

Queensland Government Submission to the Australian Industrial Relations Commission – Award Modernisation

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GLOSSARY OF COMMON ACRONYMS

ACTU	Australian Council of Trade Unions
AFPC	Australian Fair Pay Commission
AIRC	Australian Industrial Relations Commission
APCS	Australian Pay and Classification Scale
AQF	Australian Qualifications Framework
CRS	Classification and Remuneration Structure
FMW	Federal Minimum Wage
FWA	Fair Work Australia
GOC	Government Owned Corporation
HREOC	Human Rights and Equal Opportunity Commission
IR Act	<i>Industrial Relations Act 1999 (Qld)</i>
MRA	Minimum Rates Adjustment
NAPSA	Notional Agreement Preserving State Awards
NES	National Employment Standards
QIRC	Queensland Industrial Relations Commission
SEP	Structural Efficiency Principle
WR Act	<i>Workplace Relations Act 1996 (Cwth)</i>

INTRODUCTION

1. The Queensland Government faces a challenge in preparing submissions on award modernisation when the legislative context in which these modern awards will operate is not yet settled.
2. Through other forums, the States, including Queensland, have suggested the way forward. This is not yet resolved. The States agree that there will need to be processes available to maintain awards and keep them relevant to changing economic, social and workplace circumstances. The Queensland Government does not support a system where awards are creatures of Fair Work Australia and the relevant industrial parties are merely consulted from time to time about their content.
3. Representative parties, such as unions and employer associations, must have the right to seek variation and adjustment of award conditions. Historically, all award parties have been responsible for the maintenance and operation of the awards and this sense of 'ownership' has meant that the parties have ensured that awards have remained relevant and appropriate to the needs of industries and workplaces. If parties do not have the right to make application to an independent referee to make or amend awards, then awards run the risk of atrophying. The ability of the industrial parties to maintain and vary awards also ensures that awards remain fair.
4. The Queensland Government supports a system of modern awards that provide a comprehensive set of fair safety nets – fair safety nets to underlie enterprise bargaining and fair safety nets to provide decent wages and conditions for award-reliant workers. The revival of fairness in the federal system is long overdue.
5. Fair awards provide for:
 - wages and conditions which provide fair standards for employees in the context of living standards generally prevailing in the community;
 - pay equity;
 - the elimination of all forms of discrimination in employment;
 - the efficient and productive performance of work according to the needs of particular enterprises and industries;
 - skills development;
 - meeting the needs of emerging labour markets and patterns of work; and
 - participation in industrial relations by employers and employee organisations.
6. The Queensland Government supports awards being simple to understand and easy to apply. The Queensland Government welcomes flexibility clauses to permit individual tailoring of award conditions as a means of making awards adaptable to real workplace conditions and the needs of individual employees and employers.
7. However, flexibility clauses should be underpinned by due process to:
 - ensure genuine agreement;
 - resolve disputes over whether an individual should have access to flexible work arrangements;
 - resolve disputes about the details of how such arrangements operate in practice;

- ensure that employees with low bargaining capacity will not be taken advantage of or denied access to flexibilities enjoyed by other workers;
 - ensure that employees are not disadvantaged by the flexibility arrangements for the entire period of their operation.
8. The Queensland Government notes that the ACTU and AI Group have both recognised the necessity for consultation on aspects of award modernisation that are broader than the three priority tasks identified in the President's Statement and that they have recommended further consultation on the broader issues later in 2008. The Queensland Government supports ongoing consultation with all key stakeholders, including State peak bodies.
 9. The Queensland Government's submission provides principles for how the award modernisation process should be conducted and builds on some of the threshold issues raised by the New South Wales Government Submission. The Queensland Government's submission proposes principles upon which the model award flexibility clause should be drafted. The submission does not comment on what are the priority industries or on particular awards (other than those that apply in the Queensland public sector) because the industrial parties, assisted by the Commission, should determine those matters.

IMPORTANT FEATURES OF THE QUEENSLAND SYSTEM

10. In recent years the federal system of industrial regulation has focused overwhelmingly on bargaining. By contrast, the Queensland system of industrial regulation recognises that not all employers or employees are able to bargain. The Queensland system has three tiers of regulation so that all employees have fair conditions of employment:
 - Enterprise bargaining – 41.6% of Queensland employees;
 - Awards for award reliant workers – 22% of Queensland employees;
 - Minimum statutory conditions of employment for all employees including award free employees and those not covered by agreements.
11. The statutory minimum entitlements will need to be considered in the award modernisation process and this is further discussed at paragraphs 113-117.
12. Despite the effect of Work Choices, the State award system continues for 40% of Queensland employees - the vast majority of the Queensland public sector and 25% of private sector employees in Queensland. Many awards made in the State system will continue to operate as State awards even though they might also provide some of the terms of NAPSAs which are considered when a modern award is made. Regardless of the modern federal awards that may be made, many awards will survive as State awards unless and until the Queensland Government takes action about the scope of the new federal system.

IMPORTANCE OF AWARDS IN THE QUEENSLAND SYSTEM

13. Queensland State awards have always dealt with industrial matters and provided for a broader sweep of employment conditions and protections than federal awards, which were originally confined to matters pertaining to the employment relationship (as 'industrial matters' was interpreted by the courts). In 1996, the allowable content of federal awards was limited to twenty legislatively defined matters through the award simplification process. This was followed by further award stripping under Work Choices. Work Choices meant a further reduction in allowable matters, the listing of non-allowable matters and the removal of pay and classifications scales from awards. Award terms which were non-allowable matters or which were not allowable matters were unenforceable. Federal awards were frozen as at 27 March 2006 so that they could operate as historical and static points of reference for workplace agreements.
14. By contrast, Queensland's system of State awards continues to provide for fair and just employment conditions. State awards continue to provide for skills-based classification structures, commitments to training, consultation and dispute resolution, union encouragement, industry specific conditions and a range of flexible and facilitative clauses. These are designed to allow employers and employees to agree on the most effective and efficient arrangements for their workplace or industry whilst ensuring that employees are not disadvantaged. The broad scope of Queensland awards has not resulted in unions initiating industrial disputes over matters not related to employment (such as climate change, which has been suggested by some bodies).
15. The IR Act provides for a system of awards that are to be kept relevant, up-to-date and which reflect community standards. Central to this system is the ability of industrial parties to make application to an independent referee to make and amend awards. The independent referee, the QIRC, still has extensive powers to conciliate and arbitrate industrial disputes of all kinds, including those relating to failed bargaining.
16. In the public interest, the QIRC has conducted reviews requested by the Minister for Industrial Relations into important industrial issues such as long service leave and pay equity (twice). The QIRC also hears and determines the annual State wages cases and a Queensland minimum wage for all employees (not just award employees). The QIRC hears and determines test cases which establish community industrial standards including, termination change and redundancy, casual loadings, shift allowances. The outcome of these Queensland tests cases is either a General Ruling (which automatically amends all QIRC awards) or a Statement of Policy which amends State awards upon application by a party on a case by case basis.
17. The QIRC also sets the industrial conditions for apprentices and trainees which is critical for the development of a skilled labour force and protects the position of young people in the labour market. These QIRC instruments must be taken into account when creating modern awards. This is discussed in detail and recommendations are made at paragraphs 140-170.

18. Part 5 of the IR Act requires the QIRC to ensure that awards:
- are not discriminatory;
 - are in plain English and easy to understand;
 - do not contain obsolete provisions;
 - provide secure, relevant and consistent wages and conditions and fair living standards;
 - provide equal remuneration for work of comparable value;
 - are suited to efficient performance of work in particular industries and workplaces;
 - take account of the efficiency and effectiveness of the economy including productivity, inflation and employment levels;
 - contain provisions that facilitate agreements at the workplace or enterprise level;
 - provide support for training arrangements;
 - contain dispute resolution procedures; and
 - are reviewed at least once every three years.
19. All Queensland State awards are modern, relevant industrial instruments that have been subjected to the award review process under s 130 of the IR Act. Queensland awards support fair, safe and productive workplaces.
20. The difference in the scope of awards in the federal and the Queensland systems reflects different underlying assumptions. Until the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (the Transition Act), federal awards had come to operate as reference points for workplace agreements arrived at through collective bargaining or unilateral imposition of employers' choices upon employees.
21. The Queensland award system continues to recognise that, while awards serve as safety nets for bargaining, significant numbers of employees rely solely on awards as their only source of enforceable rights and entitlements. This latter perspective acknowledges that not all employees or employers are able to engage in bargaining. Not only are these employees entitled to a decent standard of living facilitated through relevant industrial instruments, but the small and medium sized employers find that a system of common rule awards provides a level playing field. Award reliance is discussed in more detail below at paragraphs 28-32.
22. Until the unilateral appropriation of significant parts of the private sector to the federal system by Work Choices, Queensland awards remained relevant to employers and employees who engaged in bargaining – the global no disadvantage test based on award entitlements and protections ensured their ongoing relevance in protecting employees and ensuring fair conditions. Unlike federal awards simplified to allowable matters, these 'safety net' Queensland awards covered a full scope of industrial matters. For employees and employers who remain in the State system, State awards are still the benchmark for the no disadvantage test for enterprise agreements.
23. Queensland employers and employees have been well served by the State award system. Awards built up by the State system have been swept into the federal system to operate as reduced starting points for bargaining. Employees who were covered by Queensland State awards should not have their conditions stripped back by the award modernisation process.

