

AWARD MODERNISATION CONSULTATION

Re:

- **Priority Industries/Occupations,**
- **Timetable' and**
- **Model Award Flexibility Clause**

Outline of Submission



May 2008

AWARD MODERNISATION CONSULTATION

Re: Priority Industries/Occupations, Timetable, and Model

Award Flexibility Clause

Outline of Submission

1. Introduction

1. Ai Group welcomes the opportunity to participate in the award modernisation process and express its views on the issues which are the subject of these proceedings.
2. The Commission has been given a massive task by the Government in streamlining and modernising a huge number of industrial awards within a defined timeframe. While difficult, it is an essential task to bring Australia's safety net of minimum award conditions in line with the needs of employees and employers in the 21st century.
3. The process will be a very challenging one for Ai Group and other registered organisations. Ai Group is a party in its own right to more than one hundred pre-reform awards and has an interest in more than 500 awards.
4. Ai Group intends to be a very active participant in the award modernisation process to represent the interests of its members and to assist the Commission to meet the objectives which have been set for the process.
5. In the Statement of 29 April, the Commission has made it clear that all parties will be given the opportunity to express their views, propose draft provisions and participate in the process. This is very welcome, and is essential to ensure fairness and unintended consequences.

6. The Award Modernisation Request from the Government to the Commission makes it clear that the process must not increase costs for employers or reduce entitlements for employees. These are important principles that, whilst difficult to achieve, must not be overlooked during the process.

2. Scope of the proceedings and preliminary matters

7. As Ai Group understands it, the Full Bench has listed these proceedings for the purposes of consulting about three matters:

- The list of priority industries / occupations;
- The timetable; and
- The model award flexibility clause.

8. To the extent that a party raises any additional matters, we submit that such matters should not be the subject of a decision of the Commission at this stage. This would include such matters as:

- The relationship between awards and the National Employment Standards (NES);
- The role of award parties and the rights of representative organisations; and
- Numerous other potential matters.

9. No doubt numerous issues will arise over the coming months about which the Commission will need to make a decision. With matters of importance, we submit that a further consultation process should occur to give parties the opportunity to express their views.

10. To this end, Ai Group, ACCI and the ACTU have agreed to seek the following in these proceedings:

“The major parties seek a right to request that the Full Bench be reconvened in the 2nd half of 2008, if necessary, to deal with issues of importance across all priority awards.”

11. This process is practical and fair and will avoid unnecessary confusion and complexity arising in respect of the consultation process this week.

3. List of priority industries / occupations

12. As the Commission is aware, the list of 19 priority industries is a compilation of those suggested separately by Ai Group, ACCI and the ACTU.

13. The three which Ai Group proposed were:

- Metal, Engineering and Associated Industries;
- Information and Communications Technology (ICT); and
- Technical Services - Engineers and Scientists Occupations.

14. In proposing these three industries, we were not suggesting that they are necessarily more important than others.

15. We are of the view that these three industries provide useful vehicles to canvass various important award modernisation issues.

- A large number of federal awards and NAPSAs operate in the **Metal and Engineering Industry** and the Metals Award has always played a key role in the award system, so this industry is a logical priority one.

- In the **ICT industry**, a series of flexible and relatively modern federal awards have been developed over recent years and the modernisation task in this industry may not be as difficult as in some others. Also, this is an industry with a high proportion of employees on AWAs.
 - Awards applying to **professional engineers and scientists** are more common than awards applying to other professionals, so they are a logical starting point in the process of modernising professional awards.
16. The awards, NAPSAs and other instruments which Ai Group proposes should be considered within the above three priority industries are set out in **Annexures A, B and C**. In considering these lists, it is important to note that they have been prepared by Ai Group on a “without prejudice basis” without a thorough analysis of the scope of each award or the conditions contained within each award. It should not be assumed that it will be desirable to have only one award in each of these industries. The number of modern awards and the content of those awards will be considered by the parties over the period ahead.
17. With regard to the proposed list of 19 priority industries, we not object to any of the industries being dealt with as a priority although the process will create some significant resource challenges for Ai Group. We have a major interest in the priority industries / occupations of:
- Clerical;
 - Electrical;
 - Graphic arts;
 - ICT;
 - Metal, engineering and associated Industries;
 - Poultry processing;
 - Rubber, plastic and cabling;
 - Technical services – engineers and scientists; and

- Textile, clothing and footwear.
18. We also have some major member companies with substantial involvement in various other priority industries (eg. retail and hospitality) and need to liaise with them about what role we will play in those industries. Even in the industries where we have not yet identified any interest, an interest may arise depending upon the scope of the modern awards that are drafted for that industry and their overlap with other awards.
19. We have commenced discussions with the unions in four industries and the status of those discussions is set out below. In each case we have informed the unions of what we intend to say today about the status of the discussions and no objections have been raised about our proposed description.

- **Metal, Engineering and Associated Industries**

“Ai Group has had discussions with the unions regarding the priority industry of ‘Metal, Engineering and Associated Industries’. The next meeting is scheduled for 12 June. It should not be assumed that it will be desirable to have only one award within this industry”.

- **Rubber, Plastic and Cablemaking**

“Ai Group has had discussions with the NUW regarding the priority industry of ‘Rubber, Plastic and Cablemaking’. It has been agreed that this priority industry will be discussed in conjunction with the priority industry of ‘Metal, Engineering and Associated Industries’. The parties are discussing the concept of the Rubber, Plastic and Cablemaking Award being rolled-in with the Metal, Engineering and Associated Industries Award but all parties have reserved their rights at this stage.”

- **ICT**

“Ai Group has been in touch with the CPSU, ASU, CEPU and the NUW and a meeting has been arranged for 11 June. At that meeting the parties will discuss the awards that they believe should be included as part of the award modernisation process in the ICT industry. The ICT industry includes several major industry sub-sectors and it should not be assumed that it will be desirable to have only one award in this sector.”

- **Technical Services (Engineers and Scientists) Occupations**

“Ai Group has had discussions with APESMA with regard to engineers and scientists awards across all industries. Ai Group and APESMA have reached agreement on a list of awards (**Annexure C**) which will be discussed within the priority occupation of “Technical Services – Engineers and Scientists Occupations”). It should not be assumed that it will be desirable to have only one award within these industries/occupations. This will be an issue which the parties will consider. A further meeting between Ai Group and APESMA has been scheduled for 19 June.”

20. In terms of the priority industries Ai Group strongly opposes any definition being placed on such industries/occupations at this early stage. This should be an issue for negotiation and possibly determination by the Commission during the development of the awards in the modern award process.
21. Ai Group submits that only titles of the priority industries/occupations should be determined at this stage, to go beyond this at this stage would be inconsistent with the status of negotiations in the four priority industries listed above. Further, the titles set out in the Commissions statement of 29 April 2008 are acceptable to Ai Group.

4. The timetable

22. Ai Group regards the draft timetable as being very tight, but this is as a result of the requirements of the *Workplace Relations Act* and the Award Modernisation Request.

