none"> <li>- Instructor trades (qualified) Year 1</li> </ul>	Wage/skill group 10	645.90
11	<ul style="list-style-type: none"> <li>- Technical, therapy and personal care supervisor</li> <li>- Instructor trades (qualified) Year 2 and after</li> </ul>	Wage/skill group 11	671.50



[308] Given that the HAS Victoria Award 1998 was made by consent, there was no consideration given to the wages that were set and the classification structure of the award.

## Private Hospital Professional Employees (State) Award 2006

[309] The *Private Hospital Professional Employees (State) Award 2006* was a NSW award covering a wide range of health professionals in private hospitals. The award was initially created on 3 December 1994.<sup>404</sup>

[310] The award was reviewed under s 19 of the *Industrial Relations Act 1996* (NSW) which required the Industrial Relations Commission of New South Wales to take into account a range of matters, including rates of remuneration and other minimum conditions of employment.<sup>405</sup> The classification structure from the 1994 Award remained unchanged. A reviewed award was published 5 December 2000 by Commissioner McLeay.<sup>406</sup> The rates of pay under the award following the *State Wage Case 2008* were as follows:<sup>407</sup>

Classification	Current Rate per week \$	SWC 2008 Adjustment per week %	Wage Rate as from 1/2/09 per week \$
Medical Officers Resident			
1st year of service	760.30	4.00%	790.70
2nd year of service	816.00	4.00%	848.60
3rd year of service	878.00	4.00%	913.10
4th year of service	936.90	4.00%	974.40
Registrar			
1st year of service	878.60	4.00%	913.70
2nd year of service	936.90	4.00%	974.40
3rd year of service	995.50	4.00%	1,035.30
4th year of service	1,051.70	4.00%	1,093.80

<sup>404</sup> *New South Wales, N.S.W Industrial Gazette*, Vol 278, 31 December 1993.

<sup>405</sup> *Industrial Relations Act 1996 (NSW)*, s 19(3)b

<sup>406</sup> [Private Hospital Professional Employees \(State\) Award](#) dated 5 December 2000

<sup>407</sup> [2008] NSWIRComm 366 Print C6798.



<b>Classification</b>	<b>Current Rate per week  \$</b>	<b>SWC 2008 Adjustment per week  %</b>	<b>Wage Rate as from 1/2/09 per week  \$</b>
Senior Registrar	1,137.40	4.00%	1,182.90
Scientific Officers			
1st year of scale	683.80	4.00%	711.20
2nd year of scale	702.00	4.00%	730.10
3rd year of scale	732.80	4.00%	762.10
4th year of scale	769.60	4.00%	800.40
5th year of scale	809.10	4.00%	841.50
6th year of scale	845.90	4.00%	879.70
7th year of scale	875.30	4.00%	910.30
8th year of scale	897.30	4.00%	933.20
Senior Scientific Officer			
1st year of scale	950.40	4.00%	988.40
2nd year of scale	975.70	4.00%	1,014.70
3rd year of scale	997.60	4.00%	1,037.50
4th year of scale	1,019.40	4.00%	1,060.20
5th year of scale	1,042.20	4.00%	1,083.90
6th year of scale	1,071.00	4.00%	1,113.80
7th year of scale	1,097.70	4.00%	1,141.60
8th year of scale	1,120.50	4.00%	1,165.30
Senior Scientific Officer-in-Charge (a) in charge of a section of a laboratory -			
1st year	950.40	4.00%	988.40
2nd year	975.70	4.00%	1,014.70
Thereafter	997.60	4.00%	1,037.50
(b) in charge of a laboratory at a hospital having an ADA of -			
(i) less than 200:			
1st year	1,019.40	4.00%	1,060.20
2nd year	1,042.20	4.00%	1,083.90
Thereafter	1,070.00	4.00%	1,112.80
(ii) more than 200:			
1st year	1,071.00	4.00%	1,113.80
2nd year	1,097.70	4.00%	1,141.60



<b>Classification</b>	<b>Current Rate per week  \$</b>	<b>SWC 2008 Adjustment per week  %</b>	<b>Wage Rate as from 1/2/09 per week  \$</b>
Thereafter	1,119.80	4.00%	1,164.60
Principal Scientific Officer			
1st year of scale	1,151.20	4.00%	1,197.20
2nd year of scale	1,174.90	4.00%	1,221.90
3rd year of scale	1,201.30	4.00%	1,249.40
4th year of scale	1,225.30	4.00%	1,274.30
5th year of scale	1,250.30	4.00%	1,300.30
6th year of scale	1,275.00	4.00%	1,326.00
7th year of scale	1,299.30	4.00%	1,351.30
8th year of scale	1,325.00	4.00%	1,378.00
9th year of scale	1,349.60	4.00%	1,403.60
10th year of scale	1,375.30	4.00%	1,430.30
Trainee Scientific Officer			
1st year of scale	457.5	4.00%	475.8
2nd year of scale	479.5	4.00%	498.7
3rd year of scale	523.3	4.00%	544.2
4th year of scale	572.2	4.00%	595.1
5th year of scale	621.9	4.00%	646.8
6th year of scale	662.5	4.00%	689
Nurse Counsellor			
1st year of scale	674.5	4.00%	701.5
2nd year of scale	697.4	4.00%	725.3
3rd year of scale	728.7	4.00%	757.8
4th year of scale	756.9	4.00%	787.2
5th year of scale	790	4.00%	821.6
6th year of scale	816.6	4.00%	849.3
7th year of scale	840	4.00%	873.6
8th year of scale	862.4	4.00%	896.9
Thereafter	892.7	4.00%	928.4
Psychologists, Audiologists and Research or Project Officers			
1st year of service	670.2	4.00%	697
2nd year of service	692.8	4.00%	720.5





<b>Classification</b>	<b>Current Rate</b> per week  \$	<b>SWC 2008</b> Adjustment per week %	<b>Wage Rate as</b> from 1/2/09 per week \$
3rd year of service	723.4	4.00%	752.3
4th year of service	753	4.00%	783.1
5th year of service	785.6	4.00%	817
6th year of service	816	4.00%	848.6
7th year of service	839.8	4.00%	873.4
8th year of service	892.5	4.00%	928.2
<b>Clinical Psychologists</b>			
1st year of service	863.5	4.00%	898
2nd year of service	905.6	4.00%	941.8
3rd year of service	944.6	4.00%	982.4
4th year of service	987.1	4.00%	1,026.60
5th year of service	1,026.30	4.00%	1,067.40
<b>Librarian – Graduate</b>			
1st year of service	664.7	4.00%	691.3
2nd year of service	683.6	4.00%	710.9
3rd year of service	709.1	4.00%	737.5
4th year of service	732.7	4.00%	762
5th year of service	756.9	4.00%	787.2
6th year of service	773.4	4.00%	804.3
7th year of service	808.7	4.00%	841
<b>Dieticians</b>			
1st year of scale	702	4.00%	730.1
2nd year of scale	732.8	4.00%	762.1
3rd year of scale	769.6	4.00%	800.4
4th year of scale	809.1	4.00%	841.5
5th year of scale	845.9	4.00%	879.7
6th year of scale	875.3	4.00%	910.3
7th year of scale	897.3	4.00%	933.2
<b>Grade 1</b>			
1st year of scale	950.4	4.00%	988.4
2nd year of scale	975.7	4.00%	1,014.70
Physiotherapists, Occupational Therapists, Music Therapists, Speech Pathologists			



<b>Classification</b>	<b>Current Rate per week</b>	<b>SWC 2008 Adjustment per week</b>	<b>Wage Rate as from 1/2/09 per week</b>
	<b>\$</b>	<b>%</b>	<b>\$</b>
1st year of scale	683.8	4.00%	711.2
2nd year of scale	702	4.00%	730.1
3rd year of scale	732.2	4.00%	761.5
4th year of scale	769.6	4.00%	800.4
5th year of scale	809.1	4.00%	841.5
6th year of scale	845.9	4.00%	879.7
7th year of scale	875.3	4.00%	910.3
8th year of scale	897.3	4.00%	933.2
<b>Medical Records Administrator</b>			
1st year of service	673.2	4.00%	700.1
2nd year of service	683.4	4.00%	710.7
3rd year of service	693.8	4.00%	721.6
4th year of service	703.8	4.00%	732
5th year of service	715.1	4.00%	743.7
6th year of service	728.5	4.00%	757.6
7th year of service	741.7	4.00%	771.4
8th year of service	771.2	4.00%	802
<b>Welfare Officers – Social Adults - Grade 1</b>			
1st year of scale	607.7	4.00%	632
2nd year of scale	634.1	4.00%	659.5
3rd year of scale	657.8	4.00%	684.1
4th year of scale	679.9	4.00%	707.1
5th year of scale	729.8	4.00%	759
<b>Adults - Grade 2</b>			
1st year of scale	726.9	4.00%	756
2nd year of scale	750.3	4.00%	780.3
<b>Social Workers</b>			
1st year of scale	674.5	4.00%	701.5
2nd year of scale	697.4	4.00%	725.3
3rd year of scale	728.7	4.00%	757.8
4th year of scale	756.9	4.00%	787.2
5th year of scale	790	4.00%	821.6
6th year of scale	816.6	4.00%	849.3



Classification	Current Rate per week \$	SWC 2008 Adjustment per week %	Wage Rate as from 1/2/09 per week \$
7th year of scale	840	4.00%	873.6
8th year of scale	862.4	4.00%	896.9
9th year of scale	892.7	4.00%	928.4

[311] Clause 3 of the *Private Hospital Professional Employees (State) Award* sets out grading information providing what scale applies to certain levels of qualifications. For a scientific officer with a three-year degree, the 1<sup>st</sup> year of scale applies which at 1 February 2009 was \$711.2 per week. For a psychologist, audiologist and research or project officer with the 3 year degree, the applicable rate was \$697.

### 3.8.3 Award modernisation

[312] The health and welfare services (excluding social and community services) were considered during Stage 2 of the award modernisation process. On 23 January 2009, the award modernisation Full Bench published 4 exposure drafts for this industry group, including the Health Professionals Award. In a statement releasing the exposure draft for the award, the award modernisation Full Bench stated the Health Professionals Award is intended to cover professional and technical classifications together with clerical and administrative classifications.<sup>408</sup> To this end, the exposure draft provided minimum wages for two classification streams: support service employees and health professional employees. The classification definitions for supported service employees in Schedule A include indicative roles which are set out under three broad subcategories: general and administrative services, food services and technical and clinical services.

[313] Following consultation hearings on 3 and 4 December 2008, the HSU filed submissions in which they proposed a classification schedule for a health industry award with industry and occupational coverage.<sup>409</sup> The classification definitions set out in the exposure draft published on 23 January 2009 resemble those proposed by the HSU in respect of a proposed support, care,

<sup>408</sup> [2009] AIRCFB 50 PR012009 at [78].

<sup>409</sup> Health Services Union, Supplementary submission in *Award modernisation*, AM2008/13, 14 January 2009.



technical and administration stream, and a separate proposed health professionals' stream. The HSU's proposal also included classifications for nurses and medical officers, as they submitted these occupations should be covered by the one health award. In respect of each proposed classification level, the HSU provided a non-exhaustive list of equivalent classifications in pre-reform awards. For health levels 1-7, the HSU references the following pre-reform awards and classifications:

- *Health and Allied Services – Private Sector Victoria Award (AT783872) – General Services 1-3;*
- *Dental Assistants and Secretaries (State) Award (NSW NAPSA) (AN120179) – Level 1-3 positions;*
- *Clerical Award – Private Hospitals – State 2003 (AN140065) – Levels 1-4*
- *Dental (Private Sector Victoria) Award 1989 (AP779110CRV) – Dental Assistants*
- *Dental Technicians and Attendants Award (AN150045) – Dental Technicians*
- *Private Hospital Administrative Officers – Victoria Award 2005 (AP838706CRV) – credit officer, public relations officer, supply officer, food services/catering officer*

[314] The classifications applying to health professionals in HSU's proposed structure for a hybrid award are health levels 8-10, with level 8 defined by the requirement that workers possess a three-year bachelor's degree or equivalent. In respect of these classification levels, the HSU references the following pre-reform awards and classifications:

- *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004 (AP835426CRV) – physiotherapists and radiation therapy technologists;*
- *Medical Scientists (South Australian Public Sector) Award (AN150080) – medical scientists;*
- *Private Hospital Employees (State) Award (NSW NAPSA) (AN120434) – chief radiographer;*
- *Hospitals Specialists and Medical Administrators Award (AP816036) – director of medical services.*

[315] The HSU did not include wage rates in its proposed classification structure for a health award with hybrid coverage, however, it provided a classification matrix with proposed relativities.<sup>410</sup> The HSU's classification matrix set relativities against health level 4, a classification requiring a

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<sup>410</sup> See Health Services Union, Supplementary submission in *Award modernisation*, AM2008/13, 14 January 2009, 4.



Certificate III qualification or equivalent. The rates set out in the exposure draft and the ensuing award published on 3 April 2009, while not perfectly aligned, appear to very broadly reflect the HSU's proposal. The supported service employee level 4 classification was set at the C10 rate of \$637.60 and defined as an employee who "requires specific on-the-job training" and "may require formal qualifications and/or relevant skills training or experience at Certificate III level".<sup>411</sup>

[316] While the award modernisation Full Bench does not stipulate how the rates were calculated, it is likely that the Full Bench had regard to similar or equivalent classifications in pre-reform awards. For example, the rate of \$580 per week for support services employees at level 1, for which indicative roles include assistant gardener, cleaner, general clerk, food and domestic services assistant and an unqualified dental assistant, appears to broadly reflect the rates for similar classifications in pre-reform awards. Following 2008 wage increases, a level 1 employee under the *Clerical Award - Private Hospitals - State 2003* was paid \$585.50 per week, a trainee level health ancillary employee under the *Clerical Award - Private Hospitals - State 2003* was paid \$577.20,<sup>412</sup> a hospital worker level 1 in the *Private Hospital Employees' Award 1972* was paid \$588.20 per week, a level 1 administrative and clerical employee under the *Hospitals Award (Tas)*<sup>413</sup> was paid \$542.24, and a cleaner under *Medical Practitioners (Private Sector) Award (Tas)*<sup>414</sup> was paid \$546.40.

[317] In its decision of 23 January 2009, the Full Bench noted that the salary structure for health professional employees seeks to accommodate all health professionals (except doctors and nurses). The Full Bench noted they had not attempted to attach particular professions or skills to particular pay points and invited parties to examine this and provide advice during the consultations.<sup>415</sup> The exposure draft set out general definitions in respect of each health professional levels in Schedule A and included a list of common health professionals in Schedule

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<sup>411</sup> See *Health Professional and Support Services Award 2010* (MA000027) Schedule A – Classification Definitions.

<sup>412</sup> *South Australian Government Health Etc. Ancillary Employees Award 2006* (AN150146).

<sup>413</sup> *Ibid.*

<sup>414</sup> *Medical Practitioners (Private Sector) Award 2009* (P046).

<sup>415</sup> [2009] AIRCFB 50 PR012009 at [78].



B. Following consultation with the parties, several professions were added or removed from Schedule B, however classification definitions remained largely unchanged.

[318] The Full Bench commented that the draft awards covering nurses and health professionals provided a common entry rate of \$697.00 for health professionals with a three-year degree. Again, this figure broadly reflected rates for equivalent classifications in pre-reform awards.

[319] Since the award was made in August 2009, aside from the annual wage review adjustments, there has been no further consideration of wages and the classification structure. The award history indicates that wages were not generally subject to a systematic work value assessment. Nor can it be said that where a work value assessment was conducted, it was free of gender-based assumptions. Instead, the research suggests that wages were largely fixed by consent between interested parties.



## 3.9 Legal Services Award 2020

### 3.9.1 Introduction

[320] The *Legal Services Award 2020* (Legal Services Award) is an industry award expressed to cover employers in the legal services industry (employers engaged in the business of providing legal and legal support services) and their employees in the classifications set out in Schedule A of the award, being legal, clerical and administrative employees, law graduates and law clerks. It does not cover lawyers admitted to practice. Nor does the award cover employers in community legal centres, aboriginal legal services or those whose primary activity is not within the legal services industry.

[321] The classification and wage structure in the current award are as follows:

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly	Teacher's benchmark rate
	\$	\$		\$ (relativity to C10)	\$ (relativity)
Level 1—Legal clerical and administrative employee	954.00	25.11			
Level 2—Legal clerical and administrative employee	995.00	26.18			
Level 3—Legal clerical and administrative employee	1050.90	27.66	3	995 (105.62%)	
Level 4—Legal clerical and administrative employee	1103.60	29.04	4	1085.60	
Level 5—Legal clerical and administrative employee	1148.40	30.22	4	1085.60	
Level 5—Law graduate*	1148.40	30.22			
Level 6—Law clerk	1217.30	32.03	5		1164.10

\*Law graduates are employees that have completed a qualification in law, ranging from a bachelor's degree (AQF 7) to a master's level juris doctor (AQF 9), and are undertaking training to be admitted to practice law. Their applicable minimum rate is not here considered aligned to these qualifications. Note that law clerks are aligned to AQF 5, and have a higher minimum rate.



[322] The Stage 1 report identified Conveyancers and Legal Executives as highly feminised occupations (83.4% female) that ‘may be’ covered by the *Legal Services Award 2020*. Around a third had Bachelor degree level qualification or higher and just under one fifth had a diploma or advanced diploma. Conveyancers and Legal Executives are young compared to the wider workforce with approximately a quarter aged 24 years or under. The incidence of part-time work also appears high relative to the wider workforce.<sup>416</sup>

[323] The Stage 1 report noted that information on pay setting is limited for Conveyancers and Legal Executives, however, available data indicates that mean earnings were low relative to the wider workforce.<sup>417</sup>

### 3.9.2 Pre-modernisation

#### ***Victorian Legal Professional, Clerical and Administrative Employers Award 1993 and 2004***

[324] The classification structure and rates of pay in the Legal Services Award have their origins in the *Victorian Legal Professional, Clerical and Administrative Employers Award 1993*.<sup>418</sup>

[325] The *Victorian Legal Professional, Clerical and Administrative Employees Award 1993*<sup>419</sup> (the Vic LPCA Award), a federal award, was made by Deputy President Maher on 31 May 1994 with effect from 19 November 1993.<sup>420</sup> It was an interim award, made as a result of a notification of dispute.