24. It is essential that the award modernisation process recognises that, at the State level, common rule awards are a major feature regulating the actual rates and conditions of workers, particularly the low paid. Award modernisation should not reduce their entitlements and protections. This could be assisted by appropriate use of transitional provisions in modern awards.
25. Award modernisation will be complex and time-consuming whilst having to meet tight time frames. It will need to balance two conflicting intentions in the Request from the Minister for Employment and Workplace Relations – to not disadvantage employees, while not increasing costs for employers.
26. The President has stated that the key federal award will be used as the basis for the modernised award, and that State awards and NAPSAs will also be considered. There is considerable history and experience in the Queensland system in protecting vulnerable workers through awards and employers' interests through common rule awards. Many awards made by the QIRC will be considered in the award modernisation process. Members of the QIRC hold dual appointments as members of the AIRC and their experience and knowledge of the awards and the industries they regulate should not be lost from the award modernisation process. The Minister's request at paragraph 13 requires consultation with State tribunals. The Queensland Government strongly supports the active involvement of members of the QIRC in assisting and conducting award modernisation.
27. All Queensland State awards comply with a standard format laid out in the sample award issued by the QIRC as part of a Practice Note 9 (Attachments 1 and 1A). The standard award clause arrangement makes awards more readily understandable, easier to apply and easier to compare against each other. This assists compliance and reduces complaints. The Queensland Government supports the President's intention to develop an award drafting guide and standard format and style and submits that the sample award in the QIRC Practice Note 9 provides a useful starting point.

EXTENT OF AWARD RELIANCE

28. The extent of award reliance highlights the necessity for common rule awards and decent award-based wages and conditions. The most recent ABS data available which casts light on award reliance is from the Employee Earnings and Hours Survey conducted in May 2006. This data will not reflect any impact from the compulsory transfer of employees from State systems of industrial regulation to the federal system.
29. Attachment 2 contains six tables with data concerning the characteristics of the award-reliant workforce.
30. Table A shows that well over a fifth of employees in Queensland, New South Wales and Tasmania are award reliant. Table B shows that award reliance is very low in the public sector and is more common amongst women than men. Almost 30% of women in the private sector are award-reliant compared to 17.4% of men. Tables C and D show that award reliance is significant amongst part-time and casual employees. Almost 33% of part-time employees are award-reliant compared to only 12% of full-time employees. Award reliance is characteristic of

precarious engagements – 44% of casual employees compared to 13% of permanent or fixed term employees and more common amongst female casual employees (46.7%) than male casual employees (38.5%). Table E shows that award reliance is highest in the following industries which are also female dominated industries:

- Accommodation, cafes and restaurants - 55% women;
- Retail trade - 52% women;
- Health and community service - 79% women;
- Cultural and recreational services - 49% women and
- Personal and other services – 52% women.

31. Significant numbers of Queensland award-reliant employees are now within the federal industrial relations jurisdiction. Table F shows that some 57% of the award-reliant employees in Queensland work in incorporated businesses and are covered by the federal system. As Table F shows, the number of Queensland employees in the federal jurisdiction who rely on pay scales is estimated to be 292,852, which represents 16% of Queensland wage and salary earners.
32. The significant rates of award reliance, particularly amongst more vulnerable workers, emphasises the importance of awards as fair industrial instruments that provide for a comprehensive set of decent working conditions.

THE NUMBER OF MODERN AWARDS

33. The Minister's Request states at paragraph 4:

When modernising awards, the Commission is to create modern awards primarily along industry lines, but may also create modern awards along operational lines as it considers appropriate. In creating modern awards, and as indicated at paragraph 3(d) above, the Commission must have regard to the desirability of reducing the number of awards operating in the workplace relations system.

34. The Queensland Government supports the approach outlined by the Minister in which the legislation sets the broad policy direction and the AIRC makes decisions, informed by the relevant industrial parties, in the light of industry needs. The Queensland Government has no view on the number of modern awards that should be created and is mindful of the Minister's intention outlined in paragraph 2 of the Request – that the creation of a modern award is not intended to disadvantage employees or increase costs for employers. This “no loss no gain principle” will have a bearing on the number of modern awards. If too many awards are replaced by one modern award, the potential for a reduction in employee entitlements or a significant increase in labour costs is greater than with a more conservative approach.
35. Some of the priority industries identified in Attachment A to the President's Statement fall into natural sub-sets. For example, the hospitality industry covers diverse activities and occupations. “Hospitality” may reasonably be regarded as a broad umbrella term for more natural groupings such as those indicated by the AIRC's existing panels:
- Catering;
 - Fast food;
 - Liquor and accommodation (which includes clubs, resorts, hotels and boarding houses);

- Restaurants.
36. The Queensland Government supports the approach outlined in the President's statement at paragraphs 5 to 9 that the classification of industries used in the Commission's panel system provides a starting point for identifying what awards need to be made.
37. The Queensland Government submits that the Commission should not be overly ambitious in reducing the number of awards because of the risk of either reducing employees' entitlements or significantly increasing labour costs. The scope of each modern award should reflect a genuine commonality of industrial interests.

WHICH VERSION OF THE PRINCIPAL FEDERAL AWARD SHOULD BE USED?

38. The President's Statement at paragraph 11 states that the principal federal award in an industry will usually be the starting point for the drafting of the modern award. If the harshness of de-regulated workplace relations, marked by gross inequality in bargaining power, is to be replaced by a new, fair and productive national system of industrial relations, then modern awards cannot be created on the skeletal remains of awards left behind by the excessively prescriptive and proscriptive Work Choices regime.
39. The Queensland Government submits that version of the federal award to be used as the starting point for the creation of the modern award should be the version that was in force immediately prior to 27 March 2006 with the pay scales as varied by AFPC decisions since that date. This will revive content that was prohibited by Work Choices as long as it is consistent with the permissible matters. The transitional award version of the principal federal award will also need to be considered with respect to allowances (see paragraphs 103-105). Important provisions from relevant State awards should also be incorporated into the modern award and this is discussed below at paragraphs 120-131.

CLASSIFICATION AND REMUNERATION STRUCTURES

40. In conducting award modernisation, the Commission is required to have regard to "*the desirability of reducing the number of awards operating in the workplace relations system*". In so doing, arguably the most contentious clauses to be rationalised will be the wages and classification clauses.
41. The Queensland Government submits that when creating pay and classification scales in modern minimum rates awards the Commission should adopt a policy of moving towards a uniform national pay and classification structure which has the following features:
- is based on skills used on the job and relevant qualifications held;
 - promotes the acquisition of skills and qualifications;
 - results in pay scales with a fair system of internal relativities; and
 - results in pay scales which are consistent across female and male occupations and achieves pay equity at the award level.

42. This position is supported by Part 10A of the WR Act:

- section 576A(2)(c) requires modern awards to “*be economically sustainable and promote flexible modern work practices and the efficient and productive performance of work*”;
- section 576B(2) provides that the Commission must have regard to
 - (a) *promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market.*
 - ...
 - (h) *relevant rates of pay in Australian Pay and Classification scales and transitional awards;*
 - (i) *minimum wage decisions of the Australian Fair Pay Commission;*
 - ...

43. The Minister’s Award Modernisation Request supports this approach. At paragraph 41 it says

In accordance with section 576J of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages in modern awards, the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees ...

44. The Queensland Government submits that the classification and remuneration structure (CRS) in the Metal, Engineering and Associated Industrial Award 1998 (the metals award) is a structure which is still relevant as benchmark for a broad-banded skills based CRS which promotes productive and efficient performance of work.

45. Historically the metals award was used as the reference award for restructuring and rationalisation of awards. These processes were not completed for all awards but are still relevant. No adequate alternative has been postulated. The Award Review Taskforce (discussed below at paragraphs 59-83) identified important principles for modern CRS but failed to develop any realistic or practical alternative to alignment with the metals model.

46. Through the Structural Efficiency Principle (SEP) and Minimum Rates Adjustment (MRA), processes which came out of National Wage Case decisions of the AIRC in the late 1980s and early 1990s, many awards were restructured and aligned to the metals award. Many State industrial commissions, including the QIRC, mirrored the decisions in their State wage cases. The Queensland Government submits that the metals award CRS is still useful and relevant and should be used as the basis for rationalising CRSs in minimum rates awards in the award modernisation process. Those awards which contain rates of pay in excess of the metals model, however, should not have those rates reduced as a result of this exercise.

The Structural Efficiency Principle and the Minimum Rates Adjustment Process

47. A summary of the SEP and MRA processes shows their continued relevance. The SEP was adopted by the Commission in 1988 and maintained for some years. Through the SEP, the Commission sought to remove barriers to productivity which had become institutionalised in awards. Under the principle, award wage increases would only be granted where the Commission was satisfied that -

the parties to an award have co-operated positively in a fundamental review of that award and are implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs.¹

48. The principle went on to list a number of measures which should be undertaken to ensure this occurred:

- 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 the efficiency 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 provision discriminate against sections of the workforce.

