

IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE
INDUSTRIAL DIVISION

Case No. MAG-CI-230098150

SHEHAN JAYAWARDANA

Plaintiff

and

TELSTRA LIMITED TRADING AS
 TELSTRA

Defendant

<u>MAGISTRATE:</u>	K Fawcett
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	4, 5 and 6 March, written submissions 15 and 20 March 2024
<u>DATE OF DECISION:</u>	11 October 2024
<u>CASE MAY BE CITED AS:</u>	Jayawardana v Telstra Limited
<u>MEDIUM NEUTRAL CITATION:</u>	

INDUSTRIAL LAW – *Fair Work Act 2009* (Cth) s 50 – alleged contravention of enterprise agreement – dispute as to Plaintiff's classification level under enterprise agreement – principles of construction of enterprise agreements – principles for determining applicable classification.

APPEARANCES:

For the Plaintiff	Daniel Dwyer	Communications Electrical and Plumbing Union
For the Defendant	Counsel	Solicitors
	Chris O'Grady KC Dimitri Ternovski	Seyfarth Shaw Australia

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HER HONOUR:

INTRODUCTION

- 1 The Plaintiff Mr Shehan Jayawardana is employed by Telstra Limited (**Telstra**)¹ as a Fibre Technician, working on Telstra's optical fibre network. Mr Jayawardana claims he has been underpaid by Telstra since 2019, in breach of the enterprise agreements applicable to his employment and s 50 of the *Fair Work Act 2009* (**the Act**), because Telstra has incorrectly classified his role. Telstra denies that Mr Jayawardana has been underpaid and says he has been correctly classified.
- 2 This Court, an eligible State or Territory Court pursuant to s 12 of the Act, has jurisdiction to remedy any underpayment arising from the contravention of an enterprise agreement pursuant to s 545(3) of the Act and to impose pecuniary penalties pursuant to s 546 of the Act.²
- 3 Determining Mr Jayawardana's classification level requires consideration of Core Job Descriptions (CJDs) which underpin the enterprise agreement classification structure, and which have not been updated since 2002. At that time Telstra's network predominantly used older transmission technologies, such as copper, rather than optical fibre, and the CJDs primarily refer to products and services based on these older technologies. Mr Jayawardana does not work on the copper network. The key issue in the proceeding is the interpretation of CJDs designed predominantly for the copper network and their application to Mr Jayawardana's work on the optical fibre network.

MR JAYAWARDANA'S CONTRACTS AND THE CLASSIFICATION STRUCTURE

- 4 Many of the facts in the matter were agreed by way of a Statement of Agreed Facts dated 21 December 2023 (**SOAF**). The following background matters were not in

¹ Mr Jayawardana was employed by Telstra Corporation Ltd until 8 December 2022, with his employment transfer to Telstra constituting a transfer of business under the *Fair Work Act 2009* (Cth) and all liabilities of Telstra Corporation Ltd transferred to Telstra. Both entities are referred to as 'Telstra' in this decision.

² Section 50 of the Act provides that a person must not contravene a term of an enterprise agreement. Section 539 of the Act provides that s 50 is a civil remedy provision. Section 545(3) applies in respect of an amount required to be paid by an employer under the Act or Fair Work Instrument, and the employer has contravened a civil remedy provision by failing to pay the amount.

dispute.

- 5 Mr Jayawardana has been employed pursuant to three successive written contracts. His 30 January 2012 contract provided that he was employed as 'Constructor Repairer' classified at CFW3. His 30 January 2013 contract provided that he was employed as 'CAN Infrastructure Builder' classified at CFW4. His current contract dated 26 October 2022 (**2022 Contract**) provides that he is employed as a 'Service Technician' classified as CFW4. The 2022 Contract was entered into following a corporate restructure and did not result in any changes to Mr Jayawardana's role or duties.
- 6 At all relevant times, Telstra has classified Mr Jayawardana as CFW4. Mr Jayawardana contends that he should have been classified as CFW7 or alternatively CFW5 since at least 1 October 2019.
- 7 The classification references in Mr Jayawardana's contracts, and in respect of the claim, are derived from the enterprise agreements applicable to Mr Jayawardana's employment, being:
 - (a) the Telstra Enterprise Agreement 2015-2018 (**2015 Agreement**), from 12 November 2015 until 18 June 2020;
 - (b) the Telstra Enterprise Agreement 2019-2021 (**2019 Agreement**), from 19 June 2020 until 12 July 2022; and
 - (c) the Telstra Limited Enterprise Agreement 2022-2024 (**2022 Agreement**) from 13 July 2022 onwards.
- 8 The classification provisions have not materially changed across the enterprise agreements and the parties agreed that the 2022 Agreement provisions may be used as a proxy for the classification structure across each of the enterprise agreements.
- 9 Mr Jayawardana is a 'workstream employee'³ under the 2022 Agreement. Accordingly,

³ 2022 Agreement, s 14, Dictionary.

his minimum fixed remuneration rate is determined based on the relevant Band,⁴ which refers to the level of a job within the relevant workstream.⁵ Mr Jayawardana falls under the 'Customer Field Workstream' or 'CFW', which is defined as:

Employees engaged in Customer Access Network (CAN) construction and/or in the end to end installation, operation, maintenance and repair of all services for customers and/or in the supervision and/or direct operational support of such employees and the testers in the service assurance call centres.⁶

10 Appendix C 'Workstream Arrangements' at clause C1 provides:

C1. WORKSTREAM PRINCIPLES

C1.1. Telstra will allocate a Workstream Employee to a Workstream (see the Dictionary for Workstream definitions).

C1.2. The following principles apply:

- a) Work in each Workstream will be evaluated in accordance with the Telstra Job Evaluation and Classification System and these principles.
- b) Each Band, within a Workstream, will have agreed representative Core Job Descriptions which form part of this Agreement. There may be more than one Core Job Description for each Band.
- c) As part of the Telstra Job Evaluation and Classification process, managers will design any new jobs that will go into a Workstream. If Telstra and any new employee to whom the new job applies cannot reach agreement on the grading of the new job, the matter will be referred to a review team comprising:
 - i) an external consultant expert in Telstra's Job Evaluation and Classification System;
 - ii) a Telstra representative;
 - iii) the employee (who may be represented, including by a Telstra Union).
- d) A majority of the three person team will determine the outcome and this outcome will be binding on the Parties to this Agreement without recourse to further review or appeal.
- e) Telstra and the Telstra Unions may agree to change the current Core Job Descriptions during the life of the Agreement. However, they will not be changed without such agreement.

⁴ 2022 Agreement, cl 7, Appendix B. B2.1 contains the minimum fixed remuneration rates which apply to Mr Jayawardana, as a Workstream Employee who is not a member of a defined benefits fund. It contains rates for Workstream Bands 1- 12.

⁵ 2022 Agreement, s 14, Dictionary.

⁶ 2022 Agreement, s 14, Dictionary.

11 The Dictionary defines ‘Core Jobs [sic] Descriptions’ (CJDs) as:

Job descriptions that underpin the classification of *Workstream* jobs. These have been graded and placed into *Bands* by the *Company’s Job Evaluation and Classification System* using agreed job descriptions. Core jobs align particular job duties with *Bands* for the life of this *Agreement*, are subject to a review (see Appendix C), and guide evaluators in determining the appropriate *Band* for new or substantially altered jobs.

12 The CJDs collectively form the ‘Job Evaluation and Classification System’ referred to in the enterprise agreements, and there are four CJDs relevant to this proceeding: CAN Infrastructure Build CFW4; Installer/Repairer CFW4; Installer/Repairer CFW5 and Installer/Repairer CFW7. A detailed comparison of the text of the relevant CJDs prepared and agreed by the parties is copied at Appendix 1.

RELEVANT LEGAL PRINCIPLES

Principles guiding the proper construction of an Enterprise Agreement

13 The parties agreed that the principles governing the construction of enterprise agreements are as set out in *Australian Manufacturing Workers’ Union v Berri Pty Ltd (Berri)*:⁷

The principles relevant to the task of construing a single enterprise agreement may be summarised as follows:

1. The construction of an enterprise agreement, like that of a statute or contract, begins with a consideration of the ordinary meaning of the relevant words. The resolution of a disputed construction of an agreement will turn on the language of the agreement having regard to its context and purpose. Context might appear from:
 - (i) the text of the agreement viewed as a whole;
 - (ii) the disputed provision’s place and arrangement in the agreement;
 - (iii) the legislative context under which the agreement was made and in which it operates.
2. The task of interpreting an agreement does not involve rewriting the agreement to achieve what might be regarded as a fair or just outcome. The task is always one of interpreting the agreement produced by parties.
3. The common intention of the parties is sought to be identified objectively, that is by reference to that which a reasonable person would understand by the

⁷ (2017) 268 IR 285, 310; [2017] FWCFB 3005.

language the parties have used to express their agreement, without regard to the subjective intentions or expectations of the parties.

4. The fact that the instrument being construed is an enterprise agreement made pursuant to Pt 2-4 of the FW Act is itself an important contextual consideration. It may be inferred that such agreements are intended to establish binding obligations.
 5. The FW Act does not speak in terms of the “parties” to enterprise agreements made pursuant to Pt 2-4 agreements, rather it refers to the persons and organisations who are “covered by” such agreements. Relevantly s 172(2)(a) provides that an employer may make an enterprise agreement “with the employees who are employed at the time the agreement is made and who will be covered by the agreement”. Section 182(1) provides that an agreement is “made” if the employees to be covered by the agreement “have been asked to approve the agreement and a majority of those employees who cast a valid vote approve the agreement”. This is so because an enterprise agreement is “made” when a majority of the employees asked to approve the agreement cast a valid vote to approve the agreement.
 6. Enterprise agreements are not instruments to which the *Acts Interpretation Act 1901* (Cth) applies, however the modes of textual analysis developed in the general law may assist in the interpretation of enterprise agreements. An overly technical approach to interpretation should be avoided and consequently some general principles of statutory construction may have less force in the context of construing an enterprise agreement.
 7. In construing an enterprise agreement it is first necessary to determine whether an agreement has a plain meaning or it is ambiguous or susceptible of more than one meaning.
 8. Regard may be had to evidence of surrounding circumstances to assist in determining whether an ambiguity exists.
 9. If the agreement has a plain meaning, evidence of the surrounding circumstances will not be admitted to contradict the plain language of the agreement.
 10. If the language of the agreement is ambiguous or susceptible of more than one meaning then evidence of the surrounding circumstance will be admissible to aide the interpretation of the agreement.
 11. The admissibility of evidence of the surrounding circumstances is limited to evidence tending to establish objective background facts which were known to both parties which inform and [sic] the subject matter of the agreement. Evidence of such objective facts is to be distinguished from evidence of the subjective intentions of the parties, such as statements and actions of the
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parties which are reflective of their actual intentions and expectations.

12. Evidence of objective background facts will include:
 - (i) evidence of prior negotiations to the extent that the negotiations tend to establish objective background facts known to all parties and the subject matter of the agreement;
 - (ii) notorious facts of which knowledge is to be presumed; and
 - (iii) evidence of matters in common contemplation and constituting a common assumption.
13. The diversity of interests involved in the negotiation and making of enterprise agreements (see point 4 above) warrants the adoption of a cautious approach to the admission and reliance upon the evidence of prior negotiations and the positions advanced during the negotiation process. Evidence as to what the employees covered by the agreement were told (either during the course of the negotiations or pursuant to s 180(5) of the FW Act) may be of more assistance than evidence of the bargaining positions taken by the employer or a bargaining representative during the negotiation of the agreement.
14. Admissible extrinsic material may be used to aid the interpretation of a provision in an enterprise agreement with a disputed meaning, but it cannot be used to disregard or rewrite the provision in order to give effect to an externally derived conception of what the parties' intention or purpose was.
15. In the industrial context it has been accepted that, in some circumstances, subsequent conduct may be relevant to the interpretation of an industrial instrument. But such post-agreement conduct must be such as to show that there has been a meeting of minds, a consensus. Post-agreement conduct which amounts to little more than the absence of a complaint or common inadvertence is insufficient to establish a common understanding.⁸

- 14 Telstra further relied on *Sheehan v Thiess Pty Ltd* (**Sheehan**)⁹ and *Target Australia Pty Ltd v Shop, Distributive and Allied Employees' Association* (**Target**)¹⁰ in support of the principle that because enterprise agreements are instruments with statutory force, distinct from commercial agreements between parties, contextual matters should not be taken into account unless they are notorious or known to the persons intended to be bound by the agreement.

⁸ Ibid, [114].

⁹ [2019] FCA 1762 [18], [22] (Appeal dismissed *Thiess Pty Ltd v Sheehan* [2019] FCAFC 198).

¹⁰ (2023) 324 IR 304, 323; [2023] FCAFC 66, [71]-[72], citing *Sheehan v Thiess Pty Ltd*, *ibid*, and *Australian Rail, Tram and Bus Industry Union v KDR Victoria Pty Ltd (t/as Yarra Trams)* [2021] FCA 1377 at [63], Wheelahan J.

- 15 The *Target* decision also cites the applicable broad principles for construing an enterprise agreement from *WorkPac Pty Ltd v Skene (WorkPac)*¹¹ which recognise, amongst other things, that the words of an agreement must be understood in their industrial context, in light of customs and working conditions, with intentions expressed in practical terms intelligible to parties but without careful attention to form and drafting, legal niceties or jargon. A purposive approach must be taken.

Approach to determining an employee's classification level

- 16 The principles applicable to determining Mr Jayawardana's classification level were also not in dispute. The following extract from *Davies v Carnachan Family Trust Pty Ltd*¹² describes the required approach:

[12] The courts and industrial tribunals have developed principles to be applied to ascertain whether an employee falls within a particular classification described in an award or agreement. Where the employee performs mixed functions, the approach has been to examine the "*major and substantial employment*" of the employee or the "*principal purpose*" or "*primary function*" of the employee.

[13] For example, in *Logan v Otis Elevator Company Pty Ltd* [1997] IRCA 200, Moore J referred to and applied the decision of Sheldon J in *Ware v O'Donnell Griffin (Television Services) Pty Ltd* [1971] AR (NSW) 18 where his Honour, applying the "*major and substantial employment*" test, relevantly observed:
...it is not merely a matter of quantifying the time spent on the various elements of work performed by a complainant; the quality of the different types of work done is also a relevant consideration.

[14] The task of the Court in examining the major, substantial or principal aspect of the work performed by the employee will include consideration of the amount of time spent performing particular tasks, but also the circumstances of the employment, and what the employee was employed to do. The question is one of fact, to be determined by reference to the duties actually attaching to the position, rather than its title: *City of Wanneroo v Holmes* [1989] FCA 553; (1989) 30 IR 362 at 379; *Joyce v Christofferson* (1990) 26 FCR 261 at 278.¹³

- 17 Additionally, each classification level must be considered in context, consistent with the

¹¹ *Target*, ibid, 308 [8]; citing *Workpac v Skene* (2018) 264 FCR 536; 280 IR 191, [197] (Tracey, Bromberg and Rangiah JJ).

¹² (2018) FCCA 45.

¹³ Ibid, [12]-[14], cited in *Michael Watson v Safe Places Community Services Limited* [2020] FWCFB 2993, [32].

approach described in *Michael Watson v Safe Places Community Services Limited (Safe Places)*:¹⁴

Further, the principles of construction of enterprise agreements also operate when considering classification structures, including indicative tasks specified for various levels, for the purpose of determining the appropriate classification Level of an employee. Each level of a classification structure and the underpinning definitions must be read in the context of higher or lower levels having regard to the descriptions at higher and lower levels of similar tasks with ascending and descending degrees of complexity.¹⁵

- 18 Mr Jayawardana bears the onus of proving on the balance of probabilities that Telstra has contravened the relevant enterprise agreements by failing to classify and pay him in accordance with the CFW7 classification level, or alternatively the CFW5 classification level.

APPROACH TO THE EVIDENCE

- 19 I adopt as findings the facts as agreed in the SOAF, with limited exceptions, where indicated.
- 20 In addition, Mr Jayawardana and Mr John Ellery, union official in the Victorian Branch of the Communications Electrical and Plumbing Union Communications Division, Telecommunications & Services Branch (**the Union**) gave evidence for Mr Jayawardana. For Telstra, employees Mr Michael Cooper, Mr Tony Considine and Mr Riccardo De Blasio gave evidence.
- 21 Mr Ellery has been an official of the Union for 29 years and prior to this was an employee of Telstra from February 1975 to 1994. At the time he left Telstra, he was a senior technical employee and did not work with cable in the field. He experienced ‘the dawn of the fibre age’ in a research environment.
- 22 Mr Cooper is the ‘Principal – Access Networks’ and is responsible for the financial and

¹⁴ [2020] FWCFB 2993.

¹⁵ Ibid, [33], citing *Christian Carnes v MSS Security Pty Ltd* [2019] FWC 7695 [75].

operations functions in the Customer Access Network (**CAN**).¹⁶ Over the 28 years he has been employed by Telstra he has worked in the field on copper cable and optical fibre maintenance. He was also team manager of the optical fibre team.

- 23 Mr Considine is the Business Senior Lead in Field Services and has national responsibility across the optical fibre, copper wire, pits and duct network. This includes cable incident restoration, the fibre maintenance program and construction and installation of wideband services. He reports to Mr Cooper. He has been employed by Telstra for 24 years and from 1999 to 2010 was a Field Communications Technician, working on the copper then fibre network after obtaining fibre accreditation in 2007.
- 24 Mr De Blasio is the CAN Program Coordinator – Optic Fibre. He coordinates the repair and maintenance of optical fibre cable in the network and is responsible for the geographic area covering the eastern side of Victoria (including all of Melbourne), all of Tasmania and part of southern NSW. Mr De Blasio reports to Mr Considine. In his 38 years as a Telstra employee he has worked predominantly in optical fibre and copper cable jointing and maintenance roles.
- 25 Telstra also tendered by consent the Witness Statement of Emma Tullberg, attaching the *Telecommunications Training Package ICT97 Technical & Call Centre Streams Volume 1 – General Information Assessment Guidelines and Qualifications* dated January 2001 (**2001 Curriculum Document**), which provides details about AQF qualifications listed in the relevant CJDs.
- 26 Frequently, the witness evidence traversed subject matters addressed in the SOAF. I have considered this evidence as supplementary to the SOAF, given both parties led evidence of this nature, and neither party objected to its admissibility on the basis that it contradicted or qualified an agreed fact.
- 27 Each witness gave opinion evidence as to the complexity of the work of Mr Jayawardana and others. Telstra submitted that because its witnesses were not challenged on their

¹⁶ The 'Customer Access Network' or CAN is the network that connects customer premises to Telstra exchanges, as distinct from the 'Inter Exchange Network' (**IEN**) which connects exchanges to each other.

opinions in cross examination, I should accept their evidence. I disagree that the evidence should be accepted on this basis. The issue of complexity was clearly disputed, and I am satisfied that the Telstra witnesses were able to, and did, answer Mr Jayawardana's evidence on this issue. Mr Jayawardana and Mr Ellery tended to say that Mr Jayawardana's work is complex, and the Telstra witnesses tended to say that his work is simple, or not complex, or that other work is more complex. Given the lack of independence of any of the witnesses, and their almost universal unwillingness to depart from the opinions that suited their case, I have generally given little weight to the opinion evidence. Where no evidence was led of the facts on which the opinion was based, I have generally given it no weight. Insofar as I have relied on opinion evidence, I considered the Telstra witnesses had relatively greater expertise, being more familiar with the relevant work and having performed the same or similar work themselves. I have also had regard to opinions Mr Jayawardana offered as to his own work. However I consider Mr Ellery had only limited relevant expertise based on his past research work.

- 28 Other than in respect of the opinion evidence, there were no issues with the credibility or reliability of the witness evidence.

