Australian Council of Trade Unions

Submission to the Australian Industrial Relations Commission

Award Modernisation
Stage 4
Pre-drafting consultation
24 July 2009
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Introduction

1. The ACTU makes the following submissions with respect to a number of specific matters in relation to Stage 4 of award modernisation.

2. The ACTU has consulted affiliates in relation to all of these matters and expects that affiliates will provide additional material to support these submissions.
Outstanding Issues of Scope

3. The ACTU makes the following submissions with respect to outstanding scope issues. These submissions are not restricted to stage 4 industries.

4. The ACTU understands that affiliates will make submissions to the Commission with respect to matters relating to the scope of existing modern awards. These submissions arise as a result of the Commission’s Statement of 29 June 2009:

We publish a separate list of miscellaneous awards and NAPSAs. We are advised that the awards and NAPSAs on the list are not enterprise and do not appear to be within any of the industries or occupations dealt with in any of the stages. Any proposals for modern award coverage for those areas will be dealt with in Stage 4. Any other proposals based on an alleged gap in modern award coverage will also be dealt with in Stage 4.\(^1\) (emphasis added)

5. Amendments to the scope provisions will be sought by affiliates in accordance with the process outlined in the 26 June 2009 Statement.

Iron and Steel Industry

6. The ACTU has previously submitted that the Iron and Steel Industry should be subject to a modern award and requested that the industry be listed for consideration in stage 4.\(^2\) The ACTU continues to urge the Commission to establish a fair minimum safety net for this industry prior to the completion of award modernisation.

7. The ACTU submits that the creation of a modern award for the Iron and Steel Industry is consistent with the requirements of the Request. The aim of award modernisation is to create a comprehensive set of modern awards that (among other things) provides a fair minimum safety net and

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\(^1\) Award Modernisation Statement, [2009] AIRCFB 641, 29 June 2009, [6].
\(^2\) ACTU letter to the Commission dated 02 February 2009.
promotes collective enterprise bargaining. The creation of modern awards is not intended to exempt or have the effect of exempting employees who are not high income employees, from modern award coverage or application, unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation. The Request specifically states that the Commission is not precluded from making an award for an industry in which enterprise awards operate.

8. The Iron and Steel Industry has historically been covered by awards and, in our submission, should remain so. Whilst this has traditionally been through enterprise awards, this is not grounds for not making a modern award. The establishment of a safety net will provide an appropriate standard against which agreements can be measured to ensure they satisfy the requirements of the proposed *Fair Work Act 2009*.

9. In our submission the Commission should make a separate modern award to cover the Iron and Steel Industry.

**Audit of Modern Award Coverage**

10. The ACTU has previously submitted that prior to the end of award modernisation the Commission should conduct an audit to ensure that issues of scope and gaps in coverage can be identified and resolved.

11. The ACTU notes that the Commission has acknowledged the necessity of conducting such a ‘review’.

12. In our submission it is not possible to consider whether modern awards provide comprehensive coverage whilst the outcome of stage 4 remains in doubt. The ACTU submits that a separate systematic review of

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3 Request, paragraphs (b) and (d).
4 Request, paragraph 2(f).
5 Request paragraph 2(e).
6 [2009] AIRCFB 1000, [31].
modern award coverage, which provides interested parties with an opportunity to identify any outstanding issues and make relevant submissions, should be undertaken following the publication of stage 4 awards.
13. An examination of awards applicable to Christmas Island reveals that there is only one award that covers Christmas Island which is not an enterprise award, namely the *UCIW Christmas Island Building and Construction Award 2004*.

14. In our submission the scope of this award is encompassed within the scope of the following modern awards:

   i. Building and Construction General On-site Award 2010;
   
   ii. Electrical, Electronic and Communications Contracting Award 2010;
   
   iii. Plumbing and Fire Sprinklers Award 2010; and
   

15. The ACTU submits that the *UCIW Christmas Island Building and Construction Award 2004* contains two provisions specific to Christmas Island which need to be incorporated into the modern awards identified above to ensure that Christmas Island workers are not disadvantaged. Their inclusion is necessary to maintain the safety net.

16. The relevant provisions are set out below:

   **Airfares**

   Where an employee is domiciled in the Territory, that employee is entitled to an annual airfare for herself/himself and her/his dependent spouse after 12 months continuous service.

   The return airfare payable is the equivalent of an economy airfare from Christmas Island to Perth.
Where an employee completes less than 12 months service with an employer, the employee shall be paid the entitlement on a pro rata basis.

**District Allowance**

For each employee other than a casual employee domiciled in the Territory, the employer shall pay a district allowance at the rate of:

<table>
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<tr>
<th></th>
<th>$ per annum</th>
<th>$ per week</th>
</tr>
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<tbody>
<tr>
<td>Employees with dependants</td>
<td>8090</td>
<td>155.08</td>
</tr>
<tr>
<td>Single employee</td>
<td>5000</td>
<td>95.845</td>
</tr>
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Dependant means the spouse, child or parent of an employee who ordinarily lives with the employee and who is wholly or substantially dependent upon the employee.

If an employee is engaged for a period of less than 38 ordinary hours i.e. a part-time employee, then the amount of district allowance will be that portion of the appropriate weekly allowance as the ordinary hours worked are a portion of 38 ordinary hours as the full week.

17. The inclusion of these allowances in the modern award identified at paragraph 16 above will ensure that employers and employees on Christmas Island are covered by an appropriate safety net.
Cocos (Keeling) Islands (AM2008/67)

18. The ACTU submits that all the awards in this group are enterprise awards and therefore do not require consideration at this stage.
19. The Award Modernisation Request (the Request) requires the Commission to create a modern award to cover employees who are not covered by another modern award and who perform work of a similar nature to that which has been historically regulated by awards (including State awards). The Commission is to identify the award as such. This modern award is not to cover those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have not traditionally been covered by awards. The modern award may deal with the full range of matters able to be dealt with by any modern award however the Commission must ensure the award deals with minimum wages and meal breaks and any necessary ancillary or incidental provisions about NES entitlements.7

20. The ACTU notes that, in the Statement of 29 June 2009,8 the Full Bench refer to this award as the ‘General’ Award. The ACTU would caution against the use of this title. Such a title, in our view, could be misleading in that the award may be perceived to have much broader coverage than it actually does. This award is not, and should not be seen, as an award of broad application. We submit that the title should reflect the scope of the award and we have adopted ‘Clause 4A Award’ as a working title.

21. In developing a draft of this award the ACTU is mindful that the coverage of the award is not known (and possibly will never truly be fully known). The award may cover employees and industries that have inadvertently been overlooked in the modernisation process. It may also cover employees who have been considered award free in some jurisdictions.

22. In any event, the requirements of the Clause 4A Award are many and each needs to be considered in turn.

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7 Request, paragraph 4A.
…a modern award to cover employees who are not covered by another modern award…

23. Clearly the difficulty in determining the content of the Clause 4A Award does not know who it will cover.

24. In the decision of 19 December 2009, the Full Bench stated:

> Before leaving the question of potentially overlapping coverage, it should be understood from what we have already said that the coverage clause of each of the modern awards may be subject to variation as the process continues and the scope of the various awards is defined. Before the end of the process it will be necessary to conduct a review to ensure that any significant gaps or areas of overlap are identified and dealt with.9

25. In our submission it is necessary that this task, identified by the Full Bench, be undertaken prior to the finalisation of the Clause 4A Award.

26. Because of the difficulty in ascertaining the extent of coverage of this award it is difficult to determine which conditions need to contained in the award to ensure it provides a fair and effective safety net.

27. For example, the Nurses (Victorian Health Services) Award 2000 covers nurses employed in pharmacies. The Nurses Award 2010 contains the following exclusion:

> The award does not cover an employer bound by the Pharmacy Industry Award 2010.10

28. However, the Pharmacy Industry Award 2010 does not contain a classification for nurses. Apparently (inadvertently we would suggest) nurses employed by pharmacies are not covered by a modern award and, if this is not otherwise rectified, will be covered by the Clause 4A

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9 [2008] AIRCFB 100, [31].
10 Clause 4.5.
Award. If this is the case specific conditions relating to these nurses will need to be included in the Clause 4A Award.

29. Of course if this gap in coverage of nurses was corrected through an amendment to the scope of the *Nurses Award 2010* then it is unlikely such considerations would be required in respect of the Clause 4A award.

30. Similarly, a classification of Foreperson exists in the current *National Building and Construction Industry Award 2000*. The *Building and Construction On-site Award 2010* however limits the definition of ‘foreperson’ to the metal and engineering construction sector.\(^{11}\)

31. Forepersons employed in construction generally but outside the metal and engineering construction sector (as defined in clause 43.1 of the *Building and Construction On-site Award 2010*) and as referred to in the NBCI Award have therefore fallen out of award coverage. Again if this matter is not rectified provisions specific to this classification will need to be included in the Clause 4A award.

32. Whilst appreciating that it is a ‘chicken and egg’ argument the ACTU submits that the final content of this award cannot and should not be finalised until such time as the audit of scope of all modern awards is complete.\(^{12}\)

...who perform work of a similar nature to that which has been historically regulated by awards (including State awards)...

33. The ACTU submits that this provision should not be read so narrowly that only employees who have been covered by pre-reform awards or NAPSAs can be covered by the Clause 4A award. This provision needs

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\(^{11}\) Clause 43.

\(^{12}\) The ACTU understands that affiliates are identifying gaps in award coverage and will make appropriate applications to resolve those coverage issues in accordance with the Statement of the Full Bench, [2009] AIRCFB 641, [6]. This does not detract from our position.
to be read in conjunction with the express limitations on the coverage of
the award, a matter considered below.

34. We submit that the Request indicates that this award has the capacity to
extend award coverage into areas that may have been award free in
some jurisdictions but covered by awards in other jurisdictions.

35. We submit, however, that this is not the only circumstance in which
award coverage may be extended under the Request. In our submission
Clause 4A of the Request allows the application of this award to any
employee undertaking work that is similar to other work regulated by
awards. The only limitations are that the work must be similar to work
regulated by awards and must not fall within one of the categories
expressly excluded by the Request.

…the Commission is to identify the award as such…

36. The identification of the award as such is a matter to be dealt with in the
scope clause of the proposed award.

37. The ACTU has sought to draft a scope clause [see cl 4.1 – Coverage of
the attached Clause 4A Award] that meets this requirement.

38. The proposed scope clause varies from the ‘standard clause’ in that the
overlap provision is deleted. Coverage of another award automatically
excludes this award hence the provision is unnecessary.

39. The proposed scope clause includes the additional exclusion of state
reference public sector awards as required by the Fair Work (State
Referrals and Consequential and Other Amendments) Act 2009.
...is not to cover those classes of employees...who, because of the
nature or seniority of their role, have not traditionally been covered by
awards...

40. Whilst it may be possible to determine those classes of employees who
have not traditionally been covered by awards, the ACTU cautions
against the inclusion of any ‘list’ of such employees in the proposed
award.

41. Whether an employee is covered by the award will ultimately be matter
for the Courts to decide. We would caution the Commission against
unduly limiting the coverage of this award at this stage.

...the modern award may deal with the full range of matters able to be
dealt with by any modern award...

42. The ACTU has drafted the Clause 4A award on the basis of the template
award provided on the Commission website.

43. Additions have been made to ensure the Award provides a fair safety
net.

44. Dispute resolution training leave is included on the basis that it is a core
condition contained in many of the modern awards. Employees covered
by this Clause 4A award should be entitled to these provisions as much
as any other employee.

45. Part time employment provisions reflect the award simplification decision
in the Hospitality Award Simplification Decision. This is an appropriate
standard for inclusion in an award that may have application across a
diverse range of employment and industries.

46. The draft includes commonly utilised allowances which have application
to a range of industries and occupations as well as allowances derived
from a number of ‘miscellaneous’ awards. These awards tend to cover a
diverse range of work and it is possible that the Clause 4A award will have coverage of such work.

47. Further matters may require inclusion in the award once the scope of modern awards is settled, but prior to 31 December 2009.

...must ensure the award deals with minimum wages and meal breaks...

48. The draft award contains minimum wages and a broad classification structure which takes into account the diversity of work that may fall within the scope of the award.

49. The award does not contain apprentice or trainee rates of pay. Employment of an apprentice can only occur within the coverage of one of the modern awards. Apprenticeship employment cannot exist outside those awards with coverage of apprentices. There is no need to include apprentices in this award.

50. Similarly, trainees must be employed under an award. The scope of pre-reform awards and NAPSAs which apply to trainees, in our submission, will be adequately encompassed by modern awards. To include the NTW schedule may confuse employers and render the award difficult to understand. An employer, not able to employ a trainee because of limitations (including classifications) in the award that covers their industry may mistakenly believe that they can employ a trainee under this award. There is no need (and it may be misleading) to include trainee provisions within the Clause 4A award.

51. The classification descriptions have been developed to give as broad a definition as possible to the work that may be encapsulated within each level. This is necessary, in our submission, to avoid confusion on the coverage of the award.

52. Meal breaks have been included as required by the Request.
...and any necessary ancillary or incidental provisions about NES entitlements...

53. The ACTU has supplemented the NES as necessary to ensure that the award provides a fair safety net of conditions, particularly with respect to:
   
   i. Annual leave;
   
   ii. Public holidays;
   
   iii. Community service leave
   
   iv. Ceremonial leave.

A draft award

54. Attached to this submission is the ACTU Draft Clause 4A Award (AM2008/74 – Attachment A)
Health and Welfare Services (Remainder)

Ambulance services (AM2008/76)

55. The ACTU submits that a separate modern award should be made for Ambulance services.

56. The Ambulance industry is a discrete industry with unique characteristics. The nature of the work and conditions of employment differ from those in other areas of health.

57. Affiliates will provide detailed submissions with respect to the content of the proposed award.

Fitness, Lifestyle and Leisure Services (AM2008/78)

58. The ACTU submits that a separate modern award should be made to cover fitness, lifestyle and leisure services.

59. The ACTU supports the LHMU draft award.

Supported Employment Services (AM2008/80)

60. The ACTU submits that when considering the Stage 4 Health and Welfare (remainder) industry, the Commission should consider that a separate Supported Employment Services Award (SES Award) is warranted.

