

FAIR WORK COMMISSION

Fair Work Act 2009

**Manufacturing and Associated Industries and Occupations Award 2010 (AM2014/75)
Vehicle Manufacturing, Repair Services and Retail Award 2010 (AM2014/93)**

SUBMISSIONS FOR PERMISSION TO APPEAR

Filed on behalf of Australian Business Industrial and the New South Wales Business Chamber Ltd

1. INTRODUCTION

- 1.1 On 17 November 2016, the Fair Work Commission issued directions in the above proceedings requiring any party wishing to be represented by a lawyer to file submissions addressing section 596(2) of the Fair Work Act 2009 (Cth).
- 1.2 Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) each seek permission to be represented by a lawyer in these proceedings pursuant to section 596 of the *Fair Work Act 2009* (Cth) (the **Act**), on the following two bases:
- (a) Legal representation will enable the matter to be dealt with more efficiently, taking into account the complexity of the matter (see s596(a) of the Act); and
 - (b) It would be unfair not to allow our clients to be represented, taking into account fairness between the parties in this matter (see s593(c) of the Act).

2. EFFICIENCY OF PROCEEDINGS AND COMPLEXITY - SECTION 596(2)(A)

- 2.1 In [2016] FWCFB 4418, a Full Bench of the Fair Work Commission decided that the vehicle manufacturing stream of the Vehicle Manufacturing, Repair Services and Retail Award 2010 (**Vehicle Award**) should be removed from the Vehicle Award and should instead be dealt with in the Manufacturing and Associated Industries and Occupations Award 2010 (**Manufacturing Award**).
- 2.2 A variety of complex legal issues arise from the Full Bench decision, including:
- (a) the nature of changes required to be made to the Manufacturing Award to ensure the effective transition of a stream of employers and employees not previously covered by the Manufacturing Award.
 - (b) potential issues of interaction between the Vehicle Award and the Manufacturing Award;
 - (c) questions as to whether the existing terms and conditions of the Manufacturing Award provide a fair and relevant set of minimum terms and conditions for a particular class of employees not previously regulated by the Manufacturing Award;
 - (d) whether the terms of the Manufacturing Award meet the modern awards objective set out in section 134 of the FW Act; and
 - (e) whether any terms included into the Manufacturing Award as a result of this process comply with section 138 of the FW Act.

- 2.3 Complex issues of fact and law will be considered during the conference, including the historical context of the two Modern Awards and their predecessor instruments.
- 2.4 The correct interpretation of provisions of the relevant Awards will also be considered.
- 2.5 Through legal representation, our clients will be able to put concise and considered positions in relation to the many and varied issues which will be discussed during the conference.

3. FAIRNESS - SECTION 596(2)(C)

- 3.1 No issue of unfairness arises from the grant of permission for ABI and NSWBC to be represented by lawyers.
- 3.2 The other parties participating in these proceedings are represented by experienced industrial relations practitioners, some of whom are legally qualified.

4. REQUEST FOR VIDEO-LINK FACILITY

In addition to our clients' joint request for permission to be represented by a lawyer in these proceedings, our clients also respectfully make an application for video-link facilities to be made available in the Commission's Newcastle registry for the purposes of the conference on 5 December 2016, as the relevant lawyer with the day-to-day carriage of this matter is located in Newcastle .

- 4.1 The provision of a video-link facility will ensure that our clients are able to constructively participate in the conference on 5 December 2016 in a manner which does not cause our clients to incur additional costs and time that would otherwise be incurred by travelling to Melbourne to attend in person.
- 4.2 This application for a video-link facility is consistent with section 577 of the FW Act which promotes and indeed requires the Commission's functions to be performed in a manner that, among other things, is:
 - (a) fair and just; and
 - (b) quick, informal and avoids unnecessary technicalities.
- 4.3 We note that the Commission has regularly permitted parties to appear via video-link during conferences in other matters as part of the 4 Yearly Review of Modern Awards.

If you have any questions, please contact Kate Thomson on (02) 4989 1003.



Luis Izzo & Kate Thomson

Legal representatives for the Respondent

24 November 2016