



The Australian Industry Group
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29 September 2017

The Hon. Justice IJK Ross
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: chambers.ross.j@fwc.gov.au

Dear Justice Ross,

Re. AM2015/2 Family Friendly Work Arrangements – Request for Revised Timetable

We refer to the above matter and amended directions issued by the Fair Work Commission (**Commission**) on 15 September 2017. Those amended directions require respondent parties to file comprehensive written submissions, any witness statements and documentary material on which they seek to rely by 4pm on 6 October 2017. Additional material in response to the expert report of Dr James Stanford, filed by the ACTU on 6 September 2017, is due by 4pm on 20 October 2017.

The Australian Industry Group (**Ai Group**) has made every effort to prepare its material in accordance with the Commission's directions. Regrettably, however, we will not be in a position to comply with those directions and as a result, respectfully seek the following amendment to the timetable established for the filing of material, noting that we do not envisage that it will necessitate any variation to the hearing dates. We have discussed the matter with the Australian Council of Trade Unions (**ACTU**) and understand that they support the amendments that follow:

1. Any party opposing the ACTU's claim shall file comprehensive written submissions and any witness statements or documentary material on which the party seeks to rely by **4.00 pm on ~~Friday 6~~ Monday 30 October 2017.**

~~2. Any party wishing to file additional written submissions, witness statements or documentary material in response to the Stanford report shall do so by 4pm on Friday 20 October 2017.~~

3. The ACTU and any other interested party supporting the ACTU's claim shall file any reply evidence written submissions and evidence in reply (sic) by **4.00 pm on ~~Friday 3~~ Monday 20 November 2017.**

4. The matter will be listed for a directions hearing ~~on Wednesday 8~~ **during the week commencing 27 November 2017** for the purpose of scheduling the evidence. At that



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hearing, all parties intending to participate in the hearing must be in a position to inform the Commission of the witnesses required for cross-examination, and an estimate of the length of time required for cross-examination.

5. The matter will be listed for hearing on 12-14 December 2017 and 18-22 December 2017, inclusive.

6. Liberty to apply.

Ai Group's request for the proposed changes to the timetable are made on the following bases.

Firstly, the Commission has decided to grant the ACTU's application to file the report of Dr Stanford. As we canvassed in our correspondence of 8 September 2017, the report traverses material that is not otherwise dealt with in the evidentiary case mounted by the ACTU and to that extent, raises issues that Ai Group was not preparing to respond to. In addition, it refers to a significant amount of literature that does not elsewhere feature in the ACTU's case. The ACTU served Ai Group with ten volumes of such material on 19 September 2017. We have not yet had an opportunity to properly grapple with the vast majority of that material.

Nonetheless, having now had a greater opportunity to consider Dr Stanford's report since our correspondence of 8 September, the report has resulted in a reconsideration of our approach to responding to the ACTU's case. The issues it covers necessarily colours various parts of our submissions and has caused us to reevaluate the evidentiary case that we had otherwise intended to mount. The fundamental nature of the propositions that Dr Stanford puts in his report are such that it does not lend itself to being dealt with discretely in the form of a supplementary submission or an additional witness statement(s). Rather, we consider that it has a bearing upon the very nature of the case that we would otherwise have sought to advance. Accordingly, the grant of an extension of time to file material that responds specifically to Dr Stanford's report, in practical terms, does not address our difficulty.

Secondly, as the Commission is aware, Ai Group has a significant interest in the Family and Domestic Violence Leave Clause common issues proceedings. We anticipate that we will be in a position to file our submissions by midday on Monday 2 October 2017, in accordance with the Commission's amended directions of 28 September 2017.

We note however that the scope of our reply submissions has expanded by virtue of the Background Paper published by the Commission on 15 September 2017 and more specifically, the three model clauses there proposed. Furthermore, Ai Group will appear before the Commission for the purposes of the conference listed on 11 and 13 October 2017 as well as the hearing on 19 – 20 October 2017. Those proceedings, and our preparation for them, will necessarily have a bearing on our ability to prepare our material in relation to the Family Friendly Work Arrangements common issues during that time.



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Finally, key personnel at Ai Group have recently been absent on leave including unplanned personal/carer's leave, which has further compounded the difficulties we face.

Accordingly, we respectfully request that the Commission grant Ai Group the extension of time sought.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Smith'.

Stephen Smith
Head of National Workplace Relations Policy