
Australian Council of Trade Unions

Submission to the Australian Industrial Relations Commission

Award Modernisation
Stage 4 Exposure Drafts
16 October 2009

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Introduction

1. The ACTU makes the following submissions with respect to a number of exposure drafts released by the Commission in their Statement of 25 September 2009.¹
2. In addition to these written submissions the ACTU specifically supports the submissions of:
 - The CPSU with respect to state government administration;
 - the LHMU with respect to restaurant and catering.
3. The ACTU will respond to submissions on the matters covered by this submission and on other matters of interest to the ACTU as necessary at the consultation hearings scheduled for the week beginning 26 October 2009.

¹ [2009] AIRCFB 865.

Issues of general importance

Adjustment of expense related allowances

4. Expense related allowances in transitional awards have generally been adjusted at the time of applications to vary minimum wages and other allowances in awards.
5. Since 2006 this has been done around September in line with the decisions of the AIRC to adjust wages and allowances in (*Workplace Relations Act 1996*) pre-reform and transitional awards. Adjustment of expense related allowances would therefore take account of movements in the appropriate indices up to end June of the year of the application.
6. The decision of the Commission on wages and allowances has, since 2006 and ending this year, followed on from the decision of the Australian Fair Pay Commission (AFPC). The AFPC decision was handed down annually in July with effect from October of each year.
7. This year the AFPC determined not to adjust minimum wages. As a consequence there was no consideration by the AIRC of adjusting wages and allowances and hence no applications made by unions generally to vary wages and wage related allowances or expense related allowances.
8. It is clearly acknowledged – and reflected in the modern award making process – that there are two types of allowances in awards. There are those that relate to wages and move when minimum wages move and those that are expense related and move with movements in the applicable consumer price index for the relevant group or subgroup. Expense related allowances may therefore move even if wages don't.
9. The indices for expense related allowances have moved in the last 12 months but the allowances haven't. These allowances now need to be adjusted to account for such movement.

10. In order to address the non-adjustment of expense related allowances the ACTU propose that:
 - (i) Expense related allowances in modern awards be adjusted by the Commission prior to 1 January 2010 to take into account movement in the relevant CPI group or subgroup up until 1 September 2009;
 - (ii) Where unions seek to adjust allowances in award-based transitional instruments this be done on application to the Commission with any relevantly adjusted rates being reflected in the modern award.
11. The approach proposed by the ACTU is designed to minimise work and re-work but ensure that modern awards continue to provide an appropriate safety net.

Adjustment of Supported Wages System minimum payment

12. The Supported Wage System minimum payment – generally found at clause C.4.2 (Schedule C) of modern awards – contains a requirement for a minimum payment under SWS of \$69 per week.
13. This provision in pre-reform and transitional awards has historically been adjusted at the time of the minimum wages adjustment by the AFPC and wages and allowances review of the AIRC.
14. The level of the SWS minimum payment is related to the income free test threshold for the Disability Support Pension (it is, in fact, set at half of this threshold). That threshold is currently \$142 per week.²
15. Recognising this nexus, the AFPC did, in fact, in their 2009 minimum wages review, adjust the SWS minimum payment to \$71 per week.³ No commensurate adjustment has been made by the AIRC.

² Centrelink, *A guide to Australian Government payments, 20 September – 31 December 2009*, p 25.

³ AFPC, *Wages setting decision and reasons for decision, July 2009*, p 13.

16. The ACTU therefore seeks that the Commission adjust the minimum weekly payment appearing in the SWS schedule of modern awards to \$71 per week.

Aboriginal Community Controlled Health Services Award

17. The ACTU notes that, arising from consultations with respect to the Indigenous Organisations and Services group the Commission has released a draft award for Aboriginal Community Controlled Health Services but has rejected submissions seeking an award for Indigenous services and/or organisations more broadly.⁴
18. The ACTU supports the decision of the Commission to not release an award covering Indigenous organisations or services.
19. We continue to oppose the making of an Aboriginal Community Controlled Health Services award. Our submissions of 24 July 2009 remain relevant on this point.
20. In considering the exposure draft released by the Commission we note that the only classification in the award that is not capable of coverage by another modern award is Aboriginal Health Worker (AHW).
21. It is our submission that this classification could be easily dealt with by inclusion of this classification into an existing award in the health industry or by the making of an occupational award that covers an AHW whilst in the classifications described therein.
22. If however the Commission does make an award in the form proposed, the ACTU would seek the following amendments to the exposure draft. These submissions are made on the basis that the award continues to exclude nurses and doctors.
23. **Dentists:** the classification of dentists should be retained in the award. This occupation is currently covered by the relevant transitional award and there is no reason to exclude them from this award. (Note that if the

⁴ [2009] AIRCFB 865, [124].

ACTU submission that the award should not be made or should be limited to an occupational award for AHW is successful we would seek the inclusion of dentists in the *Health Professionals and Support Services Award 2010*.)

24. **Overtime meal allowance:** be included in the award where an employee is required to work more than one hour beyond their normal finishing time. The rate should be set at \$12.
25. **Higher duties (clause 15.3):** that the provision be amended so that an employee required to work for more than three hours in a day on duties with a higher minimum salary be entitled to be paid at the higher level for the day. Work for less than three hours should be paid for the time worked.
26. **Time off instead of payment for overtime (clause 24.7):** that overtime taken as time off instead of payment be taken at the rate at which payment would have been made (ie time and a half or double time).
27. The ACTU notes and supports the submissions of the LHMU with respect to this matter.

Professional Diving Industry (Recreational) Award

28. The ACTU submits that the Professional Diving Industry (Recreational) Award (the Award) as currently drafted excludes several classes of employees.
29. These types of employees are among the most vulnerable in the labour market and are appropriate for inclusion in a modern award. They are also in occupations where the work performed is of a similar nature to work that has historically been regulated by awards.⁵
30. We note that the same restrictions and problems identified below also pertain to the *Marine Tourism and Charter Vessels Award 2010* to the extent that that award deals with the occupation of diving.

Employees under the age of 21

31. The Award covers employers throughout Australia engaged in the provision of underwater services for the purposes of recreational diving and related shipboard services and their employees in the classifications in clause 14.
32. The Award contains two classifications:
 - Dive instructor means an employee trained to train other divers in accordance with AS 4005.2, .3, .4: 2000 and in keeping with the provisions of the operational standard AS/NZS 2299.3:2003.
 - Dive master means an employee trained to the level required of AS 4005.2, .3, .4: 2000 and in keeping with the provisions of the operational standard AS/NZS 2299.3:2003.

⁵ Request, paragraph 2(a).