THE OPTICAL FIBRE NETWORK COMPARED TO THE COPPER NETWORK

- 29 It was agreed that optical fibre is a medium to transmit information between two points by sending and receiving light wavelengths. A single optical fibre is slightly thicker than a strand of hair. In the Telstra network, optical fibres are used for three main connection types: the connection of customer premises equipment (communications equipment at customer premises) (**CPE**) to equipment at a Telstra exchange; to connect equipment within a Telstra exchange; and to connect Telstra exchanges to each other via the Inter Exchange Network (**IEN**). Mostly, optical fibres are individually coated in plastic then bundled inside of cables, which can hold up to 360, or less commonly 720 fibres. Cables may or may not be buried underground. Fibre Access Points (**FAPs**) are plastic cannisters installed throughout the network to provide access to cables. They are labelled to allow technicians to identify the relevant cable.

- 30 Mr Cooper said, and I accept, that in 1995, copper connected residential homes and a
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significant portion of enterprise customers to the network, with optical fibre used for larger scale connections, such as linking exchanges. Approximately 10% of the telecommunications network in Australia remains on copper, and Telstra still has approximately 1200 technicians working on copper technology, with approximately 600 on any given day. Mr Ellery, said, and I accept, that 'circa 2000' optical fibre was just beginning to expand into the network. The copper network comprised copper wire cables configured in pairs, with the capacity to send two phone lines over one pair of copper wires, in contrast to an optical fibre capable of carrying a very large number of lines.

- 31 Telstra contended that work on the copper network was in some respects more complex than work on the optic fibre network, whereas Mr Jayawardana contended that work on the optic fibre network was more complex than the copper network.
- 32 Mr Considine said working on the copper network involves complications that do not arise in fibre optic work. Copper cables are subject to electrical interference, whereas optic cables are not, and finding the source of this can be difficult and time consuming. In addition, older copper cables were not colour coded, making it more difficult to find the right pair. Further, locating a leak in gas-pressurised copper cables can be difficult, and involves the use of hydrogen gas and a hydrogen sensor to locate the fault, whereas for optic fibre, an automatic tool (**OTDR**) displays the fault location. He disagreed that work on the fibre network is more complex than the copper network.
- 33 Mr Jayawardana said that copper was obsolete and the fibre network is more advanced. Mr Jayawardana agreed that there were tools for fault finding and rectification available for fibre but said there were fault finding tools for the copper network too. He agreed that the tools for fibre had evolved over time. Mr Ellery said the network is equally complex now. Whilst there is no longer capacity for electromagnetic interference, there is other interference on the fibre network. He disagreed that higher problem solving skills were required on the copper network.
- 34 Notwithstanding that the expansion of the optical fibre network has involved
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technological advancement, I am not satisfied that work on it is inherently more complex. Further, I accept that complications arose on the copper network that do not arise with fibre, however I do not conclude that this makes work on the copper network inherently more complex. These general opinions do not assist in interpreting the CJDs and determining Mr Jayawardana's classification level.

MR JAYAWARDANA'S WORK

The Melbourne Fibre Team

35 It was agreed that since 2013, Mr Jayawardana has worked in the Melbourne Fibre Team (**MFT**), which has approximately 16 technicians. The core role of the MFT is to perform repair and maintenance work on Telstra's optical fibre network (**Repair and Maintenance Work**). This involves rectifying fibre faults. Since about mid-2021, the MFT's work has expanded to improve the utilisation of its technicians, meaning technicians from the MFT can also be allocated to perform project work (**Project Work**), wideband work (**Wideband Work**) and basic inspection and maintenance work (**General Inspection Work**). The work of MFT technicians overwhelmingly consists of cabling work. They are primarily responsible for building or repairing fibre links between two points. MFT technicians may bolt on equipment at either end of a cable in accordance with a design, turn equipment on or off or plug/unplug a fibre link into a piece of equipment. However the configuration, activation, testing and troubleshooting of that equipment is not undertaken by MFT technicians.

36 Mr De Blasio said, and I accept, that of the 16 technicians in the MFT, around 10 (including Mr Jayawardana) mainly undertake Repair and Maintenance Work, with the remainder mainly performing Wideband Work. Mr Jayawardana described this group within the MFT as the 'Fibre Maintenance Group' (**FMG**), comprising around eight employees. Mr Jayawardana and Mr De Blasio both said, and I find, that Mr Jayawardana is one of only two CFW4 classified employees in the FMG, with the remaining employees (be it six or eight) classified as CFW5.

Mr Jayawardana's role

37 It was agreed that Mr Jayawardana's core role is to:

- (a) Construct, repair and replace fibre optic cables in Telstra's fibre network. This involves hauling, splicing and testing cables. It also requires filling in workbooks (for wideband and project work) and using fibre record databases;
- (b) Install hardware (such as patch panels and trays) by bolting them on to another structure (such as a rack) in accordance with a design plan. Mr Jayawardana's role is limited to physically affixing the hardware in the location specified in the design plan. He does not configure, activate or test any equipment or troubleshoot and rectify equipment faults; and
- (c) Inspect pits, pipes, ducts, poles, ladders and payphones and clean payphones.

38 It was agreed that Mr Jayawardana is also rostered to perform Area Point of Contact (**APOC**) work on weekends on a rotating roster.

39 It was agreed that between 2021 and late 2023 Mr Jayawardana spent around 70 per cent of his work time undertaking Repair and Maintenance Work (and around 60 per cent of his time from late 2023 to February 2024). Between 2021 and late 2023, Mr Jayawardana spent about 13 per cent of his time on Project Work (and around 40 per cent from late 2023 to February 2024.) Between 2021 and late 2023, Mr Jayawardana spent about 9.5 per cent of his time on Wideband Work, which he ceased performing in May 2023. Between 2021 and late 2023, Mr Jayawardana spent about 7.5 per cent of his time on General Inspection Work, and did not subsequently undertake that work.

Repair and Maintenance Work

Identifying the location of a fault

40 It was agreed that the typical process when a fault on the fibre network is reported is that a technician from a different team identifies its approximate location, then notifies the Global Operations Centre (**GOC**) which then allocates it to a technician such as Mr Jayawardana. The technician may test the fibre with an 'OTDR' to determine or confirm

the location of the fault. An OTDR is an automated tool that tests a fibre link and identifies the distance of any fault. To use it, the technician plugs in a fibre, selects the wavelength and presses a button. The OTDR then displays a line graph, showing if there is a fault and its location (as distance of the fault from the OTDR). Based on that distance, the technician can determine the approximate physical location of the fault.

41 Mr Jayawardana said he undertakes testing from the exchange to work out the distance of the fault and its location. To do so, he uses Net Maps¹⁷ which shows where the cable is running, and 'Vis Net' or 'Visio' which is a line diagram from the fault to locate the closest FAP. Mr De Blasio said that Visio is no longer used by technicians as drawings are provided, but described Vis Net in similar terms to Mr Jayawardana. Mr De Blasio said that MFT technicians always re-test the cable with an OTDR to prove the location of the fault. He said this is largely automated however some manual settings such as the distance range need to be selected. To read the OTD, Mr De Blasio said a straight line represents normal working fibre, and a spike or a drop shows an 'event' at that location in the fibre. A fibre joint shows up as a small spike. A sharp drop represents a cut (or the end of the fibre link). A big spike could be an excessive bend. Mr De Blasio said a break was obvious but agreed it was not so obvious where there is a bad joint or a kink. The technician places a cursor on the spike or drop on the line diagram and the OTDR tells them the distance of the fault along the link. Mr Jayawardana's evidence as to how to read the OTDR was similar to Mr De Blasio's.

42 Based on this evidence I find that following the allocation of a fault by the GOC, locating the fault is work commonly undertaken by Mr Jayawardana using Net Maps, Vis Net and the OTDR, which allows the location of the fault on the network to be cross referenced with the approximate physical location of the fault. I find that whilst the OTDR is an automated tool, it requires manual input, and experience and judgment in interpreting its display and identifying which fibre 'events' are depicted by the display.

¹⁷ The parties agreed that Net Maps is a database that produces a visual top-down view of Telstra's physical assets including the fibre network, with fibre infrastructure overlayed in layers.

Options for rectifying the fault

- 43 It was agreed that to rectify the fault the technician travels to the location of the fault or to the nearest FAP and identifies the source of the fault. The fault can be fixed by either: straightening a kink in the fibre; replacing and 'resplicing' a damaged section of fibre; using a spare fibre; or installing a new cable. The process of joining two pieces of optical fibre (**Splicing**) involves: stripping off the cover with a hand tool; cleaning the fibre with solvent; putting a splice protector tube on one of the fibres and sliding it to one side; cutting the fibre with another hand tool; inserting two fibres to be spliced into a splicing machine and pressing a button. The machine automatically fuses the fibres, tests the splice and tells the technician whether the splice is good or bad. If the splice is bad, the process needs to be repeated. If the splice is good, the technician slides the splice protector over the splice and heats it within the same device, so it shrinks and covers the splice. Alternatively, if the damaged fibre is inaccessible, the technician can resplice the customer's service onto a spare fibre. Spare fibres can be identified using a fibre record database. A handheld device called a fibre identifier detects whether there is traffic on a fibre listed in the database as vacant, as sometimes the database records are wrong.
- 44 It was agreed that if no spare fibre is available or a whole cable is cut or damaged, a whole section of cable may need to be cut and replaced by hauling in a new cable (**a Cutover**). 'Hauling' means physically transporting cable and inserting a length through a conduit between two access points, such as manholes or pits. External contractors are engaged if hauling cable beyond about 120m long is required. As a damaged cable is still partially functioning, a Cutover will typically involve service disruption to other customers. Accordingly, the technician needs to obtain GOC approval before performing a Cutover. Cutovers are done out of hours, and in the meantime, the technician may put in a temporary fix by running a temporary fibre above ground.
- 45 It was agreed that a range of other testing and diagnostic tools may be used by a technician including a light pen; video scope; an inline PON/GPON Meter (used to simultaneously test multiple wavelengths up and down fibre); and an 'optical power meter and light source' (an automated tool to measure signal loss or reduction in
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amplitude). A technician may also need to identify equipment and after consulting the GOC, turn off a piece of equipment, unplug the fibre, plug the fibre back in and turn the equipment back on. Once the repair is complete, the technician sends an email to another team identifying the work done, and that team updates the fibre databases.

- 46 Both Mr De Blasio and Mr Jayawardana said that the technician is also required to test the spliced joints with an OTDR from the exchange. Mr Jayawardana said this function used to be performed by employees in the exchange who have now been retrenched. Mr De Blasio said following that testing, the technician notifies the GOC of the completed repair, and the GOC performs a remote test to confirm the repair was successful. I find based on this evidence that Mr Jayawardana is also required to test a completed repair with an OTDR from the exchange.
- 47 Mr De Blasio agreed that after the fault has been fixed, administrative follow up work required of a technician could include: a police report; a red line markup report with a map; provision of details for a work order to the GOC; or provision of damage details and photos for Sherlock¹⁸ so a bill can be prepared. I find based on this evidence that Mr Jayawardana may be required to perform work of this nature.

Major fault work

- 48 It was agreed that the typical process for rectifying fibre faults, such as cut or damaged fibre, is followed regardless of the scale of the repair or maintenance job. The difference is that larger scale jobs are more time consuming, as more tests and splicing are required, but the nature of the work is the same.
- 49 Mr Jayawardana provided a small number of examples of major faults he had worked on, but said any fault could potentially be a major fault considering the customer traffic on each fibre. Mr De Blasio said that most faults are minor faults where only one or two fibres are damaged. Mr Considine said that Mr Jayawardana's examples were more serious than a typical fibre fault. I find based on this evidence that part of Mr Jayawardana's Repair and Maintenance Work is to rectify major faults, however most

¹⁸ A platform for recovery of damages from parties who damage Telstra cable.

faults Mr Jayawardana is required to repair are not major faults.

- 50 Mr Jayawardana provided the example of a major fault in Bonang, New South Wales in October 2023 he attended with a colleague. He travelled six hours to find the site had no mobile reception including for local emergency services. He located the damage to a direct-buried cable in fading light, in bush land near a river crossing. He contacted Mr De Blasio to organise an excavator. He worked almost 26 hours to restore service to the town. Mr Jayawardana was required to determine the plan of work to restore services as quickly as possible, keep relevant departments informed and record details for paperwork. He was paid overtime for the work. Mr De Blasio described the Bonang incident as a 'big one'. He agreed Mr Jayawardana had decided an excavator was required and contacted him and asked him to arrange the excavator. He agreed that otherwise, the complete job was done by Mr Jayawardana and his associate. Mr De Blasio also dealt with the GOC and Major Incident Management Team because the terrain was remote, there was no mobile reception and there was community isolation. Mr Considine said he became involved in the Bonang incident because the severity had hit a certain level and they established a communication group with the incident management team, the transmission team and the field team including the APOCs.
- 51 Both Mr Jayawardana and Mr De Blasio said that for major faults, additional personnel are arranged. Mr Jayawardana said he informs the GOC and his co-ordinator to arrange additional staff and sometimes civil contractors. Mr De Blasio said he will arrange for another crew, or contractors, to assist.
- 52 Accepting the typical process for optic fibre repair work applies to major faults, I find based on this evidence that Mr Jayawardana's role includes determining the scope of the repair, repair plan and where necessary, staffing or contractor requirements. Further, I find that Telstra distinguishes between faults based on their severity in its internal processes, with escalated severity faults involving more senior staff and requiring communication between the field team and other internal groups.
- 53 It was agreed that major fault work may involve disruption to a very large number of
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customers and/or large geographic areas. Mr De Blasio said, and I find, that the difference is that large faults are more urgent as more customers are affected and they require more hours to fix.

Country fault work

- 54 Mr Jayawardana said he is required at times to undertake work in the country because country staff don't have a full knowledge of testing and repairing of fibre faults. Most country staff are not able to test and create fibre workbooks, or splice to a certain tolerance so that it passes the tests. Mr De Blasio said that MFT technicians assist Victorian country staff from time to time as there are limited resources with splicing experience in country areas, and most country technicians cannot do splicing work. Mr Considine said MFT technicians are sometimes allocated faults in the country because country teams do not have dedicated fibre technicians, but generalists working on all aspects of the network. Hence, they are typically less experienced with fibre. I find based on the evidence of the three witnesses that as part of his Repair and Maintenance Work, Mr Jayawardana is sometimes allocated to faults in the country because he is a more experienced splicer than most country technicians, most of whom are generalists, not dedicated fibre technicians, and cannot do splicing work.
- 55 Mr Jayawardana said that whilst he still has access to the same testing equipment, maps and tools to see if a fibre is carrying traffic, locating a country fault can be more difficult due to inaccurate plans of what he sees in the field. In this case, Mr Jayawardana has to redesign as he goes in consultation with the designer as to the route the cable will take and the availability of fibres. The splicing is the same, but the cable is older and not as basic. Both Mr Considine and Mr De Blasio asserted that country work was no more complex than city work. However, their evidence did not address the basis of their opinion, or the specific matters raised in Mr Jayawardana's evidence, and I have preferred Mr Jayawardana's evidence. I find based on this that additional difficulties arise in country work. I conclude that dealing with inaccurate records, assisting with the redesign of the route and the need to work with older and different cable are matters which add complexity to Mr Jayawardana's work.
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Time frames for fault work

- 56 Mr Cooper and Mr Considine both said that service level agreements provide for the restoration of fibre faults in the metro area within 12 hours and in regional areas within 18 hours, with some exceptions. Mr Considine agreed that in some cases considerable penalties and compensation are payable if these timeframes are not met, but said most of those systems are backed up so service can be continued. Mr Cooper said these timeframes are not an expectation on Mr Jayawardana but on the business. Mr De Blasio said Mr Jayawardana's team is asked to try to meet the timeframes. He agreed that fixing optical fibre faults is high priority because fibre carries many customers' data. Technicians are required to be available to repair fibre faults immediately, and drop other work to fix a fault.
- 57 Based on this evidence I find that Mr Jayawardana is required to complete fault work urgently and so far as is possible within the timeframes provided by service level agreements, due to the number of customers and amount of data each fibre carries. I preferred Mr De Blasio's evidence as to the expectations on technicians regarding timing, given his relative proximity to the MFT as the co-ordinator, to Mr Cooper's evidence on this issue.

Advances in technology and complexity of Repair and Maintenance Work

- 58 Mr Cooper said that over the last 30 years or so, there have been significant advances in the equipment and technology used for field work which have made the work of technicians less complex, including because less analysis is required. Mr Ellery disagreed that the advances of technology mean the work is less complicated.
- 59 Mr Cooper gave the example of the growth in the Remote Field Monitoring System (**RFMS**), which covers an increasing proportion of the network and automatically pinpoints the distance of a fibre fault, meaning the GOC can provide this to a technician. Mr Cooper's evidence as to the RFMS did not address how Mr Jayawardana's work would have been more complex in its absence. It does not alter my earlier findings regarding the requirements upon Mr Jayawardana to locate the fault.
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- 60 Mr Cooper also gave the example of fibre splicing machine technology. The parties agreed that progressively over time, the process of splicing has become easier with modern equipment. Mr De Blasio also said that advances in the speed and ease of splicing made the work quicker. The Telstra witnesses described the previous process of manually lining up the fibres using a microscope, which is now largely automated. Mr Considine agreed that the process still involves stripping the plastic cover off the fibre, cleaning the fibre with solvent, using a protector tube, cleaving the fibre and inserting it in the machine which melts the cables together. I find on this evidence that the lining up and fusing of the fibre has become easier over time, making the work quicker, with the other aspects of the splicing process remaining unchanged.
- 61 Mr Cooper also said OTDRs are now smaller and more accurate compared to those used in the early 2000s, and readings can be taken by the press of a button. Mr De Blasio said that OTDR automation makes things easier than the earlier ODTR model. However, neither witness addressed in any detail how this made the process of fault diagnosis less complex.
- 62 Accepting that the process of splicing optical fibre is easier and quicker than it once was, I am otherwise not satisfied that the advances in technology relied on by Telstra make Mr Jayawardana's Repair and Maintenance Work less complex.

Wideband Work

- 63 It was agreed that the Wideband Work undertaken by the MFT requires a technician to build a fibre link from point A to point B following a given path in accordance with a design, and commission the link by testing it, calling another group to activate the equipment, and completing required database entries. The building of the fibre link involves the same cabling tasks as Repair and Maintenance Work (hauling, testing and splicing fibre) along with three additional tasks. First, test results must be recorded in a 'workbook'. Technicians are provided with template excel spreadsheets containing blank cells to be populated by performing the test and then typing the result into the corresponding cell. Formulas then automatically populate a column in the spreadsheet with a 'pass' or 'fail'. Workbooks are prepared for new connections only (Wideband
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Work and Project Work), not for repairs on existing connections. The second additional task involves utilising databases for network inventory, confirming active fibre paths and booking activation appointments, however Mr Jayawardana has not accessed these databases for between one to two years. Thirdly, a MFT technician may install equipment at customer premises, by bolting the equipment onto a 'Rack' (a standard-size metal frame used to house communication equipment) at customer premises, plugging in the fibre, then calling a different team to activate the equipment.

- 64 It was agreed that the majority of Wideband Work is done by the Digital Fibre Services Team (**DFST**), a different business unit within Telstra. However, since July 2021, as part of Telstra's expansion of the MFT's work, Wideband Work on 5 of the 40 service types undertaken by the DFST has been allocated to MFT technicians. MFT technicians are allocated only one wideband task at a time, and approximately 6 of 16 MTF fibre technicians, not including Mr Jayawardana, perform exclusively Wideband Work. Mr Cooper said, and I find, that this arrangement involves only the lowest level wideband tasks, including fibre splicing, testing and building line systems, but not programming, customer interaction, organising contractors or civil works except some small hauling. I accept Mr Cooper's evidence that this arrangement came about to better utilise technicians between faults and thus involves the simpler, single fibre services, meaning less customer disruption when technicians attend faults.
- 65 It was agreed that Mr Jayawardana has not performed Wideband Work since May 2023. Mr Jayawardana said that from mid-2021 he was part of the initial MFT group doing all the Wideband Work. He helped upskill newer staff. In May 2023, after he questioned his supervisor Mark Mays whether the upskilling work should be classified at level 5 or level 7, Mr Mays took Mr Jayawardana off Wideband Work. He did not refuse to do the work; the work was not provided to him. Mr De Blasio said that Wideband Work ceased being allocated to technicians who did not perform data base entry, however none of the Telstra witnesses had direct knowledge of why Mr Jayawardana was taken off Wideband Work. I find Mr Jayawardana ceased performing Wideband Work because Telstra stopped allocating it to him. Telstra's reason for doing so is not a matter which
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arises for determination in this proceeding.

