

From: Chambers - Lee C
Sent: Monday, 18 March 2019 2:21 PM
To: 'Juliana.Rosic@Ablawyers.com.au'
Cc: Chambers - Ross J; 'mrobson@asu.asn.au'; Leigh Svendsen; 'rachell@hsu.net.au'; 'Natalie.Dabarera@unitedvoice.org.au'; 'Stephen.Bull@unitedvoice.org.au'; 'Ruchi.Bhatt@aigroup.com.au'; 'Brent.Ferguson@aigroup.com.au'; 'nicola.shaw@afei.org.au'; Estha van der Linden; 'nsteers@ja.com.au'
Subject: RE: AM2018/26 - Social, Community, Home Care and Disability Services Award 2010 - substantive issues [ABLAW-ImanageDocs.FID135800]

Dear Parties,

I refer to the below correspondence of 15 March 2019.

Commissioner Lee will convene a Mention on **Wednesday, 20 March at 9:30am AEDT.**

Commissioner Lee will be sitting in Melbourne. Any party requiring a video-link must contact chambers.lee.c@fwc.gov.au by 12pm Tuesday, 19 March 2019.

A formal Notice of Listing will be issued later today.

Please do not hesitate to contact me if you have any queries.

Kind regards,

Sarah Martiniello
Associate to Commissioner Lee

Fair Work Commission
Tel: 03 8656 4534
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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders, past, present and emerging.

From: Juliana Rosic [mailto:Juliana.Rosic@Ablawyers.com.au] **On Behalf Of** Kyle Scott
Sent: Friday, 15 March 2019 3:37 PM
To: Chambers - Ross J
Cc: 'mrobson@asu.asn.au'; Leigh Svendsen; 'rachell@hsu.net.au'; 'Natalie.Dabarera@unitedvoice.org.au'; 'Stephen.Bull@unitedvoice.org.au'; 'Ruchi.Bhatt@aigroup.com.au'; 'Brent.Ferguson@aigroup.com.au'; 'nicola.shaw@afei.org.au'; Estha van der Linden; 'nsteers@ja.com.au'
Subject: AM2018/26 - Social, Community, Home Care and Disability Services Award 2010 - substantive issues [ABLAW-ImanageDocs.FID135800]

Dear Associate

We refer to the above matter and to the hearing listed for 12 April 2019 in respect of the contested substantive claims.

Regrettably, there have been some recent developments in the matter which affect the scope and conduct of the forthcoming hearing, which we consider require clarification.

Accordingly, our clients respectfully request that the matter be listed for mention as soon as reasonably practicable and at a time convenient to His Honour.

Specifically, we note that:

1. On 15 February 2019, the HSU filed an Amended Draft Determination which included additional claims to those which were contained in their Draft Determination filed on 9 November 2018. By way of example:
 - a) at item 3 of the Amended Draft Determination, a new subclause (d) has been included dealing with a proposed entitlement for payment for the reasonable time of travel between locations during breaks between a broken shift;
 - b) at item 16 of the Amended Draft Determination, a new claim has been included relating to work performed from home; and
 - c) at item 17 of the Amended Draft Determination, a new claim has been included relating to sleepover arrangements.
2. To our knowledge, the HSU did not seek, nor were granted, leave to advance those additional claims.
3. The additional claims that have been advanced by the HSU are related to the issues which formed part of the joint consent package that was reached in May 2017 as recorded in a Joint Report filed by the parties on or around 8 May 2017, to which all of our clients are a party. It is our understanding that the Joint Report was to be considered by the Full Bench in the upcoming hearing.
4. One of the elements of the joint consent package was that various parties agreed to withdraw certain claims.
5. It is now apparent that the HSU are seeking to pursue claims which they had previously agreed to withdraw pursuant to the consent package.
6. From recent communications with the HSU, we understand that the HSU is proceeding on the basis that the consent package is no longer on foot. Further, the HSU has indicated that it is no longer prepared to honour the consent package unless all of the employer parties to the proceeding agree to the package. His Honour would likely be aware that Ai Group was not a party to the Joint Report when it was made in 2017, and has recently raised concerns about the consent package which were ventilated during two conferences before Commissioner Lee.
7. Given the present circumstances, our clients consider that the HSU, by filing an Amended Draft Determination which is inconsistent with the agreement recorded in the Joint Report, is acting contrary to the agreed position which our clients were parties to, and in accordance with which our clients agreed to withdraw certain claims.
8. In light of this development, we consider that our clients have been prejudiced and should be given an opportunity to consider whether they wish to pursue claims that were previously withdrawn pursuant to the consent package.

We consider that it would be beneficial to all parties for the matter to be re-listed for mention so that the status of the consent package can be clarified, and to determine

what if any other directions might need to be made to deal with other substantive claims.

We appreciate that these developments have arisen very late in the process, however we consider that a Mention is necessary to enable parties to gain some clarity in relation to the matter.

Please do not hesitate to contact me should you wish to discuss.

Sincerely

Kyle Scott

Associate Director
Australian Business Lawyers & Advisors

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