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10 May 2017

The Hon IJK Ross, President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

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

Dear Justice Ross

Re. AM2015/1 – 4 yearly review of modern awards – Family & Domestic Violence Leave Clause – reconstitution of the Full Bench

I refer to the abovementioned proceedings and your statement of 28 April 2017 concerning the proposed referral of questions of law to the Federal Court pursuant to s.608 of the *Fair Work Act 2009* (Cth) (**FW Act**).

Whether to refer one or more questions of law arising in a matter before the Fair Work Commission for the opinion of the Federal Court, pursuant to s.608 of the FW Act, is a matter for the discretion of the President.

Ai Group has advanced both written and oral submissions in response to questions raised in your Statement of 27 March 2017 regarding the constitution of the Full Bench in AM2015/1. In these submissions we have argued that there is no impediment to Deputy President Gooley and Commissioner Spencer handing down their decisions and that it is appropriate for them to do so. We do however acknowledge that there are conflicting submissions before you in relation to such matters, that the relevant issues are novel, and that the issues have a potentially significant practical impact.

In the event that you decide to exercise your discretion to refer questions of law to the Federal Court, Ai Group does not propose any amendments to the questions contained in paragraph 10 of Attachment A to your Statement of 28 April 2017. However, we wish to make the following comments about other paragraphs in the Statement of Facts in Attachment A.

Ai Group concurs with paragraphs 1-6 and 8-20 in the Statement of Facts.

Paragraph 7 in the Statement of Facts is worded as follows:

7. On 20 February 2017 Vice President Watson provided the other Members of the Full Bench with a draft of his decision in matter AM2015/1 which did not include his final conclusion.

Ai Group is not in a position to know whether paragraph 7, as drafted, is a fact. With no disrespect to Deputy President Gooley and Commissioner Spencer, we note that there have been prominent media reports quoting Mr Watson as disagreeing with some of the content of their memorandum of 23 March 2017 to the President. These media reports also quote Mr Watson as stating that he advised Deputy President Gooley and Commissioner Spencer of his intention to reject the ACTU's claims in December last year.



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In the circumstances, we propose that the words “*which did not include his final conclusion*” be deleted from paragraph 7.

Yours sincerely

Stephen Smith
Head of National Workplace Relations Policy