Project Work

- 66 Project Work refers to MFT work other than Repair and Maintenance Work and Wideband Work. A typical example of Project Work is installing a short length of cable within a building (**tie cable**) at an exchange. Other examples are installation of 'patch panels', an assembly containing ports into which cables plug in. Installing a patch panel means bolting it onto a rack in accordance with a design plan or working on a 'link' connecting point A to point B over a very long distance (eg 100km). Project Work also involves the population of workbooks. MFT technicians work to a design specifying the work required. An example of a project design which Mr Jayawardana was allocated to work on required the creation of a 72-fibre 'tie cable' between two points and identifying the location of the two points. Mr Jayawardana gave examples of sub racks which I accept he had installed. He said, and I accept, that Project Work also involves him sourcing the material for the project and liaising with other project staff.
- 67 Mr Jayawardana said that Project Work design plans are never 100 per cent accurate because the records are not always accurate. Accordingly, he must test if allocated fibres are available, and if not must find a new fibre path and contact the designer to update the job pack and records. Mr Considine agreed that there are instances where some of the plans are inaccurate or do not exist, because they haven't been captured properly when the lines were first built. When there is an inaccuracy on a wideband plan, the technician can call 'Fibre Line' who can advise alternative fibres and paths to try. Mr Considine said there is capacity for a technician to identify spare fibre themselves using 'Multiman' and 'Tomahawk' and suggest that to Fibre Line to hurry things up. Alternatively, the technician can allocate the work back to the delivery specialists via Mr Considine's team to say it needs to go into 'redesign' for a site assessment path or another review. I find based on this evidence that Mr Jayawardana contributes to required redesigns by identifying alternative fibre paths using available tools, and it is beneficial if he does so.
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Complexity - Wideband Work/Project Work v Repair and Maintenance Work

- 68 Mr Cooper said the Project Work and Wideband Work performed by Mr Jayawardana is no more complex than his Repair and Maintenance Work and is in some respects simpler because the technicians simply follow a plan in building a fibre link and do not need to locate a fault or select a repair solution. Further, it is not subject to the same time pressures as Repair and Maintenance Work. Mr De Blasio also said in some respects Project Work and Wideband Work is simpler because technicians work to a design plan, and no diagnostic process is required to locate a fault or determine a solution. Fault work restores live fibres, an interruption to which disrupts a customer. Repair and Maintenance Work is thus more time sensitive.
- 69 Mr De Blasio said Project Work and Wideband Work are very similar to Repair and Maintenance Work and are typically straightforward, but because the projects are larger scale, populating the workbook is time consuming and sometimes takes longer than building the link. It is tedious but not complicated. Mr Jayawardana disagreed, saying it had become extremely complex, as the function which automatically populated the fibre workbook with FAP locations now has to be done manually.
- 70 Having accepted that the Wideband Work of the Fibre Maintenance Technicians are the simpler services or lower level tasks, I conclude that this work is no more complex than Repair and Maintenance work. I also conclude that Project Work, as a class of work, is no more complex than Repair and Maintenance work, as a class of work. The cabling tasks required for each are the same.
- 71 However, Mr Jayawardana's role as a technician involves, or has involved, performing all three types of work as required by Telstra. Project Work and Wideband Work involve the different functions of installation of customer equipment and arranging activation, working to a design plan (including participating in required redesigns) and population of voluminous data into workbooks. These functions require the utilisation of qualitatively different skills than those used in Repair and Maintenance Work. Whilst I accept the categories of work are in comparison no more complex than Repair and Maintenance Work, I conclude that the addition of these qualitatively different functions
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adds complexity to Mr Jayawardana's role overall.

General Inspection Work

- 72 It was agreed that Mr Jayawardana performs basic inspection and maintenance work, including inspection of pits, pipes, ducts, poles, payphones and payphone cleaning.

Area Point of Contact (APOC) Work

- 73 It was agreed that as part of his role as CAN Program Coordinator, Mr De Blasio acts as APOC for the eastern side of Victoria (including all of Melbourne), all of Tasmania and part of southern NSW from Monday until 4pm Friday each week. Two technicians from the MFT, including Mr Jayawardana, are allocated to be APOCs on weekends (starting from 4pm on Friday), on a rotating roster. The APOC is responsible for allocating faults to a fibre technician within the region. If a fault arises on the weekend, an automated system calls the first APOC from the list notifying a fault. Once the APOC accepts the fault, the system emails the fault details. In the case of a major fault, a person from the GOC might also telephone to highlight the urgency of the repair. The APOC fills out a webform to create a work 'ticket' in the 'Promise' database or contacts another team to do so. The APOC attends the fault if it is within the Victorian urban area or otherwise allocates the fault to an available technician in country areas. Typically, the APOC repairs the fault themselves, however if it is too far away or the APOC cannot attend, they must find an available technician.
- 74 Based on Mr Jayawardana's uncontested evidence I find that he performs APOC work on a rolling roster every four weeks. He receives an 'immediate on call' allowance for the time he is rostered to perform the APOC work and receives overtime on top of the allowance if required to attend to a fault. The allowance he receives is an 'essential customer servicing allowance' of about \$600 for the weekend or \$9 per hour pursuant to cl 67.4 of the 2022 Agreement for the requirement to be immediately available to undertake work. Mr De Blasio receives the same allowance for performing APOC work. It was not in issue that Mr Jayawardana performed this work at all relevant times over the period to which his claim relates.
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- 75 Mr De Blasio and Mr Considine said APOC is not a role in itself, but is a type of work or responsibility, which involves being on call to allocate technicians to faults. Mr Considine said being weekday APOC is not Mr De Blasio's role but is one of the functions of his role. It was put to Mr Jayawardana that this function was not part of his core role, with which he disagreed. I find on this evidence that being the APOC is a function, type of work or responsibility of both the Coordinator role and Mr Jayawardana's role.
- 76 Mr De Blasio distinguished his APOC responsibilities from those of Mr Jayawardana as he does not perform field work but allocates technicians to do so. Mr Jayawardana said he also allocates technicians to attend faults in country NSW and Tasmania. I find based on this evidence that as APOC, Mr Jayawardana allocates field work to other technicians when he cannot physically attend to fix a fault.
- 77 Mr De Blasio said that the weekend APOC does not deal with the work orders required after a temporary fix, which often involve arranging an external contractor, nor do they sign off on repair advices. Mr Jayawardana said that if he is required to undertake a temporary fix, he is required to identify the work required to complete a permanent fix, create a Map (Red Line Mark-up) of that work and complete all paperwork for Mr De Blasio to then complete the work order. I find based on this evidence that as APOC, Mr Jayawardana is not required to prepare work orders but is required to complete preparatory paperwork.

Supervision, training and work performance

- 78 It was uncontested that Mr Jayawardana usually works in pairs with another technician and usually works unsupervised, but does not have any direct reports. I find, based on Mr Jayawardana's evidence that whoever is onsite first usually takes charge of the job.
- 79 It was uncontested that Mr Jayawardana does not hold any formal or official training role. I find, based on Mr Considine's evidence, that formal fibre training and accreditation are conducted by external training providers, with five-day optical fibre jointing classroom training covering splicing, testing and OTDRs and an additional two-day course in respect of licence accreditation. Mr Jayawardana said he has trained and
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supervised trainees and other technical staff at a CFW4 and CFW5 level, which involves showing other staff how to undertake particular tasks. Mr De Blasio said that where Mr Jayawardana works with a less experienced technician he may demonstrate how to do something, provide tips or show them the ropes, as a part of teamwork. I find based on this evidence that Mr Jayawardana provides informal 'on the job' training and supervision to less experienced technicians, including those classified as CFW5. The difference in the evidence appeared to be no more than semantics.

- 80 There was no dispute that Mr Jayawardana is good at his job. As Mr De Blasio said, he is a good and reliable worker who takes pride in his work, performs neatly done builds, is a team player and his 'go-to' man. The performance reviews Mr Jayawardana relied on assessed him as rating between three and five with the most recent rating being four, in 2022-23 by his manager Mr Mays, who states his performance has been 'commendable and deserving of recognition.' I am satisfied based on this, and his uncontested evidence as to the rating system, that this is a rating of above competent.

Parts of the network on which Mr Jayawardana works

- 81 It was uncontested that Mr Jayawardana works across three different parts of the network, being the CAN, the IEN and within Exchanges.
- 82 Both Mr Cooper and Mr Considine said, there was no difference in the process or tasks involved in diagnosing or repairing a fault or undertaking Wideband Work whether it occurs on the CAN, the IEN or in respect of tie cabling. Mr Considine also said that the fibre in a P1 (priority) Exchange is the same, the same type of connection exists between fibres, and agreed that the MFT works on cables between P1 exchanges. Mr Ellery agreed the nature of fault work doesn't change whether it is between exchanges or between the exchange and the customer, saying 'fibre is fibre'. Mr Jayawardana agreed that the process of splicing a fibre is the same. I find based on this evidence that the nature of the tasks required with respect to fibre optic cable are the same on each part of the network.
- 83 However, Mr Considine also said that working on the core network in P1 (priority)
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Exchanges was an example of the 'more complex wideband work' undertaken by the DFST, and distinguished between 'P1 techs' and MFT technicians work on this basis. However, Mr Considine did not articulate why this work is more complex. The only specific evidence as to what work 'P1 techs' undertake in a P1 Exchange was Mr Considine's evidence that 'patching' (splicing a service onto another fibre) occurs where the network does not switch automatically from a faulty link. It was not in dispute that patching was an option available to Mr Jayawardana for rectifying a cable fault. Telstra submitted that the effect of Mr Considine's evidence was that in addition to the less complicated work Mr Jayawardana does, it can be assumed there is work done in P1 Exchanges that is inherently complicated, like that performed by the DFST. I do not consider I can make this assumption on the above evidence. It does not alter my finding that the nature of cabling work is the same on each part of the network. However, I find based on this evidence that Telstra distinguishes the work undertaken in a P1 Exchange from work undertaken elsewhere on the network, notwithstanding that the nature of the cabling work is the same.¹⁹

- 84 Both Mr Jayawardana and Mr Ellery said in effect that the impact of fault work on the IEN was more significant than the impact of fault work on the CAN. Mr Jayawardana said there was a difference between working on the CAN and the IEN because in the IEN, one fibre can run thousands of customers on it, including emergency services, and you need to know what you are doing. Mr Ellery also said that as you get closer to the customer there are less fibres, the volume changes. Mr Cooper said the impact of a fault on an IEN, tie cable or CAN is pretty much the same. All will potentially have a customer impact, however there is a difference in the number of customers impacted as a smaller cable will have less customers. Mr Considine said there are sometimes multiple links between P1 exchanges, and for the vast majority of IEN cable, so if one cable is faulty the connection can be switched to ensure continuity of service for the important links in that sense. He said that switching to an alternative link is an automatic process in a lot of cases, which means nil or very little customer impact, or alternatively

¹⁹ I have considered the complexity of the work of the DFST more generally below.

it needs to be patched by a technician.

85 I find based on the evidence of Mr Jayawardana and Mr Ellery that as a general proposition, fibres and cables on the IEN are likely to carry a higher volume of customers, and that the closer a cable or fibre is to the customer, the less traffic there is likely to be. This was in effect acknowledged by Mr Cooper. I did not consider Mr Cooper's conclusion that customer impact is the same despite more customers being affected to be persuasive. I find that where more customers are affected, the customer impact will be greater. However, I find based on Mr Considine's evidence that this impact is minimised where there are multiple links between P1 exchanges or on the IEN.

MR JAYAWARDANA'S MAJOR AND SUBSTANTIAL EMPLOYMENT

86 Consistent with the principles set out paragraph 16, Mr Jayawardana's classification is to be determined with reference to his major and substantial employment, principal purpose or primary function. This is a question of fact, to be determined by the duties of his position, the circumstances of his employment, the time spent performing particular tasks as well as the quality of different types of work. Mr Jayawardana submitted that all his job functions other than pole inspection work fall within the description of his major and substantial employment.²⁰ Telstra submitted that the principal function or substantial purpose of Mr Jayawardana's employment was to repair cable by finding faults, splicing and testing, and the Court should apply the classification appropriate to that work, regardless of whether occasional activities fell outside that work.

87 To assess Mr Jayawardana's major and substantial employment I have considered both the terms of Mr Jayawardana's contract and the work he has been required to and has actually performed, including both the proportion of the time and the qualitative nature of that work.

88 Mr Jayawardana's 2022 Contract provides that he is employed as a Service Technician, and states 'your role will be to perform the same or substantially the same work ... that

²⁰ Mr Jayawardana abandoned a submission that his classification should be assessed based on the highest level of work he performed.

you performed' for the previous corporate entity.²¹ Accordingly, the 2022 Contract defines Mr Jayawardana's role broadly, by reference to the full range of work he was actually performing at the relevant time, without exclusion. These are the duties actually attached to his position, and what he is employed to do.²²

89 Turning then to a quantitative and qualitative assessment of that work. It was not in dispute that from mid-2021 onwards, Mr Jayawardana could be required by Telstra, and was so required, to perform functions across all the categories of 'work' earlier described. This is reflective of the decision made by Telstra to improve the utilisation of technicians from the MFT. I find based on the time breakdown set out at paragraph 39 that the proportion of time spent on each of the categories of work was material, and more than occasional. Even Mr Jayawardana's basic inspection and maintenance work (with the lowest time percentage) equates on average to approximately half a day every fortnight. Further, because of the inevitable fluctuation of the type of work required of Mr Jayawardana, different forms of work were more or less prevalent at different times. I consider Mr Jayawardana's major and substantial employment includes each of these forms of work. However, I would exclude Wideband Work after May 2023, as I infer that since that time, Telstra no longer requires Mr Jayawardana to perform that work.

90 It was agreed that Mr Jayawardana's 'core role' is to construct, repair and replace fibre optic cables in Telstra's fibre network, including hauling, splicing and testing cables, filling in workbooks and using fibre record databases; installation of hardware such as patch panels and trays; and basic inspection and maintenance work. It was not in dispute that he performed this work across all parts of the network, including the CAN, IEN and within Exchanges.

91 Functions which are not in the agreed 'core role' list but which the evidence demonstrates Mr Jayawardana also performs include:

²¹ The 2022 Contract also contains a clause permitting changes to Mr Jayawardana's role. I have not considered this to be relevant to an assessment of the classification of his current role, as changes made pursuant to that clause may also entail a change of classification.

²² As described in *Davies v Carnachan Family Trust Pty Ltd* (2018) FCCA 45, [14]. This does not extend to work performed by Mr Jayawardana whilst on secondment, which I consider falls outside the scope of his role.

(a) Repair and Maintenance Work: fault location and diagnosis; determining the method of repair to be executed; determining the resource requirements for the repair; liaison with other groups within Telstra depending on the escalation level of a fault.

(b) Project Work: working to a design plan and contributing to redesign where required; and

(c) Wideband Work: installation of customer equipment and arranging activation of equipment.

92 I find that each of the functions described in paragraphs 90 and 91 form part of Mr Jayawardana's major and substantial employment, as the functions described in paragraph 91 arise in the context of, and in a qualitative sense are necessary incidents of, the categories of work and the agreed core functions. Similarly, accepting that the time Mr Jayawardana spends on major fault work and country fault work is limited, I conclude that this work is part of Mr Jayawardana's major and substantial employment. Performing this work is inherent to Mr Jayawardana's Repair and Maintenance Work. The FMG is responsible for rectifying fibre faults, and Mr Jayawardana is required to attend the full range of faults allocated to him, whether they are major faults or located in the country.

93 I further conclude that Mr Jayawardana's major and substantial employment also includes his APOC work given my finding that it is a function of his role, both in fact and pursuant to his contract. It is a necessary function, he performs it regularly, and as it is a 24-hour function, the proportion of his work time it makes up is at least comparable to the other categories of work identified. The fact that it is undertaken outside normal hours or that Mr Jayawardana receives an immediate recall allowance for this work (along with overtime when required to work) do not derogate from this conclusion.

WORK AND CLASSIFICATION OF OTHER CFW EMPLOYEES

94 In contrast to the detailed evidence as to Mr Jayawardana's work, the evidence as to the broader range of functions, duties and roles covered by the CFW stream, within

which to contextualise Mr Jayawardana's work, was limited to other MFT work, employees in the DFST and to the witnesses themselves.

DFST employees

95 It was agreed that the DFST comprises about 140–150 technicians who are mostly classified at CFW5, with some CFW7 and CFW4 technicians. The DFST performs wideband work across approximately 40 service types. DFST technicians deal directly with Wideband Delivery Specialists and manage between 10 and 12 orders to completion at a time. This includes confirming appointments with customers, booking activation appointments or “cutovers” with the required workforce and coordinating inductions to secure sites. They then complete the required physical work on each order and update databases. DFST technicians are responsible for:

- (a) end to end management and coordination of multiple orders at a time, including resolving design and scope issues, optimising resources and consolidating infrastructure.
- (b) Managing resources, including engaging with other work groups and scheduling install dates with customers and technicians.
- (c) Installation and commission (activation) of equipment and fibre cabling. This includes making IPMAN/SMNG bookings through the Wideband Service Activation team who are accountable for activating the service and testing.
- (d) Stakeholder management, including scheduling dates for installation in direct consultation with the programming team, customer and technicians, liaising with InfraCo Service Delivery Leads (project coordinators), and managing design changes, ensuring installations comply to design standards.
- (e) Using Telstra's Ideal system, which is a work basket dispatch/order management system.

96 Mr Considine said, and I find, that he manages a team of three ‘wideband coordinators’ who are responsible for: managing the DFST work; dealing directly with Wideband Delivery Specialists; providing stakeholder updates and management; task coordination; resource management; and managing customer appointments.

97 Mr Cooper said, and I find, that the additional functions of the DFST are performed by CFW5 and CFW7 employees, not CFW4 employees. He said a CFW5 employee in the DFST is required to liaise directly with customers for appointments, make

IPMAN/SMNG bookings, provide project coordinators with updates and use the Ideal system. These are not duties performed by a CFW4 technician or by Mr Jayawardana. Further, the CFW5 and CFW7 employees in the DFST do their own dispatching, customer interaction and organise support between themselves, whereas the wideband work of the MFT is just building the line system, splicing and jointing in the street, potentially connecting up a box in a customer's premises and getting another part of Telstra to commission and activate it.

- 98 Mr Cooper said, and I find, that in respect of wideband programs, the DFST liaises directly with Service Delivery Leads (program owners) for example in respect of designers, whereas the MFT liaise with one of the coordinators in Mr Cooper's team who does that interaction for them, with the MFT just doing the physical street work and connecting the service.

Complexity - DFST Wideband Work v MFT Wideband Work

- 99 Mr Cooper said the DFST Wideband Work is more complex than the MFT Wideband Work. For the most part I accept this evidence, on which Mr Cooper was not challenged.