23. We support the draft timetable but Ai Group, ACCI and the ACTU have agreed to seek one additional step in the process as follows:

“With regard to the Draft Timetable, the major parties seek the right to file reply submissions up to 13 June. The parties undertake to keep such submissions brief and only deal with issues of substantial importance.”

24. We are concerned about the potential for numerous submissions to be filed on 6 June, some of which may contain inaccurate, misleading or otherwise highly prejudicial material. We submit that, in the interests of fairness:

- The submissions should be made available on the Commission’s website without delay; and
- The parties should have the opportunity to make a brief reply to those submissions in respect of matters of substantial importance.

25. Also, as set out earlier:

“The major parties seek a right to request that the Full Bench be reconvened in the 2nd half of 2008, if necessary, to deal with issues of importance across all priority awards.”

26. If the Commission deemed it appropriate, this right could be set out on the bottom of the final timetable issued.

5. Model award flexibility clause

27. Ai Group on 24 April 2008, provided to His Honour, the President, Justice Giudice, a joint employer draft model award flexibility clause on behalf of Ai Group and ACCI. The positions of Ai Group and ACCI are consistent in respect of the majority of the proposed clause save for the manner in which 'disadvantage' is to be assessed in the implementation of a flexibility arrangement. In respect of this divergence there are two options articulated in the employer draft model flexibility clause. The option identified as "Option 2" reflects the methodology for assessment that is supported by Ai Group.
28. The President on 29 April 2008 issued a statement ("the President's Statement") which outlines the initial steps that will be undertaken in relation to the Commission's award modernisation process. Included in this statement is a copy of the joint employer draft model award flexibility clause. Additionally, it contained a copy of a draft model award flexibility clause which was supported by the ACTU ("the ACTU flexibility clause"). These submissions relate to the draft clauses contained within the President's Statement.

Relationship between existing award flexibilities and the model award flexibility clause

29. Beyond the ability to enter into a workplace agreement, the concept of flexibility in the application and implementation of award provisions has long been a feature of the federal award system.
30. From as early as the *April 1991 National Wage Case*, the importance of flexibility through the utilisation of enterprise flexibility clauses¹ and/or facilitative provisions² within awards was identified by the Commission as

¹ As defined in the *Safety Net Adjustment and Review Decision September 1994* 56 IR 114; at 135

² As defined in the *Safety Net Adjustment and Review Decision September 1994* 56 IR 114; at 136

central to the award system.³

31. Ai Group contends that the introduction of a model award flexibility clause in all modern awards, as required by the Deputy Prime Minister's Award Modernisation Request, represents a further layer of flexibility intended to build on the flexibilities already in place within the award system and is not intended to operate in substitution of, or restriction to, the existing flexibilities available.

32. The intention that the model award flexibility clause is to operate in an expansive and non-prescriptive fashion is evident from the terms of Labor's *Forward with Fairness – Policy Implementation Plan – August 2007* ("the Implementation Plan") where, in relation to the abolition of AWAs and the individual arrangements that will be available in their place, it states:

"Common law agreements can also offer flexibility provided that the award safety net is simple, modern and enables fair and flexible arrangements. Labor will genuinely modernise and simplify awards and ensure they are suited to the efficient performance of work.

This means that for those employers and employees who want flexible individual arrangements, under Labor's new system common law agreements will meet their needs."

33. At no stage in any of Labor's policy documents,⁴ the Modernisation Request, or the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* is there any reference to a reduction in the existing flexibilities within the award system.

34. The ACTU's clause appears to be designed around the proposition that award

³ *National Wage Case April 1991 [Print J7400] – Statement of Principles – Appendix A pg65*

⁴ *Forward with Fairness – Labour's plan for fairer and more productive Australian workplaces – April 2007, and Forward with Fairness – Policy Implementation Plan – August 2007.*

flexibility clauses will replace the existing facilitative provision structures within awards. Such an approach is highly unworkable. It would frustrate the award modernisation process and prevent the timeframe and objectives of the process being achieved.

35. Modern awards should be drafted flexibly and contain facilitative provisions in relevant clauses.
36. Facilitative provisions should include those which can be accessed by agreement with the majority of employees, by agreement with either the majority or individuals, and those that can be accessed only by agreement with individual employees, as appropriate.
37. The AIRC already has principles in place regarding facilitative provisions.
38. The facilitative provisions within awards have been developed over the past 17 years during award restructuring, the family / carer's leave cases and award simplification. The structure and content of them varies substantially between awards. Some contain a relatively complex machinery clause at the start of the award setting out the processes and safeguards which apply to the facilitative provisions (eg. Metal Industry Award and Graphic Arts Award). Most awards, however, adopt a simpler approach and any safeguards (eg. the requirement to record the agreement reached in the time and wages records) are built into the actual award clauses (eg. Business Equipment Industry - Technical Service - Award).
39. Many facilitative provisions in particular awards were hotly contested and in some cases were the subject of lengthy AIRC decisions.
40. When awards are modernised, it will be complicated enough to redraft awards into a format which takes account of the relationship between the NES and modern awards, without opening up the content of all of the facilitative

provisions in every award. What the unions, in effect, are trying to achieve is to impose additional safeguards on the facilitative provisions in all awards and substantially reduce existing award flexibility.

41. In many cases, the award modernisation process will not need to unduly disturb existing facilitative provisions. For example, a large number of very important facilitative provisions operate in hours of work clauses within awards. The award modernisation process is not likely to disturb the operation of hours of work clauses to anywhere near the extent of, say, annual leave and personal /carer's leave clauses where most of the content will be dealt with in the NES. The NES sets maximum hours but does not attempt to regulate hours of work in detail.
42. The ACTU's clause appears to be a thinly disguised attempt to re-argue the outcomes of more than 17 years of AIRC proceedings in which facilitative provisions have been developed, and a thinly disguised attempt to substantially reduce the existing flexibility in awards.
43. It is very evident from the Government's statements that award flexibility clauses are intended to increase flexibility in awards, given that AWAs will no longer be available - not reduce flexibility.
44. For example, Labor's *Forward With Fairness - Policy Implementation Plan* states that the objective of award flexibility clauses is "*enhancing the scope for upward flexibility by ensuring that as part of the award modernisation process all awards contain a flexibility clause.*"⁵
45. A copy of a public speech given by Deputy Prime Minister, Julia Gillard on 29 April 2008 is set out in **Annexure D**. The speech has been copied in full from the Deputy Prime Minister's official website.⁶

⁵ *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 11

⁶ The Hon Julia Gillard MP, Speech to Fair Work Australia Summit, Sydney, 29 April 2008 Available at: <http://mediacentre.dewr.gov.au/mediacentre/allreleases/2008/april/fairworkaustraliasummit.htm>

In her speech, the Deputy Prime Minister said:

“The Commission will also be required to develop a model individual flexibility clause for insertion into each modern award with appropriate adaptation as necessary. The purpose of such a clause is to enable an employer and an individual employee to agree on individual arrangements to meet the genuine individual needs of the employer and the employee. The Commission is to ensure that the flexibility clause cannot be used to disadvantage the individual employee.

