



4 yearly review of modern awards—Penalty rates (AM2014/305)

[1] On 3 August 2016, Directions were issued in relation to the survey evidence attached as ‘PAD2’ to the affidavit of Patricia Ann Deasy. In particular, Ai Group was directed to provide a breakdown of the survey results based on classification level. If no such breakdown existed then Ai Group was asked to suggest an alternative measure which may provide a proxy for classification level. This information was sought so that the Full Bench could consider whether employee preferences varied depending on their classification.

[2] In response to the Directions Ai Group filed an affidavit of Patricia Deasy, affirmed on 19 August 2016 (the Deasy Affidavit), and submissions dated 19 August 2016.

[3] The SDA filed a submission in reply to the submissions filed by Ai Group. At paragraph 5 of that submission the SDA states:

‘The Ai Group has not articulated a cogent basis for why age and employment status may provide a proxy for classification levels. The SDA submits that, in the context of the survey, neither age nor employment status are a reasonable or reliable proxy for the classification level of employees’.

[4] In a Statement issued on 8 September 2016 the Full Bench expressed the provisional view (at [8]) that there was ‘some force in the SDA’s submission that no cogent basis has yet been articulated for why age and employment status may provide a proxy for classification levels’. The Full Bench also issued directions for the filing of further evidence by Ai Group. In response to those directions Ai Group has filed:

- An [outline of submissions](#)
- [An affidavit of Krista Terese Limbrey](#) dated 23 September 2016 (the Limbrey affidavit)
- [An affidavit of Patricia Ann Deasy](#) dated 23 September 2016 (the second Deasy affidavit)
- [An affidavit of Domit Makhoul](#) dated 23 September 2016 (the Makhoul affidavit)

[5] The matter is listed for hearing at 10am on Wednesday 28 September 2016 in Melbourne.

[6] The deponents of the Limbrey, Deasy and Makhoul affidavits have been required to attend the hearing to deal with any questions by the Full Bench and for the purpose of cross examination by any interested party.

[7] Interested parties are to notify Ai Group and the Commission (at amod@fwc.gov.au) if they wish to cross examine Limbrey, Deasy or Makhoul, by no later than **10am Tuesday 27 September 2016**. If these witnesses are not required for cross examination then they may not be required to attend the hearing on 28 September 2016.