

New South Wales Government

**Submission to the Australian Industrial
Relations Commission**

**Award Modernisation in the
Metal Industry**

July 2008

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Overview

1. In its 20 June 2008 decision, the Full Bench determined that:

in relation to pre-drafting consultations for the priority modern awards all written submissions, draft modern awards and other proposals concerning the scope, content and transitional arrangements should be lodged with the Commission by 25 July 2008.¹
2. This submission of the NSW Government addresses the content of a potential modern award in the metal industry, principally from the position of advocating that it reflect community standards and award entitlements contained in NSW awards and legislation. Those employed in the metal industry in NSW whose conditions of employment are no higher than those set by an industrial instrument, overwhelmingly receive conditions set by NSW awards (now NAPSAs). Given the enjoiner not to disadvantage employees or increase costs for employers (Ministerial Request, paragraph 2(c) and (d)), the Australian Industrial Relations Commission (the Commission) will have a particular need to examine carefully the NAPSA conditions that currently apply in NSW to such employees.
3. All modern awards should contain conditions that reflect and preserve well-established community standards. While they may differ to some extent, they would be largely consistent across modern awards. It is submitted that in determining those general conditions the Commission would have careful regard to the standards created by the Industrial Relations Commission of New South Wales (IRC) and contained in State awards, and standards contained in NSW legislation. It is important to ensure that the creation of modern awards does not undermine existing conditions of employment. Part 1 of this submission, which is common to the submissions being filed for all fourteen priority industries, identifies the community standards created by NSW awards and legislation. It is submitted that all modern awards would contain terms that reflect and preserve these standards.
4. Specifically this submission:
 - In **Parts 1.1 and 1.2**, identifies the principles and community standards found in NSW awards and legislation that the NSW Government contends should be preserved in modern awards
 - In **Part 1.3**, sets out reasons why specific provisions found in NSW awards, now NAPSAs, that currently apply in certain industries, should be maintained

¹ AIRC Print No PR062008 20 June 2008, para 195

- In Part 1.4, describes why it is important that modern awards are drafted with the intention that they be capable of being updated
- In Part 1.5, advocates that modern awards should be drafted in a manner that promotes training and skills development
- In Part 2, identifies the relevant NSW State awards (including NSW State Awards that the Commission has not previously identified as relevant) and lists in a table the types of clauses found in those awards by reference to the matters that can be dealt with under the National Employment Standards or as matters that can be contained in an award pursuant to s576J on the understanding that the Commission when making a modern award would, in respect of each subject, refer to the relevant State award provision;
- Also in Part 2, identifies those NSW State Awards that, as a result of NSW legislation, were converted to State enterprise agreements before 27 March 2006 and so are not NAPSAs, but rather Preserved State Agreements

Background

5. In its first submission to the Full Bench, the NSW Government said:

A strong, effective and relevant award system, together with an independent tribunal with broad powers, are the key elements of the NSW industrial relations jurisdiction. The NSW Government is concerned to ensure that the employees and employers who currently enjoy the benefits of that system are not left worse off by the award modernisation process.²

6. This remains the NSW Government's broad objective. In the context of considering the fourteen priority industries, the NSW Government is concerned to ensure that the modern awards should provide outcomes at least as beneficial as current NSW provisions.

Part 1 NSW Community Standards

7. The NSW award system has been in place for over a century, with the current legislative framework being set by the *Industrial Relations Act 1996* (IR Act). During this period, decisions of the IRC have created what have become recognised as community standards, reflected in award provisions found generally in NSW State awards. In addition, the legislature has set various minimum conditions for NSW employees, in some cases irrespective of whether those employees are subject to a particular award.

² NSW Govt Submission to the AIRC Award Modernisation para 9

8. Broadly speaking, the policy objective of the NSW Government has been to give primacy to the award system as the means of setting conditions that are fair and just. Most NSW community standards are therefore the result of State decisions which have been subsequently applied to NSW awards at large. A minority of standard conditions are contained in legislation.
9. For many employers and employees, NSW common rule awards are the sole means of regulating their industrial relations, apart from the general law. In this sense, NSW awards are more than a base from which employees are expected to bargain.
10. Common rule awards also supply a level playing field for employers, ensuring that they need not compete on the price of labour, rather focusing their energies on competing on the quality of their products and services.
11. The next two sub-sections set out the NSW community standards which in turn appear in awards and legislation.
12. As set out above, while they might differ in their detail, all modern awards should contain conditions that reflect and preserve well-established community standards. In determining those general conditions the Commission would have careful regard of the following standards created by the IRC and contained in State awards and contained in NSW legislation. It is submitted that all modern awards would contain terms that reflect, and preserve these standards.

1.1 NSW Community Standards in Awards

13. Legal authority to make State decisions arises out of Ch 2 Part 3 of the IR Act, and primarily s51 of that Act, which provides:

51 Making of State decisions

- (1) A Full Bench of the Commission may, if satisfied that it is consistent with the objects of this Act and that there are good reasons for doing so, make a State decision setting principles or provisions for the purposes of awards and other matters under this Act.
- (2) A Full Bench of the Commission may make a State decision only on the application of a State peak council or on its own initiative.
- (3) A State decision may apply generally to all awards or other matters under this Act or only to particular awards or other matters under this Act.
- (4) The principles or provisions of a State decision may be varied by a Full Bench of the Commission.

14. State decisions may apply to particular awards either on application (see for example *State Wage Case 2008* [2008] NSWIRComm 103 (27 June 2008), para 336(2)), or by means of a general order pursuant to s52 of the IR Act (see for example *Family Provisions Case 2005* [2005] NSWIRComm 478 (Decision para 2)).
15. The IR Act provides for some minimum conditions to apply to all awards, in relation to:
 - Maximum ordinary hours of employment (s22)
 - Equal Remuneration and other conditions (s23)
 - Employment protection provisions (s24)
 - Provisions relevant to technological change (s25)
 - Minimum sick leave entitlements (s26)
16. In this regard, it should particularly be noted that s27 prohibits the cashing-out of sick leave in all NSW awards.
17. State Decisions relevant to the priority awards are listed in the subsequent paragraphs.

Secure Employment Test Case

18. The *Secure Employment Test Case* decision was handed down by the IRC on 28 February 2006³. The decision deals with the ability of casuals to choose to convert to permanent employment after a period of six months of employment.
19. In its decision, the IRC established a right for casuals with a regular and systematic work history to seek conversion to permanent full-time or part-time employment.
20. Employers must give casual employees written notice of their right to become permanent within four weeks of their completing a six month period of employment. Employees must reply in writing within four weeks or will be regarded as not wishing to convert.
21. The decision also requires employers who engage a labour hire or contract business to perform work on the employer's premises to (either directly or through the labour hire/contract business) consult with those employees regarding OHS arrangements and ensure the provision of induction training and protective equipment.
22. The provisions within the test case decision were required to be applied for on an award by award basis by the relevant state industrial organisation(s).

³ Secure Employment Test Case [2006] NSWIRComm 38

Family Provisions Test Case

23. The IRC flowed on (with modifications) the Commission's *Family Provisions Case 2005*⁴ by general order in December of that year.
24. The *NSW Family Provisions Case 2005*⁵ model award clause concerns caring and parental leave rights and responsibilities and affects employers and employees under NSW state awards.
25. Following the NSW decision the following conditions could be requested by employees who qualify for parental leave. These new award based conditions are in addition to the parental leave rights and responsibilities under the IR Act:
 - increase their simultaneous unpaid parental leave to eight weeks
 - extend their unpaid parental leave from 52 weeks to 104 weeks
 - return from parental leave on a part-time basis until the child reaches school age.
26. The employer must consider requests of this type, having regard for the employee's circumstances and may only refuse the request on reasonable grounds.
27. The IRC also broadened the reasons for use of sick leave for caring responsibilities to include occasions where an employee has to care for a family or household member due to an unexpected emergency.
28. The decision also made certain provisions for casual employees. Subject to appropriate evidence, casuals can be absent from work in order to care for a relevant person who is ill, has given birth to a child or because of some unexpected emergency. The period of the absence is by agreement and is unpaid. If agreement cannot be reached the casual worker is entitled to be absent for up to 48 hours (two days).
29. Casual employees are also entitled to be absent from work in the case of the death in Australia of a person with whom they had a relationship of the type defined in the personal/carers leave clause of the applicable award.

