

Rationalisation of Awards, Wages and Classifications

**Submission in Response to Two
Award Review Taskforce
Discussion Papers**



7 February 2006

1. Background

1. This submission responds to the following two discussion papers issued by the Award Review Taskforce:

- *Award Rationalisation*, December 2005; and
- *Rationalisation of Award Wage and Classification Structures*, December 2005.

2. This submission is made by the Australian Industry Group (Ai Group) and on behalf of its affiliated organisation, the Engineering Employers' Association, South Australia (EEASA).

2. About Ai Group

3. Ai Group is one of the largest national industry bodies in Australia, representing employers in manufacturing, construction, automotive, transport, graphic arts, information technology, telecommunications, call centres, labour hire, airlines, transport and other industries.

4. For nearly 140 years, Ai Group has had a strong and continuous involvement in the workplace relations system at the national, state, industry and enterprise level.

5. Ai Group is well qualified to comment on the rationalisation of awards, wages and classifications. We have a deep knowledge of award structures, classifications and industry training arrangements, together with the interplay between workplace relations and training matters. For example:

- Over the past few years, Ai Group has worked with relevant unions and the Australian Industrial Relations Commission (AIRC) to develop modern industry awards and classification structures for the

telecommunications, IT and contract call centre industries, which are linked to national training qualifications;

- Ai Group has had a great deal of experience over many years in protecting employers in industries with militant unions from reclassification difficulties which can easily arise when new classification structures are implemented or old ones modified;
- Ai Group took the lead amongst employer groups in the *Victorian Common Rule Award Test Case*; and
- Ai Group has an interest in approximately 500 awards and is a party to over 100 awards in its own right.

3. Vital to avoid the levelling-up of award conditions

6. It is vital that the award rationalisation exercise and the exercise to rationalise wages and classifications within Australian Pay and Classification Scales (APCSs) do not result in the levelling-up of wages and working conditions. This would be a backward step which would decrease the competitiveness of Australian industry and have negative effects on employment.
7. The rules set out in s.90ZA of the *Workplace Relations Amendment (Work Choices) Act 2006* ("the Work Choices Act"), relating to overlapping APCSs, in effect adopt a levelling up approach with employers in some circumstances required to apply the most generous rates amongst the APCSs which would otherwise apply. It is essential that this approach not be extended any further through the rationalisation exercises.
8. The levelling-up of award wage rates mainly affects those employees who do not receive over-award payments. Therefore, the cost impact is limited in non-award reliant industries.

However, there is the potential for massive cost increases to be imposed on employers in all industries if penalty rates, shift loadings and weekend loadings are levelled up. These rates and loadings are typically applied to overaward payments.

9. For example, it would be very damaging for employers in the Metal Industry if award rationalisation resulted in the *Metal, Engineering and Associated Industries Award 1998* (which contains a penalty of 150% for ordinary time worked on a Saturday) was combined with the *Graphic Arts – General – Award 2000* (which contains a penalty of 200% for ordinary time worked on a Saturday) and the combined award contained the Graphic Arts penalty. This would result in a 50% increase in labour costs for employers in the Metal Industry in respect of Saturday work.
10. Rather than necessarily levelling up or levelling down, the award rationalisation exercise and the exercise to rationalise wages and classifications should proceed on the basis that there is need to determine the appropriate level for wages and employment conditions taking into consideration:
 - That awards and APCs are intended to provide minimum safety net entitlements; and
 - That award wages and conditions should be set at a level which preserves high employment and international competitiveness.
11. It is essential that the need to avoid levelling-up be specified as one of the key principles within every award rationalisation request made by the Workplace Relations Minister to the President of the AIRC in accordance with s.118 of the Work Choices Act. Section 118(3)(b) of the Act requires that award simplification requests specify “*the principles to be applied by the Commission in undertaking the award rationalisation process*”.

Interplay between the rationalisation of awards and of wages and classifications

12. Ai Group supports the approach taken within the Work Choices Act whereby:
 - Wages, classifications and casual loadings will be removed from awards and dealt with in APCSs, with the Australian Fair Pay Commission (AFPC) being responsible for rationalising such instruments; and
 - Awards remain the responsibility of the AIRC, including their rationalisation.