33. These classifications and the associated rates of pay are expressed to apply to *adult* employees only.⁶ Qualified employees under the age of 21 are therefore excluded from the scope of award.
34. The ACTU submits that the exclusion of employees from a modern award on the basis of age is untenable.
35. The Request requires the Commission to establish a fair minimum safety net. In performing this task the Commission must have regard to:
- protecting the position in the labour market of young people and;
 - the need to help prevent and eliminate discrimination and to promote the principle of equal remuneration for work of equal or comparable value.⁷
36. In our submission the provisions of the exposure draft are inconsistent with these objectives.
37. The ACTU notes that the Commission is permitted to extend award coverage where the work performed by employees is of a similar nature to that which has historically been regulated by awards.⁸ Hence there is no obstacle to the inclusion of employees under 21 years of age within the Award if the work they do is similar to that regulated by the award. In our submission the work they would do under the award is *the same* as that regulated by the award.
38. The ACTU proposes that the word 'adult' be removed from clause 14 of the Award. The rates of pay will therefore apply regardless of age.
39. This proposition does not effect the *skills* required to work at either classification level but rather addresses the proposition that only adults in the industry are entitled to an award safety net.

⁶ Award, clause 14.1.

⁷ S 576B(2)(b) & (e), WR Act.

⁸ Request, paragraph 2(a).

Trainees

40. The Award also makes no provision for trainees. Consequently employees undertaking a traineeship with an occupational outcome subject to the award will not be covered by the award until they have completed their training. Whilst the *Marine Tourism and Charter Vessels Award 2010* arguably provides for traineeships in this occupational area, that award is limited in its coverage in that it does not cover the totality of the industry of recreational diving.
41. The ACTU submits that the inclusion of trainees within the scope of this award is fundamental to establishing a fair minimum safety net for this part of the diving industry.
42. Trainees in the diving industry are currently covered by the National Training Wage Award (and proposed NTW Schedule) and, in our submission, should remain subject to award protection.
43. The ACTU notes that there are a number of traineeships relevant to recreational diving which are encompassed within the outdoor recreation training package. These traineeships are allocated to wage level B of the national training wage schedule.
44. The ACTU submits that the NTW schedule and standard NTW provision should be inserted into the Award.

Employment Services Industry Award

45. The ACTU notes that the Commission have released an exposure Employment Services Industry Award (the ESI Award). This award covers the 'provision of labour market assistance programs and group training services.'⁹
46. The ESI Award is based (in part) on the Group Training (Victoria) Award 1999.¹⁰ The Group Training (Victoria) Award applies as follows:

3.2 Who does the award apply to?

the Australian Municipal, Administrative, Clerical and Services Union otherwise known as the Australian Services Union (ASU); and

employers listed in Schedule A - Respondents, of this award;

in respect of persons eligible to join the above union (whether members or not) engaged by any employer (see Schedule A - Respondents) in a business, the dominant operation of which is the provision of group training services and associated activities;

- CEOs; and
- Apprentices placed with host employers are exempted.

47. That is, the Award does not apply to apprentices placed with host employers. An apprentice employed by a group training company would be paid pursuant to the relevant award which covered the occupation and industry in which the apprentice was undertaking their apprenticeship.
48. The ACTU understands that no-one seeks to disturb this arrangement.

⁹ [2009] AIRCFB 865, [112].

¹⁰ *ibid.*

49. The ESI exposure draft excludes from coverage ‘apprentices and trainees *during any period of placement* to which another modern award applies’¹¹ (emphasis added).
50. The wording of this coverage clause will have unintended consequences for award coverage of apprentices and trainees.
51. Firstly, it could be interpreted to mean that apprentices and trainees are only covered by the industry modern award that covers the industry of their placement while on the placement and not while undertaking off the job training – particularly in circumstances when the group training company is also the registered training organisation providing the training. During such training an apprentice could be understood to be not in a *period of placement*. Given that the ESI Award does not contain classifications for apprentices and trainees such employees may be regarded as award free during periods of off the job training.
52. Secondly, there are periods of time when an apprentice or trainee may be between placements with various employers. Group Training Companies (GTCs) may facilitate multiple placements to enable an apprentice or trainee to finish their training. This is particularly likely to be the case during the current economic crisis when placement for the full period of an apprenticeship with a single employer may be difficult.
53. The wording of the current exclusion suggests that apprentices and trainees will not be covered by the industry award appropriate to the apprenticeship or traineeship during such periods. The ESI Award would not cover employees in these circumstances as it does not contain classifications for apprentices and trainees. It is possible apprentices and trainees would be award free during such periods.
54. It has always been the case that apprentices and trainees employed by GTCs are paid the rates of pay and receive the terms and conditions

¹¹ ESI Award, Clause 4.2(b).

from the industry or occupational award relevant to the apprenticeship or traineeship they are undertaking. These relevant industry (or occupational) awards contain all matters relevant to the employment of apprentices and trainees. The provisions from such awards have applied for the entirety of the apprenticeship or traineeship employment with the GTC.

55. The ACTU proposes that Clause 4.2(b) be re-worded to read:

4.2 The award does not cover:

- (a) employers and employees covered by the Supported Employment Services Award 2010; and
- (b) apprentices and trainees ~~during any period of placement~~ to which another modern award applies.

56. In addition however it is necessary that it be clear in modern awards that GTCs who are the employers of apprentices and trainees and who place these apprentices and trainees with host employers are covered by the appropriate modern award relevant to the intended occupational outcome of the apprentice or trainee. To achieve this will require that the coverage clause of a number of modern awards be amended to ensure coverage of the GTC and apprentice or trainee.

57. The ACTU understands that this position is supported by Group Training Australia. The ACTU will respond to any specific proposals as necessary before the Full Bench.

58. The ACTU anticipates that unions will make application to vary the coverage clauses of modern awards as necessary to reflect this requirement.

Firefighting Industry Award

59. The ACTU notes the statement of the Commission and the exposure draft of the Firefighting Industry Award.
60. The ACTU supports the submissions of the UFUA with respect to the 'splitting' of the Victorian award that occurred under the Workplace Relations Amendment (Work Choices) Act 2005 resulting in a 'transitional' award that applies to the CFA and a pre-reform award that applies to the MFESB.¹²
61. The UFUA's interpretation of the legislative provisions has merit and will enable a more orderly and sensible approach to award modernisation in this sector.
62. In any event the ACTU submits that there is no obligation on the Commission to create a single award for the 'industry' covering both public and private sectors and no single award in this industry should be made. To attempt to make a single award will result in inequitable outcomes for either or both of the MFESB and the private sector (as is alluded to in the Statement of the Commission).¹³
63. While the Commission is required in the award modernisation process to have regard to the desirability of reducing the number of awards in the system,¹⁴ and to avoid overlap and minimise the number of awards that apply to a particular employer or employee,¹⁵ this does not mean that there must be only one award within the industry. In some cases the creation of an appropriate safety net will require separate consideration of public and private sectors within the industry.

¹² UFUA further submissions, 7 October 2009.

¹³ [2009] AIRCFB 865, [72].

¹⁴ Consolidated request, 26 August 2009, paragraph 4B.

¹⁵ Ibid, paragraph 9.

