

**AWARD MODERNISATION
SUBMISSIONS AND DRAFT
AWARD PROVISIONS**

Stage 2 Industries / Occupations



31 October 2008

ARRANGEMENT

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Chapter 1 - Introduction

1. On 3 September 2008, the AIRC identified the industries and occupations which will be dealt with during State 2 of award modernisation.
2. Ai Group has prepared submissions and draft award proposals for the following Stage 2 industries in which Ai Group has a substantial interest:
 - Agriculture Group;
 - Building, Metal and Civil Construction Group;
 - Financial Services Group;
 - Graphic Arts Group;
 - Information and Communications Technology Group;
 - Manufacturing Group; and
 - Private Transport Industry (Road, Non-passenger)
3. At this stage Ai Group has not identified a substantial interest in the other Stage 2 Industries but this may change depending upon the scope and content of the exposure drafts. These industries are: Cleaning Services; Health and Welfare Services; Quarrying Industry; plus Sanitary and Garbage Disposal Services.

4. In its submissions relating to Stage 1 of Award Modernisation, Ai Group set out its views on a substantial number of matters of general importance across all awards. Some of these matters were subject to uncertainty because the Government's substantive workplace relations legislation had not yet been introduced or passed by Parliament.
5. Given that the Commission has not yet issued a final decision relating to many general matters pertaining to Stage 1 of award modernisation, and given that the Government's substantive workplace relations Bill has not yet been released publicly, Ai Group has not sought to address any further general issues at the present time. However, Ai Group envisages that there will be a need at an appropriate time during the Stage 2 proceedings to address various general issues, including the effect of the substantive workplace relations legislation as passed by Parliament, on the content of modern awards.
6. During Stage 1 of award modernisation, the Full Bench adopted a practical and helpful approach in allowing parties to submit updated materials between the due date for filing pre-draft submissions / award proposals, and the date of the relevant pre-drafting consultation. This process worked well and, we submit, should be adopted again on this occasion. It would not be in the public interest to prevent registered employer and employee organisations continuing their negotiations over the weeks ahead, particularly when Ai Group and many other organisations were devoting substantial resources to Stage 1 of award modernisation up to and including the due date for lodging Stage 2 materials.
7. This submission is made on behalf of Ai Group and its affiliated organisation, the Engineering Employers Association, South Australia.

Chapter 2 – Agriculture Group

8. Ai Group's view is that one award covering the whole of the agricultural industry is not appropriate. The traditional award arrangements in the various parts of the industry are not easily combined into one award. For example, the *Horticulture Industry (AWU) Award 2000* and the *Pastoral Industry Award 1998* have little in common in the structure of work arrangements and rates of pay. Therefore, at the very least, there should be separate awards for the horticulture and livestock / pastoral sectors.
9. In relation to the horticulture sector, Ai Group has developed a draft *Horticulture Industry Award 2010 (Annexure A)* which draws together award conditions in that part of the agricultural industry. Greater emphasis was placed on the arrangements applying to Schedule B and C Respondents to the *Horticulture Industry (AWU) Award 2000*. It is critical that the Commission include piece work arrangements in this modern award.
10. The scope of the proposed *Horticulture Industry Award 2010* may need to be refined during Stage 3 of modernisation when awards in the food manufacturing sector are modernised.
11. In relation to the livestock / pastoral sector, Ai Group understands that other employer organisations are developing a draft award. It is important that any award developed by the Commission properly incorporate the piggery, poultry farming and dairy farming parts of the agriculture sector, and that it contain appropriate exclusions for the food manufacturing and processing industries.
12. Ai Group will make further submissions once the Commission has released the exposure drafts for Stage 2.

Chapter 3 – Building, Metal and Civil Construction Group

13. Ai Group is extremely concerned about the potential for award modernisation in the Building, Metal and Civil Construction Industries to create huge problems for the employers in the construction, manufacturing and various service industries.
14. Ai Group has a large membership in both the manufacturing and construction industries, together with numerous service industries. In addition to its own substantial membership in the construction industry, Ai Group provides the Secretariat for the Australian Constructors Association (ACA) which represents Australia's largest construction contracting companies.
15. We urge the Commission to take great care in modernising construction industry awards, including the awards which apply to the three main sectors of the industry (building construction, civil construction and metal / engineering construction) plus the awards which apply to electrical contractors and plumbers.
16. **Central amongst Ai Group's concerns are the following:**
 1. the need to ensure that **the scope of on-site construction industry awards is not expanded**, which would result in:
 - o An automatic expansion in the scope of portable long service leave and/or portable severance schemes which operate in various States (eg. the CoINVEST scheme in Victoria) into areas of industry where long service leave and severance pay is dealt with in the usual way, at great cost to employers;

- The flow-on of the more costly and less flexible conditions which apply in the construction industry (eg. restrictive working hours and generous fares and travel provisions) to the manufacturing industry and various service sectors;
 - An increase in demarcation disputes; and
 - An increase in right of entry disputes.
2. the importance of **not creating an “off-site” construction industry award** which would, in effect, deem a large part of the manufacturing industry to be the construction industry, which would impede the productivity, efficiency and cost-competitiveness of a large number of manufacturers;
 3. The need to **prevent any electrical contracting award disturbing manufacturing industry award arrangements and increasing costs for employers** who engage electricians under the *Manufacturing and Associated Industries Award 2010* and/or other relevant awards;
 4. The need to **prevent any plumbing award disturbing award arrangements and increasing costs for manufacturers and other employers** who engage employees in the air-conditioning, refrigeration and other sectors which are legitimately covered under the *Manufacturing and Associated Industries Award 2010*, the proposed *Metal and Engineering On-site Construction Industry Award 2010* (see below) and/or other relevant awards.
17. **Central amongst the principals which we submit the Commission should adopt in modernising awards in the construction industry is to base the scope of modern awards on the scope of existing construction industry awards.** Such an approach appears to be consistent with the proposals of most registered employer and employee organisations. Whilst it is appropriate

that parties have the opportunity to suggest the inclusion or exclusion of specific sub-sectors within construction industry awards, the wholesale re-casting of the scope of construction industry awards, as pressed by the Master Builders Association (MBA), is inappropriate and highly problematic.

18. The construction industry is currently experiencing a period of unprecedented harmony, which stands in stark contrast to the situation which existed five years ago before the construction industry reforms were implemented. The Commission needs to be mindful of the capacity of award modernisation to disturb this harmonious environment if not handled carefully.
19. For example, as stated above, the award modernisation process has the potential to open up demarcation disputes. In his Final Report, Royal Commissioner Cole said:

“Demarcation disputes, involving inter-union rivalry over the right to enrol and represent workers, have been a cause of disputation in the building and construction industry in Australia for many years. Although the level of disputation has declined in recent years, it has not been eliminated.

