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## Research Report 2/2012

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### **Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report**

Michael Preston, Alice Pung, Elizabeth Leung, Chantelle Casey,  
Alice Dunn and Olaf Richter  
Minimum Wages and Research Branch—Fair Work Australia

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The contents of this paper are the responsibility of the authors and the research has been conducted without the involvement of members of the Minimum Wage Panel of Fair Work Australia.

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Phone: 1300 799 675  
Email: [inquiries@fwa.gov.au](mailto:inquiries@fwa.gov.au)

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- Australian Chamber of Commerce and Industry;
- Australian Industry Group;
- Australian Council of Social Services;
- Australian Council of Trade Unions;
- the Australian Government; and
- state and territory governments.

This report, *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report*, is the work of Michael Preston, Alice Pung, Elizabeth Leung, Chantelle Casey, Alice Dunn and Olaf Richter of the Minimum Wages and Research Branch, Fair Work Australia.

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The *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report* is intended to provide guidance to Fair Work Australia staff engaged in analysing modern award coverage as part of the *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006* project. It is not intended to be used for any other purpose.

This report does not provide any legal opinion or advice, including legal opinion or advice in relation to the coverage of modern awards. The content is the work of Fair Work Australia staff and does not reflect a view or determination of any member of Fair Work Australia in relation to modern award coverage.



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## List of abbreviations

ABS	Australian Bureau of Statistics
ANZSIC	ABS, <i>Australian and New Zealand Standard Industrial Classification 2006</i> (Revision 1.0), Catalogue No. 1292.0 (ABS, 2008)
AWA	Australian Workplace Agreement
Clerks Award	<i>Clerks—Private Sector Award 2010</i> [MA000002]
Commission	Australian Industrial Relations Commission
EEH	ABS, <i>Employee Earnings and Hours, Australia, May 2010</i> , Catalogue No. 6306.0 (ABS, 2010)
Fair Work Act	<i>Fair Work Act 2009</i> (Cth)
Food Manufacturing Award	<i>Food, Beverage and Tobacco Manufacturing Award 2010</i> [MA000073]
ITEA	Individual Transitional Employment Agreement
Long Distance Transport Award	<i>Road Transport (Long Distance Operations) Award 2010</i> [MA000039]
Manufacturing Award	<i>Manufacturing and Associated Industries and Occupations Award 2010</i> [MA000010]
Miscellaneous Award	<i>Miscellaneous Award 2010</i> [MA000104]
Panel	Minimum Wage Panel of Fair Work Australia
Project	<i>Analysing modern award coverage using the Australia and New Zealand Standard Industrial Classification 2006 project</i>
Retail Award	<i>General Retail Industry Award 2010</i> [MA000004]
Textile, Clothing and Footwear Award	<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i> [MA000017]
Transitional Act	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)
Transport Distribution Award	<i>Road Transport and Distribution Award 2010</i> [MA000038]



## Executive summary

This report examines whether it is possible to map modern award coverage to the Class/4 digit code level of the *Australian and New Zealand Standard Industrial Classification 2006* (ANZSIC), and the limitations of this mapping. It also discusses the extent to which any map produced may assist in identifying matters such as award reliance and parts of industries that may be award free.

This report is phase 1 of the *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006 project*, which forms part of a broader research agenda on award reliance.

## Modern award mapping

Modern award mapping is the process of comparing the coverage of a modern award with the industry description contained in an ANZSIC Class/4 digit code in order to assess the degree to which they overlap.

The report develops a framework for mapping modern awards, based on the idea that mapping is possible to the extent that modern awards and ANZSIC describe industries in a similar way—ANZSIC for the purpose of classification, and modern awards to express their coverage.

ANZSIC is comprised of a four level hierarchy, with the most detailed industry descriptions provided at the lowest Class/4 digit code level. The mapping framework provides that mapping should occur at this level because the finer industry descriptions available are more likely to map cleanly to modern awards. This 'direct' approach to classification differs from the 'top-down' approach used by the Australian Bureau of Statistics (ABS).

Modern awards contain explicit coverage terms, but it may also be necessary to consider terms dealing with definitions, interpretation, exclusions and classifications. To the extent possible, the framework takes these sources of modern award coverage into account, as well as considering complicating factors such as the potential for overlapping coverage, the existence of occupational modern awards and the unusual coverage of the *Miscellaneous Award 2010*<sup>1</sup> (Miscellaneous Award).

## Analysis using the map of modern award coverage

To facilitate the analysis of data using ANZSIC as a proxy for modern award coverage, a method is proposed for identifying the modern awards that map exclusively or comprehensively to a Class/4 digit code. Each Class/4 digit code is then rated according to the extent to which it maps cleanly to the primary award, with those rated green providing the most robust basis for analysis.

The ABS' Survey of Employee Earnings and Hours (EEH)<sup>2</sup> contains data on employee numbers in each ANZSIC industry whose pay is set by award only, collective agreement or individual arrangement. Where mapping can be successfully undertaken, analysis of data relating to the number of employees that fall into these pay setting categories may inform understanding of the *Fair Work Act 2009* (Cth) (Fair Work Act) modern award coverage and application in particular industries, subject to limitations relating to the availability and composition of data and the mapping process.

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<sup>1</sup> *Miscellaneous Award 2010* [MA000104].

<sup>2</sup> ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0 (ABS, 2010).

A trial mapping exercise was undertaken to test this approach, with two modern awards, the *Textile, Clothing, Footwear and Associated Industries Award 2010*<sup>3</sup> (Textile, Clothing and Footwear Award) and *Road Transport and Distribution Award 2010*<sup>4</sup> (Transport Distribution Award), mapped to nine Class/4 digit codes (Textiles Classes) and two Class/4 digit codes (Transport Classes) respectively. The results of this process were used to obtain customised EEH data from the ABS.

Complete data on methods of setting pay were obtained with relation to non-managerial employees in the aggregated Textiles Classes and aggregated Transport Classes, although many items were subject to high levels of standard error. Similar results were achieved for the method of setting pay by sex variable, while incomplete data (also subject to high standard error) were obtained for full-time/part-time, adult/junior and permanent or fixed term/casual variables.

The amount and precision of data available affect the nature of the conclusions that may be drawn from any analysis. The results of the trial mapping exercise suggest that in some cases, data may be obtained that could assist in the analysis of award reliance and modern award coverage.

The report also discusses examples drawn from the trial mapping exercise in examining the extent to which mapping may enable the identification of potentially award free industry sectors.

### **Limitations on modern award mapping and analysis**

The report identifies a number of limitations on the extent to which modern awards can be mapped to ANZSIC or any resultant map used as an analytical tool.

The first of these concerns the composition of the EEH data. The ABS's approach to classification means that in some instances an employer may be classified to an industry even where a smaller part of its operations and employees operate in a different industry. Further, the EEH's method of setting pay categories do not fit exactly with the Fair Work Act concepts of modern award coverage and application. For example, the 'award only' category may include employees to which instruments other than modern awards, such as award-based transitional instruments, cover or apply. This means that, even where a modern award can be robustly mapped to a Class/4 digit code, analysis of the underlying data is subject to these caveats.

Another constraint stems from the presence of occupational modern awards. Because of the industry focus of ANZSIC, it may not be possible to quantify the extent of occupational coverage within industry classifications as part of the mapping process. This may mean occupational modern awards can be mapped only in a limited way (or in, some cases, not at all) and make it more difficult to get a clear picture of modern industry award coverage within Class/4 digit codes. It also may not be possible to map areas of overlapping modern award coverage in some instances.

The possible absence of primary awards, or of those with the preferred green rating, relating to some Class/4 digit codes also represents a potential limitation on mapping and analysis. For example, the Transport Distribution Award was found to map as a primary award to two Class/4 digit codes, but one of these could not be rated green because of the presence of several awards with secondary coverage. In these cases, the weaker relationship between the primary award and the Class/4 digit code dilutes the strength of the conclusions that can be drawn from any analysis; in other cases no analysis may be possible.

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3 *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017].

4 *Road Transport and Distribution Award 2010* [MA000038].

Finally, mapping limitations occur where the correlation between modern award coverage and ANZSIC is unclear or there is insufficient information. Mapping may be hindered where a modern award or Class/4 digit code is not detailed in its coverage/industry description or contains technical terminology, particularly with relation to identifying potentially award free sub-industries. The potential coverage of ongoing award-based transitional instruments, which are not mapped as part of the mapping framework, also represents a limitation.

### **Findings of initial mapping and potential for future mapping**

The report finds that these limitations are likely to affect the extent to which mapping may be possible and, where it is possible, the robustness of the analysis using the map produced. The effect may vary between each modern award and Class/4 digit code mapped and be difficult to quantify. This means that, whenever it is proposed that data relating to a particular industry may be analysed using ANZSIC as a proxy for modern award coverage, the underlying mapping must be considered so that these limitations can be taken into account.

Notwithstanding these limitations, if a comprehensive mapping exercise is undertaken, it is likely that the results of this process could assist in identifying modern award coverage which fits cleanly with one or more Class/4 digit codes. Where this occurs, then quantitative analysis of data derived from the EEH on methods of setting pay may cast light on the extent of award reliance and coverage.

As a corollary of mapping, the mapping framework may also identify industries or part of industries that may be award free or subject to Miscellaneous Award coverage. However, it will not be possible to produce an exhaustive list of such coverage.



## Introduction

Modern awards are part of the safety net of minimum wages and conditions created under the *Fair Work Act 2009* (Fair Work Act).<sup>1</sup> The capacity of modern awards to perform this role relates in part to their coverage of employers and employees. Consequently, there is a relationship between modern award coverage and the extent and nature of the safety net.

The Minimum Wage Panel of Fair Work Australia (Panel) is required under the Fair Work Act to conduct an annual wage review, during which it may set, vary or revoke one or more modern award minimum wages<sup>2</sup> and must make a national minimum wage order which sets specific wages for award/agreement free employees.<sup>3</sup> In conducting the review, the Panel is required to establish and maintain a safety net of fair minimum wages in accordance with the minimum wages objective, as outlined in s.284 of the Fair Work Act.<sup>4</sup>

The Panel has recognised that award reliance is relevant to the minimum wage setting process, stating in its decision for the Annual Wage Review 2009–10 that to inform future reviews it was seeking research ‘directed to a more precise identification of the extent and composition of the award-reliant sector’.<sup>5</sup>

The *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006 project* (Project) forms part of this award reliance research agenda. The Project will investigate whether a framework can be developed for mapping modern award coverage to the *Australian and New Zealand Standard Industrial Classification 2006* (ANZSIC). To the extent this proves possible it will provide the basis to produce a ‘map’ of modern award coverage to inform a more detailed understanding of award reliance.

The Project also aims to fill gaps in the data available on award reliance and modern award coverage as identified in *Research Report 4/2011—Research Framework and Data Strategy* prepared for Fair Work Australia by the National Institute for Labour Studies.<sup>6</sup>

The Project will be carried out in two phases. This report presents the findings of phase one, which investigates whether it is possible to develop a framework for mapping modern awards to ANZSIC industry codes<sup>7</sup> (at the Class/4 digit level) and the extent to which applying that framework may generate results that can provide the basis for a robust analysis of data sources, in particular data obtained through the Survey of Employee Earnings and Hours (EEH) conducted by the Australian Bureau of Statistics (ABS),<sup>8</sup> that may yield information on modern award coverage and award reliance.

If a viable modern award mapping framework can be developed, it is intended that the focus of phase 2 of the Project would be to undertake a comprehensive mapping exercise using that framework. The extent of the exercise, the approach taken and the outcomes sought would depend on the findings from the phase 1 report.

The phase 2 report would include a final ‘map’ of modern awards to the ANZSIC Class/4 digit codes (to the extent possible) and a discussion of its strengths and limitations as a tool for the analysis and identification tasks discussed in the phase 1 report.

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1 *Fair Work Act 2009* (Cth), s.3(b); Part 2–3.

2 *Fair Work Act 2009* (Cth), s.285(2)(b); see also s.284(3) and s.284(4).

3 *Fair Work Act 2009* (Cth), s.294(1)(a), s.294(3), s.294(1)(b) and s.294(4).

4 *Fair Work Act 2009* (Cth), s.284(1) and s.284(2).

5 FWA, *Annual Wage Review 2009-10 Decision* [2010] FWAFB 4000 (3 June 2010), para. 319.

6 Healy J, McDonald I, Macaitis K, Mavromaras K, and Sloane P, (2011), *Research framework and data strategy*, Research Report 4/2011, National Institute of Labour Studies, report commissioned by Fair Work Australia, Melbourne.

7 ANZSIC is comprised of Division/1 digit codes, Subdivision/2 digit codes, Group/3 digit codes and Class/4 digit codes: ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 9, para. 1.22.

8 Employee Earnings and Hours reports on the composition and distribution of earnings and hours paid of employees: ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0 (ABS, 2010).

This report has five chapters:

- **Chapter 1** discusses the objectives of the Project and how the proposed mapping framework contained in this report is designed to achieve them.
- **Chapter 2** explores the interaction between modern awards and ANZSIC and outlines a proposed mapping framework.
- **Chapter 3** discusses the concepts of award reliance, coverage and application and investigates whether, and to what extent, any 'map' of modern award coverage produced might provide a useful analytical tool, particularly for the quantitative analysis of data sources such as the EEH.
- **Chapter 4** discusses the limitations of the mapping process and their consequences for any analysis based on its results.
- **Chapter 5** provides an overview of the findings from the mapping of two modern awards and discusses the potential of the modern award mapping framework to be applied to all 122 modern awards.

The appendices to the report provide supporting information:

- **Appendix A** sets out a detailed, step-by-step mapping framework.
- **Appendix B** provides examples of two ANZSIC Class/4 digit codes mapped as part of the trial modern award mapping exercise (B.1 and B.2) and charts illustrating the parts of ANZSIC involved in the exercise (B.3 and B.4).
- **Appendix C** explains the interaction between wage-setting practices and the Fair Work Act categories of award/agreement free, award covered and award applies.
- **Appendix D** sets out the results of a request to the ABS for EEH data relating to Class/4 digit codes mapped during the trial modern award mapping exercise.
- **Appendix E** contains a table of modern awards classified according to whether their coverage is defined by industry, occupation or both and the principles of classification applied to produce the table.

## 1 Objectives

The Project's central objective is to provide a clearer picture of the nature and extent of modern award coverage and reliance among Australian employers and employees.

As discussed above, in the *Annual Wage Review 2009–10 Decision*, the Panel identified the need for improved information on the award-reliant workforce to inform the minimum wage setting process.<sup>9</sup> Fair Work Australia is presently commissioning and undertaking research on the extent and composition of the award-reliant workforce, including a quantitative survey of 5600 enterprises and a qualitative study of higher classification award-reliant workers.<sup>10</sup> This research will not address the extent of modern award coverage or application.

The Panel has applied the ANZSIC system of industry demarcations as part of its deliberations in its last two reviews. In the *Annual Wage Review 2010–11 Decision*, for example, the Panel referred to EEH data on methods of setting pay by ANZSIC industry in discussing the extent of award reliance in the labour market<sup>11</sup> and the minimum wages objective of promoting social inclusion through increased workforce participation.<sup>12</sup> The Panel (during the Annual Wage Reviews in 2009–10 and 2010–11) has also received submissions from industrial parties proposing that individual industries should be exempt from any minimum wage increase or treated differently in some other respect:

ARA submitted that award-reliant retail businesses should be exempt from any minimum wage increase because of difficult trading conditions in the sector and costs associated with the transition to modern awards. The R&CA and MGA made similar submissions.

NRA submitted that we should make provision for any adjustment in minimum wages in the *Fast Food Industry Award 2010* and the *General Retail Industry Award 2010* to be offset by any additional amount employers are required to pay by the commencement of the relevant modern award transitional provisions on 1 July 2010.<sup>13</sup>

Although the Panel has separately identified industries, it has recognised that parties are unclear as to the extent to which parts of industries or occupations may be award/agreement free. This issue was discussed by the Panel in the context of award/agreement junior employees in its *Annual Wage Review 2010–11 Decision*:

Most parties pointed to the difficulty in ascertaining who would be covered by the [national minimum wage] order, although there was general agreement that coverage is likely to be very limited.<sup>14</sup>

The Australian Government in its submission to the Annual Wage Review 2010–11 also submitted that:

... in the absence of a formal and comprehensive study into who are award/agreement free junior employees under the national workplace relations system, the extent that special national minimum wages for award/agreement free employees will have application is not readily identifiable.<sup>15</sup>

The Australian Government stated that it had examined the EEH in an attempt to determine the extent to which award/agreement free juniors were likely to be employed in particular industries and occupations, but commented that:

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9 FWA, *Annual Wage Review 2009-10 Decision* [2010] FWAFB 4000 (3 June 2010), para. 319.

10 For further information see the Fair Work Australia website: <<http://www.fwa.gov.au/index.cfm?pagename=wagereview2012&page=research>>.

11 FWA, *Annual Wage Review 2010-11 Decision* [2011] FWAFB 3400 (3 June 2011), paras 165–166; tables 3.5 and 3.6.

12 FWA, *Annual Wage Review 2010-11 Decision* [2011] FWAFB 3400 (3 June 2011), paras 262–266; table 5.3.

13 FWA, *Annual Wage Review 2010-11 Decision* [2011] FWAFB 3400 (3 June 2011), paras. 320-321.

14 FWA, *Annual Wage Review 2010-11 Decision* [2011] FWAFB 3400 (3 June 2011), para. 387.

15 Australian Government, 'Submission to the Fair Work Australia Annual Wage Review 2011', Submission in *Annual Wage Review Decision 2010-11* [2011] FWAFB 3400 (3 June 2011), 18 March 2011, para. 31, p. 74.

The *Employee Earnings and Hours survey*, however, while providing data about methods of setting pay (such as whether an employee's pay is set by an award or pay scale only, collective agreement, etc), does not specifically address the coverage of industrial instruments and thus cannot be used to determine the number of employees that may be award-free, let alone the number of award/agreement free junior employees.<sup>16</sup>

To inform the Project's overarching objective of clarifying the nature and extent of award reliance and modern award coverage, phase 1 at the most general level aims to investigate whether a framework can be developed within which modern award coverage and ANZSIC coding can be understood (even if not applicable to quantitative analysis, this will assist in providing more informed understanding of the use of ANZSIC as a tool for analysis). At a more specific level, this report aims to explore the extent to which quantitative analysis of EEH method of setting pay data can be undertaken, using ANZSIC coding as a proxy for modern award coverage, to cast light on award reliance<sup>17</sup> and coverage. In particular, this report seeks to:

- identify any limitations in ANZSIC coding or the modern award mapping framework affecting such an analysis (that is, limitations based on modern award coverage that cannot be quantified using ANZSIC);
- depending on the extent and implication of these limitations, investigate whether a subset of modern awards can be mapped to the ANZSIC coding; and/or
- explore the extent to which the mapping process may inform the identification of parts of industries that are not covered by modern awards and may contain award free employees.

This report presents the findings of phase 1 of the Project with relation to each of these objectives. It is intended that this will help to inform discussion on the extent and composition of the award-reliant sector and lay the groundwork for phase 2 of the Project.

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16 Australian Government, 'Submission to the Fair Work Australia Annual Wage Review 2011', Submission in *Annual Wage Review Decision 2010-11* [2011] FWA FB 3400 (3 June 2011), 18 March 2011, para. 29, p. 73.

17 The meaning of award reliance in this content of this report and its relationship to the 'award only' category within Employee Earnings and Hours is discussed at chapter 3.2.



## 2 Modern award mapping

### 2.1 A framework for mapping modern awards

For the purpose of this Project, modern award mapping refers to the process of determining whether, and to what extent, a modern award could cover an employer and its employees in the industry described in an ANZSIC industry code.

ANZSIC provides a framework for considering the geography of industry, with the broadest Division/1 digit codes giving a general description, and the narrow Class/4 digit codes a much more detailed view, of industry classification in Australia and New Zealand. Modern award mapping may be possible to the extent that modern awards (except, as discussed below, occupational modern awards) and ANZSIC both describe industries in a similar way—modern awards for the purpose of determining coverage and ANZSIC for the purpose of classification.

The mapping process is essentially a comparison between the coverage of a modern award and an ANZSIC industry code to assess the extent of any overlaps in the industries described. To assist this comparison, a modern award mapping framework has been developed (Appendix A).

The modern award mapping framework aims to investigate whether, and to what extent, Class/4 digit codes can be mapped exclusively or overwhelmingly to a single modern award (described as a primary award), taking into account the limitations (outlined in chapter 4) that affect that process. The outcomes generated by this aspect of the framework will be central to determining whether it is possible to undertake a quantitative analysis using the ABS data such as the EEH, with ANZSIC coding providing a proxy for modern award coverage.

The framework also provides for an assessment to be made of the modern awards that, although not capable of exclusively or overwhelmingly covering a Class/4 digit code, nonetheless are likely to have some coverage in that industry classification (described as 'secondary awards'). The outcomes of this part of the process may not provide the basis for quantitative analysis (although they may inform the limitations on such an analysis) because of the difficulty in ascertaining the extent of coverage each secondary award may have in a Class/4 digit code and the smaller numbers that would be associated with that coverage. However, they may also be relevant to identifying parts of industries that do not appear to be covered by a modern award and therefore may contain award free employees.

A simple 'traffic light' rating system will be applied to show the extent to which a mapped Class/4 digit code is covered by a modern award, with only green or, where appropriate, amber Class/4 digit codes providing a basis for quantitative analysis (see chapter 3). Identification of red categories facilitates an identification of limitations or caveats on the mapping exercise.

### 2.1.1 ANZSIC

ANZSIC classifies industries in Australia and New Zealand according to a four-level hierarchy:

- Division/1 digit codes (the broadest level);
- Subdivision/2 digit codes;
- Group/3 digit codes; and
- Class/4 digit codes (the narrowest level).

The ABS states that ANZSIC is intended to comprehensively cover ‘productive economic activities’<sup>18</sup> in Australia and New Zealand, and is based on ‘a strong and consistently applied conceptual framework’.<sup>19</sup> It is used in data sets, including the EEH, for the classification of industries.

The modern award mapping framework focuses on Class/4 digit codes, as the highly detailed industry descriptions they contain are the most useful starting point for comprehensive award mapping (see chapter 2.2.1 below for a further discussion of this). It was also considered that structuring the mapping process around ANZSIC would have the advantage of making it easier to cross-reference any modern awards that can be mapped with EEH data.

Each Class/4 digit code contains an industry description, list of primary activities and list of exclusions/ references. All of these elements must be taken into account to understand the boundaries of the industry described in the Class/4 digit code. Considering Class/4 digit codes that cover related industries or activities can also help clarify boundaries. That is, if an industry or activity is covered by one Class/4 digit code, then by implication it is excluded from the others.

Once the industry description set out in a Class/4 digit code is understood, it can then be compared with a modern award’s coverage to determine the extent of any overlap and mapped accordingly.

### 2.1.2 Modern awards

The other key part of the modern award mapping process is analysing the coverage of each of the 122 modern awards (the concepts of modern award coverage, applicability and reliance and their interaction are discussed at chapter 3.2 and Appendix C). The Fair Work Act provides that:

A modern award **covers** an employee, employer, organisation or outworker entity if the award is expressed to cover the employee, employer, organisation or outworker entity.<sup>20</sup>

A modern award’s coverage term is usually the key source of information about the employers and employees it covers, although the structure and content of each modern award must be considered in order to understand which clauses are relevant to coverage. The Fair Work Act requires all modern awards to contain coverage terms ‘setting out the employers, employees, organisations and outworker entities that are covered by the award’.<sup>21</sup>

In many modern awards, key phrases in the coverage term such as the industry and job descriptors are expanded upon in the definitions and interpretation terms. Coverage terms also often refer to or define their coverage

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18 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 11, para. 1.33.

19 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 15, para. 2.8.

20 *Fair Work Act 2009* (Cth), s.48(1).

21 *Fair Work Act 2009* (Cth), s.143(1).

according to the classifications in the modern award. Classifications describe the roles performed by employees covered by the modern award, usually in the form of a hierarchy of skill, qualification or experience levels. The level of detail contained in classifications varies between modern awards—some contain generic role descriptions, but others provide more detailed industry-related descriptions or examples of the kind of work a person at that classification may perform. An example is the *Cemetery Industry Award 2010*<sup>22</sup> which links classifications to work such as ‘lawn mowing including ride-on’<sup>23</sup> or ‘supervising funeral’.<sup>24</sup> This information may assist in understanding the activities that comprise an industry or defining its boundaries.

