

Australian Industry Group

# Applications to vary modern awards – Vehicle allowance

Reply Submission  
(AM2026/10 & ors)

12 May 2026



## AM2026/10 AND ORS

### APPLICATIONS TO VARY MODERN AWARDS – VEHICLE ALLOWANCE

	<b>Section</b>	<b>Page</b>
<b>A</b>	Introduction	3
<b>B</b>	The Applications	6
<b>C</b>	The Statutory Framework	9
<b>D</b>	Our Response to the Applications	11
<b>E</b>	The Modern Awards Objective	32

## A. INTRODUCTION

1. This reply submission of the Australian Industry Group concerns the applications made to the Fair Work Commission (**Commission**) by various unions, supported by the Australian Council of Trade Unions (**ACTU**) (together, the **Unions**), pursuant to sections 158 and 160 of the *Fair Work Act 2009 (Cth)* (**Act**) to amend selected modern awards in relation to the prescribed vehicle allowance, in accordance with the terms of draft determinations annexed to each of the applications.
2. The Australian Industry Group has a significant interest in this matter; including, in particular, the applications to vary the:
  - (a) *Aged Care Award 2020*;
  - (b) *Airline Operations – Ground Staff Award 2020*;
  - (c) *Air Pilots Award 2020*;
  - (d) *Aircraft Cabin Crew Award 2020*;
  - (e) *Business Equipment Award 2020*;
  - (f) *Children’s Services Award 2010*;
  - (g) *Cleaning Service’s Award 2020*;
  - (h) *Clerks – Private Sector Award 2020*;
  - (i) *Fast Food Industry Award 2020*;
  - (j) *Food, Beverage and Tobacco Manufacturing Award 2020*;
  - (k) *General Retail Industry Award 2020*;
  - (l) *Hair and Beauty Industry Award 2020*;
  - (m) *Health Professionals and Support Services Award 2020*;
  - (n) *Manufacturing and Associated Industries and Occupations Award 2020*;

- (o) *Miscellaneous Award 2020;*
  - (p) *Nurses Award 2020;*
  - (q) *Pest Control Industry Award 2020;*
  - (r) *Security Services Industry Award 2020;*
  - (s) *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHCDS Award);*
  - (t) *Vehicle Repair, Services and Retail Award 2020;*
  - (u) *Water Industry Award 2020; and*
  - (v) *Wine Industry Award 2020.*
3. Were the Commission to extend the scope of modern awards to be considered in this proceeding on its own initiative (as proposed by various Unions including the ACTU<sup>1</sup>), the Australian Industry Group's interest in the proceeding would expand to include (at least) the:
- (a) *Building and Construction General On-Site Award 2020;*
  - (b) *Cement, Lime and Quarrying Award 2020;*
  - (c) *Commercial Sales Award 2020;*
  - (d) *Contract Call Centres Award 2020;*
  - (e) *Electrical Power Industry Award 2020;*
  - (f) *Electrical, Electronic and Communications Contracting Award 2020;*
  - (g) *Joinery and Building Trades Award 2020;*
  - (h) *Plumbing and Fire Sprinklers Award 2020;*

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<sup>1</sup> ACTU submission at [11](b).

- (i) *Poultry Processing Award 2020*;
  - (j) *Premixed Concrete Award 2020*;
  - (k) *Professional Employees Award 2020*;
  - (l) *Road Transport (Long Distance Operations) Award 2020*;
  - (m) *Telecommunications Services Award 2020*; and
  - (n) *Timber Industry Award 2020*.
4. The Australian Industry Group acknowledges and is sympathetic to the basis for the applications; being the impact of the sudden increased cost of fuel, arising from the ongoing conflict in the Middle East, on Australian employees where they use a private vehicle in the course of their employment. We nonetheless oppose the application as framed. Any variation to the vehicle allowance in the relevant modern awards should be appropriate, fair, proportionate and balanced, taking into account the impact the variations would have on employers. The proposal advanced by the Unions is not so.
5. In this submission, we set out the Australian Industry Group's concerns with the specific variations proposed by the Unions. We also acknowledge that the Commission is not bound to grant a remedy in the terms sought. If the Commission proposes to vary awards (either those the subject of the Unions' applications or others) in terms that deviate from those proposed by the Unions, we respectfully submit that parties should first be afforded an opportunity to be heard.

## B. THE APPLICATIONS

6. As indicated by the ACTU in its correspondence to the Commission, filed and dated 14 April 2026, the Unions' applications are framed either identically or in substantially the same terms. On its face, the terms of the draft determinations filed are substantially the same, except to account for different modern award clause references as appropriate for each application.<sup>2</sup>
7. Broadly, the applications appear to seek the inclusion of a temporary schedule that would require monthly increases to the vehicle allowance in each award for a period of 12 months, based on a multi-step process involving the use of multiple external data points published by the Australian Bureau of Statistics (**ABS**); except where the methodology produces a negative result or the same result, in which case the allowance would not require adjustment.
8. The proposed temporary schedule would operate to require an adjustment to the vehicle allowance based on the percentage movement between the ABS' quarterly private motoring index figures between March 2024 and December 2025; and then an adjustment to the allowance thereafter based on the percentage movement between the monthly private motoring index (**Index**) for each month for a period of 12 months.<sup>3</sup>
9. We understand that based on the latest relevant ABS figures, applying the proposed methodology, the vehicle allowance would increase in most cases by \$0.08 per kilometre.
10. Whilst the proposed variations are not abundantly clear; this submission proceeds on the basis that they would require *employers* to undertake the requisite calculations, in order to ascertain the allowance payable. Later in this

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<sup>2</sup> There also appear to be minor drafting errors in some of the terms of the Draft Determination adopted in the Applications. See, for example only, the Application to vary the *Nurses Award 2020*, which appears to incorrectly refer to clause 17.2C(i), instead of 17.3(C)(i), which specifies the monetary value of the Vehicle Allowance.

<sup>3</sup> See paragraph 26 in the applications.

submission, we deal with the obvious issues that would arise from this approach (such as the immense regulatory burden that would fall to employers).

