

# Ai GROUP REPORT

## Significant Workplace Relations Issues

15 November 2016

The logo for Ai GROUP, featuring the letters 'Ai' in a stylized, bold font above the word 'GROUP' in a smaller, all-caps font, all in white.

**Ai**  
GROUP

# SIGNIFICANT WORKPLACE RELATIONS ISSUES REPORT

15 November 2016

## EXECUTIVE SUMMARY

- *On 7 November, the Building and Construction Industry (Improving Productivity) Bill (ABCC Bill) was reintroduced into the Senate, after being passed by the House of Representatives on 18 October 2016.*
- *Similar to the ABCC Bill, on 7 November the Fair Work (Registered Organisations) Amendment Bill was reintroduced into the Senate, after being passed by the House of Representatives on 18 October 2016.*
- *On 10 October, the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016, was passed by Parliament.*
- *The Government is developing legislation to amend the Fair Work Act 2009 (FW Act) to increase protections for vulnerable workers. On 25 October, Ai Group attended a roundtable chaired by the Department of Employment to discuss the proposed amendments.*
- *Ai Group has expressed strong objections to new public holidays recently announced by various State and Territory Governments.*
- *Hearings commenced on 14 November in the Fair Work Commission's (FWC's) Family and Domestic Violence Leave Case. Ai Group is playing a leading role in representing employers in the Case in opposition to the unions' claim for 10 days of paid domestic violence leave, per employee, per year. Ai Group is arguing that employer assistance to employees who are subjected to domestic violence in their personal lives should be dealt with at the enterprise level – not in the award safety net.*
- *Final reply submissions on a final procedural issue in the FWC's major Penalty Rates Case are due on 16 November. The Commission is likely to hand down its decision late this year.*
- *The decision of a five-Member Full Bench of the FWC in the Casual Employment Case is still reserved. Ai Group played a leading role in the Case in strongly opposing a series of union claims which would impose major restrictions and increased costs upon employers.*
- *On 24 October, the Expert Panel of the FWC held a Preliminary Hearing in the Annual Wage Review 2016-2017. The Preliminary Hearing was scheduled to consider a union proposal for the FWC to set a medium-term target for the National Minimum Wage and award minimum wages.*

- *A Senate inquiry into Corporate Avoidance of the Fair Work Act has been established after Labor, The Greens and some of the Crossbench Senators voted in support of the inquiry. The inquiry is being conducted by the Senate Education and Employment References Committee which Labor chairs and upon which the Government only has a minority of members. Ai Group is preparing a detailed submission arguing the case for the FW Act to be varied to increase flexibility, rather than being made more restrictive.*
- *The Parliamentary Joint Committee into Human Rights is conducting an inquiry into Freedom of Speech, which will include consideration of whether ss.18C and 18D of the Racial Discrimination Act impose unreasonable restrictions on freedom of speech, and whether the handling of complaints by the Australian Human Rights Commission (AHRC) should be reformed.*
- *The FWC is redrafting various standard award clauses in plain language, as well as a number of complete awards. The plain language re-drafting process creates risks for employers. The process has led to arguments between employer groups and unions about the meaning of particular clauses, which until now have been largely settled.*
- *As part of the 4 Yearly Review, a Full Bench of the FWC has decided to remove the vehicle manufacturing section from the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and incorporate it within the Manufacturing and Associated Industries and Occupations Award 2010. It made this decision despite the objections of all of the main employer parties, including Ai Group, and unions.*
- *In a significant case, Ai Group is pursuing changes to the coverage of the Horticulture Award 2010 to ensure that the award reflects contemporary business structures and industry characteristics. The National Union of Workers (NUW) has been aggressively pursuing claims in the horticulture industry, including arguments that the costlier and less flexible Storage Services and Wholesale Award 2010 applies to numerous horticulture industry activities, e.g. packing, grading and processing of fruit and vegetables.*
- *The annual report of the Fair Work Ombudsman (FWO) was recently released. The report states that in 92 per cent of the cases which the FWO filed in a Court in the 2015/16, action was pursued against an accessory in addition to the employer who was alleged to have breached the FW Act.*
- *On 27 October, the Victorian Government released the final report of the Victorian Inquiry into the Labour Hire Industry and Insecure Work. When releasing the report, the Government announced that it will establish a licensing scheme for the labour hire industry.*
- *The Victorian Government has announced that it will establish portable long service leave schemes in the community services, security and contract cleaning industries. Ai Group has expressed strong opposition to the Government's plan on the basis that it would significantly increase business costs and threaten jobs.*

