



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE ROSS, PRESIDENT**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards**

**(AM2014/251)**

**Aged Care Award 2010**

**(AM2014/285)**

**Social, Community, Home Care and Disability Services Industry Award 2010**

**Melbourne**

**1.01 PM, TUESDAY, 7 FEBRUARY 2017**

PN1

JUSTICE ROSS: Good afternoon. Could I have the appearances in Melbourne first, please? There's no need to stand.

PN2

MR J COONEY: Yes, your Honour. Justin Cooney from the Australian Services Union in matter AM2014 - - -

PN3

JUSTICE ROSS: For the SACS award or the aged care?

PN4

MR COONEY: SACS award. Yes, only.

PN5

JUSTICE ROSS: SACS award. Yes, okay. Ms Svendsen?

PN6

MS L SVENDSEN: Svendsen, Leigh, appearing for Health Services Union for both the aged care award and the SCHCADS award. Thank you, your Honour.

PN7

JUSTICE ROSS: Sure.

PN8

MR A McCARTHY: Your Honour, McCarthy, initial A, for the Australian Nursing and Midwifery Federation in relation to the aged care award.

PN9

JUSTICE ROSS: Thank you.

PN10

MR M PEGG: Your Honour, Michael Pegg for Jobs Australia in relation to the SCHCADS award.

PN11

JUSTICE ROSS: Thank you. In Sydney?

PN12

MR M ROBSON: Robson, initial M, appearing for United Voice in the SCHCADS and the aged care award.

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JUSTICE ROSS: Thanks, Mr Robson.

PN14

MS J ZADEL: Zadel, initial J, appearing on behalf of the Australian Federation of Employers and Industries in relation to the SCHCADS award and the aged care award.

PN15

JUSTICE ROSS: Thank you.

PN16

MS R BHATT: Your Honour, Bhatt, initial R, appearing for the Australian Industry Group in relation to both awards.

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JUSTICE ROSS: Thanks, Ms Bhatt.

PN18

MS E PATTON: Your Honour, Patton, initial E, appearing for Leading Aged Services Australia and also Aged and Community Services Australia for both the aged care and the SACS award.

PN19

JUSTICE ROSS: Thanks, Ms Patton. Anyone else in Sydney? No? Newcastle?

PN20

MS K THOMSON: Thank you, your Honour. Thompson, initial K, with Mr Brian Evans for ABI and New South Wales Business Chamber in relation to both awards.

PN21

JUSTICE ROSS: Okay, thank you. Should we start with the SACS award first. I've read the joint report and I note the proposed draft directions. What's the timeframe that you're looking at for the conference before Booth DP?

PN22

MS SVENDSEN: Your Honour, probably the sooner the better, not just for the flow on directions but certainly in terms of finalising some matters. We don't want to leave too much time between our last conversations and the next one either.

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JUSTICE ROSS: All right.

PN24

MS SVENDSEN: Yes.

PN25

JUSTICE ROSS: Bearing in mind in advance of it, each party is to circulate the short bit of material, so I suppose that means you don't want it tomorrow.

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MS SVENDSEN: No.

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JUSTICE ROSS: But you want it in the next few weeks.

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MS SVENDSEN: Yes.

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JUSTICE ROSS: Some time in February is really - - -

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MS SVENDSEN: Yes, it would be great.

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JUSTICE ROSS: Okay. Everyone got the same view about that? Anyone want to comment on the - - -

PN32

MS ZADEL: Yes, your Honour.

PN33

JUSTICE ROSS: - - -report or the draft directions? No? I'll talk to Booth DP and once I've got a date from her I'll issue the directions. Just on paragraph 4 I must admit when I read this I didn't greet it with enthusiasm because is it proposed here that there are going to be further claims that are now going to be raised in - - -

PN34

MS SVENDSEN: I think, your Honour, the issue really is more modification of those. I will note however that most of us haven't clearly delineated what our substantive claims are in this award.

PN35

JUSTICE ROSS: Yes, okay.

PN36

MS SVENDSEN: So it's more about that. I think there is a significant hope that we'll narrow scope.

PN37

JUSTICE ROSS: All right. So the proposition really is that this process before the Deputy President will refine where you're up to on the substantive claims, identify what you've agreed on and what's still in dispute, and that will be the end of that issue, and then any matters still in dispute we'll set down a program for them to be heard and determined by a Full Bench. Is that what you've got in mind?

PN38

MS SVENDSEN: That's what we had in mind when we discussed it.

