



The Australian Industry Group
51 Walker Street
North Sydney NSW 2060
PO Box 289
North Sydney NSW 2059
Australia
ABN 76 369 958 788

26 September 2019

Deputy President Bull
Fair Work Commission
80 William Street
East Sydney NSW 2011

Dear Deputy President,

AM2018/27 – Application by Gavin, Christian to vary the Security Services Industry Award 2010

We refer to the above matter, and to the following extract from Ai Group's submissions of 20 August 2019:

[20]...It is appropriate for any proposed definition of a 'uniform' for the purposes of a modern award to recognise the distinct treatment that is given to personal protective equipment under the model WHS laws. As such, any definition of a 'uniform' should exclude 'personal protective equipment'.

In the course of the hearing which took place in the context of these proceedings on 19 September 2019, Ai Group was asked to provide greater detail on this point. Specifically, a clause reference was requested which supports Ai Group's contention at paragraph [20] of its submissions as to the treatment of Personal Protective Equipment (**PPE**) under the model WHS laws.

In response, Ai Group wishes to draw the Deputy President's attention to Division 5 – Personal Protective Equipment of the model Work Health and Safety Regulations. Regulation 44, which governs 'provision to workers and use of personal protective equipment' is annexed to this Correspondence and marked 'Attachment A'.

Equivalent provisions are also contained in the Work Health and Safety Regulations of the Commonwealth as well as States and Territories that have implemented the model laws as follows:

- *Work Health and Safety Regulations 2011* (Cth) reg. 44
- *Work Health and Safety Regulation 2007* (NSW) reg. 44.
- *Work Health and Safety Regulation 2011* (ACT) reg. 44.
- *Work Health and Safety Regulation 2011* (Qld) reg. 44
- *Work Health and Safety Regulations 2012* (SA) reg. 44
- *Work Health and Safety Regulations 2012* (Tas) reg. 44
- *Work Health and Safety (National Uniform Legislation) Regulations 2011* (NT) reg. 44.

Separate provisions governing the provision of personal protective equipment in specified circumstances are contained in the regulations passed in the remaining jurisdictions that have not adopted the model Work Health and Safety Laws as follows:

- *Occupational Health and Safety Regulations 2017* (Vic) reg. 58(3)(b), 70, 98(4), 163(4), 184(4), 276, 307(4), 307(5), 325(4), 405(4), 462(1)(e)
- *Occupational Safety and Health Regulations 1996* (WA) Part 3, Division 2

Ai Group considers that where a clear legislative regime has been established for the provision of PPE, it would be unnecessary for the Commission to exercise its powers in pursuit of the modern awards objective to vary the *Security Services Industry Award 2010* to apply an additional layer of regulation with respect to this aspect of the employment relationship.



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Please contact our office if any further clarification is requested concerning our position on this matter.

Yours sincerely,

Hamish Harrington
Workplace Relations Policy Adviser

- (d) the number and composition of the workers and other persons at the workplace.
- (4) A person conducting a business or undertaking at a workplace must implement the emergency plan for the workplace in the event of an emergency.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

Division 5 Personal protective equipment

44 Provision to workers and use of personal protective equipment

- (1) This regulation applies if personal protective equipment is to be used to minimise a risk to health and safety in relation to work at a workplace in accordance with regulation 36.
- (2) The person conducting a business or undertaking who directs the carrying out of work must provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another person conducting a business or undertaking.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

Example

Equipment that has been provided by a labour hire company.

- (3) The person conducting the business or undertaking who directs the carrying out of work must ensure that personal protective equipment provided under subregulation (2) is:
 - (a) selected to minimise risk to health and safety, including by ensuring that the equipment is:
 - (i) suitable having regard to the nature of the work and any hazard associated with the work; and
 - (ii) a suitable size and fit and reasonably comfortable for the worker who is to use or wear it; and
 - (b) maintained, repaired or replaced so that it continues to minimise risk to the worker who uses it, including by ensuring that the equipment is:

- (i) clean and hygienic; and
 - (ii) in good working order; and
 - (c) used or worn by the worker, so far as is reasonably practicable.
- (4) The person conducting a business or undertaking who directs the carrying out of work must provide the worker with information, training and instruction in the:
- (a) proper use and wearing of personal protective equipment; and
 - (b) the storage and maintenance of personal protective equipment.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

Note

A person conducting a business or undertaking must not charge or impose a levy on a worker for the provision of personal protective equipment (see section 273 of the Act).

45 Personal protective equipment used by other persons

The person conducting a business or undertaking who directs the carrying out of work must ensure, so far as is reasonably practicable, that:

- (a) personal protective equipment to be used or worn by any person other than a worker at the workplace is capable of minimising risk to the person's health and safety; and
- (b) the person uses or wears the equipment.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

46 Duties of worker

- (1) This regulation applies if a person conducting a business or undertaking provides a worker with personal protective equipment.
- (2) The worker must, so far as the worker is reasonably able, use or wear the equipment in accordance with any information, training or reasonable instruction by the person conducting the business or undertaking.

Maximum penalty:

In the case of an individual—\$3 600.