- 100 I find that the Wideband Work of CFW5 and CFW7 employees in the DFST involves the following additional complexities compared to the Wideband Work of the MFT:

- (a) Undertaking a wider range of Wideband Work than the MFT: whilst there was no direct evidence as to what features of the other wideband work made it more complex, I accept the requirement to work across a larger range of service types in itself adds to the complexity of the role, noting my earlier finding that there is no difference in the physical cabling work required irrespective of the context;
 - (b) Managing multiple wideband orders at a time: I accept that managing multiple orders at a time, rather than one, adds to the complexity of the role;
 - (c) Direct customer liaison: I accept that liaising directly with customers involves the exercise of a qualitatively different set of skills to the technical skills otherwise associated with the role and adds to the complexity of the role accordingly;
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- (d) Coordination of secure site inductions: this is not a function required of the MFT in undertaking Wideband Work and I accept that it adds complexity to the role;
- (e) Making IPMAN/SMNG bookings and use the Ideal system: I accept that the use of additional technology platforms adds to the complexity of the role; and
- (f) Liaising directly with Service Delivery Leads, resolving design and scope issues, managing design changes and ensuring installations comply to design standards: I accept that more direct engagement with Service Delivery Leads (rather than through a coordinator) may add to the complexity of the role. However, I am not satisfied that 'ensuring installations comply to design standards' involves anything additional to the work Mr Jayawardana undertakes when he builds a Wideband link in compliance with a design.

Other witnesses

- 101 I find on Mr De Blasio's uncontested evidence that his role is classified as CFW7 and his responsibilities include: arranging and scheduling work orders; communicating with stakeholders including customers and entities; allocating and scheduling work; arranging for external contractors where required; ensuring required paperwork and databases are correctly completed by technicians; recording completed job details via SharePoint (staff also have access to the SharePoint document and are able to update it); doing financials for faults and ensuring costs are captured; submitting FAPs for approval and assisting with implementing new systems, processes and programs.
- 102 The CFW2 and CFW3 CJDs were not in evidence. Some witnesses gave evidence of having been employed in these classifications however I did not consider this evidence sufficient to form a view as to the work covered by them.

Other MFT Work

- 103 Mr Jayawardana gave uncontested evidence that he performs the same work as all the other CFW5 employees in the FMG. The SOAF does not distinguish between the work of Mr Jayawardana and other technicians in the MFT. The Telstra witnesses did not
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address why employees performing the same work as Mr Jayawardana in the FMG are classified at CFW5, other than Mr Cooper's evidence referring in a non-specific way to legacy arrangements. Telstra submitted that it was not open to conclude that the work of other employees is relevantly the same as Mr Jayawardana, having not heard evidence from those other employees. I consider the evidence I have referred to is sufficient, and I find that Telstra currently classifies all but two employees who perform the same work as Mr Jayawardana in the FMG as CFW5 employees.

104 Mr De Blasio said in cross examination that from 2007 to 2012, he was in the same team as Mr Jayawardana doing the same work that Mr Jayawardana is now doing. He was classified as a CFW4 until, without application, he and around 14 others in the team were 'given' the CFW5 classification. When re-examined on this evidence, he said developments in technology since that time in the speed and ease of splicing made the work quicker, helping those that undertake the work. Telstra submitted based on this evidence that it was not open to conclude that Mr De Blasio was performing the same work as Mr Jayawardana, as there may have been changes in technology impacting on the complexity of the work. However, I did not understand Mr De Blasio to be resiling from his clear evidence that the work he was performing was the same as Mr Jayawardana's, albeit that splicing technology advances have helped by making it quicker. I find that in 2012, Telstra reclassified about 14 staff in the FMG from CFW4 to CFW5, including Mr De Blasio, who was doing the same work as Mr Jayawardana.

105 Mr Jayawardana said CFW7 technicians in the FMG had been retrenched, with remaining staff now doing their work (including testing from the exchange). In respect of these employees, I preferred the more detailed evidence of Mr De Blasio, and I find based on this evidence that the group previously had CFW7 technicians, retrenched about 10 years ago, who had previously travelled across Australia performing highly specialised Polarization Mode Dispersion and Chromatic Mode Dispersion testing and kept their CFW7 classification on a grandfathered basis. Only the more basic parts of the work they did are now performed by current staff, being standard fibre testing and workbooks.

Relevance of the classification levels of other employees

106 Mr Jayawardana submitted that the Court can presume that the other FMG employees performing the same work as Mr Jayawardana were correctly classified by Telstra as CFW5 employees. Telstra submitted that there may be commercial or industrial reasons for an employer classifying other employees performing the same or similar work at a higher level, such as rewarding valued employees, recognising service or seeking to retain workers in a competitive environment. Further, the proper classification of Mr Jayawardana is an objective question for the Court, to be determined by applying the proper construction of the CJDs to the findings of fact about the nature and complexity of his work, not with regard to the classification of the other fibre maintenance technicians in the MFT as CFW5.

107 Telstra characterised its classification of like employees as CFW5 as equivalent to post-contractual conduct, which cannot inform the proper construction of the contract, citing *FAI Traders Insurance Company v Savoy Plaza Pty Ltd*²³ and Colvin J in *Sheehan* in respect of the position under industrial agreements, as follows:

[23] Further, the Agreement is not to be construed by reference to the conduct of parties subsequent to its approval. This position has been adopted in respect of industrial awards: *City of Wanneroo v Holmes* [1989] FCA 553 at 36 (French J) (a decision quoted with approval in the context of industrial awards in the recent decision of *Skene* as applied in *Hay Point Services*). It is a position that applies to commercial instruments because they take their meaning at the time they were made, not as adjusted by subsequent conduct. The same can be said of industrial agreements. Therefore, it is not legitimate to use anything the parties said or did after the agreement was made as an aid to construction: *Agricultural and Rural Finance Pty Ltd v Gardiner* [2008] HCA 57; (2008) 238 CLR 570 at [35].²⁴

108 Telstra accepted, consistent with principle 15 from *Berri*,²⁵ that subsequent conduct may be relevant in an industrial context, however referred to *Target*²⁶ and *Australian Rail, Tram and Bus Industry Union v KDR Victoria Pty Ltd t/as Yarra Trams*²⁷ as authority for

²³ [1993] 2 VR 343, 351 (Brooking J).

²⁴ [2019] FCA 1762, [23].

²⁵ (2017) 268 IR 285, 310; [2017] FWCFB 3005, [114].

²⁶ (2018) 264 FCR 536; 280 IR 191, (Tracey, Bromberg and Rangiah JJ).

²⁷ [2021] FCA 1377, [60].

the need for caution when drawing upon a suggested common understanding by the parties as an aid to constructing an agreement.

109 This issue gives rise to two questions. The first is whether the evidence permits a factual finding to be made that Telstra classifies the majority of employees undertaking the same work as Mr Jayawardana in the FMG as CFW5 based on the work they perform, and has not ‘overclassified’ those employees for other unrelated reasons. On this issue, I consider the Court is entitled to presume, as a general proposition, that Telstra classifies its employees based on the work they perform. I consider this presumption is open because that is the very function of a classification structure such as the one being considered in this proceeding. I accept that there may be alternative reasons for classifying an employee above the legal minimum classification for their role. For example, direct evidence was given by Telstra as to the grandfathering of the CFW7 employees in the MFT, based on their previous roles, and I have accepted that evidence. It was similarly within Telstra’s capacity to lead evidence that it classified almost all of the other employees in Mr Jayawardana’s team as CFW5, or Mr De Blasio and 14 other employees in his team when he was performing the same work as Mr Jayawardana for commercial or industrial imperatives, but it did not do so. In the absence of evidence from Telstra as to any alternative reason, I find that these employees were so classified because of their duties and functions.

110 The second question is what flows from that finding. I do not conclude that CFW5 is the correct classification for the other members of the FMG performing the same work as Mr Jayawardana because Telstra classifies them as such, or that this is consequently determinative of Mr Jayawardana’s classification. Whilst evidence of a common understanding is capable of being relevant to a construction of the CJDs, the evidence is insufficient to establish a common understanding. Not all current employees in Mr Jayawardana’s work group are classified as CFW5. I am unable to be satisfied that this has been the case over successive agreements, or in respect of all employees performing the same work as Mr Jayawardana, for example in other States, as the evidence did not address these matters. Further, the evidence is of a very general

nature and does not detail the aspects of the CFW5 CJD which result in these employees being correctly classified as CFW5.

111 Similarly, the fact that Telstra classifies most DFST technicians as CFW5 is not evidence of the objective correctness of that classification, and neither is the fact that Telstra classifies Mr De Blasio as CFW7 determinative of his correct classification. Mr Jayawardana did not dispute these employees were properly classified as CFW5 and CFW7 respectively and accordingly, I accept they are correct for the purposes of this proceeding. But, appropriately, Telstra also relied on evidence as to the work of Mr De Blasio and the DFST technicians, as it assists in identifying the range of functions involving fibre technicians and the location of those functions within the CFW classification structure. Applying the principle from *Safe Places*²⁸ that each level of a classification structure must be read in the context of higher and lower levels of similar tasks with ascending and descending degrees of complexity, the Court must consider the work performed by Mr Jayawardana in the context of the range of work performed by other employees. On that basis, I consider it permissible to have regard to the fact that other members of the FMG performing the same work as Mr Jayawardana are classified as CFW5 by Telstra. I find on that evidence that there are no distinguishing features and no greater complexity or degree of specialisation between the work performed by other employees in the FMG and Mr Jayawardana. Further, I find that there are no longer any CFW7 employees in that team, meaning the most complex work within that team is performed by CFW5 employees.

ISSUES RELATING TO THE INTERPRETATION OF THE CJDs

112 Before turning to a detailed consideration of the CJDs, I have first considered several discrete issues as to the approach the Court should take to interpreting the CJDs.

Historical distinction between External and Internal work

113 Mr Ellery's evidence outlined a historical differentiation between outside field work (called Lines or External Plant) and inside work (called Technical or Internal Plant) which

²⁸ [2020] FWCFB 2993, [33].

he said informed the development of the CJDs. Telstra objected to Mr Ellery's evidence based on relevance, submitting with reference to the principles in *Berri*²⁹ and *Sheehan*³⁰ that this evidence could not assist the Court in construing the agreements in circumstances where there is no evidence that the people who voted up the agreements had any knowledge of the matters he refers to. I accept Telstra's submission. There was no evidence that the history described by Mr Ellery was commonly known to either the bargaining representatives or the employees to which any of the relevant enterprise agreements apply. I have not had regard to this evidence.

Telstra's capacity to direct Mr Jayawardana to perform less complex tasks

114 Telstra submitted that because Mr Jayawardana's 2022 Contract permits him to be deployed flexibly, he could be required to undertake aspects of the CFW4 roles which he does not currently perform, and Telstra need not have required him to do so for those CJDs to apply.

115 Clause C3.1 of the 2022 Agreement provides:

C3 MULTIFUNCTIONAL WORK PROVISIONS

C3.1 We may ask a CFW, TW or TPW employee to perform any function in their Workstream at or below the employee's work Band. If they have the necessary tool set (i.e.: training, competency, tools, required equipment, vehicle etc), the employee will use their skills and ability to complete the job competently.

116 I consider that the assessment must be based on the scope of Mr Jayawardana's major and substantial employment in accordance with my findings. I do not consider Telstra's capacity to direct Mr Jayawardana to perform lower level work impacts his classification. Clause C3.1 supports this conclusion as it permits Telstra to direct Mr Jayawardana to perform lower band work without impacting his band within the workstream.

Treatment of identical content in some or all CJDs

117 There are several instances of content common to some or all CJDs. Broadly described, these relate to working without supervision, customer service, compliance with policies

²⁹ (2017) 268 IR 285, 310 [114]; [2017] FWCFB 3005, [114].

³⁰ [2019] FCA 1762 [18], [22] (Appeal dismissed *Thiess Pty Ltd v Sheehan* [2019] FCAFC 198).

and practices, contribution to the company's financial wellbeing, desirable personal characteristics such as leadership and initiative and compliance with resource and deployment business rules.

- 118 I consider that common content reflects baseline expectations of all of the CJDs and each associated classification level. Most significantly in respect of Mr Jayawardana, I find that the requirement to work without supervision is a feature of each of the CJDs and each of the classification levels to which they relate. This is a clear and definitive statement that employees in the CFW4 classification work without supervision. Accordingly, the fact that Mr Jayawardana works without supervision is not determinative of a higher classification. I otherwise do not regard common content within the CJDs to be of assistance in distinguishing between the CJDs in determining Mr Jayawardana's classification level.

The impact of changed technology on interpreting the CJDs

- 119 It was agreed that the CJDs primarily relate to older technologies such as copper which Mr Jayawardana does not work on. Whilst the Workstream Principles envisage the joint creation of new CJDs and allocation of those into Bands for 'new or substantially altered jobs,' neither party argued that those provisions had application to this matter, and both submitted that the existing CJDs apply (albeit different ones).
- 120 Telstra submitted that the changed technology should inform the interpretation of the CJDs as their text largely describes functions associated with the copper network and indicates that they have not been updated since 2002. Further, Telstra submitted that the Court can safely infer from the well-publicised and fundamental nature of the change from copper to fibre that this was well known to the Telstra employees voting to approve the relevant agreements. Accordingly, the Court should have regard to 'the gist' of the CJDs, irrespective of the changed technology, in the same manner that the powers in the Australian Constitution are interpreted in light of changed technology. Further, Telstra submitted that the typical functions remain relevant as illustrative of the complexity of work covered by each CJD.
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- 121 Mr Jayawardana acknowledged that the CJDs have not kept up with the real way the work is now organised but submitted that Telstra still does copper work, and it is not simply a matter of substituting fibre for copper. There are elements of the CJDs which reflect current work practices, such as the reference to optic fibre jointing, and the CAN and IEN which continue to exist. Further, the typical functions associated with a CJD are the most significant indicators of the classification, as the words avoid subjective and general descriptions and are clear indicators of the work contemplated. I understood Mr Jayawardana to be contending that aspects of the terms in the CJDs should continue to be given their meaning so far as is possible notwithstanding this technological change, and a straight substitution of optic fibre functions for the copper network functions may not be appropriate.
- 122 The CJDs are capable of interpretation either with or without regard to the context of changed technology. However, an approach which ignored this context would require terms in the CJDs relating to the copper network to be applied as though those functions were still typical for technicians working on Telstra's network, despite the majority being obsolete so far as the fibre network is concerned. Further, many functions performed by Mr Jayawardana are not mentioned in the CJDs. If the change in technology is not considered, the absence of these functions from the CJDs would also be a relevant consideration. In my view, interpreting the CJDs without regard to the historical context would lead to a misapplication of their terms. Given those considerations, I conclude that the interpretation of the CJDs must be informed by the fact that they have not been updated since 2002 and primarily refer to copper-based products and services. To my mind, this approach is permissible for the reasons submitted by Telstra. Further, given there has been no change to the CJDs despite successive renegotiations of the enterprise agreements that give them force, it follows that both Telstra and the employees to whom the agreements apply had a common understanding that the CJDs are capable of applying to optic fibre work.
- 123 However, I also conclude that the Court should give effect to the text of the CJDs so far as it is capable of having ongoing application, provided the historical context is
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considered. Despite the technological change the CJDs continue to describe the network, and the nature of work on it.

- 124 In addition, the CJDs are capable of application insofar as they identify the purpose and other features of the roles in generic terms. This includes the desirable characteristics of a person holding each role and the relative complexity of the work to which each applies. I also consider it appropriate to have regard to the degree of complexity of specific functions related to the copper network notwithstanding that those functions are not relevant to Mr Jayawardana's work.

Specific interpretation issues flowing from the impact of changed technology

- 125 In light of my finding that the CJDs are to be read in light of the changed technology, I have rejected the following specific submissions as to how to interpret the CJDs.
- 126 Firstly, Mr Jayawardana submitted that the absence of a reference to fibre optic jointing in the CFW4 Installer/Repairer CJD meant that it did not apply, a demarcation which he submitted did not extend to the CFW5 and CFW7 CJDs. Telstra submitted that because the CFW4 CAN Infrastructure Build CJD includes a specific reference to fibre optic jointing, whereas the other CJDs do not mention fibre optic jointing, work which typically involves a lot of fibre optic jointing is indicative of a CFW4 classification. I do not consider the absence of a specific reference to fibre optic cable in the CJDs is indicative that they do not apply to fibre optic cable work. Rather, I conclude that this reflects the CJDs having been developed at a time when fibre optic cabling was not a significant part of the network. I consider it more likely that the reference to fibre optic jointing in the CAN Infrastructure Build CJD, at a time where it was relatively rare on the network, reflects that fibre optic jointing work was permissible for employees in that classification, not that fibre optic jointing could *only* be performed by those employees. The contrary approach would have the effect that all work associated with fibre optic jointing, irrespective of its complexity, must fall within the CAN Infrastructure Build CJD, and the CFW4 classification. This was not contended for by either party. Mr Jayawardana contended this work was covered by the CFW5/CFW7 CJDs. Telstra also accepted that fibre optic fibre cabling work may be performed across each of the CJDs, but with a transition from
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more simple cabling work with a prescribed range of solutions dealt with in the CFW4 and CFW5 roles to very complicated cabling work encompassed by the CFW7 role.

- 127 Secondly, Mr Jayawardana submitted that because the CFW4 CJDs do not refer to completing workbooks and using databases, they do not apply to him. Telstra submitted that completing workbooks and using fibre optic cable databases is not indicative of CFW5 or CFW7 classifications because these CJDs do not refer to those tasks. It is unsurprising that this work is not described in the CJDs given they are specific to the optical fibre network and the CJDs primarily describe the copper network. I conclude that the absence of these functions from the CFW4, CFW5 or CFW7 CJDs does not mean that those classifications do not apply.

Location of work on the network - the CAN, IEN and Exchange

- 128 Mr Jayawardana submitted that the distinction between CAN and IEN is significant, with the IEN work having greater importance because of the potential for greater network disruption. Telstra submitted that it doesn't matter where the work is undertaken as the task is the same, 'fibre is fibre', and there is no increased complexity in IEN work as opposed to the CAN work.
- 129 The CJDs in some instances describe work by reference to a specific part of the network. Most significantly, the CAN IB CFW4 CJD refers to work on the CAN, and the Installer/Repairer CFW5 CJD refers to the IEN. Notwithstanding the changes in technology, the network continues to be subcategorised in this way. Having found that cabling work across the network is common, I nonetheless conclude that meaning must be given to these textual references.
- 130 I am reinforced in this view by the terms of the 2022 Agreement, which must be the starting point for assessing the application of the CJDs. The Customer Field Workstream description comprises the outer limits of the work which is then classified within it. The description of the Customer Field Workstream states:

Employees engaged in Customer Access Network (CAN) construction **and/or** in the end to end installation, operation, maintenance and repair of all services for customers **and/or** in the supervision and/or direct operational support of such employees and the

testers in the service assurance call centres.³¹ (emphasis added)

- 131 It is apparent from this description that there are three subcategories of functions described, one of which is CAN construction, and another of which is ‘end to end installation, operation, maintenance and repair of all services for customers.’ The definition recognises these as two separate streams of work.
- 132 To ignore these similar subcategories as they are reflected in the CJDs would be to overlook the distinction drawn in the 2022 Agreement, as well as the clear words of the CJDs as to the parts of the network on which work is performed, on the basis that the work performed on each is materially the same. In my view, this would conflate the issue of the relative complexity of the work with the issue of where the work is performed. Complexity of the work is an important consideration in light of other aspects of the CJDs, but it does not follow that the only distinguishing consideration as to the operation of the CJDs is complexity.
- 133 The greater potential for customer disruption on the IEN than the CAN would provide a reasonable explanation for the drawing of a distinction by the parties. Further, Mr Cooper’s evidence as to P1 Exchanges illustrates that Telstra itself distinguishes between cabling work where it is undertaken in a P1 Exchange as opposed to elsewhere on the network. However, ultimately, the parties’ reasons for describing some functions with respect to only parts of the network is irrelevant. The CJDs are based on an industrial agreement. It was open for the parties to do so for reasons unrelated to the complexity of the work and I consider that to be what the text of the CJDs reflects. Accordingly, I have had regard to descriptors in the CJDs relating to the parts of the network on which work is performed in considering their application.

Can both of the CFW4 CJDs be considered together?

