

Australian Industry Group

# Review of C14 Rates

## **Reply Submission** (C2019/5259)

1 December 2023



## C2019/5259 REVIEW OF C14 RATES

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## 1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in accordance with the directions<sup>1</sup> issued by the Fair Work Commission (**Commission**) on 22 September 2023. Specifically, in this submission, we respond to claims advanced by various parties for variations to the following modern awards:

- (a) The *Asphalt Industry Award 2020* (**Asphalt Award**);
- (b) The *Cement, Lime and Quarrying Award 2020* (**Cement Award**);
- (c) The *Concrete Products Award 2020* (**Concrete Products Award**);
- (d) The *Corrections and Detention (Private Sector) Award 2020* (**Corrections Award**);
- (e) The *Cotton Ginning Award 2020* (**Cotton Award**);
- (f) The *Electrical, Electronic and Communications Contracting Award 2020* (**Electrical Contracting Award**);
- (g) The *Food, Beverage and Tobacco Manufacturing Award 2020* (**Food Manufacturing Award**);
- (h) The *Horticulture Award 2020* (**Horticulture Award**);
- (i) The *Joinery and Building Trades Award 2020* (**Joinery Award**);
- (j) The *Manufacturing and Associated Industries and Occupations Award 2020* (**Manufacturing Award**);
- (k) The *Meat Industry Award 2020* (**Meat Award**);
- (l) The *Nurses Award 2020* (**Nurses Award**);

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<sup>1</sup> Review of certain C14 rates in modern awards [2023] FWCFB 168.

- (m) The *Oil Refining and Manufacturing Award 2020* (**Oil Manufacturing Award**);
  - (n) The *Pest Control Industry Award 2020* (**Pest Control Award**);
  - (o) The *Premixed Concrete Award 2020* (**Premixed Concrete Award**);
  - (p) The *Rail Industry Award 2020* (**Rail Award**);
  - (q) The *Seafood Processing Award 2020* (**Seafood Award**);
  - (r) The *Sugar Industry Award 2020* (**Sugar Award**);
  - (s) The *Textile, Clothing, Footwear and Associated Industries Award 2020* (**Textile Award**);
  - (t) The *Timber Industry Award 2020* (**Timber Award**);
  - (u) The *Vehicle Repair, Services and Retail Award 2020* (**Vehicle Award**);
  - (v) The *Wine Industry Award 2020* (**Wine Award**); and
  - (w) The *Wool Storage, Sampling and Testing Award 2020* (**Wool Award**).
2. In relation to each of the above awards, we have identified our position as to which of the five categories identified in the Commission's statement of 22 September 2023<sup>2</sup> (**Statement**) at [3] is most relevant. At the conclusion of this submission, we also deal briefly with the issue of potential transitional arrangements.

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<sup>2</sup> *Review of certain C14 rates in modern awards* [2023] FWCFB 168.

## 2. PRIMARY POSITION

3. Ai Group's primary position regarding the provisional view expressed by the Commission in relation to this matter (**Provisional View**) was summarised in our submission of 6 November 2023 (**November Submission**) at [5]:
  5. Ai Group opposes the Commission's Provisional View. It should not, in our submission, be adopted, for the reasons set out in this submission. In particular, as we explain below, Key Proposition 1 misapprehends the operation of the C14 classification definition in the Manufacturing Award and Metals Award. To that end, we contest a fundamental basis underpinning the Provisional View.
4. This submission deals with proposals, submissions and evidence advanced by parties in support of variations proposed to a number of awards, as contemplated by [6] – [7] of the November Submission:
  6. If the Commission is nonetheless minded to consider varying any awards in the context of these proceedings by reference to proposals advanced by other parties and / or of the Commission's own motion, such awards should each be separately considered, having regard to the circumstances pertaining to the relevant industry or occupation covered by them, the terms of the awards (including the way in which the C14 classification definition is expressed and how it intersects with other classification definitions), the value of the relevant work, the specific variations proposed and the impact that the variations would have on employers and employees covered by the awards.
  7. The particular circumstances associated with an award may warrant an approach that deviates from the Provisional View. Indeed, they may demonstrate that the award should not be varied at all. In such circumstances, it would not be appropriate for the Commission to decide in general terms that the Provisional View will apply to all awards. Parties should be afforded a reasonable opportunity to ventilate award-specific issues and the process adopted by the Commission should facilitate a detailed consideration of them.
5. The material we have sought to respond to, as well as these submissions, should be considered in the context described above.
6. As will be seen from the submissions we have advanced, in the vast majority of instances, the moving parties seeking variations to the above awards have advanced little, if any, material of probative value in support of their claims. Generally, they have filed nothing more than a short submission, unaccompanied by any evidentiary material. Despite the significant nature of the proposed changes, including the direct bearing they may have on employment costs and / or the manner in which they would alter the operation of the classification

structure, there is also little material before the Commission dealing with the likely practical implications of the variations.

7. Our submissions seek to respond to the material advanced by the moving parties, within the constraints of the timetable set by the Commission for this matter. In our view, each of the variations proposed warrant separate and detailed consideration, having regard to relevant historical considerations, the intention underpinning the existing classification structure, the manner in which it applies in practice, its interaction with relevant training programs and requirements, and the potential impact of the proposed changes on industry.
8. Where the material before the Commission does not make out a case for a given variation, or it does not enable the Commission to assess whether the proposed change is consistent with the relevant statutory criteria, it should decline to make the change.
9. If the Commission is nonetheless minded to vary an award in terms that differ from the variation(s) proposed by a moving party, or it is inclined to vary an award that is not the subject of a claim, it should afford interested parties an opportunity to be heard about the specific form of the change. We note in this regard that to some extent, without knowing the final form of a proposed variation, we are unable to comprehensively comment on the potential impact it may have on industry.

### 3. THE AUSTRALIAN MANUFACTURING WORKERS' UNION'S GENERAL POSITION

10. The Australian Manufacturing Workers' Union (**AMWU**) advances various general submissions, which it appears to rely upon in relation to a number of awards.
11. *First*, the AMWU submits that the C14 classification level is, *'at best, a placeholder that enables a worker with no relevant skills or experience to gain enough knowledge to be able to perform tasks'*.<sup>3</sup> It argues that the C14 rate *'is not a probationary rate'*, but rather, *'it is designed for initial training within the workplace'*<sup>4</sup> and on that basis, it should only apply for an induction period *'which, ideally, should be no longer than 38 hours'*<sup>5</sup>.
12. For the reasons set out at [9] – [15] of the November Submission, we strongly disagree. In particular, we advanced the following submissions regarding the Manufacturing Award, after extracting the C14 and C13 classification descriptions:
  12. As can be seen from the above, an employee classified at C14 will be undertaking up to 38 hours induction training. In addition, an employee may be classified at C14 if:
    - (a) They are *'undertaking structured training so as to enable them to work at the C13 level'*.<sup>6</sup> When read with the C13 classification descriptor, at clause A.4.4(a)(i), it appears that such training may be completed over a period of up to three months; and / or
    - (b) The employee is performing *'routine duties essentially of a manual nature'*, which require the employee to *'[exercise] minimal judgement'* and / or to work *'under direct supervision'*;<sup>7</sup> and / or
    - (c) The employee is performing *'general labouring and cleaning duties'*.<sup>8</sup>

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<sup>3</sup> AMWU submission dated 10 November 2023 at [7].

<sup>4</sup> AMWU submission dated 10 November 2023 at [11].

<sup>5</sup> AMWU submission dated 10 November 2023 at [11].

<sup>6</sup> Clause A.4.3(a)(ii) of the Manufacturing Award, final bullet point.

<sup>7</sup> Clause A.4.3(a)(ii) of the Manufacturing Award, second and third bullet points.

<sup>8</sup> Clause A.4.3(a)(ii) of the Manufacturing Award, first bullet point.

13. The award does not require that an employee classified at C14 *must* be undertaking training that will enable them to perform work at the C13 level. An employee classified at the C14 level can, therefore, be an employee who performs work of the nature described at paragraphs (b) and / or (c) above, indefinitely. Without seeking to comment on the incidence of employees being classified in this manner, we are aware of circumstances in which employees are, or have been, so classified. In such circumstances, they are generally engaged, on an ongoing basis, to perform unskilled work.
  14. The corresponding classification descriptors in the Metals Award were in substantively the same terms.<sup>9</sup> Accordingly, the same observations can be made about them.
13. Similarly, in our submission, the AMWU's proposition is untrue in respect of the remaining awards identified at [2] of its submission.
  14. Any variation that limits the application of the C14 classification level in these awards to 38 hours of induction training would amount to a significant variation, that would disrupt the longstanding operation of the awards. Such a change would:
    - (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;<sup>10</sup>
    - (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;<sup>11</sup>
    - (c) Have an adverse impact on business, including on productivity and employment costs;<sup>12</sup>
    - (d) Be inconsistent with the need to ensure a stable awards system;<sup>13</sup>
    - (e) Not be necessary to ensure that the relevant awards achieve the modern awards objective;<sup>14</sup>

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<sup>9</sup> Engineering/Production Employee - Level I and Engineering/Production Employee - Level II descriptors in Schedule D.

<sup>10</sup> Section 134(1) of the Act.

<sup>11</sup> Section 134(1)(d) of the Act.

<sup>12</sup> Section 134(1)(f) of the Act.

<sup>13</sup> Section 134(1)(g) of the Act.

<sup>14</sup> Section 138 of the Act.

- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.<sup>15</sup>
15. Accordingly, the union’s first proposition should not be adopted.
16. *Second*, the union contends that the C13 classification level ‘*should also be properly seen as a transitional qualification*’ in respect of most workplaces and most employees in the manufacturing industry.<sup>16</sup>
17. We disagree. The C13 classification level in the Manufacturing Award is in the following terms:

**A.4.4 Wage Group: C13**

**(a) Engineering/Manufacturing Employee—Level II**

- (i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to 3 months’ structured training so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
  - works under direct supervision either individually or in a team environment;
  - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
  - understands and utilises basic statistical process control procedures;
  - follows safe work practices and can report workplace hazards.<sup>17</sup>

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<sup>15</sup> Sections 157(2) and 157(2A) of the Act.

<sup>16</sup> AMWU submission dated 10 November 2023 at [8].

<sup>17</sup> Clause A.4.4 of the Manufacturing Award.

18. In no way do the terms of clause A.4.4 of the Manufacturing Award require or suggest that it applies on a transitional basis. Just as, in our submission, employees could be classified at the C14 level indefinitely; so too could an employee at the C13 level. Such an employee would have completed *‘up to 3 months’ structured training so as to enable the employee to perform work within the scope of [the] level’*.<sup>18</sup> If the employee completed the training contemplated by clause A.4.5(a)(i) *‘so as to enable the employee to perform work within the scope of’* the C12 classification level, they would be reclassified as such. If not, the employee would remain classified at the C13 level.
19. *Finally*, the AMWU advances the following submission:
12. The AMWU also notes that classifications should be written and interpreted based on skills and knowledge acquired or the time taken in structured training, not using arbitrary time frames. ...<sup>19</sup>
20. We agree that competency-based classification structures, or classification structures that operate by reference to employees’ skills or knowledge, should not, as a product of these proceedings (**Review**) result in the introduction of new arbitrary timeframes that dictate how or when an employee is to be classified or reclassified. Such an approach could fundamentally undermine the purpose and integrity of such classification structures in a way that subverts a central feature of their design. It would potentially result in employees being reclassified to a higher level and being entitled to a higher minimum wage, in circumstances where they do not in fact possess the skills or knowledge required at that level.
21. The same can be said in respect of classification structures that contemplate that an employee will undertake certain structured training before progressing to the next level, as has been noted by the AMWU in the above passage. In some contexts, that training may require more than six months to complete. It would not be appropriate for such awards to be varied such that they require the reclassification of employees to a higher level, or payment at a higher rate, after an arbitrary period of time (e.g. six months, as per the Provisional View), in

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<sup>18</sup> Clause A.4.4(a)(i) of the Manufacturing Award.

<sup>19</sup> AMWU submission dated 10 November 2023 at [12].

circumstances where the employee has not in fact completed the relevant training.

#### 4. THE AUSTRALIAN WORKERS' UNION'S PRIMARY POSITION

22. The Australian Workers' Union (**AWU**) has advanced a general submission that the Commission '*should give continued consideration to increasing any modern award (adult) minimum rates that are below the C13 / national minimum wage*'.<sup>20</sup> In the alternate, it supports the Commission's Provisional View.<sup>21</sup>
23. The AWU's primary position amounts to a bare call for a variation (i.e. increase) to modern award minimum wages, of the nature contemplated by s.157(2) of the *Fair Work Act 2009 (Act)*. The Commission can make such a variation only if it is satisfied that it is justified by '*work value reasons*'.<sup>22</sup> Work value reasons are reasons related to any of the following:
- (a) The nature of the work;
  - (b) The level of skill and responsibility involved in doing the work;
  - (c) The conditions under which the work is done.<sup>23</sup>
24. In relation to the vast majority of instances in which the AWU advances this submission, there is no material before the Commission, whatsoever, about any of the aforementioned matters. Thus, the Commission cannot be satisfied that the increases sought by the union are justified by work value reasons. In the circumstances, it does not have power to make the variations proposed by the union. On this basis alone, the AWU's primary position in respect of the relevant awards should be dismissed.
25. In the submissions that follow, we deal with the AWU's alternate position(s) in respect of various awards in which we have an interest.

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<sup>20</sup> AWU submission dated 3 November 2023 at [2].

<sup>21</sup> AWU submission dated 3 November 2023 at [3].

<sup>22</sup> Section 157(2)(a) of the Act.

<sup>23</sup> Section 157(2A).