[326] The 1993 award reflected the terms of the Legal Profession Employees Award (Vic), a State award which ceased to have effect when the Victorian government introduced the *Employee Relations Act 1992*, which resulted in the abolition of State awards.

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<sup>416</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Final report, UNSW Social Policy Research Centre, 6 November 2023) 50.

<sup>417</sup> Ibid at 52.

<sup>418</sup> Print V0119.

<sup>419</sup> AW801883.

<sup>420</sup> *Victorian Legal Professional, Clerical and Administrative Employees Award 1993* [Print L1130].





[327] The 1993 award was made up of three parts. Part 1 contained provisions applicable to all employees other than solicitors, Part 2 contained provisions applicable only to solicitors and Part 3 contained provisions applicable to law students and work experience clerks.

[328] On 21 December 1994, the Commissioner Lawson varied the 1993 Award applying the structural efficiency principles and restructuring the award.<sup>421</sup> The classifications in the restructured award are the same as those that appear in the 2004 award except for 'Grade 7A—Senior law clerk/solicitor' and 'Grade 7B—Senior law clerk/solicitor'.

### ***Award simplification***

[329] On 4 December 1998, the Commission initiated a review of the 1993 award pursuant to Item 51 of Part 2 of Schedule 5 of the WROLA Act 1996. The *Victorian Legal Professional, Clerical and Administrative Employees Award 2004* (the 2004 Award) was the end result of the award simplification process and came into effect on 15 January 2004.<sup>422</sup>

[330] During the award simplification hearings, the ASU submitted that the 1993 Award has continuing relevance, that it was subject to the structural efficiency principles when first established in the federal jurisdiction, the rates are properly fixed minimum rates and the Grade 3 legal clerical officer is the 100 per cent 'C10' equivalent.<sup>423</sup>

[331] In the process of reviewing and simplifying the 1993 Award, there was significant dispute between the major parties as to the substance of the proposed simplified award. However, the decision notes that ultimately agreement was reached as to the substantive aspects of the proposed award except for two matters which were arbitrated. Those matters related to abandonment of employment and the provision of junior rates for the Grade 7 classification.<sup>424</sup>

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<sup>421</sup> [2004] AIRC 47 PR942718; Print L7962 and correction L8795.

<sup>422</sup> [2004] AIRC 47 PR942718.

<sup>423</sup> Transcript of proceedings, *Administrative Employees Award 1993* (Australian Industrial Relations Commission, C0120/098, Lacy SDP, 19 March 2002) [PN11]–[PN18].

<sup>424</sup> [2004] AIRC 47 PR942718 at [5]–[9].



[332] The Commission was satisfied that ‘the award accords with the Full Bench Principles, in particular Principle 9 of the Award Simplification Case.’<sup>425</sup>

**Common rule**

[333] On 8 March 2005, following application by the ASU, the 2004 award was declared common rule in Victoria, with effect from 1 May 2005.<sup>426</sup>

### 3.9.3 Award modernisation

[334] The legal services industry was initially considered, albeit briefly, during the initial/priority stage of the award modernisation proceedings as part of the consideration of award coverage for clerical employees.

[335] In these initial proceedings, the ASU sought an occupational award for private sector clerical employees, with exceptions for certain industries containing clerical workers including relevantly the legal services industry which it submitted should have a separate and specific award. The ASU sought this exception on the basis that clerical and administrative staff in the legal services sector perform work in a very particular work environment with a high level of industry and enterprise knowledge required.<sup>427</sup>

[336] In advancing the case for an occupational award for clerical employees (aside from the exceptions for certain industries), the ASU emphasised the breakthroughs that had been made for this female-dominated sector. They submitted that:<sup>428</sup>

‘71. Award restructuring in clerical and administrative employee awards was critical to the establishment of fair wages for clerical employees, particularly women workers. Clerical awards had equal pay for work of equal value from the earliest opportunity but in a number of cases common rule awards provided little by the way of career development opportunities for clerical employees or recognition of higher level skills actually employed by these employees.

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<sup>425</sup> Ibid at [12], PR950653.

<sup>426</sup> [2005] AIRC 194 PR954623.

<sup>427</sup> Australian Municipal, Administrative, Clerical and Services Union, Submission in *Award modernisation*, AM2008/1, 1 August 2008, [23].

<sup>428</sup> Ibid at 17–18.



72. Award restructuring redressed these issues and established wages parity with other skilled occupations on the basis of equal pay for work of equal skill. This represented a breakthrough in wage justice and wage equity for this female dominated workforce.

...

74. These achievements for women's work and skills will be threatened if the awards and classification structures of clerical workers are absorbed into general industry awards especially where the bulk of employees are not clerical administrative employees. It is in these industries and sectors that the skills of clerical administrative employees have traditionally devalued and where, even in recent times, unions which represent the bulk of the workforce have traded off gains made by clerical and administrative workers in the 1990s.'

[337] The ASU submitted that "in many industries clerical administrative employees – often a predominantly female workforce – have been over-looked and under-valued by employers and other groups of employees."<sup>429</sup> At the hearing on 30 October 2008, the ASU tendered to the Commission a statement published in the media in conjunction with the ANF and seven women's groups, expressing concern for women workers and seeking the continued existence of occupational awards.<sup>430</sup>

'Value of women's work threatened by award modernisation The value of work performed by Australian women is being threatened by moves currently underway to modernise awards. Our achievements in gaining recognition for skills that are traditionally performed by women are under threat.

For 100 years women have campaigned for the right to have their skills recognised and rewarded. Women employed in occupations such as nursing, childcare, social welfare or clerical and administrative work were not sufficiently rewarded or valued for the work they did. Training was informal and pay was a lot less than male dominated occupations.

For most of the last century, women were not even paid the same award wages as men when doing the same work or work of equal value.

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<sup>429</sup> Australian Municipal, Administrative, Clerical and Services Union, Submission in *Award modernisation*, AM2008/1, 6 June 2008.

<sup>430</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/5 and ors, Giudice J, Lawler VP, Watson VP, Harrison SDP, Watson SDP, Action SDP, Smith C, 30 October 2008) [PN2382]–[PN2383]; Australian Municipal, Administrative, Clerical and Services Union, Submission in *Award modernisation*, AM2008/1, 30 October 2008.



Despite the introduction of equal pay in the 1970s, women are still struggling to gain the same pay as that of their male colleagues.

In the early 1990s, government reforms meant we had greater ability to fight for, achieve and implement our objectives around recognition of skills and career paths.

Award restructuring and training reform delivered historic shifts in the attitudes to women's work.

The great steps forward for women must not be undermined by proposals to abolish occupational awards and submerge them into industry awards.

This will turn the clock back and make it hard for women to achieve reward for their skills in industries where women have little voice or influence.

We call upon the Deputy Prime Minister, Julia Gillard, the Australian Industrial Relations Commission, unions and employers to protect the hard won gains of women workers. We must ensure that their skills, pay and conditions are protected and advanced through the continued existence of occupational awards.

Our equality at work is under threat and we cannot allow this to happen.'

[338] Despite the notion that modern awards should be created 'primarily along industry lines', in its decision of 20 June 2008 the Commission decided to include a private sector clerical occupation on the priority list.<sup>431</sup>

[339] In its Statement of 12 September 2008<sup>432</sup> publishing the exposure draft for the occupational *Clerks—Private Sector Award 2010*, the Full Bench noted that a number of parties had foreshadowed coverage of clerks by various industry awards, including the legal services industry. The Full Bench confirmed the desirability of that approach and continued:

'Modern industry awards should cover all award covered employees in that industry as far as practical so that the number of awards applying to an employer is minimised. The practicalities will need to be properly addressed when the scope of award coverage is considered in each industry. The parties may be assisted in that regard by the classification structure and conditions established by the draft *Clerks—Private Sector Award 2010*.'

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<sup>431</sup> [2008] AIRCFB 550 PR062008 at [53].

<sup>432</sup> [2008] AIRCFB 717 PR092008 at [63]–[66].



[340] The legal services industry was subsequently considered in stage 4 of the award modernisation proceedings.<sup>433</sup> The Commission published an indicative list of awards and NAPSAs for the legal services industry in its Statement of 29 June 2009.<sup>434</sup>

Publication Title	Pub ID	State
<b><i>Pre-reform awards (non-enterprise)</i></b>		
Property and Business Services Industry Sector Minimum Wage Order - Victoria - 1997	AP793164	
Victorian Legal Professional, Clerical and Administrative Employees Award 2004	AP831581CRV	
<b><i>NAPSAs (non enterprise)</i></b>		
Clerical and Administrative Employees Legal Industry (State) Award	AN120675	NSW
Graduate-At-Law (State) Award	AN120237	NSW
Salaried Lawyers Award	AN150135	SA
Barristers and Solicitors Award	AN170008	TAS

[341] The ASU provided a draft award (ASU draft award) to the Commission on 24 July 2009, which it based on the Vic LPCA Award. The ASU draft award included classifications for legal, clerical and administrative employees, articled clerk, law clerk/first year lawyer, senior legal admin employee/second year lawyer, as well as classifications for third, fourth and fifth year lawyer.

[342] The Commission published an exposure draft of the *Legal Services Award 2010* on 25 September 2009 to cover employees up to and including articled clerks/graduates at law.<sup>435</sup> The exposure draft largely reflected the ASU draft award except that the Full Bench declined to include classifications for lawyers admitted to practice.

<sup>433</sup> [2009] AIRCFB 641 PR262009.

<sup>434</sup> Ibid.

<sup>435</sup> [2009] AIRCFB 865 PR392009.



[343] The Full Bench in publishing the exposure draft stated:<sup>436</sup>

‘We publish an exposure draft of the Legal Services Award 2010. The award will cover employees up to and including articulated clerks/graduates at law. We have not included classifications for lawyers admitted to practice. There is some award coverage for lawyers in the private sector but this is limited and does not appear, in our view, to satisfy the criteria necessary for the making of a modern award. It may be necessary for interested persons to give consideration to what if any transitional provisions may be needed for employees who are currently covered by an industrial instrument but will not be covered by the modern award.’

[344] The modern *Legal Services Award 2010* was published on 4 December 2009. Consistent with the Full Bench’s earlier views, the modern award was expressed to cover law graduates but not solicitors admitted to practice on the basis that unlike law graduates, they had not found there to be widespread coverage of solicitors.<sup>437</sup>

[345] The modern award contained a more simplified structure than the exposure draft, omitting increments at each level as well as removing the previously highest classification ‘Level 7–senior legal administration employee’. Otherwise, no changes were made to the classification structure or minimum wages. The Full Bench also included an annualised salaries clause for both clerical and administrative employees and law graduates.<sup>438</sup>

[346] A comparison of the classification structure and rates of the Vic LPCA Award, the ASU draft award, the exposure draft and modern award is set out in Table 1 below. The Clerks exposure draft is also included in the table as it shows the origin of the rates for the legal, clerical and administrative employees in Levels 1-5 of the Legal Services modern award as discussed further below.

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<sup>436</sup> Ibid at [141].

<sup>437</sup> [2009] AIRCFB 945 PR122009.

<sup>438</sup> Ibid at [128]–[130].



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**Table 1—Comparison of the classification structure and rates from pre-reform award to the modern award**

Victorian Legal Professional, Clerical and Administrative Employees Award 2004 ( <a href="#">AP831581CRV</a> )		<a href="#">Exposure Draft</a> (September 2008): Clerks—Private Sector Award 2010		ASU draft Legal Services Award (24 July 2009)		Exposure draft—(September 2009): Legal Services Award 2010		Legal Services Award 2010 (as published 4 December 2009)	
Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$
Grade 1 Legal Clerical Assistant	560.50	Level 1—Year 1	580.00	Level 1—Year 1 (legal clerical and administrative employee)	600.00	Level 1—Year 1 (legal clerical and administrative employee)	600.00	Level 1—Legal clerical and administrative employee	610.00
Grade 2 Legal Clerical Assistant	603.90	Level 1—Year 2	610.00	Level 1—Year 2 (legal clerical and administrative employee)	610.00	Level 1—Year 2 (legal clerical and administrative employee)	610.00	Level 2—Legal clerical and administrative employee	637.60
Grade 3 Legal Clerical Officer Entry Level	637.60	Level 1—Year 3	630.00	Level 1—Year 3 (legal clerical and administrative employee)	630.00	Level 1—Year 3 (legal clerical and administrative employee)	630.00	Level 3—Legal clerical and administrative employee	675.00
Grade 4 Legal Clerical Officer/Articled Clerk	679.30	Level 2—Year 1	637.60	Level 2—Year 1 (legal clerical and administrative employee)	637.60	Level 2—Year 1 (legal clerical and administrative employee)	637.60	Level 4—Legal clerical and administrative employee	710.00
Grade 5 Legal Clerical & Administrative Officer	735.30	Level 2—Year 2	650.00	Level 2—Year 2 (legal clerical and administrative employee)	650.00	Level 2—Year 2 (legal clerical and administrative employee)	650.00	Level 5—Legal clerical and administrative employee	740.00



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Victorian Legal Professional, Clerical and Administrative Employees Award 2004 (AP831581CRV)		Exposure Draft (September 2008): Clerks—Private Sector Award 2010		ASU draft Legal Services Award (24 July 2009)		Exposure draft—(September 2009): Legal Services Award 2010		Legal Services Award 2010 (as published 4 December 2009)	
Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$
Grade 6 Law Clerk/Solicitor	771.20	Level 3	675.00	Level 3—(legal clerical and administrative employee)	675.00	Level 3—(legal clerical and administrative employee)	675.00	Level 5—Law graduate	740.00
Grade 7 Legal Administrative & Professional Officer		Level 4	710.00	Level 4—(legal clerical and administrative employee)	710.00	Level 4—(legal clerical and administrative employee)	710.00	Level 6—Law clerk	786.00
Grade 7A 2nd Year of Service	833.80	Level 5	740.00	Level 5—(legal clerical and administrative employee)	740.00	Level 5—(legal clerical and administrative employee)	740.00		
Grade 7B 3rd Year of Service	871.50			Level 5—(articled clerk)	740.00	Level 5—articled clerk/law graduate	740.00		
		...		Level 6—(law clerk/first year lawyer)	786.00	Level 6—law clerk	786.00		
				Level 7—senior legal admin employee/second year lawyer)	859.00	Level 7—senior legal administration employee	859.00		
				Level 8—(third year lawyer)	941.00				





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Victorian Legal Professional, Clerical and Administrative Employees Award 2004 (AP831581CRV)		<a href="#">Exposure Draft</a> (September 2008): Clerks—Private Sector Award 2010		ASU draft Legal Services Award (24 July 2009)		Exposure draft—(September 2009): Legal Services Award 2010		Legal Services Award 2010 (as published 4 December 2009)	
Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$	Classification	Per week \$
				Level 9—(fourth year lawyer)	1,033.00				
				Level 10—(fifth year lawyer and above)	1,130.00				



### **Level 1-5 Legal clerical and administrative employees**

[347] As set out above, the modern award largely reflected the ASU draft award which in turn was based on the federal Vic LPCA Award at least in relation to classification structure.<sup>439</sup>

[348] The classification definitions for the Level 1-5 Legal clerical and administrative employees in the modern award essentially replicate the definitions in the Vic LPCA Award (except for the removal of articulated clerk from the Grade 4 classification in the Vic LPCA Award which is discussed further below.)

[349] The ASU submitted that the rates for the Level 1-5 Legal clerical and administrative employees in its draft award were 'modified modern Clerks award rates'. It confirmed this at the hearing on 29 October 2008:<sup>440</sup>

'[...] the explanation for the rates of pay that are in the exposure draft, seeing that they were based on the ones in the ASUs original draft award, is that of course with the exception of the starting rate in the award the rates for the clerical and administrative employees are the rates from the modern Clerks Award. That award we considered to be a fair guide and a fair national standard seeing they were rates of pay that had been set for clerical and administrative employees by this Full Bench in the modern Clerks Award so we say they're fair and reasonable rates.'

[350] The ASU continued that in taking the rates from the Clerks exposure draft when drafting the Legal Services award, it had increased the rate for Level 1—Year 1:

'We did adjust the starting rate from \$580 to \$600, as I think we explained to Commissioner Smith at the public consultations. Any issues that do arise by way of increased or in some cases reduced rates compared to some of the state awards obviously can be dealt with via the transitional and phasing in arrangements already determined by this Commission and we say that those traditional and phasing in provisions should certainly be included in this award. But the explanation for where those rates come from is the one I just gave out of the modern Clerks Award, particularly at the lower levels of the structure.'<sup>441</sup>

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<sup>439</sup> See Australian Municipal, Administrative, Clerical and Services Union, Submission in *Award modernisation*, AM2008/1, 24 July 2009, 12, 14.

<sup>440</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/24 and ors, Giudice J, Watson VP, Watson SDP, Harrison SDP, Action SDP, Smith C, 28 October 2008) [PN1385].

<sup>441</sup> Ibid [PN1386].



[351] It can be seen in the comparison table above that the Level 1-5 rates in the ASU draft have been taken from the Clerks—Private Sector Award 2010 (Clerks exposure draft), although modified for Level 1—Year 1.

[352] It is apparent that in adopting the rates from the Clerks exposure draft, the C10 rate of \$637.60 which was aligned with the Grade 3 classification in the Vic LPCA Award, became aligned with the Grade 2 classification in the ASU draft award and subsequently in the Legal Services modern award. This is explained in the ASU submission to the award modernisation proceedings for the Clerks award:<sup>442</sup>

‘Rates of pay: the ASU has considered the classification structures that apply in common rule clerical and administrative awards and NAPSAs. These award classification structures grew out of award restructuring in the early 1990s and are all skills based classification structures. They differ in the number of levels and some rates of pay at the various levels but treat skills consistently. All structures align at the C10 or 100% rate: either at Grade 3 [Victoria, Tasmania, NSW, WA, ACT and the NT] or at level 2 [SA and Qld].

The Union has identified the SA structure as the most appropriate structure of the eight awards considered. Employees can be transitioned to this classification structure without any employees being disadvantaged.

The ASU believes that this can also be done without additional cost to employers since the minimum rates of pay applicable to clerical and administrative employees, as shown in ABS earnings data, significantly exceed the minimum rates of pay in these awards.’