49. As a result, many occupational awards were amalgamated into industry awards, the number of classifications was dramatically reduced, demarcations were eliminated from awards and multi-skilling was introduced. This meant that the range of tasks an employee could perform was significantly enhanced and this gave employers far greater flexibility. The classifications were also linked to skills and qualifications held and used on the job. The acquisition by employees of skills and qualifications was thereby encouraged.

50. Classifications were described more in terms of the skills and qualifications required to perform the job, with much less emphasis on the specific duties to be performed, as had been the case previously. The duties were described more broadly and were not definitive, generally being called 'indicative tasks' or 'indicative duties'. There is now only a minority of awards where classifications are described in terms of the specific duties to be performed.

51. The MRA process came out of the February 1989 Review decision and the 1989 National Wage Case. The Commission aimed to further the objectives of the SEP through an alignment of wage rates within and between awards. The Commission stated in the 1989 wage decision:

¹ National Wage Case Decision August 1988 Print H4000 p11

*The fundamental purpose of the structural efficiency principle is to modernise awards in the interests of both employees and employers and in the interests of the Australian community: such modernisation without steps being taken to ensure stability as between those awards and their relevance to industry would, on past experience, seriously reduce the effectiveness of that modernisation.*²

52. The essence of the principle was that award rates would be set on the basis of relative skill, responsibility and the conditions under which the work was normally performed. The Commission would “only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards”.³
53. Minimum rates were fixed for key classifications in the metals award and classifications in all other awards were to be fixed in relation to this award according to the above criteria. Award CRSs based on skills and qualifications and aligned for relativities are essential to developing skills and a fair labour market which promotes productivity. Alignment with the metals award model remains relevant.

Australian Qualifications Framework

54. Parallel to this process, the qualifications framework in Australia was undergoing radical changes. Through a tripartite approach over many years, the Australian Qualifications Framework (AQF) was developed. The AQF is a system of nationally recognised qualifications, principally at the pre-degree levels. As a result, virtually all qualifications in Australia were placed at a level of this framework and recognised as providing a given level of training in a particular field. For example, a certificate III is the trade level qualification and is recognised as such nationally. A certificate III in the clerical industry, for example, is recognised as being at the same level as a trade qualification and attracts the same minimum rate of pay in the award.
55. Industrial tribunals across Australia have recently reinforced the usefulness of the model in equal remuneration decisions, for example by aligning qualifications in the child care and dental assistants’ awards with those of the metals award. This resulted in corresponding rates of pay. (See paragraphs 84-93 below on Pay Equity.) Significantly, part of the original rationale for the minimum rates adjustment process was to promote gender pay equity by aligning female dominated award rates and qualifications with those of the male dominated trade awards.

MRA Process is Consistent with Award Modernisation.

56. The Queensland Government submits that the continuation of the MRA process in the creation of modern awards is consistent with the relevant legislative provisions and the Minister’s Request. The metals award model provides a number of benefits which, if adopted across all awards, will promote economic prosperity while maintaining a fair safety net for workers. These include:
- career paths that promote the acquisition of skills at a time when productivity is being hampered by skills shortages;

² National Wage Case Decision 1989 Print H9100 p11

³ *Ibid* p13

- alignment of nationally recognised qualifications with appropriate minimum rates;
- classification descriptions that are based on skills required and used on the job, consistent with a multi skilled work force;
- minimum award rates that provide a safety net for the low paid; and
- work valued in a systematic way at the award safety net level to ensure equal remuneration for women.

57. A significant number of award pay scales across Australia have already been rationalised according to the model. For example, about 30 per cent of NAPSAs from Queensland awards contain the trade or C10 rate. This means that they are at least partially aligned to the metals model. (See Attachment 3)

58. The Queensland Government submits that as a result of the SEP and MRA processes, many awards now require minimal adjustment to wages or classification definitions to ensure flexibility, a skilled workforce and a fair safety net.

Award Review Taskforce

59. No adequate practical alternative to the metals award model has yet been developed. In 2006, the Award Review Taskforce (the Taskforce) conducted a review of pay and classification scales to feed into AFPC's review of APCSs. The AFPC's review was cancelled following the election of the federal Labor government. The Taskforce's *Final Report on Rationalisation of Wage and Classification Structures June 2006* (the Taskforce report), however, is a significant document.

60. Some of the conclusions contained in the Taskforce's Report have merit, including the general model that was proposed. However, the analysis of classification and wage data is seriously flawed in many respects. It is necessary to address these aspects of the Report in some detail because this analysis led the Taskforce to conclude that the metals model should not be used for establishing pay points for other industry sectors.⁴ The Queensland Government strongly disagrees with this conclusion for the reasons outlined below.

61. The Taskforce stopped short of formally recommending a model structure, but made positive comments about some possible models. It said:

Only the last model [broadbanding based on classifications] might assist in the development of appropriate, industry-wide classification descriptions for high and low skilled work. This is because, once like classifications at these skill levels have been identified and grouped, it might be possible to develop new, overarching descriptions that better capture the key attributes of employees at these levels. For example, a review of a group of similar classifications might determine that this group contains a myriad of definitions which all describe what is essentially low paid work. A single definition might be developed to reflect core qualities of classifications captured in this group.⁵

62. The Queensland Government submits that the metals award classification model fits the criteria identified by the Taskforce. It is submitted that the broadbanding

⁴ Award Review Taskforce *Final Report on Rationalisation of Wage and Classification Structures June 2006* p101

⁵ *Ibid* p 92

done in the metals model and the form of classification descriptions used are appropriate. The descriptions are quite broad and based on the level of skill, responsibility and qualifications required.

63. The Taskforce referred to the claim that the metals award CRS is based on qualifications acquired.⁶ In fact, the qualifications rewarded in the metals model CRS are those which are required for the job and qualifications which are not relevant are not rewarded. For example, the metals award classification description for Engineering /Production Employee – Level III (wage group C13) is:

An Engineering/Production Employee – Level III is an employee who has completed an Engineering Production Certificate I or Certificate II in Engineering or equivalent so as to enable the employee to perform work within the scope of this level. An employee at this level performs work above and beyond the skills of an employee at C14 and to the level of his/her skills, competence and training.

- *Is responsible for the quality of his/her own work subject to routine supervision;*
- *Works under routine supervision either individually or in a team environment;*
- *Exercises discretion within his/her level of skills and training;*
- *Assists in the provision of on the job training.*

64. The specific tasks to be performed are not listed as they tended to be in awards prior to award restructuring. In some restructured awards, 'indicative tasks' are listed for some classifications but the tasks listed tend to be non specific and are not mandatory or exclusive.

65. The Taskforce report also supported the notion of having a classification structure across industries that provides consistency within an occupation. It said:

It should establish minimum wage rates consistently applicable throughout Australia and ideally wage rates that reflect consistency for comparable classifications across industries. For instance, a particular clerical classification which applies in multiple industries should attract the same minimum rate on the basis that industry or workplace specific factors are best addressed through the agreement-making process.⁷

66. The Queensland Government agrees that minimum wages for similar classifications should be consistent nationally and across industries. Interestingly, in the case of clerical classifications mentioned by the Taskforce, most relevant awards are already aligned to the metals model and, consequently, to each other.

67. Clerical occupations are also listed in the Draft List of Priority Industries in the Award Modernisation Statement. As Table 1 shows, of the 19 published clerical APCs, 14 are aligned with the metals model, three have a classification aligned to the C10 rate and only two are not aligned at all. Therefore, clerical classifications generally already fit the model proposed by the Taskforce by virtue

⁶ *Ibid* p102

⁷ *Ibid* p84

of being aligned to the metals model. In fact, there is greater consistency than envisaged by the Taskforce because the published APCS clerical classifications are aligned across Australia and across industries.