11. If what is in fact contemplated is that the proposed provisions would, in effect, require the *Commission* to vary the vehicle allowance clause on a monthly basis, in accordance with the methodology set out in the proposed schedule, we raise the following concern.
12. The Commission can vary an award pursuant to s.157 of the Act only if it is satisfied that the variation is necessary to achieve the modern awards objective. If the Unions' proposal purports to require the Commission to vary the vehicle allowance in awards in a particular way on a monthly basis, it would appear to pre-determine the exercise of the Commission's discretion in respect of each variation to be made during the life of the temporary schedule. Putting to one side whether, as a matter of law, such an approach is permissible; it would certainly not be appropriate. The provisions would require, through a self-executing process, variations to awards without consideration being given to whether they are necessary to achieve the modern awards objective.
13. Separately; the draft determinations filed by the Unions are silent as to the interaction between the proposed schedule that they seek and the extant provisions contained in awards dealing with the adjustment of expense-related allowances, including vehicle allowances.
14. The pertinent part of those clauses is in the following terms (or in substantially similar terms):

At the time of any adjustment to the standard rate, each expense related allowance must be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
15. The standard rate is typically adjusted on 1 July, as a result of the Commission's Annual Wage Review.

16. It would appear therefore that the proposed schedule would operate *in addition* to the above clause. This may result in two adjustments being made to the allowance in short succession, if the Commission were to vary the awards sought by the Unions in this matter, with effect prior to 1 July.
17. Any such outcome would plainly be undesirable and unfair. It would compound the concerns we have raised later in this submission about the regulatory burden of complying with the proposed variations and would give rise to considerable uncertainty as to the quantum of the allowance over coming months.

## C. THE STATUTORY FRAMEWORK

18. Section 157(1)(a) of Act relevantly provides that the Commission ‘*may ... make a determination varying a modern award if [it is] satisfied that making the determination ... is necessary to achieve the modern awards objective*’. There is no provision for such variations to be made retrospectively.
19. A variation pursuant to s.160 of the Act may be made to remove an ambiguity or uncertainty, or to correct an error.
20. Whether a variation is made pursuant to s.157 or s.160 of the Act; an award can only include terms that are *necessary* to achieve the modern awards objective.
21. As Tracey J held in *Shop, Distributive and Allied Employees Association v National Retail Association (No.2)*:

The statutory foundation for the exercise of FWA’s power to vary modern awards is to be found in s 157(1) of the Act. The power is discretionary in nature. Its exercise is conditioned upon FWA being satisfied that the variation is “necessary” in order “to achieve the modern awards objective”. That objective is very broadly expressed: FWA must “provide a fair and relevant minimum safety net of terms and conditions” which govern employment in various industries. In determining appropriate terms and conditions regard must be had to matters such as the promotion of social inclusion through increased workforce participation and the need to promote flexible working practices.<sup>4</sup>

22. The modern awards objective is specified in s.134(1) of the Act to be that ‘*modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions*’. The provision then sets out a list of relevant considerations for the Commission to consider in determining whether the modern awards objective has been met.
23. The list of considerations posed in s.134(1) do not, of themselves, set any standards or pose any questions against which the modern awards objective is to be evaluated. They are mainly broad social objectives, and many of them may not be relevant to a particular matter under consideration.<sup>5</sup>

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<sup>4</sup> [2012] FCA 480; (2012) 205 FCR 227 (*SDA v NRA*) at [35].

<sup>5</sup> *National Retail Association v Fair Work Commission* [2014] FCAFC 118; (2014) 225 FCR 114 at [109].

24. As to the requirement for '*fairness*'; the Commission must consider the perspectives of both employers and employees, in the context of broader economic and industrial considerations that may be at play.<sup>6</sup>
25. As to '*relevance*'; the safety net must suit contemporary standards, in the sense of according with modern community standards and expectations.<sup>7</sup>

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<sup>6</sup> *Shop, Distributive and Allied Employees Association v \$2 and Under* (2003) 135 IR 1 at [11] (Giudice J, Watson SDP and Raffaelli C), cited and applied in *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001; (2017) 265 IR 1 at [113]-[119] (***Penalty Rates Decision***).

<sup>7</sup> *Penalty Rates Decision* at [122].

## D. OUR RESPONSE TO THE APPLICATIONS

### Simple and Easy to Understand

26. The draft determinations filed by the Unions are an anathema to the need to ensure that the modern award system is simple and easy to understand.<sup>8</sup> This consideration weighs heavily against varying any awards in the terms proposed.
27. The complexity of the proposed variations arises both in the manner of expression of the proposed schedule, as well as the way in which it would operate.
28. Not only is the proposed schedule not *'easy to understand'*; it is, on a frank assessment, crafted in language and with reliance on concepts barely decipherable to lawyers and industrial relations experts, let alone the vast number of employers who would be tasked with implementing its requirements.
29. By way of just some examples of this, in order to comply with proposed Schedule XY, employers would need to familiarise themselves with concepts including the:
- (a) *'Private Motoring subgroup index (Weighted Average of Eight Capital Cities'*, and specifically, the version *'published by the Australian Bureau of Statistics (ABS) for the most recently available month with reference to the index for the previous month'* (presenting employers with the challenge of not only locating the correct ABS data set, but then correctly interpreting its contents and applying the data in accordance with the requirements of proposed Schedule XY);
  - (b) *'Private Motoring Sub Group index number'*;<sup>9</sup>
  - (c) *'relevant adjustment factor'*;<sup>10</sup>

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<sup>8</sup> See s.134(1)(g) of the Act.

<sup>9</sup> Clause XY.2 of proposed Schedule XY.

<sup>10</sup> Clause XY.3.2 of proposed Schedule XY.

