Submission
to
Award Review Task Force
Response to
Issues raised in Discussion Papers
Award Rationalisation
and
Rationalisation of award wage and
classification structures

Australian Council of Trade Unions
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Executive summary

1. The ACTU does not believe, on the evidence produced, that there are any grounds for undertaking the rationalisation of awards or a rationalisation of wage and classification structures.

2. The ACTU believes that the rationalisation of awards and wages and classification structures as contemplated by the matters subject to consultation and the terms of reference for the Task force will lead to:

   - Reductions in conditions of employment for award reliant workers;
   - Loss of conditions for workers entering the federal system from state systems;
   - Inequality in wages outcomes and a loss of the principle of equal pay for work of equal value;
   - The loss of skill based career paths;
   - De-skilling of the workforce with long term consequences for the competitiveness of Australian industry.

3. The ACTU is concerned at the perceived conflict of interest of the Chair of the Taskforce in holding both that position and that of Senior Deputy President of the AIRC. The ACTU believes the Chair should not sit on AIRC matters during the operation of the Taskforce, nor should he sit on the Commission to hear any matters arising from the work of the Taskforce.

4. The ACTU is concerned that both of the rationalisation exercises are designed to deliver to government pre-determined outcomes. We consider that the discussion papers are misleading. They regularly paint a problem that does not necessarily exist and then use the imaginary problem as justification for, or at least pointing to, a
solution proposed. The discussion papers in this respect take the making of straw people to a new level.

Award Rationalisation

5. The award rationalisation paper consistently inflates the number of awards, suggests that this needs to be reduced and puts forward only the ANZSIC 2006 Divisions (of which there are 19) as the basis for rationalisation as the potential solution. The discussion paper then seeks to ask a range of questions that presume that this is the basis on which awards will be rationalised.

6. The discussion paper on award rationalisation fails to appreciate the effect of rationalisation on the full range of affected workers – in particular state award-reliant workers who are transferred into the federal jurisdiction on day one of the reform commencement.

7. State Industrial Commissions and practitioners in those systems must be consulted on the implications of the move of previous state jurisdictional workers into the federal jurisdiction.

8. If there is a need to examine awards of the federal commission it is our submission that this should be undertaken by the AIRC, who must be given the capacity to determine outcomes that are in the best interests of the industrial parties. This necessarily implies not pre-determination of the number of awards at the end of the rationalisation process, flexibility to determine industry, enterprise or occupational awards as deemed appropriate and encouraging the industry partners to develop solutions to identified problems.

9. Whilst final awards may apply by ‘general application to constitutional corporations’ specific provisions must be put in place to protect the rights of state award-reliant workers who, under the current
construction of WorkChoices will lose all of their state award entitlements should awards apply by ‘common rule’.

10. There are no grounds on which it can be argued that some employees in the rationalised award system should be award free. The is no basis for and no argument advanced as to why, as is constantly suggested, managerial and professional employees should be award free. Award coverage for professional and managerial employees is integral to any award system and ensures appropriate minimum standards across the entire labour market.

11. In developing its recommendations, the Taskforce should not be constrained by considerations of cost to employers of any outcome. This is deemed not to be a benefit cutting exercise and cost impact is not in the Taskforce Terms of Reference; cost considerations are therefore not relevant, regardless of the comments in the discussion papers.

12. Any outcome of award rationalisation must not result in the loss of benefits to employees. Awards must meet the needs of the industry partners and should provide for a mix of industry, enterprise and occupational awards.

Rationalising award wage and classification structures

13. The discussion paper on rationalising award and wage classification structures shows a level of ignorance of the history of award modernisation and wage rates that is staggering.

14. Ignorance of the implementation of the Structural Efficiency Principle, the minimum rates adjustment process and national wage decisions over the last nine years leads the discussion paper to make outrageous claims and then propose solutions to what are, in effect, non-existent problems. There are not 40,000 classifications across
awards and no evidence is produced to support this. But even if there are, this is not a problem if the relativities between those classification structures are maintained, they have a sound and rational basis and there is not a great range of different classifications within and between awards.

15. The Structural Efficiency Principle and minimum rates adjustments resulted in awards that were non-discriminatory; written in plain English; were not overly prescriptive by inserting facilitative provisions (some of which must now be removed from awards); instituted skill-based career paths; reduced the number of classifications (in the metal industry from 350 to 14 – a process replicated in most awards); eliminated state-based differences and aligned relativities across awards that stemmed leap-frogging in wages and raised minimum rates for the lowest paid.

16. Flat dollar increases over the last nine years has – to a limited extent – compressed relativities for award wage rates within awards but they have not affected relativities across award classification structures. These relativities have been maintained.

17. This process and what it has achieved are given scant regard by the discussion paper. By ignoring that this work has been done and the outcomes achieved the discussion paper proposes that it all be done again through broadbanding.

18. The ACTU is concerned that any rationalisation of the award wage and classification structure will result in a loss of the current system of skill-based career paths that encourage workers to improve their skills through formal on and off the job training and ensure workers are properly remunerated for the use of those skills in the workplace.
19. Any loss of the link between wages and skill-based career paths will not only affect workers but will affect Australia's capacity to continue to grow a strong economy and compete in the global marketplace.

20. Any propositions to alter current wage classifications must be carefully examined against the prism of pay equity and discrimination. The Taskforce will not be remembered kindly by history if, as a result of its activities, pay inequality grows and discrimination in pay outcomes is rampant. The research that is available on this matter shows that the compression of classification structures or minimal classification structures fail to properly recognise the acquisition of skills, leading to gender based undervaluation of work.

Recommendations

21. Given that the Taskforce will continue with the task allotted to it, the ACTU makes the following recommendations with respect to the conduct of the work:

1. With respect to both award rationalisation and wage and classification structures rationalisation:

   1.1. The Taskforce have a sound, well researched understanding of awards and their coverage. Such research should extend to details on award reliant workers in both the (pre-reform) federal and state systems;

   1.2. The Taskforce recommendations enable flexibility in outcomes – ie the outcome of rationalisation not be pre-determined;

   1.3. Resulting awards and wage and classification structures meet the needs of the industry partners;

   1.4. Cost not be a consideration in developing recommendations;
2. With respect, in particular, to the award rationalisation process:

2.1. That award rationalisation be carried out by the AIRC.

2.2. The AIRC be given a framework within which to work (based on the principles above) but that also includes:

a. the capacity to set priorities and determine the pool of awards to be considered in each rationalisation exercise, including, where necessary, relevant state awards;

b. an objective (without prescription) of reducing the total number of federal awards (excluding s170MX awards and s115 agreements);

c. the capacity to determine the most appropriate ‘industry’ sectors;

d. flexibility in award coverage outcomes (ie industry, enterprise or occupational);

e. encouragement of industry partners, with the assistance of AIRC, to develop a rationalised award structure for their area/s of interest;

f. capacity for State Industrial Commissions to provide input, advice and assistance to both the AIRC and industry partners in developing rationalised awards;

g. the capacity to delete inoperative awards or insert savings provisions into rationalised awards to ensure no worker is inadvertently disadvantaged;

h. that the final content of rationalised awards not result in the loss of benefits to workers covered by the pre-rationalised award(s);

i. power to abolish single issue awards by insertion of single issue provisions into the relevant industry award or as a schedule to the rationalised award. Such a provision’s inclusion in the award would not expand parties to whom the provision applied;
j. capacity to hear submissions, take evidence and determine the form of the final awards;

k. the ability to set phase in dates for the rationalised award/s;

l. a fair timetable within which to carry out the task.

3. With respect to the review of award wage and classifications rationalisation:

3.1. the wage classification structures must be based on identifiable skill levels;

3.2. the wage classification system provides for identifiable skill-based career paths with skill levels appropriately remunerated;

3.3. the wage classification structures encourage the acquisition and application of skills in the workplace;

3.4. that, unless otherwise sought by a sector, the 14 level metal industry award skill based classification structure form a template for new award structures;

3.5. the wage classification structures meet the needs of the industry partners;

3.6. the wages classification structure guarantee pay equity outcomes and not result in discrimination;

3.7. that the wages classification structure be based on proper work value assessments;

3.8. broadbanding not be a consideration but, if it is, broadbanding only be considered on a skill basis and without detriment to the current relationship between wages and skills;

3.9. the wages classifications outcome ensure the maintenance of relativities across all classification streams;

3.10. that the wages classification outcomes for all workers not be based on time served or age.
Introduction

22. The Australian Council of Trade Unions [ACTU] is the peak council of the Australian Trade Union Movement.

23. This ACTU submission to the Award Review Taskforce responds to two discussion papers¹ issued by it in December 2005.

24. The ACTU is not opposed to a proper sound consideration of awards with a view to rationalisation of those awards if such an exercise is undertaken in full consultation of all the industry partners and if the purpose of such an exercise is the continued development of a sound structure of wages, classifications and conditions that establishes a fair and effective safety net for working Australians. The ACTU is opposed to any rationalisation undertaken purely for the purpose of reducing that safety net.

