

AM2009/19

**APPLICATION BY CFMEU TO VARY THE
ELECTRICAL POWER AWARD 2010**

**SUBMISSION OF THE AUSTRALIAN
INDUSTRY GROUP**



6 November 2009

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1. Ai Group opposes the variations to the *Electrical Power Award 2010* sought by the CFMEU.

2. In its Statement of 26 June 2009, the Full Bench said:

“[3] Applications to vary the substantive terms of modern awards will be considered on their merits. It should be noted, however, that the Commission would be unlikely to alter substantive award terms so recently made after a comprehensive review of the relevant facts and circumstances including award and NAPSA provisions applying across the Commonwealth. Normally a significant change in circumstances would be required before the Commission would embark on a reconsideration....”

3. We submit that there has not been “a significant change in circumstances”, and, accordingly, the Commission should not reconsider the decision which it has made on the hours of work and part-time provisions of the Award.

4. The CFMEU’s argument that the Full Bench’s transitional decision on 2 September constitutes a “*significant change in circumstances*” has no merit. If the Commission’s decision met this test, then the Commission would invite applications to vary every modern award.

5. As stated by the Commission in its Decision of 2 September 2009 (at para [5]):

“The creation of modern awards which will constitute the award elements of the safety net involves striking a balance as to the appropriate safety net

terms and conditions in light of the diverse award arrangements that currently apply”

6. Savings provisions, such as the CFMEU's proposed clause 11A, are not warranted or appropriate.
7. The take home pay protections in the *Fair Work (Transitional Provisions and Consequential Amendments) Act* and in the Commission's model transitional arrangements provide very substantial protection to employees from any disadvantage arising from the award modernisation process.
8. The CFMEU's proposed Clause 11A conflicts with s.576T of the *Workplace Relations Act 1996* and s.154 of the *Fair Work Act 2009*, as it would result in State-based differences in award entitlements being maintained indefinitely.