PN39

JUSTICE ROSS: All right. Does anyone have a different view to that? No? Okay. It's just when I saw it my reaction was, you know, I didn't really want this to be an endless process, but I understand now the way it's put, so that's fine. I'll talk to the Deputy President at some stage today or tomorrow and wrap up a date for you and then we'll publish the directions.

PN40

Aged Care; I also understand all the technical and drafting issues have been resolved before Lee C. That took place, I think, yesterday.

PN41

MS SVENDSEN: Yes, they were, your Honour.

PN42

JUSTICE ROSS: He's going to do a report on that and that will be published in due course.

PN43

MS SVENDSEN: Yes.

PN44

JUSTICE ROSS: Aged care?

PN45

MS SVENDSEN: Your Honour, the reason we actually asked for this to be set aside with the SCHCADS matter is that there were matters being discussed there that may have had implications in aged care. We haven't actually had any discussions about aged care.

PN46

JUSTICE ROSS: All right.

PN47

MS SVENDSEN: The comments have largely been this might be something we need to talk about in aged care as well. So we're actually looking for some substantive discussions now that we've got to the stage we've got in the SCHCADS award.

PN48

JUSTICE ROSS: Is it best to leave the SCHCADS award just with Booth DP and have Lee C do the aged care award, or do you think there's an overlap between the two; the same issues are going to arise such that it makes sense for the same person?

PN49

MS SVENDSEN: I don't think it will be substantive either way.

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JUSTICE ROSS: All right. It might come down to an availability issue.

PN51

MS SVENDSEN: It might.

PN52

JUSTICE ROSS: I'll say this provisionally and if anyone has a contrary view by all means tell me, but it might be best to try and focus on the SCHCADS award first, get that done. By first I mean have Booth DP have the discussions, get that concluded. There can be parallel discussions before another Member. I just know that her time is limited. There can be parallel discussions before another Member about the aged care award, and, of course, if at some point you crystallise a substantive issue in the SCHCADS award and you've got the same issue in aged care, well, that's okay. They'll go to the same Bench for determination if you

don't reach an agreement. There is an overlap of the parties so I don't think anything will be lost.

PN53

So to be clear what the proposition is, is that in the SCHCADS award that will be conciliated by Booth DP as you've indicated in the directions. The aged care I'll refer to Lee C to bring that on at some point and find out where the parties are up to and see where the issues are. Okay. Does anyone have a view to the contrary? I know I needn't say that you don't need to be backward in saying that I've got it wrong and I should do it differently, but I'll say that anyway.

PN54

That just was my reaction because you've sort of progressed the SCHCADS award already before Booth DP really that process ought to go through for conciliation to some finality. Aged care we haven't really started at all, so I don't think it matters much. The determination of issues will be different. The same Bench should deal with both aged care and SCHCADS if there's anything that's unresolved. Anyone want to comment on any of that? No?

PN55

MS BHATT: Your Honour, if I may?

PN56

JUSTICE ROSS: Yes.

PN57

MS BHATT: It's Ms Bhatt for Ai Group. I'm just trying to think this through myself, but if it's the case, and I understand that it is, that a number of substantive variations are being sought to the SACS award which are very similar in their nature to the aged care award we have no difficulty with those matters being allocated to different Members of the Commission, but in terms of timing, subject of course to the Commission's convenience and availability, if a conference before Lee C were listed after the next conference before Booth DP.

PN58

JUSTICE ROSS: Yes, sure.

PN59

MS BHATT: The only thing I'm conscious of is this: if there are ongoing negotiations in relation to the SACS award which results in parties simply reserving their position in the context of discussions regarding the aged care award that might not be a particularly productive use of time.

PN60

JUSTICE ROSS: Yes. No, that makes sense, Ms Bhatt. The matter on aged care before Lee C will be some time in March, and I'll endeavour to get Booth DP some time in February. But either way they'll be sequential, so we'll deal with SACS first and then aged care. Everyone okay with that?

PN61

MR COONEY: Yes.

PN62

MS SVENDSEN: Thank you, your Honour.

PN63

JUSTICE ROSS: Is there anything else that we need to deal with at this stage? No? No, okay. If there's nothing further, I'll adjourn the conference. I'll issue the directions in the form sought in relation to the SCHCADS award as soon as I've spoken to Booth DP. I'll refer the aged care matter to Lee C, but indicate to him that any conference should take place after the conference before Booth DP. Nothing further? No? Thanks for your attendance.

PN64

MS SVENDSEN: Thank you very much.

PN65

JUSTICE ROSS: I will adjourn.

**ADJOURNED INDEFINITELY**

**[1.11 PM]**