## **ABCC BILL AND THE BUILDING CODE**

On 7 November, the *Building and Construction Industry (Improving Productivity) Bill* (**ABCC Bill**) was reintroduced into the Senate, after being passed by the House of Representatives on 18 October 2016.

There are two further sitting weeks of Parliament this year (i.e. the weeks commencing 21 and 28 November). The Prime Minister has stated that the Bill will be voted upon once the Government is confident that there is sufficient Crossbench support to pass the Bill. At this stage it is unclear whether or not the Bill will be voted upon this year.

Given that this Bill was a double dissolution trigger for the last Federal Election, the Government has the option of having the Bill voted upon at a joint sitting of the Senate and House of Representatives if the Bill is initially rejected by the Senate. However, given the Government's narrow election victory, there is a need to achieve the support of most of the Crossbench Senators even if this option is chosen.

Ai Group has made numerous detailed submissions in support of the Bill and is continuing to urge the Crossbench Senators to support it.

The ABCC Bill deals with the following key issues:

- The re-establishment of the Australian Building and Construction Commission (**ABCC**) with its former powers;
- Higher penalties for unlawful industrial action (roughly 3 times the level that applies in other industries);
- The making of a Building Code which all building industry participants would be required to comply with; and
- Penalties for unlawful picketing.

If the ABCC Bill is passed, the Federal Government intends to make a Building Code under the legislation in similar terms to the Code that it pre-published in early-2014. The Government's intention is that the Code will apply to new federal government funded projects from the date when the Code comes into operation under the legislation. Under the Government's proposed approach, contractors and subcontractors who wish to carry out work on those projects will need to ensure that any enterprise agreements they have made since 24 April 2014, which apply to building work, comply with the new Code. Head contractors will also be required to ensure that any subcontractors which they engage on Federal Government funded projects are Code-compliant.

Ai Group is urging the Government not to apply the new Building Code retrospectively. That is, we are seeking that the new Code only apply to enterprise agreements made after date when the new Code comes into operation following the passage of the ABCC Bill through Parliament. Ai Group is

also urging Crossbench Senators to support this approach. Despite Ai Group's efforts, at this stage there is no indication from the Government that it intends to change its proposed approach of applying the new Code to all enterprise agreements made after 24 April 2014.

## **REGISTERED ORGANISATIONS BILL**

Similar to the ABCC Bill, on 7 November the *Fair Work (Registered Organisations) Amendment Bill (RO Bill)* was reintroduced into the Senate, after being passed by the House of Representatives on 18 October 2016.

The Prime Minister has stated that the Bill will be voted upon once the Government is confident that there is sufficient Crossbench support to pass the Bill. At this stage it is unclear whether or not the Bill will be voted upon in the final two sitting weeks of Parliament this year (i.e. the weeks commencing 21 November and 28 November).

Given that this Bill was a double dissolution trigger for the last Federal Election, the Government has the option of having the Bill voted upon at a joint sitting of the Senate and House of Representatives if the Bill is initially rejected by the Senate.

Ai Group has expressed support for the Bill. An earlier version of the Bill was amended to address a number of practical regulatory issues raised by Ai Group.

The RO Bill would amend the *Fair Work (Registered Organisations) Act 2009* to:

- establish a Registered Organisations Commission;
- clarify and expand the duties of union officers;
- increase penalties and disclosure obligations; and
- provide for the disqualification of union officers who breach their duties.

## **EMERGENCY SERVICES VOLUNTEERS BILL**

On 10 October, the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016*, was passed by Parliament.