64. There are a number of industries that have been modernised or are being considered in stage 4 which have more than one award.¹⁶ While this may create some minor confusion it provides a just opportunity to minimise disadvantageous outcomes for one group of employees or another.
65. The ACTU submits that the private and public sector firefighting services are so diverse in the nature of their work, the size of their respective workforces and their existing workplace arrangements that the most equitable outcome would be to consider the two separately and create a modern award for private sector firefighting services only at this stage.
66. The ACTU notes that the statement of the Commission suggests that the exposure draft for this industry released by the Commission ‘generally reflects terms and conditions in the Victorian Fire Award and an associated award applying to administrative, engineering and support staff.’¹⁷
67. The ACTU takes the reference to the associated award applying to administrative etc staff to be a reference to the *Metropolitan Fire and Emergency Services Board Administrative Officers, Professional Engineers and Support Staff Award 2000*.¹⁸ The ACTU is not clear as to why the Commission has taken into account classifications and conditions from the administrative etc award. No submissions were made to this effect and no party sought such inclusion.
68. The ACTU submits that, should a separate award be made for private sector firefighting, the need or otherwise for administrative etc classifications to be included in the award and/or the capacity for these requirements to be met from existing modern occupational awards be considered in light of the needs of that sector.

¹⁶ See for eg racing industry, health, education, diving etc awards.

¹⁷ [2009] AIRCFB 865, [70].

¹⁸ AP804907.

Labour Hire

69. The ACTU supports the decision of the Commission to not release an exposure draft with respect to labour hire. In deciding to do so the Commission stated in there submission that:

it is preferable that modern awards should be varied, where necessary, to extend their coverage to labour hire firms and their employers. This will result in a more consistent safety net...

This could be done on an award by award basis by applications to vary. This will allow the particular circumstances of the industry to be considered and give all interested parties the opportunity to express a view. Such applications might be made immediately, where there exists an evident need to extend the coverage of a modern award to labour hire employees, with a view to the award being varied before it has effect.¹⁹

70. The ACTU supports the approach proposed by the Commission to the resolution of labour hire matters.
71. The ACTU considers it imperative that, in considering amendments to awards to enable coverage of relevant labour hire employees, the relationship between occupational and industry awards not be disturbed. This must be a major consideration of the Commission in considering applications to vary. We note that this is implied in the statement that such applications will allow 'the particular circumstances of the industry to be considered.'

¹⁹ [2009] AIRCFB 865, [139]-[140].

Local Government Award

72. The ACTU notes the views expressed by the Commission with respect to local government that

any local government entities which are brought into the scope of the *Fair Work Act 2009* (FW Act), as a result of a referral of power by a State pursuant to the State Referral Act, will be subject to the State reference public sector award modernisation process provided for in Schedule 6A of the Transitional Act rather than this award modernisation process.²⁰

73. If this analysis of referred local government is correct local government subject to this (Part 10A) award modernisation process are:

- Local government in the Northern Territory;
- Local government trading or other entities that are constitutional corporations such that they are national system employers; and
- Any local government that is relevantly a constitutional corporation (and hence not 'typical' as defined in the decision at [145]).

74. 'Typical' local governments will not be included in the Part 10A award modernisation process but will, if they are referred, be subject to modernisation in accordance with Schedule 6A.

75. The ACTU agrees that a referred State public sector entity will not be a part of the current modernisation process. However, the lack of certainty as to whether a particular local government is within coverage of a Part 10A modern award or not will result in uncertainty as to which award a particular local government may be covered by in future.

76. In addition it is highly unlikely that a single award will be made that covers all of local government and their activities in the federal system²¹

²⁰ [2009] AIRCFB 865, [147].

²¹ We do note however that it is not necessary that every state referred public sector transitional instrument be modernised. Such an award could be terminated in which case

– regardless of the mechanism of entering the system – because of limitations in the *Fair Work Act 2009* as to the coverage of awards made through the Part 10A process. Schedule 6A of the *Fair Work (Transitional Provisions and Consequential Amendment) Act 2009* (the Transitional Act) requires that a State reference public sector modern award can only be expressed to cover State reference public sector employers and their employees²² whilst a modern award must be expressed not to cover employers who are covered by a State reference public sector modern award.²³

77. Despite this however, there is substantial work for a local government Part 10A modern award to do such that an award should be made.
78. We do know of some areas that will be subject to the modern award made pursuant to these proceedings – Northern Territory Local Government and local government trading entities. We submit that the Commission should create a modern award that reflects conditions in these known areas of coverage. To attempt to deal with what is not known in this area will distract from the need to establish an award that provides a fair safety net of conditions as required under the WR Act and the FW Act.
79. In making an award however the ACTU submits that it will be necessary for the Commission to have regard to the content of all local government awards applying around the country as these awards apply to local government trading entities. It seems that whatever way this matter is approached and whether local government is a constitutional corporation or not, the need to consider all local government awards in the Part 10A process cannot be avoided.

those covered by the terminated award would then be covered by the relevant industry and/or occupational award (see subitem 5(3), Schedule 6A, Transitional Act).

²² Item 9(2).

²³ s 143(10), FWA.

80. In deciding the appropriate safety net for the Part 10A modern award it is proper to ensure that the safety net is at a level that does not encourage local government to 'forum shop' to find the lowest standards or manipulate their status through disingenuous means in order to come within or move outside the coverage of the modern award.
81. The ACTU supports the submissions of the ASU and LHMU with respect to content of such a modern award.

Miscellaneous Award

82. In the statement of 25 September 2009, the Commission stated of the miscellaneous award that:

While the coverage clause has been drafted to include employees not covered by any other modern award a number of qualifications are also required. For example, the exposure draft excludes employees in an industry covered by another modern award but who are not in one of the classifications in that modern award or who are specifically exempted from it. There are also provisions ensuring that the general award does not overlap with modern enterprise awards or state reference public sector awards.²⁴

83. The resulting coverage clause of the miscellaneous award states that:

4. Coverage

4.1 Subject to clauses 4.2, 4.3, 4.4 and 4.5, this award covers employers throughout Australia and their employees in the classifications listed in clause 14—Minimum wages who are not covered by any other modern award.

4.2 The award does not cover employees:

- (a) in an industry covered by a modern award who are not within a classification in that modern award; or
- (b) in a class exempted from the operation of a modern award,

or employers in relation to those employees.

84. The intent of the proposed miscellaneous award and the work the award is intended to do must, in our submission, be understood prior to a determination of the coverage clause of the award. Once this is done the ACTU is not convinced that the coverage clause as expressed in the exposure draft or explained in the statement will meet the needs of the work of this award.

²⁴ {2009} AIRCFB 865, [81].

Statutory Framework

85. The Transitional Act places limits around and opens up possibilities for the coverage of the miscellaneous award.
86. Awards made as part of the Part 10A award modernisation process 'switch on' from the time they commence operation (for current modern awards this is 1 January 2010). At this point the award-based transitional instrument²⁵ that previously applied 'switches off' permanently with respect to the employer and employees covered by the modern award.²⁶
87. This however is not the case with respect to the miscellaneous award. The miscellaneous award will not 'switch on' for an employer and employees while an award-based transitional instrument that applies to the employer and employees is in operation.²⁷
88. The implication of this is that employers and employees covered by an award-based transitional instrument will remain covered by that instrument until that instrument is terminated in accordance with the Transitional Act. At this point the miscellaneous award will 'switch on' with respect to the particular employer and employees.
89. The Transitional Act establishes a process for termination of transitional instruments.²⁸

3 Variation and termination of certain transitional instruments etc. to take account of Part 10A award modernisation process

(1) FWA must, as soon as practicable after a modern award (other than the miscellaneous modern award) made in the Part 10A award modernisation process comes into operation (and subject to subitem (3)):

²⁵ An award, state-reference transitional award or common rule or NAPSA.

