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Commissioner J. Roe
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Dear Commissioner,

**Re. AM2014/218 Business Equipment Award 2010
AM2014/222 Contract Call Centres Award 2010
AM2014/248 Telecommunications Services Award 2010**

We write in relation to the above matters and a report to the Full Bench dated 22 April 2016. The Australian Industry Group (Ai Group) provides the following response in relation to various outstanding issues regarding the above awards.

Business Equipment Award 2010

Clause 11.3(b)(i) of the Exposure Draft – country territory

Ai Group is concerned that the approach to defining “country territory” canvassed by the ASU at the last conference may inappropriately expand the circumstances in which the higher allowance is payable.

We will require an opportunity to further investigate the history of the provision and relevant industry practice before advancing a position as to whether a definition is required and if so, whether any of the specific proposals advanced to date would be appropriate.

Clause 11.4(c) of the Exposure Draft – State workers compensation legislation

Ai Group notes that clause 11.4(c) does not appear to be a clause that is capable of being included in a modern award. That is, there is no apparent power under the *Fair Work Act 2009* to include a term about such a matter.

Clause 15.4 of the Exposure Draft – daylight saving

Ai Group contends that the ABI proposal is deeply flawed. It represents a substantive change and is not in the interests of employers. The proposal should not be adopted.

Contract Call Centres Award 2010

Clause – 15.4 of the Exposure Draft – annual leave

During the proceedings last week Ai Group indicated an intention to file suggested amendments to address our concerns relating to the payment of annual leave and leave loading under these awards at or around the time that we file our reply submissions. We have nonetheless already drafted potentially suitable amendments and accordingly suggest that this may be a matter that the parties can resolve in the context of the proceedings tomorrow, given that it appears that the issue may not be contentious.

The insertion of the words “of the minimum hourly rate” in clause 15.4 of the amended *Exposure Draft – Contract Call Centers 2015* (dated 27 April 2016) partly addresses Ai Group’s concern and should be included in the final award. The amendment clarifies that the loading does not have a compounding effect on other loadings or penalties.

However, the drafting of clause 15.3 is arguably so broad as to capture the kind of payments referred to in clause 15.4(b). This would mean that an employee would arguably be entitled to receive the 17.5% loading and the relevant penalties. Alternatively, where clause 15.4(b) applies, the employee will receive the penalties twice. We understand from the last conference that the parties agree that such “double dipping” is not intended. We accordingly suggest that clause 15.3 be amended to exclude any requirement to pay the amounts contemplated in clause 15.4(b). The following alternate wording for clause 15.3 should suffice:

15.3 An employee under this award, prior to commencing a period of annual leave, will be paid a sum equal to the salary or wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave. Provided that, subject to clause 15.4, the employee will not be entitled to any amount calculated by reference to clause 13 – penalty rates.

We also raise the following drafting issues:

- We have deleted the reference to “close-down” from the clause as its use appears to be inaccurate. The close-down is the reason a person accesses leave but the employee does not actually commence a close-down as currently suggested.
- The words “instead of the base rate of pay as referred to in s.90(1)” as adopted in the current clause are unnecessary and in some instances arguably inaccurate. There may be circumstances where the amount payable pursuant to the award will be the base rate of pay, noting that this can include over-award payments. We have accordingly suggested their deletion but would not press this point if the issue is contentious.

Telecommunications Services Award 2010

Clause 8.8 of the Exposure Draft – daylight saving

Again, the ABI proposal is deeply flawed. It represents a substantive change and not in the interests of employers. The proposal should not be adopted.

Clause 16.3 of the Exposure Draft – annual leave

We propose that a similar approach be adopted in the amended *Exposure Draft – Telecommunications Services Award 2015* (dated 27 April 2016) to that which we have outlined above in respect of the *Exposure Draft – Contract Call Centres Award 2015*.

The new wording for clauses 16.3(a) and 16.3(b) would be as follows:

16.3 Payment of annual leave

(a) An employee, prior to commencing a period of annual leave, will be paid the wages they would have received in respect of the ordinary time the employee would have worked had the employee not been on leave during the relevant period. Provided that, subject to clause 16.3(c), the employee will not be entitled to any amount calculated by reference to clause 14 - Penalty Rates.

(b) In addition to the payment of specified in clause 16.3(a), employees must be paid an annual leave loading of 17.5% of the minimum hourly rate.

There is no need to modify clause 16.3(c) in order to address this issue.

Ai Group is happy to discuss these matters further during the conference listed on 29 April 2016. We note that a similar issue has already been addressed by the Commission, with the agreement of the parties, in the context of the *Manufacturing and Associated Industries and Occupations Award 2010*.

Yours sincerely,



Brent Ferguson

National Manager – Workplace Relations Advocacy and Policy