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**From:** Chambers - Hatcher J  
**Sent:** Friday, 4 August 2023 9:18 AM  
**To:** Kerry O'Brien  
**Cc:** Josh Cullinan; Grace Morgan-Cocks; 'kanemurtagh@icloud.com'; David Bliss; Amber Sharp  
**Subject:** RE: AG2022/5615 Application by Justin Gusset [MCR-W.FID4282665]  
**Attachments:** AG2022-5615 Gusset re Apple Retail EA - directions 20230627.pdf

OFFICIAL

Dear parties,

I have brought your emails of yesterday to Justice Hatcher's attention.

In light of Mr O'Brien's email below, the directions dated 27 June 2023 (**attached**) are set aside. The directions hearing listed for Wednesday, 9 August 2023 will be vacated and rescheduled to 2:00 pm (AEST) on Monday, 14 August 2023. A notice of listing confirming this change will be issued shortly.

Any further written directions and applications for witnesses to appear remotely at the hearing listed on 30 and 31 August and 1 September will be considered at the directions hearing on 14 August.

Kind regards  
Caroline

**Caroline Beasley**  
**Associate to Justice Hatcher, President**



## Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

**This email was sent from Gadigal Country.**

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**From:** Kerry O'Brien <kobrien@mccullough.com.au>  
**Sent:** Thursday, August 3, 2023 6:39 PM  
**To:** Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>  
**Cc:** Josh Cullinan <jcullinan@raffwu.org.au>; Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>; 'kanemurtagh@icloud.com' <kanemurtagh@icloud.com>; David Bliss <david@sdan.org.au>; Amber Sharp <asharp@mccullough.com.au>  
**Subject:** AG2022/5615 Application by Justin Gusset [MCR-W.FID4282665]

Dear Associate

We refer to the above matter and the current directions dated 27 June 2023 (**Directions**).

The Directions currently provide for Apple to send a notification to Apple employees' email addresses where those employees are covered by the *Apple Retail Enterprise Agreement 2014*, by 9 August 2023, to invite them to share their views on the termination application with the President.

The purpose of this email is to seek a variation to the Directions, by consent with the Applicant.

### **Reason for proposed variation**

At the time that the Directions were made, it was not anticipated that the timing of this process would coincide with the access period.

We are instructed that the ballot for the proposed enterprise agreement will open at 9 am on Friday 11 August 2023 and that the results of the vote will be known by soon after 5 pm on Sunday, 13 August 2023 when voting closes. Employees were notified yesterday of the upcoming vote and access period.

We submit it is appropriate to seek a variation to the Directions for the following reasons:

1. **Potential to create confusion:** in our view, there is a very real prospect that having the two processes run in unison will create confusion for affected employees
2. **Potentially impact of vote on termination application:** the outcome of the vote on the NEA has the potential to render the termination application redundant

### **Impact of the proposed variation on the hearing dates**

In our respectful submission, the proposed variation would not impact on the hearing which is due to commence on 30 August 2023.

Although we accept the period for employee views will be shorter, it remains that employees were initially invited to provide their views on the termination application, albeit in the absence of the now filed materials, in accordance with earlier directions made on 25 January 2023.

The proposed variation still provides the parties, as well as the Commission, two clear business days between the end of the period to provide employee views and the commencement of the hearing.

### **Variation sought**

We seek, by consent with the Applicant, the following amendments to the Directions:

1. By 4:00 pm on ~~Wednesday, 9~~ Tuesday 15 August 2023 Apple Pty Limited t/a Apple is to serve by email a copy of:
  - a) these directions;
  - b) the originating application (Form F24B) (Application) lodged on 23 December 2022;
  - c) the declaration in relation to termination of an enterprise agreement after the nominal expiry date (Form F24C) dated 23 December 2022; and
  - d) a link to the Commission's webpage for this matter.(together, the application documents)

on each employee covered by the Apple Retail Enterprise Agreement 2014 (Agreement) and invite them to provide their views on the Application pursuant to s 226(3)(a) of the Fair Work Act 2009 (Cth) in accordance with item 3 of these directions below.

2. By 4:00 pm on ~~Friday, 11~~ Wednesday 16 August 2023, a director or authorised officer of Apple is to file a statutory declaration confirming compliance with item 1 of these directions.

3. By 4:00 pm on ~~Wednesday, 23~~ Friday 25 August 2023, any employee covered by the Agreement may provide their views on the Application, by sending an email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au).

We respectfully request that the Directions are varied as sought in chambers.

The Applicants' representatives, and the SDA and Mr Murtagh, are copied to this email.

Kind regards,

**Kerry O'Brien**

**Special Counsel**

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E [kobrien@mccullough.com.au](mailto:kobrien@mccullough.com.au)

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# DIRECTIONS

*Fair Work Act 2009*  
s.225—Enterprise agreement

## **Application by Justin Gusset** (AG2022/5615)

JUSTICE HATCHER, PRESIDENT

SYDNEY, 27 JUNE 2023

*Application for termination of the Apple Retail Enterprise Agreement 2014.*

Further to the directions hearing held on 26 June 2023 the following directions are made:

1. By **4:00 pm on Wednesday, 9 August 2023** Apple Pty Limited t/a Apple is to serve by email a copy of:
  - a) these directions;
  - b) the originating application (Form F24B) (Application) lodged on 23 December 2022;
  - c) the declaration in relation to termination of an enterprise agreement after the nominal expiry date (Form F24C) dated 23 December 2022; and
  - d) a link to the Commission's webpage for this matter.

(together, the application documents)

on each employee covered by the *Apple Retail Enterprise Agreement 2014* (Agreement) and invite them to provide their views on the Application pursuant to s 226(3)(a) of the *Fair Work Act 2009* (Cth) in accordance with item 3 of these directions below.

2. By **4:00 pm on Friday, 11 August 2023**, a director or authorised officer of Apple is to file a statutory declaration confirming compliance with item 1 of these directions.
3. By **4:00 pm on Wednesday, 23 August 2023**, any employee covered by the Agreement may provide their views on the Application, by sending an email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au).

4. The matter will be listed for hearing on **Wednesday 30 and Thursday 31 August and Friday 1 September 2023.**



PRESIDENT

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