Such a clause needs to be simple and practical. An employer and employee need to be able to make an arrangement under the clause without seeking legal advice or sitting down to read 40 pages of "ifs" and "but fors". It needs to allow an employer and employee to make a genuine arrangement that suits them both but ensures that the employee retains the protection of the safety-net.”

46. The Deputy Prime Minister went on to say:

“There is no doubt that this process is complex and involves challenges for all. Those who seek to preserve their niche in the system via a monopoly of knowledge about unnecessary complexity will have to reconsider and get used to a new way of thinking about awards.”

47. It is very clear from the Deputy Prime Minister’s speech that award flexibility clauses are intended to be:

- “Simple”;
- “Practical”;
- Easily understood by individual employees;
- Easily understood by individual businesses - including small businesses;

- Not subject to complex provisions pursued by “those who seek to preserve their niche in the system”.
48. Ai Group’s proposed clause meets these criteria. The ACTU’s clause, we submit, does not.
49. An award flexibility clause should enable an employee and an employer to enter into an agreement which varies the award in numerous potential respects including, for example:
- Providing flexibility in an area not currently dealt with by a facilitative provision (eg. implementation of all-up rates or annualised salaries);
 - Providing additional flexibility in an area already covered by a facilitative provision (eg. allowing an employee to work a 12 hour shift even though the relevant facilitative provision in the award only permits shifts to be extended from 8 to 10 hours);
 - Providing flexibility for an individual employee and an employer to reach agreement on the introduction of a particular flexibility even though the award only enables that flexibility to be introduced with the agreement of the majority of employees (eg. payment of wages monthly, rather than weekly or fortnightly).
50. Of course, all of these flexibilities need to be subject to the safeguards in the award flexibility clause, including the test for assessing disadvantage.
51. Ai Group is not saying that award modernisation should prevent any amendments being made to existing award facilitative provisions, or prevent any new facilitative provisions being added. Some amendments or additions to award facilitative provisions may be necessary due to the relationship between awards and the NES, and/or to achieve the objectives of award modernisation.
52. What we are saying is that the development and insertion of an award

flexibility clause should not be unduly mixed up with the award facilitative provisions in awards. They are essentially different concepts.

53. As we submitted earlier, an award flexibility clause should provide an additional layer of flexibility. If the two concepts are mixed-up, as the unions are proposing, the award modernisation process would undoubtedly be frustrated and the timeframe and objectives for the process would not be achievable.
54. Ai Group's proposed clause provides a broad mechanism for an employer and an individual employee to agree on a flexibility arrangement that deviates from the standard award provisions in response to the genuine individual needs of the employee and the employer.
55. Subject to there being genuine agreement between an employer and the individual employee, there is no restriction on either the subject matter nor the amount of flexibility that can be agreed between the parties, provided that the employee is not disadvantaged (as that term has meaning within the clause) as a result of the agreement.
56. We contend that such a broad ranging flexibility is consistent with the Government's intent, not only in relation to the operation of the flexibility clause but also in regards to its approach to modern awards generally.
57. Support for such a proposition is evident in the Implementation Plan where, in relation to award modernisation, it states:

"Under Labor awards will be relevant to our modern economy. Awards will not be prescriptive; they will be flexible. Awards will not enshrine inefficient work practices, they will promote flexible and family friendly work arrangements."

(Emphasis Added)

58. This notion is also codified in the *Workplace Relations Act* where at section 576A(2) it states that Modern Awards:

“(2)...

- (a) must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and
- (b) together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and
- (c) must be economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
- (d) must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual employment agreements; and
- (e) must result in a certain, stable and sustainable modern award system for Australia.”

(Emphasis Added)

59. It is clear from the terms of the Deputy Prime Minister’s Award Modernisation Request that the award flexibility clause cannot be used in a manner that disadvantages the individual employee⁷. In this respect, Ai Group’s proposed clause not only makes it clear that any flexibility arrangement entered into cannot disadvantage the employee, but also specifically identifies the means by which disadvantage is to be calculated, including the period over which such calculation is to be made.

60. Under Ai Group’s model, for an employee to be taken to not be disadvantaged under a flexibility arrangement the following must occur:

⁷ Award Modernisation Request of the Minister of Employment and Workplace Relations at Cl 10.

- a) Genuine agreement must be reached between the employer and employee without any coercion or duress; and
 - b) The total remuneration paid to the employee over the ‘relevant period’ (as defined) is no less than the employee would have received under the award; and
 - c) The arrangement does not compromise the employer’s obligations in respect of providing a safe and healthy work environment, including the provision of adequate breaks.
61. These criteria engage with key concepts which are reflected in the Government’s Implementation Plan in relation to flexibility in awards, including the requirement for genuine agreement without coercion or duress⁸, ensuring that flexibility does not mean that employees fall through the safety net⁹, and requiring the maintenance of a safe and healthy work environment.¹⁰
62. The necessity of ensuring that the safety net for an employee is not compromised as a result of entering into a flexibility arrangement is a fundamental proposition that underlies the utilisation of the model flexibility clause. Ai Group’s proposal of defining the period over which flexibility arrangement must be assessed, through the introduction of the concept of a ‘relevant period’ to ensure that the safety net has not been compromised is an important aspect of Ai Group’s model.
63. We submit that not only will such a concept ensure that an employee does not fall below the safety net by virtue of the flexibility arrangement, but additionally will assist the employer and employee in establishing the appropriate parameters in which flexibility arrangements can legitimately be entered into.
64. The concept of a “defined period” is particularly relevant for flexible remuneration arrangements, including annualised salaries and all up rates of

⁸ *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 12

⁹ *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 12

¹⁰ Section 576B(2)(g)

pay. These arrangements are extremely common in AWAs but are not commonly addressed in awards. With the abolition of AWAs, it is essential that award flexibility clauses facilitate this flexibility.

65. The facilitation of annualised salaries is consistent with the new award content provisions set out in s.576J of the Act. Annualised wages and salaries are now specifically referred to in the Act as an allowable matter for awards.
66. It can be seen that Ai Group's clause adopts a monetary approach to assessing disadvantage. The reason for this is to ensure that there is an objective and calculable basis for ascertaining whether an employee is being disadvantaged, given that agreements reached in accordance with the clause will not be subject to scrutiny by a tribunal or agency. It is in the interests of both employers and employees to have confidence that the "no disadvantage" test has been satisfied.
67. Ai Group does not regard the monetary requirement in its draft clause as being particularly onerous or inflexible upon employers. If a formal workplace agreement is entered into, the Workplace Authority applies a no disadvantage test and that test largely centres around monetary matters.
68. Ai Group's approach is also consistent with the Government's stated policy objective to allow "*upward flexibility*"¹¹.
69. Consistent with the Implementation Plan,¹² Ai Group's proposed clause requires that any agreed flexibility arrangement be reduced to writing with a copy provided to the employee and a copy retained by the employer. Such a requirement will assist both the employer and the employee in understanding the arrangement and will also provide a reference for the comparison of the employee's entitlements over the 'relevant period'.