- (d) *'monthly index'*;<sup>11</sup>
- (e) *'percentage movements'*;<sup>12</sup> and
- (f) various formulae required to be applied under clauses XY.4 to XY.8 (inclusive). In this regard, it is not simply a case of undertaking an identical calculation month-on-month. Rather, employers would be required to:
  - (i) undertake an initial calculation to derive a *'base amount'*;<sup>13</sup>
  - (ii) then undertake a second calculation to derive the *'cumulative commencement adjustment'*;<sup>14</sup>
  - (iii) then undertake a third calculation, on a monthly basis, for the remainder of the period during which proposed Schedule XY will operate;<sup>15</sup> and
  - (iv) then determine whether an adjustment is required, noting an adjustment is not made if *'the percentage movement is a negative figure'*.<sup>16</sup>

30. The proposition that employers (particularly small to medium sized employers) could be expected to understand the above, correctly undertake such calculations and comply with the requirements, is entirely unrealistic. It would also be *unfair* to impose such a burden on employers.

31. Proposed clause XY.7 in particular (but the entire schedule more broadly) also fails to grapple adequately with the temporal adjustment of the vehicle allowance having regard to varied timing as to when an employee uses a private vehicle for purposes that may entitle them to receive the allowance, submits a claim to

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<sup>11</sup> Clause XY.6 of proposed Schedule XY.

<sup>12</sup> Clause XY8.1 of proposed Schedule XY

<sup>13</sup> Clauses XY.4 and XY.5 of proposed Schedule XY.

<sup>14</sup> Clause XY.6 of proposed Schedule XY.

<sup>15</sup> Clause XY.8 of proposed Schedule XY.

<sup>16</sup> Clause XY.8.2 of proposed Schedule XY.

their employer for payment of the allowance (including providing any evidence required in support) and processing of the claim by the employer.

32. For example, it states that the cumulative adjustment '*operates prospectively only and does not give rise to any entitlement to back-payment or retrospective adjustment in respect of any period before the first full pay period commencing on or after 5 May 2026*'.<sup>17</sup> It is not sufficiently clear as to how (for example) any vehicle allowance claims submitted to an employer on or after the operative date but which relate to vehicle use on dates before that date, should be treated.
33. A similar issue is likely to arise in each month in which the proposed schedule operates, noting that vehicle allowance claims are typically not required to be submitted within a specified period of the travel being undertaken and would not typically be submitted contemporaneously with the travel being undertaken. Rather, employees may keep a log and submit the claims in a batch. See for example the witness statement of Elizabeth Chatwin, in which the witness describes employees claiming the vehicle allowance fortnightly and '*after the fact*', by completing a travel log each day.<sup>18</sup> See also the witness statement of Peter Shroder, in which the witness describes his vehicle allowance reimbursement for March 2026, including claims for travel in January 2026 and February 2026, as the employee had forgotten to make a claim in those months.<sup>19</sup>
34. These are very practical, foreseeable issues that will almost certainly arise for employers in the context of the application of the proposed schedule. Such issues simply do not present in the same way currently, in circumstances where the vehicle allowance is ordinarily adjusted infrequently.

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<sup>17</sup> Clause XY.7 of proposed Schedule XY.

<sup>18</sup> Chatwin statement at [17].

<sup>19</sup> Shroder statement at [36].

35. We also reject as an accurate conceptualisation of the consideration in s.134(1)(g) of the Act the ACTU's submission that '*the addition of a schedule that concerns one allowance would not have the effect of making awards complex or difficult to understand*'.<sup>20</sup> In our submission, it is not necessary for an entire award (or awards) to become complex or difficult to understand for the consideration in s.134(1)(g) to weigh against the making of a variation. The fact of the matter is that the proposed schedule will add complexity to modern awards, and as a corollary, will detract from – and not enhance – the simplicity and ease of understanding of the modern award system.
36. Whilst the absence of these matters being adequately addressed is likely to lead to ambiguity and complexity in practice; nor in our submission is it desirable for the Commission to include any prescriptive measures concerning how the vehicle allowance will apply having regard to a temporal reference point, or requirements for the submitting and processing of vehicle allowance claims. Such additional detail would likely lead to greater regulatory burden on employers (a matter which we address in detail below).
37. Two further specific ambiguities arise from the Schedule:
- (a) Clause XY.3.1 (and other aspects of the Schedule) would require the allowance to be adjusted '*on a monthly basis*'. The precise meaning of this requirement is not clear. Are the adjustments to be made on the same date each month? Are they to be made at any time in each calendar month? Are they to be made on a four-weekly basis?
  - (b) The meaning or effect of clause X.9.2 is unclear.

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<sup>20</sup> ACTU submission at [146].

## Regulatory Burden

38. The ACTU's submission accepts that the variations sought would have the effect of increasing the regulatory burden, insofar as they seek monthly adjustments of the vehicle allowances.<sup>21</sup> However, the ACTU reasons that:
- (a) First, the additional burden is *justified*, insofar as it would alleviate employees of the burden of being required to absorb sudden increases in fuel prices;<sup>22</sup> and
  - (b) Second, the additional burden would not be *significant*, in so far as only proposed employers would be required to undertake monthly assessments for a period of twelve months, the monthly assessment would only concern one allowance, <sup>23</sup> and adjustment to the allowance would only occur where there is a positive percentage movement in the private motoring sub-group, which may not occur each month (or indeed, at all during the duration of the 12-month period proposed).<sup>24</sup>
39. We disagree that the regulatory burden that would be imposed by the proposed schedule is – even in the unique context of the circumstances in this matter – justified. We further disagree that the regulatory burden would not be significant. Indeed, the regulatory burden would be substantial and unfair.
40. Employers would face a significant regulatory burden arising from:
- (a) The complexity of the calculations required to be undertaken during the period in which proposed Schedule XY would operate (outlined earlier in this submission);
  - (b) The need to ensure that claims made by employees for payment of a vehicle allowance are processed and paid in accordance with the correct value of the allowance having regard to *when* the travel entitling the

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<sup>21</sup> ACTU submission at [142].

<sup>22</sup> ACTU submission at [143].

<sup>23</sup> ACTU submission at [144].

<sup>24</sup> ACTU submission at [145].

employee to the allowance occurred (in circumstances where the claim may be made some time after, at a time when the quantum of the allowance has changed);

- (c) The need to configure payroll systems on potentially a monthly basis (where a change to the value of the vehicle allowance is required as a consequence of the calculation produced in accordance with the schedule);
- (d) The need to devote resources to the implementation of the change not only frequently, but at times when the need to do so could not have been reasonably anticipated or planned for (given the applications seek the urgent implementation of the variations proposed); and
- (e) The need to communicate (potentially, on up to a once-per-month basis) with employees who are impacted by the changed vehicle allowance. Employees will naturally expect to know how much they will be paid.