²⁶ Subitem 29(1), schedule 3, Transitional Act.

²⁷ Subitem 29(2), schedule 3, Transitional Act.

²⁸ Schedule 5, Transitional Act. Transitional instruments are defined in Item 2(3) of Schedule 3 of the Transitional Act, a transitional APCS is defined in Item 5(3) of Schedule 9 of the Transitional Act.

(a) terminate any of the following (*modernisable instruments*) that FWA considers are completely replaced by the modern award:

(i) award-based transitional instruments;

(ii) transitional APCs; and

(b) if FWA considers that the modern award only partly replaces a modernisable instrument—vary the coverage terms of the modernisable instrument accordingly.

(2) As soon as practicable after all modern awards made in the Part 10A modernisation process have come into operation, FWA must (subject to subitem (3)) terminate any remaining modernisable instruments.

(3) However, FWA must not, under this item:

(a) terminate a modernisable instrument that is an enterprise instrument, or that covers employees who are also covered by an enterprise instrument; or

(b) vary a modernisable instrument that is an enterprise instrument; or

(c) vary a modernisable instrument so that it ceases to cover employees who are also covered by an enterprise instrument.

(4) FWA may establish a process for making decisions under this item to terminate or vary one or more modernisable instruments.

(5) FWA may advise persons or bodies about that process in any way FWA considers appropriate.

(6) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (5).

90. The provisions governing the termination process suggest that Fair Work Australia cannot terminate award based transitional instruments until such time as they have no on-going application (see subitem 3(1)(a) above). To do so before-hand would not, in our submission, be practical.

91. The process of consideration of modernisable instruments for termination should, in our submission, enable an audit and modification of the coverage of Part 10A modern awards. This will enable:
- (i) the identification of employers and employees who remain subject to a modernisable instrument (and by definition are not covered by a modern award).
 - (ii) the appropriate modification of scope of modern awards;
 - (iii) the modification as required of the scope of the miscellaneous award.
92. This will ensure that employers and employees do not, through the termination of modernisable instruments, fall into an 'award-free' status. Such an outcome would, we submit, be contrary to the object of award modernisation.²⁹
93. The statutory framework also suggests that there are two functions the miscellaneous award is intended to perform. The first is that it should cover employees that Fair Work Australia knows – through the process of terminating of award-based transitional instrument – need to be covered by the miscellaneous award.³⁰ The second is that the award has the capacity, within the limits of the *Fair Work Act 2009*, to cover new and emerging industries. This would suggest that the scope of the miscellaneous award should provide general coverage for the 'unknowns' but also specific coverage where a modernisable instrument is to be terminated but still applies to some employers and/or employees. This is discernable through item 3 of Schedule 5 of the Transitional Act and s143(7) of the FW Act.

²⁹ s 576B, WR Act 1996.

³⁰ Because for example it is not deemed appropriate to vary the scope of a modern award or create a new modern award to cover them.

94. This analysis does not, and should not, preclude the making of a miscellaneous award. We submit however that such an award should not be seen as set in concrete and a flexible approach to the content and coverage of the miscellaneous award should be adopted on an on-going basis.

Principles for the termination of modernisable instruments

95. The ACTU submits that the process involved in the termination of award-based transitional instruments and transitional APCSs must ensure that existing award covered workers will not become award free because they are not covered by a modern award.
96. To ensure this is the case the ACTU submits that in carrying out the requirements of item 3 of Schedule 5 of the Transitional Act, Fair Work Australia should:
- (i) Consider the termination of modernisable instruments in logical groupings;
 - (ii) Seek submissions on termination on an 'exception' basis so that a person or organisation wishing to challenge the termination on the basis that it still has work to do is required to lodge submissions to this effect;
 - (iii) Prior to terminating a disputed instrument take all steps necessary, including varying the coverage of a modern award or the miscellaneous award, to ensure employers and employees do not become award free;
 - (iv) Not terminate a modernisable instrument that has on-going application;
97. The process overall must, in our submission, enable a consideration of who remains covered by the award-based transitional instrument and transitional APCS and allow the amendment to scope of a relevant

modern award to bring those employees within the scope of the modern award.

98. The objective of the process is to not have existing award covered workers fall into an award free status.

Coverage clause in the exposure draft

99. Given this framework the ACTU submits that the Commission should not, in the scope of the miscellaneous award, preclude from its coverage those employees in industries covered by another modern award but who are not in the classification of that award or are exempt from that award.³¹ To do so would pre-empt decisions that may need to be taken during the process of terminating award-based transitional instrument.

Catholic Archdiocese of Sydney and Melbourne

100. The ACTU notes that the Commission have indicated that a 'transition clause applying to some employees in Catholic Church related employment...will be considered further during the consultations.'³²
101. Further the ACTU notes that a submission on this matter has been made on behalf of the Catholic Archdioceses of Sydney and Melbourne that seeks to enable the application of the wage rate provisions of the proposed award to all hours worked by employees at the direction of the employee's supervisor and that it should be reviewed in two years time by Fair Work Australia.
102. The ACTU opposes the proposal put forward on behalf of the two Archdioceses for many of the reasons outlined in our oral submissions to the consultations.³³ In particular we note that the submission is made on behalf of a *sector* in the Catholic church only and cannot be taken as representative of the views of the Catholic church in Australia.

³¹ [2009] AIRCFB 865, [81].

³² [2009] AIRCFB 865, [81].

³³ Transcript, AM2008/74, 7 August 2009, PN98-99.

103. Should the Commission be minded to limit the application of the award in the way sought by the Archdioceses of Sydney and Melbourne however the ACTU would seek that:

- Employees have access to consultation and dispute settling procedures under the award. Without access to dispute settling procedures employees would not have access to dispute settlement with respect to the NES;
- The review clause is removed. Any party may, at any time, seek the amendment of a modern award to ensure it continues to meet the modern award objective. There is no requirement to place such a review requirement in the award itself.

Wages and classifications

104. The exposure draft released by the Commission contains a four level classification based wage structure³⁴ along with associated Classification Structure and Definitions.³⁵

105. The ACTU does not consider that a four level (in effect three level when the rate for the first three months is removed) classification structure provides the necessary flexibility to reflect the diversity of work carried out in industries and occupations that may be covered by the award. In particular the ACTU is concerned at the lack of flexibility in the above trades (or equivalent) but below graduate level area. This 'above trades/below graduate level' is, in our submission, critical if workers exercising advanced trades and para-professionals are to be appropriately remunerated.

106. It is highly likely that industries particularly in areas of energy production, waste management and sustainability will emerge over the coming years as carbon pollution reduction strategies are put in place. These

³⁴ Miscellaneous Award, exposure draft, clause 13-14.

