

ATTACHMENT 2

2002
SAFETY NET REVIEW
CASE

Submission to the

Australian Industrial Relations Commission

by

The Australian Industry Group

and

Engineering Employers' Association, South Australia

March 2002

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2002 SAFETY NET REVIEW CASE

Submission

1 OVERVIEW

- 1.1 The Australian Industry Group (Ai Group) and Engineering Employers' Association, South Australia (EEASA) represent some 10,000 employers in the manufacturing, construction, information technology, telecommunications and

various other industry sectors.

- 1.2 Ai Group and EEASA oppose the applications filed by the various unions in these proceedings.
- 1.3 While opposing the amount of increase sought in the unions' applications, Ai Group and EEASA would support a moderate increase of \$10 per week to apply to all award rates of pay, subject to the principle of absorption. Even though this magnitude of increase is the highest that is sustainable given the need to maintain a strong economy and high employment levels, employers would prefer to see the full \$10 going into the pay packets of the low paid - not \$7 to the low paid and \$3 to the Government. However, this is not within the control of the Commission or employers. Only Governments can address this issue.
- 1.4 Our position has been determined based on our view as to what is an acceptable balance between what level of wage increase is reasonably sustainable having regard to the current state of the economy and its outlook, and the requirement under the *Workplace Relations Act 1996* (the Act) to maintain a safety net of fair minimum wages.
- 1.5 Ai Group believes that there is a need for the Commission to afford greater recognition to the fact that award wages are part of a much broader social safety net. Award wages are only one factor amongst numerous factors which impact upon the living standards of employees, including the low paid. Taxation and social security payments, in particular, are part of the social safety net. In determining safety net adjustments the Commission should take into account developments in the broader social safety net.
- 1.6 Where improvements in social security have been made or taxation levels

reduced such changes should be taken into account by the Commission in determining the level of safety net adjustment to be awarded. If the Commission is not prepared to take such factors into account there is little incentive for governments to search for more socially and economically superior ways of addressing the needs of the low paid. There is also little incentive for industrial parties to divert scarce resources to focusing on this important issue.

- 1.7 The Australian economy is facing an uncertain global environment with the prospects of a weakening economy in late 2002. Slower economic growth and the fragile recovery in the manufacturing and construction industries provide significant “red lights” to warn the Commission to go slow in awarding wage adjustment.
- 1.8 Under the Act, the Commission is responsible for establishing and maintaining an effective and relevant award safety net in a manner which further the objects of the Act. Consistent with such responsibilities, it is submitted that now is the appropriate time for the Commission to implement measures to encourage industrial parties to rationalise award structures and significantly reduce the number of awards.
- 1.9 While we acknowledge that a further flat rate adjustment will further compress relativities, we do not believe that relativities have eroded to such an extent as to be ineffective or unworkable. In addition, the effect of market factors on actual rates of pay cannot be ignored.

2 THE CLAIM

2.1 Our understanding of the ACTU's claim is as follows:

- X an increase of \$25.00 per week in all award rates of pay;
- X a commensurate adjustment of allowances which relate to work or conditions of employment which have not changed;
- X absorption of safety net adjustments into existing above award payments;
- X any safety net adjustments to be available on and from 1 May 2002 or in the alternative, from a date twelve months after the increases provided for in the May 2001 decision in the award in question;
- X a retrospective operative date for safety net wage increases in certain circumstances (i.e. where an application for a variation to an award is made a reasonable time before the date which falls 12 months after the increases provided for in the 2001 decision).

3 THE PURPOSE OF THE SAFETY NET REVIEW CASE

3.1 It is timely to once again consider the purpose of the Safety Net Review proceedings, given public debate about this issue¹. Under the Act, the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to:

- the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
- economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
- when adjusting the safety net, the needs of the low paid. (s.88B(2)).

3.2 The unions are once again referring to their application as a “living wage” application. This term was used by Higgins J in the Harvester case in 1907 and was said to represent “*the normal needs of the average employee regarded as a human being in a civilised society*”.²

3.3 In the case which led to the April 1997 Safety Net Review decision, there was significant debate about the purpose of Safety Net Review proceedings and whether or not the Commission should determine a “living wage”. The determination of a “living wage” would necessitate defining a standard of living to which a benchmark is related and, in its majority decision of April 1997, the Commission held that such an approach “*entails formidable problems*”.³

3.4 Since the 1997 decision, the Commission has consistently eschewed the notion of “living wage” as a basis for reviewing minimum safety net rates of pay. Rather, the Commission has always recognised a broad range of factors as bearing upon the assessment of an appropriate safety net increase, including:

- the economic capacity of firms;

¹ For example, see Annexure A - “Abbott’s rethink on social wage”, *The Australian Financial Review*, 13 February 2002.

² (1907) 2 CAR 1

³ *Safety Net Review – April 1997* (1997) 71 IR 1 at 52 per O’Connor P, McIntyre VP, Hancock and MacBean SDP, Oldmeadow C and McDonald C.

- the impact of international competitiveness upon Australian industry;
- community living standards;
- the objective of encouraging the making of enterprise agreements;
- the needs of the low paid.

3.5 Ai Group continues to support the view that the Commission cannot and should not determine a “living wage”.

3.6 However, Ai Group believes that there is a need for the Commission to afford greater recognition to the fact that award wages are part of a much broader social safety net which some have called the “social wage”.

