



FURTHER REPORT TO THE FULL BENCH

Fair Work Act 2009

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

REVIEW OF CERTAIN C14 RATES IN MODERN AWARDS

(C2019/5259)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 5 APRIL 2023

Review of the classification rates at the C14 rate in modern awards – introductory rates.

[1] The Fair Work Commission (Commission) has initiated a review (Review) of certain modern awards which have classification rates at the C14 rate which are either not transitional rates or where the transition period is not specified. The C14 rate is equivalent to the National Minimum Wage (NMW).

[2] The Background to the Review and the progress of the matter is set out in earlier Statements¹ and a Report to the Full Bench dated 5 September 2022.²

Award already determined

[3] On 30 January 2023 the Full Bench issued a determination³ varying the *Broadcasting, Recorded Entertainment and Cinemas Award 2020* in accordance with the provisional views expressed by the Full Bench on 6 October 2022⁴ and confirmed on 4 November 2022.⁵ The determination came into operation on 30 January 2023.

Outstanding modern awards/issues

[4] The remaining modern awards requiring consideration are:

Awards in which the C14 classification appears to be transitional, but no particular transition period is specified

- *Concrete Products Award 2020 (Concrete Products Award)*
- *Meat Industry Award 2020 (Meat Award)*
- *Rail Industry Award 2020 (Rail Award)*

¹ In particular, see [2019] FWC 5863, [2019] FWC 8159, [2022] FWC 1989, [2022] FWCFB 198 and [2023] FWC 202.

² [2022] FWC 2239.

³ PR749974.

⁴ See [2022] FWCFB 183 at [4], [5] and [7].

⁵ See [2022] FWCFB 198 at [9].

Awards in which the C14 classification level is not a transitional level

- *Dry Cleaning and Laundry Industry Award 2020 (Dry Cleaning Award)*
- *Funeral Industry Award 2020 (Funeral Award)*
- *Sugar Industry Award 2020 (Sugar Award)*
- *Travelling Shows Award 2020 (Travelling Shows Award)*

[5] On 2 November 2022, the Showmens Guild of Australasia (SGA) made a submission proposing that the Travelling Shows Award be excluded from the Review, and the Full Bench stated it would consider this issue after interested parties were given an opportunity to respond on the proposal.⁶ Comments regarding this issue were due on 18 November 2022, but no parties submitted a response to the SGA submission.

[6] On 14 December 2022, I conducted a conference with relevant parties to discuss the remaining modern awards requiring further consideration,⁷ and on 24 January 2023 I issued a Statement⁸ about the outcome of the conference. I noted that although parties discussed their proposals to vary the remaining modern awards (except the Travelling Shows Award) no agreed positions were evident.

[7] The participating parties to the process were requested to advise the Commission of any developments, including any agreed and/or revised proposals, by 17 February 2023. Additional time was afforded to the parties in light of continuing constructive discussions.

[8] In accordance with the Commission's directions of 6 October 2022,⁹ submissions outlining proposals to vary the C14 classifications under review were received from:

- Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (CFMMEU-MD);¹⁰
- Australian Workers' Union (AWU);¹¹
- United Workers' Union (UWU);¹²
- Rail, Tram & Bus Union (RTBU);¹³ and
- Australasian Meat Industry Employees' Union (AMIEU).¹⁴

[9] The Commission received submissions in reply to the proposals varying the C14 classifications from:

⁶ See [2022] FWC 198 at [19] and [20]

⁷ Prior to the conference the major parties involved had agreed on proposals concerning the *Dry Cleaning and Laundry Industry Award 2020*⁷ and the *Funeral Industry Award 2020*: see [2023] FWC 202 at [5].

⁸ [2023] FWC 202.

⁹ See [2022] FWC 183 at [33]

¹⁰ CFMMEU-MD submission, 19 October 2022

¹¹ AWU submission, 19 October 2022

¹² UWU submission, 19 October 2022

¹³ RTBU submission, 19 October 2022

¹⁴ AMIEU submission, 19 October 2022

- Drycleaning Institute of Australia (DIA);¹⁵
- Australian Industry Group (Ai Group);¹⁶
- Australian Manufacturing Workers' Union (AMWU);¹⁷ and
- Australian Business Industrial and NSW Business Chamber (ABI and NSWBC).¹⁸

[10] The Commission published a summary of the submissions and submissions in reply on its website on 2 November 2022.¹⁹

[11] Following the conference on 14 December 2022, the Commission received written updates from the following parties stating their positions regarding the C14 classifications in their respective awards:

- Australian Meat Industry Council (AMIC);²⁰
- RTBU;²¹ and
- AWU.²²

[12] The Commission also received written correspondence from parties notifying of agreement and degrees of consensus reached with respect to individual awards (Dry Cleaning Award,²³ Funeral Industry Award,²⁴ Concrete Products Award²⁵ and Sugar Industry Award²⁶).