## 5. THE ASPHALT AWARD (CATEGORY I)

26. The Asphalt Award prescribes an hourly rate that is less than the C13 rate in respect of employees classified at ‘*Skill Level 1*’.<sup>24</sup> The award defines an employee at this level as follows:

Skill level 1 is an employee who has no experience in the industry and who may be undertaking up to 38 hours induction training.<sup>25</sup>

27. The AWU relies on its general submission. For the reasons articulated above, that submission should be rejected.
28. Moreover, the operation of the classification structure is consistent with the Commission’s Provisional View and a case has not been made out for departing from the extant approach adopted in the award.
29. In any event, as noted in the November Submission, the award requires the payment of an industry allowance of \$37.72 per week, to all employees.<sup>26</sup> It is an ‘*all purpose*’ allowance and therefore, it is ‘*included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave*’.<sup>27</sup>
30. Once the industry allowance is added to the minimum hourly rate prescribed by the award for ‘*Skill Level 1*’, an employee is entitled to \$23.60 per hour. This is more than the C13 rate.
31. In the circumstances, the Asphalt Award should not form part of the Review. Employees can be classified at ‘*Skill Level 1*’ on a transitional basis only, for less than six months, and, in addition, for all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.

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<sup>24</sup> Clause 15.1 of the Asphalt Award.

<sup>25</sup> Clause 12.4(a) of the Asphalt Award.

<sup>26</sup> Clause 17.2(b) of the award.

<sup>27</sup> Clause 17.2(a) of the award.

## 6. THE CEMENT AWARD (CATEGORY IV)

32. The Cement Award prescribes a rate that is less than the C13 rate in respect of:
- (a) Employees in the '*cement and lime industries*' at Level 1;<sup>28</sup>
  - (b) Employees in the '*quarrying industry*' at Grade 1;<sup>29</sup> and
  - (c) Employees in the '*quarrying industry*' at Grade 2.<sup>30</sup>
33. The minimum rate payable to employees in the '*quarrying industry*' at Grade 2 falls short of the C13 rate by only one cent. That is, the Grade 2 rate is \$23.22.<sup>31</sup>
34. In addition, all employees are entitled to an all purpose industry disability allowance.<sup>32</sup> The allowance is to be included in an employee's rate of pay '*when calculating any penalties, loadings or payment while they are on annual leave*'.<sup>33</sup>
35. All employees classified at the aforementioned levels are, in effect, entitled to an hourly rate for all purposes that exceeds the C13 rate:
- (a) Employees in the '*cement and lime industries*' at Level 1 are entitled to an '*ordinary hourly rate*' of \$24.52.
  - (b) Employees in the '*quarrying industry*' at Grade 1 are entitled to an '*ordinary hourly rate*' of \$23.44.
  - (c) Employees in the '*quarrying industry*' at Grade 1 are entitled to an '*ordinary hourly rate*' of \$24.05.
36. Accordingly, the Cement Award should be excluded from the Review.

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<sup>28</sup> Clause 16.1 of the Cement Award.

<sup>29</sup> Clause 16.2 of the Cement Award.

<sup>30</sup> Clause 16.2 of the Cement Award.

<sup>31</sup> Clause 16.2 of the Cement Award.

<sup>32</sup> Clause 18.2(b) of the Cement Award.

<sup>33</sup> Clause 18.2(a) of the Cement Award.

37. The classification descriptions contained in the award operate by reference to employees gaining certain competencies. For example, a Grade 1 employee *'is an employee who is undertaking training to become competent in the Basic Quarry competency'*.<sup>34</sup> Once an employee is so competent, they will be classified at Grade 2 until they are *'competent in one core competency'* and they *'[perform] it as required by the employer'*.<sup>35</sup> The award provides that *'[a]ll training will be structured competency based training'*.<sup>36</sup> Clause B.3 lists the various core competencies.
38. The AWU argues that the Level 1 classification descriptor for the *'cement and lime industries'* and the Grade 1 classification description in the *'quarrying industry'* should be amended *'to limit their application to employees with no experience in the industry and who are undertaking up to 38 hours of induction training'*.<sup>37</sup>
39. The union does not propose any consequential variations to account for the work presently contemplated by the Level 1 and Grade 1 classification descriptors. It is therefore unclear how such employees would be classified or what minimum hourly rate would be payable to them if the AWU's proposal were adopted.
40. In any event, we oppose the union's claim. There is no apparent basis for it (or so much as an attempt to establish a basis for it). To the extent that it would result in employees presently classified at Level 1 and Grade 1 becoming entitled to a higher minimum rate, this would:
- (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;<sup>38</sup>

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<sup>34</sup> Clause B.1.1 of the Cement Award.

<sup>35</sup> Clause B.1.2 of the Cement Award.

<sup>36</sup> Clause B.2.1(a) of the Cement Award.

<sup>37</sup> AWU submission dated 3 November 2023 at [80].

<sup>38</sup> Section 134(1) of the Act.

- (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;<sup>39</sup>
- (c) Have an adverse impact on business, including on productivity and employment costs;<sup>40</sup>
- (d) Be inconsistent with the need to ensure a stable awards system;<sup>41</sup>
- (e) Not be necessary to ensure that the relevant awards achieve the modern awards objective;<sup>42</sup>
- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.<sup>43</sup>

41. The union's claim should be dismissed.

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<sup>39</sup> Section 134(1)(d) of the Act.

<sup>40</sup> Section 134(1)(f) of the Act.

<sup>41</sup> Section 134(1)(g) of the Act.

<sup>42</sup> Section 138 of the Act.

<sup>43</sup> Sections 157(2) and 157(2A) of the Act.

## 7. THE CONCRETE PRODUCTS AWARD (CATEGORY V)

43. The Concrete Products Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at 'Level 1'.<sup>44</sup> The award defines an employee at that level as follows:

### A.1 Level 1

**A.1.1** 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.

**A.1.2** Employees at this level perform routine duties essentially of a manual nature and to the level of their training;

- (a) perform general labouring and cleaning duties;
- (b) exercise minimal judgment;
- (c) work under direct supervision;
- (d) may undertake structured training so as to enable them to work at level 2; and
- (e) within the limitations of the skill levels as defined employees will be expected to be responsible for the quality of their own work.

### 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

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<sup>44</sup> Clause 16.2 of the Concrete Products Award.

- 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<sup>45</sup>

44. In its Statement, the Commission noted that the AWU and Ai Group had reached a *'conditional consensus'* as to how the Concrete Products Award may be varied. It described the position reached between the parties as follows:

**[19]** Broadly, the proposals for the Concrete Products Award ... would create a 'C13.5' classification level and move the existing C14 classification descriptions into the new 'C13.5' level. A new C14 classification description is proposed for employees undertaking initial training duties.<sup>46</sup>

45. The Commission went on to state that in light of its Provisional View, the aforementioned proposal would need to be revisited.<sup>47</sup>

46. The AWU submits that the *'simplest way'* to ensure conformance with the Provisional View *'would be to replace the non-transitional C14 rates ... with the C13 rate and then increase the current C13 rates by 50% of the difference between that rate and the next highest rate'*.<sup>48</sup>

47. The union's submission is, in substance, the same as the primary position it has advanced. For the reasons set out in section 4 of this submission, it should be rejected. Plainly, there is no evidence before the Commission about the value of any of the work contemplated by clause A.1, as extracted above. The same can be said of the work described by clause A.2, in respect of *'Level 2'*, for which the award prescribes the C13 rate.

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<sup>45</sup> Clause A.1 of the Concrete Products Award.

<sup>46</sup> Statement at [19].

<sup>47</sup> Statement at [20].

<sup>48</sup> AWU submission dated 3 November 2023 at [45].

48. In the alternate, the union indicates that it is '*content to maintain the position*' previously reached between the parties, provided that:
- (a) The new C14 classification level is limited to employees with up to 76 hours' experience in the industry.<sup>49</sup>
  - (b) The '*standard rate*', which is used for the purposes of calculating certain allowances, should be increased from the C13 rate, rather than the C14 rate.<sup>50</sup>
  - (c) The implementation of the proposed variations should not be transitional or delayed.<sup>51</sup>
49. Ai Group opposes each of the above propositions.
50. There is no evidence before the Commission that might establish that 76 hours of experience in the industry would be sufficient, for the purposes of enabling an employee to perform the work contemplated at the extant '*Level 1*'. Prior to implementing such a timeframe, the Commission would need to be satisfied that it is appropriate, taking into account the nature of the work contemplated at the following classification level. There is no such material before the Commission.
51. The union has not articulated a purported justification for increasing the standard rate and, by extension, various allowances payable under the award. Further, there is no apparent basis for adopting the union's proposal. In the circumstances, it should plainly be dismissed.
52. Finally, we refer to the concluding section of this submission, in which we address the need for further consideration to be given to the implementation of transitional arrangements and / or the delayed commencement of variations made to awards in these proceedings.

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<sup>49</sup> AWU submission dated 3 November 2023 at [47](a).

<sup>50</sup> AWU submission dated 3 November 2023 at [47](b).

<sup>51</sup> AWU submission dated 3 November 2023 at [47](c).

53. The union's proposal would:

- (a) Not be fair to employers;<sup>52</sup>
- (b) Not promote the efficient and productive performance of work;<sup>53</sup>
- (c) Adversely affect employers, including in respect of productivity and employment costs;<sup>54</sup> and
- (d) Be inconsistent with the need to ensure a stable modern awards system.<sup>55</sup>

54. Therefore, the union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

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<sup>52</sup> Section 134(1) of the Act.

<sup>53</sup> Section 134(1)(d) of the Act.

<sup>54</sup> Section 134(1)(f) of the Act.

<sup>55</sup> Section 134(1)(g) of the Act.

## 8. THE CORRECTIONS AWARD (CATEGORY II)

55. The Corrections Award prescribes a minimum hourly rate that is less than the C13 rate in respect of *'catering employees'* classified at the *'introductory level'*.<sup>56</sup> Such employees are defined as follows:

### C.1 Introductory level

In respect of all classification streams, introductory level means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to 3 months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of 3 months from entry, an employee will move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to 3 months is required for the employee to achieve competence for movement to level 1.<sup>57</sup>

56. The United Workers' Union (**UWU**) seeks the deletion of the underlined portion of the clause above. It proposes that it should be replaced with the following:

An employee will progress from the introductory level to level 1 after 3 months.<sup>58</sup>

57. Ai Group opposes the UWU's claim.
58. Apart from expressing support for the Commission's Provisional View, the UWU has not advanced any material in support of its proposal. There is, as a result, nothing before the Commission that purports to justify the variation proposed. Plainly a case has not been made out for the variation sought. On that basis alone, the union's claim should fail.
59. In addition, the proposed variation should not be made for the following reasons:
- (a) The award provides that an employee will transition to Level 1 after three months, unless agreement is reached between the employer and employee that the employee will remain classified at the *'introductory level'* whilst they receive up to an additional three months' training. It does not allow an employer to unilaterally decide to extend the period over which an

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<sup>56</sup> Clause 15.1(b) of the award.

<sup>57</sup> Clause C.1 of the award.

<sup>58</sup> UWU submission dated 10 November 2023 at [10].

employee can be classified at Level 1. This is an important and meaningful safeguard. There is no evidence that this has applied to employees unfairly or inappropriately.

- (b) The award does not contemplate a second extension to the initial three month period. This is another important safeguard.
- (c) The definitions for the following classification levels (i.e. *'food and beverage attendant grade 1'*,<sup>59</sup> *'kitchen attendant grade 1'*,<sup>60</sup> *'cook grade 1'*,<sup>61</sup> or *'storeperson grade 1'*<sup>62</sup>), contemplate the performance of work that would, on its face, require the employee to have specific training and / or to demonstrate relevant competencies. For example, the relevant classification descriptors include:
  - (i) *'setting up and/or wiping down tables'*,<sup>63</sup>
  - (ii) *'assembling and preparing ingredients for cooking'*,<sup>64</sup>
  - (iii) *'[receiving] and [storing] general and perishable goods'*.<sup>65</sup>

Accordingly, it would not be appropriate for the award to require that employees be reclassified to the next level after three months of training, with nothing more. It may result in situations whereby an employee classified at the following level is not in fact competent to perform the work contemplated by the relevant classification definition.

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<sup>59</sup> Clause C.2.1 of the Corrections Award.

<sup>60</sup> Clause C.3.1 of the Corrections Award.

<sup>61</sup> Clause C.3.4 of the Corrections Award.

<sup>62</sup> Clause C.4.1 of the Corrections Award.

<sup>63</sup> Clause C.2.1 of the Corrections Award.

<sup>64</sup> Clause C.3.1 of the Corrections Award.

<sup>65</sup> Clause C.4.1 of the Corrections Award.

60. The proposed variation:

- (a) Would not be fair to employers;<sup>66</sup>
- (b) Would not promote the efficient and productive performance of work,<sup>67</sup> and
- (c) Would adversely affect employers, including in respect of productivity and employment costs.<sup>68</sup>

61. The UWU's claim should be dismissed.

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<sup>66</sup> Section 134(1) of the Act.

<sup>67</sup> Section 134(1)(d) of the Act.

<sup>68</sup> Section 134(1)(f) of the Act.

## 9. THE COTTON AWARD (CATEGORY V)

62. The Cotton Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified as 'CG1'.<sup>69</sup> The award defines such employees as follows:

Employees at this level:

(a) are general workers involved in the cleaning of the yard and gin, general delivery work or manual labour; and

(b) require minimal training or experience to competently function in the role.<sup>70</sup>

63. The AWU argues that employees should remain at the existing rate *'for a very short period, for example, a maximum of 16 hours' work in the industry'*.<sup>71</sup> This proposition should not be accepted, for the reasons that follow.

64. *First*, the proposed variation would need to be justified by work value reasons. For the reasons set out in section 4 of this submission, it should not be adopted.