Where a coverage term incorporates a definition or classification by reference, it forms part of the coverage term and must be considered in assessing the coverage of the modern award for the purposes of modern award mapping. Even where these terms are not formally incorporated, they should still be used as an aid for interpreting the coverage term.

While the coverage term, definitions and interpretations term and classifications are usually important in determining a modern award’s coverage, this is not an exhaustive list. Each modern award is different and its structure and content must be considered individually to determine its coverage. For example, the *Textile, Clothing, Footwear and Associated Industries Award 2010* (Textile, Clothing and Footwear Award) contains both a definition and interpretation term and an additional schedule setting out further definitions.<sup>25</sup>

Fair Work Australia has the power to vary, revoke or make new modern awards in certain circumstances,<sup>26</sup> which means that modern awards may change over time. Under the modern award mapping framework, the completion date for the mapping of each modern award and Class/4 digit code is recorded. This should make it possible to identify whether a modern award has been varied following the conclusion of the mapping process and enable any map produced (or part thereof) to be updated accordingly.

### 2.1.2.1 Exclusions in modern awards

As well as positively asserting their coverage of industries or parts of industries, modern awards also negatively define their coverage by excluding particular industry sectors, occupations or subjects from coverage. All modern awards contain standard terms excluding ‘an employee excluded from coverage by the Act’<sup>27</sup> and ‘employees who are covered by a modern enterprise award’,<sup>28</sup> or an enterprise instrument.<sup>29</sup> Many modern awards also contain explicit exclusions that prevent them from covering a particular industry or activity. The most common form of exclusion prevents a modern award covering an employer and its employees if they are covered by certain other modern awards. For example, the *Fitness Industry Award 2010* provides:

**4.2** This award does not cover employers or employees covered by the following awards:

**(a)** *Amusement, Events and Recreation Award 2010*;

**(b)** *Children’s Services Award 2010*;

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22 *Cemetery Industry Award 2010* [MA000070].

23 *Cemetery Industry Award 2010* [MA000070], Sch. B.3.1.

24 *Cemetery Industry Award 2010* [MA000070], Sch B.5.1.

25 *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017], Schedule G.

26 For example, Fair Work Australia’s power to vary, revoke or make new modern awards during four yearly reviews is set out at *Fair Work Act 2009* (Cth), s.156; its power to do so outside of four yearly reviews is set out at *Fair Work Act 2009* (Cth), at s.157–s.161. Fair Work Australia may also vary modern award minimum wages as part of the Annual Wage Review: *Fair Work Act 2009* (Cth), s.285.

27 *Fair Work Act 2009* (Cth), s.136(2).

28 Under Schedule 6, item 4(2) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Fair Work Australia may make a modern enterprise award to replace an enterprise instrument (as defined in Schedule 6 item 2(1)). To date, no modern enterprise awards have been made by Fair Work Australia. Enterprise instruments that are not modernised before 31 December 2013 terminate on that date (Schedule 6, items 5 and 9).

29 *Fair Work Act 2009* (Cth), s.143(8).

- (c) *Cleaning Services Award 2010*;
- (d) *Hospitality Industry (General) Award 2010*;
- (e) *Registered and Licensed Clubs Award 2010*; or
- (f) *Security Services Industry Award 2010*.<sup>30</sup>

Other exclusions in modern awards operate to exclude from coverage employees engaged in a particular activity<sup>31</sup> or covered by a classification in another modern award.<sup>32</sup>

The modern award mapping framework has been designed to allow these exclusions to be taken into account. The first stage requires modern awards to be mapped to each ANZSIC Class/4 digit code based on their positive coverage (that is, the industry and classifications that they are expressed to cover). This is undertaken in order to determine whether there is a primary award that exclusively maps the Class/4 digit code or whether coverage in that industry is divided between two or more secondary awards.

The second stage requires that any exclusions contained in the modern awards mapped are identified and recorded. The extent to which an exclusion affects a modern award's coverage in an industry will vary. If a single primary award with exclusive coverage in the Class/4 digit code is identified, exclusions that affect the coverage of occupational modern awards, or that directly limit coverage in relation to a particular activity or part of the industry, may be most relevant. Where multiple modern awards with secondary coverage are identified, any exclusions that affect the relationship between those modern awards may be significant.

Under the modern award mapping framework, a modern award will only be 'unmapped' because of an exclusion where it is clear that the exclusion prevents it having any coverage in the industry. A record is kept if a whole modern award is not mapped for this reason.

## 2.2 The modern award mapping framework, modern award coverage and ANZSIC

Mapping may be possible to the extent that similarities can be identified in the way modern awards express their coverage and ANZSIC classifies industry.

For example, ANZSIC Class 1220—Cigarette and Tobacco Product Manufacturing comprises 'units mainly engaged in manufacturing cigarettes, cigars, smoking or chewing tobacco, snuff or in redrying tobacco leaf'.<sup>33</sup> The primary activities of employers and their employees in this industry are chewing tobacco manufacturing, cigar manufacturing, cigarette manufacturing, pipe tobacco manufacturing, snuff manufacturing, tobacco leaf redrying and tobacco manufacturing.<sup>34</sup>

The coverage term in the *Food, Beverage and Tobacco Manufacturing Award 2010*<sup>35</sup> (Food Manufacturing Award) states that it 'covers employers throughout Australia in the food, beverage and tobacco manufacturing industry and their employees in the classifications in this award'<sup>36</sup> and defines 'food, beverage and tobacco manufacturing' as 'preparing, cooking, baking, blending, brewing, fermenting, preserving, filleting, gutting,

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<sup>30</sup> *Fitness Industry Award 2010* [MA000094], cl.4.2.

<sup>31</sup> For example, see *Electrical, Electronic and Communications Contracting Award 2010* [MA000025] cl. 4.2.

<sup>32</sup> For example, see *Clerks—Private Sector Award 2010* [MA000002] cl. 4.1(a).

<sup>33</sup> ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 121.

<sup>34</sup> ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), pp. 121–122.

<sup>35</sup> *Food, Beverage and Tobacco Manufacturing Award 2010* [MA000073].

<sup>36</sup> *Food, Beverage and Tobacco Manufacturing Award 2010* [MA000073], cl.4.1.

freezing, refrigerating, decorating, washing, grading, processing, distilling, manufacturing and milling of food, beverage and tobacco products'.<sup>37</sup>

ANZSIC Class 1220 and the Food Manufacturing Award's coverage term both describe an industry; respectively, 'manufacturing cigarettes, cigars, smoking or chewing tobacco, snuff or in redrying tobacco leaf' and 'manufacturing... tobacco products'. This similarity in the type of information they convey provides a basis for comparing them for the purpose of modern award mapping.

Differences in the way modern awards express their coverage and ANZSIC classifies industry may not be fully accounted for in the modern award mapping framework and therefore may present limitations for the scope or robustness of any map produced. These are discussed in chapter 4.

### 2.2.1 Direct method of classification

The modern award mapping framework where possible provides for modern awards to be mapped at the Class/4 digit code level, with the outcomes of that process, if sufficiently robust, to be used as the basis for any quantitative analysis ('down-top' approach). The ABS describes this as the 'direct' method of classifying units<sup>38</sup> to industry.<sup>39</sup> The ABS does not use the direct method, instead using what it calls the 'top-down' method of classification. This approach involves first classifying individual business units to a Division/1 digit code, then working down the ANZSIC hierarchy until the unit is classified down to the Class/4 digit code level.<sup>40</sup>

The ABS's approach to classifying units to industries differs in some important respects from the Project. The most significant of these is in the way that it applies the principle of mutual exclusivity, with a given unit only able to be classified to a single category at each level based on its predominant activity.<sup>41</sup> This means, for example, that if the ABS classifies a unit to a Subdivision/2 digit code, then at the next level down it is limited to classifying the unit to the Group/3 digit codes that fall within that Subdivision/2 digit code. Classifying a unit via the top-down method prioritises accuracy at the higher levels by requiring that units are classified according to their predominant activity first at the Division/1 digit level, even if that means that a unit may not be classified to its predominant activity at a lower level. In contrast, the direct or 'down-top' method prioritises accuracy at the lower levels by requiring units to be classified according to their predominant activity first at the Class/4 digit level, with the potential consequence that a unit cannot be classified according to its predominant activity at the higher levels.<sup>42</sup>

The principle of mutual exclusivity also applies to the structure of ANZSIC, dictating that each industry category code at each level of the classification covers a distinct segment of industry and does not conflict or overlap with any other code at that level.

This principle applies to the modern award mapping process in a different way. The framework focuses on identifying the Class/4 digit codes, if any, that can be mapped exclusively or comprehensively to a single modern

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37 *Food, Beverage and Tobacco Manufacturing Award 2010* [MA000073], cl.3.1.

38 The unit of classification used in ANZSIC is the Type of Activity Unit (TAU). A TAU is 'a producing unit comprising one or more business entities, sub-entities or branches of a business entity that can report production and employment activities via a minimum set of data items'. The ABS seeks to create TAUs that are as homogenous as possible at the Subdivision level: ABS, *Australian and New Zealand Standard Industrial Classification 2006 (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), Appendix 1, p. 498, para. 12.

39 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008) p. 23, para. 4.19.

40 The ABS states that the International Standard Industrial Classification of All Economic Activities (ISIC) also recommends the top-down approach because it ensures better consistency of aggregate data at the higher levels of classification: ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 23, para. 4.18.

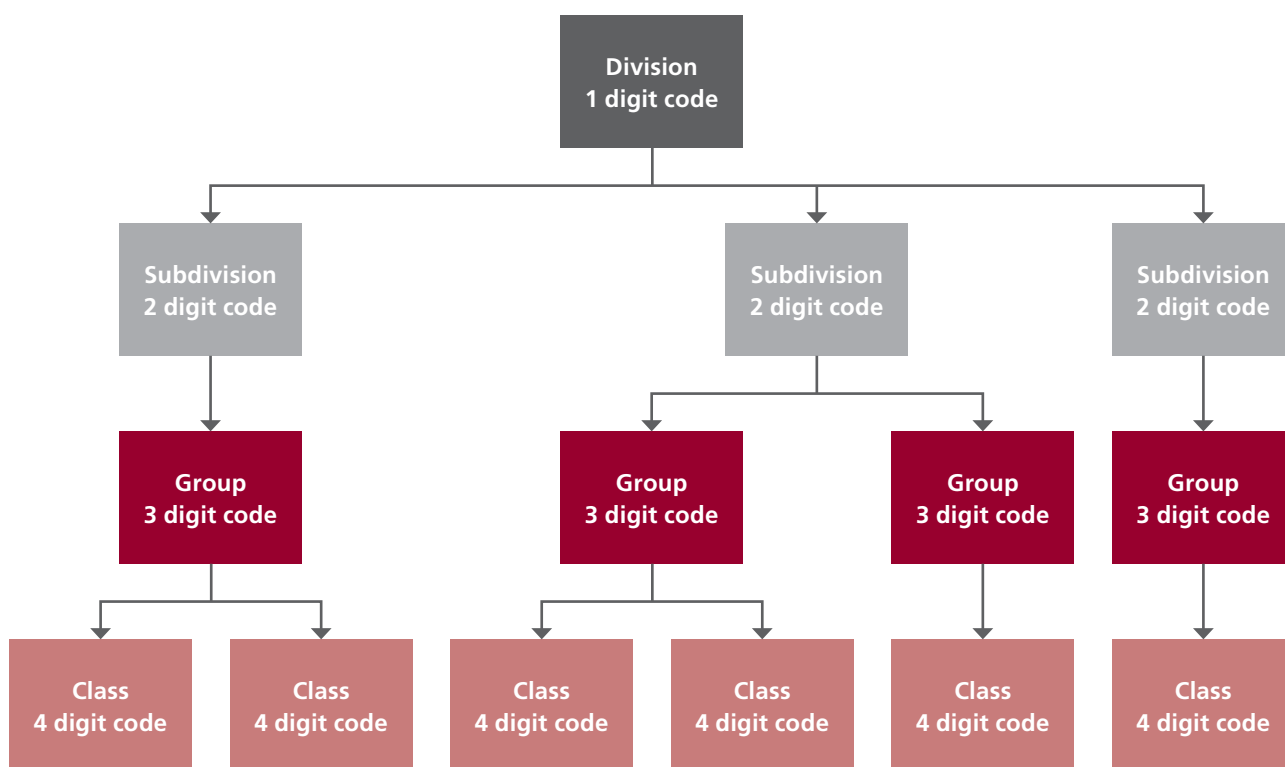
41 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p.15, para. 2.5; p. 21, para. 4.2.

42 For an example that illustrates this effect see ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), pp. 23–24, paras 4.20–4.22.

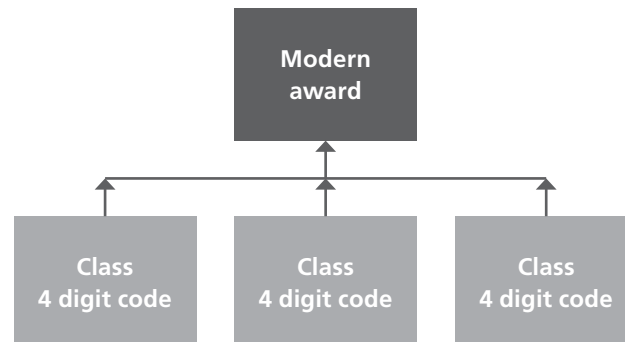
award, as it is this process which is directed towards producing outcomes that may be useful for the quantitative analysis objective of the Project. However, the framework also provides for the broader task of identifying the full range of Class/4 digit codes that can be mapped to a modern award, reflecting the fact that modern awards may have coverage across multiple industries or parts of industries. This aspect of the framework addresses the objective of assisting with the identification of award free employees by highlighting those industries or parts of industries that appear to have no or limited modern award coverage.

The restrictions that ANZSIC's hierarchical structure entails for the ABS's classification methodology do not apply in this context because the framework's focus is on mapping Class/4 digit codes directly to modern awards. Attempting to map at the narrowest level of the ANZSIC hierarchy will maximise the prospects of identifying industry categories that map exclusively to modern awards and ensure the most detailed and accurate information possible is obtained. This is particularly important for identifying award free employees, as they may be located in narrow or specialised pockets within industries that would not be detected by a higher level analysis. Figure 2.1 and 2.2 illustrate the ANZSIC top-down and the modern award direct/down-top approaches to classification.

**Figure 2.1: ANZSIC top-down approach to classification**



**Figure 2.2: Modern award down-top/direct approach to classification**



It is possible that a map produced at the Class/4 digit code level could provide the basis for some mapping of Group/3 digit codes to modern awards. A number of Group/3 digit codes are comprised of a single Class/4 digit code (and given the same name), giving rise to the possibility that the modern award mapping undertaken in relation to Class/4 digit codes could also assist in mapping to Group/3 digit codes without any loss of consistency or accuracy.

It may be possible to take a similar approach if a Group/3 digit code is comprised of more than one Class/4 digit code, provided all of them map identically to a modern award. At this stage it is unclear to what extent this will occur, if at all. Attempting to map at the higher level in this way is complicated by the fact that the Group/3 digit code will have a different name to its constituent Class/4 digit codes, which may indicate the industry it describes is broader or otherwise different to that of the combined Class/4 digit codes. Further consideration would also need to be given as to the possible consequences for the accuracy of the mapping at the higher Group/3 digit code level because of the 'down-top' nature of the classification process involved.

### 2.2.2 Approach to overlapping modern award coverage

Modern awards mainly cover separate industries or occupations, particularly after coverage exclusions are taken into account, but in some cases more than one modern award has the potential to cover a particular industry (or part of an industry) or occupation.

Where the coverage of two or more modern awards overlap, a standard term contained in all modern awards (except for the *Miscellaneous Award 2010* (Miscellaneous Award)) provides a mechanism for determining which modern award covers affected employers and employees:

Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work normally performed by the employee and to the environment in which the employee normally performs the work.<sup>43</sup>

The clause was agreed by the Full Bench of the Australian Industrial Relations Commission (Commission) at the beginning of the award modernisation process. Some changes were made to an initial draft of this clause to reflect less emphasis on the test applying where there is overlap with an 'industry award' rather than between modern awards more generally.<sup>44</sup>

The requirement that the 'most appropriate' test be applied to individual employees or groups of employees rather than at the industry level means it cannot be taken into account in the modern award mapping process.

<sup>43</sup> See for example, the *Food, Beverage and Tobacco Manufacturing Award 2010* [MA000073], cl.4.9.

<sup>44</sup> AIRC, *Award Modernisation Decision*, [2008] AIRCFB 1000 (19 December 2008), paras 28–30.



The ramifications of this for the outcomes of the mapping process are canvassed in the discussion on limitations (chapter 4).

Apart from this test, decisions of Fair Work Australia (or its predecessors) or courts that have considered award coverage issues (whether modern or pre-modern) provide little guidance to the modern award mapping framework. This is because these cases have been chiefly concerned with the determination of award coverage in relation to individual employees,<sup>45</sup> individual employers<sup>46</sup> or disputes over trade union demarcation.<sup>47</sup> The focus on coverage at the employee or enterprise, rather than industry, level means these principles are unable to be taken into account in mapping. For this reason, the modern award mapping framework is not intended to reflect established legal principles relating to award coverage.

### 2.2.3 Approach to occupational modern awards

ANZSIC is a system which describes and classifies industry and does not classify or otherwise deal with occupations.<sup>48</sup> The coverage of most modern awards is industry based (industry modern awards), but some define their coverage partially or entirely according to the occupation of employees (occupational modern awards). For example, the *Clerks—Private Sector Award 2010*<sup>49</sup> (Clerks Award) defines its coverage according to occupation:

This award covers employers in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and to those employees.<sup>50</sup>

This complicates the pattern of modern award coverage because occupations, and the modern awards that cover them, are potentially present in all industries, although the scope of this potential coverage may be limited or extinguished depending on the terms (particularly relevant exclusions) of the modern awards. For example, if the operator of a chain of pizza outlets employed a clerk in its business, that employer might be covered by the Clerks Award in relation to that employee, even though they might be characterised as falling primarily within the fast food industry. An approach that takes into account the potential for cross-industry coverage is required in order to map occupational modern awards to ANZSIC.

Under the framework, in dealing with an occupational modern award, the first step is to consider whether the occupation it covers is likely to be common or significant in the industry as defined by ANZSIC. This contrasts with industry modern awards, where the comparison is based on whether the modern award could cover an employer and its employees mainly engaged in the industry.

This approach is useful because some occupational modern awards are closely linked to only one or two industries. For example, the *Air Pilots Award 2010* covers ‘employers throughout Australia of air pilots and those employees’.<sup>51</sup> There is a limited range of industries in which the occupation of air pilot is likely to be common

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45 See for example *Ware v O'Donnell Griffin (Television Services) Pty Ltd* 1971 AR (NSW) 18 in which Justice Sheldon held that the relevant test in determining whether an employee was covered by an award or not was to determine the employee's ‘major and substantial employment’; cited with approval in *Sim v Luo Enterprise Pty Ltd (No. 2)* [2009] FMCA 1060.

46 See for example *Re TCFUA & Solaris Paper Enterprise Agreement 2010* where a Fair Work Australia Full Bench compared the coverage clauses of two modern awards in order to determine which modern award covered an employer and its employees and therefore was the appropriate reference instrument for the purposes of assessing whether a proposed enterprise agreement passed the Better Off Overall test: *Re TCFUA & Solaris Paper Enterprise Agreement 2010* [2011] FWA 222 (17 January 2011).

47 See for example *R v Williams; Ex parte Australian Building Construction Employees' & Builders Labourers' Federation* [1982], where the High Court emphasised, at paragraph 7, that it was ‘[t]he eligibility provisions in the rules of a registered organisation of employees [that] serve the function of defining the general area or areas of industry or industrial pursuit from which members can legitimately be drawn and with which the organisation can legitimately be concerned’: *R v Williams; Ex parte Australian Building Construction Employees' & Builders Labourers' Federation* [1982] HCA 68, para. 28.

48 The ABS has created a separate system of classification for occupations: ABS, ANZSCO - Australian and New Zealand Standard Classification of Occupations, First Edition, Revision 1, Catalogue No. 1220.0 (ABS, 2009).

49 *Clerks—Private Sector Award 2010* [MA000002].

50 *Clerks—Private Sector Award 2010* [MA000002], cl.4.1.

51 *Air Pilots Award 2010* [MA000046], cl.4.1. Modern awards such as this as have been described as covering ‘an occupation within an industry’; see Bray,



or significant: ANZSIC Class 4900 - Air and Space Transport (units mainly engaged in operating aircraft for the transportation of freight and passengers)<sup>52</sup> and Class 5010 - Scenic and Sightseeing Transport (units mainly engaged in operating transportation equipment for scenic and sightseeing activities).<sup>53</sup>

If a modern award covers an occupation that is likely to be common or significant in an industry, then it can be fairly assessed that it could cover an employer and its employees mainly engaged in that industry. This modern award can then be mapped to the associated ANZSIC Class/4 digit code (subject to any exclusions or overlapping coverage) either as a primary award, if it exclusively or comprehensively covers the Class/4 digit code, or if not then as a secondary award.

The next step is to determine whether any exclusions or modern awards with overlapping coverage affect whether the occupational modern award can be mapped to the ANZSIC industry category. This stage of the mapping process is important for occupational modern awards because the relationship between their coverage and that of industry modern awards will often be significant in determining the scope of their coverage.

For example, the Clerks Award is limited by exclusions for 'an employer bound by a modern award that contains clerical classifications'<sup>54</sup> and for employers and employees covered by 22 other modern awards.<sup>55</sup>

Taking these exclusions into account may make it possible to narrow down the potential coverage of occupational modern awards in the mapped ANZSIC industry category. Particularly in industries with comprehensive industry modern award coverage, these exclusions may mean occupational modern awards have limited or no coverage. Because all occupational modern awards have potential coverage in a given industry, the methodology requires that the exclusions in each occupational modern award (not just those mapped during the first step) are considered.

The third step in the process is to identify occupational modern awards that do not cover an occupation that is likely to be common or significant in the industry, but also have not been entirely excluded from coverage. These modern awards may have some coverage in the industry, but because ANZSIC classifies industries, rather than occupations, the scope of this potential coverage cannot be identified in a more precise way unless their coverage terms (and related content such as classifications and definitions) provide further information about the scope of that coverage.

Occupational modern awards do not generally limit or differentiate coverage in terms of particular industries, so this information is often not available. As a result, in most cases occupational modern awards (other than those with significant coverage or that are excluded) will be recorded as having potential coverage in the industry. An occupational award that is common or significant in one industry may still have potential coverage in others. For example, the *Air Pilots Award 2010*<sup>56</sup> may be mapped to ANZSIC Class 4900—Air and Space Transport because air pilots are common in that industry and have potential coverage in many other Class/4 digit codes (unless excluded).

This level of analysis is useful for the Project's objectives, notwithstanding that it is less detailed than that possible with industry modern awards. Where a primary award has been mapped to a Class/4 digit code, the presence of occupational modern awards with potential coverage may be significant in assessing whether that

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M. (2011), 'The Distinctiveness of Modern Awards', in Baird M., Hancock K. & Isaac J., (eds) *Work and Employment Relations: An Era of Change*, The Federation Press, NSW, p. 21.

52 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 273.

53 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 274.

54 *Clerks—Private Sector Award 2010* [MA000002] cl 4.1(a).

55 *Clerks—Private Sector Award 2010* [MA000002] cl 4.6.

56 *Air Pilots Award 2010* [MA000046].

mapping is sufficiently robust to provide the basis for quantitative analysis. It may also be relevant to take into account the extent of potential occupational modern award coverage in an industry in relation to the Project's objective of identifying areas of industry that may be award free. The issues that occupational modern awards raise for the mapping process are explored more fully in the discussion on limitations in chapter 4.

A list of industry modern awards and occupational modern awards has been prepared to assist the mapping process and is provided at Appendix E.

#### 2.2.4 Approach to the Miscellaneous Award

The Miscellaneous Award is unique among modern awards in defining its coverage entirely according to what it excludes.<sup>57</sup> This format reflects the stipulation in the Award Modernisation Request that the Miscellaneous Award 'cover employees who are not covered by another modern award and who perform work of a similar nature to that which has historically been regulated by awards (including state awards).'<sup>58</sup>

During the award modernisation process, the Full Bench of the Commission stated in its decision publishing the exposure draft of the Miscellaneous Award that:

It is unclear which employees will be covered by this award. It may be that it will have application in some areas of the workforce which have not been covered by awards before. Section 576L of the WR Act provides that the Commission may only include terms in modern awards to the extent that they constitute a fair minimum safety net. Because there is doubt about the existing conditions of employees who might be covered we have taken a cautious approach.<sup>59</sup>

In a subsequent decision finalising the terms of the Miscellaneous Award, the Full Bench stated that:

We agree with those who have suggested that the coverage of the award is very narrow and likely to be limited in time where emerging industries are concerned or where the expansion of coverage of a modern award is involved. Accordingly we do not think the award should contain a comprehensive safety net designed for any particular occupation or industry. Rather it should contain basic conditions only, leaving room for the application of an appropriate safety net in another modern award in due course.<sup>60</sup>

The negatively defined coverage of the Miscellaneous Award presents a challenge for the mapping process. It means that for each Class/4 digit code, the Miscellaneous Award must be mapped after all of the other modern awards so that possible gaps in modern award coverage (where it could operate) can be identified.