Demarcation disputes have the potential to cause serious economic damage to participants in the industry and the economy generally. Time and energy which might be better directed towards productive work is taken up with negotiations to resolve the demarcation dispute. If the dispute leads to industrial action, it can have wider ramifications, particularly if the action impinges on work which is on the critical path for a project. Most importantly, demarcation disputes involving two or more unions usually affect entirely innocent parties. In the building and construction industry, those parties include clients, contractors and workers”¹

¹ Final Report of the Royal Commission into the Building and Construction Industry, Vol. 1 – Summary of Findings and Recommendations, page 72. The Final Report is available at www.royalcombcgi.gov.au

The Cole Royal Commission and its relevance to award modernisation

20. Given the massive amount of public funding which was devoted to the Cole Royal Commission, the extensive analysis which was carried out, and the great success of the construction industry reforms – it is appropriate to consider any relevant recommendations of the Royal Commission at an early stage in the process of modernising construction industry awards.
21. In considering the findings and recommendations of the Royal Commission, it is important to be mindful of the scope of the Royal Commission’s investigation. Such scope was significantly narrower than the ultimate scope of the *Building and Construction Industry Improvement Act* (BCII Act).
22. It is common knowledge that the previous Federal Government drafted the BCII Act to have a very wide scope to allow inappropriate and unlawful industrial behaviour to be addressed, not only in the construction industry, but in sectors of the manufacturing and service industries which supply products and services to construction.
23. The following extract² from the Final Report sets out the scope of the Royal Commission’s inquiry:

“The meaning of ‘building and construction industry’

- 4 *The most important words in my Terms of Reference are the words ‘building and construction industry’. Those words identify the subject matter of my inquiry by reference to a particular industry. The building and construction industry encompasses:*

² Final Report, Vol. 2 – Conduct of the Commission – Principals and Procedures, pages 4 and 5.

- (a) *multi-unit and high rise residential developments;*
 - (b) *non-residential buildings, such as office blocks, shopping centres, retail premises, educational institutions, and hospitals; and*
 - (c) *engineering construction work.*
- 5 *As other parts of this report will demonstrate, each of the sectors of the industry just identified is different in terms of, among other things: the coverage of industrial awards; the degree of unionisation of the workforce; the union with major coverage; the types of contracting arrangements used; the types of employment arrangements used; and the level of public and private involvement.*
- 6 *The building industry includes activities associated with design, demolition, excavation, assembly and erection of buildings and other structures, and the alteration or renovation of such buildings and structures. It also includes the installation of fixtures such as heating, airconditioning, fire alarms, electrical wiring and blinds and awnings.*
- 7 *The building industry also includes domestic building but, as my Terms of Reference specifically excluded 'single dwelling houses unless part of a multi-dwelling development', the domestic segment of the industry fell outside the scope of my inquiry. The Commission has estimated that this exclusion accounts for about 26 per cent, by value, of the building and construction industry.*
- 8 *The construction industry includes activities associated with the design, construction and maintenance of roads, highways and subdivisions, bridges, railways, harbours, water storage and supply, sewerage and drainage, electricity generation, transmission and distribution, pipelines, recreation, telecommunications and other heavy industry.*

9 *Projects involving any of these activities require the co-ordination of a broad range of people and skills. Participants in the industry who had information relevant to the work of the Commission therefore included project designers, architects, project managers, major contractors, subcontractors, labourers and specialist trades such as electricians and plumbers. Australian Bureau of Statistics data indicates that, in August 2002, 692 800 people were employed either full time or part time in the building and construction industry.*

10 *Understood in the way just described, the building and construction industry is very large. According to the Australian Bureau of Statistics, in the 2001-02 financial year in dollar terms total building and construction work done in Australia was valued at approximately \$59.7 billion. Taking into account the exclusion of single dwelling houses, the Commission estimated that the total activity in the part of the industry that was subject to investigation by this Commission was for that financial year in the region of \$41 billion. The Commission estimated that about half of that total comprised activity related to engineering construction projects.”*

24. Ai Group is not suggesting that the above scope represents an appropriate scope for construction industry awards. We do, however, submit that:

- In considering any findings and recommendations, the scope of the Royal Commission’s investigation needs to be borne in mind;
- The scope of the BCII Act extends far beyond the scope of the Royal Commission’s area of investigation; and
- It is flawed to suggest (as the MBA is doing) that the scope of the BCII Act should be used as a basis for determining the coverage of construction industry awards.

25. In its submissions, the MBA refers to economic modelling which indicates that the BCII Act has led to substantial improvements in productivity in the construction industry. This fact is obviously true but the gains are equally obviously related to the formation of the ABCC and the tough provisions protecting employers against unlawful industrial action. The gains have absolutely nothing to do with the scope of construction industry awards, which were not altered during the period of the Econtech modelling referred to by the MBA. Indeed if the scope of award coverage in the construction industry had been expanded to the BCII Act's boundaries during the period of Econtech's modelling, the gains would have undoubtedly been significantly reduced.
26. However, there are a number of findings and recommendations of the Cole Royal Commission of relevance to the AIRC's award modernisation deliberations. Some of these are referred to in various sections of this Chapter which follow.

The excessively inflexible nature of construction industry awards

27. Few would argue that the content of awards in the construction industry is complex, confusing and far from modern. The following areas are amongst those where the need for reform is greatest:
- The inflexible hours of work provisions;
 - The inappropriate definition of "redundancy", whereby employees are entitled to severance pay even if not made redundant; (Note: These provisions are not currently allowable award matters and hence are not enforceable);
 - The overly complex rates of pay and allowances;
 - Fares and travel provisions, which are in need of simplification.

28. Commissioner Cole had this to say about awards in the construction industry:

“The principal award of the Australian Industrial Relations Commission which bears upon the building and construction industry in Australia is the National Building and Construction Industry Award 2000 (NBCIA).

Despite attempts to simplify the NBCIA and circumscribe the number of allowable award matters, the NBCIA is highly prescriptive. Among other matters, it prescribes some 21 allowances and 41 special rates, and contains complicated provisions in relation to rostered days off (RDOs), crib time, overtime, special time, shift work and weekend work.

Many of the special rates in the NBCIA are to compensate workers for having to perform unsafe work. Those rates do not sit well with what should be a primary goal of all employers and workers in the building and construction industry, namely establishing and maintaining a safe working environment. If proper occupational health and safety standards are observed in the building and construction industry, there is no reason why any worker should be exposed to the risk of serious accidents or death while at work. There should be no trade-off of increased wages for unsafe work conditions.

The rates and allowances in the NBCIA are detailed and intricate, and the amounts properly to be paid to employees vary constantly depending upon the specific activity carried out and the length of time during which it is carried out. In these circumstances, it is no wonder that there is frequent disagreement about the precise amount payable to workers, and that allegations of underpayment or non-payment of entitlements are made so frequently in the building and construction industry.

It is doubtful whether many workers covered by the NBCIA would have a comprehensive understanding of their rights and entitlements. For employers,

ensuring that their workers covered by the NBCIA are paid the precise amount to which they are entitled is a major exercise. The complexity of the allowances and rates in the NBCIA therefore serves neither workers nor employers.

In the building and construction industry, allegations of underpayment or non-payment of entitlements regularly translate to unprotected industrial action, or costly intrusions into the affairs of businesses while allegations are investigated. The current system leads to inflexibility and impedes productivity.

There is thus a clear need to simplify the current array of allowances and rates in the NBCIA.