65. *Second*, it would inappropriately result in the compression of internal wage relativities. The differential between the minimum rate prescribed for CG1 and CG2 would be reduced from \$1.13 to \$0.73.

66. *Third*, the Commission cannot be satisfied that it would be appropriate for an employee's rate to increase after a period of 16 hours, or any other specific time period. There is no material before the Commission in this regard.

67. *Fourth*, the award requires the payment of a disability allowance of \$33.06 per week, to all employees.<sup>72</sup> It is an *'all purpose'* allowance and therefore, it is *'included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties, loadings or payment while they are on annual leave'*.<sup>73</sup>

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<sup>69</sup> Clause 17.1 of the Cotton Award.

<sup>70</sup> Clause 13.1 of the Cotton Award.

<sup>71</sup> AWU submission dated 3 November 2023 at [113].

<sup>72</sup> Clause 19.2(b) of the award.

<sup>73</sup> Clause 19.2(a) of the award.

68. Once the disability allowance is added to the minimum hourly rate prescribed by the award for 'CG1', an employee is entitled to \$23.70 per hour. This is more than the C13 rate (i.e. \$23.23).
69. In the circumstances, the Cotton Award should not be subject to the Review. For all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.
70. *Fifth*, the proposed variation:
- (a) Would not be fair to employers;<sup>74</sup>
  - (b) Would not promote the efficient and productive performance of work;<sup>75</sup> and
  - (c) Would adversely affect employers, including in respect of productivity and employment costs<sup>76</sup>.
71. The AWU's claim should be dismissed.

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<sup>74</sup> Section 134(1) of the Act.

<sup>75</sup> Section 134(1)(d) of the Act.

<sup>76</sup> Section 134(1)(f) of the Act.

## 10. THE ELECTRICAL CONTRACTING AWARD (CATEGORY V)

72. The Electrical Contracting Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at '*electrical worker grade 1*'.<sup>77</sup> Such an employee is defined as follows:

### A.2.1 Electrical worker grade 1

An Electrical worker grade 1 is a labourer not otherwise provided for in this award, who is doing labouring work and employed as such.<sup>78</sup>

73. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union (**CEPU**) and AWU seek an increase to the minimum hourly rate payable to grade 1 employees from \$22.93 per hour to the C13 rate.<sup>79</sup>

74. Ai Group opposes the unions' claim, for the following reasons.

75. The unions are, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation *only* if it is satisfied that it is justified by '*work value reasons*'.<sup>80</sup> Work value reasons are reasons related to any of the following:

- (d) The nature of the work;
- (e) The level of skill and responsibility involved in doing the work; and
- (f) The conditions under which the work is done.<sup>81</sup>

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<sup>77</sup> Clause 16.2 of the Electrical Award.

<sup>78</sup> Clause A.2.1 of the Electrical Award.

<sup>79</sup> CEPU submission dated 3 November 2023 at [10] and AWU submission dated 3 November 2023 at [116].

<sup>80</sup> Section 157(2)(a) of the Act.

<sup>81</sup> Section 157(2A).

76. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the unions is justified based on work value reasons. In the circumstances, it does not have power to grant the unions' claim.
77. On this basis alone, the claim should fail. We advance the following arguments in the alternate.
78. *First*, the proposed variation would inappropriately compress internal wage relativities. A differential of a mere \$0.47 would remain between the minimum wages prescribed for 'electrical worker grade 1' and 'electrical worker grade 2'.
79. *Second*, the award requires the payment of an industry allowance of \$36.82 per week, to all employees.<sup>82</sup> It is an 'all purpose' allowance and therefore, it is 'included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings including payments for overtime, payments while they are on all forms of paid leave, public holidays and pro rata payments on termination'.<sup>83</sup>
80. Once the industry allowance is added to the minimum hourly rate prescribed by the award for 'electrical worker grade 1', an employee is entitled to \$23.90 per hour. This is more than the C13 rate (i.e. \$23.23).
81. In the circumstances, the Electrical Contracting Award should not be subject to the Review. For all purposes under the award, employees are entitled to a rate that exceeds the C13 rate.
82. *Third*, at paragraph [8] of its submission, the CEPU argues that '[a]dult [a]pprentices currently in 2<sup>nd</sup> year to 4<sup>th</sup> year under the Electrical [Contracting] Award are earning less than the national minimum wage because their base rate of pay is tied to the classification of an Electrical Worker Grade 1'.

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<sup>82</sup> Clause 18.3(a) of the award.

<sup>83</sup> Clause 18.2(a) of the award.

83. We do not understand this submission. Adult apprentices' minimum wages are prescribed by clauses 16.4(b)(ii) and 16.4(b)(v). They are calculated by reference to the minimum hourly rate prescribed for '*electrical worker grade 5*' (not grade 1). The rates payable pursuant to these clauses all exceed the national minimum wage (i.e. \$23.23).<sup>84</sup>
84. *Fourth*, in its decision concerning the Annual Wage Review 2022 – 2023, the Expert Panel observed that the C14 rate '*was only ever intended to constitute a transitional entry rate for new employees*'<sup>85</sup>. In our submission, this was clearly not true in respect of the electrical contracting industry.
85. The *National Electrical, Electronic and Communications Contracting Industry Award 1998*<sup>86</sup> prescribed a minimum wage that was only slightly higher than the C14 rate (and materially lower than the C13 rate) in relation to the lowest classification level ('*Electrical Worker Grade 1*'). An employee could be classified indefinitely at that level, as a labourer. It did not contemplate transitioning to the next level.<sup>87</sup>
86. Thus, the modern award reflects the longstanding position in relation to this sector. The material before the Commission does not justify departing from this approach.
87. *Fifth*, the proposed variation:
- (a) Would not be fair to employers;<sup>88</sup>
  - (b) Would not promote the efficient and productive performance of work;<sup>89</sup>

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<sup>84</sup> Clause B.4.1 of the award.

<sup>85</sup> *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [8].

<sup>86</sup> AP791396CRV.

<sup>87</sup> Clause 15.1 of the award.

<sup>88</sup> Section 134(1) of the Act.

<sup>89</sup> Section 134(1)(d) of the Act.

- (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>90</sup> and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>91</sup>

88. The unions' claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

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<sup>90</sup> Section 134(1)(f) of the Act.

<sup>91</sup> Section 134(1)(g) of the Act.

## 11. THE FOOD MANUFACTURING AWARD (CATEGORY V)

89. The Food Manufacturing Award prescribes a minimum rate that is less than the C13 rate for employees classified at Level 1.<sup>92</sup> The award defines such employees as follows: (emphasis added)

### A.2.1 Level 1 (78% relativity to the tradesperson)

- (a) An employee at Level 1 has less than 3 months' experience in the industry or enterprise and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. Provided that the length of service required to advance to Level 2 for a seasonal employee is 4 weeks and for a casual employee is 152 hours.

### (b) Competencies

An employee at Level 1 performs general duties essentially of a manual nature, and:

- (i) exercises minimal judgment;
- (ii) works under direct supervision; and
- (iii) is undertaking up to 38 hours' induction training 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.<sup>93</sup>

90. The classification description for an employee at Level 2 is framed as follows: (emphasis added)

### A.2.2 Level 2 (82% relativity to the tradesperson)

- (a) An employee at Level 2 is an employee who has either:
- (i) completed a structured induction program over 3 months or for such shorter period as is necessary to reach the required level of competency for appointment to Level 2; or
  - (ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

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<sup>92</sup> Clause 14.1(a) of the Food Manufacturing Award.

<sup>93</sup> Clause A.2.1 of the Food Manufacturing Award.

**(b) Competencies**

An employee at Level 2 performs a range of general duties essentially of a manual nature and to the level of the employee's competency, and:

- (i) exercises limited judgment;
- (ii) works under direct supervision;
- (iii) is undertaking structured training to enable the employee to work at Level 3.

91. An employee classified at Level 1 has less than three months' experience in the industry or enterprise and does not possess experience and / or skills that are sufficient for appointment to Level 2 or above. If an employee has three or more months of experience in the industry, or if they have experience or skills that warrant their classification at Level 2 or higher, the employee cannot be classified at Level 1.

**The AMWU's Position**

92. In its submissions, the AMWU states that it is its preference that the '*Level 1 classification be deleted in its entirety*'.<sup>94</sup>

93. If the Level 1 classification level was deleted from the award, it appears that employees who meet the existing classification description, and who cannot properly be classified at Level 2 or higher, would no longer be covered by the award. Relevantly, clause 4.1 describes the coverage of the award as follows: (emphasis added)

4.1 This industry award covers employers throughout Australia in the **food, beverage and tobacco manufacturing industry** and their employees in the classifications in this award to the exclusion of any other modern award.

94. We doubt that it is the union's intent to exclude such employees from the coverage of the award and in any event, it would result in an anomalous outcome.

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<sup>94</sup> AMWU submission dated 10 November 2023 at [15].

95. Further, the Commission would need to be satisfied such employees *'will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them'*.<sup>95</sup> We have not identified any other award that all such employees would be covered by.

96. Thus, the union's first proposal must fail.

97. In the alternate, the union argues that clauses A.2.1 and A.2.2 should be amended as follows:

#### **A.2.1 Level 1 (78% relativity to the tradesperson)**

(a) An employee at Level 1 has less than 3 months' experience (or 152 ordinary hours experience for a seasonal or casual employee) in the industry or enterprise and does not possess recognised enterprise or industrial or prior learning experience and/or skills sufficient for appointment to Level 2 or above. ~~Provided that the length of service required to advance to Level 2 for a seasonal employee is 4 weeks and for a casual employee is 152 hours.~~

#### **(b) Competencies**

An employee at Level 1 performs general duties essentially of a manual nature, and:

- (e) exercises minimal judgment;
- (ii) works under direct supervision; and
- (iii) is undertaking up to 38 hours' induction training 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.

#### **A.2.2 Level 2 (82% relativity to the tradesperson)**

- (a) An employee at Level 2 is an employee who has either:
- (i) completed a structured induction program ~~over 3 months or for such shorter period as is necessary~~ to reach the required level of competency for appointment to Level 2; or
  - (ii) has recognised enterprise or industrial experience, training or prior learning experience or skills to Level 2.

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<sup>95</sup> Section 163(1) of the Act.

**(b) Competencies**

An employee at Level 2 performs a range of general duties essentially of a manual nature and to the level of the employee's competency, and:

- (i) exercises limited judgment;
- (ii) works under direct supervision;
- (iii) is undertaking structured training to enable the employee to work at Level 3.

98. The proposals are advanced on the following bases:

- 13. The AMWU notes that the Level 1 Classification of this Award requires that an "employee is undertaking up to 38 hours' induction training ..."
- 14. However the Award provides that the transition from Level 1 to Level 2 can take up to 3 months. This provides an internal contradiction with Level 1 where seasonal and casual employees qualify for level 2 after 4 weeks or 152 hours respectively. The AMWU does not support this provision, given that the induction training is up to 38 hours long. Further, the progression to a higher level should be on completion of induction training, not based on an arbitrary time frame.<sup>96</sup>

99. To the extent that the union argues that clauses A.2.1 and A.2.2 are inconsistent; we disagree. It is tolerably clear that an employee may be classified at Level 2 once they have completed structured training, which may take up to 3 months, as necessary, to ensure that they are competent to be appointed to Level 2. In the alternate, an employee may be eligible for classification at Level 2 by virtue of clause A.2.2(a)(ii). An employee is not automatically eligible for classification at Level 2 once they complete the 38 hours' induction training mentioned at clause A.2.1(b)(iii).

100. We also refer to and rely on our submissions at section 3.

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<sup>96</sup> AMWU submission dated 10 November 2023 at [13] – [14].

## 12. THE HORTICULTURE AWARD (CATEGORY V)

101. Employees may be classified at Level 1 under the Horticulture Award on an ongoing and indefinite basis. Level 1 is defined by the award as follows:

### A.1 Level 1

**A.1.1 Level 1 employee** means an employee classified in accordance with the following criteria:

#### A.1.2 General description

An employee at this level:

- undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, work health and safety, equal employment opportunity and quality control/assurance;
- performs routine duties essentially of a manual nature and to the level of their training;
- exercises minimal judgment;
- works under direct supervision;
- is responsible for the quality of their own work;
- is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.

#### A.1.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- performing general labouring duties;
- fruit or vegetable picking, thinning or pruning;
- operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- performing a range of housekeeping tasks in premises and grounds;
- sorting, packing or grading of produce where this requires the exercise of only minimal judgment;
- performing basic recording functions related to work performed at this level;

- providing assistance within the scope of this level to other employees as required;
- undertaking structured training so as to enable advancement to Level 2.<sup>97</sup>

102. The minimum hourly rate prescribed by the award for such employees equates to the C14 rate.<sup>98</sup>

103. It is the AWU's primary position that the minimum rate payable to Level 1 employees should be uplifted to the C13 rate and that, by extension, the minimum rate payable to Level 2 employees should also be increased.<sup>99</sup> We oppose the union's claim for the reasons set out in section 4 of this submission.

104. The variation can be made only if the Commission is satisfied that the minimum wage increases sought are justified by work value reasons. The material before the Commission falls well short of this threshold. Large parts of the evidence relied upon by the union do not go to the question of work value at all. The same can be said of its submissions.<sup>100</sup> Rather, it makes various assertions about the characteristics of employees (and, to some extent, employers) in the horticulture industry. It lacks a detailed examination of the nature of the relevant work, the level of skill and responsibility involved in doing the work or the conditions under which the work is done.<sup>101</sup> Further, there is an absence of any analysis that might establish that the existing rates do not properly reflect the value of the work.

105. The grant of the claim would also inappropriately compress internal wage relativities. This raises the spectre of claims for wage increases in relation to higher classification levels and potential wage creep. This can already be seen to some extent in the union's claim to increase the Level 2 rate, for the purposes of ensuring that it remains higher than the Level 1 rate.<sup>102</sup>

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<sup>97</sup> Clause A.1 of the Horticulture Award.