The Miscellaneous Award's coverage has four main elements. The first is that it covers employers and their employees 'who are not covered by any other modern award'.<sup>61</sup> This element of the modern award's coverage can only be mapped to an ANZSIC industry category once the potential coverage of all other modern awards has been mapped and an assessment made as to whether any parts of the industry category are not covered. These parts are areas of potential Miscellaneous Award coverage.

The second element is that the Miscellaneous Award does not cover employees or their employers 'in an industry covered by a modern award who are not within a classification in that modern award'.<sup>62</sup> Because the Project involves mapping modern awards to industries, not individual employers and employees, this element does not need to be mapped.

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57 *Miscellaneous Award 2010* [MA000104], cl.4.1.

58 Minister for Employment and Workplace Relations, *Request under Section 576C of the Workplace Relations Act 1996 (Cth)—Award Modernisation Consolidated Version*, 16 June 2008, para. 4A.

59 AIRC, *Award Modernisation Decision*, [2009] AIRCFB 865 (25 September 2009) para. 84.

60 AIRC, *Award Modernisation Decision* [2009] AIRCFB 945 (4 December 2009) para. 153.

61 *Miscellaneous Award 2010* [MA000104], cl.4.1.

62 *Miscellaneous Award 2010* [MA000104], cl.4.3(a).

The Miscellaneous Award also does not cover employees or their employers 'in a class exempted by a modern award from its operation'.<sup>63</sup> Mapping this element requires taking into account any exclusions in the modern awards mapped to the industry category. An example of such an exclusion can be found in the *Manufacturing and Associated Industries and Occupations Award 2010*<sup>64</sup> (Manufacturing Award), which exempts from its coverage employee categories including 'security personnel'<sup>65</sup> and 'gardeners'<sup>66</sup>. Such employees are excluded from coverage of the Manufacturing Award and, because they are 'in a class exempted by a modern award from its operation', are also excluded from Miscellaneous Award coverage (although they may be covered by another modern award).

The final element of the Miscellaneous Award is its exclusion from coverage of 'classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.'<sup>67</sup> This is an occupational coverage criterion which, for the reasons discussed in chapter 2.2.3, requires a different approach. Where these classes of employees are likely to be common or significant in the part of the Class/4 digit code being considered, this should be recorded and the Miscellaneous Award not mapped to that part. Where this isn't the case, the Miscellaneous Award may be mapped, but the exclusion of any such employees noted.

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63 *Miscellaneous Award 2010* [MA000104], cl.4.3(b).

64 *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010].

65 *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010], cl.4.11(c).

66 *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010], cl.4.11(d).

67 *Miscellaneous Award 2010* [MA000104], cl.4.2.

### 3 Analysis using the map of modern award coverage

If the mapping framework can be used to map modern award coverage to one or more ANZSIC Class/4 digit codes, it is then relevant to consider whether, and to what extent, the resultant map can assist in achieving the Project's objectives of clarifying the nature and extent of modern award coverage and identifying areas of industry that may be award free. Though the phase 2 report will go into greater depth on this topic, this chapter will provide preliminary observations based on a trial mapping exercise involving two modern awards: the Textile, Clothing and Footwear Award and the *Road, Transport and Distribution Award 2010* (Transport Distribution Award) (examples of two of the Class/4 digit codes mapped to these modern awards during the trial mapping exercise are at Appendix B) and the data obtained from the ABS request (Appendix D).

#### 3.1 Mapping 'primary' awards

To analyse the extent of reliance and coverage in terms of particular modern awards, it must be possible to demonstrate that there is a robust relationship between modern awards and the data available on industry/sub-industry definitions and method of setting pay. The modern award mapping framework is intended to facilitate this by providing a means of identifying, subject to limitations, which modern awards have coverage in particular ANZSIC industry classifications. The extent of that coverage is then further described in terms of primary awards (where possible) and secondary awards. Identifying primary awards for a Class/4 digit code is necessary because it allows data obtained at that level to be subject to quantitative analysis for the coverage of that modern award.

A modern award is identified as a primary award if it exclusively/comprehensively or extensively covers the industry described in a Class/4 digit code. A modern award has exclusive or comprehensive coverage where it is the sole modern award mapped to the Class/4 digit code (apart from minor potential occupational modern award coverage). A modern award has extensive coverage in a Class/4 digit code if it covers the largest parts of the industry or the activities most closely associated with the industry and is clearly the modern award with the greatest coverage in the industry, but there is also other minor occupational or industry modern award coverage.

Exclusive coverage of an industry indicates that a modern award is the primary award for that Class/4 digit code. However, in some cases the task of identifying the primary award (if any) for a Class/4 digit code may be more difficult, such as where two modern awards have overlapping coverage or each cover a separate, but substantial part of a Class/4 digit code. Where this occurs, considering the effect that exclusions have on the coverage of each of the modern awards (particularly if one modern award has coverage to the exclusion of the other) may assist in identifying the primary award.

It will often be necessary to look beyond ANZSIC to inform the identification of a primary award. The industry description and primary activities contained in a Class/4 digit code define the boundaries of the industry it covers, but they will only give a general indication as to the internal composition of that industry. It is not possible, for example, to identify the distribution of employees within the Class/4 digit code. Because Class/4 digit codes are the finest level of industry description available, data disaggregating the component parts of industries at that level is not available.

Research may yield other sources of information on industry composition. Commission decisions or other material generated during the award modernisation process discussing the delineation of sub-industries may be relevant, as may research by governments, academics or others. Industry bodies, employer groups and employee representatives may also be able to provide useful information regarding the employment distribution below the Class/4 digit level. It should also be noted that these employment distributions may vary over time.

The example mapped Class/4 digit codes set out at Appendix B demonstrate the differing levels of complexity that can be associated with identifying primary awards. For Class 1334—Textile Finishing and Other Textile Product Manufacturing (B.1), the Textile, Clothing and Footwear Award was easily identifiable as the primary award as it has comprehensive coverage in that industry. The secondary awards identified, by contrast, have coverage only around the margins of the Class/4 digit code, such as in relation to a single primary activity (for example, the *Graphic Arts, Printing and Publishing Award 2010*<sup>68</sup> in relation to textile printing) or an activity that the modern award can cover only in limited circumstances (for example, the *Dry Cleaning and Laundry Industry Award 2010* covers dyeing, but only where it takes place ‘in dry cleaning establishments or their auxiliary receiving depots’<sup>69</sup>). As a result, the Textile, Clothing and Footwear Award is likely to cover all, or almost all, of the units mainly engaged in textile finishing and other textile product manufacturing.

Class 4610—Road Freight Transport (B.2) is an example of a Class/4 digit code that illustrates the limitations inherent in the approach to identifying primary awards outlined above. The Transport Distribution Award appears to extensively cover the industry, yet this is complicated by the presence of the *Road Transport (Long Distance Operations) Award 2010*<sup>70</sup> (Long Distance Transport Award), which covers ‘employers throughout Australia in the private transport industry engaged in long distance operations and their employees’<sup>71</sup> to the exclusion of any other modern award, and a number of other modern awards with the potential for minor coverage. Applying the criteria for identifying a primary award set out above indicates the Transport Distribution Award may be the primary award, given its coverage of freight transport services, however the extent to which Class 4610—Road Freight Transport relates to long distance transport (covered by the Long Distance Transport Award) is unclear.

Some additional insight into the composition of the road freight transport industry can be gleaned from external information sources. For example, an early report published by the Bureau of Infrastructure, Transport and Regional Economics<sup>72</sup> states that in 1979 ‘Long distance road freight movements comprise only a small part, 7.6 per cent, of the total road freight task’.<sup>73</sup> More recent reports indicate long distance freight now constitutes a larger part of the industry. The Regulatory Impact Statement for the *Road Safety Remuneration Bill 2011* states that ‘half of the road freight in Australia (tonne kilometre<sup>74</sup>) is classified as ‘long distance’ freight.’<sup>75</sup> It defines long distance freight as involving an average trip length of between 300 kilometres and 500 kilometres, a broader category than the Long Distance Transport Award’s definition of ‘long distance operation’ as ‘any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres’.<sup>76</sup> The *Australian Transport Statistics Yearbook 2011* provides data from 2007-08 indicating that the amount of road freight transported interstate was approximately 58.4 per cent of that transported intrastate (the proportion of this involving a ‘return journey where the distance travelled exceeds 500 kilometres’ is unknown).<sup>77</sup> This data leaves many important questions unanswered, in particular whether employee numbers in the industry reflect the volumes of freight transported and the extent to which work is performed by non-employee workers such as owner-drivers. Nonetheless, it suggests that non-long distance freight transport services are likely to comprise the larger part of Class 4610—Road Freight Transport, which may correlate with greater Transport Distribution Award coverage, but that long distance freight transport services (covered by the Long Distance Transport Award) are also a substantial part of the industry.

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68 *Graphic Arts, Printing and Publishing Award 2010* [MA000026].

69 *Dry Cleaning and Laundry Industry Award 2010* [MA000096], cl.3.1.

70 *Road Transport (Long Distance Operations) Award 2010* [MA000039].

71 *Road Transport (Long Distance Operations) Award 2010* [MA000039], cl.4.1.

72 The Bureau of Infrastructure, Transport and Regional Economics is part of the Department of Infrastructure and Transport, Australian Government.

73 Bureau of Transport Economics, *The Long Distance Road Haulage Industry* (BTE, 1979).

74 One tonne kilometre represents the transport task performed in moving one tonne of freight one kilometre: *Australian Transport Statistics Yearbook 2011* (BITRE, 2011), p. 4. The tonne kilometre measurement may exaggerate the proportion of employees engaged in long distance transport because individual drivers employed in that sector may travel greater distances than those in the non-long distance sector.

75 Regulatory Impact Statement, *Road Safety Remuneration Bill 2011* (Cth), p. xvii. No citation is provided to indicate the source of this information.

76 *Road Transport (Long Distance Operations) Award 2010* [MA000039], cl.3.1.

77 In 2007-08, 120.6 billion tonne kilometres of road freight was transported intrastate and 70.18 billion tonne kilometres was transported interstate: Bureau of Infrastructure, Transport and Regional Economics, *Australian Transport Statistics Yearbook 2011* (BITRE, 2011), pp. 53-54.

As these examples demonstrate, the strength of the relationship between primary awards and Class/4 digit codes is likely to vary. In some cases, the primary award will have exclusive or close to exclusive coverage, with perhaps only some minor occupational modern award coverage diluting its primary coverage. In other cases, in addition to having a primary award with extensive coverage, a Class/4 digit code may be mapped to a number of modern awards with marginal or sectoral coverage.

One option, where the coverage of two modern awards within a Class/4 digit code cannot be quantified with a sufficient degree of confidence, may be to group the modern awards together for the purpose of analysing EEH data. For example, where two modern awards cover associated industries, such as in the case of the Transport Distribution Award and the Long Distance Transport Award, it may be worthwhile to group them for quantitative analysis of both the awards as a single unit with coverage in the industry.

To give some guidance as to the strength of the relationship between each primary award and the Class/4 digit code to which it has been mapped, a rating system of primary awards (based on colour) was devised to complement the framework and provide guidance on the suitability of mapped Class/4 digit codes for further quantitative analysis. These are:

- **Green:** Class/4 digit codes rated 'green' are those in which the primary award maps exclusively or comprehensively to the Class/4 digit code. In the latter case, there may be some potential occupational modern award coverage or limited secondary coverage in addition to the primary award. These are the best candidates for a possible data request and a relatively robust analysis of any data obtained in the context of the primary award should be possible.
- **Amber:** Class/4 digit codes rated 'amber' are those where the primary award has extensive coverage and covers all or most of the primary activities associated with the industry. However, there may also be secondary awards with some coverage in the industry or that cover a small number of less significant primary activities. These may form the basis for a valid data request, but a request entirely or largely comprised of 'amber' Class/4 digit codes may result in data that relates less directly to the primary award.
- **Red:** Class/4 digit codes rated 'red' are those where there is no primary award or where the primacy of the modern award is so diminished by the presence of other awards with coverage that data obtained in relation to it could not be meaningfully analysed in terms of the primary award.

Applying this colour code to the map provides an indication as to the robustness of the relationship between a given mapped modern award and any potential quantitative analysis. In the mapped Class/4 digit codes set out at Appendix B and discussed above, Class 1334—Textile Finishing and Other Textile Product Manufacturing (B.1) has been coded green, as the Textile, Clothing and Footwear Award maps overwhelmingly (if not exclusively) to that industry. Class 4610—Road Freight Transport has been coded amber on the basis that the Transport Distribution Award has the most extensive coverage and covers the core primary activities in the industry, but there is one secondary award, the Long Distance Transport Award, that may have moderate coverage and others with marginal coverage. This Class/4 digit code represents the outer boundaries of primary award mapping—any less of a 'clean fit' between it and the Transport Distribution Award may lead it to be coded red and rejected as the basis for quantitative analysis.

### 3.2 Interaction between the Fair Work Act and the EEH

The Fair Work Act provides that a modern award determines the entitlements of an employee where it *applies* to that employee, with coverage a pre-requisite to application (see Appendix C).<sup>78</sup>

An employer or employee can be covered by a modern award even if the existence of another statutory instrument, such as an enterprise agreement or agreement-based transitional instrument such as an Australian Workplace Agreement (AWA), means it no longer determines part or any of their workplace obligations or entitlements. In such a situation, the Fair Work Act provides that the modern award *covers*, but does not *apply*, to the person. If a modern award is the only statutory instrument setting wages and conditions for the person, however, then it both covers and applies to the person.<sup>79</sup> Informal arrangements such as common law contracts or agreements to make over award payments are not statutory instruments and a modern award may cover and apply to an employee whose pay is determined by these arrangements.

An exception is that a modern award does not apply to (but may still cover) a high income employee or an employer in relation to a high income employee.<sup>80</sup> Under the Fair Work Act, a full-time employee is a high income employee at a given time if:

- (a) the employee has a guarantee of annual earnings for the guaranteed period; and
- (b) the time occurs during the period; and
- (c) the annual rate of the guarantee of annual earnings exceeds the high income threshold at that time.<sup>81</sup>

Modern award applicability does not mean the employee is paid at the modern award rate; rather that is the minimum rate they must be paid. For example, if an employee receives an over award payment under a common law contract or informal arrangement, they may not be paid the modern award rate even though the modern award applies to them. Therefore, for employees to whom a modern award applies, there are two categories of employee:

- employees whose wages are set directly in line with the relevant modern award and classification that applies to them. For the purpose of this paper, they are described as *award-reliant*;<sup>82</sup> and
- employees whose pay rate is set above the rate for the relevant classification but whose applicable wage instrument is still a modern award. For the purpose of this paper, they are described as *award applies but not award-reliant*.

A modern award covers high income employees, but they are excluded from applicability.

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78 *Fair Work Act 2009* (Cth), s.46(2).

79 *Fair Work Act 2009* (Cth), s.47 and s.48. The relationship between modern award coverage and agreement-based transitional instruments is governed by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 3, Part 5, s.28.

80 *Fair Work Act 2009* (Cth), s.47(2).

81 *Fair Work Act 2009* (Cth), s.329(1). The guarantee of annual earnings is defined at s.330–s.332 and the high income threshold at s.333. The high income threshold is currently \$118,100: *Fair Work Regulations 2009* (Cth), regulation 2.13.

82 Award reliance is a concept that may be defined differently in other contexts. For example, an employee's rate of pay may be higher than, but linked to, the modern award rate. Such an employee would not be considered award-reliant under the definition used in this report, but may be included under a broader definition.



The ABS collects data on the methods of setting pay for most categories of employees<sup>83</sup> through the EEH. The EEH classifies participating employees into three categories according to the method by which the main part<sup>84</sup> of their pay is set:

- award only: employees with ‘their rate of pay specified by an award and were not paid more than that award rate of pay’;
- collective agreement: employees with ‘the main part of their pay set by collective agreement, or an enterprise award’; and
- individual arrangement: employees with ‘the main part of their pay set by an individual contract, registered individual agreement (e.g. AWA), common law contract, or an agreement to receive over award payments’.<sup>85</sup>

The close similarity between the award only category of the ABS and the definition of award-reliant above means that the EEH data on methods of setting pay effectively outline award reliance (as a sub-category of employee to whom an award wage applies). EEH does not, as a distinct category, collect data on employees to whom an award applies. Such employees may fall into either the award only category (award-reliant employees) or the individual arrangement category (award applies but not award-reliant employees, who are picked up in the ‘individual arrangement’ category because they receive an over award method of payment under an informal arrangement).

The EEH also applies a number of other variables to the methods of setting pay data including sex, adult/junior status, employment status and ANZSIC industry codes. This last variable is most significant for the purposes of the Project, as it opens up the possibility of undertaking a quantitative analysis of method of setting pay data using ANZSIC coding as a proxy for modern award coverage.

In addition to seeking to analyse the EEH data to cast light on award reliance, it is also proposed that analysis of the data using any map produced may yield information regarding the extent of modern award coverage. Modern awards cover the employees and employers they are expressed to cover,<sup>86</sup> without the need for residency or other requirements that determined coverage under previous legislative regimes. It follows that where a modern award’s coverage exclusively or comprehensively overlaps with the industry described in a Class/4 digit code, it is likely to have a corresponding level of coverage (within the terms of the Fair Work Act) in relation to the employers and employees within that industry. This in turn means that EEH data in relation to the number of employees within that industry may also provide a way of quantifying the coverage of that modern award.

This analysis may be possible even though the employees in an industry may have their rate of pay specified by an award, enterprise agreement or individual arrangement. This is because while a modern award could *apply* only to employees in the ABS’ award only and individual arrangement categories, if it exclusively covered the industry then, subject to limitations, it would *cover* employees (within the definition of the Fair Work Act) in each of those categories.

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83 Enterprises mainly engaged in agriculture, forestry and fishing, private households employing staff, foreign embassies and consulates and their employees are excluded from the EEH, as are members of the Australian permanent defence forces, employees based outside Australia and employees on workers’ compensation who are not paid through the payroll: ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010), paras 5–6.

84 ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010), para. 23.

85 ABS, ‘Trends in employee methods of setting pay and jurisdictional coverage,’ *Australian Labour Market Statistics*, July 2011, Catalogue No. 6105.0 (ABS, 2011), p. 2.; ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0 (ABS, 2010). Note in some instances the term ‘individual agreement’ is used instead of ‘individual arrangement’.

86 *Fair Work Act 2009* (Cth), s.48(1).



It may also enable some conclusions to be drawn about the extent of modern award application, as the bulk of employees excluded from modern award application are likely to be captured in the collective agreement category. A modern award would apply to most award only employees, excluding only those employees covered by state workplace relations systems or award-based transitional instruments. Modern awards would also apply to many individual arrangement category employees (although they would not be award-reliant), except for employees who are excluded from modern award application because:

- they are award/agreement free (where a modern award has been mapped as exclusively or comprehensively covering a Class/4 digit code, very few, if any, employees should fall into this group);
- they are high income employees;
- an enterprise agreement applies to them, but they are not included in the collective agreement category because the main part of their pay is set by a higher paying common law contract or other non-statutory individual arrangement; or
- an agreement-based transitional instrument such as an AWA or Individual Transitional Employment Agreement (ITEA) applies to them.

This last group of employees will decrease as existing AWAs or ITEAs are terminated. As a result, the fit between modern award application and the combined award only and individual arrangement categories is likely to improve. There is no legislative cut-off for the operation of these instruments, making it difficult to ascertain the time frame over which this will occur.<sup>87</sup>

Declining numbers of AWA and ITEAs in operation may also increase the proportion of employees in the individual arrangement category who are award/agreement free<sup>88</sup> and to whom the national minimum wage applies.<sup>89</sup> In the absence of these agreement-based transitional instruments, either a modern award or the national minimum wage would apply to employees in the individual arrangement category, except those to whom an enterprise agreement applies but are paid an above agreement payment.<sup>90</sup>

It is not possible to disaggregate high income employees from the individual arrangement category because, as noted above, under the Fair Work Act they are defined according to whether they have a guarantee of annual earnings that exceeds the high income threshold, not according to their actual earnings. No data are available on how many of these guarantees have been made or their distribution.

It is important to note that each of these analyses—in terms of award reliance, modern award coverage and modern award application—is subject to limitations stemming from the possible representation within the data of non-national system employees or employees covered by transitional instruments. These limitations are discussed more fully at chapter 4.1.

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87 Agreement-based transitional instruments such as AWAs and ITEAs continue to operate (including after they reach their nominal expiry date) unless they are terminated in the prescribed way: see *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 3, Part 2 (particularly s.2) and Part 3 (particularly s.9(2)).

88 Apart from junior employees, employees to whom training arrangements apply or employees with a disability. A special national minimum wage applies to award/agreement free employees in these categories: *Fair Work Act 2009* (Cth), s.294. Award/agreement free employee is defined as 'a national system employee to whom neither a modern award nor an enterprise agreement applies': *Fair Work Act 2009* (Cth), s.12.

89 For the key provisions dealing with the national minimum wage see *Fair Work Act 2009* (Cth) Part 2-6, particularly s.293–s.299.

90 The defined meaning of 'apply' used with relation to modern awards and enterprise agreements does not extend to the national minimum wage, although it is still described as applying to employees: *Fair Work Act 2009* (Cth), s.294(3). The national minimum wage may apply to high income employees (unless an AWA/ITEA or collective agreement applies to them) because they are excluded from modern award application.

### 3.3 Approach to obtaining data

To obtain data from the ABS that is capable of being subjected to quantitative analysis using ANZSIC as a proxy for modern award coverage, two key issues must be overcome:

- it must be possible to identify at least some ANZSIC industries that map exclusively or comprehensively to a modern award, so that it is possible to say that data relating to those industry classifications are validly referable to that modern award; and
- it must be possible to obtain data from the ABS in relation to those mapped ANZSIC industries.

The mapping framework has been designed to address the first of these issues by providing a mechanism to map modern awards to ANZSIC at the Class/4 digit level and identify primary awards. As discussed at chapter 2.1.1, the narrower and more detailed the industry descriptions provided at the Class/4 digit level, the more likely they are to make a clean fit with modern award coverage.

Mapping at the Class/4 digit level does, however, present some issues in relation to the availability of ABS data. In particular, the ABS imposes requirements that must be satisfied before the release of data, the most important in this context being that the data must be drawn from a sample of a sufficient size and quality as to be representative of the relevant population and that the confidentiality of the units that comprise the sample is preserved.<sup>91</sup>

These requirements mean that the smaller the population, the more difficult it will generally be to obtain data relating to that population. A request for data at the Division/1 digit level or Subdivision/2 digit level may have a greater chance of success because of the larger populations they relate to, while requests for data in relation to Class/4 digit codes, with their smaller populations, may face a correspondingly lesser chance of success.

To overcome this issue, where a single modern award is identified as a primary award and coded 'green' or (in some circumstances) 'amber' in relation to two or more Class/4 digit codes, the approach adopted is to group those Class/4 digit codes together in order to make a request to the ABS for aggregated data. Under this approach, data availability will be contingent on the number of Class/4 digit codes that can be mapped and the size of the underlying employee populations. Increasing the size of the underlying sample will also tend to improve the quality of any data obtained.

The amount and quality of the data available in relation to all aggregated Class/4 digit codes is unclear at this stage.

### 3.4 Trial mapping exercise and data request

To test the viability of the modern award mapping framework, a trial mapping exercise in relation to two modern awards, the Transport Distribution Award and the Textile, Clothing and Footwear Award, was undertaken to see whether it could provide the basis for a data request to the ABS.

These two modern awards were selected because they illustrate the different kinds of results that may flow from the modern award mapping process. The Transport Distribution Award was chosen to provide an example of a modern award that was difficult to map cleanly. The Textile, Clothing and Footwear Award was chosen to provide a contrasting example of a modern award that could be more easily mapped as a primary award to a larger number of Class/4 digit codes.

