

5 May 2009



Committee Secretary
Senate Standing Committee on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

**Re: Fair Work
(Transitional Provisions and Consequential Amendments)
Bill 2009**

We refer to the Committee hearing in Canberra on 30 April, 2009. A number of questions were taken on notice on that day. We set out hereunder those questions and the relevant response thereto.

Question

On 30 April, Senator COLLINS asked: I just want to revisit this Austral Bricks case and take up your offer to provide us with further information. On the face of it, in the press reports that I have seen, it appears to me that there must be some fairly straightforward, verifiable way of demonstrating the case. Is there an individual who is prepared to furnish details that do not need to remain confidential and that will demonstrate the AWA, as opposed to the pertinent instrument, as opposed to what their roster is, so that you can do a straightforward calculation? If you could provide us with that type of information I think it would be helpful in resolving what is being aired as claim and counterclaim, because at this point we do not have the material to satisfy us.

Answer

See document attached

Question

On 30 April 2009 Senator Fisher asked:

The ministerial directive talks about the award modernisation process not disadvantaging employees, and the bill contains the take-home pay provisions. Are there any ways an employee could be disadvantaged in your industry by the award modernisation process that will not be addressed by the take-home pay provisions if they become law?

Answer

The following are some examples of where workers could be disadvantaged under the new modern awards compared to existing awards in the construction industry and where the disadvantage may not be addressed by take home pay orders. All of the examples are based on the premise that take home pay orders are only available for those employees whose employment started prior to 1st January 2010 and continued after that date, and are not available to employees who have started a new job (or changed employers) after 1st January 2010.

1. Annual leave - under the modern Building Engineering and Civil Construction Industry General On-site Award and the Joinery and Building Trades Award annual leave is determined by the NES provision which provides for accrual on the basis of 1/13th of a week per week worked whereas under the previous NBCIA and NJ&BTPA accrual was on the basis of 1/12th of a week. This is a difference of 0.244 hours or \$4.60 per week for a carpenter under the BECCI award.
2. Personal leave – The modern awards refer back to the NES. In regard to the issue of accrual, under the NES the 10 days entitlement accrues progressively during the year according to the employee’s ordinary hours of work. Under the existing NBCIA and NJBTPA an employee accrues personal leave on the basis of 1 day at the beginning of the first 10 months of employment then receives an automatic entitlement of a further 10 days on each anniversary date of engagement. If an on-site employee engaged after 1st January 2010 used all their personal leave in the first year and then became sick on their anniversary date of engagement, and was off work for two weeks, they would be over \$1400 out of pocket under the modern award and NES provisions compared to the existing award provision.
3. Public Holidays – all of the modern award refer back to the NES. This will lead to a reduction of at least one public holiday in a number of States, with the potential for further reductions where substitution days are not declared when public holidays fall on a weekend. The NBCIA and other existing awards currently provide for automatic substitution for Christmas Day, Boxing Day, New Years Day and Australia Day. A further disadvantage is that the provision from the NBCIA, that gives an entitlement to be paid for public holidays that fall within 10 days of termination, is not in the modern award nor the NES.
4. Wages – The new classification structure in the Mobile Crane Hiring Award contains rates of pay for some classifications that are below the existing award rates, a point recognised by the Full Bench who said,

“The new classification structure results in minimum classification rates and an industry allowance which, in aggregate, are below those proposed by the CFMEU and the AiGroup/CICA and below those in the

Mobile Crane Hiring Award at the higher classification levels. It may be necessary to address any potential impact on employees through transitional provisions, depending on the practical effect of the new rates.” Paragraph [123] [2009]AIRCFB345.

We trust this information will be of assistance. Please contact this office should you require anything further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tom Roberts', with a stylized flourish at the end.

