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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:

EXPOSURE DRAFT - PREMIXED CONCRETE AWARD 2014 (AM2014/83)

1. On 25 March 2015, the Full Bench directed interested parties to the *Premixed Concrete Award 2010 (the Award)* to further confer in relation to the Revised *Exposure Draft – Premixed Concrete 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 Industry Group (**AiG**)
 - Australian Business Industrial & NSW Business Chamber (**ABI**)
 - 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) AiG's submissions filed 6 March 2015 (**AiG Submissions**).
 - (b) ABI's Outline of Submissions filed 6 March 2015 (**ABI 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 that clause 1.2 of the Exposure Draft should be amended as follows (see AiG Submissions at [223]):

“A variation to this award does not affect any right, privilege, obligation or liability that a person acquired or incurred under the ~~superseded~~ award as it existed prior to that variation.”

Clause 2.1

7. The Parties agree that clause 2.1 of the Exposure Draft should be amended as follows (see ABI Submissions at [16]):

“The National Employment Standards (NES) ~~in~~ and this award contain ...”

Clause 3.6

8. The Parties agree that the note following clause 3.6 of the Exposure Draft should be deleted (see AiG Submissions at [225]).

Clause 6.5(c)

9. The Parties agree that clause 6.5(c) of the Exposure Draft should be deleted (see AiG Submissions at [226] – [227]).

Clause 8.1(b)

10. The Parties agree that clause 8.1(b) should be amended by inserting “(inclusive)” at the end of the clause (see AiG Submissions at [228]).

Clause 8.1(d)

11. The Parties agree that clause 8.1(d) of the Exposure Draft should be amended as follows (see ABI Submissions at [17]):

“The ordinary hours of work for a part-time employee will be in accordance with clauses 6 – ~~Types of employment and 8.1(a).~~”

Clause 11.2(c)

12. The Parties agree that clause 11.2(c) of the Exposure Draft should be amended by substituting “2” in the second row of the table with “3” (see AiG Submissions at [231]).

Clause 11.3(a)(i)

13. The Parties agree that the words “per meal” in clause 11.3(a)(i) should be deleted (see AiG Submissions at [232]).

Clause 14.8

14. The Parties agree that the word “meal” should be deleted each time it appears in clause 14.8 (see AiG Submission at [235]).

Schedule B.3

15. The Parties agree that the words “per meal” should be deleted from the second row of the table at Schedule B.3 (see AiG Submissions at [233]).

MATTERS NOT AGREED

Rates of pay

16. The Parties have been unable to reach agreement in respect of the matters referred to at [222] of the AiG Submission. The Parties understand that these issues are currently subject to the consideration of the Full Bench.

Clause 8.1(c)

17. For the reasons stated at [229] – [230] of the AiG Submissions, Ai Group proposes that clause 8.1(c) be amended as follows, consistent with the current clause 20.1:

“The ordinary hours of work ~~for a full-time employee~~ are an average of up to 38 hours per week as directed by the employer.”

18. ABI and AFEI support the variation sought by the AiG.
19. The AWU submits a new sub-clause should be inserted specifying casual ordinary hours. It proposes the following wording from clause 10.3(a) of the *Mining Industry Award 2010* should be adopted:

“A casual employee’s ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.”

20. The AWU is concerned the wording proposed by the employer parties creates ambiguity regarding ordinary hours for full-time employees which are an average of 38 hours per week not “up to” 38 per week. This concern is enhanced because hourly rates are now being included in the award. An employer may read this clause in isolation and think they can pay a full-time employee the ordinary hourly rate for only 35 hours in a week.
21. AiG remains of the view that this concern is adequately addressed by clause 6.3, which requires that a full-time employee be engaged for an average of 38 ordinary hours a week. This is the very definition of full-time employment under the Award.

Clause 14.4(b)

22. For the reasons stated at [234] of the AiG Submissions, Ai Group proposes that clause 14.4(b) of the Exposure Draft be replaced with the current clause 23.3(b). The redrafted provision in the Exposure Draft deviates substantively from the current Award.
23. In AFEI’s view clause 14.4(b) of the Exposure Draft amends the entitlements under the current award. AFEI supports the replacement of clause 14.4(b) of the Exposure Draft with current award clause 23.3(b).
24. ABI also supports the reversion of Clause 14.4(b) of the Exposure Draft to the text of the current Award.
25. The AWU submits the intent of this provision is for an employee to have a 10 hour break after completing overtime and to not lose pay for ordinary hours that fall within the 10 hour break. The wording in Exposure Draft is not ideal because (a) does not deal clearly with shift work arrangements whereby an employee on night shift may have shifts which end and then begin on the same actual day. Similarly, the reference in (b) to “between shifts” could create ambiguity for day workers.
26. As a result, the AWU proposes the following wording:
 - “(a) Where overtime work is necessary and it is practical to do so, an employee will have at least 10 consecutive hours off duty between the work of successive days/shifts.
 - (b) Where, after working overtime, an employee has not had at least 10 consecutive hours break, the employee must be released until the employee has 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
27. The AWU submits this clarification is necessary because during discussions there was debate between the parties regarding whether the 10 hour break commences at the end of the ordinary hours or at the end of overtime under the current award. The AWU’s view is that the 10 hour break commences at the end of the overtime.

Schedule F

28. For the reasons stated at [236] – [237] of the AiG Submissions, AiG opposes the insertion of a definition of “permanent night shift”. AiG additionally refers to its submissions at [140] – [147], which were made in the context of the *Exposure Draft – Cement, Lime and Quarrying Award 2014*. The comments made there are apposite to the proposed insertion of the definition in this Exposure Draft.

29. AFEI supports the variation sought by the AiG.
30. The AWU's position is that the definition of "permanent night shift" which has been included in the Exposure Draft for the Cement and Lime Award (clause 13.2 (b)), the Asphalt Industry Award (clause 13.1) and the Concrete Products Award (clause 13.6 (c)) should be inserted.
31. It submits this is a fair and reasonable approach to addressing the current ambiguity.