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<sup>91</sup> ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (Appendix—Data Available on Request and Quality Declaration Summary) (ABS, 2010).

The trial mapping exercise focused on identifying Class/4 digit codes for which these two modern awards could be identified as primary awards, as, for the reasons outlined at chapter 3.1, any data request would relate only to those industries. This meant the full range of secondary coverage the Textile, Clothing and Footwear Award and Transport Distribution Award may have across all ANZSIC Class/4 digit codes was not identified. This deviated from the approach set out in the modern award mapping framework (which is directed to identifying all primary and secondary awards), however the exercise was carried out in accordance with core elements of the framework. The process adopted was:

1. An initial assessment was made about the parts of ANZSIC that were most likely to map cleanly to the two modern awards selected. For the Transport Distribution Award, it was the 23 Class/4 digit codes comprising ANZSIC Division I—Transport, Postal and Warehousing, while for the Textile, Clothing and Footwear Award it was the those (11 in total) comprising Subdivision 13—Textile, Leather, Clothing and Footwear Manufacturing (charts illustrating these parts of ANZSIC are at Appendix B.3 and B.4).
2. Using the modern award mapping framework, these Class/4 digit codes were first mapped to the Transport Distribution Award and Textile, Clothing and Footwear Award respectively and then to each of the 120 remaining modern awards. This was necessary because even where it seemed clear that one of the two nominated modern awards was the primary award in a Class/4 digit code, a conclusive judgment about this could not be made until the possible coverage of other modern awards was taken into account, including possible overlapping coverage or relevant exclusions.
3. The remaining 472 Class/4 digit codes that comprise ANZSIC were then considered to determine whether they were potential areas of primary coverage for either of the two modern awards. This process resulted in mapping one additional Class/4 digit code, Class 9491— Clothing and Footwear Repair, to the Textile, Clothing and Footwear Award.

The trial data request to the ABS was formulated based on the results of the mapping exercise. Aggregated data was sought for all non-managerial employees, including permanent and fixed term, full-time and part-time, juniors and casuals, but excluding owner managers in the nine class/4 digit codes that were mapped to the Textile, Clothing and Footwear Award and the two mapped to the Transport Distribution Award respectively. The data was sought on methods of setting pay (award only, collective agreement and individual arrangement). Following discussion with the ABS about the kind of data that was likely to be available (given the sample sizes involved), data for four additional variables was requested: sex; full-time/part-time; adult/junior;<sup>92</sup> and permanent or fixed term/casual.

### 3.4.1 Textile, Clothing and Footwear Award mapping

As expected, given the differing extent to which various parts of ANZSIC's classification structure conforms with modern award coverage, significantly different results were achieved in relation to the two modern awards. It proved possible to map nine Class/4 digit codes to the Textile, Clothing and Footwear Award as a primary award:

- Class 1312 Natural Textile Manufacturing
- Class 1313 Synthetic Textile Manufacturing
- Class 1331 Textile Floor Covering Manufacturing
- Class 1333 Cut and Sewn Textile Product Manufacturing

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<sup>92</sup> For the adult/junior variable, a more limited method of setting pay data was available (award only, not award only), instead of the more detailed conventional method of setting pay data (award only, collective agreement, individual arrangement).

- Class 1334 Textile Finishing and Other Textile Product Manufacturing
- Class 1340 Knitted Product Manufacturing
- Class 1351 Clothing Manufacturing
- Class 1352 Footwear Manufacturing
- Class 9491 Clothing and Footwear Repair

Subdivision 13—Textile, Leather, Clothing and Footwear Manufacturing matches quite closely to the boundaries of the Textile, Clothing and Footwear Award, with the result that all but one of the Class/4 digit codes of the subdivision were covered exclusively or comprehensively by that modern award and therefore rated green. The larger number of Class/4 digit codes that were able to be mapped also reflects that the textiles industry falls within Division C—Manufacturing, which is one of the most finely stratified parts of ANZSIC, containing some of the most detailed industry descriptions at the Class/4 digit level.

### 3.4.2 Transport Distribution Award mapping

The Transport Distribution Award, by contrast, could be mapped only as the primary award to two Class/4 digit codes:

- Class 4610 Road Freight Transport
- Class 5102 Courier Pick-up and Delivery Services.

Only the second of these two Class/4 digit codes was rated green, with Class 4610—Road Freight Transport, which encompasses the Transport Distribution Award’s core areas of coverage, rated amber. The small number of Class/4 digit codes to which the Transport Distribution Award could be mapped as primary award reflects that Division I—Transport, Postal and Warehousing is a less stratified division of ANZSIC, containing 23 Class/4 digit codes compared to 143 in Division C—Manufacturing, and that its boundaries in some respects do not match those of the Transport Distribution Award. In particular, a key demarcation in the modern award coverage in the industry between the Transport Distribution Award and the Long Distance Transport Award is not reflected in ANZSIC. The coverage of these two modern awards cuts across Class 4610 - Road Freight Transport, hence its amber status. Ancillary coverage of transport activities across a number of other modern awards (see the examples at Appendix B) also contributed to this amber rating.

As discussed<sup>93</sup> (and further in chapter 4.3) the difficulty in quantifying the extent to which employment relates to the constituent parts of a Class/4 digit code represents a limitation on the mapping process. For the purpose of the trial mapping exercise and data request, the Transport Distribution Award has been identified as the primary award for Class 4610—Road Freight Transport, but it is acknowledged that it is unclear the extent to which this primary status is compromised by Long Distance Transport Award coverage. The identification of the Transport Distribution Award as the primary award might therefore be revised (or its rating changed from amber to red) if feedback from industry associations, employer representatives or trade unions with direct knowledge of the industry indicates that (for example) many more employees are employed in long distance freight transport services.

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93 See chapter 3.1.

### 3.5 Analysis of trial data

The ABS provided four tables in response to the request, each setting out the available data for methods of setting pay and one additional variable in relation to the aggregated Textiles Classes and the aggregated Transport Classes. The four data tables are set out at Appendix D.

Full method of setting pay data was available for both the Textiles Classes and Transport Classes, however the quality of the data varied. In particular, the data on numbers of 'award only' (which as described above, can provide a proxy for award-reliant) employees in the Textiles Classes is subject to a relative standard error of 58.8 per cent, a level the ABS describes as rendering the data 'too unreliable for general use'.<sup>94</sup> For employees on a collective agreement or individual arrangement, the data had a relative standard error of 44.5 per cent and 33.7 per cent respectively, leading the ABS to indicate that the data 'should be used with caution'.<sup>95</sup>

The larger sample size associated with the Transport Classes meant it was possible to obtain more robust data, with a relative standard error for the award only data category of 24.3 per cent, for the collective agreement category of 18.5 per cent, and for the individual arrangement category of 11.8 per cent.<sup>96</sup>

Full data was also available in relation to the method of setting pay by sex category, but less data was available in relation to the other additional variables, as Table 3.1 shows.

Even where data was available for the additional variables, in most cases it was associated with a high level of standard error. The method of setting pay by sex data, for example, has a relative standard error 59.1 per cent for men and 78.8 per cent for women in the Textiles Classes.<sup>97</sup> The Transport Classes fare somewhat better, with lower (but still noteworthy) levels of standard error associated with some categories of data.

The results also demonstrate that there may be significant variation in the size of the employee population associated with each Class/4 digit code. The nine Class/4 digit codes that comprise the Textiles Classes were associated with a population of 20,000 employees, compared with a population of 113,800 employees for the two Class/4 digit codes that comprise the Transport Classes.<sup>98</sup> Substantive analysis of the data may provide insight into the coverage of the Textile, Clothing and Footwear Award and Transport Distribution Award in the industries represented by those Class/4 digit codes and the extent to which employees in those industries are award-reliant, subject to data quality limitations and the more general caveats on the modern award mapping process discussed in chapter 4.

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94 The ABS applies this description to data with a relative standard error greater than 50 per cent: ABS, *Customised data*, footnotes (denoted \*\*), (ABS 2010).

95 The ABS applies this description to data with a relative standard error between 25 per cent and 50 per cent: ABS, *Customised data*, footnotes (denoted \*), (ABS 2010).

96 ABS, *Customised data*, Table 1, (ABS 2010).

97 ABS, *Customised data*, Table 1, (ABS 2010).

98 Figures subject to standard error. ABS, *Customised data*, Table 1 (ABS 2010).

**Table 3.1: Data availability for selected Class/4 digit codes**

Np = data not available for publication, but included in totals where applicable

D = data available

– = nil or rounded to zero

		Textiles Classes				Transport Classes			
		Award only	Collective agreement	Individual arrangement	Total	Award only	Collective agreement	Individual arrangement	Total
<b>All</b>		D	D	D	D	D	D	D	D
<b>Sex</b>	Male	D	D	D	D	D	D	D	D
	Female	D	D	D	D	D	D	D	D
	Persons	D	D	D	D	D	D	D	D
<b>Full-time/ part-time</b>	Full-time	Np	Np	D	D	Np	Np	D	D
	Part-time	Np	Np	D	D	Np	Np	D	D
	Total	D	D	D	D	D	D	D	D
<b>Permanent or fixed term (Pt/Ft), or casual</b>	Pt/ft	Np	D	Np	D	Np	D	Np	D
	Casual	Np	–	Np	D	Np	D	Np	D
	Total	D	D	D	D	D	D	D	D
		<b>Award only</b>	<b>Not award only</b>			<b>Award only</b>	<b>Not award only</b>		
<b>Adult/ junior</b>	Adult	D	Np		Np	D	Np		Np
	Junior	–	Np		Np	D	Np		Np
	Total	D	D		D	D	D		D

The 'award only' results indicate that 3000 of approximately 20,000 employees (15 per cent) that comprise the Textiles Classes are award-reliant (see table 3.2 below). The further step the mapping process allows is to assert that, because the Textiles Classes have been mapped to the Textile, Clothing and Footwear Award, then subject to the relevant limitations, those 3000 employees are paid the rates specified in the Textile, Clothing and Footwear Award. It is this evidence of the extent of award reliance under particular modern awards that has previously not been available, and that a comprehensive mapping exercise, to the extent it could be successfully executed, may help to provide.

**Table 3.2: Method of setting pay by specified industry (percentage)**

Industry	Number and percentage of employees (non-managerial)						
	Award only		Collective agreement		Individual arrangement		All methods of setting pay
	('000)	%	('000)	%	('000)	%	('000)
Textiles Classes	**3.0	15.00	*1.5	7.50	*15.5	77.50	*20.0
Transport Classes	18.0	15.82	33.2	29.17	62.6	55.01	113.8
All other industries	1340.2	16.46	3738.6	45.92	3063.1	37.62	8141.8
All industries	1361.2	16.45	3773.3	45.59	3141.2	37.96	8275.7

Source: ABS, Customised data request

Note: \* estimate has a relative standard error of between 25 per cent and 50 per cent and should be used with caution

\*\* estimate has a relative standard error greater than 50 per cent and is considered too unreliable for general use

See Appendix D for standard error in relation to number of employees. Percentages have been calculated by Fair Work Australia staff. No estimate as to standard error has been made for percentages.

The data can also be used to gauge the extent of coverage each modern award has in the mapped Class/4 digit codes, for the reasons discussed at chapter 3.2. For example, given that the Textile, Clothing and Footwear Award has been identified as having exclusive or comprehensive coverage in relation to all but one of the Textiles Classes, then subject to the limitations discussed in chapter 4 it is possible to draw the conclusion that most of the approximately 20,000 employees in those industries are covered by the Textile, Clothing and Footwear Award.<sup>99</sup>

Table 3.3 compares the EEH method of setting pay data obtained in relation to the Textiles Classes and Transport Classes with that published for the Division C—Manufacturing (into which all but one of the Textiles Classes fall) and Division I—Transport, Postal and Warehousing (into which both of the Transport Classes fall). The larger employee numbers associated with the Division/1 digit level data indicates the extent to which that data may relate to employees covered by modern awards other than the Textile, Clothing and Footwear Award or Transport Distribution Award. This highlights the difficulty in attempting to use higher level industry data to draw conclusions about reliance or coverage for individual modern awards.

99 It is possible that some employees may be covered by an enterprise award, a transitional instrument or fall under state workplace relations laws: see chapter 4.1. Note that the ABS states in relation to estimates of number of employees by method of setting pay that '[c]are should be taken in the interpretation and use of such estimates, as the Survey of Employee Earnings and Hours is not designed specifically to produce estimates of numbers of employees': ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010), at para. 29. Consideration may also need to be given to the extent to which the Employee Earnings and Hours Survey picks up outworkers in the textile industry and that any under or over reporting of this group may have on the data.

**Table 3.3: Method of setting pay by specified industry and selected Division (percentage)**

Industry	Number and percentage of employees (non-managerial)						
	Award only		Collective agreement		Individual arrangement		All methods of setting pay
	('000)	%	('000)	%	('000)	%	('000)
Textiles Classes	**3.0	15.00	*1.5	7.50	*15.5	77.50	*20.0
Division C - Manufacturing	120.8	15.07	218.2	27.23	462.4	57.69	801.4
Transport Classes	18.0	15.82	33.2	29.17	62.6	55.01	113.8
Division I - Transport, Postal and Warehousing	32.9	8.53	214.0	55.47	138.9	36.00	385.8

Source: ABS, Customised data request and ABS, Employee Earnings and Hours, Australia, May 2010, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010),

Note: \* estimate has a relative standard error of between 25 per cent and 50 per cent and should be used with caution

\*\* estimate has a relative standard error greater than 50 per cent and is considered too unreliable for general use

The 'All methods of setting pay' category excludes owner managers of incorporated enterprises, which are included in the equivalent item in the EEH publication.

See Appendix D for standard error in relation to number of employees for the Textiles Classes and Transport Classes. Percentages have been calculated by Fair Work Australia staff. No estimate as to standard error has been made for percentages.

In relation to the additional variables, in three of the four cases the ABS was unable to provide sufficient data to enable meaningful analysis. The exception is the data on method of setting pay by sex (see table 3.4) which, although impaired by inconsistent data quality, may provide the basis for some cautious conclusions to be drawn. Taking the data relating to the Textiles Classes as an example, the data suggests that compared with men, a higher proportion of women in those industries may be paid under some form of individual arrangement (for example an over award payment), and a lower proportion under the Textile, Clothing and Footwear Award (due to the lower figures of females in the 'award only' category compared to males). Given the high standard error associated with some of those data items, these conclusions may be tentative, but they could potentially provide the basis for further investigation or be used to complement or inform other research.



**Table 3.4: Method of setting pay by specified industry and sex (percentage)**

Industry/sex		Number and percentage of employees (non-managerial)						
		Award only		Collective agreement		Individual arrangement		All methods of setting pay
		('000)	%	('000)	%	('000)	%	('000)
Textiles Classes	Male	**1.7	20.00	*1.0	11.76	*5.7	67.06	*8.5
	Female	**1.3	11.30	**0.5	4.35	*9.8	85.21	*11.5
Transport Classes	Male	13.9	15.01	29.9	32.29	48.8	52.69	92.6
	Female	**4.1	19.34	*3.3	15.57	13.8	65.09	21.2
All other industries	Male	550	14.07	1661.4	42.51	1697.1	43.42	3908.4
	Female	790.3	18.67	2077.2	49.07	1366.0	32.27	4233.5
All industries	Male	565.6	14.11%	1692.3	42.21	1751.6	43.67	4009.5
	Female	795.6	18.65%	2081.0	48.78	1389.5	32.57	4266.2

Source: ABS, Customised data request

Note: \* estimate has a relative standard error of between 25% and 50% and should be used with caution

\*\* estimate has a relative standard error greater than 50% and is considered too unreliable for general use

See Appendix D for standard error in relation to number of employees. Percentages have been calculated by Fair Work Australia staff. No estimate as to standard error has been made for percentages.

It should be noted that the data obtained via the trial ABS data request relates only to the specified Class/4 digit codes. It may not represent the full extent of the coverage of the Textile, Clothing and Footwear Award or the Transport Distribution Award.

### 3.6 Identifying modern award coverage and award free industries

As a method of identifying which modern awards potentially have coverage in which industries or parts of industries, the mapping process may also provide a useful cross-industry snapshot of modern award coverage. At the end of the process, it may be possible to identify not only the coverage of each modern award, but also parts of industries that may not be covered by modern awards. Applying this process to each Class/4 digit code and each modern award may provide a consistent and systematic means for attempting to identify industry gaps in modern award coverage.

Under the modern award mapping framework, a part of industry will be identified as potentially being award free if there is no overlap between that part of the associated Class/4 digit code and the coverage of a modern award. Under the modern award mapping framework, stages one to three are concerned with mapping the coverage and exclusions of each modern award and identifying them, where relevant, as primary or secondary awards. Once this has been completed, an attempt can then be made to compare the totality of the coverage identified with the Class/4 digit code to see whether there are any parts of the industry it describes that do not appear to be covered and therefore may be either award free or covered by the Miscellaneous Award (discussed at chapter 2.2.4).

Where possible, the focus of this stage of the modern award mapping process will be on identifying parts of industries that may contain award free employees. In the more straightforward cases (such as that discussed below), an area of industry may be identified that appears completely free from coverage. However, it is

possible that in some cases a modern award may cover an industry, but it may not contain a classification for employees working in particular roles within that industry. In that situation an employer may be covered, but some of its employees may be award free. As the mapping framework requires consideration of modern award classifications, it may be possible (subject to the limitations discussed further in chapter 4) to identify some of these gaps, albeit at a sub-industry level.

The example mapped Class/4 digit code at Appendix B (B.2) illustrates the type of outcome this process may produce. A comparison of the combined coverage of the modern awards mapped to 4610—Road Freight Transport with the primary activities for that industry indicated that the industry of 'Taxi truck service (with driver); Truck hire service (with driver)'<sup>100</sup> may be award free.

The Transport Distribution Award covers employers in the road transport industry and their employees in the specified classifications in the modern award. 'Road transport industry' is defined, relevantly, as

... the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer;<sup>101</sup>

This definition may exclude employers engaged in the operation of taxi trucks or hire of trucks, as they may be characterised as being in the industry of providing others with the use of trucks (irrespective of whether that use is the transport by road of goods or otherwise) rather than the road transport industry as defined. If this is the case, then the Transport Distribution Award may not be capable of covering such employers or their employees, even though it contains classifications for truck drivers.

Should potentially award free employees be identified through this process, the next question is whether this potential gap in coverage may be filled by the Miscellaneous Award. The only criterion for Miscellaneous Award coverage that may not be fulfilled in this case is whether employees engaged in the taxi truck/truck hire (with driver) industry may be a class of employees 'who, because of the nature or seniority of their role, have not traditionally been covered by awards...'<sup>102</sup> For the reasons outlined at chapter 2.2.4, it is difficult to reach a conclusive answer on this issue, but given that the Transport Distribution Award clearly covers a similar class of employees—truck drivers employed in the road transport industry—it is arguable that taxi truck/truck hire (with driver) industry employees would be eligible for Miscellaneous Award coverage.

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100 ABS, *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0)*, Catalogue No. 1292.0 (ABS, 2008), p. 268.

101 *Road Transport and Distribution Award 2010* [MA000038], cl.3.1.

102 *Miscellaneous Award 2010* [MA000104], cl. 4.2.

## 4 Limitations on modern award mapping and analysis

The chapters above have outlined a possible framework for modern award mapping, and the ways in which the results of this mapping may be used to inform the understanding of modern award coverage and award reliance. However, both the mapping and analysis aspects of the Project have limitations that may impact on their accuracy or robustness. These limitations, their potential effect, and the steps that may be taken to ameliorate that effect are discussed below.

### 4.1 Composition and analysis of EEH data

The EEH data are subject to limitations relating to method of collection and composition that may affect the extent to which they can be analysed in terms of modern awards.

One limitation stems from the way the ABS classifies units and employees to industries when it is collecting that data. The ABS classifies each unit (which could be an enterprise or part of an enterprise<sup>103</sup>) to the ANZSIC industry to which it is 'mainly engaged' or, alternatively, according to its predominant activity.<sup>104</sup> A given unit can fall only within one ANZSIC Class/4 digit code because, if they are mainly engaged in one industry, then by definition they cannot be mainly engaged in another. This presents a limitation in recognising the diversity of industry, in that a unit 'mainly engaged' in cabinet making, for example, could also be engaged to a lesser extent in providing electrical services. Yet under the ABS's approach to classification, if the unit was 'mainly engaged' in cabinet making, the electrical services part of the business would not be recognised.

This approach flows through to the way the ABS collects information for the EEH. The EEH survey is conducted through a mail questionnaire mailed to a sample of approximately 9000 private and public sector (employer) units<sup>105</sup> selected from the ABS Business Register, with each unit classified to an industry based on its 'predominant activity'.<sup>106</sup> As discussed, this means that a unit can be classified only to a single industry, although a single employer may be comprised of more than one unit. Each participating unit then selects a random sample of employees from their payrolls to participate in the survey. Importantly, these employees are 'classified to the industry of the organisation in which they are employed',<sup>107</sup> rather than according to the work they perform.

In terms of the example above, this means that when the unit randomly samples its employees to participate in the survey, it might draw employees from its cabinet making part or its electrical contracting part. As a result, when information on (for example) employees' method of setting pay is fed back to the ABS, it will be recorded as relating to employees in the cabinet making industry, even though some of it may relate to electrical contracting employees.

The consequence for the Project is that even where a Class/4 digit code is mapped exclusively to a modern award, in practice it is likely that some of the units classified to that industry by the ABS are partially engaged in another industry, and therefore that the employees (even if a relatively small proportion) engaged in that other industry may possibly be covered by another modern award.

This affects the robustness of any quantitative analysis undertaken based on the results of the mapping process. It presents a limitation on the extent to which ANZSIC can be used as a proxy for modern award coverage when

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103 See discussion below and footnote 38.

104 The relationship between the concept of 'mainly engaged' used in each ANZSIC industry description and that of 'predominant activity' used in classifying business units to categories is not discussed in the ANZSIC document. They appear to be used interchangeably. See for example ABS, *Australian and New Zealand Standard Industrial Classification 2006* (ANZSIC), 2006 (Revision 1.0), Catalogue No. 1292.0 (ABS, 2008), p.19, para 3.1.

105 A unit may be an enterprise or part of an enterprise based on either an Australian Business Number or a Type of Activity Unit. For a discussion of 'Type of Activity Units' see footnote 38.

106 ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010), at paras 7–8.

107 ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0, Explanatory Notes (ABS 2010) paras 7–8 and paras 17–18.

analysing data because, even where there is a perfect fit between a modern award and a Class/4 digit code, there is a chance that some of the underlying data does not relate to that Class/4 digit code.

A second limitation relates to the composition of EEH data on method of setting pay. As discussed above, this data contains an award only category to which employees are classified if they 'had their rate of pay specified by an award and were not paid more than that award rate'.<sup>108</sup> The national workplace relations system under the Fair Work Act<sup>109</sup> applies to the vast majority of employers and employees in Australia, with 97.6 per cent of private sector employees and 46.4 per cent of public sector employees (87.2 per cent across both sectors) falling within the national system.<sup>110</sup> This means that in most of cases where an employee is identified as award only, it is probable that a modern award covers and applies to that employee. However, there may be a minority of employees covered by instruments other than modern awards which may be classified to the award only category in the EEH data. Such employees may have their rate of pay specified by:

- transitional instruments that have not been terminated or otherwise continue to apply under the Fair Work Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act), particularly award-based transitional instruments (not including award-based transitional instruments derived from enterprise awards) and transitional Australian Pay and Classification Scales;<sup>111</sup> or
- awards that continue to operate under state industrial laws, particularly in Western Australia and in relation to state public sector employees (other than in Victoria).

It is unlikely that transitional instruments continue to cover or apply to a large number of employees because Fair Work Australia has terminated the majority of non-enterprise and non-public sector award-based instruments through the process prescribed by Schedule 5 of the Transitional Act.<sup>112</sup> While there may be some remaining residual coverage, there is no evidence available as to the number of employees this may affect.

Awards made under state industrial laws are likely to have relatively greater coverage, with this coverage concentrated in the public sector. Given the areas in which state governments are major service providers, it may reasonably be contended that state public sector employees are likely to be concentrated in the following ANZSIC areas: Division O, Public Administration and Safety (particularly Subdivision 752—State Government Administration and Subdivision 771—Public Order and Safety Services), Division P—Education and Training and Division Q—Health Care and Social Assistance.

However, it may be possible to obtain data from the ABS that enables the extent of this coverage to be more accurately quantified.<sup>113</sup> If these data are available at the Class/4 digit level, then it may be possible to gain a more detailed picture of the extent of state system coverage in particular industries and to take this into account

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108 ABS, *Employee Earnings and Hours*, Australia, May 2010, Catalogue No. 6306.0, (ABS, 2010).

