



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2022/34

s.158 - Application to vary or revoke a modern award

**Application by APESMA t/a Professionals Australia
(AM2022/34)**

Pharmacy Industry Award 2020

Sydney

9.30 AM, TUESDAY, 28 FEBRUARY 2023

Continued from 16/01/2023

PN30

PRESIDENT HATCHER: Good morning, everyone. I'll take the appearances. Mr Hall and Ms Baulch, you appear for Professionals Australia.

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MS J BAULCH: Yes, that's right, Your Honour.

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PRESIDENT HATCHER: And Mr Harris, you appear for the Pharmacy Guild.

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MR S HARRIS: That's correct, Your Honour.

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PRESIDENT HATCHER: All right. Firstly, can I apologise for last week's events which, as it turned out, was all a false alarm. But better to be safe than sorry. Okay, before we go any further, can I just ask the applicant some questions about the application. Because there's something I don't quite understand.

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So the actual variation sought in terms of wages is to the minimum rates for interns. Is that correct?

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MS BAULCH: Yes, that's right, Your Honour.

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PRESIDENT HATCHER: And the proposition that's advanced is that the increase is awarded because of work value to graduate pharmacists and higher should have been applied to intern pharmacists. Is that right?

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MS BAULCH: Yes, that's right. But also the relativities in pay with other graduates of a similar nature.

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PRESIDENT HATCHER: Right. So that's the part I don't quite understand. Interns are not graduates, are they?

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MS BAULCH: Yes, they are, sir.

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PRESIDENT HATCHER: They are graduates.

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MS BAULCH: They graduated with a four-year degree. They have a requirement to get full registration to complete 1,824 hours of work, plus additional study, and the completion of some examinations run by the Pharmacy Board of Australia. Not by their academic institutions. So they're graduates from

university. They're just doing an internship. Similarly, I suppose, to what doctors do.

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PRESIDENT HATCHER: Right. The question I have is, that partially solves the relativity problem but then doesn't deal with the higher classifications.

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MS BAULCH: Sorry, I don't understand your point, sir.

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PRESIDENT HATCHER: Well, relativity – I'll just call it in the 'work value decision'; the relativity problem that was identified in the work value decision concerns all the professional pharmacist rates.

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MS BAULCH: Yes, that's correct, sir.

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PRESIDENT HATCHER: So it doesn't resolve that.

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MS BAULCH: No, it does not. Do you wish to say anything, Mr Hall? Maybe you can clarify it better than I can.

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MR HALL: Well, only that this is, sort of like, left over from the previous work value case. So the previous work value case wasn't applied to graduates or interns. And the relativity issue was identified. So the purpose of this application was to, I guess, finish what was started with the previous work value cause.

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PRESIDENT HATCHER: Yes, but it doesn't deal with the relativity problem for anyone apart from interns. That's the point I'm making.

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MR HALL: Yes, that's true. That's true, yes.

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PRESIDENT HATCHER: And, in fact, by dealing with it for just interns and not anybody else, it, on one view, distorts the internal relativities in the award.

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MS BAULCH: Yes, that's correct, sir. Look, we did consider looking at the whole group again. The main reason we didn't is that there's significant work going on within federal and state government jurisdictions at the moment. Running trials to see if pharmacists should be allowed to prescribe and dispense medicines themselves. And that would not apply to these interns. Those changes that are occurring now. So, we're sort of thinking, well, let's wait and see what comes out of those trials.

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PRESIDENT HATCHER: Okay, so that may raise a further work value issue which (indistinct words) - - -

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MS BAULCH: That's correct. That's correct, sir.

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PRESIDENT HATCHER: In relation to the interns, look, perhaps my recollection is flawed, but why wasn't that issue raised in the work value case?

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MS BAULCH: It was, sir. It was, sir.

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PRESIDENT HATCHER: (Indistinct). Okay.

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MS BAULCH: Yes.

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PRESIDENT HATCHER: So just tell me how it happened. I thought, again, my recollection might be wrong; I thought (indistinct) made general work value findings and then there was an issue about how that was to be applied to the rates, and then we made a final decision about that.

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MS BAULCH: Yes.

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PRESIDENT HATCHER: But was interns raised in that context?

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MS BAULCH: Yes, they were. In the decision, I think, and Mr Hall is more – read it in more detail – more than I, recently. There was two issues raised. One by the Guild, that some of the functions that pharmacists perform are not performed by interns. And also, the Full Bench raised the general relativity issue of graduates. And these pharmacists, particularly in relation to other graduates at the time.

PN64

PRESIDENT HATCHER: I believe the interns was – was it ever specifically raised that once we found that there were work value increases that this should be applied to interns?

