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**CONSTRUCTION, FORESTRY, MINING AND
ENERGY UNION (CFMEU)**

and

JOHN BEEVER (AUST) PTY LTD (John Beaver)

PORT CAMPBELL GAS PLANT

**RE: ALLEGED FAILURE OF THE EMPLOYER TO COMPLY WITH CLAUSE
45.2 OF THE ENTERPRISE AGREEMENT - WAGES AND CONDITIONS OF
CONTRACTORS AND LABOUR HIRE**

24 April 2017

010-2017

STATEMENT

[1] The CFMEU notified a dispute on 10 April 2017 regarding an issue arising under Clause 45.2 of the Enterprise Agreement concerning wages and conditions of contractors. [*John Beaver (Aust) Pty Ltd and AMWU/CFMEU Metal Engineering On-Site Construction Agreement 2014-2017*].

[2] The Panel convened a Conference of the parties on 21 April 2017. John Beaver did not attend the Conference. Messrs. J. Noonan and M. Reddie, representatives of John Beaver, were notified by email and received same dated 10 April 2017. The Panel did not receive any response from John Beaver. The CFMEU attended.

[3] In absence of attendance by John Beever the Chairman contacted Mr Noonan who advised he was not involved in the matter and that it was being handled directly by Messrs. M Reddie and R McCann of the Company and that the Panel would have to speak with them. He said he did not know if they were attending but they were aware of it.

[4] The CFMEU explained that the dispute arises over the engagement by John Beever of a subcontractor *Collins Scaffolding Pty ltd T/A Southern Rigging & Scaffolding* (Collins) during periods between 2015 and 2016 to perform work as part of its contract to Origin Energy on the Port Campbell Gas Plant. The CFMEU said it had endeavoured, unsuccessfully, to make numerous attempts to resolve the matter with the John Beever, culminating in its correspondence to John Beever addressed to Mr. Noonan dated 24 March 2017, to which there had been no reply.

[5] Clause 45.2 of the John Beever's Enterprise Agreement provides that it *"must ensure the wages and conditions of contractors' and labour hire companies' employees engaged to do work covered by this Agreement are no less favourable than the wages and conditions provided for in this Agreement for equivalent or similar work."*

[6] The CFMEU outlined that Collins employed some 5 employees over the period directly on the works subject to the contract it had with the John Beever on the Port Campbell Gas Plant over the period 2015 to 2016. The works were now completed.

[7] The CFMEU demonstrated that the wages and conditions afforded these employees were on terms significantly less than those provided by the terms of John Beever's Enterprise Agreement and consequently John Beever was not honouring its obligations under the Agreement, it said. Indeed, the CFMEU outlined that with respect to one such employee for the period of his engagement he was some \$40,000 below what his earnings entitlement should have been arising from the John Beever's obligation in Clause 45.2. The CFMEU submitted that there was a shortfall also in relation to conditions such as Superannuation, Redundancy and the like. During the course of the Conference the Chairman contacted the principal of Collins, Mr G Collins, who confirmed that the wages and conditions he paid his employees for the said work was significantly less than the terms of John Beever's Enterprise Agreement, to the extent of his knowledge. He said he had suggested a 3-way meeting with John Beever, his Company and the Union in order that the matter

might be resolved.

[8] During the course of the Conference the Chairman contacted Mr. R McCann of John Beever who advised that he had no knowledge of the Conference, but that he was aware of the matter only through the letter from the CFMEU dated 24 March 2017 that Mr Noonan had forwarded on to him. The Chairman explained to Mr McCann the issues that were before the Panel and that there was a preparedness by both Collins and the CFMEU to meet with John Beever and the Chairman asked Mr McCann if he was prepared to participate in such a meeting within the next two weeks in an endeavour to resolve the matter. Mr McCann confirmed his agreement to such a meeting.

[9] The Panel notes the provisions of the Enterprise Agreement relevant to the Dispute Settlement Procedure Clause 32 and whilst it may have been drafted more accurately, the intention of the parties seems to be that the Panel has the power to deal with disputes arising pursuant to the Agreement.

[10] The Panel also recognises that there would need to be further submissions by the parties as to its capacity to make a determination in relation to this particular matter.

[11] The Panel is hopeful however that given the commitment made by the relevant participants to meet in an endeavour to resolve the matter, that they do so.

[12] Accordingly the Panel notes that the CFMEU, Collins and John Beever have agreed to meet within the next 2 weeks in a genuine endeavour to resolve the matter. The Panel requests that Mr McCann facilitates and arranges the meeting for this purposes at the convenience of all parties. The Panel requests that it be notified of the outcome by the parties by 5.00pm on Monday 8 May 2017.

[13] In the event that the matter is not resolved, either party is at liberty to seek that the matter be relisted before the Panel.

Peter Parkinson
Chairman

Tony Cordier
Panel Member

Daniel Hodges
Panel Member



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JOHN BEEVER (AUST) PTY LTD (John Beever) PORT CAMPBELL GAS PLANT

**RE: ALLEGED FAILURE OF THE EMPLOYER TO COMPLY WITH CLAUSE
45.2 OF THE ENTERPRISE AGREEMENT - WAGES AND CONDITIONS
OF CONTRACTORS AND LABOUR HIRE**

24 May 2017

010-2017

STATEMENT NO. 2

[1] The Panel issued a Statement on 24 April 2017 in relation to a dispute notified by the CFMEU on 10 April 2017 regarding an issue arising under Clause 45.2 of the Enterprise Agreement concerning wages and conditions of contractors. This further Statement is to be read in conjunction with the previous Statement.

