



# Australian Fair Pay Commission – 2007 Minimum Wage Review



AUSTRALIAN INDUSTRY GROUP

**Ai GROUP SUBMISSION**



March 2007

# **2007 MINIMUM WAGE REVIEW**

**Submission to the  
Australian Fair Pay Commission**



**March 2007**

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# 2007 MINIMUM WAGE REVIEW

## Submission

### 1. Introduction

1. In this second review of minimum wages, the Australian Fair Pay Commission (AFPC) should address a number of practical difficulties that arose from its 2006 decision. These include the need to publish Pay Scales, the need for more lead-time between the date of the decision and the operative date of the increase, and the need for the increase to be operative from the first full pay period to commence on or after the operative date – not midnight on a particular date.
2. In determining the quantum of the wage increase, the AFPC should be mindful that employers only implemented the Commission's 2006 decision less than four months ago. Given the short period of time which has elapsed since the last AFPC decision, the impact of that decision on employers is not yet able to be properly assessed.
3. It is important that the Commission adopt a cautious approach in adjusting minimum wages. While the economy is continuing to grow at a moderate pace, the results are not uniform. The commodity boom has delivered solid returns to the resources sector and some states but for the majority of industry sectors and states growth has been moderate to weak.
4. The Commission needs to be mindful of Australia's current sub-optimal productivity record which could impact on the capacity of employers to absorb wage increases.
5. Ai Group applauds the recognition that the Commission gave in its 2006 decision to the role of changes in the tax and transfer systems in increasing

family disposable incomes. However, Ai Group urges the Commission to develop a more transparent indication of the way tax and transfer changes are taken into account in its decisions. Greater transparency of the Commission's approach would assist in developing greater coherence between the different elements of the broader social safety net. In particular, governments would be better able to assess the scope to use tax and transfer policy to shape more favourable social outcomes.

6. In exercising its minimum wage setting powers, the AFPC is required to have regard to the capacity of the low paid to obtain and remain in employment. Ai Group maintains that in this area the Commission should pay particular attention to the higher incidence of underutilisation of lesser skilled labour and the greater impacts of changes to minimum wages on the labour market outcomes for the lesser skilled.
7. On average, small businesses are much more likely to be impacted by minimum wage increases than larger businesses. When making its minimum wage decision it is vital that the AFPC not lose sight of the negative impacts that a large minimum wage increase will have on small businesses.
8. It is also important that the level of increase in minimum wages determined by the AFPC not reduce the scope for bargaining over wages at the workplace level. This would conflict with the objects of the Act.
9. In determining the level of a fair and reasonable minimum wage increase, Ai Group submits that a \$10.00 per week increase (for a nine month period) would assist the low paid whilst not damaging the Australian economy.
10. This submission is made on behalf of the Australian Industry Group (Ai Group) and the Engineering Employers Association, South Australia (EEASA).

## 2. Ai Group's Position

11. Ai Group proposes that minimum wages be increased for all classifications by 27 cents per hour (approximately \$10.00 per week) operative from the first full pay period to commence on or after 1 September 2007 (ie. a nine month period since the last increase). This would increase the Federal Minimum Wage (FMW) to \$13.74 per hour.
12. The proposed wage increase of approximately \$10.00 per week, operative from the first full pay period to commence on or after 1 September 2007, is conditional upon there being a period of prospectivity between the date of the decision and the date of the increase of at least three months. Of course the period of prospectivity will depend upon how quickly the AFPC hands down its decision and the operative date of it.
13. Should the AFPC award an operative date earlier than the first full pay period to commence on or after 1 September 2007 then the quantum of the proposed wage increase should be adjusted downwards in proportionate terms. Similarly, should the AFPC grant an operative date later than the first full pay period to commence on or after 1 September 2007, then the proposed quantum should be adjusted upwards in proportionate terms.
14. The proposed level of wage increase takes into account:
  - The generous increase handed down by the AFPC in 2006;
  - The non-adversarial nature of the AFPC's deliberations and the importance of avoiding "ambit" positions;
  - The objects of the Act and the AFPC's wage-setting parameters;
  - Current economic conditions and the outlook for the Australian economy;

- The need to avoid inflationary pressures;
  - Australia's current less than optimal productivity performance;
  - The capacity for the unemployed and the low paid to obtain and remain in employment as well as underemployment and marginal attachment to the labour force;
  - Employment and competitiveness across the economy;
  - The need to provide a safety net for the low paid;
  - The importance of taking into account the interactions between different elements of the social safety net, including minimum wages, income taxation, income support and non-wage costs;
  - The need for minimum wage increases to be positioned at a level below average workplace agreement wage outcomes in order to avoid diminishing the primacy which is given to workplace agreement-making under the Act; and
  - The impact on small businesses and regional towns.
15. Ai Group proposes that, on this occasion, the AFPC apply the wage increase to all classifications. The appropriateness of continuing to adopt such a practice should be considered in detail during the process of rationalising Pay Scales.

### 3. Legislative Provisions

16. In determining any minimum wage increase, the AFPC must have regard to s.23 of the *Workplace Relations Act*, which sets out the Commission's wage-setting parameters.
17. The Commission's objective, in performing its wage-setting function, is to promote the economic prosperity of the people of Australia having regard to:
  - The capacity for the unemployed and low paid to obtain and remain in employment;
  - Employment and competitiveness across the economy;
  - Providing a safety net for the low paid;
  - Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.
18. The AFPC's wage-setting parameters place a greater emphasis on ensuring that the unemployed and the low paid are able to obtain employment and retain it, than the objects which guided the Australian Industrial Relations Commission (AIRC) in Safety Net Review Cases.
19. In **Chapter 9** of this submission the Commission is urged to pay particular attention to the issue of labour utilisation and the experience of the lesser skilled when assessing "the capacity for the unemployed and the low paid to obtain and remain in employment".

## **4. Essential Practical Elements of the 2007 Decision**

20. In its 2006 submission to the AFPC Ai Group expressed the view that, because the AFPC was assuming a function that had rested with the AIRC for a very long period of time, it would need to establish credibility as a new tribunal in both its decisions and its processes<sup>1</sup>.
21. With such an observation in mind, Ai Group was encouraged that the AFPC's 2006 decision provided a period of prospectivity between the date of the decision and the operative date of the increase, as such a gap clearly recognised the practical effects associated with implementing the decision.
22. The necessity for the AFPC to be cognisant of the practical implications of its decisions is not a matter that can be understated. Although the prospectivity provided for in the 2006 decision was a positive step, Ai Group submits that there are a number of practical difficulties that were created by the 2006 decision which need to be addressed in the 2007 decision.

### **Importance of the concept of the 'first full pay period on or after'**

23. The principle of increases in wages and allowances becoming operative on the first full pay period to commence on or after the relevant operative date is a longstanding and practical approach of the AIRC. The fundamental rationale behind such an approach is to avoid unnecessary and potentially significant complications in the practical implementation of wage increases. Such an approach needs to be adopted by the AFPC.

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<sup>1</sup> 2006 Minimum Wage Review – Submission to the Australian Fair Pay Commission, Australian Industry Group, p.10.

24. The operative date of the AFPC's 2006 decision did not take account of pay periods or shift arrangements. Instead it required employers to increase wages from midnight on 30 November 2006. This created a multitude of problems and additional administration costs for employers. Payroll calculations were made more complex for any employees whose pay period did not commence on 1 December 2006, with one rate applying for part of the pay period and another rate applying for the remainder of the pay period. Indeed, the many thousands of employers who engage employees to work on night shifts that commence prior to midnight and conclude subsequent to midnight were faced with the additional complication of paying those shift workers two different rates of pay for the one shift.
25. The Statutory Declarations in **Annexures A, B and C** clearly identify the unnecessary complications and significant costs that were generated as a result of the 2006 decision being operative from midnight on 30 November rather than the beginning of the first full pay period on or after 1 December.
26. The difficulties are explained by Robyn Hearps, the Industrial Relations Director of Chubb Australasia, in her Statutory Declaration (**Annexure B**):
- “6. Chubb’s Security Personnel business has approximately 5,726 security officers who are shift workers.*
- 7. Paying two different pay rates for the one shift was the biggest issue which we experienced in implementing the Australian Fair Pay Commission decision. In the past wage increases were implemented from the first full pay period to commence on or after a particular date, rather than midnight on a particular date.*
- 8. Where a wage increase is effective in the middle of a pay period it is far more costly and difficult to process the employees’ pay.*

9. *Approximately 2,000 shift workers were working at midnight on 30 November 2006 when the increase took effect. As such, one rate of pay applied for part of their shift and another rate applied for the remainder of the shift.*
10. *The complications in applying the pay adjustment extended to shift loadings, overtime penalties, weekend penalties and so on which are all calculated on the applicable pay rate. When two different pay rates apply for the one pay period, and even the one shift – the calculations become very time-consuming and complex.*
11. *The administrative costs associated with implementing the minimum wage increase were much higher in 2006 compared to earlier years. A great deal of additional time was required by payroll staff, the staff in charge of our rostering systems in each state, and even the Security Personnel Finance Director.*
12. *Chubb estimates that the additional administration time for all payroll administration staff nationally arising from the fact that the wage increase was payable from midnight on 30 November (rather than the first full pay period to commence on or after 30 November) would amount to an additional 96 work hours.*
13. *If the AFPC increase had been applicable from the first full pay period to commence on or after 30 November 2006, applying the increase would have been less complex and costly administratively.”*
27. The problems are magnified for employers in the labour hire industry, as illustrated by the following extract from the Statutory Declaration of James McKay, Workplace Relations Manager of the Adecco Group (**Annexure A**):
  - “12. *The AFPC decision to order the 2006 wage increase on and from 1 December 2006, instead of, for example “the first pay period occurring*

*on or after 1 December” was extremely problematic for Adecco. Adecco’s payroll systems operate on employee placement functions in multiples of weeks, where actual rates of pay are attached to the employee placement. Where a pay rate increase occurs mid cycle, duplicate employee placements are required for each individual employee to make up the difference in their pay. When paying thousands of employees at a time this creates an enormous amount of extra work, including error correction.*

13. *It is not possible to accurately measure the financial cost to Adecco that stemmed from the administrative and commercial ramifications generated by the timing and form of the 2006 AFPC decision. (Note that the quantum of the AFPC increase is not contemplated in this regard). Nevertheless it would be fair to estimate that the on-going cost due to commercial ramifications are in the hundreds of thousands of dollars.”*
  
28. Similar problems were experienced by Daly Smith Corporation, as is evident from the following extract from the Statutory Declaration of Teresa McCowan (**Annexure C**):
  - “7. *The practical difficulties faced when implementing the decision of the AFPC stem from the operative date being a specified time on a particular day, and consequently, some rates of pay changing mid-shift.*
  
  8. *Our payroll period is Monday through to Sunday – so we had four days at the old rate and then one to three days at the new rate, which is very difficult and costly to manage.*
  
  9. *Furthermore, being a labour hire company, it meant that we had at least double the transactions for this period resulting in double the amount of paperwork, data entry and checking for each client and each employee. We had to process at least two additional records for each pay slip for*

*each worker due to the two rates of pay, plus extra transactions if there was overtime at both the new and old rates. Also, at least two additional records for invoices for each client, had to be processed, effectively doubling the time and cost involved for that period.*

10. *Also, with regard to overtime, we experienced difficulties such as calculating the correct rate of pay for overtime when two different rates apply to the one pay period. In some instances, this was very challenging.*
  11. *Because the old system under the Australian Industrial Relations Commission (AIRC) used the principle of increases being payable from the “first full pay period on or after” a certain date, we never had this problem before.*
  12. *The additional administrative costs associated with implementing the minimum wage increase in 2006 were much higher compared to earlier years. Daly Smith Corporation estimates the additional cost was \$25,000 or a 400% increase.”*
29. Given the abovementioned difficulties which arose in 2006 and the previous longstanding approach of the AIRC in adjusting minimum wages, we contend that there is clear justification for any wage increase awarded by the AFPC in 2007 to be operative from “the first full pay period to commence on or after” a specified date.

## **The Need for a Greater Period of Prospectivity**

30. Whilst Ai Group has identified that an operative date five weeks in advance of the AFPC’s 2006 decision was an encouraging step in recognising some of the practical issues which arise in implementing a decision to increase minimum wage rates, we submit that in 2007 a longer period of prospectivity is required.

31. This view is based upon three important issues:

- Firstly, the very short amount of time which has elapsed between the operative date of the AFPC's 2006 Decision and its current Review of Minimum Wages;
- Secondly, the need for employers to plan for the cost increases; and
- Thirdly, the linkages which exists between the roles of the AFPC and the AIRC in adjusting remuneration for employees

32. With regard to the first of these issues, employers only implemented the AFPC's 2006 decision less than four months ago. If a further increase is operative before September 2007 the impact upon employers will be particularly harsh. Further, given the short period of time which has elapsed since the last AFPC decision, the impact of that decision on employers is not yet able to be properly assessed.

33. In respect of the second issue – the need for employers to have time to plan for the increase – James McKay of the Adecco Group explains the importance of this (**Annexure A**):

*“15. The short lead time between the announcement of the AFPC's decision and the operative date of the AFPC's decision was a particular factor in causing problems. When a Pay Scale rate of pay increases Adecco is required to calculate all other pay rates derived from this base amount, including: casual rates, overtime rates, shift work rates, public holiday rates and so on. Adecco is then required to calculate its new charge rates which are calculated from the pay rates. Thousands of individual calculations are required. Adecco must notify its clients, receive approval from its clients and then implement the new rates into the payroll system.*

16. *Before 2006, Adecco was able to manage its wage increases with relative ease because of the appropriate gap in time between the Australian Industrial Relations Commission (“AIRC”) National Wage Case decision (and State Wage Case decision) and the actual operative date of the Award rate increase. The operative dates of the Award rate increases were staggered over the 12 months of a year, as individual applications were made to flow on the effect of a National Wage Case decision. This meant that the thousands of new pay rate calculations and charge rate calculations could be managed over a reasonable time frame.*
34. Teresa McCowan of Daly Smith Corporation expressed similar views (**Annexure C**):
- “13. *Another problem is that we had insufficient lead time between the date of decision and the date of increase, to plan and budget for the increase. We need sufficient time to inform clients of prospective increases in costs, which will inevitably effect their budgeting processes. Our clients need to be given enough time to adjust their financial estimates and pricing so that they can maintain their profit margins. Insufficient lead time can also greatly impact the preparation of tender documents.*”
35. The third issue identified above in support of a greater amount of prospectivity in 2007 relates to the fact that the role of adjusting remuneration for employees is now split between the AFPC and the AIRC and there is a need for coordination between the remuneration adjustment processes of the two tribunals.
36. The AFPC is responsible for adjusting wage rates for employees other than transitional employees, whereas the AIRC is responsible for adjusting wage rates for transitional employees, wage-related allowances for transitional employees and wage related allowances for other employees.