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MR HALL: Your Honour, I believe the previous application was to apply to every classification.

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MS BAULCH: It was.

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MR HALL: But I believe - - -

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PRESIDENT HATCHER: I'm not asking about the application. The Full Bench made findings about increases in work value, and then, as I recall, it allowed submissions as to how – as to what sort of variation should give effect to that. Was it, at that point raised, that the increases should be applied to interns?

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MS BAULCH: Yes, we did, sir. And the Full Bench decided not to do it. But to refer it to the President.

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PRESIDENT HATCHER: I think we're confusing two issues.

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MS BAULCH: I think we might be too.

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PRESIDENT HATCHER: The relativity issue, which applies to all pharmacists, as referred to the present. I'm raising a more specific issue about your contention now that the work values matters that were determined in that decision applied to interns. Was that issue ever raised?

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MS BAULCH: We did raise it, sir.

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PRESIDENT HATCHER: Right.

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MS BAULCH: Because we sought the increase across the board.

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PRESIDENT HATCHER: No, Ms Baulch, I'm not talking (indistinct words) - - -

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MS BAULCH: And mentioned - - -

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PRESIDENT HATCHER: Ms Baulch, I'm not talking about the original application. The Full Bench made findings - - -

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MS BAULCH: No, I'm (indistinct) - - -

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PRESIDENT HATCHER: The Full Bench made findings about work value in an initial submission. And there was a further step whereby parties were given the opportunity to make submissions as to how that should be applied. (Indistinct words) - - -

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MS BAULCH: And we did - - -

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PRESIDENT HATCHER: Was it at that point raised that they should be applied to interns?

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MS BAULCH: Yes, we did raise that in our submissions.

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PRESIDENT HATCHER: And was that dealt with - - -

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MS BAULCH: I don't believe there were any comments made by the Full Bench about it after we raised that point.

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PRESIDENT HATCHER: Okay. All right. So you say it simply wasn't dealt with. Is that the proposition?

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MS BAULCH: Yes, sir.

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PRESIDENT HATCHER: Right. Well, Mr Harris, do you want to respond to any of that?

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MR HARRIS: Thanks, Your Honour. I'll go with the parties - (indistinct) aspect is we're talking about people who are not qualified as pharmacists. So they've got to be under direct supervision, and they cannot perform any task within a pharmacy that's not got a registered pharmacist watching and maintaining they've done this safely, and to the public. So, that's the position from the Guild first up.

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The other part is, you actually did – the Bench did note within the decision, under paragraph 184, that the internship requirements have become onerous. But it still needs to be undertaken to become registered as pharmacists. And that was one of the reasons, we believe, why that wasn't passed on to the interns, at any way a value increase was made.

PN91

The Guild's position was that instead of being tied to a C10 position, we would have suggested it should be tied to a percentage of the registered pharmacists rate, because they're still under training and they're not proficient in the workplace yet.

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PRESIDENT HATCHER: Yes. It seems to me that, for the purpose of professional relativity, benchmark classification is the pharmacists rate. That this is not the intern rate, it's the pharmacists rate.

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If you read the teachers decision which elucidated all these relativities, it was a fully qualified teacher which was used as the benchmark for relativity purposes. Not somebody who's graduated but is not fully qualified.

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In any event, how do the parties want to proceed? You've had discussion. So how far have we got?

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MR HALL: Your Honour, I think from our discussions last week, we wanted to proceed on agreed terms as far as possible. But I think what's arisen from last week's discussion is that the agreed statement of facts is probably about as far as we're going to get, in terms of agreed matters. I think – I won't put words in Scott's mouth – but I think, basically, the amount that we're claiming is going to be opposed. And, yes, there isn't anything further, really, that was agreed.

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PRESIDENT HATCHER: Right. Okay. So how do you want to go forward? Do you just want to have the matter listed for hearing before the Full Bench?

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MS BAULCH: I think that's - - -

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MR HALL: Sorry, Jacqui. I think we need to revert to you about the expert panel query that you put out last week.

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PRESIDENT HATCHER: I mean, there's a separate process for that. But whatever I determine about that, that won't – nothing's going to happen before 6 March – so either will or will not be about an expert panel. So that will separately be determined. But leaving that aside, how do you want to proceed with your application?

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MR HALL: Well, I think if we can't really get any further agreement from the Guild, and, you know, I wouldn't mind putting some further questions, actually, to Mr Harris while we're here.

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PRESIDENT HATCHER: (Indistinct).

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MR HALL: Thank you. Well, for one, Scott, I just wanted to clear up whether, you know, we do have an agreed statement of facts where many of the grounds which were found to justify work value increase for the other classifications, the Guild has agreed that interns engage in; albeit under supervision. I just wanted to clear up from last week, we're not sure if, say for example, APESMA made a claim for 5 per cent, whether the Guild would have supported – would support

that claim. Or whether you are actually saying, no, don't agree to – because I think you said that you have a different approach to how the value should be worked out.

