ATTACHMENT
Submission no:8

6 April 2004

Mr Peter Henneken
Director - General
Queensland Department of Industrial Relations
GPO Box 69
BRISBANE QLD 4001

Dear Mr Henneken

Re. *Long Service Leave: Towards a National Minimum Standard* Discussion Paper

I refer to your recent correspondence inviting Ai Group to comment on a discussion paper entitled *Long Service Leave: Towards a National Minimum Standard.* Ai Group welcomes the opportunity to comment on the discussion paper and related issues.

Your letter states that at a Workplace Relations Ministers' Council Meeting (WRMC) in November last year, the Ministers agreed that each state would release the discussion paper for public comment and that, following this process of consultation, a final paper would be prepared for consideration by the WRMC at a meeting in May 2004. Given the involvement of the Ministers and Departmental Officers in each State, as set out in your letter, we have forwarded a copy of this submission to all of the state and federal Workplace Relations Ministers, together with the relevant state and federal Workplace Relations Departments.

Ai Group

Ai Group is one of the largest national industry bodies in Australia, representing employers in the manufacturing, construction, automotive, information technology, telecommunications, labour hire and other industries.

History and rationale for long service leave

The history and rationale for long service leave in Australia was set out in a January 2004 decision of Senior Deputy President Lacy of the Australian Industrial Relations Commission (AIRC)[1], as follows:

> *"**[8]** It appears from my own research that the entitlement to long service leave generally originated in the colonial service administration of the colonies of South Australia and Victoria. It gained statutory recognition throughout the several States of Australia commencing with New South Wales in 1951. Since that time there has been little change to the structure of long service leave. It is generally regarded now as an opportunity for an employee to take some respite from a long period of service in the one business".*

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[1] Re. Office of the Chief Electrical Inspector Enterprise Agreement 2003, SDP Lacy, 5 January 2004, PR942414.

In 1964, federal long service leave awards were made in the metal industry and graphic arts industry. In recent times, these awards were incorporated within the *Metal, Engineering and Associated Industries Award 1998* and the *Graphic Arts – General – Award 2000*. Ai Group is a party to both of these awards.

Is long service leave still appropriate?

In the abovementioned decision, Senior Deputy President Lacy questioned the relevance of long service leave in today's environment. The following extract is relevant:

> *"**[11]** It seems that the rationale for a period of respite from a long period of service is no longer a valid assumption. The world today is a much smaller place than it was in colonial times. People are inclined to be far more mobile now than then. In addition to the fading of the tyranny of distance there has been significant change in the pattern of work that raises some questions about the relevance of long service leave as a benefit in employment."*

When long service leave was 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. Ai Group is unaware of any other country in the world which provides long service leave.

Given the changes in work patterns which have occurred and the imperatives of international competition, it can be argued that long service leave is no longer appropriate and should be abolished.

If long service leave is to be retained, Ai Group submits that it is essential that the quantum of long service leave not be increased, nor the eligibility entitlements relaxed. To do so, would increase employment costs and decrease the competitiveness of Australian industry. Further, Ai Group is strongly opposed to long service leave being converted into a portable entitlement, as set out later in this submission.

Recent developments relating to long service leave in Australia

In recent times, there have been several developments relating to long service leave in Australia, including:

- The release of the *Long Service Leave: Towards a National Minimum Standard* discussion paper.

- The introduction of the *Workplace Relations Amendment (Award Simplification) Bill* into Parliament by the Federal Government and the referral of the Bill to a Senate Committee. The Bill would delete long service leave as an allowable award matter under federal awards.

- Various developments relating to the ACT, including:

    - The release of a discussion paper on ACT private sector long service leave by the ACT Minister for Industrial Relations;
    - The introduction of a private members' bill – *the Long Service Leave (Private Sector) Bill 2003* – which would extend the existing portable long service leave scheme which operates in the contract cleaning industry in the ACT to the entire private sector;

- An announcement by the ACT ALP Government that it would not support the above private members' bill.

- The release of a statement on 10 March 2004 by Shadow Workplace Relations Minister, Craig Emerson MP, clarifying that, with regard to the concept of portable long service leave, "Labor has never had plans for, and has ruled out, introducing any such scheme" and instead had "suggested that these issues are best negotiated between employers and employees".

- The December 2000 decision of a Full Bench of the AIRC in the *Metal Industry Casual Employment Case*[2] which increased the casual loading in the *Metal, Engineering and Associated Industries Award 1998* from 20 per cent to 25 per cent. The Full Bench took into account the fact that casual employees are not entitled to long service leave under the metal industry long service leave provisions, in calculating the quantum of the new casual loading.

- The AIRC's *Redundancy Test Case* decision handed down on 26 March 2004 by the AIRC. The decision creates a new standard federal award redundancy scale which reaches a maximum of 16 weeks severance pay after 9 years of service, but then reduces to 12 weeks for 10 or more years of service due to the fact that employees with more than 10 years of service are entitled to pro rata long service leave under the standard federal long service leave provisions.

Should there be a National minimum standard for long service leave?

The *Long Service Leave: Towards a National Minimum Standard* discussion paper canvasses views on whether a national minimum standard for long service leave should be established and, if so, what that standard should be.

Ai Group has long supported the goal of achieving a unitary workplace relations system in Australia. For a country 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. In the case of long service leave the situation is particularly complex. In addition to the federal award standard, separate long service leave legislation exists in every state and territory.

Until a genuinely unitary system of workplace relations laws is able to be achieved, there is merit in endeavouring to achieve consistency between existing state and federal workplace relations laws and industrial awards.

The importance of consistency was highlighted by the President of the AIRC, Justice Giudice, in a written paper which he delivered to the ACT Industrial Relations Society Convention on 31 March 2004, as follows:

> *"Although I have on several occasions pointed to the thicket of regulation emanating from different legislative bases and administered by a variety of courts and tribunals, it is not my role nor would it be appropriate for me to suggest how laws might be altered. But there should be an examination of that question……For employers operating in more than one state the number of different laws and procedures and the potential liabilities are great indeed."*

[2] Print T4991, paragraphs 171 to 174.

Ai Group supports the establishment of a national minimum long service leave standard, provided that the key components of the existing federal award long service leave standard are adopted for that standard (eg. an accrual rate based upon 13 weeks after 15 years of service and a pro rata entitlement after 10 years of service). With regard to the more peripheral components of the standard, we can see no reason why these should not also be drawn from the federal award long service leave standard. Such standard has stood the test of time and is fair to both employers and employees.

The adoption of the federal award long service leave standard as the minimum national standard is appropriate because:

- The federal long service leave standard already applies to a large number of employees in each state;
- The federal standard is largely similar to the Victorian and Western Australian standards;
- The federal long service leave standard has now been linked to the redundancy provisions in federal awards as a result of the *Redundancy Test Case* decision;
- The adoption of the federal standard as the national minimum standard would not increase employment costs, whereas the adoption of any of the state or territory long service leave standards (other than the Victorian or Western Australian standards) would increase employment costs and decrease the competitiveness of Australian industry;
- The adoption of the federal standard as a national minimum standard would not prevent states or territories from continuing to apply their existing more generous standards (although if they did so the benefit of having a national standard would be questionable).

Long service leave as an allowable award matter

Ai Group strongly opposes the deletion of long service leave as an allowable matter, as proposed in the federal *Workplace Relations Amendment (Award Simplification) Bill*.

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. 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. (For example, in South Australia the long service leave accrual rate is 50 per cent higher under the state standard than 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 award standard).

Portable long service leave schemes

Portable long service leave schemes were established to recognise the unique nature of employment in the construction industry whereby employees are typically engaged on a project basis and move from employer to employer as one project is completed and another starts. The rationale for portable long service leave schemes does not exist in areas where traditional employment arrangements are the norm (eg. Where the employees are engaged on an ongoing basis with the one employer).

Ai Group is strongly opposed to the extension of portable long service leave schemes beyond the construction sector. Over the past few years, Ai Group and its members have devoted substantial resources to:

- Opposing manufacturing unions' attempts to establish portable long service leave arrangements in the manufacturing sector via their discredited Manusafe / NEST entitlement protection scheme;
- Opposing ongoing attempts by unions to expand the construction industry portable long service leave schemes to other sectors.

Ai Group intends to continue to vigorously oppose proposals for the establishment of portable long service leave schemes in non-construction sectors. Such schemes are unfair on employers because they:

- Amount to a tax on employment;
- Operate in a manner which is contrary to the purpose of long service leave;
- Require employers to grant leave to employees with relatively short periods of service, simply because the employee has worked in the industry for several years;
- Result in substantial cost increases for employers due to:
    - The much larger proportion of employees who become entitled to long service leave; and
    - The need to cover employees absent on long service leave (eg. overtime costs, training costs, casual labour costs, etc);
- Impact upon an employer's cash flow because of the upfront contributions required.

Pleasingly, both the Federal Government and the federal Opposition have recently confirmed that they do not support general portable long service leave schemes.

How can long service leave be made more relevant?

In many workplaces, long service leave is rarely taken and employees view the leave as a "nest egg" for retirement. Ai Group has been discouraging employers from allowing such a view to develop to avoid heightening employees' concerns about the security of their entitlements. Disputes over the protection of entitlements issue have stopped the car industry twice over recent years at a cost of hundreds of millions of dollars in lost sales and damage to Australia's reputation as a reliable supplier.

Employees would be more likely to use their long service leave entitlements if more options were available regarding how the entitlement could be taken. In this regard:

- Where agreement is reached between an employee and his or her employer, the employee's long service leave entitlements should be able to be rolled-in to their superannuation account, without the amount being taxed as income. From the preliminary work that Ai Group has carried out, it would appear that the proposal has very

wide support amongst employers, employees, industry groups and unions. The proposal would further the nationally important goal of increasing retirement savings. However, to implement the proposal, it appears that the Federal Government would need to amend taxation laws.

- Where agreement is reached between an employee and his or her employer, the employee's long service leave should be able to be taken in any number of separate periods including single days. This would assist many employees in better balancing their work and family responsibilities.

- Where agreement is reached between an employee and his or her employer, the employee's long service leave entitlement should be able to be cashed-out. This option is already available under the long service leave legislation in place in some states, and is provided for in many enterprise agreement.

Should you have any queries about Ai Group's position, please contact Stephen Smith, Director – National Industrial Relations of Ai Group on 02 9466 5521 or myself.

Yours sincerely

Heather Ridout
CHIEF EXECUTIVE