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2 April 2019

The Hon Justice Iain Ross AO
President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

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

Dear Justice Ross,

Re. AM2018/26 Social, Community, Home Care and Disability Services Award 2010 – request for conference regarding programming and an extension

We write in relation to correspondence and material filed United Voice (UV) yesterday and the current timetable for the conduct of proceedings associated with the review of the Social, Community, Home Care and Disability Services Award 2010 (**Award**) that are scheduled to commence on 12 April 2019. For the reasons identified below, we respectfully request that the matter be called on urgently for a further mention to consider the status of the material filed by UV and whether alternate hearing dates should be set in light of this and other matters that we address below.

In relation to the UV correspondence, it appears that the union are now intending to pursue a significant additional claim in the context of the upcoming hearing listed for 12 April 2019. They have filed a further a draft determination, additional submissions and statements from two witnesses who work for an employer whose interests the Australian Industry Group (**Ai Group**) represents. The claim deals with similar subject matter to a claim advanced by the Health Services Union (**HSU**) but is substantively different in terms of the variation sought.

Given the extremely late stage at which the material is filed, Ai Group will not be able to properly respond to this material by the date that our reply is due, and we accordingly propose that it should not be dealt with in the in the course of the hearing on 12 April 2019. Moreover, we contend that it is neither fair or efficient for such a claim to be considered separately to the HSU proposal. If UV are to be afforded leave to advance this proposal, we propose that both the HSU and UV proposals should be dealt with at a later point.

Ai Group understands that several employer groups, including ABI and the NSWBC, will also shortly file additional claims seeking variations to the Award and that there will be an overlap between the clauses that the employer and unions parties seek to vary and the submissions and evidence relevant to the Commission's consideration of such proposals.

Separate to the abovementioned employer claims, ABI and the NSWBC have also now advanced a claim to vary the Award to include a new type of employment (**Flexible Ongoing Employment Claim**). It appears that this claim will directly overlap with other claims scheduled to be dealt with at the hearing next week.

We also note that in recent days the Commonwealth Government has announced very significant changes to the funding arrangements associated with the NDIS which we



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understand will commence on 1 July 2019. Although the full details of such changes have not yet been revealed, and we have accordingly not yet been able to consult with industry in relation to the changes, we anticipate that this development will likely be relevant to the review of the Award and consideration of the unions' claims. Ai Group will contend that a central issue for consideration in this context will be the compatibility of the proposed Award variations with the NDIS pricing structure and the consequent capacity for employers to meet costs flowing from the claims.

Given the abovementioned developments, we contend that it will not be appropriate to proceed with hearing all of the current claims on 12 April 2019.

The Commission has listed a conference concerning the Award for tomorrow at 1pm, for the purposes of dealing with the Flexible Ongoing Employment Claim. We respectfully request that proceedings associated with the claims to vary the Award more broadly be listed concurrently. This would enable the respective matters to be dealt with in a coordinated manner.

In advancing this request we are conscious that the Commission has declined a previous request by ABI and the NSWBC to vacate the current timetable and has indicated, in effect, that parties can raise procedural issues on the 12 April 2019. However, it appears to us that the abovementioned developments have either in part occurred subsequently or were not previously raised and would warrant the hearing of many of the claims currently on foot being delayed to at a later point in time. We accordingly thought it proper to raise such matters now so as to minimise any potential inconvenience to the members of the Full Bench and the parties that may arise from us raising them at the commencement of the hearing.

At the very least, the proposed conference may enable some clarification as to the manner in which the hearing will proceed and whether it is likely that the four days that have been set aside between 15 and 18 April 2019 for a hearing will be utilised or whether there will be a need for a second set of dates.

Finally, although we are currently endeavouring to work within the truncated timetable for filing submissions, so as to avoid seeking that the current hearing dates be vacated, we anticipate that we will need to request a short extension to finalise our material. It is likely that we would require an extension until 4pm Tuesday, 8 April 2019. In support of this request we observe that the unions have received multiple extensions and in some instances filed their material late. We also note that the unions have ultimately filed several additional and different claims to those that were identified when the initial directions were set and that they have also filed substantial volume of material in support. The request has also been necessitated by developments in a number of other award review proceedings in which we are engaged. We can provide additional information in relation to this last point should it be necessary.

We thank the Commission for its consideration of this request.

Yours faithfully

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

Brent Ferguson
National Manager – Workplace Relations Policy

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

Ruchi Bhatt
Senior Advisor



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