⁴ [PR802005]

⁵ Family Provisions Case 2005 [2005] NSWIRComm 478

Equal Remuneration Principle

30. Community standards in regard to pay equity and equal remuneration are well established in the NSW industrial relations system.
31. The *2000 Pay Equity Case (Re Equal Remuneration Principle [2000] NSWIRComm 113)* resulted in the establishment of a Wage Fixing Principle (currently Principle 14) which specifically permitted claims to be made 'for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis'.
32. This Principle has been subsequently applied in cases such as *Re Miscellaneous Workers Kindergartens and Child Care Centres &c (State) Award [2006] NSWIRComm 73* (1 September 2006). It is clear from the operation of these provisions that parties to NSW awards currently have a mechanism to address issues of pay equity in relation to specific awards, and put in place particular measures to address those issues.

Redundancy

33. Sections 84 and 85 of the former *Industrial Relations Act 1991* (retained at s21 of the current IR Act) require the IRC upon application to insert employment protection provisions in awards by variation or otherwise. In 1994 the IRC directed that unions and employer organisations should agree on a redundancy clause which could be inserted into certain NSW state awards.⁶
34. The majority of NSW awards now include Termination Change and Redundancy (TCR) clauses which, amongst other matters, require the employer to notify and discuss proposed changes with affected employees and their union, and prescribe the following notice:

Period of continuous Service	Period of Notice
Less than one year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

35. In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.

⁶ Re application for redundancy awards [1994 AILR 301]

Payment in lieu of the prescribed notice shall be made to the employee if the appropriate notice period is not given. Most NSW award TCR clauses also provide for employers to provide employees with three months notice of termination due to technological change.

36. Most NSW awards provide eligible employees with an entitlement to redundancy pay which is reflected in Schedule 1 of the Regulations to the *Employment Protection Act 1982*.⁷
37. If an employee is covered by a State award that contains a TCR clause, the employer is exempt from the provisions of the *Employment Protection Act 1982* (discussed further below).

Hours of Work – Reasonable Hours Test Case

38. A Full Bench of the Australian Industrial Relations Commission handed down its decision in the *Reasonable Hours Test Case*⁸ on 23 July 2002, awarding a provision granting employees a right to refuse unreasonable overtime.
39. While the test case provision recognises the right of an employer to direct an employee to work 'reasonable' overtime, this is subject to the employee's right to refuse overtime that is unreasonable, having regard to the following factors:
 - any risk to employee health and safety
 - the employee's personal circumstances including any family responsibilities
 - the needs of the workplace or enterprise
 - the notice (if any) given by both the employer of the overtime and by the employee of their intention to refuse it, and
 - any other relevant matter.
40. The Full Bench of the NSW IRC was satisfied the Australian Industrial Relations Commission's decision was a 'National Decision' as defined in the IR Act and was therefore required to consider its terms.⁹
41. The NSW IRC handed down similar provisions but also incorporated a reference to 'carer' responsibilities in order to achieve conformity with anti-discrimination clauses prevalent in NSW awards and enterprise agreements.
42. The Full Bench determined the proposed clause should be inserted upon application into awards.

⁷ See para 58 of this submission re *Employment Protection Act 1982*

⁸ State Working Hours Case 2003 [2003] NSWIRComm 86

⁹ See ss48 and 50 of Industrial Relations Act 1996

1.2 NSW Community Standards in Legislation

43. As indicated above, NSW community standards primarily reside in awards, however some standards are to be found in general industrial legislation, or specific purpose legislation. This subsection sets out the relevant NSW legislated minima.

Annual Holidays Act 1944

44. The *Annual Holidays Act 1944* (the AH Act) is the principal statutory source of annual leave for employees working in the NSW industrial relations system. It applies to all employees engaged on a full time or part time basis, and to a limited extent, casual employees.
45. Pursuant to Schedule 8, clause 34 to the *Workplace Relations Act 1996*, the conditions set by the AH Act are currently conditions contained in NAPSAs applicable to almost all NSW employees employed by a constitutional corporation. They provide enhanced conditions over the conditions provided by Part 7 of the *Workplace Relations Act* (for instance as to the definition of 'ordinary pay' for the calculation of annual leave pay). In making a modern award the Commission would accordingly need to consider carefully the conditions contained in the AH Act to ensure that employees are not disadvantaged.
46. A full time or part time worker is entitled to four weeks annual holiday for each completed year of employment with an employer. A casual employee is effectively entitled to a payment in lieu of the leave entitlement determined on the basis of one-twelfth of the worker's ordinary pay for each hour worked (s 4(3)).
47. An employer may direct the worker to take annual leave in one or two consecutive periods, or up to four separate periods by agreement. An employer must give a worker their annual leave within a period of six months from the anniversary entitlement date unless the Industrial Registrar has granted, on application by the employer a postponement of the taking of the leave (s3(4)). A worker may also take annual holiday in advance of the entitlement date, but only with the agreement of the employer.
48. For employees mainly or wholly remunerated for their normal weekly number of hours by an ordinary time rate of pay this holiday pay will include weekend penalties and shift loadings the worker would have earned if they had not been on an annual holiday. An employer must give the worker at least one month's notice of the leave commencement date and an employee must be paid their holiday pay in advance of the taking of annual leave (s 3(6)(a)). On termination of employment the employee must be paid their ordinary rate of pay for their accumulated untaken leave entitlement.

49. Under s 4A of the AH Act an employer may temporarily close their business once a year by giving one month's notice, as part of a scheduled 'annual close down'. If a worker does not have sufficient leave entitlements to cover the entire close down period, the balance of that period must be taken as leave without pay.
50. The legislative intention of the AH Act is clearly to afford a worker a paid break from their employment, accordingly the cashing out of an employee's annual leave entitlement is prohibited except upon termination of employment. The NSW Government submits that annual leave is taken to allow an employee a proper respite from the work environment and should not be cashed out.
51. Most NSW common rule awards contain annual leave provisions although many of them merely make reference to the AH Act. Where awards do contain substantive leave entitlements they will only exclude the statutory provisions where the award gives workers an entitlement to annual leave benefits that is more favourable than the corresponding leave entitlements conferred by the AH Act.¹⁰

Long Service Leave Act 1955

52. The *Long Service Leave Act 1955* sets out minimum provisions for long service leave. The statute operates with respect to all eligible workers in NSW, including (since 1985) casual employees with continuous service as defined. The leave entitlement is expressed in months, with a month defined as four and one-third weeks.
53. A worker is entitled to two months paid long service leave after ten years of service with an employer and for each additional five years of service a worker is entitled to an additional one month. In the case of a worker who has completed ten years but less than fifteen years, the worker is entitled to a proportionate amount on the basis of three months for fifteen years of service
54. Where a worker has completed five years of service (but less than ten years), the worker is entitled to a pro rata payment on the basis of two months for ten years of service in the following circumstances as per s4(2)(a)(iii):
 - whose services are terminated by the employer for any reason other than the worker's serious and wilful misconduct,
 - or by the worker on account of illness, incapacity or domestic or other pressing necessity,
 - or by reason of the death of the worker.

¹⁰ For example see clause 23 of the Private Hospital Industry Nurses' (State) Award

55. A worker is entitled to long service leave on ordinary pay as defined in s3 of the Act. Ordinary pay excludes shiftwork, other penalty rates and overtime but may include bonuses and commissions received by the worker. Cashing-out of long service leave is prohibited except upon termination.
56. The NSW jurisdiction also has specific long service leave provisions for the building industry that recognises portability of employment (*Building and Construction Industry Long Service Payments Act 1986*).
57. The NSW Government recognises that each of the States and Territories will work with the federal government to achieve harmonised national long service leave provisions. In the interim, the NSW Government submits that it is essential to maintain existing long service leave provisions.

Employment Protection Act 1982

58. The *Employment Protection Act 1982* and its Regulations provide an obligation upon employers to notify the NSW Industrial Registrar that an employee is to be or has been terminated. However, employers are not required to notify the Registrar where certain exemptions can be claimed which include the following:
 - the employer employs less than 15 employees
 - the employee has been employed for less than 12 months
 - the employee is not covered by a New South Wales State Award or agreement
 - the employee is a casual worker.
59. Where the termination does not fall under one of the exemptions the Industrial Registrar should be notified in accordance with ss 7 or 8 of the Act so that it may review the circumstances and make an appropriate order in line with the severance payment prescribed by the regulations.
60. The *Employment Protection Regulation 2001* (Schedule 1) provides for severance payments based on the following scales:

Years of Service	Under 45 Years	45 Years of Ages & Over
Less than 1 year	Nil	Nil
1 year and less than 2 years	4 weeks	5 weeks
2 years and less than 3 years	7 weeks	8.75 weeks
3 years and less than 4 years	10 weeks	12.5 weeks
4 years and less than 5 years	12 weeks	15 weeks
5 years and less than 6 years	14 weeks	17.5 weeks
6 years and over	16 weeks	20 weeks

61. Where an employee is 45 years old or over the scale provides an additional 25 per cent entitlement.
62. If an employee is covered by a State award that does not contain redundancy provisions, the employer must apply the provisions of the *Employment Protection Act 1982*.

