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2 March 2015

Justice Ross, President

Fair Work Commission
Level 10, Terrace Tower
80 William Street
East Sydney, NSW, 2011

Via email: amod@fwc.gov.au

Dear Your Honour,

**4 YEARLY REVIEW OF MODERN AWARDS – GROUP 3 AND 4 AWARDS – FINAL SUB GROUPINGS
AM2014/288**

We refer to your Statement issued in the above proceedings on 11 December 2014.

Please find enclosed an outline of submissions in relation to this matter.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Nicola Scott".

Nicola Scott
First IR Consultancy Pty Ltd

2 March 2015

1. These submissions are made on behalf of the Showmen's Guild of Australasia and The Victorian Showmen's Guild (together 'the Showmen's Guild'). Both organisations are a registered organisation under the *Fair Work (Registered Organisations) Act 2009* and they represent the industrial interests of the members of the Guilds in relation to the review of the *Travelling Shows Award 2010 (MA000102)* (the Travelling Shows Award).
2. On 11 December 2014 a Statement¹ was issued by the President in relation to the publishing of the final sub-groupings for Groups 3 and 4 as part of the 4 yearly review of modern awards.
3. The Travelling Shows Award is listed in Group 4D of the awards to be reviewed pursuant to the Statement and s.156 of the *Fair Work Act 2009* (the Act).
4. At paragraph 5(ii) of the Statement, the President directed that parties are to file submissions identifying the nature of any changes to be raised during the review process prior to the scheduled conference.
5. Further to the directions set down by the President, we provide the following submissions in respect to the changes to be raised during the review of the Travelling Shows Award at the scheduled conference.

Background to the Showmen's Guild and their industry

6. The Showmen's Guild's members are providers of amusement services including rides, games stands and food vending outlets at a variety of agricultural shows, privately and government funded festivals and carnivals. They travel from town to town following the show circuit throughout metropolitan, regional and rural Australia.
7. The main purpose of these shows is to publicly display and exhibit livestock and produce grown in specific regional and rural areas. The provision of amusement attractions by the Showmen's Guild's members is ancillary to the purpose of a show and is a significant component of a show in terms of area size and revenue derived.
8. There are approximately 300 agricultural shows each year throughout Australia. Most regional and rural shows are organised by the relevant Show society staff, who are local volunteers, whereas metropolitan shows are usually larger and better funded organisations which employ staff to organise and manage the show. Rural shows usually operate over 1 or 2 days, regional shows for approximately 3 days and major metropolitan shows generally operate from between 1 and 2 weeks.

When and how work is performed

9. Show dates are set by the relevant Agricultural Society Council in each state and are usually published a number of years in advance. Once these dates are set they are not generally changed.

¹ [2014] FWC 8985

10. The nature of this industry is unique due to the requirement to work overwhelming on weekends and public holidays, almost to the exclusion of working days that are not weekends or public holidays. The public holidays arise under s.115(1)(b) of the Act and are "Show Days" that are *"declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday."*
11. The work performed by the Showmen's Guild is characterised by its seasonal nature. A season is generally defined as the period of March – September, where the majority of work is performed. However agricultural shows and events do operate throughout the entire year.
12. The Showmen's Guild's members employ mostly family members on a permanent basis. While these individuals travel from show to show, casuals are also engaged in the local area at the time of the show.

Nature of the changes to be raised

13. It is our submission that no changes should be made to the Travelling Shows Award.
14. Section 134 (1) of the Act sets out the modern award objectives. It states that *"the Fair Work Commission (FWC) must ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions, taking into account:*
 - (a) relative living standards and the needs of the low paid; and*
 - (b) the need to encourage collective bargaining; and*
 - (c) the need to promote social inclusion through increased workforce participation; and*
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and*
 - (da) the need to provide additional remuneration for:*
 - (i) employees working overtime; or*
 - (ii) employees working unsocial, irregular or unpredictable hours; or*
 - (iii) employees working on weekends or public holidays; or*
 - (iv) employees working shifts; and*
 - (e) the principle of equal remuneration for work of equal or comparable value; and*
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy."*
15. Section 134(1)(da) of the Act was inserted by the *Fair Work Amendment Act 2013* and commenced from 1 January 2014. This provision requires the FWC to take into account the

need to provide additional remuneration for employees working on weekends and public holidays during the 4 yearly review of modern awards.

16. It is our submission that the requirement for the FWC to take into account s.134(1)(da) during the review of the Travelling Shows Award may result in changes to penalty rates for weekend and public holiday work.
17. As noted in our earlier submissions, this industry is unique in its requirement to operate predominately on weekends and public holidays. We submit that the industry has been separately regulated for an extensive period and that this regulation recognises the unique requirement to operate on weekends and public holidays.
18. The current Travelling Shows Award caters specifically to the particular and unique requirements of this industry. These include the following clauses:
 - *23.3 Sundays and public holidays—casual employees*
 - (a) *All ordinary hours worked on Sundays or public holidays will be paid at the base hourly rate for the classification plus the relevant casual loading, except that all time worked on Good Friday, Royal Queensland Show Day and Christmas Day will be paid for at the rate of double time and a half all day. Public holiday penalties will be in substitution for any other penalty or loading applicable under the terms of this award.*
 - *23.4 Sundays and public holidays—permanent employees*
 - (a) *All ordinary hours worked on a Sunday will be paid for at the ordinary hourly rate.*
 - (b) *All time worked on a public holiday will be paid for at the rate of time and a half of the hourly rate, and the employee will be granted an additional day off to be taken within 14 days of working on the public holiday.*
19. The current Travelling Shows Award was developed as a separate and distinct award during the award modernisation process to cover only travelling showmen. The making this award recognises the unique aspects of this industry in that it operates virtually only on weekends and public holidays. It also ensured that employees were not disadvantaged and that there were not increased costs for employers.
20. We submit the rates of pay and conditions of service contained in the current Travelling Shows Award already take into account the nature of the industry and that this would satisfy s.134(1)(da) of the Act.
21. Prior to award modernisation, the Showmen’s Guild were covered by the *Theatrical Employees (Showmen’s Guild) Award 2002 (AAP816117)*. This award provided that;
 - *14.1 Time worked on weekends shall be regarded and paid for at ordinary time rates as prescribed in 12.2.*

- 14.3 *All time worked on days specified in 14.2 shall be paid at the rate of time and one-half and an additional day off granted within fourteen days. There shall be a minimum payment made as for four hours worked.*

22. We submit that the FWC are required to take into account all the modern awards objectives in s.134(1).

23. It is our submission that the current Travelling Shows Award meets all the modern award objectives.

24. Further, we submit that the award should stay the same given the unique nature of this industry, which operates predominately on weekends and public holidays.

Penalty Rates – Common Issue

25. We are aware that penalty rates have been identified as a “common issue” as part of the 4 yearly review of modern awards (AM2014/305).

26. We have not participated in filing written submissions in relation to this matter due to the unique nature of this industry.

If it pleases the Commission