61. It is the ACTU position that workers are entitled to access the award safety net relevant to the industry within which they work and/or their occupation, unless the defining characteristics of the sector and its

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13 Supported employment services has been known by a variety of names over the years. The term supported employment services is used in this submission as inclusive of other names used from time to time.
employers dictate the need for separate regulation of terms and conditions of employment.

62. Further, it should be incumbent on those seeking separate regulation of a sector to provide reasons why it should be so. Such reasoning must include why an existing or proposed modern award cannot satisfactorily regulate the work and/or occupations.

63. If the Commission is inclined to make a separate award for a particular sector within an industry or occupation:

   i The scope of the award must be clearly defined;

   ii The award must contain a proper skills-based classification structure or structures with appropriate descriptors which takes into account the range of relevant occupations; and

   iii The safety net provided by the award must be equivalent to other modern awards.

64. It is our submission that an SES Award can be justified on the above criteria, recognising the particular characteristics of the sector and its history.

65. The prospect of a modern award for the supported employment services was first raised in the initial private conference of interested parties in the Health and Welfare industry. This conference was chaired by Commissioner Cribb on 19 August 2008.

66. Subsequently, Commissioner Cribb chaired a private conference of interested parties in the supported employment services sector on 25 May 2009.
67. The ACTU notes that the Full Bench in the Statement of 29 June 2009\(^\text{14}\) identified the supported employment services for further consideration.

The scope of the award must be clearly defined

68. The scope of the industry/sector to be covered by the proposed SES Award is restricted to supported employment services, as defined by the Commonwealth *Disability Services Act 1986*:

> Supported employment services means services to support the paid employment of persons with disabilities, being persons:

(a) for whom competitive employment at or above the relevant award wage is unlikely; and

(b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment. \(^\text{15}\)

69. Subject to the following paragraph, it is proposed that the SES Award would cover, with specified exemptions, employees of the supported employment services. Workers with disability comprise the majority of those employees.

70. The matters of the scope, coverage and interaction of two proposed modern awards – the SES Award and the Social, Community and Disability and Employment Services Award – are yet to be resolved. Discussions to find a resolution to this interaction are continuing

Defining characteristic of employer organisations

71. A profile of the sector to be covered by the proposed Award is provided in the June 2009 AFPC report *Australian Disability Enterprises: Sector Profile*. That report identifies:

\(^{15}\) Section 7.
i There are approximately 357 supported employment service outlets in Australia run by approximately 208 organisations.

ii These supported employment services employ approximately 20,000 people with moderate to severe disability, who need substantial ongoing support to maintain their employment.

iii Five supported employment services employ around 22 per cent of the employees:

- Endeavour Foundation (1344 employees)
- Activ Foundation (1012 employees)
- Bedford Industries Incorporated (694 employees)
- Wheelchair and Disabled Association of Australia (551 employees)
- Cumberland Industries (488 employees).

iv The average age of employees is 39 years of age.

v Employees with intellectual disability represented 89 per cent of employees in the sector.

vi The majority of employees in this sector (76.9 per cent in 2007) were earning $100 or less per week.

vii 21 per cent of employees earned $21 to $40 per week.

viii Employees with an intellectual disability had the lowest productive earnings capacity, earning a mean average of $2.68 per hour.

ix 10,718 employees had their wage assessment under the Business Services Wage Assessment Tool.\(^\text{16}\)

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\(^\text{16}\) Australian Fair Pay Commission, Australian Disability Enterprises Sector Profile, June 2009. Supported employment services are collectively marketed under the name Australian Disability Enterprises.
72. The report finds the methods of pay setting utilised in the sector in 2007 comprised:

<table>
<thead>
<tr>
<th>Method</th>
<th>Number employees with disability</th>
<th>% of employees with disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Award respondent</td>
<td>5963</td>
<td>33.4%</td>
</tr>
<tr>
<td>Enterprise, certified agreement</td>
<td>5791</td>
<td>32.5%</td>
</tr>
<tr>
<td>Reference to an award</td>
<td>2755</td>
<td>15.5%</td>
</tr>
<tr>
<td>Supported wage system</td>
<td>2054</td>
<td>11.5%</td>
</tr>
<tr>
<td>AWA</td>
<td>1173</td>
<td>6.6%</td>
</tr>
<tr>
<td>Other</td>
<td>91</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

73. Wage determination for workers employed in supported employment services has a unique history.

74. Supported employment services for people with disability originated in the 1950s when families of people with disability established sheltered workshops to provide vocational activity for people with disability.\(^{17}\)

75. In the early 1970s sheltered workshops (as supported employment services were then called) remained the main form of employment available to people with disability. The workshops were funded under the *Handicapped Persons Assistance Act 1974*. At that time little attention was given to the conditions of employment as this was seen to be secondary to the provision of some form of activity.\(^{18}\) Wages for workers with disability tended to reflect either profit sharing or capacity to pay.


development of legislation based on positive consumer outcomes. The result was the introduction of the *Disability Services Act* (DSA) in 1986.\(^\text{19}\)

77. Under the DSA, supported employment services were intended to provide meaningful, paid employment for people with disabilities who would not be able to perform paid work in open employment unless they had ongoing support.\(^\text{20}\)

78. One of the key objectives set out in the DSA is to assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community.\(^\text{21}\)

79. The Disability Services Program (DSP) funded under the DSA was reviewed in 1993. The 1995 report *Working Solution Report of the Strategic Review of the Commonwealth Disability Services Program* (the Baume Report) recommended:

By October 1995, for the purposes of DSP, funded services which find and/or support people with a disability in employment should be defined as where:

(a) The employment is paid work;

(b) The payment is at full award rates or pro-rata rates, on the basis of an agreed productivity-based/skills competency assessment, consistent with the principles of the supported wages system;

(c) The work can be in either the open labour market or in services consistent with the principles and Objectives of the DSA;

(d) The employment is under an industrial award/agreement;

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\(^{19}\) Ibid.  
\(^{20}\) Ibid, p15.  
\(^{21}\) Section 3 (c).
(e) The employment may also include contractual and self-employment, where approved specifically.22

80. The 1996 Australian Law Reform Commission report *Making Rights Count, Services for people with a disability* recommended that:

the new legislation reflects the concept of equal pay for equal work for workers with a disability. For those workers unable to work at award wage level, the legislation should refer to their right to a wage equivalent to their assessed productivity level.23

81. In 1996 the Disability Employment Assistance Reform Agenda was announced. The aim of the reform was to improve services and options available to jobseekers with disabilities. One of the four Key Initiatives of the reform agenda was a new quality assurance system.24

82. A Business Services Review in 2000 concluded that Business Services had an important role to play in the provision of real employment opportunities for people with disabilities.25 The report of the Review *A Viable Future – Strategic Imperatives for Business Services* made, amongst others, the following recommendations:

Recommendation 5: That the role of employer be regarded by all as a core responsibility and function of Business Services.

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;

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25 At this time supported employment services were known as Business Services.
• appropriate occupational and safety standards;
• superannuation;
• wages;
• skills development and training; and
• opportunities for career development.

These employment conditions should be either consistent with an existing award or form part of a negotiated industrial agreement.

Recommendation 8: That in employing people with disabilities with varying skill levels, that remuneration is linked to an individual's productivity and to an agreed industry-wide system for assessing general work competencies.26

83. To assist supported employment services the Commonwealth Department commissioned research into pro-rate wage assessment tools for people working in supported employment services. The 2001 Discussion Paper recommended:

A single wage assessment tool for wage determination in Business Services should be developed on behalf of the FaCS. The assessment tool should be developed in close consultation with the sector, undergo extensive testing and build on the strengths of existing assessment processes.27

84. However, following consultation with the sector, the resultant 2001 report *A Guide to Good Practice Wage Determination: Wage Assessment in Business Services* did not recommend one tool but rather provided criteria to assist supported employment services to choose or adapt processes in order to comply with legislative or quality assurance

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26 Business Services Review, A Viable Future Strategic Imperatives for Business Services, pp xi, xii.
27 Health Outcomes International Pty Ltd, Research into Pro-Rate Wage Assessment Tools for People working in Business Services: Discussion Paper, pxi.
requirements, to enhance the rigour of the assessment and to improve wage outcomes for their workers.²⁸

85. The Department of Family and Community Services Quality Assurance System was introduced in 2002 under the Disability Services Amendment (Improved Quality Assurance) Act.

86. Based on a system of certification, the Quality Assurance System required SES to meet 12 Disability Service Standards and 26 Key Performance Indicators.²⁹ Standard 9: Employment conditions required:

Each person with a disability enjoys working conditions comparable to those of the general workforce.

87. Key Performance Indicator 9.1, which made reference to A Guide to Good Practice Wage Determination: Wage Assessment in Business Services, required:

The service ensures that when people with a disability are placed in open or supported employment that their wages are paid according to a relevant award, order or industrial agreement consistent with the legislation. These wages are not to be reduced because of incapacity to pay or similar reasons. Where a person is unable to work at full productive capacity due to a disability, the service is to ensure that a pro-rata wage based on an award, order or industrial agreement is paid. This pro-rata wage must be determined through a transparent assessment tool, or process, such as the Supported Wage System (SWS), or tools that comply with the criteria referred to in the Guide for Good Practice Wage Determination including:

- compliance with relevant legislation;
- validity;
- reliability;

²⁸ Health Outcomes International Pty Ltd, A guide to Good practice Wage Determination, Wage assessment in Business Services, Report commissioned by the DFaCS.
²⁹ Department of Families and Community Services, Quality assurance handbook for disability employment services, 2001.
• wage outcome; and practical application of the tool.\(^{30}\) (emphasis added)

88. Therefore, unlike open employment for people with disability which relies on one assessment tool, namely the SWS, no one tool is mandated for use in SES and the number of tools has subsequently increased.

89. The *Disability Discrimination Act (1992)* (DDA) requires employers, when paying a wage or salary by reference to the capacity of the person, to directly comply with an award, order or agreement.

(1) This Part does not render unlawful anything done by a person in direct compliance with:

(b) any of the following instruments (an industrial instrument) within the meaning given by the Workplace Relations Act 1996:

(i) an award or a variation or order affecting an award;

(ii) a transitional award or a variation or order affecting a transitional award;

(iii) a pre-reform certified agreement;

(iv) a notional agreement preserving State awards;

(to the extent to which the industrial instrument has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:

(v) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and

(vi) the salary or wages are determined by reference to the capacity of the person;

(c) an order, award or determination of a court or tribunal having power to fix minimum wages, to the extent to which the order, award or determination has specific provisions relating to the

\(^{30}\) Ibid.
payment of rates of salary or wages to persons, in circumstances in which:

(i) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and

(ii) the salary or wages are determined by reference to the capacity of the person.\footnote{Section 47.}

90. The\textit{ Australian Liquor, Hospitality and Miscellaneous Workers Union Supported Employment (Business Enterprises) Award 2005} was established in 1993 to provide a safety net of wages and conditions for workers with disability employed by SES respondent to the Award.

91. To assist supported employment services to comply with the requirements of the DDA, the Business Services Review 2000 had recommended that the Department provide supported employment services with training and support in the development of comprehensive industrial agreements.\footnote{KPMG Consulting, \textit{Business Services Review 2000 Report, A Viable Future – Strategic Imperatives for Business Services}, Recommendation 11, pxii.}

92. Prior to the Quality Assurance System being introduced in 2002, several supported employment services, some in conjunction with the relevant union, had developed wage assessment tools.

93. Some agreements have been certified by the Australian Industrial Relations Commission (AIRC), and some by State Commissions. Some proposed agreements were opposed on several grounds.

94. The Disability Employment Action Centre and the National Council on Intellectual Disability (jointly DEAC) raised the issue of consent to certified agreements as a matter in the Safety Net Review 2003 case. In the SNR 2003 decision, the Full Bench stated:
DEAC raised a number of concerns regarding enterprise bargaining in the disability sector. The particular issues raised relate to:

the legal capacity of some of the employees concerned to consent to an agreement

...  

one of the requirements for an agreement to be certified is that a "valid majority" of employees must "genuinely approve" or "genuinely make" an agreement before it may be certified (ss.170LT(5) and (6)). Such requirements may be problematic where there is an issue as to the legal capacity of the employees concerned to give such consent. Indeed it may be that enterprise bargaining is not appropriate in this sector. However, as we have not had the benefit of any detailed submissions from the Commonwealth or other parties, we express no concluded view on this point.

...  

We have brought these issues to the attention of the relevant Panel Head with a view to a meeting being convened of all relevant organisations in the near future to provide a forum in which the matters raised by DEAC, including the establishment of an industry consultative council (s.133), may be canvassed.  

95. Subsequent to the May 2003 SNR decision the AIRC established the Disability Sector National Industry Consultative Council (DSNICC). Following consultation in the DSNICC, the LHMU made application to vary the LHMU Award. In his 2005 decision in the matter Commission Gay stated:

[2] The application initially sought to include the Supported Wage System as approved by the test case decision of the Full Bench of 10 October 1994, per O’Connor J, McIntyre VP and Gay C [Print L5723]. Following proceedings in the Commission, initially before Lawler VP,
and latterly in conciliation before the Commission as constituted, discussion between the parties has seen agreement reached as to the form of the variation.

[3] By the amended application the Award is sought to be varied to include a range of wage assessment tools presently in operation and including the Business Services Wage Assessment Tool (BSWAT). All the tools set out in the award as varied have been approved by the Department as satisfying the relevant standards set for the sector. The undertaking from the LHMU to not unreasonably withhold consent in relation to a tool proposed to be added to the list has been reflected in the order [PR961610].

... 

[6] at the hearing on 27 June I considered the objection to the application made by Ms Wilson, intervening for Disability Employment Action Centre (DEAC). In this regard the Commission has noted that Mr Macken, intervening in support of the application for the Minister for Employment and Workplace Relations, stressed that in the view of the Commonwealth no particular tool ought to be mandated and further, that there ought to be capacity to use tools other than the BSWAT or any other single tool.34

96. As a result of the variation, the pre-reform LHMU Award contains a list of eleven tools used to determine the wages of workers with disability in the SES sector.

97. Following the enactment of the WorkChoices legislation, the Australian Fair Pay Commission (AFPC) created Pay Scales covering Business Services. In May 2009 SES were covered by one of three pay scales:

i Special Business Services (Employees with a disability)
Australian Pay and Classification Scale,

34 AIRC, Commissioner Gay, 19 August 2005, PR961607.
ii  the preserved Pay Scale derived from the Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005

iii the preserved Pay Scale derived from the Cooma Challenge Limited Business Services (State) Award.

