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Annual Wage Review 2016-17 – Transitional Instruments – C2017/1

On 19 September 2016, the Annual Wage Review Panel (**Expert Panel**) issued a Statement indicating the release of three background papers in relation to:

- a proposal for a medium term target;
- a review of transitional instruments; and
- a review of existing arrangements for employees with disability.

The Statement also set timeframes for the filing of submissions. This correspondence is provided in accordance with paragraph 5 of the Statement.

Also on 19 September the Expert Panel released a Background Paper entitled *Annual Wage Review 2016-17 – Transitional Instruments*.

HIA expresses an interest in this matter.

At paragraphs 28 – 31 of the Background Paper the Expert Panel outlines matters relating to Apprentices and Trainees for whom competency-based wage arrangements apply, specifically noting the preserved status of instruments that relate to competency-based arrangements and the provision of tools in Queensland. These instruments include:

- *Order—Apprentices' and Trainees' Wages and Conditions (Queensland Government Departments and Certain Government Entities) 2000 (Qld)*,
- *Order—Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 Order (Qld)*, and
- *Order—Supply of Tools to Apprentices 1998 (Qld)*.

(Collectively the 'Queensland Instruments')

It is also of note that paragraph 45 of the Background Paper makes it clear that the Expert Panel will need to continue to review these instruments as part of the Annual Wage Review while they remain in operation.

The matters raised in the Background Paper are a 'live' issue currently before the Fair Work Commission (**Commission**).

On 12 August, in the matter of *All Trades Queensland and CFMEU & Ors*¹ (**All Trades Decision**) the Commission determined that, by operation of a 'sunsetting provision' at Item 20 of Schedule 3, of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the above outlined Queensland Instruments terminated on 1 January 2014.

This was held to be the case despite the operation of Item 16 of Regulation 3B.02 of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* which sought to preserve the operation of the Queensland Instruments (as indicated in the Background Paper).

It is HIA's view that the All Trades Decision is wrong and the matter is currently on appeal. HIA will be seeking to intervene.

For the present purposes, it is clear that the operation of the Queensland Instruments as outlined within the Background Paper is at odds with the All Trades Decision.

It is HIA's view that until the issues raised by the All Trades Decision are fully determined the Expert Panel should cease its examination of this matter as outlined in the Background Paper.

HIA intends to appear at the hearing listed for Monday 24 October to further assist the Expert Panel in relation to this issue.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



Melissa Adler
Executive Director - Workplace Relations

¹ [2016] FWC 2832