[353] The SA award referred to in the ASU submission above is the *Clerks’ (South Australia) Award* (Clerks SA Award).<sup>443</sup> The ASU during hearings submitted that the rates of pay in the ASU draft Clerks award were based on the properly fixed minimum rates in the Clerks SA Award.<sup>444</sup>

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<sup>442</sup> Australian Municipal, Administrative, Clerical and Services Union, Submission in *Award modernisation*, AM2008/1, 1 August 2008, [105]–[107].

<sup>443</sup> AN150039.

<sup>444</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/5 and ors, Giudice J, Lawler VP, Watson VP, Harrison SDP, Watson SDP, Action SDP, Smith C, 30 October 2008) [PN2442].



[354] In publishing the Clerks modern award, the Full Bench stated that it had had regard to the range of existing provisions. They also considered that the classifications reflect work value and existing award classification structures.<sup>445</sup>

#### **Level 5—Law graduate**

[355] The ASU draft award included a classification for articulated clerk, as did the Vic LPCA Award, albeit at a different level. The exposure draft amended the classification to articulated clerk/law graduate. The major law firms submitted in relation to the exposure draft that except for WA and NT, law graduates seeking admission to legal practice no longer complete ‘articles of clerkship’. It was subsequently amended to ‘law graduate’ only in the modern award.

[356] During the award modernisation proceedings, the ASU in its draft award set the rate for an articulated clerk at ‘level 5—articled clerk’ with a corresponding rate of \$740 stating that an articulated clerk has a four-year degree at least and that the Vic LPCA Award rate for an articulated clerk at Grade 4 was too low at \$679.30. The ASU submitted that it should be commensurate with that of other similarly trained professional employees.<sup>446</sup>

[357] On transcript, the ASU submitted:<sup>447</sup>

‘In our draft award which attempts to bring together both the clerical administrative classifications, the paralegal and para professional classifications with classifications for employed solicitors, we have put articulated clerks in a new Grade 5 and proposed a rate of \$740 per week for articulated clerks. This happens to align with the top rate of the modern clerks’ award which is also similar to the top rates in other industry awards applying to clerks and the paralegals, as I mentioned, in New South Wales NAPSA and Tasmania want.’

[358] Although the classification of ‘articled clerk’ was changed to ‘law graduate’ as set out above, it remained at the higher Level 5 rate of \$740 in the published modern award as proposed in the ASU draft, compared to ‘Grade 4 Legal Clerical Officer/Articled Clerk’ in the Vic LPCA Award.

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<sup>445</sup> [2008] AIRCFB 1000 PR122008 at [227], [229].

<sup>446</sup> Transcript of proceedings, *Award modernisation* (Australian Industrial Relations Commission, AM2008/81, Smith C, 6 August 2009) [PN105]–[PN107].

<sup>447</sup> *Ibid* [PN105].



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### ***Level 6—Law clerk***

[359] The classification definition for ‘Level 6—Law Clerk’ in the modern award has been taken from the Vic LPCA Award, but with the core skills for solicitors removed from the ‘Grade 6—law clerk/solicitor’ classification, since the modern award does not cover lawyers admitted to practice. It is not clear where the rate for Level 6—Law clerk in the Legal Services modern award originated or how it was arrived at.

[360] While the award was extensively varied during the 4 yearly review of modern awards, however, no substantive variations to rates/classifications have been made to the Legal Services Award.



## 3.10 Nurses Award 2020

### 3.10.1 Introduction

[361] The *Nurses Award 2020* (Nurses Award) is an occupational award covering employers in the health industry and employees classified as Registered Nurses (RNs), Enrolled Nurses (ENs), Nursing Assistants or Assistants in Nursing (AINs), Occupational Health Nurses and Nurse Practitioners. It also covers employers who employ Midwives and student nurses.

[362] The basis for the modern award was the Nurses (ANF – South Australian Private Sector) Award 2003, however the AIN classification structure was derived from the Nurses Private Employment (ACT) Award 2002 and the Nurses’ Aged Care Award – State 2005 (Queensland).

[363] The *Nurses Award 2010* was published by the Commission on 3 April 2009 and came into operation on 1 January 2010.<sup>448</sup> The current classification structure and minimum wage rates for non-aged care employees in the Nurses Award are as follows:

<b>Nursing assistant—other than aged care employees</b>				
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>	<b>AQF level</b>	<b>Metals framework C10 equivalent weekly</b>
	<b>\$</b>	<b>\$</b>		<b>\$ (relativity to C10)</b>
1st year	934.20	24.58		
2nd year	948.80	24.97		
3rd year and thereafter	964.00	25.37		
Experienced (the holder of a relevant certificate III qualification)	995.00	26.18	3	995 (100%)

<b>Enrolled nurses—other than aged care employees</b>		
<b>Student enrolled nurse</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Less than 21 years of age	867.90	22.84

<sup>448</sup> [2009] AIRCFB 345 PR042009.



<b>Enrolled nurses—other than aged care employees</b>		
<b>Student enrolled nurse</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
21 years of age and over	910.90	23.97

<b>Enrolled nurse</b>				
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>	<b>AQF level</b>	<b>Metals framework C10 equivalent weekly</b>
	<b>\$</b>	<b>\$</b>		<b>\$(relativity to C10)</b>
Pay point 1	1013.40	26.67		
Pay point 2	1026.80	27.02	4	1085.60
Pay point 3	1040.50	27.38	4	1085.60
Pay point 4	1055.50	27.78	4	1085.60
Pay point 5	1066.10	28.06	4	1085.60

<b>Registered nurses—other than aged care employees</b>		
<b>Registered nurse—Levels 1-5</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Registered nurse—level 1		
Pay point 1	1084.10	28.53
Pay point 2	1106.40	29.12
Pay point 3	1133.50	29.83
Pay point 4	1163.70	30.62
Pay point 5	1199.40	31.56
Pay point 6	1234.10	32.48
Pay point 7	1269.80	33.42
Pay point 8 and thereafter	1302.80	34.28
Registered nurse—level 2		



<b>Registered nurses—other than aged care employees</b>		
<b>Registered nurse—Levels 1-5</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Pay point 1	1337.40	35.19
Pay point 2	1358.70	35.76
Pay point 3	1382.30	36.38
Pay point 4 and thereafter	1404.90	36.97
<b>Registered nurse—level 3</b>		
Pay point 1	1450.10	38.16
Pay point 2	1476.80	38.86
Pay point 3	1502.30	39.53
Pay point 4 and thereafter	1529.30	40.24
<b>Registered nurse—level 4</b>		
Grade 1	1655.10	43.56
Grade 2	1773.70	46.68
Grade 3	1877.20	49.40
<b>Registered nurse—level 5</b>		
Grade 1	1670.20	43.95
Grade 2	1758.80	46.28
Grade 3	1877.20	49.40
Grade 4	1994.20	52.48
Grade 5	2199.50	57.88
Grade 6	2406.60	63.33

<b>Registered nurses—other than aged care employees</b>		
<b>Minimum entry rate</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
4 year degree <sup>1</sup>	1132.10	29.79
Masters degree <sup>1</sup>	1171.10	30.82

<sup>1</sup> Progression from these entry rates will be to level 1—Registered nurse pay point 4 and 5 respectively.





<b>Nurse practitioner—other than aged care employees</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
1st year	1668.70	43.91
2nd year	1718.30	45.22

<b>Occupational health nurses</b>		
<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
<b>Occupational health nurse—level 1</b>		
Pay point 1	1163.70	30.62
Pay point 2	1199.40	31.56
Pay point 3	1234.10	32.48
Pay point 4	1269.80	33.42
Pay point 5	1302.80	34.28
<b>Occupational health nurse—level 2</b>		
Pay point 1	1337.40	35.19
Pay point 2	1358.70	35.76
Pay point 3	1382.30	36.38
Pay point 4	1404.90	36.97
Senior occupational health clinical nurse	1404.90	36.97
<b>Occupational health nurse—level 3</b>		
Pay point 1	1450.10	38.16
Pay point 2	1476.80	38.86
Pay point 3	1502.30	39.53
Pay point 4 and thereafter	1529.30	40.24

[364] The Nurses Award also includes separate rates of pay for aged care employees. These rates have not been reproduced in the tables above.

[365] The Stage 1 report noted distinct characteristics of nurses, including:

- Compared to the workforce as a whole, a relatively high proportion of employees in the identified occupations work part-time (except Nurse Managers) and/or have unpaid childcare responsibilities.



- A very high proportion have at least a Bachelor degree level qualification, with the exception of ENs and Mothercraft Nurses.<sup>449</sup> These employees work principally in the public sector, with collective agreements being the dominant pay setting instrument.
- RNs, Midwives and Nurse Managers have a relatively high hourly rate of pay at \$54.10, \$52.40 and \$65.70 respectively. At \$41.70, the hourly rate for ENs and Mothercraft Nurses is slightly lower than the 'all employees' rate of \$42.60.<sup>450</sup>
- Midwifery was identified as having one of the highest levels of feminisation, with women comprising 98.6 per cent of hospital midwives.

[366] The report also identified that there is a national shortage of midwives. Between 2013 and 2022, the number of women practicing midwifery only (and not nursing) grew substantially, likely due to the growth in specialised midwifery degree pathways not requiring a nursing qualification. However, there was an overall drop in the total female midwifery workforce of 7 per cent over the decade.<sup>451</sup>

[367] The level of feminisation of midwifery grew over the last decade, compared with the wider nursing profession which saw levels of feminisation decrease slightly. The Stage 1 report found strong social and cultural factors deter men from midwifery. Men in nursing seek specialisations that enable them to affirm or 'recuperate' masculine identities. As a result, male nurses are consequently concentrated in areas like emergency nursing, intensive care, trauma care, psychiatry, and anaesthesia rather than maternity and personal care work.<sup>452</sup>

### 3.10.2 Pre-modernisation

[368] In the Aged Care Stage 3 decision, the Expert Panel set out the historical development of the Nurses Award and concluded that:

'This history confirms what is apparent on the face of the Nurses Award, as set out in paragraphs [942]–[955] of the Stage 1 decision. The rates of pay for degree-qualified nurses in the Nurses Award are not properly fixed minimum rates because the principles set out in the Paid Rates Review decision and the

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<sup>449</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 30–31.

<sup>450</sup> Ibid 32.

<sup>451</sup> Ibid 63.

<sup>452</sup> Ibid 65.



ACT Child Care decision (see paragraphs [82]–[83] above) were never properly applied. It is apparent that nursing has undergone a revolutionary transformation from an occupation which in 1958 was equated to a trade to a recognised profession for which a university degree is required for entry. However, the federal award system has failed to set minimum award rates of pay which properly recognise the addition to work value effected by this transformation and, in the context of this being a female-dominated occupation, this can only be characterised as historic gender undervaluation.<sup>453</sup>

[369] This chapter does not repeat the history of regulation of the development of the Nurses Award set out at [111] to [135] of the Stage 3 Decision.

[370] The Expert Panel did not finalise its consideration of the fixation of wages for nurses however, they did set out that:

‘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.<sup>454</sup>

[371] The Expert Panel did not propose a finalised classification and structure for nurses in aged care, stating this issue had not been properly addressed by the parties in the proceedings and noting the overlap of the subject matter in the separate work value application on foot by the ANMF (AM2024/11). This matter is listed for conference on 4 April 2024.

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<sup>453</sup> [2024] FWCFB 150 at [135].

<sup>454</sup> Ibid at [204].



## 3.11 Pharmacy Industry Award 2020

### 3.11.1 Introduction

[372] The *Pharmacy Industry Award 2020* (Pharmacy Award) is an industry-specific award that applies to employers in the community pharmacy industry and employees who are pharmacy assistants, dispensary assistants, and pharmacists. The Commission made the Pharmacy Award on 19 December 2008, and it came into operation on 1 January 2010. The current classification structure and wage rates is as follows:

Column 1 Employee classification	Column 2 Minimum weekly rate (full-time employee)	Column 3 Minimum hourly rate	AQF level	Metals framework C10 equivalent weekly	Teacher's benchmark rate
	\$	\$		\$ (relativity to C10)	\$ (relativity)
Pharmacy assistant level 1	939.60	24.73			
Pharmacy assistant level 2	961.10	25.29	2		
Pharmacy assistant level 3	995.00	26.18	3	995 (100%)	
Pharmacy assistant level 4	1035.90	27.26	4	1085.60	
Pharmacy student—1st year of course	939.60	24.73			
Pharmacy student—2nd year of course	961.10	25.29			
Pharmacy student—3rd year of course	995.00	26.18			
Pharmacy student—4th year of course	1035.90	27.26			
Pharmacy intern—1st half of training	1049.60	27.62			
Pharmacy intern—2nd half of training	1085.40	28.56			
Pharmacist	1289.30	33.93	7		
Experienced pharmacist	1412.10	37.16	7		
Pharmacist in charge	1445.40	38.04	7		
Pharmacist manager	1610.60	42.38	7		



[373] The Stage 1 report highlights that the Pharmacy Award covers highly feminised occupations, such as Pharmacy Sales Assistants (Pharmacy Assistants). Pharmacy Assistants are overwhelmingly female, at 87.6 per cent.<sup>455</sup>

[374] The Stage 1 report noted some distinct characteristics of Pharmacy Assistants working in Pharmaceutical, Cosmetic and Toiletry Goods Retailing. These characteristics include:

- Pharmacy Assistants are more likely to be under the age of 24 than the overall workforce (47.8 per cent and 14.3 per cent, respectively).
- A higher percentage of Pharmacy Assistants have not completed at least a Certificate III compared to the overall workforce (64.6 per cent and 31 per cent, respectively).
- Pharmacy Assistants are more likely to work part-time (71.2 per cent) than the overall workforce (32.9 per cent).
- A higher percentage of Pharmacy Assistants were lone parents than the overall workforce (13.3 per cent and 9.2 per cent, respectively).<sup>456</sup>

[375] Furthermore, the Stage 1 report also highlights that Pharmacy Assistants' dominant pay-setting method was through the Pharmacy Award (82.2 per cent). Pharmacy Assistants formed part of the lowest earnings decile, with mean weekly cash earnings of \$540.10. Approximately 92.8 per cent of Pharmacy Sales Assistants earned less than \$1,000 per week.<sup>457</sup>

### 3.11.2 Pre-modernisation

[376] Prior to award modernisation, there was no national award that regulated the working conditions of pharmacy assistants. Instead, their working conditions varied depending on State and Territory awards.

[377] In the early 1990s the Commission established the *Shop Distributive and Allied Employees Association – Victorian Pharmacy Assistants Award 1994* (Victorian Pharmacy Assistant Award

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<sup>455</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 54.

<sup>456</sup> Ibid 54-55.

<sup>457</sup> Ibid 56.



1994). This award applied to all pharmacy assistants in Victoria from 3 August 1994.<sup>458</sup> Deputy President Drake stated that '[t]he subject of this decision is an application for a Federal interim award to cover shop assistants who are employed in pharmacies in Victoria'.<sup>459</sup> The new award used the *Victorian Interim Shops Award 1994* as a basis for its pharmacy assistant classifications. Upon its creation, the Pharmacy Assistant Grade 1's weekly wage of \$357.30 aligned with the weekly wage of the Retail Worker Grade 1 in the *Victorian Interim Shops Award 1994*.<sup>460</sup>

[378] In 1999, the Commission simplified the *Victorian Pharmacy Assistant Award 1994* by moving pharmacy assistants from their traditional association with the retail awards to the *Community Pharmacy Award 1998*, which regulated pharmacists' employment conditions. This change was made following an application made by the PGA, which argued that the pharmacy assistant role was becoming increasingly complex. The PGA submitted that 'the terms and conditions of employment of both pharmacists and pharmacy assistants should be as similar as possible' and 'ideally, there should be a single national award for both pharmacists and pharmacy assistants and the Guild hopes to achieve this in time'.<sup>461</sup> The Commission agreed with the PGA, recognising that there were valid reasons for consistency in the employment conditions of pharmacists and pharmacy assistants.<sup>462</sup> The outcome of this process was the creation of the *Shop Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000 (Victorian Pharmacy Assistants Award 2000)*.<sup>463</sup>

[379] In this period, the Department of Health and Family Services' issued new recommendations that resulted in the development of new standards of practice, operating procedures, protocols, and training programs for community pharmacists and pharmacy assistants. The implementation of this new model spurred the lodging of work value cases in the WA State industrial commission as well as negotiations between employers in South Australia, Victoria, New South Wales, and

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<sup>458</sup> [1994] AIRC 1196 Print L4568.

<sup>459</sup> Ibid.

<sup>460</sup> *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000* (S0539) [Print L4946] at clause 4; *Shop, Distributive and Allied Employees Association - Victorian Shops Interim Award 1994* (S0492) [Print L3448] at clause 4.

<sup>461</sup> Print R4358 at 3.

<sup>462</sup> Ibid 4.

<sup>463</sup> *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000* (S0539) [Print L4946].



Queensland.<sup>464</sup> These State-based negotiations were mentioned by a representative from the PGA in Commission proceedings in 2001, but it does not appear that any further matters were lodged in State commissions other than in WA.<sup>465</sup> This section will briefly turn to an example of this in Western Australia before returning to the *Victorian Pharmacy Assistants Award 2000*.

[380] In Western Australia, employee and employer representatives raised a joint case in the Commission to vary the Retail and Wholesale Industry – Western Australian Community Pharmacy Retail – Shop, Distributive and Allied Employees Association – Pharmacy Guild of Australia Consent Award 1995 (WA Consent Award 1995). Their main objective was to create a new classification and wage structure that took into account work value principles. Initially, the WA Consent Award 1995 used the Victorian Interim Shops Award 1994’s Retail Worker Grade 1 classification as its basis.<sup>466</sup> However, the correlation between the 1995 consent award’s pharmacy assistant rate with the Retail Worker Grade 1’s rate gradually weakened over time.<sup>467</sup> The evidence presented to the Commission in these proceedings demonstrated an increased complexity in the pharmacy assistant role and a greater need for training to meet the client’s needs.<sup>468</sup>

[381] The Commissioner summarised the proceedings as follows:

‘A significant element in the proposed award is the parties agreement to amend the wages and classifications clauses under the Commission’s work value principles in effect to establish a classification and payments structure that will properly reflect the emerging responsibilities and obligations of employees in this rapidly changing industry. The most significant of these changes is the transition and re-orientation of pharmacy employees from principally being shop assistants through to being genuine assistants to pharmacists. [...]