Reducing the myriad of allowances and rates under the NBCIA would simplify the process of determining workers' entitlements. It would enable workers to know their rights and entitlements. It would reduce administrative costs to business and minimise the risk of confusion and disagreement and the potential for industrial disruption arising from allegations of underpayment or non-payment of entitlements.”³

29. Commissioner Cole recommended the following:

“Recommendation 98

- (a) *The Building and Construction Industry Improvement Act include a provision that restricts the Australian Industrial Relations Commission, in determining awards applicable to the building and construction industry, to the determination of four allowances only, namely:*
- (i) *a general allowance, payable to all workers;*
 - (ii) *a living away from home allowance;*
 - (iii) *a meal allowance; and*

³ Final Report, Vol. 1 – Summary of Findings and Recommendations, page 102.

- (iv) *a travelling allowance.*
 - (b) *The Australian Industrial Relations Commission be permitted to set varying rates for the allowances, based on:*
 - (i) *the State in which the worker is employed; and*
 - (ii) *whether the work is carried on within or outside a set radius of capital city or major regional centre.”*
 - (c) *The purpose of the general allowance is to compensate workers for whom it replaces the current raft of special allowances and rates.”⁴*
- 30. Ai Group does not support the rolling-in of all allowances into one general allowance as this would potentially lead to increased costs for employers, but we agree with the sentiment behind the recommendation. The allowance structures in construction industry awards are far too complicated.

Portable long service leave schemes

- 31. Some portable long service leave schemes are directly linked to the scope of construction industry awards and it is vital that the Commission not extend the scope of such schemes through extending the scope of construction industry awards.
- 32. Portable long service leave schemes were introduced in the construction industry many years ago when workers were typically terminated at the end of each project. It was regarded at the time that there was merit in recognising service within the construction industry, rather than service with a particular employer. The original rationale for the schemes has largely evaporated due to the changing nature of work in the construction industry. These days most workers are engaged by sub-contractors and work for them for lengthy periods, moving from one project to another. They have similar patterns of work and length of service as employees in many other industries.

⁴ Final Report, Vol. 1 – Summary of Findings and Recommendations, page 103.

33. Despite the original rationale for the schemes no longer being valid, Ai Group recognises that the schemes are well-entrenched in the construction industry. However, Ai Group is vigorously opposed to the expansion of the schemes beyond the on-site construction industry.
34. For years, Ai Group has been fighting attempts by unions to expand the scope of portable long service leave schemes into parts of the manufacturing and service industries.
35. Indeed, some unions appear to view this issue as another chance to press for what they failed to achieve in their push to establish the Manusafe / NEST trust fund which included a portable long service leave element.
36. CoINVEST – the construction industry portable long service leave scheme in Victoria – highlights the problem. For years, the CFMEU, ETU and AMWU (which are all represented on the CoINVEST Board) have pursued extended coverage of the CoINVEST scheme. Employers covered by the scheme are required to pay contributions to the scheme (currently 2 percent of payroll) for all employees, regardless of length of service.
37. Given that the scope of various schemes is directly linked to the scope of construction industry awards, the Commission’s award modernisation decisions in the construction industry have great importance.
38. It is unreasonable for companies outside of the construction industry to be forced to contribute to construction industry portable long service leave schemes for employees who are not engaged in construction work.
39. The following finding and recommendation of Commissioner Cole adds weight to the argument that the existing portable long service leave schemes often

operate contrary to the interests of employer contributors and should not be expanded:

“Issue

Employers are required under long service leave legislation to contribute to long service schemes for the purpose of funding their employees’ long service entitlements, yet much of the money contributed, or raised from capital investment of the long service leave fund, is used for other purposes. Money compulsorily acquired should be used for the purpose for which it is collected.

Recommendation 167

*The Commonwealth encourage the States and Territories to ensure that moneys held or received by long service leave funds should be used only for the purpose of paying employees’ long service leave entitlements”.*⁵

Redundancy

40. Two issues of concern to Ai Group relating to redundancy arrangements in the construction industry are:

- ***The inappropriate definition of “redundancy” in several construction industry awards, whereby employees are entitled to severance pay if terminated by the employer for any reason – not just if made redundant***

The inappropriate redundancy definitions are not existing award provisions. Under the *Workplace Relations Act*, they are non-allowable and non-enforceable. It is important that these inappropriate provisions not be reintroduced under the banner of award modernisation.

⁵ Final Report, Vol. 1 – Summary of Findings and Recommendations, page 145.

- ***The importance of construction awards not requiring that an employer contribute to a redundancy fund***

In appropriate circumstances, where a redundancy fund is well-established in the construction industry and is well-managed in the interests of both employer contributors and employee beneficiaries, it is appropriate that the AIRC recognise such scheme as “*an industry specific redundancy scheme*” in relevant on-site construction industry awards, as provided for in paragraphs 36 to 39 of the Amended Award Modernisation Request. However, it is vital that such schemes be optional for employers – not a requirement. It is important that employers retain their right to make severance payments in the standard manner should they wish to. It is also important that small businesses remain exempt from all severance pay requirements.

41. Commissioner Cole expressed concern about the inappropriate practices being engaged in by many construction industry redundancy funds, which adds further weight to the view that such schemes should not be made mandatory through award provisions. The following extracts and recommendations are relevant:

“Issue

Redundancy funds were set up for the benefit of employees to ensure payment of entitlements in the event of redundancy. They should operate solely for the benefit of employees. With the exception of the Australian Construction Industry Redundancy Trust (ACIRT), they instead provide significant income streams for others. Other funds distribute surpluses for training, or to sponsors or their nominees.

At present, surpluses from ACIRT are distributed annually as additional income to employee members irrespective of redundancy. Surpluses should

either be credited to member employees' accounts to be applied towards meeting redundancy entitlements and payable only in the event of redundancy or, if funds held are sufficient to meet redundancy obligations, used to reduce any contributions required.

Recommendation 168

- (a) Surpluses in redundancy funds either be credited to the employee members' accounts to be payable only in the event of redundancy or, if funds held are sufficient to meet redundancy obligations, used to reduce any contributions required.*
- (b) The distribution of surpluses in accordance with this recommendation should be a prerequisite for a redundancy fund being prescribed as a fund exempt from fringe benefits tax.*

Issue

Redundancy funds have matured throughout Australia to become a significant component of the industry's financial structure. Approximately \$500 million is currently under management yet they function without any prudential control. The repercussions would be enormous should any of these funds diminish or collapse for reasons of mismanagement, misappropriation or abuse. The opportunity for any of these events to occur is manifest.

Recommendation 169

Legislation be enacted to implement a uniform system of financial reporting, external auditing, actuarial assessment and annual reporting to a prudential authority for redundancy funds. The systems presently applying for superannuation and long service leave funds should be points of reference. Documents produced, in compliance with the legislation, be public documents.