The Bill amends the *Fair Work Act 2009 (FW Act)* to create a new "unlawful term" for enterprise agreements, entitled an "objectionable emergency management term". Terms that impede volunteer emergency service bodies (e.g. the Country Fire Authority in Victoria) in managing their volunteer operations are now unlawful.

The Bill delivers on an election promise of the Federal Government to protect CFA volunteers from unreasonable intrusion by the United Firefighters Union.

## **GOVERNMENT LEGISLATION TO AMEND THE FAIR WORK ACT TO PROTECT VULNERABLE WORKERS**

Consistent with a pre-Election commitment, the Government is developing legislation to amend the FW Act to increase protections for vulnerable workers. On 25 October, Ai Group attended a roundtable chaired by the Department of Employment to discuss the proposed amendments.

The amendments which the Government is proposing include:

- Maximum penalties for breaches of the record-keeping and pay-slip requirements under the FW Act would be increased to bring them in line with penalties for underpaying workers. (i.e. a maximum penalty of \$54,000 per breach).
- Penalties of 10 times the current maximum penalties would be implemented for “serious contraventions” involving deliberate and systematic exploitation of workers (i.e. a maximum penalty of \$540,000 per breach).
- Franchisors would be made responsible for underpayments by their franchisees, if the franchisor knew or ought to have known about the contraventions. There will be no liability if the franchisor took all reasonable steps to prevent the contraventions from happening.
- The powers of the Fair Work Ombudsman (**FWO**) would be strengthened, including giving the FWO compulsory interview powers.
- “Cashback” requests by employers will be prohibited, to prevent employees being forced to pay back a portion of their wages to an employer.

Ai Group is working hard to ensure that the proposed legislative amendments are balanced and do not operate unfairly for employers.

## **ADDITIONAL PUBLIC HOLIDAYS IN QUEENSLAND, VICTORIA AND THE NORTHERN TERRITORY**

Ai Group has expressed strong objections to new public holidays recently announced by various State and Territory Governments.

The Queensland Government recently announced that Easter Sunday would be proclaimed as a public holiday.

The Northern Territory recently announced new half day public holidays on Christmas Eve and New Year’s Eve.

The Victorian Government has announced that it is reconsidering its earlier decision not to proclaim a public holiday on 25 December given that a Christmas Day public holiday has been proclaimed on Tuesday 27 December. It appears that public holidays are now likely to be proclaimed on 25 December and 27 December.

In media comments, Ai Group Chief Executive Innes Willox stated: “From the Footy Friday holiday in Victoria, to the new Easter Sunday public holiday in Queensland, to the part-day Christmas Eve and New Year’s Eve public holidays in South Australia, and Family and Community Day in the ACT – the situation is getting worse not better. State and Territory Governments are tripping over each other in the rush to see who can be the most profligate with businesses’ money.”

Evidence from research conducted by Ai Group suggests the economy is the biggest loser when additional public holidays are proclaimed. An Ai Group survey identified an estimated cost of at least \$1 billion in lost sales for Victorian businesses, with a \$500-million-dollar wage bill on top, as a result of the AFL Grand Final Public Holiday.

In its draft report on Australia’s Workplace Relations Framework, the Productivity Commission recommended amendments to the FW Act to ensure that employers are not required to pay for leave or additional penalty rates on any newly designated State and Territory public holidays. Ai Group is urging the Federal Government to introduce legislative amendments to implement this recommendation without delay.

Ai Group is arguing that, through the Council of Australian Governments (**COAG**), a nationally consistent approach to public holidays needs to be developed in respect of: the quantum of public holidays; the days on which public holidays which are recognised in each State and Territory are held; and the substitution of certain public holidays which fall on weekends.

## **DOMESTIC VIOLENCE LEAVE CASE**

Hearings commenced on 14 November in the Fair Work Commission’s (**FWC’s**) *Family and Domestic Violence Leave Case*. Ai Group is playing a leading role in representing employers in the Case in opposition to the unions' claim for 10 days of paid domestic violence leave, per employee, per year. Ai Group is arguing that employer assistance to employees who are subjected to domestic violence in their personal lives should be dealt with at the enterprise level – not in the award safety net.