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<sup>464</sup> Transcript of Proceedings, *Application to vary Retail and Wholesale Industry – Western Australian Community Pharmacy Retail – Shop, Distributive and Allied Employees Association – Pharmacy Guild of Australia Consent Award 1995* (Australian Industrial Relations Commission, C0102/898, Laing C, 26 March 2001) at [PN37], [PN46].

<sup>465</sup> *Ibid.*

<sup>466</sup> *Ibid* [PN13].

<sup>467</sup> *Ibid* [PN15].

<sup>468</sup> [2001] AIRC 310 PR902824 at [3].



The wage structure reflects that orientation and reflects the professionalism that has been achieved as well as the continuing drive to ensure that for more pharmacy employees that careers based on skills and achievements can provide both more interesting and better paid work. [...]

As in Victoria, the wage structure is based on four grade of pharmacy assistant under this award, with the qualified level 1 employee seen as the key linkage to the metal trades C10 level and with the internal relativities of the award associated with the grade 1 classification.<sup>469</sup>

[382] The parties proposed that for wages there should be 4 increases of 3 per cent each over several years.<sup>470</sup>

[383] In a Commission decision issued on 2 April 2001, the Commissioner noted that the parties had reached complete agreement on the proposed amendments.<sup>471</sup> The Commission determined to issue this new simplified Award for Western Australia.<sup>472</sup>

[384] In 2003, the PGA applied to the Commission to vary the classification and competency structure of the *Victorian Pharmacy Assistants Award 2000*. The objective was to align the Award with the latest competency standards for pharmacy assistants.<sup>473</sup> The proposed changes aimed to replace the current pharmacy assistant grades 1 to 4 with competency level 1 to competency level 4. Each competency level would correspond to a qualification level from the Community and Pharmacy Training Package.<sup>474</sup> The PGA provided an explanation of the proposed changes during the proceedings, as follows:

‘Under the old classification structure [...] the certificate in relation to pharmacy assistant grade 1 was certificate 1; pharmacy assistant grade 2 was certificate 2; and grade 3 and grade 4 had a combined

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<sup>469</sup> Ibid at [3], [5], [7]

<sup>470</sup> Transcript of Proceedings, *Application to vary Retail and Wholesale Industry – Western Australian Community Pharmacy Retail – Shop, Distributive and Allied Employees Association – Pharmacy Guild of Australia Consent Award 1995* (Australian Industrial Relations Commission, C0102/898, Laing C, 26 March 2001) [PN28].

<sup>471</sup> [2001] AIRC 310 PR902824 at [2].

<sup>472</sup> Ibid at [10].

<sup>473</sup> Transcript of Proceedings, *Application to vary Shop, Distributive and Allied Employees Association – Victorian Pharmacy Assistants Award 2000* (Australian Industrial Relations Commission, C2003/2772, Kaufman DP, 6 October 2003) [PN21].

<sup>474</sup> Ibid [PN22].





certificate 3, where under the new structure it will be certificate 1 for grade 1; certificate 2 for grade 2; certificate 3 for – obviously – level 3, and certificate 4 for level 4. So it is a complete change.<sup>475</sup>

[385] In relation to the pharmacy assistant competency level 4 classification, the PGA explained:

‘[O]bviously there is a new pharmacy assistant competency level 4, which doesn’t have a corresponding grade 4 under the old structure. So that is an entirely new classification with a new wage rate.<sup>476</sup> Furthermore, ‘[w]age rates have been established for the new classification rates for competency level 1 for six months, competency level 1, competency level 2 and 3 and a new competency level 4’.<sup>477</sup>

[386] The PGA noted that the only area of disagreement between itself and the SDA was the classification level of mini-lab operators who had fallen under the grade 3 classification but could not be neatly fit into the proposed new structure. The PGA’s position was to remove this category of workers from the award, a stance that was opposed by the Commissioner.<sup>478</sup> The Commissioner’s view was that a separate classification be created to include mini-lab operators as he was opposed to removing award coverage from a category of workers.<sup>479</sup>

[387] Senior Deputy President Kaufman issued an order on 23 October 2003 that varied the award mostly in line with the PGA’s application.<sup>480</sup>

[388] In a Commission decision issued on 18 January 2005<sup>481</sup>, the *Victorian Pharmacy Assistants Award 2000* was declared as a common rule in Victoria by consent. The SDA, the Victorian Chamber of Commerce and Industry, and the PGA, agreed with the declaration.<sup>482</sup> As a result, the classification and weekly wage rate structure became the following:

<b>Classification:</b>	<b>Weekly wage rate FTE (\$):</b>
Competency Level 1 first 6 months	497.10
Competency Level 1	507.40
Competency Level 2	517.60

<sup>475</sup> Ibid.

<sup>476</sup> Ibid [PN33].

<sup>477</sup> Ibid.

<sup>478</sup> Ibid [PN38]–[PN44].

<sup>479</sup> Ibid [PN138].

<sup>480</sup> PR939770.

<sup>481</sup> [2005] AIRC 44 PR954399.

<sup>482</sup> Ibid at [4].



Mini-Lab Operators	527.90
Competency Level 3	542.20
Competency Level 4	569.30

## Pharmacists prior to award modernisation

[389] Before 1994, the pay and conditions of community pharmacists were regulated exclusively on a State and Territory basis.<sup>483</sup>

[390] In a decision issued on 15 January 1992<sup>484</sup>, the Commission considered an application made by the Salaried Pharmacists' Association (SPA) for the creation of a federal award that covered qualified pharmacists in Victoria and Tasmania. However, the Commission concluded that '[i]t is obvious from the current wide diversification of awards and unions covering both pharmacists and pharmacy assistants that the support by the Guild [...] for federal regulation by having "one federal award covering all employees within the pharmacy industry in Australia" is not only understandable, but desirable'.<sup>485</sup> Commissioner Lear found that the SPA's application did little to advance the development of federal regulation of *the industry* and that the development of a federal award that only covered qualified pharmacists in Victoria and Tasmania would hinder the development of a broader federal award and would contribute to 'an already confusing award structure'. The Commission rejected the application at this time.

[391] The first federal award for community pharmacists was created when the Victorian arbitration and awards system was abolished: The *Community Pharmacy (Victoria) Interim Award 1994* (Community Pharmacy Award 1994). Created on 27 May 1994, this Award carried over the wages and conditions of the previous State award, the *Chemist Shops Award (Vic) 1987*.<sup>486</sup>

[392] In 1995, outstanding issues related to the Community Pharmacy Award 1994 were arbitrated before Deputy President Drake. The PGA sought a complete review of the Award, arguing that its lack of a definitions clause, penalty rates, and vagueness were obstacles in achieving a national

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<sup>483</sup> A history of the award regulation of pharmacists is also provided in *4 yearly review of modern awards – Pharmacy Industry Award 2010* ([2018] FWFB 7621) at [170]-[176].

<sup>484</sup> [1992] CAR 24 Print K1446.

<sup>485</sup> *Ibid* at 4.

<sup>486</sup> [2018] FWCFB 7621 at [171].



federal award.<sup>487</sup> Moreover, the PGA sought a new classification and wage structure as well as adjustments to penalty and overtime rates. The NSW State Award influenced these variation proposals.<sup>488</sup>

[393] The SPA opposed the variation proposals advanced by the PGA. The Commission decision issued on 30 May 1995 noted the following:

‘Mr Collison [from the SPA] extensively examined the history of negotiations in Victoria on minimum rates adjustments and structural efficiency processes. He differentiated between the general retail industry and community pharmacy [...] Mr Collison attacked the Guild classification structure – as in New South Wales – as not recognising changes and developments in the industry.’<sup>489</sup>

[394] The decision made by the Commission rejected most of the changes proposed by the PGA. The Deputy President stated in the decision: ‘I am not persuaded by the arguments of the PGA that the new award should adopt the New South Wales classifications, wage structure, penalty rates or overtime clauses’.<sup>490</sup>

[395] In 1996, further proceedings were held in the Commission, which led to a decision on 6 March 1996<sup>491</sup> that aligned the pay relativities for community pharmacists in Victoria with Professional Scientists classifications found in Part IV of the *Metal Industry Award 1976*. The relativities were determined as follows:<sup>492</sup>

<b>Classification:</b>	<b>Percentage relativity of the C10 rate (%):</b>
Pharmacist	
1 <sup>st</sup> year	140
2 <sup>nd</sup> year and thereafter	150
Pharmacist-in-charge	
Grade 1	160
Grade 2	170
Grade 3	180

<sup>487</sup> [1995] AIRC 1023 Print M2399at 2.

<sup>488</sup> Ibid at 3.

<sup>489</sup> Ibid at 4.

<sup>490</sup> Ibid at 8.

<sup>491</sup> Print M9831.

<sup>492</sup> Ibid at 8.



<b>Classification:</b>	<b>Percentage relativity of the C10 rate (%):</b>
Pharmacist Manager	
Grade 1	190
Grade 2	200
Grade 3	210

[396] In 1996, the first national community pharmacy award was made by consent, known as the *Community Pharmacy Award 1996*.<sup>493</sup> The pay and classifications in this Award differed depending on the State and Territory and reflected the conditions contained in the different State and Territory awards at the time.<sup>494</sup>

[397] A Commission decision issued on 29 June 1998<sup>495</sup> as part of the award simplification process at the time, created the *Community Pharmacy Award 1998* after a review of the *Community Pharmacy Award 1996* pursuant to the provisions of the WROLA Act.<sup>496</sup> The review included several components, such as ensuring that the awards had properly fixed minimum rates of pay.<sup>497</sup> The parties reached agreement on the uniformity of new minimum rates of pay and a common classification structure.<sup>498</sup> The *Community Pharmacy Award 1998* contained a standard classification structure across all States and Territories, except for Western Australia, as below.<sup>499</sup>

<b>In all states and territories excluding Western Australia</b>	<b>In Western Australia</b>		
<b>Classification:</b>	<b>Total weekly minimum wage rate FTE (\$):</b>	<b>Classification:</b>	<b>Total weekly minimum wage rate (\$):</b>
Pharmacist	630.10	Pharmacist	673.70

<sup>493</sup> *Community Pharmacy Award 1996* (C1790) [Print N7370].

<sup>494</sup> [2018] FWCFB 7621 at [175].

<sup>495</sup> Print Q2258.

<sup>496</sup> [2018] FWCFB 7621 at [175].

<sup>497</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in 4 yearly review of modern awards, AM2016/28, 3 November 2016, [60].

<sup>498</sup> Ibid [61].

<sup>499</sup> [2018] FWCFB 7621 at [175]; *Community Pharmacy Award 1998* (C1790) [Print Q2647] clauses 15.1.1, 15.1.2.



In all states and territories excluding Western Australia	In Western Australia		
Classification:	Total weekly minimum wage rate FTE (\$):	Classification:	Total weekly minimum wage rate (\$):
Pharmacist after 1 <sup>st</sup> year experience	671.80	-	-
Experienced Pharmacist	711.50	-	-
Pharmacist in charge		Pharmacist in charge	
Grade 1	732.40	Grade 1	732.40
Grade 2	753.20	Grade 2	753.20
Grade 3	795.00		
Pharmacist Manager		Pharmacist Manager	
Grade 1	836.70	Grade 1	795.00
Grade 2	878.40	Grade 2	857.50
Grade 3	920.10	Grade 3	920.10

[398] The new pay rates reflected the pay relativities established by the Commission’s Full Bench during the structural efficiency process established through the August 1989 *National Wage Case decision*.<sup>500</sup> However, one of the unresolved matters from the 1996 award simplification process was the community pharmacy student and trainee pay rates. Across each State and Territory, different wage arrangements and categories existed for students and trainees, without any standardised wage.<sup>501</sup>

[399] APESMA applied to the Commission to increase the minimum rate of pharmacy trainees under the *Community Pharmacy Award 1998* to \$630.40 per week – a relativity of 130 per cent. APESMA based its case on changes in work value.<sup>502</sup>

[400] APESMA put forward an argument that the pay rates for students and trainees have been complex since the early 1980s and the Commission has not reviewed them since then. Additionally, university courses have evolved over time, now covering a broader range of

<sup>500</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in 4 yearly review of modern awards, AM2016/28, 3 November 2016, [62].

<sup>501</sup> Transcript of Proceedings, *Safety Net Review – Wages* (Australian Industrial Relations Commission, C2001/4443, Smith C, 23 October 2001) [PN17].

<sup>502</sup> Ibid [PN9].



subjects and requiring a deeper understanding of the field than what was necessary 2 decades ago.<sup>503</sup>

[401] In a Commission decision issued on 9 September 2002<sup>504</sup>, Commissioner Smith concluded:

'I have had the benefit of significant consensus in this matter although [...] final agreement alluded the parties. I propose to adopt a course which has regard to that area of consensus, the needs of the employers, the changes in the nature of the work, and the approach adopted by the Commission to relativities contained in the Principles. In reaching the conclusion I have, I have been mindful of the need to restructure the award, provide more equitable wage rates; but at the same time, seek to avoid having a deleterious affect upon employment and training opportunities for young persons embarking upon a career in Pharmacy.'<sup>505</sup>

[402] In an *ex tempore* Commission decision issued on 5 June 2003 (which concerned the pharmacy student classification) Commissioner Smith made some amendments to this classification. The Commissioner noted:

'The fixation and rationalisation of these rates has not been an easy task. It has involved a number of conferences before the Commission and a great deal of work by the parties. The changes are significant and should be approached with caution. I am also conscious of the need to accommodate the most recent living wage decision so that the rates that will be placed into the award are properly integrated and up to date for the purposes of a safety net award. These rates will apply throughout Australia.'<sup>506</sup>

[403] The Commission determined to not apply the award to students who were currently in university and who undertake work experience.

[404] These Commission decisions catalysed the lodging of a work value case by APESMA in the Tasmanian Industrial Commission in relation to Pharmacy Students and Trainees for the Tasmanian Retail Pharmacy Award. In a decision issued by Deputy President Watling on 15 December 2003<sup>507</sup>, the TIC approved the application. The decision summarised APESMA's argument as follows:

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<sup>503</sup> Ibid [PN18].

<sup>504</sup> PR922278.

<sup>505</sup> Ibid.

<sup>506</sup> [2003] AIRC 619 PR932635 at [6].

<sup>507</sup> [2003] TasIRComm T11178.



‘For the first part of his application, Mr D Pyrke, for the applicant, relied on the Wage Fixing Principles and in particular Principle 9 – Work Value Changes and Principle 10 – First Award and Extension to Existing Award [...] He also relied on the decisions arising out of the Australian Industrial Relations Commission on 16 October 2002 and 5 June 2003 which varied the Community Pharmacy Award 1998 (federal award), by granting increases to pharmacy students and trainees arising out of a work value case.’

[405] The TIC aligned the relativities in the Tasmanian Retail Pharmacy Award with those in the federal award for these classifications.<sup>508</sup>

### 3.11.3 Award Modernisation

[406] During the award modernisation process, the Pharmacy Award was created with consideration of various state awards.<sup>509</sup> The table below shows that active awards for each occupation within in each State or Territory.

State/ Territory	Pharmacy Assistants	Pharmacists
<b>Australian Capital Territory</b>	Chemists (ACT) Award 2000 (AP772207CRA)	
<b>New South Wales</b>	Pharmacy Assistants (State) Award (AN120416)	Community Pharmacy (State) Award 2001 (AN120152)
<b>Queensland</b>	Pharmacy Assistants Award – State 2003 (AN140207)	Pharmaceutical Employees’ Award – State (Exclusive of Public Hospitals) 2003 (AN140206)
<b>South Australia</b>	Retail Pharmaceutical Chemists Award (AN150131)	
<b>Tasmania</b>	Retail Pharmacy Award (AN170087)	
<b>Victoria/ Federal</b>	SDA – Victorian Pharmacy Assistants Award 2000 (AP796289CRV)	Community Pharmacy Award 1998 (AP773671)
<b>Western Australia</b>	SDA Western Australian Community Pharmacy – Pharmacy Assistants Award 2000 (AP806529)	Retail Pharmacists’ Award, 2004 (AN160277)

<sup>508</sup> Ibid at [13]–[14].

<sup>509</sup> Pharmacy Guild of Australia, ‘Submission in reply’, Submission in 4 *yearly review of modern awards*, AM2016/36, 30 June 2017, [13].



[407] As note at paragraph [226], the Commission initially aimed to create a comprehensive retail award that would cover various sectors such as general retail, fast food, community pharmacy, and hairdressing and beauty.

[408] The PGA also submitted a proposed draft of the Pharmacy Award but did not include specific rates for their proposed classifications. The table below shows the SDA's draft classification structure compared to the PGA's draft structure.

SDA's draft classification structure:	Weekly minimum rate FTE proposed by SDA (\$):	PGA's draft classification structure:
Pharmacy Student		Pharmacy Student
1 <sup>st</sup> year	512.00	
2 <sup>nd</sup> year	554.00	
3 <sup>rd</sup> year	596.00	
4 <sup>th</sup> year	617.00	
Pharmacy Trainee		Pharmacist Trainee
1 <sup>st</sup> half of traineeship	638.00	First half
2 <sup>nd</sup> half of traineeship	677.30	Second half
No equivalent classification	-	500 Hour Student (Western Australia Only)
Mini Lab Operator	624.00	No equivalent classification
Pharmacy Assistant		Pharmacy Assistant
Competency Level 1 first 6 months	593.00	Competency Level I – first 6 months
Competency Level 1	603.00	Competency Level I
Competency Level 2	613.00	Competency Level II
Competency Level 3	638.00	Competency Level III
Competency Level 4	665.00	Competency Level IV
Pharmacist	792.00	Pharmacist first year of experience
Pharmacist after 1 <sup>st</sup> year	834.00	Pharmacist after first year of experience
Experienced Pharmacist	871.00	Experienced Pharmacist
Pharmacist-in-Charge		Pharmacist-in-charge
Grade 1	892.00	Grade I
Grade 2	913.00	Grade II
Grade 3	955.00	Grade III
Pharmacist Manager		Pharmacist Manager





SDA's draft classification structure:	Weekly minimum rate FTE proposed by SDA (\$):	PGA's draft classification structure:
Grade 1	997.00	Grade I
Grade 2	1,038.00	Grade II
Grade 3	1,080.00	Grade III

[409] In a decision issued on 2 September 2009<sup>510</sup> the Full Bench noted:

'The existing Federal award and NAPSAs applying to [the pharmacy sector] have differential terms and conditions. The requirement to adopt a uniform set of terms and conditions necessarily has an impact on some minimum obligations.'<sup>511</sup>

[410] The Commission ultimately decided not to create an all-encompassing retail award. Instead, it aimed to establish 4 different awards for general retail, fast food, hairdressing and beauty, and community pharmacy.

