



6 September 2016

Our Ref: 20140530

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Associate to Hon Justice Iain Ross AO
Level 4, 11 Exhibition Street
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Dear Associate

AM2014/219 - SUBMISSION ON OUTSTANDING TECHNICAL AND DRAFTING ISSUES

We act on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**) in respect of the above matter.

ABI and NSWBC each have a material interest in the *Clerks - Private Sector Award 2010*. In accordance with the Directions dated 17 August 2016, set out below are our clients' submissions in respect of the thirteen (13) outstanding technical and drafting issues outlined in the revised summary of submissions (**Summary**) for the *Clerks - Private Sector Award 2010*:

1. Item 4 of the Summary: Our clients agree with the submissions of the Ai Group and Business SA in respect of clause 5.2 of the Exposure Draft.
2. Items 8 and 39 of the Summary: The Fair Work Ombudsman (**FWO**) has indentified a potential issue with regard to when an employee should be considered a "shiftworker", a term which is not defined within the Award. The Commission also asked the parties to clarify at clause 14.1 of the Exposure Draft whether the Award should include a definition of "shiftworker". Our clients submit that there may be some merit in including a definition of "shiftworker" in the Award. In this regard, our clients repeat and rely upon paragraph 5.8 of their joint submission dated 15 April 2016. Our clients have not provided proposed wording for a definition of "shiftworker", but will consider any wording put forward by the other interested parties. In the absence of a definition being put forward by an interested party, our clients do not intend to pursue this issue further.
3. Items 9 and 10 of the Summary: Our clients do not oppose the submission of the Ai Group in respect of clause 8.1 of the Exposure Draft. In this regard, our clients repeat and rely upon paragraph 5.4 of their joint submission dated 6 May 2016.
4. Items 17 and 18 of the Summary: The FWO has identified potential ambiguity in the spread of hours clause and the ability of an employer to alter the spread of hours. The Commission also asked the parties to clarify at clause 8.2(b) of the Exposure Draft the meaning of the words "at either end". Our clients submit that there is no ambiguity concerning the words "at either end". In this regard, our clients repeat and relies upon paragraph 5.4 of its submission dated 15 April 2016. Our clients also agree with the submission of the Ai Group in respect of this clause.
5. Item 35 of the Summary: Our clients submit that no change is required in respect of clause 13.4(b)(i) of the Exposure Draft. In this regard, our clients agree with the position of Business SA and the Ai Group.



6. Item 40 of the Summary: Our clients agree with the position of Business SA and the Ai Group in respect of clause 14.2 of the Exposure Draft and oppose the position of the ASU. In this regard, our clients repeat and rely upon paragraph 5.14 of its submission dated 6 May 2016 and paragraph 5.4 of their submission dated 15 April 2016.
7. Item 41 of the Summary: The FWO raised a concern with the Commission about the application of "special rates" under the Award. None of the interested parties have made submissions in respect of this matter. Our clients do not intend to make submissions in respect of clauses 14.4 and 14.7 of the Exposure Draft because they do not consider that there is any ambiguity concerning the application of the clauses.
8. Item 44 of the Summary: Our clients oppose the ASU's proposed change in respect of clause 15.2 of the Exposure Draft.
9. Item 45 of the Summary: The FWO indentified a potential ambiguity in the Award concerning annual leave loading. None of the interested parties have made submissions in respect of this matter. Our clients do not intend to make submissions in respect of clause 15.3 of the Exposure Draft because they do not consider that there is any ambiguity concerning the application of the clause.
10. Item 49 of the Summary: Our clients submit that the heading for clause 13 of the Exposure Draft should be amended because it incorrectly states that the clause applies to employees "other than shiftworkers". Clause 13.4(c) of the Exposure Draft sets out a shiftworker's entitlement to a rest period after working overtime. Clearly, parts of clause 13 apply to shiftworkers. Accordingly, we submit that the heading for clause 13 should be amended as follows:

"Overtime rates and penalties (~~other than shiftworkers~~)"

Our clients appreciate the opportunity to provide the above submissions.

If you have any questions, please contact Louise Hogg on (07) 3218 0905.

Yours faithfully

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