SIGNIFICANT WORKPLACE RELATIONS ISSUES

The Australian Industry Group

18 November 2019

Ai GROUP | INFLUENCE & POLICY

EXECUTIVE SUMMARY

There have been numerous important developments concerning wage underpayments. This is an area of significant risk for businesses. All Ai Group Members are urged to carefully check the payroll rules in their payroll systems, their time recording practices, and their pay record and pay slip practices to ensure compliance with relevant awards, enterprise agreements and the *Fair Work Act*. Ai Group and Ai Group Workplace Lawyers offer a variety of Workplace Compliance Advice and Auditing Services to assist Members.

The Australian Government is progressively releasing discussion papers on areas of potential industrial relations reform.

On 25 October, Ai Group made a detailed submission in response to an Australian Government discussion paper on: *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*.

On 1 November, Ai Group and the Australian Constructors Association made a joint submission in response to an Attorney-General's Department discussion paper on: *Attracting major infrastructure, resources and energy projects to increase employment - Project life greenfields agreements*.

The Australian Government is in negotiations with Crossbench Senators in an endeavour to achieve sufficient support in the Senate for the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* to pass through Parliament. There are only two Parliamentary sitting weeks left this year – the last week in November and the first week in December. The Bill passed through the House of Representatives in July.

The *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019* will hopefully be passed by the Senate before the end of the year. The Bill passed through the House of Representatives in September. Ai Group strongly supports the Bill.

The last of the required materials were filed in the High Court of Australia by Ai Group Workplace Lawyers on 4 November in support of the applications by Mondelez International and the Australian Government for special leave to appeal the decision of the Full Court of the Federal Court in the *Mondelez v AMWU* case. The case concerns the quantum of personal/carer's leave that an employee is entitled to under section 96 of the *Fair Work Act* and, in particular, the meaning of the expression "10 days of paid personal/carer's leave".

The decision of the Full Court of the Federal Court is still reserved in the *WorkPac v Rossato* case. In the case, the Court is considering arguments about the meaning of the expression 'casual employee' in the *Fair Work Act* and also considering arguments about the ability for an employer to offset any annual leave loading paid against other entitlements that may be owed.

Ai Group is pressing for the Australian Government to introduce reforms to Australia's class action laws. There has been a big increase in class actions over the past couple of years driven by litigation funders. Many overseas litigation funding firms have moved into Australia in a big way due to our lax class action laws and the absence of regulation of litigation funding arrangements. Numerous current class actions relate to claims under the *Fair Work Act*. For example, at least eight current class actions relate to claims for back-pay of annual leave entitlements for casual employees.

On 2 October, Ai Group made a submission on an exposure draft of a *Religious Discrimination Bill 2019*, released by the Australian Government for public comment. Ai Group has some substantial concerns about the Bill given its impact on employers.

On 1 January 2019, the *Modern Slavery Act 2018* (Cth) commenced, requiring large organisations with an annual consolidated revenue of at least $100 million, to report annually on the risks of modern slavery in their operations and supply chains. The Federal Government has released its *Guidance for Reporting Entities* to assist organisations with their reporting. The guidance material was released following extensive public consultation, including with Ai Group.

On 13 November, the Australian Securities and Investments Commission issued Guidance Materials for Whistleblower Policies, to assist companies to comply with the amendments made to the *Corporations Act 2001* (Cth) on 1 July 2019 which substantially increase protections for whistleblowers who report misconduct in relation to the operation of particular organisations. **From 1 January 2020**, all public and 'large proprietary companies' must have a whistleblower policy that provides information on whistleblowing as required by the legislation, and must make that policy available to officers and employees of the company.

On 28 November, a Full Bench headed by Fair Work Commission (**FWC**) President, Justice Iain Ross, will hear arguments about whether changes should be made to the spread of hours clauses in numerous awards including the *Manufacturing and Associated Industries and Occupations Award 2010*.

On 26 November, the final hearing before a Full Bench of the FWC will take place in an important case to clarify the coverage of the *Miscellaneous Award 2010*. In recent times there has been uncertainty about the coverage of the Award.

A Full Bench of the FWC, headed by FWC President Iain Ross, has scheduled a case on the Commission's own motion to review whether the C14 classifications in 14 awards should be varied to prevent employees being classified at the C14 level indefinitely.

In October, an Expert Panel handed down their final report in the Review of the Australian Qualifications Framework. The recommendations in the report could have a significant impact on awards, given that many award classifications are linked to AQF levels.

In December, a Full Bench will hear final submissions in relation to an application by Professionals Australia to make major changes to the hours of work clause in the *Professional Employees Award 2010*.

All employers with staff covered under the annualised salary provisions in about 20 awards will need to consider what changes they need to make to employment contracts, record keeping and work practices in order to comply with the new annualised salary clauses that will come into operation on 1 March 2020 as a result of the FWC's *4 Yearly Review – Annualised Salaries Case*. The *Clerks – Private Sector Award 2010* is one of the awards affected.

An extensive conciliation process in the FWC has been taking place since early 2019 in response to an application made by Ai Group to vary the coverage of the *Black Coal Mining Industry Award 2010*, which is linked to the Coal Mining Industry Long Service Leave Scheme (**Coal LSL scheme**). A levy of 2% on the 'eligible wages' of each 'eligible employee' is payable under the Coal LSL scheme but the definition of 'eligible employee' in the relevant legislation is very unclear.

On 6 November, the Attorney-General's Department released its report on *Trends in Federal Enterprise Bargaining* for the June 2019 quarter.

The deadline for applying for a licence under the Victorian labour hire licensing scheme has passed. From 29 October, users (or hosts) of labour hire service providers must only use a licensed provider or a provider that submitted its application for a licence by 29 October. Heavy penalties apply for breaches of the legislation, both for providers and users of labour hire services.

The South Australian Government is pursuing amendments to the *Labour Hire Licensing Act 2017* (SA) to narrow the scope of the legislation. If the amendments are passed by Parliament, the labour hire licensing scheme will apply only to the Horticulture processing, Meat processing, Seafood processing, Cleaning, and Trolley collection industries.

CONTENTS

DEVELOPMENTS REGARDING AWARD AND ENTERPRISE AGREEMENT UNDERPAYMENTS

There have been numerous important developments concerning wage underpayments. This is an area of significant risk for businesses. All Ai Group Members are urged to carefully check the payroll rules in their payroll systems, their time recording practices, and their pay record and pay slip practices to ensure compliance with relevant awards, enterprise agreements and the *Fair Work Act*. Ai Group and Ai Group Workplace Lawyers offer a variety of Workplace Compliance Advice and Auditing Services to assist Members.

