



FairWork
Commission

BACKGROUND DOCUMENT

Award flexibility–General Retail Industry Award 2020

(AM2021/7)

17 March 2021

This matter is to be heard on Wednesday 17 March at 2pm (AEDT). This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.

Background

[1] After the conclusion of the hearing on 5 March 2021 the Commission issued the following directions:

- ‘1. The Hearing is adjourned and the matter will be relisted for hearing at **9:30AM (AEDT) Tuesday, 16 March 2021.**
2. All interested parties are to file submissions and evidentiary material, including witness statements by no later than **5PM (AEDT) Friday, 12 March 2021.**
3. Interested parties are to provide an indication of which witnesses will be required for cross-examination by **2PM (AEDT) Monday, 15 March 2021.** Such an indication is to be sent to chambers.ross.j@fwc.gov.au.’

[2] Conciliation conferences were conducted by Commissioner Hampton on 10 and 11 March.

[3] Prior to the conferences the Commission issued a short framework document setting out the context and an indicative list of issues for discussion. The framework document also confirmed:

- The conciliation discussions were designed to narrow the issues between the parties, particularly those supporting some form of change.
- Ultimately, the Full Bench will determine whether there is to be a variation to the Award, and if so, what form that would take.
- Unless otherwise agreed by the relevant parties, the Report issued to the Full Bench would not disclose positions advanced during the conference.

- Parties may be requested to confirm their positions to the Full Bench following the publication of the Report.

[4] In view of the progress made during the conciliation process the Commission decided to provide more time to enable the parties to prepare submission based on their revised proposals and issued the following directions:

1. All interested parties are to file submissions and evidentiary material, including witness statements by no later than ~~5PM (AEDT) Friday, 12 March 2021~~. **4PM (AEDT) Tuesday, 16 March 2021**.
2. Interested parties are to provide an indication of which witnesses will be required for cross-examination by ~~2PM (AEDT) Monday, 15 March 2021~~. **10AM (AEDT) Wednesday, 17 March 2021**. Wednesday Such an indication is to be sent to chambers.ross.j@fwc.gov.au.
3. All submissions and evidence are to be sent in word format to amod@fwc.gov.au.
4. The Hearing is adjourned and the matter will be relisted for hearing at ~~9:30AM (AEDT) Tuesday, 16 March 2021~~. **1PM (AEDT) Wednesday, 17 March 2021**¹

[5] On 15 March 2021 the Commission published a [Report](#) to the Full Bench² summarising the conciliation conferences and identifying 5 major issues that arose from the proposals, broadly summarised as follows:

1. the nature of any additional hours agreement for ordinary hours beyond clauses 10.5 and 10.6 of the Award;
2. the preconditions for making an additional hours agreement;
3. the review triggers for increasing (converting) additional hours, the process and access to arbitration;
4. the interaction between extended hours provisions and other aspects of the Award; and
5. the duration of any new provision.

[6] The Report concluded that while the conferences had led to further modifications of some elements of each proposal, there is no agreement as to the precise form of the variation, including some limited elements of the parameters and safeguards.

[7] On 15 March 2021 the Commission received (and published) the following:

- [Draft determination](#) submitted by ABI containing the award variations sought by ABI, NRA and ARA (Joint Employer draft determination) (**Attachment A**).

¹ Note: the time of the hearing on 17 March was subsequently amended to 2pm.

² [2021] FWC 1297.

- [Correspondence](#) from ABI attaching a research report from the University of Wollongong Australia titled ‘Employers and the use of casuals in the Australian Retail Sector’ by Senior Professor Paul Gollan and others and related materials.
- [Revised draft determination](#) submitted by the Joint Applicants (**Attachment B**).

[8] Submissions were received from the following parties:

- [RAFFWU](#) dated 16 March 2021
- [Newsagents Association of NSW & ACT Limited](#) (NANA) dated 16 March 2021
- [ABI](#) dated 16 March 2021
- [Ai Group](#) dated 16 March 2021
- [SDA](#) dated 16 March 2021
- [NRA](#) dated 16 March 2021
- [ARA](#) dated 16 March 2021
- [ACTU](#) dated 16 March 2021
- [MGA](#) dated 16 March 2021.

[9] The [AWU](#) confirmed that it supported the submissions of the SDA and ACTU and did not seek to file any additional material.

[10] It appears to be common ground between various interests supporting either the Joint Application or the ABI proposal that there is a need for an additional degree of flexibility for part-time employees in the Retail Award that is not otherwise permitted by its present terms.

