

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

*Fast Food Industry Award 2010*  
(AM2017/49)

21 December 2017

**Ai**  
GROUP

## 4 YEARLY REVIEW OF MODERN AWARDS –

### *FAST FOOD INDUSTRY AWARD 2010*

(AM2017/49)

#### **Ai GROUP SUBSTANTIVE CLAIMS**

1. The Australian Industry Group (**Ai Group**) refers to the Directions made by Commissioner Lee on 1 December 2017 and the letter from the SDA dated 13 December 2017.
2. This submission identifies variations that will be pursued by Ai Group in relation to the *Fast Food Industry Award 2010* (**Award**) in the 2014 Four Yearly Review of Modern Awards (Group 4F) and responds to the objection raised by the SDA in its letter dated 13 December 2017.
3. An amended draft variation determination for the Award (reflecting the some variations that will be pursued) is filed with this submission.
4. The remaining variations will be filed by 16 January 2018.

#### **Variations Pursued by Ai Group**

5. In the 2014 four yearly review, Ai Group pursues four variations to the Award:
  - a. The first (claim S9A) relates to the deletion of the current laundry allowance (see clause 19.2(b) of the Award). A proposed draft variation will be filed in relation to this by 16 January 2018;
  - b. The second (claim S16) relates to the end time (6.00am) of the evening work penalty Monday to Friday (see clause 25.5(a)(i) of the Award). A proposed draft variation will be filed in relation to this by 16 January 2018;

- c. The third (claim S19) relates to the deletion to the reference to span of hours in the overtime provisions (see clause 25.5(b) of the Award); and
  - d. The fourth (a new claim) relates to the deletion of the current part-time clause (see clause 12 of the Award) and the insertion of a new flexible part-time provision modelled the clause proposed in the *Part-time and Casual Decision* [2017] FWCFB 3541.
6. Ai Group is not pursuing the claim (claim S23) to insert a facilitative provision in relation to two 5 minute breaks (see clause 27.1 of the Award).

### **Response to SDA Objection**

7. By its letter dated 13 December 2017, the SDA objects to the Ai Group seeking the insertion of the facilitative provision into the Award.
8. Ai Group submits that the SDA objection is misconceived, is based on a misunderstanding of the claimed variation and ignores the relevant history relating to the *Penalty Rates Decision* [2017] FWCFB 1001.
9. Ai Group submits that the Commission should reject the SDA objection.
10. Ai Group notes that the four yearly review is not *inter partes* proceedings but comprises the Commission undertaking of its own motion (independently of any parties) a statutory examination as required by section 156 of the FW Act (see *Penalty Rates Decision* [2017] FWCFB 1001 at [110], [837], [995], [1156]; *Re Penalty Rates Transitional Arrangements* [2017] FWCFB 3001 at [50]).
11. Ai Group notes that it is not seeking to undermine a previous determination of the Commission concerning the end time of the evening work penalty but is rather seeking a variation that supplements (and is consistent with) the previous determination.

12. Ai Group notes that the relevant history is:

- a. On 2 March 2015, Ai Group filed an outline of proposed variations to the Award in these proceedings, which outline included a substantive claim that the end time of the evening penalty be 5.00am (see Ai Group Outline of Proposed Variations dated 2 March 2015 (**Original Outline**), page 7);
- b. In 2015 and 2016, Ai Group filed evidence and submissions in the *Penalty Rates Proceedings* but did not address the end time of the evening work penalty (on the basis that the issue was to be addressed in these proceedings);
- c. On 7 October 2016, Ai Group filed a further outline of proposed variations to the Award in these proceedings, which outline included a substantive claim that the end time of the evening penalty be 5.00am (see Ai Group Outline of Proposed Variations dated 7 October 2016 (**Further Outline**), page 3);
- d. On 24 February 2017, the Full Bench that published the *Penalty Rates Decision* issued a draft determination to give effect to two variations to the Award identified in the *Penalty Rates Decision*, including a variation (identified by the Full Bench itself without hearing from the parties) to the end time of the evening penalty being 6.00am (and not 5.00am);
- e. On 3 March 2017, Ai Group filed a submission in the *Penalty Rates Proceedings* reserving its right to seek a variation to insert a facilitative provision into clause 25.5(a)(ii) of the Award to vary, by agreement, the end time to 5.00am (see Ai Group Outline of Submission dated 3 March 2017 (**March Submission**), par 3);
- f. On 7 November 2017, Ai Group filed a copy of the March Submission in these proceedings;
- g. At no stage has the Full Bench in the *Penalty Rates Proceedings* ruled on inserting a facilitative provision into the Award relating to the end time of the evening work penalty; and

- h. At not stage has the Full Bench in the *Penalty Rates Proceedings* received (or invited the filing of) submissions on inserting a facilitative provision into the Award relating to the end time of the evening work penalty.

