



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2020/99, AM2021/63, AM2021/65

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

**Application by Health Services Union and Others
(AM2020/99)**

**Application by Australian Nursing and Midwifery Federation
(AM2021/63)**

**Application by Health Services Union
(AM2021/65)**

Sydney

9.40 AM, FRIDAY, 24 NOVEMBER 2023

Continued from 25/07/2023

PN1

JUSTICE HATCHER: I'll take appearances. Mr Gibian and Ms Doust, you appear for the HSU?

PN2

MR M GIBIAN: Thank you, your Honour.

PN3

JUSTICE HATCHER: Mr McKenna and Mr Hartley, you appear for the ANMF?

PN4

MR MCKENNA: Yes. Thank you, your Honour.

PN5

JUSTICE HATCHER: Ms Harrison and Mr Nash, you appear for the UWU? Mr Ward and Ms Rafter, you appear for the joint employees?

PN6

MR N WARD: Thank you, your Honour. Yes.

PN7

JUSTICE HATCHER: And Ms Besemeres, you appear for the Commonwealth?

PN8

MS BESEMERES: That's correct, your Honour.

PN9

JUSTICE HATCHER: I've received and analysed the document concerning cross-examination of witnesses. It seems to be in a rough estimate, but in the first wage adjustment issues phase there is probably four days, plus examination and in the second phase there is perhaps one day. But parties can disagree if they wish. I will start with your, Mr Gibian. How do you propose that we should program the two weeks set aside?

PN10

MR GIBIAN: We are obviously in the Commission's hands to a considerable degree. We apprehended that we would lead the evidence in relation to wage adjustments issues in the first week, commencing 4 December, having been informed of the witnesses that are now required, we will endeavour to develop a trial plan to accommodate the witnesses, hopefully by the middle of next week or so.

PN11

I was perhaps hopeful there might be three days or so of evidence, but your Honour might be right, in the first week. It is then a question as to whether the Commission would wish to hear from the parties on submissions on the wage adjustment issues or proceed to hear the evidence in relation to the classification issues as well and hear submissions in one lot. But we don't have any firm view about it and we are happy to accommodate whatever the Commission deems most convenient.

PN12

JUSTICE HATCHER: Mr McKenna has disappeared, but - - -

PN13

MR McKENNA: My apologies. The automatic lights don't think I'm here.

PN14

JUSTICE HATCHER: Yes. What would you say about the proposition that we should try to hear all the evidence in both stages in week one and then program submissions in week two?

PN15

MR McKENNA: Given the notice provided this morning by the joint employers, it looks like it would be possible on a rough estimate to hear all the evidence in one week. Given that that first week has been allocated and arrangements have been made for ANMF representatives to be in Sydney, that would seem like a useful use of that time and it would allow the parties some time then to prepare for closing submissions which, given that we have the entire second week allocated, it might be that those submissions could be some time later in that second week.

PN16

JUSTICE HATCHER: Do you have any different view, Mr Ward?

PN17

MR WARD: No, your Honour. Given that we indicated that we don't require as many, I think the practical thing to do would be to try and dispose of the evidence in the first week. It might give us the weekend and Monday to do some preparation and come back and do the closing.

PN18

JUSTICE HATCHER: How long do the parties they would need to do their oral closing submissions?

PN19

MR GIBIAN: For our part, your Honour, the oral submissions on the wage adjustment issues probably won't be terribly extensive, but on the classification issues, probably will take not a small period of time, perhaps anticipating that the Bench may also have quite a few questions in relation to those issues. So I would say at least half a day and perhaps slight longer.

PN20

JUSTICE HATCHER: If we allowed a total of three days for oral submissions, do the parties think they can fit within that space of time?

PN21

MR GIBIAN: I can't see how that wouldn't be possible, your Honour.

PN22

JUSTICE HATCHER: Then let's plan tentatively that we will endeavour to hear all the witnesses required for cross-examination the first week and then we will set

aside the Wednesday, Thursday and Friday of the second week for closing submissions. Is that a suitable course?

PN23

MR GIBIAN: I had some preference for the Tuesday, Wednesday and Thursday of the second week, but I don't - - -

PN24

JUSTICE HATCHER: All right. Well, that - - -

PN25

MR WARD: Can I say if that was available I would be happy with that too.

PN26

JUSTICE HATCHER: Okay. We will make it Tuesday, Wednesday and Thursday. Is there any reason why that shouldn't occur in Sydney and by saying that, parties are free, if they wish, to appear by video-link.

PN27

MR McKENNA: Your Honour, for the ANMF, I think we are perhaps the only party who is substantially not in Sydney. We will be travelling up for the first week. Counsel, instructing solicitors and those from the client are all Melbourne-based, so we do have a preference for it to be in Melbourne, but understand that we are but one party to the proceeding. '

PN28

JUSTICE HATCHER: That's noted. I think we will have it in Sydney and I will leave it to you, Mr McKenna whether you wish to travel to Sydney or whether you wish to present your submissions by video from Melbourne, either from your offices or from a Commission facility. If you keep us advised what you want to do and I'm sure we can arrange it.

PN29

So can the parties between themselves confer on an order of witnesses for each day in the first week and send that to my chambers by close of business on Thursday next week?

PN30

MR McKENNA: Yes, your Honour.

PN31

JUSTICE HATCHER: Are there any other procedural issues we need to deal with now?

PN32

MR GIBIAN: The only other matter I was going to mention is I think in the communication that my client sent or my instructor sent to the Commission, we indicated a preference for our two experts to be heard by video, if that were possible, or particularly Professor Charlesworth. I am not sure whether the Commission or any other parties have any view on that subject, but perhaps they can let us know at a convenient time if there's any opposition to that course.

PN33

MR WARD: Your Honour, can I indicate straight away we have no objection to that, if that's the most efficient course. Can I just raise one matter? I understand the HSU and the ANMF wish to cross-examine our witnesses. I would ask, as we did in the first stage, that there is no doubling up in terms of areas of cross-examination. I'm assuming that won't be the case, but I just want to make sure that both unions have their mind focused on that.

PN34

JUSTICE HATCHER: Yes, all right. Well, as I think we've previously indicated, for witnesses not located in Sydney, leave is granted for them to appear by video link. That's obviously under the condition that the parties ensure that the video link is of a reliable quality. I don't want to be dealing with issues of video/audio quality as we hear their evidence. And if that means they need to travel to a Commission registry to give their evidence from wherever they are located, just tell us and we will arrange it.

PN35

If there is nothing further we will now adjourn.

ADJOURNED INDEFINITELY

[9.48 AM]