Table 1 Classification structures of published clerical awards:

APCS	
Clerical Award – Registered and Licensed Clubs – State 2003 (NAPSA Qld)	Aligned
Clerical Award – Private Hospitals – State 2003 (NAPSA) Qld)	
Clerical and Administrative Employees (State) Award (NAPSA – NSW)	
Clerical and Administrative Employees Legal Industry (State) Award (NAPSA – NSW)	
Clerical and Administrative Employees in Temporary Employment Services (State) Award (NAPSA –NSW)	
Clerical and Administrative Employees (Private Sector) Award (NAPSA- Tas)	
Clerical Employees in Retail (State) Award (NAPSA – NSW)	
Clerical Employees Award – State 2002 (NAPSA – Qld)	
Clerks (ACT) Award 1998	
Clerks (Clubs, Hotels and Motels) Award (NAPSA – SA)	
Clerks (Retail Industry) Award	
Clerks' (South Australia) Award (NAPSA- SA)	
Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947 (NAPSA – WA)	
Clerks Award – Hotels and Registered Clubs – State 2003 (NAPSA – Qld)	
Clerical and Administrative Employees (Victoria) Award 1999	Partially Aligned
Clerical and Administrative Employees (Northern Territory) Award 2000	
Clerks (Commercial, Social and Professional Services) Award (NAPSA – WA)	
Clerks (Hotels, Motels and Clubs) Award 1979 (NAPSA –WA)	Not Aligned
Clerks' (Customs and/or Shipping and/or Forwarding /Agents) Award (NAPSA- WA)	

68. The Taskforce carried out a number of analyses of CRSs of some industries and/or like classifications. The Queensland Government conducted its own analyses and arrived at very different conclusions. For example, the Taskforce tested a model of grouping similar classifications by using a sample of awards from the retail industry and the accommodation and food services industries because of a perceived high level of classification diversity.⁸

69. The methodology used by the Taskforce was that 37 awards were selected from the retail industry and 25 awards from the accommodation and food services industries. It then selected a common 'occupational grouping' for each industry: storeworkers for retail and clerical employees in accommodation and food services. It then drafted its own broad classification descriptors and attempted to group like classifications within the model.⁹

70. The Taskforce concluded that:

As was expected, the Taskforce found a high level of wage diversity between like classifications. For example, Group B for storeworkers in the retail industry contained classifications with wage rates ranging from \$13.03 per hour to \$15.08 per hour. Group F for clerical workers in accommodation and food services had wages ranging from \$16.31 per hour to \$17.36 per hour.¹⁰

⁸ *Ibid* p300

⁹ *Ibid* p302

¹⁰ *Ibid* p303

71. However, when the award data was examined by the Queensland Government it was found that a different interpretation could be arrived at. In the example of the retail industry, it was found that, of the 60 award rates in Group B, 49 were within a range of \$14.28 to \$14.68 per hour. This is less than a three per cent range. This meant that over 80 per cent of the classifications fell within three per cent of each other. In fact the wages are quite consistent and would require little adjustment to align.
72. In the other example given, the difference in the interpretation of the Taskforce and the Queensland Government is even more marked. Of the 20 award rates in Group F for clerical workers in the accommodation and food services industries, 16 were the same, at \$16.31 per hour. In our submission this is a remarkably consistent set of rates, rather than the 'high level of wage diversity' found by the Taskforce.
73. The Taskforce also sought to map classifications from a sample of manufacturing awards to the structure in the metals award. It concluded:

The Taskforce does not consider that the Metals Award could be used as the basis for establishing pay points for other industry sectors because of definitional differences and wage disparity.

74. In fact, when the Queensland Government examined the classification scales from the sample provided, it was found that all nine of the Federal scales were aligned to the metals Award, although one had not been adjusted for the 2005 increase. Of the 10 State scales, six were aligned. Of the four which were not aligned, one, the Vehicle Industry – Repair Services and Retail Award, is not in the manufacturing industry. Contrary to the Taskforce's conclusions, these awards are aligned.
75. Chapter 4 of the Taskforce's report describes the process used to extract the data from APCs. The Queensland Government takes issue with some of the approaches used. The Taskforce said:

Some classifications in pre-reform awards are aggregated and contained a range of occupations in the one classification. For example, The Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998 (Fed), establishes a Level 2 position and wage rate which covers a number of occupations such as cook, food and beverage attendant, clerical worker, security officer and storeperson. The Taskforce therefore disaggregated these classifications for the purposes of its research and analysis, and considered these occupations and any attached descriptions as individual classifications.¹¹

76. This approach ignores the fact that the Award Restructuring process reduced the number of classifications in awards by aligning a number of occupations which have similar work value, skills and qualification level into a single classification level. To "disaggregate" them for the purpose of analysing wage structures is counterproductive.
77. Similarly, at paragraph 290 of the Report, the Taskforce determined that, the metals award contained "approximately 30 more broadly based classifications".

¹¹ *Ibid* p94

However, it is generally accepted that the metals award contains 14 (or 15 by some interpretations) classifications.

78. The Queensland Government submits that a continuation of the process of minimum rates adjustment consistent with the 1989 National Wage Case decision is the most logical way of simplifying wage and classification scales. It can result in the simplest system of all, which is to align all wage and classification structures across all industries to the metals model. In this respect the Queensland Government agrees with the Taskforce report, which said:

*A broadbanding approach to the rationalisation of classifications could conceivably be developed with universal application to classifications across all industry sectors. Had the various industrial tribunals been able to implement the minimum wage consistency envisaged by the Full Bench of the AIRC in 1993, a substantial level of wage consistency across industry sectors may have been achieved.*¹²

79. The Queensland Government submits that there is already a significant percentage of pay scales aligned to the metals award. An analysis has been done of the APCs which are relevant to Queensland.

80. Of a total of 324 Queensland awards (NAPSAs):

- 102 already contain pay and classification scales which are at least partly aligned to those of the *Engineering Award – State 2003*, which is the State equivalent of the federal *Metal, Engineering and Associated Industries Award 1998*. They would therefore require little or no adjustment;
- At least 45 are paid-rates awards in which rates of pay are greater than those of the Metals model;
- At least 10 cover professional employees and rates of pay are greater than the Metals model; and
- 6 do not have wage rates.

81. Of the 45 published APCs from pre-reform federal awards which have application in Queensland:

- 24 are at least partially aligned to the Metals model;
- Eight have a minimum rate which is greater than the Metals model; and
- 13 are not aligned. (See Attachment 3)

82. Attachment 3 is a full list of federal awards and NAPSAs in the top nine industries (by number of employees) which are relevant to Queensland and which contain the C10 rate and are therefore partially aligned to the metals model.

83. In creating modern awards, completing the process of aligning CRSs to the metals model is achievable.

¹² *Ibid* p291

PAY EQUITY

84. Women are more likely than male workers to be reliant on awards for setting their wages and more likely to be employed in industries that apply award pay and conditions. They are therefore more likely to be directly affected by the outcome of the Award Modernisation process.
85. Indicators from a range of studies reinforce the fact that a higher proportion of women than men rely on awards for setting pay and conditions. A report by WISER¹³ found that of the six most award reliant industries (see Table E in Attachment 2), five of them had a relatively high proportion of women employees. They are:
- Accommodation, cafes and restaurants (58.3% women)
 - Cultural and recreational services (50.5% women)
 - Health and community services (78.6% women)
 - Personal and other services (47% women)
 - Retail trade (51.4% women)
86. These findings are supported by the Award Review Taskforce Report which indicated that businesses with more than 60 per cent female employees were more likely to use award pay and conditions exactly as set out in the award for at least some of their employees. The report identified the industry sectors most likely to depend on awards as the female dominated sectors of accommodation and food services, arts and recreation services, health care and social assistance, retail trade and other services.¹⁴
87. The alignment of the CRSs of female dominated awards with those of male dominated awards was originally a focus of the SEP and the MRA processes. As mentioned earlier, the alignment of female dominated awards with the metals model in recent industrial tribunal decisions has reinforced this approach as a means to achieve pay equity at the award level.
88. The Australian Liquor, Hospitality and Miscellaneous Workers Union (ALHMMWU, now the LHMU) sought to amend wages and allowances for child care workers in the ACT and Victoria through an application to the AIRC (the child care case). In its January 2005 decision, the full bench referred to the continued relevance of the MRA process and found that the application of the MRA process to the matter before it was consistent with the Commission's obligations under the WR Act.¹⁵
89. In aligning the wages and classifications in the relevant child care awards with those of the metals award, the Commission said,

*A consequence of the employer's contentions is that the minimum award rates applicable to child care workers would be set at a level which is below that applicable to comparable classification levels (in terms of AQF qualification levels) in other awards. Such an outcome is neither fair nor equitable.*¹⁶

¹³ Women in Social and Economic Research, *Women's pay and conditions in an era of changing workplace regulations: Towards a Women's Employment Status Key Indicators (WESKI) Database* Curtin University of Technology, 2006 p13

¹⁴ Award Review Taskforce Report pp 56-57

¹⁵ PR954938 paragraphs 152-154.

¹⁶ *Ibid* paragraph 371

90. Similarly, a full bench of the QIRC in an application by the LHMU under the equal remuneration principle for dental assistants (DAs) confirmed the continued relevance of the metals model. In its September 2005 decision the QIRC said:

*We can see no reason to depart from the Engineering Award standard for DAs. To provide a lesser relativity would perpetuate the wage disadvantage that was created in 1994 with the insertion into the DAs Award of the present classification structure. Further, to not provide consistency across Award would be inconsistent with the MRA process and would be to treat DAs differently for no sound or cogent reasons.*¹⁷

91. A scan of Queensland awards demonstrates that classifications in some female dominate awards remain unaligned to the metals model. Two examples are: the *Beauty Therapy Industry Award, State 2003* and the *Hairdressers' Industry Award, State 2003*.

92. The aged care industry is another example and is one of the priority industries. It is highly female dominated with a workforce that is 94 per cent female.¹⁸ A sample of awards from across the jurisdictions shows that few CRSs are aligned at any paypoint with the metals model.

93. Section 576B(2)(e) of the WR Act specifies that the Commission must have regard to promoting the principle of equal remuneration for work of equal value. The alignment of wage rates and classification structures of female dominated awards with those of male dominated awards, which are all aligned to the metals model, is a clear way of implementing the above requirement. It would be a significant step towards equal remuneration for women, at least at the level of award wages, and the Queensland Government urges the Commission to take advantage of this opportunity to address this long outstanding issue.

