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Vice President Hatcher
Deputy President Hamilton
Deputy President Gostencnik
Commissioner Gregory
Commissioner Harper-Greenwell
Fair Work Commission
80 William Street
East Sydney NSW 2011

By email: amod@fwc.gov.au

Your Honours

4 yearly review of modern awards- Construction Awards (AM2016/23) - Decision [2019] FWCFB 6860

HIA refers to Full Bench Decision dated 31 October 2019 (**October 2019 Decision**), and corresponding Draft Determination (**Draft Determination**) as attached to the October 2019 Decision.

In accordance with paragraph 59 of the October 2019 Decision, HIA provides the following comments in relation to the Draft Determination which varies the *Building and Construction Onsite Award 2010 (Onsite Award)*.

1. Clause 19.3(b)- Hourly rate calculation

- 1.1. HIA refers to the Draft Determination item 2.
- 1.2. It is noted that item 2 makes reference to deletion of wording relating to special allowance within clause 19.3(b).
- 1.3. HIA submits that reference to industry allowance within this clause should be changed to reflect the updated clause numbering, clause 21.1.

2. Clause 21- Industry Allowance

- 2.1. Proposed new clause 21.2 clarifies that the definition of multistorey building in clause 22.3(c) applies for the purposes of determining the applicable industry allowance. Such reference is replicated in proposed clause 21.2(b) and proposed clause 21.2(c).

2.2. Accordingly HIA recommends deletion of proposed clause 21.2(c), as follows:

21.2 For the purposes of determining the applicable industry allowance:

(a) the definitions of general building and construction, civil construction and metal and engineering construction in clause 4.10 will apply.

(b) residential building and construction industry means the activities identified in clause 4.10(a) undertaken in relation to a single occupancy residential building which is not a multistorey building as defined in clause 22.3(c).

~~*(c) the definition of multistorey building in clause 22.3(c) will apply*~~

3. Clause 22- Other Allowances

3.1. HIA refers to Draft Determination item 5, specifically proposed clause 22.4- Laser operation allowance, and proposed clause 22.5- Laser safety officer allowance

3.2. Proposed clause 22.4 appears to be a precursor guidance as to when laser operation allowances may apply under the Onsite Award. In such circumstances the allowance would only apply in accordance with proposed Clause 22.5, where an employees is a Laser safety officer.

3.3. HIA submit that proposed clause 22.5 is deleted, and should be made a new subsection c of proposed clause 22.4 as follows:

22.4 Laser operation allowance

(a) Application

This subclause applies when laser equipment is utilised for work within the scope of this award.

(b) Definitions

(i) Laser means any device excepting a Class 1 device which can be made to produce or amplify electromagnetic radiation in the wave length range from 100 nanometres to one millimetre primarily by the process of controlled stimulation emission.

(ii) Laser safety officer is an employee who in addition to the employees ordinary work is qualified to perform duties associated with laser safety and is appointed as such.

(c) Laser safety officer allowance

An employee appointed by the employer to carry out the duties of a laser safety officer must be paid an additional 13.4% of the hourly standard rate per day or part thereof whilst carrying out such duties, paid as a flat amount without attracting any premium or penalty.

4. Commencement Date

4.1. HIA refers to item B of the Draft Determination which notes that the proposed provisions commence on 1 January 2020. HIA submits that there is utility in the Commission providing a delay in commencement.

4.2. Numerous substantive matters remain outstanding for the Construction Group of Awards. Specifically matters within the Draft Determination dated 23 November 2018, and matters whereby a provisional

view was expressed by the Commission in the September 2018 Decision¹. Further the exposure draft process is to commence once the Full Bench finalises such substantive matters.²

- 4.3. The finalisation of these matters could potentially lead to numerous commencement dates, leading to a greater likelihood of confusion and potential misunderstanding of the changes to the Onsite Award.
- 4.4. HIA intends to carry out significant educative activities to assist in informing industry about the Onsite Award changes, including the need to adjust payroll processes to account for the reformed allowances.
- 4.5. Not only is there a need to ensure there is adequate time for such preparation to occur, but there is also a need to consider the looming industry shutdown over the Christmas and New Year period, whereby many businesses close for several weeks.
- 4.6. In light of the above, HIA requests that the Commission consider delaying commencement of the Draft Determination.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED



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¹ [2018] FWCFB 6019
² FWC 2271 Statement 4 April 2019, at paragraph 14