3.7 Award wages are only one factor amongst numerous factors which impact upon the living standards of employees, including the low paid. Taxation and social security payments, in particular, are part of the social safety net.

3.8 Some experts argue that safety net wage increases are a “*very blunt equity device*” and that a far more economically and socially advantageous outcome would be achieved if safety net wage increases were replaced by a system of “*tax credits for low wage earners in low income families*”⁴. An earned income tax credit system operates in the US and such a system has been proposed in Australia in recent years by the ALP.⁵

3.9 Taxation significantly erodes the value of safety net adjustments to low paid

⁴ Annexure B - “A Plan to Cut Unemployment in Australia: An Elaboration on the ‘Five Economists’ Letter to the Prime Minister”, 28 October 1998 at pp1 and 3.

⁵ Above n4 at p2.

employees. The following table sets out the taxation which would be payable from safety net adjustments of various amounts by a person earning the minimum wage of \$413.40 (assuming that the person had no other income).

Current Minimum Wage	Safety Net Increase	New Minimum Wage	Tax Rate	Amount Received by Employee
\$413.40	\$5	\$418.40	\$0.30	\$3.50
\$413.40	\$10	\$423.40	\$0.30	\$7
\$413.40	\$15	\$428.40	\$0.30	\$10.50
\$413.40	\$20	\$433.40	\$0.30	\$14
\$413.40	\$25	\$438.40	\$0.30	\$17.50

3.10 In addition to the tax implications, the receipt of a safety net increase by an employee may result in the employee losing various family assistance and other social security benefits.

3.11 For example, the Federal Government provides a *Family Tax Benefit*⁶ to families with dependent children whose incomes do not exceed specified limits. Once a family's income exceeds \$29,857 per year (equivalent to \$574 per week), the maximum rate of *Family Tax Benefit Part A* is no longer payable to the employee and is reduced by 30 cents for every extra dollar of income. Families receiving a *Family Tax Benefit* may also be eligible for the following forms of family assistance: a Maternity Allowance; a Maternity Immunisation Allowance; a Large Family Supplement; a Multiple Birth Allowance; Rent Assistance; and a Health Care Card. A Low Income Health Care Card can be obtained only by those earning a family income which does not exceed a specified level (e.g. \$558 for a couple with one child).

3.12 The above example highlights that safety net adjustments may provide a

⁶ Annexure C - Materials from the website of the Department of Family and Community Services, 28 February 2002.

disproportionately low benefit to low income earners (compared to other mechanisms for addressing their needs). Conversely, safety net adjustments may result in a disproportionately high impact upon some employers because of cost increases resulting from:

- higher base wages;
- higher shift and overtime payments - which are based on a percentage of the base rate;
- increased superannuation payments;
- increased payroll tax;
- increased workers' compensation payments.

Such cost increases reduce the competitiveness of Australian companies and negatively impact upon employment levels.

3.13 In his dissenting decision in the April 1997 Safety Net Review Decision,⁷ Vice President Ross expressed the view that there *“is an interrelationship between the award safety net and the broader social security safety net”* and that *“[a]djustments in the social safety net have a bearing on the determination of the level of the award safety net”*. Ai Group agrees with these statements.

3.14 Ai Group submits that in determining safety net adjustments the Commission should take into account developments in the broader social safety net. Where improvements in social security have been made or taxation levels reduced such changes should be taken into account by the Commission in determining the level of safety net adjustment to be awarded. If the Commission is not prepared to take such factors into account there is little incentive for governments to search for more socially and economically superior ways of addressing the needs of the low paid. There is also little

⁷ Above n3 at 147 per Ross VP.

incentive for industrial parties to divert scarce resources to focusing on this important issue.

3.15 Ai Group believes that there would be merit in the Commission, governments and the industrial parties striving to develop a deeper understanding of the interrelations between the various factors which comprise the social safety net. Without such understanding, the Commission and those who appear before it are likely to continue to have great difficulty in accurately assessing what level of safety net increase would lead to optimal economic and social outcomes. Important questions need to be considered such as:

- Are safety net increases going to those most in need of them?
- Do the increases result in an inequitable burden on employers?
- Are safety net increases the best means of addressing the needs of the low paid?
- Are the increases really benefiting low paid employees?

3.16 An acceptance by the Commission of a link between award wages and the broader social safety net does not necessitate acceptance of the concept of a “living wage” or any requirement for the Commission to define a benchmark standard of living.

3.17 Final responsibility for addressing the needs of the low paid rests with Government.

3.18 However, the Commission is responsible for an important element of the “social wage” (that is, the maintenance of award wages) and we submit that it

should not determine that element in isolation of other elements.

4 ECONOMIC ANALYSIS

4.1 The following economic analysis prepared by the Australian Industry Group focuses on two key aspects underpinning the ACTU's claim for a \$25 weekly increase in award rates. These are:

- The proposition that award wages have risen by around 2.5 per cent, as stated on pages 5 and 28 of the ACTU submission, resulting in a *“real wage cut”* (p.1 of ACTU Submission), and
- The proposition that *“there is, in short, no reason why the economy cannot sustain a moderate increase in the order sought by the ACTU”* as stated on page 7 of the ACTU Submission.

