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Fair Work Commission
11 Exhibition Street
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**Re: AM2014/1 – Four Yearly Review of Modern Awards
NES Inconsistencies – Draft Determination**

1. HIA refers to the decision of the Fair Work Commission (**FWC**) of 8 May 2015 *Alleged NES Inconsistencies* [2015] FWCFB 3023 (**Decision**).
2. HIA also refers to the Draft Determinations issued on 27 May 2015 arising out of the Decision.
3. The directions associated with the Draft Determination sought comment by 4pm Wednesday 10 June 2015. This correspondence is in response to those directions.
4. HIA specifically refers to the Draft Determination seeking to amend clause 17.7 of the *Building and Construction General Onsite Award 2010* (**Building Award**).
5. HIA seeks to raise what seems to be, on its face, an inconsistency between the Decision and the Draft Determination seeking to amend the Building Award.
6. At paragraphs 36 – 39 of the Decision the Full Bench stated:

'In relation to clause 17.7 of the Building and Construction General On-site Award 2010, a distinct submission was made by the Construction, Forestry and Mining Union (CFMEU), the Housing Industry Association and the Master Builders'

Association. They contended that clause 17, which was entitled “Industry specific redundancy scheme”, was in its entirety (including clause 17.7) an industry-specific redundancy scheme authorised by s.141 of the FW Act. Under s.123(4)(b), the NES provisions concerning redundancy pay do not apply to employees to whom an industry-specific redundancy scheme in a modern award applies.

...

We also reject the specific submission concerning clause 17.7 of the Building and Construction General On-site Award 2010. The expression “industry-specific redundancy scheme”, as used in s.141, is defined in s.12 to mean “redundancy or termination payment arrangements in a modern award that are described in the award as an industry-specific redundancy scheme”. Clause 17.7, despite its location in a clause entitled “Industry specific redundancy scheme”, is not concerned with redundancy or termination payment arrangements. Like the other provisions, it excludes s.91(1).

The identified provisions will be removed.

(our emphasis added)

7. However, the Draft Determination retains the provision and inserts the following after 17.7(a)(ii)

‘For the purpose of redundancy pay entitlements under this clause.’

8. HIA respectfully requests that the Draft Determination be reconsidered in light of the Decision, specifically the paragraphs highlighted above.

Yours sincerely

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