109 The *Fair Work Act 2009* (Cth) covers private sector employers and employees in all states except Western Australia (where non-constitutional corporation employers and their employees remain in the State system), and public sector employers and employees in Victoria: *Fair Work Act 2009* (Cth) s.13 and s.14 and Part 1-3, in particular s.30E and S.30D. For a more detailed discussion of the coverage of the national workplace relations system, see Creighton, B. and Stewart, A., *Labour Law* (5th Edition) (Federation Press, 2010), chapter 5; in particular paras 5.01–5.10.

110 ABS, *Employee Earnings and Hours*, Australia, May 2010, Catalogue No. 6306.0, (ABS, 2010); ABS, 'Trends in employee methods of setting pay and jurisdictional coverage', Australian Labour Market Statistics, July 2011, Catalogue No. 6105, (ABS, 2011).

111 Award-based transitional instruments include notional agreements preserving a state award and various instruments flowing from the referral process: *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 2, item 5. For a more detailed discussion of transitional instruments see Dunn, A. & Bray, G., *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Fair Work Australia, 2010).

112 For more information on the termination of instruments process, see <<http://www.fwa.gov.au/index.cfm?pagename=awardsmoderntermination&page=introduction>>.

113 The ABS states that 'Information about the proportions of employees covered by national and state jurisdictions for pay setting are no longer published but can be provided on request': ABS, *Employee Earnings and Hours*, Australia, May 2010, Catalogue No. 6306.0, Explanatory Notes (ABS, 2010), at para. 28. For a detailed discussion of the ABS' approach to jurisdictional issues (published in 2008), see ABS, 'Jurisdictional coverage of pay setting arrangements', Australian Labour Market Statistics, January 2008, Catalogue No. 6105, (ABS, 2008).

in assessing the robustness of any analysis undertaken. Cross-referencing this data by method of setting pay would help clarify the extent of state system coverage in relation to the award only category of employees.

Even if these data are only available at higher levels, it might be useful if it confirms that state system coverage is confined to a limited number of industries.<sup>114</sup> If existing published data on method of setting pay in the state and national systems which groups pay setting by award or agreement together in a single category<sup>115</sup> could be broken down into two separate categories, this could help inform the extent to which data on award only employees is likely to relate to employees in a state jurisdiction.

A slightly different aspect of this limitation applies in relation to any attempt to use EEH data in relation to one or more mapped Class/4 digit codes to quantify the number of employees covered by a modern award. As discussed in chapter 2.1.2, modern awards are excluded from coverage of employees that are covered by an enterprise award, enterprise-based notional agreement preserving state award or state reference transitional award. This is an issue because the 'collective agreement' method of setting pay category is defined to include 'enterprise awards',<sup>116</sup> and the EEH does not separately identify the extent of coverage of these two kinds of instruments. As a result, even where a single modern award is mapped exclusively to a Class/4 digit code, it is possible that some of the employees in that Class/4 digit code identified as having their pay set by collective agreement are covered by one of these instruments (and therefore not a modern award).

Without further evidence, it is difficult to precisely gauge the extent to which the characteristics of the EEH discussed above limit analysis using ANZSIC as a proxy for modern award coverage. To this extent, the approach is reliant upon the EEH's ability to provide complete data to reflect a nuanced workplace relations framework. This ability should be taken into account in undertaking any analysis.

## 4.2 Constraints on modern award mapping

Occupational modern awards limit mapping in two respects. First, the process for mapping an occupational modern award set out above is less direct than that for industry modern awards. Industry modern awards and ANZSIC both 'cover' industries, albeit for different purposes, and this means that they can be directly compared for the purposes of assessing whether they overlap.

Occupational modern awards, however, do not cover industries, and therefore a direct comparison cannot be made. Instead, an assessment about whether the occupation is likely to be common or significant in the industry is required in order to map (or not map) an occupational modern award. Making this assessment requires knowledge of the industry and its composition that cannot be drawn from the modern award or ANZSIC and so may bring with it a risk of inaccuracy in less clear-cut cases.

The mapping framework requires occupational modern awards to be identified so that this limitation can be taken into account in assessing the accuracy of any mapped Class/4 digit codes.

The second limitation associated with occupational modern awards is that in many cases it is difficult to rule out the possibility that they may have some occupational coverage in an industry. Even if it is clear that an occupational modern award is not common or significant in an industry, on a conceptual level it is always possible that an occupation may be present within an industry. For example, the occupation of clerk is unlikely to

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114 The ABS has published data on the percentage of federal jurisdiction award only employees at the ANZSIC Division/1 digit level: ABS, 'Trends in employee methods of setting pay and jurisdictional arrangements', *Australian Labour Market Statistics*, July 2011, Catalogue No. 6105, (ABS, 2011), p. 7.

115 ABS, 'Trends in employee methods of setting pay and jurisdictional arrangements', *Australian Labour Market Statistics*, July 2011, Catalogue No. 6105, (ABS, 2011), p. 6.

116 ABS, 'Trends in employee methods of setting pay and jurisdictional arrangements', *Australian Labour Market Statistics*, July 2011, Catalogue No. 6105.0 (ABS, 2011), p. 2; ABS, *Employee Earnings and Hours, Australia, May 2010*, Catalogue No. 6306.0 (ABS, 2010).

be common or significant in the takeaway food industry. Nonetheless, there is nothing inherent in the concept of that industry, or its description in Class 4512—Takeaway Food Services, that enables the judgment to be made that there are no clerks employed in the industry.

The mapping framework has been designed to identify the impact of this limitation to the extent possible. For each Class/4 digit code it requires the identification of any exclusions that limit the coverage of occupational modern awards, which in some cases may mean those modern awards have no coverage in an industry. Where this is not the case, the possibility of occupational modern award coverage, however marginal, has the potential to operate as a constraint on the mapping process. For this reason, the extent of possible occupational modern award coverage is one of the factors taken into account in assessing whether a modern award should be assessed as a primary award in a given industry and whether that part of the map is sufficiently robust to provide the basis for quantitative analysis. It also presents a limitation on the identification of industries or parts of industries that may be award free, as even in these areas it is possible there may be some occupational modern award coverage.

The difficulty in mapping occupations may also present a limitation on identifying employees that are award free. Employees may not be covered by a modern award if it does not contain a classification for the work they perform. This may be the case particularly for employees in senior positions or higher level technical or professional roles—for example, some modern awards may not cover higher level human resources workers.<sup>117</sup> Further, in some cases a modern award may exclude or not cover an occupation, potentially leaving it award free, but it may not be apparent whether or not that occupation is present in the industry being mapped. For example, the Manufacturing Award excludes gardeners from coverage,<sup>118</sup> but in mapping the Manufacturing Award to a Class/4 digit code, the associated industry description may not indicate the presence or absence of that occupation. Identifying these non-covered occupations is difficult because ANZSIC describes industries, not occupations, and therefore in most cases the industry description given in a Class/4 digit code will not provide information on the occupations that may be present within that industry.

The potential for overlapping modern award coverage gives rise to another constraint on the mapping process. As noted in chapter 2.2.2, where two or more modern awards have overlapping coverage, that overlap is generally resolved at the enterprise level. Because the mapping framework operates at the industry level, it is unable to take into account the consequences such enterprise level decisions have for coverage in particular industries. The frequency of such coverage overlaps is difficult to ascertain, however in some cases they may prevent a modern award being assessed as primary in an industry or render its primary status uncertain for the purposes of data analysis.

An example of an overlap (albeit minor in nature) can be seen in example mapped Class 1334—Textile Finishing and Other Textile Product Manufacturing, set out in Appendix B. The industry includes textile printing (except screen printing), which in turn might potentially be covered by two modern awards: the Textile, Clothing and Footwear Award, which covers ‘printing of textiles’<sup>119</sup>, and the *Graphic Arts, Printing and Publishing Award 2010*, which covers ‘printing of all classes’.<sup>120</sup> This potential overlap relates to one element of the industry described by this Class/4 digit code and does not substantially affect which modern award is identified as the primary award, but in other cases more extensive areas of overlap may be identified. In practice the effect of such overlaps may

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117 Australian Government, ‘Submission to the Fair Work Australia Annual Wage Review 2011’, Submission in *Annual Wage Review 2010-11* [2011] FWA FB 3400 (3 June 2011), 18 March 2011, Table 7.1, pp. 72–73.

118 *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010], cl.4.11(d).

119 See the definition of textiles industry at cl.3.1, which ties into the coverage term at cl.4.1: *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017].

120 *Graphic Arts, Printing and Publishing Award 2010* [MA000026], at cl.4.1. and cl.4.9.



be limited, for example where the demarcation between the modern awards is well understood and accepted by industry participants or has been settled by a decision of Fair Work Australia or its predecessors. The modern award mapping framework has not been designed in a way that enables facts of this nature to be taken into account. This may be an area where consultation with industry stakeholders may help to inform decisions about the extent of overlapping coverage and the weight that should be attached to such overlaps in the mapping process.

### 4.3 Identifying primary awards

An important practical limitation on the mapping process and the usefulness of any map of modern award coverage as an analytical tool is that in some cases modern awards will not map 'cleanly' to Class/4 digit codes.

As discussed, the modern award mapping framework provides for each mapped Class/4 digit code to be given a rating (green, amber or red) that reflects the degree to which it is a clean 'fit' with a primary award. Class/4 digit codes rated 'green' will be those that map exclusively or comprehensively to the primary award and so are likely to provide the basis for a more robust analysis of EEH data.

However, it is possible that a substantial number of Class/4 digit codes may map to secondary awards of sufficient size (in terms of coverage) or number that they attract an 'amber' or 'red' rating. These Class/4 digit codes in many cases will not provide the basis for robust quantitative analysis.

Less confidence may attach to the analysis of EEH data on methods of setting pay and industry obtained in relation to Class/4 digit codes rated 'amber' because, to some extent, it may relate to the secondary awards and not the primary award. This does not completely undermine any analysis of the data, as under the mapping framework a primary award mapped to an 'amber' Class/4 digit code should still have extensive coverage in the industry, and therefore any data obtained in relation to them should still relate to that modern award. Nonetheless, it is important to recognise that analysis of data obtained in relation to these Class/4 digit codes is potentially less robust.

The mapping undertaken with relation to the Transport Distribution Award during the trial mapping exercise demonstrates this limitation. The Transport Distribution Award was mapped as a primary award for just two Class/4 digit codes, with the larger of the two (Class 1334—Road Freight Transport) coded amber because of Long Distance Transport Award coverage. While it was possible to obtain data in relation to these two Class/4 digit codes, the presence of that secondary coverage looms as an important caveat on any quantitative analysis undertaken in terms of the Transport Distribution Award. Arguably, some meaningful conclusions may still be drawn, as if it is accepted that the Transport Distribution Award has comprehensive coverage in the Transport Classes, then the data relating to those Classes may be analysed in terms of that modern award, notwithstanding the 'muddying' effect of the secondary coverage. However, any conclusions drawn may have to be qualified or framed in more approximate terms to reflect the limitation.

More broadly, the mapping of Division I—Transport, Postal and Warehousing provides an example of the mixed results that may be obtained during any comprehensive mapping exercise. Of the 23 Class/4 digit codes comprising it, it appears that roughly equal numbers have a clear primary award (likely to be coded green), a primary award with less of a clean fit (coded amber), and no primary award (coded red). Although it is unclear the extent to which these results would be replicated across ANZSIC, it suggests that in at least some areas that fewer 'green' primary awards may be found.

The possible existence of a number of 'red' Class/4 digit codes—those without a clear primary award—presents a different problem. If these 'red' Class/4 digit codes are found to be prevalent in relation to particular modern

awards, it may not be possible to identify enough mapped Class/4 digit codes to undertake quantitative analysis in relation to those modern awards.

The ABS can only provide EEH data at the Class/4 digit level if it is satisfied that aggregate data sought meets its confidentiality and sampling requirements. The varying size and data available for each Class/4 digit code means there is not a set number of Class/4 digit codes required to make a valid data request. However, it appears that one or two classes will generally not be sufficient, particularly where variables in addition to method of setting pay are sought. The results obtained in response to the trial data request (set out at Appendix D and discussed in chapter 3.5) illustrate this difficulty:

- for the Textiles Classes, data on method of setting pay and method of setting pay by sex was obtained, but no data was obtained with relation to the other variables for the award only category and very limited data for the other method of setting pay categories; and
- for the Transport Classes, a similar level of data was available, with the main difference being that award only data was available for the adult/junior variable (albeit with a high standard error).

Even where aggregate data can be obtained for a relatively small number of Class/4 digit codes, the results of the trial data request demonstrate that smaller sample sizes are likely to result in reduced data quality. For example, the award only data for the Textiles Classes (both on its own and combined with variables) was in all cases subject to a relative standard error of greater than 50 per cent, while for the Transport Classes only the straight method of setting pay - award only data and the award only data for adults has a relative standard error below 50 per cent.

The number of Class/4 digit codes that can be mapped to a modern award may also have ramifications for any resulting analysis. Even if enough Class/4 digit codes can be mapped to a modern award that a valid data request can be made, the significance of any data obtained may be limited if the modern award also has secondary coverage in relation to a large number of Class/4 digit codes that were not included in the request. Data obtained in relation to such a request would still be significant and of interest in relation to industries to which it pertains, but it may not provide an indication as to the prevalence of reliance on the modern award as a whole as it would not include data in relation to those industries in which it has secondary coverage. For example, the EEH data obtained in response to the trial mapping exercise relates only to the Textiles Classes and the Transport Classes. These Class/4 digit codes may not represent the full coverage of the Textile, Clothing and Footwear Award or Transport Distribution Award, as they may have secondary coverage (not mapped during the exercise) in Class/4 digit codes that were not included in the data request.

#### **4.4 Unclear comparison or insufficient information**

During the mapping process, in some cases it will be difficult to determine the extent of overlap between a modern award's coverage and a Class/4 digit code, or the scope of a particular Class/4 digit code. This may be caused by:

- differences in the terminology used in modern awards and Class/4 digit codes that make comparison difficult. Mapping is relatively straightforward where a modern award specifies its coverage (or non-coverage) of an industry in detailed and concrete terms that can be directly referred to the industry description contained in a Class/4 digit code. Where a modern award's coverage is specified at a higher or more abstract level, it can be more difficult to compare that coverage with a detailed Class/4 digit code industry description (or vice versa).



- Class/4 digit codes with generic industry descriptions. ANZSIC contains a number of Class/4 digit codes designed to capture those parts of the industry 'not elsewhere classified' (abbreviated to n.e.c.). For example, Class 5299—Other Transport Support Services n.e.c. consists of 'units mainly engaged in providing transport support services not elsewhere classified'. The generic nature of this industry description makes it difficult to define the boundaries of the Class/4 digit code, although the primary activities specified are of some assistance.
- The potential difficulty in recognising the significance of technical terms in coverage clauses— for example, the *Black Coal Mining Industry Award 2010* which, by virtue of the word 'black', excludes brown coal mining.

The modern award mapping framework contains a review process that is intended to ensure decisions about these difficult to map areas are checked and, if necessary, re-assessed. However, the nature of the process means it will be difficult to eliminate ambiguity. Input from industry stakeholders may be useful in clarifying modern award coverage or the effect of technical terms within modern awards.

This may present a particular challenge for the Project's objective of identifying parts of industries that may be award free. The mapping process can only be used to identify parts of industries that are award free to the extent that they can be detected at the Class/4 digit code level. As detailed as the industry descriptions at this level are, gaps in modern award coverage may occur in niche industries so small or obscure that a lower level or more detailed analysis is required to identify them. The use of the coding system outlined in chapter 3.1 could also indicate where the correlation between modern award coverage and sub-industries that fall under particular Class/4 digit codes is unclear.

In some cases it may also be difficult to determine whether a sub-industry is award free or covered by the Miscellaneous Award. The unique nature of the Miscellaneous Award's coverage means that it may be difficult to understand its coverage without delving further into the particular industrial arrangements and history applying in that industry. As a result, in some cases during the modern award mapping process a Class/4 digit code or part thereof may be recorded as potentially covered by the Miscellaneous Award or award free.

Another issue arises with the continued operation of award-based transitional instruments and other transitional instruments. For example, where an award-based transitional instrument<sup>121</sup> covers an industry or part of an industry, then the Miscellaneous Award will not have coverage.<sup>122</sup> Under the Transitional Act and the Fair Work Act, when a modern award covers an employee and employer, an award-based transitional instrument ceases to cover them.<sup>123</sup> An exception to this is item 29(2), Schedule 3 of the Transitional Act, which provides that while an award-based transitional instrument covering an employee or employer is in operation, the Miscellaneous Award does not cover the employee or employer.<sup>124</sup>

The modern award mapping framework does not provide for Class/4 digit codes that are identified as award free or mapped or partially mapped to the Miscellaneous Award to be checked for possible award-based transitional instrument coverage. The introduction of modern awards and the instrument termination process<sup>125</sup> has reduced the number of award-based transitional instruments, however the modern award mapping process will not pick

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121 Award-based transitional instruments are wage instruments that existed in a state or federal system prior to 1 July 2009, and which continued to operate after 1 July 2009 by operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth): see see Dunn, A. & Bray, G., *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Fair Work Australia, 2010).

122 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 3, Part 5, Division 2, s. 29(2).

123 If a modern award (except for the *Miscellaneous Award 2010*) covers an employee or employer, then a transitional award ceases to cover, and can never again cover the employee or employer: *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 3, Part 5, Division 2, s. 29(1).

124 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Schedule 3, Part 5, Division 2, s. 29(2).

125 Prescribed by Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

up the remaining industries where they continue to operate. These limitations mean that the modern award mapping process may be capable of identifying areas that are potentially award free, but does not provide a tool for conclusively establishing the presence or absence of modern award coverage, particularly at an occupational level (i.e whether a modern award may have a gap for a particular type of position or occupation within that subset of industry). It may, however, highlight areas where a further detailed examination is needed of a particular industry and the employers and employees that comprise it for the purpose of an evaluation of industrial arrangements and coverage.

## 5 Findings of initial mapping and potential for future mapping

### 5.1 Modern award mapping

#### 5.1.1 Modern award mapping framework and approach to classification

As outlined above, the mapping framework was applied in undertaking the trial modern award mapping exercise for the purposes of this phase of the Project. It proved possible to compare modern award coverage with the industry descriptions contained in ANZSIC Class/4 digit codes, which in practice involved close reading of the text of each to identify common or similar terms or phrases.

The level of detail provided at the Class/4 digit level is necessary for the mapping process to work effectively, as the descriptions provided at the Division/1 digit level are so broad that they encompass the coverage of a large number of modern awards, without providing the means to distinguish between them or identify areas of overlap. Indeed, even at the Class/4 digit code level a lack of information, or information of sufficient specificity, complicated the mapping process.

The mapping framework's requirement that exclusions be identified proved practical and useful in assisting to assess modern award coverage. Where it appeared that the coverage of two modern awards overlapped, once exclusions were taken into account it became clear that there was no overlap or that it was less extensive than first thought. Exclusions in some cases were also relevant to determining whether or not a modern award should be identified as the primary award for a Class/4 digit code.

The main practical limitation experienced during the mapping exercise (limitations in relation to some specific areas are discussed below) was the problem of unclear comparison or insufficient information. Mapping is most straightforward where the modern award and Class/4 digit code describe the industries in similar terms, enabling a direct comparison and clear assessment about whether they overlap. The further the departure from this ideal scenario, the more difficult mapping becomes. For example, during the mapping exercise it was sometimes necessary to assess whether a high level industry description contained in a Class/4 digit code overlapped with a narrow modern award classification. This can be a difficult to do where the precise boundaries of the industry described are unclear or where, on face value, it appears that the classification overlaps with a primary activity contained in a Class/4 digit code, but the other elements of the industry described in the Class/4 digit code provide a context that suggests otherwise.

A related limitation is the sheer volume of information in ANZSIC and the 122 modern awards that needs to be analysed during the modern award mapping process.

The modern award mapping framework requires a transparent approach so that where these challenging areas are encountered, they and the decision taken in relation to them is clear and identifiable.

#### 5.1.2 Modern award mapping framework and occupational modern awards

Some of the challenges occupational modern awards present for the mapping process were highlighted during the mapping exercise. As discussed above, the coverage of occupational modern awards often cuts across industries, making it important to consider whether any relevant exclusions operate to limit their coverage in relation to particular industries or modern awards. This measure was implemented during the mapping exercise, mainly with respect to the Clerks Award and the Manufacturing Award's coverage of maintenance work. For example, the mapping document for Class 1334—Textile Finishing and other Textile Product Manufacturing (see Appendix B) indicates that:

- the Textile, Clothing and Footwear Award (the primary award for that Class/4 digit code) does not contain clerical classifications, and therefore the Clerks Award is not excluded from coverage;<sup>126</sup>
- it does, however, contain some maintenance classifications, and therefore the Manufacturing Award may be excluded in relation to the coverage of employees in those classifications;<sup>127</sup> and
- the 'Textile Finishing and other Textile Product Manufacturing' industry may include employees in the printing occupations, which the *Graphic Arts, Printing and Publishing Award 2010* covers 'to the exclusion of any other modern award'.<sup>128</sup>

Occupational modern awards were not excluded, or only partially excluded, in relation to most of the Class/4 digit codes mapped during the mapping exercise, leaving them with at least some potential coverage (no occupations were identified as being common or significant in these industries, and so no occupational modern awards were mapped as such). The extent of occupational coverage in these cases is difficult to quantify.

The key decision that must be made in relation to this limitation is the extent that it should be taken into account when rating primary awards according to the 'green - amber - red' scheme outlined above. For the purposes of the trial data request, Class/4 digit codes with non-excluded occupational modern award coverage (primarily those mapped to the Textile, Clothing and Footwear Award) were rated 'green' and included in the request. This means it is likely that some (even if marginal) data obtained in relation to those Class/4 digit codes relates to employees covered by an occupational modern award, rather than the Textile, Clothing and Footwear Award, and that the extent of this discrepancy is unclear.

If the alternative approach is taken and Class/4 digit codes with non-excluded occupational modern award coverage are rated amber (meaning they are included in data requests in limited circumstances) or red (meaning they are excluded from data requests), this will decrease the number of industries in relation to which data can be obtained. For example, while the Textile, Clothing and Footwear Award was identified as the primary award for the Textiles Classes, it was not possible to exclude potential Clerks Award coverage of clerical work performed in those industries. If these Class/4 digit codes were for this reason coded amber or red, instead of green, that would mean it would be possible to undertake limited or no quantitative analysis in relation to those industries.

### 5.1.3 Overlapping modern award coverage

An instance of potentially overlapping modern award coverage was encountered during the mapping exercise in relation to Class 1331—Textile Floor Covering Manufacturing. The Textile, Clothing and Footwear Award covers the 'textile industry', which it defines to include carpets,<sup>129</sup> while the Manufacturing Award covers the manufacture of 'flooring products other than wood'.<sup>130</sup> The decision was made to identify the Textile, Clothing and Footwear Award as the primary award because of its more specific reference to the manufacture of carpets and textile floor coverings, compared with the more general reference to 'flooring products' in the Manufacturing Award. Because of the overlap, Class 1331—Textile Floor Covering Manufacturing was rated amber, and so might not have been included in the trial data request but for the fact that the other eight Class/4 digit codes mapped were rated green.

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126 *Clerks—Private Sector Award 2010* [MA000002]; the relevant exclusion is set out at cl.4.1(a).

127 *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017]; the relevant exclusion is at cl.4.2(a).

128 *Graphic Arts, Printing and Publishing Award 2010* [MA000026], cl.4.1.

129 *Textile, Clothing, Footwear and Associated Industries Award 2010* [MA000017], cl.3.1 and 4.1.

130 *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010], cl.4.9(a)(i), cl.4.10(jj).

The extent to which this limitation impacts on a more comprehensive modern award mapping process may depend on the number and extent of any overlaps encountered. If the results of the mapping exercise are replicated, it may be that the frequency of such overlaps will be small enough to avoid having a significant impact on the accuracy of any map produced. It may also depend on the extent of supplementary material available to make judgments on the likely extent of overlaps such as that made in relation to Class 1331—Textile Floor Covering Manufacturing. A more conservative approach may dictate that judgments of this nature are avoided, which may result in potentially significant overlaps such as in this example resulting in no primary award being identified and the Class/4 digit code being coded red. Quantitative analysis will be possible to a more limited extent under this approach.

