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L U SIMON BUILDERS PTY LTD (LU SIMON)

and

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

RE: ANZAC DAY PUBLIC HOLIDAY 2020

005-2020

22 MARCH 2020

STATEMENT

[1] L U Simon Builders Pty Ltd notified a dispute on 13 March 2020 seeking guidance from the Chairman in relation to the apparent inconsistency between Clause 39 and the Calendar in Appendix D for 2020 in relation to the ANZAC Day public holiday in the *L U Simon Builders Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*. (the Agreement)

[2] Shortly after the Notification was lodged, both Multiplex and the MBAV requested to participate in the proceedings. On 16 March 2020, Multiplex circulated to the Chair, parties and the MBAV a 'brief advice' it had obtained from its Solicitors in relation to the matter.

[3] The Chairman convened a Conference of the parties, Multiplex and MBAV on 20 March 2020.

[4] The CFMEU was represented by R Edwards and D Vroland, L U Simon by J Moschoyiannis, Multiplex by G Kellock and A Sheane-Smith and MBAV by L Gartland.

[5] The controversy arises from a clear inconsistency between the content of Clause 39 of the Agreement and the Calendar at Appendix D to the Agreement, in so far as the substitution of the Anzac Day public holiday in years 2020 and 2021 is concerned. In 2020, the Government gazetted day for Anzac day is Saturday 25 April and in 2021 it is Sunday 25 April. Clause 39 provides that there is no substitute day for Anzac Day when it falls on a Saturday or Sunday, whereas the Calendar prescribes that the Public Holiday be observed on the following Monday in both years. On its face this suggests that there is a substitute day. In addition, for both years, the calendars at Appendix D prescribe an RDO to be observed on the immediate following Tuesday after the Monday 'public holiday'.

[6] The Chairman queried as to whether the parties were seeking that the Chairman make a final and binding determination on the matter. The parties indicated that they wanted the matter determined. The Chairman indicated that this could be confirmed in the event the parties were unable to settle the matter.

[7] Both Mr Edwards of the CFMEU and J Moschoyiannis of L U Simon were able to provide unequivocal collateral evidence as to the matter, given they were both directly involved in the negotiations that led to the final agreement on the Calendars at Appendix D in particular. It is clear that other participants involved in various aspects of negotiations over the relevant Enterprise Agreements in 2016, including Mr Kellock, accepted that the Calendar would be settled by Mr Edwards for the CFMEU and Mr. Moschoyiannis for L U Simon.

[8] L U Simon also undertook to provide the Chairman with copies of emails it said were relevant to the matter. These have subsequently been provided to the Chairman.

[9] Notwithstanding the relevance of the details discussed in Conference before the Chairman, a proposal to change the date of the RDO scheduled for Tuesday 28 April 2020 was raised by Mr. Moschoyiannis, pursuant to the provisions of the Agreement. The CFMEU requested that the proceedings be adjourned to enable consideration of that proposal and it indicated, other similar proposals on the subject, that had also been suggested to the CFMEU. The Chairman considered it appropriate for the matter to be adjourned pending the CFMEU's consideration. The CFMEU undertook to advise the Chairman not later than close of business

23 March 2020 as to whether or not there was a prospect of the matter being settled or if it required the Chairman to proceed to determine the matter.

[10] The CFMEU advised the Chairman later on 20 March 2020 that the CFMEU had considered the proposal from L U Simon and others and had determined that it wanted the Calendar in relation to Anzac Day at Appendix D of the Agreement to be observed.

[11] Accordingly, the Chairman is being asked to determine the matter by the parties. The Chairman is satisfied that sufficient material, evidence and explanation has been provided by the parties and participants to enable a determination to be made. However, should any of the parties or participants in the Conference wish to make any further submissions in writing, such submissions will be required to be received by the Chairman, with a copy to others, no later than 5.00pm on Tuesday 24 March 2020, following which the Chairman will proceed to issue a final Determination.

A handwritten signature in black ink, appearing to read 'Peter Parkinson', is written over a light grey rectangular background.

Peter Parkinson
Chairman