25. The ACTU is prepared to provide input to the considerations of the Taskforce. This participation in the Taskforce deliberations does not in any way signal ACTU agreement per se to the rationalisation of the awards or the wages and classification structure.

26. The ACTU believes that the rationalisation of awards and wages and classification structures as contemplated by the matters subject to consultation and the terms of reference for the Task force will lead to:

- Reductions in conditions of employment for award reliant workers;
- Loss of conditions for workers entering the federal system from state systems;

¹ Throughout this submission, specific references to the ‘Award rationalisation’ discussion paper will be denoted “AR” followed by the relevant paragraph number; and references to the ‘Rationalisation of award wage and classification structures’ will be denoted “WCS” followed by the relevant paragraph number. So eg AR 1.1 refers to paragraph 1.1 in the Award rationalisation discussion paper.
• Inequality in wages outcomes and a loss of the principle of equal pay for work of equal value;
• The loss of skill based career paths;
• De-skilling of the workforce with long term consequences for the competitiveness of Australian industry;

A brief history of awards

27. For the past one hundred years the Australian Industrial Relations Commission [AIRC] has made awards in settlement of industrial disputes, having heard and considered the substantial merits of evidence and argument put to it.

28. Awards made and varied by the AIRC pertained to settlement of particular industrial disputes brought before it variously by unions, employers, and employer organisations.

29. The breadth of award making has changed markedly over the history of the operation of the federal conciliation and arbitration system. While the award making role, up until 1909, was restricted to just two industries and there were just 300 federal awards in 1954, award making expanded so that by 1994 there were approximately 1900 federal awards\(^2\) and today there are an estimated 2251 federal awards\(^3\).

30. From the early to mid 1980s awards have undergone quite substantial restructuring that has continued until now. This commenced in earnest in 1987 with the ‘Restructuring and Efficiency Principle’ arising from the 1987 national wage case.\(^4\) In this case a

\(^2\) Derry, S, Plowman, D and Walsh, J; (2001) *Industrial Relations: a contemporary analysis* pp 223 & 267
\(^3\) Although this figure is inflated by the inclusion of some 600 section 170MX awards and by section 115 agreements.
\(^4\) AIRC, Print G6800
‘first tier’ increase of $10 per week was awarded with a ‘second tier’ increase of 4 per cent available as a result of initiatives to improve efficiency including initiatives to reduce demarcation barriers, advance multi-skilling, training and re-training, and broad banding.

31. Arising from the 1988 national wage case the Commission introduced the Structural Efficiency Principle. This principle set out the conditions under which pay increases could be granted:

*Increases in wages and salaries or improvements in conditions allowable under the National Wage Case decision of 12 August 1988 shall be justified if the union(s) party to an award formally agree(s) to co-operate positively in a fundamental review of that award with a view to implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs. The measures to be considered should include but not be limited to:*

- establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;
- eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;
- creating appropriate relativities between different categories of workers within the award and at enterprise level;
- ensuring that working patterns and arrangements enhance flexibility and meet the competitive requirements of the industry;
- including properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;
- updating and/or rationalising the list of respondents to awards;
• addressing any cases where award provisions discriminate against sections of the work-force.

It is not intended that this principle will be applied in a negative cost-cutting manner or to formalise illusory, short-term benefits. Its purpose is to facilitate the type of fundamental review essential to ensure that existing award structures are relevant to modern competitive requirements of industry and are in the best interests of both management and workers.⁵

32. The operation of this Structural Efficiency Principle in particular delivered an extensive level of award restructuring. This restructuring continued through Safety Net Review decisions to the mid 1990s.⁶

33. Award restructuring, under this principle:

• was a comprehensive overhaul of wage and classification structures in federal awards, the first in the history of the award system.
• was replicated in State jurisdictions.
• resulted in a huge reduction in the number of classifications in many awards – from more than 350 to 14 in the Metal Industry award.
• instituted skill-based classifications structures in awards.
• broadened the range of duties encompassed within classifications, with multi-skilling greatly reducing scope for demarcation disputes.
• eliminated interstate differentials in rates of pay within federal awards.

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⁵ AIRC Print H4000
⁶ AIRC, Prints H9100; J7400; K9700; K9940; M5600
• aligned minimum rates for like classifications across awards, ending previous instability in the wages system that stemmed from leap-frogging and build-on.
• raised minimum rates of pay for low paid workers through the minimum rates adjustment process.

34. The success of the award restructuring program in overhauling award provisions, ending instability in the wages system, promoting skills formation, and underpinning the nation’s strong economic performance over the past two decades, must be acknowledged.

35. ‘Award Simplification’ pursuant to section 150A of the Industrial Relations Act 1988 (as amended) was administered by the AIRC throughout the first half of the 1990s until the section was repealed with the 1996 amendments. This process followed the award restructuring process and required the AIRC to ensure, inter alia, the removal of obsolete and discriminatory provisions from awards; insertion of enterprise flexibility clauses in awards; that awards be expressed in plain english; and that awards did not contain unnecessary detail. To facilitate this process in the early 1990s (well before 1997) the AIRC prepared and issued a ‘how to’ guide to assist this process replete with standard clauses, specification of Test Case standards, and other relevant material.

36. The award simplification process that commenced in 1997 was about stripping non-allowable matters from awards and terminating paid rates awards. By that time the heavy lifting of award restructuring had been done, and had delivered Australia a world-class model for fixing minimum wages and conditions of employment.
WorkChoices changes

37. The Workplace Relations Amendment (Work Choices) Act 2005 [WorkChoices] requires awards to be reduced in number and content.

38. WorkChoices presages a radical reduction in the number of federal awards. The inference from the ‘Award rationalisation’ discussion paper is that this reduction will be from 2,251 federal awards at present to less than 20.

39. Implementation of this change means that awards will henceforth have nothing whatsoever to do with dispute resolution.

40. The core content of awards made by the AIRC has consisted in specification of job classifications and accompanying minimum rates of pay and conditions of employment. For constitutional corporations:

   - WorkChoices removes from the AIRC its powers to make and vary awards in respect of job classifications and their associated minimum rates of pay.

   - WorkChoices creates a new regulatory instrument called ‘Australian Pay and Classification Scales’ [APCS], establishes a new regulatory body called the ‘Australian Fair Pay Commission’ [AFPC] and vests in it the power to make and vary the minimum rates of pay specified for job classifications in the APCS.

41. In this respect use of the word ‘rationalisation’ in both Taskforce discussion papers to badge the process is misleading.

42. The Macquarie Dictionary [1981 at page 1432] offers nine definitions for ‘rationalise’, of which the following four appear most germane in this context:
2. to remove unreasonable elements from.
3. to make rational or conformable with reason.
6. to reorganise (resources, the components of a business, etc.) to promote efficiency, economy, etc.
8. to reorganise and integrate (an industry).

43. Neither of the Taskforce Discussion Papers (nor for that matter the WorkChoices documentation) makes any case that the elements to be removed from awards are unreasonable (def 2). Nor do they advance argument that the changes to be effected will make the resultant awards and/or APCS conformable with reason (def 3). The claims that the changes will promote efficiency or economic growth have been hotly disputed and are highly problematic (def 8). Similarly, while some reorganisation and even integration may be entailed in the process, this is a second-order and consequential aspect of what is to be done (def 6 and 8).

44. A more appropriate and singularly fitting word is ‘reduction’.

45. The Macquarie Dictionary relevantly defines ‘reduction’ as ‘the act of reducing’, which is ‘to bring down to a smaller extent, size, amount, number etc’.

46. This is precisely what the WorkChoices process entails for the award system.

47. In making and varying the classifications and minimum rates of pay in its awards the AIRC was required by statute to weigh the contending interests of employees and employers, having regard to economic factors.

48. Under WorkChoices neither the AFPC nor the Award Review Taskforce is required to have any particular regard to the interests of employees.
49. The indicators of a mature system of a safety net of wages and conditions employment is a capacity and willingness of the parties in that system to cooperatively keep the system under review so that it remains accessible and relevant to the changing structures of a workforce. Unfortunately this is not the approach being proposed under WorkChoices. It is clear from public statements and from the discussion papers themselves that the Taskforce outcomes are already partly determined – a drastic reduction in the number of awards and a wages safety net with as few salary points as possible and with no link to a skills-based career path.