¹¹ *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 11

¹² *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 12

70. The clause does not contain unnecessary restrictions on the types of agreements which can be reached. For example, agreement could be reached that a flexible arrangement:
- Will operate on an ongoing basis;
 - Will operate for a defined period;
 - Will be trialled before full implementation;
 - Can only be terminated with the agreement of both parties;
 - Can be terminated by either party at any time;
 - Can be terminated by either party with a defined period of notice.
71. All of the above options, and more, are available within existing award flexibility clauses which typically leave such details to be resolved between the parties. A similar non-prescriptive approach is appropriate for award flexibility clauses and is adopted within Ai Group's draft clause.
72. The manner in which disputes over the operation of an agreed flexibility arrangement are to be resolved is also an important concept addressed within Ai Group's proposal. In the event that a dispute arises Ai Group believes that it is appropriate for such a dispute to be resolved in accordance with the dispute resolution procedures contained within the award. Significantly, such a mechanism is only available in relation to agreed arrangements and should not be used as a mechanism for one party to seek agreement from the other.
73. Ai Group contends that such a limitation on access to the dispute resolution provisions of the Award is appropriate and that one party should not be able to potentially avail itself of the Commission's arbitral powers to resolve a dispute over the making of a flexibility arrangement when the very premise that underlies the concept of a flexibility arrangement is an employer and employee reaching a genuine agreement.
74. The final aspect of Ai Group's proposed flexibility clause is the inclusion of

examples of matters which may be dealt with by a flexibility arrangement. It is not intended that this list represent an exhaustive statement of matters which can be dealt with but rather provides an indication of the types of subject matter that an employee or employer could consider entering into an agreement on. The list of matters included is derived directly from the Implementation Plan¹³ and could be increased or varied based upon the particular circumstances of individual awards.

75. Whilst variation of the examples may be possible from award to award, importantly, Ai Group strongly opposes exhaustive statements being inserted into awards setting out the totality of the matters over which an employer and employee may enter into a flexibility agreement. Such an approach, we contend would be overly prescriptive and inconsistent with the stated objects of modern awards.

ACCI's proposed clause

76. As stated above, ACCI and Ai Group provided to the Commission an agreed clause save for the manner in which disadvantage is to be assessed against the award.
77. In this regard, the two clauses do not approach the question of disadvantage from contradictory perspectives but rather Ai Group's proposed clause provides for clearly defined time parameters for such an assessment and defines that disadvantage is to be assessed in monetary terms.

ACTU's proposed clause

78. In accordance with the Award Modernisation Request and the objects expressed in s.576A of the *Workplace Relations Act*, the model award flexibility clause must:

¹³ *Forward with Fairness – Policy Implementation Plan – August 2007* at Pg 11

- enable agreement to be reached to meet the individual needs of an employer and their employee;
- ensure that the agreement is genuine and without coercion or duress;
- be as simple as possible for an employer and employee to understand and implement;
- be easy to apply;
- promote flexible modern work practices and the efficient and productive performance of work; and
- not disadvantage employees.

79. In reviewing the terms of the ACTU flexibility clause, Ai Group contends that the clause;

- does not provide for meaningful individual flexibility and alternatively subjugates the rights of an individual to reach an agreement to the will of the majority;
- creates unnecessary complications in the process of reaching and implementing an agreement which would serve as a disincentive to the reaching of flexibility agreements;
- prohibits the reaching of individual agreement in respect of particular award provisions;
- perceives the model flexibility arrangements as a parallel to the existing facilitative arrangements that exist in most awards; and
- requires the involvement of a relevant union in the process of negotiating a flexibility arrangement irrespective of the wishes of the employee.

80. Such factors, we submit are diametrically opposed to the concept of an award flexibility clause in modern awards and the manner in which it is intended to function as evidenced by the Government's policy and enacted legislation.

81. Ai Group submits that whilst the notion of facilitative provisions accessible my

majority agreement is a feature of awards, the inclusion of such a provision within the model flexibility clause is irreconcilable with the stated purpose of the model flexibility clause which is to:

“enable an employer and an individual employee to agree on arrangements to meet the genuine individual needs of the employer and employee.”¹⁴

82. Additionally, the parallel which the ACTU seeks to draw between the manner in which the model flexibility clause should operate and the provisions commonly found in facilitative provisions within awards is, we submit an erroneous connection.
83. As submitted earlier, Ai Group contends that the model flexibility clause is intended to operate so as to provide additional flexibility beyond that which is provided by existing facilitative provisions within awards. It is not intended that the flexibility clause be drafted in a manner that makes it a modern day incarnation of a facilitative provision. Such an approach we say, would be contrary to the notion of awards being flexible and not prescriptive¹⁵ and simple to understand and easy to apply¹⁶.
84. Ai Group submits that the notions of flexibility arrangements which are unable to be accessed by an individual,¹⁷ which can only be accessed by an individual after a majority of employees have agreed on the flexibility,¹⁸ or which cannot be accessed by an individual if the majority of employees have previously rejected the arrangement,¹⁹ have no place in the model flexibility clause envisaged for modern awards.
85. Furthermore, the requirement that the model flexibility clause be *“as simple as possible for an employer and employee to understand”* is not reflected in the

¹⁴ Award Modernisation Request of the Minister of Employment and Workplace Relations at Cl 10.

¹⁵ Forward with Fairness – Policy Implementation Plan – August 2007 at Pg 15

¹⁶ Section 576A(2)(a)

¹⁷ See Cl #3(a) of ACTU flexibility clause

¹⁸ See Cl #3(b) of ACTU flexibility clause

¹⁹ See Cl #3(c) of ACTU flexibility clause

ACTU's flexibility clause. The ACTU's clause not only contains complex provisions in relation to the interplay of majority only clauses, individual clauses subject to the majority, and individual only clauses, as referred to above, but additionally, it includes a range of limitations pertaining to the manner in which specific flexibilities may be applied to individual clauses of the award which creates an additional level of complexity.

86. Further, the onerous requirements in respect of the provision of information should the employer make a proposal²⁰ would operate as a disincentive for an employer to seek to enter into such arrangements.
87. Far from establishing balanced and appropriate parameters for the utilisation of the model flexibility arrangements, the ACTU's flexibility clause imposes additional burdens on the utilisation of the provision that go beyond the current safeguards generally applied to facilitative provisions. This is reflected in the mandatory requirement for an employer if it is the initiating party to a flexibility proposal concerning an individual employee, to contact the union and allow them to participate in the process even if the employee has not requested representation.²¹
88. Ai Group submits that far from being an appropriate term of a modern award, the ACTU flexibility clause represents a reincarnation of traditional concepts relating to facilitative provisions and is not designed to achieve genuine flexibility or modernisation of awards.
89. If the ACTU clause was to be adopted by the Commission, undoubtedly award flexibility clauses in modern awards would prove to be as underutilised as agreements reached in accordance with the existing enterprise flexibility clauses in awards. Despite such clauses appearing in nearly all of the Commission's awards only an extremely small number of such agreements have ever been entered into.

²⁰ See Cl #5(c) of ACTU flexibility clause

²¹ See Cl #5(d) and #7 of ACTU flexibility clause

Draft List of Awards Submitted by Ai Group for Inclusion Within the Priority Industry of Metal, Engineering and Associated Industries

Important note: This list has been prepared by Ai Group on a “without prejudice basis” without a through analysis of the scope of each award or the conditions contained within each award.

