



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON
MS LABINE-ROMAIN
PROFESSOR BAIRD
MR CULLY**

C2023/1

s.285 - Annual wage review

**Annual wage review 2022-23 – copied State awards hearing
(C2023/1)**

Sydney

2.05 PM, WEDNESDAY, 17 MAY 2023

Continued from 01/05/2023

PN1

JUSTICE HATCHER: I'll take the appearances. Ms Bhatt, you appear for the Australian Industry Group and Transdev?

PN2

MS R BHATT: Yes, your Honour.

PN3

JUSTICE HATCHER: Mr Clarke, you appear for the ACTU?

PN4

MR T CLARKE: Yes, your Honour.

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JUSTICE HATCHER: Mr Rodriguez and Mr Dunstan, you appear for the ANMF?

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MR M DUNSTAN: That's right. Thank you.

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JUSTICE HATCHER: All right. First of all I understand there is agreement as to the making of the confidentiality order.

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MS BHATT: Yes, that's my understanding, your Honour.

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JUSTICE HATCHER: That order will be made and I'll arrange for it to be issued from my chambers. Next there is the issue of the statement of Rachel Spencer. I understand you want to cross-examine Ms Spencer, Mr Clarke.

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MR CLARKE: Yes, that's correct, including in relation to the confidential matter, so we're agreed to having that part of the proceedings proceed in camera.

PN11

JUSTICE HATCHER: All right. We can close the courtroom door, but does anybody need to be excluded from the courtroom?

PN12

MR CLARKE: I just thought it might be more convenient if the Nurses go first. The Nurses I understand are only going to be quite quick, so if we could perhaps deal with that and then - - -

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JUSTICE HATCHER: Sorry, deal with what?

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MR CLARKE: The submissions - - -

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JUSTICE HATCHER: Their submissions, all right.

PN16

MR CLARKE: - - - that the Nurses Federation wanted to make and then I think the problem kind of takes care of itself.

PN17

JUSTICE HATCHER: All right, we'll do that. Mr Rodriguez or Mr Dunstan?

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MR DUNSTAN: Thank you, your Honour. We will be very brief. We had planned to make a very brief submission in relation only to the copied state award matter.

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JUSTICE HATCHER: Yes.

PN20

MR DUNSTAN: In summary our view is that the orders that were made last year in appendix 5 relating to the copied state awards should be, in substance, repeated again, which would be as well repeating what has been done by the Commission in the annual wage review since I believe 2018. To the extent that it is of assistance, I will just go through the employees that are covered in the ex-Family and Community Services workers who are the people that we represent and the employers that they currently work for.

PN21

JUSTICE HATCHER: Does this arise from the list of CSAs which the ACTU identified, does it?

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MR DUNSTAN: There is the list that was identified by the ACTU which we support. There are three very small employers which I wanted to note, as well, but they are covered by the same copied state awards.

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JUSTICE HATCHER: Yes, just give me a second. Yes.

PN24

MR DUNSTAN: So the three that are under a copied state award – it's the same one; the Nurses (Department of Family and Community Services - Ageing, Disability and Home Care) (State) Award 2017. The three employers are Life Without Barriers, LiveBetter and Hunter Group Homes.

PN25

JUSTICE HATCHER: How did they come to be covered by copied state awards?

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MR DUNSTAN: All three of those employers are in the same capacity as the other employees in that section of the list - - -

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JUSTICE HATCHER: Yes.

PN28

MR DUNSTAN: - - - were part of the movement of disability care away from the Department of Family and Community Services to various NGOs in 2017 and 2018, and were covered at the time by the very same copied state awards.

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JUSTICE HATCHER: Yes, all right.

PN30

MR DUNSTAN: Very briefly, our view is that the annual wage increase should be applied once more to employees covered by those copied state awards. We note that we continue to represent members under each of the employers listed in the ACTU's submission and those three that I just raised. We note that there have been no movements by any of those employers or indeed by the union to initiate enterprise bargaining in any of those employers, so there is no fundamental change to the structure of employment for any of those – we're particularly talking about nurses from our perspective, but it's any of the employees working in those disability care roles.

PN31

We note that the wages when the transferred occurred of nurses in particular in those facilities were matched to the wages of nurses in New South Wales public sector, nurses working in hospitals, that those are largely still very similar although public sector New South Wales nurses I think are now paid around a dollar an hour more, but we're talking about still staff seeing pay increases in the same general terms as they would have previously.

PN32

Lastly, we note that the wages that the employees are receiving under those copied state awards – indeed the conditions, as well – are still active. We have still taken action over the last year or two to enforce various aspects of the copied state awards both in this Commission and in the Federal Court, so there is still very much active terms of employment. On that basis we would support a similar order being made as what was made last year in appendix 5.

PN33

JUSTICE HATCHER: So when did those employees last receive a wage increase pursuant to the New South Wales system?

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MR DUNSTAN: There were two primary transfer dates, so in 2017 and '18. I understand that the 2018 transferees received the last increase under that agreement in 2018.

PN35

JUSTICE HATCHER: Right.

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VICE PRESIDENT ASBURY: So they don't have inbuilt mechanisms for wage increases, those copied state awards you're referring to?

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MR DUNSTAN: Definitely not that come this far into time. I think they may have had one pay increase that was set out when they were transferred.

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VICE PRESIDENT ASBURY: Because the maximum could have only been three years, so they would have – yes, okay. Thank you.

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MR DUNSTAN: That's right. Thank you.

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JUSTICE HATCHER: Yes, all right. Is there any enterprise bargaining going on with respect to them?

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MR DUNSTAN: There is no enterprise bargaining in any of the employers that I've raised today.

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JUSTICE HATCHER: Yes, all right. Thank you.

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MR DUNSTAN: Thank you.

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JUSTICE HATCHER: You're excused and free to go.

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MR DUNSTAN: Thank you very much.

PN46

JUSTICE HATCHER: We will now move into the confidential phase of the hearing, so once you have left we will close the doors.

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