Over the past few years, underpayments by a number of well-known organisations have attracted widespread publicity. Also, an increasing number of major corporations have been self-disclosing underpayments to the Fair Work Ombudsman (**FWO**).

The following factors appear to have influenced these developments:

- In 2017, maximum civil penalties were increased 10-fold for breaches of awards and enterprise agreements, and 20-fold for breaches of payslip and record-keeping requirements;

- In late 2018, the final report of the Migrant Worker Taskforce, chaired by Professor Allan Fels, was released. At the time when the report was released the Federal Government announced 'in principle' support for all of the recommendations, including a recommendation that criminal penalties be introduced for serious and deliberate underpayments.

- The Victorian Government and Queensland Governments have announced their intention to amend the Crimes Acts in these States to implement criminal penalties for serious and deliberate underpayments, including imprisonment.

- In response to the announcements by corporation of underpayments, there has been widespread public criticism including strong criticisms by the Federal Government and the Fair Work Ombudsman. This has led to many businesses reviewing their payroll rules and practices, and a focus on the issue by boards and senior management.

- The implementation of new requirements for payroll reporting to the Australian Taxation Office (i.e. Single Touch Payroll) has led to many businesses reviewing their payroll rules and arrangements and various payroll errors have been identified by the businesses.

A Capability Statement for Ai Group's and Ai Group Workplace Lawyers' *Workplace Compliance Advice and Auditing Services* is attached. (**Attachment A**).

Common errors that many employers have made include:

- Treating supervisors and lower-level managers as 'staff employees' and not checking whether an award or enterprise agreement applies to them;

- Failing to record and pay for additional hours / overtime, for employees covered by an award or enterprise agreement;

- Failing to identify the specific days and times when any regular overtime built into a shift roster is worked. This is important because different payments apply for overtime worked at different times of the day and week;

- Failing to identify allowances, loadings and penalties separately in pay records and on pay slips, as required by the *Fair Work Regulations 2009*; and

- Assuming that individual award provisions can be ignored so long as the salary paid to an employee exceeds the minimum amount that an employee would be entitled to under the relevant award or enterprise agreement, but failing to include a 'set-off' clause in an employee's common law contract.

The Australian Government recently released a discussion paper entitled *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance* and invited interested parties to make submissions. Ai Group made a detailed submission on 25 October (see separate item below).

Given the often ill-informed commentary about Australia's existing laws concerning wage underpayments and widespread calls for legislative change, on 7 November Ai Group issued the following media release:

> **Calm consideration needed in complex workplace compliance debate**
>
> "In the current public debate about whether businesses have done enough to ensure compliance with Australia's extremely complex workplace relations system, calm consideration is needed about any potential changes," Ai Group Chief Executive, Innes Willox, said today.
>
> "The fact is that Australia has by far the most complex workplace relations system in the world. For example, we are the only country in the world that has an award system, and the only country in the world with a few thousand legally enforceable rates of pay."
>
> "Another fact is that there are already very heavy penalties in place for breaches of awards. The maximum penalties for breaching awards and the National Employment Standards were increased tenfold two years ago and twentyfold for breaches of payslip and pay record requirements."
>
> "A further fact is that there is already a small claims jurisdiction in the *Fair Work Act*. It was never abolished and so the ACTU's call for the small claims system to be brought back makes no sense."
>
> "Also, the ACTU's proposal to give the Fair Work Commission the power to deal with underpayments, breaches the separation of powers in the Australian Constitution as determined in the High Court's *Boilermakers Case* in 1956 (in which Ai Group's predecessor organisation was the respondent). In this case, the High Court held that the predecessor tribunal to the Fair Work Commission could not exercise judicial powers because these powers can only be exercised by a relevant Court. The Commission does not have the power to order employers to make back-payments and it cannot impose penalties. The relevant provisions in the Constitution have not changed since 1956."
>
> "Another relevant fact is that the directors of a company can be held liable for breaches of awards by a company under the accessorial liability provisions in section 550 of the *Fair Work Act***.** There have been many cases where penalties have been imposed on directors. There is no case for further change in this area at all."

"Another fact is that the vast majority of businesses do the right thing and if errors are discovered they quickly remedy them," Mr Willox said.

AUSTRALIAN GOVERNMENT'S CONSULTATION PROCESS ON IR REFORMS

The Australian Government is progressively releasing discussion papers on areas of potential industrial relations reform.

The following two discussion papers have been released so far:

- *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance* (see previous item above).

- *Attracting major infrastructure, resources and energy projects to increase employment - Project life greenfields agreements* (see separate item below).

Other topics mentioned by the Federal Government for potential discussion papers include:

- The complexity of awards;

- The complexity of enterprise agreement requirements;

- Inconsistent meanings of casual employment; and

- Unfair dismissal laws.

The three criteria that the Government has stated that any further industrial relations reforms would need to meet are:

1. They must create jobs and put upwards pressure on wages to benefit workers;

2. They must help business by boosting productivity; and

3. They must help to grow the economy overall.

GOVERNMENT DISCUSSION PAPER ON PENALTIES FOR EMPLOYERS THAT UNDERPAY EMPLOYEES

On 25 October, Ai Group made a detailed submission in response to an Australian Government discussion paper on: *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*.

The discussion paper raises a series of issues and poses questions on:

- The adequacy of the current civil penalties under the *Fair Work Act*;

- Whether accessorial liability should be extended to other categories of lead firms in a supply chain;

- Whether penalties should be increased for sham contracting offences; and

- In what circumstances should underpayment of wages attract criminal penalties?

Ai Group's submission argues that:

1. Given that the Protecting Vulnerable Workers Amendments to the *Fair Work Act*, which increased penalties by up to 20 times, have only been in place for two years, there is inadequate evidence at this early stage to conclude that the measures will not be effective in addressing underpayments. The Australian Government has made it clear that any changes to Australia's workplace relations system should be evidence-based.

2. Over the past 12 months there has been a substantial increase in the number of underpayments self-reported to the FWO and remedied by employers. As acknowledged in the FWO's 2018-19 annual report, this development suggests that 'compliance and enforcement activities are creating the desired effect'.

3. Ai Group opposes any disturbance to the existing accessorial liability provisions in the *Fair Work Act*. These provisions are working effectively and as intended. Lowering the test to one of 'recklessness' rather than actual knowledge, would be unfair given the extreme complexity of Australia's workplace relations system, with thousands of pages of relevant legislation, regulations and award provisions. It is very challenging for large businesses and HR professionals to successfully navigate the workplace relations system, and even more challenging for SMEs.