<sup>98</sup> Clause 15.1(a) of the Horticulture Award.

<sup>99</sup> AWU submission dated 3 November 2023 at [9] and [11].

<sup>100</sup> For example, AWU submission dated 3 November 2023 at [9]0.

<sup>101</sup> Section 157(2A) of the Act.

<sup>102</sup> AWU submission dated 3 November 2023 at [11].

106. We also oppose the AWU's proposal in the alternate, which is to '*vary the classification structure in Schedule A to ensure that employees progress to Level 2 automatically, after completing 76 hours' of work in the industry*'.<sup>103</sup> The proposed variations seek to indirectly achieve an increase to the minimum wage payable to employees and as such, they should also not be granted in the absence of established work value reasons.

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<sup>103</sup> AWU submission dated 3 November 2023 at [14].

## 13. THE JOINERY AWARD (CATEGORY V)

107. The Joinery Award prescribes a minimum hourly rate that is less than the C13 rate in respect of employees classified at Level 1.<sup>104</sup> The award contains the following classification descriptor:

### A.1.1 Level 1 [relativity to Level 5—78%]

- (a) An employee at this level will undertake up to 38 hours induction training which may include information on the company, 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) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
  - (i) performs work as directed;
  - (ii) performs routine duties essentially of a manual and repetitive nature;
  - (iii) is responsible for the quality of their own work subject to direct supervision;
  - (iv) works in a safe manner so as not to injure themselves or other employees;
  - (v) is able to solve basic problems associated with their work;
  - (vi) while undertaking structured training performs work within the scope of that training subject to safety and training requirements.
- (c) Indicative of the tasks which an employee at this level may perform are the following:
  - (i) general labouring and cleaning duties from written or verbal instructions;
  - (ii) assistance to other employees at this or other skill levels within their level of skill and training;
  - (iii) other tasks as directed in accordance with their level of skill and training.
- (d) Level 1 includes the following occupations:
  - (i) General hand.
  - (ii) Factory hand.

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<sup>104</sup> Clause 19.1 of the Joinery Award.

108. An employee can plainly be classified at Level 1 on an ongoing or indefinite basis. It expressly refers to the ‘occupations’ of ‘general hand’ and ‘factory hand’.<sup>105</sup> Whilst an employee classified at Level 1 ‘will undertake up to 38 hours induction training’<sup>106</sup>, the above clause also expressly states that an employee at this level performs ‘routine duties essentially of a manual nature’<sup>107</sup>. Further, it describes various indicative tasks that may be performed at Level 1.<sup>108</sup>
109. Despite this, the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) argues that an employee can be classified at Level 1 only whilst they undertake 38 hours of induction training and that to the extent that there is any doubt about this, the award should be amended to make this clear.<sup>109</sup> So far as the union relies on the *Metal Industry Award 1984*<sup>110</sup>, we refer to [9] – [15] of the November Submission.
110. The union proposes the following variations to ‘clarify’ the operation of the award:

#### **A.1.1 Level 1 [relativity to Level 5—78%]**

- (a) This level only applies to new employees. An employee at this level will undertake up to 38 hours induction training which may include information on the company, 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. Upon completion of the induction training a new employee will transition to level 2.
- (b) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
- ...
- (c) Indicative of the tasks which an employee at this level may perform are the following:
- ...

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<sup>105</sup> Clause A.1.1 of the Joinery Award.

<sup>106</sup> Clause A.1.1(a) of the Joinery Award.

<sup>107</sup> Clause A.1.1(b) of the Joinery Award.

<sup>108</sup> Clause A.1.1(c) of the Joinery Award.

<sup>109</sup> CFMMEU – Construction and General Division submission dated 3 November 2023 at [13] and [16].

<sup>110</sup> CFMMEU – Construction and General Division submission dated 3 November 2023 at [12].

(d) Level 1 includes the following occupations:

- (i) General hand.
- (ii) Factory hand.

#### **A.1.2 Level 2 [relativity to Level 5—82%]**

- (a) An employee to be classified at this level will have completed the required induction training or will have equivalent skills gained through work experience in accordance with the prescribed standards for this level. ~~In all cases the employee will be required to satisfactorily complete a competency assessment to enable the employee to perform work within the scope of this level.~~
- (b) An employee at this level performs work above and beyond the skills of an employee at Level 1 and to the level of their skill and training:
- (i) performs work as directed;
  - (ii) exercises limited discretion and utilises basic fault finding skills in the course of their work;
  - (iii) works in a safe manner so as not to injure themselves or other employees;
  - (iv) understands and undertakes basic quality control/assurance procedures subject to supervision;
  - (v) while undertaking structured training, performs work within the scope of that training subject to safety and training requirements.
- (c) Indicative of the tasks which an employee at this level may perform are the following:
- (i) repetitive fixing of pre-made components or parts of any article in predetermined ways, using basic written, spoken and/or diagrammatic instructions;
  - (ii) repetition work (including the feeding and removing of glass) on automatic, semi automatic or single purpose machines or equipment;
  - (iii) use of selected hand tools and hand operated power tools;
  - (iv) maintenance of simple records;
  - (v) manual handling skills;
  - (vi) use of hand trolleys and pallet trucks;
  - (vii) problem solving skills; and
  - (viii) handling of glass to and from cases, trucks, benches, pallets, stillages, bins, cages or racks.

(d) Subject to Schedule A.1.2 (e), Level 2 includes the following occupations:

(i) Assembler B.

(ii) Factory hand.

(iii) General hand.

(e) An employee currently classified as an Assembler B who is only required to perform the duties specified in Schedule A.1.2 must be paid in accordance with Level 2. Where such employee performs a wide range of duties including those more complex tasks identified for Level 3, then such employee must be paid in accordance with Level 3.

111. We oppose the union's claim. It would not clarify the operation of the award. Rather, it would fundamentally alter it. A case has not been made out for such change.

112. To the extent that the changes would result in '*factory hands*' and '*general hands*' being paid the Level 2 rate after completing induction training, they should be made only if justified by work value reasons. There is, however, a complete absence of any material about the value of such work. Therefore, the Commission cannot be satisfied that those variations should be granted.

## 14. THE MANUFACTURING AWARD (CATEGORY V)

113. The Manufacturing Award prescribes a rate that is less than the C13 rate in respect of employees classified at the C14 and V1 levels.<sup>111</sup>

114. Clause A.4.3 of the award describes the C14 level as follows:

### A.4.3 Wage Group: C14

#### (a) Engineering/Manufacturing Employee—Level I

- (i) An Engineering/Manufacturing Employee—Level I is an employee who is undertaking up to 38 hours induction training 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.
- (ii) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
  - performs general labouring and cleaning duties;
  - exercises minimal judgement;
  - works under direct supervision;
  - is undertaking structured training so as to enable them to work at the C13 level.

115. Clause B.2 describes the V1 level as follows:

### B.2 V1—Vehicle industry/production employee Level 1

**B.2.1** A Vehicle industry/production employee—Level 1 is an employee undertaking up to 38 hours' induction training 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.2.2** An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- (a) performs general labouring and cleaning duties;
- (b) exercises minimal judgment;

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<sup>111</sup> Clause 20.1(a) of the Manufacturing Award.

- (c) works under direct supervision; and
- (d) is undertaking structured training so as to enable them to work at V2 Level.

**B.2.3** Classifications at Level V1:

- Assembler, cushion and squab including spring frame
- Dipper solder or tin
- Degreaser at liquid or vapour bath
- Electroplater—3rd class
- Garage attendant
- Greaser and/or oiler
- Grinder using fixed gear
- Heat treat attendant—first 3 months
- Janitor and/or convenience attendant
- Machinist (metal)—3rd class
- Packer other than as defined
- Paster trim
- Paintshop assistant
- Pickler
- Plastics developer (b) second class (2) first month's experience
- Pleat stuffer
- Press operators assistant
- Shot and/or sand blast operator
- Spring coil machinist not required to set up machine
- Washer using phenyl etc.

## The AMWU's Position

116. The AMWU submits that clause A.4.3 should be deleted.<sup>112</sup>

117. If the C14 classification level was deleted from the award, it appears that employees who meet the existing classification description, and who cannot properly be classified at the C13 level or higher, would no longer be covered by the award. Relevantly, clause 4.1 describes the coverage of the award as follows: (emphasis added)

4.1 This award covers employers throughout Australia of employees in the Manufacturing and Associated Industries and Occupations who are covered by the classifications in this award and those employees.

118. We doubt that it is the union's intent to exclude such employees from the coverage of the award and in any event, it would result in an anomalous outcome.

119. Further, the Commission would need to be satisfied such employees '*will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them*'.<sup>113</sup> We have not identified any other award that all such employees would be covered by.

120. Thus, the union's first proposal must fail.

121. In the alternate, the AMWU proposes the following amendments to clause A.4.4, which describes the C13 level:

### A.4.4 Wage Group: C13

#### (a) Engineering/Manufacturing Employee—Level II

(i) An Engineering/Manufacturing Employee—Level II is an employee who has ~~completed up to 3 months~~;

a. Previously completed a structured training of at least three months duration or has equivalent experience in manufacturing;  
or

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<sup>112</sup> AMWU submission dated 10 November 2023 at [17].

<sup>113</sup> Section 163(1) of the Act.

b. Completed the induction training program for the workplace

so as to enable the employee to perform work within the scope of this level.

- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
  - works under direct supervision either individually or in a team environment;
  - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
  - understands and utilises basic statistical process control procedures;
  - follows safe work practices and can report workplace hazards.

122. The union says that its proposed amendments are '*designed to ensure that the time periods are not seen as a qualifying time to progress to the C13 level, but a situation where it is appropriate to bypass the C14 level*'.<sup>114</sup>

123. We oppose the union's proposed amendments. They would:

- (a) Permit an employee to be classified at C13 once they have completed their induction training, irrespective of whether they have '*completed up to 3 months' structured training so as to enable the employee to perform work within the scope of*' the C13 level, as currently required by clause A.4.4(a)(i).
- (b) By extension, render the proposed clause A.4.4(a)(i)a. redundant, where induction training has been completed.

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<sup>114</sup> AMWU submission dated 10 November 2023 at [17].

124. We acknowledge that the concluding words of the provision (*'... so as to enable the employee to perform work within the scope of this level.'*) may be intended to limit the scope of clause A.4.4(a) to circumstances in which the training in fact results in an employee having the competencies required to perform work at the C13 level; however, this is not clear. On one view, those words go to the purpose or design of the training, as opposed to whether an employee is in fact able to perform work at the higher level after completing the training.
125. It is not clear whether the proposed changes would have the effect of requiring that an employee who has undertaken 38 hours of induction training *must* be classified at Level 2, or whether the award would continue to permit the classification of employees at the C14 level on an ongoing basis. We assume that the union's intent is consistent with the former proposition. We oppose any such variation for the reasons set out at section 3 of this submission.
126. In respect of the vehicle manufacturing stream, the AMWU proposes that clause B.3.1 be varied as follows:

### **B.3 V2—Vehicle industry/production employee Level 2**

**B.3.1** A Vehicle industry/production employee—Level 2 is an employee who has:

- (i) Completed the induction training program for the workplace; or
- (ii) Has previously met the requirements of the Certificate I in Automotive Manufacturing (AUM10113), or equivalent.

**B.3.2** An employee at this level performs work above and beyond the skills of an employee at Level V1 and to the level of their training:

- (a) works under direct supervision either individually or in a team environment;
- (b) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults; and
- (c) understands and utilises basic statistical process control procedures.

**B.3.3** Indicative of the tasks which an employee at this level may perform are the following:

- (a) repetition work on automatic, semiautomatic or single purposes machines or equipment;

- (b) assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- (c) basic soldering or butt and spot welding skills or cuts scrap with oxyacetylene blow pipe;
- (d) uses selected hand tools;
- (e) boiler cleaning; and
- (f) maintains simple records.

**B.3.4** Classifications at Level V2:

...

127. We oppose the union's claim.

128. Currently, the V2 level is confined to employees who have '*met the requirements of the Certificate I in Automotive Manufacturing (AUM10113), or equivalent*'.<sup>115</sup> An employee who has not completed this training could not be classified at the V2 level. The union's proposal seeks to subvert this requirement in its entirety, by rendering any employee who has completed induction training eligible to be classified as Level V2, irrespective of whether they have gained the competencies required to perform the work contemplated at the V2 level.

129. Both categories of variations proposed by the AMWU would:

- (a) Be inconsistent with the need to ensure that the safety net is fair from the perspective of both employers and employees;<sup>116</sup>
- (b) Be inconsistent with the need to promote flexible modern work practices and the efficient and productive performance of work;<sup>117</sup>
- (c) Have an adverse impact on business, including on productivity and employment costs;<sup>118</sup>

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<sup>115</sup> Clause B.3.1 of the Manufacturing Award.

<sup>116</sup> Section 134(1) of the Act.

<sup>117</sup> Section 134(1)(d) of the Act.

<sup>118</sup> Section 134(1)(f) of the Act.

- (d) Not be consistent with the need to ensure a stable awards system;<sup>119</sup>
- (e) Not be necessary to ensure that the Manufacturing Award achieves the modern awards objective;<sup>120</sup>
- (f) Inappropriately compress internal wage relativities; and
- (g) On the material before the Commission, not be justified by work value reasons.<sup>121</sup>

130. We also refer to and rely on section 3 of this submission.

131. The union's claims should therefore be rejected.

### **The AWU's Position**

132. The AWU argues that the C14 and V1 levels should apply only in respect of the first 38 hours of induction training.<sup>122</sup> For the reasons set out above in section 3 of this submission, this submission should be dismissed.

