



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**C2019/5259**

**s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective**

**Review of certain C14 rates in modern awards  
(C2019/5259)**

**Adelaide**

**11.05 AM, WEDNESDAY, 26 APRIL 2023**

**Continued from 14/12/2022**

PN1

JUSTICE HATCHER: Good morning, everybody, I will take the appearances. Mr Houlihan, you appear for the Showmen's Guild of Australia?

PN2

MR D HOULIHAN: That's correct, your Honour.

PN3

JUSTICE HATCHER: Mr Smith, you appear for the Drycleaning Institute of Australia?

PN4

MR S SMITH: Yes, your Honour.

PN5

JUSTICE HATCHER: Ms Bhatt, you appear with Mr Chang for the Australian Industry Group?

PN6

MS R BHATT: Yes, your Honour.

PN7

JUSTICE HATCHER: Ms Starcevic, you appear for the United Workers' Union?

PN8

MS C GRAY-STARCEVIC: Yes, your Honour.

PN9

JUSTICE HATCHER: Mr Herbert, you appear for the Australian Meat Industry Council?

PN10

MR A HERBERT: Yes, your Honour.

PN11

JUSTICE HATCHER: Mr Buckley, you appear for the Australasian Meat Industry Employees' Union?

PN12

MR C BUCKLEY: Yes, your Honour.

PN13

JUSTICE HATCHER: Ms Davis, you appear for the RTBU?

PN14

MS M DAVIS: Yes, your Honour, and good morning.

PN15

JUSTICE HATCHER: Ms Simmons, you appear for Australian Business Industrial and the New South Wales Business Chamber?

PN16

MS C SIMMONS: Yes, your Honour.

PN17

JUSTICE HATCHER: Mr Crawford, you appear for the Australian Workers' Union?

PN18

MR S CRAWFORD: Yes, your Honour.

PN19

JUSTICE HATCHER: I have called the matter on to make arrangements for the finalisation of the review of C14 rates.

PN20

Hopefully, you will have seen the report to the Full Bench that Hampton DP published on 5 April of this year. As that report makes clear, there are effectively seven outstanding awards that remain subject to the review. In that report, it identifies, with respect to four awards, what I understand to be an agreed position, subject, in a couple of cases, to operative date.

PN21

I will ask the parties to address each of those four awards in turn, but can I ask you to comment upon this proposed approach that, in respect of those four awards, the Commission proposes to issue a statement in which it expresses a provisional view that the agreed variations should be made with, in some cases, the operative date as proposed and then to invite any further public comment and then, if there's no further objection, to make the variations.

PN22

First of all, with respect to the Dry Cleaning Award, is there any opposition to that course?

PN23

MS GRAY-STARCEVIC: No, your Honour, not from the United Workers' Union.

PN24

JUSTICE HATCHER: Mr Smith?

PN25

MR SMITH: No, your Honour.

PN26

JUSTICE HATCHER: All right. The next one is the Funeral Award. Mr Crawford, is there any objection?

PN27

MR CRAWFORD: No objections to that, your Honour.

PN28

JUSTICE HATCHER: Any other parties with an interest in that award have any objections? No? All right.

PN29

The third award was the Concrete Products Award. Again, I think that's you, Mr Crawford. Any objections to that course?

PN30

MR CRAWFORD: No objections, your Honour.

PN31

JUSTICE HATCHER: Anybody else with any objections?

PN32

MS GRAY-STARCEVIC: No, your Honour.

PN33

JUSTICE HATCHER: I think the last one is the Sugar Industry Award. Again, is there any objection to that course?

PN34

MS GRAY-STARCEVIC: No, your Honour.

PN35

MR CRAWFORD: No, your Honour.

PN36

JUSTICE HATCHER: All right. In respect of the remaining three awards, that is, the Meat Industry Award, the Rail Industry Award and the Travelling Shows Award, I understand with those awards, there is no agreement.

PN37

My provisional view is that I should make directions in the following form: firstly, that any party that proposes a variation to those awards should file their variation by a specified date and, by the same date, any party which proposes or supports a variation to the award, or, alternatively, proposes some other course to be taken, or no course to be taken, should file their submissions and any evidence by a specified date. There would then be a further direction allowing for the filing of reply submissions and evidence and then hearing dates would be set.

PN38

Does anybody wish to comment upon those proposed directions and, in doing so, indicate what they think the time periods for those directions should be? I'll start with you, Ms Bhatt.

PN39

MS BHATT: Your Honour, perhaps I've misunderstood what your Honour has proposed. Is it envisaged that any party with an interest in, for example, the Meat Industry Award would file their material by that initial date, and the position of that party, for example, might be that the award should not be varied at all, or the position might be that it should be varied in a particular way?