4. There are many legitimate reasons why businesses engage in outsourcing and subcontracting. There would be many adverse consequences of imposing liabilities on businesses for underpayments of other businesses that they have outsourced or subcontracted work to. This proposal would operate as a major barrier to the restructuring of businesses and would impede productivity and competitiveness. It would also operate as a barrier to investment in Australia. More businesses would be driven offshore or wound up, and more jobs would be lost.

5. Ai Group strongly opposes the introduction of criminal penalties for wage underpayments. While at first glance, the introduction of criminal penalties for underpayments might seem like a good idea, there are many reasons why this is not in anyone's interests and needs to be rejected, including:

    a. Implementing criminal penalties for wage underpayments would discourage investment, entrepreneurship and employment growth;

    b. Exposing directors and managers of businesses to criminal penalties would operate as a major barrier to employers self-disclosing underpayments to the FWO; and

    c. Importantly, a criminal case would not deliver any back-pay to an underpaid worker. Where a criminal case is underway, any civil case to recoup unpaid amounts would no doubt be put on hold by the Court until the criminal case is concluded. This means that underpaid workers could be waiting years for redress.

GOVERNMENT DISCUSSION PAPER ON PROJECT LIFE GREENFIELDS AGREEMENTS

On 1 November, Ai Group and the Australian Constructors Association made a joint submission in response to an Attorney-General's Department discussion paper on: *Attracting major infrastructure, resources and energy projects to increase employment - Project life greenfields agreements*.

The Discussion Paper invites input from parties on whether the nominal expiry date of a greenfields agreement should be allowed to align with the life of longer-term building and construction projects or similar types of major projects.

This submission argues that:

- The *Fair Work Act* should be amended to permit enterprise agreements that cover work on major projects to continue for the life of the project even if this is longer than the current four-year limit on the nominal term. Many major projects continue for longer periods, for example, the Snowy Hydro 2.0 Project is projected to continue for five to six years.

- This reform should not be limited to greenfields agreements. Regular enterprise agreements commonly regulate work on major projects.

- A key industry concern about greenfields agreements is the current power imbalance that exists between unions and employers when negotiating these agreements. A head contractor usually needs to have an enforceable agreement in place prior to the commencement of a project to manage industrial risks and costs on the project. The tight timeframe gives unions substantial leverage to demand excessive wage rates and conditions.

- To address the power imbalance, and to give employers the ability to negotiate a fair, project-life agreement, the following two supplementary reforms need to be introduced:

    - Employers need to have the ability to enter into a greenfields agreement with any union eligible to represent any employees on a project, as was the case under the *Workplace Relations Act 1996* between 1996 and mid-2009; and

    - The six-month 'notified negotiation period' for negotiations with the relevant unions before an employer can have a greenfields agreement approved by the Fair Work Commission (**FWC**) without the agreement of the unions, needs to be reduced to three months.

ENSURING INTEGRITY BILL

The Australian Government is in negotiations with Crossbench Senators in an endeavour to achieve sufficient support in the Senate for the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* to pass through Parliament. There are only two Parliamentary sitting weeks left this year – the last week in November and the first week in December. The Bill passed through the House of Representatives in July.

Ai Group strongly supports the Bill. Ai Group has made submissions to two Parliamentary inquiries into the Bill, and we have written to all Crossbench Senators on a number of occasions urging them to support the Bill. We have also met with a number of the Crossbench Senators to discuss the Bill.

The Bill would expand the circumstances in which officials of registered organisations can be disqualified from holding office, would allow the Federal Court to cancel the registration of an organisation on a range of grounds, and would introduce a public interest test for amalgamations of registered organisations.

The provisions of the Bill apply equally to unions and registered employer organisations like Ai Group.

The disqualification provisions in the Bill do not apply to past conduct.

PROPER USE OF WORKER BENEFITS BILL

The *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019* will hopefully be passed by the Senate before the end of the year. The Bill passed through the House of Representatives in September. Ai Group strongly supports the Bill.

Ai Group has made submissions to two Parliamentary inquiries into the Bill, and we have written to all Crossbench Senators on a number of occasions urging them to support the Bill. We have also met with a number of the Crossbench Senators to discuss the Bill.

The Bill would implement more rigorous governance standards for workers' entitlement funds, like construction industry redundancy funds. Ai Group has been arguing for reform in this area for many years and the reforms in the Bill address recommendations of the Cole and Heydon Royal Commissions.

APPLICATION TO HIGH COURT FOR SPECIAL LEAVE TO APPEAL THE FEDERAL COURT'S PERSONAL/CARER'S LEAVE DECISION

The last of the required materials were filed in the High Court of Australia by Ai Group Workplace Lawyers on 4 November in support of the applications by Mondelez International and the Australian Government for special leave to appeal the decision of the Full Court of the Federal Court in the *Mondelez v AMWU* case. The case concerns the quantum of personal/carer's leave that an employee is entitled to under section 96 of the *Fair Work Act* and, in particular, the meaning of the expression "10 days of paid personal/carer's leave".

The Court is likely to make a decision on the special leave applications in December 2019 or February 2020, depending upon whether the applications are determined on the papers or at a hearing. If special leave to appeal is granted by the High Court, the appeal will be heard in mid-2020, with a decision expected in late 2020.

The Federal Court's decision is inconsistent with widespread industry practice and inconsistent with the intention of Parliament when the *Fair Work Act* was drafted. The decision has major implications for all businesses that have employees who work more than 7.6 hours per day, flexible hours or on a part-time basis.

In evidence filed in support of the Mondelez special leave application, Ai Group's Chief Economist, Julie Toth, estimated that the Federal Court's decision, if it stands, would impose more than $2 billion a year of additional costs on employers.

The Majority (Bromberg and Rangiah JJ) decided that a "day" in section 96 means *"the portion of a 24 hour period that would otherwise be allotted to work"* and that *"an employee accrues an entitlement to be absent from work … for ten such working days for each year of service"*.