### **The CFMMEU's Position**

133. The CFMMEU also contends that the C14 level should apply only for the first 28 hours of induction training.<sup>123</sup> We refer to and rely on the above submission in support of our position that this contention should be dismissed.

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<sup>119</sup> Section 134(1)(g) of the Act.

<sup>120</sup> Section 138 of the Act.

<sup>121</sup> Sections 157(2) and 157(2A) of the Act.

<sup>122</sup> AWU submission dated 3 November 2023 at [91] – [92].

<sup>123</sup> CFMMEU Manufacturing Division submission dated 9 November 2023 at [17].

## 15. THE MEAT AWARD (CATEGORY IV)

134. The Meat Award prescribes a minimum rate that is less than the C13 rate in respect of employees classified as *'Meat Industry Level 1'*.<sup>124</sup> The award defines such employees as follows: (emphasis added)

### 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.<sup>125</sup>

135. The classification descriptors describe employees at *'Meat Industry Level 2'* and higher by reference to indicative tasks.

136. The Australian Meat Industry Employees' Union (**AMIEU**) proposes that the level 1 classification and corresponding minimum rate should be deleted from the award.<sup>126</sup> In the alternate, it contends that the award should be varied such that an employee cannot be classified at level 1 for more than one week.<sup>127</sup>

137. On the other hand, the Australian Meat Industry Council (**AMIC**) has proposed the following amendments to clause A.3.1 of the award:

### A.3.1 Meat Industry Level 1

An employee at this level will be a person with no experience in the industry (or less than 3 months continuous experience in the preceding 5 years) undergoing on-the-job training for no longer than six months ~~an initial period of at least 3 months~~.<sup>128</sup>

138. Ai Group opposes the AMIEU's claims, for the reasons that follow.

139. *First*, the award is expressed to cover employers in the *'meat industry'*, as defined, *'and their employees in classifications in Schedule A'*. If the Level 1 classification was deleted from the award, it appears that employees undergoing on-the-job training, who are not performing any of the indicative tasks described by the other classification descriptors, would no longer be covered by the award.

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<sup>124</sup> Clause 16.1 of the Meat Award.

<sup>125</sup> Clause A.3.1 of the Meat Award.

<sup>126</sup> AMIEU submission dated 10 November 2023 at [6].

<sup>127</sup> AMIEU submission dated 10 November 2023 at [7].

<sup>128</sup> AMIC submission dated 3 November 2023 at page 4.

We doubt that this is the union's intent and in any event, it would result in an anomalous outcome.

140. Further, the Commission would need to be satisfied such employees '*will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them*'.<sup>129</sup> We have not identified any other award that all such employees would become covered under.

141. Thus, the union's first proposal must fail.

142. *Second*, we do not agree that the maximum period of one week proposed by the union reflects '*the amount of on-the-job training that new employees typically receive*'.<sup>130</sup> This is unsurprising, given that the award expressly contemplates that employees at Level 1 will receive '*at least*' three months of initial on-the-job training. The Commission should proceed on the basis that, *prima facie*, employees classified at Level 1 receive no less than three months' training. In addition to the text of the award, this is supported by the evidence advanced by AMIC.

143. *Third*, the union argues that the tasks undertaken at Levels 2 and 3 are '*generally straightforward, routinised, and not overly complex*'.<sup>131</sup> It submits that at Level 1, employees '*are being trained for basic labouring and packing roles in the industry*'<sup>132</sup> and that '*typically*', after completing '*standard workplace inductions*' at Level 1, employees are classified at Level 3, whilst some will be classified at Level 2.

144. It is clear from the terms of the award that Level 1 is not confined to '*induction training*'. That is, it is not confined to training that relates to information about the workplace, basic health and safety matters, introductions to co-workers, workplace policies and procedures etc. Rather, it is described as applying where a person is undergoing '*on-the-job training*'.

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<sup>129</sup> Section 163(1) of the Act.

<sup>130</sup> AMIEU submission dated 10 November 2023 at [7].

<sup>131</sup> AMIEU submission dated 10 November 2023 at [20].

<sup>132</sup> AMIEU submission dated 10 November 2023 at [10].

145. In our submission, an employee is to be classified at Level 1 whilst they are undergoing training to perform substantive tasks (i.e. the indicative tasks identified in the award's classification structure), that require some skill, knowledge and / or experience. Such training may include more experienced members of staff demonstrating how certain work is to be undertaken, health and safety training that is specific to the relevant work and the new employee performing the work under close supervision.
146. Moreover, self-evidently, on-the-job training may not be limited to '*basic labouring and packing roles*'. The Level 2 and Level 3 classification descriptors contemplate a range of other indicative tasks that involve skilled work. In that context, the union has not made out a case for limiting the application of Level 1 to one week.
147. *Fourth*, the union's case appears to proceed on the basis that an employee's on-the-job training is complete once they are able to perform the relevant work to any degree, including under close supervision. An important distinction must, however, be made between an employee having basic competencies *vis-à-vis* being able to competently perform a specific task, such that they are no longer undergoing on-the-job-training. The union's approach overlooks the latter proposition. Rather, it inappropriately assumes that once an employee exhibits an elementary ability to perform the relevant work, their on-the-job training will necessarily be complete and therefore, they should be classified at a higher level.
148. *Fifth*, the union alleges that some employers '*treat three months as the default period on which to remain at the introductory level rate*'.<sup>133</sup> We would first observe that the evidence before the Commission does not establish that any such practice is widespread or commonplace. In any event, if an employer inappropriately classifies an employee at Level 1 in circumstances where they are not receiving '*on-the-job training*', there exist various mechanisms for this to be disputed, including through the dispute resolution procedure prescribed by

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<sup>133</sup> AMIEU submission dated 10 November 2023 at [21].

the award.<sup>134</sup> This does not, of itself, justify the variations proposed by the union to the award.

149. *Sixth*, the material filed by AMIC focuses on the emphasis placed on workplace health and safety in the meat industry. In addition to the nature of the work described at Levels 2 and 3 in the award, these safety-related concerns demonstrate the need to ensure that employees receive a sufficient period of training. A period of one week would not be satisfactory in this context.

150. Finally; in respect of the proposal advanced by AMIC, it is Ai Group's position that the proposed variation is not necessary in the relevant sense; however, we acknowledge that if it were adopted in lieu of the AMIEU's proposals, that would in large part allay our concerns.

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<sup>134</sup> Clause 34 of the Meat Award.

## 16. THE NURSES AWARD (CATEGORY IV)

151. The Nurses Award prescribes a minimum hourly rate that is less than the C13 rate in respect of *‘student enrolled nurses – other than aged care employees’*, who are less than 21 years of age.<sup>135</sup> A *‘student enrolled nurse’* is defined as a *‘student undertaking study to become an enrolled nurse’*.<sup>136</sup> This involves completing a Diploma in Nursing, which typically requires a period of 18 months to two years.

152. The UWU submits that the minimum rate prescribed by the award for student enrolled nurses should be increased to the C13 rate. It argues that this would *‘avoid the need to amend the subsequent classification levels by removing or varying the’* extant requirements that must be satisfied in order for an employee to be classified at a higher level.<sup>137</sup> The union has not advanced any other material in support of its submission.

153. Ai Group opposes the UWU’s claim, for the following reasons.

154. The union is, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by *‘work value reasons’*.<sup>138</sup> Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work; and
- (c) The conditions under which the work is done.<sup>139</sup>

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<sup>135</sup> Clause 15.3(b)(i) of the Nurses Award.

<sup>136</sup> Clause A.3 of the Nurses Award.

<sup>137</sup> UWU submission dated 10 November 2023 at [6].

<sup>138</sup> Section 157(2)(a) of the Act.

<sup>139</sup> Section 157(2A).

155. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the union is justified based on work value reasons. In the circumstances, it does not have power to grant the union's claim.

156. On this basis alone, the claim should fail. Further, the proposed variation:

- (a) Would not be fair to employers;<sup>140</sup>
- (b) Would not promote the efficient and productive performance of work;<sup>141</sup>
- (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>142</sup> and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>143</sup>

157. The UWU's claim should therefore be dismissed.

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<sup>140</sup> Section 134(1) of the Act.

<sup>141</sup> Section 134(1)(d) of the Act.

<sup>142</sup> Section 134(1)(f) of the Act.

<sup>143</sup> Section 134(1)(g) of the Act.

## 17. THE OIL MANUFACTURING AWARD (CATEGORY IV)

158. The Commission's Statement identified that the Oil Manufacturing Award prescribes a minimum weekly rate for '*refinery operations – trainee operator (level 1)*' that is less than the weekly C13 rate.<sup>144</sup>
159. Unlike many other awards, the minimum hourly rate prescribed by the Oil Manufacturing Award is calculated by dividing the weekly rate by 35<sup>145</sup>, reflecting the maximum number of ordinary hours that may be worked in a week under the award. This results in a minimum hourly rate for the aforementioned classification level of \$25.08,<sup>146</sup> which exceeds the C13 rate. Noting that the Commission's Provisional View was expressed by reference to the hourly C13 rate,<sup>147</sup> the Oil Manufacturing Award falls beyond the scope of the Review and should, therefore, be excluded from the Commission's consideration.
160. In the event that our primary submission is not accepted by the Commission, we rely on the following in response to the UWU's claim.
161. The UWU submits that the minimum rate prescribed by the award for '*refinery operations – trainee operator (level 1)*' should be increased to the C13 rate. It argues that this would '*avoid the need to amend the subsequent classification levels by removing or varying the*' extant requirements that must be satisfied in order for an employee to be classified at a higher level.<sup>148</sup> The union has not advanced any other material in support of its submission.
162. Ai Group opposes the UWU's claim, for the following reasons.

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<sup>144</sup> Statement at Attachment D.

<sup>145</sup> Clause 16.1, including footnote 1.

<sup>146</sup> Clause 16.1 of the Oil Manufacturing Award.

<sup>147</sup> Statement at [8].

<sup>148</sup> UWU submission dated 10 November 2023 at [6].

163. The union is, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by ‘*work value reasons*’.<sup>149</sup> Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work;
- (c) The conditions under which the work is done.<sup>150</sup>

164. There is no material before the Commission relating to the above matters. Thus, the Commission cannot be satisfied that the increase sought by the union is justified based on work value reasons. In the circumstances, it does not have power to grant the union’s claim.

165. On this basis alone, the claim should fail. Further, the proposed variation:

- (a) Would not be fair to employers;<sup>151</sup>
- (b) Would not promote the efficient and productive performance of work;<sup>152</sup>
- (c) Would adversely affect employers, including in respect of productivity and employment costs,<sup>153</sup> and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>154</sup>

166. The UWU’s claim should therefore be dismissed.

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<sup>149</sup> Section 157(2)(a) of the Act.

<sup>150</sup> Section 157(2A).

<sup>151</sup> Section 134(1) of the Act.

<sup>152</sup> Section 134(1)(d) of the Act.

<sup>153</sup> Section 134(1)(f) of the Act.

<sup>154</sup> Section 134(1)(g) of the Act.

## 18. THE PEST CONTROL AWARD (CATEGORY III)

167. The Pest Control Award prescribes a rate that is less than the C13 rate in respect of employees classified at Level 1.<sup>155</sup> Clause 12.1(a) of the award defines an employee at Level 1 as follows:

A Level 1 employee is a person who has entered the industry with no previous experience and has yet to apply for a licence. An employee at this level has been employed in the industry for less than 6 months.

168. The Level 2 classification is defined as follows: (emphasis added)

A Level 2 employee is a person who has applied for a licence pursuant to relevant government regulation as either a Fumigator or a Pest Control Technician but has yet to be examined or licensed other than provisionally. Such an employee is presently undertaking an accredited course to obtain a pest operator's certificate.<sup>156</sup>

169. The AWU argues that clause 12.1(a) should be varied '*to ensure that employees automatically progress from the 'Level 1' classification ... after obtaining 3 months' experience in the industry (rather than the current threshold of 6 months)*'.<sup>157</sup> The union also argues that '*there should be no requirement to have applied for a licence as a Fumigator or Pest Control Technician in order to progress from Level 1 to Level 2*'.<sup>158</sup>

170. The union has not advanced any justification, or purported justification, whatsoever, for the proposed changes. Plainly, a case has not been made out for them. There is simply no material before the Commission that might support the variations or enable the Commission to assess their implications.

171. We would also observe that given that the award provides for progression to Level 2 after six months it, in effect, conforms with the Provisional View (subject to the requirement that an employee must apply for a licence) and on that basis, it should be excluded from the Review.

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<sup>155</sup> Clause 16.1 of the Pest Control Award.

<sup>156</sup> Clause 12.1(b) of the Pest Control Award.

<sup>157</sup> AWU submission dated 3 November 2023 at [118](a).

<sup>158</sup> AWU submission dated 3 November 2023 at [118](b).

## 19. THE PREMIXED CONCRETE AWARD (CATEGORY III)

172. The Premixed Concrete Award prescribes a rate that is less than the C13 rate in respect of employees classified at *'Level 1'*, by one cent. That is, the level 1 rate is \$23.22.<sup>159</sup> In addition, all employees are entitled to an all purpose industry disability allowance.<sup>160</sup> The allowance is to be included in an employee's rate of pay *'when calculating any penalties, loadings or payment while they are on annual leave'*.<sup>161</sup>

173. Employees classified at Level 1 are in effect entitled to an hourly rate for all purposes that exceeds the C13 rate (i.e. it totals \$23.97). Accordingly, the Premixed Concrete Award should be excluded from the Review.

174. Further, the award defines the Level 1 classification as follows:

An employee without industry skills, training to be a batcher, allocator, tester or plant assistant. An employee may work at this level for up to 6 months.<sup>162</sup>

175. As can be seen, an employee cannot be classified at Level 1 for more than six months. The award therefore accords with the Commission's Provisional View. This presents another reason why it should not form part of the Review.