[11] The intention of the Joint Application is to ‘encourage employers ... to offer additional hours of work to part-time employees willing to work them without having to engage casual employees for such a purpose.’³

[12] A similar intention is expressed in relation to the ABI proposal, namely that it is aimed at ‘... varying the part time provisions of the (Retail) Award to enable part time employees to work additional ordinary hours, without attracting overtime payments, where such hours are voluntarily worked.’⁴

[13] It also appears to be common ground that facilitating the working of additional ordinary hours by part-time employees will:⁵

- encourage employers to offer additional hours;⁶

³ SDA Submissions filed 2 March 2021 at [14].

⁴ ABI/NSWBC Submissions filed 4 March 2021 at [32].

⁵ ABI/NSWBC Submissions filed 4 March 2021 at [36] – [37]; ARA Submissions filed 4 March 2021 at [15] – [19].

⁶ SDA Submissions filed 2 March 2021 at [17]; Expert Report, page 12.

- increase hours of employment amongst part-time employees, thereby promoting social inclusion through increased workforce participation;⁷
- have a positive impact on business and productivity;⁸
- have a positive impact on employees by allowing for the more efficient allocation of labour to part-time employees, rather than that labour being allocated to casual employees;⁹ and
- support employment growth, and the performance of the economy as a whole.¹⁰

[14] Both the Joint Application and the ABI proposal include a number of protections for employees, including:

- the requirement that an additional hours agreement cannot be a condition of employment and cannot be entered into concurrently with an offer of employment; and
- the right for an employee to request that their additional hours become part of their regular hours as agreed under clause 10.5, where the employee has regularly worked those additional hours for an extended period.

[15] Both the Joint Application and the ABI proposal provide a mechanism whereby a part-time employee who has regularly worked additional hours in excess of the number of hours agreed under clauses 10.5 or 10.6 may request that their employer vary the agreement under clause 10.5 to reflect the ordinary hours regularly being worked. The two mechanism are set out in the table below.

Joint Application	ABI Proposal
<p>Review of number of hours</p> <p>I.7 Where a part-time employee has regularly worked additional agreed hours for at least six months, the employee may request in writing that the employer vary the agreement under clause 10.5 to reflect the ordinary hours regularly being worked.</p> <p>I.8 The employer must respond in writing to the employee’s request within 21 days.</p> <p>I.9 The employer may refuse the request only on reasonable business grounds. EXAMPLE:</p>	<p>10.12 Increasing guaranteed hours to match regular work pattern</p> <p>(a) If a part-time employee has regularly worked additional ordinary hours in excess of their pattern of work agreed under clauses 10.5 and 10.6 for at least 12 months, the employee may request in writing that the employer vary the agreement under clause 10.5 to reflect the ordinary hours regularly being worked.</p> <p>(b) The employer must respond in writing to the employee’s request within 21 days.</p>

⁷ SDA Submissions filed 2 March 2021 at [19]; ACTU Submissions filed 2 March 2021 at [33]; Expert Report, pages 12 – 13.

⁸ SDA Submissions filed 2 March 2021 at [20]; ACTU Submissions filed 2 March 2021 at [35], [40].

⁹ SDA Submissions filed 2 March 2021 at [21]; ACTU Submissions filed 2 March 2021 at [38].

¹⁰ SDA Submissions filed 2 March 2021 at [24]; ACTU Submissions filed 2 March 2021 at [46].

<p>Reasonable business grounds to refuse the request may include that the reason that the employee has regularly worked additional agreed hours is temporary—for example where this is the direct result of another employee being absent on annual leave, long service leave or worker’s compensation.</p> <p>I.10 Before refusing a request made under clause I.7, the employer must discuss the request with the employee and genuinely try to reach agreement on an increase to the number of hours agreed under clause 10.5 that will give the employee more predictable hours of work and reasonably accommodate the employee’s circumstances.</p> <p>I.11 If the employer and employee agree to vary the agreement under clause 10.5, the employer’s written response must record the agreed variation. If the employer and employee do not reach agreement, the employer’s written response must set out the grounds on which the employer has refused the employee’s request.</p>	<p>(c) If the employer agrees to a request under clause 10.12(a), then the employer and the part-time employee must vary the agreement made under clause 10.5 to reflect the employee’s new regular pattern of work. The variation must be recorded in writing before it occurs.</p> <p>(d) The employer may refuse the request under clause 10.12(a) only on reasonable business grounds. The employer must notify the part-time employee in writing of a refusal and the grounds for it.</p> <p>(e) Before refusing a request under clause 10.12(a), the employer must discuss the request with the employee and explore whether they can reach agreement on an increase to the number of hours agreed under clause 10.5 that will give the employee more predictable hours of work and reasonably accommodate the employee’s circumstances.</p>
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[16] Both proposals contain the following elements:

- A part-time employee who has regularly worked additional agreed hours in excess of the number of hours agreed under clauses 10.5 or 10.6 may request in writing that the employer vary the agreement under clause 10.5 to reflect the ordinary hours regularly being worked.
- The employer must respond in writing to the employee’s request within 21 days.
- Before refusing a request the employer must discuss the request with the employee and [genuinely try to reach agreement – Joint Application] or [explore whether they can reach agreement – ABI proposal].
- An employee request can only be refused on ‘reasonable business grounds’.
- The employer must notify the employee in writing of a refusal and the grounds for it.
- If the employer agrees to a request then the employer and employee must vary the agreement under clause 10.5 to reflect the employees new regular pattern of work (this is expressed differently in the two models – Joint Application at clause 1.11 and ABI proposal at 10.12(c)).

[17] There are however two points of distinction between the two models in respect of this aspect of the proposals:

- The minimum period before a request can be made (Joint Application - 6 months; ABI proposal – 12 months).
- The access to arbitration in respect of a dispute pertaining to whether there were reasonable business grounds for refusing an employee request (Joint Application – yes; ABI proposal – no).

[18] In relation to the last point both the Joint Application and the ABI proposal provide for the arbitration of disputes arising under their terms, with the parties to such agreement providing consent to such arbitration. The difference between the proposals is limited to whether such arbitral power extends to an assessment of whether an employer has reasonable business grounds to refuse an employee's regular additional hours becoming a permanent part of their agreed hours.

Q1: Question for all parties: Do you agree with the summary at [10] – [18]?

[19] More generally there are 3 broad key points of distinction between the Joint Application variation determination and the ABI proposal:

1. The Joint Application proposes the insertion of a schedule into the Retail Award, with a limited period of operation (18 months) subject to extension on application. The ABI proposal seeks to vary the Retail Award by inserting new clauses 10.11 to 10.12 'subject to review to determine whether they will continue to operate beyond 15 September 2022 (i.e. after about 18 months operation).
2. The 'model' for facilitating the working of 'additional hours' by part-time employees in the Joint Application is by individual agreement. The ABI proposal facilitates the working of 'additional hours' by means of a 'standing written agreement' between an employer and part-time employee.
3. There are a number of differences between the two proposed models:
 - The Joint Application model only applies to part-time employees who 'work more than 9 hours per week in accordance with clause 10.5'; the ABI proposal contains no such limitation.
 - The Joint Application model provides that if an additional hours agreement is made 'the employee must be paid for the additional agreed hours, even if they are not required to work those hours'. The ABI proposal contains no such limitations.
 - The Joint Application model provides that an additional hours agreement may be terminated, by mutual agreement with 24 hours' notice, such agreement not to be unreasonably withheld. The ABI proposal contains no such mechanism.
 - The ABI proposal provides:
 - The employer is not required to offer additional hours.
 - The employee has the right to refuse any request to work additional hours.
 - The employee may vary or revoke their standing written agreement at any time.

These features are not provided (or at least not in the same terms) in the Joint Application variation.

[20] Finally, it is unclear if the limitations in clause 15 apply to ‘additional hours’ worked pursuant to the ABI proposal. Clause 1.2 of the Joint Application variation expressly provides that ‘additional hours agreements’ are ‘subject to clause 15’.

Q2: Question for all parties: Do you agree with the summary at [19] – [20]?

[21] Broadly speaking the revised variation determination filed by the SDA is supported by the ACTU, AWA, MGA and COSBOA. The ABI proposal is supported by the ARA, NRA and (with some caveats) Ai Group. RAFFWU opposes the ABI proposal.

[22] In relation to the SDA’s proposal RAFFWU submits:

‘Since the earlier submission the Joint Applicants have confirmed their application is premised on any “agreed additional hours” being subject to the requirements of clause 10.5.