The Award Review Taskforce

50. The Taskforce is an administrative body, supported by a Secretariat located within the Department of Employment and Workplace Relations.  

51. The Taskforce’s role is to recommend to the Minister how government policy should be given effect.

“The Taskforce will examine and report to Government on two projects relevant to the Government’s workplace reform agenda.”

52. With respect to award rationalisation the Taskforce is required to report to the Minister on a recommended strategy by the end of March 2006. Then,

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7 AR 1.9; WCS 1.9
8 AR 1.7 and Appendix A; similarly in WCS.
9 AR 1.16 (although the terms of reference state end January 2006)
“Following a decision by the government on that methodology, the Australian Industrial Relations Commission will be formally tasked with undertaking the award rationalisation project.”

53. With respect to the rationalisation of wages and classifications the Taskforce is to report to the Minister recommending a strategy to give effect to the Government’s policy. Then,

“Following a decision by the government on that methodology, the Taskforce shall commence an initial rationalisation of wage and classification structures.

The Taskforce shall finalise its rationalisation of wage and classification structures, including casual loadings and piece rates, by end July 2006 for consideration by the AFPC prior to its first wage adjustment.”

54. The chair of the Taskforce is the Honourable Matthew O’Callaghan who holds office as a Senior Deputy President of the AIRC. A reference group comprising people with employer and employee backgrounds assists him.

55. The ACTU is gravely concerned that the Chair of the Taskforce may find himself in conflict between his Taskforce role and his role as a Senior Deputy President of the AIRC.

56. The AIRC is not an administrative arm of government [see National Wage Case decision, 3 April 1975, Serial No C2200 at p.7]

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10 AR Appendix A at point D
11 By end March 2006 according to AR 1.28 and WCS 1.17; by end January 2006 according to the Terms of Reference at points C and D, but subject to what may have transpired under point E of the Terms of Reference.
12 AR Appendix A at point C
13 AR 1.8; WCS 1.8
14 The composition of this reference group was only announced on 24 January 2006.
57. But some of the recommendations of the Taskforce, as are accepted by the Government, are subsequently to be implemented by the AIRC.

58. There is clearly great scope for conflict of duties - actual or potential, real or perceived - in this situation. It would seem impossible for propriety to be secured and be seen to be secured, by the one person wearing both hats at the same time.

59. The ACTU does not believe it is appropriate for the Senior Deputy President to be put in such a position. Should he continue to Chair this Taskforce, the ACTU believes he should indicate now that he will step aside from his role with the AIRC for the duration of the Taskforce and that he should excuse himself from sitting on the Commission when it hears matters that were subject to any consideration of the Taskforce (including award simplification matters).

The current situation – wages, classification structures, and awards

60. Both of the discussion papers offer some background and contextual material on the current system of federal awards and award wages and classification structures.

61. These sections shed a limited light on the current situation, fail to highlight relevant material facts, and perpetuate multiple misunderstandings and misperceptions.

62. According to the Discussion papers, ‘there are currently 4053 different awards operating around the country’, of which ‘2251 are federal awards and 1802 are State awards’.

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15 AR 2.1 to 2.9
16 WCS 2.1 to 2.29
63. Presentation of the total number of awards in this way is highly tendentious and inflates the apparent complexity of the award system. It gives no accurate or reliable indication of the number of federal awards to which the WorkChoices reduction process will apply.

64. The total is a factoid devoid of meaning, because

- although ‘some enterprise awards apply only to one employer’\(^{18}\) and ‘some federal awards relate to single issues, such as superannuation or long service leave’\(^{19}\), these are included in the total number of awards;
- the Discussion papers fail utterly to quantify the numbers of enterprise specific or single issue awards;
- there are currently about 600 federal awards made under s.170MX that are exempt from the award rationalisation process;\(^{20}\)
- inclusion of them in the total for reduction is wholly erroneous as they are quarantined.

65. The discussion papers, in this respect, do not accurately reflect the status of awards. By the use of inflated and inaccurate statistics the discussion papers seek to overstate the issue for the purpose of justifying a pre-determined outcome.

66. It is true that, having been developed over time in settlement or part settlement of industrial disputes, federal (and State) awards contain a wide range of terms that are not necessarily comparable across awards or industries.\(^{21}\)

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\(^{17}\) AR 2.1 and WCS 2.1
\(^{18}\) AR 2.8
\(^{19}\) AR 2.9
\(^{20}\) AR 1.10
\(^{21}\) AR 2.2 and WCS 2.2
67. This is, however, simply not an issue of any moment – unless the goal is simplistic minimalism and reduction to a one-size-fits-all lowest common denominator. For example:

- award provisions pertaining to ear, nose and throat infections for aircraft stewards matter for aircraft cabin crew but are irrelevant for factory workers not subject to changes in air pressure to the same extent, degree or regularity;
- provisions pertaining to whole or partial nudity are highly relevant for workers in the theatrical and entertainment industries engaged in certain establishments, but overwhelmingly irrelevant for shop assistants;
- provisions pertaining to the use of handguns are relevant in the security industry but irrelevant for hotel cleaners;
- provisions relating to rostering arrangements for workers on oil rigs are of little interest to teachers but highly relevant to rig workers; etc

68. The statement that:

‘(T)here has been some streamlining of federal awards through the award simplification process undertaken by the AIRC beginning in 1997’\textsuperscript{22}

is less than a half-truth, and a blatant attempt to misrepresent the extensive process of award reform engaged in by unions and employers over the past two decades.

69. It is a gross misrepresentation to assert that the process of modernisation of awards commenced just 8 years ago.

\textsuperscript{22} AR 2.4
70. Award restructuring delivered broad consistency in minimum rates for like classifications across awards. Thus the statement that:

‘There are tens of thousands of wage classifications currently in awards. The majority of awards contain a number of classifications, each with their own minimum rate of pay’

is an egregious exaggeration arrived at by repeated double counting. It is highly misleading, deliberately erecting a straw person for the sole purpose of knocking it over.

71. The assertion at para 2.29 of WCS, that ‘as awards currently stand, relativities have not been maintained’ is wholly tendentious and derives from a clear logical slide:

- flat dollar increases awarded through Safety Net Reviews have of course compressed relativities within awards;
- but relativities for like classifications across awards have been maintained.

72. The WCS discussion at paragraphs 2.21 to 2.23 is emphatically about ‘classification rates in an award bearing a proper relationship to classification rates in other minimum rates awards’.

73. Moreover, though there has been compression in relativities across the skills structure within awards, the skill-based progression in classifications within awards has been maintained.

74. Since award restructuring, overwhelmingly, like classifications across awards carry consistent minimum rates of pay. Trivial state-based differences in minimum rates for the same classifications have been

23 WCS 2.3
abolished. There has been no leap-frogging, no build-on, no instability in the award wages system.

75. The principal exception to this assessment is the area of junior rates of pay.

76. There has been no award-restructuring overhaul of junior rates in the award system because the Workplace Relations Act amendments of late 1999 froze then existing provisions and effectively terminated the flow-on that was then underway of award restructuring precepts to junior rates.

77. Despite profound change in the youth labour market over the past 40 years, current award provisions for youth wages are overwhelmingly a relic from a bygone era.

78. The WCS Discussion Paper includes a table entitled ‘Junior wage rates in the Metal, Engineering and Associated Industries Award 1998’. This table is neither reflective nor indicative of current provisions for minimum wage rates payable to employed juniors under federal awards. The weight of employment of persons under the age of 21 years lies in retail trade. Provisions in the various retail awards provide a far more appropriate and relevant benchmark.

79. Current provisions for ‘juniors’ are inconsistent within and between awards, lack focus on skills progression and acquisition, are poorly integrated with award provisions for apprentice and trainees, and in some awards provide abysmally low rates of pay. The Report of the Junior Rates Inquiry required by s.120B of the Workplace Relations Act\textsuperscript{24} documents the shambolic situation as it existed in 1999, and which still exists today.