4.2 Ai Group's analysis shows that:

- On the first proposition, the award wage average increase of 2.5% in 2001 needs to be treated with caution given:
 - the difficulties in determining the impact of award increases on salaries;
 - the extent of award absorption into over-award payments;
 - the spread of relevant awards; and
 - the spread of pay rates within awards.
- On the second proposition, while the Australian economy has performed better than most other countries in recent times, this does not take into account Australia's weaker economic performance over the last two

years relative to the previous five years. Indeed, the prospect of further weakness ahead in Australia's growth does provide a reason for caution and moderation in awarding wage increases.

4.3 As part of the Ai Group's economic analysis, we have attached two documents – an economic assessment of the prospects for manufacturing over the next twelve months prepared by Ai Group, and a report on growth prospects in the decade ahead ("*How fast can the Australian economy grow? Mark II*") commissioned by Ai Group from Dr Barry Hughes.⁸ These documents reinforce the modest outcomes expected of the Australian economy in 2002/03.

How Have Award Dependent Workers Fared?

4.4 The ACTU on page 27 of its Submission states that "*last year award workers received an average increase well below 3 per cent*". Using unpublished data from *ABS Employee Earnings and Hours* (6306.0), the average increase for award workers is calculated at 2.5% (2.7% for full time employees) in 2001.

4.5 However, it can be questioned as to what exactly does the calculation measure. Employees are defined as "award only" where they are principally employed under an award. However, the salary actually received by "award only" employees as a minimum includes:

- award payments,
- agreement payments,
- over-award payments,
- higher duties pay,
- shift/penalty payments for ordinary time hours,

⁸ Annexures D and E

- supplementary payments,
- retainers/commissions.

In the case of AWOTE, it may additionally include taxable allowances, bonuses, payment under incentives or piece work, and workers' compensation payments.

4.6 The ACTU appears not to have separated from the salary data the industry award element from the non-award elements identified above, presumably because ABS cannot desegregate this data. The collection instrument used by ABS does not enable this data to be separated, nor does it always capture all so-called "award only" employees.

4.7 Given that award increases can be absorbed into over-award payments, it is not clear what is actually being measured. Is it certainly not measuring the **actual** movement in award salaries. It may be simply reflecting the fact that many workers are being paid in excess of their award rates. Thus, the supposed 2.5% increase may be no more than a measure of the extent of over-award absorption of living wage increases, consistent with previous determinations by the Commission.

Table 1 Distribution of Award Workers across Industry Sectors

	Awards only (%)	Total emp (Nov 01)	Total emp Awards	% of – awards
Mining	5.9	79.5	4.7	0.2
Manufacturing	11.4	1088.6	124.1	6.2
Electricity, gas and water supply	1.4	68.7	1.0	0.0
Construction	15	694.8	104.2	5.2
Wholesale trade	12.1	432.4	52.3	2.6
Retail trade	34.9	1397.4	487.7	24.3
Accommodation, cafes and restaurants	64.7	454	293.7	14.6
Transport and storage	18.4	427.9	78.7	3.9
Communication services	1.5	164.2	2.5	0.1
Finance and insurance	5.6	354.6	19.9	1.0
Property and business services	20.7	1006.9	208.4	10.4
Government administration and defence	15.3	388.1	59.4	3.0
Education	13.6	648.9	88.3	4.4
Health and community services	37.4	906.2	338.9	16.9
Cultural and recreational services	18.9	224.7	42.5	2.1
Personal and other services	27.1	371.7	100.7	5.0
All industries	23.2	8708.6	2007.0	100.0

Sources: ABS, *Employee Earnings and Hours (6306.0)* and *Labour Force (6203.0)*

4.8 In further support of its case, the ACTU uses Tables 2.3 to report on “selected award rates”. There are no details on the source of this data. Inspection of ACTU Composite Exhibit 3, “*Metal Industry Award Increases, 1997 – 2002*” suggests that Table 2.3 is based on this award. Indeed, the C7 rate increase

for 2001 is actually 2.7% and not 2.1% as cited in the submission (all other increases cited being consistent with the metals award).

- 4.9 The ACTU submission suggests that award workers “*at best received 3.2 per cent*” (p. 28 of the ACTU Submission). While this appears to be true for the Metal Industry Award, workers under other awards (such as retail awards) received increases of up to 4.7 per cent in 2001. There is such a vast spread of award increases across awards, and levels within awards, that the use of an overall average increase appears to be of limited value, particularly if no account is taken of the spread of employees across awards and levels.
- 4.10 As Table 1 highlights, at the very best, the example of the Metals Award used by the ACTU would represent no more than **6.2%** of award workers. More significant would have been the case of award retail trade workers. These awards account for the largest share of award workers (24.3%), a point acknowledged by the ACTU in its submission on page 110.
- 4.11 By way of example, the changes in minimum (hourly) rates for full time workers in the Victorian retail industry sector are shown in Table 2. As can be seen, minimum rate increases in 2001 ranged from 4.73% for Level 1A to 2.79% for Level 12. These increases flowed-on the results of the last year’s May 2001 Safety Net Review Decision.⁹ A crude average based on the average of the increases would be 3.14%, above the CPI. The table also highlights that the lower the classification, the higher the increase received by the employee, distributing the highest increase to the lowest paid.

⁹ See *Re Applications for Minimum Wage Orders for certain Victorian employees*, AIRC Full Bench, 16 August 2001, PR907793.

