



21 March 2017

Our Ref: 20140517

Your Ref: AM2014/285

BY EMAIL amod@fwc.gov.au

ABN 76 008 556 595
140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059
DX 10541 North Sydney
t: 1300 565 846
f: +61 2 9954 5029
ablawyers.com.au

Award Modernisation Team
Fair Work Commission

Dear Sir/Madam

4 YEARLY REVIEW OF MODERN AWARDS - SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010 (AM2014/285)

We refer to the above proceedings and confirm that we act for Australian Business Industrial (**ABI**) and the New South Wales Business Chamber (**NSWBC**).

Pursuant to the Directions of the Commission dated 7 February 2017 (**Directions**), interested parties were directed to file a short submission confirming the substantive claims being pursued, those substantive claims no longer being pursued and, in relation to claims being pursued, outlining:

- (a) the nature of the change sought;
- (b) a draft variation determination;
- (c) the type of case to be run (merits or evidentiary based); and
- (d) if the case is evidence-based, how many witnesses will be called?

1. CURRENT STATUS OF PROCEEDINGS

- 1.1 Since the making of those Directions, the matter was listed for a mention before Vice President Catanzariti on 14 March 2017, during which the parties informed the Commission that negotiations in relation to a package of proposed consent variations addressing a number of key claims was well-progressed, but that additional time was required to reach a concluded position.
- 1.2 The Vice President then listed the matter for a further mention and report back on 20 April 2017.
- 1.3 In light of the above, the Directions of 7 February 2017 have been displaced (to some extent at least) by reason of the fact that without prejudice discussions between the parties remain ongoing.

21 March 2017

4 YEARLY REVIEW OF MODERN AWARDS - SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010 (AM2014/285)

1.4 In the circumstances, our clients are not currently in a position to provide a final indication as to the claims that they will pursue. Nevertheless, in accordance with the Directions we set out our clients' position in relation to this matter as follows.

2. PROPOSED PACKAGE OF CONSENT VARIATIONS

2.1 As stated above, the parties are continuing discussions on a suite of proposed variations, and it is anticipated that such discussions will be concluded by 20 April 2017. The suite of proposed variations may resolve a number of matters which are also dealt with in our clients' substantive claims, such as issues relating to hours of work (and how these are arranged), sleepovers, and recall to work.

2.2 Accordingly, if the Proposed Package be agreed to, it is likely that our clients will withdraw a number of substantive claims.

3. OUR CLIENTS' SUBSTANTIVE CLAIMS

3.1 Our clients have flagged their intention to pursue a range of variations to the SCHCDSI Award, including:

- (a) variation to clause 25.1 to increase the maximum ordinary hours of work per shift (Item 25);
- (b) variation to clause 25.3 to replace the words "two full days" with the words "48 hours" to resolve any potential ambiguity surrounding the requisite period of the break between duty (Item 26);
- (c) variation to clause 25.4 to reduce the minimum breaks between shifts (Item 27);
- (d) variation to clauses 25.5 and 25.6 to relax some of the obligations concerning the display of rosters and changes to rosters to reflect the increasingly changeable nature of work in the industry (Item 33);
- (e) variation to clause 25.6 to increase the spread of hours over which a broken shift may be worked and extending the operation of broken shifts to all employees {not just social and community services employees when undertaking disability services work and home care work} (Item 35);
- (f) variation to clause 25.7 to allow sleepovers to count as a break between shifts in certain circumstances and subject to certain conditions (Item 39);
- (g) variation to clause 28.4 to clarify when overtime rates are payable when recalled to work (Item 53); and
- (h) variation to clause 29 to amend the shift definitions, clarify the interaction between overtime rates and penalty rates, and clarify the appropriate penalty rates that apply to work performed before or after sleepovers (Item 55).

21 March 2017

4 YEARLY REVIEW OF MODERN AWARDS - SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010 (AM2014/285)

4. CLAIMS WHICH OUR CLIENTS INTEND TO PURSUE

4.1 Our clients' respective positions on this question will largely depend on the outcome of the current without prejudice discussions. If no agreement is reached in respect of the suite of proposed variations, our clients will reassess their positions at that time, but will likely pursue some or all of the variations set out at paragraph 3.1 above.

5. CLAIMS WHICH OUR CLIENTS ARE NO LONGER PRESSING

5.1 Again, our clients' positions on this matter will depend on outcome of current discussions. If agreement is reached, our clients will likely withdraw part of their substantive claims.

5.2 In addition, we note that the issue raised as Item 26 appears to have been incorrectly identified by us as a substantive issue. This item is more appropriately addressed as part of the technical and drafting proceedings for this Award, and accordingly is no longer pressed as a substantive issue.

If you have any questions, please contact Kyle Scott on (02) 9458 7607.

Yours faithfully



Luis Izzo
Director

Australian Business Lawyers & Advisors Pty Ltd
(02) 9458 7640
Luis.Izzo@ablawyers.com.au



Kyle Scott
Senior Associate

Australian Business Lawyers & Advisors Pty Ltd
(02) 9458 7607
Kyle.Scott@ablawyers.com.au