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28 March 2024

Vice President Asbury
Deputy President Binet
Commissioner Lim

By email: awards@fwc.gov.au; chambers.asbury.vp@fwc.gov.au

Variation of modern awards to include a delegates rights term (AM2024/6)

HIA provides this correspondence in accordance with the Statement dated 30 January 2024¹.

HIA expresses an interest in these proceedings, in particular how the variation would impact the *Building and Construction General Onsite Award 2020*, the *Joinery and Building Trades Award 2020* and the *Timber Industry Award 2020*.

HIA refers to the submission of the CFMEU (Construction and General Division) (CFMEU Submission) dated 1 March.

HIA opposes the Draft Union Delegates Rights Award Clause set out at Appendix A to the CFMEU Submission.

Terms must be 'necessary' to achieve the modern awards objectives

As outlined in several employer group submissions, the Fair Work Commission (Commission) should only include provisions in a new term that are 'necessary' to achieve the modern awards objectives in accordance with section 134 of the Fair Work Act 2009 (FW Act).

HIA submits that the proposal set out in the CFMEU Submission goes well beyond this, and touches on matters beyond that required to be dealt with by new section 350C of the FW Act.

Industry specific approach not required or necessary

The CFMEU Submission argues that there is a need for an industry specific approach to the formulation of a delegates rights terms. HIA understands that it is on that basis that the provision set out at Appendix A is proposed, as it is the terms included in construction industry enterprise agreements.

HIA does not agree that an industry specific approach is needed and opposes Appendix A.

As highlighted in the CFMEU Submission, the modern award term will only have work to do in unionised workplaces where a union delegate is appointed. HIA suggests that this scenario lends itself to a more

¹ [2024] FWC 241

standardised approach to the provision on the basis that where union delegates have been appointed, enterprise agreements are in place that include an appropriately tailored term regarding delegates rights.

HIA would expect that even if a modern award term was of the ilk proposed in the CFMEU Submission (and in the same or similar terms as those included in enterprise agreements) this would lead to adverse outcomes as we would expect that enterprise agreements would retain provisions relating to delegates rights notwithstanding the content of the term in the modern awards.

This would create difficulties in ensuring that there are no inconsistencies between the term in the modern award and the term in enterprise agreements. HIA submit that adopting a simple standard term, would avoid this and not interfere with any provisions included in enterprise agreements.

Further, as noted above modern award can only include provisions that are necessary to meet the Modern Awards Objectives and the requirements of section 350C of the FWA. These parameters lend itself to a standardised provision along the lines of that proposed by Australian Business Industrial at Annexure A of the submission dated 29 February.

Timing

As highlight in the submission of Australian Industry Group dated 4 March the Commission has a severely constrained timeframe within which to vary the modern awards to include a delegates rights term. This lends itself to a standardised approach, noting that should union parties seek more bespoke provisions, it remains open to them to bring further applications.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in black ink, appearing to read 'M. Adler', written in a cursive style.

Melissa Adler
Senior Executive Director – Compliance and Workplace Relations