Table 2 Movement in hourly minimum rates for full-time workers in retail trade

	\$	\$	%	\$	%
	1999	2000	Increase	2001	Increase
Level 1A	6.8	7.19	5.74	7.53	4.73
Level 1B	8.21	8.6	4.75	8.94	3.95
Level 1C	10.15	10.54	3.84	10.88	3.23
Level 2	10.16	10.55	3.84	10.89	3.22
Level 3	10.58	10.97	3.69	11.31	3.10
Level 4	11.17	11.56	3.49	11.9	2.94
Level 5	11.43	11.82	3.41	12.16	2.88
Level 6	11.7	12.09	3.33	12.43	2.81
Level 7	11.96	12.35	3.26	12.69	2.75
Level 8	12.22	12.61	3.19	12.95	2.70
Level 9	12.56	12.95	3.11	13.34	3.01
Level 10	12.81	13.2	3.04	13.59	2.95
Level 11	15.19	15.58	2.57	16.03	2.89
Level 12	15.74	16.13	2.48	16.58	2.79
Average increase			3.55		3.14

Source: OSIRIS web site

4.12 In summary, the analysis suggests that the average award wage increase of 2.5% in 2001 cited by the ACTU needs to be treated with caution – it doesn't actually measure "award only" movements in salaries and it does not typify the variation in award rates across industries and pay rates within industries. Better account of the distribution of employees with industry award rates would be required to be able to assess the impact of movements in award wages on workers. This is consistent with the need to recognise that safety net wage increases will impact differently across industry sectors and firms.

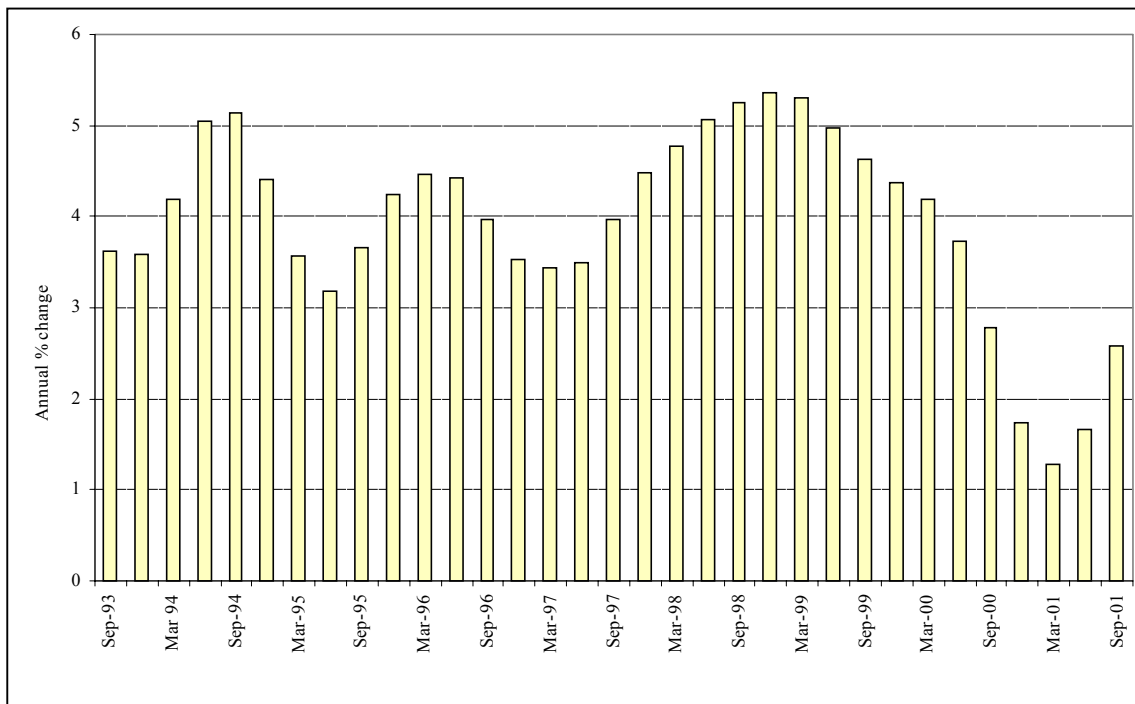
Economic Conditions and Prospects

- 4.13 The ACTU in its submission has stated that the “*Australian economy has showed remarkable resilience over the past year*” recovering from the slowdown and outperforming most other major industrialised countries (p. 101 of ACTU Submission). It added that the outlook ahead “*is also very encouraging*” with Australia expected to ride out the current world downturn better than most.
- 4.14 While it is certainly true that Australia has performed better than many other industrialist nations in recent times, this is not sufficient grounds for granting a \$25 increase. Given that wages must be set within the **Australian** context, comparisons with the economic growth of other countries are irrelevant, other than how they may impinge on Australia’s economic performance.
- 4.15 Ai Group contends that, amongst others, a more pertinent consideration is how Australia is performing (and expected to perform) relative to past years. Can an increase of \$25 be justified when the economy is delivering well below 4 per cent growth per annum (since the start of 2000), when over the previous five years award increases of \$12 to \$15 have generally been granted when the economy was averaging over 4 per cent per annum growth? The answer must clearly be no.
- 4.16 Chart 1 below shows the quarterly change in economic growth (measured in annualised terms) based on trend National Accounts data. As can be seen, the performance of the Australian economy has departed substantially over the last year from the previous five or more years. Quarterly annualised growth of over 4 per cent has been replaced by a growth rate below 3 per cent. Even assuming a strong quarterly growth (of over 1 per cent) in the December 2001

quarter, this would put growth at about 3.7 per cent in trend terms, well below past experience and our optimal growth potential. This contrast is even more evident with cyclical downturns, where annualised growth fell to around 3.5 per cent in previous downturns compared to 1.5 per cent in the most recent downturn (a difference of 2 percentage points or two-thirds lower).