176. In any event, the claim advanced by the AWU is without basis. It proposes that *'clause 12.4(a) should be varied to provide that an employee automatically progresses from the 'Level 1' classification ... after 3 months' experience in the industry (rather than the current 6 months of work threshold)'*. Once again, the union has not advanced any reason or potential justification for this change.

177. The union's claim should simply be rejected.

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<sup>159</sup> Clause 16.1 of the Premixed Concrete Award.

<sup>160</sup> Clause 18.2(b) of the Premixed Concrete Award.

<sup>161</sup> Clause 18.2(a) of the Premixed Concrete Award.

<sup>162</sup> Clause 12.4(a) of the Premixed Concrete Award.

## 20. THE RAIL AWARD (CATEGORY V)

178. The Rail Award prescribes a minimum hourly rate that is less than the C13 rate in respect of:

- (a) 'Level 1 Rail Worker (Op)'; and
- (b) 'Level 1 Rail Worker (TCI)'.

### Operations – Level 1

179. Level 1 in the 'Operations' stream is defined by reference to the tasks and functions that an employee may be required to perform at that level, as follows: (emphasis added)

Employees at this level undertake and successfully complete standard induction training and will be required to:

- Be responsible for personal safety and use the protective equipment provided to perform work safely.
- Undertake a range of functions with a basic knowledge of policies, procedures and guidelines using a sound level of skill to perform the functions.
- Perform routine customer service, presentation and operations duties requiring minimal judgment.
- Undertake tasks with direct supervision and guidance.<sup>163</sup>

180. The Australian Rail, Tram and Bus Industry Union (RTBU) submits that the above classification definition should be amended as follows:

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. and Employees at Level 1 will be required to:

- Be responsible for personal safety and use the protective equipment provided to perform work safely.
- Undertake a range of functions with a basic knowledge of policies, procedures and guidelines using a sound level of skill to perform the functions.

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<sup>163</sup> Schedule A to the Rail Award.

- Perform routine customer service, presentation and operations duties requiring minimal judgment.
- Undertake tasks with direct supervision and guidance.<sup>164</sup>

181. The union's claim would:

- (a) Confine the period of time within which induction training must be completed;
- (b) Mandate the reclassification of an employee to Level 2 after one month; and
- (c) Confine the circumstances in which the work contemplated at the bullet points in the above extract may be performed under the award to employees in their first month of employment, who are undertaking induction training.

182. Ai Group opposes the proposed variations.

183. Plainly, the classification descriptor for Level 1 contemplates the performance of work in addition to the satisfactory completion of induction training. The aforementioned part of Schedule A expressly states that in addition to completing such training, employees *'will be required to ... undertake a range of functions with a basic knowledge of policies, procedures and guidelines'* and to *'perform routine customer service, presentation and operations duties'*.

184. Further, the award does not require or suggest that employees are to be reclassified to Level 2 after a specified period of time or immediately after completing induction training. Tellingly, the Level 2 classification description states that employees at that level will be required to perform *'semi-skilled work'* and *'provide some supervision of staff'*.<sup>165</sup> Apart from Level 1, no other classification level in the *'Operations'* stream contemplates the performance of tasks that require minimal skills.

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<sup>164</sup> RTBU submission dated 3 November 2023 at [19].

<sup>165</sup> Schedule A to the Award.

185. To that end, we disagree with the union’s interpretation of the award.<sup>166</sup>
186. The union’s submissions and evidence proceed on the misapprehension that an employee can be classified at Level 1 only whilst they are undertaking induction training. By extension, their material focuses on the period of time required by an employee to complete induction training. It ignores, perhaps unwittingly, that an employee may be classified at Level 1 on an ongoing and indefinite basis, to perform basic, routine work.
187. A case has not been made for the variations advanced by the union. They would fundamentally change the manner in which the classification level applies. Critically, it may give rise to serious operational difficulties to the extent that employers would need to routinely employ new employees at Level 1 to perform the relevant work. This would result in various additional costs and increase the regulatory burden. It may also adversely impact productivity.
188. Further, the evidence does not establish that after one month of induction training, an employee will have the skills and experience required to perform the work described at Level 2. We contend that that would not necessarily be so. An employee may not be in a position to, for example, supervise other staff.
189. For all of these reasons, the RTBU’s claim:
- (a) Would not be fair to employers;<sup>167</sup>
  - (b) Would not promote the efficient and productive performance of work;<sup>168</sup>
  - (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>169</sup> and

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<sup>166</sup> RTBU submission dated 3 November 2023 at [14].

<sup>167</sup> Section 134(1) of the Act.

<sup>168</sup> Section 134(1)(d) of the Act.

<sup>169</sup> Section 134(1)(f) of the Act.

- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>170</sup>

190. The union's should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

### **Technical and Civil Infrastructure – Level 1**

191. The Rail Award defines an employee at Level 1 in the '*Technical and Civil Infrastructure*' stream as follows: (emphasis added)

An employee at this level performs routine duties essentially of a manual nature and to the level of their training. These include:

- Performing general labouring and cleaning duties.
- Exercising minimal judgment.
- Working under direct supervision.
- Undertaking structured training so as to enable them to work at a Level 1.
- Observes and applies all relevant rules, regulations, and instructions including attendance policies and instructions, rostered hours, wearing protective clothing, footwear and equipment, and safety and safeworking notices or instructions.<sup>171</sup>

192. The RTBU argues that the above descriptor should be amended as follows:

An employee at this level performs routine duties essentially of a manual nature and to the level of their training. An employee cannot remain at level 1 for longer than 1 month. An employee at level 1 will be required to undertake duties that ~~These~~ include:

- Performing general labouring and cleaning duties.
- Exercising minimal judgment.
- Working under direct supervision.
- Undertaking structured training so as to enable them to work at a Level 1.
- Observes and applies all relevant rules, regulations, and instructions including attendance policies and instructions, rostered hours, wearing protective clothing, footwear and equipment, and safety and safeworking notices or instructions.<sup>172</sup>

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<sup>170</sup> Section 134(1)(g) of the Act.

<sup>171</sup> Schedule A to the Rail Award.

<sup>172</sup> RTBU submission dated 3 November 2023 at [19].

193. We oppose the union's proposals.

194. The union has not advanced any probative material in support of its case. As is accepted by the union, employees can be engaged at Level 1 on an ongoing and indefinite basis. It seeks to fundamentally alter the operation of the award in this respect, by confining the application of Level 1 to one month. We repeat the submissions made above against analogous variations sought to the '*Operations*' stream.

## 21. THE SEAFOOD PROCESSING AWARD (CATEGORY II & V)

195. The Seafood Processing Award prescribes a rate that is less than the C13 rate for employees classified at 'Process Attendant Level 1' and 'Process Attendant Level 2'.<sup>173</sup> These classification levels are defined as follows:

### 12.1 Process Attendant Level 1

**(a) Point of entry**

New employee.

**(b) Skills/duties—indicative tasks**

An employee in the first 3 months of duty undertakes training for any task including but not limited to sorting, grading, trimming, washing and packaging of fish, seafood and marine products and is under direct supervision.

**(c) Promotional criteria**

An employee remains at this level for the first 3 months or until they are capable of demonstrating competency in the tasks required at this level so as to enable them to progress to Level 2.

### 12.2 Process Attendant Level 2

**(a) Point of entry**

- (i)** Process Attendant Level 1; or
- (ii)** Proven and demonstrated skills, including industry certification as appropriate, at Level 2.

**(b) Skills/duties—indicative tasks**

Indicative of the tasks which an employee at Level 2 may perform are the following:

- (i)** Filleting,
- (ii)** Weighing,
- (iii)** Cleaning of fish and/or shellfish,
- (iv)** Precise grading, marking and inspection,
- (v)** Draining, tailing, pickling, crumbing and cooking of seafood,

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<sup>173</sup> Clause 15.1(a) of the Seafood Processing Award.

- (vi) Chilling of fish and shellfish,
- (vii) Sealing, stopping and stamping of cartons,
- (viii) Bulk packaging and operation of single function fish processing equipment,
- (ix) Operation of a can closure machine,
- (x) Packing in a standard container,
- (xi) Recording and documentation as required,
- (xii) Cold storage chiller and freezer operations.

**(c) Promotional criteria**

An employee remains at this level until they have developed the skills to allow the employee to effectively perform the tasks required at this level and are assessed by the employer to be competent to perform effectively at a higher level so as to enable them to progress as a position becomes available.

196. The AWU has advanced the following submissions:

- (a) In relation to Level 1, clause 12.1(c) should be amended *'to make clear that 3 months is the maximum period and that it applies to 3 months' work in the industry, rather than with a particular employer'*.<sup>174</sup>
- (b) The Commission should *'give consideration to lifting both rates'*, such that the Level 1 rate is lifted to the C13 rate and the Level 2 rate is increased to a rate that is *'half the difference between the Level 2 and Level 3 rates'*.<sup>175</sup>
- (c) *'At a minimum'*, the Level 2 rate should be lifted to the C13 rate.

197. Ai Group opposes each of the above propositions.

198. In relation to paragraph (a) above; the union has not made out a case for the proposed change. Presently, an employee cannot be reclassified to Level 2 until they are competent in the tasks contemplated by the Level 1 descriptor. This is entirely appropriate in the context of a classification framework that features successive levels that each proceed on the basis that the employee is competent

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<sup>174</sup> AWU submission dated 3 November 2023 at [74].

<sup>175</sup> AWU submission dated 3 November 2023 at [75].

in performing the work contemplated by the preceding level. The automatic reclassification of employees after three months would potentially result in employees being classified at Level 2 in circumstances where they do not in fact possess the skills to perform work at that level. That is an obviously undesirable and anomalous outcome.

199. Further, clause 12.1(c) appears to operate in the context of an employee's employment. Logically, this ensures that an employee has obtained the requisite period of experience in a particular work environment and in the context of a particular employer's expectations and requirements, before progressing to the next level. This is especially relevant given the breadth of the Level 1 classification description, which could result in an employee performing different types of work for different employers at the same level. The employer-specific application of clause 12.1(c) ensures that the employee has gained *relevant* experience before progressing.

200. The AWU's claims:

- (a) Would not be fair to employers;<sup>176</sup>
- (b) Would not promote the efficient and productive performance of work;<sup>177</sup>
- (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>178</sup> and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>179</sup>

201. Therefore, they should be dismissed. They are not necessary to ensure that the award achieves the modern awards objective.

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<sup>176</sup> Section 134(1) of the Act.

<sup>177</sup> Section 134(1)(d) of the Act.

<sup>178</sup> Section 134(1)(f) of the Act.

<sup>179</sup> Section 134(1)(g) of the Act.

202. In respect of paragraphs (b) and (c) above, we refer to and rely on section 4 of this submission.

## 22. THE SUGAR AWARD (CATEGORY III & V)

203. The Sugar Award prescribes the C14 rate for *'milling, distillery, refinery and maintenance employees'* classified at L2<sup>180</sup> and *'bulk terminal employees'* classified at BT1<sup>181</sup>.

204. In its Statement, the Commission noted that the AWU and Ai Group had reached a *'conditional consensus'* as to how the Sugar Award may be varied. It described the position reached between the parties as follows:

[19] Broadly, the proposals for the ... Sugar Award ... would create a 'C13.5' classification level and move the existing C14 classification descriptions into the new 'C13.5' level. A new C14 classification description is proposed for employees undertaking initial training duties.<sup>182</sup>

205. The Commission went on to state that in light of its Provisional View, the aforementioned proposal would need to be revisited.<sup>183</sup>

206. The AWU submits that the *'simplest way'* to ensure conformance with the Provisional View *'would be to replace the non-transitional C14 rates ... with the C13 rate and then increase the current C13 rates by 50% of the difference between that rate and the next highest rate'*.<sup>184</sup>

207. The union's submission is, in substance, the same as the primary position it has advanced. For the reasons set out in section 4 of this submission, it should be rejected. Plainly, there is no evidence before the Commission about the value of any of the work contemplated by the relevant classification levels. The same can be said of the work described for the C13 levels.

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<sup>180</sup> Clause 19.1 of the Sugar Award.

<sup>181</sup> Clause 21.1 of the Sugar Award.

<sup>182</sup> Statement at [19].

<sup>183</sup> Statement at [20].

<sup>184</sup> AWU submission dated 3 November 2023 at [45].

208. In the alternate, the union indicates that it is ‘*content to maintain the position*’ previously reached between the parties, provided that:

- (a) The new C14 classification level is limited to employees with up to 76 hours’ experience in the industry.<sup>185</sup>
- (b) The ‘*standard rate*’, which is used for the purposes of calculating certain allowances, should be increased from the C13 rate, rather than the C14 rate.<sup>186</sup>
- (c) The implementation of the proposed variations should not be transitional or delayed.<sup>187</sup>

209. Ai Group opposes each of the above propositions.

210. There is no evidence before the Commission that might establish that 76 hours of experience in the industry would be sufficient, for the purposes of enabling an employee to perform the work contemplated at the extant ‘*Level 1*’. Prior to implementing such a timeframe, the Commission would need to be satisfied that it is appropriate, taking into account the nature of the work contemplated at the following classification level. There is no such material before the Commission.

211. The union has not articulated a purported justification for increasing the standard rate and, by extension, various allowances payable under the award. Further, there is no apparent basis for adopting the union’s proposal. In the circumstances, it should plainly be dismissed.

212. Finally, we refer to the concluding section of this submission, in which we address the need for further consideration to be given to the implementation of transitional arrangements and / or the delayed commencement of variations made to awards in these proceedings.

213. The union’s proposal would:

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<sup>185</sup> AWU submission dated 3 November 2023 at [47](a).

<sup>186</sup> AWU submission dated 3 November 2023 at [47](b).