A copy of the Original Outline, the Further Outline and the March Submission is attached to this submission.

13. Ai Group submits that the Commission has not addressed, as part of the 2014 Four Yearly Review of Modern Awards, a facilitative provision for the Award relating to the end time of the evening work penalty.
14. Ai Group submits that the *Penalty Rates Decision* and the determination giving effect to the *Penalty Rates Decision* is not a bar to the variations being pursued by it.
15. Ai Group submits that there is no basis (let alone a proper basis) to strike out the variations pursued by it.
16. In any event Ai Group submits that even if there was some basis to the SDA objection, the Commission has jurisdiction to hear variations pursued by it under section 157 of the *Fair Work Act 2009* (Cth).

### **Timetable**

17. Ai Group refers to its letters dated 27 November 2017 and 5 December 2017 in relation to the Timetable in this matter (**Ai Group letters**), and the email of the Commission dated 6 December 2017 (**FWC Email**). To date response in relation to the Timetable has not been received.
18. A copy of the Ai Group letters, and the FWC Emails are attached to this submission.



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Fast Food Award 2010 (MA000003)**

(AM2014/267)

(AM2017/49)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX

XXXX 2017

*4 yearly review of modern awards – Fast Food Award 2010 (MA000003).*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Fast Food Industry Award 2010*<sup>2</sup> be varied by:

1. Deleting clause 12.
2. Inserting in clause 12:

### **12. Part-time employment**

**12.1** A part time employee is an employee who:

- a) Works at least an average of 8 but less than 38 hours per week; and
- b) Receives on a pro-rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

**12.2** For the purpose of the averaging in clause 12.1(a), **clause 25.4 – Hours of Work** will apply to part-time employees.

**12.3** At the time of engagement, the employer and the part-time employee will agree in writing upon:

- a) The number of minimum hours of work which are guaranteed to be provided and paid to the employee each week, or where the employer operates a roster cycle of greater than one week, the number of hours of work which are guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed minimum hours**); and
- b) The days of the week, and the periods of those days when the employee will be available to work the guaranteed minimum hours (**the employee's availability**).

**12.4** The guaranteed minimum hours shall not be less than an average of 8 hours per week.

**12.5** Any change to the guaranteed minimum hours, or the employee's availability, may only occur with the written consent of the other party.

**12.6** The employer may roster, and the employee may work, the employee's guaranteed minimum hours and any additional hours in accordance with **clause 25 – Hours of Work**, provided that:

- a) The employee may not be rostered for work outside of the employee's availability; and
- b) The employee must not be rostered to work less than 3 hours for each engagement.

**12.7** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee with **clause 13 – Casual Employment**.

**12.8** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38<sup>th</sup> of the minimum weekly rate prescribed for the class of work performed.

3. Deleting clause 19.2(b).

4. In sub-clause 25.5(a)(i), deleting the words "within the span of hours" after the word "work".

B. This determination comes into effect on [insert date].

PRESIDENT

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000003.

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

Group 3 and 4 Modern Awards  
Outline of Proposed Variations

**2 MARCH 2015**





**4 YEARLY REVIEW OF MODERN AWARDS  
GROUP 3 AND 4 MODERN AWARDS  
OUTLINE OF PROPOSED VARIATIONS**

1. Ai Group has prepared this Outline of Proposed Variations for Group 3 and 4 modern awards pursuant to the Commission's Statement of 23 January 2015.<sup>1</sup>

**Group 3 and 4 Modern Awards in which Ai Group has a significant interest**

2. Ai Group has a significant interest in the following Group 3 and 4 Awards. We have a lesser interest in other Group 3 and 4 Awards. Our involvement in proceedings relating to those awards will depend upon the claims made by other interested parties and the content of the relevant exposure drafts.
3. Ai Group has a significant interest in the following awards in Group 3:

**Sub-group 3A**

- *Banking, Finance and Insurance Award 2010* (MA000019, AM2014/217)
- *Business Equipment Award 2010* (MA000021, AM2014/218)
- *Clerks Private Sector Award 2010* (MA000002, AM2014/219)
- *Commercial Sales Award 2010* (MA000083, AM2014/221)
- *Contract Call Centres Award 2010* (MA000023, AM2014/222)
- *Legal Services Award 2010* (MA000116, AM2014/233)
- *Market and Social Research Award 2010* (MA000030, AM2014/236)
- *Miscellaneous Award 2010* (MA000104, AM2014/237)

