Submission no: 8A

WORKPLACE RELATIONS (AWARD SIMPLICATION) BILL 2002

WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004

A submission by the Australian Industry Group and
Engineering Employers' Association, South Australia
to the Senate Employment, Workplace Relations, and Education Committee

APRIL 2004

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1.0 Introduction

The Australian Industry Group (Ai Group) is one of the largest national industry bodies in Australia, representing approximately 10,000 employers, large and small, in every State and Territory. Members provide more than $100 billion in output, employ more than 1 million people and produce exports worth some $25 billion.

Ai Group represents employers in manufacturing, construction, automotive, printing, information technology, telecommunications, labour hire, and other industries.

Ai Group has had a strong and continuous involvement in the industrial relations system at the national, industry and enterprise level for over 130 years. Ai Group is well qualified to comment on the:

- *Workplace Relations (Award Simplification) Bill 2002;* and the
- *Workplace Relations Amendment (Choice in Award Coverage) Bill 2004.*

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

It is not our intention to comment on all aspects of the Bills but rather to outline Ai Group's position on the significant legislative amendments proposed.

Heather Ridout
CHIEF EXECUTIVE

2.0 Workplace Relations (Award Simplification) Bill 2002

The Bill proposes that the number of allowable matters in federal awards be reduced.

Ai Group supports the continuing evolution away from a "one-size-fits all" approach to the regulation of wages and conditions and an increased focus on the setting of wages and conditions at the enterprise level. Many award provisions were introduced in an era when economic circumstances and priorities were vastly different to what they are today. When most award provisions were introduced, Australia's economy operated behind high tariff barriers. Today, Australia has one of the most open economies in the world and international competitive pressures are intense. Australia's safety net of minimum conditions needs to be simple and flexible to enable Australian companies to remain efficient, productive and globally competitive.

Nevertheless, Ai Group supports the maintenance of a fair safety net of wages and minimum conditions. A balance needs to be struck between maintaining a sufficiently comprehensive safety net to ensure fairness but allowing sufficient scope for parties at the enterprise to determine their own arrangements in relation to wages and working conditions.

The approach reflected in the *Workplace Relations (Award Simplification) Bill 2002* would take the award simplification process further by reducing the number of allowable matters, thereby increasing the number of issues to be dealt with at the enterprise level. Ai Group does not object to this approach but has concerns about some of the specific proposals in the Bill. Our concerns are set out in Table 2.1 below.

Further, Ai Group believes that the following issues need be considered in assessing the merits of the Bill:

- The existing award simplification requirements of the *Workplace Relations Act* has required the devotion of massive resources by the Australian Industrial Relations Commission (AIRC), unions and employer associations. For example, Ai Group devoted over 2000 hours of its professional staff's time in the simplification of the Metal Industry Award. There were more than 25 negotiating meetings between Ai Group and the metal unions and more than 35 AIRC hearings and conferences. The Metals Award is only one of 250 federal awards which Ai Group has a significant interest in. Ai Group is a party to approximately 100 federal awards. The question arises as to whether a further round of award simplification will provide sufficient gains to warrant the resources which the AIRC and registered organisations would need to devote, when resources would need to be diverted away from other nationally important issues.

- While award simplification had been useful in updating the content of existing awards, little has been done to rationalize the coverage of different awards. A high proportion of industry awards still reflect the eligibility rules of former unions which have long since amalgamated into larger and more efficient organizations. A focus on award rationalization may produce more gains than further simplification of the content of awards. As at 29 February 2004, there were 2227 federal awards. This is far too many.

- Some matters which are currently in awards are not easily dealt with exclusively at the enterprise level. Skill based career paths are an example of this. The career paths in some awards link with industry training packages and competency standards and are designed to achieve consistency and portability of skill recognition across an industry.

- When matters are removed from federal awards, unions understandably pursue claims to have those matters dealt with in enterprise agreements. This process has often led to companies in sectors with militant unions (eg. manufacturing and construction) losing flexibility in areas which were previously settled (eg. consultation over redundancies, introduction of change, shop stewards rights). Rather than pursuing the incorporation of the former award provisions (which are typically balanced and take account of the interests of both employers and employees) within enterprise agreements, unions typically redraft those provisions to reduce flexibility for companies and enhance the rights of unions in the workplace. The unions' redrafted provisions are often vigorously pursued via pattern bargaining and the use of protected action.

- When matters are removed from federal awards, doubts can occur about whether or not the remaining provisions "cover the field" and, therefore, continue to exclude the operation of state awards. If a federal award no longer "covers the field", an employer may be forced to apply both a federal and state award to the same group of employees, with different awards applying for different subject matters. There have been several recent decisions of the NSW Industrial Relations Commission relating to termination of employment matters, where the Commission has expressed the view that the termination of employment provisions of federal awards may no longer "cover the field" because of the federal award simplication process (eg. See *Thornthwaite v Australian National Credit Union Limited* [2002] NSWIRComm 240 and *Burgess v Mount Thorley Operations Pty Ltd (No 2)* (1999) 100 IR 260). Ai Group raised its concerns about these NSW developments, in the *Redundancy Test Case*, and sought that the AIRC insert a specific provision into federal awards expressly stating that the termination of employment provisions "cover the field". The Commission declined to do so.