37. The *Workplace Relations Act* links the two processes. Clause 8 of Schedule 6 of the Act identifies that it is the AIRC that is responsible for adjusting the wage rates of transitional employees and requires that, in performing this function, it take into account decision of the AFPC.
38. In its *Wages and Allowances Review 2006* decision, the AIRC complied with this requirement, and in so doing decided to grant a retrospective operative date of the first full pay period to commence on or after 1 December 2006. This operative date applied not only to the wage increases for transitional employees but also to the wage-related allowance increases in hundreds of awards applying to both transitional and other employees.
39. During the hearings in the case, Ai Group and other employer representatives vigorously opposed any retrospectivity regarding the operative date. The ACTU supported that the operative date be consistent with the AFPC's decision.
40. The AIRC's rationale in granting a retrospective operative date is set out in the following extract from the Full Bench's *Wages and Allowances Review 2006* decision:

*“[37] All federal system employees engaged on minimum rates were entitled to receive an increase in rates on 1 December 2006. In light of the Commission’s statutory duty in cl.8 of Schedule 6 to the WR Act, in particular the terms of cl.8(3) and (4), there is no reason that employees under transitional awards should be disadvantaged by a later operative date than will apply to federal system employees. Those clauses read:*

- “(3) In having regard to the factors referred to in paragraph (2)(a), the Commission must have regard to:*
- (a) wage-setting decisions of the AFPC; and*

*(b) in particular, any statements by the AFPC about the effect of wage increases on productivity, inflation and levels of employment.*

*(4) In performing its functions under this Schedule, the Commission must have regard to:*

*(a) the desirability of its decisions being consistent with wage-setting decisions of the AFPC; and*

*(b) the importance of providing minimum safety net entitlements that act as an incentive to bargaining at the workplace level.”*

*[38] It would be inequitable, particularly in light of the universal application of the AFPC decision to federal system employees reliant on rates in APCs, if we were to order a later operative date in the applications before us than the first pay period on or after 1 December 2006.”<sup>2</sup>*

41. The decision of the AIRC to award a retrospective operative date has caused widespread problems for employers. The Full Bench handed down its *Wages and Allowances Review 2006* Decision in December but it gave the Australian Industrial Registry the role of settling the terms of the specific variations in hundreds of awards in conjunction with the parties. It is now nearly four months later and this process has still not concluded.
42. There are compelling and obvious reasons why retrospectivity in respect of operative dates for wage and allowance increases is inappropriate. Such reasons include:
- There are substantial administrative and direct costs associated with back-paying employees to take account of retrospectivity of wage and allowance increases; and
  - These days a significant percentage of the workforce is employed by labour hire companies and in other contract labour situations. Typically, the

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<sup>2</sup> PR002006 at [37] and [38]

employers in these situations have no ability to recover retrospective wage and allowance increases from their clients.

43. The problems caused by the retrospective operative date for allowance increases (which would not have occurred had there been sufficient lead-time in the AFPC's decision) are set out in the Statutory Declarations in **Annexures A, B and C**.

44. James McKay of Adecco said (**Annexure A**):

*“17. A flow on effect of the AFPC's short lead time in 2006 was its impact on the AIRC's capacity to order Award allowances increases. Many of the industrial instruments utilised by Adecco contain wage related all-purpose allowances that require the recalculation of ordinary rates of pay and thus overtime rates, shift work rates, public holiday rates and so on. The retrospectivity of the AIRC's orders compounded the administrative, financial and commercial issues that had already been created.”*

45. Robyn Hearps of Chubb identified similar problems:

*“15. If the Fair Pay Commission had provided a greater amount of lead-time, this would have allowed more time for the Australian Industrial Relations Commission (AIRC) to deal with the large number of applications lodged by the unions for increases in wage-related allowances, without a retrospective operative date. The decision by the AIRC to award the same operative date as the AFPC, resulted in Chubb being required to back-pay its employees for wage-related allowance increases in a large number of awards - in some cases, by more than three months. This was extremely costly and administratively burdensome.*

16. *Retrospectivity of allowance increases is particularly costly in the security industry because the industry operates largely on a contract labour basis. In some cases we have no ability to recover retrospective allowance increases from our clients.*
17. *Chubb estimates that the additional administrative work nationally arising from the requirement to back-pay wage-related allowance increases (given that the AIRC decided that the same operative date should apply to the AFPC wage increases and the AIRC wage-related allowance increases) was 48 work hours.”*
46. Further, Terese McCowen for Daly Smith Corporation said:
- “14. *The insufficient lead time allowed for by the AFPC in last year’s decision created additional pressures regarding the increase to wage-related allowances granted by the AIRC. The retrospective operative date which ensued caused further unnecessary cost pressures on Daly Smith Corporation as it is very difficult to recover any back pay from clients. As I write this, there are still some awards where the allowances haven’t been handed down. If these are retrospective back to the 1/12/06 this is approximately 18 weeks later. We cannot recharge or recover this amount. Our business is very competitive and works on costs payable at the current point in time not retrospectively.”*
47. As evidenced from the above statements, the process of settling the orders in hundreds of awards has taken months and hence employers are required to pay months of backpay. It is now four months since the operative date of the allowance increase (1 December 2006) and orders for a number of the major awards including the *National Building and Construction Industry Award 2000* and the *Metal, Engineering and Associated Industries Award 1998* have not been settled.

48. Such a result would clearly be avoidable in respect of the 2007 decision should the AFPC allow for greater prospectivity between the date of the decision and the operative date of the increase.
49. Ai Group submits that with these significant problems in mind, the shortest period of prospectivity that will allow for efficient and sensible implementation of the decision is a period of three months.
50. It is important to remember that prior to 2006, safety net adjustments awarded by the AIRC were often operative a lengthy period after the Commission's *Safety Net Review Decision*. In some industries it was not uncommon for employers to have at least 6 months' (and in some instances 12 months' or more) notice of the wage increase prior to it becoming operative.
51. On this basis, prospectivity of no less than three months, as proposed by Ai Group, would not only be unremarkable, but furthermore, would go a long way to alleviating the administrative and financial burdens that occurred as a result of the 2006 decision.

## **Economic Incapacity Principle**

52. The Economic Incapacity Principle has been a longstanding and important feature of Safety Net Review / National Wage Case decisions and Ai Group submits that it should be retained (with appropriate minor modifications) within the minimum wage system through its adoption by the AFPC in 2007.
53. The AIRC's principle states:  
  
*"Any respondent or group of respondents to an award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs determined under this Statement of Principles on the ground of very serious or extreme economic adversity. The merit of such application will be determined in the light of the particular circumstances of*

*each case and any material relating thereto shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party making such an application must make and justify an application pursuant to s.107. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench.*

*Any decision to temporarily reduce or postpone an increase will be subject to a further review, the date of which will be determined by the Commission at the time it decides any application under this Principle.”<sup>3</sup>*

54. The Economic Incapacity Principle is a significant and necessary notion that recognises that in some cases even a small increase in wages could potentially be crippling to an employer, particularly a small one.
55. It is in all parties' interests to retain the flexibility provided by this Principle. Experience over the years has shown that the criteria set out in the Principle applies only in exceptional circumstances.
56. The Economic Incapacity Principle remains within the AIRC wage setting system for transitional employees. The Principle was the subject of submissions in the AIRC's *Wages and Allowances Review 2006* and all parties supported its retention, including Ai Group, other employer representatives, the ACTU and the Commonwealth.
57. There would need to be some modifications to the AIRC's Principle to take account of the different wage setting processes of the AFPC and the current legislative requirements. An appropriate Principle for adoption by the AFPC would be:

*“Any party covered by a Pay Scale may apply to the Australian Fair Pay Commission for an adjustment to the Pay Scale with the effect of, temporarily or otherwise, reducing or postponing the application of any AFPC decision to*

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<sup>3</sup> The Statement of Principles is Attachment A to the *Safety Net Review Wages June 2005 Decision* (PR002005).

*adjust minimum rates of pay in the Pay Scale on the ground of very serious or extreme economic adversity. The merit of such application will be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. Any decision to temporarily reduce or postpone an increase will be subject to a further review, the date of which will be determined by the Australian Fair Pay Commission at the time it decides any application under this Principle.”*

## **5. The Need for the AFPC to Publish Preserved and New Pay Scales**

58. In its 2006 Minimum Wage Review submission, Ai Group urged the AFPC to publish Pay Scales. The AFPC chose not to do so. If the AFPC had published Pay Scales the widespread confusion which followed the AFPC's 2006 decision may not have occurred.
59. The lack of accurate, legally binding and published Pay Scales is reducing confidence within the community in the reformed minimum wage setting system. This problem can readily be overcome if the AFPC decides to publish Pay Scales.
60. The problems associated with the AFPC's decision not to publish Pay Scales have been exacerbated because the WorkChoices legislation has given the AFPC responsibility for setting and adjusting minimum rates of pay and casual loadings (except for transitional employees) but has left the role of setting and adjusting allowances, penalty rates and loadings with the AIRC. In many cases there are several elements which combine to make up the remuneration of award / Pay Scale covered employees and it is extremely difficult and highly debatable to delineate between the wage rates and casual loadings in various Pay Scales and the penalty rates and allowances in the corresponding awards.
61. Ai Group publishes and circulates to its member companies, the wage rates and related information in approximately 350 Pay Scales. The task of calculating the wage increases arising from the AFPC's 2006 decision and endeavouring to resolve numerous interpretation issues which have arisen has consumed a vast amount of time. The task is far from complete.

62. Nearly six months have elapsed since the AFPC's first wage setting decision and the content of many Preserved Pay Scales have still not been settled between the Department of Employment and Workplace Relations (DEWR) and the industrial parties, including the Pay Scales arising from various major awards. In some cases, unions, employer associations and DEWR each have different views on what the correct wage rates are. Unless the Fair Pay Commission publishes Pay Scales, the only way that such differences of view can be resolved definitively is through Court proceedings. This is very unsatisfactory.
63. It is highly inadequate for the Fair Pay Commission to leave the role of publishing Pay Scales (or summaries of them) to DEWR. The Pay Scale summaries which DEWR publishes have no legal force and employers who comply with them are not protected against legal action if the wage rates are incorrect.
64. The DEWR's Pay Scale summaries contain the following preamble which indicates that the Office of Workplace Services is unlikely to prosecute an employer who pays in accordance with a DEWR Pay Scale Summary. However, the unions have made it clear that they may pursue legal proceedings against an employer who they believe has paid less than the legal minimum<sup>4</sup>:

*"This pay scale summary was developed by the Department of Employment and Workplace Relations (DEWR) and is derived from the above award as it was on 26 March 2006 (before the commencement of WorkChoices) as adjusted by the Australian Fair Pay Commission decision effective from 1 December 2006.*

*This summary sets out basic classification wages, and associated provisions, derived from the pre-reform award. Other conditions of*

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<sup>4</sup> For example, see the comments made by ACTU Advocate Richard Watts during the *Wages and Allowances Review 2006* at PN833 and 834 of transcript.

*employment (including allowances, penalties and loadings) may be contained in an award, workplace agreement, contract of employment, or Notional Agreement Preserving State Awards.*

*DEWR has discussed the approach adopted in developing this summary with the Australian Fair Pay Commission and the Office of the Employment Advocate, both of which support the approach adopted by DEWR.*

*Demonstrated compliance with the details published in this pay scale summary by an employer bound to observe the provisions of the equivalent preserved Australian Pay and Classification Scale (APCS) will be deemed by the Office of Workplace Services (OWS) as satisfying the employer's obligations under the APCS, provided that the employee is correctly classified and paid for each hour worked in accordance with the APCS. The keeping of time and wages records and the issuing of payslips is required by law and will be needed to demonstrate to OWS compliance with this APCS."*

65. Any comfort that employers are able to gain from the above preamble is largely negated by the following disclaimer which is included within every DEWR Pay Scale Summary:

***"Disclaimer***

*By agreeing to use this summary of information, the user agrees:*

- that the Commonwealth of Australia does not give any guarantee, undertaking or warranty whatsoever in relation to the summary, including in relation to the accuracy, completeness or currency of the summary; and*

- *to indemnify and hold harmless the Commonwealth from and against any loss or liability suffered by a user or a third party, arising out of the provision of the information, howsoever caused, including due to the negligence of the Commonwealth.”*
66. Such disclaimers of course do not form part of orders of the AIRC, nor would they appropriately be included in Pay Scales published by the AFPC.
67. The Fair Pay Commission is the body responsible for maintaining the system of Pay Scales and accordingly it is the body which should publish them. Employers, employees and industrial parties need to have accurate and legally binding published documents which set out the minimum wage rates which employers are required to pay to their employees.
68. It is vital that the Pay Scales to be published are developed in consultation with representative bodies such as Ai Group.
69. We submit that the appropriate first step in the process of publishing Pay Scales is for the AFPC to publish Preserved Pay Scales derived from the awards which cover the largest number of employees (say, approximately 100 Pay Scales).
70. The AFPC has the power to publish Preserved Pay Scales via s.26 of the *Workplace Relations Act*.

**“26 Publishing wage-setting decisions etc.**

- (1) *The AFPC must publish its wage-setting decisions.*
- (2) *The AFPC may, as it thinks appropriate, publish other information about wages or its wage-setting function.*
- (3) *Publishing under subsection (1) or (2) may be done in any way the AFPC thinks appropriate.”* (Emphasis added).

71. The AIRC has always published awards and issued a separate order for each award that is varied, setting out the specific terms of the award variation. With this approach, the obligations of employers and the entitlements of employees are clear.
72. In various proceedings over recent months, the AIRC has expressed concern about the lack of certainty arising from the AFPC's decision not to publish Pay Scales. Such uncertainty creates difficulties for the AIRC, given its responsibility to adjust wages for transitional employees.<sup>5</sup>
73. For example, in proceedings before a five Member Full Bench of the AIRC, relating to the wage rates in the *Security Industry (NSW) Award 1999 [Transitional]*, the Full Bench said:

*“[5] As explained in the main decision, so far as pre-reform awards are concerned, on 27 March 2006 award classifications and rates became preserved Australian Pay and Classification Scales (APCS) within the wage-setting jurisdiction of the Australian Fair Pay Commission (AFPC). By that date only two instalments of \$4.25 had been included in the award rates pursuant to the 2003 agreement. The resulting award rates were adjusted by the AFPC in its wage-setting decision of October 2006. It is accepted that the AFPC has not published pay and classifications scales resulting from its October decision. Despite the lack of certainty resulting from this situation, there is nothing in the decision to suggest that the AFPC varied the APCS derived from the Security Industry (New South Wales) Award 1999 by more than the amounts set out in the decision. It follows that the relevant APCS does not contain the last two instalments of the 2003 safety net adjustment”.*<sup>6</sup>  
(Emphasis added)

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<sup>5</sup> Clause 8 of Schedule 6 of the *Workplace Relations Act 1996* requires that the AIRC have regard to wage setting decisions of the AFPC when adjusting wage rates for transitional employees.

<sup>6</sup> PR975850, 18 January 2007

74. During the *Wages and Allowances Review 2006* proceedings the President of the AIRC, Justice Giudice expressed the view that it would be desirable for there to be accuracy and enforceability regarding the judgments of the AFPC as evidenced by the following exchange recorded on transcript:

*PN555*

*MR BARKLAMB: We say this Commission has obligations, your Honour, to ensure accuracy and enforceability of its judgments. It has established approaches.....*

*PN556*

*JUSTICE GIUDICE: Does the Fair Pay Commission not have that obligation?*

*PN557*

*MR BARKLAMB: Your Honours, we will have further discourse with the Fair Pay Commission on that in due course. We'd certainly support a situation in which there was, at some stage in the future, formal issuing of orders in relation to all of the APCS rates of pay, but we'll be endeavouring to do all we can in relation to that jurisdiction to ensure greater clarity over time as it evolves and does its work in future years.*

*PN558*

*JUSTICE GUIDICE: Yes. It would seem to be desirable.* (Emphasis added).

75. To assist the AFPC in carrying out the important task of publishing Pay Scales, Ai Group has prepared the following draft of the Preserved Pay Scale derived from the *Business Equipment Industry - Technical Service - Award 1999*.