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<sup>1</sup> [2015] FWC 618

- *Telecommunications Services Award 2010* (MA000041, AM2014/248)

### **Sub-group 3C**

- *Electrical Power Industry Award 2010* (MA000088, AM2014/226)
- *Seagoing Industry Award 2010* (MA000122, AM2014/243)

### **Sub-group 3D**

- *Horticulture Award 2010* (MA000028, AM2014/231)
- *Nursery Award 2010* (MA000033, AM2014/238)
- *Sugar Industry Award 2010* (MA000087, AM2014/247)
- *Wine Industry Award 2010* (MA000090, AM2014/249)

4. Ai Group has a significant interest in the following awards in Group 4:

### **Sub-group 4A**

- *Aged Care Award 2010* (MA000018, AM2014/251)
- *Social, Community, Home Care and Disability Services Industry Award 2010* (MA000100, AM2014/285)

### **Sub-group 4B**

- *Air Pilots Award 2010* (MA000046, AM2014/252)
- *Aircraft Cabin Crew Award 2010* (MA000047, AM2014/253)
- *Airline Operations – Ground Staff Award 2010* (MA000048, AM2014/254)

### **Sub-group 4C**

- *Food, Beverage and Tobacco Manufacturing Award 2010* (MA000073, AM2014/268)

- *Funeral Industry Award 2010* (MA000105, AM2014/269)
- *Pest Control Industry Award 2010* (MA000097, AM2014/279)
- *Professional Employees Award 2010* (MA000065, AM2014/281)
- *Water Industry Award 2010* (MA000113, AM2014/289)

#### **Sub-group 4D**

- *Broadcasting and Recorded Entertainment Award 2010* (MA000091, AM2014/259)

#### **Sub-group 4E**

- *Building and Construction General On-site Award 2010* (MA000020, AM2014/260)
- *Electrical, Electronic and Communications Contracting Industry Award 2010* (MA000025, AM2014/265)
- *Joinery and Building Trades Award 2010* (MA000029, AM2014/274)
- *Mobile Crane Hiring Award 2010* (MA000032, AM2014/278)
- *Plumbing and Fire Sprinklers Award 2010* (MA000036, AM2014/280)

#### **Sub-group 4F**

- *General Retail Industry Award 2010* (MA000004, AM2014/270)
- *Fast Food Industry Award 2010* (MA000003, AM2014/267)
- *Hospitality Industry (General) Award 2010* (MA000009, AM2014/272)

## Outline of Proposed Variations to Group 3 and 4 Modern Awards

5. Ai Group is pursuing various changes to Group 3 and 4 awards during the Common Issues proceedings. Additional award-specific proposed changes to particular awards are identified below.

### Sub-group 3D

- **Horticulture Award 2010**

#### ***Coverage***

A Full Bench decision is reserved in the matter of *Mitolo Group Pty Ltd v National Union of Workers* (C2014/7871) concerning the coverage provisions of the *Horticulture Award 2010* and the *Storage Services and Wholesale Award 2010*. Ai Group may seek changes to the coverage of the *Horticulture Award 2010* following the Full Bench's decision.

### Sub-group 4C

- **Food, Beverage and Tobacco Manufacturing Award 2010**

#### ***Payment on termination***

Ai Group proposes that clause 28.3 – *Payment on termination* should enable employers who pay by electronic funds transfer to pay termination monies in accordance with the employer's pay cycle.

#### ***Annual leave loading***

Ai Group proposes that clause 34.5 – *Annual leave loading* be clarified in respect of the interaction between the payment for annual leave and leave loading for shift workers receiving a shift penalty higher than 17.5%. Ai Group proposes an amendment to ensure that employers are not obliged to pay for shift loadings twice when shiftworkers take annual leave.

## Sub-group 4E

- **Building and Construction General On-site Award 2010**

### ***Trainees***

Ai Group proposes that the interaction between Clause 28 - *National Training Wages* and Schedule C – *National Training Wage* be clarified. Clause 28 provides minimum wages for civil construction and other traineeships that apply in lieu of the minimum wages provided in the National Training Wage Schedule. Further, clause 28 uses the terminology of “Skill Level A” and “Skill Level B”, which are not defined elsewhere in the Award and are terms not used in the National Training Wage Schedule.

