

30 June 2016

The Hon. Justice Ross, President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Email: chambers.ross.j@fwc.gov.au

Dear Justice Ross



4 Yearly Review of Modern Awards—Payment of wages – (AM2016/8)

We refer to the above matter and a statement issued by Your Honour on 15 June 2016 ([2016] FWCFB 3737) and the related impending mention. Master Builders Australia (MBA) had intended to appear at this mention, however circumstances beyond our control now prevent us from doing so. We apologise for our absence and any related inconvenience.

Notwithstanding this absence, we set out below the MBA position on the items at paragraph 25 in the Commission's Statement.

(i) Determine whether this statement reflects the position of the parties;

The Statement accurately reflects the MBA position set out in submissions filed in March 2015. However, during Award Stage proceedings before Senior Deputy President Watson (AM2014/260 & AM2014/274) MBA has since advised the parties of our intention to review this position.

Such a review is necessary in light of the *Timber Industry Award 2010* decision ([2015] FWCFB 2856) referenced by the Commission at paragraph 18 of the Statement. That decision was delivered in June 2015 and this was subsequent to the filing of our earlier submissions in March 2015.

On a preliminary basis, we indicate it is likely our reviewed position will indeed change and align with the decision in the Timber Industry Award matter. Confirmation of any revised MBA position will be provided to the Commission within not more than seven days.

We would support the Ai Group claims set out at paragraphs 22-24 in the Statement.

(ii) Consider whether conciliation would be beneficial to narrow any issues in dispute;

MBA would not oppose conciliation were the Commission minded to afford this to the parties. Confirmation of a revised position as noted above may impact the extent of, and necessity for, any conciliation insofar as it relates to our claims affecting the late payment penalty provisions in the Joinery and On-Site Awards.

We also note that the parties have considered this issue during Award Stage proceedings before Senior Deputy President Watson (AM2014/260 & AM2014/274) and that a further conference is set for next week. As the MBA claims are discrete to construction, the Commission may wish to await the outcome of those impending conferences which may remove the need for additional conciliation.

(iii) Obtain an indication of the scope of each party's case, and whether they intend to call any evidence;

The scope of the MBA case will be dependent upon the matters raised above at item (i). Were our position to alter as expected, our scope is likely to be limited to a technical argument and unlikely to involve witness evidence.

(iv) Give consideration to the directions to be issued.

MBA remains in the hands of the Commission but would support the proposal of Ai Group in their correspondence to the Commission sent earlier today.

We apologise for our absence and thank the Commission for its consideration of the matters raised herein.

Yours sincerely



per Shaun Schmitke
National Director Industrial Relations