That is, the agreed additional hours must be documented as a regular pattern of work with agreed start times, finish times, days of work and breaks. With those concessions RAFFWU no longer opposes the core basis of the application. That said, the proposed variation itself is deficient in that it doesn’t clearly identify this premise. Until such clarity is ensured, the Full Bench ought not embark on that part of the proposed variation.’¹¹

[23] The ACTU submits that the following are pertinent to the disposition of the Joint Application:

- The Joint Applicants consist of worker and employer representatives.
- The Application is supported by the ACTU and COSBOA.
- MGA and COSBOA represent small to medium-sized enterprises, which are more likely to engage employees pursuant to the Retail Award.
- The variation the subject of the Joint Application:
 - is temporary in nature, being scheduled to sunset after a period of 18 months;
 - may be adopted by employers and employees on an entirely voluntary basis;
 - is straightforward and easy to understand;
 - provides certainty for employers and workers; and
 - contains a range of safeguards.

[24] The ACTU opposes the ABI proposal submitting that it:

¹¹ RAFFWU Submission, 16 March 2021 at [2] – [3].

- Is not supported by any other employer or employee representatives, and is opposed, by the Applicants.
- Provides for a more complicated mechanism, with less certainty, than the variation proposed in the Application.
- Does not contain provisions protections to workers.
- Goes beyond the immediate need to address the effects of the pandemic by seeking to impose permanent radical changes.

[25] The ACTU’s submission is encapsulated at [5] – [12] of its submission:

‘The FWC is asked to choose between two competing proposals. However, it is the ACTU’s submission that this is not a choice between equals.

The change proposed by the Applicants, which the ACTU submission supports, is a sensible and measured change. It makes temporary adjustments which deliver to the extent necessary to support the retail industry as it moves through its recovery from the effects of the COVID-19 pandemic. These changes are supported by a relevant mix of worker and small business advocates.

The competing proposal, advance by ABI, ARA and NRA, seeks a radical and permanent overhaul of working arrangements for part-time retail workers. These changes go further, both substantively and temporally, than is required or justified by the present circumstances.

What is essentially the ongoing wholesale casualisation of part-time employment is neither warranted nor justified by the current economic situation or outlook.

Not only would the ABI proposal casualise part-time employment, it would also have a deleterious effect on full-time employment. By leaving it open to employers to engage part-time workers – without any guarantees – for up to 38 hours per week as and when they need, employers would simply be able to structure their entire workforce on part-time, rather than full-time contracts.

That this is what is being advanced as a competing proposal to this Application is no more than an attempt to fulfill an industrial agenda which existed well prior to the COVID-19 pandemic.

That the changes sought by the ABI, ARA and NRA are permanent in nature greatly exceeds any linkage which might otherwise apply to the present and temporary economic circumstances brought about by the COVID-19 pandemic.

The following section of this submission compares the two proposals that are before the FWC and, in the submission of the ACTU demonstrates why the Applicant’s proposal ought be accepted, and the alternative proposal put forward by the ABI should not.’

[26] The ACTU (and MGA) also makes submissions about the nature of the industry covered by the Retail Award which are adopted and summarised by the SDA, in particular:

- Retail trade is highly award reliant
- Many retail workers are ‘low income’
- A high proportion of employees work on a part-time basis

- Small business accounts for almost one-third of all employment in the sector.

[27] The SDA submission addresses what it characterises as the ‘substantive’ and ‘technical’ objections to the Joint Applicant variation. The ‘substantive’ objections are addressed at [21] – [35] of the SDA submission; the ‘technical’ objects are addressed at [36] – [45]. The SDA’s objections to the ABI proposal are set out at [46] – [67].

[28] At [46] the SDA identifies the differences between the ABI proposal and the Joint Applicant variation.

[29] ABI opposes the Joint Application and supports the making of the Joint Employer draft determination. In support of their submission, ABI contends:

