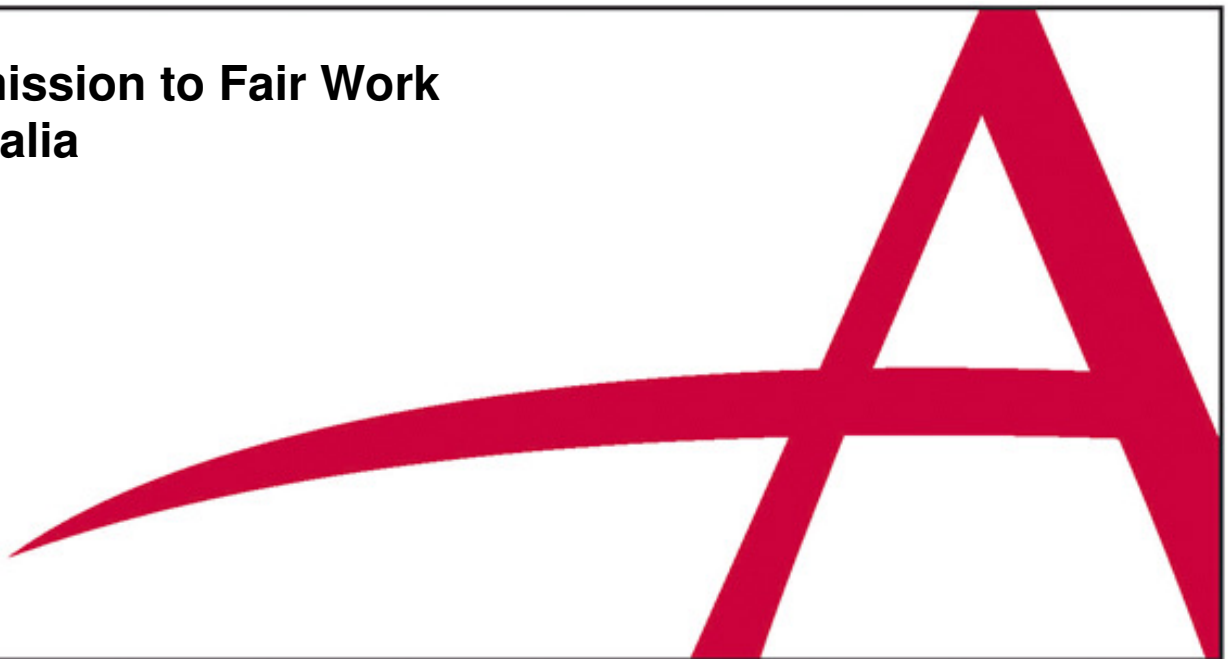


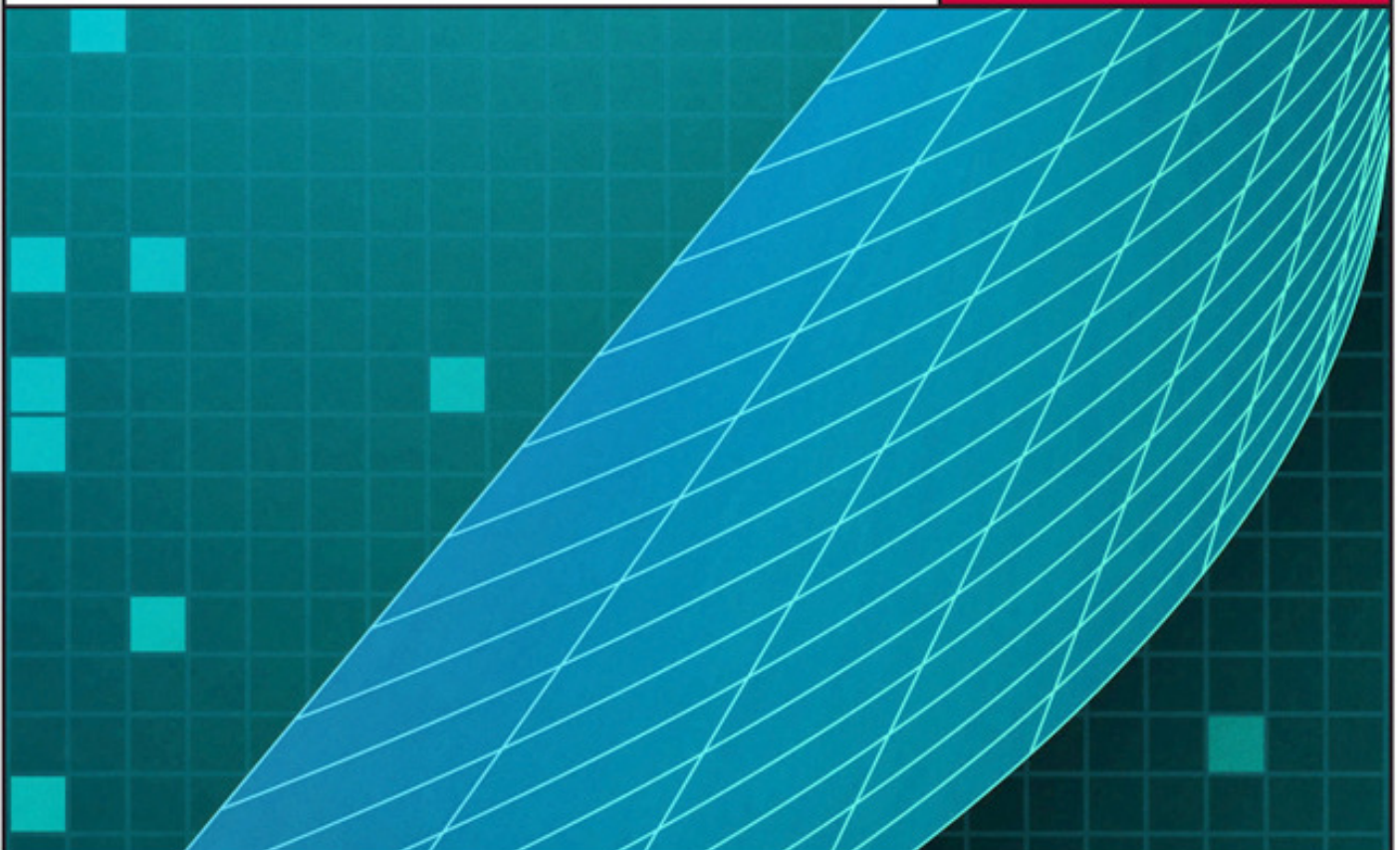
**Submission to Fair Work
Australia**



**APPLICATION BY Ai GROUP TO VARY THE
TELECOMMUNICATIONS SERVICES AWARD 2010**

 AUSTRALIAN INDUSTRY GROUP

4 November 2010



APPLICATION BY Ai GROUP TO VARY THE TELECOMMUNICATIONS SERVICES AWARD 2010

1. Introduction

1. The application seeks to vary the *Telecommunications Services Award 2010* (Telecommunications Modern Award) to include the standard national training wage provisions. These provisions appear to have been omitted from the modern award in error. They were included in the principal pre-modern award and are widely used in the telecommunications industry.
2. Given the exceptional circumstances relating to this application, Ai Group seeks an operative date of 1 January 2010.
3. The CPSU has advised Ai Group of its consent to the application. We are unaware of any union or any other party which opposes the application.
4. Given the consent nature of this application, Ai Group would appreciate this matter being determined by the Tribunal as soon as possible.

2. Relevant provisions of the *Fair Work Act*

5. This application is made pursuant to s.160 of the *Fair Work Act* (FW Act) to correct an apparent error.
6. If the Tribunal is not convinced that an error has been made, then the application is pressed on the basis that the terms of the award are uncertain.
7. The application is also consistent with s.157 of the FW Act in that the variation is necessary to achieve the modern awards objective.

3. Submissions in support of the application

8. The *Telecommunications Services Industry Award 2002* (TSI Award 2002) was made by consent in November 2002 following over two years of negotiations between Ai Group, the CPSU and the CEPU, and a conciliation process before Commissioner Smith. The award included the standard national training wage provisions in clause 18.5.3.
9. During Stage 2 of award modernisation, Ai Group, the CPSU and the CEPU negotiated over the terms of the modern Telecommunications Services Award. On 10 December 2008, Ai Group, the CPSU and the CEPU submitted a joint draft modern award to the AIRC. The draft award included a clause in similar terms to 18.5.3 of the TSI Award 2002, together with an adjoining clause relating to apprentices.