- 4.17 Lower growth means we cannot sustain wage increases in the order of \$25, let alone increases of \$12 to \$15 granted over previous years. Indeed, last year's increase of up to \$17 per week was "out of sync" with the economy growing at a rate of only 1.5 to 2.0 per cent.

Chart 1 Annualised growth in Australian economy, trend terms



Source: National Accounts

4.18 As an Ai Group study into Australia's growth, "*How fast can Australia grow? Mark II*" prepared by Dr Barry Hughes highlighted,¹⁰ Australia's economic performance throughout the 1990s was sustained by strong growth in productivity. Three factors contributed to the gains in productivity:

- Growth in the supply and quality of labour, through natural increase, immigration and higher labour participation rates.
- Microeconomic reforms through the lowering of tariffs, greater decentralisation in wage settings, increased market competition, and reform to government business enterprises and utilities.
- Capital deepening through the purchase of new technology, better software and wider internet usage by business and the community.

4.19 Unlike the US, where IT production contributed strongly to productivity performance, the real Australian productivity story occurred outside the IT sector. The productivity growth was largely confined to a narrow range of industries sheltered from international trade, namely wholesale and retail trade, construction, and to a lesser extent, the hospitality sector of accommodation, cafes and restaurants. Overall, of far more importance was the intense period of microeconomic reform.

4.20 However as the Hughes study highlights, the outlook for the years ahead is not so promising with a lower potential growth rate of around 3% due to:

- Further declines in the labour supply growth rate, expected to cut 0.25% or more off annual GDP growth by the end of the decade;

¹⁰ Annexure E

- The removal of any excess capacity (known as the “output gap”) in the growth potential of the economy;
- A decline in productivity growth, from 4% in mid-1998 due to a slowing in the pace of microeconomic reform and limited IT spillover effects.

4.21 Australia’s economic performance in recent times has reflected this scenario and while there has been an upturn in productivity in recent quarters, this has been due to a significant reduction in aggregate hours worked (which fell by 2 per cent on an annualised basis) reflecting a reluctance by firms to employ additional staff coming out of the sharp downturn in late 2000. This is unlikely to last as companies adjust employment levels to reflect the improvement in business conditions.

4.22 Compounding the need for wage restraint arising from Australia’s slower economic performance is the considerable uncertainty about prospects over the year ahead.

4.23 The ACTU on page 101 of its Submission concluded:

“The outlook for the period ahead is also very encouraging. Notwithstanding the recent developments overseas, Australia is expected to ride out the current world downturn better than most, being largely shielded by the international events by strong growth domestically, and by the stimulatory effects from the expansionary stance in both fiscal and monetary”.

This assessment is largely based on the Federal Government’s MYEFO document (dated October 2001), Statement on Monetary Policy from the RBA (dating back to November 2001), OECD and IMF publication (dating back to

late 2001). While these documents may have represented a fair assessment of Australia's and global economic outlooks, they are now outdated.

4.24 More recent economic assessment of prospects present a more sober picture for the second half of 2002 and into 2003. A sample of these economic assessments includes:

- Consensus Economics forecast has the Australia economy growing by only 3.2 per cent in 2002, rising to 3.6 by late 2003.
- The latest NAB forecasts (dated 22 February 2002) has the Australian economy growing by 3.25 per cent in 2002. The NAB states "*overall, prospective developments in dwelling investment, business investment and net exports suggest Australia could well be struggling to maintain its current pace of growth into the second half of the year*".¹¹
- The ANZ Bank has the economy growing by 3.2 per cent in 2002 and 2.7 per cent in 2003. ANZ Chief Economist Saul Eslake states "*sustained overall growth will therefore require a pick up in business investment and exports in the second half of the year: Both seem likely to occur, but [are] probably not enough to prevent a temporary slowing in growth below 3%*".¹²
- The Reserve Bank Deputy Governor, Glenn Stevens, in an assessment of "*The Economic Outlook for 2002*" (dated 18 February 2002) has stated "*we should ... keep in mind that the full effects of the global downturn on Australia are probably not yet apparent*".¹³ The RBA's expectations of moderate growth in 2002 rest on the general effects of low interest rates

¹¹ Annexure F
¹² Annexure G
¹³ Annexure H

still filtering through the economy and prospects of a hopeful upswing in business investment all acting to counteract the impact on domestic demand of a waning in the housing cycle. However, Stevens adds “*none of this is assured, in large part because the global recovery itself, while apparently more likely than it was, is no sure thing*”.

- 4.25 These assessments hardly amount to justification for the claim that there is “no reason” why the economy cannot sustain a \$25 increase in award wages.
- 4.26 The situation in Australia has been worsened by a number of recent setbacks including the collapse of Ansett; Pasminco and One Tel being put into voluntary administration; the planned closure of Daimaru in Melbourne; major staff cutbacks in Coles Myer, Optus, South Pacific Tyres and Orica; and a tourism industry still recovering from the effects of a tourism slowdown.
- 4.27 Looking at the manufacturing sector, while the sector continues to recover from its worst downturn in over twenty years, growing at only 0.2 per cent on an annualised trend basis according to the latest National Accounts, the prospects for the year ahead are only modest.
- 4.28 The survey released by Ai Group in February 2002, covering 880 companies with annual turnover of about \$50 billion (25% of Australian manufacturing activity) in summary shows that:¹⁴
- Despite the global uncertainty, companies expect activity to grow at around 2.7 per cent by the end of 2002. While this is a significant recovery from the 0.2 per cent growth in the 12 months to last September, it remains well below the 4 per cent growth prior to the downturn at the end of 2000.