41. Further, it is appropriate to situate the impost on employers of the proposed variations against other significant changes they are also contending with, including but not limited to:

- (a) The commencement of '*pay day superannuation*' requirements on and from 1 July 2026, which applies to all employers;
- (b) The outcome of the 2026 Annual Wage Review, and any changes to award rates and allowances required to be implemented as a consequence of that decision within a relatively short period of time;
- (c) The making of the *Road Transport Contractual Chain Order – Fuel Cost Recovery – 2026*<sup>25</sup> which commenced operating from 21 April 2026 and has widespread application and impact for businesses in contractual chains involving the performance of road transport services. The impacts of this order are being felt well beyond the road transport industry;

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<sup>25</sup> PR798817.

- (d) Employers covered by four of the five *'priority awards'* reviewed for gender-based undervaluation<sup>26</sup> recently needing to implement (and who will in future continue to need to implement) changes to their awards made to address gender-based undervaluation, including changes to the Pharmacy Award, Children's Services Award and HPSS Award proposed to commence on 30 June 2026;<sup>27</sup> and
- (e) Changes to the SCHCDS Award associated with the performance of work immediately before and after sleepovers, effective 1 June 2026.<sup>28</sup>
42. Accordingly, the need for the Commission to ensure that awards are fair and relevant, taking into account the likely impact of the exercise of its modern award powers on the regulatory burden for business is a factor that weighs against the variations in the form proposed.

## Uncertainty

43. The requirement to adjust the vehicle allowance *monthly* will give rise to considerable uncertainty. Employers will not be in a position to reliably forecast their costs associated with the vehicle allowance beyond the present month. This will give rise to various challenges associated with managing budgets and financial forecasts. In respect of those who rely on Government funding (a matter that we return to below), it will likely compound the challenges associated with securing funding to cover the additional costs.
44. Having regard to the submissions made above about the resulting regulatory burden and uncertainty of the variations proposed by the Unions; if the Commission is minded to vary awards to provide an out-of-cycle increase to the

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<sup>26</sup> Being the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*, *Children's Services Award 2010 (Children's Services Award)*, *Health Professionals and Support Services Award 2020 (HPSS Award)*, *Pharmacy Industry Award 2020 (Pharmacy Award)*. The proceedings for the SCHCDS Award are not yet finalised.

<sup>27</sup> See *Gender-based undervaluation – priority awards review* [2026] FWCFB 105 and *Gender-based undervaluation – priority awards review – Health Professionals and Support Services Award 2020* [2026] FWCFB 47.

<sup>28</sup> PR798459.

vehicle allowance, the variations should not require that the allowance be adjusted more frequently than quarterly.

### **Negative Movements in the Index**

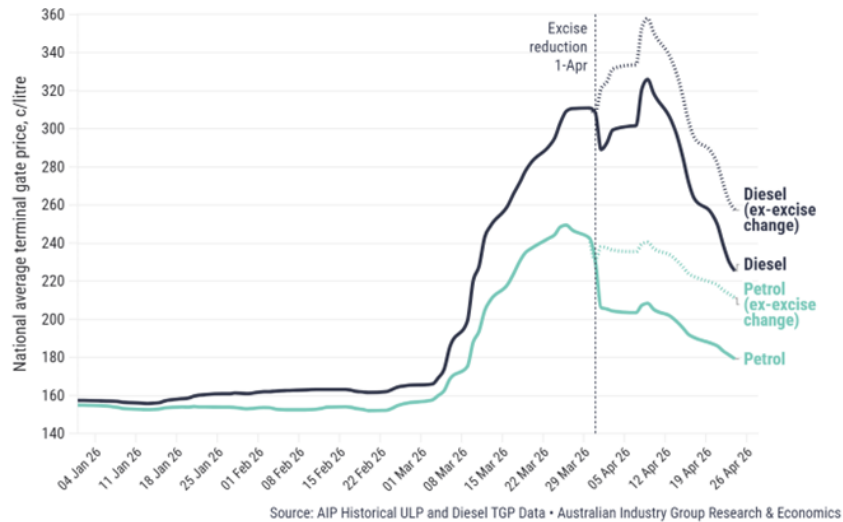
45. By virtue of clauses XY.3.3 and XY.8.8, where the percentage movement in the Index is a negative figure (including due to a reduction in fuel prices), the vehicle allowance would not be adjusted downward. Rather, the allowance from the previous month would continue to be required to be paid.
46. This is plainly unfair and unjustifiable in circumstances where, as the ACTU submits, the situation in the Middle East (including in relation to the Strait of Hormuz) is volatile<sup>29</sup> and by extension, fuel prices might also be expected to be volatile. Any continued intervention by the Commonwealth Government to reduce fuel costs (directly, and / or by improving fuel supplies) would also have a relevant bearing on the matter. It certainly cannot be assumed that fuel prices will not fall during the life of any temporary variations made by the Commission to awards in relation to vehicle allowances. The ACTU itself accepts that the *'medium to longer term outlook'* in relation to petrol prices in Australia is *'dependent on the conflict in the Middle East'*.<sup>30</sup> It is, therefore, inherently uncertain.
47. In fact, Figure 1 below demonstrates that since the onset of the conflict in the Middle East, there *has* been a recent downward trend in fuel prices. It shows daily wholesale (terminal gate) prices for petrol and diesel across 2026, with modelled prices for April that adjusts for changes in the fuel excise (discussed below). Between March 2026 and the end of April 2026, the daily national average (terminal gate) price of petrol decreased from a high of above 240 cents per litre, to about 180 cents per litre. The corresponding price for diesel for the period reduced from a high of above 300 cents per litre to about 230 cents per litre.

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<sup>29</sup> ACTU submission at [37].

<sup>30</sup> ACTU submission at [37].