- Ai Group has long supported the goal of achieving a unitary workplace relations system in Australia. For a nation with a relatively small population, its is inefficient and costly to maintain a federal system, together with state systems in Queensland, New South Wales, South Australia, Western Australia and Tasmania. Further award simplification could make the achievement of a unitary system more difficult if it leads to state awards having increased coverage at the expense of federal awards.

Long service leave

Ai Group strongly opposes the proposed deletion of long service leave as an "allowable matter".

Making long service leave non-allowable in federal awards would do nothing to achieve national consistency but rather would result in tens of thousands of employers (eg. those in the metal and graphic arts industries) losing the benefit of nationally consistent long service leave provisions. Employers who operate nationally would be forced to apply provisions which differ markedly from state to state. Their employees would most likely be surprised and confused to see the company significantly improving long service leave benefits for employees in some states but not others.

The proposal is a move in the opposite direction to the goal of eventually achieving a unitary workplace relations system in Australia. The federal long service leave standard should be extended – not abolished.

If the Bill is passed, there would be significant additional costs for businesses because more generous long service leave standards apply in most states, than under the federal award standard. There would also be significant additional compliance costs due to the added complexity which would be imposed on businesses which operate across more than one state.

It should be noted that the majority of respondents to the federal long service leave award provisions are small businesses. There are many thousands of these businesses. Imposing the state and territory long service leave standards upon such businesses will significantly increase their employment costs. (For example, in South Australia the long service leave accrual rate is 50 per cent higher under the state standard than under the federal award standard and the pro rata entitlement applies three years earlier. Under the NSW standard, the pro rata entitlement applies five years earlier than under the federal award standard).

A recent Ai Group submission is **attached** which sets out in more detail why the federal award long service leave standard needs to be retained and should be used as the basis for a national long service leave standard.

Table 2.1 - Ai Group's position on the provisions of the *Workplace Relations (Award Simplification) Bill 2002*

