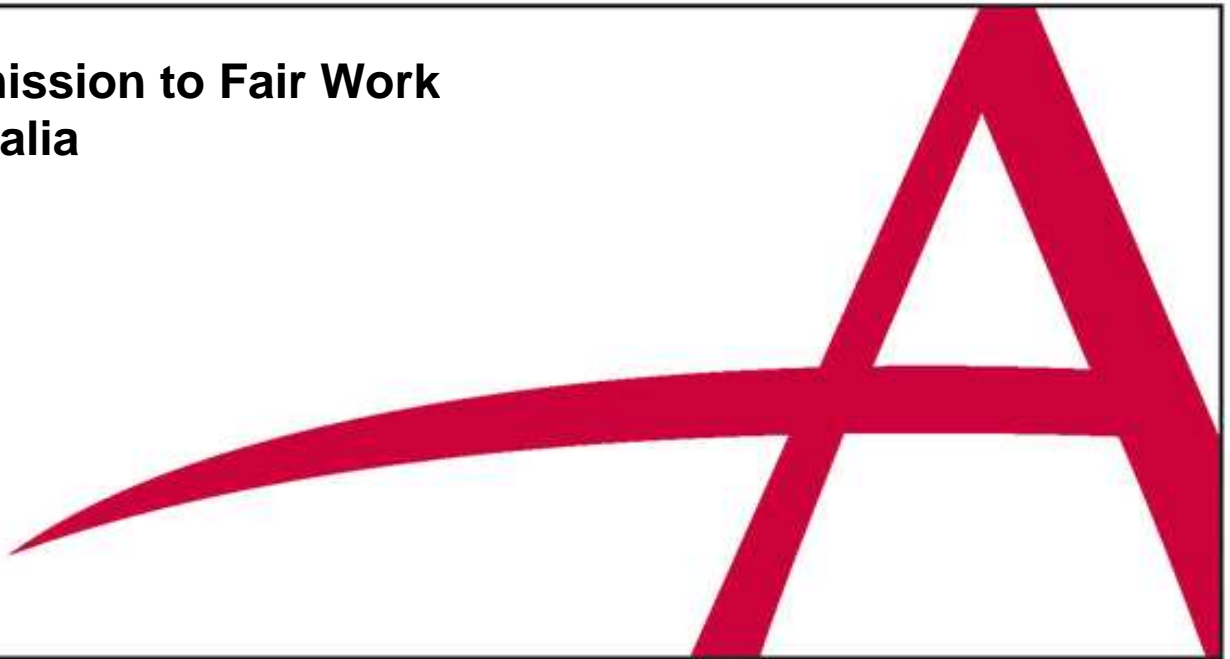


**Submission to Fair Work
Australia**



**AWARD MODERNISATION
DIVISION 2B STATE AWARDS**

 **AUSTRALIAN INDUSTRY GROUP**

13 September 2010

AWARD MODERNISATION – DIVISION 2B STATE AWARDS

1. Introduction

1. In a Statement of 27 August 2010, the President of Fair Work Australia (FWA) invited parties to submit proposals for the variation of modern awards to deal with the termination of Division 2B State awards at the end of 2010 and to comment upon the proposals submitted by other parties.
2. This submission sets out Ai Group's views on the proposals submitted by the Commonwealth, the ACTU and the NSW Government.

2. The Commonwealth's proposal

3. Under the Commonwealth proposed approach (as set out in its submission of 24 June 2010):
 - The existing transitional provisions in modern awards would be varied to add references to a ***Division 2B State award*** alongside the references to ***award-based transitional instrument*** and references to a ***Division 2B State agreement*** alongside the references to ***agreement-based transitional instrument***,
 - The relevant point in time would be immediately prior to 1 January 2011;
 - On 1 January 2011, the relevant proportion of the transitional amount would be 80 per cent for employees phasing down and 20 per cent for employees transitioning up and that proportion would change to 60 per cent or 40 per cent respectively on 1 July 2011;

- FWA would have the ability to depart from the general approach outlined above where it considers it is appropriate to take account of specific circumstances within a particular industry or occupation.
4. Ai Group supports the Commonwealth's proposed approach. We regard the approach as practical and fair for both employers and employees. As stated by the Commonwealth in its submission: *"this approach balances the desirability for broadly consistent transitional arrangements for all national system employers and employees covered by modern awards, while achieving an efficient transition to modern award coverage for affected employers and employees."*

3. The ACTU's proposal

5. In its submission of 25 August 2010, the ACTU proposed a two stage process.
6. In the ACTU's proposed Stage 1:
- From 1 January 2011, Division 2B employees would be entitled to the same minimum wage rate, loadings and penalty rates which apply to NAPSA employees who are employed in an equivalent classification;
 - The rates for Division 2B employees would be phased during the transition period in a similar manner to NAPSA employees;
 - Modern awards containing the model transitional provisions dealing with redundancy and accident pay would be extended to ensure that similar entitlements in Division 2B State awards are preserved.

7. Ai Group does not support the proposed approach in the first two dot points above. Ai Group regards the Commonwealth's approach as fairer on employees and employers, and more practical. The ACTU's approach could lead to large cost increases on 1 January 2011 for some small businesses and other employers.
8. Ai Group does not oppose the proposal in the third dot point above, regarding redundancy and accident pay.
9. In the ACTU's proposed Stage 2:
 - In relation to entitlements that are not subject to phasing, the Tribunal would make orders on an award by award basis to preserve the entitlements in full for the transition period;
 - In relation to long service leave, the Tribunal would make a general order preserving long service leave entitlements in Division 2B state awards for the duration of the transition period.
10. Ai Group opposes the proposal in the first dot point above. Each NAPSA and Division 2B State award has been derived from the same source – the relevant State award. In the award modernisation process the terms of State awards have been taken into account. The ACTU's proposed approach would create widespread uncertainty and would provide scope for a very large number of settled modern award entitlements to be re-contested.
11. Ai Group does not oppose the ACTU's proposed approach re. long service leave.

4. The NSW Government's proposal

12. Under the NSW Government's proposed approach (as explained in its submission of 9 September 2010):
- Division 2B minimum rates of pay would be maintained for the maximum period permissible, in circumstances where they are higher than the relevant classification in the modern award, with the relevant employees also being entitled to future minimum wage increases arising from the Annual Wage Reviews between 2011 and 2014;
 - Where the Division 2B State award minimum rate of pay is less than the rate in the relevant modern award, the relevant employees would be transitioned up to the relevant modern award rate at the earliest possible opportunity;
 - Penalties and loadings would be phased up or down in instalments of twenty five per cent, rather than the current twenty per cent.
13. Ai Group opposes the NSW Government proposed approach for wage rates. The approach does not strike an appropriate balance between the interests of employees and employers. The Commonwealth's approach strikes the appropriate balance, as explained above.
14. With regard to penalties and loadings, on balance Ai Group prefers the Commonwealth's proposed approach to phasing as it would more quickly brings employees covered by Division 2B State awards in line with other employees.