³⁵ Ibid, Schedule A.

industries – like many others - will require both professional employees and a skilled and competent para-professional workforce – both fulfilling particular and critical roles (in addition of course to trades and other workers).

107. To exclude an advanced trades/para-professional classification will, in our submission, have a detrimental effect on the emerging industries that may well be covered by this award.

108. The ACTU therefore proposes an amendment to the minimum wages clause as follows:

14.1 Adult minimum wages

Classification	Minimum wage per week	Minimum wage per hour
	\$	\$
Level 1	543.90	14.31
Level 2	583.00	15.34
Level 3	637.60	16.78
Level 4	679.30	17.88
Level 5	733.70	19.31

109. Further, the ACTU does not support the classification definitions contained in the award. They provide little guidance on the skills and capabilities that are expected to be demonstrated at each of the classification levels and hence provide little guidance or assistance in the resolution of disputes over classifications.

110. The ACTU submits that more detailed classification descriptions are required. We propose at **Attachment A** to this submission an amended classification description for inclusion in the miscellaneous award.

Allowances

111. The ACTU notes the allowances that have been included by the Commission in the exposure draft. The ACTU supports the inclusion of each of these allowances.

112. In addition however the ACTU seeks that additional allowances asset out below be included in the award:

Tool Allowance

113. The Commission has decided to include apprentices in the award and clearly anticipate that trades persons may be covered by the award. As such it is appropriate that a tool allowance – a common entitlement for tradespeople – be included in the award. The ACTU proposes the following clause:

Tool allowance—tradespersons and apprentices

- T.1** Except as provided elsewhere in this clause, a tradesperson must be paid \$20.00 per week extra for supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- T.2** An employer may reach agreement with an individual tradesperson or apprentice to provide all of the tools required in the performance of their work. In such circumstances, the tool allowance is not payable.
- T.3** The allowance in this clause applies to an apprentice on the same percentage basis as set out in Clause 14.2 – Apprentice minimum wages.
- T.4** The provision of tools under the Federal government **tools for your trade scheme** does not constitute the provision of all tools by the employer for the purposes of this clause.

Disability Allowance

114. The ACTU continues to support the express inclusion of a Disability Allowance in this award. Such a clause would enable the payment of an allowance in circumstances where the work environment is adversely affected such that some disability is suffered by the employee for which compensation is justified.

115. The ACTU supports the inclusion of the following clause:

Disability Allowance

D.1 An employee who is required to work in circumstances different from those normally experienced in the particular workplace shall be entitled to a disability allowance of 3.5% of the standard rate for each day the disability is suffered. 'Circumstances' means any detrimental effects on the working conditions of the employees caused by a variety of factors outside those normally present in the workplace including: dust, noise, fumes, heat, vibrations, cold, wet, dirt, loss of amenities, general inconvenience.

Other Allowances

116. The Commission, in drafting the Miscellaneous award, has chosen not to include a number of allowances sought by the ACTU. These include:

- Living Away From Home Allowance;
- Outdoor Work Allowance;
- Relocation Expenses;
- Special Clothing Allowance;
- Training Costs;
- Bilingual Qualifications Allowance.

117. The ACTU continues to press for these allowances for the reasons outlined in our Stage 4 submission.

118. Should the Commission not be minded to grant these allowances, the ACTU submits that a general expense payment provision be included in the award in the following terms:

Reimbursement Expenses

R.1 All reasonable expenses incurred at the direction of the employer, including out-of-pocket, accommodation, travelling expenses and special protective clothing, incurred in connection with the employee's duties shall be paid by the employer and, where practicable shall be included in the next pay period.

R.2 The method and mode of travelling or the vehicle to be supplied or to be used shall be arranged mutually between the employer and the employee. Travelling arrangements shall be agreed between the employer and the employee in advance. The employer may require the employee to present proof of payment prior to the reimbursement.

Superannuation

119. The Commission have included a superannuation clause in the exposure draft in a similar form to that included in other modern awards. The 'default fund' provision is at clause 19.4 of the exposure draft.

120. The ACTU proposed a default fund clause for this award that varied the model provision inserted into modern awards generally and varies from the clause in the exposure draft. In particular we proposed that default funds should be limited to recognised industry funds or

any superannuation fund to which the employer was making superannuation contributions **in compliance with an award based transitional instrument** for the benefit of its employees before 12 September 2008 provided the superannuation fund is an eligible choice fund.³⁶

121. The highlighted words are the proposed ACTU amendment to the standard clause inserted by the Commission in modern awards.

122. The ACTU continues to press this amended clause.

123. The standard clause as inserted into modern awards has a number of detrimental consequences that the ACTU submits are contrary to general requirements for award compliance and that confuse default funds with funds that an individual may have chosen for their own circumstances through the operation of choice legislation.

124. First, under the Commission's proposed clause if an employer had, in breach of the default superannuation provisions in an award-based transitional instrument, contributed superannuation on behalf of his or her employees to a non award-named default fund, that breach of the award based transitional instrument is legitimised by making that (breach) fund a default fund in the modern award. This occurs because the standard clause does not distinguish *how* the employer came to be contributing on behalf of employees into the fund.

125. Secondly, the standard clause causes any fund an employer was contributing to on behalf of an employee who had exercised their rights under 'choice of fund' legislation to be recognised as a default fund. Again this comes about because the clause fails to distinguish *how* an employer came to be contributing to a fund and simply states that any

³⁶ ACTU Award Modernisation Stage 4 Submission, 24 July 2009, ACTU Draft Clause 4A award, Attachment A, Clause 22.4(b).

fund to which an employer was contributing is now a legitimate *default* fund.

126. The implications of the standard clause as included in the modern award are firstly to reward behaviour of an employer that is in breach of an award based transitional instrument requirement and secondly to enable an employer to elect to contribute superannuation to a fund that is 'on their books' only by virtue of the operation of employee choice without due regard to the attributes of the fund.
127. The ACTU submits that neither of these outcomes should be enabled by the operation of the superannuation clause.
128. The ACTU submits that the requirement that a default fund only be one that was legitimately operating as a default fund prior to the modern award will not place an onerous responsibility on employers and will not add any additional cost or increase the regulatory burden on employers.
129. The effect of the change proposed by the ACTU would be to firstly stop an employer contributing to a fund as a default fund that they had previously been contributing to in breach of the award and secondly prevent an employer from contributing to a fund as a default fund where that fund only operates through employee choice.
130. Should the Commission accept this amendment the ACTU submits that the alteration made to the standard superannuation clause should be reflected in all modern awards and not just the miscellaneous award.
131. We note that the Commission has altered the standard default fund clause in the Stage 4 exposure drafts to provide that the successor funds to a default fund become default funds. The ACTU does not oppose this change.
132. The ACTU notes that the Commission has also been prepared, on application, to name as a default fund those funds that are currently

named as default funds in award based transitional instruments. The effect of this is to ensure those funds remain eligible to be selected as the default fund by an employer covered by the modern award regardless of whether the employer currently forwards contributions to that fund. Subject to the views of the parties with a direct interest in the award, the ACTU also supports this approach.