IMPLEMENTATION OF RATIONALISATION OF CRSs IN MODERN AWARDS

94. Paragraph 20 of the Minister's Request, states:

The Commission may include transitional arrangements in modern awards to ensure the Commission complies with the objects and principles of award modernisation set out in this award modernisation request.

Sections 576T(1) and (2) of the WR Act permit modern awards to contain State based differences for a transition period of 5 years only.

95. The Objects set out in paragraphs 1 and 2 of the Ministers Request relevantly include:

...modern awards:

(c) must be economically sustainable and promote flexible modern work practices and the efficient and productive performance of work;

and

¹⁷ (2005) 180 QGIG 187 at paragraph 97

¹⁸ Josh Healy and Megan Moskos, *How Do Aged Care Workers Compare With Other Australian Workers?* The National Institute of Labour Studies 2005 p iii

The creation of modern awards is not intended to:
(c) disadvantage employees; (or)
(d) increase costs for employers;

96. There is tension between the “no loss no gain” principle and the need to rationalise wage rates within a modern award and relativities across modern awards, particularly in the tight time frames available. The Queensland Government submits that use of transitional arrangements will be essential to resolving this tension.
97. The use of transitional provisions will allow the parties time to finalise the MRA process. In turn this would also satisfy the requirement for the Commission to promote the principle of equal remuneration as all awards, including those for female dominated occupations, would undergo the same process. Negotiations may result in arrangements for some grandfathering of wages and/or acceleration of others in order to move to a new structure. This process would not be new to industrial parties as many undertook it during the award restructuring, SEP and MRA processes as detailed above. Five years (the outer limit on State based differences) should be sufficient time for parties to negotiate the translation from old award CRSs to the new.
98. Another matter that the Commission must address in this process is the fact that only approximately 400 of the several thousand federal pay scales have been published. This will certainly cause some difficulties for the Commission and parties wishing to make submissions in this matter. The parties to individual awards will presumably have calculated the correct rates but they are not public.

State Based Differences in Minimum Award Wages

99. For many years minimum wages in the federal and State systems were consistent. For over ten years the AIRC conducted a National Wage Case each year and States all adopted the decision. This resulted in all jurisdictions having the same minimum wage. Where awards across jurisdictions were aligned with the metals model, this meant that awards across the country had identical CRSs.
100. With the commencement of Work Choices the minimum wage fixing system changed dramatically. Wage scales were removed from federal awards and NAPSAs and became APCs. The FMW and other federal minimum wages were (and still are) fixed by the AFPC. Transitional awards remained separate and wages were adjusted by the Commission in line with the decision of the AFPC. State jurisdictions retained their minimum wage fixing procedures through State Wage Cases and have made decisions without reference to decisions of the AFPC. This has resulted in four different minimum wages across the six industrial jurisdictions, (plus four sets of wages in metals model). The minimum wages are set out in Table 2.

Table 2: Comparison of Minimum Wage Outcomes:

Jurisdiction	New minimum weekly wage
Federal	\$522.12
NSW*	\$531.40
WA	\$528.40
South Australia	\$522.12
Tasmania	\$527.10
Queensland	\$528.40

* The NSW minimum wages is an award minimum rate. There is no statutory minimum wage.

101. The situation is further complicated because more minimum wage cases will be decided this year. The AFPC has already taken submissions on its 2008 wage review which is due for release around July. The State Wage Cases in Western Australia and New South Wales have also commenced. The Queensland State Wage Case will be conducted around July/August for implementation in September. Presumably the other States will also conduct State Wage Cases as usual. These matters are again taking place independently of the AFPC's deliberations and presumably will result in another round of minimum wage decisions which vary across the jurisdictions. If the WR Act is not amended, there will be another set of decisions in 2009 with the same result.

102. Obviously for State based differences to be removed from modern awards this situation must be remedied. The Queensland Government submits that this also take place over a transition period. However, the process should not be as complex as the alignment to the metals model and might be completed within a two year transition period.

ALLOWANCES

103. Allowances contained in federal awards prior to Work Choices were amended by several methods, depending on their function. Allowances which relate to work or conditions (skills and disabilities) were amended through the national wage case by increasing them by the percentage that each minimum wage adjustment bears to the C10 rate. Allowances which constituted a reimbursement of expenses incurred were adjusted by the increase in the Consumer Price Index by application by the union party to the award.

104. This method is still used in the QIRC and by the AIRC in relation to adjustment of transitional awards. However, awards which had pay scales removed and put into APCs under Work Choices have not had allowances increased since 2005. This is because APCs do not contain allowances and the AFPC is expressly prohibited from adjusting allowances. They therefore remained in the awards but there is currently no power for any tribunal to adjust them.

105. The Queensland Government submits that the Commission will need to address the fact that allowances in pre-reform federal awards have not been varied since 26 March 2006. Where there is a transitional award which is counterpart to a key pre-reform federal award and the allowances in the transitional award have been varied since 26 March 2006, the transitional award should be used to create a modern award. Otherwise the Commission should vary the allowances in accordance with normal practice for that key award pre-Work Choices (CPI or other nexus) for the purpose of creating a modern award that does not disadvantage employees.

OTHER AWARD PROVISIONS

106. The Minister's Request says that the modernisation process is not intended to disadvantage employees or increase costs for employers. The objects listed in the request include providing a fair minimum safety net for employees, economic sustainability and promoting efficient and productive performance of work. The matters that must be considered by the Commission include the needs of the low paid, equal remuneration and the development of a fair labour market.
107. The Queensland Government submits that where there is tension between the "no loss no gain" principle when creating a modern award, the Commission should perform its functions beneficially in favour of employees which will ensure that employees are not disadvantaged by the modernisation process. The process should benefit employees even if that results in some increase in labour costs, provided that the increases do not adversely affect the economic sustainability of the industry. This is of particular importance in areas of significant award reliance.
108. The Queensland Government submits that the Commission should apply the "no disadvantage" test as was applied to certifying agreements before Work Choices (ie on balance, the entitlements overall must not be reduced and no individual employee should be worse off).
109. The President's statement at paragraph 11 states that while the principal federal award for an industry will usually be the starting point for drafting, other terms in State awards may also be relevant. Such State award terms will be assessed in the light of Part 10A Division 3 – Terms of modern awards.
110. The Queensland Government submits that the Commission should not read down the permissible matters in the WR Act. Further, a modern award may include incidental terms – those that are incidental to a term that is required or permitted and that are essential for making a particular term operate in a practical way.
111. A broad reading of the permissible matters will mean that the modern award will truly operate as a "fair minimum safety net" as required by section 576L. Fairness was the critical element that was purged from wage-setting and industrial regulation by Work Choices. The explicit re-insertion of the requirement for fairness in modern award making must be given full recognition in the award modernisation process.
112. As outlined above, the Queensland award system has delivered fairness to both employees and employers, particularly in award-reliant businesses or industries. It would be unfortunate if entitlements and protections found in modern, relevant Queensland awards, particularly those for vulnerable workers, were to be lost by reading down the permissible matters.

Entitlements Derived from State Law

113. A significant percentage (22%) of Queensland wage and salary earners is award-reliant and the majority of these workers are now in the federal system. They will be covered by NAPSAs, whose terms include entitlements derived from state law.

114. Chapter 2 of the IR Act specifies minimum conditions of employment. Some of these are absolute minimum entitlements for all employees (eg annual leave entitlement of 4 weeks and 5 weeks for shift workers) whilst some can be varied by an industrial instrument (eg annual leave accumulates). Some apply only to employees covered by an industrial instrument such as penalty rates for work performed on public holidays (although those rates may themselves be varied by the industrial instrument).
115. An important set of statutory entitlements in the IR Act are those relating to family leave (see Part 2 of Chapter 2). These entitlements were amended to incorporate the outcomes of the Family Provisions Test Case August 2005. The statutory entitlements prevail over any industrial instrument to the extent that the instrument provides a less favourable benefit to the employee (see s 41). Many of the terms of the Family Leave Award 2003 and Family Leave (Queensland Public Sector) Award - State 2004 are less favourable and thus the statutory minima must be taken into account when making a modern award that replaces Queensland NAPSAs.
116. So that these employees are not disadvantaged by award modernisation these statutory minima will have to be considered by the Commission when modern awards are created. The members of the QIRC could provide invaluable assistance in identifying the issues for a modern award that flow from Queensland's statutory minima.

IMPACT OF AWARD MODERNISATION ON TERMS IN FEDERAL AND STATE AWARDS

117. The terms of key Federal and Queensland State awards in some of the identified priority industries and occupations have been scanned and compared against the NES subject matter and the permissible award matters. The industries scanned were selected from the draft list of priority industries on the basis that there is a higher incidence of award reliance and/or female participation. The metals industry was also scanned because it has traditionally set the benchmarks for conditions in other awards.
118. The industries scanned were:
- Metals
 - Retail
 - Hospitality
 - Poultry
 - Aged Care
 - Clerical
119. The purpose of the comparison is to identify if there are important award provisions that might be left out of modernised awards. At first glance some provisions from State awards might appear to fall outside the scope of the permissible matters.
120. Award provisions other than the provisions that relate obviously to section 576J(1) are grouped together under three areas and a rationale for their inclusion in a modern award is provided. The proposed rationale relies on the provision being incidental to a permissible matter or a broad reading of the permissible matter.

