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Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney NSW 2011

Dear Vice President,

Re. 4 Yearly Review of Modern Awards – outstanding issues in respect of multiple group 2 awards

We refer to the notice of listing issued by the Fair Work Commission (**Commission**) on 4 July 2016 in respect of various group 2 awards, which are to be called on for mention and/or directions before the Commission later today. The document attached to the listing (**the Commission's document**) identifies various outstanding issues in respect of those awards. For the purposes of facilitating the efficient conduct of the aforementioned proceedings, this correspondence:

- characterises the outstanding matters as either being substantive in nature or as technical/drafting issues;
- identifies our position in respect of substantive variations sought by other interested parties; and
- seeks to propose the manner in which the relevant issues should be dealt with hereafter.

Of the awards identified on the notice of listing, the Australian Industry Group (**Ai Group**) has a significant interest in the following:

1. the *Graphic Arts, Printing and Publishing Award 2010* (**Graphic Arts Award**);
2. the *Health Professionals and Support Services Award 2010* (**Health Award**);
3. the *Medical Practitioners Award 2010* (**Medical Practitioners Award**);
4. the *Nurses Award 2010* (**Nurses Award**);
5. the *Passenger Vehicle Transportation Award 2010* (**PVT Award**);
6. the *Road Transport (Long Distance Operations) Award 2010* (**Road Transport LDO Award**);
7. the *Road Transport and Distribution Award 2010* (**RTD Award**);
8. the *Transport (Cash in Transit) Award 2010* (**Cash in Transit Award**); and
9. the *Waste Management Award 2010* (**Waste Management Award**).

We deal with each of these awards below, in the order that they appear in the Commission's document.

AM2014/203 Graphic Arts, Printing and Publishing Award 2010

The Commission's document identifies four outstanding substantive issues in respect of the Graphic Arts Award. Ai Group filed [correspondence](#) on 21 January 2016 addressing two of those four matters. We also make the following additional observations with reference to the Commission's document:

1	Training allowances	This is an Ai Group claim that has been referred to a separately constituted Full Bench (AM2016/14). Directions have been issued by Justice Ross.
2	Competencies	<p>This is an AMWU claim to replace Schedule C – Competencies, which is opposed by Ai Group. It appears that the variation sought would have a significant impact on the coverage of the award. Despite discussions between the AMWU and Ai Group, this matter remains contentious.</p> <p>We propose that the matter be referred to a separately constituted Full Bench. Directions should be issued requiring the filing of comprehensive written submissions and evidence in support of the claim, the filing of comprehensive written submissions and evidence in opposition the claim; and a subsequent hearing before that Full Bench.</p>
3	Payment of wages on termination	This is an Ai Group claim that has been referred to a separately constituted Full Bench (AM2016/8). The matter was listed for mention before Justice Ross on 30 June 2016. We understand that directions will be issued in due course.
4	Award coverage of metropolitan newspapers	This is an AMWU claim to vary the coverage of the award to cover metropolitan daily newspapers. We understand that there have been ongoing discussions between the relevant interested parties. We anticipate that those parties will be better placed to address the Commission as to how this matter should be advanced.

AM2014/204 Health Professionals and Support Services Award 2010

The Health Award has been the subject of extensive discussions between interested parties, including multiple conferences before Commissioner Roe. Most recently, a 'package' of variations was proposed by the HSU. Based on the responses filed by various parties, it appears that a consensus position has not been reached.

The table below addresses each of the issues identified in the Commission's document. Given the number of matters on foot, the significant number of parties interested and the scope of the claims that may be pursued, we propose that the matters proceed as follows:

- Each of the issues below, apart from item 5 (annualised salaries), be referred to a separately constituted Full Bench.
- Interested parties be directed by the Commission to file draft determinations that confirm the terms of the variations sought by 5 August 2016. Any agreement reached between the parties in respect of specific variations should be identified at this time and reflected in the determinations.

- The Full Bench list the matter for mention/conference after 5 August 2016 and hear the parties as to how the claims should be programmed.
- The Full Bench issue directions for the filing of material thereafter. Those directions should contemplate the filing of comprehensive written submissions, witness evidence and documentary material in support of and in opposition to the claims.