Hours of work and shift work

133. The ACTU notes that the hours of work provisions in the exposure draft are substantially different to those proposed by the ACTU.

134. The ACTU rejects the arrangements determined by the Commission with respect to:

- the spread of hours - which enable ordinary hours to be worked Monday to Saturday
- shift work –the clause appears to suggest that ordinary hours can be worked regularly outside the 7.00am – 7.00pm Monday to Saturday spread as long as the penalty is paid
- the penalty rates payable
- the overtime rates for work on Saturday, Sunday and public holidays.

135. The ACTU submits that the conditions contained in the exposure draft with respect to these matters fall well short of an appropriate safety net standard.

136. The ACTU proposes that the hours of work clause provide:

- Ordinary hours be worked Monday to Friday 7.00am – 7.00pm;

- Explicitly for shiftwork and that all shifts starting and/or finishing outside the ordinary hours be paid a minimum shift penalty for all hours worked of 15%;
- That permanent night shift attract a penalty of 30%;
- The payment for work by a shiftworker for work between midnight Friday and midnight Saturday be time and a half (in lieu of 15%);
- The payment for work by a shiftworker for work on Sunday or a public holiday be double time (in lieu of 15%).

137. In addition the ACTU proposes that the annual leave clause be amended to provide that shift workers are entitled to the greater of the 17.5% loading or their shift penalties for the period of leave. This is a standard provision for shiftworkers and is appropriate for the safety net.

National Training Wage Schedule

138. The ACTU notes the Commission decision with respect to the National Training Wage Schedule (NTW Schedule). The ACTU makes the following submissions with respect to the draft Schedule.
139. **Default Wage Level:** The ACTU continues to press our submission that there is no need for a default wage level. Our submissions of 24 July 2009 remain relevant.³⁷
140. The inclusion of a provision in the draft schedule that defines a training package to include 'any replacement training package' obviates the need for a default wage level. If the purpose of the default wage level is to respond to delays in updating of the schedule for changes to training packages we submit that the application of the provisions in the Schedule to any replacement training packages overcomes this concern. There is no need for a default wage level.
141. **Employment Conditions:** The ACTU supported, in conjunction with the Queensland Department of Education and Training, altered wording with respect to the requirement that a trainee be permitted to be absent from work to attend approved training. The ACTU proposed the inclusion of the following in lieu of the existing clause 6.2:

(1) Trainees are entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the Training Plan.

(2) Time spent by a trainee undertaking training or assessment is taken to be time worked for the employer for the purposes of

³⁷ See ACTU Award Modernisation Submission Stage 4, 24 July 2009, [223]-[227].

calculating the trainee's wages and determining employment conditions.³⁸

142. The purpose of this amendment was to ensure that a trainee who is undertaking or is required to undertake approved training is not disadvantaged – particularly in light of the fact that their wages are discounted to take account of the time during a working week that they spend in training.

143. The ACTU does not understand that there were any submissions to the contrary on this point and continue to press the amendment.

Transitional provisions

144. The ACTU notes that transitional provisions, particularly with respect to the operation of the Queensland Order – Apprentice and Trainee Wages and Conditions 2003 were not dealt with in the Statement of the Commission. The ACTU submits that adequate transitional provisions with respect to competency based progression should be addressed in the transitional provisions of modern awards.

³⁸ ACTU Supplementary Submission, NTW Schedule, 26 August 2009.

145. The ACTU proposes that the following be inserted into transitional arrangements:

Transitional Provisions Apprentices and Trainees Wages and Conditions (Queensland)

An employer who, immediately prior to 1 January 2010, was obliged to apply the provisions of the Queensland Order – Apprentice and Trainee Wages and Conditions 2003 shall be entitled to continue to apply the competency based wage progression provisions set out in that order to apprentices and trainees employed after 1 January 2010 until either:

- (i) A review of the National Training Wage Schedule is completed, or
- (ii) 31 December 2014

whichever is earlier.

146. No other State or Territory has distinct apprentice arrangements such that transitional provisions are required.

Coverage

147. The wording of the current coverage clause is limited by the wording in subclause 3.1. To suggest that the coverage of the Schedule is only subject to clause 3.2 nullifies the purpose of sub-clauses 3.3-3.5.

148. **Clause 3.1** should be amended to read:

3. Coverage

3.1 Subject to ~~clause 3.2 of this schedule~~ this clause, this schedule applies...'

Allocation of training packages – Appendix A

149. The ACTU proposes a number of changes to Appendix A of the NTW Schedule. These changes ensure the accuracy of the information contained in the Schedule. The changes and notated reasons for these are at **Attachment B** to this submission.

Social, Community, Home Care and Disability Services Industry Award

150. The ACTU notes the statement of the Commission with respect to the this award.
151. In the Statement the Commission seek the views of parties with respect to the capacity for further rationalisation of and integration of wage structures 'across some or all of the remaining sectors (family day care, disability, home care services).³⁹
152. The ACTU notes that there are, in the exposure draft, separate minimum wages rates for disability service employees and social and community service employees. The ACTU supports the integration of the minimum wages structure and relevant conditions of disability service employees into the wages structure for social and community service workers. To not integrate the structure will create an on-going artificial barrier between social and community services employees and disability services employees that does not, in reality, exist and will only serve to disadvantage employees if maintained.
153. The ACTU supports the submission of the ASU that a differential wages structure across these two groups will undermine existing arrangements and workforce stability. Further, the ACTU submits that a single integrated structure will provide a fair minimum safety net for these workers. The ACTU supports the integration of the wages structures.
154. The ACTU supports the submissions of the ASU with respect to salary packaging. This does form an important part of the safety net for workers in this sector and should be maintained.

³⁹ [2009] AIRCFB 865, [107].

155. The ACTU has sighted and supports the submissions more broadly of the ASU with respect to Health and Welfare Services (remainder) – Social and Community Services.

Supported Employment Services Award

156. The Commission in its statement of 25 September sought assistance from parties in relation to two matters arising under the proposed Supported Employment Services Modern Award 2010.

Disputes regarding rate of pay or classification level

157. The ACTU supports the preliminary view of the Commission that employees with a disability engaged under modern awards should be able to raise the matter of their disputed rate of pay or classification level in the event such an issue is not resolved at the local level.

158. The ACTU does not support a limitation on access to a dispute settling procedure and finds no cogent argument to support such a provision.

159. This is a matter of equity. Employees employed under this award should have the same rights as any employee in any industry to raise a dispute over such matters, regardless of any internal mechanism in the age assessment process.

160. The ACTU notes that the draft award put forward by the LHMU contained no such limitation.

Superannuation clause

161. The ACTU notes the submissions of the parties on this issue accurately summarised in the decision of the Commission.⁴⁰

162. The ACTU further notes the invitation from the Commission for submissions on how this matter may be progressed.

163. On further consideration of the matter the ACTU submits that the clause could be amended to update the percentage and dollar amounts and be

⁴⁰ [2009] AIRCFB 865, [122].

made to have universal application, subject to transitional phasing provisions. The ACTU makes this submission on the following grounds.