**Figure 1 Australian wholesale fuel prices January to April 2026**



48. Similarly, in its latest weekly report regarding fuel prices, the Australian Competition and Consumer Commission (**ACCC**) said as follows:

- (a) In addition to the excise reduction, decreases in international refined petrol and diesel benchmark prices during April have also influenced recent lower retail petrol and diesel prices. International refined petrol and diesel prices reduced after 8 April, when Iran and the United States agreed to a 2-week ceasefire.
- (b) After heightened volatility in international prices in March and most of April, over the last 2 weeks international refined petrol and diesel prices have been relatively stable, while retail petrol and diesel prices have continued to decrease.
- (c) By 6 May, across the 5 largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth), daily average retail petrol prices were 76.1 cents per litre lower compared with 31 March, well exceeding the excise cut of 32 cents per litre. Weekly average international refined petrol (Mogas 95) prices to 6 May were around 11 cents per litre lower than those to 31 March. Over the last week, daily average retail petrol prices across the 5 largest cities reduced to levels below daily average terminal gate (or indicative wholesale) prices.

- (d) In regional areas, over the 5 weeks since 31 March, around 98% of monitored regional locations had decreases in average retail petrol prices of more than 30 cents per litre. The average decrease in retail petrol prices since 31 March across over 190 regional locations (in aggregate) was around 70 cents per litre.
- (e) By 6 May, daily average retail diesel prices across the 5 largest cities were 79.7 cents per litre lower compared with 31 March. Most of this reduction occurred over the last 3 weeks.
- (f) For retail diesel prices in regional locations, over the 5 weeks since 31 March, around 97% of monitored locations had decreases in average prices of more than 30 cents per litre. The average decrease in retail diesel prices since 31 March across over 190 regional locations (in aggregate) was around 69 cents per litre.<sup>31</sup>
49. The reduction in prices for both petrol and diesel since March coincides with the Commonwealth Government's decision to reduce the national fuel excise by 50% from 1 April 2026, for an initial period of three months, from 52.6 cents per litre to 20.6 cents per litre.<sup>32</sup> The reduction also coincided with an agreement by Australian state governments to forgo increased GST revenue on fuel transactions, which the Commonwealth has delivered via an additional 5.7 cents per litre cut to fuel excise.<sup>33</sup>
50. The overall excise reduction has reduced the wholesale price of petrol by around 12% and diesel by 15% as of the end of April 2026. Ongoing government support from July 2026, including by way of any continuation of the current reduction in the fuel excise, will be a matter for the Federal Budget and ongoing agreement between the Commonwealth and states. We anticipate that the current temporary measures will be extended and formalised in some manner in the Federal Budget to be handed down shortly after the filing of this submission. We

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<sup>31</sup> ACCC, [Weekly fuel price monitoring report](#), 8 May 2026.

<sup>32</sup> Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, [Fact sheet: fuel excise relief measures from 1 April 2026](#) (accessed 12 May 2026).

<sup>33</sup> Media release, Prime Minister of Australia, [Government delivering more fuel relief through deal with states](#) (2 April 2026).

may seek to bring any relevant measures to the Commission's attention at or prior to the upcoming hearing for this matter.

51. Viewed in this context, the aforementioned elements of the Unions' proposal are unfair and should not be adopted. They would result in a requirement to pay an inflated vehicle allowance even if the cost of fuel declines. This is particularly unfair given the extended timeframe proposed for the operation of the schedule (i.e. 12 months).

## The Index

52. The Index relates to various expenses – purchasing or leasing a motor vehicle, spare parts and accessories, fuel, maintenance and repair and other services such as registration fees, driver licence fees and tollway charges.<sup>34</sup> The ACTU submits that *'even if the cost of fuel stabilises, the other components of the allowance may cause the index to rise'*.<sup>35</sup> It goes on to say that such costs *'can reasonably be expected to rise'* and allowing for monthly adjustments to the allowance *'insulates against further price rises in non fuel costs of vehicle use and ownership'*.<sup>36</sup>
53. The ACTU's submission calls into question the appropriateness of relying on the Index as a means of making adjustments to the vehicle allowance to account for fuel price volatility. The Index may fluctuate for reasons disassociated with the cost of fuel or at the very least, movement in the Index may not be attributable solely (or even largely) to changes to the price of fuel.
54. On one view, it would arguably not be appropriate for awards to be varied on the basis that the variations are for the purpose of ensuring that employees are not *'worse off, out of pocket or subsidising their employers in the performance of their work in the context of surging oil and fuel prices'*<sup>37</sup> (emphasis added) in circumstances where the proposed provisions could in fact deliver increases to

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<sup>34</sup> ABS, [Price collection, Consumer Price Index: Concepts, Sources and Methods](#) (Released 26 November 2025).

<sup>35</sup> ACTU submission at [108].

<sup>36</sup> ACTU submission at [108].

<sup>37</sup> ACTU submission at [90].

the allowance for reasons in addition to or disassociated from increases to the price of fuel. It would not be fair or justifiable to impose a substantial regulatory burden upon employers to adjust the vehicle allowance monthly to account for costs about which there is no material before the Commission and which are unrelated to the specific time-sensitive challenges associated with the conflict in the Middle East. The case advanced by the Unions does not substantiate a necessity for such a variation.

### **Monthly vs Quarterly Series**

55. The Unions' applications are based, in part, on various purported issues arising from the introduction by the ABS of monthly Consumer Price Index (**CPI**) data (**Monthly Series**).
56. The ACTU submits that the Monthly Series has *replaced* the previously quarterly CPI publication.<sup>38</sup> This is untrue. As acknowledged elsewhere by the ACTU in its submission, the ABS *will* continue to publish quarterly CPI data.<sup>39</sup> The ABS will continue to follow the previous schedule for publishing that data. To the extent that the Unions rely on the purported cessation of the quarterly series as a justification for the proposed variations, such arguments should be rejected.
57. We acknowledge that the quarterly data is now derived in a manner that differs somewhat from the way in which it was derived up to and including the September 2025 quarter. This is explained by the ABS as follows:<sup>40</sup> (emphasis added)

### **Re-referencing and index linking**

The previously published quarterly index will be re-referenced and aligned to the new monthly series. This process will create a continuous historical time series for the quarterly CPI. While the levels of the quarterly CPI index will change due to re-referencing, the percentage movements of the index will not be revised. Any changes to movements will be due to rounding and a result of re-referencing. This does not constitute a revision.