Recommendation 170

Compliance with those requirements be a prerequisite to a redundancy fund being prescribed as a fund exempt from fringe benefits tax.”⁶

The MBA proposal for an “off-site building and construction industry award”

42. In various submissions to the AIRC, the MBA has expressed opposition to the scope of the draft *Manufacturing and Associated Industries / Employees Award 2010* which has been agreed upon between Ai Group and the six union parties to the existing *Metal, Engineering and Associated Industries Award 1998* (ie. the AMWU, AWU, CEPU, NUW, CFMEU and LHMU).
43. The MBA, in effect, is arguing that a large portion of the manufacturing industry should be removed from coverage under manufacturing industry awards and covered under construction industry awards.
44. The MBA approach would have the following very negative impacts.
45. **Significantly increased costs for manufacturers**

Construction industry wages and conditions are, in general, more generous than manufacturing industry wages and conditions. To extend construction industry awards into the manufacturing sector would drive up costs which would impact upon the competitiveness of Australian manufacturers. Such an outcome would be inconsistent with paragraph 2(d) of the Award Modernisation Request which provides that the creation of modern awards is not intended to “increase costs for employers”.

⁶ Final Report, Vol. 1 – Summary of Findings and Recommendations, pages 146 and 147.

46. A high proportion of companies in the manufacturing industry manufacture products which are later installed in, or become part of, buildings and other structures. For example, manufacturers of: aluminium windows; metal shelving; metal brackets and fittings; bolts, nails and other fasteners; structural steel; air-conditioning ducting; guttering; pipes and tubing; cables and wiring; doors; timber, metal, glass, gyprock and other building materials and products; cement; telecommunications systems; alarm systems; refrigeration systems; computer systems; etc. These companies are manufacturers, not constructors, even though some companies have installation and/or service crews. The *Metal, Engineering and Associated Industries Award 1998* covers the manufacture of a very large number of products which are often installed in buildings and other structures.

47. **Significantly increased building costs**

The MBA's proposal would result in the cost of a very large number of products which are ultimately installed in or become part of buildings and other structures increasing significantly. This, in turn, would increase the overall cost of building.

48. The MBA bases its argument in support of an extremely broad "off-site" construction industry award on the scope of the BCII Act. As set out earlier in this Chapter, it is common knowledge that the previous Government drafted the Act to have a very wide coverage to ensure that incidences of unlawful and inappropriate behaviour in numerous industries which supplied products and services to the construction industry could be regulated.

49. Ai Group and the Australian Constructors' Association (which represents the largest construction contracting companies) opposed the breadth of the definition of "building work" in the BCII Act in submissions to the previous Federal Government as set out in the following extract:

“Ai Group and the ACA support industry-specific legislation being enacted to deliver a reform package for the building and construction industry, but the coverage of the legislation needs to be appropriate and limited to those activities which are typically recognised within Australia’s workplace relations system as being part of the building and construction industry (eg. those activities that fall within the scope clauses of the major construction industry awards). These are the activities which were the subject of the Royal Commission’s investigations.

The Bill’s very broad definition of “building work” could lead to construction industry terms and conditions flowing into other industry sectors (eg. fabrication and supply of building materials and products) which, in turn, would drive up the cost of construction through higher input costs.”⁷

50. For the MBA to seek to use the scope of the BCII Act, to extend construction industry awards into these other industries is deeply flawed and against the interests of companies in the manufacturing industry, the construction industry and numerous services industries.

51. The building and construction industry is an on-site industry.

Proposed structure for modernising awards in the construction industry

52. In brief, Ai Group proposes the following structure for modern awards in the building and construction industry:

⁷ *Reforming Workplace Relations in the Building and Construction Industry*, Joint Ai Group and ACA submission to the Federal Government, March 2005.

1. No off-site building and construction industry award. Off-site work is generally carried out in the manufacturing industry, and should be treated as such under award modernisation.
2. Construction industry awards should relate only to on-site building and construction industry work.
3. Consistent with existing award structures, a separate modern award should be made for each of the three major sectors of the industry:
 - Civil construction;
 - Metal and engineering on-site construction; and
 - Building construction.
4. The proposed *Civil Construction Industry Award 2010* should contain an exemption for work carried out under the *Manufacturing and Associated Industries and Occupations Award 2010*. It should not contain classifications for professional employees such as engineers and architects, clerical employees, or maintenance employees not engaged by building and construction industry employers.
5. The proposed *Metal and Engineering On-site Construction Industry Award 2010* should contain an exemption for work carried out under the *Manufacturing and Associated Industries and Occupations Award 2010*. It should not contain classifications for professional employees such as engineers and architects, clerical employees, or maintenance employees not engaged by building and construction industry employers.
6. The proposed *Building Construction Industry Award 2010* should contain exemptions for work carried out under the *Civil Construction Industry Award 2010*, the *Metal and Engineering On-site Construction Industry*

Award 2010 and the Manufacturing and Associated Industries and Occupations Award 2010. It should not contain classifications for professional employees such as engineers and architects, clerical employees, or maintenance employees not engaged by building and construction industry employers.

7. Any electrical contracting award should not have a scope which extends beyond the existing federal electrical contracting industry award and should contain an appropriate exemption for work carried out under the *Manufacturing and Associated Industries and Occupations Award 2010*. It should not contain classifications for professional employees such as engineers and architects, clerical employees, or maintenance employees not engaged by building and construction industry employers.

As the Full Bench has been advised, Ai Group, the CEPU and NECA have reached agreement on the following exemption for the modern manufacturing award:

“4.5 Manufacturing and Associated Industries and Occupations does not mean:

.....

(e) Employees of electrical contractors who are bound by and applying an electrical contracting award or an electrical contracting Notional Agreement Preserving State Awards (NAPSA), provided that this provision does not affect the application of this award to:

- electrical, electronic and communications employees who are not employed by an electrical contractor; and*
- employees of employers who were legitimately and appropriately applying the Metal, Engineering and Associated Industries Award 1998 to such employees at the*

time when it was superseded by this award.”

The second dot point above is intended to avoid any electrical contracting award disturbing the award coverage of the large number of employers who employ electricians under the *Metal, Engineering and Associated Industries Award 1998*.

It is also important to note that in the discussions between Ai Group and the CEPU concerning the scope of the *Manufacturing and Associated Industries and Occupations Award 2010*, the parties agreed that this award should supersede the NAPSAs covering general electricians (as opposed to electrical contractors) such as the *NSW Electricians, &c. (State) Award*. This agreement has been reflected in the amended application clause which Ai Group and the MTFU have submitted to the Commission. Accordingly, there is no longer a need for any general occupational award for electricians.

8. Ai Group reserves its position with regard to whether a separate plumbing award is warranted. It would appear that some representative bodies in the plumbing industry are seeking to substantially expand the scope of plumbing industry awards, which would create numerous problems for industry. Any plumbing award should contain appropriate exclusions for work carried out under the *Manufacturing and Associated Industries Award 2010* and the proposed *Metal and Engineering On-site Construction Industry Award 2010*. It should not contain classifications for professional employees such as engineers and architects, clerical employees, or maintenance employees not engaged by building and construction industry employers.