164. The AFPC Disability Sector Profile Employer Survey, which had a 71 per cent response rate, reports:

Additional benefits

Most participants advised that they provided benefits and conditions to their employees in addition to the wage provided by the WAT to their employees. Commonly cited benefits include: paid time off to attend training; additional training (type of training was not specified); time off when required to attend medical appointments; additional paid personal leave; and superannuation for all employees regardless of earnings; and employee bonuses.⁴¹ [emphasis added]

165. The Business Services Review states:

Recommendation 7

That in fulfilling their role as employers, Business Services are required to provide work conditions comparable to that found in other forms of employment including:

- *Hours of work*
- *Leave conditions*
- *Appropriate Occupational Health and Safety*
- *Superannuation*
- *Wages*
- *Skills development and training*
- *Opportunities for career development.*⁴²

⁴¹ Australian Fair Pay Commission, Australian Disability Enterprises, Sector Profile, June 2009, p60.

⁴² Business Services Review, A Viable Future Strategic Imperatives for Business Services.

166. The Supported Wage System Handbook states:

All workers within the system will receive employer supported superannuation, at least to the minimum levels established by the government's Superannuation Guarantee. Agreements may be negotiated between relevant parties on a case-by-case basis to provide for superannuation where workers would normally not receive a benefit under the Superannuation Guarantee⁴³.

167. The original, and unadjusted, employees with disability superannuation clause was based on the 1993 Superannuation Guarantee amount of 3 per cent. The \$6 figure was included to ensure that after deduction of fund fees an employee accumulated superannuation.

168. As a matter of principle the ACTU believes that the percentage amount in the employees with disability superannuation clause must be increased to the current superannuation guarantee amount (9 per cent).

169. In 1993 \$6 was equivalent to 54.7 per cent of the hourly rate (\$10.98) of the 1993 key classification (Tradesperson) rate of \$417.20. Retaining the original/existing ratio of the dollar figure to the key classification (Tradesperson) rate (\$16.78 per hour) increases the dollar figure in the clause to \$9 per week.⁴⁴

170. The following table is based on the wages distribution for employees with a disability employed by supported employment services reported in the 2007 Disability Census and two assumptions:

- Mid-points of wage ranges;
- Weekly wages can be multiplied by four weeks to provide monthly wages

⁴³ Department of Families and Community Services, Quality assurance handbook for disability employment services, 2001.

⁴⁴ Rounded to the nearest dollar.

Gross weekly wage category	Number of employees	Mid-point of wage range	Monthly wage (Mid-point x 4 weeks)	9 per cent of weekly wage	9 per cent or \$9 whichever the greater
0	27				
1-20	1639	\$10.00	\$40.00	\$0.90	\$9.00
21-40	3746	\$30.00	\$120.00	\$2.70	\$9.00
41-60	3078	\$50.00	\$200.00	\$4.50	\$9.00
61-80	3482	\$70.00	\$280.00	\$6.30	\$9.00
81-100	1772	\$90.00	\$360.00	\$8.10	\$9.00
101-150	2414	\$125.00	\$500.00	\$11.25	9%
151-200	897	\$175.00	\$700.00	\$15.75	9%
201-250	370	\$225.00	\$900.00	\$20.25	9%
251-300	171	\$275.00	\$1,100.00	\$24.75	9%
301-350	92	\$325.00	\$1,300.00	\$29.25	9%
351-400	70	\$375.00	\$1,500.00	\$33.75	9%
401-450	24	\$425.00	\$1,700.00	\$38.25	9%
451-500	10	\$475.00	\$1,900.00	\$42.75	9%
501+	35	\$500.00	\$2,000.00	\$45.00	9%

171. The table shows that the majority of employees (77%) would be subject to the \$9 per week dollar amount in the special clause, earning less than the \$450 per month threshold which invokes the standard clause. (If the dollar figure was left at \$6, 47% of the employees would receive \$6 per week, the remaining employees receiving 9% super.)

172. The additional cost (per employee) for employers not currently paying superannuation to employees earning less than \$450 per month would be \$468 per annum (\$9 x 52) and for employers currently paying the \$6 per week to employees earning less than \$450 per month \$156 per annum (\$3 x 52). As previously noted these additional costs could be phased in as part of transitional provisions.

173. The Superannuation Guarantee \$450 threshold was introduced to exclude from an obligation on the employer to pay the Superannuation Guarantee cases of marginal attachment in which the employee worked

so few hours per month that the benefit to the employee was outweighed by the compliance costs to the employer.

174. The ACTU believes this can be distinguished from cases in which employees with disability working regular hours earn below the threshold because they are in receipt of productivity/competency based wages. It is not the lack of hours or lack of attachment to the workplace but the assessed wage which excludes these employees from receiving superannuation.

175. The ACTU believes an argument can be advanced that if an employee, working at the job level and the hours of an employee with a disability, would be eligible for superannuation, the employee with a disability should also be eligible, notwithstanding their productivity/competency based wage.

176. On this basis, any employee working an average of 8 hours per week, or 32 hours per month would be eligible to receive superannuation.⁴⁵

177. The Australian Government Disability Services Census 2007 records that at 29 June 2007 employees with disability in supported employment worked the following hours:

Hours per week	No. of Employees	Percentage
<8	109	0.6%
8-15	3611	20.3%
16-30	5377	30.2%
31-40	8646	48.5%
40+	84	0.5%

178. On this basis nearly all employees with disability would be eligible for superannuation.

⁴⁵ An adult employee working 32 hours per month at Level 2 equivalent (\$14.75 per hour) earns \$472 per month)

179. This argument can be advanced on the premise that only the wage and not other conditions of employment is to be pro-rata if the employee with disability cannot work at a fully productive capacity.
180. The ACTU believes in principle that this should apply to all employees with disability working in both supported employment and open employment.
181. The ACTU notes that there are award exceptions to the \$450 threshold, including the *Hospitality Industry Award 2010* which has a threshold of \$350 per month.
182. The ACTU submits that there is no reason to not progress this matter through the current award modernisation process. The existence of transitional provisions will shield employers from any substantive shock as a result of implementation of this provision.

Real Estate Industry Award

183. The ACTU has generally not opposed the making of a Real Estate Industry Modern Award.⁴⁶

184. The ACTU does however have some concerns about the exposure draft for this industry as released by the Commission. In particular these concerns go to the existence of a wage rate at the federal minimum wage for a Property Sales Associate.⁴⁷ The ACTU does not accept that any position should be paid at the FMW on an on-going basis. The FMW should, at most, be an entry/induction/introductory training level with an occupant shifted onto an appropriate classification and pay rate following a fixed, short period of time.

185. We note that the Commission, in releasing an exposure draft of the proposed miscellaneous award, have recognised this role for the FMW/entry level classification.

186. In examining the functions of the position⁴⁸ the ACTU does not accept that these duties reflect an entry level position. Further, the ACTU submits that, on a cursory examination, the skills and responsibilities of the position would appear equal to if not higher than the Property Management Associate position⁴⁹ which has a substantially higher minimum salary.