- 134 Mr Jayawardana submitted that the Court must identify the single CJD that best applies to his role to determine the applicable classification level. He submitted that it is not permissible to identify some functions from each of the two CFW4 CJDs and conclude based on a combination of them that Mr Jayawardana is appropriately classified as a

³¹ 2022 Agreement, s 14, Dictionary.

CFW4. On the other hand, Telstra submitted that the Court is not required to distinguish between them, because if the Court is satisfied that the principal function and purpose of Mr Jayawardana's employment is better characterised as falling across both of the CFW4 CJDs, rather than the CFW5 and CFW7 CJDs, it follows that CFW4 is the correct classification.

135 The 2022 Enterprise Agreement, at principle C1.2(b) regarding allocation of an employee to a Workstream, provides that each Band within a Workstream will have agreed 'representative Core Job Descriptions' and there 'may be more than one Core Job Description for each Band. Further, the definition of CJDs states they are 'Job descriptions'... [which] have been graded and placed into Bands, and 'align particular job duties with Bands'. I find based on these provisions that the CJDs are 'representative' of the jobs which fall within a particular Band. They permit more than one CJD per Band. Accordingly, I consider the correct approach is to have regard to both CFW4 CJDs in determining Mr Jayawardana's classification.

'Horizontal' and 'vertical' reading of the CJDs

136 Relatedly, Mr Jayawardana submitted that the CJDs must be read both 'horizontally and vertically.' Telstra also accepted that a holistic assessment of each CJD is required, as various components interact with each other. I agree it is necessary to undertake both exercises. A 'horizontal' reading of the CJDs is consistent with the accepted principle from *Safe Places*³² extracted above. The definition of CJDs in the 2022 Agreement provides that it is the 'job descriptions' which have been graded and placed into Bands. Whilst this includes aligning 'particular job duties' with Bands, I consider it necessary to consider these duties in the context of the CJD as a whole. A 'vertical' or holistic reading of each CFW4 CJD means that despite both yielding the same classification level, the context in which a function appears within those CJDs remains relevant.

DETAILED COMPARISON OF THE CJDs

137 What follows is first, a comparative 'horizontal' analysis, then secondly, analysis of the

³² [2020] FWCFB 2993, see paragraph 17 above.

applicability of each of the CJDs to Mr Jayawardana's major and substantial employment, having regard to both the horizontal analysis and a vertical or holistic consideration of each CJD.

Title

- 138 The title of the CAN Infrastructure Build CFW4 CJD is materially different from the Installer/Repairer CJDs. Whilst the Installer/Repairer titles are generic and broad and reference a 'repair' function, the CAN Infrastructure Build title reflects a job which is specific to the CAN and relates to infrastructure building.

Job Purpose – primary role

- 139 The statements of 'Job purpose - primary role' in the CJDs are self-evidently a significant feature of the CJDs, as a broad overarching statement of the role. As this feature is identical between the CFW4 and CFW5 Installer/Repairer, it follows that there is substantial similarity between these two CJDs. There are qualitative differences between the CAN Infrastructure Build CJD and the Installer/Repairer CJDs. The CAN Infrastructure Build CJD is limited to 'the full range of construction, provisioning & Maintenance activities' whereas the Installer/Repairer CJDs do not refer to 'construction' or 'provisioning' activities but instead refer to 'end to end installation, repair and maintenance functions.' Additionally, the CAN Infrastructure Build CJD limits the activities described to the CAN whereas the Installer/Repairer CJDs instead describe functions associated to 'telecommunications products and services.' Further, the CFW7 CJD describes a role with additional complexity of functions, products and services.

Job purpose – typical functions

Generic statement

- 140 The generic statement of typical functions is also a significant aspect of the CJDs. It is a broad statement of the expected functions of the role. It takes on greater significance given the extent to which the examples of typical functions which follow relate to the copper network.
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141 This aspect of the CJDs requires an assessment of the relative complexity of the diagnostic process undertaken by Mr Jayawardana and the breadth of the range of solutions from which he must select. A CFW4 is required to undertake 'prescribed diagnostics' and determine the course of action from a 'limited range of solutions', a CFW5 is required to undertake 'complex prescribed diagnostics' and determine the course of action from a 'range of variable solutions', and a CFW7 is required to undertake 'very complex diagnostics' and determine the course of action from a 'wide range of variable solutions.'³³ This assessment is material to determining Mr Jayawardana's classification and is considered in detail below.

Examples

142 Each CJD states 'typical functions could include, but not exclusive to' then lists typical functions. Most of the typical functions for each of the four CJDs can be categorised into four subject matters. Broadly described, these subject matters are:

- (a) Repair and maintenance of the network, or part of it;
- (b) Installation and repair of CPE products and cabling, and associated work;
- (c) Work on small and large Pair Gain Systems and Radio-based connections; and
- (d) Non-network interference and network interference work involving switches and transmission.

Repair and maintenance of the network, or a part of it

143 Of the four common subject matters, I find that this is the most relevant as it best describes a key part of Mr Jayawardana's major and substantial employment, being Repair and Maintenance Work, in particular rectifying fibre faults. The other subject matters have less or no direct relevance to the work undertaken by Mr Jayawardana.

144 The relevant typical function for Installer/Repairer CFW4 is 'Repair and Maintenance of the Customer Access Network including Cable TV.' For Installer/Repairer CFW5 it is

³³ The programming of services and networks is referred to in each CJD but is not work undertaken by Mr Jayawardana.

‘Repair of complex and difficult CAN transmission and interexchange network faults (ESD)’. For Installer/Repairer CFW7 it is ‘Highly specialist complete Repair and Maintenance of Network and Service affecting Faults and Isolations associated with Switches and Transmission activities (eg. difficult and complex fault rectification, outage recovery, complex switch fault rectification, DRCS, RIM, S12, AXE and Customer Radio).’

145 The CAN Infrastructure Build CJD does not include a ‘repair and maintenance’ related typical function. However, it includes the typical function ‘Highly skilled cable jointing (eg. Complex Cable Jointing, Fibre Optic Jointing).’ The parties agreed this function is without equivalent.³⁴ However, given my finding that optic fibre cabling work is encompassed by each of the CJDs,³⁵ and the majority of Mr Jayawardana’s cable jointing is undertaken in the course of his Repair and Maintenance Work, I consider this typical function must be viewed in the context of the repair and maintenance functions in the other CJDs.

146 The scope of, and difference between, the CFW4 and CFW5 Installer/Repairer repair and maintenance function is material in determining Mr Jayawardana’s classification and is considered in detail below.

Installation and repair of CPE products and cabling, and associated work

147 The relevant typical function for ‘Installer/Repairer CFW4’ is ‘Installation or Repair of Complex CPE Products and Cabling (eg. PABX, SBS, Data & Special Services, Mobiles, Media & Broadcast Services, associated MDF activities).’³⁶ The relevant typical function for Installer/Repairer CFW5 is identical to this, except that ‘MDF activities’ is replaced by ‘Exchange work’. The relevant Installer/Repairer CFW7 function is ‘Specialist complex repair of CPE (eg. PABX, Data, Media, & Broadcast services, associated Exchange elements). [sic] and/or CPE related networks.’ This

³⁴ See Appendix 1.

³⁵ See paragraph 126.

³⁶ It was agreed that ‘PABX’ (Private Automatic Branch Exchange) is a mini exchange at customer premises for an internal telephone network. ‘Data & Special Services’ refers to a specialised service on the copper network. MDF (Main Distribution Frame) is copper infrastructure which connects equipment to cables, and may be located at an exchange or customer premises.

group of functions remains relevant despite many of the specific examples of relevant equipment being copper-related, as CPE products and cabling continue to exist on the optic fibre network. Further, Mr Jayawardana's major and substantial employment insofar as it includes Wideband Work involves some limited installation of customer equipment.³⁷

- 148 The CFW7 descriptor is clearly distinguishable from the CFW4/CFW5 descriptors, as it describes 'specialist' complex repair. I do not consider Mr Jayawardana's work installing customer equipment can be characterised in this way. I find that the CFW7 descriptor does not have application to Mr Jayawardana's Repair and Maintenance work. Regarding the CFW4/CFW5 descriptor, the parties both accepted that MDF activities are similar to the patch panel work which Mr Jayawardana undertakes on optical fibre. However whilst Mr Jayawardana performs patch panel work and exchange work as part of his Project Work, the evidence does not establish that either is undertaken in association with his Wideband Work installing customer equipment. Accordingly I find there is no basis to distinguish between the applicability of the CFW4 or CFW5 descriptor in respect of Mr Jayawardana's work.

Work on small and large Pair Gain Systems and Radio based connections.

- 149 The CAN Infrastructure Build CFW4 CJD includes the typical function 'Large Pair Gain System Installation (eg RIM, DRCS, Customer Radio).' Whilst, by way of the Table at Appendix 1, the parties did not identify any typical functions of the same nature from the other CJDs, each of them in fact include functions relating to Pair Gain Systems and Customer Radio as follows:

- (a) Installer/Repairer CFW4: 'Installation & Repair of Fixed Radio Access/Small Pair Gain Systems;'
- (b) Installer/Repairer CFW5: 'Repair and Maintenance of Large Pair Gain Systems (eg. RIM, DRCS & Customer Radio)' along with a reference to 'RIM' and 'RCM' in

³⁷ See paragraph 63.

the typical function relating to network interference, considered further below; and

- (c) Installer/Repairer CFW7: 'DRCS, RIM and Customer Radio' are listed as examples of the 'Highly specialist complete Repair and Maintenance of Network and Service affecting Faults and Isolations associated with Switches and Transmission activities.'

150 Based on the agreed description of terms, I am satisfied that each of these functions are related. A Pair Gain System is effectively a 'mini exchange' installed at (or near) customer premises that allows a single line to the exchange to be used to support multiple lines to customer premises. Pair Gain systems can be small or large depending on the number of lines. 'RIM' stands for 'Remote Integrated Multiplexer', a type of pair gain system. 'RCM' is a Pair Gain System. 'DRCS' stands for 'Digital Radio Concentrator System', a radio-based connection from customer premises to exchange. 'Customer Radio' is another radio based customer connection system.

151 Both Mr Jayawardana and Telstra accepted Pair Gain Systems are a feature of the copper network. (in the case of Telstra, with the exception of 'RIMs'). It was agreed that Mr Jayawardana does not work on Pair Gain equipment, however he may at times work on a fibre optic cable connected to a RIM. I infer from this that RIM Pair Gain Systems interact in some way with the optic fibre network. However, this group of typical functions is concerned with installation, repair and maintenance of the Pair Gain Systems and radio connections themselves, not associated cabling work. Both parties also accepted that radio-based connections are not a feature of the optic fibre network. Mr Jayawardana does not work on DRCS or Customer Radio Systems.

152 Telstra submitted that typical functions of the CFW5 and CFW7 (but not CFW4) CJDs included: repair of large Pair Gain Systems, RIMs, RCM, DRCS, customer radio and DRCS. Accordingly, Telstra submitted that one of the differentiators between the CFW4 CJDs on the one hand and the CFW5 and CFW7 CJDs on the other is that the latter typically involve complex repair of complex equipment. The CFW7 typical function refers to 'highly specialised' repairs of this equipment, and I find that this indicates complex

repairs. However, I find that the installation and repair of the same kinds of equipment (small and large Pair Gain Systems and Customer Radio) is also provided for in the CFW4 CJDs. Neither the CFW4 or CFW5 CJDs refer to the equipment or repair as complex. Accordingly, I do not conclude that the CFW5 role typically involves complex repair of complex equipment based on this group of functions.

153 Beyond indicating in a general sense that the work of CFW7 technician is more specialised than the other classifications, I do not consider the range of typical functions relating to Small or Large Pair Gain Systems, or Customer Radio, assists in the allocation of a classification to Mr Jayawardana. Mr Jayawardana does not perform any of the work described in any of the typical functions, because they are functions overwhelmingly concerned with the copper network. Even if I assume that there is equivalent equipment on the optic fibre network, Mr Jayawardana's failure to perform work on equipment does not give rise to any presumption that he falls outside one or other of the relevant CJDs, because each of them includes this function. Accordingly I have not considered this group of functions further.

Non-network interference and network interference work

154 The respective typical functions in this group are:³⁸

- (a) Installer/Repairer CFW4: 'Non-network Interference work on Switches & Transmission (eg Alarm resets, board changes under GOC direction, line conditioning and testing);'
- (b) Installer/Repairer CFW5: 'Repair and Maintenance of potential Network interference and service affecting Faults and Isolations associated to Switches and Transmission Systems (eg. Special service jumpering, fault rectification and hazardous board replacement under direction from GOC, RIM, RCM Faults, etc).'
- (c) Installer/Repairer CFW7: 'complex switch fault rectification,' 'S12' and 'AXE' are listed as examples of the 'Highly specialist complete Repair and Maintenance of

³⁸ There is no equivalent function for the CAN Infrastructure Build CJD.

Network and Service affecting Faults and Isolations associated with Switches and Transmission activities' (S12 and AXE are systems that form part of the telephone network core).

- 155 It was agreed that 'network interference' refers to dealing with electrical interference or radio frequency interference, a common source of faults on the copper network but virtually non-existent on the fibre optic network. 'Non-network Interference' means work that does not involve dealing with electrical interference or radio frequency interference. Switches and transmission are types of equipment attached to a line. 'Board changes' means replacing a circuit board in a piece of equipment. 'Jumpering' is a type of interfacing from copper lines to equipment. 'Hazardous board replacement' means replacing circuit boards in hazardous circumstances. Mr Jayawardana does not replace circuit boards or repair any equipment. Mr Jayawardana does perform line testing.
- 156 Both parties submitted that aspects of this group of functions are relevant to optic fibre. Telstra submitted that Mr Jayawardana performs 'non-network interference' work, the CFW4 descriptor is sufficiently generic to apply to both the optic fibre and copper networks, and that whilst some terms are related to copper technology, Mr Jayawardana undertakes 'line conditioning and testing.' Mr Jayawardana submitted that the CFW7 descriptor was most relevant because optical fibre work is highly specialist work needed to accomplish a complete repair or maintenance of the network, and that the description of the CFW5 repair of network interference in consultation with the GOC function is also comparable to his work with the GOC to coordinate the managed approach to an optical fibre outage.
- 157 I am not persuaded by the submissions of either party that any of the work performed by Mr Jayawardana is described by any of these typical functions. The SOAF states 'the fibre optic network is not subject to electrical or radio frequency interference, so Mr Jayawardana's work is non-interference work.' This appears to be based on the flawed logic that because Mr Jayawardana does not perform 'network interference' work, he therefore performs 'non-network interference' work. I reject this construction. Mr Considine, on whose evidence this agreed fact was based, confirmed that both
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descriptions related to the copper network.

158 Beyond that, each party's submission involved selecting discrete phrases out of context. Whilst Mr Jayawardana does perform line testing work, the evidence does not disclose what the associated function of line 'conditioning' means, and the reference to line testing in the CFW4 typical function is clearly within the context of (copper-based) non-network interference work on switches and transmission. Beyond describing switches and transmission as types of equipment attached to a line, the evidence does not disclose what type of equipment, or whether the equipment is present in the optic fibre network, or if not whether there is equivalent equipment in the optic fibre network. Similarly, the CFW5 and CFW7 functions referred to by Mr Jayawardana's submissions are all related to switches and transmissions, or network interference work on the copper network, which is not a feature of the optic fibre network. I find that Mr Jayawardana does not perform work described in this group of functions, because they are functions overwhelmingly concerned with the copper network.

159 This group of typical functions does however illustrate a progressive increase in complexity in the work performed. Based on the evidence as to network interference work on the copper network, I accept it was more complex than non-network interference work on the copper network, placing the CFW5 CJD in a tangibly different category of complexity than the CFW4 CJD. A further degree of difference is evident in the distinction between the CFW4 function of 'board changes' under GOC direction and the CDW5 function of 'hazardous board replacement' under direction from GOC. The CFW7 CJD describes more specialised work. Telstra submitted, and I accept, that the CFW7 descriptor insofar as it relates to complex switch fault rectification, repair of S12 and AXE, means that a typical function of the CFW7 role is the performance of complex repairs of complex equipment. Accordingly, this group of functions demonstrates in a general way that the complexity of the work increases from CFW4 to CFW5 to CFW7 classifications. Beyond this, I do not consider this group of functions to be of assistance in determining Mr Jayawardana's classification level.

Examples without equivalent in other CJDs

- 160 Three of the five typical functions for the CAN Infrastructure Build CFW4 CJD have no equivalent in any of the other CJDs. The first is 'Complex CPAS (eg. Installation and Repair of APCAMS)': CPAS stands for 'Cable Pressure Alarm System' and APCAMS stands for 'Air Pressure Cable Alarm Monitoring System'. These are the sensors and systems used to detect leaks in pressurised cables. This work is unrelated to optic fibre cables and I find it is not of assistance in determining Mr Jayawardana's classification.
- 161 The second is 'Party Leader up to 9 Staff undertaking Pit, Pipe, Conduit Cable or Service Installation, or Party Leader of a small team undertaking Directional Boring (i.e. 10,000 Lbs force), Large Mole Plough, Complex Hauling etc' (**Construction function**). Directional boring means using a special steerable drill to bore a horizontal underground hole between two points, into which conduit can then be inserted. Mr Jayawardana does not perform that work. Mr Considine said, and I accept, that there are no directional boring teams in Telstra, but there would have been back in the day. Ploughing is the process of using a plough to cut a trench in the ground from above and insert conduit into that trench. Mr Jayawardana does not perform that work. Mr Jayawardana performs hauling work, limited to cable of 120 metres length or less, beyond which external contractors are engaged by Telstra. I consider the Construction Function largely describes the physical construction of the infrastructure underpinning the copper network. However, I consider it relevant to determining Mr Jayawardana's classification. Because hauling work is not otherwise referred to in the other CJDs, I find that the reference to complex hauling, in the context of the CAN, indicates hauling work is no higher than a CFW4 function.
- 162 The third is 'Pole Inspection.' The parties agreed that pole inspection relates to the inspection of telephone poles, and Mr Jayawardana performs this work as part of his General Inspection work. I find that this work is indicative of a CFW4 classification.
- 163 One of the five typical functions for Installer/Repairer CFW4 has no equivalent in any of the other CJDs, being 'Repair and Maintenance of Simplex Products & Services (eg. Single line services, OnRamp, basic Data, public Payphones & associated products i.e.: TOPS, COPS)', 'Simplex' services means single line services. 'OnRamp' was a Telstra
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Integrated Services Digital Network that ran over the copper network. 'Basic Data' refers to data services and equipment, such as a dial-up or ADSL services. Accordingly, these functions relate to the copper network. Telstra submitted that simplex products and services refers to a single line service which may or may not be fibre or copper as it can be assumed that single lines of fibre go to various homes and in these circumstances the descriptor applies to both copper and fibre and applies to Mr Jayawardana. I accept that Mr Jayawardana may work on single fibre services to homes. To the extent he does, this is indicative of a CFW4 classification. However, this is an incomplete reflection of Mr Jayawardana's cabling work, which based on my findings above goes well beyond single fibre services. 'TOPS' and 'COPS' refer to payphones. Mr Jayawardana does not work on the copper network, maintain or repair payphones. However, he does inspect and clean payphones and to this extent maintains them. I find that this work is indicative of a CFW4 classification.

- 164 One of the five typical functions for Installer/Repairer CFW5 has no equivalent in any of the other CJDs, being 'Install and replace exchange cards.' This refers to active equipment in an exchange. Mr Jayawardana occasionally bolts an exchange card to a rack as part of Project Work. I find that this constitutes installation, and this work is indicative of a CFW5 classification.

