

26 February 2020

General Manager and Associate to Commissioner
Hampton
Fair Work Commission
Level 10, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011

Our ref: TWO:ADB:2063938

By email: amod@fwc.gov.au;
chambers.hampton.c@fwc.gov.au

Dear General Manager and Associate to Commissioner Hampton

C2020/1 - Annual Wage Review 2019-20 - Apprentice rates of pay in the Rail Award

We refer to the above matter and Background Paper published by the Fair Work Commission (**Commission**) on 30 January 2020.

We are instructed to make submissions in respect of this matter on behalf of Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd (collectively, the **Rail Employers**). We apologise for the delay in providing these submissions to the Commission.

Consistent with the encouragement of the Commission at paragraph 16 of the Background Paper, the Rail Employers have been provided with and considered the submissions of the Australian Rail, Tram and Bus Industry Union (**ARTBIU**) to determine if it is possible to reach a joint position in respect of the matters identified by the Commission at paragraph 15 of the Background Paper. The Rail Employers have also considered the submissions of the Australian Industry Group (**AIG**) filed in respect of this matter on 24 February 2020.

We are instructed by the Rail Employers to appear at the conference of this matter listed for 27 February 2020 at 2:30 pm. Consistent with paragraph 16 of the Background Paper, we are instructed by the Rail Employers to provide the following outline of their position on this matter:

1. the Rail Employers support the position of the AIG as set out in its submissions of 24 February 2020. That is, consistent with the previous expression of the Expert Panel in respect of the *2018-19 Annual Wage Review Decision*, there is no mandated relationship between the operation of Special National Minimum Wage Order 4 (**SNMWO4**) and the apprentice rates of pay provided in the Rail Award, which requires that the rates in the Rail Award must not fall below those in SNMWO4. The Rail Employers agree with the submission of the AIG that any amendment proposed to apprentice rates of pay sought by the ARTBIU should be by way of application pursuant to s157 of the *Fair Work Act 2009* (Cth) (**FW Act**) supported by substantive evidence and submissions as to why such amendments are needed to achieve the modern awards objective. As opposed to the present submission that because the present rates fall below SNMWO4 in some circumstances, the rates should be the subject of a blanket increase;

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2. there are two key issues with respect to the blanket "percentage increase" consistent with rates in the *Miscellaneous Award 2010 (Miscellaneous Award)* proposed by the ARTBIU which makes such a generalised approach to increases inappropriate:

- (a) the proposal fails to acknowledge the distinction in qualifications between junior apprentices who have completed year 12 and those who have not. The Rail Award creates a distinction in rates of pay based on the possession of this qualification. It is inappropriate to this distinction by virtue of a blanket increase to the rates of pay for both types of junior apprentice; and
- (b) the proposed blanket increase is inconsistent with the actual intended operation of SNMWO4. Clause 9.2 of SNMWO4 relevantly states with respect to the minimum rate of pay established in the *Miscellaneous Award 2010 (Miscellaneous Award)*:

"An employer of an employee to whom special national minimum wage 4 applies must pay the employee a base rate of pay that at least equals the amount set out in cl. 14.2 - Apprentice minimum wages of the Miscellaneous Award 2010 ..."

Clause 14.2 of the Miscellaneous Award relevantly operates by reference to a "standard rate", that rate being the Level 3 minimum wage per week for an adult worker (**\$862.50**).¹ The blanket percentage increase proposed by the ARTBIU fails to acknowledge that the rate of pay for a Level 3 Operations (Op) worker in the Rail Award, being one of the relevant reference rates for determining apprentice rates of pay, is presently **\$872.10**. A blanket increase to the percentages for junior apprentices in clause 14.3(d) of the Rail Award for consistency with the Miscellaneous Award will have the practical effect of increasing the rate of pay for junior apprentices on a Level 3 Op rate to a level *above* the weekly rate in the Miscellaneous Award. Such a generalised approach should not be adopted in the absence of a substantive application brought pursuant to s. 157 of the FW Act as to the need for such a change; and

3. the Rail Employers do not agree with the amendments proposed in paragraphs 13 (b) - (d) of the ARTBIU's submissions to remove any reference to pre-2014 apprentices. Again, any such amendment should, in the respectful submission of the Rail Employers, be considered as part of a substantive s. 157 application which considers the available evidence as to the proportion of apprentices that commenced apprenticeships before 1 January 2014.

Yours faithfully



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¹ See definition of "Standard Rate" at clause 3 of the Miscellaneous Award