

Working for business.
Working for Australia

AM2015/1 Family & Domestic Violence Clause and Other Matters

Submissions in Response to
Statement [2017] FWC 2347
11 May 2017



Australian
Chamber of Commerce
and Industry

1. INTRODUCTION

- 1.1 On 28 April 2017 the Fair Work Commission (the **Commission**) issued a Statement [2017] FWC 2347 in Matter No. AM2015/1 (the **Matter**).
- 1.2 The Statement outlines the President's provisional view that a number of questions of law in the Matter should be referred to the Federal Court of Australia pursuant to s 608(1) of the *Fair Work Act 2009* (Cth) (**FW Act**).
- 1.3 Paragraph [26] of the Statement requests as follows:

The parties that appeared at the hearing on 4 April 2017 and any other interested persons are requested to provide submissions on the provisional view that a referral should be made to the Federal Court and also on the contents of the Attachment by 4 pm on Wednesday 10 May 2017. In particular, the parties are asked either to confirm that they concur with the proposed statement of facts and that in the context of those facts the Court's answers to the questions will dispose of the issue, or to propose alterations or additions to the statement of facts or the questions.

2. REFERRAL TO THE FEDERAL COURT

- 2.1 Given that the current issues are administrative in nature and do not deal with the merits of the Matter, the issues should be resolved in the most efficient manner available.
- 2.2 There is a real controversy before the Commission, as the interested parties have advanced different views on how the FW Act is to be interpreted and applied in the Matter.
- 2.3 In so far that referral to the Federal Court can provide an efficient and practical resolution to this real controversy, the Australian Chamber raises no objection to such a course.

3. THE PROPOSED STATEMENT OF FACTS

- 3.1 As is necessary the Statement sets out a proposed "statement of facts" (the **Proposed SOF**) in Attachment A to the Statement.
- 3.2 The Proposed SOF is set out in paragraphs [1]-[9] and [11]-[20].
- 3.3 Paragraph [7] asserts that Vice President Watson provided an incomplete copy of his decision to the other members of the Full Bench on 20 February 2017.
- 3.4 Paragraph [8] asserts that at or about 27 February 2017 Deputy President Gooley and Commissioner Spencer were not able to issue their decision or decisions at that time.
- 3.5 Paragraph [12] asserts that on 23 March 2017 Deputy President Gooley and Commissioner Spencer sent an internal Commission Memorandum to the President.
- 3.6 That Memorandum is contained in Attachment 2 to the Proposed SOF.
- 3.7 The Australian Chamber has no reason to doubt that paragraphs [7], [8] and [12] and Attachment 2 are correct and complete statements of fact, but is equally unable to confirm that they are correct and complete. They concern internal communications of the Commission to which the Australian Chamber was not privy. It is likely that the other parties to the proceeding may be similarly unable to positively endorse those parts of the SOF.
- 3.8 That potential difficulty need not be confronted because the relevant questions of law can be determined without reference to paragraphs [7], [8] (second sentence), [12] or Attachment 2. The best course, in the Australian Chamber's respectful submission, is to omit those parts of the SOF.

3.9 Subject to those matters, the Australian Chamber considers the Proposed SOF is correct.

4. THE PROPOSED QUESTIONS OF LAW

4.1 The parties are asked whether, in the context of the Proposed SOF, the Federal Court's answers to the proposed questions will dispose of the relevant issues before the Commission.

4.2 The Australian Chamber considers that, if accepted as appropriate and answered by the Federal Court, the proposed questions **will** dispose of the relevant issues. It may be possible however to further distil the questions to the following:

1. Is the President of the Fair Work Commission required to appoint another member of the Fair Work Commission to the Full Bench in Matter AM2015/1?
2. If the answer to question 1 is yes, is the new member of the Full Bench required under the FW Act to issue a decision in Matter AM2015/1?
3. Does the decision of Vice President Watson in Matter AM2015/1 dated 27 February 2017 form part of the decision of the Full Bench in matter AM2015/1?

Australian Chamber Members

AUSTRALIAN CHAMBER MEMBERS: BUSINESS SA CANBERRA BUSINESS CHAMBER CHAMBER OF COMMERCE NORTHERN TERRITORY CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA NEW SOUTH WALES BUSINESS CHAMBER TASMANIAN CHAMBER OF COMMERCE & INDUSTRY VICTORIAN CHAMBER OF COMMERCE & INDUSTRY **MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE, COSMETIC & SPECIALTY PRODUCTS INDUSTRY AGED AND COMMUNITY SERVICES **ANIMAL MEDICINES AUSTRALIA AUSTRALIA ARAB CHAMBER OF COMMERCE AND INDUSTRY AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION ASSOCIATION OF FINANCIAL ADVISERS ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION AUSTRALIAN BEVERAGES COUNCIL LIMITED AUSTRALIAN DENTAL ASSOCIATION AUSTRALIAN DENTAL INDUSTRY ASSOCIATION AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES AUSTRALIAN FEDERATION OF TRAVEL AGENTS AUSTRALIAN HOTELS ASSOCIATION AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP AUSTRALIAN MADE CAMPAIGN LIMITED AUSTRALIAN MINES & METALS ASSOCIATION AUSTRALIAN PAINT MANUFACTURERS' FEDERATION AUSTRALIAN RECORDING INDUSTRY ASSOCIATION **AUSTRALIAN RETAILERS' ASSOCIATION AUSTRALIAN SELF MEDICATION INDUSTRY AUSTRALIAN STEEL INSTITUTE AUSTRALIAN TOURISM INDUSTRY COUNCIL AUSTRALIAN VETERINARY ASSOCIATION BUS INDUSTRY CONFEDERATION BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS CARAVAN INDUSTRY ASSOCIATION OF AUSTRALIA CEMENT CONCRETE AND AGGREGATES AUSTRALIA CHIROPRACTORS' ASSOCIATION OF AUSTRALIA CONSULT AUSTRALIA CUSTOMER OWNED BANKING ASSOCIATION CRUISE LINES INTERNATIONAL ASSOCIATION DIRECT SELLING ASSOCIATION OF AUSTRALIA EXHIBITION AND EVENT ASSOCIATION OF AUSTRALASIA FITNESS AUSTRALIA **HOUSING INDUSTRY ASSOCIATION HIRE AND RENTAL INDUSTRY ASSOCIATION LTD LARGE FORMAT RETAIL ASSOCIATION LIVE PERFORMANCE AUSTRALIA MASTER BUILDERS AUSTRALIA MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA MEDICINES AUSTRALIA NATIONAL DISABILITY SERVICES NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION NATIONAL EMPLOYMENT SERVICES ASSOCIATION NATIONAL FIRE INDUSTRY ASSOCIATION NATIONAL RETAIL ASSOCIATION NATIONAL ROAD AND MOTORISTS' ASSOCIATION NSW TAXI COUNCIL NATIONAL ONLINE RETAIL ASSOCIATION **OIL INDUSTRY INDUSTRIAL ASSOCIATION OUTDOOR MEDIA ASSOCIATION PHARMACY GUILD OF AUSTRALIA PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA PLASTICS & CHEMICALS INDUSTRIES ASSOCIATION PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA RESTAURANT & CATERING AUSTRALIA RECRUITMENT & CONSULTING SERVICES ASSOCIATION OF AUSTRALIA AND NEW ZEALAND SCREEN PRODUCERS AUSTRALIA THE TAX INSTITUTE VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE********