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Sent: Thursday, 3 June 2021 3:17 PM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: Ruchi Bhatt <ruchi.bhatt@aigroup.com.au>; Kyle Scott <Kyle.Scott@ablawyers.com.au>; Tony Doyle <tony.doyle@afei.org.au>; 'peggms24@gmail.com' <peggms24@gmail.com>; AMOD <AMOD@fwc.gov.au>
Subject: AM2018/26 Social, Community, Home Care and Disability Services Industry Award 2010 - Joint Correspondence

Dear Associate,

We write in relation to the above matter and **attach** correspondence requesting a variation to the directions issued by the Fair Work Commission to accommodate an extension of time for the filing of material by interested parties.

The application is made jointly by the following organisations:

- (a) The Australian Industry Group (**Ai Group**);
- (b) The Australian Federation of Employers and Industries;
- (c) Australian Business Industrial;
- (d) Business NSW (formerly the NSW Business Chamber);
- (e) Aged and Community Services Australia; and
- (f) Leading Age Services Australia.

In addition, Ai Group understands that National Disability Services also supports the proposed amendments to the current directions and we have copied their representative into this email.

We respectfully request that this email and the attached correspondence are uploaded to the Commission's website and brought to the attention of the Full Bench.

Regards,

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Advocacy & Policy



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3 June 2021

The Hon. Justice IJK Ross
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 Industry Award 2010 – Request for Extension of time

We refer to the above matter and a decision¹ issued by the Fair Work Commission (**Commission**) on 4 May 2021 (**Decision**). At paragraphs [1288] – [1293] of the Decision, the Commission set out its directions relating to the future conduct of the matter. Relevantly, it directed parties to file any submissions and evidence in relation to the draft determination published alongside the Decision and the provisional views expressed by the Commission in the Decision, including its provisional view that the proposed variations to the *Social, Community, Home Care and Disability Services Industry Award 2010* (**Award**) should commence operation on 1 October 2021, by 4pm on 22 June 2021.

Since the Decision was issued, the Australian Industry Group, the Australian Federation of Employers and Industries, Australian Business Industrial, Business NSW (formerly the NSW Business Chamber), Aged and Community Services Australia and Leading Age Services Australia (collectively, **Associations**) have been consulting their respective memberships in relation to the Decision and the variations to the Award that are being contemplated as a consequence of the Decision.

Though the Associations have not yet had an opportunity to complete their consultation processes, the relevant discussions that have occurred to date suggest that a number of employers covered by the Award have serious concerns about the significant implications that the Decision will have for their operations, employees and clients. These concerns have been exacerbated by the absence of any indication from the relevant government bodies that the cost increases that will flow from the Decision will be funded through the relevant schemes.

¹ [2021] FWCFB 2383.

The Associations understand that a significant proportion of their memberships are still evaluating the precise impact that the Decision will have on their operations, whilst others are continuing to evaluate how their arrangements could be modified in order to mitigate the impacts flowing from the Decision as well as to ensure that their arrangements comply with the Award as proposed to be varied. Importantly, the Associations' constituents have overwhelmingly advised that the proposed operative date of 1 October 2021 does not permit a sufficient period of time to complete their evaluation of the Decision, have appropriate consultation with clients regarding the changes to their pricing and the services provided and implement the necessary changes to their operations especially regarding staffing; nor does it enable an adequate opportunity to engage with the relevant institutions about their funding arrangements.

Accordingly, the Associations jointly write to request that the directions issued by the Commission be varied as follows:

- (a) The direction requiring the filing of materials by 4pm on 22 June 2021 be varied such that parties are not required to do so until 17 August 2021.
- (b) The hearing listed on 30 June 2021 be vacated and relisted on a date that follows the filing of the aforementioned materials.

The Associations propose the revised timeframe having regard to the following considerations:

- (a) The number, nature and extent of the variations proposed to be made to the Award. The Associations' discussions with their members to date suggest that the proposed changes, individually and cumulatively, will have a profound impact on many employers covered by the Award because they significantly change fundamental aspects of their operations. The Associations have variously been informed by some of their members that at least in the absence of changes to government funding, the proposed changes will require major changes to their service delivery model. There are also clear financial implications that members are still working through, in an environment where many service providers are already operating at a deficit.
- (b) As mentioned above, many employers with whom the Associations have engaged are continuing to assess the impact that the Decision will have on their operations. Until they have had an opportunity to complete this process, they have indicated that they will not be in a position to provide further feedback, which might then inform the position that is ultimately advanced by the Associations in these proceedings.
- (c) As a consequence, the Associations' consultation process with their members is at a relatively early stage. The Associations seek additional time to file their material, in part, to ensure that the material ultimately advanced properly reflects the position and concerns of their members.

- (d) Notwithstanding this, the Associations anticipate that they will seek to file detailed submissions and some evidence in relation to the relevant matters in issue and in particular, regarding the proposed operative date. The Associations are actively working with their members to understand the nature of the evidence that they might be able to provide to the Commission. However, for the reasons articulated at paragraph (b) above, a further period of time is required to enable a proper assessment of what evidence might be able to be called. In addition, the Associations have sought to ensure that the proposed timetable contemplates a sufficient period of time for the development of submissions and evidence that are of assistance to the Commission.
- (e) The Associations are concurrently endeavouring to advance discussions amongst the parties concerning the matters that were the subject of a conference before the Commission on 27 May 2021. The outcome of those discussions may have some bearing on the materials that they seek to advance in relation to the provisional views expressed by the Commission in relation to the relevant claims.
- (f) Some of the Associations are concurrently involved in other award proceedings before the Commission including, most notably, the '*Casual Award Terms Review 2021*', in which the parties are required to file submissions in reply on 16 June 2021. Further, the matter has been listed for a hearing on 24 – 25 June 2021. Some are also involved in the three work value applications relating to the aged care sector which are currently before the Commission.
- (g) The matters described at paragraphs (e) and (f) above are necessarily limiting the extent to which the relevant Associations are presently able to devote their resources to this matter. We note though that, even absent the conduct of such proceedings, the Associations would seek the proposed variation to the current directions.

The Associations thank the Commission for its consideration of their request.

Yours sincerely,



Brent Ferguson
National Manager – Workplace
Relations Advocacy & Policy
Australian Industry Group



Tony Doyle
Director, Workplace
Relations
**Australian Federation
of Employers and
Industries**



Kyle Scott
Director
Australian Business
Lawyers & Advisors
**on behalf of ABI,
Business NSW, Aged
and Community
Services Australia and
Leading Age Services
Australia**