13. However, it is important that the rationalisation of awards and of wages and classifications, not be treated as completely unrelated exercises. A much simpler system will result if the scope of the rationalised awards and the scope of the rationalised APCSs are similar.

14. For example, after receiving and dealing with an award rationalisation request from the Workplace Relations Minister relating to awards in the information and communications technology (ICT) sector, the AIRC may logically decide that the appropriate outcome is as follows:
 - One award covering non-professional employees in the ICT industry, with three streams - clerical, customer contact/call centre and technical - to replace the *Telecommunications Services Industry Award 2002*, the *Contract Call Centre Industry Award 2003*, the *Business Equipment Industry – Technical Service – Industry Award 1999* and the *Business Equipment Industry – Clerical Officers – Award 2000*; with
 - Another award covering professional employees in the ICT industry to replace the *Information Technology Industry (Professional*

Employees) Award 2001 and the Telecommunications Industry (Professional Employees) Award 2002.

15. The scope of the above two ICT awards could be readily drafted from the combined scopes of the six existing industry awards referred to above.
16. If the AFPC decided to adopt a similar model for rationalising the APCs which arose from the abovementioned six awards, a very logical and simple safety net of minimum wages and conditions would be created.
17. In contrast, if the AFPC headed off in a different direction regarding the scope of APCs there is the potential for an illogical and complex safety net of minimum wages and conditions to be created
18. Accordingly, Ai Group submits that the AFPC should generally rationalise wage and classification structures in an industry once the AIRC has rationalised awards for that industry.
19. The Work Choices Act imposes a timeframe on award rationalisation which will ensure that the rationalisation exercise is completed without undue delay. Section 118 of the Act states that each award rationalisation request made by the Workplace Relations Minister to the President of the AIRC must specify *"the time by which the award rationalisation process must be completed, which must not be later than 3 years after the making of the request"*.
20. In making this submission, Ai Group does not wish to see the rationalisation of wages and classifications unduly delayed but the issues are very complex and the approach which we have suggested in paragraph 19 above is a very logical one.

21. Also, in making this submission we are not proposing that the AFPC delay its determination of any minimum wage increase until after awards are rationalised by the AIRC. If the AFPC determines that minimum wages should be increased in 2006, then the level of increase which it determines as appropriate could readily be applied to preserved APCs as well as any new APCs.

4. Model for the rationalisation of awards

22. An appropriate starting point for the award rationalisation exercise is to develop a model for the grouping of awards into industry sectors.
23. In Appendix C of the *Award Rationalisation* discussion paper, the ANZSIC 2006 Divisions are set out. The details of this revised version of the ANZSIC system have not yet been finalised by the Australian Bureau of Statistics. The Divisions are set out in **Table 1** below.

Table 1: Industries recognised within the Australian Industrial Relations Commission's panel system

A	Agriculture, Forestry and Fishing
B	Mining
C	Manufacturing
D	Electricity, Gas, Water and Waste Services
E	Construction
F	Wholesale Trade
G	Retail Trade
H	Accommodation and Food Services
I	Transport, Postal and Warehousing
J	Information, Media and Telecommunications
K	Financial and Insurance Services
L	Rental, Hiring and Real Estate Services
M	Professional, Scientific and Technical Services
N	Administrative and Support Services
O	Public Administration and Safety
P	Education and Training
Q	Health Care and Social Assistance
R	Arts and Recreational Services
S	Other Services

24. Ai Group regards the above ANZSIC Divisional structure as a useful component of an appropriate model for award rationalisation, but certainly not the only component.

25. Another useful component is the system used by the AIRC to group awards within industries and to allocate work to Commission Members (ie. the panel system). The industries currently recognised within the AIRC's system are set out in **Table 2** below.