¹⁴ Annexure D

- Export growth has slowed sharply from about 21 per cent twelve months ago to around 3 per cent at the end of 2001. The survey responses point to a slight improvement to around 5 per cent growth by the end of 2002.
- Manufacturing employment fell by 3 per cent in 2001 and is expected to fall by another 2 per cent in the course of 2002. The biggest declines are expected in the textiles, clothing and footwear and miscellaneous manufacturing sectors.
- While automotive industry investment is strong, the general investment outlook remains bleak. Overall, investment is expected to increase by 4 per cent in 2002, but when transport equipment is excluded, investment is expected to decline by 1.5 per cent.

4.29 Granting a \$25 a week increase would put unnecessary pressure on the sector in its early phase of recovery and threaten the already fragile prospects for job growth.

4.30 Results from the latest Australian Industry Group *Construction Outlook Report*¹⁵ also point to the fact that non-residential construction activity is still in decline, with forecasts only for moderate recovery in 2001/2002. Even this recovery is dependent upon certain high value projects under consideration moving into construction, while the weak global outlook constitutes an added risk. The nationally conducted survey covered the responses of 100 market leading construction companies employing some 33,500 persons with combined turnover of 9.2 billion or 25% of total industry activity.

4.31 In summary, an uncertain global environment, the prospects of a weakening in the economy in late 2002, slower economic growth, and the fragile recovery in

¹⁵ Annexure I

manufacturing and construction activity, provide significant “red lights” to warn the Commission to go slow in awarding wage adjustment, particularly in a low inflation and interest rate environment.

5 AMOUNT OF INCREASE

5.1 There may be some superficial appeal in the ACTU’s proposition that employers need to pay large wage increases to the low paid to assist them in meeting their needs.

5.2 However, the appeal of this proposition is indeed superficial given the following facts:

- Excessive safety net wage increases, as proposed by the ACTU, would have a negative impact on the Australian economy with a resultant impact upon all income earners, particularly the low paid.
- Excessive wage increases could lead to higher inflation, which in turn could lead to the Reserve Bank raising interest rates. Low interest rates are the greatest benefit that the Australian community has received out of the economic reforms of the past decade. To put them in jeopardy for a few extra dollars a week - which would be quickly eroded by the impact of rate rises - would be a tragedy.

5.3 Under s.90 of the *Workplace Relations Act 1996*, in determining this matter, the Commission must take into account the state of the national economy and the likely effects of its decision on the national economy, with particular reference to the likely effects on the level of employment and inflation.

- 5.4 Under s.90A of the *Workplace Relations Act 1996*, the Commission must have regard to the increased costs incurred by employers arising from the operation of the *Superannuation Guarantee Legislation*. From 1 July 2000, employers have been required to contribute eight per cent of ordinary time earnings into superannuation. From 1 July 2003, employers will be required to increase this contribution to nine per cent.
- 5.5 In addition, many employers are faced with significant increases in labour costs due to the numerous applications which are being made by unions to increase the casual loadings in awards¹⁶ seeking to flow-on the terms of the *Metals Award Casual Employment Decision*¹⁷ which increased the casual loading in the *Metal Engineering and Associated Industries Award 1998* from 20 per cent to 25 per cent (i.e. a 25 per cent increase in the loading).
- 5.6 Ai Group submits that such large cost increases should not be overlooked in these safety net review proceedings in assessing the capacity of employers to pay a safety net adjustment. 31.8 per cent of female employees and 22 per cent of male employees are engaged on a casual basis.¹⁸ In many workplaces and in many industry sectors there are much higher levels of casual employment than the average across all industries. The increases in the casual loadings in the Metals and Graphic Arts Awards and those being pursued in numerous other awards represent very large wage increases for a large proportion of the employees of many enterprises.

¹⁶ For example, Cargill C recently decided to increase the casual loading in the *Graphic Arts – General Interim Award 2000* from 20 per cent to 25 per cent. Applications to increase casual loadings are also being pursued by unions in the numerous other awards including the *Rubber, Plastic and Cablemaking Industry – General – Award 1998*; *Wine Industry – AWU – Award 1999*; *Pig Breeding and Raising (AWU) Award 1999*; *National Building and Construction Industry Award*, *Horticultural Industry (AWU) Award 2000* and the *National Metal and Engineering On-site Construction Industry Award 1989*.

¹⁷ Print T4991

¹⁸ ABS, *Australian Social Trends*, July 2000, Cat. No. 4102.0.

5.7 If the ACTU is correct and low paid workers continue to have significant unmet needs then the burden of addressing such a social problem should not rest unfairly on employers. Governments have a responsibility to ensure that social welfare and taxation systems are adequate and representative bodies, such as the ACTU, have a responsibility to ensure that governments are well-informed about the needs of their constituents.