10. When the *Exposure Draft – Telecommunications Services Award 2010* was released, the clause relating to trainees was omitted and the adjoining clause relating to apprentices (Clause 14.4) was entitled “Apprentices and trainees”. However, this clause contained provisions only relevant to apprentices, not trainees, and the clause did not incorporate the national training wage provisions. It appears that none of the industrial parties or the Tribunal detected the error before the final award was made.
11. During the award modernisation proceedings, Ai Group and the ACTU agreed on the content of Appendix D.1 (Allocation of Traineeships to Wage Levels) in the *National Training Wage Schedule*. Telecommunications Certificate II and Certificate III are included in the appendix.
12. The *National Training Wage Schedule* was finalised in Stage 4 of the award modernisation process whereas the Telecommunications Modern Award was made in Stage 2. Therefore, it is perhaps not surprising that the Tribunal and the industrial parties did not thoroughly consider the national training wage

provisions in the Telecommunications Modern Award at a time when the standard national training wage provisions had not been finalised

13. During Stage 4 of award modernisation, a clause was inserted into the Telecommunications Modern Award bringing group trainees within the coverage of the Award (clause 4.4) and this is further confirmation that the modern award was intended to cover employees undertaking formal traineeships.
14. It is important to note that the classification of “Telecommunications Trainee” in the Technical Stream (refer to clause 14.1(c) and clause A.4.1 in Schedule A) does not apply to employees carrying out formal traineeships.
15. Clause A.4.1(a) in Schedule A states:

“(a) A Telecommunications Trainee is engaged in a course of training and development (other than through a new apprenticeship / traineeship) to enable them to perform technical functions in the telecommunications industry.”

(Emphasis added)

16. The classification structure in the TSI Award 2002 was developed and agreed upon between Ai Group, the CPSU and the CEPU. The classification structure in the TSI Award 2002 has been adopted for the Telecommunications Modern Award. The classification of Telecommunications Trainee is essentially an induction level – similar to C14 in the *Manufacturing and Associated Industries and Occupations Award 2010*. It is not intended to cover employees undertaking a formal traineeship.

17. The variation sought by Ai Group simply reflects the existing widespread practice. The variation is essential to give certainty to employers of the large number of trainees in the Telecommunications Services Industry who are employed under the national training wage provisions, and to the trainees.