<sup>187</sup> AWU submission dated 3 November 2023 at [47](c).

- (a) Not be fair to employers;<sup>188</sup>
- (b) Not promote the efficient and productive performance of work;<sup>189</sup>
- (c) Adversely affect employers, including in respect of productivity and employment costs;<sup>190</sup> and
- (d) Be inconsistent with the need to ensure a stable modern awards system.<sup>191</sup>

214. Therefore, union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

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<sup>188</sup> Section 134(1) of the Act.

<sup>189</sup> Section 134(1)(d) of the Act.

<sup>190</sup> Section 134(1)(f) of the Act.

<sup>191</sup> Section 134(1)(g) of the Act.

## 23. THE TEXTILES AWARD (CATEGORY V)

215. The Textiles Award prescribes a rate that is less than the C13 rate in respect of *‘Wool and basil employee – General hand’*.<sup>192</sup> *‘Wool and basil employees’* are those who are *‘required to work on pulling sheep skins, pie or piece picking, or any other class of work connected with wool scouring and carbonising’*.<sup>193</sup>

216. The award does not define a *‘general hand’*. The CFMMEU proposes that the following definition be inserted:

### B.4.1 General hand

(a) Employees at this level will:

- be new entrants into the wool and basil industry; and
- undertake up to 38 hours induction training 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 practices and procedures, equal employment opportunity and quality control/assurance; and

(b) At the completion of the induction training as per B.4.1(a) above, the employee will, at a minimum, transition to the level/classification *‘Operator, Grade 3’*.<sup>194</sup>

217. Ai Group opposes the proposed variation. It would fundamentally alter the characterisation of the classification level. It appears that, at present, an employee may be engaged as a *‘general hand’* on an ongoing and indefinite basis. Typically, the role of a general hand includes an assortment of basic, miscellaneous duties that do not require specialised skills or training. This is a markedly different proposition to the one advanced by the union, which is to confine the relevant level to employees undertaking induction training for a finite period of time.

218. If the variations proposed by the union were adopted, the award would no longer expressly contemplate the performance of the type of work typically undertaken

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<sup>192</sup> Clause 19.2 of the Textile Award.

<sup>193</sup> Clause B.4 of the Textile Award.

<sup>194</sup> CFMMEU – Manufacturing Division’s submission dated 9 November 2023 at [32].

by a *'general hand'*. It would no longer be clear that employees performing such work are covered by the award. This would plainly be an anomalous outcome. Further, the Commission would need to be satisfied such employees *'will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them'*.<sup>195</sup> We have not identified any other award that all such employees would be covered by.

219. It is also necessary to consider whether employees will have the requisite skills and competencies after completing 38 hours of induction training to perform the role of an *'Operator – Grade 3'*. There is a complete absence of any material before the Commission about this. In the circumstances, it would plainly be inappropriate for the Commission to adopt the union's proposal.

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<sup>195</sup> Section 163(1) of the Act.

## 24. THE TIMBER AWARD (CATEGORY II & IV)

220. The Timber Award prescribes a rate that is lower than the C13 rate for employees classified at Level 1 in the '*General Timber*'<sup>196</sup> stream and the '*Wood and Timber Furniture*'<sup>197</sup> stream.

### General Timber Stream

221. The Level 1 classification in the '*General Timber*' stream is defined as follows:

#### A.1 Level 1 (relativity 78%)

##### A.1.1 General

- (a) An employee at this level:
  - (i) will complete a program of induction training;
  - (ii) will complete a program of skills training to meet the requirement of being able to competently perform work within the scope of Level 1; and
  - (iii) where required by statute or regulation will obtain the necessary licenses, permits or other authorisations prior to progression to the next level.
- (b) General description of skills required

A Level 1 worker will exercise the following skills:

  - (i) the ability to follow instructions;
  - (ii) manual handling skills; and
  - (iii) the ability to follow standards and procedures.
- (c) General description of knowledge required

A Level 1 worker will develop the following:

  - (i) broad knowledge of the industry sector and operations at the enterprise level;
  - (ii) broad understanding of all functions carried out in the enterprise;

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<sup>196</sup> Clause 20.1(a) of the Timber Award.

<sup>197</sup> Clause 20.1(b) of the Timber Award.

- (iii) understanding of health and safety regulations and procedures relevant to the level;
- (iv) an understanding of the employment conditions set out in the award, and enterprise policies and procedures relating to conditions;
- (v) knowledge of the resources used in the sector; and
- (vi) knowledge of the range and uses of basic hand tools.

**(d) Induction training**

Induction training will include the following:

- (i) basic work health and safety;
- (ii) first aid;
- (iii) conditions of employment; and
- (iv) company policies and objectives.

**(e) Level of responsibility**

Workers at Level 1 will work under direct supervision at all times and will be expected to exercise minimal judgment.

**(f) Criteria for extension of term in Level 1 beyond 3 months**

A worker who enters the industry and is unable to meet the competency requirements of Level 2 will remain in Level 1 for a maximum of 3 months unless an extension for up to a further 3 months is agreed by the employer and the employee, and the union where the employee is a union member. Extension of the term of Level 1 beyond 3 months will only be considered when:

- (i) the employee has participated in a structured and documented skill development programme which sets out and covers the standards of competence the Level 1 worker is required to achieve for progression to Level 2;
- (ii) any deficiencies in the performance of the employee during the skill development programme have been described clearly to the employee at the time they have occurred and standards for acceptable performance have been made clear to the employee;
- (iii) suitable conditions have been provided for training including sufficient time, appropriate environment and equipment and a skilled trainer; and
- (iv) given the above, the employee has not reached the standards of competence set down in the skill development programme.

**(g) Process for extension of the term in Level 1 beyond 3 months**

Where an employer proposes that the term an employee will spend in Level 1 should be extended beyond 3 months the following actions will be taken at least 3 weeks before the expiration of the initial 3 months:

- (i)** the employee will be advised in writing. This advice will set out clearly the areas where the employee has not reached the competency standards required for progression to Level 2 and are set out in the skill development program;
- (ii)** where the employee is a member of the union a copy of the advice to the employee will be sent to the relevant branch secretary of the union at the same time as it is provided to the employee;
- (iii)** subsequent to the advice of intention to extend the period in Level 1 beyond 3 months being issued, a meeting will be held between the employer and the employee and a full-time official of the union or their nominee where the employee is a union member. At this meeting the parties will develop and agree on a plan (including time frames) to assist the employee to develop competence to the required standard in the areas identified as deficient and agreed to by the employee. This plan will be documented and signed by all parties — that is the employer, the employee and the union official where the employee is a union member;
- (iv)** the employee (and the branch office of the union if the employee is a union member) will be notified immediately by the employer if any further problems arise during this extension period.

222. The CFMMEU submits that clause A.1 should be varied by deleting clauses A.1.1(f) and (g), and replacing them with the following:

- (f) An employee at this level will remain at Level 1 for a maximum of 3 months.<sup>198</sup>

223. A similar variation is sought by the AWU. It is opposed by Ai Group.<sup>199</sup>

224. The CFMMEU appears to rely primarily on the proposition that clause A.1.1 differs from the approach taken in the Manufacturing Award, in which the C14 rate is purportedly only payable whilst an employee undertakes up to 38 hours' induction training.<sup>200</sup> For the reasons set out at [9] – [15] of the November

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<sup>198</sup> CFMMEU – Manufacturing Division submission dated 9 November 2023 at [44].

<sup>199</sup> AWU submission dated 3 November 2023 at [110](a).

<sup>200</sup> CFMMEU – Manufacturing Division submission dated 9 November 2023 at [40].

Submission, we disagree with the union's understanding of the manner in which the C14 classification in the Manufacturing Award applies.

225. In any event, even if the union's interpretation were found to be correct, that of itself would not of itself justify a variation to the safety net as it applies in the timber industry. A different set of permutations and combinations in different awards can achieve the modern awards objective.<sup>201</sup>
226. It is also relevant that clauses A.1.1(f) and (g) permit an extension of the relevant three-month period in only very limited circumstances. They include a number of safeguards, including the need for employee agreement and union agreement where relevant. There is no evidence or other material to suggest that they are operating, in practice, in a manner that is unfair or inappropriate.
227. Finally, notwithstanding clauses A.1.1(f) and A.1.1(g), the classification level operates in a manner that is consistent with the Provisional View. As such, it should be excluded from the Review.
228. Accordingly, the union's claim should be dismissed.

### **Wood and Timber Furniture Stream**

229. The Timber Award defines an employee in the '*Wood and Timber Stream*' at Level 1 as follows:

#### **B.1 Timber furniture production employee, Level 1 (relativity 78%)**

- B.1.1** A Timber furniture production employee, Level 1 is an employee new to the industry who is undertaking up to 3 months' induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.
- B.1.2** The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees, machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety instruction and quality assurance.

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<sup>201</sup> 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 at [34].

### **B.1.3 Duties**

- (a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.
- (b) Indicative of the tasks an employee at this level may perform are the following:
  - (i) general labouring;
  - (ii) cleaning; and
  - (iii) other comparable tasks.

### **B.1.4 Responsibilities**

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

### **B.1.5 Qualification**

An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.

### **B.1.6 Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be provided with training to enable the employee to acquire the skills required of a Timber furniture production employee, Level 2.

### **B.1.7 Progression**

A Timber furniture production employee, Level 1, will progress to Level 2 on the basis of the successful completion of the induction program and the core units of the Furnishing Industry Training Package, and has demonstrated competency to undertake duties at Level 2.

230. The CFMMEU describes the ability to transition to Level 2 under the above clause as being '*conditional*'.<sup>202</sup> We agree. Clause B.1.7 makes clear that an employee will progress only if the employee has completed the relevant training and '*has demonstrated competency to undertake duties at Level 2*'.

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<sup>202</sup> CFMMEU – Manufacturing Division submission dated 9 November 2023 at [47].

231. The union proposes the following variations to clause B.1 for the purposes of ensuring consistency with the Provisional View (without more):<sup>203</sup>

### **B.1 Timber furniture production employee, Level 1 (relativity 78%)**

**B.1.1** A Timber furniture production employee, Level 1 is an employee new to the industry who is undertaking up to 3 months' induction and skill development consistent with national competency standards to prepare the employee for a productive role in the industry.

**B.1.2** The induction and skill development will include information on the enterprise, conditions of employment, introduction to supervisors, fellow employees, machinery and work processes of the enterprise, information on training and career opportunities, plant layout, work and documentation procedures, basic work health and safety instruction and quality assurance.

#### **B.1.3 Duties**

(a) An employee at this level is required to perform routine production and/or labouring duties to the level of their training.

(b) Indicative of the tasks an employee at this level may perform are the following:

- (i) general labouring;
- (ii) cleaning; and
- (iii) other comparable tasks.

#### **B.1.4 Responsibilities**

An employee at this level is required to work competently under direct supervision whilst using minimal discretion, however, such an employee cannot be required to organise or schedule tasks.

#### **~~B.1.5 Qualification~~**

~~An employee must satisfy the employer that they have basic literacy and numeracy skills and that they have an aptitude for work in the industry. The employee must also be assessed to be competent in the core units of the Furnishing Industry Training Package.~~

#### **B.1.65 Training**

An employee at this level will be provided with skill development consistent with national competency standards relevant to this level to enable the employee to perform duties within the range specified for this level. At this level, the national competency standards referred to are the core units of the Furnishing Industry Training Package. Employees at this level will be

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<sup>203</sup> CFMMEU – Manufacturing Division submission dated 9 November 2023 at [52] – [53].

provided with training to enable the employee to acquire the skills required of a Timber furniture production employee, Level 2.

#### **B.1.7 Progression**

~~A Timber furniture production employee, Level 1, will progress to Level 2 since the successful completion of the induction program and the core units of the Furnishing Industry Training Package, and has demonstrated competency to undertake duties at Level 2.~~

B.1.6 An employee at this level will remain at Level 1 for a maximum of 3 months.

232. The AWU similarly submits that clause B.1 should be amended to *'remove any competency based requirements for progression from 'Wood and Timber Furniture Stream: Level 1', such that progression becomes automatic following 3 months' experience in the industry'*.<sup>204</sup>
233. Employees would thereafter be reclassified to Level 2, irrespective of whether they have demonstrated that they have the required competencies to perform work at that level. This is plainly inappropriate, having regard to the list of indicative duties for Level 2 listed at clause B.2.2, which contemplate the need for various specific skills.
234. Clearly, a case has not been made out for the proposed amendments. In addition, the proposed variations would
- (a) Would not be fair to employers;<sup>205</sup>
  - (b) Would not promote the efficient and productive performance of work;<sup>206</sup>
  - (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>207</sup> and
  - (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>208</sup>

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<sup>204</sup> AWU submission dated 3 November 2023 at [110](b).

<sup>205</sup> Section 134(1) of the Act.

<sup>206</sup> Section 134(1)(d) of the Act.

<sup>207</sup> Section 134(1)(f) of the Act.

<sup>208</sup> Section 134(1)(g) of the Act.

235. The unions' claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

## 25. THE VEHICLE AWARD (CATEGORY V)

236. The Vehicle Award entitles employees classified at Level 1 to a minimum hourly rate that is less than the C13 rate.<sup>209</sup> The award defines employees at Level 1 and Level 2 as follows:

### A.1 Vehicle industry RS&R—employee—Level 1 R1 (entry)

An employee at Level 1 is an employee who has undertaken little or no formal or informal training. A Level 1 employee may be undertaking up to 38 hours of induction training. The induction training 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.

An employee at this level would acquire/possess skills relevant to the performance of routine duties essentially of a manual nature and to the level of their training:

- performs general labouring and/or cleaning duties;
- has basic numeracy skills;
- exercises minimal judgment;
- works to defined procedures and under direct supervision; and
- may be undertaking structured training so as to enable the employee to progress to a higher level.