98. Since March 2006 further wage assessment tools have been proposed for inclusion in the Special Business Services and LHMU pay scales. As amended, the two Pay Scales list thirty tools, namely:

i  The Supported Wages System.

ii  The Business Services Wage Assessment Tool.

iii The Civic Industries Supported Employees Wage Assessment Tool.

iv  The Elouera Association Wage Assessment Tool.

v  The FWS Wage Assessment Tool.

vi  The Greenacres Association Competency Based Wages System.

vii The Hunter Contracts Wage Assessment Tool.

viii The Phoenix Wage Assessment Tool.

ix  The PHT Wage Assessment Tool.

x  The Skillsmaster Wage Assessment Tool.

xi  The Yumaro Wage Assessment Tool.

xii The Woorinyan Wage Assessment Tool.

xiii The RVIB Enterprises Wage Assessment Tool.

xiv The Koomarri Competency Based Wages System.
xv  The Valmar Support Services Wage System.

xvi  The Sunnyfield Association Wage Assessment Tool.

xvii  The New Horizons Wage Assessment Tool.

xviii  The Cumberland Industries Wage Assessment Tool.

xix  The Endeavour Wage Assessment Tool.

xx  The Wangarang Industries Wage Assessment Tool.

xxi  The Bedford Employee Wage Assessment Tool.

xxii  The Blue Mountains Employment Services Wage Assessment Tool.

xxiii  The Ability Options Wage Assessment Tool.

xxiv  The Blueline Laundry Inc Wage Assessment Tool.

xxv  The Caloola Vocational Services Inc Wage Assessment Tool.

xxvi  The GDP Industries Wage Assessment Tool.

xxvii  The Kurri Contracting Service Wage Assessment Tool.

xxviii  The Mai-Wel Group Wage Assessment Tool.

xxix  The Merriwa Industries Limited Wage Assessment Tool.

xxx  The Waverley Helpmates Wage Assessment Tool.

99. The ACTU submits that, unlike the SWS in open employment, the use of these tools to determine wages for workers with disability in SES is not well understood outside the sector.

100. The ACTU does not see how the wages for workers with disability clause currently reflected in these pay scales, with its reference to thirty wage
assessment tools, could fit without confusion in industry and/or occupational awards.

101. The thirty wage assessment tools, currently contained within the APCS, are a matter the Commission is required to take into account in making the modern award. The ACTU does not argue for the exclusion of any of these tools from the proposed SES award at this point.

102. The number of wage assessment tools utilised can vary. The ACTU believes there is much more work to be done by the interested parties in relation to these tools. Given the current lack of clarity and need for that work the ACTU sees merit in having one SES Award that contains these wage tools.

103. To not have an SES Award would require reflection of some or all of the tools in many modern awards, creating, in our submission, confusion and uncertainty.

The award must contain a proper skills-based classification structure or structure(s) with appropriate descriptors which takes into account the range of relevant occupations

104. The Department of Families and Housing, Community Services and Indigenous Affairs (DFaHCSIA) describes SES as commercial enterprises enabling people with disability to engage in a wide variety of work tasks such as packaging, assembly, production, recycling, screen printing, plant nursery, garden maintenance and landscaping, cleaning services, laundry services and food services. Some of the SES outlets undertake work in more than one of these tasks.

35 WR Act, s 576B(h).
105. The classification structure in the proposed modern award, based on the pre-reform LHMU Award, reflects this diversity of tasks:

- Engineering
- Micro film
- Catering
- Leather and canvas goods and sewing
- Clerical support
- Timberwork
- Gardening
- Laundries
- Specialist packaging
- Printing/Bookbinding/Packaging;
- Foam and Plastic
- Art Union Seller
- Cleaning

106. The ACTU believes that a diverse classification structure encompassing the above work would not fit into any single larger Health and Welfare Services industry or occupational award.

107. Notwithstanding this, the classification structure is a proper skills-based classification structure with appropriate descriptors for levels Grade 1 to 8. The classification structure provides access to the same opportunities for skills recognition and career progression as provided for in other modern awards.

The safety net provided by the award must be equivalent to other modern awards

108. The ACTU has considered the Draft SES Award filed by the LHMU.

109. The proposed award reflects the safety net provisions as contained in other awards and will provide an effective safety net.
Indigenous Organisations and Services (AM2008/64)

Introduction

110. The ACTU is committed to working towards the redress of the economic and social disadvantage faced by Aboriginal and Torres Strait Islander peoples, particularly in relation to employment. Clearly, award modernisation affects our capacity to deliver on our policy. We believe however that disadvantage in relation to employment will not be addressed and may well be exacerbated by the making of a separate award for Indigenous organisations.

111. The issue of award regulation for various groups of workers in Indigenous organisations has been raised a number of times with the Full Bench over the course of award modernisation.

112. The ACTU submits that in determining the merit of a separate Indigenous organisations modern award, the industry of the employer/s to be covered by such a proposed award should be identified to determine if that work and/or occupations are currently within the scope of existing modern awards, awards within stage 3 or clearly identified industries within stage 4. If the work and/or occupations fit within established or proposed modern awards the presumption must be that the work of Indigenous organisations is regulated through that award.

113. Any attempt to exclude the work or occupation must be positively prosecuted: it is incumbent on those seeking to exclude the work or occupation from the modern industry or occupational awards to provide the arguments for doing so. Such reasoning must go beyond the Indigenous nature of the organisation and must demonstrate why the

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37 ACTU Aboriginal and Torres Strait Islander Policy, 2003.
38 The use of “Indigenous” in this submission is capitalised as a sign of respect and applies as the collective grouping of Australian Aboriginal and Torres Strait Islander peoples (as opposed to “indigenous” which is internationally recognised as applying to the first peoples of a land).
existing or proposed industry or occupational modern awards cannot satisfactorily regulate the work or occupation.

114. The ACTU submits that this has not been achieved in any of the submissions of those who seek a separate award or awards for Indigenous organisations.

115. In their decision of 3 April 2009 the Full Bench stated:

[193] In dealing with the modern awards in the health and welfare services group we referred to a submission by NACCHO seeking a separate, comprehensive modern award for Aboriginal and Torres Strait Islander community controlled health organisations. This is not the first occasion on which we have been asked to make specific provision for indigenous organisations. In the Commission's 19 December 2008 decision the following passage appears:

“[108] The Chamber of Commerce of the Northern Territory (CCNT) submitted that the award modernisation program should take account of the special needs of indigenous organisations in remote areas. The CCNT submission indicated that such organisations operate a variety of businesses which reflect a range of local factors such as geography, climate, community needs, tourism, industry needs and national security. The view was expressed that the patterns of work in these organisations are unlikely to be catered for in modern awards. We think this submission raises some potentially important issues for the award modernisation process. We shall make provision for the matter to be further considered concurrently with Stage 4 when the terms of modern awards generally applying to indigenous organisations will be clearer and there will be an opportunity to properly consider the impact and decide upon the necessary modifications.”

[194] We shall appoint Commissioner Raffaelli to investigate the matters raised by the CCNT and NACCHO and any other similar matters. The Commissioner will visit the Northern Territory for this purpose at a time
to be advised. The Commission will give further consideration to the issues in Stage 4, as already indicated. A possible outcome is that one or more separate awards may be made for indigenous organisations or services.\(^\text{39}\)

116. The ACTU and relevant affiliates have contributed to the considerations inherent in the task appointed to Commissioner Raffaelli by the Full Bench, including a hearing on June 10 and inspections of a number of Indigenous organisations (Fitzroy, Mount Druitt, Peak Hill and Darwin).

117. The ACTU does not support the proposals put forward to date for separate awards to cover workers in Indigenous organisations. We submit that workers, regardless of the characteristics of the employer, are entitled to access the award safety net relevant to the industry within which they work and/or their occupation, unless there are compelling reasons for excluding them from the industry and/or occupational award.

118. There are no defining characteristics of Indigenous organisations that dictates separate regulation of terms and conditions of employment.

119. Where there are specific needs of any particular group of workers these can be accommodated in industry and/or occupational awards through the inclusion of specific, additional provisions including supplementation of the NES.\(^\text{40}\)

120. It is the ACTU’s submission that to create separate awards for employees in Indigenous organisations will distort the concept of a safety net and may lead to disadvantage. It may also create uncertainly in relation to the boundaries between modern awards and the application of awards to Indigenous employees in Indigenous organisations.

121. Modern awards are required to provide a fair and relevant minimum safety net of terms and conditions for all industries and occupations. The


\(^{40}\) See for example Clause 35 - Ceremonial leave in the Health Professionals and Support Services Award 2010.
standards necessary to achieve this have been considered by the Commission across over 40 modern awards already made and the 50 plus awards under current consideration in Stage 3.41

122. The awards made, or about to be made, in the modernisation process will encompass the operations of employers and occupations of employees in Indigenous organisations. The requirement to adjust the scope and content of modern awards, as modernisation proceeds and as relevant additional matters appropriate for inclusion in an award are identified, is accepted by the Commission. Hence there is no impediment to varying existing industry and occupational awards to ensure they provide an appropriate safety net for employees within Indigenous organisations.

123. The proposals put forward on behalf of Indigenous organisations lack clarity in relation to their intended scope and the standards to be applied. The ACTU submits the Commission should reject these proposals.

124. The establishment of a fair minimum safety net through relevant modern awards will provide a platform upon which employers can enter into agreements with their employees.42 The FW Act, in recognition of some of the inherent difficulties of bargaining in certain sectors, establishes additional bargaining options, including single interest employer bargaining43 and low-paid bargaining44 to assist in achieving bargained outcomes.

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41 Many of these issues were considered in the Award Modernisation Decisions: [2008] AIRCFB 717, 12 September 2008; [2008] AIRCFB 1000, 19 December 2008.
42 FW Act, section 171(a).
43 FW Act, Ch 2, Div 10.
44 FW Act, Ch 2, Div 9.
Fairness & equity for Indigenous workers

125. The purpose of award modernisation is to create a fair minimum safety net of enforceable terms and conditions of employment that, amongst other things, promotes collective bargaining.\textsuperscript{45}

126. In performing its award modernisation functions the Commission must have regard to:

i promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;

ii protecting the position in the labour market of young people, employees with a disability and employees to whom training arrangements apply;

iii the needs of the low-paid;

iv the desirability of reducing the number of awards;

v the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin and to promote the principle of equal remuneration for work of equal value or comparable value;

vi the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;

vii the safety, health and welfare of employees;

viii relevant rates of pay in Australian Pay and Classification Scales and transitional awards;

\textsuperscript{45} See WR Act, section 576A and section 576B. See also the Request.
ix minimum wage decisions of the Australian Fair Pay Commission;

x the representation rights...of organisations and transitionally registered associations.46

127. In addition, the Request requires that:

When modernising awards, the Commission is to create modern awards primarily along industry lines, but may also create modern awards along occupational lines as it considers appropriate.47

128. The Commission is to have regard to the desirability of avoiding overlap of awards and minimising the number of awards that may apply to a particular employee and employer. Where there is any overlap, or potential for overlap in the coverage of modern awards, the Commission will as far as possible include clear rules that identify which award applies.48

129. In considering the requirements of the Request and Part 10A of the WR Act, the Full Bench found that:

These considerations require the Commission to make awards primarily on broad industry lines and, as far as practical, to make those awards apply to all award-covered employees in the relevant industry.49

130. The object of award modernisation and the requirements placed on the Commission in carrying out the modernisation process do not require that the Commission create awards based on the Indigenous status (however defined) of the employer. The establishment of separate awards for Indigenous employers across a broad range of industries would create the potential for overlap of awards, undermine the simplicity of the modern award system and result in multiple awards setting different safety net standards for workers in the same industry.

46 WR Act, s 576B(2).
47 Request, para 4.
48 Request para 9.
49 [2008] AIRCFB 550, [12].
131. This may lead to systematic differences in awards applying in the same industry which are attributable to the Indigenous status of the employer. Such an outcome may be construed as discriminatory.

132. Considering all of the demands placed on the Commission in carrying out its functions under award modernisation and, taking into account the decisions of the Commission to date with respect to those awards that have been modernised, the ACTU submits that:

i Equity of outcomes and in particular the promotion of equal remuneration for work of equal value or comparable value dictates that workers in Indigenous organisations be entitled to the same wages and conditions as workers doing the same or similar work in non-Indigenous organisations. That, is, the Indigenous characteristic of the organisation should not result in different safety net outcomes;

ii Employers should not be distinguished on the basis of the Indigenous character of the organisation;

iii The need to minimise overlap and ensure that awards are simple to understand and easy to apply mitigates the need for the creation of separate awards per se for Indigenous organisations.

The right to self determination

133. The ACTU is committed to the principles of self-determination and self management for Aboriginal and Torres Strait Islander peoples, and asserts this as a fundamental democratic right of Aboriginal and Torres Strait Islander people.50

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50 ACTU Aboriginal and Torres Strait Islander Policy, 2003.
134. The ACTU is concurrently committed to ensuring the provision of industrial protection and a high consistent national standard for Aboriginal and Torres Strait Islander workers through both awards and enterprise bargaining agreements.51

135. Self determination is not achieved, in our submission, through the establishment of a single award for Indigenous organisations or some grouping of Indigenous organisations. This is to conflate an ideological position with the basic industrial right to a fair minimum safety net and give precedence to the former.

136. The right to self determination does not negate the right or need to access basic industrial rights through an award safety net. While issues of self determination do need to be addressed, award modernisation is concerned with establishing a fair minimum safety net. The creation of a separate award (based on the right to self determination) will not guarantee basic industrial rights through an award safety net.

137. The ACTU submits that the pathways for self-determination and fairness are achieved by ensuring workers in Indigenous organisations are entitled to the same safety net of wages and conditions as workers in non-indigenous organisations who perform the same or comparable work.