1	Hours of work	A significant number of award variations have been proposed by multiple parties in respect of issues that can broadly be characterised as pertaining to hours of work. These can most readily be identified by reference to the summary of submissions dated 21 June 2016 at items 12A, 17, 18, 19, 23, 23A, 26, 26A, 27, 30B, 42.
2	Medical imaging schedule	The MIERG is seeking a new schedule that covers medical imaging. This is a substantive variation. Ai Group opposes the claim in its current form.
3	List of common health professionals – exhaustive or indicative	The HSU is seeking a variation to the schedule to the award such that it states that the list is indicative. This is opposed by Ai Group.
4	Translators and interpreters	APESMA seeks to vary the coverage of the award to cover translators and interpreters on an occupational basis. This is a substantive change that is opposed by Ai Group.
5	Annualised salaries	Ai Group and the Chiropractors Association of Australia are seeking the insertion of an annualised salary provision. This has been referred to a separately constituted Full Bench (AM2016/13). We understand that the relevant claims will be listed for mention in due course.
6	Intern health professionals	The HSU is seeking to vary the classification definitions to include interns. This is a substantive change that is opposed by Ai Group.
7	List of common health professionals – additional titles	It is our understanding that the HSU is no longer seeking the introduction of additional job titles to the list of common health professionals. APESMA's proposal in this regard relates to item 4 above.
8	Additional annual leave for shiftworkers	This is a claim made by the HSU to vary the definition of 'shiftworker' for the purposes of the NES. This is a substantive claim and is opposed by Ai Group. This claim should not be referred to the annual leave common issues Full Bench. In our view, it can more efficiently be dealt with by a Full Bench constituted to deal with substantive claims made to vary the Health Award. We note that the annual leave Full Bench does not have before it any such similar issues.

AM2014/206 Medical Practitioners Award 2010

Ai Group filed [submissions](#) on 28 August 2015 that respond to the HSU claim to insert a ceremonial leave provision in the Medical Practitioners Award. We are content for the Full Bench as presently constituted to determine the matter based on the material before it. Should the HSU, however, seek to file additional submissions, we may request an opportunity to respond.

AM2014/207 Nurses Award 2010

The matters identified in the Commission's document are addressed in the table below.

1	Casual and part-time common issues Full Bench	<p>Clause 6.4(d) of ED: Based on the summary of submissions dated 29 September 2015 and 7 December 2015, it appears that there is some consensus amongst the parties regarding clause 6.4(d). The issue seems to be one of drafting, rather than a substantive variation sought by any party. We consider that the matter would most efficiently be dealt with by the Full Bench as presently constituted, after the receipt of further written submissions.</p> <p>Clause 15.1(c) of the ED: This is a substantive issue raised by the ACE. We do not oppose its referral to the casual and part-time common issues Full Bench.</p>
2	Shift length for all employees	Ai Group does not oppose the approach proposed in the Commission's document.
3	Matters for this Full Bench	<p>Classifications: Based on material filed by the ANMF on 15 July 2015 and correspondence dated 24 December 2015, we understand that the union's claim is substantive in nature and that it may seek to call evidence. Accordingly, this claim should be referred, along with the matters at item 4 below, to a separately constituted Full Bench.</p> <p>Schedule B to the ED: Consideration of this issue will likely be coloured by the outcome of the matters above at item 1. It may be appropriate to defer consideration of the ANMF's submission until those matters are determined.</p>
4	Separate Full Bench	<p>Ai Group agrees that the matters listed at item 4 are substantive in nature and should be referred to a separately constituted Full Bench.</p> <p>The claims should be listed for mention/directions before that Full Bench, such that parties are given an opportunity to be heard as to how the claims ought to be programmed. Directions should be issued thereafter requiring the filing of comprehensive written submissions and evidence in support of the claim, the filing of comprehensive written submissions and evidence in opposition the claim; and a subsequent hearing before that Full Bench.</p>

The Transport Industry Awards

Proposed approach in respect of the transport industry awards

Five of the awards identified relate to the transport industry. The outstanding issues listed in the Commission's document include substantive variations sought by the parties (shaded blue in the tables below) as well as technical and drafting issues arising from the relevant exposure drafts.

