



The Australian Industry Group
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3 June 2020

Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney NSW 2011

By email: chambers.hatcher.vp@fwc.gov.au

Dear Vice President,

Re. AM2020/18 Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

We refer to the above matter and an application filed by Australian Business Lawyers and Advisors (**ABLA**) on 1 June 2020 for an order requiring Life Without Barriers (**LWB**) to produce certain documents (**Application**).

LWB is a member of the Australian Industry Group (**Ai Group**). We are instructed to oppose various aspects of the Application on LWB's behalf. In broad terms, that opposition relates to concerns regarding the breadth and / or lack of clarity regarding certain aspects of the orders sought by ABLA and the likelihood that the documents sought may reveal confidential and / or commercially sensitive information.

As at the time of filing this correspondence, we are endeavouring to confirm the precise extent and nature of LWB's concerns. It appears that we will not be in a position to identify all such matters by 5pm today as directed by the Fair Work Commission (**Commission**).

It also appears that a return date of 8 June 2020 as proposed by ABLA will not be feasible. Firstly, we note that 8 June is a public holiday in various states and territories including New South Wales. Secondly, the proposed return date does not afford a sufficient period of time for LWB to identify, collate and produce the requested documents. Due to the COVID-19 pandemic, we understand that the relevant officers of LWB have limited access to their offices and as a result it is expected that a longer period of time will be required.

Further, we have received a copy of correspondence from the Australian Services Union (**ASU**) to the Commission dated 3 June 2020. In it, the ASU has proposed that the Commission list the matter for conference to facilitate discussions as to whether some or all of the documents requested by ABLA can be provided by consent.

Ai Group supports the course of action proposed by the ASU and further requests that the Commission issue directions requiring Ai Group and ABLA to confer as to the Application ahead of that conference. We note that Ai Group advised ABLA prior to and after the filing of the Application that it sought to discuss any call for documents from LWB. Regrettably, the Application was filed without such discussions taking place and since the Application was filed, ABLA has proposed that such discussions occur after the Commission has considered



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the Application. This proposition appears to proceed on the assumption that the Commission will grant the Application in the terms proposed.

In our view, however, it is clearly more appropriate that such discussions occur prior to the orders being considered by the Commission. This would enable the parties to endeavour to minimise the extent to which disputed issues need to be ventilated and determined by the Commission. In addition, ABLA's proposed course of action would leave LWB exposed to an order requiring the production of documents unless an application to vary that order was subsequently granted by the Commission.

Having regard to the various matters raised in our correspondence, we respectfully request that the Commission:

- (a) Direct ABLA and Ai Group (on behalf of LWB) to confer and report back to the Commission in writing as to whether an agreed position has been reached in relation to the Application by 2pm on 10 June 2020; and
- (b) List the matter, if convenient to the Commission, for conference on 11 or 12 June 2020 to deal with any outstanding issues.

Such an approach would also enable the parties to discuss and endeavour to reach agreement in relation to any appropriate orders that are sought from the Commission and / or undertakings that are sought from interested parties regarding confidential and / or commercially sensitive information.

Yours sincerely,

A handwritten signature in black ink that reads "Brent Ferguson".

Brent Ferguson
National Manager – Workplace Relations
Advocacy & Policy

A handwritten signature in blue ink that reads "R. Bhatt".

Ruchi Bhatt
Senior Adviser – Workplace Relations
Policy