#### **5.1.4 Miscellaneous Award and gaps in modern award coverage**

A key finding to emerge from the modern award mapping exercise in relation to identifying possible gaps in modern award coverage is that such gaps are often not easy to identify. Further, where gaps are identified, it can be difficult to determine whether the area identified is award free or whether the Miscellaneous Award may have coverage.

The difficulty in identifying gaps in modern award coverage stems from the fact that, by their nature, such gaps tend to be located in small or obscure parts of industries. In particular, it can be challenging to identify gaps that arise where a modern award appears to comprehensively cover an industry, but the absence of a classification for a particular activity or role means the modern award cannot cover employees engaged in that work in that industry. Even after a very detailed examination, identifying these gaps may require knowledge of the kinds of roles employees perform in the industry that can't be gleaned from ANZSIC industry descriptions.

Where potential gaps are identified, the difficulty in determining whether they are areas of Miscellaneous Award coverage lies primarily in determining whether that part of the industry should be exempt from coverage because it is or may be comprised of 'classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards.'<sup>131</sup> This is a matter that requires specific knowledge of the industry, its history and the history of pre-modern award coverage more generally to settle conclusively, and is therefore beyond the scope of the modern award mapping framework. The example discussed in chapter 3.6 above in relation to whether the 'taxi truck with driver' part of Class 1334—Road Freight Transport is covered by the Miscellaneous Award demonstrates the difficulty of resolving this issue.

These issues highlight the importance of modern award coverage assessment extending beyond the coverage term to include a detailed analysis of classifications. They also suggest that while it may be possible to use the modern award mapping framework to identify parts of industries that are award free, it may be possible to make only a prima facie judgment as to whether the Miscellaneous Award is likely to have coverage in that area.

## **5.2 Understanding modern award and ANZSIC coverage**

### **5.2.1 Identifying primary awards**

The Textile, Clothing and Footwear Award was selected for the exercise to provide an example of a modern award mapped as a primary award to multiple Class/4 digit codes. It was identified as the primary award for nine Class/4 digit codes, which represents most of the 11 Class/4 digit codes that comprise Subdivision 13—Textile, Leather and Clothing Footwear Manufacture (although one of the nine mapped Class/4 digit codes was drawn from outside that Subdivision).

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<sup>131</sup> *Miscellaneous Award 2010* [MA000104], cl.4.2.

The exercise also demonstrated that even where the coverage of a modern award overlaps comprehensively with a Class/4 digit code, it is likely that one or more other modern awards will be found to have some secondary coverage. For example, it may have been expected that Class 1351—Clothing Manufacturing would map exclusively to the Textile, Clothing and Footwear Award, and while this expectation was largely met—it is the only modern award with comprehensive coverage of the Class/4 digit code and the clear primary award—three secondary awards (*Supported Employment Services Award 2010*<sup>132</sup>, *Dry Cleaning and Laundry Industry Award 2010*<sup>133</sup> and *Live Performance Award 2010*<sup>134</sup>) were also identified. The coverage of these secondary awards overlapped with Class 1351—Clothing Manufacturing to a very limited extent, but this experience suggests that Class/4 digit codes that map exclusively to a single modern award may be few in number.

The Transport Distribution Award was selected to provide an example of a modern award at the more difficult end of the modern award mapping spectrum. The challenge it presents is that Class 1334—Road Freight Transport, which encompasses its core area of coverage, is expressed in relatively broad terms and so was also mapped to a number of secondary awards including one, Long Distance Transport Award, with more substantial coverage. For the purposes of the trial modern award mapping exercise the judgment was made that the Transport Distribution Award was the primary award, and that the Class 1334—Road Freight Transport could be coded amber, but it is unclear whether such ‘borderline’ mapping can provide the basis for robust data analysis. As discussed above, additional research sources and consultation with industry stakeholders may assist in clarifying the composition of industry classifications or the relationship between modern awards that share coverage of a Class/4 digit code.

One approach to dealing with situations such as this could be to allow two modern awards to be grouped together for the purposes of mapping and any subsequent quantitative analysis. Whether such a move would be warranted may depend on whether combining the modern awards for the purpose of analysis could yield meaningful results. In the case of the Transport Distribution Award and Long Distance Transport Award, it may be argued that the two could be meaningfully combined for analytical purposes given that they cover a similar kind of work and that the core coverage of both is likely to lie in the same Class/4 digit code. A limitation with this approach is that grouping two modern awards together for the purposes of analysis may obscure relevant differences between them.

### 5.2.2 Obtaining and analysing EEH data

The trial modern award mapping exercise and data request show that it is possible to obtain EEH data on methods of setting pay at the Class/4 digit level, and that in some cases it may be possible to do so even where the data are sought in relation to only a small number of Class/4 digit codes. Where data can be obtained in relation to mapped Class/4 digit codes, it appears that in at least some cases it may be possible to conduct an analysis that casts light on the relationship between individual modern awards, coverage and reliance in particular industries in a way that is not currently possible.

Achieving a sufficient sample size is the key determinant of the amount and quality of data that can be obtained, which means that the larger and/or more Class/4 digit codes that can be aggregated for the purposes of a data request, the better the range and quality of data likely to be available. The data received in response to the trial request suggest that, even where the pure method of pay setting pay data can be obtained, an even larger underlying sample size may be required before additional variables (with the possible exception of sex) can be included.

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132 *Supported Employment Services Award 2010* [MA000103].

133 *Dry Cleaning and Laundry Industry Award 2010* [MA000096].

134 *Live Performance Award 2010* [MA000081].

A range of potential limitations must be taken into account in assessing the weight that should be attached to any quantitative analysis. Differences in the approach to classification, potential occupational modern award or overlapping coverage, the extent of non-primary award coverage and the possible representation of non-modern award elements such as transitional instruments or state system instruments must all be considered in assessing the extent to which ANZSIC can be used as a proxy for modern award coverage in analysing EEH data. It may not be possible to quantify the effect of these limitations on the robustness of any quantitative analysis, but the greater their presence, the more tentative the conclusions (if any) that can be drawn.

Once the 'down-top' exercise of mapping the Class/4 digit code has been completed in phase 2 of the research, the coverage provisions of each modern award will be reviewed to assess whether all coverage elements have been sourced in the ANZSIC data (ie. a 'top-down' exercise—that each component of award coverage there is a corresponding data source identified).

This means that, where it is proposed to obtain and analyse data that relates to aggregated Class/4 digit codes, it will be important to consider the results of the modern award mapping undertaken in relation to those Class/4 digit codes in light of these limitations. In some cases a robust quantitative analysis may be possible, in others it may be possible only to obtain results that, while providing a snapshot of coverage and reliance in relation to a modern award, are more indicative in nature.

### **5.3 Overview of key findings against the Project objectives**

First, a number of limitations have been identified that may affect any quantitative analysis of data using ANZSIC as a proxy for modern award coverage. An important limitation is that the mapping framework has only a limited capacity to deal with cross-industry occupational modern award coverage and overlapping modern award coverage, which is likely to affect the precision of the modern award mapping process and any resultant map.

Another issue is the extent to which Class/4 digit codes can be mapped exclusively to a 'primary' modern award, with the trial mapping exercise indicating that in many cases non-primary modern award coverage may be identified that may compromise any analysis in terms of the primary modern award.

Limitations may also arise from the composition or availability of the data. The strength of the conclusions that may be drawn from analysis of the EEH data may be limited to the extent that it may in part reflect non-modern award minimum wage instrument coverage, such as state system awards or (non-enterprise award-based) transitional instrument coverage in the award only category, or where data quality is limited due to sample size or classification issues.

Second, the report findings support the conclusion that, notwithstanding these limitations, the modern award mapping framework provides a means of mapping ANZSIC Class/4 digit codes to modern awards with industry-based coverage or with occupational modern award coverage where it relates to an occupation that is common or significant within an industry.

In a comprehensive modern award mapping exercise, it is likely that the results of this process in relation to some modern awards (those where industry coverage cleanly fits within ANZSIC Class/4 digit codes) will provide the basis for quantitative analysis of data derived from the EEH that may cast light on the extent of award reliance and modern award coverage. The extent to which this analysis may be possible will be difficult to estimate until the mapping exercise is completed, but the trial mapping exercise suggests it will not be possible for all modern awards or all industries.

The data available for analysis will vary according to the number and size (in terms of the underlying employee population) of the Class/4 digit codes that can be mapped to each modern award. Data on methods of setting pay are likely to be the most accessible, followed by method of setting pay varied by sex. Data relating to variables such as adult/junior, permanent/casual and full-time/part-time may be available only where one or more Class/4 digit codes with a sufficient underlying employee population can be mapped to a modern award.

Finally, the report has also found that the modern award mapping process may provide a means of identifying parts of industries that may be award free or subject to Miscellaneous Award coverage. However, it will be not be possible to produce a comprehensive or exhaustive list, and further research may be required to clarify the extent and composition of any Miscellaneous Award coverage.



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## Appendix A

### Framework for mapping modern awards to ANZSIC

#### Structure of framework

The modern award mapping framework set out below proceeds in five stages:

- Stage 1 involves analysing the positive coverage of each modern award and mapping it to an ANZSIC Class/4 digit code;
- Stage 2 involves analysing the exclusions contained in the mapped modern awards and all occupational modern awards to determine whether they affect the coverage mapped during stage 1;
- Stage 3 involves categorising the modern award or awards mapped during stage 1 as a primary award or secondary awards in relation to the Class/4 digit code;
- Stage 4 involves comparing the coverage of the modern award or awards identified during stage 1 and stage 2 with the industry description in the Class/4 digit code to determine whether any parts of the industry may be award free or covered by the Miscellaneous Award; and
- Stage 5 involves a review of the mapping document produced as a result of stages 1 to 4.

The framework must be applied to each ANZSIC Class/4 digit code and each modern award. A template document has been created into which the information obtained during the mapping process can be recorded. It is intended that the result will be that one of these documents will be created for each ANZSIC Class/4 digit code and, once completed, that they provide the basis for an overall map of modern award coverage.

#### Framework

##### Stage 1 Map coverage

1. The researcher is allocated an ANZSIC Class/4 digit code.
2. The researcher selects the first modern award from the Fair Work Australia website (<http://www.fwa.gov.au/index.cfm?pagename=awardsfind#modernawards>) and assesses its coverage.
3. If the modern award is an industry modern award, the researcher compares its coverage with the industry description in the ANZSIC Class/4 digit code to determine whether there are any areas of overlap. The test to be applied is: 'Could the modern award cover an employer (or part of an employer) and employees mainly engaged in the industry described in the Class/4 digit code?'
4. If the researcher finds areas of overlap between the modern award's coverage and the Class/4 digit code, the element of the modern award that gives rise to the overlap is recorded.
5. For an occupational modern award, the researcher assesses its coverage to determine whether the occupation/s it covers is/are likely to be common or significant in the industry described in the Class/4 digit code.

6. If the researcher assesses that the occupational modern award covers an occupation/s that is/are likely to be common or significant in the industry described in the Class/4 digit code, this is recorded.
7. Steps 3 to 6 are repeated for all modern awards except for the Miscellaneous Award. Once this has happened the first stage of the mapping process is complete.

### Stage 2 Identify exclusions

8. The researcher selects a modern award mapped to the Class/4 digit code during stage 1 and analyses it to determine whether it contains any exclusions that affect either its coverage in the industry or that of another modern award (industry or occupational) with coverage in the industry. Exclusions that potentially affect the coverage of any other occupational modern award in relation to the industry must also be recorded.
9. If the modern award contains a relevant exclusion, the researcher records its effect both on the modern award that contains the exclusion and the modern award that it excludes/privileges.
10. Steps 8 and 9 are repeated for all modern awards mapped to the Class/4 digit code during stage 1.
11. Exclusions contained in modern awards with occupational coverage (in addition to those (if any) mapped during stage 1) must also be considered. If any of these 'other' occupational modern awards contain an exclusion that affects a modern award that has been mapped to the Class/4 digit code, this is recorded. Once all of the exclusions have been dealt with, the second stage of the mapping process is complete.

### Stage 3 Identify primary awards

12. The researcher considers the modern awards mapped during stage 1 and, taking into account any relevant exclusions, assesses which modern award (if any) has exclusive/comprehensive or extensive coverage in the Class/4 digit code (note: for more information on the factors to be taken into account in making this assessment see chapter 3.1 above).
13. A modern award identified in step 11 is recorded as the primary award, with all other mapped awards recorded as secondary awards. If no modern award is identified as a primary award, then all of the modern awards are recorded as secondary awards.

### Stage 4 Identify gaps in coverage or Miscellaneous Award coverage

14. The researcher considers the combined coverage in the Class/4 digit code of each of the modern awards mapped during stage 1, taking into account each of the exclusions identified during stage 2.
15. The researcher identifies and records any part of the industry described in the Class/4 digit code that is not covered by a mapped modern award.
16. If any part of the industry described in the Class/4 digit code is identified in step 14, the researcher determines whether the Miscellaneous Award could have coverage in that area. The Miscellaneous Award covers employers and their employees not covered by another modern award, but **not** employees:
  - 'who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists;'

- 'in an industry covered by a modern award who are not within a classification in that modern award;' (note: this need not be mapped - see chapter 2.2.4) or
  - 'in a class exempted by a modern award from its operation.'
17. If the researcher determines that the Miscellaneous Award has coverage of part of the industry identified in step 14, that is recorded. Parts of the industry identified in step 14, but not covered by the Miscellaneous Award, are recorded as being award free, subject to any potential occupational modern award coverage.

### **Stage 5 Review**

18. The reviewer is allocated a mapped Class/4 digit code and checks the key elements of the industry description.
19. For each modern award mapped to the Class/4 digit code, the reviewer checks:
- the coverage term, definitions and interpretation clause, classifications and other relevant clauses and that the modern award has been mapped in accordance with stage 1 of the methodology;
  - that all relevant exclusions have been identified and correctly applied and recorded;
  - the researcher's assessment about which, if any, modern award is the primary award and which are secondary awards; and
  - the researcher's assessment about whether a part of the industry described in the Class/4 digit code could be award free or covered by the Miscellaneous Award.
20. The reviewer rates the map code green, amber or red depending on the extent to which the primary award (if any) is a 'clean fit' with the Class/4 digit code (see chapter 3.1).
21. The reviewer briefly checks over the list of modern awards to ensure that no obvious awards have been erroneously omitted.
22. If any errors or areas of ambiguity are identified, the reviewer may:
- discuss issue with initial researcher to see if agreement can be reached on correct approach;
  - convene meeting with the other researchers/reviewers to discuss the approach that should be taken; or
  - discuss issue with either the Project Manager or Manager of the Workplace Relations Research team, Minimum Wages and Research Branch.
23. If agreement is reached at any stage on the correct approach, reviewer amends mapping template document accordingly. If a definitive mapping outcome cannot be reached, reviewer records 'unable to be mapped' against the relevant modern award and inserts a note in the mapping template document for that Class/4 digit code explaining the issue.
24. Once the map is finalised the reviewer records the date on template document.

## Appendix B

### Example of two mapped Class/4 digit codes

#### B.1—ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing					
This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified.					
Primary activities: Badge, woven, manufacturing; Binding, textile, manufacturing; Embroidered apparel manufacturing; Embroidered fabric manufacturing; Felt manufacturing; Label, printed cloth, manufacturing; Label, woven cloth, manufacturing; Textile dyeing; Textile fabric coating; Textile printing (except screen printing); Textile product manufacturing n.e.c.; Underfelt manufacturing					
Exclusions/References: screen printing and heat transfer onto clothing or fabric are included in Class 1611 Printing; and manufacturing felt clothing are included in Class 1351 Clothing Manufacturing.					
Key words (ANZSIC class)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified. Primary activities: Badge, woven, manufacturing; Binding, textile, manufacturing; Embroidered apparel manufacturing; Embroidered fabric manufacturing; Felt manufacturing; Label, printed cloth, manufacturing; Label, woven cloth, manufacturing	<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>  4.1 This industry award covers employers throughout Australia in the textile industry, clothing industry, bag making industry, button making industry, footwear industry and allied manufacturing and fabricating industries and their employees engaged in duties covered by the classifications in this award.  3.1 textile industry includes: ...commission dyeing, bleaching and finishing embroidery; fabrics; felt, wool and/or fibre; labels; printing of textiles; allied manufacturing and fabricating industries includes but is not limited to: spinning, throwing, texturising, creping, extruding, mercerising, impregnating, processing and treatment of fibres, filaments, threads, tyre cords, or yarns of all	4.4 The award does not cover:  (a) electricians;  (b) clerical employees within the application of the <i>Clerks—Private Sector Award 2010</i> ; or  (c) maintenance tradespersons and their apprentices covered by the classifications contained in the <i>Manufacturing and Associated Industries and Occupations Award 2010</i> , save and except for textile, clothing and footwear mechanics/ tradespersons and their apprentices covered by the classifications contained in this award.			Note: may be some occupational coverage for Clerks Award (clerical), Manufacturing Award (maintenance) and Graphic Arts Award (printing) - see Limitations on coverage worksheet.

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing					
Key words (ANZSIC class)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
	<p>descriptions including animal or vegetable fibres, artificial silk, cotton, flax, pure silk, filament, synthetic fibres or wool, or any of them combined with one another or with any other animal, natural or synthetic fibre;</p> <p>...</p> <p>dyeing, bleaching, coating, calendering, cleaning and/or finishing of all types of fabrics, filament yarns, wool tops, yarns and articles of all descriptions up to and including the completed product;</p> <p>printing including hand printing, screen and/or roller printing and stamping of fabrics and/or articles of all kinds and descriptions;</p>				



ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing					
Key words (ANZSIC class)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis.			<p><i>Graphic Arts, Printing and Publishing Award 2010</i></p> <p>4.9 Graphic arts, printing, publishing and associated industries and occupations means the following industries, parts of industries and occupations:</p> <p>(a) composing, reading, electrotyping, stereotyping, letterpress machining, lithographic machining, lithographing, screen printing, printing of all classes, slug-casting or type-casting machine attending and adjusting and/or repairing;</p>	4.1 This industry and occupational award covers employers throughout Australia in the graphic arts, printing, publishing and associated industries and occupations and their employees in the classifications listed in clause 17—Wage rates and classification structure and Schedule B—Classification Definitions to the exclusion of any other modern award.	May have some coverage in printing part of class - note overlap with Textile, Clothing and Footwear Award. See also occupational coverage.
This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified.			<p><i>Manufacturing and Associated Industries and Occupations Award 2010</i></p> <p>4.9 Manufacturing and Associated Industries and Occupations means:</p> <p>[4.2 renumbered as 4.9 by PR994530 from 01Jan10]</p> <p>(a) the following industries and parts of industries:</p> <p>(i) the manufacture, making, assembly, processing, treatment, fabrication and preparation of:</p> <ul style="list-style-type: none"> <li>• the products, structures, articles, parts or components set out in clause 4.10; or</li> <li>• the materials or substances set out in clause 4.10; or</li> </ul> <p>4.10 For the purposes of clause 4.9(a) (i), the products, structures, articles, parts, components, materials and substances include:</p> <p>(ee) skins, pelts, leather, canvas, fibre, vulcanised fibre, webbing, bark and other tanning extracts and all substitutes and all products made therefrom, including but not limited to saddles, harnesses, whips, machine</p>	4.2 The award does not cover:	Possibly some n.e.c. coverage? Extent unclear.

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing					
Key words (ANZSIC class)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
			<p>belting, sporting goods, travel goods, handbags, wallets, belts, gloves, hats, sails, tents, tarpaulins, umbrellas, parachutes, car seats, gaskets, beach shelters, deck chairs, cargo nets, ships' gear and life jackets.</p> <p>(ii) upholstery, furnishing drapery, blinds, screens, awnings, mattresses and bedding.</p>		
<p>This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified.</p>			<p><i>Dry Cleaning and Laundry Industry Award 2010</i></p> <p>3.1 In this award, unless the contrary intention appears:</p> <p>dry cleaning and laundry industry means the industry of:</p> <p>(a) dry cleaning, dyeing and/or repairing and/or invisible mending of garments or articles in dry cleaning establishments or their auxiliary receiving depots; and</p> <p>(b) washing, sorting and/or packing of laundry in laundries and laundrettes including the repair of items and preparation of garments for rental; and</p> <p>(c) performing any operation incidental to the activities in clauses 3.1(a) or (b) of this definition in dry cleaning, laundry or combined dry cleaning/laundry establishments</p>	<p>This award applies to the exclusion of any other awards.</p>	<p>Coverage of one element of Class only, limited to conduct in 'dry cleaning establishments or their auxiliary receiving depots'</p>

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing					
Key words (ANZSIC class)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
<p>This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified.</p>			<p><i>Supported Employment Services Award 2010</i></p> <p>4.1 This industry award covers employers throughout Australia who operate supported employment services and their employees working in the classifications listed in Schedule B—Classifications to the exclusion of any other modern award.</p> <p>B.4.3 Indicative of the tasks which an employee at this level may perform are the following:</p> <p>(c) Leather and canvas and sewing cutter who has a knowledge of all types of weights of materials made and used in the trades and who is capable of laying out and cutting all types of material of work and who can mark out and prepare for the machinery and the finish for the work concerned;</p> <p>lays out, cuts, assembles and repairs canvas and related products such as awnings, tents, tarpaulins, horse rugs and caravan annexes;</p> <p>lays out full-scale drawings according to blueprints or sketches;</p> <p>cuts materials with power cutters;</p> <p>die cutting using clicking press (on leather where the employee is required to exercise discretion as to the kind and quality of material cut); and/or</p> <p>minor machine maintenance including lubrication of (automatic and semiautomatic) production equipment.</p>		Extent of coverage, if any, unclear.

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing to Textile, Clothing, Footwear and Associated Industries Award 2010		
<p>This class consists of units mainly engaged in finishing textile products, using processes such as automated embroidery, bleaching, dyeing, printing (except screen printing) or pleating on a fee or commission basis. This class also includes units mainly engaged in manufacturing felt, felt products (except clothing) or other textile products not elsewhere classified.</p>		
<p>Primary activities: Badge, woven, manufacturing; Binding, textile, manufacturing; Embroidered apparel manufacturing; Embroidered fabric manufacturing; Felt manufacturing; Label, printed cloth, manufacturing; Label, woven cloth, manufacturing; Textile dyeing; Textile fabric coating; Textile printing (except screen printing); Textile product manufacturing n.e.c.; Underfelt manufacturing</p>		
<p>Exclusions/References: screen printing and heat transfer on to clothing or fabric are included in Class 1611 Printing; and manufacturing felt clothing are included in Class 1351 Clothing Manufacturing.</p>		
Occupational awards (not mapped)		
Name of award	Relevant exclusions	Comments
MA000046 <i>Air Pilots Award 2010</i>		
MA000047 <i>Aircraft Cabin Crew Award 2010</i>		
MA000079 <i>Architects Award 2010</i>		
MA000002 <i>Clerks-Private Sector Award 2010</i>	<p>4.1 This award covers employers in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and to those employees. However, the award does not cover:</p> <p>(a) an employer bound by a modern award that contains clerical classifications; or</p>	Textile, Clothing and Footwear Award does not contain clerical classifications.
MA000083 <i>Commercial Sales Award 2010</i>		
MA000064 <i>Hydrocarbons Field Geologists Award 2010</i>		
MA000117 <i>Mannequins and Models Award 2010</i>		
MA000031 <i>Medical Practitioners Award 2010</i>		
MA000066 <i>Surveying Award 2010</i>		
MA000026 <i>Graphic Arts, Printing and Publishing Award 2010*</i>	<p>4.1 This industry and occupational award covers employers throughout Australia in the graphic arts, printing, publishing and associated industries and occupations and their employees in the classifications listed in clause 17—Wage rates and classification structure and Schedule B—Classification Definitions to the exclusion of any other modern award.</p>	Textile, Clothing and Footwear Award also covers printing. This award may have some coverage.
MA000027 <i>Health Professionals and Support Award 2010*</i>		
MA000029 <i>Joinery and Building Trades Award 2010*</i>		

ANZSIC class 1334/Textile Finishing and Other Textile Product Manufacturing to Textile, Clothing, Footwear and Associated Industries Award 2010		
Occupational awards (not mapped)		
Name of award	Relevant exclusions	Comments
MA000010 <i>Manufacturing and Associated Industries and Occupations Award 2010*</i>	4.2 The award does not cover: (a) an employer who is outside the scope of clause 4.9(a) or (b) unless such employer employs an employee covered by clause 4.9(c) and the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee; or	Note: Textile, Clothing and Footwear Award contains maintenance/mechanical classifications.
MA000034 <i>Nurses Award 2010</i>		
MA000065 <i>Professional Employees Award 2010*</i>		

Award free/Miscellaneous Award coverage?		
Part of class not covered	Is this industry/occupation traditionally not covered? (examples include managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists).	Excluded from coverage by another award/comments
-	-	-

\*Modern awards with combined industry and occupational coverage.