[13] This report will first discuss a summary of the parties' positions, and then proceed to consider the circumstances of each relevant award under review:

- *Dry Cleaning Award*
- *Funeral Award*
- *Concrete Products Award*
- *Sugar Industry Award*
- *Meat Award*

¹⁵ DIA reply submission, 25 October 2022

¹⁶ Ai Group reply submission, 26 October 2022

¹⁷ AMWU reply submission, 26 October 2022

¹⁸ ABI and NSWBC reply submission, 26 October 2022

¹⁹ Fair Work Commission, Review of certain C14 rates in modern awards – summary of parties' proposals and submissions in reply, 2 November 2022.

²⁰ AMIC submission, 17 February 2023

²¹ RTBU submission, 17 March 2023

²² AWU submission, 17 March 2023.

²³ DIA correspondence, 25 January 2023.

²⁴ UUU correspondence, 8 December 2022.

²⁵ AWU submission, 17 March 2023.

²⁶ AWU submission, 17 March 2023.

- *Rail Award*
- *Travelling Shows Award*

Summary of parties' positions

[14] The DIA, ABI and NSWBC, CFMMEU-MD, AWU and UWU reached a common view on proposed variations to the Dry Cleaning Award.²⁷

[15] The UWU, AWU, Australian Funeral Directors Association (AFDA) and ABI and NSWBC reached a common view on proposed variations to the Funeral Award.²⁸

[16] The AWU reached what might be described as a conditional consensus with Ai Group and ABI and NSWBC on proposed variations to the Concrete Products Award and the Sugar Award.²⁹

[17] Supported by the AMWU³⁰ and AWU,³¹ the RTBU proposed changes to the Rail Award;³² while Ai Group expressed concerns regarding the RTBU's proposals.³³

[18] The AMIEU proposed changes to the Meat Award,³⁴ supported by AWU.³⁵ AMIC objected to the unions' proposals,³⁶ and submitted its own alternative proposal to vary the Meat Award.³⁷ Ai Group³⁸ and ABI and NSWBC³⁹ expressed concerns about the AMIEU's proposals.

[19] The AMWU reiterated its position in its original submission⁴⁰ that in all awards, employees should transition from the C14 or NMW rate after 38 hours of induction training or whenever they have attained the requisite competence, whichever is sooner.⁴¹

[20] ABI and NSWBC's reply submission discussed the approach to C14 rates in awards generally, and submitted:

- It should not be assumed that the C14 rate in modern awards can only ever be a 'temporary' rate;

²⁷ DIA and others submission, 5 December 2022

²⁸ UWU submission, 8 December 2022.

²⁹ AWU submission, 17 March 2023.

³⁰ AMWU reply submission, 26 October 2022 at [4].

³¹ AWU submission, 19 October 2022 at [14].

³² RTBU submission, 19 October 2022 at [3]-[6].

³³ Ai Group reply submission, 26 October 2022 at [11]-[12].

³⁴ AMIEU submission, 19 October 2022 at [10]-[11].

³⁵ AWU submission, 19 October 2022 at [14].

³⁶ AMIC submission, 9 December 2023; AMIC submission, 17 February 2023.

³⁷ AMIC submission, 17 February 2023.

³⁸ Ai Group reply submission, 26 October 2022 at [8] – [10].

³⁹ ABI and NSWBC reply submission, 26 October 2022 at [4.21]-[4.26].

⁴⁰ AMWU submission, 3 October 2019.

⁴¹ AMWU reply submission, 26 October 2022 at [3]

- Primacy must be placed on the work actually being performed, and the value of that work properly determined;
- Where a classification structure is truly competency-based, it is important to avoid placing an artificial temporal constraint on that structure;
- Any consideration of C14 rates in awards should only proceed where a party or the Commission has concerns that the rate does not properly reflect the value of work being performed;
- An award should only be varied where the Commission is satisfied that the rate set for a particular level does not reflect the value of the work performed; and
- Awards must be considered on an individual basis having regard to the actual work being performed (and the value of that work), and any transitional timeframe must be set having regard to the industry and the individual employee rather than imposing some arbitrary or uniform timeframe for transition.⁴²

[21] The positions of parties in relation to specific awards are set out below:

Dry Cleaning and Laundry Industry Award 2020

[22] A common view on proposed variations has been reached by interested parties in relation to varying the Dry Cleaning Award.