Draft scope for the proposed Civil Construction Industry Award 2010

53. Ai Group and the AWU have had discussions regarding the scope of the proposed *Civil Construction Industry Award 2010*.
54. The draft scope which the parties have been discussing appears as Clause 4 – Application in the draft award submitted to the AIRC by the AWU on 31 October. With the inclusion of the additional exemptions, as referred to above, Ai Group supports such clause on a “without prejudice” basis.

Ai Group drafts of modern awards for the building and construction industry

55. Ai Group is currently working on draft modern awards for the building and construction industry and, when completed, will submit such drafts for the Commission’s consideration.

Chapter 4 – Financial Services Group

56. Ai Group has a substantial interest in the financial services industry in respect of contract call centres and IT professionals.
57. A substantial proportion of the work carried out by companies bound by the proposed *Contract Call Centre Industry Award 2010* (see **Chapter 6**) is carried out in the financial services industry. We understand that the ACTU, ASU, CPSU and NUW generally agree with the scope which Ai Group has proposed for this award.
58. Further, a substantial proportion of the work carried out by employees covered by the proposed *Information Technology and Telecommunications (Professional Employees) Award 2010* (see **Chapter 6**) is carried out in the financial services industry. We understand that APESMA generally agrees with the scope which Ai Group has proposed for this award.
59. Ai Group submits that any modern award/s in the financial services industry should contain the following provision:

“This award does not apply to employers in respect of their operations and activities covered by the Contract Call Centre Industry Award 2010 and the Information Technology and Telecommunications (Professional Employees) Award 2010.”

Chapter 5 – Graphic Arts Group

60. Ai Group is a party to the *Graphic Arts – General – Award 2000* and we have had a long history of representing employers covered under this award, particularly major companies in the industry.
61. Ai Group took a leading role in representing employers when this award was modernised between 1998 and 2000. Indeed, 1000 hours of our professional staff's time was devoted to the exercise.
62. Ai Group was also heavily involved in the case which continued (on and off) for 15 years where the skills-based classification structure in this award was developed.

Primary position

63. As a primary position, Ai Group is of the view that relevant awards in the Graphic Arts Industry (such as the *Graphic Arts – General – Award 2000*) should be incorporated within the *Manufacturing and Associated Industries and Occupations Award 2010*.
64. This approach would be consistent with:
- The ANZSIC Coding system which deems the Graphic Arts Sector to be part of the Manufacturing Industry; and
 - The *Manufacturing Industry Sector – Minimum Wage Order – Victoria 1997*.
65. The proposed approach would address the problems of overlapping coverage which will arise if a separate modern award is made, (eg. the manufacture of plastic goods, engraving).

Secondary position

66. If Ai Group's primary position is not adopted, then Ai Group proposes the following application clause for a modern *Graphic Arts Industry Award 2010*.

4. Application

4.1 *This award applies throughout Australia to employers of employees in the Graphic Arts Industry who are covered by the classifications in this award and to those employees.*

4.2 Graphic Arts Industry means:

- (a)** *Commercial printing, composing, proof reading, electrotyping, stereotyping, letterpress machining, lithographic machining, lithographing, slug-casting or type-casting machine attending and adjusting and/or repairing, type-founding, engraving, process engraving and/or photo engraving, commercial and/or lithographic designing, writing and/or drawing, publishing, despatching, book-binding, binding, paper ruling, paper cutting, paper making, paper working, calico and/or paper bag making, envelope making, stationery making, paper products working, embossing, cardboard box making, carton making (including the making of any kind of boxes and/or containers of paper and/or cardboard used alone or in combination with any other material or materials), mailing houses, including folding, paging, numbering, perforating, gathering, collating, inter-leaving, wrapping, sealing, addressing, mailing, despatching, stamping, inserting, security paper working, wire stapling, envelope working, direct mail systems working, addressograph work, paper products work and machine work in or in connection with*

enveloping, sealing, automatic/computer addressing and/or wrapping; and

- (b) The composing or imposition or assembly of matter which is to be printed and the transference of images by use of cameras or scanners or transparency duplications to obtain a relief of planographic or intaglio formation for the operations set out in 4.2(a).*

4.3 *The award does not apply to:*

- (a) an employer who is bound by an enterprise award in respect of an employee to whom the enterprise award applies.*
- (b) an employee excluded from award coverage by the Act.*
- (c) employers in respect of their operations and activities to which the Manufacturing and Associated Industries and Occupations Award 2010 applies.*
- (d) information technology professionals, professional engineers and professional scientists.*

Proposals by PIAA and the AMWU to include inappropriate work under the modern award

67. Ai Group has had discussions with the AMWU and PIAA and is concerned about proposals from those organisations to include the following types of work within a modern Graphic Arts Industry Award:

- Plastics manufacturing;
- Web design / development.

Plastics Manufacturing

68. Only a very small amount of work in the plastics manufacturing industry is carried out under the *Graphic Arts – General – Award 2000*. The vast majority of work in the plastics manufacturing industry is carried out under the:
- The *Metal, Engineering and Associated Industries Award 1998*; (Note: In former years the Metal Industry Award contained a specific division for the Plastics Industry within the schedule of classifications. The current award – at Item 37 in Schedule A – refers to “*Plastic moulding, casting or fabricating in synthetic resins, or similar materials and including the production of synthetic resins, powders, tablets etc, as used in such processes*”);
 - The *Rubber, Plastic and Cablemaking Industry – General – Award 1998* (which covers several hundred Ai Group members in the plastics manufacturing industry); and
 - The *Saddlery, Leather, Canvas and Plastic Material Workers' Award 1999*.
69. The first two of the above awards have been incorporated within the *Manufacturing and Associated Industries and Occupations Award 2010* during Stage 1 of modernisation. The LHMU and Ai Group have agreed that the third award will be incorporated within the modern manufacturing award during Stage 2.

Web design / development

70. Web design / development has very substantially been an award-free area within Australia. The penalty rates in the *Graphic Arts – General – Award 2000* are amongst the highest in the award system and the award is nowhere near flexible enough for this dynamic sector. For example, the penalty for working

ordinary time on a Saturday under the Graphic Arts – General – Award, compared to some other awards is:

- Graphic Arts – General – Award:
 - Morning or afternoon 220%
 - Night 230%

- Metal, Engineering and Associated Industries Award:
 - All workers 150%

- Telecommunication Services Industry Award:
 - 7am to 1pm No penalty
 - After 1pm 150%

71. The Award Modernisation Request states that the creation of modern awards *“is not intended to... extend award coverage to those classes of employees, who because of the nature or seniority of their role, have traditionally been award free.”* (Paragraph 2(a)).

72. Many regard web design / development work as primarily part of the ICT industry - not the printing / graphic arts industry, given that:

- Salary levels for Webmasters etc are included within IT Industry salary surveys;
- Information Technology Industry Training Packages contain substantial content relating to web design / development;
- University courses for IT professionals often include substantial content relating to web design / development.

73. When the skills-based classification structure for the *Graphic Arts – General – Award 2000* was being developed, both the AMWU and PIAA pressed for the list of competencies in Appendix F of the Award to include multi-media competencies. Ai Group opposed this, given the potential for arguments to be pursued that the award applies to the web design / development industry. Eventually such competencies were included but very importantly they were accompanied with a note which appears on the first page of Appendix F which states:

“5. The inclusion of particular competencies within Appendix ‘F’ or the recognition of particular qualifications within the Award, shall not vary the scope of the Award beyond that set out in clause 1.6”

74. The above note was included specifically to address Ai Group’s concerns about the award-free nature of the web design / development industry.