[2] A further Conference with the Panel was held on 24 May 2017 at which *John Beever* and the *CFMEU* were present.

[3] Following discussion with the parties in Conference and following a discussion between the Chairperson and Mr G Collins immediately following the Conference, the Panel issued the following directions, which the parties indicated they were prepared to comply with:

Directions:

1. That *Collins Scaffolding Pty Ltd T/A Southern Rigging & Scaffolding* (Collins) provide to the parties no later than 5.00pm on Friday 2 June 2017 such relevant and adequate evidence of the wages and all entitlements paid by it to the relevant employees affected by the Dispute as is appropriate, in order for *John Beever* to assess the difference, to the extent possible, between what has actually been effected for each such employee to what would have been effected had the provisions of Clause 45.2 of the Enterprise Agreement applied. [ie. *John Beever (Aust) Pty Ltd and AMWU/CFMEU Metal Engineering On-Site Construction.*”

2. That *John Beever* will review the evidence provided by *Collins* as per Direction 1. and for *John Beever* to determine a response as to how it proposes to resolve the Dispute and to have entered dialogue with both the *CFMEU* and *Collins* for this purpose.
3. That *John Beever* will inform the Panel of the position arising from Direction 2. not later than 5.00pm on Friday 16 June 2017.
4. That, given the circumstances of this matter, the Panel urges the parties to seek a satisfactory solution to resolve the matter amongst themselves.

[4] In the event the matter is not settled, the CFMEU or either party is at liberty to seek a relisting before the Panel.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



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**RE: ALLEGED FAILURE OF THE EMPLOYER TO COMPLY WITH CLAUSE
45.2 OF THE ENTERPRISE AGREEMENT - WAGES AND CONDITIONS OF
CONTRACTORS AND LABOUR HIRE**

13 September 2017

010-2017

STATEMENT NO. 3

[1] The Panel issued Statements on 24 April and 24 May 2017 in relation to a dispute notified by the CFMEU on 10 April 2017 regarding an issue arising under Clause 45.2 of the applicable Enterprise Agreement concerning wages and conditions of contractors. This further Statement No. 3 is to read in conjunction with the previous Statements, which set out the relevant circumstances.

[2] A further Conference of the parties including the relevant sub contractor Collins Scaffolding Pty Ltd t/a Southern Rigging & Scaffolding (Collins) was conducted on 11 September 2017.

[3] In short, notwithstanding the encouragement by the Panel, the parties have not been able to settle the matter.

[4] It is apparent to the Panel that the applicable Enterprise Agreement to which both the CFMEU and John Beever are parties, makes provision for certain obligations on John Beever in relation to employees of subcontractors such as Collins, who are engaged to do work covered by the Enterprise Agreement (*Sub-clause 45.2*)

[5] From the material before the Panel it appears that for the employees engaged by Collins on the Project, for whom it had entered a contract with John Beever and conducted works during 2015 and 2016, received from their employer, Collins, terms and conditions significantly less favourable than what would have been enjoyed had the provisions of the John Beever Enterprise Agreement been effected. An employee of Collins affected by this matter was in attendance at the Conference and assisted the Panel in understanding what had occurred. The allegations, now presented by way of this Dispute notification, were raised by the employees of Collins during the period when work was being conducted, however, unfortunately it is apparent to the Panel that the issues were not adequately pursued by any party at the time. The CFMEU dispute notification was made well after completion of the works by Collins.

[6] It is not clear from the material before the Panel as to whether or not Collins met its contractual obligations in relation to payments of terms and conditions for its employees as might have been anticipated. There is some conflict as to the arrangements that led to a commercial contract being finalised, at least in so far as site allowances are concerned. The Panel does not intend to interfere with the commercial arrangements that might have been in place; and notes that the issue is complicated by other matters, including those relating to enforceability.

[7] However, it is noted that a breakdown of the hourly rates and terms and conditions including on costs that would have applied if John Beever had employed the labour that was otherwise delivered by Collins to the Project through its contract with John Beever has been provided to the CFMEU. Additional material provided to the Panel confirms a significant shortfall on this hourly rate compared to that charged by Collins to John Beever by way of invoice, however, that does not take into account overheads and profit. Collins claims that the hourly rate referred to is wrong. It was also noted by Collins that it had effected some back pay to its employees to meet its obligations.

[8] During the Conference Collins, represented by Gary Collins, agreed to meet with the CFMEU to reconcile the payments made and terms and conditions provided to its employees for the relevant periods both in respect to its industrial obligations pursuant to its applicable Enterprise Agreement and to seek to settle any argument with the CFMEU about the difference between what is claimed to be the relevant hourly rate applicable at the relevant times, had the John Beever Enterprise Agreement applied to employees, such that any disagreement about these facts (as disputed by Collins) can at least be settled. To this end, the breakdown in relation to hourly rate that it had previously provided to the CFMEU will be provided to Collins and the Panel.

[9] The Panel urges all parties to attend to these undertakings expeditiously. The Panel is hopeful that these actions may lead to a solution satisfactory to all parties. The Panel wishes to make it clear that no party is being asked to do anything that is not otherwise intended by the relevant Enterprise Agreements. The Panel also wishes to make clear its expectation that any outcome agreed by the parties will not be inconsistent with legislative obligations or any other applicable Codes or Regulations

[10] The Panel remains available to assist the parties if required and requests the CFMEU to provide an update of the actions arising from paragraph [8] by on 5.00pm 22 September 2017.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Daniel Hodges
Panel Member