Employers have different capacities to provide support to employees experiencing domestic violence. Many large employers have relevant written policies to assist employee victims. Smaller employers often do not have written policies but they typically adopt a reasonable and compassionate approach when their employees suffer genuine hardships. Ai Group is arguing that the unions’ “one-size-fits-all” approach is not appropriate.

The ACTU's proposed clause is very poorly drafted and would lead to a raft of problems and inequities. The definition of family violence is very vague and the purposes for which leave can be taken are very vague.

A person who is listed in an employer’s casual pool and is only called in to work infrequently would be entitled to 10 days of paid leave from the employer, even if they had not worked for the employer recently. The unions’ proposed clause would operate unfairly and unworkably for employers in industries like retail and hospitality where a high proportion of the workforce is engaged on a casual basis.

Paid domestic violence leave is extremely uncommon internationally. The only country that is known to have paid domestic violence leave at a national level is the Philippines, but the entitlement is not well-known or well-enforced. In its submissions, the ACTU refers to a number of US States that have granted domestic violence leave, but these entitlements are unpaid and typically only apply to larger businesses. A few provinces in Canada have some paid domestic violence leave entitlements, but the entitlements do not exist in most of the country.

Only a minority of enterprise agreements include domestic violence provisions. These agreements contain a wide variety of different arrangements, leave and non-leave. Most of those that contain leave entitlements contain less than 10 days of leave, with many providing unpaid leave entitlements, or access to existing personal/carer's leave entitlements.

Hearings in the case have been scheduled between Monday 14 November and Friday 2 December.

### **PENALTY RATES CASE**

Final reply submissions on a final procedural issue in the FWC's major *Penalty Rates Case* are due on 16 November. The Commission is likely to hand down its decision late this year.

The case is dealing with penalty rates in the fast food, retail and hospitality industries. Ai Group is representing the fast food industry in the proceedings in pursuing, amongst other changes, a reduction in the Sunday penalty rate to align with the Saturday penalty rate.

### **CASUAL EMPLOYMENT CASE**

The decision of a five-Member Full Bench of the FWC in the *Casual Employment Case* is still reserved. Ai Group played a leading role in the Case in strongly opposing a series of union claims which would impose major restrictions and increased costs upon employers.

The unions' claims include:

- Giving employees an absolute right to convert to permanent employment after a period of regular service, with employers having no right of reasonable refusal;
- Minimum engagement periods for casual and part-time employees of at least four hours per day/shift (with even longer periods in some awards);
- A prohibition on employers engaging a greater number of casual or part-time employees unless existing casual and part-time employees have been offered more hours by the employer and declined the offer;
- A requirement to count service as a casual for the purposes of redundancy and other entitlements, for employees who have converted to permanent employment.

Contrary to union claims about an increased “casualisation” of the workforce, the level of casual employment in Australia has been stable since 1998, at about 20% of the workforce. There are over 2 million casual employees in Australia.

## **PRELIMINARY HEARING – ANNUAL WAGE REVIEW**

On 24 October, the Expert Panel of the FWC held a Preliminary Hearing in the *Annual Wage Review 2016-2017*. The Preliminary Hearing was scheduled to consider a union proposal for the FWC to set a medium-term target for the National Minimum Wage and award minimum wages.

Ai Group expressed opposition to the setting of a medium-term target for the following reasons:

- The concept of a medium-term target is inconsistent with the duty of the FWC to review minimum wages annually;
- Setting a target would result in the FWC being heavily influenced by that target in each Annual Wage Review and, as a consequence, being diverted from its duty to take into account the factors in the minimum wages objective and modern awards objective in the FW Act;
- The setting of a medium-term target would make it more difficult for the FWC to take into account major events like the Global Financial Crisis and major droughts, floods and cyclones which have influenced national minimum wage outcomes over the past decade;
- A medium-term target would inhibit the Commission from taking any future changes in the broader social safety net into account, such as changes to tax transfer payments, taxation levels and superannuation.
- The unions have failed to establish any inadequacy in the FWC’s current approach to adjusting minimum wages.
- The unions’ proposal for a medium-term target is based on developments in the UK and in various other overseas countries. However, there has been no decline in the real value of Australian minimum wages, as has been the case in the UK. Accordingly, there is no need to introduce a new and additional policy response. Also, Australia’s minimum wage rates are high by international standards. As of 2015, Australian minimum wage rates had risen to be equal to the Netherlands and second only to Luxembourg among OECD countries.