## **Preserved Pay Scale Derived from the Business Equipment Industry – Technical Service – Award 1999**

### **1. Interpretation**

In this Preserved Pay Scale:

**Commission** means the Australian Fair Pay Commission.

**Pay Scale** means an Australian Pay and Classification Scale.

### **2. Preserved Pay Scale derived from pre-reform wage instrument**

This Preserved Pay Scale is derived from the *Business Equipment Industry - Technical Service - Award 1999* as in force on 26 March 2006.

### **3. Publication of this Pay Scale**

This Preserved Pay Scale is published by the Commission in accordance with paragraph 26(2) of the *Workplace Relations Act 1996*.

### **4. Coverage of this Pay Scale**

4.1 This Pay Scale applies to **employers** who:

- perform work in the industry covered by this Pay Scale (see sub-clause 4.3); and
- are a party bound by this Pay Scale (see sub-clause 4.4); and
- are not exempt from this Pay Scale (see sub-clause 4.5); and
- who engage employee/s in classification/s set out in this Pay Scale (see clause 9);

4.2 This Pay Scale applies to **employees** who:

- perform work in the industry covered by the Pay Scale (see sub-clause 4.3); and
- are employed by an employer bound by the Pay Scale (see sub-clause 4.4); and
- are not exempt from this Pay Scale (see sub-clause 4.5); and
- are engaged in a classification set out in this Pay Scale (see clause 9).

4.3 The **industry** covered by this Pay Scale is the business equipment industry in all its branches. This Pay Scale applies to employees engaged in, or in connection with:

- 4.3.1 servicing, repairing, maintaining, structurally altering and/or assembling business equipment but excluding the repair and structural alteration of typewriters; and
- 4.3.2 sorting, packing and dispatching business equipment and parts and supplies thereof; and
- 4.3.3 every operation, process, duty and function carried on or performed incidental to the business equipment industry

4.4 This Pay Scale is binding upon:

- 4.4.1 The following organisations of employees, their officers and members:
  - Australian Municipal, Administrative, Clerical and Services Union;
  - National Union of Workers; and

- Australian Liquor, Hospitality and Miscellaneous Workers Union.

4.4.2 The Australian Industry Group and its members, and other parties listed in the Schedule to the *Business Equipment Industry - Technical Service - Award 1999* as in force on 26 March 2006, in respect to all their employees covered by this Pay Scale whether such employees are members of the organisations listed in 4.4.1 hereof or not.

4.5 This Pay Scale does not apply to persons wholly or mainly engaged in managerial positions or, to employees whilst undertaking formal training courses or schools in connection with their employment.

## 5. Wages

| <b>Classification</b>      | <b>Minimum Rate of Pay (\$ per hour)</b> |
|----------------------------|--|
| Level 1 Technician         | 18.10                                    |
| Level 2 Technician         | 17.07                                    |
| Level 3 Technician         | 16.04                                    |
| Level 4 Technician         | 15.08                                    |
| Level 5 Technical Employee | 14.53                                    |
| Level 6 Technical Employee | 13.94                                    |

## 7. Casual loading provisions

A casual employee is one engaged and paid as such, and for working ordinary time shall be paid per hour 1/38<sup>th</sup> of the basic periodic rate of pay prescribed by this Pay Scale for the work which the employee performs, plus twenty per cent.

## **8. Frequency of payment provisions**

Salaries/wages shall be paid weekly, fortnightly, four weekly, monthly, half monthly or in accordance with existing practices.

## **9. Classifications**

### **9.1 Level 1 Technician**

#### **9.1.1 *Classification requirements***

An employee at this level must be capable of performing work above, beyond and including the requirements of a Level 2 Technician and consistent with clause 11 – Employee duties, this award:

- Demonstrates an ability to respond to issues such as complex, unusual, intermittent or undefined malfunctions.
- Researches problems and recommends solutions.
- Maintains contact with problem situations and assists until satisfactory resolution is achieved.
- Summarises problem resolution and follow-up requirements for management. Communicates final status to local management prior to leaving site.
- Demonstrates an ability to review background of problems and performs on site technical activities.
- Conducts technical product performance improvement projects.
- Identifies procedures to improve service support delivery.
- Exercises broad discretion in defining and solving technical problems which may require the development of new alternative approaches.

- Applies logical, methodical, analytical approaches to isolate and solve complex problems.
- Able to lead a small team.
- Works under limited supervision.
- Able to handle the technical functions of all aspects of computer systems, networks and communications.

#### 9.1.2 **Duties**

- Provides assistance with installation planning.
- Provides guidance to customers on component failure impact and problem determination procedures.
- Provides guidance to employees engaged at lower levels.
- Responsible for customer satisfaction and quality of service provided.
- Provides technical direction and guidance to customers.
- Handles more complicated projects.
- May be directed to perform other duties consistent with training and skills levels required for this position.

### 9.2 **Level 2 Technician**

#### 9.2.1 **Classification requirements**

An employee at this level must be capable of performing work above, beyond including the requirements of a Level 3 Technician and consistent with clause 11 – Employee duties, of this award:

- Applies specialised technical knowledge to problem solve difficult or complex situations.

- Able to exercise broad discretion in defining and solving technical problems where alternative choices may be applicable within standard practice.
- Able to perform varied technical duties involving the use of a wide range of alternative procedures.
- Capable of providing technical guidance and assistance as part of a work team.
- Capable of assistance in the provision of training, in conjunction with other support staff.
- Able to work under general supervision either individually or in a team environment.
- Able to use system level diagnostics to isolate and correct problems.
- Able to apply verbal and written communication skills.

#### 9.2.2 ***Duties***

- Handles more complex/critical equipment.
- Operates diagnostic systems to debug and isolate problems.
- May be directed to perform other duties consistent with training and skills levels required for this position.

### 9.3 **Level 3 Technician**

#### 9.3.1 ***Classification requirements***

An employee at this level must be capable of performing work above, beyond and including the requirements of a Level 4 Technician and consistent with clause 11 – Employee duties, of this award:

- Performs technical service, support and installation of equipment, services and installs networks and maintains communication facilities.
- Performs non technical tasks incidental to the employee's work.
- Able to work under routine supervision either individually or in a team environment.
- Able to work independently at customer site as assigned.
- Demonstrates and applies greater knowledge of the company's product sufficient for diagnosis of complicated hardware production faults.
- Able to exercise limited discretion in deviating from standard practice to solve problems within area of experience.
- Able to apply logical, methodical, analytical approach to isolate and solve complicated hardware problems.
- Able to effectively communicate and work with other technicians, technical employees, managers and customers in technical support situations.

### 9.3.2 ***Duties***

- Installation or relocation of hardware.
- Assists in the provision of on the job training.
- Assists in the analysis and preparation of component failure impact plans.
- May be directed to perform other duties consistent with training and skills levels required for this position.

## 9.4 Level 4 Technician

### 9.4.1 *Classification requirements*

An employee at this level must be capable of performing work above, beyond and including the requirements of a Level 5 Technical Employee and consistent with clause 11 – Employee duties, of this award:

- Able to perform basic technical duties in accordance with company procedures.
- Is responsible for the quality assurance of the employee's own work.
- Works under routine supervision either individually or a team environment.
- Understands and applies quality control techniques.
- Exercises good interpersonal and communication skills.
- Exercises limited discretion within the scope of this grade.
- Performs non-technical tasks incidental to the employee's work.
- Able to inspect products and/or material for conformity with established operational standards.
- Able to apply a logical approach to solving technical problems.
- Able to maintain reports or records in accordance with company procedures.
- Able to effectively communicate and to work with other technicians, technical employees and customers in technical service situations.
- Able to work independently at a customer site as assigned.

- Able to perform technical duties in accordance with company procedures on basic equipment.

#### 9.4.2 ***Duties***

- Capable of applying routine diagnostic procedures.
- Performs option checkout to ensure proper equipment performance to meeting company standards and customer expectations.
- Resolves routine malfunctions where cause and correction are readily identifiable.
- Performs preventative maintenance and repair services on demand and/or to agreed schedules.
- Renders technical support in conformity with the manufacturer's/ company procedures and specifications.
- Assists other employees by skill sharing and the provision of advice and assistance.
- Reviews the performance of equipment being serviced.
- Runs routine diagnostics on printed circuit boards.
- May be directed to perform other duties consistent with the training and skill levels required for this position.

### 9.5 **Level 5 Technical Employee**

#### 9.5.1 ***Classification requirements***

An employee at this level must be capable of performing work above, beyond and including the requirements of a Level 6 Technical Employee and consistent with Clause 11 – Employee duties, of this award.

- Is responsible for the quality assurance of the employee's own work.
- Works under routine supervision either individually or in a team environment.
- Exercises discretion within the employee's level of skills and training.
- Follows specific verbal/written instructions relating to repair assignments.
- Able to maintain records or reports in accordance with company procedures.

#### 9.5.2 **Duties**

- Receiving, dispatching, distributing, sorting, checking, packing, documenting and recording of goods, materials and components other than repetitive packing in a standard container or containers in which goods are ordinarily packing.
- Basic inventory control in the context of a production process.
- Operation of mobile equipment including forklifts, hand trolleys, pallet trucks, overhead crane and winch operation.
- Routine maintenance of mechanical, electro-mechanical, or electronic business equipment.
- May be directed to perform other duties consistent with training and skill level required for this position.

## 9.6 **Level 6 Technical Employee**

### 9.6.1 ***Classification requirements***

- Routine mechanical/electro-mechanical/electronic assembly.
- Is responsible for the quality assurance of the employee's own work.
- Works under direct supervision either individually or in a team environment.
- Exercises discretion within the employee's level and training.
- Able to follow specific verbal/written instructions relating to assembly assignments.
- Able to measure accurately.
- Able to inspect products and/or materials for conformity with established operational standards.
- Operates all lifting equipment incidental to the employee's work.

### 9.6.2 ***Duties***

- Repetition work on automatic, semi-automatic or single purpose machines or equipment.
- Assemble components using basic written, spoken and/or diagrammatic instruction in an assembly environment.
- Basic soldering or butt and spot welding.
- May be directed to perform other duties consistent with training skill levels required for this position.

## 9.7 Supervision definitions

9.7.1 **Direct supervision** means that a person:

- Receives detailed instructions on what is required and is subject to progress checks; and
- Has his or her tasks reviewed on completion, or who performs tasks that are part of an overall assignment of tasks

9.7.2 **Routine supervision** means that a person:

- Receives instructions on what is required on unusual or difficult features and when new procedures are involved, on the method of approach; and
- Is normally subject to progress checks but these are usually confined to the unusual or difficult aspects; and
- Has his or her assignments reviewed on completion; and
- Has the technical knowledge and experience to enable duties to be performed usually without specific instructions

9.7.3 **General supervision** means that a person:

- Receives general instructions, usually covering only the broader technical aspects of the work; and
- May be subject to progress checks but where these are made they are usually confined to ensuring that, in broad terms, satisfactory progress is being made; and
- Has his or her assignments reviewed on completion; and
- Although technically competent and well experienced, there may be occasions on which the employee will receive technical assistance.

9.7.4 **Limited supervision** means that a person:

- Receives limited instructions normally comprising a clear statement of objectives; and
- Has his or her work usually measured in terms of the achievement of stated objectives; and
- Is fully competent and very experienced in a technical sense and requires little guidance in the performance of his or her work; and
- May be required to plan, direct and co-ordinate the work of other personnel.

76. Ai Group submits that with the necessary resourcing and in consultation with representative bodies such as Ai Group, it would be a manageable task within a relatively short period of time for the AFPC to publish Preserved Pay Scales derived from the 100 or so awards which cover the largest number of employees.
77. The publication of these Preserved Pay Scales is the appropriate first step in the process of rationalising Pay Scales and publishing new ones.

## 6. Rationalisation of Pay Scales

78. The Act empowers the AFPC to adjust, revoke and make Pay Scales.
79. In exercising its wage setting powers, the AFPC is required under s.177 to “have regard” to any relevant recommendations made by the Award Review Taskforce.
80. In July 2006, the Award Review Taskforce submitted its *Final Report on the Rationalisation of Wage and Classification Structures* to the Minister for Employment and Workplace Relations. The report was subsequently publicly released. It identified various approaches which could be taken to rationalising Pay Scales but did not recommend any one approach.
81. There are a very large number of Pay Scales and the process of rationalising them without causing harsh and unfair outcomes for employers and/or employees will be highly complex.
82. A simplistic, “one-size-fits-all” approach to the rationalisation of wage rates and classifications would undoubtedly lead to numerous negative consequences for both employees and employers. It is essential that the Pay Scale rationalisation exercise be conducted in a consultative and careful manner.
83. It is vital that the rationalisation exercise not result in the levelling-up of wages and casual loadings. This would be a backward step which would decrease the competitiveness of Australian industry and have negative effects on employment.
84. In whatever model that is developed, scope needs to be retained for appropriate exclusions, modifications and exceptions to apply within particular industries, where circumstances justify them.

85. Developing a coherent model to rationalise wage rates and classifications is fraught with difficulty. Any model implemented needs to meet the following criteria:
- It should not result in employers being forced to pay substantial wage increases;
  - Any wage increases which do arise should generally be phased-in to avoid cost pressures for employers and negative employment effects;
  - The rationalisation of classifications should not result in employees who are currently “award free”, becoming covered by a Pay Scale. For example, if the Pay Scale arising from the *Metal, Engineering and Associated Industries Award* (which has a 14 level structure) is combined with the Pay Scale arising from the *Graphic Arts General Award* (which has an 8 level structure which was inserted into the award in October 2005 following 16 years of AIRC proceedings<sup>7</sup>) then employees above Level 8 in the Graphic Arts Industry should not become covered by a Pay Scale as a result;
  - Classifications should not be removed within an industry without good reason as this creates significant potential for unions to pursue claims for employees engaged in a removed classification to be levelled-up to a higher classification.
86. The AFPC should ensure that the economic impacts of whatever rationalisation model is adopted are thoroughly analysed and considered before any decisions are made.

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<sup>7</sup> Throughout the 16 years of negotiations and AIRC proceedings the AMWU pursued a 14 level classification structure which Ai Group and the Printing Industries Association opposed given the negative effects which it would have on the industry. A decision was finally handed down by Senior Deputy President Marsh on 26 October 2005, PR964271.

## **The Wages Guarantee**

87. Section 190 of the Act states that the AFPC, in exercising its powers to adjust, make or revoke Pay Scales, must ensure that the minimum wage rates applicable to employees are not less than the minimum award rates of pay that each employee was entitled to before the reforms commenced.
88. The Wages Guarantee in s.190 makes the process of rationalising Pay Scales more complex than would otherwise be the case. The Wages Guarantee ensures that no employee will be treated harshly by the rationalisation exercise in terms of his or her pay rate but it does not protect employers from harsh treatment or employees from the negative employment effects of such treatment.
89. The Wages Guarantee adds further weight to the imperative that a cautious and consultative approach is taken to the rationalisation of Pay Scales.

## **Removal of Coverage Rules Within Pay Scales which are Described by Reference to State and Territory Boundaries**

90. Section 206 of the *Workplace Relations Act* provides that by the end of three years from the date of reform commencement, Pay Scales must not contain coverage rules that are described by reference to state or territory boundaries. Accordingly, the differences in minimum wage rates in the Pay Scales arising from the various state awards need to be removed by 27 February 2009.
91. This legislative requirement, unless amended, will undoubtedly cause harsh outcomes for employers in some industries (eg. retail) given the substantial differences in the rates within the Pay Scales which arose from the various state awards, and given the Wages Guarantee in s.190 of the Act.