\textsuperscript{24} Print R5300, Munro J, Duncan SDP, Raffaelli C, 4 June 1999
Recommendations

80. The ACTU makes the following recommendations to the Taskforce in making recommendations on the conduct of the award rationalisation and the wages and classifications rationalisation:

1. **With respect to both award rationalisation and award wage and classification structures rationalisation:**

   1.1. The Taskforce have a sound, well researched understanding of awards and their coverage. Such research should extend to details on award reliant workers in both the (pre-reform) federal and state systems;
   1.2. The Taskforce recommendations enable flexibility in outcomes – ie the outcome of rationalisation not be pre-determined;
   1.3. Resulting awards and wage and classification structures meet the needs of the industry partners;
   1.4. Cost not be a consideration in developing recommendations;

2. **With respect, in particular, to the award rationalisation process:**

   2.1. That award rationalisation be carried out by the AIRC.
   2.2. The AIRC be given a framework within which to work (based on the principles above) but that also includes:
      a. the capacity to set priorities and determine the pool of awards to be considered in each rationalisation exercise, including, where necessary, relevant state awards;
      b. an objective (without prescription) of reducing the total number of federal awards (excluding s170MX awards and s115 agreements);
      c. the capacity to determine the most appropriate ‘industry’ sectors;
d. flexibility in award coverage outcomes (ie industry, enterprise or occupational);

e. encouragement of industry partners, with the assistance of AIRC, to develop a rationalised award structure for their area/s of interest;

f. capacity for State Industrial Commissions to provide input, advice and assistance to both the AIRC and industry partners in developing rationalised awards;

g. the capacity to delete inoperative awards or insert savings provisions into rationalised awards to ensure no worker is inadvertently disadvantaged;

h. that the final content of rationalised awards not result in the loss of benefits to workers covered by the pre-rationalised award(s);

i. power to abolish single issue awards by insertion of single issue provisions into the relevant industry award or as a schedule to the rationalised award. Such a provision’s inclusion in the award would not expand parties to whom the provision applied;

j. capacity to hear submissions, take evidence and determine the form of the final awards;

k. the ability to set phase in dates for the rationalised award/s;

l. a fair timetable within which to carry out the task.

3. With respect to the review of award wage and classifications rationalisation:

3.1. the wage classification structures must be based on identifiable skill levels;

3.2. the wage classification system provides for identifiable skill-based career paths with skill levels appropriately remunerated;
3.3. the wage classification structures encourage the acquisition and application of skills in the workplace;

3.4. that, unless otherwise sought by a sector, the 14 level metal industry award skill based classification structure form a template for new award structures;

3.5. the wage classification structures meet the needs of the industry partners;

3.6. the wages classification structure guarantee pay equity outcomes and not result in discrimination;

3.7. that the wages classification structure be based on proper work value assessments;

3.8. broadbanding not be a consideration but if it is broadbanding only be considered on a skill basis and without detriment to the current relationship between wages and skills;

3.9. the wages classifications outcome ensure the maintenance of relativities across all classification streams;

3.10. that the wages classification outcomes for all workers not be based on time served or age.

Our responses set out below, to specific issues raised by the Taskforce in its Discussion Papers, are consistent with the Taskforce adopting these principles.
Award rationalisation

Can the legislative requirements best be given effect an (sic) industry-based approach to award rationalisation? If not, why not, and what alternative arrangements better reflect the role of awards under WorkChoices.

82. Whilst an industry based approach is a reasonable start to the task being undertaken flexibility needs to be built in to any approach finally adopted.

83. The development of awards over the last 100 years (including processes of rationalisation) suggests that there is a level of common interest in awards within an industry. However, it must be acknowledged that some awards are broad in their coverage while others are, for quite legitimate reasons, very specialised.

84. Whilst the basis of the development of awards is acknowledged in the discussion paper\textsuperscript{25}, it is important that it is understood that where enterprise awards exist this is not necessarily at the behest of union parties to those awards. In many cases the outcome of the award making process where the resulting award is enterprise specific, is as a result of the demands of the employer bound by the award.\textsuperscript{26}

85. It is important that it is acknowledged that the development of awards as they do stand is as the result of processes engaged in by both employers and unions over many years. Awards are a result of cooperative processes by industry partners. Rationalisation should

\textsuperscript{25} AW 2.1-2.9
\textsuperscript{26} For example, as a result of the award simplification process, undertaken since 1997, the number of awards applying to Commonwealth Government Employment altered substantially with an increase in enterprise specific awards, not at the behest of employees or unions, or imposed by the AIRC, but because of a desire of the employers.
occur through the involvement of and consultation with these partners.

86. Views on this question are further developed in following sections of this paper.

The need for a proper process

87. Whatever the approach to the rationalisation of awards, it is critical, in our submission, that the process associated with that be sound and provide all interested parties with an opportunity to contribute to the final result and be assure that their views will be considered and given proper weight.

88. The ACTU believes that the following process should be followed in the rationalising of awards by the AIRC when it undertakes the formal rationalisation process and hence should form part of the recommendations of the Taskforce:

   i. The group or class of awards needs to be clearly identified;
   ii. The scope and coverage of the awards needs to be identified;
   iii. Relevant state awards of similar coverage that are relevant to employees transferring from the State system are identified;
   iv. Interested parties to be invited to make submissions as to the scope for rationalisation of the awards, the on-going relevance of the awards etc;
   v. State industrial tribunals are to be invited to provide input to the rationalisation and in particular to identify areas where the state awards provide superior outcomes for workers to the federal awards;
vi. Consultation occur between the interested parties under the auspices of the AIRC to determine areas of agreement and areas which will require determination;

vii. Rationalisation take place by the Commission consistent with the principle that benefits available under awards will not be cut;

viii. Rationalised award is simplified in accordance with the AIRC simplification principles.

89. This process will ensure that the rationalisation of awards is done on a coherent and logical basis and will protect against claims of pre-determination, will minimise unintended consequences and will ensure awards remain relevant to the industry partners.

**Should the ANZSIC divisions be used as a basis for a system of rationalised awards or are there better alternatives?**

90. It is the view of the ACTU that the use of ANZSIC Divisions\(^{27}\) is too broad to enable any sensible rationalisation of awards. Whilst there may seem to be some merit in the approach in that it certainly will result in a reduction of the number of awards (which appears to be a critical objective of the rationalisation process though not one agreed to or supported by the ACTU) it is based on the flawed assumption that there is enough commonality of interest within an ANZSIC Division to result in an award that has meaning, is easy to understand and simple to access.

91. If the objective of rationalisation is to establish similar minimum conditions across industry an examination of the Transport, Postal & Warehousing Division demonstrates the foolhardiness of attempting a rationalisation at such a level. Rostering arrangements for workers in the Transport sector, for example – putting aside postage and

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\(^{27}\) Unless otherwise specified reference to ANZSIC is to ANZSIC 2006.
warehousing – cannot be rationalised with any sensible and coherent outcome across that sector. A common feature of awards (that remains as an allowable award matter under WorkChoices and hence will be a feature of any award) is rostering of hours. The rostering arrangements for international pilots and long haul flight attendants that involve absences from home for extended periods of time followed by long rostered breaks away from work are substantially different from the rostering requirements of baggage handlers which are different again from that of suburban bus or train drivers. These then are all different from the requirements of those in postal and warehousing.

92. This is just one example of an area where a single award provision arising from the rationalisation of awards based on ANZSIC Divisions would be unlikely to suit an ‘industry’. These types of differences are easily identified across almost all of the Divisions and explain, in part, why the industry groupings used within the award system have developed as they have. To rationalise the awards on an industry basis based on ANZSIC Divisions would lead to the need for differential provisions for different parts of an industry within the one award. This will lead to complexity and confusion – exactly those things the award rationalisation process claims to seek to avoid.

93. Whilst there may be arguments for the further rationalisation of awards it should not be done by forcing awards into a structure that does not suit the purpose of awards, and results in awards being more complex and harder to understand.

94. While the Victorian example of the establishment of 18 industry sectors by the ERCV may set some precedent for the use of ANZSIC Divisions it cannot be assumed that the outcome was workable or a
good system (as the discussion paper implies). As Zeitz (2000) found, difficulties emerged in the inflexibility of the system:

Those descriptors are primarily economic or statistically based and are used for gathering technical data and for categorising economic endeavour within Australia. The capacity for these descriptors to adapt to the demands of an industrial relations system was unknown at the time of the declaration of the industry sectors. From being a descriptor for administrative purposes, they became a descriptor for the purpose of imposing legal obligations on employees and employers regarding the payment of minimum wages in the industry sector. The capacity for those descriptors to be found to be inadequate or require variation for the purposes of clarification was significant, particularly as issues of enforcement arose and parties considered their legal obligations in relation to the industry sectors.29

95. It is the ACTU view that a better solution is to examine the current industry groups used by the AIRC. These may need to be refined taking into account both the size, complexity and relevance of the industry groups (for example there may well be a justifiable argument to merge ‘prudential regulation’ industry group30 with another industry group but there may well be cogent reasons for keeping other industry groups as they are).