In its submissions to the Expert Panel, the Australian Government concurred with Ai Group that a medium-term target should not be set.

## **SENATE INQUIRY – CORPORATE AVOIDANCE OF THE FAIR WORK ACT**

A Senate inquiry into Corporate Avoidance of the Fair Work Act has been established after Labor, The Greens and some of the Crossbench Senators voted in support of the inquiry. The inquiry is being conducted by the Senate Education and Employment References Committee which Labor

chairs and upon which the Government only has a minority of members. Ai Group is preparing a detailed submission arguing the case for the FW Act to be varied to increase flexibility, rather than being made more restrictive.

The Committee is chaired by Labor Senator Gavin Marshall. There are three Labor members of the Committee (Senators Marshall, Collins and Kitchin), one Greens' members (Senator Hanson-Young) and two Coalition members (Senators McKenzie and Paterson).

The Terms of Reference require the Committee to investigate the incidence of, and trends in, corporate avoidance of the FW Act with particular reference to:

- The use of labour hire and/or contracting arrangements that affect workers' pay and conditions;
- Voting cohorts to approve agreements with a broad scope that affect workers' pay and conditions;
- The use of agreement termination that affect workers' pay and conditions;
- The effectiveness of transfer of business provisions in protecting workers' pay and conditions;
- The avoidance of redundancy entitlements by labour hire companies;
- The effectiveness of any protections afforded to labour hire employees from unfair dismissal;
- The approval of enterprise agreements by workers not yet residing in Australia that affect workers' pay and conditions;
- The extent to which companies avoid their obligations under the FW Act by engaging workers on visas;
- Whether the National Employment Standards and modern awards act as an effective 'floor' for wages and conditions and the extent to which companies enter into arrangements that avoid these obligations;
- Legacy issues relating to Work Choices and Australian Workplace Agreements;
- The economic and fiscal impact of reducing wages and conditions across the economy; and
- Any other related matters.

The closing date for submissions is 25 November 2016. The Committee is required to report to Parliament by 7 August 2017.

## **INQUIRY INTO SECTIONS 18C AND 18D OF THE *RACIAL DISCRIMINATION ACT* AND THE AHRC'S PROCESSES**

The Parliamentary Joint Committee into Human Rights is conducting an inquiry into Freedom of Speech, which will include consideration of whether ss.18C and 18D of the *Racial Discrimination Act* impose unreasonable restrictions on freedom of speech, and whether the handling of complaints by the Australian Human Rights Commission (**AHRC**) should be reformed.

The inquiry was established after significant public debate and concern about a complaint pursued against a number of Queensland University of Technology (**QUT**) students who had made social media comments after a group of non-indigenous students were excluded from an indigenous computer laboratory, and a separate complaint Bill Leak cartoon which appeared in *The Australian*. The complaint against three of the QUT students was recently dismissed by the Federal Circuit Court but other students (or their parents) paid significant financial sums in settlement of the complaints against them. The complaint against Bill Leak was recently dropped after the complaint was withdrawn.

Section 18C outlaws acts (other than in private) that are *“reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people”* because of race, colour or national or ethnic origin. There are exemptions in s.18D which provide some protection for journalists and artists.

The Chair of the AHRC, Gillian Triggs, recently stated that if “offend” and “insult” was deleted from s.18C and “vilify” was added, this would strengthen the section.

Ai Group intends to make a submission in support of amending s.18C given the risks and uncertainties which the section currently presents for employers.