Table 2: Industries recognised within the Australian Industrial Relations Commission's panel system

Panel 1

Agricultural industry
Building, metal and civil construction industries
Cement and concrete products
Clothing industry
Dry cleaning and laundry services
Electrical contracting industry
Food, beverages and tobacco industry
Graphic arts
Grocery products manufacture
Gypsum, plaster board etc. manufacturing industry
Insulation materials manufacturing
Journalism
Pet food manufacturing
Plumbing industry
Printing industry
Publishing industry
Textile industry
Wool industry

Panel 2

Australian Capital Territory public administration
Banking services
Chemical industry
Coal industry
Coal treatment industry
Commonwealth employment
Communications industry
Finance and investment services
Fire fighting services
Health and welfare services
Insurance industry
Library services
Local government administration
Meat industry
Pharmacy operations
Postal services
Scientific services
State government administration
Sugar industry
Technical services
Telecommunications industry
Water, sewerage and drainage services

Panel 3

Agricultural implement manufacturing
Aircraft industry
Brass, copper and non-ferrous metals industry
Brush and broom making industry
Engine drivers and firemen
Furnishing industry
Glass industry
Jewellery manufacturing
Metal industry
Paint manufacturing industry
Paper products industry
Rope, cordage and thread industry
Rubber, plastic and cable making industry
Saddlery, leather and canvas industry
Shipbuilding industry
Space tracking industry
Timber industry
Vehicle industry
Watchmaking

Panel 4

Airline operations
Airport operations
Catering industry
Clerical industry
Data processing industry
Educational services
Fast food industry
Federal police operations
Grain handling industry
Health insurance industry
Liquor and accommodation industry
Maritime industry
Market and business consultancy services
Northern Territory
Northern Territory Administration
Pharmaceutical industry
Photographic industry
Port and harbour services
Restaurants
Storage services
Tourism industry
Travel industry
Wholesale and retail trade

Panel 5

Aluminium industry
Arts administration
Business equipment industry
Cemetery operations
Christmas Island
Clay and ceramics industry
Cleaning services
Cocos (Keeling) Islands
Defence support
Diving services
Electrical power industry
Entertainment and broadcasting industry
Funeral directing
Gardening services
Glue and gelatine industry
Hairdressing services
Industries not otherwise assigned
Mannequins and modelling industry
Mining industry
Oil and gas industry
Painting industry
Private transport industry
Prudential regulation
Public transport industry
Quarrying industry
Sanitary and garbage disposal services
Security services
Uranium mining (including construction)

26. The advantage which the AIRC's system has over the ANZSIC system is that it has been developed over the years in conjunction with the development of the award system and nearly all awards have been allocated to one of the industries listed. The small number of awards which have not been able to be readily allocated have been assigned to the category of: *"Industries not otherwise assigned"*.
27. In **Table 3** below, Ai Group has prepared an initial draft which allocates the industries recognised within the AIRC's system to the Divisions recognised within the ANZSIC system. It can be seen that the industries recognised within the AIRC's system can be assigned relatively easily to the ANZSIC system.

Table 3: Draft Alignment between ANZSIC Codes and the AIRC's Panel System

ANZSIC Divisions		Industries Recognised Within AIRC Panel System
A	Agriculture, Forestry and Fishing	Agricultural industry Grain handling industry Timber industry Wool industry
B	Mining	Coal industry Coal treatment industry Mining industry Oil and gas industry Quarrying industry Uranium Mining
C	Manufacturing	Agricultural implement manufacturing Aluminium industry Brass, copper and non-ferrous metals industry Brush and broom making industry Cement and concrete products Chemical industry Clay and ceramics industry Clothing industry Engine drivers and firemen Food, beverage and tobacco industry Furnishing industry Glass industry Glue and gelatine industry Graphic Arts industry Grocery products manufacture Gypsum, plaster board etc. manufacturing industry Insulation materials manufacturing Jewellery manufacturing Mannequins and modelling industry Meat industry Metal industry Paint manufacturing industry Paper products industry Pet food manufacturing Pharmaceutical industry Printing Industry Rope, cordage and thread industry Rubber, plastic and cable making industry Saddlery, leather and canvas industry Ship Building Industry Sugar industry Textile industry Vehicle industry Watchmaking
D	Electricity, Gas, Water and Waste Services	Electrical power industry Water, sewerage and drainage services