96. Alternatively, should there be a desire to more closely align awards with ANZSIC then ANZSIC Subdivisions should be used (of which there are 53 now and apparently 85 under ANZSIC 2006) although

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30 There is and only ever has been one award under this industry group. Of interest is that this industry group was established following an approach by the employer and contrary to the wishes of the union. The award in this industry group is either a part of Commonwealth employment or financial services.
operating at the 3- or 4-digit level should not be discounted where it is a sensible option.

97. Whatever is used the system cannot be established with such rigidity that it becomes unworkable or inflexible. Using ANZSIC codes will only work if there is capacity for flexibility. Using the current Commission industry groupings will only work if they can be amended and restructured as is required to have a usable and adaptable award system.

98. In passing it is worth reflecting on the meaning of Appendix B in the Award Rationalisation Discussion paper. That table seems to have been included as perhaps ‘proof’ of the complexity of the award system and the high number of awards that exist within some sectors. As this table count of awards contains section 170MX awards – which are not subject to rationalisation – and section 115 IR Agreements no such inference can be drawn from the table. That it does not specify whether the awards are enterprise specific, single issue or broader awards further restricts the value of the information. A more detailed examination of awards is necessary before any conclusions can be made about the complexity or ‘over abundance’ of existing awards. An example of a straw person.

99. It is the view of the ACTU that it is inappropriate to specify any one method of rationalising awards. Whilst awards to date have developed through the process of industrial disputation and the subsequent settlement of those disputes, awards have developed as industry, occupational or single issue not just because of the conciliation and arbitration basis of the industrial system or some arbitrary imposition of outcomes by the industrial relations system but also through previously established processes of rationalisation of awards, with outcomes that suited the needs of all of the parties to the awards.
Can an industry based system of awards be achieved through a single rationalisation process or is a multi-stage approach more appropriate?

100. This question (as do so many others in the discussion paper) presupposes that rationalisation will occur on an industry basis. That assumption aside, it is conceivable that an industry-based system of awards could be achieved in a single step. Such a system would likely neither be good nor equitable, nor effective in establishing labour market minima that involved no cuts to benefits. It would need to allow a number of occupation-based awards.

101. Though a single step is possible, it would be foolhardy. A multi-stage approach to rationalisation would be more appropriate.

How should occupation-based awards and single enterprise awards be dealt with in the rationalisation process?

102. Any effective system will need some occupation based awards. Like single enterprise awards they should be retained where they are in the best interests of the parties to them.

Should consideration be given to subsequent rationalisation of awards beyond the industry sector level?

103. This question is based on assumptions about the outcome of this first round of rationalisation. If there is to be true consideration of the input of interested parties to the rationalisation approach then this question cannot be asked or answered at this time.

104. The prime consideration in rationalising awards should be establishing and maintaining a fair and effective floor in the labour market, having regard to the needs of low paid workers in the context
of living standards prevailing in the society of which they are constituent members, and to economic factors.

105. Any attempts to rationalise awards beyond the industry sector level will surely result in awards that have no chance of passing the ‘one kilo test’ as enunciated by the Minister.31

Should rationalised awards apply by common rule?

An alternative to the term ‘common rule’

106. The ACTU believes that the term ‘common rule’ should be avoided in discussing options for coverage of awards. It is a term that has quite specific meanings and applications to employers, unions and employees now – and these meanings differ depending on where you work and how the common rule system has developed. The ACTU believes that the Taskforce should support the development of ‘Awards of general application to constitutional corporations’ [‘awards of general application’] subject to the following paragraphs. In this way there will be no confusion with common rule awards that continue to exist within State jurisdictions or Victorian common rule declaration that will continue to operate for a period of time for a large number of Victorian based workers.

The effect of awards of general application on current state award workers

107. The ACTU believes that an unqualified application of ‘awards of general application’ will have catastrophic consequences on award-reliant workers entering the federal system from the state systems.

31 House of Representatives Hansard, 18 August 2005, p 76
108. A worker whose employment is not governed by a state agreement and is governed by a state award will transfer to the federal system and their previous state award will become a *Notional Agreement Preserving State Awards* [NAPSA]³².

109. A NAPSA comes into effect on the day of the reform commencements.

110. A NAPSA ceases to operate with respect to an employee through one of three occurrences:

- At the end of the three year transitional period when it ceases to be in operation;
- If a workplace agreement comes into operation in relation to the employee;
- If the employee becomes bound by an award.³³

111. The effect of this is that if rationalised awards are declared ‘awards of general application’ or common rule *all employees subject to a NAPSA will lose the conditions of employment contained within that NAPSA on the day of declaration*. Such an outcome is intolerable and will result in the loss or reduction in benefits – despite assurances to the contrary that this is not the intent of the rationalisation process³⁴.

112. It is therefore imperative that workers subject to a NAPSA have their employment conditions protected, both in the short and long term.

*A proposal for awards of general application*

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³² *WorkChoices*, Sch 15, s 31
³³ *WorkChoices*, Sch 15, s 38A
³⁴ AR 7.7
113. The awards of general application should apply to all constitutional corporations (within the scope of the proposed award) excluding those constitutional corporations or classes of employees where those employees are subject to a NAPSA.

114. The exclusion should have a time limit on it of one day less than the three year transitional period. At the end of this ‘exclusion period’ employees subject to a NAPSA would automatically be covered by the relevant award of general application - unless of course they have otherwise reached an agreement contemplated by WorkChoices with their employer.

115. This approach will ensure that workers on NAPSA are given an adequate opportunity to enter into a workplace agreement with their employer prior to the loss of their conditions. Workers will understand the extent of loss of conditions from the relevant NAPSA to the rationalised award and hence can enter into an agreement on those matters.

116. This approach also protects workers from a cut in benefits as maintained in the discussion paper.

117. This approach will not, of course, stop an application for an employer covered by a NAPSA being roped into the relevant federal award as is contemplated by WorkChoices.

118. An alternative approach to this is to include state awards in the pool of awards to be rationalised. This pool of awards, and the conditions contained therein, would set the benchmarks from which there could be no reduction in benefits.
Conclusion

119. Should rationalised awards operate as awards of general application to constitutional corporations? The ACTU says they should subject to the qualification above designed to protect state award workers. Support for this is qualified of course by our on-going support for the retention and operation of the State jurisdictions.

If rationalised awards do not apply by common rule, how should coverage be determined and updated?

120. If rationalised awards are not to apply as awards of general application then some ‘body’ needs to be established to determine who the rationalised award binds, both in terms of organisations and named or classes of employers and employees.

121. If such a system of determination of parties to the award is to be established the processes for such determination must be transparent with the capacity of interested parties to make submissions, test claims or counter claims and for the input to be properly and fairly considered with a sound basis for any decisions.

122. Such a process should not result in any union losing the award coverage that they currently enjoy. Such award coverage is important in the operation of other aspects of the legislation, including the right of entry provisions.

123. Respondency to the award should be maintained by the AIRC, as it is now, with the right of parties to the award to make application to have their respondency status altered.

35 WorkChoices ss208 & 221
Should award free employers and employees, including new employers and their employees, be covered by rationalised awards?

124. Yes, of course, subject to the qualification above to protect state award workers.

125. Otherwise the resultant regulatory floor of labour market minima will incorporate built-in design features that deliver a ready-made opt-out mechanism, and guarantee that the ‘award system’ will be ineffectual in practical terms.

126. Cost considerations are outside the Terms of Reference of this Taskforce.

127. A system of awards of general application is fair, transparent and places employers on an equal footing while guaranteeing the same minimum entitlements to employees.

Should some classes of employees (for example managerial or professional employees) be exempted from common rule coverage of rationalised awards?

128. The determination of awards of general application (outlined above) should apply to all workers subject to the qualification to protect state award workers.

129. Award coverage for professional and managerial employees form an integral part of any industry-based system, ensuring minimum standards across the labour market.

130. Cost considerations are outside the Terms of Reference of this Taskforce and should not interfere with the matter at hand.
How should coverage be determined for former state award employees?

131. Through the process of determination of awards of general application applying to constitutional corporations. Again, cost considerations are outside the Terms of Reference of this Taskforce.

How should preserved award entitlements be recorded?

132. Whilst the discussion paper asks no specific question on this matter we make the following comments.

133. Federal award preserved entitlements need to be recorded along with whom they bind noting that preserved award entitlements cannot bind employers or apply to employees who would not otherwise have been so bound.

134. Section 117A of WorkChoices provides that where a preserved award term was included in an award that is replaced by a rationalised award, the preserved award term is taken to be included in the rationalised award. The preserved term however only has effect to the extent that it applied to the employee or class of employees in the replaced award.