Key award:

Metal Engineering and Associated Industries Award 1998 - Transitional

Federal awards - Metal industry

1. Metal Engineering and Associated Industries Award 1998 – Pre-reform
2. Metal Engineering and Associated Industries Award 1998 – Transitional
3. Metal Engineering and Associated Industries Victorian Common Rule Declaration 2005
4. Metal Engineering and Associated Industries (Superannuation) Award 2000 – Pre-reform
5. Metal Engineering and Associated Industries (Superannuation) Award 2000 – Transitional
6. Metal Engineering and Associated Industries (Superannuation) Victorian Common Rule Declaration 2005
7. Metal Engineering and Associated Industries (Accident Pay, Victoria) Award 1998 – Pre-reform
8. Metal Engineering and Associated Industries (Accident Pay, Victoria) Award 1998 – Transitional
9. Metal Engineering and Associated Industries (Accident Pay, Victoria) Victorian Common Rule Declaration 2005
10. Manufacturing and Associated Industries – Skills Development – Wages and Conditions Award 2004 – Pre-reform
11. Manufacturing and Associated Industries – Skills Development – Wages and Conditions Award 2004 – Transitional
12. Manufacturing and Associated Industries – Skills Development – Wages and Conditions Victorian Common Rule Declaration 2005
13. Draughting, Production Planners and Technical Workers Award 1998 – Pre-reform
14. Draughting, Production Planners and Technical Workers Award 1998 – Transitional
15. Industrial Services (AWU) Award 2002 – Pre-reform
16. Industrial Services (AWU) Award 2002 – Transitional
17. Industrial Services (AWU) Victorian Common Rule Declaration 2005
18. Metal Industry (Victorian Public Hospitals) Award 2002
19. South Australian Government Departments and Instrumentalities (Metal Trades) Award 1999 – Pre-reform
20. South Australian Government Departments and Instrumentalities (Metal Trades) Award 1999 – Transitional
21. Railways Metal Trades Grades Award 2002 - Pre-reform
22. Metal Trades (ACT) Award 2000 – Pre-reform
23. Metal Industry (NT) Award 2003 – Pre-reform

Federal awards – brass, copper and non-ferrous metals industry

24. Brass, Copper and Non-Ferrous Metals Industry Award 1998 – Pre-reform
25. Brass, Copper and Non-Ferrous Metals Industry Award 1998 – Transitional
26. Brass, Copper and Non-Ferrous Metals Victorian Common Rule Declaration 2005

Federal awards – engine drivers and firemen

27. Engine Drivers and Firemen – General – Award 1998 - Pre-reform
28. Engine Drivers and Firemen – General – Award 1998 – Transitional
29. Engine Drivers and Firemen – General – Victorian Common Rule Declaration 2005
30. Engine Drivers and Firemen's (ACT) Award 2000

Federal awards – Glass industry

31. Glass Industry Maintenance Employees (Hours of Work) Award 1981 – Pre-reform
32. Glass Industry Maintenance Employees (Hours of Work) Award 1981 – Transitional

Federal awards – Space Tracking industry

33. Space Tracking Industry Award 1998 *(NB. The ACTU has proposed the modernisation of this award within the priority industry of "Metal, Engineering and Associated Industries". Ai Group has not yet consulted with the companies covered by this award and accordingly at this stage does not consent to the discontinuation of a separate Space Tracking Industry Award).*

Federal awards – Technical services

34. Draughtspersons, Planners and Technical Officers (ACT) Award 2000 – Pre-reform
35. Metals and Engineering Workers Union (ACT) Superannuation Award 1988

Victorian Minimum Wage Orders

36. Manufacturing Industry Sector – Minimum Wage Order – Victoria 1997 – Pre-reform
37. Manufacturing Industry Sector – Minimum Wage Order – Victoria 1997 – Transitional

NAPSAs – Engine Drivers and Firemen

38. Engine Drivers General (State) Award – NSW NAPSA
39. Engine Drivers (General) Award – WA NAPSA

NAPSAs – Entertainment and Broadcasting Industry

40. Farriers (State) Award – NSW NAPSA

NAPSAs – Jewellery Manufacturing

41. Jewellers and Watchmakers &c (State) Award – NSW NAPSA
42. Jewellers and Watchmakers Award – State 2003 – QLD NAPSA
43. Manufacturing Jewellers, Watchmakers, Badge Makers & Precious Metals Industry Award – SA NAPSA
44. Watchmakers and Jewellers Award 1970 – WA NAPSA

NAPSAs – Meat Industry

45. Meat Industry (Private Export Companies) Mechanical etc Award – State 2002 – QLD NAPSA

NAPSAs – Metal industry

- 46. Metal Engineering and Associated Industries Award – NSW NAPSA
- 47. Engine Packing Manufacture (State) Award – NSW NAPSA
- 48. Friction Materials &c Manufacture (State) Award – NSW NAPSA
- 49. Metal Industry (SA) Award – SA NAPSA
- 50. Metal Trades (General) Award 1966 – WA NAPSA
- 51. Electronics Industry Award No. A22 of 1985 – WA NAPSA
- 52. Engineering and Engine Drivers (Nickel Smelting) Award 1973 – WA NAPSA
- 53. Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971 – WA NAPSA
- 54. Gate, Fence and Frames Manufacturing Award – WA NAPSA
- 55. Saw Servicing Establishments Award No. 17 of 1977 – WA NAPSA
- 56. Sheet Metal Workers' Award No. 10 of 1973 – WA NAPSA
- 57. Metal and Engineering Industry Award – TAS NAPSA
- 58. Wireworking Award – TAS NAPSA

NAPSAs – Shipbuilding Industry

- 59. Marine Vessel Builder and Repairer Award – State – QLD NAPSA
- 60. Ship Painters and Dockers Award no. 29 of 1960 – WA NAPSA
- 61. Ship Builders Award – TAS NAPSA

NAPSAs – Sugar Industry

- 62. Sugar Milling Industry Award – State 2005

NAPSAs – Technical Services

- 63. Draughting Employees, Planners, Technical Employees &c (State) Award – NSW NAPSA
- 64. Draughtspersons, Production Planners and Engineering Assistants Award – State 2002 – QLD NAPSA
- 65. Engineering Award State – QLD NAPSA
- 66. Draughtspersons, Planners and Technical Officers (Consolidated) Award – SA NAPSA
- 67. Draughting, Tracers, Planners and Technical Officers Award 1979 – WA NAPSA
- 68. Materials Testing Employees Award 1984 – WA NAPSA
- 69. Draughting and Technical Employees (Private Industry) Award – TAS NAPSA

NAPSAs – Industries Not Otherwise Assigned

- 70. Mechanical Opticians (State) Award – NSW NAPSA
- 71. Optical Mechanics Award 1971 – WA NAPSA

Note: Ai Group does not agree to the inclusion of the following awards, from the ACTU's list, on the list of awards to be modernised within the priority industry of "Metal, Engineering and Associated Industries":

- Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998 – Pre-reform (This award should be modernised within the priority industry/occupation of "Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)")
- Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998 – Transitional (This award should be modernised within the priority industry/occupation of "Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)")
- Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000 – Pre-reform (This award should be modernised within the priority industry/occupation of "Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)")
- Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000 – Transitional (This award should be modernised within the priority industry/occupation of "Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)")

Draft List of Awards Submitted for Inclusion Within the Priority Industry of Information and Communication Technology (ICT) Industry

Important note: This list has been prepared by Ai Group on a “without prejudice basis” without a through analysis of the scope of each award or the conditions contained within each award. It has not been agreed upon with relevant unions. The ICT industry includes several major industry sub-sectors and it should not be assumed that it will be desirable to have only one award in this sector.”