Industrial Relations Act 1996

63. Chapter 2, Pt 4, Divisions 1 & 2 provides for parental leave for all employees except for irregular casuals and seasonal employees. These Divisions provide detailed prescriptions of eligibility, entitlements and obligations.
64. Chapter 2, Pt 4 Div 4B, provides for leave for victims of crime, and prescribes eligibility, entitlements and obligations in detail.
65. Chapter 2, Pt 5 provides for part-time work agreements which allows employees and employers to contract out of an award or agreement in relation to part time work. The Division also provides for a State Decision which, inter alia, sets minimum standards (s79(3)), and makes some prescriptions in relation to additional hours of work, leave and replacement employees (ss80-82). This Decision was made in 1998¹¹. Some of the matters in the Decision were revisited in the *Secure Employment Test Case*, but the Commission declined to make any change to the 1998 decision¹².
66. Many NSW common rule awards prescribe for the payment of superannuation guarantee contributions to a nominated industry fund (or funds) although in some instances choice of fund is permitted to any complying fund. However under the IR Act, superannuation choice is available to workers under NSW awards. Section 124, provides that despite the provisions of an industrial instrument, contributions may be made to a complying superannuation fund nominated by the employee and approved by the employer.
67. The preceding material submitted by the NSW Government is intended to assist the Commission in its deliberations by outlining existing NSW legislation and community standards. The Award Modernisation process should not disadvantage employees by undermining these existing standards.

¹¹ *State Part-Time Work Case* [1998] NSWIRComm 142 (26 March 1998)

¹² *Secure Employment Test Case* [2006] NSWIRComm 38 (30 March 2006)

1.3 Why specific NSW Award provisions should be preserved

68. As noted above at para 8, awards are the primary means of setting fair and just conditions in the NSW industrial relations jurisdiction. The common rule nature of NSW awards ensures that they set the industry standard deployed by all industrial parties within the scope of the award. The broad scope of matters capable of being regulated by NSW awards means that the NSW awards in priority industries, contain a large range of matters above and beyond the community standards described in the previous section.
69. Given the nature of the NSW award-making process, these provisions have been subject to extensive processes of evidence, submissions, testing and deliberation by the IRC, the parties, and other interested bodies prior to their inclusion in the relevant award. They have become an accepted and necessary part of the machinery of regulating the industry and should therefore be respected as such by the award modernisation process.
70. The NSW Government submits that protections provided to workers under existing NSW award provisions should not be undermined by the Award Modernisation process.
71. In support of this contention, a number of observations should be made. Firstly, most such award provisions demonstrate that, characteristic of State awards, both the awards themselves and the respective clauses under consideration have a long history. This suggests that these awards and provisions are both durable and relevant.
72. In addition, most of these clauses have seldom been the subject of applications for variation, have remained in the respective instruments over a very long time and more often than not, deal with matters which are of some practical real significance to the employment of persons in the respective industries.
73. It will be noted that, save for test case provisions, many such provisions are not uniform although they may deal with similar subject matters. They arise at different times in different industries. When combined with the fact that the provisions were inserted by consent, it is reasonable to conclude that the provisions have a particular resonance in the industry or occupational area in which the award operates. Despite their longevity, these provisions plainly have a practical relevance to the particular industries and have arisen from enterprise bargaining within those industry sectors. That bargaining process, however, is consistent with the operation of the New South Wales system. Many such clauses would have been the subject of an application by a party or parties and often times the subject of quite extensive negotiation and conciliation

processes before the IRC before an agreement is reached which resulted in a consent award.

74. It should also be remembered that the IRC reviews awards at regular intervals. That review is undertaken under s 19 of the IR Act. That section sets out the factors the IRC must have regard to in reviewing the award. Furthermore, the IRC has given various decisions over time elaborating upon the factors relevant to the review of the awards. Most NSW awards, and therefore the provisions which they contain, have been the subject of many reviews since the inception of s 19. That has a real significance at two levels. Firstly, in terms of the New South Wales criteria, these are relevant and ongoing provisions. Secondly, it demonstrates that the clauses have a vitality in that they are seen to be clauses that are not obsolete and which satisfy the criteria set out in s 19. It is equally relevant that the parties have actively participated in those review processes and the clauses have, nonetheless, survived.
75. It is the NSW Government's submission that the *Workplace Relations Act* provides the Commission with ample scope to retain a wide range of NSW award provisions. Section 576J(2) of the *Workplace Relations Act* provides the Commission with a broad discretion to include 'terms about any other matter specified in the award modernisation request to which the modern award relates' among the terms of the modern award. Further, modern awards (together with the NES) '...must provide a fair minimum safety net of enforceable terms and conditions for employees...' ¹³, and the Request provides that the creation of modern awards is not intended to disadvantage employers or employees. ¹⁴
76. Further, the Request provides that 'a modern award may include industry-specific detail about matters in the NES' ¹⁵, and that 'a modern award may supplement the NES where the Commission considers it necessary to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to the terms of this request and the existing award provisions (including under NAPSAs) for those employees..' ¹⁶.
77. On this basis, the NSW Government submits that the full range of conditions in the relevant NSW awards be included in the modern industry award(s). With regard to the Commission's obligation to remove state-based differences ¹⁷, the NSW Government reiterates

¹³ WR Act s576(2)(b)

¹⁴ Consolidated Ministerial Request paras 2(c) & (d)

¹⁵ Consolidated Ministerial Request para 31

¹⁶ Consolidated Ministerial Request para 32

its earlier submission that ‘..dealing with issues raised by differing State community standards would be most appropriately dealt with in the medium term, having regard to the five year transition period provided for by s576T(2)...’¹⁸.

1.4 Maintaining the Relevance of Modern Awards

78. In our initial submission regarding the award modernisation process the NSW Government urged the Commission to ‘be cognisant of the need to make awards as relevant and contemporary as possible’¹⁹. This point was intended to be made in the broadest possible sense, having regard to the fact that many matters unforeseen at the time of making an award may later become sufficiently important to the parties to prompt their inclusion in the relevant award. While the extent to which modern awards can adapt in the future to changes depends largely on future amendments to the *Workplace Relations Act*, the following submissions are nevertheless relevant.
79. As it stands, there appear to be a number of matters of increasing public and industrial importance which may be appropriately addressed by modern awards. Indeed, some of these matters are the subject of current Commonwealth Government review processes and it may be reasonably expected that these reviews will report prior to the effective date of modern awards on 1 January 2010.
80. The Productivity Commission is currently undertaking an Inquiry into improved support for parents of newborn children and is required to report its findings by February 2009. The Terms of Reference of the Inquiry require the Productivity Commission to identify paid maternity, paternity and parental leave models that could be used in the Australian context.
81. Depending on the administrative requirements of any potential paid parental scheme, modern awards will need to be responsive and flexible enough to deal with industry specific implementation issues.
82. The Commonwealth government has also initiated a number of concurrent reviews into 457 and other temporary working visas, to strengthen the integrity of these visa programs.
83. Outcomes of these reviews, particularly in relation to wages and conditions of employment will have significant industrial relations implications. Modern awards will need to be capable of accommodating and/or incorporating review outcomes with industrial relations

¹⁷ Workplace Relations Act, s576T.

¹⁸ NSW Govt Submission to the AIRC Award Modernisation para 142.

¹⁹ NSW Govt Submission to the AIRC Award Modernisation para 173.

implications as well as be responsive to future federal government policy in this growth area.

84. The potential consequences of measures designed to mitigate climate change appear to be far-reaching. Modern awards will need to be capable of being responsive to future workforce needs and changes in relation to climate change policies.
85. Changes in industry structures and organisation, occupations, skills, job design, production methods and technology, will require a flexible and adaptable system of awards. In particular, modern awards will need to accommodate new industries and classifications for climate change skills and occupations and re-evaluate existing occupational classifications.
86. The House of Representatives Employment and Workplace Relations Committee is currently conducting an inquiry into pay equity and other causes of potential disadvantage in relation to women's participation in the workforce.
87. The Terms of Reference of the Inquiry require the Committee to examine, among other matters, the adequacy of recent and current equal remuneration provisions in state and federal workplace relations legislation and the need for further legislative reform to address pay equity in Australia.
88. It is clear that the terms of modern awards and the proposed Forward with Fairness substantive legislation may ultimately reflect the recommendations of the Inquiry to the extent that they are adopted by the Commonwealth. The proposed Fair Work Australia will, in particular, need to have the capacity and flexibility to review and vary modern awards to ensure they facilitate equal opportunities and pay equity outcomes for women in their employment.