- **Joinery and Building Trades Award 2010**

### ***Hours of Work***

Ai Group proposes more flexible and less costly hours of work and shift work provisions for this award.

## Sub-group 4F

- **Fast Food Industry Award 2010**

### ***Coverage***

Due to emerging changes in the fast food industry, Ai Group may seek a variation to the coverage of the Award to avoid potential overlap with other awards.

### ***Casual Employment***

Ai Group proposes that the minimum engagement periods for casual employees in clause 13.4 be 2 hours, instead of 3 hours.

### ***Hours of work***

Ai Group notes the ambiguity in the application of the evening penalty at clause 25.5(a)(ii) and proposes an end time of 5am.

The reference to “span of hours” in clause 25.5(b) is unnecessary and confusing. It should, therefore, be deleted.

### ***Breaks***

Ai Group proposes that greater flexibility should exist in clause 27.1 to allow for the applicable 10 minute rest break to be taken as 2 x 5 minute rest breaks.

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

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Fast Food Industry Award 2010  
(AM2014/267)

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**4 YEARLY REVIEW OF MODERN AWARDS  
OUTLINE OF PROPOSED VARIATIONS  
AM2014/267 FAST FOOD INDUSTRY AWARD 2010**

1. The Australian Industry Group (**Ai Group**) refers to the Directions issued by President Justice Ross on 26 August 2016, requesting parties file a short submission confirming the substantive claims being pursued (**Directions**).
2. This outline is filed in accordance with the Directions. It identifies the substantive claims or variations that will be pursued by Ai Group in the *Fast Food Industry Award 2010* (**Award**) (Group 4F).
3. This outline provides:
  - A general description of the claim or variation sought; and
  - The type of case to be run and, where applicable, the anticipated number of witnesses to be called.
4. A draft variation determination for the *Fast Food Industry Award 2010* is filed with this submission.

***Variations previously proposed to the Fast Food Industry Award 2010***

5. On 2 March 2015, Ai Group filed an Outline of Proposed Variations to Group 3 and 4 Modern Awards, pursuant to a Statement issued by the Commission on 23 January 2015<sup>1</sup> (**2 March 2015 Outline**).
6. In its 2 March 2015 Outline, Ai Group proposed the following variations to the *Fast Food Industry Award 2010*:

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<sup>1</sup> [2015] FWC 618



(a) **Coverage**

Due to emerging changes in the fast food industry, Ai Group may seek a variation to the coverage of the Award to avoid potential overlap with other awards.

(b) **Casual Employment**

Ai Group proposes that the minimum engagement periods for casual employees in clause 13.4 be 2 hours, instead of 3 hours.

(c) **Hours of Work**

Ai Group notes the ambiguity in the application of the evening penalty at clause 25.5(a)(ii) and proposes an end time of 5am.

The reference to “span of hours” in clause 25.5(b) is unnecessary and confusing. It should, therefore, be deleted.

(d) **Breaks**

Ai Group proposes that greater flexibility should exist in clause 27.1 to allow for the applicable 10-minute rest break to be taken as 2 x 5-minute rest breaks.

7. Ai Group confirms its position in relation to those claims as follows:

- **Coverage:** Ai Group does not intend to pursue this variation at this stage.
- **Casual Employment:** This matter was referred to and has been dealt with by a Full Bench as part of AM2014/197 (4 Yearly Review of Modern Awards – Casual Employment).
- **Hours of Work:**
  - (i) Ai Group intends to pursue a variation in relation to clause 25.5(a)(ii). This issue has not been dealt with as part of 4 Yearly

Award Review Matter No. AM2014/305 (Penalty Rates). Further detail in relation to this claim is set out below.

(ii) Ai Group intends to pursue a variation in relation to clause 25.5(b). Further detail in relation to this claim is set out below.

- **Breaks:** Ai Group intends to pursue a variation to allow the applicable 10-minute rest break to be taken as 2x5-minute rest breaks. Further detail in relation to this is set out below.

### ***Confirmation of variations currently sought to the Fast Food Industry Award 2010***

8. Ai Group now confirms that it seeks the following variations to the *Fast Food Industry Award 2010*. The variations being pursued include some outlined in its 2 March 2015 Outline, together with new claims not previously identified:

#### **(a) Laundry Allowance (Clause 19.2(b))**

Ai Group proposes that the laundry allowance at clause 19.2(b) of the Award be removed.

Ai Group will provide evidence in support of this claim, and anticipates calling 1 – 2 witnesses.