In his dissenting judgment, O'Callaghan J stated that *"I am unable, with respect, to agree with their Honours' conclusions*". Justice O'Callaghan highlighted the examples in the Explanatory Memorandum for the *Fair Work Bill* and stated:

> *Those examples, in my respectful view, reinforce the expression of the determination of Parliament that the amount of personal/carer's leave to be accrued is not to be affected by any different spread of an employee's ordinary hours of work in a week, and is designed to achieve what senior counsel for the applicant, correctly in my view, described as "equity as between different classes of employees". In my view, the position advanced by the respondents produces an outcome that creates inequities between different classes of employees that Parliament did not intend.*

The case relates to 12-hour shift workers at the Mondelez plant in Claremont, Tasmania where Cadbury chocolate is manufactured. The current enterprise agreement agreed to by Mondelez states that the 12-hour shift workers at the Claremont Plant are entitled to 96 hours of personal/carer's leave per year. This is a lot more generous than the 76 hours that employees would have been entitled to under the *Fair Work Act* if the Act had been interpreted in the manner that aligns with the widespread industry practice.

FEDERAL COURT DECISION STILL RESERVED IN CASUAL EMPLOYMENT TEST CASE

The decision of the Full Court of the Federal Court is still reserved in the *WorkPac v Rossato* case. In the case, the Court is considering arguments about the meaning of the expression 'casual employee' in the *Fair Work Act* and also the ability for an employer to offset any annual leave loading paid against other entitlements that may be owed.

The *WorkPac v Rossato* case is separate to the *WorkPac v Skene* case which resulted in a very problematic decision of the Federal Court last year in which the Full Court decided that the term 'casual employee' in the *Fair Work Act* has no precise meaning and whether or not an employee is a casual for the purposes of the Act depends upon the circumstances surrounding the employee's employment. The Court decided that the fact that an employee is engaged as a casual and paid a casual loading does not necessarily mean that the employee is a 'casual employee' for the purposes of the annual leave entitlements under the *Fair Work Act*.

REFORMS TO CLASS ACTION LAWS

Ai Group is pressing for the Australian Government to introduce reforms to Australia's class action laws. There has been a big increase in class actions over the past couple of years driven by litigation funders. Many overseas litigation funding firms have moved into Australia in a big way due to our lax class action laws and the absence of regulation of litigation funding arrangements. Numerous current class actions relate to claims under the *Fair Work Act*. For

example, at least eight current class actions relate to claims for back-pay of annual leave entitlements for casual employees.

The following Ai Group media release of 30 October, highlights some of the key issues:

> **Class action claims total over $10 billion – Government needs to act quickly to protect economy**
>
> "The recent explosion in class action claims by plaintiff law firms, typically backed by overseas litigation funders, is a clear and present danger to Australia's fragile economy.
>
> "Investment and jobs are threatened and business insurance costs are going through the roof. The Australian Government needs to act now to rein in speculative and costly class actions before they materially damage our economy. Ai Group has today released a seven point plan (see below) to address what is an issue of growing concern to Australian industry," Australian Industry Group Chief Executive, Innes Willox, said today.
>
> "It is difficult to calculate the true cost of current class action claims because the cost is not known until the proceedings are over. However, based on the information that plaintiff law firms and litigation funders have publicly released, together with information provided by law firms involved in the proceedings, Ai Group has made a conservative estimate that the amounts claimed against businesses in the class actions filed in the last financial year are well over $10 billion. Nearly all of these class actions are still before the Courts.
>
> "Overseas litigation funding firms have moved into Australia in a big way due to the fact that class actions in Australia are subject to scant regulation, compared with other countries such as the US and UK. Overseas investors should not be permitted to make super-profits at the expense of Australian businesses and jobs. Also, regulation cannot be left to the Courts. Litigation funding arrangements are financial products and these arrangements need to be regulated like other financial products.
>
> "The level of returns which are being sought by litigation funders and plaintiff law firms in some of the current class actions are unconscionable and have been criticised by the Courts. Returns to litigation funders and plaintiff lawyers are extracted from the sum finally awarded or settled for. Therefore, unreasonable returns are unfair to the plaintiffs who the claim is purportedly being pursued on behalf of. Also, workers are being enticed to join some of the class actions through, what many would argue, is misleading and deceptive conduct.
>
> "Insurers are playing a big role in class actions. This is leading to massive increases in insurance costs generally for businesses which is money that could otherwise be spent more productively on job creation or investment.
>
> "The growing threat of class actions adds to business risks and creates a disincentive for those considering setting up new businesses, or taking on board and senior leadership positions. This has potential impacts for leadership and management capability in the long term.
>
> "We urge the Federal Government to introduce legislative amendments into Parliament to implement the following reforms without delay:
>
> - *Regulation of litigation funders through the Australian Securities and Investments Commission* – Litigation funding arrangements are financial products and there is

no legitimate reason why these arrangements should not be subject to regulation like other financial products.

- *Imposing reasonable limits on returns to plaintiff lawyers and litigation* funders – Currently, some law firms and litigation funders are earning excessive profits from class actions, to the detriment of plaintiffs.

- *Exposing plaintiff lawyers and litigation funders to adverse costs orders for unsuccessful class actions* – Under the *Fair Work Act*, costs orders are only able to be made in very limited circumstances and are relatively rare. This makes class action litigation relating to claims under the *Fair Work Act* very attractive to plaintiff law firms and litigation funders. Current class actions relating to claims under the Fair Work Act include claims that employees engaged as casuals are entitled to annual leave entitlements and claims that persons engaged as independent contractors are employees.

- *Prohibiting litigation funders exerting any control over the positions taken by, and the arguments pursued by, the lawyers in the proceedings* – This is important to protect lawyers' duties to the court and their clients. A similar requirement applies in some other countries.

- *Increasing the current minimum number of plaintiffs* – Currently in Australia, a class action can be commenced if the lawyer acting for the lead plaintiff believes there are at least six other people who have a similar claim, even if no other person has given consent for a claim to be pursued on their behalf. This minimum number needs to be increased.

- *Implementing a 'predominance rule' like that which operates in the US, whereby the common issues amongst the claims must predominate* – At present in Australia, a class action can be pursued if there is one common issue of fact or law.

- Implementing a preliminary or certification hearing process, like that which exists in the US – This would require the plaintiffs to satisfy the Court that the relevant requirements for pursuing a class action are satisfied, before the defendants are exposed to major costs.

"If the Federal Government does not act quickly to protect the Australian economy from speculative class action claims it may be too late to prevent substantial damage. Virtually every day another class action is announced due to Australia's extremely lax class action laws," Mr Willox said.

Appeal against the decision of Justice Lee in *Turner v Tesa Mining*

“UK litigation funder Augusta Ventures has filed an application in the Federal Court for leave to appeal the decision of Justice Lee in *Turner v Tesa Mining* [2019] FCA 1644.”

“In the decision that Augusta Ventures is endeavouring to have overturned, Justice Lee of the Federal Court decided that Augusta Ventures must provide security up-front for the costs likely to be expended by the relevant employers in defending the class action.”

“As held by Justice Lee, a litigation funder that is pursuing claims for financial reward should not have access to the ‘no costs’ arrangements that apply to most parties under the *Fair Work Act*. Justice Lee said: *‘There is no compelling textual or contextual argument which would*

suggest that this protection should be somehow extended to non-party funders who are using these claims to their perceived commercial advantage.'"

"The materials filed with Augusta Ventures' application for leave to appeal appear to disclose that under the Litigation Funding Agreement (LFA) that plaintiffs who wish to participate in the class action are required to sign:

- Augusta Ventures is entitled to a return of the ***greater of*** 3 times its outlay or 25% of the claim proceeds;
- Augusta Ventures must be paid first from any claim proceeds;
- The lawyers (i.e. Adero Law) must be paid second from any claim proceeds; and
- The plaintiffs receive what is left over after Augusta Ventures and Adero have been paid."

"Even though a Court would be unlikely to allow a blatantly unfair outcome for plaintiffs, there should be a legislative requirement that funding arrangements are fair, rather than relying on Courts to be the sole assessor of this. Also, litigation funders should be regulated like any other organisations that offer financial products, to ensure that appropriate standards are maintained. The Courts are ill-equipped to unravel the details of often highly complex litigation funding arrangements to ensure that plaintiffs are not being disadvantaged," Ai Group Chief Executive, Innes Willox said.

"An Australian Law Reform Commission report last year on *Class Actions Proceedings and Third-Party Litigation Funders* reported that, in cases involving litigation funders, the median return to plaintiffs is only 51% of the amount awarded, while in cases not involving litigation funders the median return to plaintiffs is 85%. This highlights that the current arrangements are not benefiting plaintiffs and that reforms are urgently needed," said Mr Willox.

EXPOSURE DRAFT – RELIGIOUS DISCRIMINATION BILL

On 2 October, Ai Group made a submission on an exposure draft of a *Religious Discrimination Bill 2019*, released by the Australian Government for public comment. Ai Group has some substantial concerns about the Bill given its impact on employers.

The draft Bill would prohibit discrimination (directly and indirectly) on the basis of an employee's religious beliefs and would give employees the right to make a 'statement of belief'. The Bill does not define what a 'religious belief' is.

The draft Bill imposes significant restrictions on the conduct rules that employers are able to implement, including codes of conduct and dress codes.

The draft Bill provides that certain conduct rules imposed by a very large business (defined as an employer with annual revenue of at least $50 million) are *prima facie* unreasonable. These are rules which would have the effect of restricting or preventing employees from making a statement of belief at a time other than when the employee is actually performing work (e.g. the restrictions on conduct rules would apply to meal breaks and work-related functions such as office Christmas parties). A conduct rule is regarded as unreasonable unless compliance with the rule is necessary to avoid 'unjustifiable financial hardship' to the employer. However, the Bill does not prevent the employer implementing a conduct rule to restrict or prevent

employees making statements which are malicious, or would harass, vilify, or incite hatred or violence against a person or group, or which advocate for the commission of a serious criminal offence.

Ai Group is concerned that the Bill, as drafted, could prevent employers dealing with employee conduct that is inconsistent with diversity and inclusion policies and other reasonable policies.

GUIDANCE MATERIALS RELEASED – MODERN SLAVERY REPORTING OBLIGATIONS

On 1 January 2019, the *Modern Slavery Act 2018* (Cth) commenced, requiring large organisations with an annual consolidated revenue of at least $100 million, to report annually on the risks of modern slavery in their operations and supply chains. The Federal Government has released its Guidance for Reporting Entities to assist organisations with their reporting. The guidance material was released following extensive public consultation, including with Ai Group.

A modern slavery statement (singular or joint) must address the following mandatory criteria:

- Identify the reporting entity;
- Describe the structure, operations and supply chains of the reporting entity;
- Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls;
- Describe the actions taken by the reporting entity and any entity that it owns or controls, to assess and address those risks, including due diligence and remediation processes;
- Describe how the reporting entity assesses the effectiveness of such actions;
- Describe the process of consultation with any entities that the reporting entity owns or controls, and in the case of a reporting entity covered by a joint statement - the entity giving the statement; and
- Include any other information that the reporting entity or the entity giving the statement considers relevant.

Meanwhile, in New South Wales, a Parliamentary inquiry is underway into an Amendment Bill and draft regulations relating to the *Modern Slavery Act 2018* (NSW). The NSW Act is not yet operative, with the NSW Government announcing that the commencement date will be determined following the Government's consideration of, and response to, the Parliamentary inquiry's recommendations.

ASIC GUIDANCE MATERIALS RELEASED – WHISTLEBLOWER POLICIES

On 13 November, the Australian Securities and Investments Commission (**ASIC**) issued Guidance Materials for Whistleblower Policies, to assist companies to comply with the amendments made to the *Corporations Act 2001* (Cth) on 1 July 2019 which substantially increase protections for whistleblowers who report misconduct in relation to the operation of particular organisations. **From 1 January 2020**, all public and 'large proprietary companies' must have a whistleblower policy that provides information on whistleblowing as required by the legislation, and must make that policy available to officers and employees of the company.

'Large proprietary companies' are those that satisfy at least two of the following three criteria:

- Consolidated revenue of $25 million or more (for the financial year of the company and the entities it controls);
- Consolidated gross assets valued at $12.5 million or more (valued at the end of the financial year);
- 50 or more employees (employed by the company and the entities it controls at the end of the financial year).

ASIC Regulatory Guide 270 – *Whistleblower policies* provides guidance to companies about whistleblower policies. The Guide sets out the components that a whistleblower policy must include to comply with the law. These include:

- types of matters covered by a policy;
- who can make and receive a disclosure;
- how to make a disclosure;
- legal and practical protections for disclosers;
- investigating a disclosure; and
- ensuring fair treatment of individuals mentioned in a disclosure.

FWC CASE ABOUT SPREAD OF HOURS CLAUSES IN AWARDS

On 28 November, a Full Bench headed by FWC President, Justice Iain Ross, will hear arguments about whether changes should be made to the spread of hours clauses in numerous awards including the *Manufacturing and Associated Industries and Occupations Award 2010*.

On 26 September, Ai Group filed a submission strongly opposing a provisional position arrived at by the FWC that a substantial change needs to be made to the common clause in awards that enables the spread of hours within which ordinary hours must be worked by day workers (e.g. 6.00am to 6.00pm) to be varied by up to one hour at either of the spread by agreement with employees.