We propose that the outstanding substantive claims be dealt with as follows:

- One separate Full Bench be constituted to deal with all transport industry substantive claims, given the potential overlap of issues between the awards and the involvement of certain parties in most if not all of these awards;

- Interested parties be directed by the Commission to file draft determinations that confirm the terms of the variations sought by 5 August 2016;
- That Full Bench list the matters for mention/directions after 5 August 2016 and hear the parties as to how the claims should be programmed; and
- The Full Bench issue directions for the filing of material thereafter. Those directions should contemplate the filing of comprehensive written submissions, witness evidence and documentary material in support and in opposition to the claims.

We propose that the outstanding technical and drafting issues be the subject of further discussion between interested parties. Given their nature, we anticipate that such discussions, which to date have been productive, will resolve some if not all of those matters that remain contentious. We respectfully request that for the purposes of facilitating those discussions, a further conference be listed before a member of the Commission. In so doing we note that prior conferences have been conducted by His Honour, Senior Deputy President Hamberger.

The tables that follow provide a brief description of the outstanding issues identified in the Commission's document, confirm Ai Group's position in respect of each and categorise the matter as either being substantive (shaded blue) or technical/drafting in nature.

AM2014/208 Passenger Vehicle Transportation Award 2010

1	Award flexibility clause	APTIA is seeking to vary the model flexibility clause. This is a substantive variation. Ai Group opposes the claim in its current form.
2	Amend clause 8.1(a) of ED: insert "up to"	This is a technical and drafting issue raised by Ai Group in respect of the exposure draft. It is of a similar nature to a concern we have raised in respect of several other exposure drafts.
3	Span of hours	The TWU is seeking the introduction of a span of hours. This is a significant substantive change that is opposed by Ai Group.
4	Two up driving	Various issues have arisen from the redrafting of the two-driver provisions in the exposure draft. Parties should be directed to clarify whether any substantive variations are to be pursued or whether they seek to make submissions in support of the proposition that the current award provisions should be retained in the exposure draft. If so, the matter should be considered by the Full Bench as presently constituted. If substantive variations are sought, the matter should be referred to the transport industry Full Bench.

AM2014/211 Road Transport (Long Distance Operations) Award 2010

1	Definition of "long distance operation"	The TWU is seeking to vary the definition of "long distance industry". This would affect the award's coverage. It is opposed by Ai Group.
2	Requirement re fatigue management plan	The TWU is seeking the introduction of a requirement that a copy of the FMP be provided to an employee. This is a substantive change that is currently opposed by Ai Group.
3	Minimum payment and performance of work under one award	The TWU is seeking a variation that would limit an employee's ability to perform work covered by the RTD Award and the LDO Award in one day. This is a substantive change that is opposed by Ai Group.
4	Passenger allowance	The TWU is seeking the introduction of new provisions that require payment for time spent by an employee as a passenger. This is a

		significant new entitlement that is opposed by Ai Group.
5	Two up driving	The TWU is seeking the introduction of new provisions that require payment for time spent during a two up driving operation. This is a significant new entitlement that is opposed by Ai Group.
6	Loading and unloading	The TWU is seeking to expand the definition of “loading and unloading” in the award, which would give rise to enhanced entitlements under the award. The claim is opposed by Ai Group.
7	Entitlement to work diary	The AWU is seeking to extend the entitlement to a work diary to casual employees. This is a substantive change that is opposed by Ai Group.