#### **(b) Evening penalty end time (Clause 25.5(a)(ii))**

Clause 25.5(a)(ii) states that a loading of 15% will apply “for ordinary hours of work after midnight”, however does not stipulate a time at which the evening penalty rate ceases to apply. Ai Group intends to pursue a variation to clause 25.5(a)(ii) so that it is clear that the evening penalty ceases to apply at 5am.

This will be an evidentiary and merits based case. Ai Group currently estimates it may call up to 3 witnesses in support of the claim.

**(c) Saturday work (Clause 25.5(b))**

The reference to “span of hours” in clause 25.5(b) appears to be an anomaly and/or an error, as there does not appear to be a “span of hours” in the Award to which the reference relates. The words are therefore unnecessary and confusing, and should be deleted.

Ai Group’s position is that this issue may be dealt with on its merits.

**(d) Rest breaks (Clause 27.1)**

Ai Group proposes that clause 27.1 of the Award be varied so as to allow for the 10 minute rest break to be taken as 2 x 5 minute rest breaks, by agreement between an employer and an employee.

Ai Group will provide evidence in support of this claim, and anticipates calling 1 witness.

***Variations previously proposed to other Stage 4 Awards***

9. In accordance with previous directions issued by the Commission, Ai Group filed an outline of variations sought to other group 4 awards in its 2 March 2015 Outline, and a second Outline filed on 12 November 2015. For completion we note that:
- The proposed variations outlined in our submission of 2 March 2015 in relation to the *Food, Beverage and Tobacco Manufacturing Award 2010* have been referred to the Payment of Wages Full Bench (AM2016/8).
  - The proposed variations outlined in our submission of 2 March 2015 in relation to the *Building and Construction General On-Site Award 2010* and the *Joinery and Building Trades Award 2010* have been referred to a Full Bench constituted to deal with substantive variations sought to the construction industry modern awards (AM2016/23). We understand that those awards are not subject to the Directions.

- The proposed variations outlined in our submission of 15 November 2016 have been referred to the Payment of Wages Full Bench (AM2016/8).

10. Accordingly, we have not here dealt with the aforementioned variations.



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Fast Food Award 2010 (MA000003)** (AM2014/267)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX XXXX 2016

*4 yearly review of modern awards – Fast Food Award 2010 (MA000003).*

- A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Fast Food Industry Award 2010*<sup>2</sup> be varied by:
1. Deleting sub-clause 19.2(b).
  2. In sub-clause 25.5(a)(ii), inserting the words “and before 5.00am” after the word “midnight”.
  3. In sub-clause 25.5(b), deleting the words “within the span of hours” after the word “work”.
  4. In sub-clause 27.1(a), substituting the words “Subject to clause 27.1(b) below, breaks” in place of the first instance of the word “Breaks”.
  5. Inserting a new sub-clause 27.1(b), as follows:

(b) By agreement between an employer and an employee, a 10-minute rest break may instead be taken as two separate 5-minute rest breaks.
  6. Re-numbering existing sub-clauses 27.1(b) – (f), to 27.1(c) – (g).
- B. This determination comes into effect on [insert date].

PRESIDENT

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000003.

**OUTLINE OF SUBMISSION OF AUSTRALIAN INDUSTRY GROUP  
RELATING TO DRAFT DETERMINATION OF THE FULL BENCH ISSUED 24 FEBRUARY 2017**

1. On 24 February 2017, the Full Bench released a draft determination to give effect to two variations to the Fast Food Industry Award 2010 (the “**Fast Food Award**”) – the first relating to the starting time of the evening work penalty in clause 25.5(a)(i) of the Fast Food Award and the second relating to the ending time of the late night work penalty in clause 25.5(a)(ii) of the Fast Food Award. At the time of the release, the Full Bench afforded parties the opportunity to file submissions relating to the draft determination.
2. Ai Group has no objections to the form of the draft determination.
3. Ai Group notes that it had, as part of the Group 4 process of the Four Yearly Review (AM 267 of 2014), proposed that the ending time of the late night work penalty be 5.00am (rather than 6.00am found by the Full Bench in these proceedings to be the fair and relevant ending time (see [2017] FWCFB 1001 at [1134], [1135], [1333], [1335])). Ai Group appreciates that it will need to revisit its proposal in the Group 4 process in light of the decision of this Full Bench on the issue. Ai Group also wishes to reserve its right in the Group 4 process to seek a variation to the Fast Food Award to permit individual arrangements to be made or facilitative provisions to be developed that permit, by agreement, the ending time of the late night penalty to be 5.00am.