Employment Relations

121. The first area includes the provisions that underpin effective employee management practices which are critical for ensuring that the award is fair and supports productive workplaces. Some common provisions are:

(a) *Time and wages records*

The requirement for an employer to maintain accurate time and wages records is necessary to ensure that flexibility arrangements can be assessed to ensure no disadvantage as well as providing evidence for leave entitlements.

(b) *Continuity of service*

These provisions clarify entitlements such as accrual of leave and redundancy benefits in circumstances of changes of business ownership or extended periods of leave.

(c) *Introduction of changes*

The requirement for consultation about significant changes in the workplace is incidental to the consultation provisions and NES on notice and redundancy.

(d) *Mixed/higher duties compensation*

Falls within minimum wages and supports flexible work practices.

(e) *Rest periods between period of work (fatigue leave, 10 hr break provisions)*

Fall within arrangement for when work is performed and overtime and promotes the safety and health of employees.

(f) *Prohibition of deductions from wages for breakages, cash register discrepancies, rent, food etc*

This is incidental to minimum wages, promotes fairness and protects the low-paid.

(g) *Limits on stand down i.e. flood, fire and emergencies and inclement weather*

Falls within leave.

(h) *Training*

Falls within skill-based classification and career structures, promotes skills development and productivity.

(i) *Career or study leave*

Falls within leave and promotes skills development.

Consultation, Representation and Dispute Settlement

122. The second area relates to ensuring that modern awards facilitate employee and union involvement and consultation in the workplace and effective dispute resolution.

123. Right of entry provisions, which are common in Queensland State awards, are clearly not permissible because of section 576R.

124. Queensland State awards contain union encouragement provisions. The model clause was developed as a Statement of Policy by the QIRC and released on 21

December 2000. It was subsequently contained in the QIRC's model award format. The model clause reads:

11.5 Union encouragement

Preamble

Clause 11.5 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.5.1 Documentation to be provided by employer

At the point of engagement, the employer shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the Premises of the employer in a place readily accessible by each employee. The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

11.5.2 Union delegates

(a) Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

(b) The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

125. The Queensland Government submits that clauses modelled on CI 11.5.2 can be contained in modern awards because they are incidental to the permissible matter "procedures for consultation, representation and dispute settlement". Such provisions will operate subject to other provisions of the Act, for example, clause 11.5.2(b) will operate subject to the right of entry provisions of the new Act.

126. Queensland State awards commonly contain trade union training leave or industrial education leave. The Queensland government submits that these can be included in a modern award because they are incidental to the permissible matter.

127. Union encouragement provisions and industrial relations education leave have practical importance in that they help make effective the engagement of employees and job delegates in procedures for consultation and dispute resolution. They also make representation more effective.

Other Employment Legislation

128. The third area highlights the importance of signposting other legislation that relates to the employment relationship to ensure all employees and employers are aware of their rights and responsibilities. Many Queensland State awards contain provisions which concern:

- Workplace Health and Safety eg amenities (dressing and meal rooms), training, provision of protective clothing and equipment;
- Anti-discrimination;
- Sexual harassment.

129. The Queensland Government acknowledges that these workplace matters are regulated by other State legislation. However there has been a place for these provisions in awards for several reasons. State awards are required to be posted in workplaces and the award can serve as a single document that prescribes obligations of employers and employees to ensure a safe and healthy workplace free from discrimination and sexual harassment. Without these provisions in awards, employees might not be aware of their rights and obligations.
130. While such provisions are consistent with the concerns evident in the Minister's statement – fairness, productivity, health and safety, prevention and elimination of discrimination – they do not readily fall within the permissible matters.
131. The Queensland Government urges the Commission to consider incorporating such provisions in a modern award if they can at all fall within a broad reading of the permissible matters or are broadly incidental to the permissible matters.

UNION COVERAGE ISSUES

132. Traditionally, registration of a union in the federal system gave the union incorporation and allowed it to represent its members in industrial disputes before the AIRC. This permitted the union to be a party to any award made to settle the dispute and to subsequently make application to vary the award. It also meant that the union was bound by the award and had to comply with its terms and conditions. The binding force of an award was limited to the named parties to the dispute or members of the organisation that was party to the dispute.
133. The Queensland Government notes the terms of section 576V, that is, a modern award
- Must bind specified employers and specified employees of the specified employers; but
 - May bind one or more specified organisations in respect of all or specified employees who are bound by the award.
134. The Queensland Government supports a federal system which will ensure the status quo as far as union rights to represent the interests of employees covered by the various awards that have migrated into the federal system and any relevant modern award. The Queensland Government strongly supports unions' right to make and amend modern awards.
135. The Queensland Government acknowledges that the ability of employee and employer organisations to apply to make and amend a modern award will be determined by the new legislation which will take effect from January 2010.
136. In another forum the States are raising the potential problems for State unions that attempt to register in the federal system. However, until the new federal system becomes a reality, award modernisation must proceed under the provisions of the WR Act as it presently stands.
137. Many State registered unions have obtained federal registration as transitionally registered associations under the WR Act. This provides some protection and preservation of the status quo until 31 December 2009 as it allows them to be parties to and bound by NAPSAs.

138. They should be parties to and bound by modern awards. It is noted that the name of a transitionally registered association is identical to the name of the counterpart State registered organisation. If a modern award included the name of a State registered organisation as an entity which is party to and bound by the award (within the appropriate geographical coverage), then until 1 January 2010 only a transitionally registered association of the same name could exercise any rights under the modern award. If the new Act recognises State registered organisations, the State union with the same name as the entity named in the modern award would be party to the modern award. This would mean that union coverage of awards will remain unchanged into the new era.

139. The Queensland Government submits that Commission should ensure that unions do not lose or extend their coverage in relation to a modern award derived from a number of precursor federal awards, NAPSAs or State awards. The modern award should bind as parties to the award entities that have the name of all relevant State registered organisations (which were parties to and bound by the pre-cursor awards) as well as relevant federal counterparts which were parties to and bound by a pre-cursor award.

APPRENTICES AND TRAINEES

140. The Minister's Request at paragraph 41 says

In accordance with section 576J of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages in modern awards, the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees including where appropriate, junior employees, employees to whom training arrangements apply and employees with a disability in order to assist in the promotion of employment opportunities for those employees.

141. Since the mid 1980s, the Queensland Government, through the Department of Education, Training and the Arts (and its predecessors) has been closely and actively involved in developing not only the training aspects of apprenticeships and traineeships, but also the industrial relations aspects. This innovative work has been conducted through extensive consultation and with the co-operation of employer and employee organisations. It has resulted in considerable success in the introduction and expansion of:

- Traineeships (since their introduction in the mid eighties);
- School based apprenticeships and traineeships (NCVER reports that in the September 2007 quarter, Queensland had 43.5% of the national school based apprenticeships and traineeships commencements);
- Competency based apprenticeship and traineeship wage progression arrangements (approximately 80% of Queensland apprentices and trainees are employed under competency based wage arrangements); and
- Early completion of apprentices and trainees (approximately 40% of Queensland apprentices and trainees complete 6 months or more than their nominal completion date).

The Queensland Provisions

142. Many federal awards contain apprenticeship and traineeship provisions but in Queensland, state awards generally do not have apprenticeship or traineeship provisions. The exceptions are:

- *Children's Services Award - State 2006* (apprentices and trainees);
- *Hairdressers' Industry Award - State 2003* (apprentices and trainees);
- *Pharmacy Assistants' Award – State 2003* (trainees only);
- *Retail Industry Award - State 2004* (trainees only);
- *Rubber and Plastic Industry Award - State 2003* (apprentices and trainees);
- *Veterinary Practice Employees' Award – State* (trainees only);
- *Whitsunday Charter Boat Industry Award - State 2005* (trainees only).

143. Since the 1960's, the QIRC has primarily established Queensland apprentice and trainee wage arrangements in general Orders of the QIRC rather than in the state awards. These Orders provide minimum wages and conditions for all Queensland apprentices and trainees where the employer is either a respondent to a state award or is award free. The current Orders are:

- (a) *Apprentices' and Trainees, Wages and Conditions (Excluding Certain Queensland Government Entities)* (<http://www.wageline.qld.gov.au/aol/wageline/pdfs/obo.pdf>) (which covers private sector employers);and
- (b) *Apprentices' and Trainees, Wages and Conditions (Queensland Government Departments and Certain Government Entities)* (http://www.wageline.qld.gov.au/aol/wageline/pdfs/gov_obo.pdf) (which covers Queensland Government employers including some Queensland Government Owned Corporations).

144. Each Order comprises of a generic body (Parts 1 to 5) which specifies generic conditions for all apprentices and trainees. The body of the Orders is then followed by schedules which prescribe specific wage and special conditions for certain industries. The *Queensland Government Departments and Certain Government Entities* order has an advantage in that, with only a few exceptions, its wage provisions are common across all industries of the Queensland public sector and it is therefore less complex than the wage provisions of the private sector order with its 23 separate industry schedules.