[23] The DIA, ABI and NSWBC, CFMMEU-MD, AWU and UWU jointly agreed to the following variations to the Dry Cleaning Award:⁴³

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

~~An employee who is below the level of a tradesperson dry cleaner and is not within Levels 2 to 4.~~

An employee at this level will:

- (a) be a new entrant to the dry cleaning industry;**
- (b) for up to six (6) months undergo appropriate training, (including induction), so as to enable them to achieve the level of competence required to be classified at Dry cleaning employee Level 2;**
- (c) perform routine duties of a basic nature, exercise minimal judgment and work under direct supervision.**

A.2 Dry cleaning employee Level 2

An employee who is employed as:

⁴² ABI and NSWBC reply submission, 26 October 2022 at [3.7]

⁴³ DIA and others submission, 5 December 2022.

- (a) a wet cleaner;
- (b) a steam air finisher;
- (c) an examiner of garments;
- (d) an assembler of garments; ~~or~~
- (e) a sorter of garments; ~~or~~
- (f) **an employee with at least six (6) months' experience in the dry cleaning industry who is not a tradesperson dry cleaner and is not otherwise employed in the above roles or within Levels 3 to 4.**

Funeral Industry Award 2020

[24] A common view has been reached by interested parties in relation to varying the Funeral Award.

[25] The UWU, AWU, Australian Funeral Directors Association (AFDA), and ABI and NSWBC jointly proposed to insert a new introductory level classification and vary the current Grade 1 classification to include a requirement that employees at that level have at least 6 months experience in the funeral industry.⁴⁴

[26] It was proposed that the pay rate for the introductory level classification be set at the NMW. The parties proposed a pay rate of \$21.68 per hour for the amended Grade 1 classification, being 50% of the difference between the NMW and Grade 2 rates $((21.97 - 21.38) \times 0.5 + 21.38)$. The parties noted that the table of pay rates at clause 15.1 of the Funeral Award also require updating to reflect the addition of the new introductory level and increased rate of pay for Grade 1.

[27] The parties proposed that following variations:

12. Classifications

Employees must be classified in accordance with the classification descriptions set out in clause 12.

12.1 Introductory level

An employee at this level will:

- (a) **be a new entrant to the funeral industry;**
- (b) **for up to six (6) months undergo appropriate training, including induction, so as to enable them to achieve the level of competence required to be classified at Grade 1 or above;**

⁴⁴ UWU and others submission, 9 December 2022.

- (c) perform routine duties of a basic nature, exercise minimal judgment and work under direct supervision.

~~12.1~~ 12.2 Grade 1

- (a) Funeral director's assistant;
- (b) coffin draper; or
- (c) adult employee with at least six (6) months' experience in the funeral industry who is not mentioned elsewhere in any of Grades 2 to 6.

[28] The Commission notes that 'Schedule A—Summary of Hourly Rates of Pay' contains tables with various rates of pay. The submissions received have not addressed any consequential amendments that may be required to Schedule A as a result of the proposal.

Concrete Products Award 2020

[29] A conditional consensus position has been reached in relation to varying the C14 classification in the Concrete Products Award.

[30] On 17 March 2023 the AWU submitted a revised proposal to vary the Concrete Products Award. The AWU submitted that the proposed amendments introduce a C13.5 classification level and move the existing C14 classification descriptions into the new C13.5 level. AWU also proposed a new C14 classification description for employees undertaking initial training duties.⁴⁵

[31] The AWU submitted that its proposed amendments would not be opposed by Ai Group and ABI and NSWBC if they commenced operating from six months after a variation decision is made.⁴⁶

[32] The variations proposed by the AWU to the definitions in clause 2 are:

standard hourly rate means the minimum hourly rate of pay for a ~~Level 1~~ **the Introductory level** in clause 16—Minimum rates.

standard weekly rate means the minimum weekly rate of pay for a ~~Level 1~~ **the Introductory level** in clause 16—Minimum rates.