1. The flexibility that the Joint Application purports to introduce already exists within the existing Award framework.
2. The only additional benefit that would be gained by the Joint Application is the ability for an employer and part-time employee to record an agreement to work additional hours by the end of the shift. Currently the agreement must be recorded prior to the hours being worked. This is of marginal benefit. It is insubstantial.
3. The above ‘benefit’ would only apply in limited situations and to limited categories of part-time employees. The existing award provisions contain no such limitations.
4. In exchange for the above ‘benefit’, the variations would introduce unprecedented burdens including the right to permanently increase a part-time employee’s regular hours of work and the ability for the Commission to arbitrate any disputes. The existing Award does not contain any such terms.
5. The scheme proposed by the Applicants would operate in parallel with the existing Award provisions. Both methods would contain different eligibility requirements and different consequences once introduced. This would lead to significant confusion and uncertainty.
6. Notwithstanding the above, there appears to be uniform consensus amongst a large number of employer and union parties that the Award should better promote the working of additional hours by part time employees.
7. The evidence filed by ABI and NSWBC shows that there are real difficulties with the existing Award provisions regulating the working hours of part-time employees. The evidence demonstrates that (both real and perceived) inflexibilities of the Award’s part-time provisions prevent employers from engaging more staff in secure, part-time employment.
8. The Joint Employer Determination seeks to vary the Award in a more appropriate way than the Joint Application and promotes the offering of additional hours in a manner more aligned with the modern awards objective.

9. The flexibilities contained in the Joint Employer solution are not dissimilar from those found in enterprise agreements applying across the retail industry without issue - many of which have been expressly supported by the SDA.

[30] ABI refers to a number of enterprise agreements which contain standing consent arrangements. It appears that the SDA supported the approval of these agreements. Three examples serve to illustrate the point:

- *Kmart Australia Ltd Agreement 2018*
- *Woolworths Supermarkets Agreement 2018*
- *Coles Supermarkets Enterprise Agreement 2017*

[31] The relevant clauses are extract below, with emphasis added:

Kmart Australia Ltd Agreement 2018

- ‘12.15 When a part-time team member is first employed. Kmart and the team member will agree in writing on a regular pattern of work that specifies the hours that will be worked each day, the days of the week that will be worked and the start and finishing time each day. This written agreement will also state that the minimum engagement is three hours and the time of taking meal breaks. Kmart shall retain a copy of the agreement.
- 12.16 By agreement, and not otherwise, Kmart and a part-time team member may agree to either increase or decrease a part-time team member's contract hours on a permanent basis. Such an agreement must be made in writing before the variation occurs. Kmart shall retain a copy of the variation agreement.
- 12.17 Any agreement to vary the regular pattern of work will be made in writing before the varied hours commence. A variation under this sub-clause may be of a temporary nature (including ad hoc or one-off variations). A part-time team member may elect to provide written standing consent to vary their regular pattern of work in order to work additional hours (without the payment of overtime) at the applicable rates of pay contained in the Relevant Pay Schedule, provided such standing consent may be withdrawn by the team member at any time. A team member who has provided standing consent is not obligated to accept the offer to work additional hours on any occasion, and may refuse if offered additional hours.
- 12.18 The requirement to make an agreement in writing in sub-clause 12.15 and a variation agreement in writing under sub-clause 12.16 and 12.17 is satisfied if the agreement is recorded by electronic means.’

Coles Supermarkets Enterprise Agreement 2017

‘4.1.4 **Part-time team members**

- (d) Any agreement to vary the regular pattern of work will be made in writing before the varied hours commence. A variation under this subclause may be of a temporary (including ad-hoc or one off variations) or permanent nature. A part-time team member can elect to provide written standing consent to vary their regular pattern of work in order to work additional hours at the rates of pay specified in clause 4.1.4(h), provided such standing consent may be withdrawn by the team member at any time. (To avoid doubt, a team member who provides standing consent can still verbally refuse to work

additional hours when offered on any occasion.) Such a variation in writing may be made by electronic means (this will include MyColes, One Team, E-mail and SMS).

- (e) A record of the agreement and any variations to it (including by way of standing consent) will be retained by Coles and provided to the team member. This may be provided by electronic means as noted above.’