## B.2—ANZSIC Class 4610 - Road Freight Transport

This Class consists of units mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.
Primary activities: Furniture removal service; Log haulage service (road); Freight transport service; Road vehicle towing; Taxi truck service (with driver); Truck hire service (with driver).
Exclusions/References: Units mainly engaged in operating road freight terminals are included in Class 5299 Other Transport Support Services n.e.c.; providing road freight forwarding services are included in Class 5292 Freight Forwarding Services; providing crating or packing for road freight transport are included in Class 7320 Packaging Services; and leasing or hiring trucks without drivers are included in Class 6619 Other Motor Vehicle and Transport Equipment Rental and Hiring.

ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
<p>4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service. Primary activities: Furniture removal service</p>	<p><i>Road Transport and Distribution Industry Award 2010</i></p> <p>4.1 This industry award covers employers throughout Australia in the road transport and distribution industry and their employees in the classifications listed in clause 15—Classifications and minimum wage rates to the exclusion of any other modern award.”</p> <p>3.1: “road transport and distribution industry means: (a) the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer;”</p> <p>Schedule C: greaser and cleaner, yardperson, vehicle washer and detailer, motor driver’s assistant/furniture removers’ assistant</p>	<p>4.2 This award does not cover employers and employees covered by the following awards: <i>Mining Industry Award 2010; Road Transport (Long Distance Operations) Award 2010</i> whilst undertaking long distance operations; <i>Transport (Cash in Transit) Award 2010</i>; and <i>Waste Management Award 2010</i>.</p>			<p>Unclear whether covers taxi truck (with driver) industry. No clerical classifications. <i>Road Transport (Long Distance Operations) Award 2010</i> ; and <i>Waste Management Award 2010</i> exclude this award. The <i>Timber Industry Award 2010</i> is excluded from covering units covered by this award. Covers ‘transportation of freight by road’, but extent of long distance coverage unclear. Some maintenance coverage (greaser and cleaner)?</p>

ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.			<i>Road Transport (Long Distance Operations) Award 2010</i> 4.1 This industry award covers employers throughout Australia in the private transport industry engaged in long distance operations and their employees in the classifications listed in Schedule A—Classification Structure to the exclusion of any other modern award 3.1. private transport industry means the transportation by road of all materials whether in a raw or manufactured state, or of livestock, throughout Australia	This award applies to the exclusion of any other award	No clerical classifications. Extent of long distance coverage unclear.
			<i>MA000010 - Manufacturing and Associated Industries and Occupations Award 2010</i> 4.9 Manufacturing and Associated Industries and Occupations means: (a) the following industries and parts of industries: (x) handling, sorting, packing, despatching, distribution and transport in connection with any of the foregoing industries or parts of industries. (iii) repair, refurbishment, reconditioning, maintenance, installation, testing and fault finding or	4.2 The award does not cover: (a) an employer who is outside the scope of clause 4.9(a) or (b) unless such employer employs an employee covered by clause 4.9(c) and the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee; or	Note exclusion, which is likely to mean Vehicle Repair award more likely to have maintenance coverage. Mechanics covered by Class 9419 - Other Automotive Repair and Maintenance

ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.			<p><i>Salt Industry Award 2010</i></p> <p>For the purposes of this clause salt industry means:</p> <p>(a) the producing, gathering, extracting, harvesting, storing, distributing, packaging, manufacturing, treating, refining, brine handling, processing and transporting, shipping and conveying of salt and incidental related work by employees of the employer;</p>	<p>4.4 Exclusions</p> <p>This award does not cover:</p> <p>...</p> <p>(b) employers in respect of their operations or activities covered by the <i>Manufacturing and Associated Industries and Occupations Award 2010</i>, except for work covered by clause 4.2.</p>	Limited to transportation of salt. classifications. Extent of long distance coverage unclear.
			<p><i>Sugar Industry Award 2010</i></p> <p>3.1. "milling sector means the operations of transporting and processing cane including all rail construction, maintenance and operation; factory operation; sugar cane by-product manufacture and processing at a sugar mill; and packaging and storage operations performed at a sugar mill"</p> <p>39.1(b) "Production, transport and services operator—level 3 (C13) ...</p> <p>(ii) Indicative classifications would include, for example: Sugar boiler's assistant; Fireperson in mills; Low grade fugal operator; Diffuser attendant; Truck driver other than articulated</p>	<p>4.3 Where a sugar industry employer is also engaged in another industry not covered by this award the employees of that employer in the other industry will be covered by the industry award of that other industry.</p>	Coverage only where ancillary to sugar industry activities.
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service. Also Log haulage service (road)			<p><i>Timber Industry Award 2010</i></p> <p>4.1 This industry award covers employers throughout Australia in the industry sectors described in clause 4.2 and to the work and persons performing such work as listed in the skill grade structures, as described in clause 3—Definitions and interpretation. Without limiting the scope of this award it applies to the following types of work in the forest and building products, manufacturing and merchandising, and pulp and paper sectors and persons performing such work or employed in connection with the</p>	<p>5.1 The award does not cover employers and employees covered by the following awards:</p> <p>(a) <i>Silviculture Award 2010</i>;</p> <p>(b) <i>Graphic Arts, Printing and Publishing Award 2010</i>;</p> <p>[5.1(c) and (d) inserted by PR501999 from 21Sep10]</p>	Exclusions may limit any coverage.



ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
			<p>following work, to the exclusion of any other modern award.</p> <p>4.2 The following activities are arranged in industry sectors for ease of use. In reality each sector may overlap and include any or all activities from other sectors.</p> <p>(a) Harvesting and forestry management sector</p> <p>(i) Harvesting timber, processing of harvested timber, operating any machinery or vehicle in connection with harvesting, lifting, processing and transporting timber.</p>	<p>(c) <i>Road Transport and Distribution Award 2010</i>; or</p> <p>(d) <i>Road Transport (Long Distance Operations) Award 2010</i>.</p>	
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.			<p><i>Mining Industry Award 2010</i></p> <p>4.2. "For the purposes of this clause mining industry means: ... (d) the transportation, handling and loading of any of the metals, minerals, ores or substances covered by clause 4.2(a) by the mine operator, a related company or an entity principally engaged by the mine operator to do such work, using the plant or infrastructure (including rail and/or ports) of the mine operator or a related company;</p>	<p>4.3 Exclusions</p> <p>This award does not cover: ...</p> <p>(d) employers in respect of their operations or activities in the following industries or occupations: aluminium; catering, accommodation, ...; and melting and smelting of metals in connection with manufacturing activities covered by the <i>Manufacturing and Associated Industries and Occupations Award 2010</i>;</p> <p>(e) employers in respect of their operations or activities covered by the <i>Black Coal Mining Industry Award 2010</i>;</p> <p>(f) employers in respect of their operations or activities covered by the <i>Manufacturing and Associated Industries and Occupations Award 2010</i>, except for work covered by clause 4.2 above; and</p> <p>(g) persons employed in the head office or town office...</p>	Unclear whether transportation by road would be "using the plant or infrastructure (including rail and/or ports) of the mine operator or a related company'

ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.			<p><i>Meat Industry Award 2010</i></p> <p>4.2 The meat industry includes:</p> <p>(a) meat manufacturing establishments; (b) meat processing establishments; (c) meat retail establishments; and (d) the following:</p> <p>(i) handling and further processing of all by-products of the establishments referred to in clause 4.2(a), (b) or (c), including skins, hides and rendering; and</p> <p>(ii) distribution, transport and storage (including freezing and cold storage) operations for the purpose of transport or storage of the meat or meat products of an establishment referred to in clause 4.2(a), (b) or (c), where such activities are carried out by an employer engaged in any of clauses 4.2(a), (b) or (c) as an ancillary part of the business of that establishment, or by an employer that is a related company of such employer.</p>	<p>4.3 The award does not cover:</p> <p>(a) meat inspectors (being employees of an employer covered by this award who are engaged to perform duties equivalent to duties usually performed by AQIS Meat Inspectors);</p> <p>(b) employees covered by:</p> <p>(i) <i>Nurses Award 2010</i>;</p> <p>(ii) <i>General Retail Industry Award 2010</i>; or</p> <p>(iii) <i>Food, Beverage and Tobacco Manufacturing Award 2010</i>,</p> <p>(c) employees engaged to undertake managerial duties and responsibilities (at the level of foreman and above);</p> <p>(d) employers and employees engaged in the slaughter and/ or processing of any species of poultry, game or game birds not specifically listed in clause 3—Definitions and interpretation;</p> <p>(e) storage, transport or distribution of meat or meat products or by-products by employers who are not engaged in, or who do not conduct or operate a meat processing establishment, a meat manufacturing establishment or a meat retail establishment, and are not a related company of an employer that is so engaged;</p>	<p>Note only covers transport of meat or meat products where ancillary (so not primary activity) or by an employer that is a related company - unclear whether this would be separate unit for EEH purposes. Also note overlap created by coverage of wholesale meat transport in Transport Distribution Award.</p>
			<p><i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i></p> <p>4.1 This award covers employers throughout Australia of employees engaged in vehicle manufacturing and/or vehicle industry repair, services and retail</p> <p>4.2 For the purposes of coverage of this award:</p>		<p>Coverage limited to tow truck driving. - Note, also covers automotive mechanics, but mechanics not included in this Class.</p>

ANZSIC class (key words)	Primary industry award	Exclusions	Secondary industry awards	Exclusions	Comments
			(a) employees engaged in vehicle industry repair, services and retail means employees covered by the classifications at clause 33 and for whom Section 1—Vehicle Industry RS&R Employees applies; and 33. (c) Driver—tow truck:		
4610/Road Freight Transport mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.			<i>Water Industry Award 2010</i> 4.2 In this award water industry means the harvesting (including by desalination), transportation, storage, treatment and supply of water to commercial, residential and other consumers and the harvesting, transportation, storage, treatment and recycling of waste water, stormwater and sewerage	4.4 This award does not cover: (a) employers and employees covered by the <i>Local Government Industry Award 2010</i> ; (b) contractors to owners or operators of water industry facilities ... where such contractors are covered by any of the following awards: (i) <i>Building and Construction General On-site Award 2010</i> ; (ii) <i>Electrical, Electronic and Communications Contracting Award 2010</i> ; (iii) <i>Joinery and Building Trades Award 2010</i> ; (iv) <i>Manufacturing and Associated Industries and Occupations Award 2010</i> ; (v) <i>Mobile Crane Hiring Award 2010</i> ; (vi) <i>Plumbing and Fire Sprinklers Award 2010</i> ; or (vii) <i>Professional Employees Award 2010</i> , unless such contractor is a sub-contract operator of water industry facilities or infrastructure; (c) a chief executive officer, however described, ...	Transportation of water only

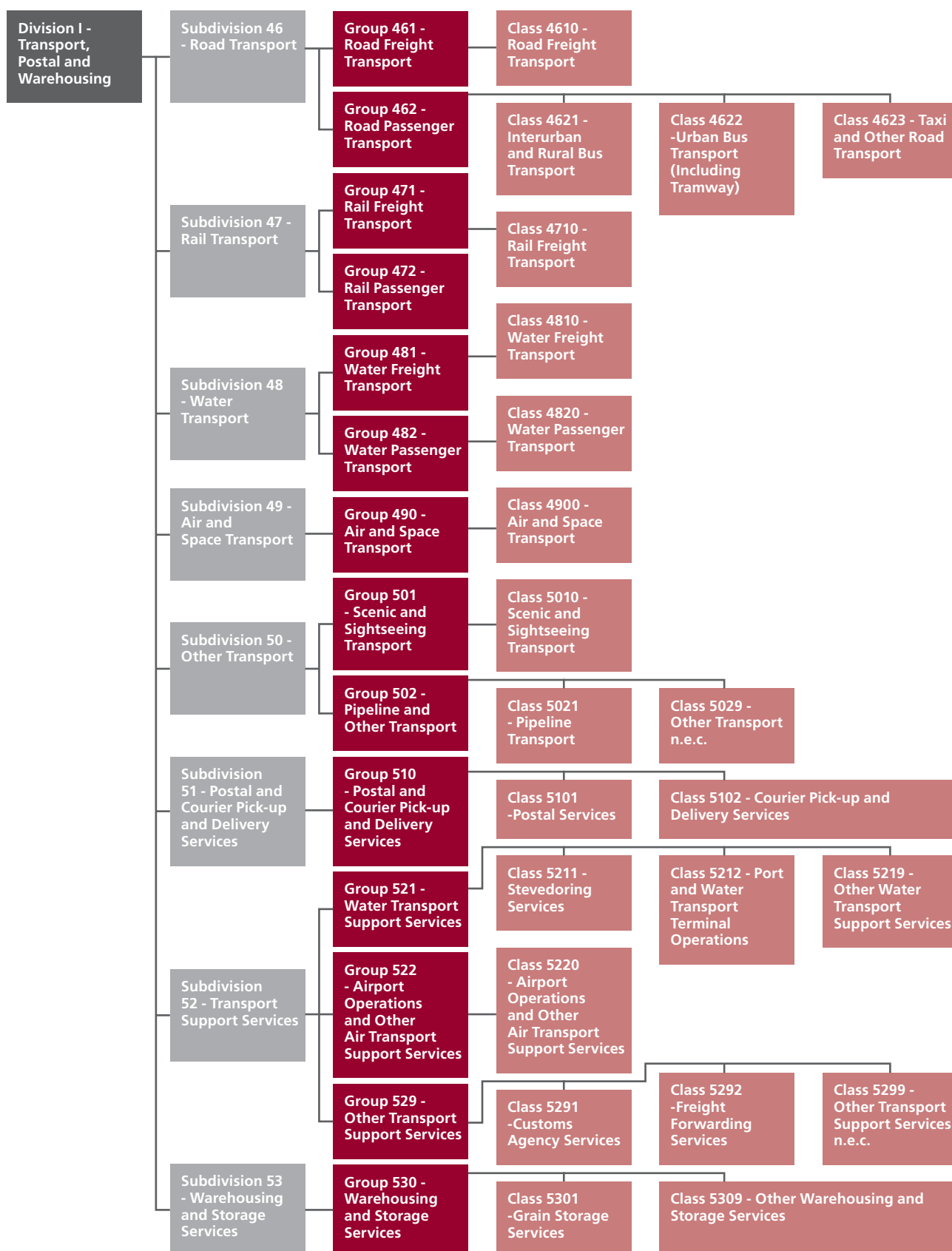
ANZSIC class 4610/Road Freight Transport to occupational awards		
This Class consists of units mainly engaged in the transportation of freight by road. It also includes units mainly engaged in renting trucks with drivers for road freight transport and road vehicle towing service.		
Primary activities: Furniture removal service; Log haulage service (road); Freight transport service; Road vehicle towing; Taxi truck service (with driver); Truck hire service (with driver).		
Exclusions/References: Units mainly engaged in operating road freight terminals are included in Class 5299 Other Transport Support Services n.e.c.; providing road freight forwarding services are included in Class 5292 Freight Forwarding Services; providing crating or packing for road freight transport are included in Class 7320 Packaging Services; and leasing or hiring trucks without drivers are included in Class 6619 Other Motor Vehicle and Transport Equipment Rental and Hiring.		
Occupational awards (not mapped)		
Name of award	Relevant exclusions	Comments
MA000046 <i>Air Pilots Award 2010</i>		
MA000047 <i>Aircraft Cabin Crew Award 2010</i>		
MA000079 <i>Architects Award 2010</i>		
MA000002 <i>Clerks— Private Sector Award 2010</i>	4.1 This award covers employers in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and to those employees. However, the award does not cover:  (a) an employer bound by a modern award that contains clerical classifications; or	Primary award does not contain clerical classifications.
MA000083 <i>Commercial Sales Award 2010</i>		
MA000064 <i>Hydrocarbons Field Geologists Award 2010</i>		
MA000117 <i>Mannequins and Models Award 2010</i>		
MA000031 <i>Medical Practitioner Award 2010</i>		
MA000066 <i>Surveying Award 2010</i>		
MA000027 <i>Health Professionals and Support Services Award 2010*</i>		
MA000029 <i>Joinery and Building Trades Award 2010*</i>		

ANZSIC class 4610/Road Freight Transport to occupational awards		
Occupational awards (not mapped)		
Name of award	Relevant exclusions	Comments
MA000010 <i>Manufacturing and Associated Industries and Occupations Award 2010*</i>	4.2 The award does not cover: (a) an employer who is outside the scope of clause 4.9(a) or (b) unless such employer employs an employee covered by clause 4.9(c) and the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee	May have some maintenance coverage, however Transport Distribution Award may have some maintenance coverage (greaser and cleaner). Note automotive mechanics excluded from Class- see Industries and Occupations worksheet
MA000034 <i>Nurses Award 2010</i>		
MA000065 <i>Professional Employees Award 2010*</i>		

Award free/Miscellaneous Award coverage?		
Part of class not covered	Is this industry/occupation traditionally not covered? (examples include managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists).	Excluded from coverage by another award/comments
Taxi truck service (with driver); taxi truck hire service (with driver)	unclear	Not excluded / Unclear whether this function may be covered by Transport Distribution Award

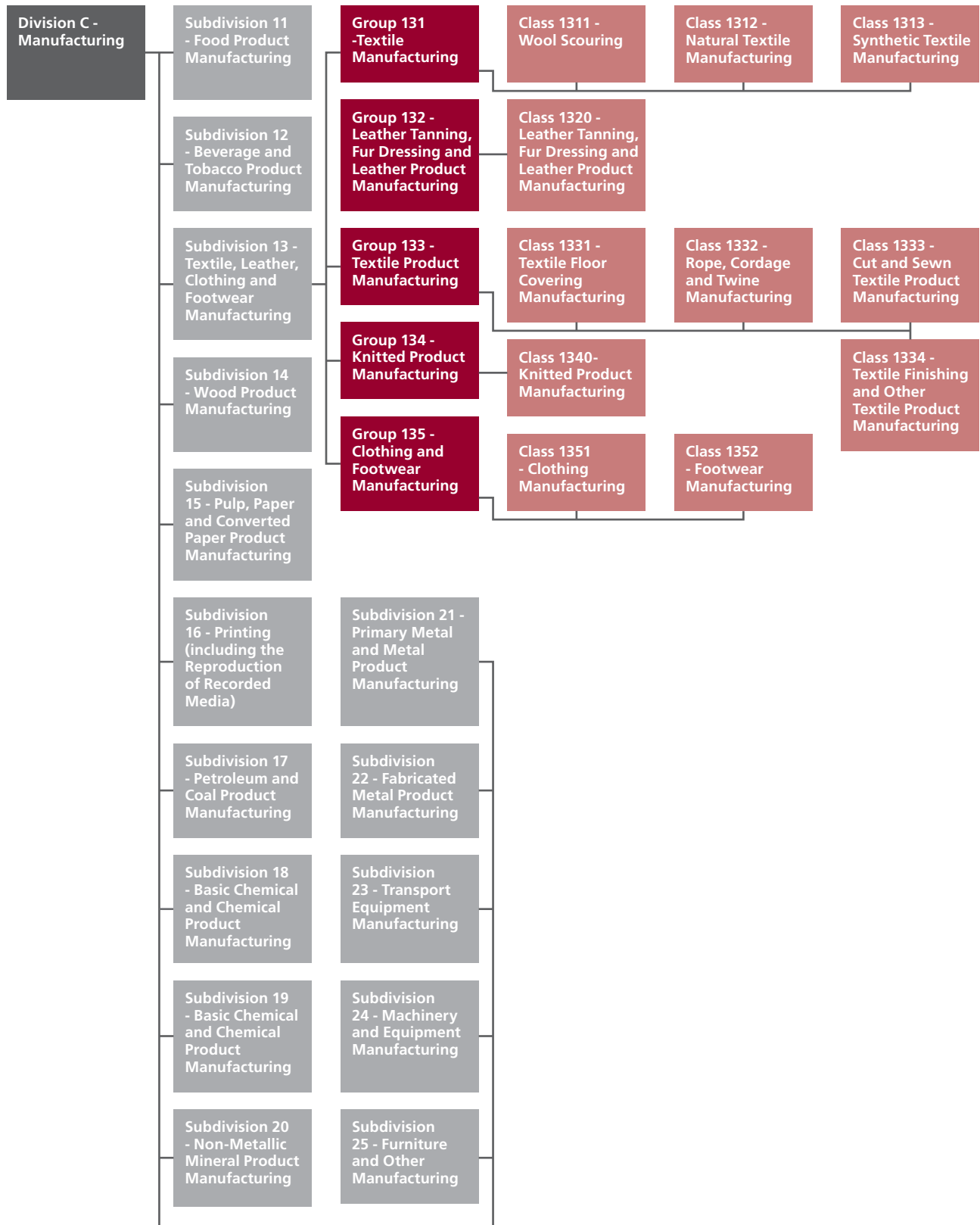
\*Modern awards with combined industry and occupational coverage.

**B.3—Flowchart of ANZSIC Division I - Transport, Postal and Warehousing**



Source: ABS, Australian and New Zealand Standard Industrial Classification, 2006 (Revision 1.0), Catalogue No. 1292.0 (ABS, 2008).

**B.4—Flowchart of ANZSIC Division C - Manufacturing, Subdivision 13 - Textile, Leather, Clothing and Footwear Manufacturing**



Source: ABS, Australian and New Zealand Standard Industrial Classification, 2006 (Revision 1.0), Catalogue No. 1292.0 (ABS, 2008).

## Appendix C

### Categories for classifying arrangements that define wage entitlements

Classification: legislation	Sub-classification: Wage-setting practice	Examples of workplace practice
<b>Award/agreement free</b> (Defines an employee to whom neither a modern award nor enterprise agreement applies (s.12))	Reliant on the National Minimum Wage Order to set minimum rates of pay/casual loading.	Pay rate is set according to the relevant rate specified in the National Minimum Wage Order. Pay rate may be set above this level.
<b>Award applies</b> (Would define employees to whom a modern award applies (within the meaning of s.47 of the Fair Work Act). This category would thus exclude employees whose wages are determined by an enterprise agreement and 'high income' employees (within s.329 definition of Fair Work Act) but could include employees on over award payments or on common law contracts.)	<b>Award-reliant</b>	Pay rate is set according to the relevant award rate specified for the classification of the employee. Conditions set by the award.
	<b>Over award (informal arrangements)</b>	Pay rate is set above the relevant award rate specified for the classification of the employee. Pay rate is not determined by an enterprise agreement and employee is not a 'high income' guaranteed employee.
	<b>Over award (common law contract)</b>	Pay rate is set above the relevant award rate specified for the classification of the employee. Pay rate is not determined by an enterprise agreement and employee is not a 'high income' guaranteed employee. Pay rate above the award rate is specified in a common law contract.
<b>Award covered</b> Would define employees who are covered (within the meaning of s.48 of the Fair Work Act) by a modern award. Predominantly those under formal agreements but also individuals who earn over the high income threshold.	<b>Over award (covered by a formal enterprise agreement)</b>	Covered by a formal enterprise agreement.
	<b>Over award (High income employee with guarantee of earnings<sup>135</sup>)</b>	High income employee - (as of 1 July 2011) - is a full time employee not covered by an enterprise agreement, covered by a modern award but earning \$118,100 + super or over with a guarantee of earnings with their employer (Note that amount will again be indexed 1 July 2012). Note that under s.329 an employee to be defined as a 'high income employee' must be subject to a guarantee of earnings with their employer for a period of at least 12 months. See s.329-333A. Guarantee means that modern award provisions will not apply to the employee for the life of the guarantee.

Note: Transitional instruments may also cover or apply to employees: see *Fair Work (Transitional Provisions and Consequential Amendments Act 2009)*(Cth), Schedule 3, Part 2 and Part 5 and Dunn, A. and Bray, G., *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Fair Work Australia 2010).

135 See Division 3, Part 2-9, Ch 2 of the Fair Work Act. Extract of para 11.61 of Creighton, B and Stewart, A (2010) *Labour Law: Fifth Edition*, The Federation Press, NSW.

