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To: AMOD

Subject: AM2016/15 - 4 yearly review of modern awards — Plain language – standard clauses – Redundancy clauses – Award specific matters.

Ai Group refers to the following extract from the Commission's decision of 11 December 2018 ([2018] FWCFB 7447) regarding the redundancy clauses in the *Building and Construction General On-site Award 2010* and the *Plumbing and Fire Sprinklers Award 2010*:

"[22] Clause 18.4(d) refers to the *Fringe Benefits Tax Regulations 1992*. These Regulations included a list of prescribed approved worker entitlement funds at Schedule 3. The Regulations were replaced by the *Fringe Benefits Tax Assessment Regulations 2018* on 1 October 2018. In addition, references to 'approved worker entitlement funds' were removed from the Regulations in 2013.

[23] Materials from the ATO indicate that as at 29 June 2018 these funds are still in existence and operate as in clauses 18.4(b) and 18.4(c) of the Plumbers Award. The term 'approved worker entitlement funds' is defined in the *Fringe Benefits Tax Assessment Act 1986* (Cth) at s.58PB.

[24] Parties are asked to consider whether the reference to the '*Fringe Benefits Tax Regulations 1992*' in clause 18.4(d) of the Plumbers Award, and the corresponding reference in clause 17.4(c) of the Building Award, should be replaced with a reference to the '*Fringe Benefits Tax Assessment Act 1986*'. Submissions on this point are due by **4.00 pm on 21 December 2018.**"

Ai Group agrees that the reference to the '*Fringe Benefits Tax Regulations 1992*' in clause 18.4(d) of the Plumbers Award, and the corresponding reference in clause 17.4(c) of the Building Award, should be replaced with a reference to the '*Fringe Benefits Tax Assessment Act 1986*'.

For background, the following extract from a submission that Ai Group made to the Royal Commission into Trade Union Governance and Corruption provides some relevant history and identifies why the provisions in the *Fringe Benefits Tax Assessment Act 1986* are so important:

"On 11 October 2002, the Treasurer announced that the Government had agreed to provide an FBT exemption on certain payments to approved worker entitlement funds. Legislation providing for the FBT exemption was introduced into Parliament on 13 February 2003 in *Taxation Laws Amendment Bill (No 4) 2003*. The Senate referred the Bill to the Senate Economics Legislation Committee. Ai Group made a submission to the Committee and appeared before the Committee at the public hearing. The Senate Committee supported the legislation and the Bill was passed on 26 June 2003.

Following the enactment of the *Taxation Laws Amendment Act (No 4) 2003*, a number of ATO private rulings were released in which the ATO interpreted the requirements of the new legislation in a very narrow manner and Ai Group was concerned that contributions made under many construction industry awards and agreements might not comply with the legislative requirements. Therefore, Ai Group pressed its concerns with the Federal Government and the *Tax Laws Amendment (2005 Measures No 2) Bill 2005* was introduced into Parliament and subsequently passed.

Section 58PB of the *Fringe Benefits Tax Assessment Act 1986* identifies various requirements that worker entitlement funds must meet to qualify for the exemption. Under s.58PA, a contribution to a worker entitlement fund is exempt from FBT if it meets the following conditions:

- The contribution is made to an approved worker entitlement fund;
- The contribution is made under an industrial instrument; and
- The contribution is either:
 - made for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
 - for the reasonable administrative costs of the fund.

The current FBT exemption is very important to employers and Ai Group does not see a need for any changes to the exemption."

Yours sincerely

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