



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 C14 and C13 rates in modern awards
(C2019/5259)**

Sydney

11.00 AM, WEDNESDAY, 13 DECEMBER 2023

Continued from 26/04/2023

PN68

JUSTICE HATCHER: I'll take the appearances in no particular order. Mr Scott, you appear for Australian Business Industrial and the New South Wales Business Council.

PN69

MR K. SCOTT: I do, your Honour.

PN70

JUSTICE HATCHER: Ms Baxter, you appear for the Australian Fresh Produce Alliance.

PN71

MS E. BAXTER: Yes, your Honour, I do.

PN72

JUSTICE HATCHER: Ms Bhatt and Mr Chang, you appear for the Australian Industry Group.

PN73

MS R. BHATT: Yes, your Honour.

PN74

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

PN75

MR A. HERBERT: Yes, your Honour.

PN76

JUSTICE HATCHER: Mr Buckley, you appear for the AMIEU.

PN77

MR C. BUCKLEY: That's correct, your Honour.

PN78

JUSTICE HATCHER: Ms Buchanan and Mr Govey, you appear for APESMA.

PN79

MS M. BUCHANAN: Yes, that's correct, thank you, your Honour.

PN80

JUSTICE HATCHER: Mr Giordano, you appear for Australian Workers' Union.

PN81

MR A. GIORDANO: Yes, your Honour.

PN82

JUSTICE HATCHER: Mr Keats, you appear for the MUA Division of the CFMEU.

PN83

MR N. KEATS: That's correct, your Honour.

PN84

JUSTICE HATCHER: Mr Maxwell, you appear for the Construction and General Division of the CFMEU.

PN85

MR S. MAXWELL: Yes, your Honour.

PN86

JUSTICE HATCHER: Ms Wiles, you appear for the Manufacturing Division of the CFMEU.

PN87

MS V. WILES: That's correct, your Honour.

PN88

JUSTICE HATCHER: Ms Adler appears for the Housing Industry Association.

PN89

MS M. ADLER: Yes, thank you, your Honour.

PN90

JUSTICE HATCHER: Mr Hodges, you appear for the – I'll just call it the motor trades organisations.

PN91

MR D. HODGES: Yes, thank you, your Honour.

PN92

JUSTICE HATCHER: Ms Sostarko, you appear for Master Builders Australia.

PN93

MS R. SOSTARKO: Yes, your Honour.

PN94

JUSTICE HATCHER: Mr Rogers, you appear for the National Farmers' Federation.

PN95

MR B. ROGERS: Yes, thank you, your Honour.

PN96

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

PN97

MS M. DAVIS: Yes, that's correct, your Honour.

PN98

JUSTICE HATCHER: And, Mr Houlihan, you appear for the Showmen's Guild of Australia. Yes, all right. The purpose of today's hearing is to program the final

hearing for next week, given the diversity of organisations and interests. Firstly can I deal with the witness evidence.

PN99

In accordance with my earlier directions, the Commission's been advised that in respect of witness statements filed, four witnesses are required to attend for cross-examination, and they're all witnesses in connection with the Meat Industry Award. Mr Herbert, obviously it would be convenient to hear that evidence as a block, so from your client's perspective, those witnesses, can they appear at any time during the two days?

PN100

MR HERBERT: We can make that happen, yes, your Honour.

PN101

JUSTICE HATCHER: Mr Buckley, likewise for your two witnesses? Mr Buckley, your microphone's off.

PN102

MR BUCKLEY: Apologies, your Honour. There were three witness statements from AMIEU witnesses, so if I could be advised which are the two that are - - -

PN103

JUSTICE HATCHER: I'm sorry. Mr Smith and Mr Cooper – you can confirm this, Mr Herbert. We're advised that Mr Smith and Mr Cooper were required for cross-examination.

PN104

MR BUCKLEY: Yes. That should be possible too, yes.

PN105

JUSTICE HATCHER: All right. I'll come back to that, but we'll try to arrange a block of time in the two days in which those witnesses can be cross-examined and we can, at the same time, receive submissions relevant to the Meat Industry Award.

PN106

I take it that all parties here have attended on the basis they wish to make oral submissions during the two-day hearing. Is that correct?

PN107

MS ADLER: It is from our perspective, your Honour.

PN108

JUSTICE HATCHER: Yes, all right. If no one disagrees, I'll assume that's the case. I think we'll try to construct the program so that parties know when they need to attend, but first I think the hearing should start with those parties who have made general submissions, or submissions in respect of a large number of awards. I'll start with you, Mr Scott. How long do you think your submissions would take?

PN109

MR SCOTT: Your Honour, I wouldn't anticipate more than 20 to 30 minutes, depending on the number of questions the Bench might have.

PN110

JUSTICE HATCHER: Ms Bhatt?

PN111

MS BHATT: A similar estimate as to time, your Honour.