E	Construction	Building, metal and civil construction industries Cement and concrete products Electrical contracting industry Painting Industry Plumbing industry
F	Wholesale Trade	Wholesale and retail trade *
G	Retail Trade	Pharmacy operations Wholesale and retail trade *
H	Accommodation and Food Services	Catering industry Fast food industry Liquor and accommodation industry Restaurants
I	Transport, Postal and Warehousing	Aircraft industry Airline operations Airport operations Maritime industry Port and harbour services Postal services Private transport industry Public transport industry Storage services
J	Information Media and Telecommunications	Business equipment industry Communications industry Data processing industry Journalism Library Services Publishing industry Space tracking industry Telecommunications industry
K	Financial and Insurance Services	Banking services Finance and investment services Health insurance industry Insurance industry
L	Rental, Hiring and Real Estate Services	
M	Professional, Scientific and Technical Services	Market and business consultancy services Photographic industry Scientific services Technical services
N	Administrative and Support Services	Clerical industry Cleaning services

* The AIRC Panel System combines Wholesale Trade and Retail Trade

O	Public Administration and Safety	Australian Capital Territory public administration Christmas Island Cocos (Keeling) Islands Commonwealth employment Defence support Federal police operations Fire fighting services Local government administration Northern Territory Northern Territory Administration Prudential regulation Security Industry State government administration
P	Education and Training	Educational services
Q	Health Care and Social Assistance	Health and welfare services
R	Arts and Recreation Services	Arts administration Diving services Entertainment and broadcasting industry Tourism industry Travel industry
S	Other Services	Cemetery operations Dry cleaning and laundry services Funeral directing Gardening services Hairdressing services Mannequins and modelling Sanitary and garbage disposal services
		Industries not otherwise assigned

28. Given that nearly all federal awards have been allocated by the AIRC to one of the industries recognised within its system, the model in **Table 3** enables nearly all federal awards to be immediately allocated to an ANZSIC Division.

29. We submit that consideration should be given to the approach of having the Minister for Workplace Relations make 18 award rationalisation requests to the President of the AIRC (in accordance with s.118 of the Work Choices Act), as follows:

- The 18 requests would align with the 19 ANZSIC Divisions - with Division L and M combined;

- Each request would identify the awards which are to be rationalised using the AIRC's existing allocations of awards to the industry groupings set out in **Table 3**.
30. While 18 award rationalisation requests may appear at first glance to be a lot, it needs to be considered that there are 2251 federal awards and 1802 state awards¹.
31. The 18 award rationalisation requests need not all be made concurrently.
32. Ai Group proposes that the following two industries be the subject of the initial two award rationalisation requests:
- Manufacturing; and
 - Information, Media and Telecommunications.
33. The Manufacturing Industry should be the subject of one of the initial two requests because:
- By far, the largest number of awards operate in this industry;
 - The rationalisation of awards in this industry will be relatively complex and will require a wide range of issues to be considered and resolved. Once the issues are resolved for this industry, the rationalisation of awards in other industries should be a much easier task.
34. The Information, Media and Telecommunications Industry should be the subject of the other initial request because in this industry a series of flexible and modern awards have been developed over recent years, including:

¹ Award Rationalisation Discussion Paper, p.5.

- The *Information Technology Industry (Professional Employees) Award 2001*;
 - The *Telecommunications Services Industry Award 2002*;
 - The *Telecommunications Industry (Professional Employees) Award 2002*; and
 - The *Contract Call Centre Industry Award 2003*.
35. Full Benches of the AIRC have been involved in the making of two of the above four awards.
36. The issue of whether award rationalisation should be carried out in one stage or in two or more stages is best left for the AIRC to decide on an industry by industry basis. For example, there are a relatively small number of awards in the Information, Media and Telecommunications Industry and therefore it may be possible to rationalise awards in one stage. In contrast, there are a very large number of awards in the Manufacturing Industry and accordingly in this sector a multi-stage approach would appear to be best.

5. Professional awards

37. There are a significant number of awards in operation covering professional engineers, professional scientists, information technology professionals, and other professional staff.
38. These awards are typically very flexible, reflecting the nature of professional jobs.
39. Ai Group submits that professional awards should be retained within the award safety net. However, consideration should be given to reducing the number of existing professional awards by combining some of them.

40. Professional and managerial areas that are currently award-free should remain so.

6. Occupational awards

41. The *Telecommunication Services Industry Award 2002* and the *Contract Call Centre Industry Award 2003* are genuine industry awards with:

- A technical stream, covering technical occupations;
- A clerical stream, covering clerical occupations;
- A call centre/customer contact stream, covering customer contact occupations; and
- A highly flexible set of wages and conditions for employees in higher level qualifications.