1.5 Support for training provisions as existing NSW standards

89. In accordance with sections 576B (2)(a) and (b) of the *Workplace Relations Act*, the Commission should approach the award modernisation process as an opportunity to use the award system to promote training and skills development to meet economic needs. Skill based classifications and other award conditions provide structures for employers that place a relative value on the skills in the workplace and remuneration incentives for employees to up skill.
90. In creating modern awards the Commission has an opportunity to maintain training related provisions to improve the quality of vocational education and training (VET) outcomes. Existing provisions in federal pre-reform awards and NAPSAs that facilitate VET for apprentices and trainees or more broadly encourage skill development among non-apprentice and trainee employees in NSW include:

- higher wage rates for adult apprentices
 - allowances paid to apprentices
 - reimbursement of course costs
 - paid and unpaid leave to attend training and examinations
 - reimbursement for excessive travel costs to attend off-the-job training
 - restrictions on overtime for apprentices
 - requirement for apprentices to be supervised by qualified tradespeople
 - caps on the number of trainees and apprentices that can be supervised by qualified tradesperson
 - a higher duties allowance for suitably qualified workplace trainers
 - prohibitions on using apprentices to perform unskilled work.
91. Traineeships are covered by a wide range of federal and state awards with trainees in the NSW system covered by some cross-industry awards as well as industry specific training wage awards such as those dealing with clerical and retail employees. The principal cross-industry awards are the Training Wage (State) Award 2002 or the National Training Wage Award 2000.
92. The NSW Government submits that the Commission should:
- support the inclusion in modern awards of wage and classification structures that create skill based career paths linked to the national training framework and the Australian Qualifications Framework
 - support the inclusion in modern awards of a comprehensive range of NSW award provisions relating to the employment of apprentices and trainees (including school-based), dealing with wages, allowances, reimbursements, hours, and the quality of on-the-job training (as listed above) and consider apprenticeship classifications linked to competency based progression
 - take the broadest possible approach to including provisions that support training and skill development as allowable matters in modern awards. This approach should be taken irrespective of the fact that according to the terms of s576J, 'training' is not specified to be an allowable matter
 - not disperse training provisions throughout modern awards but rather take the approach of bringing relevant training clauses together in the one section of a modern award to make the importance of training provisions clear and their meaning easily interpreted.

Conclusion

93. As was pointed out in the NSW Government's first submission:

community standards ... have been (the) subject (of) extensive processes of evidence, submissions, testing and deliberation by the Industrial Relations Commission of NSW, the parties, and other interested bodies.²⁰

94. Whilst making legislation is subject to a different process, the legislated minima described above have been the subject of detailed parliamentary scrutiny and remain in place many decades after their original passage.

95. While these conditions are now contained in NAPSAs, they are nonetheless currently enjoyed by the employees subject to those instruments, and the subject employers are obliged to deliver those conditions.

96. In making modern awards, the Commission should therefore ensure that these important minimum conditions are not lost, and that these awards should provide outcomes for NSW employees at least as beneficial as current State provisions.

²⁰ NSW Govt Submission to the AIRC Award Modernisation , para 141

Part 2 – Comparison of provisions of NSW Awards with NES and allowable award matters

97. Attached to this section is a table that identifies known relevant NSW State awards (including NSW State Awards that the Commission has not previously identified as relevant). The table indicates whether clauses that can be dealt with under the National Employment Standards or as matters that can be contained in an award pursuant to s576J are to be found in those awards. This table is intended to assist the Commission, when making a modern award, to cross-check whether the relevant NSW State awards contain clauses in respect of each subject, on the submitted basis that in each case the Commission would then review such clauses carefully in order to prevent any reduction in existing conditions.

Metal Industry: NSW State Awards	NSW award code no.	Parties to NSW award	Effective date of wages clause of NSW award	Date of s.19 review of NSW award
Draughting Employees, Planners, Technical Employees, &c (State)	283	Employer: ABI, AIG, EF, TTIA, Employees: AMWU	15/01/2008	15/01/2008 (new award)
Engine Drivers General (State)	301	Employer: ABI, EF, AIG Employees: CFMEU	25/02/2008	6/12/2006
Engine Packing Manufacturers (State)	306	Employer: EF Employees: LHMU	15/11/2007	23/02/2004
Jewellers and Watchmakers, &c., (State)	703	Employer: ABI, EF, ARA, AIG Employees: AMWU	22/11/2007	26/07/2007
Mechanical Opticians (State)	469	Employer: ABI, EF Employees: AMWU	22/11/2007	26/07/2007
Metal, Engineering and Associated Industries (State)	039	Employer: ABI, EF, ARA, FIAA, MBA, TTIA, ECA, PATEA Employees: AMWU, ETU, AWU	11/10/2007	24/07/2007
Sugar Field Workers (State) Consolidated	634	Employer: ABI, EF Employees: AWU	8/09/2007	24/07/2007
Coal Superintending Samplers (State)	1052	Employer: EF Employees: AWU	31/12/2007	20/07/2007
Friction Materials, &c., Manufacture (State)	336	Employer: EF, MTA, AIG Employees: LHMU	29/07/2007	18/12/2007 (new award)

Key:	ABI	Australian Business Industrial
	AIG	Australian Industry Group
	AMWU	Australian Manufacturing Workers' Union
	AWU	Australian Workers' Union, New South Wales
	CFMEU	Construction, Forestry, Mining and Energy Union (New South Wales) Branch
	ECA	The Electrical Contractors' Association of New South Wales
	EF	Employers First
	ETU	Electrical Trades Union of Australia, New South Wales Branch
	FIAA	Furnishing Industry Association of Australia
	LHMU	Liquor, Hospitality and Miscellaneous Union, New South Wales Branch
	MBA	The Master Builders' Association of New South Wales
	MTA	Motor Traders' Association of New South Wales
	PATEA	Printing Industries Association of Australia
	TTIA	Timber Trade Industrial Association

METAL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Coal Superintending Samplers (State) Award 1052	Draughting Employees, Planners, Technical Employees, &C. (State) Award 283	Engine Drivers General (State) Award 301
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	Y
PARENTAL LEAVE		Y	Y	Y
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	Y
COMMUNITY SERVICE LEAVE	Jury Service	N	Y	Y
	Emergency Leave	N	N	N
LONG SERVICE LEAVE		Y	Y	Y
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	Y	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
Allowable Award Matters:				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	N	Y	Y
	Apprenticeships/ traineeships	N	Y	Y
TYPE of WORK PERFORMED		Y	Y	Y

ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	Y	Y
SUPERANNUATION		Y	N	Y
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific Condition Based NSW Awards in the Metals Industry:			Metal Trades (Training Wage) (State) Award	Training Wage (State) Award 2002

KEY: Y: where the NES/allowable award matter appears within the NSW award
N: where the NES/allowable award matter does not appear within the NSW award

METAL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Jewellers And Watchmakers, &C. (State) Award 703	Friction Materials, &C., Manufacture (State) Award 336	Engine Packing Manufacture (State) Award 306
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	Y
PARENTAL LEAVE		Y	Y	Y
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	Y
COMMUNITY SERVICE LEAVE	Jury Service	Y	Y	Y
	Emergency Leave	N	N	N
LONG SERVICE LEAVE		N	Y	Y
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	Y	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
Allowable Award Matters:				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	Y	N	Y
	Apprenticeships/ traineeships	Y	Y	N
TYPE of WORK PERFORMED		Y	Y	Y

ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	Y	Y
SUPERANNUATION		N	N	Y
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific Condition Based NSW Awards in the Metals Industry:		Metal Trades (Training Wage) (State) Award	Training Wage (State) Award 2002	

KEY: Y: where the NES/allowable award matter appears within the NSW award
N: where the NES/allowable award matter does not appear within the NSW award

