

The Hon. Justice IJK Ross  
President Fair Work Commission  
11 Exhibition Street  
Melbourne Victoria 3000

By email: chambers.ross.j@fwc.gov.au  
cc: amod@fwc.gov.au

16 June 2016

Dear Justice Ross

**Re: Decision [2016] FWCFB 2602 4 yearly review of modern awards - common issue - award flexibility - time off in lieu of payment for overtime AND the Electrical Power Industry Award 2010 – MA000088**

I write on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (the CEPU) and the Construction, Forestry, Mining and Energy Union - Mining and Energy Division (the CFMEU) – collectively ‘the Unions’.

It has recently come to our attention that in ‘Attachment E— Modern awards with TOIL provided at overtime rates’ of what may be described in shorthand the April 2016 TOIL Decision no mention is made of the Electrical Power Industry Award 2010 – MA000088. (No mention is made anywhere else in the Decision either.)

We believe that this is probably an oversight, having been inadvertently left out of the table of awards in Attachment E. We say that it is probably inadvertent because the Horse and Greyhound Training Award 2010 [MA000008] is included at Attachment E and this award was specifically referred to, together with the Electrical Power Industry Award, in the July 2015 Award Flexibility Decision<sup>1</sup> at paragraph 201, which for convenience is reproduced below:

[201] The first aspect of Ai Group’s claim seeks to vary 26 modern awards in order to ‘enable an employer and employee to agree to take time off in lieu of overtime’.<sup>2</sup> This aspect of Ai Group’s claim proceeds on the basis that the 26 modern awards sought to be varied do not currently contain a TOIL provision. In respect of two of the 26 modern awards sought to be varied this assumption is incorrect - the *Electrical Power Industry Award 2010* and the *Horse and Greyhound Training Award 2010* already have a TOIL



NATIONAL OFFICE

**Allen Hicks**  
National Secretary

Suite 408, Level 4  
40 Harcourt Parade  
PO Box 380  
Rosebery NSW 2018

Ph: (02) 9663 3699  
Fax: (02) 9663 5599

Email:  
admin@etuaustralia.org.au

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<sup>1</sup> [2015] FWCFB 4466

<sup>2</sup> Ai Group submission, 18 March 2015 at paragraph 6

provision.<sup>3</sup> We deal later with the variations we propose in respect of existing TOIL provisions in modern awards.

As the Commission has stated at paragraph 49 of the April 2016 TOIL Decision that it plans to shortly publish draft determination variations in respect of awards that presently contain a penalty basis TOIL term, we thought that we should draw the Commission's attention to what to us appears to be an oversight, so that the Commission may also provide for such a determination for the Electrical Power Industry Award, if it determines that it is appropriate to do so.

Yours sincerely



Guy Noble  
National Industrial Officer  
guy@etuaustralia.org.au

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<sup>3</sup> Clauses 26.3 and 22.3 respectively