



Fair Work Commission: 4 yearly review of modern awards

SUBMISSION:

In respect of Statement [2017] FWC 2189

AM2015/2

AM2014/190

AM2013/30

AM2014/286

Australian Chamber of Commerce and Industry

Australian Business Industrial and

NSW Business Chamber Ltd

5 MAY 2017

1. BACKGROUND

- 1.1 We refer to Statement [2017] FWC 2189 issued on 18 April 2017 with respect to “4 Yearly review of modern awards - Family & Domestic Violence Leave Clause and arrangements for Other Matters” (**Statement**).
- 1.2 The Statement requires interested parties to indicate whether they continue to pursue their claims and whether the Full Bench should be reconstituted in the respective matters.
- 1.3 We represent the following parties in respect of the following relevant matters:

Matter	Parties Represented
AM2015/2 - Family Friendly Work Arrangements	Australian Chamber of Commerce and Industry (Australian Chamber), Australian Business Industrial (ABI) and the NSW Business Chamber (NSWBC).
AM2014/190 - Transitional Provisions - District Allowances	ABI and NSWBC
AM2013/30 and AM2014/286 - Supported Employment Services Award 2010	ABI and NSWBC

(Chamber Matters)

2. SHOULD THE FULL BENCH BE RECONSTITUTED IN THESE MATTERS?

- 2.1 For the reasons set out in the Australian Chamber’s:
- (a) written submissions in Response to Statement [2017] FWC 1733 dated 3 April 2017 in AM2015/1; and
- (b) oral submissions during the hearing on 4 April 2017;
- (which we rely upon), we submit that the Full Bench assigned to each of the Chamber Matters should be reconstituted by another member taking the place of the now retired Watson VP (assuming that those Full Benches are currently constituted by less than 3 members).
- 2.2 In summary, this is because in respect of each of the matters, Watson VP has become “unavailable” to continue dealing with the matter before the matter has been “completely dealt with”¹.
- 2.3 As such, s 622(3) requires that the President direct another FWC Member to form part of the Full Bench.
- 2.4 In relation to the specific circumstances of each of the Chamber Matters referred to in the Statement, we comment as follows:

¹ See 622(1) of the *Fair Work Act 2009* (Cth)

3. ITEM 1 - AM2015/2 - FAMILY FRIENDLY WORK ARRANGEMENTS

- 3.1 Our clients do not have claims in this matter.
- 3.2 The matter has been timetabled and the initial directions require the Australian Council of Trade Unions (**ACTU**) and any other interested party supporting the ACTU's claim to file submissions and evidence by 5 May 2017.
- 3.3 The Commission has reserved the weeks of 10 and 17 October 2017 for evidence and cross-examination.
- 3.4 Once the Full Bench is re-constituted, the dates for the hearing of the matter should be confirmed, subject to the convenience of the re-constituted Full Bench.

4. ITEM 4 - AM2014/190 - TRANSITIONAL PROVISIONS - DISTRICT ALLOWANCES

- 4.1 Our clients do not have claims in this matter.
- 4.2 As noted in the Statement, the parties have exchanged submissions regarding their claims and no further directions or orders have been made.
- 4.3 In light of the length of time that has elapsed since the matter was before the Commission, it is appropriate that, following reconstitution of the Full Bench, a directions hearing be held to determine the further programming of the matter.

5. ITEM 5 - AM2013/30 AND AM2014/286 - SUPPORTED EMPLOYMENT SERVICES AWARD 2010 (SESA)

- 5.1 Our clients continue to pursue their claims in these matters.
- 5.2 In relation to AM2013/30, United Voice (**UV**) indicated during the conference for AM2014/286 on 21 April 2017 that the moving parties, being UV and the Health Services Union (**HSU**), would be discontinuing this application forthwith on the basis of the agreement in principle reached during the (now concluded) conferences for AM2013/30, being to vary the SESA to replace the standard form Supported Wage System tool (**SWS**) with the modified form SWS (**MSWS**) for Australian Disability Enterprises (**ADEs**), as an optional wage assessment tool along with other such tools available to ADEs, subject to appropriate amendments being made to the Federal Government Guidelines.
- 5.3 The agreement reached in principle in AM2013/30 outlined above is without prejudice to the parties in relation to the substantive issue arising from that application, being the treatment of existing/new wage assessment tools apart from the SWS/MSWS, which are being dealt with (*inter alia*) in the AM2014/286 award review process. In relation to this issue, it is clear that the parties are highly unlikely (at this juncture, in any event) to reach a conciliated outcome.
- 5.4 During the last conference in AM2014/286 on 21 April 2017 it was discussed with DP Booth that:
 - (a) given the resolution in principle now reached in relation to the MSWS issue (as outlined above), the parties will now focus their efforts on preparing a merit-

based case associated with the wage assessment tool issue, amongst other substantive matters in dispute; and

- (b) respectfully request that programming of the timetabling for filing of materials in this matter allow a period of at least three months for the simultaneous filing by the parties of draft determinations, to be followed, in due course, by evidence and submissions.

5.5 If you have any questions in relation to the above, please contact Julian Arndt.



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