PN112

JUSTICE HATCHER: Then, after that, Mr Giordano, of the parties attending, your organisation appears to have an interest in the greatest number of awards. How long do you think your submissions would take?

PN113

MR GIORDANO: I think we'll mainly be relying on written submissions, your Honour, so probably around the same as what we've just heard, 20 to 30 minutes.

PN114

JUSTICE HATCHER: I think it might be convenient for those parties who have a common interest with the AWU in respect of awards to go after that, so who would that be? Mr Rogers?

PN115

MR ROGERS: Yes, your Honour, we've got an interest in the Hort Award and the Pastoral Award. We'll also be largely relying on written submissions, so we may need to make some submissions in response to those which are made by the AWU, but I don't think we'll need very long, so 10, 15 minutes, probably, tops.

PN116

JUSTICE HATCHER: All right. Mr Houlihan? Are you still there, Mr Houlihan?

PN117

MR HOULIHAN: Is that better, your Honour?

PN118

JUSTICE HATCHER: Can you hear us, Mr Houlihan?

PN119

MR HOULIHAN: I can.

PN120

JUSTICE HATCHER: How long would your submissions take, do you think?

PN121

MR HOULIHAN: Your Honour, no longer than five minutes. It would be in support of the application to vary the award. We've had no contact from the AWU during the award modernisation process. It was the SDA that was the responsive party to the making of this award.

PN122

JUSTICE HATCHER: All right. Going back to you, Mr Herbert and Mr Buckley, can you give an estimate of how long cross-examination and submissions might take in each case? Mr Herbert, your microphone's off.

PN123

MR HERBERT: I apologise, your Honour. For my part, cross-examination will be no more than about four or five minutes for each witness, of the two that we've asked to be called. I'll have a discussion with Mr Buckley in the meantime to see if we can even dispense with that, or shorten that, and let the Commission know if it changes. It would only be shorter, not longer. Oral submissions in the order of 10 to 15 minutes at the most.

PN124

JUSTICE HATCHER: Mr Buckley, do you have any radically different estimate for your side?

PN125

MR BUCKLEY: No, your Honour. In cross-examination, might be 20 minutes all told, with both witnesses. It might be less. In terms of submissions, again, five to 10 minutes, really only dealing with matters that arise out of the cross-examination.

PN126

JUSTICE HATCHER: Can I then deal with the construction awards, to the extent they're relevant. Mr Maxwell, how long do you think you'll need?

PN127

MR MAXWELL: Your Honour, 10 to 15 minutes.

PN128

JUSTICE HATCHER: Ms Adler?

PN129

MS ADLER: I expect the same, your Honour.

PN130

JUSTICE HATCHER: Ms Sostarko?

PN131

MS SOSTARKO: Yes, I agree with my colleagues, thank you, your Honour.

PN132

JUSTICE HATCHER: All right. I'll just go through everybody else. Ms Buchanan, how long do you think you'll need?

PN133

MS BUCHANAN: No more than five to 10 minutes in relation to the Architects Award.

PN134

JUSTICE HATCHER: Mr Keats?

PN135

MR KEATS: Your Honour, if it's convenient, I propose to file a short written reply submission which would reduce oral submissions to about five, 10 minutes.

PN136

JUSTICE HATCHER: Ms Wiles?

PN137

MS WILES: Your Honour, my estimate would be probably 10 minutes, 15 at the most.

PN138

JUSTICE HATCHER: And Mr Hodges?

PN139

MR HODGES: Your Honour, no more than five to 10 minutes.

PN140

JUSTICE HATCHER: Sorry, and Ms Davis?

PN141

MS DAVIS: Your Honour, no more than 10 minutes, I would estimate.

PN142

JUSTICE HATCHER: All right. Have I covered everybody?

PN143

MS BAXTER: Your Honour, for the Australian Fresh Produce Alliance, we estimate - - -

PN144

JUSTICE HATCHER: Yes. I'm sorry, yes.

PN145

MS BAXTER: Approximately 20 minutes, your Honour.

PN146

JUSTICE HATCHER: Sorry, I couldn't hear that. What was that?

PN147

MS BAXTER: 20 minutes, estimate.

PN148

JUSTICE HATCHER: 20 minutes. Is that everybody? All right. What I intend to do, on the basis of those indications, is to prepare a timetable of which parties can attend during the two days and make their submissions in particular groupings.

PN149

It's been previously indicated that the hearing will be a hybrid process, so parties in Sydney can attend in person, otherwise parties can attend by Teams, and with respect to the witnesses, they can be called in person or by Teams. So to the

extent they haven't done so already, can parties who require a Teams link, that is, parties who are not present in Sydney or who don't want to travel to Sydney, can they advise my chambers of that, and that will be organised. Are there any other procedural matters I need to deal with?

PN150

MR HERBERT: No, your Honour.

PN151

JUSTICE HATCHER: Thank you for your attendance. This matter is now adjourned.

ADJOURNED INDEFINITELY

[11.30 AM]