[33] The AWU proposed to vary clause 16.2 to include the new C14 classification and amend the rates:

16.2 An employer must pay employees the following minimum wages for ordinary hours worked by the employee:

⁴⁵ AWU submission, 17 March 2023.

⁴⁶ AWU submission, 17 March 2023.

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Introductory level	812.60	21.38
Level 1	823.65	21.68

[subsequent table rows omitted]

[34] The AWU proposed inserting an introductory level classification in Schedule A—Classification Definitions:

A.1 Introductory level

A.1.1 Employees at this level are undertaking either or both of the following forms of training:

- (a) the employer’s induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, work health and safety and quality assurance.
- (b) other training to enable them to achieve the level of competence and/or to acquire the skill(s) required to perform work at Level 1.

[35] The changes proposed by the AWU to the level 1 classification are:

A.1.A.2. Level 1

~~A.1.1~~**A.2.1** ~~Undertaking the employer’s induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, work health and safety and quality assurance.~~ **Employees who have undertaken the employer’s induction programme and who have satisfactorily completed training so as to enable them to perform work at this level.**

[36] The changes proposed by the AWU to the level 1 classification descriptors are:

A.1.3 Classification descriptors

- ~~• Operator of concrete mixing machine with a rated capacity in excess of 0.4 cubic metres (1/2 cubic yard approximately)~~
- ~~• Automatic tile/ridge machine operator~~
- ~~• Maker by hand of tiles, ridges, apexes and starters~~
- ~~• Pipe machine operator~~

- ~~Employee making pipe specials, i.e. concreting junctions, splays or other articles including the use of cortex and who may be required to work from plans and/or specifications~~
- ~~Moulder special, employed working from plans and specifications~~
- ~~Pre-stressed concrete—steel stressing operator~~
- ~~Automatic block/brick machine operator~~
- ~~Off-bearer operator~~
- ~~Operator bending, cutting and/or fixing bars, rods or reinforcement working from plans~~
- ~~Exposed aggregate maker finisher (includes control of washing off of wet concrete surfaces)~~
- ~~Coating machine operator~~
- Operator of concrete mixing machine with rated capacity less than 0.12 cubic metres, or mixing by hand
- Pipe tester
- Stacker by hand of articles including bricks, blocks, tiles and pipes
- All other employees not elsewhere classified

[37] The changes proposed by the AWU to level 3 classification descriptors are:

A.3.4 Classification descriptors

- ~~Operator of concrete mixing machine with rated capacity less than 0.12 cubic metres, or mixing by hand~~
- ~~Pipe tester~~
- ~~Stacker by hand of articles including bricks, blocks, tiles and pipes~~
- ~~All other employees not elsewhere classified~~
- Operator of concrete mixing machine with a rated capacity in excess of 0.4 cubic metres (1/2 cubic yard approximately)
- Automatic tile/ridge machine operator
- Maker by hand of tiles, ridges, apexes and starters
- Pipe machine operator
- Employee making pipe specials, i.e. concreting junctions, splays or other articles including the use of cortex and who may be required to work from plans and/or specifications
- Moulder special, employed working from plans and specifications
- Pre-stressed concrete—steel stressing operator
- Automatic block/brick machine operator
- Off-bearer operator

- Operator bending, cutting and/or fixing bars, rods or reinforcement working from plans
- Exposed aggregate maker-finisher (includes control of washing off of wet concrete surfaces)
- Coating machine operator

[38] The AWU proposed replacing the references to level 1 in clauses C.1.1 and C.1.2 with references to the introductory level:

C.1.1 The following wage-related allowances in this award are based on the standard weekly rate as defined in clause 2—Definitions as the minimum weekly wage for a ~~Level 1~~ **the Introductory level** in clause ~~16.1~~ **16.2 = \$812.60.**

C.1.2 The following wage-related allowances in this award are based on the standard hourly rate as defined in clause 2—Definitions as 1/38th of the standard weekly rate for a ~~Level 1~~ **the Introductory level** in clause ~~16.1~~ **16.2 = \$21.38.**

[39] In clauses C.1.1 and C.1.2, the AWU’s proposed variation changed the references from ‘clause 16.1’ to ‘clause 16.2.’ It is unclear why this change has been proposed, and whether AWU considers the original clause reference an error: clause 16.2 in the current award refers to minimum *weekly* and minimum *hourly* rates, while clause 16.1 refers to a summary of *hourly* rates, including overtime and penalty rates.

