

HENRY DAVIS YORK

3 June 2016

Our Ref AJW/FZH/3126847

BY EMAIL amod@fwc.gov.au
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2010

4 yearly review of modern awards - Annual leave (AM2014/47)

We act for Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Metro Trains Melbourne, Sydney Trains and V/Line Passenger Pty Ltd in relation to the 4 yearly review of the Rail Industry Award 2010 (**Rail Award**).

We refer to the decision of the Fair Work Commission dated 23 May 2016 dealing with the insertion of model terms regarding annual leave into various awards including the Rail Award (**Decision**), and to the draft determination for the Rail Award published on 26 May 2016.

This submission is made in accordance with the direction of the Fair Work Commission to comment on the form of the draft determination by 3 June 2016.

In the Decision, the Fair Work Commission said that a transitional provision would be inserted into each variation determination so that the clause giving employees the ability to require that they be granted excessive annual leave does not come into force until 12 months after the commencement of the balance of the clause. Proposed subclause 24.7 of the draft determination for the Rail Award gives employees the ability to require that they be granted excessive annual leave. The draft determination does not include the proposed transitional provision. The rail entities submit that the draft determination should be amended to include the proposed transitional provision.

Yours faithfully
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