5.8 Accordingly, we propose the following:

1. A flat adjustment of \$10.00 per week to be applied to all award rates of pay and to the Minimum Wage.
2. The adjustment is to be payable from a date not earlier than 12 months after the operative date of the safety net adjustment in the relevant award flowing from the May 2001 Safety Net Review Decision.
3. The adjustment is to be subject to absorption into over award payments, irrespective of whether they reflect formal or informal agreements or individual arrangements.

6 AWARD STRUCTURES

6.1 The Commission has a responsibility under the Act to maintain an effective and relevant award system which furthers the objectives of the Act. Such objectives include:

- encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market (s.3(a));

- ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level (s.3(b));
- providing the means for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards (s.3(d)(i)); and
- providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them (s.3(e)).

6.2 The Act requires that:

- awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s.88A(c));
- awards are expressed in plain English and are easy to understand in structure and content (s.143(1C));
- the Commission performs and exercises its functions and powers in relation to making and varying awards in a way that encourages the making of agreements between employers and employees at the workplace or enterprise level (s.88A(d)).

6.3 Consistent with the responsibilities of the Commission referred to above, in its 2001 Safety Net Review submission, Ai Group asked the Commission to take

positive steps to encourage industrial parties to rationalise award structures and significantly reduce the number of awards.

6.4 Ai Group submitted that there was merit in considering the approach of having only one award for each major industry sector or, alternatively, as an interim step, combining awards within major segments of each industry. Given the numerous issues that would need to be worked through to achieve such an outcome and the numerous parties who would need to be consulted and involved in the process, Ai Group proposed that as a first step the Commission should convene a conference to explore relevant issues and endeavour to achieve consensus on the way forward.

6.5 In response to Ai Group's submission, the Commission said:¹⁹

"We accept that this issue is important. However we are not persuaded that now is the time for a conference. Many of the parties to awards are currently required to commit a significant amount of time to the simplification of awards.....This process should continue to be given priority.....The desirability of a conference subsequently to discuss the rationalisation of awards is a matter which may be raised again at an appropriate time".

6.6 The question arises as to whether now is the appropriate time to deal with this issue. Ai Group believes that it is.

6.7 Globalisation has reshaped and will continue to reshape those many Australian industries which are subject to international competition. Globalisation of both markets and production has forced major changes on Australian companies. To survive and compete in a global marketplace,

¹⁹ (2001) 104 IR 314 at 350

Australian companies need a high degree of flexibility and need to continuously improve productivity levels.

6.8 The rationalisation which is occurring in Australian industry is central to building the long-term competitiveness of our companies in global markets. Such rationalisation is a world-wide phenomenon.

6.9 Today, Australian companies face the full brunt of world competitive pressures. Sustained improvement in productivity levels are essential to survive and compete.

6.10 Australia's award system has failed to keep pace with the needs of companies operating in a globally competitive environment.

6.11 The Commission's current status report²⁰ on the progress of award simplification shows that:

- 824 awards have been simplified;
- 630 awards are currently being simplified;
- 1353 awards have been set aside or deemed not in operation.

2210 awards remain, including 592 new awards made since 1 July 1998.

6.12 While benefits have flowed from the simplification of the content of awards, virtually nothing has been done to rationalise and simplify the scope of awards. The scope of a large number of awards still reflect the former rules of former unions which have long since amalgamated into much larger organisations.

²⁰ AIRC *Award Simplification Status Report*, 31 January 2002.

- 6.13 Australia's award system is cumbersome and extremely complex. It is still common for employers to be bound by a significant number of awards applying to different groups of employees. Such a situation creates administrative difficulties for employers and leaves them exposed to claims for award breaches.
- 6.14 Australia's award system is unique in the world and there are many who believe that the system should be abandoned. Ai Group does not share this view. Ai Group supports a strong ongoing role for awards in setting minimum standards.
- 6.15 However, unless Australia's award system is able to respond to the changing business environment and the changing nature of work in Australia, the voices of those advocating change will become louder and louder.
- 6.16 The differences in terms and conditions between awards will be an important consideration for both employers and employees in any award rationalisation exercise. However, as a result of the award simplification process, such differences are not as great as they once were. Further, there are numerous ways that any differences could be dealt with.
- 6.17 Consistent with Ai Group's submission in the 2001 Safety Net Review case, Ai Group urges the Commission to convene a Conference of the major parties to explore relevant issues and endeavour to achieve consensus on the way forward. At such Conference:
- The Commission could seek the views of relevant parties concerning the best approach to award rationalisation;
 - Any models proposed by the parties could be explored;

- The information needed by the Commission and the parties to make informed decisions about the rationalisation process could be identified;
- A program of further Conferences could be scheduled to work through the issues.

6.18 Ai Group believes that the above approach is the most practical way to proceed rather than, say, Ai Group making applications to vary the large number of awards to which it is a party. If such applications were made, a test case of significant proportions could eventuate. Rather than devoting resources to preparing submissions for test case proceedings, Ai Group would prefer to devote its resources towards working through the issues with the other parties and the Commission, and endeavouring to achieve as much consensus as possible on the way forward.

6.19 In addition to providing benefits at the enterprise level, rationalising the award system would provide benefits to the Commission and the industrial parties. Every year enormous resources are expended in flowing-on safety net wage increases and other test case standards due to the need for applications to be lodged and hearings conducted on an award-by-award basis.