[411] Once the Pharmacy Award was published, the PGA, the SDA, and APESMA applied to modify it before it came into effect. The parties agreed on the changes sought, 2 of which were relevant to the Pharmacy Trainee and Pharmacy Student classifications in the Award. The first proposed change was to rename 'Pharmacy Trainee' as 'Pharmacy Intern' to align with industry terminology. The second proposed change was to adjust the pay rates as follows:

Classification:	Weekly Pharmacy Award rate FTE (\$):	Weekly rates proposed by parties FTE (\$):
<b>Pharmacy Intern</b>		
First half of training	637.60	674.00
Second half of training	665.00	698.00
<b>Pharmacy Students</b>		
1 <sup>st</sup> year of course	550.00	600.00
2 <sup>nd</sup> year of course	570.00	615.00
3 <sup>rd</sup> year of course	600.00	637.60
4 <sup>th</sup> year of course	620.00	665.00

<sup>510</sup> [2009] AIRCFB 800 PR282009.

<sup>511</sup> Ibid at [94].



[412] In a Full Bench decision issued on 22 December 2009, the Commission accepted the changes sought by the parties.<sup>512</sup>

[413] The table below shows the final classification structure and wages rates determined by the Commission for the Pharmacy Award which came into operation on 1 January 2010, as well as the corresponding classifications and rates contained in the Commission exposure draft, and the SDA's draft proposal.

SDA Draft Classifications	Weekly rate FTE (\$):	AIRC Exposure Draft Classifications	Weekly rate FTE (\$):	Final Pharmacy Award Classifications:	Weekly rate FTE (\$):
Pharmacy Student		Pharmacy Student		Pharmacy Student	
1 <sup>st</sup> Year	512.00	1 <sup>st</sup> year	515.45	1 <sup>st</sup> year of course	600.00
2 <sup>nd</sup> Year	554.00	2 <sup>nd</sup> year	555.10	2 <sup>nd</sup> year of course	615.00
3 <sup>rd</sup> Year	596.00	3 <sup>rd</sup> year	594.75	3 <sup>rd</sup> year of course	637.60
4 <sup>th</sup> Year	617.00	4 <sup>th</sup> year	634.40	4 <sup>th</sup> year of course	665.00
Pharmacy Trainee				Pharmacy Intern	
1 <sup>st</sup> half of traineeship	638.00	Retail Employee Level 4	637.60	1 <sup>st</sup> half of training	674.00
2 <sup>nd</sup> half of traineeship	677.30	Retail Employee Level 6	675.00	2 <sup>nd</sup> half of training	698.00

<sup>512</sup> [2009] AIRCFB 978 PR992089.



SDA Draft Classifications	Weekly rate FTE (\$):	AIRC Exposure Draft Classifications	Weekly rate FTE (\$):	Final Pharmacy Award Classifications:	Weekly rate FTE (\$):
Mini Lab Operator	624.00	Retail Employee Level 3	630.00	No equivalent classification	-
Pharmacy Assistant				Pharmacy Assistant	
Competency Level 1 first 6 months	593.00	Retail Employee Level 1	600.00	Level 1	600.00
Competency Level 1	603.00				
Competency Level 2	613.00	Retail Employee Level 2	615.00	Level 2	615.00
Competency Level 3	638.00	Retail Employee Level 4	637.60	Level 3	637.60
Competency Level 4	665.00	Retail Employee Level 5	665.00	Level 4	665.00
Pharmacist		Retail Employee Level 9	793.00	Pharmacist	
In first year	792.00			Pharmacist	793.00
After 1 <sup>st</sup> year	834.00				
Experienced	871.00	Retail Employee Level 10	871.00	Experienced	871.00
Pharmacist in Charge		Retail Employee Level 11	892.00	Pharmacist in Charge	892.00
Grade 1	892.00				



SDA Draft Classifications	Weekly rate FTE (\$):	AIRC Exposure Draft Classifications	Weekly rate FTE (\$):	Final Pharmacy Award Classifications:	Weekly rate FTE (\$):
Grade 2	913.00				
Grade 3	955.00				
Pharmacist Manager		Retail Employee Level 12	997.00	Pharmacist Manager	997.00
Grade 1	997.00				
Grade 2	1,038.00				
Grade 3	1,080.00				

[414] As shown in the comparison table the Pharmacy Assistant classifications were derived from the *Pharmacy Assistants Award 2000*. The SDA's submission in the award modernisation process stated that '[t]he wage rates and definitions for community pharmacy reflect the provisions of the Community Pharmacy Award in relation to pharmacists and the Pharmacy Assistant's Award for pharmacy assistants the SDA has used the Victorian Pharmacy Assistant's Award as the base line for pharmacy assistants within the community pharmacy stream'.<sup>513</sup>

[415] During the modernisation process, the Commission made changes to the pharmacy assistant structure. First, the Commission merged Pharmacy Assistant Competency Level 1 first 6 months, and Pharmacy Assistant Competency Level 1 into a single Level 1 classification. Second, the mini-lab operators classification was removed.

[416] It is likely that the SDA derived its rates in its proposed draft from the *Victorian Pharmacy Assistant Award 2000*, which had the following weekly rates compared to the rates found in the SDA's draft.

<sup>513</sup> Shop, Distributive and Allied Employees Union, Submission in *Award modernisation*, AM2008/10, July 2008, 5.



**Pharmacy Assistant Classification: SDA Draft Weekly Rate FTE (\$):** **Victorian Pharmacy Assistant Award Weekly Rate FTE as of 1 October 2008 (\$):<sup>514</sup>**

Level 1 first 6 months	593.00	592.40
Level 1	603.00	602.70
Level 2	613.00	612.90
Mini Lab Operator	624.00	623.20
Level 3	638.00	637.60
Level 4	665.00	664.60

[417] In relation to the Pharmacist classifications contained in the SDA's draft award, it is unclear from where these specific rates originated. The below table compares the SDA's draft pharmacist rates with its equivalent classifications found across other State and Territory awards.

Pharmacist Classification:	Weekly Rate FTE at time of modernisation (\$): <sup>515</sup>						
	SDA Draft	Vic / Federal	NSW	QLD	WA	TAS	SA
Pharmacist	792.00	770.40	743.00	785.20	870.00	816.80	808.90
Pharmacist > 1 year	834.00	812.10	784.80	N/A		858.50	850.60
Experienced	871.00	849.80	822.50	868.60		N/A	
In Charge I	892.00	870.70	843.40	868.60	928.70	896.20	888.30
In Charge II	913.00	891.50	864.20	927.20	949.50	937.90	909.20
In Charge III	955.00	933.30	906.00	989.80		979.70	950.90

<sup>514</sup> PR983805.

<sup>515</sup> Rates derived from: PR979640; *Community Pharmacy (State) Award 2001* [2001] 354 NSWIRComm 601 Print C3882; *Pharmaceutical Employees' Award - State (Exclusive of Public Hospitals) 2003 - General ruling amendment* [2009] QIRComm 286; *Retail Pharmacists' Award, 2004* (RET022); [2009] TasIRComm T13471; *Retail Pharmaceutical Chemists Award* (AN150131).



Pharmacist Classification:	Weekly Rate FTE at time of modernisation (\$): <sup>515</sup>						
	SDA Draft	Vic / Federal	NSW	QLD	WA	TAS	SA
<b>Manager I</b>	997.00	975.00	947.70	989.80	991.30	979.70	1,034.30
<b>Manager II</b>	1,038.00	1,016.70	989.80	1,052.30	1,053.80	1,042.20	1,096.90
<b>Manager III</b>	1,080.00	1,058.40	1,031.10	1,114.90	1,116.40	1,104.80	

## 4 Yearly Review of Modern Awards 2014-2022

[418] In APESMA's 2014 submission to the 4 yearly review of modern awards, it stated:

'Following on from various significant changes in the industry APESMA believes that some of the current Pharmacy Industry Award [2010] provisions relating to employee pharmacists do not reflect current practice and requirements and that they need to be updated to reflect the changes that have occurred in the industry since the development of the new modern award [...] APESMA seeks to have the pay rates for Pharmacists and Pharmacy students contained in Clause 17 Minimum weekly wages of the Pharmacy Industry Award 2010 increased to reflect more appropriate relativities between different classifications contained in the award.'<sup>516</sup>

[419] During the 4-yearly review of modern awards, APESMA applied to vary the minimum rates of pay in the Pharmacy Award. The request was made to reflect the changes in work value and the inclusion of a new 'Accredited Pharmacist' classification.<sup>517</sup>

<sup>516</sup> Association of Professional Engineers, Scientists and Managers Australia, 'Proposed variation', Submission in *Four yearly review of modern awards*, AM2014/209, 25 November 2014, 1.

<sup>517</sup> Association of Professional Engineers, Scientists and Managers Australia, Submission in *4 yearly review of modern awards*, AM2016/28, 3 November 2016, [2].



[420] APESMA claimed that the pay increases were necessary due to significant changes in the work performed by employees in community pharmacies since the last time that the Commission assessed their work value.<sup>518</sup> Furthermore, APESMA submitted that the minimum wages in the Award needed to increase to restore the wage relativities with the C10 classification rate in the Manufacturing Award.<sup>519</sup> In the alternative, APESMA sought a 25 per cent increase to all rates in the Award.<sup>520</sup>

[421] APESMA proposed the following rate adjustments for each classification:

<b>Classification:</b>	<b>Weekly rates under the Award FTE (\$):</b>	<b>APESMA's claim (\$):</b>
<b><u>Pharmacy Interns</u></b>		
First half of training	853.50	1,027.18 (130 per cent of current rate)
Second half of training	882.60	1,046.94 (130 per cent of current rate)
<b><u>Pharmacist</u></b>	998.50	1,132.74 (140 per cent of current rate)
<b><u>Experienced Pharmacist</u></b>	1,093.50	1,213.65 (150 per cent of current rate)
<b><u>Pharmacist in charge</u></b>	1,119.20	1,456.38 (180 per cent of current rate)
<b><u>Accredited Pharmacist</u></b>	N/A	1,699.11 (210 per cent of current rate)
<b><u>Pharmacist Manager</u></b>	1,247.20	1,699.11 (210 per cent of current rate)

[422] APESMA argued that the role of pharmacists had changed significantly since the Commission last evaluated the work value of the role in 1998.<sup>521</sup> Specifically, APESMA contended that pharmacists were no longer just dispensers of medicines but had evolved into professionals who

<sup>518</sup> Ibid [5].

<sup>519</sup> [2018] FWCFB 7621 at [1].

<sup>520</sup> Ibid at [2].

<sup>521</sup> Ibid at [3].



actively participate in a multi-disciplinary healthcare team. They now contributed to patient care decisions and outcomes.<sup>522</sup> APESMA argued that pharmacists' work value had been eroded due to the flat-dollar increases awarded in the decade prior to award modernisation and, therefore, proposed increases to rectify this.<sup>523</sup>

[423] The Commission examined whether there had been any significant changes in the nature of pharmacists' work since 1998. While APESMA argued that there had been a fundamental shift in the skills, responsibilities and nature of work, the Commission did not agree with this.<sup>524</sup> The Commission also found that the specific areas of change mentioned by APESMA, such as dose administration aids, blood pressure and blood glucose tests, and medical certificates, did not satisfactorily demonstrate a fundamental shift in the nature of the work.<sup>525</sup>

[424] However, the Commission did acknowledge that the introduction of Home Medicine Reviews had brought about a change that justified a remuneration adjustment.<sup>526</sup> Additionally, the Commission found that there had been an increase in the work value of pharmacists since 1998. This increase was related to inoculations, emergency contraception, downscaling of medicines, and a general increase in the level of responsibility and accountability.<sup>527</sup>

[425] The Commission also reviewed the relativities claim made by APESMA. While the Commission agreed that the relativities had become compressed, which could justify an increase under work value grounds, the claim requested by APESMA was not supported by the facts.<sup>528</sup> The Commission noted that the flat-dollar increases had the intended effect of compressing wage relativities. This, in turn, would help improve the relative position of lower-paid award-wage workers and depress the position of their higher-paid counterparts.<sup>529</sup>

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<sup>522</sup> Ibid at [5].

<sup>523</sup> Ibid at [14].

<sup>524</sup> Ibid at [182].

<sup>525</sup> Ibid at [184].

<sup>526</sup> Ibid at [185].

<sup>527</sup> Ibid at [188].

<sup>528</sup> Ibid at [191].

<sup>529</sup> Ibid at [191].





[426] The Commission observed that the classifications of the Pharmacy Award did not correspond with the equivalent qualifications specified in the Manufacturing Award.<sup>530</sup> The Commission stated that this misalignment could potentially lead to a consideration of work value.<sup>531</sup> As a result, the Commission decided that a separate review of these relativities should be conducted, which would not be part of the 4-yearly review of modern awards.

[427] The Commission determined that a weekly allowance for Home Medicine Reviews and Residential Medication Management Review was most appropriate to address the changes in work value. This allowance would be equivalent to ten per cent of the minimum rate for the pharmacist classification.<sup>532</sup> Additionally, the Commission granted a 5 per cent increase to all pharmacist wage rates, except for pharmacist interns because they do not administer vaccinations, provide emergency contraception, or dispense medications.<sup>533</sup>

## 2022 Pharmacy Intern case

[428] In 2022 APESMA made a further application to vary the Pharmacy Award. APESMA sought an increase in the Pharmacy Intern weekly rate, from \$992.50 for the first half of training and \$1,026.40 for the second half, to a single rate of \$1,129.04.<sup>534</sup> The aim was to align the Pharmacy Award graduate rate with other scientific and technical 4-year degree graduate award rates.<sup>535</sup>

[429] The Commission published a recommendation in June 2023 urging the parties to undertake a more holistic reconsideration of the Award's classification structure, which took the following issues into account:

- Establishing a benchmark classification for a four-year degree-qualified, fully practising pharmacist with a properly fixed pay rate aligned with the notional C1 classification of the Metal Industry Award classification scale.

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<sup>530</sup> Ibid at [195].

<sup>531</sup> Ibid at [198].

<sup>532</sup> [2019] FWCFB 3949 at [12].

<sup>533</sup> Ibid at [14].

<sup>534</sup> Application, *Pharmacy Industry Award variation* (Association of Professional Engineers, Scientists and Managers Australia, AM2022/34, 21 December 2022) [12].

<sup>535</sup> Ibid [13].



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- The recognition of any work value changes likely to arise because of pharmacists being authorised to prescribe particular medicines.
- The establishment of appropriate relativity between the Pharmacist or benchmark classification and the Pharmacy Intern classifications.<sup>536</sup>

[430] At the time of publication of this report, no further work value application has been made in response to the recommendation of the Full Bench to undertake a more holistic reconsideration of the Award's classification structure.

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<sup>536</sup> Fair Work Commission, Recommendation in *Pharmacy Industry Award variation*, AM2022/34, 9 June 2023 at [11].



## 3.12 Social, Community, Home Care and Disability Services Industry Award 2010

### 3.12.1 Introduction

[431] The *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award) is an industry award, expressed to cover employers and their employees in the following 4 sectors:

- social and community services sector; (Schedule B)
- crisis assistance and supported housing sector; (Schedule C)
- family day care scheme sector; (Schedule D)
- home care sector; (Schedule E)

[432] The SCHADS Award does not cover employers and employees covered by the Aged Care Award 2010, Amusement, Events and Recreation Award 2020, Fitness Industry Award 2020, Health Professionals and Support Services Award 2020 or Nurses Award 2020.<sup>537</sup>

[433] The social and community services industry was considered in Stage 4 of the award modernisation proceedings. The Full Bench published an indicative list of awards and NAPSAs covering the social and community services industry.<sup>538</sup>

[434] The following awards ended up forming the basis of the classification structure and minimum wage rates in the modern award:

- *Social and Community Services (Queensland) Award 2001*;
- *Crisis Assistance Supported Housing (Queensland) Award 1999*;
- *Family Day Care Services Award 1999*;
- *Residential and Support Services (Victoria) Award 1999*; and
- *Home and Community Care Award 2001*.

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<sup>537</sup> *Social, Community, Home Care and Disability Services Industry Award 2010* (MA000100) clause 4.

<sup>538</sup> [2009] AIRCFB 641 PR262009 at Attachment B.



[435] The SCHADS Award was published in December 2009 and came into operation on 1 January 2010.<sup>539</sup> The classification and wage structures for the different streams in the current award are set out below. It is worth noting that there is also an equal remuneration order that affects the Social and community services and Crisis accommodation employees with the ERO rates set out in a note under clause 15.8 of the award. The minimum rates for Home care—Aged care employees are currently being finalised in the Work value case – Aged care industry.

	Per week \$	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)	Teacher's benchmark rate \$ (relativity)
<b>Social and community services employee and crisis accommodation employees</b>				
<b>Social and community services employee level 1</b>				
Pay point 1	930.70			
Pay point 2	960.70			
Pay point 3	995.00			
<b>Social and community services employee level 2</b>				
Pay point 1	995.00	1		
Pay point 2	1026.20	4	1085.60	
Pay point 3	1057.40	4	1085.60	
Pay point 4	1085.60	4	1085.60	
<b>Social and community services employee level 3 Crisis accommodation employee level 1</b>				
Pay point 1 (associate diploma/advanced certificate)	1085.60	4	1085.60	
Pay point 2	1116.80	4	1085.60	
Pay point 3 (3 year degree)	1140.70	4	1085.60	
Pay point 4 (4 year degree)	1164.10	4	1085.60	

<sup>539</sup> [2009] AIRCFB 945 PR122009.