3 March 2017

**Ai Group Workplace Lawyers**



## Ai GROUP WORKPLACE LAWYERS

51 Walker Street  
North Sydney NSW 2060  
PO Box 94  
North Sydney NSW 2059  
Australia  
Ai Group Legal Unit Trust ABN 68 671 268 671

27 November 2017

### PRIVATE & CONFIDENTIAL

Associate to President Iain Ross  
Fair Work Commission  
Level 4, 1 Exhibition Street  
**Melbourne VIC 3000**

**By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)**

Dear Associate

**FWC Matter No. AM2017/49  
4 YEARLY REVIEW OF MODERN AWARDS  
SUBSTANTIVE CLAIMS – FAST FOOD INDUSTRY AWARD 2010**

We refer to the above matter and the Directions of the Fair Work Commission dated 9 November 2017 (**Directions**).

The Directions provide the following timetable:

1. 1 December 2017 – Conference in Melbourne before Commissioner Lee;
2. 7 February 2018 – The Australian Industry Group (**Ai Group**) and SDA to file draft variations, submissions and evidence in support;
3. 28 February 2018 – Parties to file submissions and evidence in reply; and
4. 6 March 2018 – Hearing (**Timetable**).

With the consent of the SDA, Ai Group requests an additional hearing day and further, for the dates in the that the Timetable be deferred to later dates on the basis that:

1. Ai Group intends to lead survey evidence, and requires an appropriate timeframe to administer the survey;
2. Ai Group further intends to lead expert evidence in support of the survey evidence, which requires briefing of an expert and report preparation time. The availability of expert witnesses is limited by the Christmas, New Year and Australia Day period;
3. The current hearing of one day does not allow sufficient time for survey and expert evidence to be heard;
4. Senior Counsel for The Australian Industry Group is not available for the hearing date on 6 March 2018;
5. Counsel has extremely limited availability during the Christmas, New Year and Australia Day period which is likely to hamper the preparation of evidence and prejudice the ability of Ai Group to meet the current dates in the Timetable; and
6. Lay witnesses have limited availability during the Christmas, New Year and Australia Day period.



**Ai GROUP WORKPLACE LAWYERS**

51 Walker Street  
North Sydney NSW 2060  
Australia

Ai Group Legal Unit Trust ABN 68 671 268 671

We thank the Commission for consideration of this request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katie-Maree O'Brien'.

**Katie-Maree O'Brien**

Lawyer

Ai Group Workplace Lawyers





**Ai GROUP WORKPLACE LAWYERS**

51 Walker Street  
North Sydney NSW 2060  
PO Box 94  
North Sydney NSW 2059  
Australia  
Ai Group Legal Unit Trust ABN 68 671 268 671

5 December 2017

**PRIVATE & CONFIDENTIAL**

Associate to President Iain Ross  
Fair Work Commission  
Level 4, 1 Exhibition Street  
**Melbourne VIC 3000**

**By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)**

Dear Associate

**FWC Matter No. AM2017/49  
4 YEARLY REVIEW OF MODERN AWARDS  
SUBSTANTIVE CLAIMS – FAST FOOD INDUSTRY AWARD 2010**

We refer to the above matter, our letter dated 27 November 2017 and the additional claim of The Australian Industry Group dated 30 November 2017.

We note that we have not received a response to our letter dated 27 November 2017, and that the we foreshadowed in our letter dated 30 November 2017 calling an additional 8 to 10 witnesses in connection with the additional claim.

We request that the Commission urgently consider the timetable proposed in this matter in light of the additional claim.

We thank the Commission for consideration of this request.

Yours sincerely

**Katie-Maree O'Brien**  
Lawyer  
Ai Group Workplace Lawyers

## Katie-Maree O'Brien

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**From:** FRANCESCHINI, Mirella <Mirella.FRANCESCHINI@fwc.gov.au>  
**Sent:** Wednesday, 6 December 2017 11:33 AM  
**To:** Katie-Maree O'Brien  
**Subject:** AM2017/49 - Fast Food Industry Award

**Categories:** Saved to SharePoint

Good morning Katie,

Thank you for your correspondence and apologies for the late reply.

Justice Ross has been on leave for the past few weeks and is returning to Chambers next Monday. I will refer your correspondence to his Honour for consideration and response.

Kind regards,

**Mirella Franceschini**  
**Associate to The Hon. Justice IJK Ross**  
**President**

**Fair Work Commission**

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