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Sent: Saturday, 25 April 2015 9:20 AM

To: Chambers - Ross J; Chambers - Hatcher VP; Chambers - Hamberger SDP; Chambers - Bissett; Chambers - Bull C

Cc: AMOD

Subject: Subgroup 1A & 1B Exposure Drafts - joint reports

Dear Associates,

We refer to the following subgroup 1A and 1B Exposure Drafts:

- Asphalt Industry Award 2014;
- Cement, Lime and Quarrying Award 2014;
- Concrete Products Award 2014;
- Cotton Ginning Award 2014; and
- Premixed Concrete Award 2014.

Pursuant to directions from the Full Bench during proceedings on 24 - 25 March 2015, and the extension of time subsequently granted on 16 April 2015, please find attached a joint report from Ai Group, ABI & the NSW Business Chamber, AFEI and the AWU with respect to each of the above Exposure Drafts.

Kind regards,
Ruchi.

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REPORT TO THE FULL BENCH

4 YEARLY REVIEW OF MODERN AWARDS: CONCRETE PRODUCTS AWARD 2010 (AM2014/70)

1. On 25 March 2015, the Full Bench directed interested parties to the *Concrete Products Award 2010 (the Award)* to further confer in relation to the Revised *Exposure Draft - Concrete Products Award 2014* issued on 2 February 2015 (**Exposure Draft**).
2. The parties have been directed to provide a joint report to the Fair Work Commission (**Commission**) identifying the position of the parties in respect of the Exposure Draft by 24 April 2015.
3. The following organisations conducted a conference on 8 April 2015:
 - Australian Business Industrial & NSW Business Chamber (**ABI**)
 - Australian Industry Group (**AiG**)
 - Australian Federation of Employers and Industries (**AFEI**)
 - Australian Workers' Union (**AWU**).(hereafter referred to as '**the Parties**')
4. The below is a joint report that identifies the updated position of the Parties in respect of the Exposure Draft, specifically in relation to those issues identified by:
 - (a) ABI's Outline of Submissions filed 6 March 2015 (**ABI Submissions**);
 - (b) AiG's submissions filed 6 March 2015 (**AiG Submissions**).
5. All clause references below refer to the Exposure Draft and issues are separated into 'Agreed Matters' and 'Matters Not Agreed'.

AGREED MATTERS

Clause 1.2

6. The Parties agree to vary clause 1.2 of the Exposure Draft in accordance with [177] of the AiG Submissions by removing the word *superseded* and including the phrase '*as it existed prior to that variation*' at the end of the clause.

Clause 3.1

7. The Employer Parties agree that the words "*to the exclusion of any other modern award*" should be deleted from this clause (See AiG Submissions at [178] – [180]). The AWU is not opposed to the words remaining in the Exposure Draft but accepts they do not appear in the current award.

Clause 3.4

8. The Parties agree that in accordance with the Commission's decision of 23 December 2014, the Note which follows clause 3.4 should be deleted (See AiG Submissions at [181]).

Clause 8.4(a)(iii)

9. The Parties agree to vary clause 8.4(a)(iii) of the Exposure Draft in accordance with [184] of the AiG Submissions by deleting clause 8.4(a)(iii) and reinstating the current clause 22.6(d) as new clause 8.3(c), with consequent numbering to follow.

Clause 9.1(a)

10. The Parties agree that, in accordance with [185] of the AiG Submissions, clause 9.1(a) of the Exposure Draft should not be amended as proposed by the question contained in the Exposure Draft.

Clause 11.2(f)(i)-(iii)

11. The Parties agree to vary clause 11.2(f)(i)-(iii) in accordance with [186] of the AiG Submissions by inserting the words 'whilst so engaged' as follows:

(f) Bituminous sprayer allowance

- (i) An employee spraying or using bituminous and other similar preparations on exterior surfaces will be paid an allowance of \$0.51 per hour or part of an hour whilst so engaged.
- (ii) An employee engaged on the preparation and/or the application of epoxy based materials will be paid an allowance of \$0.79 per hour, or part of an hour whilst so engaged.
- (iii) An employee required to use a sand-blasting machine will be paid an allowance of \$0.79 per hour or part of an hour whilst so engaged.

Clause 13

12. The Parties agree to vary clause 13 as follows:

- (i) Clause 13.3(a) should be amended in accordance with [189] of the AiG Submissions to state that ordinary hours "are an average of 38 hours per week".
- (ii) Clause 13.2(d) of the Exposure Draft should be replaced by clause 25.2(b) of the current award in accordance with [188] of the AiG Submission;
- (iii) Clause 13.3(e) of the Exposure Draft should be replaced by clause 25.3(c) of the current award from the third sentence of preamble onwards in accordance with [191] of the AiG Submission.
- (iv) Clauses 13.4(c) and 13.4(d) of the Exposure Draft should be deleted in accordance with [192] of the AiG Submission.

13. The agreed form of clauses 13.2-13.4 is therefore as follows:

13.2 Hours—continuous work shifts

This clause will apply to shiftworkers on continuous work.