A recent unfair dismissal case involving BHP Billiton subsidiary, Mt Arthur Coal, highlights the difficulties that an employer can face when dealing with racist conduct in its workplace. An employee was sacked for broadcasting grossly racist and homophobic comments on the company's radio system. The comments breached company policies that were communicated to all employees. Despite this, the Majority of a Full Bench of the Commission (Vice President Hatcher and Deputy President Wells) upheld an earlier decision of Commissioner Saunders who had reinstated the employee. The member on the Full Bench who dissented (Commissioner Johns) expressed strong disagreement with the Majority's decision. Section 18C of the Racial Discrimination Act outlaws racial statements that offend or insult, yet this case highlights that when an employer takes action to deal with such conduct in its workplace, it can be found to have breached the unfair dismissal laws.

Submissions to the Parliamentary inquiry are required by 9 December. The Committee is required to report to Parliament by 28 February 2017.

#### **4 YEARLY REVIEW OF AWARDS – PLAIN LANGUAGE RE-DRAFTING**

The FWC is redrafting various standard award clauses in plain language, as well as a number of complete awards. The plain language re-drafting process creates risks for employers. The process has led to arguments between employer groups and unions about the meaning of particular clauses, which until now have been largely settled.

Ai Group has filed submissions identifying a raft of problems with the FWC's plain language re-drafts of standard award clauses relating to individual flexibility arrangements, dispute resolution, consultation, termination of employment and redundancy. Ai Group's submissions argue that, as re-drafted, the proposed clauses would increase employer costs, reduce flexibility and lead to various other adverse outcomes.

The FWC recently released draft plain language re-drafting guidelines. Submissions on the draft guidelines are due on 17 November.

#### **AWARD COVERAGE FOR VEHICLE AND COMPONENT MANUFACTURING**

As part of the 4 Yearly Review, a Full Bench of the FWC has decided to remove the vehicle manufacturing section from the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* and incorporate it within the *Manufacturing and Associated Industries and Occupations Award 2010*. It made this decision despite the objections of all of the main employer parties, including Ai Group, and unions.

The conditions in the two awards are significantly different. Accordingly, combining the two awards in a manner which does not significantly alter the existing award conditions for employers or employees will be difficult. A recently published FWC exposure draft of variations to the Manufacturing Award to include the vehicle manufacturing section of the Vehicle Award is very problematic for employers and employees.

Ai Group and the Australian Manufacturing Workers Union (**AMWU**) have commenced negotiations in an endeavour to reach agreement on the draft variations to the Manufacturing Award. Both parties are urging the Commission to give the parties time to work through the issues.

Submissions on the FWC's exposure draft variations are due on 18 November and a conference is scheduled before Commissioner Bissett on 5 December.

#### **HORTICULTURE AWARD COVERAGE CASE**

In a significant case, Ai Group is pursuing changes to the coverage of the *Horticulture Award 2010* to ensure that the award reflects contemporary business structures and industry characteristics. The National Union of Workers (**NUW**) has been aggressively pursuing claims in the horticulture industry, including arguments that the costlier and less flexible *Storage Services and Wholesale Award 2010* applies to numerous horticulture industry activities, e.g. packing, grading and processing of fruit and vegetables.

Ai Group is required to file evidence and submissions in support of the proposed award variations by 19 December. The hearings before a Full Bench of the FWC will take place next year.

### **ANNUAL REPORT OF THE FAIR WORK OMBUDSMAN – ACCESSORIAL LIABILITY**

The annual report of the Fair Work Ombudsman (**FWO**) was recently released. The report states that in 92 per cent of the cases which the FWO filed in a Court in the 2015.16 year, action was pursued against an accessory in addition to the employer who was alleged to have breached the FW Act.

The accessorial liability provisions are found in s.550 of the FW Act. “Accessories” can be held liable if they:

- Aided, abetted, counselled, procured or induced the contravention;
- Were in any way, by act or omission, directly or indirectly, knowingly concerned in or a party to the contravention; or
- Conspired with others to effect the contravention.

The FWO has been using the accessorial provisions to take action against businesses higher-up in the supply chain than the business which is alleged to have breached the Act. The FWO has also taken action against CEOs, directors, accountants, human resources managers and other individuals who were involved in the contravention.