42. Such genuine industry awards are rare and many occupational awards exist, eg. clerical awards.

43. Ai Group submits that it would be undesirable to completely eradicate occupational awards. The merits of retaining occupational awards should be looked at on a case by case basis by the AIRC while it is rationalising awards within an industry.

44. With regard to clerical awards, as set out above, in some industries it has proved beneficial to include a clerical stream within a broader industry award. However, in industries such as manufacturing and construction, Ai Group strongly opposes a clerical stream being incorporated within the main industry awards given that such approach would undoubtedly lead to “blue-collar” militant unions such as the AMWU and CFMEU embarking upon recruitment drives to enrol clerical employees as members.

45. With regard to the occupational specific awards which apply in the construction industry - eg. those covering electrical contractors, plumbers and sprinkler fitters – consideration should be given to combining these awards with the *National Building and Construction Industry Award*, while maintaining separate awards for engineering construction and civil construction.

7. Enterprise awards

46. Many companies with their own enterprise awards strongly support the maintenance of such awards. The flexibility for companies to retain existing enterprise awards should be retained.
47. The preservation of enterprise awards is consistent with the object of the Work Choices Act (s.3) which states that *"the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level."*
48. Ai Group acknowledges that enterprise awards will have less relevance under the Work Choices Act than they do now because most companies which have enterprise awards also have a workplace agreement and, under the Act, an award had no effect while a workplace agreement is in operation. However, the concept of "protected award conditions", as referred to in s.101B of the Act, ensures the ongoing relevance of many enterprise award conditions, even for companies with workplace agreements.

8. Award free employees

49. One apparent aim of the Work Choices Act is to decrease the reliance on awards and to give encouragement to employers and employees to enter into workplace agreements. Consistent with this aim, the Act

imposes very substantial restrictions on award variations and on the making of new awards.

50. It would be inconsistent with the above aim for areas which are currently award free, to become award regulated. Ai Group strongly opposes such an outcome.

9. Common rule awards

51. The Work Choices Act has preserved the existing notions of award responsiveness for the time being (ie. through an employer being an individual respondent or a member of an employer association which is a respondent). In Victoria, the ACT and the Northern Territory common rule awards also exist.
52. The issue of whether or not an award should operate on a common rule basis should be left for the AIRC to determine on a case by case basis while awards are being rationalised within an industry.
53. The substantial overlap which exists between different federal awards needs to be addressed before awards are able to be readily declared to operate on a common rule basis nationally.
54. The problems associated with overlapping coverage of different federal industry awards were very apparent to Ai Group when the Victorian common rule award system was being developed. In the *Victorian Common Rule Award Case*, Ai Group's efforts in pressing for the problem to be addressed led to agreement being reached between the employer associations involved in the case and the Victorian Trades Hall Council on an approach to dealing with overlapping award coverage (NB. Ai Group took the lead amongst the employers involved in the case). It was agreed that the following undertaking would be given by unions when applying to the AIRC to have an award declared

to operate on a common rule basis and that such undertaking would be referred to by the AIRC in decisions relating to Victorian common rule declarations:

"It is not the intention of (insert relevant union/s) to seek to retrospectively enforce the common rule declaration in circumstances where an employer has been legitimately and appropriately applying another award which also covers the work performed by the employees. This position is advanced without prejudice to the rights of parties to seek the making of "roping-in" awards, irrespective of the common rule declaration by an employer or any rights under Part IX of the Act".

55. The above undertaking secured from the unions enables an employer in Victoria to continue to use the federal award that it was applying prior to the introduction of the common rule award system and protects the employer from union claims for another more generous common rule award to be applied.
56. Given the undertaking which the unions were prepared to give, the AIRC did not need to remove the overlap between different Victorian common rule awards.
57. Unless a similar approach is able to be implemented nationally, the significant overlap which exists between different federal awards will need to be removed before awards are able to be declared to operate on a common rule basis.

10. Transitional Provisions

58. The issue of whether transitional arrangements should be put in place is an issue best dealt with by the Commission while it is rationalising awards within an industry.

59. The transitional provisions which are appropriate will vary depending upon the extent of the changes being made to award conditions within the relevant industry.