92. It is important that the requirements of s.206 not lead to the AFPC proceeding to rationalise Pay Scales with undue haste. A better approach would be for the Commission to recommend to the Federal Government that s.206 be repealed. Ai Group can see no logical reason why minimum wage rates in Pay Scales need to be the same in every state.
93. At the very least, Ai Group submits that the Commission should recommend to the Federal Government that the timeframe in s.206 be extended to enable the differences in minimum wage rates between states and territories to be removed over a more workable timeframe (eg. within five years from the time when the first Pay Scales are rationalised).
94. The Award Review Taskforce made a similar recommendation in its Final Report on the Rationalisation of Wage and Classification Structures, as set out below:
- “**Recommendation 6:** That the Government review and extend the timeframe established by s.206 of the WR Act for the elimination of wage differentials based on state and territory boundaries, so as to ensure that actions taken by the Fair Pay Commission to comply with the current obligation do not have an unintended and counterproductive effect on employers and employees”<sup>8</sup>.*
95. In its 2006 Minimum Wage Review Decision, the Fair Pay Commission said that it “intends to undertake further research and consultations in respect of the recommendations of the Taskforce and will commence this in 2007”<sup>9</sup>. Ai Group looks forward to being involved in this process.

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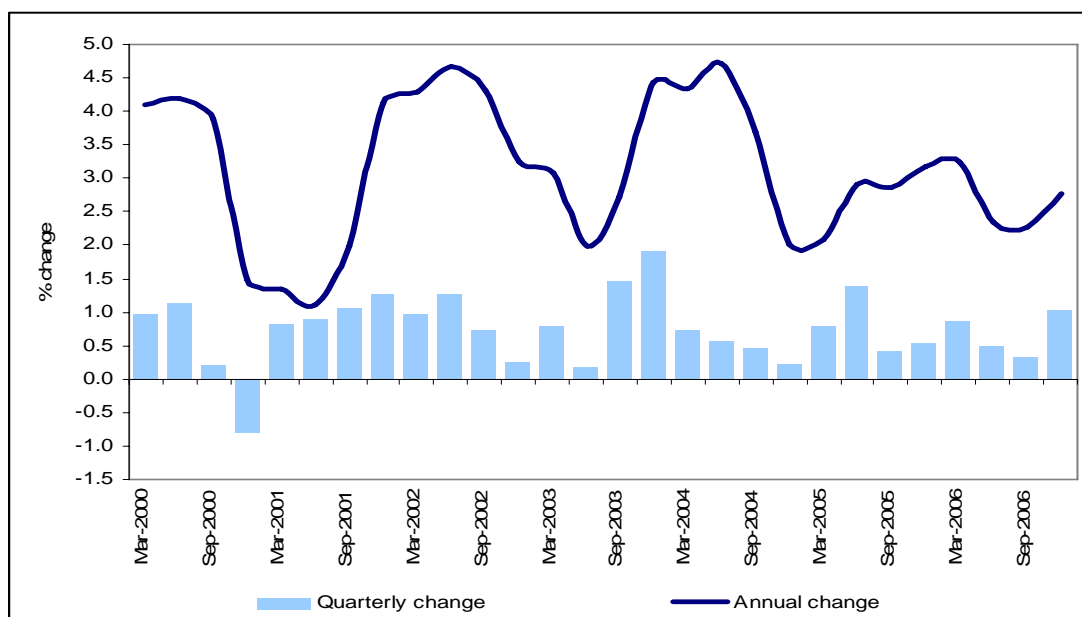
<sup>8</sup> P.77 of the Award Review Taskforce’s Final Report on Rationalisation of Wage and Classification Structures.

<sup>9</sup> P.137 of 2006 Minimum Wage Review Decision.

## 7. Economic Conditions and Outlook

96. Ai Group, in putting its views to the Fair Pay Commission, has taken account of current growth conditions in the Australian economy.
97. As **Chart 7.1** highlights, the economy picked up some momentum in the later part of 2006, but continues to under-perform relative to the early part of this decade. Average annual GDP growth (seasonally adjusted, chain volume terms) between March quarter 2000 and December quarter 2004 averaged 3.3%, compared to an average of 2.7% over the period March 2005 to December 2006.

**Chart 7.1 - Annual and quarterly change in GDP growth**

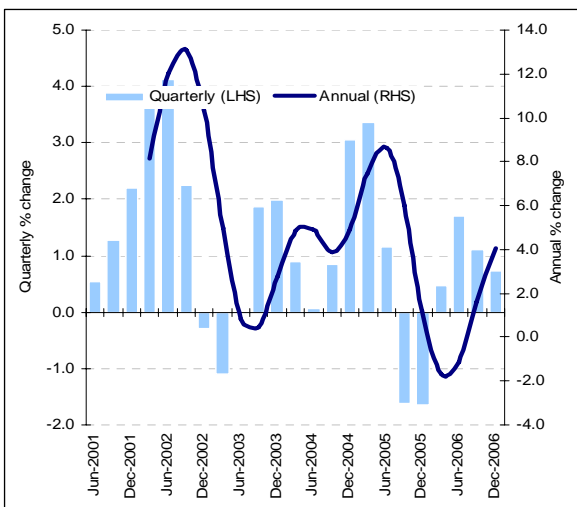


98. The latest National Accounts shows that GDP growth as at the end of December 2006 was 2.8%, down from 3.2% the same time last year. Given the weaker growth, it must be asked whether the Commission will continue with its judgment (of October last year) that “the economy and labour market conditions continued to perform **strongly**” (emphasis added).

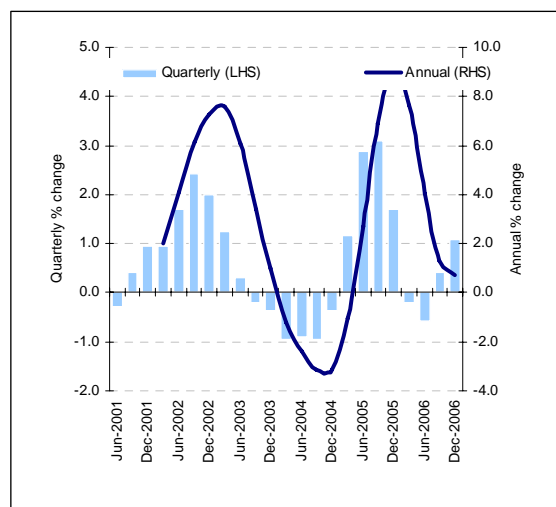
99. While the commodity boom has delivered solid returns to the resources sector and some states, for the majority of industry sectors and states, growth has been moderate to weak.

100. Looking at industry sectors, and using Australian Bureau of Statistics data on sales volumes, highlights that outside the mining sector, industry performance has been considerably less than strong (**Charts 7.2 – 7.5**).

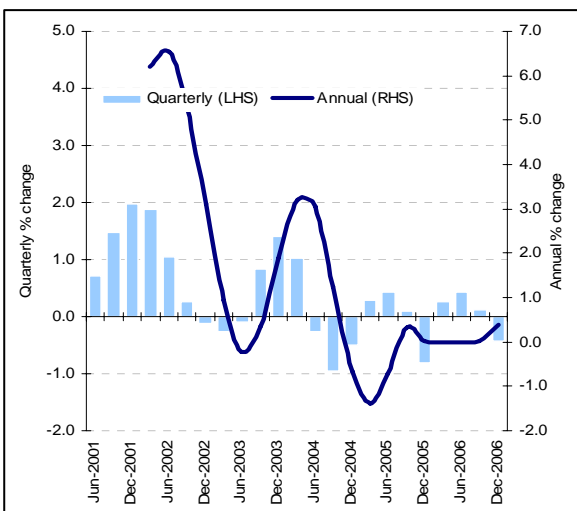
**Chart 7.2 - Mining sales volume**



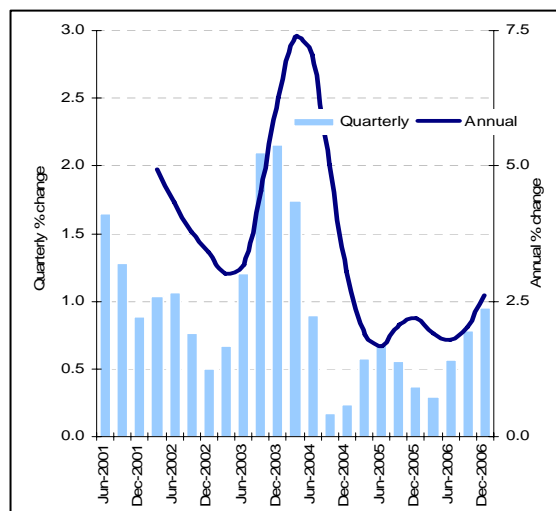
**Chart 7.3 - Construction sales volume**



**Chart 7.4 - Manufacturing sales volume**



**Chart 7.5 - Services sales volume**



101. In mining, annual sales volumes were growing 4.1% at the end of 2006, with quarterly growth throughout 2006 averaging around 1.0%. In construction, sales volumes are weak, with annual growth of 0.7% in 2006, with quarterly growth averaging only 0.2%. In manufacturing, sales volumes actually fell by 0.4% in 2006, with quarterly growth averaging only 0.1%. Even with services, growth in sales volumes are well down on previous years, with annual growth of 2.1%, and average quarterly growth of 0.6%.
102. The official ABS data reinforces the findings of Ai Group's own business surveys (Australian PMI, PCI and PSI), covering manufacturing, construction and the services sector, that shows activity in these sector are well down on previous years. Again, the question must be asked whether such industry outcomes still warrants the Commission describing the economy as strong.
103. Indeed, slower growth across the economy is what the Reserve Bank has sought to achieve through raising interest rates, thereby lowering overall demand and taking pressure off wages. As Assistant Governor (Economics), Malcolm Edey has recently stated "the RBA has been pointing out for some time now, that we should not expect the economy to grow as quickly as it did a few years ago, when there was still a lot of surplus labour and capital to be re-employed"<sup>10</sup>. Capacity constraints and lower productivity means slower growth and a cap on wage growth in order to contain inflationary pressure. The Commission similarly has a role to ensure its wage adjustments are consistent with the RBA's overall goal of sustaining growth and keeping inflation within reasonable limits.
104. Ai Group notes in its October decision that the Commission took into account that the performance of the economy and labour market was not uniform, but it is unclear whether this is a reference to industry sector differences and/or state differences. Given that the majority of employees and businesses reside in NSW and Victoria, and South Australia to a lesser extent, the weak growth

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<sup>10</sup> Malcolm Edey, Assistant Governor (Economic), Australia in the Global Economy, Address to the Australia & Japan Economic Outlook Conference 2007, Sydney - 16 March 2007

performance of these states means that the impact of a wage adjustment in these states would be greater than in Queensland and Western Australia, where the state economies are growing significantly stronger.

105. While it is difficult to determine the extent to which national wage adjustments impact on employment at the state level, it is clear that employment opportunities are constrained in the non-resources states of NSW, Victoria, SA and Tasmania. Indeed, while Queensland and Western Australia account for 31% of the workforce, they were responsible for around 52% of the jobs created in the last year (**Table 7.1**). These states have had among the strongest growth in state final demand, and appear to have absorbed wage adjustment with little impact on employment growth. However, whether this conclusion can be made about the other states, which are growing much slower, remains in doubt. Ai Group believes the Commission should give more consideration to the differential impacts of a minimum wage increase across the states.

**Table 7.1 Change in employment over last year (to February 2007)**

| State | No of full-time jobs (000) | Annual % change | No of part-time jobs (000) | Annual % change | Annual growth in state final demand (%)* |
|-------|----------------------------|-----------------|----------------------------|-----------------|--|
| NSW   | 46.8                       | 1.97            | 3.80                       | 0.44            | 1.4                                      |
| VIC   | 49.1                       | 2.75            | 21.0                       | 2.94            | 3.2                                      |
| SA    | 4.3                        | 0.84            | 2.5                        | 1.07            | 2.6                                      |
| TAS   | 3.2                        | 2.11            | -3.1                       | -4.49           | -3.0                                     |
| NT    | 3.1                        | 4.00            | 2.7                        | 14.54           | 1.0                                      |
| ACT   | 5.4                        | 3.93            | 2.4                        | 5.77            | 6.5                                      |
| QLD   | 92.9                       | 6.42            | 22.8                       | 4.20            | 6.1                                      |
| WA    | 18.9                       | 2.48            | 15.7                       | 5.26            | 7.2                                      |

\* As at December quarter 2006

106. Finally, Ai Group continues to hold to its view that the Commission needs to be more mindful of Australia's current poor productivity record which could impact on the capacity of employers to absorb such increases.

107. There is a growing consensus that Australia's non-inflationary growth potential (or 'trend' GDP growth) has slipped in the current decade. The Australian Treasury has recently revised down its estimate of trend growth from 3.25% to 3.0%.
108. The source of this new consensus is the continuing weak growth in both labour productivity (GDP per hour-worked) and multi-factor productivity (the growth in GDP that is not attributable to either labour or capital inputs and which is basically due to the effects of new technology and new organisational practices). Indeed, Treasury's new estimate of trend growth incorporates annual labour productivity growth of 1.75% (revised down from 2.0%), and which is broadly in line with the long-run average Australian growth rate.
109. The Productivity Commission has recently published a summary of recent growth in labour productivity by industry, drawn from the 2005/06 annual National Accounts. The estimates are presented in **Table 7.2**.
110. Annual growth in labour productivity in the 'so-called' market sector averaged 0.9% in 2004/05 and 2005/06, compared with long-term annual average growth of 2.2%. However, two sectors - mining and electricity, gas & water – accounted for much of the overall weakness in this period, reflecting relatively strong employment growth in both industries. Nevertheless, average annual growth in labour productivity was zero in the manufacturing sector during these two years, and compared with a long-run average growth rate of 3.2%. Through this period, manufacturing output growth was comparatively weak, while growth in capital inputs remained strong.

**Table 7.2 Annual change in industry productivity (per cent)**

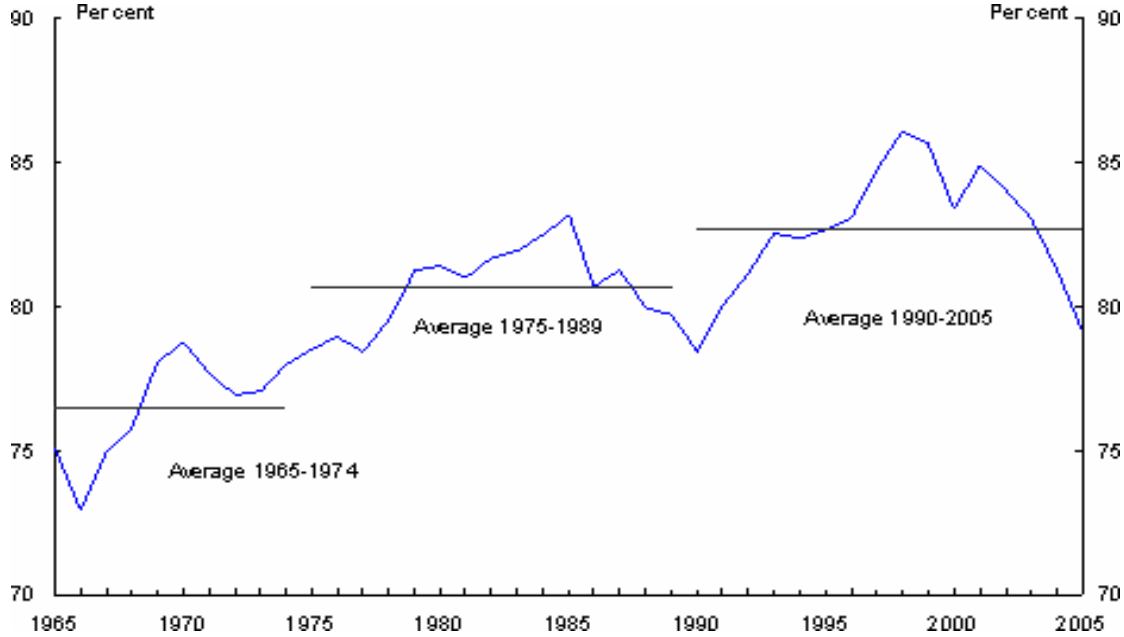
| Industry Sector                    | Labour Productivity |             |            | Multifactor Productivity |             |              |
|------------------------------------|---------------------|-------------|------------|--------------------------|-------------|--------------|
|                                    | Long-term average   | 2004-05     | 2005-06    | Long-term average        | 2004-05     | 2005-06      |
| Agriculture, forestry & fishing    | 3.5                 | 2.6         | 9.4        | 2.8                      | -1.2 (-0.1) | 4.1 (0.2)    |
| Mining                             | 2.6                 | -3.6        | -19.1      | 0.4                      | -0.3 (0.0)  | -12.1 (-1.1) |
| Manufacturing                      | 3.2                 | -2.3        | 2.3        | 1.9                      | -3.4 (-0.6) | -0.5 (-0.1)  |
| Electricity, gas & water supply    | 4.0                 | -1.9        | -8.2       | 1.9                      | -1.9 (-0.1) | -4.1 (-0.2)  |
| Construction                       | 1.7                 | -0.3        | 3.1        | 1.1                      | -0.3 (0.0)  | 3.2 (0.4)    |
| Wholesale trade                    | 2.0                 | 6.0         | 2.8        | 0.9                      | 1.8 (0.2)   | -0.1 (0.0)   |
| Retail trade                       | 1.6                 | 0.7         | 1.3        | 0.9                      | -0.4 (0.0)  | -0.5 (0.0)   |
| Accommodation, cafes & restaurants | 0.1                 | -0.2        | 6.8        | -0.7                     | 0.2 (0.0)   | 4.4 (0.2)    |
| Transport & storage                | 2.8                 | 2.4         | 1.5        | 2.2                      | 1.3 (0.1)   | -0.7 (-0.1)  |
| Communication services             | 6.6                 | -5.1        | 9.1        | 3.9                      | -2.6 (-0.1) | 5.9 (0.3)    |
| Finance & insurance                | 2.0                 | -0.9        | 1.1        | 0.6                      | -1.7 (-0.2) | 1.3 (0.2)    |
| Cultural & recreational services   | -0.2                | -1.4        | -2.7       | -0.7                     | -0.3 (0.0)  | -2.4 (-0.1)  |
| <b>Market sector</b>               | <b>2.2</b>          | <b>-0.4</b> | <b>2.2</b> | <b>1.2</b>               | <b>-1.1</b> | <b>0.0</b>   |

Numbers in brackets refer to industry contributions to market sector productivity growth. They are only approximate. The long term in this table refers to the period 1974-75 to 2003-04. Market sector numbers differ slightly from the average presented in the Aggregate Estimates, where the long term figures commence in 1964-65.

111. After some convergence during the previous decade, the gap between the levels of labour productivity in Australia and the United States has again widened in the past six years (i.e. labour productivity in the US has been growing faster than in Australia since 2000). The relative performance of the two economies is illustrated in **Chart 7.3**. While industry composition appears to explain much of the deterioration in Australia's relative performance in the past two years (and which could be expected to be reversed as mining sector output increases in the next few years), nevertheless it is generally agreed 'reform fatigue' is an additional factor at work.

112. In conclusion, Ai Group believes that weaker growth in the Australian economy, the soft business environment in the non-resources sectors, the differences in employment conditions in the states, and Australia's weaker productivity performance should imply caution in setting the level of minimum wages in 2007.

**Chart 7.6 Australia's productivity level relative to the United States**



Source: Productivity Commission

## 8. Minimum Wages and the Social Safety Net

113. One of the factors the AFPC is to have regard to in performing its wage setting functions is the provision of a safety net for the low paid.
114. Ai Group agrees strongly with the Commission's view expressed in its 2006 Decision that the appropriate benchmark for the safety net should take into account the support provided to the low paid through the Australian tax and transfer systems.<sup>11</sup>

### The AFPC's 2006 Decision

115. In the 2006 Decision, the Commission noted<sup>12</sup> OECD analysis that showing that:

*"Full time minimum wage households in Australia had higher disposable relative to a poverty line based on 60 percent of median household income than in any of 14 other countries surveyed; and*

*The amount of income that income support recipients with children need to earn to reach such a poverty line is less in Australia than in other countries surveyed."*

116. The Commission also noted the role of adjustments to the tax and transfer systems in the setting of the broader social safety net through their impacts on improvements in disposable income. The Commission cited the following changes as being relevant to disposable incomes:<sup>13</sup>

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<sup>11</sup> P.96 of 2006 AFPC Decision.

<sup>12</sup> P.97 of 2006 AFPC Decision

<sup>13</sup> P.93 of 2006 AFPC Decision

*“Regular indexation of income support payments (once or twice a year) and/or family assistance (once a year); and/or*

*Ad hoc changes to rates or to income test arrangements, such as occurred in July 2006 when the income test taper was relaxed for people receiving unemployment and related payments.”*

## **Ai Group Submissions**

117. In determining the safety net dimensions of appropriate wage adjustments, the Commission should continue to take into account the support provided through the tax and transfer systems.
118. In Ai Group's view, this should involve a consideration of both the *existing level* of such support as well as *increments* to the amount of support in the relevant period covered by its decisions.

## **The Level of Support**

119. As Ai Group showed in its 2006 submission, the extent of support provided by the tax-transfer systems has risen remarkably over the past quarter century. Ai Group cited research undertaken by Dr Michael Keating<sup>14</sup> pointing out that:

*“[G]overnments have dramatically increased their income and other support to low income families. For example, in January 2003 a single income family with a dependent spouse and two children under five, earning two thirds of average male earnings and renting privately, received 46 percent of their net disposable income from government transfers. By comparison these transfers accounted for 41 percent of that family's income in January 1996, but only 4 percent of their income in January 1983.”<sup>15</sup>*

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<sup>14</sup> Michael Keating (2004), “The Case for Increased Taxation”, *Academy of Social Sciences*, 2004, pp.1-28.

<sup>15</sup> Keating (2004), p.9.

120. In addition, Ai Group showed in its 2006 submission (Chapter 5 and particularly pp.31-33) the substantial increases that had been made over the period 2000 to the middle of 2006 in the real level of support provided to households due to increases in transfer payments and changes in taxation. In line with Dr Keating's arguments, we also illustrated for a range of family types a contribution to family disposable incomes from the tax transfer system in the order of 40 percent.
121. In Ai Group's view, the increased level of support in real terms that is available to low income-families through the tax and transfer systems is of fundamental importance in evaluating the safety net role of adjustments in minimum wages.
122. To an extent the safety net role of minimum wage increases has been diluted by the favourable changes in real disposable incomes from the tax and transfer dimensions of the broader social safety net. To the extent that this source of disposable income has increased, there is a lesser role for minimum wage adjustments in the broader social safety net.

### **Changes in the Level of Support**

123. Ai Group applauds the recognition that the Commission gave to the role of changes in the tax and transfer systems in increasing family disposable incomes.
124. We submit that, in determining the current adjustment to minimum wages, the impacts of regular indexation of income support payment levels and income test arrangements (the parameters of which are also indexed) as well as any ad hoc changes in taxation and income support made in the context of the 2007-08 budget (or other policy announcements) should be taken into account.

125. In this context it can be noted that Ai Group frequently argues for targeted changes to income tax and income support arrangements to benefit low income households. For instance in our submission to the 2007-08 Commonwealth Budget we advocated the following measures:

- A reduction in the rate of income tax on incomes between \$25,000 and \$30,000 from the present level of 30 cents in the dollar to 15 cents in the dollar;
- A substantial increase in the amount available to low income earners under the superannuation co-contribution scheme; and
- A refund into the superannuation accounts of low income earners of the superannuation contributions tax paid in respect of compulsory employer superannuation contributions.

126. Ai Group submits that such changes to improve the broader social safety net should be taken into account in determining any adjustments the Commission makes to minimum wages.

## **Greater Transparency in how the Tax and Transfer Systems are Taken into Account**

127. In its 2006 Decision, the Commission stated that:<sup>16</sup>

*“While the Commission is not persuaded that an explicit discount is warranted, it considers that the proposed wage rise, in combination with the recent tax cuts and increases in income transfers, will deliver a real increase in the living standards of low-paid employees and their families.”*

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<sup>16</sup> P.93 of 2006 AFPC Decision

128. Ai Group urges the Commission to refine this approach and develop a more transparent indication of the way tax and transfer changes are taken into account in its decisions.
129. Greater transparency of the Commission's approach would assist in developing greater coherence between the different elements of the broader social safety net. In particular, governments would be better able to assess the scope to use tax and transfer policy to shape more favourable social outcomes.
130. There are several reasons to believe that greater coherence between the different elements of the broader social safety net would improve its overall cost effectiveness.
131. Firstly, increases in support for low-income families through adjustments to the taxation and transfer systems can deliver increases in disposable incomes without imposing higher costs of employment on employers. Increases in disposable incomes can therefore be delivered without having a negative impact on the demand for labour.
132. As the Commission found in its 2006 Decision:<sup>17</sup>
- “On the basis of the evidence available, the Commission considers that there is a negative relationship between the level of minimum wage increases and employment in Australia. The basis for any disagreement seems to involve the magnitude of the relationship rather than its existence.”*
133. Any attempt to increase disposable incomes by raising minimum wage rates will, to some extent, be offset by slower growth in employment opportunities. In contrast, increases in disposable incomes delivered through favourable changes to the tax and transfer systems will not have the same negative impact on the growth of employment opportunities.

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<sup>17</sup> P.73 of 2006 AFPC Decision

134. Secondly, in addition to the employment impacts, an increase in minimum wage rates is a relatively costly way to improve the broader social safety net compared with those made through changes to the tax and transfer systems.
135. Minimum wage rises are relatively costly because of the interaction of two sets of factors.
- Minimum wage rises are eroded by taxation and the operation of the income tests that apply both to income support payments and income tested tax benefits. Increases in disposable income are lower than the increase in wages.
  - Minimum wage increases impose additional costs on employers. This is due to the array of non-wage costs borne by employers when minimum wages are increased. These include payroll tax liabilities, workers' compensation premiums and compulsory superannuation contributions. The cost of minimum wage increases to employers is therefore greater than the extent of any wage rise.
136. These two factors combine so that, even where effective marginal tax rates applying to low-income earners are moderate, the ratio of costs (as borne by employers) to benefits (in the form of increases in disposable incomes) is in the order of 1.85:1. In other words to deliver an increase in disposable incomes of \$1.00, employers will pay in the order \$1.85.<sup>18</sup>
137. This benefit to cost ratio compares unfavourably to changes in income tax support. This is particularly the case with family tax benefits and a range of other benefits are not subject to income tax or income tests. Income tax reductions are similarly undiluted and in both cases the cost to benefit ratio is 1:1.<sup>19</sup>

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<sup>18</sup> If the effective marginal tax rate is 35%, a one dollar increase in disposable income would require a wage rise of around \$1.54. With non wage costs of 20%, the cost to employers would be around \$1.85.

<sup>19</sup> If additional taxation is imposed to finance increases in transfer payments the extra deadweight losses may alter this ratio. Equally however, if the safety net is improved by decreasing taxation, the reduction in deadweight losses would also enter into calculations.

138. Thirdly, improvements in the social safety net delivered through changes to income tax and income support arrangements can be relatively tightly targeted to low income households. In contrast, increases in minimum wage adjustments are widely dispersed. As the Commission noted in its 2006 Decision:<sup>20</sup>

*“Research on the household income status of low-paid employees has consistently found that, rather than being concentrated in low-income households, low paid employees can be found across the whole household income distribution.”*

139. A more coordinated approach to setting the broader social safety net would improve the cost effectiveness of the social safety net. A necessary condition of achieving a more coordinated approach is for the Commission to set out more clearly how, in contributing to the social safety net, it takes into account the very significant contributions that income tax and income support arrangements make to the social safety net.

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<sup>20</sup> P.68 of 2006 AFPC Decision

## 9. The Capacity of the Low Paid to Obtain and Remain in Employment

140. In exercising its minimum wage setting powers, the AFPC is required to have regard to the capacity of the low paid to obtain and remain in employment.
141. Ai Group maintains that in this area the Commission should:
- have regard to the full extent of labour underutilisation; and,
  - give particular attention to the experience of the lesser skilled.

### Labour Underutilisation

142. In its 2006 Decision the AFPC noted<sup>21</sup> that:

*“The Commission is open to considering broader definitions of labour underutilisation and notes that there is still a pool of under-utilised labour in Australia. The unemployment rate is, however, a widely understood and useful indicator of conditions in the labour market.”*

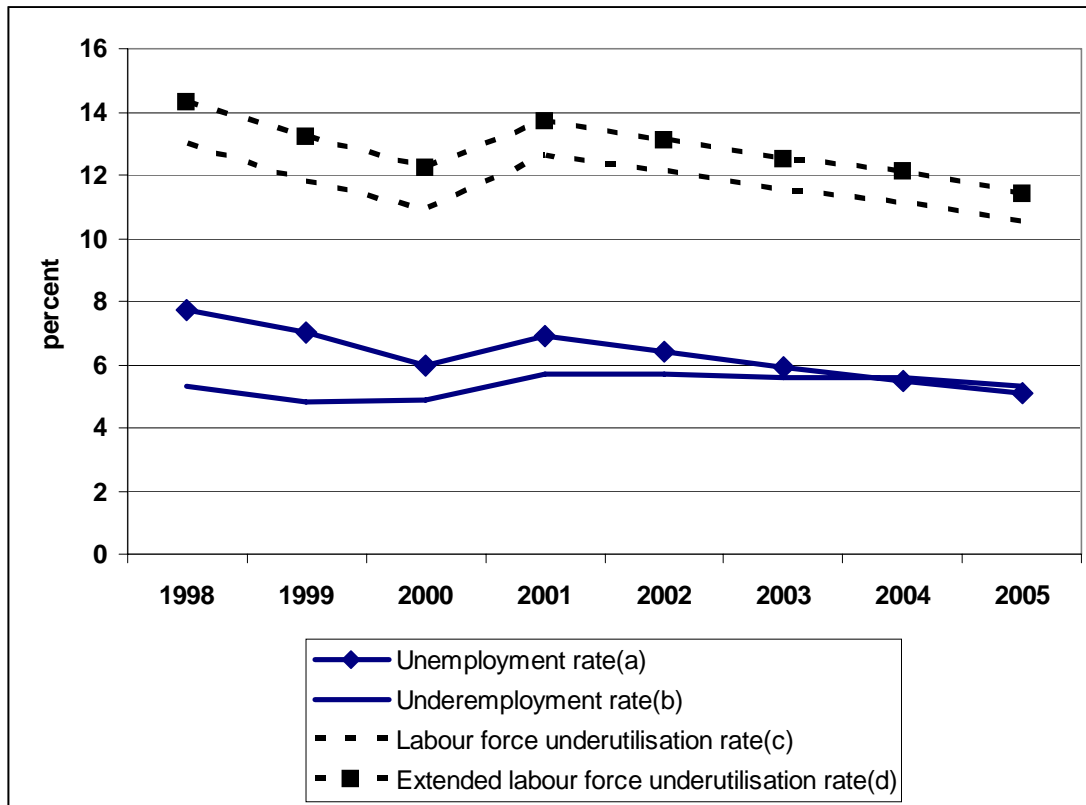
143. Ai Group applauds this openness and acknowledges that the unemployment rate has particular resonance as an indicator of labour market conditions.
144. Broader measures of labour underutilisation record important features of the labour market that are not covered by official unemployment data. The experiences of underemployed and people with a marginal attachment to the labour force do not count as far as official measures of unemployment are concerned. Yet it is very likely that these groups would be impacted by the decisions of the AFPC in setting minimum wages.

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<sup>21</sup> P.82 of 2006 AFPC Decision

145. Neither part-time workers who would like to work more hours, nor full-time workers who are involuntarily only working part-time at the time of the ABS labour market surveys are included as “unemployed”. These employees fall into the category of the “underemployed”.
146. Similarly, people marginally attached to the labour force such as discouraged jobseekers and people who are actively looking for work but would not be ready to start work within one week are not included in measures of unemployment.
147. In Ai Group’s view, the particular indicator of labour market conditions chosen by the Commission is of less importance than the need to take full account of the experiences of people who are not regarded as unemployed.
148. In many cases it may be expected that the labour market aspirations of people who are underemployed and those with a marginal attachment to the labour force may be unfavourably impacted by decisions to raise minimum wage rates.
149. As **Chart 9.1** makes clear, the number of people who are included in broader measures of labour market underutilisation is generally more than double the number of people who are regarded officially as “unemployed”.
150. Ai Group urges the Commission to take full account of underemployment and marginal attachment to the labour force as well as unemployment in considering the impacts of its decisions on the labour market.

**Chart 9.1 - Labour Underutilisation in Australia 1998 to 2005**



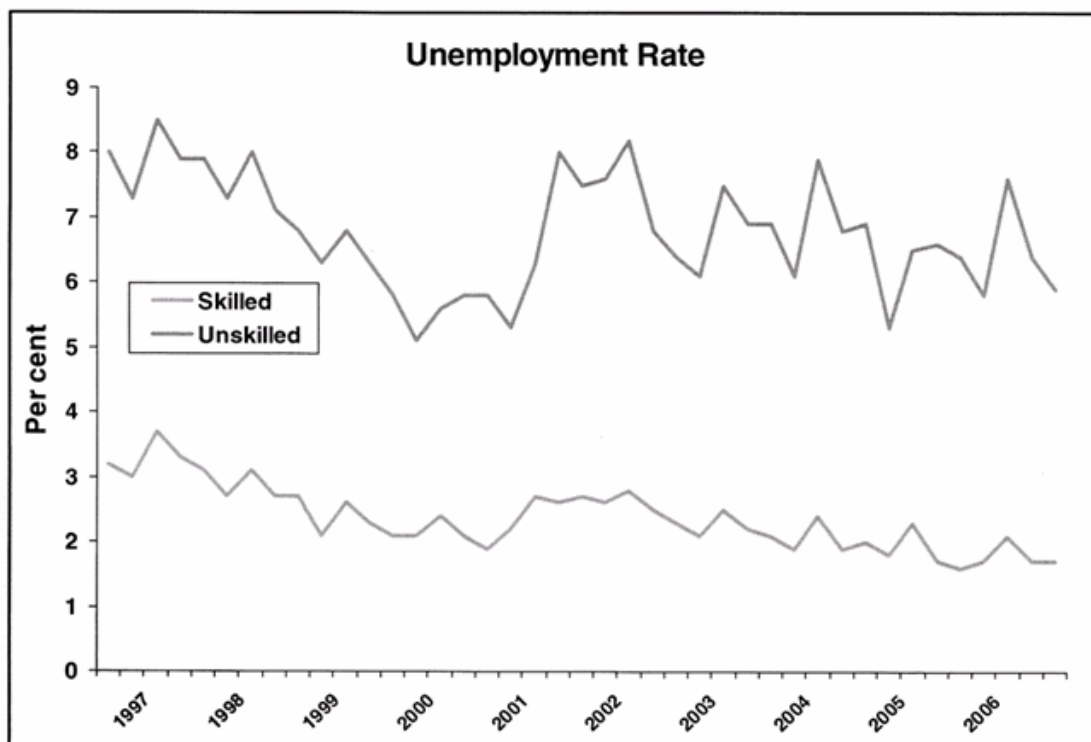
- (a) The unemployment rate is the unemployed expressed as a proportion of the labour force.
- (b) The underemployment rate is the underemployed expressed as a proportion of the labour force. Underemployed people include part-time workers who want, and are available to work, more hours, and full-time workers who involuntarily worked part-time hours in the week of the ABS survey.
- (c) The labour force underutilisation rate is the unemployed, plus the underemployed, expressed as a proportion of the labour force.
- (d) The extended labour force underutilisation rate is the unemployed, plus the underemployed, plus a subset of persons marginally attached to the labour force, expressed as a proportion of the labour force augmented by the marginally attached persons. The marginally attached people are discouraged jobseekers and people actively looking for work and available to start after one week and within four weeks of the ABS survey.

Source: ABS, 6105.0 Australian Labour Market Statistics, January 2007.

## Labour Market Underutilisation of Lesser Skilled People

151. Concentration on aggregate measures of labour underutilisation can create a misleading picture. This is particularly the case for lesser skilled people.
152. While more thorough data that embrace the fuller measures of labour market underutilisation would be preferred, **Chart 9.2** provides an indication of skilled and unskilled underutilisation over the past decade.
- It shows that the rate of unskilled unemployment is considerably and consistently higher than the rate of unemployment among skilled people.
  - It also highlights that the success in reducing total unemployment over the early years of the current century is not anywhere near as apparent for unskilled workers as it is for the lesser skilled.

**Chart 9.2 - Skilled and Unskilled Unemployment 1997 to 2006**



Source: Compiled by the Department of Immigration and Citizenship using ABS data.

153. In view of the nature of minimum wages, they are likely to have far more impact on lesser skilled people than on skilled people. Similarly, the impacts of minimum wage adjustments on the labour underutilisation of lesser skilled people are also likely to be greater than for skilled people. As noted in the report commissioned by the AFPC in 2006 *Minimum wages and employment*<sup>22</sup>

*“the impact of the minimum wage on total employment may be proportionately small but the impact on low skilled, low paid workers is disproportionately high.”*

154. Ai Group urges the Commission to pay particular attention to the higher incidence of underutilisation of lesser skilled labour and the greater impacts of changes to minimum wages on the labour market outcomes for the lesser skilled.

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<sup>22</sup> Lewis, P. (2006), *Minimum wages and employment*, Report commissioned by the Australian Fair Pay Commission, p.19.

## 10. Impacts of Increases in Minimum Wages

### Impacts of Minimum Wage Increases on Bargaining

155. The *Workplace Relations Act* emphasises the importance and primacy of agreement-making between employers and employees with regard to the determination of wages and working conditions. The Principal Object of the Act includes:

- Ensuring that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level (s.3(d));
- Enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances (s.3(e)); and
- Ensuring that awards provide minimum safety net entitlements for award-reliant employees which are consistent with Australian Fair Pay Commission decisions and which avoid creating disincentives to bargain at the workplace level (s.3(g)). (Emphasis added)

156. It is important that the level of increase in minimum wages determined by the AFPC not reduce the scope for bargaining over wages at the workplace level. This would conflict with the objects of the Act.

157. According to the Department of Employment and Workplace Relations' *Trends in Federal Enterprise Bargaining* report, average annualised wage increases for agreements registered in the December Quarter 2006 were:

| <b>Sector</b>                  | <b>AAWI</b> | <b>Change from September<br/>Quarter</b> |
|--------------------------------|-------------|--|
| All industries                 | 3.8         | Up 0.1                                   |
| Private sector                 | 3.7         | Up 0.5                                   |
| Employee Collective Agreements | 3.7         | Up 0.1                                   |
| Union Collective Agreements    | 3.8         | Up 0.1                                   |
| Employer Greenfields           | 4.4         | Up 0.9 *                                 |
| Union Greenfields              | 4.0         | Up 0.3                                   |
| All Manufacturing              | 3.9         | Up 0.2                                   |
| Non-Metals Manufacturing       | 3.9         | Up 0.2                                   |
| Metals Manufacturing           | 4.0         | Up 0.3                                   |
| Construction                   | 4.3         | Down 0.3                                 |

\* Revised September quarter figures

158. Ai Group submits that the primacy of workplace agreement-making needs to be a foremost consideration of the AFPC in adjusting minimum wages. The positioning of minimum wage increases need to be at a level below average enterprise agreement wage outcomes, so as not to detract from the important role of agreement making under the Act.

159. This view was shared by the Full Bench of the AIRC in its *2005 Safety Net Review* decision, in which it said:

*“We are conscious that increases in the award safety net have the potential to influence the pace at which bargaining, either formal or informal, is taken up at the enterprise level”.*<sup>23</sup>

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<sup>23</sup> Paragraph 300 of the *2005 Safety Net Review Decision*

160. The AFPC, in its *2006 Minimum Wages Review* decision, noted that there was an “..obligation to avoid creating disincentives to bargain at the workplace level as far as possible”. The Commission said that “*In particular, the decision to award a smaller increase to those employees earning above \$700 per week is partly based on the proposition that these employees are better equipped to reach workplace agreements themselves and should be encouraged to do so.*”<sup>24</sup>
161. Indeed, Ai Group submits that the AFPC should not only be wary of factors that may act as a disincentive to workplace bargaining, but in its own words, should encourage parties to do so.

## **Many Employers Pass on Minimum Wage Increases even though Employees are paid above the Pay Scale Rates**

162. The economic impacts of minimum wage adjustments are extended by the fact that in many businesses, minimum wage increases are passed on to employees that are paid above the relevant minimum rate of pay.
163. Ai Group has made submissions to the AIRC in several Safety Net Review cases, and to the AFPC last year, arguing strongly that the impact of minimum wage increases extends beyond those paid minimum wages.
164. Ai Group has conducted its own research in this area, notably two surveys, the results of which were included in its submissions to the 2003 AIRC Safety Net Review Case and in 2006, to the AFPC in its Minimum Wages Review.
165. The results of Ai Group’s first survey (conducted in October 2002) were set out in a report which was annexed to Ai Group’s 2003 submission to the AIRC. In the report it was stated that:

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<sup>24</sup> AFPC Wage-Setting Decision October 2006, page 91

*“Despite being able to absorb the increase into over award payments, a notable number of employers [29.5%] chose to pass on the \$18 per week increase to employees paid over the award and non-award employees (at enterprises where federal award employees were engaged)”.*<sup>25</sup>

166. The fact that many employers pass on minimum wage increases to their employees even when they are not obliged to do so, was accepted by the AIRC in its 2003 decision:

*“... the surveys provide some guidance and confirm that some level of flow-on occurs...”*<sup>26</sup>

167. One of the findings from Ai Group’s second survey, conducted in 2006 to assist the AFPC in its first review of minimum wages, was that:

*“There is evidence of the practice by employers of passing on the minimum wage rate increases to non-award rate of pay employees. One in five firms report that they flow on the minimum wage rate increases to all employees not on award rates of pay. An additional 12 percent of firms indicate that they pass on the minimum wage rate increases to at least a proportion of those not on award rates of pay. Consequently, increases in minimum rates of pay have a broader impact on the economy than is typically recognised.”*<sup>27</sup>

168. Ai Group proposes that the AFPC, in making its decision, take into account that many employers pass on minimum wage increases, even though their employees are paid above the minimum rate of pay. Consequently, increases in minimum wage rates have a broader impact on the economy than is typically recognised.

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<sup>25</sup> *Safety Net Wages Survey Report, A Report on a Survey of Ai Group Members on the Impact of the 2002 Safety Net Review Decision, February 2003, pg. 35.* Found at Annexure L of Ai Group’s submission to the Safety Net Review Case 2003, pg. 233

<sup>26</sup> PR002003 at [131]

<sup>27</sup> *2006 Review of Minimum Wages – Ai Group Submission to the Australian Fair Pay Commission, July 2006, pg.62*

# Disproportionate Negative Impacts of Minimum Wage Increases on Small Business

- 169. Small businesses are vital to the Australian economy. Such businesses employ well over three million people within 1,075,000 small businesses and are the largest employer in Australia.<sup>28</sup>
  
- 170. In 2003, a Senate Committee conducted a comprehensive inquiry into small business employment. The inquiry found that the cost of employing staff remains a significant deterrent to employment growth in the small business sector.<sup>29</sup> It was also found that the fundamental characteristic that distinguishes small businesses from large businesses is their higher probability of ceasing to trade. Almost half of the small businesses in operation have been in business for less than five years.
  
- 171. **Table 10.1** below is drawn from ABS Cat. No. 6306. It shows that a much higher proportion of the employees of employers with up to 100 employees are award-reliant than the employees of employers with 1000 or more employees.

**Table 10.1 – Proportions of Award-reliant Employees by Employer Size**

| Size of Employer        | Proportion of the employees of employers of different sizes whose method of pay setting is “Award Only” |
|-------------------------|---|
| Under 20 employees      | 25.3  |
| 20 to 49 employees      | 27.2  |
| 50 to 99 employees      | 26.0  |
| 100 to 499 employees    | 22.6  |
| 500 to 999 employees    | 14.1  |
| 1000 and over employees | 5.3   |

<sup>28</sup> ABS Cat. No. 1321.0.55.001 – Small Business in Australia, Electronic Spreadsheets 1999-2000  
<sup>29</sup> Report on Small Business Employment, Senate Committee on Employment, Workplace Relations and Education References, February 2003, pp.6, 49

172. **Table 10.2** below, which is also drawn from ABS Cat. No. 6306, highlights that award reliant employees engaged by small businesses receive much lower average weekly total earnings than those employed by larger businesses.

**Table 10.2 – Average Weekly Total Earnings of Award-reliant Employees by Employer Size**

| <b>Size of Employer</b> | <b>Average Weekly Total Earnings (\$)</b> |
|-------------------------|---|
| Under 20 employees      | 436.80                                    |
| 20 to 49 employees      | 482.60                                    |
| 50 to 99 employees      | 489.40                                    |
| 100 to 499 employees    | 535.00                                    |
| 500 to 999 employees    | 549.30                                    |
| 1000 and over employees | 619.50                                    |

173. The above statistics clearly show that, on average, small businesses are much more likely to be impacted by minimum wage increases than larger businesses.

174. In its *2005 Safety Net Review Decision*, the Full Bench of the AIRC said:

*“We accept that businesses employing up to 100 employees employ a larger proportion of award-reliant employees than larger businesses. We have had regard to the impact on small business of the safety net adjustment we propose to award.”<sup>30</sup>*

175. When making its minimum wage decision it is vital that the AFPC not lose sight of the negative impacts that a large minimum wage increase will have on small businesses.

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<sup>30</sup> PR002005 at [264]

## Disproportionate negative impact of minimum wage increases on regional towns

176. In its 2006 decision, the AFPC acknowledged the results of an Ai Group survey which assessed the impact of minimum wage increases on regional towns:

*“Based on a survey, AiG finds that minimum wage increases have a larger impact on firms that are located in regional towns relative to metropolitan centres and regional cities, and firms in regional towns are more likely to “lift selling prices and implement redundancies”, particularly of low-skilled labour”.*<sup>31</sup>

177. In its 2006 decision, the AFPC appeared to largely reject the concept of taking regional impacts into account in adjusting minimum wages. It said:

*“While the Commission notes the comments in submissions regarding regional differences, it is required to eliminate pay differentials based purely on state or territory locations over a three year period.”*<sup>32</sup>

178. With regard to the above statement, Ai Group has proposed in **Chapter 6** that the section of the *Workplace Relations Act* which requires the removal of state differentials be repealed (or the timeframe extended) and that the AFPC should recommend this to the Federal Government.

179. Regardless of whether the Act is amended, Ai Group submits that the disproportionate negative impact of minimum wage increases on regional towns needs to be taken into account, and that in doing so, the AFPC should adopt a cautious approach in adjusting minimum wages. The widespread impact of the drought on regional towns adds to the concern that such towns have less capacity to support a substantial increase in minimum wages.

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<sup>31</sup> 2006 Review of Minimum Wages – Ai Group Submission to the Australian Fair Pay Commission, July 2006, pg.91

<sup>32</sup> Ibid.

## 11. Minimum Wages for Adults

180. Ai Group proposes that minimum wages be increased for all classifications by 27 cents per hour (approximately \$10.00 per week) operative from the first full pay period to commence on or after 1 September 2007 (ie. a nine month period since the last increase). This would increase the Federal Minimum Wage (FMW) to \$13.74 per hour.
181. As set out in paragraph 203(1) of the *Workplace Relations Act*, wage rate provisions in a Pay Scale are to be expressed as a monetary amount per hour. Accordingly, proposed AFPC minimum wage increases need to be expressed primarily in terms of hours.
182. The proposed wage increase of approximately \$10.00 per week, operative from the first full pay period to commence on or after 1 September 2007, is conditional upon there being a period of prospectivity between the date of the decision and the date of the increase of at least three months. Of course the period of prospectivity will depend upon how quickly the AFPC hands down its decision and the operative date of it.
183. Three months is the shortest period of prospectivity that will allow for efficient and sensible implementation of the decision (see **Chapter 4**).
184. Should the AFPC award an operative date earlier than the first full pay period to commence on or after 1 September 2007 then the quantum of the proposed wage increase should be adjusted downwards in proportionate terms. Similarly, should the AFPC grant an operative date later than the first full pay period to commence on or after 1 September 2007, then the proposed quantum should be adjusted upwards in proportionate terms.
185. The proposed level of wage increase takes into account:
- The generous increase handed down by the AFPC in 2006;

- The non-adversarial nature of the AFPC’s deliberations and the importance of avoiding “ambit” positions;
- The objects of the Act and the AFPC’s wage-setting parameters (see ss.3 and 23 of the Act);
- Current economic conditions and the outlook for the Australian economy (see **Chapter 7**);
- The need to avoid inflationary pressures and Australia’s current less than optimal productivity performance (see **Chapter 7**);
- The capacity for the unemployed and the low paid to obtain and remain in employment as well as underemployment and marginal attachment to the labour force (see **Chapters 8 and 9** and s.23(a));
- Labour utilisation and the experience of the lesser skilled (see **Chapter 9**);
- Employment and competitiveness across the economy (see **Chapters 7, 8 and 9** and s.23(b));
- The need to provide a safety net for the low paid (see **Chapters 8, 9** and s.23(c));
- The importance of taking into account the interactions between different elements of the social safety net, including minimum wages, income taxation, income support and non-wage costs (see **Chapter 8 and 9**);
- The need for minimum wage increases to be positioned at a level below average workplace agreement wage outcomes in order to avoid diminishing the primacy which is given to workplace agreement-making under the Act (see **Chapter 10** and s.3(d) and (e)); and

- The impact on small businesses and regional towns (see *Chapter 10*).

## **The Application of the Proposed Minimum Wage Increase to all Classifications**

186. Ai Group proposes that, on this occasion, the AFPC apply the wage increase to all classifications.
187. The appropriateness of continuing to adopt such a practice should be considered in detail during the process of rationalising Pay Scales.
188. The relativities within skill-based classification structures in Pay Scales are already compressed due to the many flat dollar minimum wage increases which have been awarded but the compression has not yet reached a stage where the relativities are meaningless. If the minimum wage increases awarded by the AFPC are not applied to all classifications, the relativities between classifications will soon become meaningless.
189. This is not necessarily a problem because market factors and the incidence of over-award payments reduce the detrimental impact of compressed relativities between minimum rates. However, the impacts should be thoroughly analysed and understood before any view is formed by the AFPC that it is no longer important to maintain meaningful relativities between classifications.

## **The Relevance, if any, of State Wage Case Decisions to the AFPC's Deliberations**

190. It is important that the AFPC not be influenced by the various State Wage Case decisions when making its minimum wages decision.
  
191. In the State Wage Case proceedings, Ai Group has argued strongly that the State Industrial Commissions should delay their decisions until after the AFPC has handed down its minimum wages decision. Despite the logic in this approach, such arguments to date have been rejected by the State Commissions.
  
192. The role of the AFPC would be substantially undermined if it gave any weight to the State Wage Case decisions. Doing so would simply encourage the State Commissions to conduct State Wage Cases in future years, prior to the AFPC's deliberations. The appropriate approach is for the AFPC to make its decision on minimum wage increases for those in the national workplace relations system, and then for the State Commissions to schedule proceedings to consider whether the AFPC's decision should be flowed on to employees in the State system.

## 12. Minimum Wages for Juniors

193. The AFPC has announced that minimum wages for juniors will be the subject of a separate review during 2007. Ai Group looks forward to participating in this review.
194. In its 2006 decision the Commission decided to adopt the following approach to increasing junior rates of pay:

*“The Commission will flow on the general adult decision in relation to Pay Scales to preserved junior wage Pay Scales. The general pay increase will be pro-rated on the basis of formulas applying in the relevant pre-reform wage instruments.*

*In circumstances where there was no formula in the pre-reform wage instrument (for example, where a junior rate was originally expressed as a dollar value rather than a percentage), the general increase will be pro-rated so that the junior rate retains its relativity to the relevant adult rate in the preserved Pay Scale. If no relevant rate is identified, the junior rate will be adjusted to retain its relativity to the lowest adult rate in the Pay Scale.”<sup>33</sup>*

195. Ai Group supports the continuation of the abovementioned practical approach adopted by the AFPC in its 2006 decision, pending the outcome of the upcoming separate review of minimum wages for junior employees.

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<sup>33</sup> P.104 of 2006 AFPC Decision.

### 13. Minimum Wages for Employees to Whom Training Wages Apply

196. Ai Group looks forward to participating in the separate review of minimum wages for employees to whom training wages apply, which the AFPC has announced will be conducted during 2007.
197. In its 2006 decision the Commission expressed the view that “the setting of a special FMW and Special Pay Scales for employees to whom training arrangements apply is complex, encompassing a wide variety of issues on which no clear consensus has yet emerged”. It decided that to establish a special FMW and new Pay Scales at that stage “would be premature and may have unforeseen consequences”. In reference to Ai Group’s submission and others, the Commission noted that there is general agreement that such matters should be dealt with as part of the Pay Scale rationalisation process, following further consultation.<sup>34</sup>
198. With regard to preserved Pay Scales containing apprentice and/or trainee rates of pay, in 2006 the Commission adopted the following approach:
- **Apprentices:** *“The general pay increase will be pro-rated on the basis of formulas applying in the relevant pre-reform wage instruments so as to maintain the relativity of the basic periodic rates of pay for apprentices with the relevant tradesperson rate. Formulas, where available, will be used to adjust basic periodic rates of pay for full-time and part-time apprentices, and school-based apprentices (noting that the Pay Scale derived from repealed s.552 of the WR Act retains a formula suitable for flowing on the general minimum wage increase).”*

*Where apprentice rates are derived from a specific rate in another Pay Scale, they will be adjusted to reflect the parent rate upon which they are*

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<sup>34</sup> P.109 of 2006 AFPC Decision.

*based, where the parent rates have been adjusted to give effect to the general decision.”<sup>35</sup>*

- **Trainees:** *“Trainee basic periodic rates of pay provided for in preserved Pay Scales will be adjusted to flow on the general decision using the method described in the transcript of the application to vary the National Training Wage Award 2000 for the 2003 Safety Net Review.”<sup>36</sup>*

199. Ai Group supports the continuation of the abovementioned approach adopted in 2006, pending the outcome of the upcoming separate review of minimum wages for employees to whom training arrangements apply.

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<sup>35</sup> P.111 of 2006 AFPC Decision.

<sup>36</sup> P.111 and Appendix A in the 2006 AFPC Decision.

## 14. Minimum Wages for Employees with a Disability

200. In 2006, the Fair Pay Commission established minimum wage structures for employees with a disability. Such structures are relatively complex reflecting the varied types of employment relating to employees with a disability. Such types of employment include:

- **Open employment** – where employees with a disability are engaged in the mainstream workforce and compete with fully productive employees in a commercial setting. This type of employment includes:
  - Employees who are able to earn the relevant full wage, as their disability does not impair their productive capacity; and
  - Employees whose disability affects their productive capacity.
- **Business services** – also known as “supported employment services” or “sheltered workshops”.

201. Ai Group has not detected any difficulties with the wage structures established by the AFPC in 2006 for employees with a disability and supports their continuation.

202. Ai Group supports the minimum wage rates in the New Special Pay Scales and Special FMW being increased in proportion to any general increase awarded in the 2007 Minimum Wage Review.

# **Annexure A**

# Australian Fair Pay Commission

## Minimum Wage Review 2007

### STATUTORY DECLARATION

I, **James McKay** of Level 4, 31 Queen Street Melbourne, in the State of Victoria, am the Workplace Relations Manager of the Adecco Group of Companies on whose behalf this statutory declaration is made, do solemnly and sincerely declare as follows:

1. The Adecco Group of Companies (“Adecco”) is an organisation that supplies employment and staffing solutions.
2. The Adecco Group of Companies are wholly owned subsidiaries of Adecco SA which is listed on the New York, Paris and Zurich Stock Exchanges.
3. Depending on the time of year Adecco can employ between 10,000 to 11,000 employees and contractors in Australia on any one day.
4. In Australia, the principal companies within Adecco that employ persons are Adecco Industrial Pty Ltd (covering mainly blue collar occupations) and Adecco Australia Pty Ltd (covering mainly white collar occupations).
5. Adecco provides staff in multiple occupations within multiple industries including but not limited to: distribution and logistics, retail and wholesale, manufacturing, IT, business and professional services, call centres and finance.
6. Adecco pays its employees under hundreds of different instruments including Pay Scales derived from pre-reform Federal Awards and Notional Agreements

Preserving State Awards. A sample of some of the more commonly utilised instruments include:

- Artificial Fertilizers & Chemical Industry Award
- AWU Miscellaneous Workers' (ACT) Award
- Asphalt Bitumen Industry (NSW & ACT) Award
- Asphalt Bitumen Industry (Southern State) Award
- Biscuit (Victoria) Award
- Bread Trade (VIC) Award
- Building and Construction Industry (ACT) Award
- Business Equipment Industry (Technical Services) Award
- Butter Factories and Condensories Award
- Casual Officers (Adecco) Award
- Cement and Concrete Products Award
- Clay & Ceramics Industry - Brick and Terra Cotta Manufacture Award
- Clay & Ceramics Industry - Pottery Manufacture - Vic Award
- Clerical and Administrative Employees (Vic) Award
- Clerks (Vehicle Industry Repair Service and Retail) Award
- Clothing Trades Award
- Confectioners Award
- Country Publishing and Printing Award
- Commercial Sales (Vic) Award
- Draughting Production Planners and Technical Workers Award
- Dry Cleaning Industry Award
- Fibre Processing Industry Award
- Food, Beverages & Tobacco - Frozen Goods VIC Award
- Food, Beverages & Tobacco - Retail Dairies VIC Award
- Food, Beverages & Tobacco - Ice Cream Manufacturing VIC Award
- Food, Beverages & Tobacco - Aerated Waters General Award
- Food Preservers Interim Award
- Furnishing Industry National Award
- Graphic Arts - General - Award

- Grocery Products Manufacture - Manufacturing Grocers Award
- Grocery Products Manufacture - Wholesale Grocers Award
- Laundry Industry (VIC) Award
- Manufacturing Chemists Award
- Metal Trades (ACT) Award
- Metal, Engineering & Associated Industries Award - Parts I, II, III, IV, VI
- Metal, Engineering & Associated Industries (Professional Engineers & Scientists) Award
- National Joinery and Building Trades Products Award
- National Metal and Engineering On Site Construction Industry Award
- Pastry Cooks (VIC) Award
- Pet Food Manufacturing (VIC & SA) Award
- Quarry Industry (VIC) Award
- Rubber, Plastic & Cable Making Industry Award
- Scientific Services Professional Scientists Award
- Shop, Distributive & Allied Employees Association - VIC Shops Interim Award
- Storage Services - General - Award
- Storage Services - Steel Distributing Award
- Storage Services (ACT) Award
- Textile Industry Award
- Timber & Allied Industries Award
- Transport Workers (Refuse) Award
- Transport Workers Award 1998
- Transport Workers (Distribution Facilities) Award
- Transport Workers (Mixed Industries) Award
- Transport Workers (Refuse) (Garbage) (ACT) Award
- Vehicle Industry - Repair Service & Retail Award
- Vehicle Industry Award

- Commercial Travellers (ACT) Award
- Liquor and Allied Industries Catering, Cafe, Restaurant etc Award
- Metal Trades (ACT) Award
- Retail and Wholesale Industry - Shop Employees - ACT Award
- Transport Workers (ACT) Award
- Commercial Travellers (State) Award
- Metal, Engineering and Associated Industries (State) Award
- NSW Shop Employees Award
- Plant and C., Operators on Construction Award
- Storeman and Packers General Award
- Transport Industry - Mixed Enterprises (State) Interim Award
- Transport Industry (State) Award
- Clerical Employees (State) Award
- Commercial Travellers Award (State)
- General Stores, Warehousing and Distribution Award
- Storemen and Packers' Award - Northern and Mackay Divisions Award
- Clerks (SA) Award
- Commercial Travellers (SA) Award
- General Store Workers, Packers, Wholesalers & Distributors Award
- Clerical and Administrative Employees (Private Sector) Award
- Cleaning and Property Services Award
- Business Services Award
- Clerks (Commercial Social and Professional Services) Award
- Commercial Travellers and Sales Representatives Award
- Metal Trades (General) Award

7. It is estimated that the minimum rates of pay of approximately 30% of the Adecco Group's workforce were affected by the Australian Fair Pay Commission's ("AFPC") decision in 2006.