### **FINAL REPORT OF THE VICTORIAN INQUIRY INTO THE LABOUR HIRE INDUSTRY AND INSECURE WORK**

On 27 October, the Victorian Government released the final report of the Victorian Inquiry into the Labour Hire Industry and Insecure Work. When releasing the report, the Government announced that it will establish a licensing scheme for the labour hire industry.

The inquiry report recommends that the Victorian Government advocate through COAG the national adoption of a sector-specific labour hire licensing scheme. In the meantime, the report recommends that the Victorian Government implement a licensing scheme for labour hire in the horticulture, meat and cleaning industries.

In its public comments, Ai Group expressed the view that the report raises some valid issues but not all of the recommendations have merit. It is essential that in dealing with a very small minority of disreputable labour hire operators, an undue regulatory burden is not imposed on the vast majority of labour hire companies and their clients. As recognised in the report, the labour hire industry provides vital flexibility to employers and employees. Industrial laws and awards apply to labour hire companies and their employees in the same manner as other employers and employees.

Ai Group has expressed opposition to the Recommendation that enterprise agreements should be permitted to include clauses requiring that labour hire contractors provide the same wages and conditions as their clients. These clauses are not appropriate and need to be outlawed as

recommended by the Productivity Commission Inquiry into the Workplace Relations Framework, the Heydon Royal Commission and the Harper Competition Review.

Ai Group has also expressed concern about Recommendation 35 which would lock many businesses out of Government contracts if they do not predominantly engage permanent workers. There are very different patterns of casual employment across industries, reflecting differences in industry characteristics and the nature of work.

### **VICTORIAN GOVERNMENT TO EXPAND PORTABLE LONG SERVICE LEAVE**

The Victorian Government has announced that it will establish portable long service leave schemes in the community services, security and contract cleaning industries. Ai Group has expressed strong opposition to the Government's plan on the basis that it would significantly increase business costs and threaten jobs.

The announcement goes beyond the recommendations which were made by a recent Victorian Parliamentary inquiry into portable long service leave. In the inquiry report, the Government members of the Committee (who were in the minority) recommended that a feasibility study be carried out on whether portable long service leave should be introduced in the cleaning industry and the security industry. The majority of Committee members did not support the relevant recommendations.

The analysis in Ai Group's submission to the inquiry shows that portable long service leave is over four times as costly as regular long service leave. For example, regular long service leave in the Victorian health care and social assistance industry currently costs employers \$83 million per year. A portable scheme for this industry would cost businesses \$358 million per year.

## **NATIONAL WORKPLACE RELATIONS POLICY AND ADVOCACY**

This report has been prepared by Ai Group's National Workplace Relations Policy and Advocacy Team. The Team represents the interests of Ai Group Members through:

- Writing submissions and appearing in major cases in the Fair Work Commission and Courts;
- Pursuing appeals and other cases in Tribunals and Courts on issues of importance to Ai Group Members;
- Representing Members interests in modern award cases and reviews;
- Keeping Ai Group Members informed and involved in workplace relations developments;
- Providing forums for Ai Group Members to share information on best practice workplace relations approaches, and to influence developments, e.g. through Ai Group's PIR (Policy-Influence-Reform) Forum;
- Developing policy proposals for necessary reforms to workplace relations laws;
- Making representations to Government and Opposition parties in support of a more productive and flexible workplace relations system;
- Leading and influencing the workplace relations policy agenda;
- Writing submissions and appearing in numerous inquiries and reviews carried out by a wide range of bodies including Parliamentary Committees, the Productivity Commission, the Australian Human Rights Commission, the Australian Law Reform Commission, and others; and
- Opposing union campaigns on issues which would be damaging to competitiveness and productivity.

Ai Group welcomes and values your input. Should you wish to discuss any of the issues in this report, please contact Stephen Smith, Head of National Workplace Relations Policy on email [stephen.smith@aigroup.com.au](mailto:stephen.smith@aigroup.com.au) or telephone 02 9466 5521.

We appreciate your support.