Tom Roberts
Senior National Legal Officer
CFMEU
Construction & General

AWA – Enterprise Agreement (EA) comparison Austral Bricks (Vic.) Summer Hill Plant, May 2009

-EA; Austral Bricks Victorian Production and Maintenance Workers Union Collective
Agreement 2008

Comparison table 1 - without public holiday

Employee	AWA	Enterprise Agreement	Weekly wage difference
Sam Cini A'noon shift, 2.5 hours o'time x 2 nights a week plus 6 hours Sunday	<u>\$27.50 per hour</u> Normal; 38 x 27.50; - \$1045.00 O'time; 5 x 27.50; - \$137.50 Sunday; 6 x 27.50; - \$165.00 Weekly Wage Total; <u>\$1347.50</u>	<u>\$23.24 per hour</u> Normal; 38 x 23.24; - \$883.12 Plus 15% (A'noon shift); \$132.47 O'time; 4 x 23.24 x 1.5; \$139.44 1 x 23.24 x 2; \$46.48 Sunday; 6 x 23.24 x 2; \$278.88 Weekly Wage Total; <u>\$1480.39</u>	-\$132.89
Daryl Delaney A'noon shift, 4 hours o'time x 2 nights a week, No weekends worked	<u>\$27.50 per hour</u> Normal; 38 x 27.50; - \$1045.00 O'time; 8 x 27.50; - \$220.00 Weekly Wage Total; <u>\$1265.00</u>	<u>\$23.24 per hour</u> Normal; 38 x 23.24; - \$883.12 Plus 15% (A'noon shift); \$132.47 O'time; 4 x 23.24 x 1.5; \$139.44 4 x 23.24 x 2; \$185.92 Weekly Wage Total; <u>\$1340.95</u>	-\$75.95
Michael Harris A'noon shift, 2 hours weekly o'time, 6 hours weekend work generally Sunday	<u>28.50 per hour</u> Normal; 38 x 28.50; - \$1083.00 O'time; 2 x 28.50; - \$57.00 Sunday; 6 x 28.50; - \$171.00 Weekly Wage Total; <u>\$1311.00</u>	<u>\$23.84 per hour</u> Normal; 38 x 23.84; - \$905.92 Plus 15% (A'noon shift); \$135.89 O'time; 2 x 23.84 x 1.5; \$71.52 Sunday; 6 x 23.84 x 2; \$286.08 Weekly Wage Total; <u>\$1399.41</u>	-\$88.41
Graham Lines A'noon shift, 2 hours o'time x 3 nights weekly, no weekends worked	<u>\$24.50 per hour</u> Normal; 38 x 24.50; - \$931.00 O'time; 6 x 24.50; - \$147.00 Weekly Wage Total; <u>\$1078.00</u>	<u>\$23.84 per hour</u> Normal; 38 x 23.84; - \$905.92 Plus 15% (A'noon shift); \$135.89 O'time; 6 x 23.84 x 1.5; \$214.56 Weekly Wage Total; <u>\$1256.37</u>	-\$178.37
Ray Griffin A'noon shift, averages 21 hours o'time a week plus 9 hours Sunday	<u>\$31.20 per hour</u> Normal; 38 x 31.20; - \$1185.60 O'time; 21 x 31.20; \$655.20 O'time (>60 hours a week) 8 x 31.20; \$249.60 Sunday; 9 x 31.20; \$280.80 Weekly Wage Total; <u>\$2371.20</u>	<u>\$24.80 per hour</u> Normal; 38 x 24.80; - \$942.40 Plus 15% (A'noon shift); \$141.36 O'time; 10 x 24.80 x 1.5; \$372.00 11 x 24.80 x 2; \$545.60 Sunday; 9 x 24.80 x 2; \$446.40 Weekly Wage Total; <u>\$2447.76</u>	-\$76.56