METAL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Mechanical Opticians (State) Award 469	Metal, Engineering And Associated Industries (State) Award 039	Sugar Field Workers (State) Consolidated Award 634
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	Y
PARENTAL LEAVE		Y	Y	Y
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	Y
COMMUNITY SERVICE LEAVE	Jury Service	Y	Y	N
	Emergency Leave	N	N	Y
LONG SERVICE LEAVE			Y	Y
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	Y	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
Allowable Award Matters:				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	Y	Y	Y
	Apprenticeships/ traineeships	Y	Y	Y
TYPE of WORK PERFORMED		Y	Y	Y

ARRANGEMENTS for when WORK PERFORMED		Y		Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	Y	Y
SUPERANNUATION		N	N	Y
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific Condition Based NSW Awards in the Metals Industry:			Metal Trades (Training Wage) (State) Award (286 I.G. 154)	Rural Traineeships (State) Award

KEY: Y: where the NES/allowable award matter appears within the NSW award
N: where the NES/allowable award matter does not appear within the NSW award

NSW Project/Enterprise Awards within the Metals Industry

98. The NSW State Awards listed below were included in the Commission's first Award Modernisation Decision handed down on 20 June 2008 as NSW State Awards relevant to this industry. They are, however, Project/Enterprise Awards which did not become NAPSAs.
99. It should be noted that the Industrial Relations Amendment Act 2006 (NSW) deemed existing consent or enterprise awards to be enterprise agreements within the meaning of the Industrial Relations Act 1996 (NSW), with effect immediately prior to the commencement of Workplace Relations Amendment (Workchoices) Act 200521.
100. On commencement of that Act, therefore they were converted into Preserved State Agreements.

Abbott Australasia Pty Ltd Consent Award 2004-2006

Australian Steel Mill Services Pty Enterprise Award 2005 – 2008

AWU-AMR Enterprise Award 2004

BHP Steel (AIS) Pty Ltd Port Kembla Steel Works Employees Award 2000

BHP Steel (AIS) Pty Ltd Supervisors and Technical Officers

Bluescope Steel (AIS) Pty Ltd - Maintenance Restructuring Award

BlueScope Steel (AIS) Pty Ltd - Port Kembla Steelworks Employees Award 2006

Bluescope Steel Limited - Springhill and CRM Employees Award 2006

Bullivants Pty Limited - Unanderra Award

Clerical and Administrative Employees (Bluescope Steel (AIS) Pty Ltd) Award

Clerical and Administrative Employees (Bluescope Steel Limited - Port Kembla) Award

Clerical and Administrative Employees (Onesteel Manufacturing Pty Ltd) Award

Com 10 Pty Ltd Enterprise Award 1998

Fluor Global Services Australia Pty Ltd and United Goninan Ltd
Bluescope Steel, Port Kembla Steelworks Rail and Rolling Stock
Maintenance Award 2004

Illawara Services Pty Ltd Employees Award

K&R Fabrications (W'Gong) Pty Ltd (Port Kembla Steel Works)
Maintenance Award 2004 – 2007

Mainteck Services Pty Ltd Port Kembla Slab Caster Segment
Workshop Industrial Award

²¹ See NSW Government, Supplementary Submission to the AIRC- Award Modernisation June 2008, paras 2-10.

MM Kembla Products (Clerical and Administrative Employees)
Enterprise Award
OneSteel Manufacturing Pty Ltd Newcastle Rod and Bar Award
OneSteel Trading Pty Ltd Newcastle Award
OneSteel Wire Pty Ltd Newcastle Fence Post Plant Award
OneSteel Wire Pty Ltd Newcastle Wiremill Award
OneSteel Wire Pty Ltd Ropes Award
QCM (Ozrock) Pty Ltd and Australian Workers' Union, Port Kembla
(State) Award
Sandvik Hard Materials Mayfield (State) Award
Sandvik Mayfield (State) Award
Sandvik Smithfield (State) Award 1999
Smorgon Steel Group - Reinforcing and Steel Products Division -
Manufacturing and Grinding Media Waratah - Award 2006
The Integrated Steel Mill Services Pty Limited Enterprise Award 2003-
2006
Tomago Aluminium Smelter AP22 Capacity Expansion Project Consent
Award 2002
Transfield Services (Australia) Pty Ltd (Port Kembla Steelworks) Facility
Maintenance Award 2004 – 2007
Transfield Services (Australian) Pty Ltd (Port Kembla Steelworks)
Maintenance Award 2004 – 2007
Unions NSW Port Kembla Steelworks Construction Award 2006

Industry Analysis Prepared for the NSW Office of Industrial Relations

101. The following analysis was prepared by the Workplace Research Centre at the request of the NSW Office of Industrial Relations to contribute to submissions to the Award Modernisation process currently being conducted by the Commission. It relates to a number of the fourteen priority industries and occupations that are under review, including the metal industry.
102. The analysis provides valuable information on the working lives of Australians in this industry including working conditions, the labour contract, earnings and hours worked and attitudes to work. The survey collected data on a range of topics including workplace profile, methods of setting pay and conditions, wages and entitlements and managers' attitudes.
103. It is expected the data at Appendix A will be a valuable source of information and assist the Commission in its deliberations during the Award Modernisation process.

Appendix A

Industry Analysis: *Metal Manufacturing*

Analysis prepared for the
NSW Office of Industrial Relations

Workplace Research Centre,
The University of Sydney
July 2008

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Introduction

This analysis was prepared at the request of the NSW Office of Industrial Relations to contribute to their submissions to the Award modernisation process currently being conducted by the Australian Industrial Relations Commission. This analysis relates to industries and occupations that are under review including metal manufacturing.

The research questions driving the analysis are:

- What are the employment and industrial relations characteristics of employees who will be affected by the award modernisation process?
- In particular, what are the industrial arrangements of employees working in metal manufacturing?

This analysis draws on data from two sources: the Australia at Work study and the Eastern Seaboard Workplace and Industrial Relations Survey (ESWIRS) of Queensland, New South Wales and Victoria. Australia at Work is a survey of 8,341 people who were in the labour force in March 2006 (prior to the introduction of *WorkChoices*). It provides valuable information on the working lives of Australians from the respondent's perspective including working conditions, the labour contract, earnings and hours worked, attitudes to work and stage in the life course. This analysis uses weighted data on the employment situation in 2007. ESWIRS is a telephone survey of 1,071 workplace managers that was conducted in 2006. The survey collected data on a range of topics including workplace profile, methods of setting pay and conditions, wages and entitlements and managers' attitudes.

Analysis Groups – Australia at Work

The metal manufacturing industry has been disaggregated into two sectors: primary metal manufacturing, and transport and machinery manufacturing. Primary metal manufacturing includes Australian New Zealand Standard Industry Classification (ANZSIC) codes 2100 to 2299, including primary metal and fabricated metal manufacturing. Transport and machinery manufacturing includes ANZSIC codes 2300 to 2499 including transport equipment manufacturing, and machinery and equipment manufacturing.

Analysis Groups – ESWIRS

The bulk of the analysis is conducted using the Australia at Work study due to the precise industry and occupational coding used in this study. The ESWIRS methodology is quite different to the Australia at Work methodology and as a result the data are not compatible. Where Australia at Work surveys individuals and is able to report on employee experiences, ESWIRS reports on workplaces. The respondents in ESWIRS are workplace managers who answer questions relating to their workplaces.

ESWIRS also differs from Australia at Work in coding of industry. While Australia at Work uses the ANZSIC industry coding provided by the Australian Bureau of Statistics, ESWIRS uses Dun & Bradstreet coding. Due to the convention of the Dun

& Bradstreet sampling frame, as well as the sample sizes in ESWIRS, industry analysis will be confined to manufacturing (and not metal manufacturing more precisely). The manufacturing industries are consistent with ANZSIC coding.

Like the data from Australia at Work, the ESWIRS data set relies on the judgement of respondents. Accordingly, the data presented in the tables on dominant agreements may in some ways be considered more accurate than employees' knowledge of agreement types, but as it is based on personal understanding, rather than administrative data, it should not be considered an objective assessment of agreements in workplaces. Instead, it complements the data presented from Australia at Work on agreement types.

Metal Manufacturing

There are just over 400,000 employees in the metal manufacturing industry. These employees are predominantly male (80 per cent), Table 2.1. There are more employees in transport and machinery manufacturing – comprising of 63 per cent of metal manufacturing employees - than in primary metal manufacturing. The gender distribution is the same in both sectors of the metal manufacturing industry.

Table 2.1: Sex by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
Male	79	121,115	80	209,518	80	330,633
Female	21	31,887	20	52,013	20	83,900
Total	100	153,002	100	261,531	100	414,533

Source: Australia at Work, Wave 1

Employees in the metal manufacturing industry have a similar age distribution pattern to employees in the wider labour market (please refer to Table 2 in Appendix A for the age distribution of all employees). Over half (54 per cent) of employees in metal manufacturing are aged between 35 and 54 years, Table 2.2. There are a smaller proportion of employees aged under 25 years in the primary metal manufacturing industry.

