

BETWEEN:



ESSO AUSTRALIA PTY LTD  
(ABN 49 000 018 566)  
Appellant

and

THE AUSTRALIAN WORKERS' UNION  
Respondent

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### APPELLANT'S CHRONOLOGY

#### Part I:

This chronology is in a form suitable for publication on the internet.

#### Part II:

Date	Event	Ref.
<b>Relevant facts</b>		
At all material times	Esso Australia Pty Ltd ( <b>Esso</b> ) operates a business of the exploration for and the production of oil and gas, the refining of petroleum and the supply of fuels, including natural gas.	PJ <sup>1</sup> [2]
June 2014	Esso, its employees, and the Australian Workers' Union ( <b>AWU</b> ), as a bargaining representative of its members, commence negotiations for new enterprise agreement(s) to replace: <ul style="list-style-type: none"><li>the <i>Esso Gippsland (Longford and Long Island Point) Enterprise Agreement 2011 (Longford/LIP Agreement)</i>;</li></ul>	PJ [5]-[6]

<sup>1</sup> Primary Judgment ([2015] FCA 758; (2015) 253 IR 304).

**THE SOLICITOR FOR THE APPELLANT IS:**  
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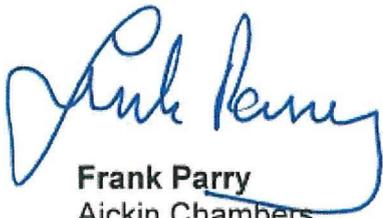
Date	Event	Ref.
	<ul style="list-style-type: none"> <li>• the <i>Esso Offshore Enterprise Agreement 2011</i>; and</li> <li>• the <i>Esso Gippsland (Barry Beach Marine Terminal) Enterprise Agreement 2011</i>.</li> </ul> (together, the <b>Agreements</b> )	
1 October 2014	The Agreements pass their nominal expiry date.	PJ [5]
January 2015	The AWU gives three separate notices of intention to take protected industrial action in support of the proposed enterprise agreement(s) on 16, 22 and 30 January 2015.	PJ [30]
3 February 2015	The AWU provides its fourth notice of intention to take protected industrial action in support of the proposed enterprise agreement(s) ( <b>Fourth Notice</b> ). One of the forms of action notified was “ <i>an indefinite ban on the de-isolation of equipment by employees covered by the Agreements commencing at 12.01am on Thursday, 12 February 2015.</i> ”	PJ [31]
17 February 2015	The AWU provides its fifth notice of intention to take protected industrial action in support of the proposed enterprise agreement(s).	PJ [40]
2 March 2015	The AWU provides its sixth notice of intention to take protected industrial action in support of the proposed enterprise agreement(s).	PJ [42]
4 March 2015 at about 4.45pm	The AWU advises Esso that the de-isolation ban (the subject of the Fourth Notice) includes a ban on the performance of air freeing or leak testing and that AWU members would refuse to perform these activities if required to do so.	PJ [46]
5 March 2015	Esso makes application to the Fair Work Commission ( <b>Commission</b> ) for an order under section 418 of the <i>Fair Work Act 2009</i> , on the basis that a ban on equipment testing, air freeing and leak testing did not fall within the meaning of “de-isolation of equipment” as listed in the Fourth Notice.  The AWU contends that the bans fell within the	PJ [49]-[50]

Date	Event	Ref.
	meaning of “de-isolation of equipment”.	
6 March 2015	Deputy President Hamilton of the Commission grants Esso’s application for a section 418 order and makes such an order ( <b>Order</b> ).  <i>Inter alia</i> , the Order required the AWU to stop organising “industrial action”, including the ban on equipment testing, air freeing and leak testing.	PJ [51]-[52]
From 6.00pm on 6 March 2015 to 9.30am on 7 March 2015	The AWU continues to organise “industrial action” in the form of a ban on air freeing and leak testing.	PJ [119]
7 March 2015 at 9.30am	The AWU advises Esso that its members will not manipulate bleeder valves to facilitate air freeing and leak testing on the basis of their view that bleeder valve manipulation formed part of the ban on the “de-isolation of equipment” and was therefore the subject of the Fourth Notice.	PJ [58] & [120]
<b>Litigation</b>		
16 March 2015	Esso files an Application in the Federal Court of Australia.	PJ [65]
17 March 2015	The Court makes an interim injunction lasting until 4:00 pm on 25 March 2015, restraining the AWU from organising industrial action relating to bargaining for the Agreements.	PJ [65]
25 March 2015	The Court makes an interlocutory injunction restraining the AWU, pending the hearing and determination of the proceeding, from organising industrial action at Longford of various descriptions, including “bans on de-isolations, equipment testing, air freeing and leak testing”.	PJ [65]
24 July 2015	Justice Jessup delivers his reasons for judgment (Primary Judgment).	

Date	Event	Ref.
13 August 2015	Justice Jessup makes orders.	
20 August 2015	Esso files a Notice of Appeal in the Federal Court of Australia (Matter No. VID435/2015) ( <b>Esso Appeal</b> ).	
26 August 2015	The AWU files a Notice of Appeal in the Federal Court of Australia (Matter No. VID470/2015) ( <b>AWU Appeal</b> ).	
25 May 2016	The Full Court of the Federal Court of Australia makes orders and publishes its reasons for judgment in <i>Australian Mines and Metals Association Inc and Others v Maritime Union of Australia</i> [2016] FCAFC 71; (2016) 242 FCR 210 ( <b>AMMA Appeal</b> ).	
25 May 2016	<p>The Full Court of the Federal Court of Australia makes orders and publishes its reasons for judgment in the Esso Appeal and the AWU Appeal ([2016] FCAFC 72; (2016) 258 IR 396).</p> <p>The reasons for judgment incorporate the reasons for judgment in the AMMA Appeal regarding section 413(5) of the <i>Fair Work Act 2009</i> (<b>Appeal Judgment</b>).</p>	
21 June 2016	Esso files an application for special leave to appeal from part of the Appeal Judgment.	
22 June 2016	The AWU files an application for special leave to appeal from part of the Appeal Judgment.	
16 December 2016	The High Court (constituted by Kiefel, Gageler and Nettle JJ) grant special leave to appeal to each of Esso and the AWU on limited grounds.	
23 December 2016	Esso files a Notice of Appeal in the High Court of Australia (M185 of 2016).	
23 December 2016	The AWU files a Notice of Appeal in the High Court of Australia (M187 of 2016).	

Date	Event	Ref.
23 December 2016	The AWU files a Notice of Appeal in the High Court of Australia (M187 of 2016).	
23 December 2016	The AWU files a Notice of Contention in respect of Esso's appeal (M185 of 2016)	

Dated: 27 January 2017



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