

**SUBMISSION OF AUSTRALIAN INDUSTRY GROUP**  
**RELATING TO DRAFT DETERMINATION FOR FAST FOOD AWARD**

1. The Ai Group files this submission in response to the submission of the SDA dated and filed 13 June 2017 concerning the draft determination published by the Full Bench on 7 June 2017 to vary the Fast Food Award (the “**SDA Submission**”) and the submission of WorkSight dated and filed 7 June 2017 concerning the same draft determination (the “**WorkSight Submission**”).

**Minimum Hourly Rate**

2. By its submission on the draft determination for public holidays dated and filed 12 April 2017 and uploaded on 20 May 2017, the Ai Group stated:

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.
3. The Ai Group maintains that earlier submission.
4. The Ai Group thus opposes the SDA Submission objecting to the phrase “minimum hourly rate” (see SDA Submission, pars 7 to 9).
5. Were the Full Bench to accept the earlier submission of the Ai Group (as maintained by this submission), the Ai Group submits that persons affected by the Fast Food Award would benefit from the Full Bench indicating (in a short decision relating to the form of the final determination) those matters that were to be included in, and those matters to be excluded from, the “minimum hourly rate”.

6. However, were the Full Bench to accept the SDA Submission and to consider adopting the proposed wording put forward by the SDA (see Appendix A to the SDA Submission), the Ai Group submits that proposed clause 30.3 should be modified so as to make plain that the amount of 250 per cent payable on a public holiday to a casual employee includes the casual loading. To that end, an appropriate modification could be:

“30.3 Work on a public holiday must be compensated by payment at the rate of 225% (250% for casual employees, inclusive of the casual loading).”

#### **Trainee**

7. The WorkSight Submission suggests that the draft determination relating to the Fast Food Award excludes trainees from receiving a Sunday penalty rate as trainees are not level 1, level 2 or level 3 employee.
8. The Ai Group disagrees with the WorkSight Submission.
9. By the combined operation of clause 16 and clause 24 of the Fast Food Award, Schedule B to the Fast Food Award and Schedule D to the Fast Food Award, a trainee may be a level 1 employee, a level 2 employee or a level 3 employee.
10. Additionally, by the combined operation of clause D6.4 of the Fast Food Award and subclauses 25.5(c) and (d) of the Fast Food Award, a trainee is entitled to be paid a Sunday penalty rate if the trainee performs work on a Sunday.

#### **Ai Group**

**[15] June 2017**