138. The ACTU submits that the right to a fair minimum safety net of wages and conditions, based on the nature of the work performed, is critical in bridging the employment gaps that currently exist between Indigenous and non-Indigenous Australians. These minimum standards should be established taking into account the objects of award modernisation and the objects of the Fair Work Act 2009.52

139. Existing modern awards will require some remediation to ensure that they provide all relevant classifications (including Aboriginal Health

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51 Ibid.
52 FW Act, s 3(f).
Workers (AHW)) and culturally sensitive conditions (including, for example, ceremonial leave, bilingual allowances, and NAIDOC holiday). The ACTU, supports the continued inclusion within awards of the ‘self determination’ clause currently contained in the *Aboriginal & Torres Strait Islander Health Services Award 2002*.\(^53\) Such a clause is in accord with the policies of the ACTU.

140. The following provisions are indicative of the types of entitlements that should be included in modern awards.

**Ceremonial leave**

An employee is entitled to up to two weeks paid leave and two weeks unpaid leave for absences from work for ceremonial purposes.

An employee and an employer may agree to extend the period of paid or unpaid leave for ceremonial purposes.

**Bilingual Qualification Allowance**

Bilingual means a recognised proficiency in English as well as any one of the Aboriginal or Torres Strait Islander languages.

An employee who is competently bilingual and who is required to use more than one language in the course of their employment is entitled to a bilingual qualification allowance. The amount of the allowance is:

- **Level 1**  $1,523 per year
- **Level 2**  $3,048 per year

\(^53\) See NACCHO Submission, February 2009, [12].
Level 2 represents a level of ability for the ordinary purposes of general business, conversation, reading and writing.

**NAIDOC Day**

Public holidays are provided for in the NES

Employees of Aboriginal and Torres Strait Islander descent are entitled to an additional public holiday on National Aborigines and Islander Day as declared by the National Aborigines and Islanders Day Observance Committee (NAIDOC).

**The ‘lack of funding’ argument**

141. The proposition that lack of funding justifies the application of a separate and/or reduced safety net to a particular sector has been put forward by employer associations in relation to a number of areas.

142. The ACTU submits that the mechanism, level, or means of funding for any organisation should not be the determinant of the industrial safety net for workers in that industry or occupation. Funding is not the basis upon which the need for a separate safety net has been decided in other industry sectors that are dependent on government funding and should not be a determinative factor in this instance.

143. Issues relating to funding may influence the debate around transitional provisions and bargaining but should not determine the safety net.

144. The use of funding to determine the level of the safety net will have a negative effect on the capacity of organisations dependent on funding to attract and retain skilled workers if other award rates for the same industry are superior.

145. The ACTU submits that insufficient funding is a matter which should be addressed through public campaigns directed towards those with responsibility for the provision of funding and should not be used as an
The ACTU welcomes the possibility of working with Indigenous organisations to improve the level of government funding available to those organisations.

**No access to HR advice**

146. Access to HR advice is not an appropriate basis upon which to determine the level of the award safety net for workers.

147. Inadequate access to advice should be remedied through the provision of training and development. We submit that additional government support is required to lift the level of skill within Indigenous (and indeed other) organisations. This does not undermine the importance of establishing a fair minimum safety net.

**Employer submissions**

148. The ACTU understands that there are (at least) three separate employer organisations who have each requested a single modern award for Indigenous organisations. The submissions of these employer organisations advocate different outcomes. That is, there is no single view among the employers as to how Indigenous organisations should be treated but rather three alternative proposals which entail three quite different outcomes.

149. In addition to the reasons outlined above, the ACTU provides the following specific response to the submissions of employer organisations who seek separate Indigenous organisation/s awards.

**Chamber of Commerce NT**

150. Since mid 2008 the Chamber of Commerce NT (CCNT) have asserted the need for a separate award for Indigenous communities in the Northern Territory.
151. In their 2008 submission on the priority awards the CCNT sought with respect to:

Clerical, Retail and Hospitality Awards as they relate to small Indigenous organisations in remote and very remote areas. Argument is to exclude them from the coverage of proposed new awards and for the creation of a dedicated award.54 (sic)

152. In a further submission dated October 2008 the CCNT stated that ‘CCNT believes that the award modernisation program needs to take account of the needs of Indigenous organisations in remote areas.’55 The ACTU reads into this (brief) submission that the CCNT seek a separate award for Indigenous communities operating in ‘remote’ locations (though remote is not defined).

153. In consultation hearings before Commissioner Raffaelli Mr Maloney for the CCNT failed to clearly articulate a scope for the award proposed by CCNT:

[S]tarting first with what we believe is the target group, and it's probably best to easily exclude those that are not part of the target group first and those indigenous organisations which we would exclude are obviously the well funded and well resourced, particularly having a HR function, probably single business focus and based in a major town such as Darwin.

154. The ACTU submits that it is not possible to draft a workable scope clause based on funding levels. An organisation may be well funded and resourced one day and, due to changes in government policy or funding programs, find itself not so well funded or resourced the next day. In our submission, the line between organisations that are well funded and those that are not is uncertain and any award that is premised on such a distinction will create confusion.

54 CCNT Submission, 4 June 2008.
55 CCNT Submission, October 2009, [7].
155. The ACTU assumes that if the CCNT’s proposal were adopted organisations that are ‘well funded and well resourced’ would be covered by separate industry and occupational modern awards from those not well funded. This would create a two tiered award safety net for workers undertaking the same work within the same industry. The CCNT proposal would also create an incentive for employers to argue that they should be covered by the award which has the least cost associated with it and result in a drive to sub-standard wages and working conditions. Such an outcome would not provide a ‘fair and effective safety net’ for employees within the coverage of the award.

156. At the 10 June consultations clarification of the scope of the modern award proposed by the Chamber was sought from CCNT. Unfortunately no further clarification was offered other than to suggest that Indigenous people and communities in the NT had specific needs that were perhaps not reflective of all Indigenous organisations.56

157. In our submission, any proposal that seeks to create an award that applies only in the Northern Territory or that establishes special arrangements for the Northern Territory that do not apply in other states and territories will fall foul of section 576T of the WR Act.

158. My Maloney further argued that:

Indigenous organisations in remote parts of the country, particularly the Northern Territory, especially those that are forced to go down the road of multi focus business streams, do not need to be saddled with a host of modernised awards because they’re in many cases irrelevant, inappropriate and will not help us go ahead.57

159. The ACTU rejects the proposition put forward by Mr Maloney that modern awards are ‘irrelevant [or] inappropriate’. A modern award will apply if the industry of the employer and the occupations of employees

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56 Transcript, AM2008/64, 10 June 2009, PN275.
57 Transcript, AM2008/64, 10 June 2009, PN27.
are within the scope of the modern award. The relevance of a modern award to employers and employees covered by that award, in terms of establishing the legal safety net and providing the basis for assessing agreements under the better off overall test, is indisputable.

160. The ACTU submits that the CCNT have not provided a case for the development of a modern award (covering Indigenous communities with limited funding) nor have they articulated the basis upon which the scope of such an award could be drafted.

161. The ACTU notes that the CCNT have filed a further written submission. This submission does not advance any new grounds upon which a separate Indigenous Communities Award should be made.

162. Their proposal for a separate award should be rejected.

Chamber of Commerce and Industry WA

163. The Chamber of Commerce and Industry WA (CCIWA) lodged a written submission in relation to these matters which was uploaded to the AIRC website on 12 June 2009. In that submission CCIWA requested an award for Aboriginal Communities ‘and not simply an award to deal with Aboriginal medical services.’ Their proposal is based on the Aboriginal Communities and Organisations (Western Australia) Award 2001. CCIWA submit that the scope of the award should include community development, medical, health and legal services.

164. CCIWA’s submission relies heavily on the arguments of CCNT and does not provide any additional material or reasons to support their proposal. Given that there is no basis on which the Commission could proceed to make a modern award as submitted by CCNT, the CCIWA proposal

58 CCNT Submission, 10 July 2009.
59 Submission Chamber of Commerce & Industry WA Stage 3 Award Modernisation, Indigenous Communities – Northern Territory (undated).
60 CCIWA Submission, [4].
61 Many, if not all of which, we note can or will be covered by proposed modern awards.
must fail as well. We note that CCIWA have not addressed the scope issue raised in relation to the submission of CCNT.

National Aboriginal Community Controlled Health Organisation (NACCHO)

165. NACCHO have made a number of written submissions to the Commission. The ACTU understands that they seek a separate ‘all-embracing federal award which outlines the minima for everyone employed by the ACCHS.’62

166. They seek such an award on the following basis:

i  Aboriginal community controlled health services (ACCHS) constitute an industry which is as clearly defined as the aged care industry if not more so; 63

ii  The perilous state of aboriginal health; 64

iii  A mainstream award cannot properly take account of special needs, experience, qualifications and issues such as self determination of aboriginal people. 65

167. In submissions before Commissioner Raffaelli, Mr Amendola for NACCHO also stated that an existing federal instrument that currently applies to ACCHS contains additional provisions (not generally found in modern awards) including a statement on the right to self determination, a public holiday provision relating to NAIDOC and ceremonial leave.66

168. That these conditions are currently contained within awards that apply specifically to ACCHS is not in itself a reason for the creation of a separate award for ACCHS. Award entitlements such as ceremonial

62 NACCHO Submission, February 2009, [7].
63 Ibid.
64 Ibid, [14].
65 Ibid, [20].
66 Transcript AM2008/64, 19 June 2009, PN20.
leave should, in our submission, be available to all relevant employees – regardless of industry or award coverage.

169. The ACTU strongly advocates for culturally appropriate delivery of health care which recognises the rights, beliefs and values of Aboriginal and Torres Strait Islander people. The ACTU also firmly believes that the provision of culturally safe and appropriate facilities is of utmost importance.67

170. The ACTU appreciates the breadth of services provided by ACCHS, fully supports their method and model of care and has a standing policy position advocating for

i increased funding for and further development of Aboriginal and Torres Strait Islander community controlled health services, care and aged care facilities;

ii services that are locally delivered, supported and promoted within communities; and

iii predominantly new government resources for Closing the Gap.68

171. However, we do not accept that the model of health care provided by the ACCHS is determinative of the need for a separate award. The ‘model of care’ argument was advanced by employers during consultations on the aged care award as a basis for a separate industry award for that sector and was not adopted by the Commission in determining the final scope of the modern aged care award.

172. The ACTU notes that award modernisation to date has not produced a clear definition of the term ‘industry’. The Commission’s decisions in relation to stages 1-3 have taken into account existing award and NAPSA regulation as to what ‘industry’ (or occupation) an award should cover. Some awards, in this respect, have very wide reach across what

67 ACTU Aboriginal and Torres Strait Islander Policy, 2003.
68 Ibid.
could be described as multiple sectors within the industry (see for example the *Manufacturing and Associated Industries and Occupations Award 2010*) whilst others are quite narrow (see for example *Mobile Crane Handling Award 2010*).

173. The ACTU submits that ACCHS are part of the health and welfare services industry. A number of industry and occupational awards have been made for that industry. More awards for that industry will, undoubtedly, be created during Stage 4. The question is not whether AACHS constitute an industry but how the safety net for employees and occupations in AACHS should be determined. It is our submission that the awards which have already been made along with those which are likely to be made for the Health and Welfare services industry will provide an appropriate safety net for employers and employees in AACHS.

174. Further, the ACTU notes that ACCHS are currently covered by a number of awards including the *HSU (Aboriginal and Torres Strait Islander Health Services) Award 2002*, state and territory awards and NAPSAs for nurses, and doctors and other awards which apply to the health and welfare industry generally. Should they be covered by modern awards in the health industry their position with respect to award regulation (in terms of the number of applicable awards) will not substantially change.

175. In our submission many of the matters raised by NACCHO lend themselves to resolution through bargaining. As outlined above the structure of the bargaining provisions of the FW Act will facilitate bargaining in a range of new and innovative ways to assist organisations such as AACHS to bargain.

176. The ACTU recognises that through the development of ACCHS and policy commitments from governments in providing culturally appropriate health care in public hospitals, there is now an occupational base of Indigenous/Aboriginal Health Workers. The ACTU submits that the
current process of modernisation is a fortuitous opportunity to ensure the inclusion of this classification in all relevant modern awards.

177. The classification of Aboriginal Health Worker (AHW) currently exists in some awards. An award as proposed by NACCHO is not necessary for the purpose of recognising that classification. In addition the ACTU submits that there are a range of qualifications relevant to the classification that are embedded in the national training package\(^69\) and that a national AHW registration scheme is planned. The argument that mainstream awards cannot take account of the qualifications and experience in AACHS is clearly not correct. The existing industrial regulatory framework has not hindered the development of the AHW, nor has training regulation hindered the development of a range of qualifications in this area.

178. The ACTU submits that there is no basis on which the Commission should accede to the arguments of NACCHO.

**Alternative submission**

179. The ACTU submits that Indigenous employers and their employees should be covered by the modern occupational and industry awards that apply to non-Indigenous employers and employees. This approach would provide a fair and equitable outcome for Indigenous employees which is consistent with the requirements of the Request and avoids numerous pitfalls associated with the employers’ proposals.

180. However if the Commission is not inclined to adopt this approach and is considering making an Indigenous organisations award/s the ACTU submits the following would need to form the basis of any such award.

181. Firstly the scope of the award must be clearly defined. The scope of the award must make it clear which organisations are covered by the award

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and whether all of the services they provide are encompassed within the award. The Commission would need to ensure that the coverage clause draws a clear line between the coverage of such an award and other modern awards. In this respect specific exclusions may be just as important as inclusions.

182. Secondly the award must contain all of the necessary skills-based classification structure or structure(s) with appropriate descriptors which takes into account the range of occupations and activities encompassed by such an award. This will include classification structures for doctors, nurses, dentists, health professionals, clerical workers, drivers and more. Employees of Indigenous organisations must have access to the same opportunities for skills recognition and career progression as employees covered by non-Indigenous organisations awards and must not be subject to a second-rate classification structure simply because they work for an Indigenous organisation.

183. Thirdly the level of the safety net provided by the award must be equivalent to other modern awards. Indigenous employees are among the most vulnerable members of the workforce and are often award reliant. In recent submissions to the Australian Fair Pay Commission, the LHMU (NT Branch) argued that ‘while there are no statistics that exist for the number of Indigenous Territorians on minimum award rates…it would be reasonable to assume that years of systemic disadvantage would mean that Indigenous workers are less likely to receive over-award payments.’70 Maintaining the safety net is therefore of utmost importance.

