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18 July 2016

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

Dear Justice Ross,

**Re. AM2016/15 Plain language drafting – proposed process and indicative timetable**

We refer to the above matter and a statement issued by Your Honour on 15 July 2016 ([2016] FWCFB 4756). Pursuant to the directions set out at paragraphs [41] – [42] of that statement, we write to provide comment regarding the proposed process and indicative timetable therein.

**Redrafting of the *Clerks – Private Sector Award 2010***

Your Honour's statement proposes the following process in respect of the *Clerks – Private Sector Award 2010 (Clerks Award)*:

- A revised *Exposure Draft – Clerks – Private Sector Award 2016 (Exposure Draft)* was to be published on 15 July 2016, reflecting changes that have been agreed between interested parties, as documented in Deputy President Clancy's report to the Full Bench, dated 3 June 2016 (**Clancy DP's report**).

We note that at the time of drafting this correspondence, a revised Exposure Draft has not been published. We also observe that Clancy DP's report was superseded, in certain respects, by the hearing before Your Honour on 6 June 2016, during which the parties confirmed their position in respect of each item contained in the Commission's summary of submissions dated 23 May 2016. It is our understanding that the transcript of those proceedings reflects the most recent position of the parties.

- Interested parties will be given an "opportunity to comment on the revised exposure draft insofar as it reflects" Clancy DP's report.

We understand this to mean that parties will have an opportunity to comment on whether the revised Exposure Draft properly reflects the matters identified as having been agreed in Clancy DP's report, as compared to an opportunity to make submissions regarding any other technical and drafting issues arising from the revised Exposure Draft or regarding contentious technical and drafting matters previously raised that remain outstanding.

- The revised Exposure Draft will form the basis of the plain language redrafting process. A process of consultation will follow.

The Australian Industry Group (**Ai Group**) considers that there is merit in resolving outstanding technical and drafting issues arising from the Exposure Draft, before a further process of redrafting is undertaken by the Commission. To the extent that such a process ensures that any contentious issues are not liable to perpetuation, this would assist. We anticipate that it would ensure that the process that follows the plain language redrafting of the Clerks Award deals only with those matters that arise afresh from the new draft instrument.

Accordingly, we propose that the following course be adopted by the Commission in respect of the Clerks Award:

- A further conference be listed before the Commission, for the purposes of discussing the few remaining outstanding technical and drafting issues arising from the Exposure Draft published on 18 December 2015;
- A revised Exposure Draft be published by the Commission thereafter, which reflects changes that have been agreed between the parties, having regard to the transcript of proceedings on 6 June 2016;
- Interested parties be given an opportunity to file submissions and submissions in reply regarding any outstanding technical and drafting issues as well as any additional concerns arising from the revised Exposure Draft;
- The Commission consider determining any such outstanding matters based on the material before it;
- The plain language redrafting of the Clerks Award be undertaken on the basis of a version of the Exposure Draft that reflects the matters agreed between the parties and to the extent relevant, matters determined by the Commission.

If the Commission is not minded to adopt this approach, we respectfully request that parties be provided until 26 August 2016 (in lieu of 29 July 2016) to file submissions regarding a revised Exposure Draft. We make this request in light of the significant number of award review proceedings in which Ai Group will be involved over the coming weeks including:

- Commission proceedings regarding specific awards on 19 July 2016, 20 July 2016, 22 July 2016, 26 July 2016, 28 July 2016, 1 August 2016, 4 August 2016 and 8 August 2016.
- Submissions in reply regarding most group 4A – 4C are to be filed by 21 July 2016 and 3 August 2016.
- Submissions regarding various aspects of the casual and part-time common issues are to be filed by 22 July 2016 and 5 August 2016. Final hearings before the Full Bench will be conducted on 15 – 19 August 2016.
- Commission proceedings regarding the payment of wages claims on 27 July 2016.
- Material concerning certain group 2 awards, the National Training Wage Schedule, the award flexibility common issues, the annual leave common issues and general issues arising from the exposure drafts is also to be filed during the intervening period.

With reference to the remaining indicative timetable set out at Attachment A to Your Honour's statement in respect of the Clerks Award, we make the following observations:

- It has been our experience during this Review that interested parties benefit from the

filing of submissions in reply concerning technical and drafting issues arising from the exposure drafts, prior to the conduct of any proceedings. Such a process puts the parties and the Commission on notice as to the position of other organisations regarding the concerns each has raised, and enables parties to give consideration to those submissions before attending the Commission.

For the purposes of ensuring the efficient conduct of any conferences to be listed, we suggest that the timetable developed by the Commission contemplate the filing of submissions in reply to those required to be filed by 11 November 2016.

- The Commission proposes to list a conference during the week commencing 21 November 2016. We note that the family and domestic violence leave common issues (AM2015/1) have been listed for hearing before a Full Bench of the Commission on 14 November 2016 – 2 December 2016. In addition, submissions in respect of group 4D – 4F exposure drafts are due by 24 November 2016. We anticipate that these matters will place a significant strain on our resources during the week commencing 21 November 2016. Accordingly, we respectfully request that a conference in respect of the Clerks Award be listed not before 5 December 2016.

**Redrafting of the *Hospitality Industry (General) Award 2010*, the *Restaurant Industry Award 2010* and the *General Retail Industry Award 2010***

The observations made above regarding the desirability of implementing a process for the filing of submissions in reply are also apposite regarding the redrafting of the *Hospitality Industry (General) Industry Award 2010*, the *Restaurant Industry Award 2010* and the *General Retail Industry Award 2010*.

Yours sincerely,



**Stephen Smith**  
Head of National Workplace Relations Policy