8. The timing and operative provisions of the AFPC's decision in 2006 caused Adecco considerable administrative and commercial difficulties and consequently resulted in a significant financial cost.
9. The short lead time between the announcement of the AFPC's decision and the operative date of the AFPC's decision was a particular factor in causing problems. When a Pay Scale rate of pay increases Adecco is required to calculate all other pay rates derived from this base amount, including: casual rates, overtime rates, shift work rates, public holiday rates and so on. Adecco is then required to calculate its new charge rates which are calculated from the pay rates. Thousands of individual calculations are required. Adecco must notify its clients, receive approval from its clients and then implement the new rates into the payroll system.
10. Before 2006, Adecco was able to manage its wage increases with relative ease because of the appropriate gap in time between the Australian Industrial Relations Commission ("AIRC") National Wage Case decision (and State Wage Case decision) and the actual operative date of the Award rate increase. The operative dates of the Award rate increases were staggered over the 12 months of a year, as individual applications were made to flow on the effect of a National Wage Case decision. This meant that the thousands of new pay rate calculations and charge rate calculations could be managed over a reasonable time frame.
11. A flow on effect of the AFPC's short lead time in 2006 was its impact on the AIRC's capacity to order Award allowances increases. Many of the industrial instruments utilised by Adecco contain wage related all-purpose allowances that require the recalculation of ordinary rates of pay and thus overtime rates, shift work rates, public holiday rates and so on. The retrospectivity of the AIRC's orders compounded the administrative, financial and commercial issues that had already been created.

12. The AFPC decision to order the 2006 wage increase on and from 1 December 2006, instead of, for example “the first pay period occurring on or after 1 December” was extremely problematic for Adecco. Adecco’s payroll systems operate on employee placement functions in multiples of weeks, where actual rates of pay are attached to the employee placement. Where a pay rate increase occurs mid cycle, duplicate employee placements are required for each individual employee to make up the difference in their pay. When paying thousands of employees at a time this creates an enormous amount of extra work, including error correction.
  
13. It is not possible to accurately measure the financial cost to Adecco that stemmed from the administrative and commercial ramifications generated by the timing and form of the 2006 AFPC decision. (Note that the quantum of the AFPC increase is not contemplated in this regard). Nevertheless it would be fair to estimate that the on-going costs due to commercial ramifications are in the hundreds of thousands of dollars.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

---

[signature of person making the declaration]

Declared at \_\_\_\_\_ on the \_\_\_\_\_ day of March 2007.

Before me,

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*[signature of person before whom the declaration is made]*

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*[title of person before whom the declaration is made]*

**SIGNED STATUTORY DECLARATION PROVIDED TO AFPC**

# **Annexure B**

# Australian Fair Pay Commission

## Minimum Wage Review 2007

### STATUTORY DECLARATION

I, **Robyn Hearps** of 149 Milton Street Ashfield in the State of New South Wales, am the Industrial Relations Director of Chubb Australasia on whose behalf this statutory declaration is made, do solemnly and sincerely declare as follows:

1. Chubb Australasia employs approximately 11,000 employees, 10,100 in Australia. There are 4 main businesses, Fire Safety, Cash in Transit, Electronics and Security Personnel.
  
2. The Pay Scales arising from the following awards apply to our employees either directly as they are employed under the Award or indirectly as they are employed on a WorkChoices workplace agreement and the Pay Scale minimums still apply:
  - Business Equipment Industry (Technical Services) Award
  - Chubb Security Services Cash Processing and Clerical Award
  - Clerical and Administrative Employees (NSW) Award
  - Clerical and Administrative Employees (Victoria) Award
  - Clerical and Administrative (Private Sector) Award (TAS)
  - Clerical Employees Award (QLD)
  - Clerks (SA) Award
  - Clerks (ACT) Award
  - Electrical Engineering & Contracting Industries (NT) Award
  - Electrical Contracting Industry (QLD) Award State
  - General Clerks (NT) Award
  - Metal Industry (NT) Award

- Metal and Engineering On-site Construction Industry Award
  - Metal, Engineering and Associated Industry Award
  - Metal Trades (ACT) Award
  - Miscellaneous Workers Award
  - National Electrical, Electronic and Communications Contracting Industry Award
  - NSW Electrical Contracting Industry Award
  - NSW Electricians (State) Award
  - NSW Storemen and Packers General (State) Award
  - NSW Transport Industry Cash in Transit (State) Award
  - NSW Transport Industry M/E Award
  - Security Industry QLD (Contractors) Award State
  - Security Employees (ACT) Award
  - Security Employees (Victoria) Award
  - Security Industry (NSW) Award
  - Security Industry (TAS) Award
  - Security Officers (SA) Award
  - Security Industry (NT) Award
  - Security Industry (WA) Award
  - Security Industry (Contractors) Award
  - Sprinkler Pipe Fitters Award
  - Transport Workers (Armoured Vehicles) Award
3. Approximately 6,300 of our Pay Scale-covered employees are affected by the relevant Basic Periodic Rate of Pay.
  4. The Security Personnel and Cash in Transit businesses, in particular, employ a high proportion of employees earning the Basic Periodic Rate of Pay. Employees in these parts of the company are more likely to be unskilled than skilled.
  5. Chubb passed on the Australian Fair Pay Commission's 2006 increase or part thereof to approximately 6,300 employees.

6. Chubb's Security Personnel business has approximately 5,726 security officers who are shift workers.
7. Paying two different pay rates for the one shift was the biggest issue which we experienced in implementing the Australian Fair Pay Commission decision. In the past wage increases were implemented from the first full pay period to commence on or after a particular date, rather than midnight on a particular date.
8. Where a wage increase is effective in the middle of a pay period it is far more costly and difficult to process the employees' pay.
9. Approximately 2,000 shift workers were working at midnight on 30 November 2006 when the increase took effect. As such, one rate of pay applied for part of their shift and another rate applied for the remainder of the shift.
10. The complications in applying the pay adjustment extended to shift loadings, overtime penalties, weekend penalties and so on which are all calculated on the applicable pay rate. When two different pay rates apply for the one pay period, and even the one shift – the calculations become very time-consuming and complex.
11. The administrative costs associated with implementing the minimum wage increase were much higher in 2006 compared to earlier years. A great deal of additional time was required by payroll staff, the staff in charge of our rostering systems in each state, and even the Security Personnel Finance Director.
12. Chubb estimates that the additional administration time for all payroll administration staff nationally arising from the fact that the wage increase was payable from midnight on 30 November (rather than the first full pay period to commence on or after 30 November) would amount to an additional 96 work hours.

13. If the AFPC increase had been applicable from the first full pay period to commence on or after 30 November 2006, applying the increase would have been less complex and costly administratively.
14. Another issue we experienced in implementing the AFPC's decision last year was the lead-time between the date of the decision and the operative date of the increase (5 weeks) to plan / budget for increases.
15. If the Fair Pay Commission had provided a greater amount of lead-time, this would have allowed more time for the Australian Industrial Relations Commission (AIRC) to deal with the large number of applications lodged by the unions for increases in wage-related allowances, without a retrospective operative date. The decision by the AIRC to award the same operative date as the AFPC, resulted in Chubb being required to back-pay its employees for wage-related allowance increases in a large number of awards - in some cases, by more than three months. This was extremely costly and administratively burdensome.
16. Retrospectivity of allowance increases is particularly costly in the security industry because the industry operates largely on a contract labour basis. In some cases we have no ability to recover retrospective allowance increases from our clients.
17. Chubb estimates that the additional administrative work nationally arising from the requirement to back-pay wage-related allowance increases (given that the AIRC decided that the same operative date should apply to the AFPC wage increases and the AIRC wage-related allowance increases) was 48 work hours.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

\_\_\_\_\_  
*[signature of person making the declaration]*

Declared at \_\_\_\_\_ on the \_\_\_\_\_ day of March 2007.

Before me,

\_\_\_\_\_  
*[signature of person before whom the declaration is made]*

\_\_\_\_\_  
*[title of person before whom the declaration is made]*

**SIGNED STATUTORY DECLARATION PROVIDED TO AFPC**

# **Annexure C**

# Australian Fair Pay Commission

## Minimum Wage Review 2007

### STATUTORY DECLARATION

I, **Terese McCowen** of 9/888 Bourke Street, Waterloo in the State of New South Wales, a Business Consultant to Daly Smith Corporation (DSC) on whose behalf this statutory declaration is made, do solemnly and sincerely declare as follows:

1. Daly Smith Corporation is a labour hire company. We operate in ten to fifteen different industries, principally in the Manufacturing & Warehousing Industries.
2. Daly Smith Corporation employs approximately 200 employees at any one time. We have a fluctuating labour force and a relatively high turnover, which means that over the course of one year, we employ up to 2000 people.
3. Within the business, approximately 50% are shift workers and 100% are casuals. Shift worker percentages can vary greatly from month to month.
4. The Pay Scales arising from the following awards apply to Daly Smith Corporation's employees:
  - Building and Construction Industry (State) Award;
  - Business Equipment Industry (Technical Services) Award;
  - Clerical and Administrative Employees (NSW) Award;
  - Clerical and Administrative Employees in Temporary Employment Services (NSW) Award;
  - Metal, Engineering and Associated Industries (NSW) Award;
  - Metal, Engineering and Associated Industries Award;
  - Storeman and Packers General (State) Award;

- Transport Industry Mixed Enterprises Interim (State) Award;
- Transport Industry (State) Award.

This list is not exhaustive and can change from day to day.

5. Approximately 95% of our Pay Scale-covered employees are employed on the relevant Basic Periodic Rate of Pay.
6. Daly Smith Corporation passed on the Australian Fair Pay Commission's 2006 increase to approximately 95% of its employees.
7. The practical difficulties faced when implementing the decision of the AFPC stem from the operative date being a specified time on a particular day, and consequently, some rates of pay changing mid-shift.
8. Our payroll period is Monday through to Sunday – so we had four days at the old rate and then one to three days at the new rate, which is very difficult and costly to manage.
9. Furthermore, being a labour hire company, it meant that we had at least double the transactions for this period resulting in double the amount of paperwork, data entry and checking for each client and each employee. We had to process at least two additional records for each pay slip for each worker due to the two rates of pay, plus extra transactions if there was overtime at both the new and old rates. Also, at least two additional records for invoices for each client, had to be processed, effectively doubling the time and cost involved for that period.
10. Also, with regard to overtime, we experienced difficulties such as calculating the correct rate of pay for overtime when two different rates apply to the one pay period. In some instances, this was very challenging.

11. Because the old system under the Australian Industrial Relations Commission (AIRC) used the principle of increases being payable from the “first full pay period on or after” a certain date, we never had this problem before.
12. The additional administrative costs associated with implementing the minimum wage increase in 2006 were much higher compared to earlier years. Daly Smith Corporation estimates the additional cost was \$25,000 or a 400% increase.
13. Another problem is that we had insufficient lead time between the date of decision and the date of increase, to plan and budget for the increase. We need sufficient time to inform clients of prospective increases in costs, which will inevitably effect their budgeting processes. Our clients need to be given enough time to adjust their financial estimates and pricing so that they can maintain their profit margins. Insufficient lead time can also greatly impact the preparation of tender documents.
14. The insufficient lead time allowed for by the AFPC in last year’s decision created additional pressures regarding the increase to wage-related allowances granted by the AIRC. The retrospective operative date which ensued caused further unnecessary cost pressures on Daly Smith Corporation as it is very difficult to recover any back pay from clients. As I write this, there are still some awards where the allowances haven’t been handed down. If these are retrospective back to the 1/12/06 this is approximately 18 weeks later. We cannot recharge or recover this amount. Our business is very competitive and works on costs payable at the current point in time not retrospectively.
15. The decision of the AFPC to have another wage review only six months after the last decision was handed down, adds to the administrative and cost burden on our company.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

\_\_\_\_\_  
[signature of person making the declaration]

Declared at \_\_\_\_\_ on the \_\_\_\_\_ day of March 2007.

Before me,

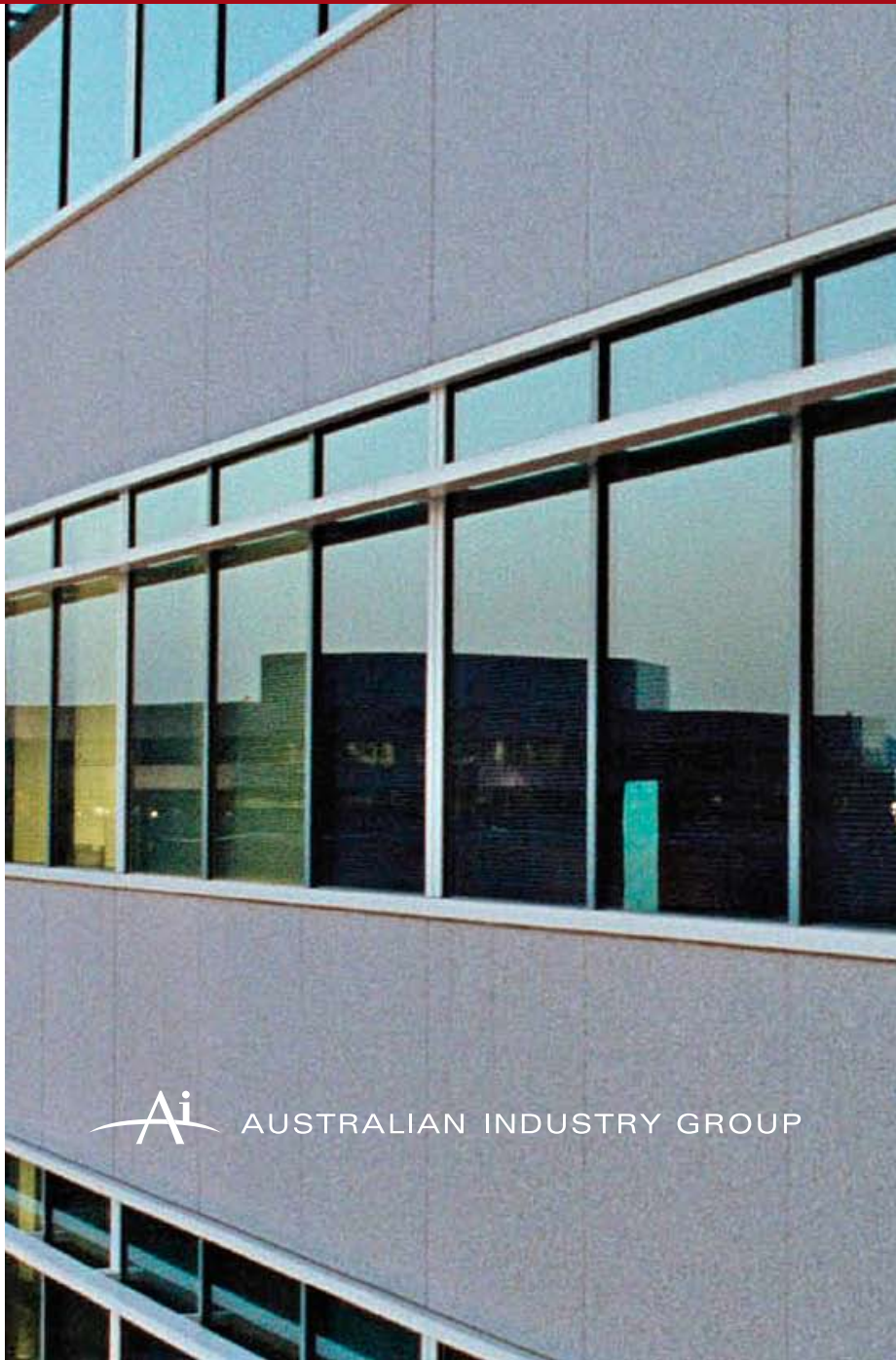
\_\_\_\_\_  
[signature of person before whom the declaration is made]

\_\_\_\_\_  
[title of person before whom the declaration is made]

**SIGNED STATUTORY DECLARATION PROVIDED TO AFPC**



**51 Walker Street  
North Sydney NSW 2060  
Telephone: 02 9466 5566  
Facsimile: 02 9466 5599  
Contact: Stephen Smith**



**Ai AUSTRALIAN INDUSTRY GROUP**