Accountabilities

- 165 There are six 'Accountabilities' for each CJD, and four of them are identical for each CJD. All of the accountabilities are identical for Installer/Repairer CFW4 and CFW5, again contributing to the substantial similarities between these classifications.
- 166 The accountabilities largely identify outcomes to be achieved by a person in each role, but also at times describe functions of the role. To the extent there are differences between them, I consider them material to determining Mr Jayawardana's classification.
- 167 The first accountability for the CAN Infrastructure Build CJD is to 'achieve faultless end to end construction, provisioning & Maintenance of the customer access network and associated infrastructure' whereas the first accountability for each of the
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Installer/Repairer CJDs are to 'achieve faultless end to end fault rectification and installations.' There are differences in both the subject matter and the scope described, with the former confined to the CAN and related to construction, provisioning and maintenance, including of associated infrastructure, and the latter not confined to the CAN, and related to fault rectification and installations. The Installer/Repairer CJDs also refer to the 'utilisation of instruments and tools from remote points within the network' and the CAN Infrastructure Build CJD does not. The reference to utilisation of instruments and tools from the remote parts of the network in the Installer/Repairer CJDs indicates that this is a function of that group of CJDs but not the CAN Infrastructure Build CJD. Having found that Mr Jayawardana works across the network and utilises instruments and tools remotely, I find that the accountabilities to be indicative that the 'Installer/Repairer' CJDs apply.

- 168 The accountabilities for the CFW7 CJD differ from CFW4/CFW5 in degree, referring to compliance with 'standards' not 'prescribed standards,' 'expert' rather than 'proficient' use of instruments and tools, 'planned and complex routine' activities rather than 'planned activities' and 'network & service infrastructure' rather than 'infrastructure.' In each case the CFW7 accountabilities require a higher degree of autonomy and complexity than the other CJDs.

Qualifications – Mandatory (no person to occupy job without this)

- 169 The CJDs mandatory qualifications are in fact not mandatory, but 'typical'. The CAN Infrastructure Build CJD identifies a Heavy Machinery licence as typical, whereas the Installer/Repairer CJDs do not. This is consistent with the emphasis of this CJD on construction of the infrastructure for the copper network. The two CFW4 CJDs identify 'Austel Cabling Licence' as typical whereas Installer/Repairer CFW5 and CFW7 identify 'Austel BCL/CATS cabling licence.' The evidence does not disclose the difference between them. I find the inclusion of cabling licences as typically required for CFW5 and CFW7 roles is consistent with cabling being a function of each of those roles.

Qualifications/Experience level – desirable

170 Each CJD lists three criteria under ‘Qualifications/Experience Level – Desirable’ which introduce into consideration the personal skill level and experience of the individual performing the role. The first criteria is the only one which is not common across the CJDs, and differs between the CFW5/CFW7 CJDs on the one hand and the CFW4 CJDs on the other.³⁹ The distinguishing features are that an employee at the top of each respective level will demonstrate the following experience and attributes:

- (a) ‘high level of procedural and systematic proficiency’ (CFW4) compared to a ‘very high level of procedural and systematic proficiency’ (CFW5/CFW7);
- (b) ‘well developed’ (CFW4) compared to ‘very well developed’ (CFW5/CFW7) broad technical skills;
- (c) typically, but not being restricted to, having ‘four years’ (CFW4) compared to ‘six years’ (CFW5/CFW7) relevant experience in at least one of the functional areas defined in the job role;
- (d) ‘logistical skills’ (CFW4) compared to ‘well developed’ (CFW5/CFW7) logistical skills for determining job planning;
- (e) ‘personal organisation’ (CFW4) compared to ‘well developed personal organisation’ (CFW5/CFW7);
- (f) Sound knowledge of ‘basic data products’ (CFW4) compared to ‘data products’ (CFW5/CFW7); and
- (g) First level leadership skills on site (CFW4) with no equivalent in CFW5/CFW7.

171 Whilst the criteria are stated to be desirable only, they are in fact the only tangible indication of the personal characteristics required of a person holding the respective roles. I therefore consider that this aspect of the CJDs should be given appropriate weight in determining Mr Jayawardana’s classification. This is considered further below.

³⁹ The CAN Infrastructure Build CJD is substantively the same as Installer/Repairer CFW4, with some minor differences which are not material

Australian Qualifications Framework (AQF) Relativities

172 Also underneath the heading ‘Qualifications/Experience – desirable,’ each of the CJDs contains a subsection stating:

Australian Qualifications Framework Relativities

A person who is assessed as fully competent at this work level and across all functions performed in this position analysis, would be eligible to attain the following Australian Qualifications Framework Competencies and/or certificates.

173 Each CJD then lists the competencies as summarised in the Table at Appendix 1. Following the specification of competencies, each CJD states ‘NOTE; Applicable, relevant competencies as identified on 1 October 1998, these can be varied from time to time as Industry standards are adjusted.’

174 Mr Jayawardana submitted that the AQF relativities are not relevant as they are ‘reverse qualifications’ which recognise skills obtained by employees while working for Telstra, rather than requiring those skills of an employee. Telstra submitted that notwithstanding this, the competencies inform what an employee must be able to do in order to do the job competently, and who would be hired into the position.

175 The AQF relativities differ between the two CFW4 roles. The only qualifications attainable by a CAN Infrastructure Build employee performing all the functions of that role are limited to cabling (Certificate ii) and the CAN (Certificate iii). In contrast, the qualifications attainable for an employee performing all the functions of the Installer/Repairer CFW4 role include cabling but at a higher (certificate iii and iv) level, a lower number of CAN competencies, and include ‘telecommunications’ competencies (a general term, the subject or subjects of which is not discernible from the CJDs) and CPE competencies. Further, the AQF relativities differ between the CFW4 roles, on the one hand, and the CFW5/CFW7 roles on the other, for which they are identical. The qualifications attainable for an employee performing all of the functions of a CFW5/CFW7 role do not include cabling qualifications at all, but include higher level ‘telecommunications,’ ‘CAN’ and ‘CPE’ qualifications.

176 Telstra submitted that the AQF relativities indicate cabling work is an important part of

the CFW4 roles but not the CFW5/CFW7 roles, and that complex CPE work is one of the distinguishing factors between the CFW5/CFW7 roles on the one hand and the CFW4 roles on the other. In support of this contention, Telstra relied on the 2001 Curriculum Document⁴⁰ which identifies the competency units within each of the qualifications listed in the CJDs, at the date the CJDs were issued. Telstra submitted that because the CJDs refer to the qualifications, the qualifications in turn inform the content of the CJDs. The 2001 Curriculum Document was tendered by consent, however Mr Jayawardana submitted that Court must look to the industrial agreement to determine the classification, not the 2001 Curriculum Document which sets out industry standards which may not be aligned. I have reservations in using the 2001 Curriculum Document to interpret the CJDs, given the lack of evidence that it was considered by the negotiating parties or accessible to employees voting on the enterprise agreements some 13 years later. However, given that it establishes objectively (by reference) the content of the qualifications referred to in the CJDs at that time, I have had regard to it. Ultimately, it has not altered the conclusions I would otherwise have drawn from the text of the CJDs themselves.

177 Telstra submitted that the competency units within the qualifications for the CFW4 CJDs included several cabling and optical fibre related competencies which suggest that the following tasks can be done within a CFW4 role: installing conduits and cable; splicing cable; testing cable and identifying, locating and rectifying faults; performing cut-overs; installing trays and equipment; identifying requirements and preparing design drawings and specifications for cabling installation; and supervising cabling work. In contrast, the competency units falling within the qualifications for CFW5/CFW7 included a range of CPE related functions including complex and very complex CPE faults, suggesting that this focus on complex CPE work is a significant distinction from the CFW4 roles.

178 I find that the AQF relativities are relevant to an interpretation of the CJDs insofar as they provide a point in time snapshot of the equivalent qualifications for an employee performing every function within each CJD. Having regard to both the text of the CJDs

⁴⁰ See paragraph 25.

and the 2001 Curriculum Document, I conclude that the AQF relativities indicate that cabling work is a greater focus of the CFW4 CJDs than the CFW5/CFW7 CJDs, and that CPE work is a greater focus of the CFW5/CFW7 CJDs than the CFW4 CJDs. However, for the reasons set out below, I have given them less weight in determining Mr Jayawardana's classification than other matters.

179 Firstly, there are also competencies which on their face may be relevant to Mr Jayawardana's work amongst those provided for under the CFW5/CFW7 CJD. These are:

(a) 3 of 5 required competencies for Certificate iv in telecommunications (CAN).

Competencies which on their face appear relevant to the work of Mr Jayawardana include, for example: supervise cabling project; assign a transmission path; schedule resources; remotely locate and identify cable network faults; locate and diagnose cable faults.

(b) 2 of 5 required competencies for Certificate iv in Telecommunications. Those

include competencies from cabling, CAN, Network and CPE streams. Competencies which on their face appear relevant to Mr Jayawardana include, for example: Undertake routine maintenance of the telecommunications network; Undertake remote repair of network faults; Locate and repair network faults on a first in basis; Remotely locate and identify cable network faults; Locate and diagnose cable faults; Supervise cabling project; Schedule and supply cable installation; Cutover CPE additions, moves and changes.

180 The analysis is limited to the title of the qualification or competency unit, as opposed to the substance. In some cases the title is clear as to the task it describes. For example, 'splice optical [fibre] cable' is clear, and is a competency associated with the qualifications listed in the CFW4 roles. In other cases, the content of or interrelationship between competencies is not able to be determined by the title. For example, the CFW4 qualifications include 'locate and identify cable system fault' and the CFW5/CFW7 qualifications include 'locate and repair network faults on a first in basis', 'remotely

locate and identify cable network faults’ and ‘locate and diagnose cable faults.’ Whilst Telstra submits that identifying, locating and rectifying faults falls within a CFW4 qualification, I do not consider the titles of the competencies are sufficient to ascertain which best aligns with Mr Jayawardana’s work.

181 Secondly, I give only limited weight to the AQF relativities and associated competencies given the express terms of the CJDs allow them to be varied from time to time as industry standards are adjusted. There is no requirement that any variation be by agreement or articulated in any way.⁴¹ Ms Tullberg stated that she obtained the 2001 Curriculum Document from the training.gov.au website and that it was the latest version available prior to the training package being superseded on 27 December 2002. Accordingly, they provide only a ‘point in time’ snapshot of how the work of the CJDs translated to AQF qualifications, from October 1998 and December 2002.

182 Thirdly, the AQF qualifications are those attainable by an employee who is ‘fully functional’ across ‘all functions’ described in the CJD. Other aspects of the CJDs indicate that it is not a requirement that an employee be fully functional in all functions they describe. In particular, the ‘Qualifications/Experience Level – Desirable’ section of the CJDs states that ‘an employee ‘at the top end of this level’ (for the Installer/Repairer CJDs) would have relevant experience in ‘at least one of the functional areas defined in the job role.’ Further, the typical functions of each CJD are indicative, not mandatory. Thus, the AQF qualifications do not directly reflect the qualifications or requirements of the roles as they are otherwise stated. Rather, they reflect the maximum potential scope of the role. A related difficulty arises because the AQF qualifications are identical for the CFW5 and CFW7 CJD. However, in light of other differences between these two CJDs, a ‘fully functional’ employee across ‘all functions’ of one role would be performing functions of a substantively different nature to the other. It is not possible for the specified AQF qualifications to be what the CJD describes them to be in respect of both classifications.

⁴¹ In contrast to the process for changing the CJDs (by agreement between Telstra and the Telstra Unions) provided for in the 2002 Agreement at cl C1.2(e).

183 Fourthly, Telstra submitted that because of the greater focus or emphasis on CPE work in the CFW5/CFW7 competencies, an employee must be performing significant CPE work for those classifications to apply. I disagree in respect of the CFW4 and CFW5 Installer/Repairer CJDs, in the context of the typical functions of each CJD. It is apparent from the consideration of the typical functions of each of the CJDs that all three classification levels include work on CPE products. In the case of both the CFW4 Installer/Repairer CJD and the CFW5 CJD, the CPE-related function is one of five typical functions. Accordingly, I do not consider the fact that Mr Jayawardana performs only limited CPE work gives rise to a greater likelihood that he falls outside one or other of those classifications. In the case of the CFW7 CJD, the CPE related function is one of only two typical functions identified, indicating it is a more significant focus of that role, and to that extent the AQF relativities support Telstra's submission.

CONSIDERATION OF THE APPLICABILITY OF EACH CJD

184 Telstra submitted that there is no basis upon which the Court could conclude that Mr Jayawardana should be classified as a CFW7, which it said would be a radical reclassification. Telstra submitted that the question is really whether or not Mr Jayawardana is appropriately classified as CFW4 or should be classified as CFW5. Telstra submitted that the features of Mr Jayawardana's employment are overwhelmingly consistent with the CFW4 CJDs. Further, his employment has many inconsistent features with the CFW5 and CFW7 CJDs. Mr Jayawardana acknowledged that he performs some CFW4 work, namely optical fibre jointing work and pole inspection work. However, he is required in his role to do a lot more than that, meaning his role is appropriately classified as a CFW5 or CFW7 employee.

CFW7 Installer/Repairer

185 Based on the comparative analysis above, the CFW7 role involves additional complexity in the job purpose - primary role and the job purpose – generic typical function.⁴² Whilst the typical functions relating to 'small and large Pair Gain Systems and radio-based

⁴² See further paragraphs 205 and 213 below.

connections' and 'non-network interference and network interference work involving switches and transmission' do not directly relate to Mr Jayawardana's work, in the context of the range of functions relating to this subject matter across the CJDs, the CFW7 function for each subject matter is illustrative of increased complexity. The repair and maintenance function described is 'highly specialist' and 'complete.' In respect of 'Installation and repair of CPE products and cabling, and associated work,' specialist complex work is described. Accountabilities for a CFW7 reflect a higher degree of expertise and complexity. Whilst there are some elements of the CFW7 CJD which mirror those in the CFW5 classification (mandatory cabling qualifications, desirable qualifications and the AQF relativities) and others which were common across all CJDs, these do not derogate from the comparative complexity of functions and expertise described in the CFW7 CJD.

186 A holistic or vertical reading of this CJD also demonstrates that this role is concerned with particularly complex work across the full breadth of the network. The primary role indicates that the CJD is confined to complex functions and complex products and services. The typical functions relate to 'very complex' diagnostics and programming, and specialist complex repairs of CPE and Network faults. There are only two typical functions described and both relate to specialist, complex work. One of the two functions relates to CPE, indicating that CPE is a significant focus of the CFW7 role. The other relates to 'highly specialised' complete repair and maintenance.

187 Telstra submitted that the language of the CFW7 CJD as a whole indicates an employee operating at a tangibly higher level than the other CJDs. The focus is on work which is necessarily complex and specialised, a 'troubleshooter' role called in where others do not have the technical ability. Telstra submitted it was applicable to an employee operating at the level of Mr De Blasio. Mr Jayawardana accepted that the focus of the higher level CJD is away from manipulative skills and towards system management and supervision.

188 I conclude that Mr Jayawardana's major and substantial employment is not as described by the CFW7 Installer/Repairer role, and accordingly his claim insofar as it is based on

an entitlement to be classified at CFW7 is not made out. Whilst it is true that Mr Jayawardana sometimes takes the lead in repair and maintenance work performed in pairs, determines resource allocation for repair work, provides on the job training for other employees, performs something of a specialist role in respect of his country fault work and allocates work as part of his APOC work, I am not persuaded that these aspects of his role are sufficient to meet the criteria as to complexity and specialisation set out in the CFW7 CJD. That all other employees in the FMG perform the same work as Mr Jayawardana supports the view that this work does not involve the requisite degree of specialisation. The other evidence as to the work of CFW7 employees supports this conclusion. Mr De Blasio undertakes a role less focused on fieldwork and with a much greater management, supervision and administration focus. The highly specialised testing role of the former CFW7 technicians in the MFT is qualitatively different to the work performed by Mr Jayawardana.

CAN Infrastructure Build CFW4

189 The above comparative analysis of the CJDs demonstrates several material differences between the CAN Infrastructure Build CJD on the one hand and the Installer/Repairer CJDs on the other. These include: the title of the CJD referring to both the CAN and the Infrastructure Build function; the job purpose – primary role referring to construction and provisioning activities and not referring to installation and repair activities; the job purpose – primary role being confined to the CAN rather than the more general ‘telecommunications products and services;’ the absence of a general ‘repair and maintenance’ function, present in each other CJD; the specification of ‘highly skilled cable jointing’ as a function, absent from each of the other CJDs; the limitation of the first accountability to the CAN and associated infrastructure; the absence of a reference in the accountabilities to the use of instruments and tools remotely on the network; the typical mandatory requirement of a Heavy Vehicle Licence and the limitations on the AQF relativities to cabling and the CAN.

190 Mr Jayawardana submitted that the CAN Infrastructure Build CJD is limited to work on the CAN. Telstra submitted that whilst this CJD references the CAN in the primary role,

the typical functions (such as undertaking prescribed diagnostics and programming of services and networks in the field) are broader than the CAN.

191 On both a horizontal and vertical analysis of this CJD, I conclude that the role it describes is limited to the CAN. The plain words in the title of the CJD and the 'Job purpose - primary role' indicates that the role requires its holder to 'undertake the full range of construction, provisioning & Maintenance activities *in the telecommunications Customer Access Network*' (emphasis added). I consider this statement determines the outer limits of the CJD and the functions contained within it. Accordingly, both the generic and specific typical functions described must be read as subject to this confining qualification. Consistent with this, the first accountability confines the activities described to the CAN. In addition, the subject matter of the relevant AQF competencies are limited to Cabling and the CAN. Further, the comparative analysis above indicates that the focus in this CJD on the CAN is unique amongst the CJDs. Mr Jayawardana's work extends across the network, whereas this CJD applies only to work on the CAN.

192 Moreover, I consider that on a holistic reading of the CJD, the role it describes is primarily focused on construction and maintenance, including the construction of the physical infrastructure associated with the network of cables that comprise the CAN, including through boring and ploughing the ground. The title of the CJD describes the role as 'Infrastructure Build.' The main functions described in the job purpose – primary role are 'construction, provisioning and maintenance.' The Construction Function describes in detail the physical construction of network infrastructure in teams which install pits, pipes, conduits, cables or services, or undertake directional boring, with reference to large mole plough and complex hauling. A Heavy Machinery Operators Licence is a typical applicable mandatory licence for the role. The comparative analysis also illustrates that these features are unique to this CJD. Mr Jayawardana's Wideband Work involves building new fibre links on the CAN, and his work also involves hauling and installing short lengths of cable. However, beyond this he is not engaged in construction of the physical infrastructure of the CAN.

193 Mr Jayawardana submitted that the function 'highly skilled cable jointing' in this CJD

does not extend to work such as fault finding and testing, and is a reference only to the process of joining together two pieces of optical fibre. Telstra submitted that in light of the reference to 'the full range of construction, provisioning & maintenance activities' in the job purpose, the function extends to associated work such as testing and fault finding. In light of the comparative analysis of the CJDs, I conclude that the term is confined in the way contended for by Mr Jayawardana. Comparatively, the other CJDs do not expressly refer to cabling work. Instead they describe a broader function within which cabling work, along with other associated work, may be undertaken. I consider this supports Mr Jayawardana's contention that the more specific reference to 'highly skilled cable jointing' is limited to the physical process of jointing, rather than the broader range of work associated with the repair of a fibre optic cable fault. Further, the evidence establishes that fault finding and testing are undertaken by the use of tools and instruments. The Installer/Repairer CJDs refer to the use of tools and instruments remotely on the network however the CAN Infrastructure Build CJD does not. In the context of these two aspects of the other CJDs, I conclude that the narrow reference to cable jointing in this CJD should not be given a broader meaning.

- 194 Further, there is no contextual basis in the CJD itself to conclude that the reference to jointing includes a reference to other work associated with Mr Jayawardana's fault repair work. The reference to the 'full range of construction, provisioning & maintenance activities' must be read in the context of the other CJDs which contain specific repair functions, whereas this CJD does not. The cable jointing function is in the context of a role which is primarily concerned with construction, not fault finding and rectification.
- 195 Whilst Mr Jayawardana performs highly skilled cable jointing, he also performs, as part of his Repair and Maintenance Work, fault finding and testing (utilising instruments and tools including remotely on the network). He also determines the method of fault rectification, which may include identifying spare fibres from a fibre record database, and may include contributing to a redesign if records are inaccurate. He also determines the resource requirements to conduct the repair and undertakes associated administrative work. I consider Mr Jayawardana's Repair and Maintenance Work alone
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goes beyond the process of ‘highly skilled cable jointing.’