[40] Similarly, in the paragraph under the heading ‘Schedule C—Summary of Monetary Allowances’, the AWU’s proposal changed the reference from ‘see clause 18—Allowances’ to ‘see clause 2—Definitions’. It is unclear why this change has been proposed.

[41] The Commission notes that ‘Schedule B—Summary of Hourly Rates of Pay—employees other than tile manufacturing employees’ contains tables with various rates of pay. The submissions received have not addressed any consequential amendments that may be required to Schedule B as a result of the AWU’s proposal.

Sugar Industry Award 2020

[42] A conditional consensus has been reached in relation to varying the C14 classification in the Sugar Award.

[43] On 17 March 2023 the AWU submitted a revised proposal to vary the Sugar Award.⁴⁷ The AWU submitted that the proposed amendments introduce a C13.5 classification level and move the existing C14 classification descriptions into the new C13.5 level. A new C14 classification description was proposed for employees undertaking initial training duties.

[44] The AWU submitted that its proposed amendments would not be opposed by Ai Group and ABI and NSWBC if they commenced operation six months after a variation decision is made.⁴⁸

⁴⁷ AWU submission 17 March 2023.

⁴⁸ AWU submission 17 March 2023.

[45] The variations proposed by the AWU to clause 19.1 assign the C14 rate to the new level 1 classification and create new rates for the level 2 classification:

19.1 The following rates apply to adult milling, distillery, refinery and maintenance employees classified under clause Schedule B—Classification Definitions—Milling, Distillery, Refinery and Maintenance:

Classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
C14/L2 L1	812.60	21.38
L2	823.70	21.68

[subsequent table rows and notes omitted]

[46] The AWU proposed replacing the reference to ‘C14 to C11’ classifications with ‘Level 1 to Level 5’ in clause 19.2:

19.2 Classification definitions in Schedule B—Classification Definitions—Milling, Distillery, Refinery and Maintenance for ~~C14 to C11~~ Level 1 to Level 5 do not apply in sugar mills.

[47] The AWU did not provide an explanation for its proposed amendment to clause 19.2, however it would appear the change is suggested because the proposed level 2 classification does not specify an associated C-level rate.

[48] The AWU proposed to change the references to ‘level 2’ in clause 19.5(a) to ‘level 1’:

19.5 Junior rates

(a) The minimum rate payable to juniors must be the following percentages of the minimum adult weekly rate corresponding to classification level ~~2~~ 1 (C14).

Age	% of the minimum weekly rate for level 2 1 (C14)
Employees less than 15 years of age	50
Employees at 15 years of age	65
Employees at 16 years of age	75
Employees at 17 years of age	90

[49] The AWU proposed to insert a new level 1 C14 classification for milling general operators:

B.1.1 Milling general operator—level 1 (C14)

An employee at this level is undertaking either or both of the following forms of training:

- (a) the employer's induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.
- (b) other training to enable them to achieve the level of competence and / or to acquire the skill(s) required to perform work at Level 2.

[50] The AWU proposed to amend the current clause B.1.1 to remove the reference to C14 rates in relation to level 2 milling general operators:

~~B.1.1~~ **B.1.2 Milling general operator—level 2 (C14)**

...

[51] The AWU proposed to insert a new level 1 C14 classification for distilling and services operators:

B.2.1 Distilling and services operator—level 1 (C14)

An employee at this level is undertaking either or both of the following forms of training:

- (a) the employer's induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.
- (b) other training to enable them to achieve the level of competence and / or to acquire the skill(s) required to perform work at Level 2.

[52] The AWU proposed amending the current clause B.2.1 to remove the reference to C14 rates in relation to level 2 distilling and services operators:

~~B.2.1~~ **B.2.2 Distilling and services operator—level 2 (C14)**

...

[53] The AWU proposed inserting a new level 1 C14 classification for refinery operators:

B.3.1 Refinery operator—level 1 (C14)

An employee at this level is undertaking either or both of the following forms of training:

- (a) the employer's induction programme which may include information on the enterprise, conditions of employment, introduction to supervisors and

fellow workers, training and career path opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance.

- (b) other training to enable them to achieve the level of competence and / or to acquire the skill(s) required to perform work at Level 2.

[54] The AWU proposed amending the current clause B.3.1 to remove the reference to C14 rates in association with level 2 refinery operators:

B.3.1B.3.2 Refinery operator—level 2 (C14)

...