145. The Queensland *Training Wage Award - State 2003* still exists but is now only used to provide the actual rates of pay for use when the relevant industry schedule of the private sector Order provides for that system of paying trainees to be used.

146. With the introduction of *WorkChoices*, these Orders became Notional Agreement Preserving State Awards (NAPSA) and Preserved Australian Pay and Classification Scale (APCS) are derived from them.

Other Queensland Provisions

147. The following provisions need to be protected in any modern award to ensure employers do not attempt to cease providing these entitlements:

(a) The above Orders “call up” the provisions of s392 of the *Industrial Relations Act 1999 (Qld)* which provides:

392 Paying apprentices or trainees for supervised training

(1) Time spent by an apprentice or trainee undertaking supervised training is taken to be—

- (a) time worked for the employer; and
- (b) ordinary working hours when calculating the apprentice’s or trainee’s wages and employment conditions.

Example of paragraph (b)—

A trainee is required to work 38 ordinary working hours a week under an award. In a particular week, the trainee spends 30 hours working for the employer and 10 hours at college. The trainee is entitled to be paid 38 hours ordinary time (which includes 10 hours ordinary time for the time spent at college) and 2 hours overtime.

(2) Subsection (1) applies irrespective of the way the supervised training is delivered.

Examples of ways supervised training can be delivered—

block release, day release, workplace-delivered training or correspondence

(3) Despite subsection (1), wages are not payable for time spent by an apprentice or trainee undertaking supervised training when the apprentice or trainee is—

- (a) a school-based apprentice or trainee; or
- (b) the subject of a decision of the approving authority under section 162 or 211.

(4) In this section—

supervised training, for an apprentice or trainee, means training up to the maximum period required, under the *Vocational Education, Training and Employment Act 2000*, to be delivered by a supervising registered training organisation during the apprenticeship or traineeship.

(b) The Order of the QIRC *Supply of Tools to Apprentices*, available at <http://www.wageline.qld.gov.au/aol/wageline/pdfs/apptool.pdf> . This Order is also a NAPSA and requires employers to provide a “kit” of tools to their apprentices each year or stage to a specified retail value. Most federal awards that provide for apprentice tools provide for a weekly allowance to a monetary value. It is considered that the Queensland provisions are superior as they ensure that the apprentices receive tools of trade to carry out their work for their employer because it takes some time for a first year apprentice at the rate of \$5.20 per week (Federal Metal, Engineering and Associated Industries Award 1998) to accrue sufficient money to purchase expensive tools of trade.

The Need for Reform - Addressing National Skill Shortages

148. One of the key concerns facing the national economy now and over the next decade and beyond is securing sufficient skilled workers to meet the needs of Australia’s industries and growing population. Skill shortages are a national issue as confirmed by COAG at its February 2006 meeting where it agreed to a range of reforms of apprenticeships and skills recognition arrangements in order to accelerate trades skills formation.

149. To help address this skills shortage in Queensland, the *Queensland Skills Plan* (which can be found at the department's website <http://deta.qld.gov.au/>) includes funding for an additional 17,000 trade training places and to assist apprentices complete early. The new Federal Government has committed itself to an additional 450,000 additional training places over the next 4 years. However, in order that apprentices and trainees may be employed, it is imperative that flexible industrial relations provisions be in place to allow the employment of apprentices and trainees in all industries and under all relevant qualifications.
150. To date, the development of these industrial relations arrangements has been done on a case by case basis as new qualifications or training packages are approved. This has resulted in many delays in introducing new apprenticeships or traineeships. These qualifications are now developed in consultation with the relevant industry representatives, are nationally agreed to and endorsed and are based on nationally agreed and endorsed competency standards. The time has come for generic provisions to apply in all industries so that delays in employing apprentices and trainees are eliminated. Provisions need to be developed for all levels of qualification under the AQF (Certificate I to Advanced Diploma).
151. Further, a key consideration in attracting candidates for these places is ensuring apprenticeships are an attractive and competitive option for young people and others in the workforce. Research into the factors inhibiting the take-up and completion of apprenticeships, undertaken as part of the development of *the Queensland Skills Plan*, highlighted concerns that the level of apprentice wages, particularly during the early stages of apprenticeships, is too low.
152. As a result of the *Queensland Skills Plan* a review of the apprentice training wages was undertaken in 2005/06 to identify what changes are necessary to make apprenticeships a more attractive career option for today's young people. The review identified the following issues that require addressing:
- Rising age and education standard of apprentices
 - Reducing apprentice cancellation rates
 - Increasing the participation of adults in training
 - Competency based wage progression arrangements

Rising Age and Education Standard of Apprentices

153. Queensland research has shown that in 1973, when young people commenced an apprenticeship, most school leavers were 15 years of age, had only completed year 10 and possessed few if any workplace skills. Today, most apprentices on commencement are at least 17 years old, have completed Year 12 at commencement of their apprenticeship and turn 18 within their first year of their apprenticeship.
154. Year 12 graduates not only are older, generally more mature and more independent than Year 10 graduates, they have additional communication, literacy and numeracy skills that come from their higher education. Many have also undertaken some vocational training whilst at school or gained workplace skills through part time or casual work whilst at school. On these occasions most have earned higher wages than they will earn in the first two stages of their apprenticeship (usually around 40% and 55% of the tradesperson rate of pay). It might be more appropriate that these relativities be in the vicinity of 50% and 60% respectively.

155. In addition, research undertaken by the Queensland Government as part of its review of apprentice wages indicated that apprentices who have completed year 12 are between 25 per cent and 30 per cent more productive than grade 10 trained apprentices over the life of their apprenticeship.
156. On 21 February 2006 the AIRC approved increases for Federal Metal Industry apprentices who had attained Year 11 or Year 12 education for similar reasons.

Reducing Apprentice Cancellation Rates

157. Department of Education, Training and the Arts statistics show that for the period January 2006 to January 2007, 15.9% to 29.3% of apprentices cancelled their apprenticeships within 12 months after commencement. This is a significant loss of training effort and contributes to the skill shortages.
158. In the report *Investigation Into Apprentices in the Building and Construction Industry in Queensland- 'Matching Supply and Demand with Results' - 2004* by Deborah Wilson Consulting Services, it was reported that 24.2% of apprentices who cancelled their apprenticeship did so due to financial reasons – wages and leaving for a higher paid job.
159. Further research conducted by the Department of Employment and Training leading up to the *Queensland Skills Plan* revealed that 42.7% of the apprentices surveyed, indicated that they had considered dropping out of their apprenticeship and 64% of those indicated that the key reason was due to low apprentice wages. It was also reported that of the apprentices who had cancelled their apprenticeship in the six months from 1 July 2004 to 31 December 2004, 36.7% cancelled their apprenticeship due to low apprentice wages.

Increasing the Participation of Adults in Training

160. In order to increase the numbers of persons in training and therefore reduce current skill shortages, it is necessary that strategies are put in place to increase the participation of adults in apprenticeship and traineeship training. Adults experience considerable difficulty gaining access to training and that they also have little financial incentive to enter apprenticeships and traineeships, despite the availability of adult rates in some industries.
161. In Queensland, minimum rates of pay for adult apprentices and trainees have been introduced in the Automotive, Building, Civil Construction, Electrical, Engineering, Forestry, Laboratory Operations, Pest Management and Plastics Industries. These were achieved through agreement between relevant employer associations and unions. These industries employ approximately 73% of the total number of apprentices in training (the Laboratory Operations and Pest Management industries in Queensland only have trainees). In May 2006, the Full Bench of the South Australian Industrial Relations Commission set the minimum wage for adult apprentices and trainees on state awards at \$484.40 (the then Standard FMW).
162. Research undertaken by the Queensland Government as part of its review of apprentice wages indicates that apprentices aged over 21 are more productive than the grade 10 and grade 12 trained entrants in the first 2 years of the apprenticeship. Therefore a wage differential should exist between adult and junior apprentices based on their higher productivity.

