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Mr John Carter
Secretary
Senate Employment, Workplace Relations
And Education Committee
Department of the Senate
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Dear Mr Carter

Re. Inquiry into the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007*

In addition to the amendments proposed in our submission relating to the above Bill, we wish to propose that a further consequential amendment be made to the *Workplace Relations Act* via Part 2-Consequential Amendments, of the Bill.

Section 355 of the Act imposes substantial restrictions on workplace agreements incorporating by reference the terms of awards and other industrial instruments.

With the introduction of the fairness test, Ai Group submits that section 355 should be repealed for the following reasons:

- Many employers, employees and unions prefer to have a simpler workplace agreement and incorporate by reference terms from the relevant award/s, rather than being forced to draft a comprehensive agreement. Section 355 is an unnecessary restriction on drafting;
- Incorporating by reference terms from the relevant award/s within a workplace agreement, if this is what the parties wish to do, will give the parties more certainty that their agreement meets the fairness test;

- In general it will be much easier for the Workplace Authority to apply the fairness test to agreements which incorporate by reference terms from the relevant award/s. In such circumstances the Workplace Authority will not need to study lengthy agreements and compare them line by line with the relevant award/s to ascertain what modifications may have been made to protected award conditions;
- There is arguably an inconsistency in the *Workplace Relations Act* (which has existed since the introduction of the WorkChoices reforms) that needs to be addressed. Section 355 prohibits in many circumstances incorporating by reference terms from an award. This approach is inconsistent with s.354 which enables employers to modify protected award conditions. The typical way that protected award conditions are modified is to incorporate by reference a clause from the relevant award and set out in the agreement the modification which the parties have agreed to make to the clause. An example of a common approach to drafting is set out below:

“The protected award conditions in the Metal, Engineering and Associated Industries Award 2007 are incorporated in this workplace agreement, except that:

- *in lieu of the double-time penalty in subclause 6.4.1, all overtime is to be paid at the rate of time and one half; and*
- *in lieu of the tool allowance in paragraph 5.9.1(d), a higher tool allowance of \$20.00 per week shall be paid.”*

In the event that it is not acceptable to delete s.355 in its entirety, Ai Group submits that s.355 should be modified to apply the section only to prior workplace agreements and the instruments set out in s.355(6) and not federal awards.

We look forward to appearing before the Committee at the hearing tomorrow.

Yours sincerely



Stephen Smith
DIRECTOR – NATIONAL INDUSTRIAL RELATIONS