75. Ai Group intends to continue its discussions with the AMWU and PIAA, and its analysis of relevant federal award and NAPSA provisions, and may shortly submit a draft modern award for the Commission’s consideration (reflecting Ai Group’s secondary position). This should not be viewed in any way as a reduction in support by Ai Group for the primary position outlined above.

Chapter 6 – Information and Communications Technology Group

76. Since the 1970s, Ai Group and its predecessors have represented the information and communications technology (ICT) sector in respect of industrial relations matters. Ai Group has a large number of members in the ICT industry including most of the major players. Our membership in the sector has recently increased by another 300 companies due to the merger between Ai Group and the Association of Electrical and Electronic Manufacturers Australia (AEEMA).
77. Ai Group is a party to the principal federal awards in the ICT industry. These awards are:
- *Telecommunications Services Industry Award 2002;*
 - *Contract Call Centre Industry Award 2003;*
 - *Business Equipment – Technical Service – Award 1999;*
 - *Information Technology (Professional Employees) Award 2001;* and
 - *Telecommunication Industry (Professional Employees) Award 2002.*
78. In addition to the above principal awards, the following awards cover named companies who employ clerical and commercial sales employees in the business equipment industry:
- *Business Equipment Industry – Clerical Officers – Award 2000;*
 - *Business Equipment Industry (Commercial Travellers) Award 2000.*
79. The *Television, Radio and Electronics Service Industry Award 1998* (to which Ai Group and the CEPU are parties) also has some application in the ICT industry. Amongst other areas, this award applies to the installation and repair

of “domestic and/or home computers”. The award contains an exemption for work carried out under the *Business Equipment (Technical Service) Award*.

80. There are very few NAPSAs in the ICT industry.
81. The Member of the Commission who has had the most extensive involvement in ICT industry award matters over recent years has been Commissioner Smith who was heavily involved in the conciliation and arbitration proceedings relating to the development of the telecommunications services and contract call centre industry awards between 2000 and 2003.
82. Ai Group has had recent discussions with the ACTU, ASU, CPSU, CEPU and NUW and agreement has been reached that separate modern awards should be made for:
- The Telecommunication Services Industry;
 - The Contract Call Centre Industry; and
 - The Business Equipment Industry.
83. Ai Group has also had recent discussions with APESMA and agreement has been reached that a modern award should be created covering professional employees in the information technology and telecommunications industries.
84. The NUW has proposed that a further award be made covering the market research industry. Ai Group has no objection to this provided that the scope and content are appropriate. It would be appropriate that any such award exempt employers and employees covered by the *Contract Call Centre Industry Award 2010*.
85. Ai Group and the CEPU have discussed the *Television, Radio and Electronics Service Industry Award 1998* and have formed a preliminary view that most of

the work carried out under this award would belong under the *Manufacturing and Associated Industries and Occupations Award 2010* (which has relatively wide coverage of radio and electronic work), rather than under an ICT industry award. An exception to this, in Ai Group's view, would be the installation and repair of "domestic and/or home computers".

Telecommunications Services Industry Award 2010

86. Ai Group has prepared a modern *Telecommunications Services Industry Award 2010*, based upon the terms of the existing *Telecommunications Services Industry Award 2002*. The draft award is set out in **Annexure B**.
87. The background to the development of the 2002 award (which was eventually achieved by consent between Ai Group, the CPSU and the CEPU) is set out in the following Recommendation issued by Commissioner Smith on 24 October 2002 :

"Since September 2000 there have been extensive proceedings in relation to the Telecommunications Services Industry. These have not been easy proceedings as each of the parties has come into the process with strongly held views.

However, and even against that background, all parties have earnestly sought to resolve their differences. The conciliation process has placed many demands on time and resources. I have asked the parties on a number of occasions to reconsider a particular position or seek to find common ground by re-examining underlying objectives.

A document has now been produced which represents significant effort and compromise. The negotiators have, without exception, sought to maximize the

stated objectives of those on whose behalf they have been negotiating, whilst at the same time realizing that an agreed outcome is the most desirable result.

I invite all parties to now examine the document and I earnestly recommend that it be adopted as an award to be made by consent.

I will schedule a hearing for 8 November in Sydney to finalise any findings of dispute and deal with any outstanding issues. Hopefully an award by consent can be made at that time.

If my recommendation is accepted and it becomes the intention of the parties to seek to make an award by consent then I would expect to be advised by no later than close of business on 4 November 2002. If I can be confident that all of the parties who will be bound by the award will be aware of the matters to be considered in the proceedings on 8 November 2002, I shall grant relief from the rules in relation to lodging a separate application.”

88. The 2002 award came into operation in late-November 2002. It is a relatively modern and flexible award which caters for the needs of employers and employees in the telecommunications services industry. In addition to incorporating relevant existing award terms, the draft modern award in Annexure B reflects decisions and developments during the award modernisation process.
89. Ai Group has discussed the draft modern award in Annexure B with the CPSU and CEPU. So far, the parties have reached agreement on the scope and classifications, and have agreed that the content should be based upon the 2002 award. The parties intend to have further discussions over the next few weeks with the aim of reaching as much agreement as possible on the content.

Contract Call Centre Industry Award 2010

90. Ai Group has prepared a modern *Contract Call Centre Industry Award 2010*, based upon the terms of the existing *Contract Call Centre Industry Award 2003*. The draft award is set out in **Annexure C**.
91. The negotiations and AIRC proceedings between June 2000 and August 2003 relating to the development of the *Contract Call Centre Industry Award 2003* were very lengthy and complicated.
92. Most of the contract call centre companies involved in the matter are members of Ai Group and we negotiated the terms of the award with the ACTU, ASU, CPSU and NUW.
93. The contract call centre industry operates in an environment of intense cost and competitive pressures. Companies in the industry compete with Australian firms as well as competitors in low-cost overseas locations.
94. The 2003 award is a relatively modern and flexible award which caters for the needs of employers and employees in the contract call centre industry. In addition to incorporating relevant existing award terms, the draft modern award in Annexure C reflects decisions and developments during the award modernisation process.
95. Ai Group has discussed the draft modern award in Annexure C with the ACTU, ASU, CPSU and NUW. Ai Group understands that the unions agree with the proposed scope and classifications, and agree that the content should be based upon the 2003 award. The parties intend to have further discussions over the next few weeks with the aim of reaching as much agreement as possible on the content.

Business Equipment Industry Award 2010

96. Ai Group has prepared a modern *Business Equipment Industry Award 2010*, based upon the terms of the *Business Equipment Industry – Technical Service – Award 1999* and the *Business Equipment Industry – Clerical Officers – Award 2000*. The draft award is set out in **Annexure D**. In addition to incorporating relevant existing award terms, the draft modern award in Annexure D reflects decisions and developments during the award modernisation process.
97. Ai Group is not opposed, in principal, to incorporating the terms of the *Business Equipment Industry (Commercial Travellers) Award 2000* into the modern award provided that the unique conditions applicable to commercial salespersons are preserved (eg. hours of work arrangements).
98. Ai Group intends to have further discussions with the ASU and the NUW over the next few weeks with the aim of reaching as much agreement as possible on the provisions of the modern award.