- 196 Mr Jayawardana’s major and substantial employment includes work described by three of the five typical functions in this CJD, being highly skilled cable jointing, hauling cable and pole inspection. His Wideband Work involves building fibre links in the CAN. However, his work is not confined to the CAN. He does not construct physical infrastructure supporting the CAN. His work goes beyond cable jointing. On both a ‘horizontal’ and ‘vertical’ reading I consider the role described by this CJD bears little resemblance to Mr Jayawardana’s major and substantial employment as I have identified it. Given this, whilst the functions of highly skilled cable jointing, hauling cable and pole inspection are indicative of a CFW4 classification, I otherwise do not conclude that Mr Jayawardana is appropriately classified at CFW4 on the basis of this CJD.

CFW4 Installer/Repairer and CFW5 Installer/Repairer

- 197 In light of the above, the correct classification level of Mr Jayawardana’s major and substantial employment falls to be determined by having regard to those matters from the CAN IB CFW4 CJD which indicate a CFW4 classification, along with a comparison of the CFW4 and CFW5 Installer/Repairer CJDs.
- 198 A holistic reading of both the Installer/Repairer CFW4 CJD and the Installer/Repairer CFW5 roles demonstrates that each is a broad-based role focused on installation, repair and maintenance of telecommunication products and services. This is apparent from: the title of the roles; the ‘job purpose – primary role;’ and the list of specific typical functions, each of which encompass four subject matters common to each of the Installer/Repairer CJDs. The span of AQF relativity competencies across cabling, CAN, Telecommunications and CPE further illustrates the breadth of each role, and the inclusion of typical mandatory cabling qualifications indicates that cabling work is encompassed by both CJDs.
- 199 Having regard also to the comparative analysis of the CJDs, it is also apparent that these two CJDs describe very similar roles. The common content includes an identical job purpose – primary role, which is the key statement as to the scope of the role. The
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six accountabilities are also identical. It is the application of the distinguishing factors between the two CJDs to Mr Jayawardana's major and substantial employment which must ultimately determine his classification level.

Differences in Job purpose – typical functions generic statements

- 200 There are critical differences between the CFW4 and CFW5 job purpose – typical functions generic statements, relating to whether firstly, the role requires 'prescribed diagnostics' or 'complex prescribed diagnostics,' and secondly whether the role requires the course of action to be determined from a 'limited range' of solutions or a 'range of variable' solutions. Regarding both of these differences, I find Mr Jayawardana's work is best described by the CFW5 generic descriptor rather than the CFW4 descriptor, which I consider does not adequately describe his work.
- 201 Telstra submitted that Mr Jayawardana has conceded by way of the SOAF that the tools used to find, fix and test faults takes his work outside of the notion of complex prescribed diagnostics and determining a course of action from a range of variable solutions. I reject that submission. The SOAF goes no further than describing many of the functions Mr Jayawardana performs and the types of work within which he performs them. Further, the SOAF is supplemented by my other findings as to Mr Jayawardana's major and substantial employment.

Prescribed Diagnostics/Complex Diagnostics/Very Complex Diagnostics

- 202 The parties agreed that 'prescribed diagnostics' refers to standard diagnostics used for a particular task. In respect of the diagnostic task required to be performed in his Repair and Maintenance Work, Mr Jayawardana submitted that his fault-finding and diagnosis work involved complex or very complex diagnostics. Telstra submitted that Mr Jayawardana does not use complex diagnostics but rather a limited range of automated easy-to-use diagnostic tools. Telstra accepted that the diagnostic process is more complicated than pressing a button, but submitted that as the skills are able to be taught over a five day course with two day certification, this reflects a lower level of complexity. Further, Telstra submitted that complex diagnostic tools for fibre optic cable do exist,
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but Mr Jayawardana does not work with such tools.

- 203 I consider the diagnostic task Mr Jayawardana performs constitutes 'prescribed diagnostics' insofar as he utilises prescribed tools to undertake a prescribed function. However to my mind, the manner in which he is required to undertake the diagnostic task includes complexity beyond merely 'prescribed diagnostics'. The task includes: the cross-referencing of information utilising different tools to determine the physical location of the fault; manual input; experience; and an element of judgment on Mr Jayawardana's part in diagnosing the fibre event depicted by the OTDR.
- 204 Complexity of a diagnostic task is obviously a relative concept. In reaching this view, I have had regard to the evidence of the more complex diagnostic tools utilised by CFW7 employees.⁴³ I consider the use of these diagnostic tools falls within the descriptor 'very complex'. This sets a benchmark by which to determine the degrees of complexity in the lower two classifications.
- 205 Telstra relied on the duration of training provided to submit that the diagnostic function must not be complex. Accepting the diagnostic skills may be taught in the timeframes referred to by Telstra, this is supplemented by informal on the job training, which Mr Jayawardana provides to other employees including CFW5 employees. Whilst I accept this reflects a lower level of complexity than that which applies to the CFW7 CJD, it does not in my view equate to an absence of complexity in the context of the three classifications and ascending levels of complexity.
- 206 I have had regard to the evidence as to the work of the CFW5 DFST technicians in considering this issue. There was no direct evidence or submissions as to any complex prescribed diagnostics they undertake. I envisage that their resolution of design and scope issues may involve complex prescribed diagnostics. However, this is undertaken through liaison with Service Delivery Leads, and the evidence did not establish what function the CFW5 employees perform or how it in substance differed to Mr Jayawardana's contribution to resolving design issues in his country fault work and

⁴³ See paragraph 104.

Project Work. Nor was there any evidence that the DFST technicians undertake complex programming of services and networks in the field. The parties agreed that 'programming of services and networks' refers to configuring equipment. Based on the evidence as to the duties of the DFST technicians, they do not configure equipment. Rather, the SOAF states that DFST technicians activate equipment by making bookings through another team accountable for activating the service. Further, the Telstra witnesses acknowledged that the absence of a design plan for fault repair work contributes to its complexity.

Range of solutions

- 207 Mr Jayawardana submitted that the Repair and Maintenance work requires him to consider a number of solutions which must be assessed based on a number of variable factors. These include: the need to conduct the repair within time limits; the extent of the effect of the outage on customers; the impact of the fault on the integrity of the network; whether it is on live or dead fibre; whether additional staff are required and their availability; whether a temporary or permanent repair is required and whether a repair can be delayed; the need for civil works; and the creation of work orders. Further, the capacity for very large disruptions arising from one cable fault is a variable which affects the course of action. He also has to liaise with others such as staff assisting and coordinating as to expected progress and time of completion.
- 208 Telstra submitted that to the extent that Mr Jayawardana's work requires him to make decisions, he has to select from only a limited range of solutions not a variable range of solutions. The task is to fix the cable. Whilst there are options, like splicing or patching, this is not a role captured by CFW5. Mr Jayawardana undertakes a methodical approach to problem-solving, but this does not require him to bring to bear a broad range of discretionary considerations.
- 209 Telstra's analysis focused on the mechanical options for fixing a fibre fault available to Mr Jayawardana. I conclude that the range of mechanical options are not properly described as a 'limited range'. The range of options spans from the simple straightening
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of a kink or performing a splice of a single fibre through to replacing a section of damaged fibre or fibres within a cable, changing the services on damaged fibre or fibres to other spare fibre or replacing a whole cable. Determining which solution to apply may vary based on whether spare fibres can be identified using a fibre record database and a handheld fibre identifier. Determining whether to implement a temporary solution may vary depending on the extent of damage and the capacity to perform a cutover to implement a permanent solution.

210 Further, as I have found, Mr Jayawardana's role goes beyond simply fixing the cable in that he manages the fault rectification process for the full range of fibre faults across the network. This includes major faults, and country faults. Telstra submitted that there is no difference in the complexity of the work required between ordinary fault work and work to rectify major faults and country faults. However, I conclude that the context of a fault is relevant to the range of solutions to be considered. As I have found, Telstra itself distinguishes between faults based on their severity in its internal processes. Further, Mr Jayawardana is required to complete fault work urgently, where possible within the timeframes contained in the service level agreements, in light of the customer disruption associated with a fault. Whilst the SOAF makes clear that the same typical process applies, the focus on the physical steps of the process required to rectify a cable fault does not account for variability arising from associated work which I have found Mr Jayawardana undertakes, including assessing staff and contractor requirements, identifying inaccurate fibre records and assisting with the redesign of a fibre route.

211 The relevant question is whether there are a 'limited range' or a 'range of variable' solutions. I conclude that the range of considerations and options available to Mr Jayawardana in determining and implementing the solutions for a fibre fault is not a 'limited range' of solutions, and I find that the range of solutions Mr Jayawardana is required to consider is variable based on the contextual matters and associated work described above.

212 Of the three descriptors, I conclude that only the CFW7 CJD envisages a broad range of discretionary considerations, through the term '*wide range of variable solutions.*' I

consider this description to go beyond what Mr Jayawardana is required to implement. This description is more fitting for the considerations undertaken by Mr De Blasio in the course of exercising the wide range of functions of his coordinator role.

213 I have also had regard to the work of the CFW5 DFST technicians in considering this question. The evidence and submissions did not directly address how their work involves determining a course of action from a range of variable solutions. I envisage that this may arise in the course of prioritising work across multiple orders, or stakeholder management, or in resolving design or scope issues. However, there is nothing in the evidence to distinguish the work of these CFW5 technicians such that the matters I have identified in respect of Mr Jayawardana's work amount by comparison to a limited range of solutions.

Repair and Maintenance Functions

214 The relevant descriptors of the typical functions relating to repair and maintenance are, for CFW4, 'Repair and Maintenance of the Customer Access Network ...' and for CFW5 'Repair of complex and difficult CAN transmission and interexchange network faults (**ESD**).' The parties' submissions were made on the basis that each was capable of applying to fibre optic cable faults, but Telstra submitted that the CFW4 descriptor applies whereas Mr Jayawardana submitted that the CFW5 descriptor applies.

215 Telstra submitted that the Installer/Repairer CFW4 classification extends to repair and maintenance work on the IEN, notwithstanding that the typical function refers only to the CAN, on the basis of the broad description of the job purpose, because the typical functions do not exclusively describe the functions of the role, and because the other typical functions extend beyond the CAN, such as the reference to 'diagnostic and programming of service and networks in the field' and 'board changes' referring to exchange-based work. Mr Jayawardana submitted that because the CJD does not refer specifically to the IEN, it does not extend to work on the IEN, whereas the Installer/Repairer CFW5 function extends to the IEN.

216 In contrast to the CAN Infrastructure Build CJD, there is no overriding restriction present

in the CFW4 CJD job purpose – primary role which confines it to work on the CAN. It applies to ‘the full range of (relevant) functions associated to telecommunications products and services.’ Accordingly, I consider this CJD is not confined to the CAN and extends to work across the network including the IEN. In addition, whilst it does not directly refer to the IEN in the typical functions, those functions are not limited to the CAN and in any event are not an exclusive statement of the work of the role. However, despite this, there is a clear restriction in the text of the typical function relating to repair and maintenance which confines it to the CAN. I consider that this restriction must be given some meaning in a context where: firstly, none of the other typical functions include the restriction; secondly, the work covered by the other CFW4 CJD is limited to the CAN; and thirdly, given the distinction made in the 2022 Agreement description of the CFW workstream. Having regard to these contextual factors, so far as repair and maintenance of the network is concerned, I conclude that the typical function of the CFW4 Installer/Repairer role describes work on the CAN.

217 The CFW5 CJD, in contrast, clearly applies to both the CAN and the IEN, as it specifically refers to both. However, it applies to repair of ‘complex and difficult CAN transmission and interexchange network faults (**ESD**).’ Telstra submitted that ‘ESD’ is generally reflective of complexity, and there was no evidence Mr Jayawardana was called in to ‘troubleshoot’ difficult faults. Mr Jayawardana submitted that the evidence demonstrates he works on complex faults.

218 There are two ways of reading the CFW5 typical function. On a proper grammatical reading, the qualifier ‘complex and difficult’ applies to faults on both the CAN and IEN. However, the CAN Infrastructure Build CFW4 is confined to work on the CAN, and the repair and maintenance typical function of Installer/Repairer CFW4 also describes work on the CAN. Accordingly, for the first time ascending up the classifications, repair of the IEN appears expressly as a typical function in the CFW5 CJD. Given this context, the alternative, grammatically incorrect, reading of the CFW5 typical function is that it applies to complex and difficult faults on the CAN (thus distinguishing it from the CFW4 repair and maintenance functions), as well as faults on the IEN (not qualified by

‘complex and difficult’). I consider on balance that this is the better interpretation. Otherwise, none of the CJDs expressly contain non-complex repair work on the IEN as a typical function. I consider this interpretation best applies the purposive approach to interpretation referred to in the extract from *Workpac*⁴⁴ cited in *Target*,⁴⁵ recognising the practical expression of intention by the industrial parties rather than careful drafting. If this interpretation is correct, I consider it clear that Mr Jayawardana’s fault repair work is best described by the CFW5 descriptor and not adequately described by the CFW4 descriptor, because his repair work extends beyond the CAN and includes the IEN.

219 However, even if the alternative, grammatically correct reading of the CFW5 typical function is adopted, I conclude that Mr Jayawardana’s role requires him to repair complex and difficult CAN transmission and interexchange network faults, as described in the CFW5 CJD. I have found that major fault work and country fault work are part of Mr Jayawardana’s major and substantial employment. Mr Jayawardana is allocated country work because he is a more experienced splicer than country technicians, and additional difficulties arise with country work arise due to inaccurate records, assisting with redesign and working with older and difficult cables, which add complexity. Major faults are escalated within Telstra due to their severity, may involve disruption to large numbers of customers and are more urgent. As far as possible faults must be repaired within the applicable time frames. On the evidence before me, based on the factors I have identified, I find that these are the most complex fibre optic cable faults, and Mr Jayawardana (and the MFT) are responsible for rectifying them.

220 In assessing the complexity of faults, I again have had regard to the relative ascending complexity in the CJDs. The CFW7 repair and maintenance function is clearly set apart from the equivalent functions in the other CJDs by its reference to ‘highly specialist’ and ‘complete’ repair and maintenance of network and service affecting faults. Despite the absence of evidence of more complex fibre optic cable faults than those referred to above, I nonetheless conclude that the work undertaken by Mr Jayawardana and the

⁴⁴ *Workpac v Skene* (2018) 264 FCR 536; 280 IR 191, [197] (Tracey, Bromberg and Rangiah JJ).
⁴⁵ (2023) 324 IR 304; [2023] FCAFC 66, [8].

MFT falls short of the description of ‘highly specialist.’

Other typical functions

221 I conclude that two of three additional ‘typical functions’ specified in each of the CFW4 and CFW5 CJDs Installer/Repairer CJD (relating to the subject matters of small and large Pair Gain Systems/Customer Radio and non-network interference and network interference work involving switches and transmission) are not relevant to determining Mr Jayawardana’s classification as they primarily relate to the copper network. The evidence does not demonstrate how they translate to the fibre network and Mr Jayawardana does not perform work of the nature described in either CJD.

222 I find that Mr Jayawardana’s work cleaning payphones is encompassed by the remaining typical function in the CFW4 Installer/Repairer role. I find that his work installing exchange cards is encompassed by the remaining typical function in the CFW5 Installer/Repairer CJD.

Desirable experience and attributes

223 I conclude in respect of items (a) to (e) in paragraph 170 above that Mr Jayawardana meets the more onerous requirements of the CFW5 descriptor. I take account of: his performance reviews from his managers; his capacity to take charge of a job when he is paired with another CFW5 employee; his informal on the job training and supervision of less experienced technicians; and Mr De Blasio’s assessment of his work. The years of experience described in paragraph 170(c) relate to an employee at the top of the level. As at 30 January 2019, Mr Jayawardana had six years’ experience working in the FMG in the MFT and I am satisfied accordingly had the requisite experience working in the functional area of repair and maintenance of the network, including repair of faults on the CAN and IEN, prior to the period to which his claim relates. As to paragraph 170 (f), the evidence does not establish what a ‘data product’ or ‘basic data product’ is, and I have accordingly not had regard to it.

General complexity of the work

224 Telstra submitted that the CJDs demonstrate a relative increase in complexity, and that

the Court should have regard to this general notion of complexity notwithstanding that many specific aspects of the CJDs largely describe the copper network. Mr Jayawardana did not dispute this approach. I conclude that it is necessary to have regard to general notions of complexity in considering the CJD applicable to Mr Jayawardana.

225 Telstra submitted that the work of the CFW5 DFST technicians is more complex than Mr Jayawardana's role, meaning Mr Jayawardana is appropriately classified at CFW4. Telstra submitted that the complexity of the DFST technician's role arises from the number of responsibilities and complexities in effecting a fibre link, such as the range of work, the number of orders being managed at one time and design and scope issues. Mr Jayawardana submitted that the DFST technicians are doing the same or no more complex work than the Fibre Maintenance work he undertakes, noting the potentially wide customer impact of Mr Jayawardana's fault repair work and the consequent skills he requires being at a higher level.

226 I have found that the Wideband Work and the Project Work of the MFT is no more complex than the Repair and Maintenance Work, however the addition of qualitatively different tasks associated with performing all three types of work adds complexity to Mr Jayawardana's role. I have also found that the Wideband Work of the DFST is more complex than the Wideband Work of the MFT.

227 However, assessing complexity in this general sense requires an assessment of Mr Jayawardana's major and substantial employment as a whole, compared to the work of other employees within the CFW classification structure. I have already found that there are no distinguishing features, therefore no greater complexity between the work performed by the CFW5 employees in the FMG and Mr Jayawardana, and that the most complex work within that team is performed by CFW5 employees.

228 The other relevant comparison available on the evidence is with the CFW5 DFST technicians. The FST perform most of the Wideband Work. Wideband Work (in the context of the MFT undertaking it) is described as the building of a fibre link from point

A to point B following a given path, in accordance with a design, involving the same cabling tasks as the repair and maintenance work (hauling, testing and splicing fibre). It was agreed that DFST technicians 'complete the required physical work' on each order. I understand this to mean that DFST technicians undertake the cabling work to construct the wideband links on the services for which they are responsible. Accepting that external contractors are used for hauling cable beyond 120 metres in length, and MFT technicians are used for 5 of 40 service types, I infer that DFST technicians perform the remaining cabling work. There was no evidence that the cabling work performed by DFST technicians is any more complex than the cabling work undertaken by Mr Jayawardana. The evidence as to the more complex work of DFST technicians focused on the tasks DFST technicians perform additional to cabling work.

- 229 Beyond cabling work, I have found that additional complexities of a DFST technician role compared to Mr Jayawardana's role include: being responsible for multiple orders at a time; being responsible for work across a greater range of service types; liaising directly with customers; liaising directly with service delivery leads and participating more significantly in the design process; and coordination of secure site inductions.
- 230 However, I was not satisfied that compliance with design standards by DFST technicians involves more complexity than Mr Jayawardana's work in building a Wideband link in compliance with a design. I am similarly not satisfied of this in respect of Mr Jayawardana's compliance with designs in his Project Work.
- 231 Whilst it is the case that DFST technicians are required to make IPMAN/SMNG bookings and use the Ideal system and Mr Jayawardana is not, there is no evidence that the booking systems used by the DFST to arrange activation of the equipment by another team are any more complex than the systems Mr Jayawardana uses to book the activation of customer equipment he installs. Also, whilst Mr Jayawardana does not himself activate equipment, the SOAF states that DFST technicians activate equipment by making bookings through another team accountable for activating the service, and I find accordingly that DFST technicians similarly do not activate equipment.
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232 It is unclear what is meant by DFST technicians 'optimising resources,' 'managing resources' and 'consolidating infrastructure' or by Mr Cooper's evidence that DFST technicians 'organise support between themselves.' The evidence does not establish in what way this is qualitatively different to the work Mr Jayawardana does in ascertaining the resource requirements for a fault repair. Further, accepting DFST technicians are required to engage with each other and various other groups in performing their work, I am not satisfied there is any greater complexity in this engagement than Mr Jayawardana's engagement with other technicians and groups in his fault repair work.