AM2014/212 Road Transport and Distribution Award 2010

1	Early morning shift allowance	Ai Group is seeking the introduction of greater flexibility in relation to the working of ordinary hours in the early morning. This is a substantive change. Parties have participated in productive discussions but no final position has been reached.
2	Meal allowance	Ai Group is seeking additional limitations around the circumstances in which the meal allowance is payable. This is a substantive change. We understand that it is opposed by the TWU.
3	Amend clause 8.1(a) of ED: insert “up to” & delete “full-time employee”	This is a technical and drafting issue raised by Ai Group in respect of the exposure draft. It is of a similar nature to a concern we have raised in respect of several other exposure drafts.
4	Higher duties	Ai Group is seeking the introduction of certain limitations to the application of the higher duties provision. This is a substantive change. We understand that it is opposed by the TWU.
5	Classification definitions	The TWU is seeking various amendments to the classification definitions. These changes are substantive and are opposed by Ai Group. The matter potentially raises work value considerations.
6	Hourly rates for oil distribution workers	This is an issue that has arisen from the exposure draft and was raised by Ai Group. Ai Group has previously filed submissions in this regard. We are content for the matter to be determined by the Full Bench as presently constituted. We do not seek an opportunity to file further material in this regard.
7	Minimum engagement of casual employees during overtime	This issue arose from the exposure draft. The agreement between the parties referred to at paragraph [13] of Hamberger SDP’s report of 19 February 2016 resolves the issue.
8	Rate of pay for casual employees on public holidays	This issue arose from the exposure draft. The agreement between the parties referred to at paragraph [14] of Hamberger SDP’s report of 19 February 2016 resolves the issue.
9	Definition of “road transport industry”	The TWU is seeking a variation to the definition of “road transport industry”. This would impact upon the coverage of the award. It is opposed by Ai Group.
10	Definition of “driver”	The TWU is seeking the introduction of a definition of “driver”. This would impact upon the coverage of the award. It is opposed by Ai Group.
11	Meal break	Ai Group is seeking the introduction of certain limitations to the entitlement to a meal break. This is a substantive change. We understand that it is opposed by the TWU.
12	Schedule C.4 of the ED	This is a technical and drafting issue raised by Ai Group in respect of the exposure draft.

AM2014/215 Transport (Cash in Transit) Award 2010

The four matters identified in the Commission's document are, to our knowledge, the only outstanding matters in respect of this award. Each are technical and drafting issues raised by Ai Group regarding the exposure draft. They are not substantive in nature.

AM2014/216 Waste Management Award 2010

1	Requirement to inform casual employee of classification on engagement	This is a TWU claim to introduce a requirement that full-time and casual employees be informed upon engagement of their classification. This is a substantive change that is opposed by Ai Group.
2	Paid meal break during overtime	This is a TWU claim to alter the circumstances in which an employee is entitled to a break whilst performing overtime and to require that such breaks be paid. This is a substantive claim and is opposed by Ai Group.
3	New crib time clause	<p>In correspondence dated 25 November 2014, the TWU outlined a claim for a new crib time provision for shiftworkers (clause 28.9). In a submission dated 22 July 2016, it indicated that it no longer sought the variations proposed in the aforementioned correspondence but instead sought to pursue the variations identified in that submission. The proposal for a new crib time clause is not contained in that submission. On this basis, it is our understanding that this claim is withdrawn.</p> <p>For completeness, the variation sought is a substantive one and if, despite the above, it is pressed by the TWU, it will be opposed.</p>
4	Paid meal break for shiftworkers	This is a TWU claim to introduce a paid meal break for shiftworkers while working on afternoon or night shifts. This is a substantive claim and is opposed by Ai Group.
5	Recall to work	This is a technical and drafting issue arising from the exposure draft. Ai Group has reconsidered its position. the TWU's proposal is no longer opposed.
6	Additional annual leave for shiftworkers	This is a claim made by the TWU and an individual employee covered by the award to introduce a definition of 'shiftworker' for the purposes of the NES. The effect would be to entitle such employees to an additional week of annual leave. This is a substantive claim and is opposed by Ai Group.
7	Rate of pay for casual employees outside ordinary hours	This is a technical and drafting issue arising from clause 6.5(h) of the exposure draft. It is contended by employer interests that the redrafting of the provision has resulted in a substantive change.

Yours sincerely,



Stephen Smith

Head of National Workplace Relations Policy