1. ICT Industry – Other than professional employees

Federal awards

Business Equipment Industry

1. Business Equipment Industry – Technical Service – Award 1999 – Pre-reform
2. Business Equipment Industry – Technical Service – Award 1999 – Transitional
3. Business Equipment Industry – Technical Service – Victorian Common Rule Declaration 2005
4. Business Equipment Industry (Technical Service) Superannuation Award – Pre-reform
5. Business Equipment Industry (Technical Service) Superannuation Award – Transitional
6. Business Equipment – Superannuation (NUW) Award 1990 – Pre-reform
7. Business Equipment – Superannuation (NUW) Award 1990 – Transitional
8. Business Equipment Industry – Clerical Officers – Award 2000 – Pre-reform
9. Business Equipment Industry – Clerical Officers – Award 2000 – Transitional
10. Business Equipment Industry – Commercial Travellers – Award 2000 – Pre-reform
11. Business Equipment Industry – Commercial Travellers – Award 2000 – Transitional

Entertainment and Broadcasting Industry

12. Television, Radio and Electronics Service Industry Award 1998 – Pre-reform
13. Television, Radio and Electronics Service Industry Award 1998 – Transitional

Telecommunications Services Industry

14. Contract Call Centre Industry (Interim) Award 2002 – Pre-reform
15. Contract Call Centre Industry (Interim) Award 2002 – Transitional
16. Contract Call Centre Industry Award 2003 – Pre-reform
17. Contract Call Centre Industry Award 2003 – Pre-reform
18. Telecommunications Services Industry Award 2002 – Pre-reform
19. Telecommunications Services Industry Award 2002 – Transitional
20. Telecommunications Services Industry Victorian Common Rule Declaration 2005

Victorian Minimum Wage Orders

21. Communication Services Industry Sector – Minimum Wage Order – Victoria 1998 – Pre-reform
22. Communication Services Industry Sector – Minimum Wage Order – Victoria 1998 – Transitional
23. Property and Business Services Industry Sector – Minimum Wage Order – Victoria 1997 – Pre-reform
24. Property and Business Services Industry Sector – Minimum Wage Order – Victoria 1997 – Transitional

NAPSAs

25. Business Equipment Industry Maintenance (State) Award – NSW NAPSA
26. Tasmanian Information Technology Industry Award – TAS NAPSA

2. ICT Industry - Professional engineers, Professional scientists, IT professionals, Telecommunications professionals

Federal awards

Technical Services

1. Information Technology Industry (Professional Employees) Award 2001 – Pre-reform
2. Information Technology Industry (Professional Employees) Award 2002 – Transitional
3. Information Technology Industry (Professional Employees) Victorian Common Rule Declaration 2005

Telecommunications Industry

4. Telecommunications Industry (Professional Employees) Award 2002 – Pre-reform
5. Information Technology Industry (Professional Employees) Award 2002 – Transitional
6. Information Technology Industry (Professional Employees) Victorian Common Rule Declaration 2005

Note: Ai Group has not yet formed a view as to whether the above professional award grouping should be combined with the professional engineers and scientists awards in the priority occupation of “Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)” or retained as a separate award grouping for professional employees in the ICT industry. See next annexure.

Draft List of Awards Submitted for Inclusion Within the Priority Sector of Technical Services - Engineers and Scientists Occupations

Key award:

Technical Services Professional Engineers (General Industries) Award 1998 – Transitional

Federal awards - Metal industry

1. Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998 – Pre-reform
2. Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998 – Transitional
3. Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Victorian Common Rule Declaration 2005
4. Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000 – Pre-reform
5. Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000 – Transitional
6. Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000 – Victorian Common Rule Declaration

Federal awards – Scientific services

7. Scientific Services Professional Scientists (Miscellaneous Conditions) Award 1998 – Pre-reform
8. Scientific Services Professional Scientists (Miscellaneous Conditions) Award 1998 – Transitional
9. Scientific Services Professional Scientists Award 1998 – Pre-reform
10. Scientific Services Professional Scientists Award 1998 – Transitional
11. Scientific Services Professional Scientists Victorian Common Rule Declaration 2005

Federal awards – Technical services

12. Technical Services Professional Engineers (General Industries) Award 1998 – Pre-reform
13. Technical Services Professional Engineers (General Industries) Award 1998 – Transitional
14. Technical Services Professional Engineers (General Industries) Victorian Common Rule Declaration 2005
15. Technical Services Engineers, Scientists and IT Professional Employees (Consulting Services) Award 1998 – Pre-reform
16. Technical Services Engineers, Scientists and IT Professional Employees (Consulting Services) Award 1998 – Transitional
17. Technical Services Engineers, Scientists and IT Professional Employees (Consulting Services) Victorian Common Rule Declaration

NAPSAs – Scientific Services

18. Professional Engineers and Professional Scientists (Private Industry) (State) Award – NSW NAPSA
19. Professional Scientists Award – State 2002 – QLD NAPSA
20. Professional Scientists (General Industries) South Australia Award – SA NAPSA

NAPSAs – Technical Services

21. Professional Engineers Award – State 2002 – QLD NAPSA
22. Professional Engineers (General Industries) Award – SA NAPSA
23. Western Australian Professional Engineers (General Industries) Award 2004
24. Professional Engineers and Scientists (Private Industry) Award – TAS NAPSA

Note: Ai Group has not yet formed a view as to whether the following awards covering professional engineers, professional scientists, IT professionals and Telecommunications professionals in the ICT sector should be included within the priority occupation of “Technical Services - Engineers and Scientists Occupations (with appropriate exclusions)”. See previous section.

- Information Technology Industry (Professional Employees) Award 2001 – Pre-reform
- Information Technology Industry (Professional Employees) Award 2002 – Transitional
- Information Technology Industry (Professional Employees) Victorian Common Rule Declaration 2005
- Telecommunications Industry (Professional Employees) Award 2002 – Pre-reform
- Information Technology Industry (Professional Employees) Award 2002 – Transitional
- Information Technology Industry (Professional Employees) Victorian Common Rule Declaration 2005

Annexure D

The Hon Julia Gillard MP
Minister for Education.
Minister for Employment and Workplace Relations
Minister for Social Inclusion.
Deputy Prime Minister

Speech
Fair Work Australia Summit

29 April, 2008

Fair Work Australia Summit Sydney

Acknowledgements

Thank you for that welcome.