Comparison table 2 – with one public holiday worked

Employee	AWA	Enterprise Agreement	Weekly wage difference
Sam Cini A'noon shift, 2.5 hours o'time x 2 nights a week plus 6 hours Sunday	\$27.50 per hour Normal; 32 x 27.50; - \$880.00 Public hol; 8 x 27.50; - \$220.00 O'time; 5 x 27.50; - \$137.50 Sunday; 6 x 27.50; - <u>\$165.00</u> Weekly Wage Total; <u>\$1402.50</u>	\$23.24 per hour Normal; 32 x 23.24; - \$743.68 Plus 15% (A'noon shift); \$111.55 Public hol; 8 x 23.24 x 3; \$557.76 O'time; 4 x 23.24 x 1.5; \$139.44 1 x 23.24 x 2; \$46.48 Sunday; 6 x 23.24 x 2; <u>\$278.88</u> Weekly Wage Total; <u>\$1877.79</u>	-\$475.29
Daryl Delaney A'noon shift, 4 hours o'time x 2 nights a week, No weekends worked	\$27.50 per hour Normal; 32 x 27.50; - \$880.00 Public hol; 8 x 27.50; - \$220.00 O'time; 8 x 27.50; - <u>\$220.00</u> Weekly Wage Total; <u>\$1320.00</u>	\$23.24 per hour Normal; 32 x 23.24; - \$743.68 Plus 15% (A'noon shift); \$111.55 Public hol; 8 x 23.24 x 3; \$557.76 O'time; 4 x 23.24 x 1.5; \$139.44 4 x 23.24 x 2; <u>\$185.92</u> Weekly Wage Total; <u>\$1738.35</u>	-\$418.35
Michael Harris A'noon shift, 2 hours weekly o'time, 6 hours weekend work generally Sunday	28.50 per hour Normal; 32 x 28.50; - \$912.00 Public hol; 8 x 28.50; - \$228.00 O'time; 2 x 28.50; - \$57.00 Sunday; 6 x 28.50; - <u>\$171.00</u> Weekly Wage Total; <u>\$1368.00</u>	\$23.84 per hour Normal; 32 x 23.84; - \$762.88 Plus 15% (A'noon shift); \$114.43 Public hol; 8 x 23.84 x 3; \$572.16 O'time; 2 x 23.84 x 1.5; \$71.52 Sunday; 6 x 23.84 x 2; <u>\$286.08</u> Weekly Wage Total; <u>\$1807.07</u>	-\$439.07
Graham Lines A'noon shift, 2 hours o'time x 3 nights weekly, no weekends worked	\$24.50 per hour Normal; 32 x 24.50; - \$784.00 Public hol; 8 x 24.50; - \$196.00 O'time; 6 x 24.50; - <u>\$147.00</u> Weekly Wage Total; <u>\$1127.00</u>	\$23.84 per hour Normal; 32 x 23.84; - \$762.88 Plus 15% (A'noon shift); \$114.32 Public hol; 8 x 23.84 x 3; - \$572.16 O'time; 6 x 23.84 x 1.5; <u>\$214.56</u> Weekly Wage Total; <u>\$1663.92</u>	-\$536.92
Ray Griffin A'noon shift, averages 21 hours o'time a week plus 9 hours Sunday	\$31.20 per hour Normal; 32 x 31.20; - \$998.40 Public hol; 8 x 31.20; - \$249.60 O'time; 21 x 31.20; \$655.20 O'time (>60 hours a week) -additional 8 x 31.20; \$249.60 Sunday; 9 x 31.20; <u>\$280.80</u> Weekly Wage Total; <u>\$2433.60</u>	\$24.80 per hour Normal; 32 x 24.80; - \$793.60 Plus 15% (A'noon shift); \$119.04 Public hol; 8 x 24.80 x 3; - \$595.20 O'time; 10 x 24.80 x 1.5; \$372.00 11 x 24.80 x 2; \$545.60 Sunday; 9 x 24.80 x 2; <u>\$446.40</u> Weekly Wage Total; <u>\$2871.84</u>	-\$438.24

Notes to tables 1 and 2

1. Differences in overall weekly wage amounts between AWA and ITEA employees as compared to similar Enterprise Agreement (EA) employees vary subject to the amount of overtime/weekend work performed. Some AWA/ITEA employees have recently reduced the amount of overtime and weekend work because they receive less for their overtime as compared to EA employees.
2. AWA and ITEA employees may have their hours varied by the company which may widen the disparity between them and EA employees.
3. AWA and ITEA employees are required to work public holidays at normal pay rates if rostered on, whereas EA employees may choose to not work public holidays.
4. The AWA and ITEA grievance procedures do not allow an employee to be represented by a union or a lawyer for purposes of arbitration.