7 SKILLS-BASED CLASSIFICATION STRUCTURES AND RELATIVITIES

7.1 Even though a flat increase will further distort relativities within skill-based classification structures, a flat dollar increase of \$10 represents an appropriate balance given the conflicting statutory goals of assisting the low paid and protecting the integrity of award classification structures. We do not propose

any cut off point in respect of the award rates which such increase should be applied to.

- 7.2 Relativities have not eroded to such an extent as to be ineffective or unworkable.
- 7.3 In addition, the effect of market rates on actual rates of pay cannot be ignored. The incidence of overaward payments in the industries represented by Ai Group and EEASA significantly reduces any detrimental impact of compressed relativities between award rates.
- 7.4 Further, last year's May 2001 Safety Net Review decision, which awarded a higher increase to higher classification levels, reduced the distortion.
- 7.5 The ACTU has signalled its intention to pursue a solution, in separate proceedings, for the problem of compressed relativities between award rates.²¹ Whilst Ai Group would, of course, consider any application on its merits, Ai Group is unable to identify any approach to addressing award relativities which would not represent a blatant attempt at "double dipping" on the part of the unions. For many years, the ACTU has argued that the Commission should award flat dollar safety net adjustments in order to address the needs of the low paid. Such arguments have been accepted by the Commission and flat dollar increases have been awarded.
- 7.6 It would be very unfair for employers to now be required to increase middle and upper level award rates to correct the distortion which the ACTU has pursued over the last decade.

²¹ ACTU Submission, p 38.

8 OTHER FACTORS BEARING ON AI GROUP'S POSITION

8.1 There are other factors bearing on the formulation of our position in response to the ACTU's application and these are set out briefly below.

Consistency with Legislation

8.2 In determining the appropriate level of the award safety net, the following objects established in section 3 of the Act are particularly relevant to this case:

- “(a) encouraging the pursuit of high employment, improved living standards, low inflation, and international competitiveness through higher productivity and a flexible and fair labour market;*
- (b) ensuring that primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level;*
- (c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act;*
- (d) providing the means:*
 - (i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and*
 - (ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment”.*

8.3 Essentially, these provisions emphasise the need to:

- achieve superior economic and social outcomes – including internationally competitive enterprises and reduced unemployment – by means of higher productivity and a flexible and fair labour market;
- preserve freedom of choice in employment arrangements for employers and employees upon whose shoulders rests the main responsibility for determining matters affecting their relationship;
- ensure that agreement-making between employers and employees takes priority over other forms of regulation upon a foundation of minimum award safety net standards.

8.4 The *Workplace Relations Act* also emphasises that the Commission’s role in arbitrating safety net adjustments is not to inhibit agreement-making at the workplace or enterprise level. We seek to preserve the primacy of enterprise bargaining by pitching the adjustment to award rates at a level which encourages the making of agreements at the workplace or enterprise level [see s.88A(d)].

8.5 Awards have assumed the role of a safety net of fair minimum wages and conditions of employment. The scheme of the Act makes it clear that awards are to be safety net arrangements.

8.6 The proposal by the Ai Group and EEASA relating to flat adjustments to award rates of pay is consistent with the scheme and intention of the Act.

8.7 Under the Act (s.88B) the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained having regard to the following:

- the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
- economic factors, including levels of productivity, inflation and the desirability of attaining a high level of employment;
- when adjusting the safety net, the needs of the low paid.

8.8 In performing its function pursuant to s.88B, the Commission is required to balance the competing elements of that section. The proposal by Ai Group and EEASA achieves a proper balance and would at least maintain the real value of award wages for employees on the lowest paid classifications while at the same time having regard to general economic objectives, including low inflation and the need to avoid adverse effects on unemployment.

Scope for Enterprise Bargaining

8.9 An adjustment of \$10.00 will maintain real wages for employees in the lowest paid classifications while at the same time avoid or at least minimise the prospect of limiting or undermining the scope for enterprise bargaining. The ACTU's claim would in our submission impact quite negatively on such bargaining.

8.10 It is important to consider the claim against the background of enterprise bargaining outcomes. The Department of Employment, Workplace Relations and Small Business' *Workplace Agreement Database (WAD)* shows that the Average Annualised Wage Increase in the September 2001 Quarter was 3.9% across all industries. 3.8% was the result for the private sector, while that for public sector was 4%. The ACTU claim of \$25.00 represents an increase of

5.8% for Level C13 under the Metals Award and 4.9% for Level C10. These safety net increases are significantly in excess of the bargaining outcomes.

8.11 Were the claim to be successful, the result would be a safety net adjustment which outstripped bargaining outcomes and would, particularly for low-paid employees, act as a disincentive to bargaining. This would be contrary to the objectives of the Act, in particular sections 3(b) and 3(d)(i), and would also be inconsistent with Section 88A(d).

Absorption

8.12 As we have said on previous occasions, absorption is an essential precondition. In the absence of absorption against all forms of over-award payments, we would be strongly against any adjustment at this time. Absorption is consistent with the intention of the Act to establish and maintain a "safety net" of minimum rates of pay and to have regard to the needs of the low paid.

9 PRINCIPLES

Ai Group and EEASA support the retention of a set of Principles and do not propose changes to those adopted last year other than those changes necessary to reflect the Commission's Decision in this Case.

10 CONCLUSION

For all the reasons expressed in this Submission, Ai Group and EEASA submit that the Commission should take a cautious approach in determining an appropriate safety net adjustment in these proceedings.