Woolworths Supermarkets Agreement 2018

‘8.4. Part-time flex-up – additional hours

- a. In addition to working their contract hours as per their standard roster, a part-time team member can be offered additional hours based on the operational needs of Woolworths (additional hours). Additional hours may change with operational needs and are not guaranteed to be offered. The team member may accept the additional hours on the terms below, or the team member can decline the additional hours without penalty.
- b. Additional hours are offered on a voluntary basis in addition to the team member’s existing standard roster, and a team member may accept additional hours up to a maximum of 38 hours (contract hours + additional hours combined) in any 1 week. The team member needs to provide their consent to the additional hours in writing before the additional hours are worked.
- c. A part-time team member can choose to provide standing consent and their personal availability (in writing) in order to work additional hours, provided such standing consent may be varied or revoked by the team member at any time. Such a variation or revocation in writing may be made by electronic means including by email or via an application. A record of the agreement and any variations to it (including by way of standing consent) will be retained by Woolworths and provided to the team member on request. This may be provided by electronic means as noted above. For clarity, the provision of standing consent and availability does not require a team member to accept additional hours (even if those hours fall within their stated availability) and they may continue to decline any additional hours that may be offered.
- d. Additional hours will be paid at the team member’s base rate of pay and treated as ordinary hours for all other purposes of this Agreement, including any penalty rates or loadings applicable to the hours worked, the payment of superannuation, applicable leave accrual, and for the purposes of allowances and breaks.
- e. A part-time team member will not be rostered to work a total number of hours (contract hours + additional hours combined) in excess of 144 hours in any 4-week cycle without the payment of overtime rates.
- f. In the event a part-time team member cannot work any agreed additional hours due to illness or injury, the team member is entitled to use personal leave in accordance with clause 14.
- g. Subject to appropriate skills and availability, and all things being equal, any extra hours of work will be offered to part-time team members before they are offered to casual team members (where practicable).’

[32] The Newsagents Association of NSW and Act Limited (NANA) supports increased flexibility around the engagement of part-time employees but is concerned that whatever the changes to the Retail Award that may arise from either of the proposals:

1. Must not disturb the existing structure of the plain language version of the Award.
2. Must not serve to cause confusion for those small business employers which rely on the Award as their main regulatory instrument.

[33] Further, NANA opposes the 9 hour minimum engagement term specified at I.2 of the Joint Applicant's proposal.

[34] Ai Group opposes the Joint Applicant's revised variation determination and provides qualified support for the ABI proposal.

[35] In relation to the ABI proposal Ai Group expresses some reservations about whether all the safeguards included in the proposal are necessary. Ai Group submits that it would be appropriate to amend ABI's proposal to ensure that it expressly provides:

1. That additional hours worked in accordance with a standing arrangement are ordinary hours if an employee agrees to work them; and
2. That the right to refuse additional hours only extends until such time as the employee has agreed to the working of the additional hours.

[36] Ai Group also submits that the Retail Award contains an adequate dispute resolution mechanism and that it is not necessary to include the proposed consent arbitration arrangement.

Questions for the Joint Applicants:

Q3: What is the effect of the 'Note' under clause 1.2?

Q4: In respect of clause 1.3, it is put that an employee should be paid for the additional hours even if they are not 'ready willing and able' to work those hours?

Q5: In respect of clause 1.4 why do you need to provide 24 hours' notice if an additional hours agreement can only be mutually changed?

Questions for ABI:

Q6: How does ABI envisage its proposal would operate in practice?

Q7: Do the various limitations in clause 15 apply to additional hours worked pursuant to ABI's proposal?

Q8: Clause 10.12(e) of the ABI proposal provides:

Before refusing a request under clause 10.12(a), the employer must discuss the request with the employee and explore whether they can reach agreement on an increase to the number of hours agreed under clause 10.5 that will give the employee more predictable hours of work and reasonably accommodate the employee's circumstances.

Why has ABI chosen the underlined words, noting that clause 28.5(b) speaks in terms of 'genuinely try to reach agreement'?

Question for the SDA:

Q9: Did the SDA support the approval of the agreements set out at [30]? If so, what is the difference between those arrangements and ABI's proposal?

Question for the SDA and ACTU:

Q10: If the Commission was minded to vary the Retail Award to provide for a standing availability of the type proposed by ABI, what additional features (if any) do you propose?

[37] The parties will be invited to respond to the questions in this background paper at the commencement of the hearing scheduled for 2pm today.

Note:

1. In its submission Ai Group raises a number of specific issues with the revised draft determination filed by the SDA, on behalf of the Joint Applicants. These matters are set out at [23] – [40] of Ai Group's submission. Ai Group and the representatives of the Joint Applicants are encouraged to discuss these matters prior to the hearing at 2PM today.
2. Ai Group also raises some issues with the ABI proposal at [39] and [41] – [52]. Ai Group and ABI are encouraged to discuss these matters prior to the hearing at 2PM today.
3. NANA raises a number of issues with the wording of the revised draft determination filed by the SDA on behalf of the Joint Applicants. NANA submits that the revised draft determination contains terminology which 'can be confusing, possibly ambiguous and which fails to support the continuation of the plain language Award.' These matters are set out at [8] – [10] of NANA's submission. The representatives of the Joint Applicants and NANA are encouraged to discuss these issues prior to the hearing at 2PM today.