Classifications contained within Level 1 R1

- Car cleaner/washer
- Workshop cleaner
- Car polisher—by hand
- Detailer—other
- Driveway attendant
- Office cleaner
- Parking attendant
- Process worker
- Tradesperson's assistant (see also Level 2)
- Employee not elsewhere prescribed

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<sup>209</sup> Clause 16.2 of the Vehicle Award.

### **A.1.1 Vehicle industry RS&R—employee—Level 2 R2**

An employee at Level 2 is an employee who has completed up to 3 months structured training to enable an employee to attain/possess job skills relevant to tasks performed at this level and to the level of their training:

- works under direct supervision either individually or in a team environment;
- has some oral and written communication skills;
- can distinguish where a minor fault/error is made and undertake basic quality control of own work;
- is responsible for the quality of own work subject to routine supervision;
- has some input to job planning;
- can work from simple instructions;
- has some basic customer service skills;
- performs basic maintenance tasks;
- has basic knowledge of the range of services offered by the business;
- has simple numerical equipment skills; and
- may use selected hand tools.

#### **Classifications contained within Level 2 R2**

- Battery repairer
- Brake servicer—first 6 months
- Driver of courtesy car or vehicle in relation to sales or sales promotion or in the course of registration, collection from or delivery to customer—vehicles up to and including maker's capacity of 3 tonnes
- Exhaust repairers—first 6 months
- Grinder and/or buffer metal—using a portable machine
- Lubritorium attendant
- Operator on warming mill
- Operator detreading, buffing, gouging, etc.
- Roadhouse attendant, when required to cook take away meals only
- Spring service worker
- Tradesperson's assistant (see also Level 1)

- Tyre fitter

237. The AMWU has expressed a concern that the *'Level 2 classification requires completion of a 3 month training period rather than a worker being able to demonstrate the necessary skills required for that classification level'*.<sup>210</sup> On that basis, it proposes the following amendments to clause A.1.1, in relation to Level 2 employees:

An employee at Level 2 is an employee who has:

- (i) Previously completed up to 3 months structured training or has equivalent experience performing such work; or
- (ii) Has completed the induction training at the workplace

so as to enable an employee to ~~attain~~/possess job skills relevant to tasks performed at this level and to the level of their training: ...<sup>211</sup>

238. We oppose the union's proposed amendments. They would:

- (a) Permit an employee to be classified at Level 2 once they have completed their induction training, irrespective of whether they have *'completed up to 3 months' structured training so to enable an employee to attain/possess job skills relevant to tasks performed at [Level 2] and to their level of training'* as currently required by clause A.1.1; and
- (b) By extension, render the proposed clause A.1.1(i) redundant, where induction training has been completed.

239. We acknowledge that the AMWU's proposed concluding words of the provision may be intended to limit the scope of clause A.1.1(i) to circumstances in which the training in fact results in an employee having the competencies required to perform work at the Level 2; however, this is not clear. On one view, those words go to the purpose or design of the training, as opposed to whether an employee is in fact able to perform work at the higher level.

240. We also refer to and rely on section 3 of this submission.

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<sup>210</sup> AMWU submission dated 10 November 2023 at [19].

<sup>211</sup> AMWU submission dated 10 November 2023 at [19].

## 26. THE WINE AWARD (CATEGORY III)

241. The Wine Award prescribes a rate that is less than the C13 rate for employees classified at Grade 1<sup>212</sup> in each of the various classification streams covered by the award (i.e. the bottling, cellar, cellar door sales, laboratory, vineyard, warehouse and supply and coopers streams)<sup>213</sup>.
242. The Grade 1 classification definition in each stream is largely in the same terms. For example, in respect of the *'bottling stream'* it appears in the following form:

### A.1.1 Grade 1—Bottling stream

- (a) An employee at this level is a trainee undertaking a 3 month induction training program, followed by training in the modules essential to the Grade 2 level.
  - (b) Such training will be completed and assessed within 12 months of service from the date of employment. The employee will automatically be appointed to Grade 2 on passing an accredited assessment for progression from Grade 1 to Grade 2.<sup>214</sup>
243. The award details a rigorous process for transitioning from Grade 1 to Grade 2, which is designed to ensure that an employee has the relevant competencies to perform the work required of an employee at Grade 2.
244. The UWU submits that the minimum rate prescribed by the award for Grade 1 should be increased to the C13 rate. It argues that this would *'avoid the need to amend the subsequent classification levels by removing or varying the'* extant requirements that must be satisfied in order for an employee to be classified at Grade 2.<sup>215</sup> The union has not advanced any other material in support of its submission.

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<sup>212</sup> Clause 15.1 of the Wine Award.

<sup>213</sup> Schedule A of the Wine Award.

<sup>214</sup> Clause A.1.1 of the Wine Award.

<sup>215</sup> UWU submission dated 10 November 2023 at [6].

245. The AWU similarly submits that the *'simplest approach to implementing the [Provisional View] is to retain the structure but lift the Grade 1 classification to C13'*.<sup>216</sup>

246. Ai Group opposes the unions' claim, for the following reasons.

247. The unions are, in effect, seeking a variation to a modern award minimum wage, of the nature contemplated by s.157(2) of the Act. The Commission can make such a variation only if it is satisfied that it is justified by *'work value reasons'*.<sup>217</sup> Work value reasons are reasons related to any of the following:

- (a) The nature of the work;
- (b) The level of skill and responsibility involved in doing the work;
- (c) The conditions under which the work is done.<sup>218</sup>

248. There is no material before the Commission relating to the above matters. The evidence of Shane Roulstone, led by the AWU, does not deal with these matters. Thus, the Commission cannot be satisfied that the increase sought by the unions is justified based on work value reasons. In the circumstances, it does not have power to grant the unions' claim.

249. On this basis alone, the claims should fail. Further, the proposed variation:

- (a) Would not be fair to employers;<sup>219</sup>
- (b) Would not promote the efficient and productive performance of work;<sup>220</sup>
- (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>221</sup>

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<sup>216</sup> AWU submission dated 3 November 2023 at [105].

<sup>217</sup> Section 157(2)(a) of the Act.

<sup>218</sup> Section 157(2A).

<sup>219</sup> Section 134(1) of the Act.

<sup>220</sup> Section 134(1)(d) of the Act.

<sup>221</sup> Section 134(1)(f) of the Act.

- (d) Would be inconsistent with the need to ensure a stable modern awards system;<sup>222</sup> and
- (e) Would inappropriately compress internal wage relativities.

250. The unions' claims should therefore be dismissed.

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<sup>222</sup> Section 134(1)(g) of the Act.

## 27. THE WOOL AWARD (CATEGORY II & V)

251. The Wool Award prescribes a rate that is less than the C13 rate for employees classified at Level 1 in the ‘*Wool Storage*’, ‘*Wool Testing*’ and ‘*Skin and Hide Stores*’ streams.<sup>223</sup>

252. Clause A.2 of the award deals with an employee’s progression through the classification structure:

### **A.2 Progression**

An employee will progress through the classification levels subject to:

- (a) possessing the applicable skills for the level; and
- (b) being required by the employer to perform work at that level.

253. The award contemplates that an employee will progress through the various classification levels subject to the employee having the requisite skills and being required to perform work at the relevant level. It is not intended or envisaged that the classification structure will operate by reference to arbitrary time-based requirements or limitations.

### **Wool Storage – Level 1**

254. The award defines an employee at Level 1 in the ‘*Wool Storage*’ stream as follows: (emphasis added)

#### **A.3.1 Wool Industry Worker Level 1 (Wool Storage)**

##### **(a) Prerequisites**

- basic interpersonal and communication skills; and
- basic literacy and numeracy skills.

##### **(b) Skills/duties**

- become familiar with company policies and procedures;
- responsible for quality of their own work subject to detailed direction;

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<sup>223</sup> Clause 16.1 of the Wool Award.

- obtain knowledge and apply appropriate manual handling skills and/or testing or sampling skills;
- ability to work in a team environment and/or under routine supervision;
- ability to exercise discretion within the limits of skills and/or training; and
- ability to undertake duties in a safe and responsible manner.

The following tasks are indicative of the tasks which an employee at this level may be required to perform:

- core sampling (non-mechanical);
- feeding wool into blending machines;
- head marking or branding of head bale at receipt or weighing;
- inserting lot plates or dividers;
- lobbing;
- opening or closing bales (including fadging and boodling);
- pushing into or taking from elevators or drops;
- sewing;
- wheeling baskets;
- hand trucking;
- use of non-licensed material handling equipment;
- operate wool bending machine; and
- responsible for housekeeping in own work environment.

**(c) Promotional criteria**

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

255. Clause A.3.1(c) is consistent with clause A.2. Employees will be eligible for progression to the next level only once they have acquired the relevant skills and their employer requires them to perform work at a higher level.

256. The AWU contends as follows:

As there is no clear time-based pathway for progression ... the rate should be increased to C13, or clause A.3.1(c) should be amended to provide that employees progress automatically after obtaining 3 months' experience in the industry.<sup>224</sup>

257. In relation to the first proposition advanced by the union, we refer to section 4 of this submission.

258. The notion that the award should be amended to provide that employees will progress automatically after gaining 3 months' experience in the industry ought to be rejected. It is plainly unworkable when considered in the context of the existing framework in Schedule A. Further, it would be entirely inappropriate for that framework to be upended by the union's proposal in the absence of any material before the Commission that supports the variations sought. Critically, nothing in the material before the Commission establishes that after three months of experience in the industry, an employee would have the skills necessary to perform the work contemplated by the Level 2 classification 2 description:

### **A.3.2 Wool Industry Worker Level 2 (Wool Storage)**

#### **(a) Prerequisites**

Wool Industry Worker Level 1 or equivalent.

#### **(b) Skills/duties**

In addition to the skills/duties required of a Wool Industry Worker Level 1 the following skills/duties are required:

- able to work in a team environment under limited supervision;
- responsible for quality of own work; and
- appropriate licence to operate required materials handling equipment (other than crane or fork-lift rated in excess of 20,000 kg), (as required).

The following tasks are indicative of the tasks which an employee at this level may be required to perform:

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<sup>224</sup> AWU submission dated 3 November 2023 at [121](a).

- breaking out of specified bales for shipping, showing, pooling or blending;
- breaking out for rail trucks (including the use of mechanical aids);
- breaking down stacks of wool;
- port marking and branding of wool for shipment;
- operating and in charge of semi automatic dump press;
- operation of all appropriate materials handling equipment (other than crane or fork-lift rated in excess of 20,000 kg), not requiring ancillary or incidental clerical functions;
- sheetman or fossicker;
- wool pressing; and
- weight adjusting.

**(c) Promotional criteria**

An employee remains at this level until they are capable of completing the tasks required of this level so as to enable them to be considered for promotion to the next level when a position becomes available.

259. In addition, the compulsory reclassification of employees after three months would potentially create a significant practical problem for employers. The Level 1 classification description contemplates the performance of various substantive tasks. The union's proposal raises the spectre of employers needing to routinely employ new employees at Level 1 to perform the relevant work once existing employees complete the three month period at Level 1. Self-evidently, this would result in various additional costs and increase the regulatory burden. It may also adversely impact productivity.

260. The AWU's claim:

- (a) Would not be fair to employers;<sup>225</sup>
- (b) Would not promote the efficient and productive performance of work;<sup>226</sup>

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<sup>225</sup> Section 134(1) of the Act.

<sup>226</sup> Section 134(1)(d) of the Act.

- (c) Would adversely affect employers, including in respect of productivity and employment costs;<sup>227</sup> and
- (d) Would be inconsistent with the need to ensure a stable modern awards system.<sup>228</sup>

261. Therefore, union's claim should be dismissed. It is not necessary to ensure that the award achieves the modern awards objective.

### **Wool Testing – Level 1 & Skin and Hide Stores – Level 1**

262. Clause 16.1 states that a *'Wool Industry Worker Level 1 (Wool Testing)'* and a *'Wool Industry Worker Level 1 (Skin and Hide Stores)'* will be paid a sub-C13 rate for the *'first 3 months'*. The AWU argues that it should be made clear that an employee will progress to the next pay point *'automatically after obtaining 3 months' experience in the industry (rather than 3 months of employment with a particular employer)'*.<sup>229</sup>

263. We oppose the proposed change. Clause 16.1 appears to operate in the context of an employee's employment and thus, for the first three months during their employment with a particular employer, an employee will be entitled to the relevant minimum rate, after which they will be entitled to the higher rate.

264. Logically, this ensures that an employee has obtained the requisite period of experience in a particular work environment and in the context of a particular employer's expectations and requirements, before progressing to the next pay point. This is especially relevant given the breadth of the Level 1 classification descriptions, which could result in an employee performing different types of work for different employers at the same level. The employer-specific application of clause 16.1 would ensure that the employee has gained *relevant* experience before progressing.

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<sup>227</sup> Section 134(1)(f) of the Act.

<sup>228</sup> Section 134(1)(g) of the Act.

<sup>229</sup> AWU submission dated 3 November 2023 at [121](b) and [121](c).

## **28. TRANSITIONAL ARRANGEMENTS**

265. In our November Submission, and in these submissions, we have outlined some of the adverse consequences that may face employers if the Commission varies awards in a manner that is consistent with the Provisional View and / or the claims advanced by various unions. They include impacts on employment costs, productivity and the regulatory burden.
266. Accordingly, if, notwithstanding our submissions, the Commission decides to vary any awards in these proceedings, it should grant interested parties an opportunity to be heard in respect of appropriate transitional arrangements. These may include delaying the operative date, phasing in the changes and / or implementing grandfathering arrangements. Naturally, the nature and form of any transitional arrangements will necessarily depend on the final form of any variations determined by the Commission. It is therefore impracticable to deal with the matter at this stage.