187. Whilst the ACTU believes that a proper work value assessment should be undertaken for all classifications in the award we recognise that this is unlikely to be undertaken in the time available for the finalisation of the making of modern awards.

⁴⁶ See ACTU Submission Stage 4, 24 July 2009, [212].

⁴⁷ Exposure Draft – Real Estate Industry Award 2010, clause 14.1.

⁴⁸ Ibid, Schedule B.1.1.

⁴⁹ Ibid, clause 14.1 and Schedule B.2.1

188. The ACTU would therefore propose as a minimum that the existing minimum wage be specified for a Property Sales Associate – entry level (applicable for the first three months of employment) and that an additional classification for a Property Sales Associate (following three months employment) be inserted at the rate of \$560.50.
189. The rate of \$560.50 is the minimum rate following induction in the Manufacturing Industry Modern Award. It is based on skills based career path and recognises the skills that attach to a classification at the entry level but following a period of training. In proposing this rate the ACTU does not concede any matter with respect to the skills required but recognise that there is not the time in the current timetable to determine the appropriate skill level and hence minimum rate of pay for the position.
190. Any additional costs arising from the inclusion of an appropriate rate for this position should be dealt with through transitional provisions in the award.

Attachment A

Schedule A - Classification Structure and Definitions

- A.1** A **Level 1 employee** is on probation and is employed at this level for a maximum of three months. Work at this level is less than that of a level 3 or above
- A.2** A **Level 2 employee** has completed a Certificate I or II or exercises equivalent skills and is an employee who at the completion of their training is capable of performing work within the scope of this level. An employee at this level:
- 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.
- A.3** A **Level 3 employee** has completed a trade qualification, a Certificate III or exercises equivalent skills and performs work above and beyond the skills of an employee at the Level 2. An employee at this level:
- is be able to perform specialised or non-routine tasks or features of the work;
 - exercises good interpersonal and communication skills
 - requires only general guidance or direction;
 - has scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties;
 - may be required to give assistance and/or guidance (including guidance in relation to quality of work) to employees at lower levels;
 - is capable of training employees at lower levels by means of personal instruction and demonstration.
- A.4** A **Level 4 employee** has completed a Certificate IV or exercises equivalent skills and has achieved a level of organisation or industry specific knowledge sufficient for them to give advice and/or information to the organisation and clients in relation to specific areas of their responsibility. An employee at this level:
- requires only limited guidance or direction;

- works under limited supervision either individually or in a team environment;
- may be responsible for employees in lower levels in terms of allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems.
- exercises initiative, discretion and judgment at times in the performance of their duties.
- may assist in the provision of training in conjunction with supervisors and trainers;

A.5 A **Level 5 employee** has completed a Certificate V or at least a three year or four year graduate degree or exercises equivalent skills. An employee at this level works above and beyond the skills of an employee Level 4. An employee at this level will work to the level of their skill, competence and training.

Attachment B

Appendix 1: Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

A.1 Wage Level A

Training package	AQF certificate level	Comment
Aviation	I	
	II	
	III	
Aeroskills	II	This qualification has been moved from wage level B.
Beauty	III	
Business Services	I	
	II	
	III	
Chemical, Hydrocarbons and Refining	I	
	II	
	III	
Civil Construction	III	
Coal Training Package		
Community Services	I	Delete, there is no work based Cert I qualification. This is a 'pre-work' course.
	II	
	III	
Construction, Plumbing and Services Integrated Framework	I	
	II	
	III	
Correctional Services	II	
	III	
Drilling	II	
	III	
Electricity Supply Industry - Generation Sector	II	
Electricity Supply Industry - Transmission, Distribution and Rail Sector	II	This is the correct name of the package

Training package	AQF certificate level	Comment
Electrotechnology	I II	
Financial Services	I II III	
Floristry	III	
Food Processing Industry	III	
Gas Industry	III	
General Construction	I II III	Delete. Superseded by Const, Plumbing & Services Integrated Framework package
Information and Communications Technology	I II III	
Laboratory Operations	II III	
Local Government (Other than Operational Works Cert I & II)	I II III	Local government training package and quals has been restructured. This is now accurate along with a change in Wage Level B.
Manufactured Mineral Products	III	
Manufacturing	I II III	
Maritime	I II III	
Metal and Engineering Industry (Technical)	II III	
Metalliferous Mining	II III	
Museum, Library and Library/Information Services	II III	
Plastics, Rubber and Cablemaking	III	
Public Safety	III	

Training package	AQF certificate level	Comment
Public Sector	II III	
Pulp and Paper Manufacturing Industries	III	
Retail Services (including wholesale and Community pharmacy)	III	Provides clarity. Wholesale – retail is deleted below.
Telecommunications	II III	
Textiles, Clothing and Footwear	III	
Tourism, Hospitality and Events	I II	
Training and Assessment	III	
Transport and Distribution	III	
Water Industry (Utilities)	III	
Wholesale – Retail Training	III	See comment on retail above

A.2 Wage Level B

Training package	AQF certificate level	Comment
		The table has been sorted into alphabetical order
Aeroskills	II	This qualification more properly belongs in Wage level A
Animal Care and Management	I II III	
Asset Maintenance	I II III	
Australian Meat Industry	I II III	

Training package	AQF certificate level	Comment
Automotive Industry Manufacturing	II III	
Automotive Industry Retail, Service and Repair	I II III	
Beauty	II	
Caravan Industry	II III	
Civil Construction	I	
Community Recreation Industry	I II III	Delete - there are no Cert I & II quals.
Construction, Plumbing and Integrated Services Framework	I II III	Delete - these are (correctly) in Wage Level A
Entertainment	I II III	
Extractive Industries	II III	
Fitness Industry	III	
Floristry	II	
Food Processing Industry	I II	
Forest and Forest Products Industry	I II III	
Furnishing	I II III	
Gas Industry	I II	
Health	II III	
Local Government (Operational Works)	I II	

Training package	AQF certificate level	Comment
Manufactured Mineral Products	I II	
Metal and Engineering Industry (Production)	I II III	Delete – there is no occupational outcome – it is a ‘pre-work’ qualification.
Outdoor Recreation Industry	I II III	
Plastics, Rubber and Cablemaking	II	
Printing and Graphic Arts	II III	
Property Services	I II III	
Public Safety	I II	
Pulp and Paper Manufacturing Industries	I II	
Retail Services	I II	
Screen and Media	I II III	
Sport Industry	II III	
Sport, Fitness and Recreation	II III	There are three distinct streams of qualifications: Community Rec, Fitness & Sport. Each should be, and is, listed separately.
Sugar Milling	I II III	
Textiles, Clothing and Footwear	I II	
Transport and Logistics	I II	

Training package	AQF certificate level	Comment
Visual Arts, Craft and Design	I II III	
Water Industry	I II	

A.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I II III
Conservation and Land Management	I II III
Funeral Services	I II III
Music	I II III
Racing Industry	I II III
Rural Production	I II III
Seafood Industry	I II III