Contrary to widespread industry practice and the contrary to the intent when these facilitative provisions were inserted into awards over 20 years ago, the FWC has formed the provisional view that the spread of hours should only be able to be moved forwards or backwards by one hour, and not extended, For example, if the spread of hours in an award is 6.00am to 6.00pm, the spread would be able to be moved to 5.00am – 5.00pm, or 7.00am – 7.00pm, but not to, say, 6.00am – 7.00pm.

Some awards have much shorter spreads of hours than others and, therefore, the impact on employers and employees of the proposed loss of flexibility is greater. For example, the *Pharmaceutical Industry Award 2010* has a spread of hours between 7.45am and 5.15pm.

The concept of a facilitative provision to vary the spread of hours by up to one hour at either end of the spread was devised by Ai Group and pursued as a claim by Ai Group during the 1996-98 award simplification proceedings relating to the Metal Industry Award. This Award was the first one to be varied to include this flexibility but ultimately numerous awards were varied in similar terms.

Ai Group's submission argues that the implementation of the FWC's provisional view would disrupt a large number of existing hours of work arrangements, causing operational problems for many employers and hardship for many employees.

FWC CASE TO CLARIFY THE COVERAGE OF THE MISCELLANEOUS AWARD

On 26 November, the final hearing before a Full Bench of the FWC will take place in an important case to clarify the coverage of the *Miscellaneous Award 2010*. In recent times there has been uncertainty about the coverage of the Award.

Despite the apparent intent when the Award was made that it would have a relatively limited coverage, the coverage clause in the Award has arguably been interpreted in a relatively expansive manner by a Full Bench of the FWC in *United Voice v Gold Coast Kennels* [2018] FWCFB 128. This has created risks for employers because some areas previously considered award free could be award covered.

In response to concerns expressed by Ai Group and other parties about this matter and a focus on the issue during the *Annual Wage Review 2018-2019*, the FWC has scheduled proceedings as part of the 4 Yearly Review of Awards to consider the coverage of the Award.

Ai Group has filed detailed submissions in the case and will play a leading role at the hearing on 26 November.

C14 CLASSIFICATIONS CASE

A Full Bench of the FWC, headed by FWC President Iain Ross, has scheduled a case on the Commission's own motion to review whether the C14 classifications in 14 awards should be varied to prevent employees being classified at the C14 level indefinitely.

The case is at an early stage and currently submissions are being considered by the Commission on the extent of the FWC's power under s.157 of the *Fair Work Act* to review a broad subject area in a large number of awards. Section 157 is the main section in the Act which gives the Commission to the power to vary awards. Ai Group has made detailed submissions on this issue.

REVIEW OF THE AUSTRALIAN QUALIFICATIONS FRAMEWORK – POTENTIAL IR IMPLICATIONS

In October, an Expert Panel handed down their final report in the Review of the Australian Qualifications Framework. The recommendations in the report could have a significant impact on awards, given that many award classifications are linked to AQF levels.

The Panel has recommended reducing the current 10 AQF levels to eight and has put forward three options for aligning qualification types with AQF levels.

The Australian Government has not yet issued a response to the Expert Panel's report.

PROFESSIONALS AWARD HOURS OF WORK CASE

In December, a Full Bench will hear final submissions in relation to an application by Professionals Australia to make major changes to the hours of work clause in the *Professional Employees Award 2010*.

During the course of the 4 Yearly Review, the FWC expressed concern about some aspects of the hours of work clause and decided that a review of the clause warranted. In addition, Professionals Australia (the union that represents professional employees) proposed major changes to the hours of work clause, arguing that, in effect, the provisions in the clause are annualised salary provisions and the outcome of the FWC's *Annualised Salaries Case* (see next item below) is relevant.

Following extensive negotiations between Ai Group and Professionals Australia, a less onerous series of amendments to the hours of work clause were developed and filed with the FWC for its consideration.

NEW AWARD ANNUALISED SALARY CLAUSES OPERATIVE FROM 1 MARCH – MAJOR IMPLICATIONS FOR CLERICAL EMPLOYEES

All employers with staff covered under the annualised salary provisions in about 20 awards will need to consider what changes they need to make to employment contracts, record keeping and work practices in order to comply with the new annualised salary clauses that will come into operation on 1 March 2020 as a result of the FWC's *4 Yearly Review – Annualised Salaries Case*. The *Clerks – Private Sector Award 2010* is one of the awards affected.

Each of the 20 awards will be varied from 1 March 2020 to insert one of three new model clauses that will replace existing annualised salary clauses in the awards. The three new model clauses are a lot more onerous for employers and will impose detailed obligations regarding record-keeping and the periodic reconciliation of hours worked against hours paid. Determinations to vary the awards have not yet been issued by the FWC.

In response to a series of submissions from Ai Group to the FWC over the past two years expressing strong objections to the onerous nature of the new model clauses, the Full Bench has confirmed that the new annualised salary clauses do not prevent an employer and employee implementing an annual salary arrangement through the use of an appropriate 'set

off' clause in the employee's employment contract, rather than through the relevant award clause.

Unfortunately, common law set-off clauses will not be able to resolve all of the problems that will be caused by the new award annualised salary clauses because employers will still need to comply with the pay record provisions of the *Fair Work Regulations 2009*. Regulation 3.34 requires that *"if a penalty rate or loading (however described) must be paid for overtime hours actually worked by an employee"*, the employer must keep a record of the number of overtime hours worked by the employee during each day, or when the employee started and ceased working overtime hours.

Options that employers may wish to consider for clerical staff covered by the *Clerks – Private Sector Award 2010* include:

1. Abandoning paying staff an annualised salary and paying them under the Award provisions;

2. Applying the new annualised salary provisions in the Award when these come into operation on 1 March 2020, including the detailed record-keeping and pay reconciliation requirements;

3. Enter into an annualised salary arrangement through a common law 'set-off' clause in a written common law employment contract, and apply the record-keeping provisions in the *Fair Work Regulations 2009*;

4. Enter into an Individual Flexibility Arrangement (**IFA**) with each individual employee to vary the operation of the overtime provisions in the Award, subject to the employee being better off overall. For example, in appropriate circumstances, an IFA might be reached between an employer and an employee that:

    a. The employer will at all times pay the employee at least 25% in excess of the relevant hourly minimum wage rate for the relevant classification in the Award;

    b. The employer will not require the employee to work additional hours of a quantum that would result in the employee not being better off overall than if no IFA were agreed to;

    c. The overtime clause in the Award will not apply to the employee; and

    d. For the purpose of the IFA, 'additional hours' are defined as those that the employer requires or requests the employee to work.