Information Technology and Telecommunications Industries Professional Employees Award 2010

99. Ai Group has prepared a modern *Information Technology and Telecommunications Industries Professional Employees Award 2010* based upon the terms of the *Information Technology (Professional Employees) Award 2001* and the *Telecommunication Industry (Professional Employees) Award 2002*. These two awards contain identical classifications and entitlements and are readily able to be incorporated into one award.

100. The draft modern award is set out in **Annexure E**. In addition to incorporating relevant existing award terms, the draft modern award reflects decisions and developments during the award modernisation process.
101. The *Information Technology Industry (Professional Employees) Award 2001* arose from more than five years of (for the most part, heavily contested) AIRC proceedings between 1996 and 2001. Eventually an award was negotiated between Ai Group and APESMA and made by consent.
102. The scope clause of the 2001 award defines the Information Technology Industry as:

“6.2 The Information Technology Industry is defined as:

6.2.1 the design and manufacture of computers and computer peripherals;

6.2.2 the design and manufacture of telecommunications equipment;

6.2.3 the design and manufacture of computer software;

6.2.4 computer system installation, repair and maintenance;

6.2.5 computer consultancy services;

6.2.6 computer programming; and

6.2.7 systems analysis services.

6.2.8 activities which are incidental, ancillary or complimentary to the activities set out in 6.2.

6.3 For the purposes of this award, the Information Technology Industry only includes those employers whose principle function is set out in 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6 and/or 6.2.7 and not other employers. (Emphasis added)

103. Subclause 6.3 above was inserted from 1 January 2006, following an application by Ai Group to remove ambiguity and uncertainty, given doubt which had arisen regarding whether the award applied only to IT professionals working for IT companies, or IT professionals working for all companies.

104. Ai Group made a similar application to vary the Victorian Common Rule Declaration but Commissioner Smith decided that it was appropriate for the Declaration to have a wider scope than the main award (PR968123).
105. Ai Group has discussed the draft modern award in Annexure E with APESMA. The parties agree that the content should be based upon the *Information Technology (Professional Employees) Award 2001* and the *Telecommunication Industry (Professional Employees) Award 2002*.
106. The parties intend to have further discussions over the next few weeks with the aim of reaching as much agreement as possible on the scope and content.

Chapter 7 – Manufacturing Group

107. To facilitate the modernisation of awards in the Manufacturing Group for Stage 2, it is imperative that the problems inherent in the application clause of the *Manufacturing and Associated Industries and Occupations Award 2010 – Exposure Draft*, be addressed in the Stage 1 modern award which will be made in December 2008. These problems are set out in detail in Ai Group’s submission of 10 October.
108. Unless the problems are addressed before the modern award is made, the modernisation of the awards in the Manufacturing Group for Stage 2 will be substantially impeded.
109. The Exposure Draft includes a provision which has the effect of deeming this award to be the one that is overridden whenever an issue of overlap applies.
110. Manufactured products are extensively used in all other industries and there are numerous industry awards which potentially overlap with the manufacturing award. If the application clause remains in its current form, the coverage of the award will be very uncertain. It would be unfair to place the employers, employees and registered organisations covered by the modern manufacturing award in an inferior position to every other party in the award system.
111. Ai Group and the MTFU have jointly proposed modifications to the application clause to address the problems referred to above. These are set out in **Appendix H** of Ai Group’s submission of 10 October.
112. For Stage 2, Ai Group and the manufacturing unions have jointly considered the industry sectors in the Manufacturing Group and have decided to proceed on the basis that the Commission will accept the views expressed by Ai Group

and the MTFU and will modify the application clause to ensure that the scope of the modern award will not be vague and uncertain. If this does not occur Ai Group reserves its rights in respect to the position which follows, which involves the expansion of the modern award to incorporate further industry sectors.

113. A modified application clause for the *Manufacturing and Associated Industries and Occupations Award 2010* is included in **Annexure F**. The document was prepared following initial discussions between Ai Group and the MTFU unions (ie. AMWU, AWU, CEPU, CFMEU, LHMU and NUW).
114. The draft clause is based upon the amended application clause proposed by Ai Group and the MTFU during Stage 1 of modernisation. The proposed Stage 2 amendments to the clause are highlighted.
115. Ai Group has communicated with the six MTFU unions about the proposed clause, together with APESMA. Ai Group understands that:
 - There is strong support amongst the MTFU unions for the proposed amendments to the application clause;
 - APESMA agrees to the amendments to the application clause, in the context of the proposed *Manufacturing and Associated Industries Professional Engineers and Scientists Award 2010*.
116. The proposed clause incorporates each of the 11 industry sectors identified in the Manufacturing Group. These industries are:
 - Aircraft industry;
 - Brush and Broom Manufacturing Industry;
 - Furnishing Industry;
 - Chemical Industry;

- Clay and Ceramics Industry;
- Glass Industry;
- Gypsum, Plasterboard etc. Manufacturing Industry;
- Insulation Materials Manufacturing;
- Paint Manufacturing Industry;
- Rope, Cordage and Thread Industry;
- Saddlery, Leather and Canvas Industry.

117. It is important to note that, whilst Ai Group has no objection to these 11 manufacturing sectors being incorporated within the *Manufacturing and Associated Industries and Occupations Award 2010*, a detailed analysis of the conditions in all of the federal awards and NAPSA's in these sectors has not yet been undertaken.

Aircraft Industry

118. The existing *Metal, Engineering and Associated Industries Award 1998* applies widely to the manufacture and repair of aircrafts and components. The proposed amendments to 4.4(f) do no more than provide greater clarity about the existing scope.

119. It would appear that, in addition to work covered by the *Metal, Engineering and Associated Industries and Occupations Award 1998*, the scope of the Exposure Draft of the *Manufacturing and Associated Industries and Occupations Award 2010* covers the work performed under the *Aircraft Engineers – General Aviation – Award*. This award applies to work carried out by Aircraft Maintenance Engineers, defined under the award as a “tradesperson who is engaged in the maintenance, repair, overhaul, modification, assembly and/or testing of aircraft, aircraft systems, aircraft components, aircraft engines and/or associated equipment”.

120. The union parties to the *Aircraft Engineers – General Aviation – Award 1999* are the AMWU, AWU, CEPU, CPSU and Australian Licensed Aircraft Engineers Association. It appears that there are no employer association respondents. Ai Group appears in AIRC proceedings relating to this award, to represent member companies.

Brush and Broom Manufacturing Industry

121. The scope of the *Brush and Broom Making Industry - Brushmaking - Award 2000* has been incorporated within paragraph 4.4(m) of the draft clause.
122. The NUW is the union party to the award and it appears that there are no employer association respondents.
123. The *Metal, Engineering and Associated Industries Award 1998* and the *Rubber, Plastic and Cablemaking Industry – General – Award 1998* both apply to the manufacture of plastic brushes and brooms.