[55] The Commission notes that ‘Schedule D —Summary of Hourly Rates of Pay’ contains tables with various rates of pay. The submissions received have not addressed any consequential amendments that may be required to Schedule D as a result of the AWU’s proposal.

[56] AMWU expressed support for the AWU’s variation proposal of 19 October 2022,⁴⁹ but have not yet expressed their views regarding the revised variation proposal of 17 March 2023.

Meat Industry Award 2020

[57] The Commission received two proposals from the AMIC and the AMIEU to vary the Meat Award, but parties have not reached an agreed position.

AMIEU proposal

[58] The AMIEU proposed deleting the C14 classification (Meat Industry Level 1) at clause A.3.1 of the Meat Award. Due to the short period of training generally provided to new employees, the AMIEU submitted the classification was unnecessary because on-the-job training usually consisted of providing brief instruction in the physical task required, after which the Meat Industry Level 1 employee performed the task, initially assisted by a supervisor or co-worker. After this, employees were expected to work at the pace normally required of trained employees in the higher classification. In practice, the AMIEU submitted, the amount of actual on-the-job training might be as little as a few hours.

[59] The AMIEU submitted that it did not believe any employer provided on-the-job training as extensive as 3 months to Level 1 employees and that the classification was, therefore, being widely misused or misapplied in the industry.⁵⁰

[60] In the alternative, the AMIEU proposed varying the C14 classification to insert a maximum duration of one week before transition occurs to the usual classifications, to reflect

⁴⁹ AMWU reply submission, 26 October 2022 at [5].

⁵⁰ AMIEU submission, 19 October 2022 at [7].

the amount of on-the-job training new employees typically receive.⁵¹ The AMIEU submitted that the C14 classification should not be open-ended in nature.⁵²

[61] The AMIEU did not provide specific wording for its alternative proposal. Such a variation may appear as follows:

A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry undergoing on-the-job training for an initial period of ~~at least 3 months~~ **one week**.

[62] The AWU supported submissions by the AMIEU.⁵³

[63] Ai Group contested the AMIEU's proposal to delete clause A.3.1 and remove the Meat Industry Level 1 classification because it submitted that not all employees were capable of being classified at Level 2 or higher.⁵⁴

[64] In relation to AMIEU's alternative proposal, Ai Group submitted that a one-week limitation on the application of the Level 1 classification was not appropriate, as some employees with no industry experience undergo on-the-job training for periods that well exceed one week.⁵⁵

[65] ABI and NSWBC submitted that the AMIEU submission did not appear to address work value considerations or engage with the historical development of the Meat Award. ABI and NSWBC submitted that whether the C14 classification is being misapplied is not a relevant consideration as to whether the rate has been properly set, and evidence is required to assess the length of training generally provided to employees.⁵⁶

[66] ABI and NSWBC submitted that it may be worthwhile considering whether the C14 classification descriptor is unclear or ambiguous and that any issues arising can be resolved by a drafting amendment to ensure clarity.⁵⁷

[67] The AMIC opposed the AMIEU proposal to remove the C14 classification level from the Meat Award.⁵⁸ It also opposed setting a limit of one week for employment at the C14 classification level.⁵⁹

AMIC proposal

⁵¹ AMIEU submission, 19 October 2022 at [11].

⁵² AMIEU submission, 19 October 2022 at [11].

⁵³ AWU submission, 19 October 2022 at [14].

⁵⁴ Ai Group reply submission, 26 October 2022 at [9].

⁵⁵ Ai Group reply submission, 26 October 2022 at [10].

⁵⁶ ABI reply submission, 26 October 2022 at [4.24].

⁵⁷ ABI reply submission, 26 October 2022 at [4.23].

⁵⁸ AMIC submission, 17 February 2023.

⁵⁹ AMIC correspondence, 9 December 2022.

[68] The AMIC proposed the following C14 classification level be included in the Meat Award:

A.3.1 Meat Industry Level 1

An employee at this level will ~~be a person with no experience in the industry undergoing on the job training for an initial period of at least 3 months.:~~

- (a) be a new entrant to the meat industry, (which shall mean that the employee has, at the point of engagement, less than three months continuous experience in the industry, in the preceding 5 years), and who is undertaking appropriate training, including induction and on-the-job training.
- (b) be entitled to be appointed to a higher classification upon having been assessed as having achieved the level of competence required by that classification, in default of which, will be entitled to be appointed to the MI 2 classification after having been engaged in this classification for a period of six months
- (c) perform routine duties of a basic nature, exercise minimal judgment and work under direct and/or indirect supervision.