233 I have accepted that for DFST technicians, performing work across 40 service types adds to the complexity of the role. Mr Jayawardana performs, or has performed, work across the functional areas of Repair and Maintenance Work, Project Work, Wideband Work and APOC Work. I have found that working across functions beyond Repair and Maintenance Work involves the utilisation of qualitatively different skills by Mr Jayawardana, including installation and arranging of activation of CPE, following design plans, participating in required redesigns and voluminous data entry. In addition, his APOC work involves the qualitatively different skills.

234 Further, the effect of Mr Cooper and Mr De Blasio's evidence that the Wideband Work of the MFT was less complex than its Repair and Maintenance Work involved a concession that the absence of a design plan for fault repair work, and the time sensitivity required to complete fault repair work in light of the customer impact are factors which contribute to the complexity of the Repair and Maintenance Work undertaken by Mr Jayawardana. Based on this evidence, I find that the following matters, which are not features of the work of a DFST technician, contribute to the complexity of Mr Jayawardana's role:

- (a) Locating and diagnosing the nature of the fibre fault;
 - (b) Identifying and executing the plan to rectify the fault, in the absence of a design plan; and
 - (c) The customer impact and thus time sensitivity required to complete the fault work.
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- 235 In addition, I find that Mr Jayawardana's APOC function, including the allocation of work to other technicians and the administrative work associated with doing so, as well as the requirement that Mr Jayawardana undertake country work which existing 'generalist' technicians are not able to perform, contribute to the complexity of Mr Jayawardana's role and are not features of the DFST technicians' role.
- 236 Finally, I find on Mr Considine's evidence that there are three wideband coordinators who manage the DFST work, from which I infer that the CFW5 DFST technicians' work is coordinated, as Mr De Blasio coordinates the work of the MFT technicians. Considering this and each of the above matters, I accept there are some aspects of the DFST technicians' role that are more complex than Mr Jayawardana's role. However, there are also some aspects of Mr Jayawardana's role that are more complex than the work of a DFST technician. I conclude, based on the analysis above, that there is no significant material difference between the two.
- 237 In any event, whilst I accept general complexity is a relevant consideration, it cannot displace the need to give effect to the text of the CJDs, to the extent that text remains relevant to the work being performed by CFW technicians in light of the changed technology. Beyond considerations of general complexity, neither party undertook an analysis of how the work of the DFST technicians corresponds with the roles described in the CJDs. I have considered this question in respect of the diagnostic process and range of solutions involved in each respective role. I have not undertaken a detailed analysis beyond that, given both parties accepted that DFST technicians are appropriately classified as CFW5. However, in the absence of the parties having addressed this issue, I am not satisfied that a textual analysis of the CFW5 CJD would provide any better or worse basis for DFST technicians to be classified at that level than Mr Jayawardana.

CONCLUSION

- 238 In summary, Mr Jayawardana's highly skilled optic fibre cable jointing on the CAN, hauling work on the CAN, pole inspection work, payphone cleaning work and his work on single line services to customer premises are indicative of a CFW4 classification.
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The AQF relativities in the CJDs also indicate that a CFW4 classification is applicable, however for the reasons identified above, I have given this aspect of the CJDs less weight than others.

239 However, the remaining considerations are indicative that a CFW5 classification applies. In particular, I have found that:

- (a) Mr Jayawardana undertakes complex prescribed diagnostics in his fault repair work, consistent with the 'job purpose – typical functions' generic statement for the CFW5 Installer/Repairer CJD;
 - (b) Mr Jayawardana is required in his fault work to determine a course of action from a range of variable solutions, consistent with the 'job purpose – typical functions' generic statement for the CFW5 Installer/Repairer CJD;
 - (c) Mr Jayawardana undertakes Repair and Maintenance Work across all parts of the network, including the IEN, whereas the CAN IB CFW4 CJD is confined to work on the CAN, and the repair and maintenance function of the CFW4 Installer/Repairer CJD describes work on the CAN;
 - (d) Mr Jayawardana's repair and maintenance work on the IEN meets the description in the CFW5 Installer/Repairer CJD in that Mr Jayawardana performs this work on the IEN and he undertakes work on complex and difficult faults;
 - (e) Mr Jayawardana installs exchange cards, consistent with the CFW5 Installer/Repairer CJD typical function;
 - (f) Mr Jayawardana has over six years of relevant experience, and has the proficiency, technical skills, logistical skills and personal organisation described in the 'qualifications/experience level – desirable' criteria for the CFW5 Installer/Repairer CJD;
 - (g) Regarding the general complexity of Mr Jayawardana's role, he does not perform any less complex work than any CFW5 employee in the FMG, and the most
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complex work in that team is performed by CFW5 employees. Further, the general complexity of Mr Jayawardana's work as a whole is not materially different to the general complexity of the DFST technician role as a whole, which both parties accept is appropriately classified at level CFW5.

240 For these reasons, I conclude that on the balance of probabilities, Mr Jayawardana is properly classified as level CFW5 under the 2022 Agreement. I find Mr Jayawardana's major and substantial employment is not appropriately described by the CFW4 CJDs and is accordingly he is not appropriately classified at level CFW4.

241 This conclusion is based largely on Mr Jayawardana's Repair and Maintenance Work, as is apparent from the summary above. However, it is also based in part on Mr Jayawardana's APOC Work, with the additional functions that entails contributing to the complexity of his role. It is also based in part on Mr Jayawardana's personal characteristics, including his years of experience and degree of competency.

242 This conclusion is also based in part on the increased breadth of Mr Jayawardana's role from mid-2021 onwards. In particular:

(a) In Mr Jayawardana's Project Work, the installation of Exchange Cards, and the functions of working to a design plan, contributing to redesign and populating workbooks contribute to the general complexity of his role.

(b) In Mr Jayawardana's Wideband Work, the additional function of installing customer equipment and arranging activation contributes to the general complexity of his role.

243 However, omitting considerations relating to Mr Jayawardana's Project Work and Wideband Work (and the corresponding counter-considerations in respect of his General Inspection Work as to the applicability of the CFW4 classification) I nonetheless reach the same conclusion, on balance, that prior to mid-2021, Mr Jayawardana was not appropriately classified at level CFW4 and should have been classified at level CFW5. That conclusion is based on the matters referred to above regarding Mr

Jayawardana's Repair and Maintenance Work, APOC Work and his personal characteristics. Accordingly, I conclude that Mr Jayawardana was entitled to be classified at CFW5 for the full relevant period to which his claim relates.

244 It is evident from this decision that the exercise of determining Mr Jayawardana's correct classification in the context of changed technology has been far from straightforward. It has required extensive analysis of both historic and current functions. It has required careful consideration of a range of opposing and sometimes contradictory submissions in order to determine, firstly, what the CJDs meant at the time they were written, and, secondly, to arrive at a technology-appropriate and internally consistent approach to interpreting the CJDs some 22 years later. It must be observed that complexity of this nature is hardly beneficial for either Telstra or the employees to which the CJDs apply. For completeness I note that the 2022 Agreement contains both a tripartite process for designing new CJDs and robust dispute resolution procedures. Each of these processes would potentially facilitate not only the resolution of classification disputes but the development of new, agreed approaches which could address this undesirable complexity to the benefit of both parties in future agreements.

245 The parties are directed to confer and seek to agree on:

- (a) A form of orders giving effect to this decision; and
- (b) directions in respect of the determination of the Plaintiff's claims for pecuniary penalties.

246 By 4pm on 25 October 2024:

- (a) The Plaintiff is to file any agreed form of order and/or directions; or
- (b) In the absence of agreement, each party is to file and serve their proposed form of orders and/or directions.

247 In the absence of agreement between the parties, the matter will be listed for directions on 6 November 2024.

Appendix 1 — comparison of the text of the relevant Core Job Descriptions

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
<p>1. Primary Role ...</p> <p>Without immediate supervision or direction undertake the full range of end to end installation, repair and maintenance functions associated to telecommunications products and services, to meet customers [sic] expectations and service commitments and maximise network profitability and revenue.</p>	<p>[Same as CFW 4 Installer/Repairer]</p>	<p>1. Primary Role ...</p> <p>Without immediate supervision or direction undertake the full a range of <u>complex</u> end to end installation, repair and maintenance functions associated to the range of complex telecommunications products and services, to meet customers [sic] expectations and service commitments and maximise network profitability and revenue.</p>	<p>1. Primary Role...</p> <p>Without immediate supervision or direction undertake the full range of end to end installation, repair and maintenance functions associated to telecommunications products and services <u>construction, provisioning & Maintenance activities in the telecommunications Customer Access Network</u>, to meet customers [sic] expectations and service commitments and maximise network profitability and revenue.</p>
<p>2. Typical Functions</p> <p>Typically an individual performing this role would be required to undertake prescribed diagnostics and programming of services and networks in the field and determine the course of action from a limited range of solutions.</p>	<p>2. Typical Functions</p> <p>Typically an individual performing this role would be required to undertake <u>complex</u> prescribed diagnostics and programming of services and networks in the field and determine the course of action from a limited range of <u>variable</u> solutions.</p>	<p>2. Typical Functions</p> <p>Typically an individual performing this role would be required to undertake <u>very complex</u> prescribed diagnostics and programming of services and networks in the field and determine the course of action from a limited <u>wide</u> range of <u>variable</u> solutions.</p>	<p>[Same as CFW 4 Installer/Repairer]</p>

¹ Tracking shows relevant material differences from the CFW 4 Installer/Repairer. Immaterial or minor differences in wording (such as re- ordering of the same wording within a sentence or paragraph) are not tracked.

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
Typical functions could include, but not exclusive to: [items in the list re-ordered to line-up equivalent items across the four roles]			
<ul style="list-style-type: none"> Repair and Maintenance of the Customer Access Network including Cable TV. 	<ul style="list-style-type: none"> Repair of complex and difficult CAN transmission and inter-exchange network faults (ESD). 	[No direct equivalent]	[No direct equivalent]
<ul style="list-style-type: none"> Repair and Maintenance of Simplex Products & Services (eg. single line services, OnRamp, basic Data, public Payphones & associated products i.e.: TOPS, COPS). 	[No direct equivalent]	[No direct equivalent]	[No direct equivalent]
<ul style="list-style-type: none"> Installation or Repair of Complex CPE Products and Cabling (eg. PABX, SBS, Data & Special Services, Mobiles, Media & Broadcast Services, associated MDF activities). 	<ul style="list-style-type: none"> Installation and Repair of Complex CPE products and cabling (eg. PABX, SBS, Data & Special Services, Mobiles, Media & Broadcast services, associated MDF activities <u>Exchange work</u>). 	<ul style="list-style-type: none"> Specialist complex repair of CPE (eg. PABX, Data, Media, & Broadcast services, associated Exchange elements). [sic] and/or CPE related networks 	[No direct equivalent]
<ul style="list-style-type: none"> Installation & Repair of Fixed Radio Access/Small Pair Gain Systems. 	<ul style="list-style-type: none"> Repair and Maintenance of Large Pair Gain Systems {eg. RIM, DRCS & Customer Radio} 	[No direct equivalent]	[No direct equivalent]

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
<ul style="list-style-type: none"> Non-Network Interference work on Switches & Transmission (eg. Alarm resets, board changes under GOC direction, line conditioning and testing). 	<ul style="list-style-type: none"> Repair and Maintenance of potential Network interference and service affecting Faults and Isolations associated to Switches and Transmission Systems (eg. Special service jumpering, fault rectification and hazardous board replacement under direction from GOC, RIM , RCM Faults, etc) 	<ul style="list-style-type: none"> Highly specialist complete Repair and Maintenance of Network and Service affecting Faults and Isolations associated with Switches and Transmission activities. (eg. difficult and complex fault rectification, outage recovery, complex switch fault rectification, DRCS, RIM, S12, AXE and Customer Radio). 	[No direct equivalent]
[No direct equivalent]	<ul style="list-style-type: none"> Install and Replace Exchange Cards. 	[No direct equivalent]	[No direct equivalent]
[No direct equivalent]	[No direct equivalent]	[No direct equivalent]	<ul style="list-style-type: none"> Highly skilled Cable Jointing (eg. Complex Cable Jointing, Fibre Optic Jointing). Complex CPAS (eg. Installation and Repair of APCAMS). Party Leader up to 9 Staff undertaking Pit, Pipe, Conduit, Cable or Service Installation, or Party Leader of a small team undertaking Directional Boring (ie > 10 ,000 Lbs force), Large Mole Plough, Complex Hauling etc. Large Pair Gain System Installation (eg . RIM, DRCS, Customer Radio). Pole Inspection

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
ACCOUNTABILITIES (Primary business outputs set for job) ...			
<p>1. Achieve faultless end to end fault rectification and installations to the full satisfaction of customers [sic] expectations;</p> <ul style="list-style-type: none"> • Through compliance to prescribed standards, practices and procedures • Through correct and proficient utilisation of instruments and tools from remote points within the network. 	[Same as CFW 4 Installer/Repairer]	<p>1. Achieve faultless end to end fault rectification and installations to the full satisfaction of customers [sic] expectations.</p> <ul style="list-style-type: none"> • Through Compliance to prescribed standards, practices and procedures • Through correct and proficient <u>expert</u> utilisation of instruments and tools from remote points within the network. 	<p>1. Achieve faultless end to end fault rectification and installations <u>construction, provisioning & Maintenance of the customer access network and associated infrastructure</u> through compliance to prescribed standards, practices and procedures, and to the full satisfaction of customers [sic] expectations.</p> <ul style="list-style-type: none"> • Through correct and proficient utilisation of instruments and tools from remote points within the network.
<p>2. Undertake planned activities associated to infrastructure maintenance and upgrades within given time lines.</p> <ul style="list-style-type: none"> • Through compliance to prescribed standards, practices and procedures • Through correct and proficient utilisation of instruments and tools from remote points within the network. 	[Same as CFW 4 Installer/Repairer]	<p>2. Undertake planned <u>and complex routine</u> activities associated to <u>network & service</u> infrastructure, maintenance and upgrades, within given time lines.</p> <ul style="list-style-type: none"> • Through Compliance to prescribed standards, practices and procedures • Through correct and proficient <u>expert</u> utilisation of instruments and tools from remote points within the network. 	<p>2. <u>Plan and</u> Undertake planned activities associated to infrastructure maintenance and upgrades within given time lines, through compliance to prescribed standards, practices and procedures within given time lines.</p> <ul style="list-style-type: none"> • Through correct and proficient utilisation of instruments and tools from remote points within the network.

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
3. Ensure customer delight by constant interaction with the customer to confirm requirements, inform of progress and confirm the agreed requirements are fully met upon completion.	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]
4. Contribute to personal and public image by compliance with all relevant policies, practices and regulations in an effective and responsible manner.	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]
5. Contribute to the company's financial well being by the timely and accurate capturing and recording of all relevant cost, time and revenue data, along with seeking opportunities to grow revenue and reduce costs.	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]
6. Contribute to the effective resource and workforce deployment through compliance to Work Management Centre business rules and performance expectations.	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
<p>QUALIFICATIONS - MANDATORY (No person to occupy job without this) An employee will be required to possess/obtain and maintain the relevant and applicable licences to performing this function as deemed mandatory by regulatory and legal authorities and posses/obtain [sic] and maintain a drivers [sic] licence. Typical Applicable Licence could be AUSTEL BCL/CATS cabling licence Where a mandatory licence is required to perform a particular job function it will be specified on the individual job description statement (i.e.; [sic] Riggers Ticket, Articulated Truck Licence, Austel Licence)</p>	<p>[Same as CFW 4 Installer/Repairer except that BCL/CATS is removed as a typical applicable licence]</p>	<p>[Same as CFW 5 Installer/Repairer]</p>	<p>[Same as CFW 4 Installer/Repairer except that BCL/CATS is removed as a typical applicable licence and Heavy Machinery Operators [sic] Licence is added instead]</p>

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
QUALIFICATIONS/EXPERIENCE LEVEL - DESIRABLE			
<p>1. An employee at the top end of this level will demonstrate a high level of procedural and systematic proficiency in performing those functions and would be required to apply well developed broad technical skills, would typically, but not restricted to, having a minimum of four years relevant experience in at least one of the relevant functional areas defined in the job role and posses [sic] the following attributes; [sic]</p> <ul style="list-style-type: none"> • Logistical skills for determining job planning • First level leadership skills to lead a small team on site • Personal organisation & high level of self motivation • Able to Operate Screen Based Equipment • Possess a sound knowledge of voice/basic data products. 	<p>1. An employee at the top end of this level will demonstrate a <u>very</u> high level of procedural and systematic proficiency in performing those functions and would be required to apply <u>very</u> well developed broad technical skills and would, typically, but not be restricted to, having a minimum of four<u>six</u> years relevant experience in at least one of the relevant functional areas defined in the job role and posses [sic] the following attributes; [sic]</p> <ul style="list-style-type: none"> • <u>Well developed</u> logistical skills for determining job planning • First level leadership skills to lead a small team on site • <u>Well developed</u> personal organisation & high level of self motivation • Able to Operate Screen Based Equipment • Possess a sound knowledge of voice/basic data products. 	<p>[Same as CFW 5 Installer/Repairer]</p>	<p>An employee at the top end of <u>entering into</u> this level would be required to apply well developed broad technical <u>and work organisation</u> skills and typically, but not restricted to, have a minimum of four years relevant experience in at least one of the relevant functional areas defined in the job role and posses [sic] the following attributes; [sic]</p> <ul style="list-style-type: none"> • Logistical skills for determining job planning • Personal organisation & high level of self motivation • Able to Operate Screen Based Equipment • First level Leadership skill to Lead a small Team on site • A high level of procedural and systematic proficiency in performing those functions. • Possess a sound knowledge of voice/basic data products.

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
2. An occupant performing at this level is a front line ambassador for Telstra and will require the individual to present the highest level of customer service behaviours possible, to take ownership and show initiative in the resolution of customer related issues and the provision of service.	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]
3. The Employee will be required to show a high level of initiative as a fundamental requirement in the delivery of service to customers and to operate inter dependently [sic].	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]	[Same as CFW 4 Installer/Repairer]
A person who is assessed as fully competent at this work level and across all work functions performed in this position analysis, would be eligible to attain the following Australian Qualifications Framework Competencies and/or certificates. [items in the list re-ordered to line-up equivalent items across the four roles]			
3 of the required 7 competencies for AQF2, Certificate ii (Cabling)	[No direct equivalent]	[No direct equivalent]	7 of the required 7 competencies for AQF2, Certificate ii (Cabling)
4 of the required 6 competencies for AQF3, Certificate iii (Cabling)			
1 of the required 5 competencies for AQF4, Certificate iv (Cabling)			
2 of the required 6 competencies for AQF3, Certificate iii (CAN)	3 of the required 5 competencies for AQF4, Certificate iv (CAN)	[Same as CFW 5 Installer/Repairer]	6 of the required 6 competencies for AQF3, Certificate iii (CAN)

CFW 4 Installer/Repairer	CFW 5 Installer/Repairer ¹	CFW 7 Installer / Repairer	CFW 4 CAN Infrastructure Build
1 of the required 6 competencies for AQF3, Certificate iii (Telecommunications)	2 of the required 5 competencies for AQF4, Certificate iv (Telecommunications)	[Same as CFW 5 Installer/Repairer]	[No direct equivalent]
4 of the required 6 competencies for AQF3, Certificate iii (CPE)	1 of the required 4 competencies for AQF5, Diploma In (CPE) 4 of the required 5 competencies for AQF4, Certificate iv (CPE)	[Same as CFW 5 Installer/Repairer]	[No direct equivalent]