	Per week \$	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)	Teacher's benchmark rate \$ (relativity)
<b>Social and community services employee level 4 Crisis accommodation employee level 2</b>				
Pay point 1	1195.30	5	1164.10	
Pay point 2	1226.50	5	1164.10	
Pay point 3	1258.00	5	1164.10	
Pay point 4	1286.10	5	1164.10	
<b>Social and community services employee level 5 Crisis accommodation employee level 3</b>				
Pay point 1	1317.50	5	1164.10	
Pay point 2	1345.80	5	1164.10	
Pay point 3	1377.20	5	1164.10	
<b>Social and community services employee level 6 Crisis accommodation employee level 4</b>				
Pay point 1	1408.60	5	1164.10	
Pay point 2	1439.60	5	1164.10	
Pay point 3	1470.80	5	1164.10	
<b>Social and community services employee level 7</b>				
Pay point 1	1502.00			
Pay point 2	1533.50			
Pay point 3	1564.70			
<b>Social and community services employee level 8</b>				
Pay point 1	1595.90			
Pay point 2	1627.20			
Pay point 3	1658.70			



	Per week \$	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)	Teacher's benchmark rate \$ (relativity)
<b>Family day care employees</b>				
<b>Family day care employee level 1</b>				
Pay point 1	931.90			
Pay point 2	961.70			
Pay point 3	996.60			
Pay point 4	1030.10			
<b>Family day care employee level 2</b>				
Pay point 1	1059.40			
Pay point 2	1094.00			
Pay point 3	1128.60			
Pay point 4	1155.50			
<b>Family day care employee level 3</b>				
Pay point 1	1184.90			
Pay point 2	1221.70			
Pay point 3	1259.40			
Pay point 4	1294.00			
<b>Family day care employee level 4</b>				
Pay point 1	1331.50			
Pay point 2	1345.40			
Pay point 3	1377.00			
Pay point 4	1399.70			
<b>Family day care employee level 5</b>				
Pay point 1	1499.90			
Pay point 2	1541.30			



	Per week \$	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)	Teacher's benchmark rate \$ (relativity)
Pay point 3	1583.20			
Pay point 4	1624.80			
<b>Home care employees—disability care</b>				
<b>Home care employees level 1—disability care</b>				
Pay point 1	921.70			
<b>Home care employees level 2—disability care</b>				
Pay point 1	974.90	1		
Pay point 2	981.60	1		
<b>Home care employees level 3—disability care</b>				
Pay point 1 (certificate 3)	995.00	3	995 (100%)	
Pay point 2	1025.70	3	995	
<b>Home care employees level 4—disability care</b>				
Pay point 1	1085.50			
Pay point 2	1107.20			
<b>Home care employees level 5—disability care</b>				
Pay point 1 (degree or diploma)	1163.90	5	1164.10	
Pay point 2	1209.80	5	1164.10	
<b>Home care employee –aged care</b>				
<b>Home care employee level 1—aged care</b>				
Pay point 1	1059.90			
<b>Home care employee level 2—aged care</b>				
Pay point 1	1121.20	1		
Pay point 2	1128.80	1		



	Per week \$	AQF level	Metals framework C10 equivalent weekly \$ (relativity to C10)	Teacher's benchmark rate \$ (relativity)
<b>Home care employee level 3—aged care</b>				
Pay point 1 (certificate 3)	1144.20	3	995	
Pay point 2	1179.50	3	995	
<b>Home care employee level 4—aged care</b>				
Pay point 1	1248.40			
Pay point 2	1273.30			
<b>Home care employee level 5—aged care</b>				
Pay point 1 (degree or diploma)	1338.50	5	1164.10	
Pay point 2	1391.20	5	1164.10	

[436] The Stage 1 report identified Aged and Disabled Carers as a highly feminised occupation with women making up 86.5 per cent of employees. Aged and Disabled Carers are defined as employees who 'provide general household assistance and support for aged and disabled people in their own homes'.<sup>540</sup> It is worth noting that the Stage 1 report has used the category of Aged and Disabled Carers to define an occupation located within aged care residential services, which include those who may provide care in people's homes, or other services. Accordingly, the Stage 1 report identified that Aged and Disabled Carers were often covered by the SCHADS Award and the Aged Care Award, and also observed that the Nurses Award could potentially provide some coverage in this industry subdivision.<sup>541</sup>

[437] The Stage 1 report noted certain characteristics of Aged and Disabled Carers including:

- mean and median earnings appear lower than the workforce average with 63.8 per cent earning less than \$1000 per week;

<sup>540</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, 'Gender-based occupational segregation: a national data profile' (Final report, UNSW Social Policy Research Centre, 6 November 2023) 37.

<sup>541</sup> Ibid 39.





- a relatively high proportion work part-time and/or have unpaid childcare responsibilities, at around double the rate of the overall workforce;
- a higher than average proportion live in lone parent families compared to the workforce as a whole;
- hourly pay rates are low at \$33.20 per hour, in contrast to the 'all employees' rate of \$42.60 per hour;
- low proportions are employed in the public sector (less than 3%);
- 42.6% hold Certificate III and Certificate IV qualifications;
- collective agreements are the dominant pay setting methods, with approximately 80 per cent coverage;
- there is a national shortage of Aged and Disabled Carers and an increasingly strong demand for these employees across the nation.<sup>542</sup>

### 3.12.2 Pre-modernisation

[438] This section explores the history of the pre-reform awards which formed the basis for the wages and classification structure in each sector of the SCHADS Award.

## Social and community services sector

### *Social and Community Services (Queensland) Award 1996 and 2001*

[439] The classifications and wage rates for the social and community services employees in the SCHADS Award largely reflect the federal *Social and Community Services (Queensland) Award 2001*<sup>543</sup> (SACS Award 2001) which in turn was based on the *Social and Community Services (Queensland) Award 1996* (SACS Award 1996).

[440] The SACS Award 1996 was made in September 1996 by Commissioner O'Shea as a result of an application made by the ASU. The employers originally covered by the award were parties to interstate industrial disputes or were successors to parties to interstate industrial disputes in

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<sup>542</sup> Ibid 37–39, 104.

<sup>543</sup> [2009] AIRCFB 865 PR392009 at [101].



earlier proceedings.<sup>544</sup> The award was created from ‘almost total measure of agreement between the parties’ and the Commission was satisfied that the terms of the award sought were within the Commission’s power, consistent with the objects of the Act and consistent with the Commission’s statement of wage fixing principles of the time.

[441] Commissioner O’Shea stated:<sup>545</sup>

Finally, in noting the parties’ joint intention for the making of a first award but not an interim award, and that this award is not specified to be a paid rates award, I have concluded that the Commission’s current wage fixing principles will be met by the making of the award sought. I refer, in particular, to principle 3.4(1)(b), which reads and I quote:

“In the making of a first award other than an interim award, the main consideration shall be that the award meets the needs of the particular industry or enterprise while ensuring that employees’ interests are also properly taken into account. Structural efficiency considerations shall apply in the making of such an award.”

[442] The SACS Award 2001 was made in July 2001 as a result of the review of the SACS Award 1996,<sup>546</sup> required by Item 51 of the Transitional Provisions of the WROLA Act.

[443] The parties reached an agreed position on all of the terms of the SACS Award 2001 except for matters concerning the classification structure, minimum rates and incremental progression.<sup>547</sup>

[444] Senior Deputy President Cartwright, in making the award, had not yet decided whether the rates required review under Item 51(4) of the WROLA Act and indicated that the parties were continuing to discuss these matters.<sup>548</sup> As a result, the contested provisions of the award were placed in Appendix B with a note advising that they have not yet been reviewed and will be subject to further proceedings.<sup>549</sup> The classification structure and minimum wage rates contained in Appendix B were duplicated from the SACS Award 1996 including the stated wage relativities.

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<sup>544</sup> Print N4670.

<sup>545</sup> Ibid 2.

<sup>546</sup> *Social and Community Services (Queensland) Award 1996 (S1159)* [Print N4671].

<sup>547</sup> PR906088 at [3].

<sup>548</sup> Ibid at [5].

<sup>549</sup> *Social and Community Services (Queensland) Award 2001 (AW808848)* [PR906192] at Appendix B.



[445] In an interim decision issued on 23 November 2001, the Commission found that the award required review under item 51(4) of the WROLA Act, that the key classification in the award was the entry level classification for a graduate with a four year degree (level three, paypoint two) and that the appropriate relativity with the metal industry fitter was 130%.<sup>550</sup> Reasons for decision were set out in the decision of 5 March 2002, once all matters were finalised.

[446] Following the interim decision which identified the key classification, the parties finalised the conversion of the other rates of pay in the award by consent. The Commission stated:

'I am satisfied that the proposed variations will result in a classification structure with integrity and which is consistent with the Commission's current wage fixing principles. Equally, I am satisfied that the proposed variation is consistent with the Award Simplification Principles and the Conversion Principles. Accordingly, I have decided to vary the award in the terms sought, either under item 51(5) or, to the extent required, of my own motion under section 113.

Apart from the changes specifically identified in para [19] above, I have adjusted all the other rates in the Award according to the internal relativities established when the award was made in 1996. The wage rates in the Award were then increased to account for subsequent safety net adjustments. In this regard I note that the rates of pay in the award include the 2001 safety net adjustment. I am satisfied that the wage rates contained in the simplified award are properly fixed minimum rates. Finally, I compared these properly fixed minimum rates to the existing rates. As the properly fixed minimum rates are higher than the existing rates, it is unnecessary to identify residual amounts.

The award contains increments. I have reviewed the form of the mechanism for progression and I am satisfied that it is not simply service based but rather includes the element of work-value required by the Full Bench in the Paid Rates Decision. On this basis, I accept that the incremental paypoints in the award may be maintained.

Finally, the parties sought to add provisions, not previously in the award, related to incremental progression and to the classification of positions. I indicated that I was not able to do this under item 51. Accordingly, the ASU applied under s.113 of the Act to vary the Award to implement a consent position with the employer bodies on these matters [C2002/1120]. These provisions were the subject of discussion in conference. I am satisfied that in making the order under s.113 the requirements of the Act have been met.

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<sup>550</sup> PR911777.



An order will issue shortly to give effect to this decision. The order includes a translation process to reclassify employees who have graduated with either a three or four year degree relevant to their work.<sup>551</sup>

[447] The classification structure in the SACS Award 2001 was amended and the classification and minimum wage rates were moved from Appendix B to the body of the award.<sup>552</sup> These amendments included the insertion of a new Paypoint 4 for Community Services Worker Level 2.<sup>553</sup>

[448] Wage increases from this time on to the inception of the SCHADS Award were only through annual wage adjustments.

[449] Aside from renaming the relevant employees covered from Community Services Worker in the SACS Award 2001 to Social and community services employee in the SCHADS Award, the classification structure has not changed since and remains to this day in the SCHADS Award.

[450] The table below compares the wage structures between the original rates in the SCHADS Award and the rates of the SACS Award 2001 as at 27 March 2006 with the 2006, 2007 and 2008 Commission wages and allowances review increases applied:

<b>Social and Community Services (Queensland) Award 2001<sup>554</sup> as at 27 March 2006 with 2006, 2007 and 2008 AIRC W&amp;AR increases applied</b>		<b>SCHADS</b>	
<b>Classification</b>	<b>Per week (current annual rate multiplied by 52.1667)*</b>	<b>Classification</b>	<b>Per week \$</b>
Community Services Worker Level 1		Social and community services employee level 1	
Paypoint 1	593.90	Pay point 1	593.90
Paypoint 2	614.75	Pay point 2	614.75
Paypoint 3	637.62	Pay point 3	637.62

<sup>551</sup> PR914950 at [20]-[24].

<sup>552</sup> PR914975

<sup>553</sup> [PR919148](#)

<sup>554</sup> *Social and Community Services (Queensland) Award 2001 (AW808848) [PR906192]*



Social and Community Services (Queensland) Award 2001 <sup>554</sup> as at 27 March 2006 with 2006, 2007 and 2008 AIRC W&AR increases applied		SCHADS	
Classification	Per week (current annual rate multiplied by 52.1667)*	Classification	Per week \$
Community Services Worker Level 2		Social and community services employee level 2	
Paypoint 1	637.62	Pay point 1	637.62
Paypoint 2	658.48	Pay point 2	658.48
Paypoint 3	679.34	Pay point 3	679.33
Paypoint 4	698.22	Pay point 4	698.22
Community Services Worker Level 3		Social and community services employee level 3	
Paypoint 1	698.22	Pay point 1 (Associate diploma/advanced certificate)	698.22
Paypoint 2	719.07	Pay point 2 (3 year degree)	719.07
Paypoint 3	734.93	Pay point 3 (4 year degree)	734.93
Paypoint 4	750.39	Pay point 4	750.39
Community Services Worker Level 4		Social and community services employee level 4	
Paypoint 1	771.24	Pay point 1	771.24
Paypoint 2	792.12	Pay point 2	792.12
Paypoint 3	812.97	Pay point 3	812.97
Paypoint 4	831.84	Pay point 4	831.84
Community Services Worker Level 5		Social and community services employee level 5	
Paypoint 1	852.69	Pay point 1	852.69
Paypoint 2	871.56	Pay point 2	871.56
Paypoint 3	892.43	Pay point 3	892.43



Social and Community Services (Queensland) Award 2001 <sup>554</sup> as at 27 March 2006 with 2006, 2007 and 2008 AIRC W&AR increases applied		SCHADS	
Classification	Per week (current annual rate multiplied by 52.1667)*	Classification	Per week \$
Community Services Worker Level 6		Social and community services employee level 6	
Paypoint 1	974.28	Pay point 1	913.29
Paypoint 2	996.71	Pay point 2	934.14
Paypoint 3	1019.12	Pay point 3	955.00
Community Services Worker Level 7		Social and community services employee level 7	
Paypoint 1	1041.55	Pay point 1	975.86
Paypoint 2	1063.96	Pay point 2	996.71
Paypoint 3	1086.41	Pay point 3	1017.59
Community Services Worker Level 8		Social and community services employee level 8	
Paypoint 1	1108.83	Pay point 1	1038.44
Paypoint 2	1131.24	Pay point 2	1059.30
Paypoint 3	1153.67	Pay point 3	1080.16
* Note clause 21.2 says: 'Weekly rate of pay is calculated by dividing current rate of pay per annum by 52.1667.'			

[451] While the wages are expressed as an annual rate in the *Social and Community Services (Queensland) Award 2001*, clause 21.2 indicates that a divisor of 52.1667 can be used to calculate weekly wages. The wages in the above table are therefore expressed weekly using the expressed divisor.

[452] In determining the rates for the SCHADS Award, the Full Bench looked at the wage rates in the federal Australian Capital Territory, Western Australian and Queensland awards which had been reviewed as part of the award simplification process in 2002. The award modernisation Full Bench noted at the time that the rates were all very similar. It was also noted that the NSW



NAPSA provided for generally higher wage rates than the federal awards whilst the South Australian and Tasmanian NAPSA wage rates were generally lower than the federal awards.<sup>555</sup>

[453] The Full Bench otherwise indicated that it had adopted the federal Queensland award wage rates. As such, it is unclear as to why there are negative variances in the Levels 6 to 8 employees. This did not appear to be addressed by the parties in their submissions or during consultations.

## Disability services sector

### *Residential and Support Services (Victoria) Award 1999*

[454] The *Health (Residential Care – Victoria) Award 1995* was created in April 1996.<sup>556</sup> The classification and minimum wages structure in this award were vastly different to that seen in its successors.

[455] The *Residential and Support Services (Victoria) Award 1999*<sup>557</sup> was made in December 1999 by Senior Deputy President Macbean, setting aside its predecessor, the *Health (Residential Care – Victoria) Award 1995*. From the time it was made to award modernisation in 2008–09, there were no significant changes to the classifications and minimum wages structure.

[456] The *Residential and Support Services (Victoria) Award 1999* was binding on the HSU and Victorian-based employers.

[457] At the time the *Health (Residential Care – Victoria) Award 1995* was being replaced, the Full Bench of the Commission had made a number of findings, including that:

‘1. On the evidence and the material before us, we are is satisfied (*sic*) that the disability services sector in Victoria covered by the awards which are the subject of these HSUA applications should not be the subject of significantly different pay rates and conditions for work of a similar nature...

2. It is our view that this disability services sector award should be a "stand alone" award providing common rates and conditions for employees who are employed by employers who are currently respondent to the HASA and/or the Resicare Awards and which are encompassed within the present applications made by the HSUA. This is our view with one important proviso. That proviso is that we have concluded that a case has been made out for some additional flexibility to be available to the

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<sup>555</sup> [2009] AIRCFB 865 PR392009 at [101].

<sup>556</sup> *Health (Residential Care – Victoria) Award 1995* (H0370) [Print M6133].

<sup>557</sup> [1999] AIRC 1448 Print S1894.



providers of the smaller residential services. Within the award that we propose, therefore, there will be a separate category for providers of residential services within the sector at the smaller end of the scale. This category will provide those smaller providers of residential services with the capacity to use a 24 hour roster as an alternative to roster patterns generally set by the award...

3. Within the disability services sector award which is proposed, there shall be a single classification structure. This classification structure will need to have regard to s.88B(3)(a) of the Act and be consistent with the requirements of the Commission's August 1988, August 1989 and subsequent National Wage Decisions.<sup>558</sup>

[458] The parties in this case were then directed to confer and submit a draft disability services sector award to give effect to the determination. The Full Bench was then reconvened in August 1999 and concluded in December 1999:

'[13] We have concluded that the evidence supports the claim that the Residential/Support Services Worker Grade 3 classification is properly equated to the Metal, Engineering and Associated Industries Award, 1998 – Part 1 [M1913] (Metal Industry Award) C10 being the 100% level. The rate sought at this level in Exhibit F2 had been \$485.40.<sup>559</sup>

[459] The rate was subsequently reduced by the parties to \$477.20 and the remaining classification rates were adjusted at the base level by maintaining existing internal relativities. In considering the evidence that the work of disabled services employees had altered significantly over the preceding 5 years due to the transfer of clients from a medical type model to one in which the service is provided in community homes, resulting in a substantial change to the duties, the Full Bench was satisfied that the rates in the *Residential and Support Services (Victoria) Award 1999* were properly fixed minimum as required by section 89A(3) and had been fixed in accordance with the *Paid Rates* decision.<sup>560</sup>

[460] Prior to the integration of the disability services sector into the social and community services structure, the classification and wage rates structure for disability service employees as at the time the SCHADS Award was originally published in December 2009 was largely based on the federal *Residential and Support Services (Victoria) Award 1999*.<sup>561</sup> This structure comprised 5

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<sup>558</sup> [1997] AIRC 1336 Print P7638 at 1–3.