184. Industry or occupational standards for wages and conditions in modern awards must form the basis for conditions in any award restricted in its coverage to Indigenous organisations. Any proposal to adopt a less beneficial level for the safety net must be rejected outright in the

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interests of fairness, equity and consistency. The Commission has already established safety net standards for various industries and occupations which apply nationally. These standards would need to be incorporated into any separate award in order to ensure that Indigenous employees are not disadvantaged by award modernisation.

185. Similarly, if the Commission is inclined to make an Aboriginal and Torres Strait Islander health industry award, the ACTU submits that based on the principles expressed above all established safety net standards for various industries and occupations would need to be directly transferred into such an award. Over and above these national standards, a 'best of' approach must be taken when including culturally specific provisions.
Industries Not Otherwise Assigned

186. Awards in ‘Industries Not Otherwise Assigned’ cover a range of identifiable occupations and industries. The award modernisation Request requires the Commission to ensure that modern awards provide a fair minimum safety net for employees covered by these awards.

187. The ACTU submits that it is appropriate and in accordance with the intention of award modernisation to make a number of modern awards to cover awards in the ‘Industries not otherwise assigned’ group. In our submission the creation of a comprehensive set of modern awards requires the Commission to recognise and provide an appropriate safety net for all identifiable industries and occupational groupings.

188. The ACTU submits that awards in the ‘Industries Not Otherwise Assigned’ group should be dealt with as follows:

i Awards that fall within the scope of an existing modern award should be incorporated into the relevant modern award. This includes awards which are generally comprehensive of terms and conditions; awards which provide for a relevant specific entitlement; and awards which apply to a specific type of employee across various industries such as the National Training Wage Award 2000.71

ii New modern awards should be created for other industries and occupational groupings which can not be incorporated into existing modern awards.

iii Enterprise awards should be set aside to be considered at a later date in accordance with the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.

71 The Commission has decided to include the redrafted national training wage award as a schedule to modern awards [2008] AIRCFB 1000 [72].
iv Miscellaneous awards which can not be accommodated during stage 4 should be reconsidered as part of the ‘audit of scope’ to ensure they have been appropriately incorporated into modern industry or occupational awards.

189. The ACTU notes that while the Commission has split Industries Not Otherwise Assigned into several designated industry sectors, ‘the question of award coverage remains to be determined.’72 These submissions are made on the basis that the Commission’s list of industry sectors is not determinative of the number or scope of modern awards arising from this group.

Awards that fall within the scope of existing modern awards

190. The ACTU has identified a number of pre-reform awards and NAPSAs in the ‘Industries Not Otherwise Assigned’ group which fall within the scope of existing modern awards. Most of these awards have not been included in the indicative award list published as part of the Full Bench Statement of 29 June 2009.73

191. The ACTU assumes that the Commission now considers that those awards have been incorporated into modern awards already made. This assumption does however serve to emphasis the need for the Commission to provide a list of pre-reform awards and NAPSAs subsumed in each of the modern awards as soon as possible in order to facilitate consideration of transitional issues.

192. ACTU affiliates will make submissions on any change of scope required in modern awards to ensure they properly comprehend these pre-reform awards and NAPSAs.

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73 Ibid.
New modern awards

193. The ACTU notes that the Commission has identified a number of industry sectors from the list of awards in ‘Industries Not Otherwise Assigned.’ The ACTU makes the following general comments with respect to a select number of these proposed groupings. On the remainder the ACTU makes no submission.

194. The ACTU agrees that there are, within this group of awards, a number of industries that warrant their own modern award. These industries are distinct from one another and from other industries governed by modern awards made to date. In our submission, the existing standards in these industries should be maintained through separate award regulation under the modern system.

195. Affiliates with an interest in these areas will make detailed submissions on the scope and content of these proposed awards.

Accountancy Practices (AM2008/81)

196. The ACTU supports creation of an award to cover professional accountants.

197. We note that it is likely that clerical workers in this industry are covered by the Clerks - Private Sector Award 2010 but note that this award does not cover professional occupations in the industry of accountancy practices.

Animal Care and Veterinary Services (AM2008/82)

198. The ACTU supports the making of a separate modern award covering the Animal Care Industry.
Building Services (AM2008/83)

199. The ACTU submits that two modern awards should be made to cover the sectors identified in the Commission list of pre-reform awards and NAPSAs:

(i) a Car Parking Industry Award; and

(ii) a Pest Control Industry Award.

200. Clerical workers covered by pre-reform awards and NAPSAs in this group should be subject to the Clerks Private Sector Award 2010.

201. The ACTU notes that there are a number of miscellaneous awards listed in the building services group which do not relate to car parking or pest control. The ACTU understands that the LHMU will address this issue in their submissions.

Correctional facilities (AM2008/84)

202. The ACTU supports the submissions of the CPSU (SPSF) on this matter.

Labour Hire Services (AM2008/85)

203. The ACTU notes that the only award listed in this group is the Clerical and Administrative Employees (Victorian Land Titles Office On-line Project Labour Hire) Interim Award 1999. The ACTU understands that this award no longer covers or applies to any work and supports the submission of the ASU that it may be set aside.

204. The Commission has identified labour hire as an area in which further work may be needed prior to the end of award modernisation. In its decision on 19 December 2008, it noted:
A number of issues have arisen concerning the operation of modern industry awards in relation to employees of contractors and labour hire firms. While the coverage clause in a number of the priority awards deals specifically with these employees, it is not possible to foresee all of the issues that might arise or to have a full appreciation of them. It is likely that it will be necessary to give special consideration to labour hire firms and their employees, at least, at a convenient time during 2009. Questions which require discussion include whether there should be a separate award for the labour hire industry to cover employment not covered by other modern awards with either industry or occupational coverage and the basis upon which such employment might be covered by one award rather than another. We should also indicate that when these issues are more fully considered it may be necessary to make some modifications to the coverage provisions of some modern awards.74

205. In its statement of 29 June 2009, it further noted:

We draw attention to the fact that the Stage 4 list includes some industries and occupations in relation to which the question of award coverage remains to be determined. To take an example, while labour hire services now appears on the list, whether an award should be made to cover that area and if so the terms the award should contain are matters for decision. Generally the options include a separate modern award for the area in question, no award, coverage under the general award or an alteration to the coverage of an existing modern award.75

206. The ACTU understands the term labour hire in this context to refer to arrangements whereby a labour hire company or agency provides individual workers to a client or host with the labour hire company being the direct employer of the worker.

74 [2008] AIRCFB 1000, [25].
75 [2009] AIRCFB 641, [4].
207. The basic principle underlying the Commission’s approach to award modernisation and labour hire companies should be that a labour hire company that supplies labour to work in a particular industry or occupation should, with respect to those employees whilst working in that industry or occupation, be covered by the award covering the industry or occupation into which the employee is placed.

208. The ACTU notes that, as currently drafted, some modern awards do not clearly and unambiguously cover employees of labour hire firms working within those industries or occupations. The ACTU believes that the coverage clauses of these awards should be amended so as to achieve this objective.

209. Where labour hire employers are currently regulated by an existing pre-reform award, they should continue to be regulated by the modern award which supersedes this award.

210. The ACTU opposes the making of a general labour hire services award.

**Legal Services (AM2008/86)**

211. The ACTU supports the making of a separate modern award to cover the legal services industry. The ACTU supports the submissions of the ASU on this matter.

**Real Estate Industry (AM2008/87)**

212. The ACTU does not oppose the making of a separate modern award to cover the real estate industry but supports the submissions of the ASU that clerical workers in the industry be covered by the *Clerical – Private Sector Award 2010*. 
Salt Industry (AM2008/88)

213. The ACTU supports the making of a separate modern award to cover the salt industry and supports the submissions of the AWU to this extent.
214. The Commission has published a further draft schedule for the national training wage and indicated that this draft would be considered in Stage 4 of the award modernisation process.77

215. The ACTU and affiliates have considered the draft schedule as proposed by the Commission and make the following submissions.

Proposed amendments

216. The ACTU and affiliates propose a number of amendments to the draft released by the Commission. These amendments are highlighted in the attached ACTU Redraft – 10 July 2009 (AM2008/24 – Attachment B).

217. The amendments, and the reasons for those amendments, are set out below.

(a) Clause 2 - Definition of trainee

It is essential that a trainee is defined as being employed under a training contract. Excluding these words from the definition may lead employers to believe erroneously that they can employ a person as a trainee where no specific contract of training exists.

The contract of training binds both the employer and trainee to specific obligations with respect to undertaking the traineeship. It is in exchange for meeting these obligations that the arrangements in the NTW schedule become operative.

The inclusion of the words under a training contract properly closes the loop in the definitions of the training contract, the traineeship

76 The ACTU had previous made submissions with respect to a number of aspects of the proposed NTW Schedule – see in particular ACTU Submission, Award Modernisation Stage 2 Exposure Drafts, AM2008/13-24, 13 February 2009. For ease of reference we have replicated and updated those submissions, where relevant, in this submission.

77 [2009] AIRCFB 345, [33]-[34].
and a trainee and provides necessary clarification of employer obligation’s.

(b) **Clause 2 - Definition of traineeship**

A traineeship should be required to meet both State/Territory approval and relevant training package/qualification outcome requirements.

The ACTU understands that the use of the word ‘or’ in the past was designed to meet transitional requirements that went to (very) old, now superseded training packages that were, but are no longer, part of the NTWA.

To leave in the word ‘or’ will create confusion with respect to current arrangements and requirements.

(c) **Clause 5.2(d) School-based trainees**

The ACTU considers that the capacity for a trainee to seek additional payment of 20% in lieu of leave is a legitimate entitlement that should be retained in the award.

The working patterns of school-based trainees undertaking a traineeship are varied and may involve the trainee working on weekends and during their school holidays. Their working patterns may not necessarily be regular and may be concentrated into a short period of time. In such cases, at the request of the trainee, payment in lieu of annual leave etc may be a preferable option.

Were the Commission to reject this request an additional clause should be added to the provisions specifying that employment as a casual employee is not permitted while undertaking a school-based traineeship.
(d) **Clause 6 – Employment Conditions**

The ACTU seeks the inclusion of five additional employment conditions for trainees. These have been included in the ACTU draft schedule attached.

(i) Proposed clause 6.3 shields a trainee from the Reasonable Overtime provisions in the award to the extent that such overtime would affect the capacity of the trainee to complete their approved training. The inclusion of this provision will provide clarity on what should be considered under ‘any other matter’ as specified in the reasonable overtime clause of the award. Without this clause a trainee may be disciplined unreasonably for refusing to work what is, in other circumstances, considered ‘reasonable’ overtime.

(ii) Proposed clause 6.4 clarifies the operation of shiftwork provisions in the award. It is reasonable that a trainee – who by definition is undertaking training and is not yet competent in the area of training – should be restricted from working shiftwork on their own unless the award has already made specific provision for this.

(iii) Proposed clause 6.5 ensures that a trainee is not rostered for shiftwork where such rostering would interfere with the capacity of the trainee to undertake the training required (both on and off the job) under the training contract. The clause does not seek to preclude a trainee from working shift work but requires that access to training is incorporated into the shift roster.

(iv) Proposed clause 6.6 enables an employer and trainee to agree to alternate payment arrangements for overtime and shift penalties. This provision does not mandate higher rates.
but recognises the validity of such arrangements entered into by the employer and trainee.

(v) Proposed clause 6.7 places an obligation on the employer to enable a trainee to access the training course relevant to their traineeship. It is a reasonable obligation to place on the employer in exchange for access to training rates of pay contained in the NTW schedule.

Each of the clauses proposed by the ACTU for inclusion in the NTW schedule is reasonable in our submission and provides additional protections for trainees and employers. None of these provisions is unknown and all have formed part of the NTWA since its inception.

In our submission it is appropriate that they be retained. The will impose no additional cost on employers operating under the existing NTWA.

(e) Appendix 1: Allocation of Traineeships to Wage Levels

The ACTU seeks the following changes to Appendix 1 of the Schedule:

(i) The ‘Information and Communications’ traineeship should be renamed ‘Information and Communications Technology.’

(ii) Construction, Plumbing & Services – Certificate I, II & III be allocated to wage level A.

(iii) Coal – Certificate I, II & III be allocated to wage level A.
(iv) The following ‘traineeships’ should be removed from the schedule as they are, in fact, apprenticeships covered by the
Electrical, Electronic and Communications Contracting Award 2010:

- Electricity Supply Industry Generation III Sector
- Electricity Supply Industry III Transmission, Distribution and Rail Sector
- Electrotechnology III

Should all traineeships be included in each schedule to each modern award?

218. The ACTU has made previous submissions that only those traineeships relevant to the modern award should be contained in the NTW Schedule. The NTW schedule should be adapted to meet the needs of each specific modern award to which it is appended. This involves the determination of which qualifications in the schedule are relevant to the modern award and consideration of the interaction of the NTW schedule and the award. The ACTU does not support the making of a single schedule to be replicated across all awards.

219. The ACTU supports the concept of one NTW Schedule but believes this should, on an award by award basis, be adapted to meet the specific needs of the modern award coverage without derogating from the NTW Schedule itself.

220. The extent of inclusion of specific training packages/qualifications in any particular award should be progressed by written submission of
interested parties. A failure to make submissions should result in the default of all training packages/qualifications be included in the Schedule.

221. Should the NTW schedule not be adapted to meet the needs of particular industries the utility of attaching the schedule to each award is questionable. No efficiency or ease of use is gained. In our submission failing to adapt the schedule will do no more than confuse the coverage of the NTW schedule.

222. The ACTU supports the submissions of the CFMEU with respect to adaption of the schedule to meet the needs of the Building and Construction General On-site Award 2010.

Default wage level

223. An earlier exposure draft of the NTW Schedule proposed a default wage level for traineeships not included in Appendix 1. The Full Bench have sought further submissions on this matter.78

224. The ACTU opposes the inclusion of a default wage level in the NTW Schedule. To include such a wage level implies that any employee undertaking training can be paid a training wage. This is clearly not the case. The inclusion of a default training wage will therefore be misleading.

225. Including the default clause will extend the coverage of minimum rates contained in the schedule to employees who would not otherwise be covered by the NTW arrangements, potentially disadvantaging employees. In our submission it has never been the intention that award modernisation would extend the operation of NTW arrangements beyond their existing scope. Any need to do so should, in our submission, be progressed through a variation to the relevant modern award to enable a

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78 [2009] AIRCFB 345, [34].
proper consideration of the effect of extending the operation of the Schedule.