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<sup>38</sup> ACTU submission at [39].

<sup>39</sup> ACTU submission at [43].

<sup>40</sup> ABS, [Monthly and quarterly data series](#) (accessed 12 May 2026).

The reference period is the period for which the CPI index equals 100.0. The current reference period for the quarterly CPI is the 2011-12 financial year. The new quarterly index will be referenced to September month 2025, see example below. Re-referencing the historical quarterly series is a critical step in ensuring consistency between the historical and new quarterly series.

September 2025 will serve as the link period where the index will equal 100.0. A conversion factor will be applied to adjust index values in the periods prior to September 2025. This adjustment resets the index levels while preserving the underlying quarterly movements.

The re-referenced quarterly indexes will be published for the first time in the December 2025 CPI release, scheduled for publication on Wednesday, 28 January 2026.

Example using mock data:



58. Nonetheless, the proposed reliance on monthly data (coupled with the proposition that the vehicle allowance would not be adjusted downwards in the event of a negative movement in the Index) is inappropriate. So much can be seen from the March result, which would cause the allowance in most instances to be increased by \$0.08 per kilometre. The effect of the proposed variations would be for the allowance to remain as such, notwithstanding subsequent declines in fuel prices (as outlined earlier in this submission) and any future further reductions in the cost of fuel (including the likely downward movement in the Index for the months of April and May).
59. Cherry-picking the data for the month of March (only) will result in a disproportionate increase to the vehicle allowance. It would remain pegged at that level and could only increase. It would convert a temporary monthly figure into a permanent minimum baseline for any future adjustments This is plainly unfair, unjustifiable and unwarranted.
60. If the Commission is minded to grant variations of the nature sought by the Unions, it should instead adopt the quarterly CPI series published by the ABS. This would moderate the impact of any monthly aberrations due to short-term spikes in fuel increases.

## Electric Vehicles

61. In its current form, the proposed variations would not discriminate in their application between employees utilising electric vehicles (**EVs**) and those who do not. This raises an obvious issue as to fairness. A temporary measure, primarily directed at providing fuel cost relief should not operate to benefit or provide a windfall to employees driving EVs and are not impacted by the cost of fuel.
62. Whilst it might be asserted that the vehicle allowance is intended to compensate employees for both fuel and non-fuel related cost components – for example, in respect to repair and maintenance costs – the applications are squarely directed at extending compensation to employees in respect to the fuel-related cost component of the allowance.<sup>41</sup>
63. If the Commission decides to introduce the proposed schedule to modern awards, it should contain an exclusion in respect of employees utilising EVs.

## Existing Arrangements

64. The Australian Industry Group is anecdotally aware – and evidence has been led by the UWU<sup>42</sup> and HSU<sup>43</sup> to confirm – that some employers are already taking voluntary measures to alleviate any heightened fuel cost burden on their workforces. This could include, for example, employers:
  - (a) Having voluntarily increased the amount of the vehicle allowance being paid to employees, where there is an entitlement to receive the allowance under an applicable award;<sup>44</sup>
  - (b) Making a one-off, temporary fuel payment;
  - (c) Providing fuel vouchers to employees;

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<sup>41</sup> ACTU submission at [90].

<sup>42</sup> See Coad statement at [25], referenced in the ACTU submission at [94].

<sup>43</sup> See Wright-St.Clair statement at [19].

<sup>44</sup> See Wright-St.Clair Statement at [19].

- (d) Providing a fuel-related allowance to assist with commuting costs (separate to any reimbursable travel entitlement under awards); and
- (e) Offering temporary adjustments to working arrangements, including compressed work weeks (to reduce the number of instances of travel per week) and increased use of work from home arrangements (where practicable).

65. Where employers have implemented measures to supplement the existing vehicle allowance prescribed by awards, they should be permitted to absorb the increased amount of the vehicle allowance that may flow from the making of the variations proposed. One way in which this could be achieved is through the inclusion of a provision in the proposed schedule as follows:

The monetary obligations imposed on employers by this Schedule may be absorbed into over award payments made to an employee in relation to the cost of fuel. Nothing in this Schedule requires an employer to maintain or increase any over award payment.

The Schedule will not apply to an employee whose fuel costs incurred in the cost of their employment are covered by their employer (including by methods such as provision of a fuel card).

### **The Impact on Employment Costs**

66. The ACTU's submission concedes that *'it can be expected'* that there will be an effect on employment costs if the variations sought are made,<sup>45</sup> but states that this should be either a neutral or limited consideration in the context of the case<sup>46</sup> on the basis that:

- (a) First, the applications only seek to increase the vehicle allowance with reference to increases to the cost of private vehicle ownership and usage as measured by the ABS in the 'private motoring sub-group';<sup>47</sup> and

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<sup>45</sup> ACTU submission at [138].

<sup>46</sup> ACTU submission at [139].

<sup>47</sup> ACTU submission at [140].

- (b) Second, it does not impose a new cost on employers but rather, transfers an existing cost incurred by employees in the service of the employer, to the employer.<sup>48</sup>
67. In a similar vein to the ACTU's '*cost transfer*' argument, the Australian Services Union (**ASU**) submission focuses on the need to ensure that workers are not '*out of pocket*' for performing work on behalf of their employer, and forced to bear the cost of the unique circumstances giving rise to elevated and unpredictable fuel prices.<sup>49</sup>
68. We acknowledge that there has been and still is some additional cost associated with the operation of a petrol or diesel fuelled vehicle for work purposes. The extent to which this will continue, and the period of time over which it may continue, is uncertain.
69. It is imperative that the constraints on employers to absorb resulting additional costs are taken into account. It cannot simply be assumed that the impact on employers will be so minor as to have no discernible impact on operating costs, or that employers have immediate capacity to absorb the additional cost without it having broader operational impacts.
70. There is no material before the Commission that employers will be able to absorb the resulting cost increases or that they have capacity to recover those costs (e.g. by increases their rates or prices). In many cases, that would not be feasible; particularly if the variations are made at short notice. In some cases, the cost of the variations would be substantial; where large numbers of employees utilise private vehicles and / or employees travel extensively in the course of their employment.
71. Many employers are operating in economically uncertain circumstances and facing various challenges associated with the increased cost of fuel. Overall, the disruption to global energy markets poses a significant downside risk to the

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<sup>48</sup> ACTU submission at [141].