Let me start by acknowledging the traditional owners of the land on which we meet, the Eora people.

It's a pleasure to be here to address this important summit on workplace reform.

What we are discussing here today is a key part of the crucial productivity agenda we took to the last election and for which we received an overwhelming mandate for reform.

What that election and the more recent landmark 2020 Summit demonstrate is that Australians are willing to embrace change – even far-reaching change – if governments and opinion leaders take them into their confidence through an honest process of consultation.

This clearly didn't happen when "Work Choices" was introduced. On that occasion:

- No mandate was sought;
- No genuine public consultation took place; and
- No consensus for change was created.

The result was a legislative disaster that no amount of taxpayer-funded advertising could convince the Australian people to accept.

I believe strongly that last November's election result wasn't a vote against reform but a vote against unbalanced, unfair and ill-directed change.

Australian workplaces still need reform.

But they don't need conflict.

They need us to put the conflict model of workplace relations that led to "Work Choices" firmly behind them – and to replace it with one built on the principles of balance, fairness and simplicity with an over-riding objective of boosting national economic productivity and prosperity.

That's what the proposed new Fair Work Australia system will do.

Our intention is to stop workplace relations being a political football. It's to stop employers and employees having to constantly adapt to changes in legislation with every change of government.

Our intention is instead to embed a dynamic new system that can bring about modernisation without constant system-wide upheaval and conflict.

A thorough consultation process

To achieve these aims, the Government is determined that the workplace reforms we introduce will be lasting and able to generate enduring public support from employers and employees.

I want to emphasise that all public commitments made before the last election will be honoured and the reforms promised will be implemented in full.

We are determined to get the legislation right to deliver on the promises that we made last year in such detail to the Australian people.

Unlike the former government, it is not our intention to spend the years following the commencement of our new legislation tinkering with the law and fixing up mistakes that would have been obvious had the former government bothered to consult.

Such an approach smacks of arrogance. On the one hand, the former government believed that it was the sole repository of all wisdom on industrial relations.

On the other hand, it didn't make the effort to get the law right because it took the view that employers and employees would just have to get used to it, no matter how hard it was for small businesses to find the time to understand just the first round of changes.

In contrast, we are prepared to:

- Meet with as many people as it takes;
- Talk for as long as it takes; and
- Iron out as many unintended consequences as it needs, in order to achieve our goal.

But we're not going to use consultation as an excuse for delaying these important reforms. Consultation is useful but only if it's acted upon.

That's why consultation is taking place right now and has been taking place since February this year.

The Business Advisory Group, chaired by John Denton of Corrs Chambers Westgarth, and the Small Business Working Group, chaired by the Minister for Small Business, Craig Emerson, have both been in place since February. To date, the Business Advisory Group has met four times and the Small Business Working Group has met twice.

A formal consultation group with representatives of the Australian Council of Trade Unions has also met twice so far. Consultations will also be held with the Australian Council of Social Service particularly in relation to the minimum wage and the low-paid.

In addition, the National Workplace Relations Consultative Council, which represents the major workplace relations peak bodies, has met 3 times.

And the Workplace Relations Ministers' Council has also already met and endorsed the Government's *Forward with Fairness* proposal as providing the basis for a modern, fair and flexible workplace relations system. Another major meeting is scheduled for 23 May.

All of these bodies are hard at work.

Discussion is both extensive and intense and progress is being made on the details of our proposals.

A new start and a new vision

And of course, parts of the new arrangements – most particularly measures to abolish AWAs – have already been implemented through the Transition Act that commenced on 28 March.

But let me now outline the sort of workplace relations system that – with your input on important details – we aim to have fully operational by 1 January 2010.

In the very broadest terms it will be a simple, balanced system that allows employers to get on with business and employees to get on with their jobs.

The new system will have five key ingredients.

1. A fair and simple safety net

The first will be a fair and simple safety net.

When the Government's new system is fully operational from 1 January 2010, all employees will have the benefit of a strong and enforceable safety net which can't be stripped away. And employers will have the benefit of a safety-net that is simple and flexible – easy-to-understand and easy-to-apply.

10 National Employment Standards will protect important conditions like hours of work, public holidays and redundancy entitlements as well as annual, personal, parental and long service leave.

Employees earning \$100,000 or less will be protected by modern simple awards that will contain ten minimum conditions such as minimum wages, overtime and penalty rates of pay and superannuation.

And when a collective agreement is made under the Government's new workplace relations system, it will only be approved by the independent umpire, Fair Work Australia, if it meets or exceeds the National Employment Standards and leaves the employees under the agreement "better off overall" when compared with the modern award.

Common law contracts will also be available. Unlike individual statutory agreements, such agreements may only build on the safety-net instead of stripping it away.

2. Collective bargaining

The second major ingredient will be collective bargaining to drive productivity in our workplaces.

Numerous studies – including by the OECD – have pointed to the value of collective bargaining in redesigning workplace arrangements to make employees more productive. In contrast, research finds that by cutting wages and reducing trust within workplaces, AWAs can actually curb productivity growth.

And all of this would help explain how, despite AWAs, productivity growth has remained cruelly disappointing.

Because of our emphasis on enterprise bargaining – and because our reforms specifically rule out a return to any form of centralised wage fixation – they will allow for sustainable and responsible increases in real wages and employment without putting upward pressure on inflation.

It's for these reasons – productivity and fairness – that one-sided individual statutory agreements will not be a part of the Government's new workplace relations system. In their place employees will be free to bargain collectively with their employer, in good faith, without excessive government rules and regulations to tilt the balance against one or the other side.

Good faith bargaining obligations will be simple and effective and designed to enhance the process of bargaining. They will ensure that the parties focus on the

matters that need to be addressed in order to reach agreement about what's best for the workplace, rather than on extraneous and irrelevant disputes.

Employees can be represented in bargaining, if they choose to be, but can also represent themselves and reach agreement directly with their employer, if that's what they choose.

3. Fair treatment in the workplace

The third ingredient is about ensuring that everyone in the workplace is treated fairly and decently and that, when things go wrong, matters can be dealt with simply, quickly and effectively.

On unfair dismissal, we are taking a pragmatic approach that takes into account the particular needs of small business. Employees of businesses with fewer than 15 employees will have a qualifying period of 12 months and other employees will have a six-month qualifying period.

Compliance by a small business with a specially-designed Code will mean that the dismissal will be deemed to be fair. And all unfair dismissal matters will be dealt with initially in conferences that are designed to eliminate the legalism and complexity of the current system.

Unlawful dismissal on grounds such as family responsibilities, pregnancy or disability will remain just that – unlawful.

There will also be strong protections for freedom of association. It will be unlawful to discriminate against a person for belonging to a union or for participating in collective bargaining, just as it will be unlawful to discriminate against them for not belonging to a union.

4. An independent umpire

The fourth ingredient will be an independent umpire – Fair Work Australia.

This will be a 'one stop shop' to provide practical information, advice and assistance to deal with workplace issues and to ensure compliance with workplace laws.

Fair Work Australia will also have particular responsibility for encouraging the adoption of family-friendly work practices.