- (a) The ordinary hours for shiftworkers on continuous work will be an average 38 per week inclusive of crib breaks and will not exceed 152 hours in 28 consecutive days.*

(b) Where the employer and the majority of affected employees agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days.

(c) Subject to the provisions of this clause, shiftworkers will work at such times as the employer may require.

~~(d) Subject to compliance with clause 8.3(a), a shift will consist of not more than 10 hours inclusive of crib breaks in accordance with clause 8.3(a).~~

(d) A shift will consist of not more than 10 hours inclusive of crib time; provided that:

(i) in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift, the arrangement of hours will be subject to the agreement of the employer and the majority of employees concerned; and

(ii) by agreement between an employer and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- proper health monitoring procedures being introduced;
- suitable roster arrangements being made;
- proper supervision being provided;
- adequate breaks being provided; and
- an adequate trial or review process being implemented through the consultative process in clause 22— Consultation.

(e) Except at the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

(f) Twenty minutes will be allowed to shiftworkers each shift for a crib break which will be counted as time worked.

13.3 Hours—other than continuous work

This clause will apply to shiftworkers not on continuous work.

(a) The ordinary hours for shiftworkers not on continuous work are an average of 38 hours per week to be worked on one of the following bases:

- (i) 38 hours within a period not exceeding seven consecutive days;
- (ii) 76 hours within a period not exceeding 14 consecutive days;
- (iii) 114 hours within a period not exceeding 21 consecutive days; or
- (iv) 152 hours within a period not exceeding 28 consecutive days.

(b) An afternoon or night shiftworker will be allowed 20 minutes crib time in each shift which will be counted as time worked and paid for as such.

(c) The rostered hours will be worked continuously except for meal breaks at the discretion of the employer.

(d) An employee will not be required to work for more than six hours without a meal break.

(e) Except at the regular changeover of shifts an employee will not be required to work more than one shift in each 24 hours, provided that:

~~(i) the rostered hours of work prescribed in this clause will not exceed 10 hours on any day;~~

~~(ii) shifts may be varied in accordance with clause 8.3(a).~~

(e) Except at the regular changeover of shifts an employee will not be required to work more than one shift in each 24 hours, provided that:

(i) the ordinary hours of work prescribed in this clause will not exceed 10 hours on any day;

(ii) in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift, the arrangement of hours will be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned; and

(iii) by agreement between an employer, and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- proper health monitoring procedures being introduced;*
- suitable roster arrangements being made;*
- proper supervision being provided;*
- adequate breaks being provided; and*
- an adequate trial or review process being implemented through the consultative process in clause 22— Consultation.*

13.4 Variation by agreement

(a) The method of working shifts may be varied by agreement between the employer and the majority of employees concerned.

(b) The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by seven days' notice of alteration given by the employer to the employees.

~~*(c) In any arrangement of working hours where the rostered working hours are to exceed eight on any shift, the arrangement of hours will be subject to the agreement of the employer and the majority of employees concerned; and*~~

~~*(d) by agreement between an employer and the majority of employees in the plant, work section or sections concerned, rostered hours not exceeding 12 on any day may be worked subject to:*~~

- ~~*• proper health monitoring procedures being introduced;*~~
- ~~*• suitable roster arrangements being made;*~~

- ~~• proper supervision being provided;~~
- ~~• adequate breaks being provided; and~~
- ~~• an adequate trial or review process being implemented through the consultative process in clause 22 — Consultation.~~

Clause 18.2

14. The Parties agree that the reference to clause 13.8 should be substituted with a reference to clause 13.9 in accordance with the AiG Submissions at [195]. However, the AWU notes it is seeking a variation regarding non-continuous shift work rates on public holidays.

Clause 20.2:

15. The Parties agree to vary clause 20.2 in accordance with [196] of the AiG Submissions as follows:

*The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice, the employer may withhold **from** any money due to the employee on termination under this award, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by the **NES this clause**, less any period of notice actually given by the employee.*

Schedule C.3:

16. The Parties agree to vary Schedule C.3 in accordance with [197] of the AiG Submissions by removing the words: “per meal”.

MATTERS NOT AGREED

Rates of pay

17. The Parties have been unable to reach agreement in respect of the matters referred to at [175]-[176] of the AiG Submission. The Parties understand that these issues are currently subject to the consideration of the Full Bench.

Clause 11.3(b)

18. The Employer Parties agree that clause 11.3(b) and (c) should be reformatted, as proposed at [187] of the AiG Submission.
19. The AWU submits the formatting of the Exposure Draft should be retained because the entitlements are separate. An employee is entitled to the fares entitlement prescribed in clause 16.3(a) of the current Award if they do not stay away overnight as part of the travel. The heading does not negate the words appearing in the clause.

Clause 13.9(b)(i)

20. This clause is subject to a claim by the AWU.

MATTERS NOT PRESSED

21. Ai Group does not press the submission made at [182] of its submissions.

MATTERS TO NOTE

Clauses 15.2(b) and (c)

22. The parties note the AiG Submissions at [194].

Clause 18.2

23. The Parties note that this clause will be affected by the AWU's claim in respect of non-continuous shiftworkers.