226. In our submission there are too many unintended consequences of placing a default clause in the schedule.

227. Should the Commission not be persuaded by our argument to remove the clause we submit that the default wage level should be Wage Level A and that it should only operate where there is a training contract and the training being undertaken relates directly to an occupation covered by the award. This will minimise the risk of disadvantage.

**Should the Schedule apply to replacement training packages?**

228. The ACTU supports automatic application of the Schedule to replacement training packages but considers that this must be able to be negated in applications by a person covered by an award or a representative organisation.

229. Training packages are updated and/or replaced through the (relevant) Industry Skills Council. Most, if not all, training packages are now locked in to a continuous improvement process that is designed to avoid wholesale replacement of training packages; promote the updating of the content of qualifications within the training package and, enable if necessary, the creation of new training packages. This process is designed to minimise the disruption caused by the abandonment of existing qualifications and creation of new qualifications to replace those abandoned.

230. The ACTU would not see this as precluding a consideration of the relevant allocation of a replacement training package to appropriate wage levels should the circumstances warrant.
231. The Commission has identified a number of ‘miscellaneous’ awards for consideration.

232. The ACTU notes that no specific consultations have been scheduled for this group of awards. We would urge the Commission to establish such consultations if requested.

233. The ACTU submits that these awards can (or could easily) be incorporated into the scope of existing modern awards.

234. The proposed allocation of each of the miscellaneous awards is set out in the following table:

<table>
<thead>
<tr>
<th>Miscellaneous Award</th>
<th>Modern award</th>
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<tbody>
<tr>
<td>Transport Workers (Northern Territory) Barge Depots Award 2002 AP814315</td>
<td>Several modern awards including: Ports, Harbours and Enclosed Water Vessels Award 2010; Rail Industry Award 2010; Private Transport Industry Award 2010; Private Transport (Long Distance) Award 2010; and Passenger Vehicle Transportation Industry Award 2010.</td>
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<tr>
<td>Broken Hill Commerce and Industry Agreement Consent Award 2001 AN120088</td>
<td>See below</td>
</tr>
<tr>
<td>Marine Stores and Bottle-Washing Establishments Award - South-Eastern District 2003 AN140161</td>
<td>Manufacturing and Associated Industries Award 2010.</td>
</tr>
<tr>
<td>Case and Box Makers’ Award, 1952</td>
<td>Timber Industry Award 2010</td>
</tr>
<tr>
<td>Drum Reclaiming Award AN160102</td>
<td>Manufacturing and Associated Industries Award 2010.</td>
</tr>
</tbody>
</table>

235. With respect to the *Broken Hill Commerce and Industry Agreement Consent Award 2001* the ACTU refers the Commission to the submissions of the SDA. This submission is supported by the ACTU.
Part 1— Application and Operation

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2. Commencement date
3. Definitions and interpretation
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<td>Shiftwork</td>
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<td>Breaks</td>
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<td>Overtime and penalty rates</td>
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<td>30.</td>
<td>Public holidays</td>
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<td>31.</td>
<td>Ceremonial Leave</td>
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<td></td>
<td>Schedule A - Classification Structure and Definitions</td>
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<td></td>
<td>Schedule B —Supported Wage System</td>
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</tbody>
</table>
Part 1—Application and Operation

1. Title

This award is the Clause 4A Award 2010.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the Workplace Relations Act 1996 (Cth)

Commission means the Australian Industrial Relations Commission or its successor

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

enterprise NAPSA means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or a part of a single business

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

standard rate means the minimum wage for a Level 4 in clause 17.

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This award covers employers throughout Australia and their employees if and only if those employees

(a) are not covered by an industry and/or occupational award, and

(b) perform work of a similar nature to that which has historically been regulated by awards (including State awards),

(c) have been allocated by the employer to a classification set out in Schedule A – Classification structure and definitions.

4.2 The award does not cover an employee excluded from award coverage by the Act.
4.3 The award does not cover an employer bound by an enterprise award or enterprise NAPSA with respect to any employee who is covered by the enterprise award or enterprise NAPSA.

4.4 This award does not cover an employer bound by a State reference public sector transitional award or a State reference public sector modern award with respect to an employee who is covered by the State reference public sector transitional award or a State reference public sector modern award.

4.5 **Aboriginal and Torres Strait Islander Right to Self Determination**

The parties to this award recognise the right to self-determination of Aboriginal and Torres Strait Islander people.

Recognition of Aboriginal and Torres Strait Islander self-determination means that the parties will not involve themselves in issues which are part of the internal affairs of Aboriginal and Torres Strait Islander organisations unless they are industrial matters and that in dealing with any industrial matters, particularly where dispute resolution is contemplated, cultural differences will be taken into account.

5. **Access to the award and the National Employment Standards**

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. **The National Employment Standards and this award**

The NES and this award contain the minimum conditions of employment for employees covered by this award.

7. **Award flexibility**

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

(a) arrangements for when work is performed;
(b) overtime rates;
(c) penalty rates;
(d) allowances; and
(e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:
(a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and

(b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee’s parent or guardian;

(b) state each term of this award that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee’s terms and conditions of employment; and

(e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee’s understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

(a) by the employer or the individual employee giving four weeks’ notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

7.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.
Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

(a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

(b) Significant effects include termination of employment, major changes in the composition, operation or size of the employer’s workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

(a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

(b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.

(c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer’s interests.

9. Dispute resolution

9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
9.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.

9.3 The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.

9.4 Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

9.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

10. **Dispute Resolution Training Leave**

10.1 Subject to clauses 10.7, 10.8 and 10.9, an eligible employee representative is entitled to, and the employer must grant, up to five days training leave with pay to attend courses which are directed at the enhancement of the operation of the dispute resolution procedure including its operation in connection with this award and with the Act, or with any relevant agreement which provides it is to be read in conjunction with this award.

10.2 An eligible employee representative must give the employer six weeks’ notice of the employee representative’s intention to attend such courses and the leave to be taken, or such shorter period of notice as the employer may agree to accept.

10.3 The notice to the employer must include details of the type, content and duration of the course to be attended.

10.4 The taking of such leave must be arranged having regard to the operational requirements of the employer so as to minimise any adverse effect on those requirements.

10.5 An eligible employee representative taking such leave must be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had they not been on leave during the relevant period.

10.6 Leave of absence granted pursuant to clause 9—Dispute resolution procedure training leave counts as service for all purposes of this award.

10.7 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an **eligible employee representative** is (a) who is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in an enterprise or workplace generally or collectively for all or part of an enterprise or workplace for the purpose of representing those employees in the dispute resolution procedure; and
(b) who is within the class and number of employee representatives entitled from year to year to take paid dispute resolution procedure training leave according to the following quota table:

<table>
<thead>
<tr>
<th>Number of employees employed by the employer in an enterprise or workplace</th>
<th>Maximum number of eligible employee representatives entitled per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>5–15</td>
<td>1</td>
</tr>
<tr>
<td>16–30</td>
<td>2</td>
</tr>
<tr>
<td>31–50</td>
<td>3</td>
</tr>
<tr>
<td>51–90</td>
<td>4</td>
</tr>
<tr>
<td>More than 90</td>
<td>5</td>
</tr>
</tbody>
</table>

10.8 Where the number of eligible employee representatives exceeds the quota at any particular time for a relevant enterprise or workplace, priority of entitlement for the relevant year must be resolved by agreement between those entitled or, if not agreed, be given to the more senior of the employee representatives otherwise eligible who seeks leave.

10.9 For the purpose of applying the quota table, employees employed by the employer in an enterprise or workplace are full-time and part-time employees, and casual employees with six months or more service, covered by this award who are employed by the employer and engaged in the enterprise or workplace to which the procedure established under clause 9.1 applies.

**Part 3—Types of Employment and Termination of Employment**

11. **Full-time employees**

11.1 Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in this award.

12. **Part-time employment**

12.1 An employer may employ part-time employees in any classification in this award.

12.2 A part-time employee is an employee who:

(a) works less than full-time hours of 38 per week; and

(b) has reasonably predictable hours of work; and

(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

12.3 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day,
which days of the week the employee will work and the actual starting and finishing times each day.

12.4 Any agreed variation to the regular pattern of work will be recorded in writing.

12.5 An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

12.6 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13—Casual employment.

12.7 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 26—Overtime.

12.8 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed in clause 17—Minimum wages, for the work performed.

13. Casual employment

13.1 A casual employee is one engaged and paid as such. A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of one thirty-eighth of the minimum weekly wage prescribed in clause 17-Minimum Wages for the work being performed plus a casual loading of 25%. The loading constitutes part of the casual employee’s all purpose rate.

13.2 On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours work. In order to meet their personal circumstances a casual employee may request and the employer may agree to an engagement for a minimum of three hours.

13.3 An employer when engaging a casual must inform the employee that they are employed as a casual, stating by whom the employee is employed, the classification level and rate of pay and the likely number of hours required.

14. Termination of employment

14.1 Notice of termination is provided for in the NES.

14.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.
14.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day’s time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

15. Redundancy

15.1 Redundancy pay is provided for in the NES.

15.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

15.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

15.4 Job search entitlement

(a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

(c) This entitlement applies instead of clause 14.3.

15.5 Transitional provisions

(a) Subject to clause 15.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:

(i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and

(ii) that would have entitled the employee to redundancy pay in excess of the employee’s entitlement to redundancy pay, if any, under the NES.
(b) The employee’s entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee’s entitlement to redundancy pay, if any, under the NES.

(c) This clause does not operate to diminish an employee’s entitlement to redundancy pay under any other instrument.

(d) Clause 15.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

16. Classifications

16.1 All employees covered by this award must be classified according to the structure set out in Schedule A and paid the minimum wage in clause 16. Employers must advise their employees in writing of their classification and of any changes to their classification.

16.2 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

17. Minimum Wages

17.1 The classifications and minimum wages for an adult employee, are set out in the following table:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Minimum weekly wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 (Induction – 38 hours)</td>
<td>543.90 (78%)</td>
</tr>
<tr>
<td>Level 2</td>
<td>583.00 (85%)</td>
</tr>
<tr>
<td>Level 3</td>
<td>603.90 (92.4%)</td>
</tr>
<tr>
<td>Level 4</td>
<td>637.60 (100%)</td>
</tr>
<tr>
<td>Level 5</td>
<td>700.20 (115%)</td>
</tr>
<tr>
<td>Level 6</td>
<td>734.90 (125%)</td>
</tr>
</tbody>
</table>

17.2 Junior minimum wages

The minimum wages for a junior are:

<table>
<thead>
<tr>
<th>Age</th>
<th>% of Base rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 16 years of age</td>
<td>60</td>
</tr>
<tr>
<td>At 16 years of age</td>
<td>70</td>
</tr>
<tr>
<td>At 17 years of age</td>
<td>80</td>
</tr>
<tr>
<td>At 18 years of age</td>
<td>90</td>
</tr>
</tbody>
</table>
17.3 **Mixed functions**

An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. If for two hours or less during one day or shift, they must be paid the higher minimum wage for the time so worked.

17.4 **Supported wage system**

See Schedule B.

18. **Allowances**

18.1 **Team Leader/Leading hand**

(a) A team leader or leading hand in charge of three or more people must be paid:

<table>
<thead>
<tr>
<th>In charge of</th>
<th>Amount of the standard rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>3–10 employees</td>
<td>4.4% per week extra</td>
</tr>
<tr>
<td>11–20 employees</td>
<td>6.5% per week extra</td>
</tr>
<tr>
<td>more than 20 employees</td>
<td>8.3% per week extra</td>
</tr>
</tbody>
</table>

18.2 **First aid allowance**

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid an extra 1.99% of the standard rate per week if appointed by their employer to perform first aid duty.

18.3 **Vehicle allowance**

An employee who reaches agreement with their employer to use their own motor vehicle on the employer’s business, must be paid $0.74 per kilometre travelled.

18.4 **Meal allowance**

(a) An employee required to work more than one hour of overtime without being given 24 hours’ notice after the employee’s ordinary time of ending work will be either provided with a meal or paid a meal allowance of $14.20. Where such overtime work exceeds four hours a further meal allowance of $12.85 will be paid.

(b) No meal allowance will be payable where an employee could reasonably return home for a meal within the period allowed.

18.5 **Special clothing**

(a) Where the employer requires an employee to wear any protective or special clothing such as a uniform, dress or other clothing then the employer will reimburse the employee for any cost of purchasing such clothing and the cost of replacement items, when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer.
(b) Where an employee is required to launder any special uniform, dress or other clothing, the employee will be paid an allowance of $6.25 per garment per week, with a maximum payment per week of a single complete set of any special uniform, dress or other clothing (e.g. a uniform comprising a shirt and trousers entitles an employee to two laundry allowance payments per week).

18.6 Training costs

(a) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred by an employee in connection with training agreed to by the employer must be reimbursed by the employer on the production of evidence of such expenditure by the employee, provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress.

(b) Travel costs incurred by an employee undertaking training agreed to by the employer, which exceed those normally incurred in travelling to and from work, must be reimbursed by the employer.

18.7 Bilingual Qualification Allowance

(a) Bilingual means a recognised proficiency in English as well as any one of the Aboriginal or Torres Strait Islander languages.

(b) An employee who is competently bilingual and who is required to use more than one language in the course of their employment is entitled to a bilingual qualification allowance.

(c) The amount of the allowance is:

(i) Level 1 $1,523 per year

Level 1 is an elementary level. This level is appropriate for employees who are capable of using minimal knowledge of a language for the purpose of simple communication.

(ii) Level 2 $3,048 per year

Level 2 represents a level of ability for the ordinary purposes of general business, conversation, reading and writing.

18.8 Living Away From Home Allowance

(a) An employee, required by the employer to work temporarily for the employer away from the employee’s usual place of employment, and who is required thereby to sleep away from the employee’s usual place of residence, is entitled to the following:

(i) The payment of an allowance to cover all fares to and from the place at which the employer requires the employee to work; and

(ii) The payment of an allowance to cover all reasonable expenses incurred for board and lodging.
(b) The allowances referred to in this clause are not payable where the fares and the board and lodging are provided by the employer.

(c) In addition to the above, the employee must receive payment at ordinary rates of pay for all time spent in travelling between the employee’s usual place of employment and the temporary location, such paid time not to exceed eight hours in 24 hours.