<sup>559</sup> [1999] AIRC 1448 Print S1841 at [13].

<sup>560</sup> *Ibid* at [21].

<sup>561</sup> [2009] AIRCFB 865 PR392009 at [104].





levels, each containing either one (in the case of Disability services employee level 1) or 3 pay points (Disability services employee levels 2 to 5). The table below sets out the comparison of wage rate structures between the SCHADS Award and the *Residential and Support Services (Victoria) Award 1999* (pre-reform rate as at 27 March 2006 with 2006, 2007 and 2008 Commission wages and allowances review increases applied) and shows that the rates are identical except for a very slight difference for pay point 1 of the Disability services employee level 4:

Residential and Support Services (Victoria) Award 1999 for Residential Support Services other than Half Day Model employees		SCHADS Award	
Classification	Minimum rate per week \$	Classification	Minimum rate per week \$
Residential Support Services Worker Grade 1		Disability services employee level 1	
First year	587.90	Pay point 1	587.90
Residential Support Services Worker Grade 2		Disability services employee level 2	
First year	616.50	Pay point 1	616.50
Second year	620.10	Pay point 2	620.10
Third year	623.90	Pay point 3	623.90
Residential Support Services Worker Grade 3		Disability services employee level 3	
First year	637.60	Pay point 1 (certificate 3)	637.60
Second year	641.20	Pay point 2	641.20
Third year	645.00	Pay point 3	645.00
Residential/Support Services Worker Grade 4		Disability services employee level 4	
First year	656.70	Pay point 1 (certificate 4)	657.70
Second year	660.30	Pay point 2	660.30
Third year	664.10	Pay point 3	664.10
Residential/Support Services Supervisor		Disability services employee level 5	
First year	664.10	Pay point 1	723.50
Second year	667.70	Pay point 2	727.10
Third year	671.50	Pay point 3	730.90



[461] It should be noted that there was a difference in rates between Residential/Support Services employees employed under a Half Day Model and in services other than a half day model, which is the comparator in the table above. Employees employed under a Half Day Model were required to be paid for a minimum half day engagement, which is any consecutive period of 12 hours.<sup>562</sup> There appears to be no equivalent half day rate or engagement in the SCHADS Award pertaining to disability services employees. For reference, below is a table setting out wages for employees employed under a Half Day Model (as at 27 March 2006 with 2006, 2007 and 2008 Commission wages and allowances review increases applied):

<b>Residential and Support Services (Victoria) Award 1999<sup>563</sup> for Residential Support Services Half Day Model employees</b>	
<b>Classification</b>	<b>Minimum rate per week \$</b>
Residential Support Services Worker Grade 1	
First year	788.90
Residential Support Services Worker Grade 2	
First year	828.94
Second year	833.98
Third year	839.30
Residential Support Services Worker Grade 3	
First year	858.48
Second year	863.52
Third year	868.94
Residential/Support Services Worker Grade 4	
First year	885.22
Second year	890.26
Third year	895.58
Residential/Support Services Supervisor	
First year	978.74
Second year	983.78

<sup>562</sup> [1999] AIRC 1448 Print S1894 at part C, section I, clause 1.1.1.

<sup>563</sup> PR968955.



<b>Residential and Support Services (Victoria) Award 1999<sup>563</sup> for Residential Support Services Half Day Model employees</b>	
<b>Classification</b>	<b>Minimum rate per week \$</b>
Third year	989.10

## Crisis accommodation sector

### *Crisis Assistance Supported Housing (Queensland) Award 1999 and predecessors*

[462] The *Crisis, Assistance, Supported Housing Award 1991*, was created by Deputy President Macbean on 1 July 1991 pursuant to section 112 of the *Industrial Relations Act 1988*. It applied to the Australian Social Welfare Union and employers listed in Schedule A which spanned across 8 States and territories.

[463] As a conditions only award, it did not contain a classification or minimum wage rates structure. In fact, clause 5.2(b) of the award says:

‘The parties agree to introduce an award classification structure with related job definitions which are suitable to the needs of employers, which will truly reflect the work requirements and skill levels of employees in the industry and which shall generally enable employees to perform a range of duties as appropriate.’

[464] From the inception of the *Crisis, Assistance, Supported Housing Award 1991* to the making of the *Crisis Assistance, Supported Housing Industry – Western Australia Award 1997*, there appears to be no evidence as to any formalised classification structure.

[465] The *Crisis Assistance Supported Housing (Queensland) Award 1999* (the CASH Qld Award 1999) was made following a combination of multiple matters arising from the making of the *Crisis, Assistance, Supported Housing Award 1991* (the CASH Award 1991), which was a conditions only award. The application had initially been made in 1995 and came before Commissioner O’Shea, where it was agreed that the approach to be adopted was to seek awards for each State.<sup>564</sup>

<sup>564</sup> [2000] AIRC 85 Print S8400 at [1].



- [466] The first Award so created was the *Crisis Assistance, Supported Housing Industry – Western Australia Award 1997*.<sup>565</sup> This award contained a vastly different classification structure to what we have today, with employees called Community Services Workers and 9 classification levels, each with 1 to 4 pay points.
- [467] Since the making of the *Crisis Assistance, Supported Housing Industry – Western Australia Award 1997*, considerable negotiations had taken place between the ASU and a range of employer groups. During this time, the *Workplace Relations Act 1996* was amended to incorporate s.89A and the Queensland draft award took this into account.
- [468] The *Crisis Assistance Supported Housing (Queensland) Award 1999* was made by consent. This classification structure is reflected in the SCHADS Award.
- [469] The SCHADS Award covers employers in the crisis assistance and supported housing sector, which it defines as meaning the provision of crisis assistance and supporting housing services.
- [470] Crisis accommodation employees in the SCHADS Award are integrated into the social and community services minimum wages structure, such that:
- Crisis accommodation employee level 1 is equivalent to a Social and community services employee level 3.
  - Crisis accommodation employee level 2 is equivalent to a Social and community services employee level 4.
  - Crisis accommodation employee level 3 is equivalent to a Social and community services employee level 5.
  - Crisis accommodation employee level 4 is equivalent to a Social and community services employee level 6.
- [471] The award modernisation Full Bench noted that in integrating the crisis accommodation employees into the social and community services wage rate structure, it had taken into account qualification levels.<sup>566</sup>

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<sup>565</sup> *Crisis Assistance, Supported Housing Industry – Western Australian Award 1997* [Print P7752].

<sup>566</sup> [2009] FWCFB 865 PR392009 at [102].



[472] The classification definitions are practically identical to those contained in the federal *Crisis Assistance Supported Housing (Queensland) Award 1999*.<sup>567</sup> The wage rates, however, differ slightly in that it separates Level 1 to Level 3 employees into Category A and Category B, with Category A wage rates representing base wage rates for Monday to Friday employees and Category B wage rates being inclusive of all penalties except overtime and public holidays. The table below compares the wage structures between the original rates in the SCHADS Award and the rates of the *Crisis Assistance Supported Housing (Queensland) Award 1999* prior to modernisation (Category A wage rates only):

Crisis Assistance Supported Housing (Queensland) Award 1999 <sup>568</sup> as at 26 March 2006 with 2006, 2007, 2008 wages and allowances review increases applied		SCHADS as at 24 December 2009	
Classification	Annual wage rate converted to weekly rate per cl 20.1 \$	Classification	Weekly wage rate \$
Level 1		Crisis accommodation employee level 1	
Paypoint 1	680.91	Pay point 1 (associate diploma/advanced certificate)	698.22
Paypoint 2	701.76	Pay point 2 (3 year degree)	719.07
Paypoint 3	722.64	Pay point 3 (4 year degree)	734.93
Paypoint 4	738.50	Pay point 4	750.39
Level 2		Crisis accommodation employee level 2	
Paypoint 1	753.95	Pay point 1	771.24
Paypoint 2	774.81	Pay point 2	792.12
Paypoint 3	795.66	Pay point 3	812.97
Paypoint 4	816.54	Pay point 4	831.84

<sup>567</sup> Ibid at [102].

<sup>568</sup> PR983896.



Crisis Assistance Supported Housing (Queensland) Award 1999 <sup>568</sup> as at 26 March 2006 with 2006, 2007, 2008 wages and allowances review increases applied		SCHADS as at 24 December 2009	
Classification	Annual wage rate converted to weekly rate per cl 20.1 \$	Classification	Weekly wage rate \$
Level 3		Crisis accommodation employee level 3	
Paypoint 1	835.40	Pay point 1	852.69
Paypoint 2	854.26	Pay point 2	871.56
Paypoint 3	875.12	Pay point 3	892.43
Level 4		Crisis accommodation employee level 4	
Paypoint 1	950.97	Pay point 1	913.29
Paypoint 2	966.98	Pay point 2	934.14
Paypoint 3	995.83	Pay point 3	955.00

## Home care sector

[473] The SCHADS Award covers employers in the home care sector, which it defines as the provision of personal care, domestic assistance or home maintenance to an aged person or a person with a disability in a private residence.

### *Home and Community Care Award 1995 and 2001*

[474] The source of the classification structure and rates of pay for aged and disability home care workers in the SCHADS Award was identified by the award modernisation Full Bench to be the *Home and Community Care Award 2001* (HAC Award 2001).<sup>569</sup>

[475] The *Home and Community Care Award 1995* (HAC Award 1995) was made in May 1997 by Commissioner Nolan as a consent award between the ASU and the City of Hobart and other parties.<sup>570</sup> The classification and wage structure in this award is identical to its successor, the

<sup>569</sup> [2009] AIRCFB 865 PR392009 at [106].

<sup>570</sup> *Home and Community Care Award 1995* (H0607) [Print Q4767].



HAC Award 2001. It appears that the rates of pay in the HAC Award 1995 have never involved any work value assessment.

[476] The *Home and Community Care Award 2001* was created in March 2001 by Commissioner Simmonds as the successor to the HAC Award 1995 and applied only to a single employer.<sup>571</sup> No significant changes were made to the classification structure and wage rates until the inception of the SCHADS Award.

[477] Home care employees are classified into 5 levels. Level 1 is the entry point for employees with less than 12 months' experience in the industry and features only a single pay point. Levels 2 and 3 cover employees directly involved in the provision of domestic assistance and support. Employees at Level 3 are expected to exercise a higher level of personal judgement and perform more specialised work than Level 2 employees. It is also the entry point for employees that need a Certificate III for their position.

[478] The Full Bench at the time of publishing the exposure draft noted that the wage rate for a Certificate III qualified home care employee (grade 3) is the same rate as a similarly qualified aged care employee (level 4) in the *Aged Care Award 2010*.<sup>572</sup>

[479] The rates of pay of the *Home and Community Care Award 2001* and the SCHADS Award are set out below for comparison:

Home and Community Care Award 2001 <sup>573</sup>		SCHADS Award	
	Per week \$	Classification	Per week \$
Employee – band 1		Home care employee level 1	
Level A	559.70	Pay point 1	587.40
Level B	569.00		
Level C	578.20		
Level D	587.40		
Employee – band 2		Home care employee level 2	

<sup>571</sup> PR902435.

<sup>572</sup> [2009] AIRCFB 865 PR392009 at [106].

<sup>573</sup> *Home and Community Care Award 2001* (AP806214).



Home and Community Care Award 2001 <sup>573</sup>		SCHADS Award	
	Per week \$	Classification	Per week \$
Level A	600.70	Pay point 1	624.30
Level B	612.00	Pay point 2	628.80
Level C	624.30		
Level D	628.80		
Employee – band 3		Home care employee level 3	
Level A	637.60	Pay point 1 (certificate 3)	637.60
Level B	658.10	Pay point 2	658.10
Level C	678.60		
Level D	690.90		
Employee – band 4		Home care employee level 4	
Level A	698.10	Pay point 1	698.10
Level B	712.50	Pay point 2	712.50
Level C	731.90		
Level D	737.20		
Employee – band 5		Home care employee level 5	
Level A	750.20	Pay point 1 (degree or diploma)	750.20
Level B	781.00	Pay point 2	781.00
Level C	812.80		
Level D	840.50		

[480] While the classification definitions and structure between the two awards remained identical, it is clear that following award modernisation, the home care sector saw a decrease in the number of pay points available in each level.





## Family day care scheme sector

### *Family Day Care Services Award 1993 and 1999*

[481] The *Family Day Care Services Award 1993* (FDC Award 1993) was the predecessor to the *Family Day Care Services Award 1999* (FDC Award 1999). It was created on 10 March 1993 by Commissioner Hoffman. The classification structure of family day care scheme employees in the FDC Award 1993 were highly similar to the structure that was adopted in the FDC Award 1999 except for:

- Category 3 employees only contained 1 grade.
- There were no Category 5 employees.
- From November 1995 an additional grade was added to Category 4, making for a total of 5 grades.

[482] It is unclear how the additional 3 grades for Category 3 and Category 5 classifications were created between 7 June 2001 to the inception of the FDC Award 1999 on 10 December 2001. There seems to be no evidence of any work value assessments that would have led to the creation of these additional grades and Category 5.

[483] The FDC Award 1999 was made on 10 December 2001 by Senior Deputy President Duncan following a review of its predecessor, the FDC Award 1993 pursuant to Item 51 of Pt 2 of Sch 5 of the WROLA Act.

[484] Employer coverage in the FDC Award 1999 was defined as employers who 'provide a service which is a family day care scheme being a network of individuals providing child care and developmental activities in their own home for other people's children, organised and supported by a central co-ordination unit. The unit supports, recruits and trains carers, arranges the placement of children according to the needs of the families and carers, monitors the care provided and undertakes the necessary administrative responsibilities. It is a flexible type of service providing child care according to family needs.'<sup>574</sup>

[485] In making the FDC Award 1999, wage rates were also updated in accordance with the Safety Net Review – Wages May 2001 decision<sup>575</sup> and the Senior Deputy President was satisfied that

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<sup>574</sup> *Family Day Care Services Award, 1999* (AP812580).

<sup>575</sup> PR002001 ('2001 safety net review').



the wage rates were reviewed consistent with the principles of the Full Bench in the Paid Rates Reviews Decisions.<sup>576</sup>

[486] The only changes to the wages in the *Family Day Care Services Award 1999* over the years prior to award modernisation were as a result of safety net reviews. The classification structure remained unchanged.

[487] The SCHADS Award covers employers operating a family day care scheme for the provision of family day care services. Importantly, it covers employees who don't provide the actual care of the children but who have roles such as:

- registering family day care centres
- providing administrative support for centres
- assisting centres to access child care subsidies for families.

[488] The Full Bench during the award modernisation process emphasised that the classification structure for family day care scheme employees in the SCHADS Award 'do not include workers who provide family day care services in their home'.<sup>577</sup>

[489] It is important to note that certain functions of family day care are also covered by the *Children's Services Award 2010*. The Full Bench noted that the classifications of family day care employee – level 4 and level 5 are the same as the classifications family day care co-ordinator (level 5) and director of a family day care service (level 6), respectively, as they appear in the *Children's Services Award 2010*, with award coverage to depend on the industry of the employer.<sup>578</sup>

[490] In the SCHADS Award, family day care employees are categorised into 5 levels, each with 4 pay points. The classification structure is practically identical to the classification structure found in the federal award, *Family Day Care Services Award 1999*, but for the change of terminology from Category to Level and Grade to Pay point. The table below compares the classification structures and wages in the pre-modern award immediately before modernisation and the original rates in the SCHADS exposure draft and Award following modernisation:

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<sup>576</sup> [1998] AIRC 1413 Print Q7661 ('Paid rates review decision'); [1999] AIRC 1163 Print S0105 ('Paid rates review – supplementary decision').

<sup>577</sup> Ibid at [103].

<sup>578</sup> [2009] AIRCFB 865 PR392009 at [103].



Family Day Care Services Award 1999 as at 1 October 2008 <sup>579</sup>		SCHADS Award (at 24 Dec 2009)	
	Gross Annual Salary \$		Per week \$
Category 1		Family day care employee level 1	
Grade 1	31 017	Pay point 1	594.59
Grade 2	32 108	Pay point 2	615.50
Grade 3	33 312	Pay point 3	638.58
Grade 4	34 488	Pay point 4	661.13
Category 2		Family day care employee level 2	
Grade 1	35 508	Pay point 1	680.68
Grade 2	36 708	Pay point 2	703.68
Grade 3	37 908	Pay point 3	726.68
Grade 4	38 848	Pay point 4	744.69
Category 3		Family day care employee level 3	
Grade 1	39 867	Pay point 1	764.21
Grade 2	41 167	Pay point 2	789.13
Grade 3	42 467	Pay point 3	814.05
Grade 4	43 663	Pay point 4	836.97
Category 4		Family day care employee level 4	
Grade 1	44 963	Pay point 1	861.89
Grade 2	45 458	Pay point 2	871.38
Grade 3	46 546	Pay point 3	892.24

<sup>579</sup> PR983598.



Family Day Care Services Award 1999 as at 1 October 2008 <sup>579</sup>		SCHADS Award (at 24 Dec 2009)	
	Gross Annual Salary \$		Per week \$
Grade 4	47 350	Pay point 4	907.65
Category 5		Family day care employee level 5	
Grade 1	50 818	Pay point 1	974.13
Grade 2	52 272	Pay point 2	1002.00
Grade 3	53 726	Pay point 3	1029.88
Grade 4	55 180	Pay point 4	1057.75

[491] The rates in the *Family Day Care Services Award 1999* are between 0.04 and 0.05 per cent higher than the SCHADS rates when converted to a weekly rate (using 7/365 as the multiplier). The disparity did not appear to be addressed by parties in filing their submissions or in conferences about the exposure draft.

### 3.12.3 Award Modernisation

[492] On 25 September 2009, an exposure draft was issued for the 'health and welfare services (remainder) – Social and community services' industry called the 'Social, Community, Home Care and Disability Services Industry Award 2010'.<sup>580</sup> The exposure draft incorporated social and community services, home care, the provision of family day care schemes and disability services.

[493] The Full Bench noted that a number of parties had supported having one modern award covering all four industry sectors, whilst other parties proposed that disability services and home care should be covered by separate awards or that there should be two social welfare awards covering direct client care and support services. Ultimately, the Full Bench determined that all four industry sectors could be dealt with in the social and community services framework as there was no 'obvious advantage in taking a more fragmented approach'.<sup>581</sup>

<sup>580</sup> [2009] AIRCFB 865 PR392009.