Fair Work Australia will be accessible to everyone. There will no longer be a need to contact different helplines and deal with a range of separate agencies about workplace matters. If desired by the parties, workplace visits will also be available.

Crucially, this new industrial umpire will be independent of unions, business and government.

Appointments will not favour one side over the other, but will be made through a transparent selection process.

5. Strong compliance measures including tough rules on industrial action and right of entry

The fifth ingredient will be strong compliance measures to ensure all participants comply with their obligations under the law.

Employers, employees and organisations will all be required to comply with the law and will face penalties if they do not do so.

Industrial action will only be protected when taken during good faith bargaining for a collective agreement and only once it has been approved by a mandatory secret ballot.

Unprotected industrial action will be dealt with swiftly. Secondary boycotts will continue to be regulated by the *Trade Practices Act* and the current rules in relation to right of entry will remain. With the right to enter another's workplace comes the responsibility to ensure that it is done only in accordance with the law.

Unions and employers alike who listen to their employees' and members' wishes have nothing to fear from such arrangements.

They combine democratic rights for all with the need for certainty and economic common sense.

Uniform national system for the private sector

And it is, of course, our intention that this system be uniform throughout our nation's private sector.

One of the major outcomes of the 2020 Summit was a desire to create a seamless national marketplace.

Workplace relations laws must be part of this and uniform laws will assist in promoting labour mobility.

Too many businesses that compete across state borders are finding themselves caught up in a complex web of existing state-based industrial relations laws, leading to unnecessary legal bills and time-wasting uncertainty.

The new laws will be achieved either by this Government working with State Governments for a referral of powers for private sector industrial relations or other forms of cooperation and harmonisation and work on this is continuing to ensure that we end the costs and confusion for business of dealing with separate industrial relations systems.

This is a reform that, with its conflict-driven approach, the former government could never have achieved.

Simpler legislation

One of the key goals of the new workplace relations system is simpler legislation.

We want to replace the legislative phone book that constitutes Work Choices with something that is simple and workable for both employers and employees.

The exposure draft of the National Employment Standards, which was released on 14 February and open for submissions until 4 April, is evidence of our commitment to simplicity.

We are currently considering the range of comments and submissions made by stakeholders for the purpose of further improving the workability of our National Employment Standards.

But we appreciate that both employer and employee stakeholders have commented approvingly on what they have identified as a new simpler approach to the drafting of workplace relations legislation.

Award modernisation as a key objective

We also know that, in workplace relations, simplicity of legislation is not enough. We need the award safety-net to be flexible and simple as well.

This was something that the Howard Government simply failed to do. In fact, they didn't even succeed in starting the process.

Frustratingly, despite all the money spent and all the advertising campaigns, plastic folders, mousepads and pens it generated, "Work Choices" did nothing to modernise the awards that set out the terms and conditions of employment for almost 1 in 5 employees and provided a safety-net for thousands more until the Howard Government's "Work Choices" legislation stripped it away.

The modernisation of awards to provide a fair and relevant safety-net is a key objective of the Rudd Government's *Forward with Fairness* policy. And it's a process that has already started with an award modernisation request signed by me on the day that the Transition Act commenced operation and delivered to the President of the Australian Industrial Relations Commission.

Awards have been a key part of the safety net for Australian employees for more than a century. However, despite attempts at simplification, they have remained lengthy, prescriptive and unwieldy documents that have been amended and reviewed over and over again.

For awards to be an effective safety-net, they need to be relevant to today's workplace needs and able to accommodate the flexibility that businesses and their employees expect.

Our award modernisation process is not about trying to drag old awards kicking and screaming into the 21st century.

Our goal will be to create new up-to-date awards, not simplify old awards around the edges.

It won't be about one clause out, one clause in.

And it won't be about preserving existing rules and structures for the sake of preserving them.

It will be about starting from scratch and rethinking a new, modern, relevant and decent minimum safety net for the industries or occupations covered by the award.

My request to the President of the Australian Industrial Relations Commission makes clear that one of the objectives of award modernisation is to ensure that awards are simple to understand, easy to apply and reduce the regulatory burden on business.

Another objective is that modern awards be economically sustainable and promote flexible modern work practices. And in creating modern awards, the AIRC must have regard to the need to assist employees to balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce.

The Commission will also be required to develop a model individual flexibility clause for insertion into each modern award with appropriate adaptation as necessary. The purpose of such a clause is to enable an employer and an individual employee to agree on individual arrangements to meet the genuine individual needs of the employer and the employee. The Commission is to ensure that the flexibility clause cannot be used to disadvantage the individual employee.

Such a clause needs to be simple and practical. An employer and employee need to be able to make an arrangement under the clause without seeking legal advice or sitting down to read 40 pages of "ifs" and "but fors". It needs to allow an employer and employee to make a genuine arrangement that suits them both but ensures that the employee retains the protection of the safety-net.

Modern awards are, together with the National Employment Standards, absolutely fundamental to ensuring we have a fair, simple and enduring safety net.

The Commission will develop these modern new awards in consultation with key stakeholders including unions and employer groups and will prepare exposure drafts of modern awards so that all stakeholders and interested parties have a reasonable opportunity to comment on those drafts.

There is no doubt that this process is complex and involves challenges for all.

Those who seek to preserve their niche in the system via a monopoly of knowledge about unnecessary complexity will have to reconsider and get used to a new way of thinking about awards.

It is appropriate that the Australian Industrial Relations Commission, with all its expertise in the area of awards, conducts the award modernisation process and, while my request to the President contains a number of parameters, it also contains substantial flexibility for the Australian Industrial Relations Commission to make the decisions it needs to.

For example, the Government has not set the Australian Industrial Relations Commission the task of reducing the number of awards to a specified number or the task of ensuring a single award for a single industry.

While the request makes clear that the Commission is to have regard to the desirability of reducing the number of awards operating in the workplace relations system, it also has to have regard to a number of other factors and objectives.

And we are certainly not asking the Commission to create a single transport industry award when that industry covers sectors as diverse as aviation, shipping, road and rail.

Such details will properly be left to the AIRC.

And in this process, the Government has made it clear that old demarcation disputes are not to be re-opened.

Our intention is for the AIRC, along with you, the stakeholders, to complete award modernisation for priority industries by the end of 2008 and for all remaining industries by 31 December 2009 when our new workplace relations system will be fully operational.

The Government understands that modernising and simplifying our award system is a huge job but it is a job that needs doing to ensure this nation moves forward with fairness.

Conclusion

By way of conclusion, let me encourage you to use the remainder of this summit to explore how we can get our workplace relations system working better and how awards can be modernised to promote national productivity.

As I've said, the new Government's pre-election promises will be implemented in full.

Balance, simplicity and modernisation are what we promised and they are what we will deliver. They're the key to making the new system work.

But we're not so arrogant as to believe that all the good ideas around workplace relations have been exhausted.

We're an open, listening government that values consultation.

And just as we've listened to the constructive ideas put forward by the 2020 Summit, we will listen to those from this and other industrial relations forums.

Thank you and I wish you well in your deliberations.