18.9 Outdoor Work Allowance

In addition to the rates otherwise prescribed by this award employees working in the open and thereby being subjected to all kinds of climatic conditions, dust blowing in the wind, wet and muddy conditions and/or the lack of usual amenities associated with factory work will be paid an all purpose amount of $24.20 per week.

18.10 Disability allowance

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.

18.11 Relocation expenses

Where an employee is transferred to another location or another State, the cost of removal expenses reasonably incurred will be borne and paid for by the employer, provided that an employee who is transferred at the employee’s own request may be required to pay their own expenses.

18.12 Adjustment of expense related allowances

(a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

(b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<table>
<thead>
<tr>
<th>Allowance</th>
<th>Applicable Consumer Price Index figure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meal allowance</td>
<td>Take away and fast foods sub-group</td>
</tr>
<tr>
<td>Clothing, equipment and tools allowance</td>
<td>Clothing and footwear group</td>
</tr>
<tr>
<td>Vehicle/travel allowance</td>
<td>Private motoring sub-group</td>
</tr>
</tbody>
</table>
19. District allowances

19.1 Northern Territory

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

(a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and

(b) that would have entitled the employee to payment of a district allowance.

19.2 Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a NAPSA or an award made under the *Workplace Relations Act 1996* (Cth):

(a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and

(b) that would have entitled the employee to payment of a district allowance.

19.3 This clause ceases to operate on 31 December 2014.

20. Accident pay

20.1 Subject to clause 20.2, an employee is entitled to accident pay in accordance with the terms of:

(a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and

(b) that would have entitled the employee to accident pay in excess of the employee’s entitlement to accident pay, if any, under any other instrument.

20.2 The employee’s entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee’s entitlement to accident pay, if any, under any other instrument.

20.3 This clause does not operate to diminish an employee’s entitlement to accident pay under any other instrument.

20.4 This clause ceases to operate on 31 December 2014.
21. **Payment of wages**

21.1 Wages will be paid weekly or fortnightly according to the actual hours worked each week or fortnight, or may be averaged over a period of a fortnight.

22. **Superannuation**

22.1 **Superannuation legislation**

(a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.

(b) The rights and obligations in these clauses supplement those in superannuation legislation.

22.2 **Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

22.3 **Voluntary employee contributions**

(a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 22.2.

(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

(c) The employer must pay the amount authorised under clauses 22.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 22.3(a) or (b) was made.

22.4 **Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or (b) to one of the following superannuation funds:

(a) A superannuation fund listed as an Industry Fund by APRA; 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.

Part 5—Hours of Work and Related Matters

23. Ordinary hours of work and rostering

23.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

23.2 Ordinary hours of work—day workers

(a) Subject to clause 23.5, the ordinary hours of work for day workers are an average of 38 per week but not exceeding 152 hours in 28 days.

(b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday.

(c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.

(d) Any work performed outside the spread of hours must be paid for at overtime rates. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the plant in a state of readiness for production work is to be regarded as part of the 38 ordinary hours of work.

(e) The rate to be paid to a day worker for ordinary time worked between midnight on Friday and midnight on Saturday is time and a half and/or the rate to be paid to a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday is double time.

(f) A day worker required to work on a public holiday must be paid for a minimum of three hours work at the rate of double time and a half. The double time and a half rate must be paid to the employee until the employee is relieved from duty.

23.3 Ordinary hours of work—continuous shiftworkers

(a) Continuous shiftwork means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

(b) Subject to clause 23.3(c), the ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Continuous
shiftworkers are entitled to a 20 minute meal break on each shift which must be counted as time worked.

(c) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.

(d) Except at the regular change-over of shifts, an employee must not be required to work more than one shift in each 24 hours.

23.4 Ordinary hours of work—non-continuous shiftworkers

(a) Subject to clause 23.3(c), the ordinary hours of work for non-continuous shiftworkers are an average of 38 per week and must not exceed 152 hours in 28 consecutive days.

(b) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.

(c) The ordinary hours of work must be worked continuously, except for meal breaks, at the discretion of the employer.

(d) Except at change-over of shifts an employee must not be required to work more than one shift in each 24 hours.

23.5 Methods of arranging ordinary working hours

(a) Subject to the employer’s right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 23.2(c) and the employer’s right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours must be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude the employer reaching agreement with individual employees about how their working hours are to be arranged.

(b) The matters on which agreement may be reached include:

(i) how the hours are to be averaged within a work cycle established in accordance with clauses 23.2, 23.3, and 23.4;

(ii) the duration of the work cycle for day workers provided that such duration does not exceed three months;

(iii) rosters which specify the starting and finishing times of working hours;

(iv) a period of notice of a rostered day off which is less than four weeks;

(v) substitution of rostered days off;

(vi) accumulation of rostered days off;
(vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and

(viii) any arrangements of ordinary hours which exceed eight hours in any day.

(c) By agreement between an employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:

(i) proper health monitoring procedures being introduced;

(ii) suitable roster arrangements being made;

(iii) proper supervision being provided;

(iv) adequate breaks being provided; and

(v) a trial or review process being jointly implemented by the employer and the employees or their representatives.

(d) Where an employee works on a shift other than a rostered shift, the employee must:

(i) if employed on continuous work, be paid at the rate of double time; or

(ii) if employed on other shiftwork, be paid at the rate of time and a half for the first three hours and double time thereafter.

(e) Clause 23.5(d) does not apply when the time is worked:

(i) by arrangement between the employees themselves;

(ii) for the purposes of effecting the customary rotation of shifts; or

(iii) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment in accordance with s.524 of the Act.

23.6 Daylight saving

(a) Where by reason of State or Territory legislation summer time is prescribed as being in advance of the standard time in that state, the length of any shift commencing before the time prescribed by the relevant legislation for the commencement of a summer time period or commencing on or before the time prescribed by the relevant legislation for the termination of a summer time period, is deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed by the relevant legislation.

(b) The terms standard time and summer time have the same meaning as in the relevant State or Territory legislation.
23.7 Make up time

(a) An employee may elect, with the consent of the employer, to work make up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.

(b) An employee on shiftwork may elect, with the consent of their employer, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.

23.8 Notification of rosters

(a) The ordinary hours of work for each employee will be displayed on a roster in a place conveniently accessible to employees. Such roster will be displayed at least two weeks prior to the commencing date of the first working period in any roster.

(b) The employer must give at least seven days notice of a change in a roster. However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency. An employer may not alter the agreed working times of a part-time employee (see clause 11) without the genuine consent of the employee.

(c) Where practicable, rostered days off will be displayed on the roster.

24. Shiftwork

24.1 Application of clause

(a) This clause will apply only to persons specifically employed as shiftworkers under this award.

(b) This clause does not apply to an employee who is employed as a non shiftworker and who does additional hours or overtime.

24.2 For the purposes of this award:

(a) **rostered shift** means any shift of which the employee concerned has had at least 48 hours notice;

(b) **afternoon shift** means any shift finishing after 6.00p.m. and at or before midnight; and

(c) **night shift** means any shift finishing after midnight and at or before 8.00a.m.

24.3 By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.
24.4 Afternoon and night shift allowances

(a) An employee who works on afternoon or night shift must be paid 15% extra for such shift.

(b) An employee who works on an afternoon or night shift which does not continue:

(i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day enterprise (where no more than eight ordinary hours are worked on each shift); or

(ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 23.3 or 23.4),

must be paid for each shift 50% extra for the first three hours and 100% extra for the remaining hours.

(c) An employee who:

(i) during a period of engagement on shift, works night shift only; or

(ii) remains on night shift for a longer period than four consecutive weeks; or

(iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle,

must, during such engagement, period or cycle, be paid 30% extra for all time worked during ordinary working hours on such night shift.

24.5 Rate for working on Saturday shifts

The rate at which a shiftworker must be paid for work performed between midnight on Friday and midnight on Saturday is time and a half. The extra rate is in substitution for and not cumulative upon the shift premiums prescribed in clause 24.4.

24.6 Rate for working on Sunday and public holiday shifts

(a) The rate at which a continuous shiftworker must be paid for work on a rostered shift the major portion of which is performed on a Sunday or public holiday is double time.

(b) The rate at which a shiftworker, on other than continuous shiftwork, must be paid for all time worked on a Sunday is double time and on a public holiday is double time and a half.

(c) Where shifts commence between 11.00 p.m. and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.
(d) Where shifts fall partly on a holiday, the shift which has the major portion falling on the public holiday must be regarded as the holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the holiday shift instead.

(e) The extra rates in clause 24.6 are in substitution for and not cumulative upon the shift premiums prescribed in clause 24.4.

24.7 Rosters

(a) Shiftwork rosters cannot be varied so as to avoid the provision of the public holiday entitlements of shiftworkers.

(b) Rosters of shiftworkers cannot be arranged so as to have the shiftworker work both shiftwork and non shiftwork in the same week.

25. Breaks

25.1 Each employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.

25.2 The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer but only if it is necessary to do so in order to meet a requirement for continuity of operations.

25.3 Except as otherwise provided and except where any alternative arrangement is entered into by agreement between the employer and the employee concerned, time and a half rates must be paid for all work done during meal hours and thereafter until a meal break is taken.

26. Overtime and penalty rates

26.1 Payment for working overtime

(a) Employees working overtime:

   (i) within the hours fixed in clause 23.2—Ordinary hours of work (other than shiftworkers), of this award but in excess of the hours fixed for an ordinary week’s work; or

   (ii) outside the hours fixed in clause 23 of this award;

must be paid time and a half for the first two hours and double time thereafter calculated on a daily basis.

(b) For the purposes of this clause hours fixed for an ordinary week’s work means the hours of work fixed in an establishment in accordance with clause 23 of this award or varied in accordance with the relevant clauses of this award.

(c) For the purposes of administering the provisions contained in this clause, the minimum period for which an employee must be paid overtime is one half hour per week.
(d) An employee who works 38 hours Monday to Friday must be paid a minimum of three hours at overtime rates for work performed on a Saturday, provided that such employee is ready, willing and available to work such overtime.

26.2 Rest period after overtime

(a) When overtime work is necessary it must wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

(b) An employee (other than a casual employee) who works so much overtime between the termination of the employee’s ordinary work on one day and the commencement of the employee’s ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times must, subject to this clause, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If on the instructions of the employer such an employee resumes or continues work without having had such ten consecutive hours off duty the employee must be paid at double the ordinary time rate of pay until the employee is released from duty for such period and the employee is then entitled to be absent until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Part 6—Leave and Public Holidays

27. Annual leave

Annual leave is provided for in the NES. This clause contains additional provisions.

27.1 Annual leave loading

(a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.

(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:

(i) annual leave loading of 17.5% of their ordinary rate of pay; or

(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

27.2 For the purposes of the additional week of annual leave provided for in s. 87(1)(b) of the Act, a shiftworker is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

28. Personal/carer’s leave and compassionate leave

Personal/carer’s leave and compassionate leave are provided for in the NES.
29. **Community service leave**

Community service leave is provided for in the NES.

29.1 **Jury Service Payment to Employees (other than casuals)**

The provisions of Section 111 of the NES apply provided that employees covered by this Award are entitled to be paid the difference between jury service pay, if any, and their base rate of pay for all time spent on jury service.

30. **Public holidays**

30.1 Public holidays are provided for in the NES

30.2 Employees of Aboriginal and Torres Strait Islander descent are entitled to an additional public holiday on National Aborigines and Islander Day as declared by the National Aborigines and Islanders Day Observance Committee (NAIDOC).

30.3 **Public holidays which fall on a weekend**

(a) Where Christmas Day falls on a Saturday or a Sunday, 27 December is observed as the public holiday instead of the prescribed day.

(b) Where Boxing Day falls on a Saturday or a Sunday, 28 December is observed as the public holiday instead of the prescribed day.

(c) Where New Year’s Day or Australia Day falls on a Saturday or a Sunday, the following Monday is observed as the public holiday instead of the prescribed day.

30.4 **Substitution of certain public holidays by agreement at the enterprise**

(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.

(b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

30.5 **Rostered day off falling on public holiday**

(a) Except as provided for in clauses 30.5(b) and (c) and where the rostered day off falls on a Saturday or a Sunday, where a full-time employee’s ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(i) 7.6 hours of pay at the ordinary time rate; or

(ii) 7.6 hours of extra annual leave; or

(iii) a substitute day off on an alternative week day.

(b) Where an employee has credited time accumulated pursuant to clause 23.5, then such credited time should not be taken as a day off on a public holiday.
(c) If an employee is rostered to take credited time accumulated pursuant to clause 23.5 as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer must allow the employee to take the time off on an alternative week day.

(d) Clauses 30.5(b) and (c) do not apply in relation to days off which are specified in an employee’s regular roster or pattern of ordinary hours as clause 30.5(a) applies to such days off.

31. **Ceremonial Leave**

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.
Schedule A- Classification Structure and Definitions

A.1 A **Level 1 employee** is on probation and undertaking induction training for a maximum of 38 hours.

A.2 A **Level 2 employee** has completed a Certificate I or exercises equivalent skills and is an employee who at the completion of their induction training is capable of performing work within the scope of this level. Such an employee to the level of their 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.

A.3 A **Level 3 employee** has completed a Certificate II or exercises equivalent skills and is capable of performing work within the scope of this level. Such an employee performs work above and beyond the skills of an employee Level 2 and:

- works from complex instructions and procedures;
- may assist in the provision of on-the-job training;
- may co-ordinate work in a team environment or works individually under general supervision;
- is responsible for assuring the quality of their own work.

A.4 A **Level 4 employee** has completed a Certificate III or exercises equivalent skills and performs work above and beyond the skills of an employee at the Level 3. An employee at this level:

- is 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.5 A **Level 5 employee** has completed a 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.6 A **Level 6 employee** has completed a Certificate V or three year graduate degree or exercises equivalent skills. An employee at this level works above and beyond the skills of an employee Level 5. An employee at this level will work to the level of their skill, competence and training.
Schedule B—Supported Wage System

B.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

B.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee’s productive capacity and agreed wage rate

B.3 Eligibility criteria

B.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

B.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.
B.4  **Supported wage rates**

B.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<table>
<thead>
<tr>
<th>Assessed capacity (clause B.5)</th>
<th>Relevant minimum wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
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<tr>
<td>20</td>
<td>20</td>
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<td>30</td>
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<td>80</td>
<td>80</td>
</tr>
<tr>
<td>90</td>
<td>90</td>
</tr>
</tbody>
</table>

B.4.2 Provided that the minimum amount payable must be not less than $69 per week.