<sup>49</sup> ASU Submission at [1].

Australian economy in 2026. It will negatively impact economic growth and industrial activity through a range of channels:

- (a) Significantly higher prices for imported petrochemical-derived products (fuels, fertilisers and industrial commodities such as plastics), which will directly increase consumer (CPI) and producer (PPI) prices.
- (b) Second order price rises for final goods utilising these products (such as transport, food products and manufactures) as costs are passed through supply chains.
- (c) Potential reductions in industry activity due to physical shortages/rationing of fuels and petrochemical derivatives.
- (d) Weakened consumer sentiment owing to supply chain disruptions, alongside lower real household spending as income is diverted to higher cost essentials (fuel and food).
- (e) Tighter monetary policy than otherwise required due to increased inflationary pressures, which will further weaken consumer spending.
- (f) Lower business investment due to uncertainty surrounding geopolitical and energy market instability.

72. The impact of the variations proposed on employers should be considered in this context.

73. Further, sectors that are reliant on Government funding will face specific challenges, particularly where they are precluded from being able to recover labour cost increases.

74. For example, employers in the Early Childhood Education and Care (**ECEC**) sector in receipt of the Worker Retention Payment are constrained by an annual fee growth cap which until 7 August 2026 is 4.2%.<sup>50</sup>

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<sup>50</sup> Department of Education, [More services available for worker retention payment](#) (accessed 6 May 2026).

75. By way of another example, employers who provide disability support services are constrained by the *National Disability Insurance Scheme (NDIS) Pricing Arrangement and Price Limits (NDIS Pricing Arrangements)*.<sup>51</sup> In this regard, clause 20.7(a) of the SCHCDS Award) provides:

Where an employee is required and authorised by their employer to use their motor vehicle in the course of their duties, the employee is entitled to be reimbursed at the rate of \$0.99 per kilometre.

76. Accordingly, disability support workers are entitled under the SCHCDS Award to reimbursement for all kilometres travelled, provided the travel was '*required and authorised by their employer*'.

77. However, the NDIS Pricing Arrangements stipulates that:

Claims can only be made for the non-labour costs associated with provider travel in respect of a support where the rules governing provider travel allow a claim for provider travel time to be made.<sup>52</sup>

78. See for example the witness statement of Janelle Bailey, in which the witness describes the number of kilometres able to be claimed by support workers being determined by a client's NDIS package.<sup>53</sup>

79. The NDIS Pricing Arrangements permit providers to '*negotiate with the participant for them to make a reasonable contribution towards*' (amongst other things) the running costs of a vehicle (in addition to the cost of a worker's time) when travelling to deliver face-to-face supports to a participant.<sup>54</sup>

80. The NDIS Pricing Arrangements go on to state:

The NDIA considers that the following would be reasonable contributions:

- For a vehicle owned by the provider or the worker, up to \$0.99 a kilometre.<sup>55</sup>

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<sup>51</sup> [NDIS Pricing Arrangements and Price Limits 2025-26](#).

<sup>52</sup> NDIS Pricing Arrangements at page 23.

<sup>53</sup> Bailey Statement at [7] and [11].

<sup>54</sup> NDIS Pricing Arrangements at page 23.

<sup>55</sup> NDIS Pricing Arrangements at page 23.

81. It follows that the cost of the vehicle allowance under the SCHCDS Award for any travel undertaken by an employee that is in addition to a client's NDIS plan, is borne by the employer.
82. In the context of these proceedings, two implications flow from this:
- (a) Firstly, as there has been no announcement regarding any proposed change to the NDIS Pricing Arrangements should the variations been made, the Commission must proceed on the basis that the NDIA's pronouncement as to the amount that is a '*reasonable contribution*' to vehicle running costs remains at \$0.99 per kilometre (being the same rate currently contained in the SCHCDS Award). Accordingly, there is real potential for a '*funding gap*' to be created. To avoid this gap, providers would need to seek to negotiate with the participant for a higher contribution to vehicle costs.<sup>56</sup> Obviously, there is no certainty that participants will be willing to agree to this.
  - (b) Secondly, for any travel undertaken by employees in respect of which funding is *not* claimable, employers will simply need to absorb any additional costs within existing funding margins.
83. If the Commission is minded to grant an increase in Government funded sectors, it should make the obligation to pay the increased allowance conditional upon the ultimate funder implementing arrangements to enable employers to recover the cost of the increase. Such an approach has particular force in sectors such as the ECEC sector and NDIS-funded sectors, where there are in effect Government imposed barriers to employers recovering such costs. This would strike an appropriate and fair balance between the interests of employers and employees. This would ensure that relevant employers, many of whom are not-for-profit organisations already in a perilous financial position, are not exposed to unrecoverable and unsustainable costs. It would be blatantly unfair for the Commission to adopt a view that the funding of costs flowing from an award variation is merely a matter for Government, in circumstances where the

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<sup>56</sup> NDIS Pricing Arrangements at page 23.

proposed variations would potentially result in a significant financial impost on employers.

84. Alternatively, It would be open to the Commission to request that both federal and state governments (or relevant bodies / agencies) provide an indication as to whether they will fund any increase to the vehicle allowance (or otherwise provide for recovery of such amounts), if it reaches a provisional view that it will grant a variation, but before deciding to implement the variation. Any failure by such entities to provide comfort that the costs of any variation will be recoverable for an employer should weigh against the grant of the claim or potentially warrant a variation in different terms than might otherwise be appropriate.