Competency Based Wage Progression Arrangements

163. Competency based wage progression arrangements for apprentices were first introduced in Queensland in a pilot program in June 1990. It is estimated that now some 80% of all Queensland apprentices and trainees are employed under competency based wage provisions.
164. Queensland leads Australia in the introduction of competency based wage progression arrangements for apprentices and trainees and remains the only state to have effective competency based wage arrangements across most industries. Since 1990, different models of competency based arrangements have been trialled in Queensland leading to the development of the Competency Weighting Model (Refer Attachment 4).
165. The Queensland competency based wage provisions were adopted by the AIRC in amendments made to the apprentice rates of pay in the federal *Metal Engineering and Associated Industries Award* on 21 February 2006.
166. At its meeting on 10 February 2006, the Council of Australian Government's (COAG) meeting agreed that:
- By December 2006 - Once apprentices or trainees have demonstrated competency to the satisfaction of their employer and RTO, they will be able to be certified as competent by the State Training Authority, without the need to make special application for this or the need to serve a minimum time.
 - Apprentices to be certified as competent by a State or Territory Training Authority without the need to make a special application when they have demonstrated competence to industry standards:
 - through the amendment of training legislation and administrative procedures where necessary; and
 - by removing references to fixed duration from awards and legislation in all jurisdictions where such awards prevent early sign off based on competency.
167. In its recently published policy *Contemporary apprenticeships for the twenty first century (2005)* AIG suggested that "Awards need to be varied to replace time-served requirements with genuinely competency based progression. Discussion also needs to be held to re-consider apprenticeship wage progression and rates."
168. In its report *Training wage reform good for apprentices (October 2005)* ACCI referred to its earlier report *Addressing Workplace Relations Barriers to Training*, wherein it developed a number of recommendations to address the workplace relations barriers to training including:
- in any role the proposed Australian Fair Pay Commission has in setting and adjusting minimum wage rates, it is recommended that the following issues be considered:
 - introducing a wage structure to meet the requirements of shorter duration New Apprenticeships and competency-based arrangements;
169. Competency based wage arrangements benefit both the employer and the apprentice or trainee. The apprentice or trainee progresses to higher wages only when they have attained prescribed levels of competence and the apprentices

and trainees are rewarded with a wage increase for their effort in attaining competence. They also promote early completion of apprenticeships which will assist in resolving the current skill shortages.

170. The Queensland Government submits that:

1. All modern awards should contain provisions relating to wages and conditions of employment for all apprentices and trainees employed in the industry, including those in higher level qualifications;
 2. A general award should be made that provides minimum wages and conditions for apprentices and trainees where the relevant award or agreement does not contain provisions for apprentices or trainees and for apprentices or trainees who are employed in “award free” areas of employment.
 3. The general award mentioned in recommendation 2 should be added to the *Draft List of Priority Industries* as a modern award on operational lines (Refer paragraph 4 in the *Award Modernisation Request*). It should also be constructed along the lines of the QIRC Orders, but without the various industry schedules;
 4. In accordance with s576T(2) of the *Workplace Relations Act 1996* the modern industry awards or the general award for apprentices and trainees should contain transitional provisions protecting the following provisions that exist for Queensland apprentices and trainees where the modern award do not contain equivalent or superior provisions:
 - (a) competency based wage progression arrangements;
 - (b) provisions for the payment of wages for supervised training; and
 - (c) supply of tools of trade.
 5. In order to provide adequate incentive to prospective apprentices to enter and complete trade training, the Commission should give serious consideration when establishing modern awards to:
 - (a) increasing the percentage relativities in the first two stages of the apprenticeships for apprentices who have attained a year 12 education to an amount that is commensurate with other forms of employment for 17-19 year olds.
 - (b) establishing the Standard FMW rate as a minimum adult rate for all apprentices and trainees who are 21 years of age or older at commencement of their apprenticeship or traineeship.
- (a) introduce a system of competency based wage progression arrangements for apprentices and trainees in accordance with the competency weighting system example stated in Attachment 4.

MODEL FLEXIBILITY CLAUSE

171. The Minister's Request requires the AIRC to prepare a model flexibility clause "to enable an employer and an individual employee to agree on arrangements to meet genuine individual needs". The Queensland Government supports a flexibility clause that encourages genuine agreement between an employee and an employer to modify the terms of an award so that individual needs for flexible work arrangements can be met within the overall protection of the award. Such a clause would build on flexibility clauses that already exist in awards for example, rostering provisions that require majority agreement.
172. If an individual employee is to enter into flexible arrangements, the employee should clearly understand from the clause itself what is permissible. The definition of flexible arrangements should prevent modification of the NES or the terms of any applicable collective agreement. The award procedures for resolving disputes should be available for all aspects of flexible arrangements including making the arrangements and settling their terms, not just the application of the terms of the arrangements once they are agreed. Employees who need flexible work arrangements to meet their family needs should be able to ventilate a dispute with a recalcitrant employer and have it resolved. Employers who need reasonable flexibility in the spread of hours to meet temporary operational needs should be able to ventilate a dispute with a recalcitrant employee and have it resolved.
173. The Queensland Government submits the following principles for drafting a model flexibility clause:
1. The clause should be simple and easy to understand.
 2. The clause should facilitate individual flexibility arrangements.
 3. The clause should make clear that the employee as well as the employer can propose a flexible arrangement.
 4. The clause should define flexible arrangements as modification of an award term or its application over an agreed specified period.
 5. The clause should state that a flexible arrangement cannot be used to disadvantage the employee and the clause should define what is meant by not being disadvantaged:
 - a. the employer and the employee genuinely agreed on the flexible arrangement without undue influence, coercion or duress; and
 - b. there is no reduction in the employee's award entitlements and protections considered as a whole.
 6. The clause should state that flexibility arrangements may only be made with existing employees and may not be made a condition of engagement.
 7. The clause should entitle an employee to involve the union in making the flexibility arrangement.
 8. The clause should provide that a copy of the agreed award flexibility arrangement, signed by both the employer and the employee, must be given to the employee and retained by the employer.
 9. The clause must require the parties to review the operation of the award flexibility arrangements at intervals agreed between the employer and the employee to ensure that employees are not disadvantaged by their use. The clause should provide for back-pay for a period up to 12 months should the review uncover that an employee has been disadvantaged
 10. The clause should entitle the employee to involve the union in the review.

11. The clause should provide that any disputes about award flexibility arrangements, including disputes about whether a particular arrangement will be agreed or the terms of that arrangement, may be dealt with under the dispute resolution procedure contained in the award.

QUEENSLAND PUBLIC SECTOR

174. Awards applying to employees in the Queensland public sector have been extracted from the list provided by the AIRC on its website (Attachment 5). All awards in this list are paid rates awards.

175. Paid rates awards prevail in the public sector because of the application of the *Financial Administration and Audit Act 1977 (Qld)* the effect of which is to prohibit the payment of money to employees unless it is authorised by an award, agreement, Ministerial Directive or Cabinet decision.

176. The public sector awards fall into four main groupings:

1. GOC Awards

The awards covering electricity, ports and rail GOCs were State awards prior to Work Choices. They would not be effective as NAPSAs for many employees because of very high levels of coverage by enterprise agreements.

Because of National Competition Policy, the GOCs compete with the private sector for business. Consequently the Queensland Government makes no submission on the future of awards concerning GOCs.

2. Former Federal Awards

Nurses employed by Queensland Health (not a corporation) and by the Mater Public Hospital (a corporation) were covered by federal awards prior to Work Choices. The *Nurses (Queensland Public Hospitals) Award 2004* applied to both Queensland Health and the Mater whilst the *Nurses (Queensland Public Health Sector) Award 2004* applied only to Queensland Health.

After 26 March 2006 the two awards applied as transitional awards with respect to Queensland Health. A State employment agreement was certified for Queensland Health employees on 16 June 2006. The terms of the former federal awards were incorporated as terms of the agreement and the former federal award no longer operates as a transitional award for these employees.

3. Former State Awards applying to Some Statutory Authorities

Some statutory authorities, which had State awards, were captured by Work Choices because they were constitutional corporations. The employees of some of these authorities have been returned to the State jurisdiction by transferring them to or by creating non-corporate employing entities. They are:

- Australian Agricultural College
- Tourism Queensland
- WorkCover
- State Library
- Art Gallery
- Museum

Consequently any pre-existing State award is still effective with respect to these employees. These include the *Workcover Queensland Award – State 2003* and

the *Queensland Tourist and Travel Corporation Employees Award - State 2003*. Under State transmission of business provisions, the latter award bound a successor employer, Tourism Queensland, prior to 26 March 2006.

The *Statutory Bodies Legislation Amendment Act 2007 (Qld)* provides for the transfer of employees of other statutory bodies to the State jurisdiction, notably the Residential Tenancy Authority and the Building Services Authority, but this process has yet to be completed.

Forward with Fairness states that State employees will not be covered by the federal jurisdiction if that is what each state wants. The terms of the new federal Act are not yet settled.

4. State Awards

The majority of awards covering the Queensland public sector excluding GOCs are State awards and will not be subject to the award modernisation process.

177. All of the awards listed in Attachment 5, except the awards applying to GOCs (Queensland Rail Award - State 2003 and Electricity Generation, Transmission and Supply Award - State 2002), should be classified as State Government Administration industry. They are typical public sector awards paid rates awards which also reference other terms and conditions of employment which are determined administratively. These other terms and conditions are contained in the Directives of the Public Service Commissioner or the Minister for Industrial Relations which are made pursuant to the *Public Service Act 1996*. These Directives are also recognised by the IR Act.

178. The CRSs in most of these public sector awards are based on a unique public sector broadbanded CRS which was developed in the early 1990's to meet the needs of the Queensland public sector. The generic level descriptors in the award CRS align with the system used to evaluate particular jobs under the Jobs Evaluation Methodology System (JEMS). JEMS was developed by Cullen Egan Dell for the Queensland Government.

179. The Queensland Government submits that all awards on the State Government administration list proposed in paragraph 177 are not part of the award modernisation process. Most are effective as state awards only. Those which cover employees currently in the federal system will become effective as state awards when those employees return to the State system