    Important Note: It is very important that IFAs are carefully drafted and that the terms of an IFA genuinely result in the employee being better off overall when compared to the relevant award provisions. Members interested in exploring or implementing IFAs are urged to contact Ai Group or Ai Group Workplace Lawyers for advice. Also, it is important to note that IFAs can only be entered into once an employee has commenced working for a business and cannot be offered as a condition of employment.

5. For employees paid in excess of the 'high income threshold' (currently $148,700 per annum), the employer could give a Guarantee of Annual Earnings, by agreement with the relevant employee, in accordance with section 330 of the *Fair Work Act*.

BLACK COAL LONG SERVICE LEAVE AND AWARD DEVELOPMENTS

An extensive conciliation process in the FWC has been taking place since early 2019 in response to an application made by Ai Group to vary the coverage of the *Black Coal Mining Industry Award 2010*, which is linked to the Coal Mining Industry Long Service Leave Scheme (**Coal LSL scheme**). A levy of 2% on the 'eligible wages' of each 'eligible employee' is payable under the Coal LSL scheme but the definition of 'eligible employee' in the relevant legislation is very unclear.

Deputy President Bull is chairing conciliation conferences to assist the parties to determine whether agreement can be reached on any issues relating to Ai Group's application. At present the conciliation process is focussing on the coverage of the Coal LSL scheme.

The parties involved in the proceedings are Ai Group, the CFMMEU, the Coal Mining Industry (Long Service Leave Funding) Corporation (**Coal LSL**), the Coal Mining Industry Employer Group (a group of coal mining companies), the AMWU, the ETU and Professionals Australia.

Coal LSL is currently pursuing claims against numerous employers, large and small, that provide equipment and services to coal mining clients, including many Ai Group Members.

Ai Group is representing a number of individual Members in dealing with Coal LSL claims.

Members with an interest in black coal industrial relations developments are invited to contact lucy.britto@aigroup.com.au to be placed on Ai Group's mailing for black coal member briefings and other relevant information.

WAGE OUTCOMES UNDER ENTERPRISE AGREEMENTS

On 6 November, the Attorney-General's Department released its report on *Trends in Federal Enterprise Bargaining* for the June 2019 quarter.

Average annualised wage increases **(AAWI)** for enterprise agreements approved in the June 2019 quarter are summarised in the following table.

Industry Sector or Type of Agreement	AAWI (%) for agreements approved in June 2019	Change from March 2019 (%)
All sectors	2.7	Same
Private sector	2.8	Down 0.1
Public sector	2.6	Up 0.2
Manufacturing	2.6	Same
Metals manufacturing	2.9	Up 0.3
Non-metals manufacturing	2.4	Down 0.2

Industry Sector or Type of Agreement	AAWI (%) for agreements approved in June 2019	Change from March 2019 (%)
Construction	3.3	Down 0.4
Transport, postal & warehousing	3.1	Up 0.3
Mining	2.6	Up 0.3
Information media and telecommunications	2.2	Up 0.1
Retail	2.3	Down 0.8
Health care and social assistance	3.0	Up 0.3
Single enterprise non-greenfields	2.7	Up 0.1
Single enterprise greenfields	3.7	Up 1.0
Union/s covered	2.7	Same
No Union/s covered	2.6	Up 0.2

The following table highlights the decline in the number of enterprise agreements in the private sector, and the number of employees covered by private sector agreements, over recent years.

Private sector enterprise agreements current on the last day of the quarter				
	June 2012	June 2016	March 2019	June 2019
Number of employees	1,971,000	1,557,000	1,309,400	1,375,600
Number of agreements	22,870	13,903	10,034	10,758

VICTORIAN LABOUR HIRE LICENSING SCHEME

The deadline for applying for a licence under the Victorian labour hire licensing scheme has passed. From 29 October, users (or hosts) of labour hire service providers must only use a licensed provider or a provider that submitted its application for a licence by 29 October. Heavy penalties apply for breaches of the legislation, both for providers and users of labour hire services.

Ai Group is continuing to make representations to the Victorian Government seeking regulatory changes to clarify the scope of the labour hire licensing scheme given the broad interpretations of the coverage provisions that have been adopted by the Victorian Labour Hire Licensing Authority.

SOUTH AUSTRALIAN LABOUR HIRE LICENSING SCHEME

The South Australian Government is pursuing amendments to the *Labour Hire Licensing Act 2017* (SA) to narrow the scope of the legislation. If the amendments are passed by Parliament, the labour hire licensing scheme will apply only to the Horticulture processing, Meat processing, Seafood processing, Cleaning, and Trolley collection industries.

At this stage it is unclear whether there is sufficient support in Parliament for the proposed legislative amendments to be passed

Under the current South Australian labour hire licensing scheme, businesses that meet the definition of a labour hire service provider in the Act were required to lodge their licence application by 31 August 2019 and be licensed by 1 November 2019. Businesses that use labour hire services must only use a licensed provider from 1 November 2019.

NATIONAL WORKPLACE RELATIONS POLICY AND ADVOCACY TEAM

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:

- Protecting and representing the interests of Ai Group Members in relation to workplace relations matters;
- Leading and influencing the workplace relations policy agenda;
- Writing submissions and preparing evidence for major cases in the Fair Work Commission (FWC);
- Representing Members' collective interests in modern award cases and reviews;
- Representing Ai Group Members interests in significant cases in Courts;
- Representing individual Ai Group Members in significant cases in the FWC and Courts;
- 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 policy developments, e.g. through Ai Group's PIR (Policy-Influence-Reform) Forum and PIR Diversity and Inclusion Forum;
- Developing policy proposals for worthwhile reforms to workplace relations laws;
- Making representations to Government and Opposition parties in support of a more productive and flexible workplace relations system;
- Liaising with regulators including the Fair Work Ombudsman and the Australian Building and Construction Commission, as well as Departmental officials;
- Writing submissions and appearing in numerous inquiries and reviews carried out by a wide range of bodies including Parliamentary Committees, Royal Commissions, the Productivity Commission, the Australian Human Rights Commission, the Australian Law Reform Commission, and others;
- Carrying out research; and
- Opposing union campaigns on issues which would be damaging to competitiveness and productivity.

Ai Group welcomes and values your input and support. 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 or telephone 02 9466 5521.