PN103

MR HARRIS: Your Honour, in regards to Mr Hall's questions, and (indistinct); a 5 per cent increase we would potentially object to, because the Full Bench granted that due to a significant increase in accountability and responsibility of the pharmacist employment classification, and their responsibilities within the pharmacy, it did identify a small set of skill sets that were an increase, but that predominantly relate to accountability and responsibility, the increase come across.

PN104

The pharmacy interns are still that. They are under direct responsibility and capability. They do participate in - to learn. They do undertake some of those tasks. But the accountability and responsibility is still the pharmacist who is their direct supervisor to go (indistinct).

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So therefore, the 5 per cent increase as done to the 2018 pharmacist decision, would potentially be inappropriate for increase to those wages. However, we wouldn't be too against the conceptual idea of linking the pharmacists intern rate of pay to a percentage of the pharmacist itself. In lines with, as you mentioned, the EST decision about being a proficient person be in the benchmark, at the Level 2, being the teacher. The pharmacy intern should be, from our understanding, should be granted a percentage of that flat rate as their wages. Because they're still under learning, and they're not proficient in the trade yet.

PN106

PRESIDENT HATCHER: Can I ask the parties, would there be any benefit in me speaking to the parties separately? And I'd only do that if both parties agree.

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MS BAULCH: We have no objection, sir.

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MR HARRIS: No objections, Your Honour.

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PRESIDENT HATCHER: All right. Mr Harris, I might just speak to the applicant first, and then I'll speak to you.

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MR HARRIS: So I'll just disconnect then call back in?

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PRESIDENT HATCHER: We'll just disconnect you, and then we'll – get ready to be called back in when we're ready.

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MR HARRIS: No problems. Thank you, Your Honour.

OFF THE RECORD

[9.46 AM]

ON THE RECORD

[9.46 AM]

PN113

PRESIDENT HATCHER: I record that I've just had off the record discussions with the parties individually. My summation of the position is this: Firstly, I think there would be benefit for the parties engaging in a discussion about the discreet issue of the relativity of interns to the pharmacist rate.

PN114

And secondly, I also think there would be benefit for the parties engaging in a larger discussion about classifications and rates for pharmacists generally. Having regard, firstly to the previously identified relativity problem, and the way that was resolved in the teachers case. And secondly, the pending, what I think are major changes to the work of pharmacists. On one view this may be not pertaining now for the sector to, as it were, get ahead of the changes and design something that is appropriate for the future.

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So it's a matter for the parties, but I would recommend, at this stage, standing (indistinct) the application. Allowing the parties to have those discussions. And have the parties request if those discussions need to be facilitated by the Commission, and that will be arranged.

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So, Ms Baulch and Mr Hall, what's your initial reaction to that?

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MR HALL: Yes, Your Honour, we just had a discussion in which we were agreed to hearing further information from the Guild about intern rates in relation to pharmacy rates. We think that might be worthwhile. And it would make sense to stand over things for now. We also talked about how we don't want to abandon this application though. Because we're talking about a group of graduates who didn't get a work value increase in 2019. And in some ways, we feel like we need to do something about that group. And if we were to wait until the scope of practice, you know - all the dust settles from that - that will take, as Ms Baulch said, I think a further 12 months or so. But still think it would be worthwhile to have further discussions with the Guild.

PN118

PRESIDENT HATCHER: I'm not suggesting you need to abandon the application, Mr Hall. And, in fact, nor am I assessing you need to wait for the current changes to come to fruition. What I'm in fact suggesting is perhaps the parties might find a way to get ahead of those changes and deal with them in advance rather than in retrospect.

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MS BAULCH: Okay.

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PRESIDENT HATCHER: (Indistinct) single package which deals with everything. But, in any event, there's two discreet problems. I just think there's benefit for the parties having those discussions, and the Commission will help if necessary. Mr Harris?

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MR HARRIS: No disagreement with your proposal there, Your Honour.

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PRESIDENT HATCHER: All right. Well, look, what I'll do is I'll stand the application over generally. The applicant can have the matter relisted on request if it feels that it's not going anywhere and it wishes to proceed with this case. Otherwise, can I just generally ask the parties to keep the Commission advised by my chambers as to the state of progress say, in not less than a period of two months.

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MS BAULCH: Thank you, sir.

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PRESIDENT HATCHER: I mean, not more than a period of two months. All right. Well, I thank the parties for their participation, and we'll now adjourn.

ADJOURNED INDEFINITELY

[9.50 AM]