

OUTLINE OF REPLY SUBMISSIONS OF AUSTRALIAN INDUSTRY GROUP
RELATING TO PUBLIC HOLIDAYS

1. By its decision published on 23 February 2017 (see [2017] FWCFB 1001 (the “**Penalty Rates Decision**”)), the Full Bench determined to reduce from 1 July 2017 the existing public holiday penalty rates in the *Fast Food Industry Award 2010* (the “**Fast Food Award**”) for a full time and part-time employee from 250 per cent to 225 per cent (see Penalty Rates Decision at [63], [1957], [1980]) and for a casual employee from 275 per cent to 250 per cent (see Penalty Rates Decision at [63], [1979], [1980]).
2. By its decision published on 17 March 2017, the Full Bench reiterated its intent to reduce from 1 July 2017 the existing public holiday penalty rates (see [2017] FWCFB 1551 at [11]) and referred to its plan to publish draft determinations to give effect to the reductions (see [2017] FWCFB 1551 at [14]).
3. Later on 17 March 2017, the Full Bench circulated to parties its draft determination with an operative date of 1 July 2017 for the reduction in the public holiday penalty rates.
4. By a written submission filed on 24 March 2017, the SDA sought that deferral and transitional arrangements (including a first operative date of 1 July 2019) be implemented for the reduction in the public holiday penalty rates (see submissions of SDA dated 24 March 2017 (“**SDA Submissions**”), pars 24, 25).
5. By a written submission filed on 27 March 2017, Ai Group submitted that (subject to some minor drafting changes) the Full Bench should make a determination in the terms of the draft determination with an operative date of 1 July 2017 (see written submissions filed 27 March 2017, par 4).
6. By a written submission filed on 27 March 2017 (but not seen by Ai Group until 28 March 2017), the SDA has sought that the draft determination not be finalised prior to the hearing scheduled for 9 May 2017.
7. Ai Group opposes both the deferral and transitional arrangements.

8. Ai Group repeats and relies upon its earlier submissions opposing a deferral arrangement, including a deferral of the operative date beyond 1 July 2017 (see Ai Group written submissions dated 27 March 2017, par 5).
9. Ai Group notes that its opposition to the deferral arrangement is supported by the National Retailers Association (see NRA written submissions dated 27 March 2017, pars 5, 6) and the Retail Associations (see ARA and MGA written submissions dated 27 March 2017, par 2).
10. Ai Group also repeats and relies upon its earlier submissions opposing red circling (see written submissions dated 24 March 2017 and amended on 3 April 2017, par 53) in opposing a distinction between existing and future employees as part of a transitional arrangement (compare SDA Submissions, pars 25, 27).
11. Ai Group further repeats and relies upon its earlier submissions opposing the introduction of a term similar to clause 34.1A of the *Restaurant Industry Award 2010* (see written submissions dated 24 March 2017 and amended on 3 April 2017, par 54) in opposing a new term that precludes adverse action against existing employees over a claimed preserved rate as part of a transitional arrangement (compare SDA Submissions, par 25(b)).
12. Moreover, and in the alternative, Ai Group repeats and relies upon its earlier submissions opposing a transitional arrangement with more than two instalments (see written submissions dated 24 March 2017 and amended on 3 April 2017, par 51) as part of a transitional arrangement for future employees (compare SDA Submissions, par 27).
13. Ai Group submits that the Full Bench should (subject to the minor drafting changes) make a determination in the terms of the draft determination as soon as practicable (and at least by the conclusion of the hearing on 9 May 2017).
14. Ai Group notes that its support for the draft determination (subject to the minor drafting changes) is endorsed by the National Retailers Association (see NRA written submissions dated 27 March 2017, pars 7) and the Pharmacy Guild (see written submissions sent 27 March 2017, second paragraph).
15. Finally, Ai Group opposes the submissions of the SDA objecting to the use of the phrase “minimum hourly rate” (see SDA written submissions dated 27 March 2017, par 8). Ai Group submits that the phrase means the minimum weekly wage (see clause 17 of the Fast Food Award) divided by 38 hours (see clause 25.2 and clause 25.4 of the Fast Food Award) and (for the avoidance of doubt) excluding any allowances, loadings and overtime (see clause 19 and clause 25.5 of the Fast Food Award) and notes that such a meaning is consistent with the principles specified in the *General Drafting Decision* [2014] FWCFB 9412 at [44] per Ross J, Hatcher VP, Hamberger SDP, Bissett and Bull CC and *General Drafting Decision* [2015] FWCFB 4658 at [43] per Ross J, Hatcher VP, Hamberger SDP, Bissett and Bull CC.