Rail Industry Award 2020

[69] A consensus position has not been reached by interested parties in relation to varying the Rail Award.

[70] The RTBU submitted that standard induction and basic competency training can be obtained and completed relatively quickly after an employee commences employment.⁶⁰ Accordingly, it submitted the C14 classification in the Rail Award (Operations Classification Level 1) should be varied to ensure the rate operates on a transitional basis:⁶¹

Level	Tasks and Functions
1	<p>Employees at this level undertake and successfully complete standard induction training within the first month of employment. On completion of the required induction training the employee will be reclassified to level 2.</p> <p>Employees at Level 1 will be required to:</p>

[subsequent table rows omitted]

[71] The AWU and AMWU supported the RTBU’s proposal to vary the Rail Award.⁶²

⁶⁰ RTBU submission, 19 October 2022 at [5].

⁶¹ RTBU submission, 19 October 2022 at [6].

⁶² AWU submission, 19 October 2022 at [14] and AMWU reply submission, 26 October 2022 at [4].

[72] In their reply submission, Ai Group stated that it was inappropriate for a classification descriptor to create a requirement that employees complete their training within one month.⁶³ Ai Group also expressed concern that the RTBU's submission does not reveal the specific period of time within which induction training is in fact completed.⁶⁴

Travelling Shows Award 2020

[73] On 2 November 2022 the SGA submitted that the Travelling Shows Award should be excluded from the Review because no party had made a proposal to vary it.⁶⁵ It noted that other awards had been excluded from the review for this reason.⁶⁶ On 4 November 2022 the Full Bench issued a Statement inviting parties to comment on the proposal to exclude the Travelling Shows Award from the Review by 18 November 2022.⁶⁷ No party commented on the proposal.

Matters for the Full Bench to consider

[74] I suggest that the Full Bench might consider dealing with the outstanding modern awards and issues having regard to the following observations.

- Some parties, and in particular, ABI and NSWBC and the AMWU, have advanced broad and somewhat divergent positions that may inform the approach to be adopted by the Commission more generally.
- There is common ground amongst the participating interested parties about potential variations to the *Dry Cleaning Award* and this variation appears to be consistent with the terms found in some other modern awards. The C14 rate would be confirmed as applying to an introductory level with set parameters.
- Subject to the timing of introduction in the case of 2 awards, there is also potentially common ground regarding proposed variations to the *Funeral Award*, the *Concrete Products Award* and the *Sugar Award*. In each case, the proposal involves confirmation of introductory classifications and rates equivalent to C14, but with the introduction of revised classifications/rates at level/grade 1 which would be set between the C14 rate and the level/grade 2 rate. There are also some consequential changes that would need to be considered but these are unlikely to be controversial. The Full Bench would need to consider the appropriateness of the proposed level 1 arrangements and rates. In the case of the *Concrete Award* and the *Sugar Award*, the timing of any variations would need to be determined.
- There is no common ground amongst the parties in relation to the *Meat Award* or the *Rail Award*. Those parties proposing a variation might be directed to make an application which would be dealt with in the normal manner by the Commission.
- There is no proposal to vary the *Travelling Shows Award*. However, this modern award has been identified as having a classification at the C14 equivalent level that

⁶³ Ai Group reply submission, 26 October 2022 at [11].

⁶⁴ Ai Group reply submission, 26 October 2022 at [12].

⁶⁵ SGA submission, 2 November 2022 at [3].

⁶⁶ SGA submission, 2 November 2022 at [2].

⁶⁷ See [2022] FWCFB 198 at [19] and [20].

is not a transitional level. The Full Bench would need to consider whether this is appropriate and whether the award meets the modern awards objective⁶⁸ and the minimum wages objectives.⁶⁹

[75] I suggest that it may be appropriate for the Presiding Member of the Full Bench to canvass the views of the parties in light of this Further Report.

The image shows a handwritten signature in black ink on the left, which overlaps with the circular seal of the Fair Work Commission on the right. The seal features the Australian coat of arms in the center, with the text 'THE SEAL OF THE FAIR WORK COMMISSION' around the top and 'AUSTRALIA' at the bottom.

DEPUTY PRESIDENT

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⁶⁸*Fair Work Act 2009* (Cth) s 134.

⁶⁹*Fair Work Act 2009* (Cth) s 284.