

**BEFORE THE FAIR WORK COMMISSION**

**MATTER NO. AM2020/13**

**S157 – VARIATION OF MODERN AWARDS TO ACHIEVE THE MODERN AWARDS OBJECTIVE – PAID PANDEMIC LEAVE**

**AUSTRALIAN UNITY LIMITED SUBMISSIONS AGAINST ORDERS UNDER SECTION 590 OF THE FAIR WORK ACT 2009**

1. Australian Unity Limited (**AUL**) has received notice of an application in the Fair Work Commission by Australian Business Industrial and the New South Wales Business Chamber (**Applicant**) for an order requiring the production of documents under section 590(1) of the *Fair Work Act 2009* (**Act**) (**notice**).
2. AUL is not a party to the substantive application.
3. The notice was sent to AUL by the Applicant by email on 2 June 2020 at 4:39pm from their Representative, Australian Business Lawyers & Advisors. The email address used by the Representative is not an authorised email address for service and caused delay in the Proper Officer receiving the notice. Annexed hereto and marked "A" is a copy of the email to AUL from the Applicant.
4. AUL has not received any prior request for the information or documents the applicant has listed in the draft order sought.
5. AUL opposes the making of the orders.
6. AUL has read the Submissions of United Workers' Union filed with the Commission on 4 June 2020 and largely agrees with those submissions insofar as the submissions object to the making of the orders, and the reasons for those objections.
7. AUL has not received sufficient notice to enable it to prepare detailed submissions regarding the draft order sought. If the application is granted and the draft order requiring AUL to produce all or part of the information and documents is made, AUL reserves its right to file detailed submissions and apply to have the orders set aside or varied.

8. The first order seeks information regarding AUL's policies, procedures and practices in New South Wales as at 1 January 2020 concerning AUL's:
  - (a) control of infectious diseases in the workplace;
  - (b) use of personal protective equipment;
  - (c) provision of support or treatment to people who are unwell;
  - (d) the provision of support or treatment to people who are suspected of having an infectious disease; and
  - (e) the provision of support or treatment to people who are confirmed as having an infection disease.
  
9. AUL objects to the making of the first order, primarily on the basis that the documents and information sought are not relevant to and beyond the scope of the substantive application before the Commission. The documents and information are not relevant to pandemic leave or AUL's approach to pandemic leave nor are they the subject of the Statement of Nicholas Gold, Senior Employee Relations Consultant dated 5 May 2020.
  
10. The second order seeks information regarding AUL's current policies, procedures and practices in New South Wales concerning AUL's:
  - (a) control of infectious diseases in the workplace;
  - (b) use of personal protective equipment;
  - (c) provision of support or treatment to people who are unwell;
  - (d) the provision of support or treatment to people who are suspected of having an infectious disease; and
  - (e) the provision of support or treatment to people who are confirmed as having an infection disease.
  
11. AUL objects to the making of the second order primarily on the basis that the documents and information sought are not relevant to and beyond the scope of the substantive application before the Commission. The documents and information are not relevant to pandemic leave or AUL's approach to pandemic leave. It is further noted that AUL has already provided details and a copy of its Covid-19 Special leave policy for the assistance of the Commission, in the Statement of Nicholas Gold, Senior Employee Relations Consultant dated 5 May 2020.
  
12. The third order seeks production of documents relation to any incidents in which an employee, client or patient of AUL:
  - (a) contracted Covid-19;
  - (b) was required to self-isolate because he or she might have contracted Covid-19; or
  - (c) was tested for Covid-19.

13. AUL objects to the making of the third order on the basis that these documents contain confidential and personal information, including health information, relating to its employees and customers. AUL's employees and customers have not provided consent to AUL using or otherwise disclosing their confidential and personal information, including health information, to any third parties and such information is protected from disclosure by law.
14. Additionally, AUL operates businesses across a variety of sectors. Many of AUL's employees and customers have no connection to the modern awards sought to be varied under the substantive application. The documents and information requested are not relevant to and beyond the scope of the substantive application before the Commission.
15. AUL objects to the making of the fourth order on the basis that the request is for confidential information relating to the employment of Kathleen Dryden, an employee of one of AUL's subsidiaries. The documents and information requested are not relevant to and beyond the scope of the substantive application before the Commission. Ms Dryden's employment is covered by an enterprise agreement, not an Award. Further, Ms Dryden has provided a statement to the Commission in her capacity as a delegate of the United Workers' Union (not in her capacity as a representative or employee of AUL), which discloses the enterprise agreement applicable to her employment and encloses payslips. If this information is considered relevant to the substantive application, any request for this information ought to be directed to Ms Dryden.
16. It is respectfully submitted that no orders should be made requiring AUL to produce documents or information as sought in the Applicant's draft order.

Australian Unity Limited

5 June 2020