135. In effect this means that rationalised awards must record preserved award terms from the replaced awards and also record who those particular preserved award terms bind. The binding nature of preserved award terms is affected by transmission of business36 (in that the preserved award terms transmit). Such information must be maintained and updated as necessary.

36 WorkChoices s. 126
Preserved notional terms are similar to preserved award terms but are contained in notional agreements preserving state awards (NAPSA). Where an award is made under s. 118E, varied under s. 118J, 120A or 120B and the award is binding on an employer/employee whose employment was subject to a NAPSA that contained a preserved notional term then that preserved notional term is taken to be included in the award\(^{37}\) and has effect with respect to the current and future class of employees.

This implies a clear requirement to record and maintain information on preserved award terms and who they bind from time to time.

It is the view of the ACTU that such information must be recorded as a schedule to (and forming part of) the rationalised award for each effected award. The record must identify the employer(s), employee(s) and union(s) bound and detail the preserved term(s). Such recording will ensure that the employers’ rights and obligations and employees rights are accessible on an on-going basis.

**How should appropriate customs or arrangements from state awards be identified for inclusion in rationalised awards?**

A more pressing question that needs to be answered is who will be responsible for determining what customs and arrangements should be included in rationalised awards.

A sensible first step in the process however would be for the Taskforce to consult with the Heads of State tribunals so as to gauge the magnitude of this task. A process of dealing with the task can then be proposed for consideration. Until the task is understood an answer to the question is not possible.

\(^{37}\) *WorkChoices* Schedule 15 s. 50
141. A requirement placed on the AIRC in undertaking rationalisation that they take into account the provisions of relevant state awards and they involve the state industrial tribunals would assist in the identification and inclusion of such matters.

What factors should be taken into account when rationalising award terms?

142. If the true objective of award rationalisation is to make awards simple to use and to remove state based differences and is not an exercise in reducing benefits\(^38\) then the only logical approach in consolidation of award terms is to adopt the ‘most generous’ approach. There is, in our submission, no other way of achieving the stated objectives of rationalisation and meeting the undertakings of government.

143. Using average or median award terms as a basis for consolidating award provisions would clearly cut benefits to (around) half of all award reliant workers and would violate the Government’s undertaking as reflected in the fundamental principle, and should be rejected.

144. The criterion of ‘most commonly used’ should be rejected for the reasons set out at AR 7.12.

145. Of course, the fewer the number of awards arising from rationalisation, the greater this problem becomes as the breadth of conditions are sought to be squeezed into a single provision.

\(^{38}\) AR 7.7
Should model rationalised awards be developed as part of the award rationalisation process to operate by default unless stakeholders raise specific criticisms?

146. This in not a course of conduct that is supported by the ACTU. Such a proposition, by its very nature, imposes an outcome on the industry partners.

147. Any process to develop a ‘model rationalised award’ would be cumbersome, confusing and time consuming and add a level of unnecessary complexity to an already complex process. There is not, for all award entitlements, model or test case provisions. Differences within occupations within industries do not lend themselves to single prescription (see for example the rostering arrangement set out above).

Should there be transitional arrangements to allow employers and employees move (sic) onto rationalised awards gradually?

148. There certainly should be. Coupled with this, of course, must be an embedded principle that no-one can move to reduced benefits from those they are entitled to pre-reform. In other respects, however, if there are demonstrable, real additional costs to an employer a period of transition is a reasonable approach.

149. A transitional period with reasonable timeframes will also enable workers to enter into agreement with their employer in full knowledge of the safety net provisions.
How can the Taskforce best prevent discrimination in making recommendations about award rationalisation?

150. In undertaking their role, the Taskforce needs to be cognisant of the potential for both direct and indirect discrimination that may arise through the alteration of current award structures, coverage and provisions.

151. Substantial work has already been undertaken with awards through the s. 150A reviews to remove discriminatory provisions from awards. Substantial effort was expended in the development of materials to assist the parties undertake this task. A revisiting of such material may be beneficial and ensure against unnecessary duplication of work already done.

152. The greatest danger through this rationalisation process is that it will lead to indirect discriminatory provisions as employment provisions, in an effort to have them apply to a broader category of workers within an industry, lose the specificity that provides protections against discriminatory practices. In developing any principles for rationalisation it must be acknowledged by the Taskforce that there is a disproportionate share of women and young workers amongst award reliant workers. Subsequently these are the group within the workforce who will be most effected by changes to award structures and conditions of employment contained therein.

Should award rationalisation take place prior to, or at the same time as, stage 2 award simplification?

153. Award rationalisation and award simplification are two discrete exercises and should be undertaken as such. In determining the ‘order’ of the two exercises consideration needs to be given to
minimising duplication, double handling, or unnecessary handling of award provisions.

154. It is the view of the ACTU that award rationalisation should occur prior to any simplification. It would appear a pointless exercise to expend time and effort simplifying awards only then to put them through a further restructure by rationalisation.

155. Rationalisation followed by simplification is the most efficient and least confusing mechanism of undertaking the task of reducing awards as established by WorkChoices.

**Should a small number of awards be simplified prior to the AIRC undertaking award rationalisation? If so, which awards?**

156. No (see answer above).

**Should the Taskforce prioritise industry sectors for award rationalisation?**

157. The ACTU does not propose any prioritisation of industry sectors for rationalisation. We would say however that an orderly, structured approach is necessary. For this to occur, as mentioned above, it is our submission that a number of tasks need to be completed first. These include a comprehensive analysis of exactly what federal awards exist and what their status is (ie MX awards, single issue-multi-employer, single enterprise etc), the issues that need to be incorporated from the State system (through consultation with State Tribunal members), etc.
158. To not undertake the task in an ordered manner will lead to confusion, unnecessary costs and inequitable and potential discriminatory outcomes.

How should the transition to 38 ordinary hours in awards with more than 38 ordinary hours be undertaken?

159. Without hesitation or delay.

How should rationalised awards be published?

160. Rationalised awards must be available free, both on-line and in hard copy, and in accessible formats including languages other than English. In addition employers must be obliged to ensure there are copies of the relevant award, including preserved award matters, in the workplace.
Does the minimum rates adjustment process provide a useful model for assessing skill-level structures for wage classifications?

161. This question is very poorly asked and makes no logical sense. At best it rests on a false premise and flawed understanding.

162. An oblique, partial and highly selective account of the history of minimum rates adjustment is set out in WCS at paragraphs 2.18 to 2.29 under the heading ‘Previous experience rationalising wage classifications – minimum rates adjustment’. The minimum rates adjustment process (under the Structural Efficiency Principle from 1989) had nothing whatever to do with ‘assessing skill-level structures for wage classifications’.  

163. A simplification of the language or at least an understanding of the terminology used along with an accurate recording of historical

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39 The minimum rates adjustment process was the mechanism adopted to align minimum rates of pay for like classifications across federal awards. Given a shortfall between the then current award rate and the consistent award rate to be achieved out of award restructuring, it provided for up to four phased increases in supplementary payments in certain awards in order to spread the cost of adjustment over time (two years or more). At the conclusion of the minimum rates adjustment process, the classification rate and the supplementary payment amount were combined into a single award minimum rate of pay, for each classification.

The size of the supplementary payment amount – that is, the minimum rates adjustment - differed between similar classifications in different awards, and between different classifications within the same award. This was inherent in the alignment of minimum rates of pay and achievement of consistency across awards.

The consistent minimum rates were determined first, by the AIRC in the February and August 1989 National Wage decisions and having regard to the ACTU Blueprint for Restructuring Awards. It was the Blueprint that provided the template for a consistent skills-based classification structure across federal awards, with corresponding consistency in award minimum rates of pay for like classifications.

The minimum rates adjustment was a transitional arrangement, a useful and integral tool in the successful achievement of award restructuring.

It had no role whatever in any assessment of skill levels, nor of job classifications.
changes in award skill-based structures and wage rates is perhaps a necessary precursor to the debate that is sought to be generated by this section of the discussion paper. In any event it needs to be understood and accepted that the process of minimum rates adjustment is distinct from any process of determining skill and classification levels.

164. The more appropriate question is: Is there a process that provides a useful model for assessing skill-level structures for wage classifications?

165. The process used for adjusting minimum wages over the last ten years does provide a useful model for a process of determination of skill-level structures for wage classifications.

166. That process is characterised by:

- Being conducted before an independent body with no conflict of or direct interest in the outcome;
- The capacity of interested parties to put forward agreed propositions;
- Procedures grounded in natural justice;
- The right of interested parties to make submission (either written or oral);
- The public hearing of argument;
- The right to test evidence or claims made;
- A considered decision, based on sound, defensible reasons, binding on the parties to the process.

167. Such a process has substantial merit for the determination of skill-level structures for wage classifications. Any other process runs the risk of resulting in biased outcomes.
168. It is open to the Taskforce, evidenced by the terms of reference, to determine the most appropriate process for the determination of skill-level structures and wage levels. Whatever the process is however, for there to be confidence in the outcomes it must be based on these underlying principles.

169. The minimum rates adjustment process conceivably may have a role in ‘rationalising’ award classification structures consistent with the most generous terms in ‘pre-rationalised awards’.40

What is the best means of broadbanding classification structures?

170. The question assumes that broadbanding is an important feature or a necessary adjunct to a rationalisation of wage and classification structures. This is perhaps driven by the belief that there are ‘tens of thousands of wage classifications currently in awards.’41 This assertion appears to be based around the claim of ‘4,000 state and federal awards … and 44,000 wage classifications contained within them’.42 This assumes eleven wage classifications in each and every award in existence. If it is true that there are eleven (11) classifications in each award however, it is only those awards that directly deal with classifications that need be considered in any (spurious) count. The multitude of awards that are single issue awards (eg superannuation or long service leave) should be excluded.

171. As is the case in both discussion papers, the question is asked based on no identified or available substantive facts. The question implies a problem that needs fixing. Another straw person.

40 AR 7.10 and 7.13; WCS 3.8 and 3.9; 3.10 – 3.13; and WCS section 4
41 WCS 2.3
42 Kevin Andrews, Minister for Employment and Workplace Relations, Press release Moving Toward a Better Award System 19 December 2005. See also Hansard, House of Representatives, Thursday 18 August, p.76.
172. This question is founded on a lack of real information. There is no material to suggest that there are 44,000 wage classifications across all awards. In fact there is absolutely no data that would advise of the number of classifications. Again the work of the Taskforce (and the input of interested parties) would be greatly assisted by the provision of real, reliable data, not assertion. Useful questions may then be asked and proper, considered responses given.

173. In any event it is not the number of times the classifications are repeated across awards that is relevant; it is the extent of the variation of the classifications that is perhaps pertinent. It may be that these eleven classifications per award all fit neatly into the fourteen (14) level wage classification of the Metal, Engineering and Associated Industries Award Part 1.43 Without a detailed analysis (none of which is provided) assumptions of the need to introduce broadbanding are misplaced.

174. In addition questions about the need to ‘broadband’ ignore that broadbanding of classifications structures was an integral part of previous processes designed to modify award structures and simplify classifications systems. As outlined above, the award restructuring under the Structural Efficiency Principle which sought to provide consistent minimum rates for consistent skill based classifications would not have been possible without major changes to classifications within awards. It was through this process that the Metals Award adopted a 14 level skill-based classification structure as opposed to the 350 separate classifications that had existed under the award prior to that process. Likewise other industries went through similar process.44

43 WCS 2.5
44 The Australian Public Service for example went from about 1200 to 1500 classifications to now about 100 - ranging across administrative, veterinary, legal, technical and some very specialised (eg examiners of patents) classifications. An examination of the National Building and Construction Industry Award 2000 gives an excellent indication of the level of
175. As mentioned in the introductory paragraphs, award restructuring delivered broad consistency in minimum rates for like classifications across awards. The statement that:

‘There are tens of thousands of wage classifications currently in awards. The majority of awards contain a number of classifications, each with their own minimum rate of pay’ is an unfounded exaggeration arrived at by repeated double counting. It is highly misleading, deliberately erecting a straw person for the sole purpose of knocking it over.

176. The assertion that ‘as awards currently stand, relativities have not been maintained’ is totally misleading. It fails to recognise that while flat dollar increases awarded through Safety Net Reviews have of course compressed relativities within awards, relativities for like classifications across awards have been maintained.

177. A matter for critical consideration ignored by the discussion paper is not just the how or if broadbanding should occur but how you move between classification levels. This is answered through a skill-based career path but is totally ignored (and in fact swept aside) by a focus on broadbanding only.

It has already been done

178. The task of broadbanding and the establishment of relativities across awards and classification streams have fundamentally been done. As outline above these were critical and important outcomes of the restructuring of classifications with a number of previous classifications aligned with an eight level structure.

45 WCS 2.3
46 WCS 2.29
Structural Efficiency Principle and the minimum rates adjustment process.

179. Good reason needs to be advanced as to why these outcomes should be discarded and the process should start again.

180. In the operation of the structural efficiency principle the parties to awards knew the outcomes sought. The principles were clear. The work of the Taskforce seems to have no outcome in mind except a determination to broadband, perhaps driven by a pre-determined outcome.

*Effect of broadbanding on skill development*

181. Any attempt to force classifications into some arbitrary broadbanded structure ignores the important connection between wages, classifications and skill-based career paths, relativities and the ongoing development of a skilled Australian workforce.

182. The Australian training framework was designed by the industry partners to enable employees to improve their skills and qualifications through a system of nationally recognised portable qualifications that are appropriately remunerated. The relationship between the national training framework and award skill-based career paths is important in terms of development of a skilled workforce.

183. The Metal Industry Award 14 level classification structure has appropriate links with the national training system and the qualifications framework – it hence encourages training, skill development and attainment of qualifications and then ensures proper remuneration minima for the qualifications attained and used in employment. It did, and continues, to form a sound basis for classifications across a range of industries. The same is true in a vast
array of industries including construction, childcare, hospitality, retail etc.  

184. Through this system, the development of a highly skilled workforce is encouraged. As Australia competes more and more in the global economy, it is imperative that the Australian workforce continue to develop its skill base. The choices are between a high skill and appropriately remunerated workforce and a low skill, low wage workforce. Attempts to de-link wages and classifications from skill-based career paths will lead to the latter.

185. The link between qualifications, classifications and wages is also critical in encouraging workers to train and re-train and hence move out of low skilled jobs that do exist in the economy. The impetus to do so will not be there if the link between qualifications and pay is lost.

186. Any restructuring of the classification system must retain, at its core, the principle of the link between skills attained and used in the workplace and wages paid. In this respect, a consideration of this matter must include the basis on which movement between classification levels occurs.

187. Any broadbanding decisions – should they be taken and we caution strongly against this – must be measured against the deleterious effect of de-linking wage classification levels from skill levels.

The status of relativities

188. The discussion paper spends some time talking about the minimum rates adjustment process and reaches the conclusion that ‘as awards currently stand relativities have not been maintained.’

47 A discussion of the development of award structures and the importance of the relationship between AQF levels and pay – particularly with respect to relativities between awards – can be found in the recent ACT & Victorian Childcare Case [AIRC, PR954938]
189. Such a comment is misleading, displays a level of ignorance of the history of minimum rates adjustments and the development of both internal and external relativities in awards and is further not supported by any material.

190. While it is true that flat dollar increases in national wage outcomes over the last nine years have compressed internal relativities (to some degree) relativities across awards have absolutely been maintained. As the discussion paper itself notes the ‘minimum rates adjustment was designed to create a consistent pattern of minimum rates in awards covering similar work’. These relativities across awards have not been disturbed. There has been some pressure on relativities at the uppermost levels with awards through compression caused by flat dollar increases but this does not provide an argument for broadbanding. As the Commission said in its most recent national wage case decision:

> Each safety net adjustment since 1997 has been a flat dollar adjustment rather than a percentage. On some occasions the increase has been higher at the lower classification levels although on one occasion the increase was lower at the lower levels and higher at the higher levels. The overall effect of these adjustments has been that wages at the lower classification levels have increased more in percentage terms than wages at the middle and higher levels. The ACTU has consistently sought flat dollar adjustments in recent years and again in this case. It is also important to point out that in several safety net review decisions the Commission has emphasised that changes in relativities brought about by flat adjustments cannot form the basis for future claims.

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48 WCS 2.29
49 WCS 2.25
191. As a consequence the ACTU has not, in national wage cases, sought to address issues of internal relativities.

But if you did broadband…

192. If, despite these arguments, the Taskforce determined to proceed with broadbanding it is our view that the broadbanding must be based on skill levels and not wage rates.

How will these broadbands best assist the Fair Pay Commission in its wage setting function?

193. Broadbanding per se will not make the task of the Fair Pay Commission any easier or more difficult. It is to be hoped that the AFPC will undertake its task with the same degree of rigour regardless of the classification structures that exist.

How can classifications and wage rates be broadbanded in accordance with the requirement to remove state-based differences within three years of reform commencement?

194. Here is another example of a question that assumes facts that are not provided. The extent of state based differences is not clear and the reasons for them, if they do exist, are not known. How to comment on the effect of broadbanding on this is almost impossible.