<sup>581</sup> Ibid at [100].



[494] As to each of the four industry sectors, the Full Bench explained the source of the classifications and wage rates for each as follows:

[101] The classifications and wage rates we have adopted for the social and community services employees largely reflect the federal Social and Community Services (Queensland) Award 2001. There are federal awards in this sector in all states except New South Wales, Tasmania and South Australia, where there are NAPSAs. The wage rates in the federal Australian Capital Territory, Western Australian and Queensland awards were reviewed as part of the award simplification process in 2002. They are all currently very similar. The New South Wales NAPSA provides for generally higher wage rates than the federal awards. The South Australian and Tasmanian NAPSA wage rates are generally lower than the federal awards. In adopting the federal Queensland award wage rates, we note that s.576(L) of the WR Act requires that modern awards provide a fair minimum safety net.

[102] Crisis accommodation employees have been integrated into the social and community services employee wage rate structure taking into account qualification levels. The wage rates and classification definitions reflect the federal Crisis Assistance Supported Housing (Queensland) Award 1999.

[103] The classification for family day care scheme employees do not include workers who provide family day care services in their home. The wage rates and definitions are derived from the federal Family Day Care Services Award, 1999. The classification of family day care co-ordinator (family day care employee – level 4) and director of a family day care service (family day care employee – level 5), also appear in the Children’s Services Award 2010 exposure draft. Coverage will depend on the industry of the employer.

[104] Award coverage of disability services employees is currently spread over federal awards (Australian Capital Territory, Victoria and Northern Territory) and NAPSAs (New South Wales, Tasmania, South Australia and Queensland). Wage rates are largely comparable between the federal awards (the Australian Capital Territory award is slightly higher). The New South Wales NAPSA wage rates are again the highest rates. All of the other State NAPSAs contain generally lower rates. The classification structure and wage rates we have adopted largely reflect the federal Residential and Support Services (Victoria) Award 1999.

[105] Home care employees covered by the exposure draft provide care and support for aged persons or persons with a disability in their own home. The Aged Care Award 2010 also covers the provision of care for aged persons in their home. Whether this draft modern award or the Aged Care Award 2010 covers a particular employee will depend on the industry of the employer.

[106] The wage rates and classification definitions for home care employees are based on the federal Home and Community Care Award 2001. The wage rate for a Certificate III qualified home care employee (grade 3) is the same rate as for a similarly qualified aged care employee (level 4) in the Aged Care Award 2010.’

(citations omitted)



[495] The Full Bench noted that there had been some rationalisation and integration of wage rate structures in the exposure draft and invited parties to comment on whether there should be further rationalisation across all or some of the remaining sectors (family day care, disability and home care services).<sup>582</sup> The ASU, ACTU and HSU made submissions advocating for the integration of the minimum wages structure and relevant conditions of disability service employees into the wages structure, however at that stage there was no fully developed and agreed proposal.<sup>583</sup>

[496] During the award modernisation process, the Full Bench noted that the minimum wages and other wage related conditions payable to employees covered by the *Queensland Community Services and Crisis Assistance Award – State 2008* (Queensland SACS Award) were significantly higher than the wages in the federal and other State awards applying in the social and community services industry. The wage rates in the exposure draft of the SCHADS Award were lower than those in the Queensland SACS Award.

[497] As a result of this, the ASU sought to defer the operation of parts of the SCHADS Award to permit it to pursue an application for higher wage rates based on pay equity or work value grounds in the social and community services sector. This came about due to the ASU's concerns with how the recent pay equity decision awarding significant pay increases in the Queensland SACS Award would be dealt with in any transfer of relevant employees into the federal system as to preserving the new rates for Queensland employees and how similar outcomes could be achieved for employees in other States. It tendered a Heads of Agreement, which demonstrated agreement between the ASU and the Australian Government to submit to the Commission as follows:

- That the Commission proceed to create a modern award for the social and community services sector in accordance with the timetable set down for the Stage 4 awards.
- That the rates of pay for the SCHADS Award should be established initially on an interim basis and should reflect the rates that presently exist in relevant instruments, pending a full hearing of the ASU's application to properly fix the rates.

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<sup>582</sup> Ibid at [107].

<sup>583</sup> [2010] FWA FB 2024 at [7].



- [498] The ASU's proposal was supported by the Australian Council of Social Service, Jobs Australia and some State Governments including New South Wales, South Australia, Tasmania and Victoria, citing the importance of minimising disruption to the social and community services sector. A number of employer organisations opposed the proposal, including AFEI, Aged Care Employers and ABI.
- [499] The SCHADS Award was subsequently published by the Commission on 4 December 2009 based on the terms of the exposure draft but for a number of alterations not related to minimum rates of pay.
- [500] In making the SCHADS Award, the Full Bench dealt with the proposals advanced by the ASU to defer the operations of parts of the SCHADS Award to permit it to pursue an application to establish new wage rates based on pay equity or work value grounds. It noted that the award 'will include the classifications and minimum wages which appear to us, on the material available at this time, to be appropriate for a modern award in this industry'.<sup>584</sup> The Full Bench also accepted that 'it would be inconvenient to say the least to introduce new classifications and minimum wages for the industry covered by the award when a significant case is contemplated before Fair Work Australia next year'.<sup>585</sup>
- [501] The making of the SCHADS Award 'replaced, in whole or in part, the provisions of a number of federal and state awards previously applying in the industry. While the modern award contained a new classification structure and wage rates, it contained a provision that the new classifications and wages should not operate until 1 July 2011'.<sup>586</sup>
- [502] During the equal remuneration proceedings for the social, community and disability services sector, the operation of these rates was further delayed until 1 February 2012.<sup>587</sup> Classifications and wage rates in the relevant transitional instruments continued to operate until that time.<sup>588</sup>

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<sup>584</sup> Ibid at [80].

<sup>585</sup> Ibid.

<sup>586</sup> [2009] AIRCFB 945 PR122009 at [80].664.10

<sup>587</sup> [2011] FWAA 2257.

<sup>588</sup> [2011] FWAFB 2700 at [3].



**Integration of disability services into classification structure**

[503] On 26 March 2010, the Full Bench handed down a decision to vary the SCHADS Award.<sup>589</sup> This decision saw the integration of the disability services sector minimum wage and classification structures into that of the social and community services sector. Below is a table comparing the wages for disability services employees and social and community service employees in the SCHADS Award when it was first published in December 2009:

	Per week \$		Per week \$
<b>Disability services employee level 1</b>		<b>Social and community services employee level 1</b>	
Pay point 1	587.90	Pay point 1	593.90
<b>Disability services employee level 2</b>		Pay point 2	614.75
Pay point 1	616.50	Pay point 3	637.62
Pay point 2	620.10	<b>Social and community services employee level 2</b>	
Pay point 3	623.90	Pay point 1	637.62
<b>Disability services employee level 3</b>		Pay point 2	658.48
Pay point 1 (certificate 3)	637.60	Pay point 3	679.33
Pay point 2	641.20	Pay point 4	698.22
Pay point 3	645.00	<b>Social and community services employee level 3</b>	
<b>Disability services employee level 4</b>		Pay point 1 (associate diploma/advanced certificate)	698.22
Pay point 1	657.70	Pay point 2 (3 year degree)	719.07
Pay point 2	660.30	Pay point 3 (4 year degree)	734.93

<sup>589</sup> [2010] FWA FB 2024.





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	Per week \$		Per week \$
Pay point 3		Pay point 4	750.39
<b>Disability services employee level 5</b>		<b>Social and community services employee level 4</b>	
Pay point 1 (diploma)	723.50	Pay point 1	771.24
Pay point 2	727.10	Pay point 2	792.12
Pay point 3	730.90	Pay point 3	812.97
		Pay point 4	831.84
		<b>Social and community services employee level 5</b>	
		Pay point 1	852.69
		Pay point 2	871.56
		Pay point 3	892.43
		<b>Social and community services employee level 6</b>	
		Pay point 1	913.29
		Pay point 2	934.14
		Pay point 3	955.00
		<b>Social and community services employee level 7</b>	
		Pay point 1	975.86
		Pay point 2	996.71
		Pay point 3	1017.59
		<b>Social and community services employee level 8</b>	
		Pay point 1	1038.44



	Per week \$		Per week \$
		Pay point 2	1059.30
		Pay point 3	1080.16

[504] The decision was made following application of ABI to ‘remove distinctions in the regulation of the disability services sector and the social and community services sector respectively by integrating the relevant definitions, wage rates and classifications’.<sup>590</sup>

### SACS equal remuneration case

[505] The ASU made an application for an equal remuneration order for the social, community and disability services sector, in March 2010. The application sought an equal remuneration order applying to employees in the social and community services industry nationally, based on the wage rates and classification structure in the Queensland SACS Award.

[506] The rates in the Queensland award for non-government SACS industry workers were increased to ‘compensate for historical undervaluation of work, recognise current work value and provide redress for the incapacity to bargain’.<sup>591</sup> Wage rates were fixed by the QIRC in reference to rates paid to employees performing similar work in State and local government in Queensland.

### First equal remuneration decision 2011

[507] On 16 May 2011, a Commission (formerly Fair Work Australia) Full Bench handed down the first of two major decisions in the proceedings.<sup>592</sup> The Full Bench was considering the equal remuneration provisions in part 2-7, as they then were, and held that an order could not be made unless FWA was satisfied that there was not equal remuneration for work of equal or comparable value, but if it was so satisfied, it nevertheless retained a discretion to make an order or not.<sup>593</sup>

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<sup>590</sup> Ibid at [1].

<sup>591</sup> [2009] QIRCComm 33 at 32.

<sup>592</sup> [2011] FWAFB 2700.

<sup>593</sup> Ibid at [227].



[508] The Full Bench identified the SACS industry as comprising the following sectors, which were also identified as predominantly female:<sup>594</sup>

- Disability services
- Youth and children’s services
- Community centres
- Women’s services
- Family support services
- Community legal centres
- Home and community care services
- Drug and alcohol services
- Community housing services
- Specialist health services
- Peak organisations
- Indigenous services
- Tenancy services, and
- Mental health services.

[509] The Full Bench considered the issue of gender-based undervaluation of caring work and made several findings consistent with the Queensland Equal Remuneration Decision:

- ‘ (a) much of the work in the industry is “caring” work;
- (b) the characterisation of work as caring work can disguise the level of skill and experience required and contribute, in a general sense, to a devaluing of the work;
- (c) the evidence of workers, managers and union officials suggests that the work, in the SACS industry, again in a general sense, is undervalued to some extent, and
- (d) because caring work in this context has a female characterisation, to the extent that work in the industry is undervalued because it is caring work, the undervaluation is gender-based.<sup>595</sup>

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<sup>594</sup> Ibid at [235], [238].

<sup>595</sup> Ibid at [253].



[510] In the recent Work value case – Aged care industry stage 3 decision <sup>596</sup>, the Expert Panel summarised the decisions of the SACS equal remuneration Full Bench as follows:

[164] The Full Bench declined to make a finding that the applicable minimum rates in the SCHADS award were not properly based on the value of work, saying:

[261] We deal first with the applicants' submission that the minimum wages in the modern award do not properly reflect the value of the work. Given the basis on which minimum rates are fixed, it is not possible to demonstrate that modern award wages are too low in work value terms by pointing to higher rates in enterprise agreements, or in awards which clearly do not prescribe minimum rates. In order to succeed in their submission it would be necessary for the applicants to deal with work value and relativity issues relating to the classification structure in the modern award and potentially to structures and rates in other modern awards. No real attempt has been made to deal with those important issues.

[165] The Full Bench did however find that social and community employees were relatively low paid and that a large proportion of them were paid at or quite near the award rate, with collective bargaining having had only a limited effect in rates of pay and over-award payments not being of great significance. The ultimate conclusion reached by the Full Bench was that 'for employees in the [social and community services] industry there is not equal remuneration for men and women workers for work of equal or comparable value by comparison with state and local government employment'. In respect of remedy, the Full Bench rejected the applicants' submission that the ERO should reproduce the classification structure in the Queensland award:

[283] In our view the applicants have not made out a case for adoption of a classification structure in the equal remuneration order different from that in the modern award. It would be undesirable to have parallel but different classification structures, one in the award and the other in an equal remuneration order. It is preferable that if there are to be alterations in the classification structure they should be reflected in the award itself rather than in a separate equal remuneration order. Also, there is no single classification structure which could be adopted, as there are many differences between the classification structures in the awards and agreements with which comparisons could be made. In the circumstances we do not think that the achievement of equal remuneration for work of equal or comparable value will be compromised if classification structures are dealt with at the award level rather than in an equal remuneration order.

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<sup>596</sup> [2024] FWCFB 150.



[166] The Full Bench invited further submissions on the terms of the order to be made having regard to the conclusions it had stated, including as to whether 'the quantum in any equal remuneration order could or should be included in the modern award having regard, amongst other things, to the operation of the better off overall test'. It also indicated the primary consideration in determining the terms of the orders as follows:

...in order to give effect to the equal remuneration provisions, the proper approach is to attempt to identify the extent to which gender has inhibited wages growth in the [social and community services] industry and to mould a remedy which addresses that situation.

[167] In its second decision issued on 1 February 2012, the Full Bench (by majority) eschewed any notion of establishing a nexus between the ERO to be made and market rates or facilitating claims for parity with the public sector. It ultimately accepted a joint submission from the applicant unions and the Commonwealth as to the outcome to be determined, which involved the addition of percentage amounts to the SCHADS Award pay rates for social and community service employees and, in doing so, the Full Bench said:

[63] We note the reliance placed on caring work as a proxy for gender-based undervaluation. Attempting to identify the proportion of work which is caring work at the various classification levels is consistent with one of the principal conclusions in the May 2011 decision. ... (citations omitted)

[168] The Full Bench made the ERO on the basis that its implementation would be introduced in nine equal instalments in each year from 2012 to 2020. Significantly, the Full Bench said that the ERO 'would ensure that for the employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value'.

#### **Work value case – Aged care industry 2021-24**

[511] An application was lodged by the HSU to vary the minimum wage rates in the SCHADS Award by increasing them by 25%. In their application, the HSU stated that the current minimum wage rates pertaining to home aged care employees do not recognise the nature of work, the level of skill and responsibility nor the conditions under which they are employed.<sup>597</sup>

[512] The case has been considered in 3 stages. The 4 November 2022 Stage 1 Decision<sup>598</sup> concluded that:

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<sup>597</sup> Application, *Form F46 – Application to vary a modern award* (Health Services Union, 1 June 2021) Annexure A.

<sup>598</sup> [2022] FWCFB 200 ('Work value case – Aged care industry').



- Existing minimum wage rates in awards do not properly compensate direct care workers for the value of the work performed.
- The vast majority of the direct care workforce in both residential and in-home aged care services (over 83 per cent) identify as female.
- Direct care workers include home care workers (HCW) working in aged care under SCHADS Awards.
- Considerations weighing in favour of an interim decision providing an increase in minimum wages included evidence established that existing minimum rates do not properly compensate for the value of the work performed by these classifications of employees. Evidence in respect of support and administrative employees is not as clear or compelling and varies between classifications
- An interim increase was warranted and was applied to HCWs at all levels at and below the Certificate III level.

[513] The Stage 2 Decision issued on 21 February 2023<sup>599</sup> varied the SCHADS Award to provide the interim increase of 15 per cent to modern award wages for HCWs.

[514] The Full Bench<sup>600</sup> was satisfied that interim increase should apply to all employees in Schedule E of the SCHADS Award and accepted that home care employee level 4 and/or level 5 are direct care workers, regardless of their supervisory responsibilities.

[515] On 16 June 2023, the Full Bench was reconstituted as an Expert Panel for pay equity in the Care and Community Sector in accordance with ss 667(9) and 620(1D) of the FW Act. The Expert Panel handed down its Stage 3 decision on 15 March 2024.

[516] Recalling that the Stage 1 Decision made clear that the interim increase was not intended to exhaust the ultimate increase awarded on work value grounds, the Expert Panel stated that a 'further substantial increase'<sup>601</sup> was justified by work value reasons.

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<sup>599</sup> [2023] FWCFB 40.

<sup>600</sup> [2023] FWCFB 93 at [75].

<sup>601</sup> [2024] FWCFB 150 at [156].



[517] The Expert Panel said that their historical analysis of the federal award rates of pay showed that HCWs (and AINs and PCWs) had never been the subject of a work value assessment by the Commission or its predecessors. The Expert Panel stated:

‘The pay rate alignment at the Certificate III level in the Aged Care Award, the SCHADS Award and the Nurses Award with the C10 classification in the Metals Industry Award structure has meant that the award rates of pay for PCWs, HCWs and AINs have never properly comprehended the exercise of the ‘invisible’ skills involved in aged care work identified in the expert report of Associate Professor Anne Junor (Junor Report)...’<sup>602</sup>

[518] Rather than apply a uniform percentage increase in pay rates, the Expert Panel held that the appropriate course was to identify a benchmark pay rate for a key classification and then construct a new and uniform classification structure based on that benchmark rate.

[519] The benchmark classification chosen by the Expert Panel was Certificate III-qualified PCWs, HCWs and AINs, noting that in Stage 1, all parties proceeded on the basis that this was the key classification. For the benchmark rate, the Expert Panel identified Certificate III-qualified social and community service employees under the SCHADS Award, operating in conjunction with an equal remuneration order (ERO). Of this benchmark rate the Expert Panel said:

‘We consider that the rate of \$1223.90 per week (rounded to the nearest 10 cents) is appropriate to serve as the benchmark rate for Certificate III-qualified PCWs, AINs and HCWs [...] The basis upon which the ERO rates were determined closely parallel the work value reasons upon which we are proceeding in this matter...’<sup>603</sup>

[520] Having set the benchmark, the Expert Panel then turned to a classification structure, making the decision that HCWs should be retained in the SCHADS Award with a different classification structure, a modified version of the Expert Panel’s proposed new six-level classification structure for PCWs/AINs.<sup>604</sup>

[521] A draft determination varying the SCHADS Award to give effect to the Stage 3 decision has been published. Interested parties have been invited to file any written submissions commenting upon the draft determination by 26 April 2024.

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<sup>602</sup> Ibid.

<sup>603</sup> Ibid at [170].

<sup>604</sup> Ibid at [199].

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