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
"Skill-based career paths" would be removed as an allowable matter. [s.89A(2)(a)].	**Not supported**	While Ai Group is far from satisfied with aspects of the skill-based classification structures in some awards, we do not agree that this matter would be more appropriately dealt with at the enterprise level. Skill-based classifications in awards, when appropriately structured, are able to assist in elevating skill levels and addressing skill shortages in an industry through linkages with national competencies and industry training packages.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
Relatively minor modifications would be made to the allowable matters dealing with bonuses, certain forms of leave, redundancy and outworkers, and other provisions related to allowable matters. [s.89A(2)(d), (g), (ga), (sa), (m), (t), and (8A) and s.113A(2) and s.120A(4)].	**Supported**	Ai Group does not object to these relatively minor modifications.
"Long service leave" would be removed as an allowable matter. [s.89A(2)(f)].	**Not supported**	Making long service leave non-allowable in federal awards would do nothing to achieve national consistency but rather would result in tens of thousands of employers (eg. those in the metal and graphic arts industries) losing the benefit of nationally consistent long service leave provisions. Such employers would be forced to apply provisions which differ markedly in each state. The proposal is a move in the opposite direction to the goal of eventually achieving a unitary workplace relations system in Australia.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
		The federal long service leave standard should be extended – not abolished. If the Bill is passed, there would be significant additional costs for businesses because more generous state standards apply in most states. There would also be significant additional compliance costs due to the added complexity which would be imposed on businesses which operate across more than one state. It should be noted that the majority of respondents to the federal long service leave award provisions are small businesses. There are many thousands of these businesses. Imposing the state and territory long service leave standards upon such businesses will significantly increase their employment costs. (eg. in South Australia the long service leave accrual rate is 50 per cent higher under the state standard than under the federal standard and the pro rata entitlement applies three years earlier. Under the NSW standard, the pro rata entitlement applies five years earlier than under the federal standard.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
The public holiday provisions of awards would be limited to provisions dealing with: • Public holidays which are declared by States or Territories; and • Payments for time worked on a public holiday. [s.89A(i)].	**Supported with modifications**	The Bill appears to prevent the following common provisions remaining in awards: • Provisions which allow other days to be substituted for prescribed days by agreement between an employer and its employees; • Provisions which allow other days to be substituted for prescribed days on Christmas Day, Boxing Day, New Year's Day and Australia Day; • The ability for awards to provide for an 11th public holiday in NSW. In many industries this day is commonly taken on the Tuesday immediately following Easter. The day is not a declared public holiday but is equivalent to Melbourne Cup Day in Victoria and Show Day in Brisbane. Unnecessary disputation and inequity would most likely occur if the above provisions were removed from awards.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
Awards would only be able to prescribe *"monetary allowances"*, not allowances in general. [s.89A(2)(j)].	**Not supported**	Many awards give employers the option of either providing certain benefits (eg. Tools, a company car, accommodation when traveling etc) or paying an allowance in lieu of the provision of such benefits. Employers would lose significant flexibility if awards were varied to require that monetary allowances be paid in all circumstances.
Awards would no longer be able to deal with *"notice of termination".* [s.89A(2)(n)].	**Not supported**	The rationale for removing notice of termination as an allowable matter in awards, appears to be that this issue is dealt with in s.170CM of the *Workplace Relations Act* and, therefore, that it is unnecessary for the issue to be dealt with in awards. Unlike the award test case clause, s.170CM of the Act does not require an employee to give his or her employer notice upon resignation. Therefore, to remove notice of termination as an allowable matter would significantly disadvantage employers.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
"*Jury service"* would be removed as an allowable matter. [s.89A(2)(q)].	**Not supported**	Award clauses dealing with jury service impose obligations on both employers and employees. The removal of jury service as an allowable matter would remove various employee obligations to their employer (eg. early notification to the employer, proof of attendance at the Court, the duration of attendance, the amount received in respect of the jury service). State laws generally require employers to pay employees for jury service.
Various specific matters will be deemed to be "not allowable" for awards, including: • Transfers between locations; • Training and education (except in relation to leave and allowances for trainees and apprentices);	**Not supported without modifications**	Ai Group is particularly concerned about the removal of the following items as allowable matters: • Accident make up pay; • Transfers from one type of employment to another type of employment. The reasons for Ai Group's opposition to the above matters being deemed "not allowable" are set out below.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
• Recording of the hours employees work, or the times of their arrival and departure from work; • Payments of accident make-up pay by employers; • Rights of an organisation to participate in, or represent, the employer or employee in the whole or part of a dispute settling procedure, unless the organisation is the representative of the employer's or employee's choice; • Transfers from one type of employment to another type of employment; • The number or proportion of employees that an employer may employ in a particular type of employment or in a particular classification;		**Accident make-up pay** This is a settled provision in many awards and has been for many years. Ai Group is concerned that if it is removed from awards unnecessary disputation will occur and this issue will become the subject of widespread enterprise bargaining claims which could result in costs to employers which are greater than those currently being incurred via awards. **Transfers from one type of employment to another type of employment** Many awards give employers significant rights to transfer employees from day work to shift work and vice versa. Such rights are important for efficiency purposes and should not be removed from awards.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
• Prohibitions (directly or indirectly) on an employer employing employees in a particular type of employment or in a particular classification; • The maximum or minimum number of hours of work for regular part-time employees. [s.89A(3A) and (4)].		
The power of the AIRC to insert provisions in an award which are *"incidental"* to an allowable matter and *"necessary for the effective operation of the award"* would be modified. The AIRC would only have the power to insert:	**Supported**	Ai Group supports this change.

Proposed Amendment	Ai Group's Position	Basis of Ai Group's Position
• Provisions which are *"incidental"* to an allowable matter and *"essential for the purpose of making a provision operate in a practical way";* • *"Machinery provisions"* such as definitions, titles, etc. [s.89A(6) and (6A)].		

3.0 Workplace Relations Amendment (Choice in Award Coverage) Bill 2004

An objective of the *Workplace Relations Amendment (Choice in Award Coverage) Bill 2004* is to make the AIRC's processes more responsive to the needs of small businesses. Ai Group supports this objective.

When most small employers receive a log of claims they are confused as to the purpose of the log and what they need to do in response. It is often more expensive for small businesses to arrange representation before the AIRC, than larger businesses, because they do not typically employ workplace relations experts and often are not members of a registered employer organisation.

A balance needs to be struck between protecting the interests of small businesses and ensuring that the AIRC is able to operate in an efficient manner. S.98 of the *Workplace Relations Act* requires that the Commission *"perform its functions as quickly as practicable"*. This is a very important requirement to protect the public interest and the interests of all parties.

The procedural requirements set out in the Bill are workable and would further the objective of making the AIRC's processes more responsive to the needs of small businesses.

It should not be overlooked that many small businesses prefer to be covered under federal awards than state awards. In many cases, the relevant federal award contains more flexibility and lower penalty rates than the corresponding state award. This is one reason why tens of thousands of small businesses are members of employer associations, such as Ai Group, which are parties to federal awards.

As Ai Group interprets s.101B(3) of the Bill, the AIRC would not be able to make a dispute finding unless a small business employs a member of the union which served the log of claims. Consideration should be given to extending the circumstances where the AIRC can make a dispute finding to include circumstances where a small business employer specifically advises the AIRC in writing that the business does not object to the dispute finding.