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National Employment Standards submission:

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The following submission has been prepared on behalf of the Australian Spatial Information Business Association (ASIBA). ASIBA represents the private sector of the spatial information industry in Australia. Our members range from very small businesses to multi-state organisations.

The submission has only addressed those issues that we believe to be relevant to our industry.

The industry has numerous employees who are not covered by the current award/NAPSA situation. We also have a long list of complex state based awards and NAPSA's that apply to the more traditional positions.

The industry is aware of the evolution of more multi-state companies. Changes to technology and the availability of easier travel from state to state now mean that more and more employees are spending time in different states as they work on projects. The introduction of a national standard for employees, a simplified modern award system and a national minimum wage rate relevant to the modern award is welcomed.

Thank you for the opportunity to comment on the proposed National Employment Standards.

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NATIONAL EMPLOYMENT STANDARDS

1. Employees not covered by modern awards

- 1.1 In the case of managerial employees and high income employees we would recommend that the individual contract negotiated by the employer and employee should not be restricted by a requirement to comply with the NES. A minimum salary package should be stipulated for the exclusion of managerial employees as not all are necessarily on what would be recognized as high incomes in some industries.
- 1.2 However we would note that no employer should be able to prevent an employee from their right to annual leave that can and should be taken annually.
- 1.3 Other non-award employees should be covered by the NES as required minimum conditions of employment.

2. National Employment standards

(a). Maximum weekly hours

- (a)-1 Modern awards, because they will be industry specific, should define what is acceptable as “reasonable” extra hours for the industry and clarify to what extent averaging can be used and over what period.
- (a)-2 The “reasonable” hours as defined in the relevant modern award would also apply to an individual working on a part time basis.
- (a)-3 No employer should be penalized for an employee who works unauthorized hours at their own volition.

(b). Requests for flexible working arrangements

- (b)-1 “Employee with responsibility for the care of a child” should be better defined in the standards to avoid abuse of the condition. It when a parent employs a neighbour to care for their child after school. The neighbour’s employer should not be required to make special work place arrangements for what is a second paid or unpaid position. The rule should only apply to natural parents or guardians.
- (b)-2 “Reasonable business grounds” must recognise the right of the employer to refuse on occupational health and safety grounds. Working hours outside normal office hours or working from home may introduce unnecessary OHS risks.

(c). Parental leave and related entitlements

- (c)-1 In an industry that employs skilled individuals the potential of finding replacement staff for a one year contract during the current skills shortage is minimal.

- (c)-2 Extending the potential absence of an employee for a further twelve months with only four weeks notice raises several concerns. Presuming a suitable replacement has been found for the first twelve months more than four weeks notice is required to renegotiate an ongoing contract. If alternative temporary arrangements have been introduced with other staff carrying additional work load it may be unreasonable to continue this situation for a further twelve months. In a technically based industry it is unreasonable to expect that an employee can return after even twelve months to a previously held position with out considerable re-training.
- (c)-3 Providing for 'no safe job leave' adds a further potential cost to employers who are already carrying accumulated personal (sick) leave that should be used in this situation.
- (c)-4 The proposal for employers to carry the potential for additional parental leave and related entitlements burden raises a major concern that this may lead to discrimination against females when employing.

(d). Annual leave

- (d)-1 It is agreed that the progressive accruing of annual leave is a simpler process than currently exists. However the paying of leave loading for an employee who has been employed for less than 12 months is yet another additional cost to the employer. The complete removal of leave loading would further simplify the calculations relating to annual leave.
- (d)-2 The NES does not include a provision for an employer to request an employee to use accrued leave. This would be beneficial for the well being of some employees and is essential for businesses that have an annual shut down.
- (d)-3 The proposal that employees could be re-credited annual leave should a situation arise where an application for personal leave would apply is strongly opposed. Although this may be appropriate in the case of an accident that leads to hospitalisation it is a system that could easily be abused by employees whilst travelling and succumbing to food poisoning etc.

(e). Personal/Carer's leave and compassionate leave

- (e)-1 To minimise the potential that an employee could take an unlimited amount of paid compassionate leave in relation to an ongoing, life threatening illness of a family member it is suggested that the two days of paid compassionate leave should be restricted to "per occasion but once only in any twelve month period for a named family member".
- (e)-2 An employer should be able to direct an employee to use their accumulated personal leave if they believe that their presence at work causes an OHS issue. Eg An employer displaying flu like symptoms should be sent home to avoid contaminating other workers.
- (e)-3 Employers should be able to request medical evidence of illness from an employee who regularly uses personal carer's leave just prior to or after weekends or public holidays.

(f). Community service leave

- (f)-1 It is agreed that an individual called for jury duty should be paid what would be their normal base pay for the period but strongly oppose that this cost should be born by the employer. Particularly for court cases that extend over long periods the employer is already carrying the cost of engaging temporary staff to carry work load, paying penalty rates to other employees or suffering financial loss due to reduced productivity.

(g). Long Service Leave

- (g)-1 A simplified national long service leave entitlement is needed. In our industry long service leave should only be applicable to employees who have worked with one employer for a minimum period – suggest ten years. The system of recognition of a pro-rata entitlement after five years has been found to be open to abuse. A clear determination such as termination by the employer or resignation due to health reasons for pro-rata entitlements would be preferred.

(h). Public holidays

- (h)-1 When an additional day is gazetted as a public holiday, frequently because the holiday falls on a weekend, employers are sometimes then required to pay penalty rates for two days if work on a project cannot be halted. A clause is required to ensure that the intent of recognition of one working day as a holiday is all that is paid.

(i). Notice of termination and redundancy pay

- (i)-1 The proposed table for redundancy pay clearly does not take in to account a pro-rata payment for Long Service Leave after five years if terminated. One or other should apply – not both.

(j) Fair Work Information statement

- (j)-1 It would appear that the Fair Work Information statement is really relevant to new entrants to the work force. It may therefore be more relevant to provide it through the schools to school leavers, through the immigration department as information provided to applicants seeking working visas and through recruitment agencies for workers returning to the work force.