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29 September 2023

Justice Hatcher, President
Fair Work Commission
80 William Street
East Sydney NSW 2011

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

Dear Justice Hatcher,

Re. 2023/21 Modern Awards Review 2023 – 24 – Draft timetable

We refer to the above matter and the statements published by Your Honour on 15 September 2023 and 26 September 2023¹, including the draft timetable set out in the latter. We write in relation to various matters arising from the draft timetable, ahead of proceedings listed before the Fair Work Commission (**Commission**) on 3 October 2023. We can speak to these matters further at that time.

First, we suggest that a directions hearing is listed after submissions have been filed and before the consultation process starts, in respect of each of the above matters, for the purposes of enabling the parties to be heard as to how the consultation process should be programmed or scheduled.

For instance, part of the review will relate to '*making awards easier to use*' (**Making Awards Easier**). In our view, a directions hearing should be listed after submissions in response have been filed, before the consultation process starts. That hearing would enable parties to be heard in relation to matters such as:

- (a) Whether certain awards or proposals advanced should be dealt with jointly, because they give rise to similar issues and / or involve the same parties; and
- (b) The availability of parties to attend consultation conferences on specific days. This is particularly relevant because the draft timetable contemplates conferences being listed about more than one matter at the same time. For example, during the period of 19 February 2023 – 8 March 2024, the Commission proposes to conduct conferences regarding the issue of job security and in relation to Making Awards Easier.

Second, it is proposed that interested parties will be required to file '*submissions*' and '*submissions in response*' in relation to any proposals that are advanced in the context of Making Awards Easier. In our submission, any such directions should require parties to file only an outline of submissions. That is, parties should not be required to ventilate their arguments in full at this early stage in the review. Rather, an outline that identifies the key

¹ *Modern Awards Review 2023-24* [2023] FWC 2481.



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grounds and reasons in support of, or in opposition to, proposed variations should suffice. This is particularly so given that a process of conferences will follow, during which parties will have an opportunity to further advance the bases for and against any proposals.

In making this submission, we have also had regard to the cumulative demands that the foreshadowed process is likely to place on our resources and our capacity to concurrently prepare material in respect of various aspects of the review, as well as other matters before the Commission.

Third, in each case, the draft timetable would allow for the passage of a week between the filing of submissions and the commencement of the consultation process. We request that this is increased to at least two weeks. A period of one week may not afford parties a reasonable period of time to review the material filed and prepare for the consultation process, particularly where a considerable volume of material is filed and / or submissions are filed by a large number of organisations. We also note that in some instances, the relevant one-week period overlaps with a period set aside for conferences in relation to another matter that is the subject of review.

Importantly, an extension to the short window currently provided would better enable us to consult with members, before attending conferences before the Commission. This is, in our view, likely to facilitate more productive discussions during that process.

Yours sincerely,

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Head of National Workplace Relations Policy

Ruchi Bhatt
Principal Advocate