Table 2.2: Age by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
16 – 19	4	6,787	11	28,500	9	35,287
20 – 24	11	17,156	8	21,272	9	38,428
25 – 34	22	34,725	20	52,751	21	87,476
35 – 44	28	42,839	29	74,952	28	117,791
45 – 54	23	36,496	26	69,074	26	105,570
55 +	9	13,102	6	14,983	7	28,085
Refused	1	1,897	0	0	1	1,897
Total	100	153,002	100	261,532	100	414,534

Source: Australia at Work, Wave 1

Permanent employment is widespread in the metal manufacturing industry, Table 2.3, with more than four fifths of employees employed on a permanent basis (89 per cent for both primary metal manufacturing and transport and machinery manufacturing). One in ten employees are casuals, while very few employees are employed on fixed term contracts.

Table 2.3: Form of Employment by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
Permanent	89	136,448	89	232,164	89	368,612
Fixed term	2	3,534	2	4,280	2	7,814
Casual	9	13,021	10	25,087	9	38,108
Total	100	153,003	100	261,531	100	414,534

Source: Australia at Work, Wave 1

The rate of part-time employment among all Australian male employees is comparatively low —17 per cent for men and 53 per cent for women (see Appendix A, Table 4). As metal manufacturing is a male-dominated industry it is no surprise that part-time employment is uncommon, only 7 per cent of jobs in this industry are part-time, Table 2.4. This is compared to 34 per cent of all jobs in the labour market being part-time. Table 2.4 also shows that within metal manufacturing that women are more likely to hold part-time jobs. But again, the rate of female part-time employment in this industry is low compared to the wider labour market, with 21 per cent of women employed part-time in this industry compared to 53 per cent of all female employees in part-time jobs. The incidence of part-time employment does not significantly differ between the two metal manufacturing sectors.

Table 2.4: Employment status by sex, Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
<i>Male</i>						
Part-time	3	3,605	4	8,700	4	12,305
Full-time	97	117,510	96	200,819	96	318,329
<i>Female</i>						
Part-time	25	8,037	18	9,565	21	17,602
Full-time	75	23,850	82	42,448	79	66,298
<i>All</i>						
Part-time	8	11,642	7	18,264	7	29,906
Full-time	92	141,360	93	243,267	93	384,627
Total	100	153,002	100	261,531	100	414,533

*n<30

Source: Australia at Work, Wave 1

Using ESWIRS we know that manufacturing workplaces' hours of operation are generally consistent with all workplaces, Table 2.5. Most manufacturing workplaces (44 per cent) are open for less than 40 hours each week, which is consistent with a 9 to 5, five day a week operation. Only 4 per cent of manufacturing workplaces are open 24 hours a day, 7 days a week, similar to the average of 5 per cent.

Table 2.5: Hours of operation each week by Manufacturing Workplaces, 2006, per cent

	Manufacturing workplaces	All workplaces
Less than 40 hours per week	44	37
41 to 48 hours per week	10	15
49 to 56 hours per week	20	19
57 to 167 hours per week	22	23
168 hours per week (Open 24/7)	4	5
Total	100	100

Source: ESWIRS

‘Standard’ full-time hours of work appear to be prevalent in the manufacturing industry. For the majority (70 per cent) of workplaces in the manufacturing industry, the average shift length is between 8 and 10 hours, Table 2.6. While the workplaces with long shifts (over 10 hours) is similar to the average of workplaces in all industries, short shifts (under 8 hours) in manufacturing workplaces are less common compared to all workplaces (15 per cent compared to 28 per cent).

Table 2.6: Length of most common shift by Manufacturing Workplaces, 2006, per cent

	Manufacturing workplaces	All workplaces
Under 8 hours	15	28
8 to 10 hours	70	56
10 or more hours	15	16
Total	100	100

Source: ESWIRS

The skill level at which employees are working differs among the two sectors in metal manufacturing, Table 2.7. In primary metal manufacturing there are a higher proportion of employees in the lower skill levels (Levels 4 and 5). Half (52 per cent) of employees in this sector are employed at the bottom two skill levels compared to only 29 per cent in transport and machinery manufacturing. In this sector, nearly three quarters (73 per cent) of workers are working in high skilled jobs, predominantly at skill levels 1 and 3.

Table 2.7: Skill level by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>
Level 1	21	31,242	31	80,182	27	111,424
Level 2	6	9,604	8	20,738	7	30,342
Level 3	21	31,725	33	86,446	29	118,171
Level 4	39	58,616	23	59,714	29	118,330
Level 5	13	19,452	6	14,453	8	33,905
Total	100	150,639	100	261,533	100	412,172

Source: Australia at Work, Wave 1

In relation to the wider labour market, the metal manufacturing industry has a lower proportion of high skilled jobs and a higher proportion of mid-skill level jobs, equivalent to trade-qualified positions. Nearly half (47 per cent) of Australian employees are employed in the top two skill levels compared to only 34 per cent of metal manufacturing employees. Whereas the bulk (58 per cent) of metal manufacturing employees are employed at skill levels 3 and 4, compared to 36 per

cent of all Australian employees. This is an important finding with implications for the bargaining power of employees in the metal manufacturing industry. *Australia at Work: The Benchmark Report* found that employees in the top three skill levels have a higher degree of bargaining power that enabled them to negotiate better pay outcomes on an individual basis, while low skilled employees tend to rely on collective bargaining for better pay and hours outcomes.

Table 2.8 expands on the findings regarding skill level and displays the occupational distribution in this industry. While the largest occupation in the whole metal manufacturing industry is technicians and trades, with one third (32 per cent) of employees in this occupation, the occupation distribution is quite different between the primary metal manufacturing and transport and machinery manufacturing sectors. Over two thirds (68 per cent) of employees in transport and machinery manufacturing are employed in the usually higher skilled occupations of managers, professionals or technicians and trades. The largest occupations in primary metal manufacturing are machinery operators and drivers (28 per cent) followed by technicians and trades (25 per cent). Primary metal manufacturing also has a larger proportion of workers in the low skilled jobs of labourers (12 per cent) and machinery operators and drivers (28 per cent).

Table 2.8: Occupation by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
Managers	13	19,577	17	43,439	15	63,016
Professionals	8	11,664	16	40,736	13	52,400
Technicians and trades	25	37,371	35	92,304	32	129,675
Clerical and admin	12	17,803	17	43,817	15	61,620
Sales workers	3	4,939	4	10,412	4	15,351
Machinery operators & drivers	28	41,551	7	18,175	15	59,726
Labourers	12	17,733	5	12,649	7	30,382
<i>Total</i>	100	150,638	100	261,532	100.	412,170

Source: Australia at Work, Wave 1

In relation to the broader labour market, the metal manufacturing industry has a commensurate number of managers, clerical and administrative workers and labourers (see Appendix A, Table 6). The proportion of technicians and trades workers in metal manufacturing is almost three times of that in the wider labour market (32 per cent compared to 12 per cent), along with the proportion of labourers (15 per cent of metal manufacturing employees compared to 5 per cent of all employees).

Table 2.9 shows that average usual hours of full-time employees in metal manufacturing are comparable to the Australian average of 44 hours per week. There is evidence of some unpaid hours – an average of 2 unpaid hours a week – as metal manufacturing employees are paid for 42 hours per week on average. Average hours and rates of pay are consistent across both sectors in the metal manufacturing industry. The average hourly rate of \$24 across the industry is comparable to the national average of \$25 for full-time non-managerial employees.

Table 2.9: Full-time non-managerial employees' average hours and hourly pay by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing <i>Mean</i> <i>N = 111,002</i>	Transport and Machinery Manufacturing <i>Mean</i> <i>N = 174,711</i>	Total Metal Manufacturing <i>Mean</i> <i>N = 285,714</i>
Usual hours	45	44	44
Paid hours	43	42	42
Average hourly rate	\$24	\$24	\$24

Source: Australia at Work, Wave 1

Large workplaces are easier for unions to organise and therefore representation is often higher in these workplaces. Further, it is less cost-effective for smaller employers to negotiate a collective agreement at their workplace and therefore, these employers often rely on established award arrangements or more informal individual contracts for establishing pay and conditions. Due to the large amount of capital required in manufacturing, workplaces tend to be larger. There are more people employed in medium to large workplaces (68 per cent) than in smaller ones, Table 2.10. This finding does not differ across sectors and is generally reflective of workplaces across the board (see Appendix A, Table 11).

Table 2.10: Workplace Size by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Transport and Machinery Manufacturing	
	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>
Less than 20 employees	34	51,645	31	80,384	32	132,029
20 to 100 employees	27	41,808	38	99,346	34	141,154
More than 100 employees	39	58,725	31	78,841	34	137,566
<i>Total</i>	100	152,178	100	258,571	100	410,749

Source: Australia at Work, Wave 1

At 15 per cent of metal manufacturing employees, union membership is comparable to all private sector employees in the labour market (see Appendix A, Table 8). Similar to all private sector employees, 12 per cent of metal manufacturing employees would like to be a union member but are not currently one (Table 2.11). Employees in primary metal manufacturing are more likely to be union members (20 per cent) than those in transport and machinery manufacturing (13 per cent).

Table 2.11: Union membership and workplace presence by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
<i>Union membership</i>						
Union member	20	30,483	13	33,595	15	64,078
Unrepresented worker	11	17,382	12	31,314	12	48,696
Satisfied non-member	68	103,521	75	196,623	72	300,144
Don't know	1	1,617	0	0	0	1,617
<i>Union represented in the workplace</i>						
Yes	40	61,223	25	66,612	31	127,835
No	58	87,979	64	168,325	62	256,304
Don't know	2	3,801	10	26,594	7	30,395
Total	100	153,003	100	261,531	100	414,534

Source: Australia at Work, Wave 1

Australia at Work respondents were asked if a union was represented in their workplace – in attempt to understand the visibility and presence of unions in the workplace. Overall, 30 per cent of all private sector employees said a union is represented in their workplace – again, comparable to metal manufacturing, with 31 per cent of employees in this industry reporting union presence. Union presence tends to be reported by twice as many people who report union membership – this is consistent across both sectors, the industry and the wider labour market.

In the Australia at Work survey, respondents were asked what type of agreement set out their pay and conditions. If they did not know the answer immediately they were asked a series of questions relating to how pay and conditions are negotiated with their employer. The Australian Bureau of Statistics reports on instruments that set pay using employer reports.²² The *Australia at Work* data found that a higher proportion of employees believe that they rely entirely on the award system for their pay and conditions, compared to employer reports; while collective enterprise agreements were notably underestimated.²³ However, the overall balance of collective and individual instruments from employee and employer reports is similar.

The most commonly reported instrument for setting pay and conditions in the metal manufacturing sector is awards – in total 29 per cent of employees reported this arrangement, Table 2.12. However, compared to the wider labour market, the incidence of award only arrangements is relatively low. One-third (32 per cent) of all employees rely on award only arrangements compared to only 18 per cent of metal manufacturing employees. The proportion of over-award arrangements in metal manufacturing is similar to the wider labour market (11 per cent compared to 9 per cent, respectively). The lower incidence of basic award arrangements is a result of more employees in this industry reporting individual arrangements – both common law agreements (25 per cent compared to 19 per cent of all employees) and AWAs (10 per cent of metal manufacturing employees compared to 6 per cent of all employees). Employees in this industry are no more likely to report collective agreements at the enterprise level, than employees in the broader labour market.

²² Australian Bureau of Statistics (2007) *Employee Earnings and Hours May 2006 (Reissue)*, Catalogue 6306.0, ABS, Canberra.

²³ van Wanrooy, B., Oxenbridge, S., Buchanan, J. and Jakaubaukas, M. (2007) *Australia at Work: The Benchmark Report*, Workplace Research Centre, Sydney.

Table 2.12 Self-reported Agreement Type by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Total Metal Manufacturing	
	%	N	%	N	%	N
Award only	15	23,687	20	51,599	18	75,286
Over-award	12	17,708	10	26,921	11	44,629
Collective agreement w/ Union	17	25,365	10	27,230	13	52,595
Collective agreement w/o Union	3	4,670	10	26,979	8	31,649
Collective agreement DK Union	3	5,105	1	1,676	2	6,781
Individual common law	20	30,167	28	73,748	25	103,915
AWA	10	14,971	10	25,720	10	40,691
Other	1	1,253	0	0	0	1,253
No agreement	4	6,521	2	6,409	3	12,930
Don't Know / Refused	15	23,554	8	21,249	11	44,803
Total	100	153,001	100	261,531	100	414,532

Source: Australia at Work, Wave 1

Earlier we saw that primary metal manufacturing employees tend to be employed in lower skilled jobs. Low paid and lower skilled jobs often have the protection of the award system and do not tend to rely on individual common law contracts. Substantial proportions of employees in both metal manufacturing sectors report award based agreements (27 per cent in primary metal, 30 per cent in transport and machinery). The notable differences between the two sectors is reliance on individual common law contracts, involvement of the union in enterprise agreements and knowledge of agreement type. Over a quarter (28 per cent) of transport and machinery manufacturing employees report individual common law agreements, compared to only one-fifth of primary metal manufacturing employees. This is reflective of the higher proportion of employees in higher skilled jobs, where negotiating individual agreements is more common. Although there is not a higher proportion of the lower skilled primary metal manufacturing employees on awards, there is a higher proportion of union-negotiated enterprise agreements in this sector (17 per cent compared to 10 per cent of transport and machinery manufacturing employees). Conspicuously, 15 per cent of employees in primary metal manufacturing do not know how their pay and conditions are set. This is a lower level of knowledge compared to the broader labour market in which only 8 per cent could not report their agreement type.

Australia at Work respondents were asked a series of questions regarding the industrial instrument that determine their pay and conditions and how their terms of employment are negotiated. To begin with participants were asked if they had an award, agreement or contract of some sort and if so, whether an award plays a role in their conditions. Just under half (46 per cent) of employees in metal manufacturing reported that an award played a role in their pay and conditions, Table 2.13. This is lower than the national average – 58 per cent of all employees say that an award plays a role in their pay and conditions (Appendix A, Table 10). The results do not differ across the metal manufacturing sectors.

Table 2.13: Award plays a role in pay and conditions by Metal Manufacturing Industry, 2007

	Primary Metal Manufacturing		Transport and Machinery Manufacturing		Transport and Machinery Manufacturing	
	%	N	%	N	%	N
Yes	45	69,137	46	120,752	46	189,889
No	50	75,948	47	123,741	48	199,689
Don't know / Refused	5	7,916	6	17,038	6	24,954
<i>Total</i>	100	153,001	100	261,531	100	414,532

Source: Australia at Work, Wave 1

According to workplace managers, awards are the most common instrument they use to set employees' pay and conditions, Table 2.14. In fact, it is over-awards that are most popular in the manufacturing industry (36 per cent of workplaces), this is slightly higher than the workplace average of 31 per cent. A further one fifth (19 per cent) of manufacturing workplaces have individual agreements as the dominant agreement type, though this is much lower than the average of 29 per cent of all workplaces. Manufacturing workplaces are more likely to have collective agreements in place compared to all workplaces (16 per cent compared to 10 per cent, respectively).

Table 2.14: Dominant agreement type (≥60% of workplaces) by Manufacturing Workplaces, 2006, per cent

	Manufacturing workplaces	All workplaces
Award only	7	15
Over-award	36	31
Collective agreement	16	10
Individual agreements	19	29
No dominant agreement type in workplace	22	16
<i>Total</i>	100	100

Source: ESWIRS

Manufacturing managers' preferred method of setting wages and conditions is generally similar to the preference of all managers, Table 2.15. Around two fifths (38 per cent) of managers prefer informal individual agreements, similar to all workplaces (43 per cent). A further one quarter (25 per cent) in both manufacturing and all workplaces prefer over-awards. There are a higher proportion of manufacturing managers who would prefer to set their wages and conditions by collective agreement compared to all managers (19 per cent compared to 11 per cent).

Table 2.15: Managers' preferred method of setting wages and conditions by Manufacturing Workplaces, 2006, per cent

	Manufacturing workplaces	All workplaces
Union collective agreements	10	6
Non-union collective agreements	9	5
Award rates of pay	7	13
Over-awards	25	25
Informal individual agreements	38	43
AWAs	10	7
<i>Total</i>	100	100

Source: ESWIRS

An interesting comparison can be made between Tables 2.14 and 2.15. While informal individual agreements are the preferred method of setting wages and conditions by two-fifths (38 per cent) of managers in manufacturing workplaces, only 19 per cent of managers cite this as the dominant agreement type in their workplace. Further, while over-award is the dominant agreement type in one third (36 per cent) of workplaces, only one quarter (25 per cent) of managers cite this as their preferred method.