Furnishing Industry

124. The main award in the Furnishing Industry is the *Furnishing Industry National Award 2003*. The scope of this award is broad and covers the manufacture of, for example, furniture, picture frames, billiard tables, musical instruments, glass products, mattresses, bedding and wooden toys.
125. Some of these products and/or related products are covered under the *Metal, Engineering and Associated Industries Award 1998* and the *Rubber, Plastic and Cablemaking – General – Award 1998*, eg. metal furniture, metal toys, plastic furniture and plastic toys.

126. The glass products covered by the *Furnishing Industry National Award 2003* are also covered by awards in the Glass Industry (see below).
127. The CFMEU is the union party to the award. Ai Group is also a party and has been heavily involved over the years in developments relating to this award.
128. Elements of the scope of the *Furnishing Industry National Award 2003* are dealt with in paragraphs 4.4(m), (ag) and (ah) in the proposed clause.

Chemical Industry

129. The proposed application clause incorporates the scope of the *Artificial Fertilizers and Chemical Industry Award 2001* and the *Federal Explosives Manufacturing and Distribution (AWU) Award 2000*, within paragraph 4.4(aa).
130. The AWU is the union party to both of these awards. Ai Group is the only employer association respondent – being a party to the *Artificial Fertilizers and Chemical Industry Award 2001*.

Clay and Ceramics Industry

131. The *Metal, Engineering and Associated Industries Award 1998* and the Exposure Draft of the *Manufacturing and Associated Industries and Occupations Award 2010* both apply to the manufacture of ceramic articles.
132. The other significant awards in the Clay and Ceramic Industry are:
- The *Clay and Ceramics Industry – Brick and Terra Cotta Tile Manufacture – Victoria – Award 2000*; and
 - The *Clay and Ceramics Industry – Pottery Manufacture – Victoria Award 2001*.

133. The union party to both of the above awards is the CFMEU and the only employer association respondent is Ai Group.
134. In the draft clause, the existing paragraph 4.4(o) – which covers ceramic products – has been expanded to include clay products.

Glass industry

135. The proposed clause incorporates the manufacture and installation of glass products in paragraphs 4.3(a)(vii) and 4.4(ae).
136. The awards which would be superseded if this approach was adopted include the *Glass Industry – Glass Production – Award 1998* and various awards and NAPSAs applying to glazing and bottle merchants.
137. The AWU is the union party to the *Glass Industry – Glass Production – Award 1998*. The major companies in this industry are members of Ai Group.

Gypsum, Plasterboard etc. Manufacturing Industry

138. The *Gypsum, Plasterboard and Plaster of Paris Manufacturing Industry – Gypsum Products Industry Award* applies to the two major companies in this sector of the manufacturing industry – both of which are members of Ai Group.
139. The LHMU is the union party to this award.
140. This manufacturing sector has been incorporated into the draft application clause in paragraph 4.3(af).

Insulation Materials Manufacturing

141. This sector is already included within the application of the *Metal, Engineering and Associated Industries Award 1998* (Item 24 in Schedule A) and the Exposure Draft of the *Metal, Engineering and Associated Industries and Occupations Award 2010* (paragraph 4.4(n)).

Paint Manufacturing Industry

142. The *Australian Paint Industry Award 2000* has not been adequately maintained over the years. It still includes a 40 hour week and has not been varied to incorporate numerous test case decisions of the Commission.
143. One reason for this may be that the three major companies in the industry have comprehensive workplace agreements with the LHMU, which remove the operation of the award for their employees.
144. This award is readily able to be incorporated within the *Manufacturing and Associated Industries Award 2010*. Ai Group understands that the LHMU supports this approach.
145. The manufacture of paint is dealt with in paragraph 4.3(ab) of the proposed clause.

Rope, Cordage and Thread Industry

146. The union party to the *Rope Cordage, Thread Etc Industry Award 1999* is the AWU and the only employer association respondent is Ai Group.

147. Ai Group supports the incorporation of the scope of this award into the *Manufacturing and Associated Industries and Occupations Award 2010* and Ai Group understands that the AWU also supports this.

148. This manufacturing sector has been incorporated via paragraph 4.3(ac) of the proposed clause.

Saddlery, Leather and Canvas Industry

149. The two main awards in the Saddlery, Leather and Canvas Industry are:

- The *Saddlery, Leather, Canvas and Plastic Material Workers' Award 1999*; and
- The *Tanning Industry Award 1999*.

150. The LHMU is the union party to the *Saddlery, Leather, Canvas and Plastic Material Workers' Award 1999* and Ai Group appears to be the only employer association respondent. The LHMU is also the only union party to the *Tanning Industry Award 1999*.

151. Ai Group is of the view that these awards neatly fit within the scope of the *Manufacturing and Associated Industries and Occupations Award 2010* and we understand that the LHMU agrees.

152. These manufacturing sectors are dealt with in paragraphs 4.3(a)(ii), 4.4(q) and 4.4(ad) of the proposed clause.

Chapter 8 – Private Transport Industry (Road, Non-passenger)

153. Ai Group has prepared two draft modern awards for this industry, being the *Road Transport (Long Distance Drivers) Award 2010* and the *Road Transport (General) Award 2010*. The draft awards are set out in **Annexures G and H**.
154. In Ai Group's view, two awards are needed to properly cover the road transport industry, with the cash-in-transit section and their operators being exempted.
155. The content of the *Road Transport (Long Distance Drivers) Award 2010* is based upon the *Transport Workers (Long Distance Drivers) Award 2000*.
156. The content of the *Road Transport (General) Award 2010* is based upon the *Transport Workers Award 1998*.
157. Amendments to the content of each award have been made to reflect decisions and developments during the award modernisation process.

Road Transport (General) Award 2010

158. The application clause (clause 4.1) in the draft modern award utilises the wording from the *Transport Workers Award 1998* and the *Transport Workers (Mixed Industries) Award 2002* ("Mixed Industries Award") to ensure coverage of transport operators and those businesses to which transport of goods is ancillary to their primary business and which are currently covered by the Mixed Industries Award.

159. Under clause 4.2 of the draft award, exclusions have been incorporated to ensure that the award does not apply to “long distance operations”, using the definition from the *Transport Workers (Long Distance Drivers) Award 2000*.
160. Clause 4.3 also contains an exclusion for cash-in-transit operators. The wording of this exclusion is based on the coverage of the *Transport Workers (Armoured Vehicles) Award 2004*.
161. The exclusions sought are necessary because of the nature of the operations within these sections of the industry, which have had longstanding separate industrial regulation.

Road Transport (Long Distance Drivers) Award 2010

162. Ai Group has based this draft modern award upon the *Transport Workers (Long Distance Drivers) Award 2000* to reflect the particular terms and conditions appropriate to this industry and the manner in which businesses are operated and drivers engaged. To incorporate these terms into a general transport award would introduce unwarranted complexity into that award.
163. Ai Group has also provided an exclusion for cash-in-transit operators to enable their operations to be governed by a separate award.