AiGROUP | INFLUENCE & POLICY

CONTACT US

1300 55 66 77

aigroup.com.au

info@aigroup.com.au

linkedin.com/company/australian-industry-group

ATTACHMENT A

CAPABILITY STATEMENT

Workplace compliance advice and auditing services

November 2019

Ai GROUP

Ai GROUP | WORKPLACE LAWYERS

Ai Group and Ai Group Workplace Lawyers

The Australian Industry Group (Ai Group) is one of Australia's largest national industry associations which, along with its affiliates, represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, construction, information technology, telecommunications, transport, aviation, retail, fast food, health, community services, hospitality, labour hire, mining services and many other industries.

Ai Group Workplace Lawyers is a national law firm operated by Ai Group. Ai Group Workplace Lawyers regularly gives advice to businesses about workplace relations matters and has represented businesses in workplace relations cases in the High Court of Australia, the Federal Court of Australia, the Supreme Court of Victoria, the Federal Circuit Court and other courts.

Ai Group and Ai Group Workplace Lawyers have a large team of approximately 80 workplace relations professionals, including around 40 lawyers, who provide extensive assistance to businesses in a wide range of areas.

Expert knowledge of modern awards

Ai Group and Ai Group Workplace Lawyers have a deep, expert knowledge of modern awards.

Ai Group's workplace relations policy and advocacy team played a leading role during the development of Australia's modern award system in 2008/09, and the team plays an ongoing leading role in representing employers in major award cases in the Fair Work Commission.

The consulting and legal teams of Ai Group and Ai Group Workplace Lawyers are very regularly involved in giving advice to employers about modern award matters.

Ai Group provides a workplace advice service to businesses on around 80 of the 122 modern industry and occupational awards and produces annotated copies of numerous awards. Our Workplace Advice Line provides advice to thousands of businesses every year on award interpretations and other aspects of workplace compliance.

Relationship with Governments, Opposition parties, Regulators and Tribunals

Ai Group is apolitical and is respected by Governments and Opposition parties of all political persuasions. Ai Group's maintains ongoing dialogue with political leaders and Departmental officials about Australia's workplace relations laws and arrangements.

Ai Group has very regular contact, at a senior level, with the Fair Work Ombudsman (FWO) and other regulators. This dialogue is important in enabling the FWO to understand the views of businesses, and to enable Ai Group to understand the FWO's approaches and priorities. Ai Group and the FWO very regularly discuss interpretations of awards and workplace laws and both parties benefit from each organisation's extensive expertise.

Ai Group is involved in cases in the Fair Work Commission virtually every day, including a very large number of cases about award matters. As a peak council under the *Fair Work Act 2009*, Ai Group is regularly consulted by the Commission about relevant matters. Ai Group is respected by the Commission, given our expertise and fair approach.

Workplace compliance advice and auditing services

Ai Group and Ai Group Workplace Lawyers provide workplace compliance advice and auditing service, to give advice to businesses on:

- Which modern awards apply to the business;
- Whether the business is compliant with the provisions of relevant awards;
- Whether the business is complying with any enterprise agreements which apply;
- Whether the business is compliant with pay record and pay slip requirements in the *Fair Work Act 2009* and the *Fair Work Regulations 2009*;
- Numerous other workplace compliance topics.

Common services include:

- Mapping of jobs against relevant awards and enterprise agreements;
- Auditing of a business's compliance, based on a sample of pay records for key classifications over a few different time periods;
- More extensive auditing, involving interviews with relevant staff and analysis of pay records;
- Calculation of underpayments;
- Liaison with the FWO and/or representatives of employees;
- Auditing of franchisees and key suppliers; and
- Advice on payroll changes that need to be made to ensure ongoing compliance.

Businesses that self-disclose underpayments to the FWO are able to seek approval from the FWO for Ai Group to be used as an independent auditor for the purposes of calculating underpayments.

Ai Group has conducted education and awareness sessions on award compliance topics, for businesses which have entered into Enforceable Undertakings (EUs) and compliance deeds with the FWO. Where a business has entered into an EU or compliance deed with the FWO, often there is a requirement for training to be conducted. Businesses are able to seek the FWO's agreement to Ai Group offering the training. Training programs can be delivered on site and tailored to meet the needs of a business.

Businesses that utilise Ai Group's and Ai Group Workplace Lawyers' workplace compliance advice and auditing services are able to benefit from our deep knowledge of modern award provisions and the requirements of the *Fair Work Act 2009*, including relevant historical matters of relevance to interpretation.

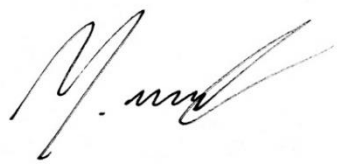
Advice given by Ai Group Workplace Lawyers is confidential and privileged.

The Cleaning Accountability Framework

Ai Group is represented on the Certification Committee for the Cleaning Accountability Framework, along with the FWO and United Voice. Under this framework, there is a Building Certification Scheme and a Cleaning Contractor Certification Scheme that assesses the workplace compliance of businesses involved in cleaning operations. Participation in the schemes is voluntary.

Contact

To access Ai Group's Workplace Compliance Auditing and Training Services, please contact Ai Group on 1300 55 66 77.



Michael Mead
Head of Consulting and Legal Services,
Ai Group

Legal Practitioner Director,
Ai Group Workplace Lawyers

Stephen Smith
Head of National Workplace Relations Policy,
Ai Group

Legal Practitioner Director,
Ai Group Workplace Lawyers

Offices

METROPOLITAN OFFICES
SYDNEY 51 Walker Street, North Sydney NSW 2060, PO Box 289, North Sydney NSW 2059
WESTERN SYDNEY Level 2, 100 George Street, Parramatta, NSW 2150
CANBERRA Ground Floor, 42 Macquarie St, Barton ACT 2600, PO Box 4986, Kingston ACT 2604
MELBOURNE Level 2, 441 St Kilda Road, Melbourne VIC 3004, PO Box 7622, Melbourne VIC 8004
BRISBANE 202 Boundary Street, Spring Hill QLD 4004, PO Box 128, Spring Hill QLD 4004
ADELAIDE Level 1, 45 Greenhill Road, Wayville SA 5034
PERTH Level 3, 85 South Perth Esplanade, South Perth WA 6151

REGIONAL OFFICES
ALBURY/WODONGA 560 David Street Albury NSW 2640
BENDIGO 87 Wills Street, Bendigo VIC 3550
NEWCASTLE Suite 1 “Nautilos”, 265 Wharf Road, Newcastle 2300, PO Box 811, Newcastle NSW 2300

Contact Us

1300 55 66 77

aigroup.com.au

info@aigroup.com.au