Appendix A: Tables for all Australian employees

Table 1: Sex, All employees, 2007

	%	N
Male	52	4,171,204
Female	48	9,793,842
Total	100	7,965,046

Source: Australia at Work, Wave 1

Table 2: Age, All employees, 2007

	%	N
16 – 19	8	621,388
20 – 24	13	1,025,870
25 – 34	18	1,419,187
35 – 44	30	2,359,354
45 – 54	24	1,906,744
55 +	7	583,323
Refused	1	49,180
Total	100	7,965,046

Source: Australia at Work, Wave 1

Table 3: Form of Employment, All employees, 2007

	%	N
Permanent	72	5,711,837
Fixed term	6	493,338
Casual	22	1,759,871
Total	100	7,965,046

Source: Australia at Work, Wave 1

Table 4: Employment status by sex, All Employees, 2007

	%	N
<i>Male</i>		
Part-time	17	725,004
Full-time	83	3,443,785
Refused	0	2,415
<i>Female</i>		
Part-time	53	2,012,033
Full-time	47	1,781,809
<i>All</i>		
Part-time	34	2,737,037
Full-time	66	5,225,594
Refused	0	2,415
Total	100	7,965,046

Source: Australia at Work, Wave 1

Table 5: Skill level, All employees, 2007

	%	N
Level 1	36	2,863,038
Level 2	11	862,046
Level 3	12	984,125
Level 4	24	1,923,084
Level 5	16	1,305,395
<i>Total</i>	100	7,937,688

Source: Australia at Work, Wave 1

Table 6: Occupation, All employees, 2007

	%	N
Managers	14	1,087,266
Professionals	25	1,978,291
Technicians and trades	12	917,992
Community and personal service workers	10	802,400
Clerical and administrative workers	17	1,318,817
Sales workers	10	797,811
Machinery operators and drivers	5	412,232
Labourers	8	623,975
<i>Total</i>	100	7,940,560

Source: Australia at Work, Wave 1

Table 7: Hours and pay, All employees, 2007

	Mean	N
Usual hours		
Part-time	20	2,318,426
Full-time	44	3,763,631
Paid hours		
Part-time	19	2,318,426
Full-time	41	3,763,631
Average hourly rate		
Part-time	21	2,318,426
Full-time	25	3,763,631

Source: Australia at Work, Wave 1

Table 8: Union membership and workplace presence by sector, 2007

	Private Sector		Public Sector		All Employees	
	%	N	%	N	%	N
<i>Union membership</i>						
Union member	15	905,089	42	849,263	22	1,762,053
Unrepresented worker	10	581,562	11	227,185	10	822,911
Satisfied non-member	73	4,301,090	45	906,766	66	5,264,221
Don't know	2	89,966	1	25,101	1	115,862
<i>Union represented at the workplace</i>						
Yes	30	1,778,556	76	1,524,734	42	3,339,701
No	58	3,386,402	17	333,875	47	3,743,473
Don't know	12	712,749	7	149,706	11	881,872
<i>Total</i>	100	5,877,707	100		100	7,965,046

Source: Australia at Work, Wave 1

Table 9: Self-reported Agreement Type, All employees, 2007

	%	<i>N</i>
Award only	32	2,516,368
Over-award	9	730,124
Collective agreement w/ Union	14	1,114,035
Collective agreement w/o Union	6	461,117
Collective agreement DK Union	2	169,627
Individual common law	19	1,491,985
AWA	6	442,850
Other	0	17,066
No agreement	5	376,383
Don't Know / Refused	8	645,492
Total	100	7,965,047

Source: Australia at Work, Wave 1

Table 10: Award plays a role in setting agreement, All employees, 2007

	%	<i>N</i>
Yes	58	3,959,804
No	34	2,322,396
Don't know / Refused	8	571,095
Total	100	6,853,295

Source: Australia at Work, Wave 1

Table 11: Workplace Size, All employees, 2007

	%	<i>N</i>
Less than 20 employees	33	2,571,223
20 to 100 employees	35	2,736,169
More than 100 employees	32	2,513,191
Total	100	7,820,583

Source: Australia at Work, Wave 1

Appendix B: Sample Counts

	Metal Manuf.	Transport & Machinery Manuf.	Total Metal Manuf.	Super-market	Recreation, Clothing & Dept Store	Total Retail	Accomm.	Food & Beverage	All Hospitality	Public Sector Clerks	Private Sector Clerks	Total Clerks
Sex												
Male	86	154	240	88	41	275	24	102	126	115	184	299
Female	20	35	55	110	116	371	37	157	194	207	522	729
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1028
Age												
16 – 19	5	17	22	63	44	152	2	107	109	8	30	38
20 – 24	7	14	21	43	49	147	12	61	73	28	117	145
25 – 34	28	41	69	22	24	100	9	30	39	61	129	190
35 – 44	34	59	93	39	13	127	18	29	47	107	217	324
45 – 54	22	49	71	26	22	92	16	23	39	97	149	246
55 +	9	9	18	4	4	26	3	6	9	21	54	75
Refused	1	0	1	1	1	0	1	3	4	0	10	10
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	696	1018
Workplace Size												
Less than 20	34	53	87	12	85	276	15	102	117	57	295	352
20 to 100	31	72	103	102	40	222	28	128	156	97	227	324
More than 100	40	62	102	78	28	137	17	26	43	161	177	338
<i>Total</i>	105	187	292	192	153	635	60	256	316	315	699	1,014
Form of Employment												
Permanent	97	169	266	100	57	338	29	73	102	270	531	801
Fixed term	2	3	5	4	2	12	1	8	9	31	33	64
Casual	7	17	24	94	98	296	31	178	209	21	142	163

<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1028
Occupation												
Managers	14	30	44	13	10	61	12	23	35	-	-	-
Professionals	8	29	37	3	0	24	0	2	2	-	-	-
Technicians and trades	30	68	98	9	1	31	3	44	47	-	-	-
Community & personal service workers	0	0	0	0	1	1	10	104	114	-	-	-
Clerical & administrative workers	11	29	40	10	12	53	10	5	15	322	706	1028
Sales workers	3	8	11	118	128	408	3	17	20	-	-	-
Machinery operators & drivers	24	15	39	11	2	23	1	5	6	-	-	-
Labourers	14	10	24	34	3	45	22	59	81	-	-	-
<i>Total</i>	104	189	293	198	157	646	61	259	320	322	706	1028
Skill Level												
Level 1	22	57	79	5	4	42	3	3	6	0	0	0
Level 2	6	16	22	11	8	57	10	24	34	82	131	213
Level 3	26	62	88	12	2	34	4	45	49	31	85	116
Level 4	36	43	79	33	18	114	17	81	98	183	455	638
Level 5	14	11	25	137	125	399	27	106	133	26	35	61
<i>Total</i>	104	189	293	198	157	646	61	259	320	322	706	1,028
Usual & Paid hours												
Part-time	5	11	16	127	117	342	25	169	194	80	244	324
Full-time	76	129	205	45	22	190	19	46	65	213	376	589
<i>Total</i>	81	140	221	172	139	532	44	215	259	293	620	913
Average hourly rate												
Part-time	5	11	16	127	117	342	25	169	194	80	244	324
Full-time	76	129	205	45	22	190	19	46	65	213	376	589
<i>Total</i>	81	140	221	172	139	532	44	215	259	293	620	913

Self-reported agreement type												
Award only	18	38	56	75	57	232	27	93	120	118	191	309
Over-award	14	20	34	10	13	58	8	26	34	19	81	100
Collective agreement w/ Union	20	25	45	40	15	69	2	9	11	103	69	172
Collective agreement w/o Union	2	16	18	6	5	26	3	14	17	18	46	64
Collective agreement DK Union	4	2	6	6	3	18	2	3	5	15	18	33
Individual common law	21	52	73	9	9	37	0	0	0	0	0	0
AWA	11	16	27	19	16	86	0	16	16	21	45	66
Other	1	0	1	0	0	1	6	29	38	14	161	175
No agreement	4	5	9	12	12	38	7	26	33	3	39	42
Don't Know / Refused	11	15	26	21	27	81	3	41	44	11	55	66
Total	106	188	295	198	157	646	61	257	318	322	705	1027
Award Role												
Yes	52	89	141	114	92	365	40	135	175	221	356	577
No	47	89	136	57	47	209	17	91	108	75	294	369
Don't know / Ref	7	11	18	27	18	72	4	33	37	26	56	82
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1,028