### **Sunset Date**

85. The proposed 12 month operation of the proposed variations is not appropriate, given the uncertain geopolitical climate and outlook. We note that the ACTU appears to acknowledge the uncertainty of the situation in the medium and long term.<sup>57</sup> A variation that would operate for such a duration, in such circumstances, cannot be said to be *necessary*.
86. In our submission, if the proposed schedule is to be inserted in awards, it should operate for no longer than three months. Parties with standing would be at liberty to seek a variation to the schedule such that it applies for a longer duration, if warranted (e.g. because fuel prices remain high or volatile).

### **Implementation Date**

87. Lastly, should the Commission be minded to grant the applications, it is imperative that employers be afforded adequate time prior to the commencement of the variations to prepare for their implementation; particularly having regard to the considerations outlined earlier in this submission regarding:
- (a) The need to grapple with the interpretation and application of proposed Schedule XY (taking into account its complexity);

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<sup>57</sup> ACTU submission at [37](5).

- (b) The need to reconfigure payroll systems to reflect any change to the value of the vehicle allowance (and engage in requisite testing of those system to ensure that the reconfiguration will result in employees being paid correctly);
  - (c) Any changes the employer may need to implement regarding the procedures required to be followed by employees for claiming the vehicle allowance (and for payroll when processing such claims) to ensure that the correct amount is applied; and
  - (d) Any training and communications required to employees in respect of the above matters.
88. At the very minimum, any variations made by the Commission should not commence operation for at least two weeks from the date on which the Commission issues its determinations to vary the awards. A longer period would be prudent in the context of implementing any initial increase to the allowance, given it is not expected by industry. We note in this regard that it would be reasonable for employers to expect that such allowances will not increase until July (as is usually the case) and that efforts will need to be made by various entities including the Commission, the Fair Work Ombudsman and employer associations to inform or educate industry of any such variations to awards. This is particularly appropriate given the substantial penalties employers may be exposed to for non-compliance with awards.
89. We also note that, under many awards, pay cycles may be weekly. If the variations took effect in relation to an employee from the first full pay period following an operative date of less than two weeks, employers would be afforded an inadequate period of time to take all of the steps required to comply with the proposed Schedule.
90. In a similar vein; we submit that the schedule should be amended to make clear that any adjustment to the allowance is required to be implemented in the first full pay period, two weeks after the adjustment.

## E. THE MODERN AWARDS OBJECTIVE

91. In this part of our submission, we respond to submissions advanced by the Unions in relation to the modern awards objective, and identify various considerations required to be taken into account by s.134(1) of the Act that weigh against the grant of the Unions' claim.
92. We note at the outset that various aspects of the submissions we have made in the preceding section go to the fairness (or rather, *unfairness*) of the proposed variations. This includes the submissions we have advanced regarding the complexity of the proposed variations, the regulatory burden they would impose, the increased labour costs that would flow and the uncertainty that would arise from them.

### Section 134(1)(a) – Relative living standards and needs of the low paid

93. We make two key arguments about this consideration:
- (a) The scope of the variations proposed extends well beyond those who are low paid. It includes employees in all classification levels covered by the relevant awards, including those who, on any assessment, are not '*low paid*'.
  - (b) This is, in any event, one of a number of considerations that must be taken into account and *balanced* against other countervailing considerations. It does not '*compel*' the Commission to make the variations proposed, as contended by the ASU.<sup>58</sup>

### Section 134(1)(b) – The need to achieve gender equality in the workplace

94. The material advanced by the Unions does not establish that the allowance is contributing to '*gender based undervaluation*', as suggested by the ACTU.<sup>59</sup> Nor does the evidence establish that there is a widespread refusal by women, or

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<sup>58</sup> ASU submission at [15].

<sup>59</sup> ACTU submission at [127].

inability for women, to fully participate in the workforce, due to the extant vehicle allowance.<sup>60</sup>

### **Section 134(1)(c) – The need to promote social inclusion through increased workforce participation**

95. Section 134(1)(c) goes to *workforce* participation. There is no evidence that employees are not participating in the workforce due to the perceived inadequacy of the extant vehicle allowance and / or that prospective employees *would* participate in the workforce if it was increased.

96. Contrary to the ACTU's submission<sup>61</sup>, this is a neutral consideration.

### **Section 134(1)(d) – The need to promote flexible modern work practices and the efficient and productive performance of work**

97. The ACTU submits that '*an allowance that properly compensates employees for using their own vehicles can be seen as promoting [the] flexible work practice*' of employees using private vehicles in the course of their employment.<sup>62</sup> The Australian Manufacturing Workers' Union (**AMWU**) and ASU advance similar arguments.<sup>63</sup>

98. There is no evidence that employees are refusing to use private vehicles in the course of their employment due to the perceived inadequacy of the extant vehicle allowance and / or that increasing the allowance would result in additional employees using their private vehicles.

### **Section 134(1)(f) – The likely impact on business**

99. For the reasons set out in the preceding section of this submission, the Unions' claim, if granted, would adversely affect business. It would increase employment costs and the regulatory burden. Contrary to the ACTU's submission, the

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<sup>60</sup> ACTU submission at [127].

<sup>61</sup> ACTU submission at [133].

<sup>62</sup> ACTU submission at [134] – [136].

<sup>63</sup> AMWU submission at [16] – [17] and ASU submission at [17] – [19].

proposed terms would impose a *substantial* regulatory burden; particularly the requirement to adjust the allowance each month.<sup>64</sup>

100. We acknowledge that if employees decline to perform certain periods of work or tasks due to the increased cost of fuel, this may also adversely impact their employer's operations. Such issues are more appropriately dealt with at the enterprise level, through the implementation of measures that provide targeted solutions, having regard to the specific circumstances of the employer and employee(s). The evidence demonstrates that this is already occurring.<sup>65</sup>

101. This factor weights strongly against the grant of the claim.

**Section 134(1)(g) – The need to ensure a simple, easy to understand and stable modern award system**

102. As set out earlier in this submission, the variations proposed are not simple and easy to understand; in fact, to the contrary, they are complex and convoluted.

103. Further, if the proposed schedule would require the Commission to vary awards each month, this would be contrary to the need to ensure a *stable* awards system.

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<sup>64</sup> ACTU submission at [144].

<sup>65</sup> See Coad statement at [25] and Wright-St.Clair statement at [19].