'If no [high income] guarantee is given, then the modern award will apply to the employee in the same way as to any other employee covered by it. It is erroneous, therefore, to assume that a modern award cannot apply to a high income earner - rather, the employer and the employee can enter into an agreed arrangement whereby it will not apply to a particular employee who earns in excess of the threshold. The effect of the arrangement, while in force, is that the employer need not comply with the requirements of the relevant award. It would also appear to have the effect of making the worker an 'award/agreement free employee', given the way the term is defined in s.12. That would in turn affect the operation of various provisions in the NES, for example as to the cashing out of annual leave. On the other hand, because the employee is still covered by the relevant award, they remain eligible to make an unfair dismissal claim'



## Appendix D

### Result of trial request to ABS for data

Australian Bureau of Statistics—Customised data

Survey of Employee Earnings and Hours, ABS cat. no. 6306.0, May 2010

**Table 1 Non-managerial employees in Australia, Sex by Method of Setting Pay by specified Industry (a)**

Industry (a)	Number of employees (b)											
	Award only			Collective agreement			Individual arrangement			All methods of setting pay		
	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)
<b>Males</b>												
Textile industries	**1.7	1.0	59.1	*1.0	0.4	37.2	*5.7	2.1	37.3	*8.5	2.5	29.1
Transport industries	13.9	3.2	23.1	29.9	5.8	19.3	48.8	6.3	13.0	92.6	9.5	10.3
All other industries	550.0	27.2	4.9	1661.4	45.3	2.7	1697.1	45.6	2.7	3908.4	68.4	1.7
<b>All industries</b>	<b>565.6</b>	<b>27.3</b>	<b>4.8</b>	<b>1692.3</b>	<b>45.5</b>	<b>2.7</b>	<b>1751.6</b>	<b>45.9</b>	<b>2.6</b>	<b>4009.5</b>	<b>68.6</b>	<b>1.7</b>
<b>Females</b>												
Textile industries	**1.3	1.0	78.8	**0.5	0.3	67.6	*9.8	4.0	40.5	*11.5	4.1	35.6
Transport industries	**4.1	2.4	57.0	*3.3	0.9	26.6	13.8	2.4	17.6	21.2	3.5	16.7
All other industries	790.3	40.7	5.2	2077.2	80.6	3.9	1366.0	40.5	3.0	4233.5	94.8	2.2
<b>All industries</b>	<b>795.6</b>	<b>40.8</b>	<b>5.1</b>	<b>2081.0</b>	<b>80.6</b>	<b>3.9</b>	<b>1389.5</b>	<b>40.6</b>	<b>2.9</b>	<b>4266.2</b>	<b>94.9</b>	<b>2.2</b>
<b>Persons</b>												
Textile industries	**3.0	1.8	58.8	*1.5	0.7	44.5	*15.5	5.2	33.7	*20.0	5.8	28.8
Transport industries	18.0	4.4	24.3	33.2	6.1	18.5	62.6	7.4	11.8	113.8	11.2	9.9
All other industries	1340.2	53.5	4.0	3738.6	109.0	2.9	3063.1	70.0	2.3	8141.8	133.8	1.6
<b>All industries</b>	<b>1361.2</b>	<b>53.6</b>	<b>3.9</b>	<b>3773.3</b>	<b>109.1</b>	<b>2.9</b>	<b>3141.2</b>	<b>70.1</b>	<b>2.2</b>	<b>8275.7</b>	<b>133.8</b>	<b>1.6</b>

**Table 2 Non-managerial employees in Australia, Employee status by Method of Setting Pay by specified Industry (a)**

Industry (a)	Number of employees (b)											
	Award only			Collective agreement			Individual arrangement			All methods of setting pay		
	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)
<b>Full-time</b>												
Textile industries	np	np	np	np	np	np	*8.8	2.9	33.5	*12.5	3.5	28.0
Transport industries	np	np	np	np	np	np	46.9	6.2	13.2	85.4	9.5	11.1
All other industries	515.4	27.4	5.3	2197.6	68.0	3.1	2255.9	55.9	2.5	4968.8	91.8	1.8
<b>All industries</b>	<b>527.6</b>	<b>27.5</b>	<b>5.2</b>	<b>2227.6</b>	<b>68.2</b>	<b>3.1</b>	<b>2311.6</b>	<b>56.1</b>	<b>2.4</b>	<b>5066.7</b>	<b>91.8</b>	<b>1.8</b>
<b>Part-time</b>												
Textile industries	np	np	np	np	np	np	*6.7	2.6	38.7	*7.5	2.6	35.1
Transport industries	np	np	np	np	np	np	15.7	3.2	20.1	28.4	4.7	16.5
All other industries	824.9	40.3	4.9	1541.0	56.4	3.7	807.2	32.6	4.0	3173.0	71.4	2.2
<b>All industries</b>	<b>833.6</b>	<b>40.4</b>	<b>4.8</b>	<b>1545.7</b>	<b>56.4</b>	<b>3.6</b>	<b>829.6</b>	<b>32.7</b>	<b>3.9</b>	<b>3209.0</b>	<b>71.5</b>	<b>2.2</b>
<b>Total</b>												
Textile industries	**3.0	1.8	58.8	*1.5	0.7	44.5	*15.5	5.2	33.7	*20.0	5.8	28.8
Transport industries	18.0	4.4	24.3	33.2	6.1	18.5	62.6	7.4	11.8	113.8	11.2	9.9
All other industries	1340.2	53.5	4.0	3738.6	109.0	2.9	3063.1	70.0	2.3	8141.8	133.8	1.6
<b>All industries</b>	<b>1361.2</b>	<b>53.6</b>	<b>3.9</b>	<b>3773.3</b>	<b>109.1</b>	<b>2.9</b>	<b>3141.2</b>	<b>70.1</b>	<b>2.2</b>	<b>8275.7</b>	<b>133.8</b>	<b>1.6</b>

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**Table 3 Non-managerial employees in Australia, Age by Method of Setting Pay by specified Industry (a)**

Industry (a)	Number of employees (b)								
	Award only			Not award only			All methods of setting pay		
	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)
<b>Adult</b>									
Textile industries	**3.0	1.8	58.8	np	np	np	np	np	np
Transport industries	14.0	3.0	21.3	np	np	np	np	np	np
All other industries	1150.4	49.1	4.3	6492.6	125.9	1.9	7643.0	130.2	1.7
<b>All industries</b>	<b>1167.4</b>	<b>49.1</b>	<b>4.2</b>	<b>6604.7</b>	<b>125.9</b>	<b>1.9</b>	<b>7772.1</b>	<b>130.1</b>	<b>1.7</b>
<b>Junior</b>									
Textile industries	—	—	—	np	np	np	np	np	np
Transport industries	**4.0	2.5	62.7	np	np	np	np	np	np
All other industries	189.8	19.1	10.0	309.1	21.5	7.0	498.9	28.4	5.7
<b>All industries</b>	<b>193.8</b>	<b>19.2</b>	<b>9.9</b>	<b>309.8</b>	<b>21.5</b>	<b>6.9</b>	<b>503.6</b>	<b>28.5</b>	<b>5.7</b>
<b>Total</b>									
Textile industries	**3.0	1.8	58.8	*17.0	5.2	30.9	*20.0	5.8	28.8
Transport industries	18.0	4.4	24.3	95.9	10.4	10.8	113.8	11.2	9.9
All other industries	1340.2	53.5	4.0	6801.6	129.6	1.9	8141.8	133.8	1.6
<b>All industries</b>	<b>1361.2</b>	<b>53.6</b>	<b>3.9</b>	<b>6914.5</b>	<b>129.7</b>	<b>1.9</b>	<b>8275.7</b>	<b>133.8</b>	<b>1.6</b>

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**Table 4 Non-managerial employees in Australia, Type of employee by Method of Setting Pay by specified Industry (a)**

Industry (a)	Number of employees (b)											
	Award only			Collective agreement			Individual arrangement			All methods of setting pay		
	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)	('000)	SE ('000)	RSE (%)
<b>Permanent or fixed term</b>												
Textile industries	np	np	np	*1.5	0.7	44.5	np	np	np	*16.2	4.9	30.3
Transport industries	np	np	np	28.9	5.6	19.5	np	np	np	86.3	9.7	11.3
All other industries	725.3	41.4	5.7	3048.4	98.7	3.2	2516.1	61.5	2.4	6289.8	122.0	1.9
<b>All industries</b>	<b>737.6</b>	<b>41.5</b>	<b>5.6</b>	<b>3078.8</b>	<b>98.7</b>	<b>3.2</b>	<b>2575.9</b>	<b>61.6</b>	<b>2.4</b>	<b>6392.3</b>	<b>122.0</b>	<b>1.9</b>
<b>Casual</b>												
Textile industries	np	np	np	—	—	—	np	np	np	**3.8	2.0	53.8
Transport industries	np	np	np	*4.3	1.1	26.6	np	np	np	27.5	3.9	14.0
All other industries	614.9	33.2	5.4	690.2	34.1	4.9	546.9	27.8	5.1	1852.1	51.4	2.8
<b>All industries</b>	<b>623.6</b>	<b>33.3</b>	<b>5.3</b>	<b>694.5</b>	<b>34.1</b>	<b>4.9</b>	<b>565.3</b>	<b>28.0</b>	<b>5.0</b>	<b>1883.4</b>	<b>51.5</b>	<b>2.7</b>
<b>Total</b>												
Textile industries	**3.0	1.8	58.8	*1.5	0.7	44.5	*15.5	5.2	33.7	*20.0	5.8	28.8
Transport industries	18.0	4.4	24.3	33.2	6.1	18.5	62.6	7.4	11.8	113.8	11.2	9.9
All other industries	1340.2	53.5	4.0	3738.6	109.0	2.9	3063.1	70.0	2.3	8141.8	133.8	1.6
<b>All industries</b>	<b>1361.2</b>	<b>53.6</b>	<b>3.9</b>	<b>3773.3</b>	<b>109.1</b>	<b>2.9</b>	<b>3141.2</b>	<b>70.1</b>	<b>2.2</b>	<b>8275.7</b>	<b>133.8</b>	<b>1.6</b>

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### Customised ANZSIC Classification Groups

Textile Industries		Transport Industries	
1312	Natural Textile Manufacturing	4610	Road Freight Transport
1313	Synthetic Textile Manufacturing	5102	Courier Pick-up and Delivery Services
1331	Textile Floor Covering Manufacturing		
1333	Cut and Sewn Textile Product Manufacturing		
1334	Textile Finishing and Other Textile Product Manufacturing		
1340	Knitted Product Manufacturing		
1351	Clothing Manufacturing		
1352	Footwear Manufacturing		
9491	Clothing and Footwear Repair		

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#### Notes:

- \* estimate has a relative standard error of between 25% and 50% and should be used with caution
- \*\* estimate has a relative standard error greater than 50% and is considered too unreliable for general use
- nil or rounded to zero (including null cells)
- np not available for publication but included in totals where applicable, unless otherwise indicated

- (a) Industry is classified according to the Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006, ABS cat. no 1292.0 for customised classification groups described at the end of this document.
- (b) Care should be taken in the interpretation and use of estimates of numbers of employees from the Survey of Employee Earnings and Hours (EEH). Although the survey can provide estimates of the number of employees, it is not designed specifically for this purpose. Users are directed to Labour Force, Australia (cat. no. 6202.0) as the primary source of official ABS statistics of employment. For more information see paragraphs 29 and 30 of the Explanatory Notes in Employee Earnings and Hours, Australia (cat. no. 6306.0)

SE Standard Error

RSE Relative Standard Error

Caveat: (1) As these data are based on information relating to a sample of employers and employees for each year, rather than a full enumeration, they are subject to sample variability. That is, they may vary from the estimates that would have been produced if the information had been obtained from all employers and all employees. The figures produced at this fine level of disaggregation show volatility due to the sample design. (2) The Survey of Employee Earnings and Hours was not designed as a time series so caution should be exercised when comparing data between different years. (3) Release of data is subject to confidentiality rules.

Note: The sampling error associated with any estimate can be estimated from the sample results. One measure of sampling error is given by the standard error. There are about two chances in three that a sample estimate differs from the true value by less than one standard error, and about nineteen chances in twenty that the difference will be less than two standard errors. An example of the use of a standard error is as follows. If the estimated number of non-managerial employee paid by Award only in Australia in May 2010 is 1,361,200, with a standard error of 53,600 (derived from relative standard error of 3.9%), then there would be about two chances in three that a full enumeration would have given an estimate in the range 1,307,600 - 1,414,800, and about nineteen chances in twenty that it would be in the range 1,254,000 - 1,468,400.

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## Appendix E

### List of industry and occupational modern awards

#### Identifying industry and occupational modern awards

The Award Modernisation Request<sup>136</sup> states at paragraph 8 that ‘the Commission will identify the type of work, industry and/or occupations covered by a modern award and the application of each award.’ Coverage clauses in some modern awards identify whether they apply to an industry or occupation, while others contain little or no indication. For example, the *Aluminium Industry Award 2010*<sup>137</sup> at clause 4.1 states that ‘[t]his industry award covers employers through Australia in the aluminium industry and their employees...’. Others provide no explicit indication as to whether they are an industry or occupational modern award; for example, the *Architects Award 2010*<sup>138</sup> under clause 4.1 states ‘This award covers employers of architects with respect to their employees...’.

It is necessary for the purposes of the Project to determine whether a modern award is an industry or occupational modern award (or both). As ANZSIC is a system for the classification of industries, not occupations, its interaction with occupational modern awards is different in some respects from that of industry modern awards. In particular, an occupational modern award could potentially have coverage in a number of industries where that occupation may be present; for example, the Clerks Award may have coverage of clerical duties across a number of industries. Separately identifying occupational modern awards enables the different nature of their coverage to be taken into account, to the extent possible, in the mapping framework.

For the purposes of the Project, modern awards have been classified as ‘industry’ and/or ‘occupational’ according to the following principles:

1. Explicit identification: Modern awards that explicitly state that they are an industry or occupational modern award have been classified as such.
2. Use of ‘industry’ or ‘occupational’: References to an industry or occupation (but not ‘industry award or ‘occupational award’) are relevant to the classification of the modern award. This may be found in either the title or coverage clause of a modern award. For example, the *Hair and Beauty Industry Award 2010*<sup>139</sup> also contains the words ‘hair and beauty industry’ in the coverage clause under clause 4.1.
3. Structure of the coverage clause: Subject to principle 1, modern awards that define their coverage primarily according to the industry or activity of the employer, with coverage then extended to the employees of those employers, have been identified as an industry modern award. For example, clause 4.1 of the *Aluminium Industry Award 2010*<sup>140</sup> states ‘This industry award covers employers throughout Australia in the aluminium industry and their employees...’.

Modern awards that define their coverage primarily according to the occupation or activity of employees, with coverage then extended to the employers of those employees, have been identified as an occupational modern awards. For example, clause 4.1 of the Clerks Award states: ‘This award covers employers in the private sector throughout Australia with respect to their employees engaged wholly or principally in clerical work, including administrative duties of a clerical nature, and to those employees’.

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<sup>136</sup> Minister for Employment and Workplace Relations, Award Modernisation Request under section 576C(1) of the *Workplace Relations Act 1996* (Cth), 28 March 2008.

<sup>137</sup> *Aluminium Industry Award 2010* [MA000060].

<sup>138</sup> *Architects Award 2010* [MA000079].

<sup>139</sup> *Hair and Beauty Industry Award 2010* [MA000005].

<sup>140</sup> *Aluminium Industry Award 2010* [MA000060].

4. Applicability of primary activity: If the modern award defines its coverage in whole or part by an activity that can be performed in more than one industry, it is an indication that it may be an occupational modern award. For example, employees under the *Hydrocarbons Field Geologists Award 2010*<sup>141</sup> could be employed in a number of different industries including the water industry or mining.
5. Exclusion clause: although a modern award may cover an activity that may exist in a number of industries, the exclusion clause may limit coverage to a single industry. For example, the *Contract Call Centres Award 2010*<sup>142</sup> refers to the 'contract call centre industry' under clause 4.1 and as stated under clause 4.4(a) and (b), does not apply to 'any business or part of a business which is not a business in the contract call centre industry; or any business or part of a business in which the customer contact services are carried out within that business and for that business, except in the case of a business in the contract call centre industry...'. Such modern awards, subject to the principles above, have been classified as industry modern awards.
6. Occupations of employers: although in most cases occupational modern awards are structured to cover employers of employees in the occupation concerned (see point 2 above), in some cases modern awards refer to the occupation of employers. For example, the coverage term of the *Graphic Arts, Printing and Publishing Award 2010*<sup>143</sup> at clause 4.1 states that '[t]his industry and occupational modern award covers employers throughout Australia in the graphic arts, printing, publishing and associated industries and occupations and their employees'. In accordance with principle 1, such modern awards will be classified as occupational modern awards or, where there is also an element of industry coverage (such as in the case of the *Graphic Arts, Printing and Publishing Award 2010*), combined industry/occupational modern awards.
7. Several modern awards have elements of both occupation and industry modern award coverage (identified below).

### Summary of industry/occupational modern awards list

Industry modern awards	
MA000115 <i>Aboriginal Community Controlled Health Services Award 2010</i>	MA000062 <i>Hydrocarbons Industry (Upstream) Award 2010</i>
MA000018 <i>Aged Care Award 2010</i>	MA000067 <i>Journalists Published Media Award 2010</i>
MA000048 <i>Airline Operations-Ground Staff Award 2010</i>	MA000099 <i>Labour Market Assistance Industry Award 2010</i>
MA000049 <i>Airport Employees Award 2010</i>	MA000116 <i>Legal Services Award 2010</i>
MA000092 <i>Alpine Resorts Award 2010</i>	MA000081 <i>Live Performance Award 2010</i>
MA000060 <i>Aluminium Industry Award 2010</i>	MA000112 <i>Local Government Industry Award 2010</i>
MA000098 <i>Ambulance and Patient Transport Industry Award 2010</i>	MA000093 <i>Marine Tourism and Charter Vessels Award 2010</i>
MA000080 <i>Amusement, Events and Recreation Award 2010</i>	MA000050 <i>Marine Towing Award 2010</i>

141 *Hydrocarbons Field Geologists Award 2010* [MA000064].

142 *Contract Call Centres Award 2010* [MA000023].

143 *Graphic Arts, Printing and Publishing Award 2010* [MA000026].

Industry modern awards	
MA000118 <i>Animal Care and Veterinary Services Award 2010</i>	MA000033 <i>Nursery Award 2010</i>
MA000114 <i>Aquaculture Industry Award 2010</i>	MA000072 <i>Oil Refining and Manufacturing Award 2010</i>
MA000054 <i>Asphalt Industry Award 2010</i>	MA000063 <i>Passenger Vehicle Transportation Award 2010</i>
MA000019 <i>Banking, Finance and Insurance Award 2010</i>	MA000035 <i>Pastoral Award 2010</i>
MA000001 <i>Black Coal Mining Industry Award 2010</i>	MA000097 <i>Pest Control Industry Award 2010</i>
MA000078 <i>Book Industry Award 2010</i>	MA000069 <i>Pharmaceutical Industry Award 2010</i>
MA000091 <i>Broadcasting and Recorded Entertainment Award 2010</i>	MA000012 <i>Pharmacy Industry Award 2010</i>
MA000020 <i>Building and Construction General On-site Award 2010</i>	MA000051 <i>Port Authorities Award 2010</i>
MA000021 <i>Business Equipment Award 2010</i>	MA000052 <i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>
MA000095 <i>Car Parking Award 2010</i>	MA000074 <i>Poultry Processing Award 2010</i>
MA000055 <i>Cement and Lime Award 2010</i>	MA000057 <i>Premixed Concrete Award 2010</i>
MA000070 <i>Cemetery Industry Award 2010</i>	MA000108 <i>Professional Diving Industry (Industrial) Award 2010</i>
MA000120 <i>Children's Services Award 2010</i>	MA000109 <i>Professional Diving Industry (Recreational) Award 2010</i>
MA000022 <i>Cleaning Services Award 2010</i>	MA000037 <i>Quarrying Award 2010</i>
MA000045 <i>Coal Export Terminals Award 2010</i>	MA000013 <i>Racing Clubs Events Award 2010</i>
MA000056 <i>Concrete Products Award 2010</i>	MA000014 <i>Racing Industry Ground Maintenance Award 2010</i>
MA000023 <i>Contract Call Centres Award 2010</i>	MA000015 <i>Rail Industry Award 2010</i>
MA000110 <i>Corrections and Detention (Private Sector) Award 2010</i>	MA000106 <i>Real Estate Industry Award 2010</i>
MA000024 <i>Cotton Ginning Award 2010</i>	MA000058 <i>Registered and Licensed Clubs Award 2010</i>
MA000085 <i>Dredging Industry Award 2010</i>	MA000119 <i>Restaurant Industry Award 2010</i>
MA000096 <i>Dry Cleaning and Laundry Industry Award 2010</i>	MA000038 <i>Road Transport and Distribution Award 2010</i>
MA000075 <i>Educational Services (Post-Secondary Education) Award 2010</i>	MA000039 <i>Road Transport (Long Distance Operations) Award 2010</i>
MA000076 <i>Educational Services (Schools) General Staff Award 2010</i>	MA000107 <i>Salt Industry Award 2010</i>
MA000077 <i>Educational Services (Teachers) Award 2010</i>	MA000068 <i>Seafood Processing Award 2010</i>
MA000025 <i>Electrical, Electronic and Communications Contracting Award 2010</i>	MA000122 <i>Seagoing Industry 2010</i>
MA000088 <i>Electrical Power Industry Award 2010</i>	MA000016 <i>Security Services Award 2010</i>
MA000003 <i>Fast Food Industry Award 2010</i>	MA000040 <i>Silviculture Award 2010</i>
MA000073 <i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	MA000100 <i>Social, Community, Home Care and Disability Services Industry Award 2010</i>



Industry modern awards	
MA000111 <i>Fire Fighting Industry Award 2010</i>	MA000032 <i>Mobile Crane Hiring Award 2010</i>
MA000094 <i>Fitness Industry Award 2010</i>	MA000082 <i>Sporting Organisations Award 2010</i>
MA000105 <i>Funeral Industry Award 2010</i>	MA000121 <i>State Government Agencies Administration Award 2010</i>
MA000101 <i>Gardening and Landscaping Services Award 2010</i>	MA000053 <i>Stevedoring Industry Award 2010</i>
MA000061 <i>Gas Industry Award 2010</i>	MA000084 <i>Storage Services and Wholesale Award 2010</i>
MA000004 <i>General Retail Industry Award 2010</i>	MA000087 <i>Sugar Industry Award 2010</i>
MA000005 <i>Hair and Beauty Industry Award 2010</i>	MA000103 <i>Supported Employment Services Award 2010</i>
MA000006 <i>Higher Education Industry—Academic Staff—Award 2010</i>	MA000041 <i>Telecommunications Services Award 2010</i>
MA000007 <i>Higher Education Industry—General Staff—Award 2010</i>	MA000017 <i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>
MA000008 <i>Horse and Greyhound Training Award 2010</i>	MA000071 <i>Timber Industry Award 2010</i>
MA000028 <i>Horticulture Award 2010</i>	MA000042 <i>Transport (Cash in Transit) Award 2010</i>
MA000009 <i>Hospitality Industry (General) Award 2010</i>	MA000102 <i>Travelling Shows Award 2010</i>
MA000086 <i>Maritime Offshore Oil and Gas Award 2010</i>	MA000089 <i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>
MA000030 <i>Market and Social Research Award 2010</i>	MA000043 <i>Waste Management Award 2010</i>
MA000059 <i>Meat Industry Award 2010</i>	MA000113 <i>Water Industry Award 2010</i>
MA000011 <i>Mining Industry Award 2010</i>	MA000090 <i>Wine Industry Award 2010</i>
MA000104 <i>Miscellaneous Award 2010</i>	MA000044 <i>Wool Storage, Sampling and Testing Award 2010</i>

Occupational modern awards
MA000046 <i>Air Pilots Award 2010</i>
MA000047 <i>Aircraft Cabin Crew Award 2010</i>
MA000079 <i>Architects Award 2010</i>
MA000002 <i>Clerks-Private Sector Award 2010</i>
MA000083 <i>Commercial Sales Award 2010</i>
MA000034 <i>Nurses Award 2010</i>
MA000064 <i>Hydrocarbons Field Geologists Award 2010</i>
MA000117 <i>Mannequins and Models Award 2010</i>
MA000031 <i>Medical Practitioners Award 2010</i>
MA000066 <i>Surveying Award 2010</i>

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<b>Combined industry/occupational modern awards</b>	
MA000027	<i>Health Professionals and Support Services Award 2010</i>
MA000029	<i>Joinery and Building Trades Award 2010</i>
MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>
MA000065	<i>Professional Employees Award 2010</i>
MA000036	<i>Plumbing and Fire Sprinklers Award 2010</i>
MA000026	<i>Graphic Arts, Printing and Publishing Award 2010</i>