195. Broadbanding per se is not going to make the removal of state-based differences any easier or harder. Again an examination of the classification and skill levels within state-based awards is critical prior to determining the most appropriate mechanism for removal of state based systems.
196. As mentioned earlier however, the requirement to not cut benefits must be an overriding consideration in the exercise to remove these differences. This must also apply to the question of wages and the work value of jobs.

Are there any specific issues in a broadbanding approach that relate to APCSs for juniors, trainees/apprentices and workers with disabilities?

197. The ACTU assumes, in responding to this question, that the Taskforce is interested not in all workers with a disability but rather those workers who are eligible for the supported wage system (being a much smaller group of workers).

198. The ACTU is concerned that the Taskforce may not fully appreciate the current wages and classifications structures for each of these identified segments of the workforce. Rates of pay for workers paid under the Supported Wage System are expressed as percentages and relate to productivity assessments.

199. Rates of pay for apprentices and trainees under awards are expressed either as a percentage of the trades rate of the award or on the basis of the attainment of levels of competence.

200. Rates of pay for juniors are (generally) expressed as a percentage of the adult rate for the classification.

201. It is the mechanism for the maintenance of these links that is the important consideration for the Taskforce, both in terms of broadbanding and in any rationalisation of classification structures (see below).

202. Whether it is broadbanding, some other process of restructuring of wages and classifications, minimal change to the current wages and classifications structures or something in between, the basic
principles must encompass that the wages and classification structures:

- Must not result in a reduction in rates;
- Must not keep such workers at artificially low levels of pay;
- Must not introduce barriers for movement into the full-time adult rates;
- Must introduce structures that recognise and remunerate workers on the basis of skill and not other arbitrary measures such as age.

**Are there any specific issues in the broadbanding of casual rates?**

203. The ACTU does not appreciate how broadbanding can affect casual rates unless there is some underlying assumption about casual rates of pay differing across classifications levels.

204. In most cases the casual rates of pay is specified as a percentage loading. How this will be effected by broadbanding is not clear.

**To what extent should the Taskforce consider substantial realignment or amalgamation of classifications derived from federal and State awards?**

205. Any attempts to realign classifications should be based on the needs of industry, the need to maintain relativities and should reflect the views of all industry partners.

**Should APCSs be rationalised on an industry basis?**

206. For the same reason that awards should not necessarily be rationalised on an industry basis neither should classifications and
wage rates. There is however some merit in the rationalisation of classifications being done on the same basis as the awards – this will simplify access and minimise confusion for users of the material.

If so:

Should the ANZSIC divisions be used as a basis for a system of rationalised APCSs or are there better alternatives?

207. ANZSIC was neither designed nor intended for the purpose of classifying minimum wages, and is unlikely to be the best basis for specification of minimum wages.

208. If however the Taskforce was to consider using these industry divisions the ACTU believes that the ANZSIC Subdivision level is the appropriate level (for the same reasons outlines in the discussion on award rationalisation)

Can an industry based system of APCSs be achieved through a single rationalisation process or is a multi-stage approach more appropriate?

209. Again, as with award rationalisation, it is conceivable that it is possible to do so. Such a process would be neither good nor equitable. Whatever the process chosen, it needs to be logical, considered, minimise confusion and ensure no disadvantage.

Are there alternatives to an industry based approach that the Taskforce should consider? What are the potential advantages and disadvantages of these alternatives?

210. Of course there are alternatives to an industry based approach and of course the Taskforce should consider them.
211. An occupational-based or skill-based approach is quite a legitimate mechanism for restructuring wages and classification structures. While there are arguments for and against any approach a clear understanding of the current configuration of wages and classification structures and the outcome being sought would assist greatly in a determination of the most appropriate approach.

212. It may well be that the best outcome is a hybrid of a number of potential approaches.

213. In considering this matter the Taskforce need to be aware of any relationships that exist between legislative and (mandatory) training material and award classification structures. There are existing award structures that have been developed through consultation between unions, employees, employers and regulators that properly match training mandated by regulations with classifications structures. (See for example nursing where the award classification is reflected in regulations and determines the level of responsibility for, eg, drug administration; airline pilots where CASA regulations relate to award classifications.) To remove these award classifications may have substantial detrimental effect on public safety standards and public risk.

Should rationalisation occur beyond an industry basis, possibly to one single APCS structure?

214. This assumes that rationalisation will occur on an industry basis.

215. This first exercise should be completed prior to attempts to commence some greater exercise that can only be assumed to want to deliver a very small number of minimum wages points.
Are there any specific issues in simplifying APCSs that relate to juniors, trainee/apprentices and workers with disabilities?

216. Again, the ACTU assumes, in responding to this question, that the Taskforce is interested not in all workers with a disability but rather workers who are eligible for the supported wage system (being a much smaller group of workers).

217. As award restructuring was prevented from flowing to junior and trainee/apprentice minimum rates of pay, this is the place to start this exercise as it is the area in greatest need.

Are there any specific issues relating to the simplification of casual rates?

218. Unless the exercise proceeds by evening up rather than evening down, the process will systematically deliver both direct and indirect discriminatory outcomes across the workforce.

What transitional arrangements could the Taskforce consider to deal with differences in classifications derived from federal and State awards?

219. The consideration of transitional provisions where there is a legitimate demonstrable additional cost to employers of any changes is a reasonable approach.

220. Sitting with this however must be a commitment that no worker will have their benefits cut through this process. Such a commitment must incorporate a commitment to on-going access to training and skills-based career path.
221. The comments made earlier with respect to the discussion on broadbanding are relevant to this section as well.

How can the Taskforce best prevent discrimination in making recommendations about wage and classification rationalisation?

How should pay equity issues be addressed by the Taskforce?

222. These two issues are interrelated and, as such, so is the response.

223. The Taskforce must be cognisant of the impact of any reconfiguration of classification structures and the subsequent impact on pay equity. The prevention of discrimination can only occur if there is a proper assessment of the value of work performed, particularly in female dominated industries.

224. Any move to compress current classification structures will, without doubt lead to greater pay inequality and discrimination – a situation that must be avoided. The Taskforce will have done a great disservice if, as a result of their work, greater discrimination and pay inequality arise caused by the ‘rationalisation’ of award wage and classification structures.

225. In order to remove discrimination and hence minimise pay equity problems there is a need to be able to clearly and precisely identify and specify many skills involved in the various female dominated occupations and industries.

226. A non-gendered evaluation of skills and classification structures is an important issue in resolving pay equity. A study undertaken in New
Zealand\textsuperscript{50} found that individualised pay systems worsened pay inequality and discrimination. For these issues to be re-dressed skill must be properly valued and classification structures must be wide ranging and clearly articulated in formal industrial instruments (ie in the proposed pay and classification standards). Reward for work must not be left to subjective assessment of an employee’s worth or value.

227. In her report to the Pay Equity Inquiry, Industrial Relations Commission of New South Wales, Justice Glynn found that award and classification structures were important in addressing gender undervaluation of work. In particular she found that awards with compressed and minimal classifications structures and which do not give reference to career paths do not adequately recognise acquisitions of skills through training and qualifications\textsuperscript{51}.

228. In making recommendations the Taskforce must understand issues of direct and indirect discrimination. Again the work undertaken by the AIRC in the s. 150A review provides useful guidance to the Taskforce.

229. Issues associated with discrimination within industries/enterprises and between industries/enterprises must also be properly understood.

230. The Taskforce must understand the difference between pay equity and discrimination. This means not just ensuring all workers within an industry are paid on the basis of equal pay for equal work but that workers in female dominated industries have their work properly valued.

\textsuperscript{50} Department of Labour (2004) \textit{Pay and Employment Equity in the Public Service and Public Health and Public Education Sectors}, New Zealand

\textsuperscript{51} NSW Office of Industrial Relations (1999), \textit{Pay Equity Inquiry}, Vo 1, p 387 [IRC6320 of 1997]
231. Again, in undertaking their role the Taskforce must be mindful of the preponderance of women and young workers in award reliant areas – and hence the group most likely to be affected by the ‘rationalisation’ process.

How should APCS be published?

232. Whilst the discussion paper does not ask this question, it is important that all employees and employers have access to relevant information on classification structures and wages.

233. This requires not just the production of rationalised wage and classification structures but also the production and maintenance of preserved scales subject to guarantee under WorkChoices.

234. Such material needs to be available to employer and employees for free, in soft and hard copy and in easy to read formats. In addition it must be provided in a form that enables an employer and employee to be confident that they are accessing the correct information – in this respect the material must be able to be traced back to the pre-reform industrial instrument.