PN40

JUSTICE HATCHER: Yes, Ms Bhatt, you have just put it better than I just did. That is exactly what I am proposing with the caveat that, if any party proposes a variation, they should do so at the same time.

PN41

MS BHATT: Yes. Your Honour, the observation we would make is that the matter ought to proceed by reference to proposed variations, that is, that parties seeking a variation to the award should first file their proposed variation and any material in support of it and then submissions in reply are filed, as opposed to directions that require parties to file in the first instance in defence of any variation being made to the award.

PN42

JUSTICE HATCHER: I note that, Ms Bhatt, but the matter which needs to be taken into account is that the Commission self-initiated this matter; it was not initiated by any party seeking a variation.

PN43

MS BHATT: Yes.

PN44

JUSTICE HATCHER: And I think the parties are aware of the issue which is driving the review, so I think the parties know what this is about. I hear what you say, but I think we cannot assume that there will be applications or that the Commission will not act in the absence of an application.

PN45

MS BHATT: Yes, I understand. Your Honour, so far as an appropriate period of time is concerned, we would submit that the Commission should allow a period of at least four to six weeks for the filing of material and then again for the filing of material in reply.

PN46

JUSTICE HATCHER: Thank you. What about any other party? Perhaps we will start with those parties interested in the Meat Award, which is Mr Herbert and Mr Buckley. What do you say about that?

PN47

MR HERBERT: Yes, your Honour, I have no objection. In light of what your Honour has said, I won't press the matter any further in relation to the order in which things should occur, but, given that the AMIC is required to canvass a wide range of its members across Australia in order to gather evidence in relation to these sorts of matters - it has already commenced that process - I would ask for a period of at least six weeks for the material.

PN48

I apprehend that the union, the AMIEU, will be filing an application, and as to whether the AMIC files a counter application simply depends on the union's application. I don't understand that a final decision has been made about that, but it is likely that a cross-application will be made by the AMIC, in which case it

will need substantive evidence to support that and to rebut the union application, and I am instructed it would require at least a period of about six weeks to canvass its members and get that material together, so we would ask for that period of time at least.

PN49

JUSTICE HATCHER: All right, thank you. Mr Buckley?

PN50

MR BUCKLEY: Yes, thank you, your Honour. I would simply endorse Mr Herbert's remarks, but I would think we would need at least six weeks in terms of preparing material because it's essentially about, you know, what the state of the industry is nationally.

PN51

JUSTICE HATCHER: All right, thank you.

PN52

The Rail Award. Ms Davis?

PN53

MS DAVIS: Yes, thank you, your Honour. I have no objection to the course suggested by your Honour this morning in regards to how the matter would proceed. However, the union would be content with a three-week period to put on material of any proposed variation. The parties have been at this for quite some time. However, I do note the reference from my friends that perhaps a six-week period; therefore, we would be content with perhaps a four-week period for material to be put and material to be replied upon.

PN54

However, it would be our position that the matter progresses as quickly as possible. However, it's a matter for the Commission on the best way forward. However, it would be our position for it to be dealt with as quickly as possible, of course depending on the Commission's time frames.

PN55

JUSTICE HATCHER: Thank you. Does any other party have an interest in the Rail Award? No? All right.

PN56

Finally, the Travelling Shows Award. Mr Houlihan?

PN57

MR HOULIHAN: Thank you, your Honour. Your Honour, obviously there's been no application made to vary this award and my client has obviously made an application that it be excused from participating in this process on the same basis that a number of other awards have been excused. Having said that, I will obviously seek instructions that that's my client's continued position.

PN58

However, the time frame of six weeks to put on material in support of the status quo is not an unreasonable time frame for my clients, if it pleases.

PN59

JUSTICE HATCHER: All right. Mr Crawford, does your union have any interest in this?

PN60

MR CRAWFORD: Your Honour, only a minor interest, and we have basically just been supporting the applications of the other unions, so we are happy to leave it at that.

PN61

JUSTICE HATCHER: All right, thank you.

PN62

What I will do, I think, is allow six weeks for the first step, I will allow a further six weeks for the second step, and we will set some hearing dates.

PN63

Does anybody have any views about the length of the hearing that might be required? My provisional view is I will just set aside two days for an abundance of caution.

PN64

MS BHATT: Your Honour, perhaps a directions hearing prior to the hearing might assist with developing some sort of program for that matter.

PN65

JUSTICE HATCHER: Yes, all right, I will do that. Mr Herbert?

PN66

MR HERBERT: Yes, we would agree with that, your Honour.

PN67

JUSTICE HATCHER: Yes, all right. I thank you for your attendance today. If there's nothing further, we will now adjourn.

**ADJOURNED INDEFINITELY**

**[11.24 AM]**