B.4.3 Where an employee’s assessed capacity is 10%, they must receive a high degree of assistance and support.

B.5  **Assessment of capacity**

B.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

B.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

B.6  **Lodgement of SWS wage assessment agreement**

B.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Commission.

B.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Industrial Registrar to the union by certified mail and the agreement will take effect unless an objection is notified to the Commission within 10 working days.
B.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

B.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

B.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee’s capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

B.10 Trial period

B.10.1 In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

B.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

B.10.3 The minimum amount payable to the employee during the trial period must be no less than $69 per week.

B.10.4 Work trials should include induction or training as appropriate to the job being trialled.

B.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause B.5.
National Training Wage Schedule

1. Title

This is the National Training Wage Schedule.

2. Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level.

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training.

approved training means the training specified in the training contract.

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

(a) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;

(b) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and

(c) not include any period during a calendar year in which a year of schooling is completed.

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation.

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Western Australia: *Vocational Education and Training Act 1996*

Northern Territory: *Northern Territory Employment and Training Act 1991*
ACTU Redraft - 24 July 2009

Victoria: *Education and Training Reform Act 2006*

New South Wales: *Apprenticeship and Traineeship Act 2001*

Australian Capital Territory: *Training and Tertiary Education Act 2003*

Queensland: *Vocational Education, Training and Employment Act 2000*

South Australia: *Training and Skills Development Act 2008*


A trainee is an employee undertaking a traineeship under a training contract.

A traineeship means a system of training which has been approved by the relevant State or Territory training authority, and which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification.

A training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority.

A training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training. A reference to a training package in this schedule includes any relevant replacement training package or training scheme.

A Year 10 includes any year before Year 10.

3. Coverage

3.1 Subject to clause 3.2 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by Appendix 1 to this schedule.

3.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix 1 to this schedule.
3.3 This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.

3.4 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

3.5 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

4. Types of Traineeship

4.1 The following types of traineeship are available under this schedule:

   (a) a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training.

   (b) a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

4.2 Employment as a trainee does not commence until the relevant training contract has been signed by the employer and the employee and lodged for registration with the relevant State or Territory training authority, provided that if the training contract is not in a standard format employment as a trainee does not commence until the training contract has been registered with the relevant State or Territory training authority.

5. Minimum Wages

5.1 Minimum wages for full-time traineeships

   (a) Wage Level A

Subject to clause 5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix 1 are:
Highest year of schooling completed

<table>
<thead>
<tr>
<th></th>
<th>Year 10</th>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ per week</td>
<td>$ per week</td>
<td>$ per week</td>
</tr>
<tr>
<td>School leaver</td>
<td>245.00</td>
<td>270.00</td>
<td>323.00</td>
</tr>
<tr>
<td>Plus 1 year out of school</td>
<td>270.00</td>
<td>323.00</td>
<td>375.00</td>
</tr>
<tr>
<td>Plus 2 years out of school</td>
<td>323.00</td>
<td>375.00</td>
<td>437.00</td>
</tr>
<tr>
<td>Plus 3 years out of school</td>
<td>375.00</td>
<td>437.00</td>
<td>500.00</td>
</tr>
<tr>
<td>Plus 4 years out of school</td>
<td>437.00</td>
<td>500.00</td>
<td></td>
</tr>
<tr>
<td>Plus 5 or more years out of school</td>
<td>500.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(b) Wage Level B

Subject to clause 5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix 1 are:

<table>
<thead>
<tr>
<th></th>
<th>Year 10</th>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ per week</td>
<td>$ per week</td>
<td>$ per week</td>
</tr>
<tr>
<td>School leaver</td>
<td>245.00</td>
<td>270.00</td>
<td>313.00</td>
</tr>
<tr>
<td>Plus 1 year out of school</td>
<td>270.00</td>
<td>313.00</td>
<td>360.00</td>
</tr>
<tr>
<td>Plus 2 years out of school</td>
<td>313.00</td>
<td>360.00</td>
<td>423.00</td>
</tr>
<tr>
<td>Plus 3 years out of school</td>
<td>360.00</td>
<td>423.00</td>
<td>482.00</td>
</tr>
<tr>
<td>Plus 4 years out of school</td>
<td>423.00</td>
<td>482.00</td>
<td></td>
</tr>
<tr>
<td>Plus 5 or more years out of school</td>
<td>482.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(c) Wage Level C

Subject to clause 5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level 1–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix 1 are:
<table>
<thead>
<tr>
<th>Highest year of schooling completed</th>
<th>Year 10 $ per week</th>
<th>Year 11 $ per week</th>
<th>Year 12 $ per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>School leaver</td>
<td>245.00</td>
<td>270.00</td>
<td>312.00</td>
</tr>
<tr>
<td>Plus 1 year out of school</td>
<td>270.00</td>
<td>312.00</td>
<td>351.00</td>
</tr>
<tr>
<td>Plus 2 years out of school</td>
<td>312.00</td>
<td>351.00</td>
<td>392.00</td>
</tr>
<tr>
<td>Plus 3 years out of school</td>
<td>351.00</td>
<td>392.00</td>
<td>437.00</td>
</tr>
<tr>
<td>Plus 4 years out of school</td>
<td>392.00</td>
<td>437.00</td>
<td></td>
</tr>
<tr>
<td>Plus 5 or more years out of school</td>
<td>437.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(d) School-based traineeships

Subject to clause 5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF certificate level traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix 1 are as follows when the trainee works full-time ordinary hours:

<table>
<thead>
<tr>
<th>Year of schooling</th>
<th>Year 11 $ per week</th>
<th>Year 12 $ per week</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>245.00</td>
<td>270.00</td>
</tr>
</tbody>
</table>

(e) AQF Certificate Level IV traineeships

(i) Subject to clause 5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clause 5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:
Wage level | First year of traineeship $ per week | Second year of traineeship $ per week
---|---|---
Wage Level A | 519.00 | 539.00
Wage Level B | 500.00 | 519.00
Wage Level C | 454.00 | 471.00

5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix 1 are:

<table>
<thead>
<tr>
<th>Highest year of schooling completed</th>
<th>Year 10 $ per hour</th>
<th>Year 11 $ per hour</th>
<th>Year 12 $ per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>School leaver</td>
<td>8.06</td>
<td>8.88</td>
<td>10.63</td>
</tr>
<tr>
<td>Plus 1 year out of school</td>
<td>8.88</td>
<td>10.63</td>
<td>12.34</td>
</tr>
<tr>
<td>Plus 2 years out of school</td>
<td>10.63</td>
<td>12.34</td>
<td>14.38</td>
</tr>
<tr>
<td>Plus 3 years out of school</td>
<td>12.34</td>
<td>14.38</td>
<td>16.45</td>
</tr>
<tr>
<td>Plus 4 years out of school</td>
<td>14.38</td>
<td>16.45</td>
<td></td>
</tr>
<tr>
<td>Plus 5 or more years out of school</td>
<td>16.45</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(b) Wage Level B

Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix 1 are:
### (c) Wage Level C

Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix 1 are:

<table>
<thead>
<tr>
<th>Highest year of schooling completed</th>
<th>Year 10 $ per hour</th>
<th>Year 11 $ per hour</th>
<th>Year 12 $ per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>School leaver</td>
<td>8.06</td>
<td>8.88</td>
<td>10.30</td>
</tr>
<tr>
<td>Plus 1 year out of school</td>
<td>8.88</td>
<td>10.30</td>
<td>11.84</td>
</tr>
<tr>
<td>Plus 2 years out of school</td>
<td>10.30</td>
<td>11.84</td>
<td>13.91</td>
</tr>
<tr>
<td>Plus 3 years out of school</td>
<td>11.84</td>
<td>13.91</td>
<td>15.86</td>
</tr>
<tr>
<td>Plus 4 years out of school</td>
<td>13.91</td>
<td>15.86</td>
<td></td>
</tr>
<tr>
<td>Plus 5 or more years out of school</td>
<td>15.86</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### (d) School-based traineeships

Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF certificate level traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix 1 are as follows when the trainee works part-time ordinary hours:
Year of schooling

<table>
<thead>
<tr>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ per week</td>
<td>$ per week</td>
</tr>
<tr>
<td>8.06</td>
<td>8.88</td>
</tr>
</tbody>
</table>

(ii) A trainee undertaking a part-time school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 20% on all ordinary hours worked in lieu of annual leave, sick leave, personal leave and public holidays.

With 20% loading

<table>
<thead>
<tr>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ per week</td>
<td>$ per week</td>
</tr>
<tr>
<td>9.67</td>
<td>10.66</td>
</tr>
</tbody>
</table>

(e) AQF Certificate Level IV traineeships

(i) Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.

(ii) Subject to clauses 5.2(f) and 5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

<table>
<thead>
<tr>
<th>Wage level</th>
<th>First year of traineeship</th>
<th>Second year of traineeship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ per hour</td>
<td>$ per hour</td>
</tr>
<tr>
<td>Wage Level A</td>
<td>17.07</td>
<td>17.73</td>
</tr>
<tr>
<td>Wage Level B</td>
<td>16.45</td>
<td>17.07</td>
</tr>
<tr>
<td>Wage Level C</td>
<td>14.93</td>
<td>15.49</td>
</tr>
</tbody>
</table>

(f) Calculating the actual minimum wage
(i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses 5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

(ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses 5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.

(iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses 5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

5.3 Other minimum wage provisions

(a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.

(b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

6. Employment conditions

6.1 A trainee is subject to a probation period of no longer than one month.

6.2 A trainee must be permitted to be absent from work without loss of continuity of employment and/or wages to attend approved training.

6.3 Reasonable overtime may be worked by a trainee provided that it does not affect the successful completion of the approved training.

6.4 No trainee is to work overtime or shiftwork on their own unless consistent with the provisions of this award.
6.5 No trainee is to work shiftwork unless the shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork trainees.

6.6 The trainee minimum wage in this schedule is the basis for the calculation of overtime and/or shift penalty rates unless the employer and trainee agree in writing that the trainee will be paid at a higher rate, in which case the higher rate must apply.

6.7 The employer must ensure that the trainee is permitted to attend the training course or program provided for in the training contract and that the trainee receives the appropriate on-the-job training.

6.8 Subject to clause 3.4 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

Appendix 1: Allocation of Traineeships to Wage Levels

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

1.1 Wage Level A

<table>
<thead>
<tr>
<th>Training package</th>
<th>AQF certificate level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Beauty</td>
<td>III</td>
</tr>
<tr>
<td>Business Services</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Chemical, Hydrocarbons and Refining</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
</tbody>
</table>
III

Civil Construction  III

Coal Training Package

Community Services  I
II
III

Construction, Plumbing and Services Integrated Framework

Correctional Services  II
III

Drilling  II
III

Electricity Supply Industry Generation Sector  II

Electricity Supply Industry Transmission, Distribution and Retail Sector  II

Electrotechnology  I
II

Financial Services  I

Deleted: III

Deleted: II

Deleted: II

Deleted: III
II

Floristry

Food Processing Industry

Gas Industry

General Construction

Information and Communications

Laboratory Operations

Local Government

Manufacturing

Manufactured Mineral Products
Maritime

Metal and Engineering Industry

Metalliferous Mining

Museum, Library and Library/Information Services

Plastics, Rubber and Cablemaking

Public Safety

Public Sector

Pulp and Paper Manufacturing Industries

Retail Services

Telecommunications

Textiles, Clothing and Footwear

Tourism, Hospitality and Events
1.2 Wage Level B

<table>
<thead>
<tr>
<th>Training package</th>
<th>AQF certificate level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aeroskills</td>
<td>II</td>
</tr>
<tr>
<td>Animal Care and Management</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Asset Maintenance</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Asset Security</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Australian Meat Industry</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Automotive Industry Manufacturing</td>
<td>II</td>
</tr>
</tbody>
</table>
III

Automotive Industry Retail, Service and Repair

II

Beauty

III

Caravan Industry

II

Civil Construction

I

Community Recreation Industry

II

Entertainment

III

Extractive Industries

II

Screen and Media

III

Fitness Industry

III
Floristry

Food Processing Industry

Forest & Forest Products Industry

Furnishing

Gas Industry

Health

Local Government

Manufactured Mineral Products

Metal and Engineering Industry
<table>
<thead>
<tr>
<th>Industry</th>
<th>I</th>
<th>II</th>
<th>III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Off-Site Construction</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outdoor Recreation Industry</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plastics, Rubber and Cablemaking</td>
<td></td>
<td>II</td>
<td></td>
</tr>
<tr>
<td>Printing and Graphic Arts</td>
<td></td>
<td>II</td>
<td>III</td>
</tr>
<tr>
<td>Property Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Safety</td>
<td></td>
<td>II</td>
<td></td>
</tr>
<tr>
<td>Pulp and Paper Manufacturing Industries</td>
<td></td>
<td>II</td>
<td></td>
</tr>
<tr>
<td>Retail Services</td>
<td></td>
<td>II</td>
<td></td>
</tr>
<tr>
<td>Sport Industry</td>
<td></td>
<td>II</td>
<td>III</td>
</tr>
</tbody>
</table>
Sport, Fitness and Recreation II
III

Sugar Milling I
II
III

Textiles, Clothing and Footwear I
II

Transport and Logistics I
II

Visual Arts, Craft and Design I
II

Water Industry I
II

1.3 Wage Level C

<table>
<thead>
<tr>
<th>Training package</th>
<th>AQF certificate level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agri-Food</td>
<td>I</td>
</tr>
<tr>
<td>Amenity Horticulture</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>III</td>
</tr>
<tr>
<td>Category</td>
<td>Section 1</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Conservation and Land Management</td>
<td>I</td>
</tr>
<tr>
<td>Funeral Services</td>
<td>I</td>
</tr>
<tr>
<td>Music</td>
<td>I</td>
</tr>
<tr>
<td>Racing Industry</td>
<td>I</td>
</tr>
<tr>
<td>Rural Production</td>
<td>I</td>
</tr>
<tr>
<td>Seafood Industry</td>
<td>I</td>
</tr>
</tbody>
</table>