

**From:** Chambers - Hatcher J [Chambers.Hatcher.J@fwc.gov.au]  
**Sent:** Monday, 24 April 2023 10:57 AM  
**To:** Grace Morgan-Cocks[gmorgancocks@raffwu.org.au]  
**CC:** Josh Cullinan[jcullinan@raffwu.org.au]; Amber Sharp[asharp@mccullough.com.au]; Kerry O'Brien[kobrien@mccullough.com.au]; 'kanemurtagh@icloud.com'[kanemurtagh@icloud.com]; David Bliss[david@sdan.org.au]  
**Subject:** RE: AG2022/5615 - Application by Gusset  
**Attachments:** AG2022-5615 Gusset re Apple Retail EA - AMENDED Directions 24 April 2023.pdf

OFFICIAL

Dear parties,

Justice Hatcher has declined the request to amend the directions of 3 April 2023 to add a direction for employees to file submissions in relation to the application by 8 June 2023 and advises that the matter of employee views on Mr Gusset's application can be addressed by the parties at the further directions hearing.

The timetable provided for in the 3 April 2023 directions will therefore remain unchanged, but the date of the directions hearing will be amended to Monday 26 June 2023 as requested. Please find **attached** amended directions confirming this change. An updated notice of listing will be issued later today.

I confirm the redacted statements will be uploaded to the Commission's webpage for the matter.

Kind regards  
Caroline

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



**Fair Work Commission**

Australia's national workplace relations tribunal

T (02) 9308 1812

E [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au)

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011  
[www.fwc.gov.au](http://www.fwc.gov.au)

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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:** Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>

**Sent:** Thursday, 20 April 2023 3:31 PM

**To:** Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>

**Cc:** Josh Cullinan <jcullinan@raffwu.org.au>; Amber Sharp <asharp@mccullough.com.au>; Kerry O'Brien <kobrien@mccullough.com.au>; 'kanemurtagh@icloud.com' <kanemurtagh@icloud.com>; David Bliss <david@sdan.org.au>

**Subject:** AG2022/5615 - Application by Gusset

Dear Associate

We refer to the above matter and the Directions and Orders issued by President Hatcher on 3 April 2023. With Apple's consent, we seek an amendment to the Directions, which are outlined below.

### **Directions**

On 30 March 2023 the parties attended a directions hearing before President Hatcher, and we advised that the Applicant had some unavailability through May and June 2023. Consequently, President Hatcher invited the Applicant to provide a note outlining the unavailability, which was sent to chambers that day. We advised that we were unavailable on the following dates:

- 15 May through to 12 June 2023
- 15 and 16 June 2023

We also advised that we had witness availability issues for the week of 26 June to 4 July 2023.

On 3 April 2023, President Hatcher issued the following Directions, relevantly, that:

1. Apple Pty Limited t/a Apple and any party that opposes the application in matter AG2022/5615 (s 225 application) are each to file:
  - (a) an outline of submissions; and
  - (b) any evidence on which they wish to rely in response to the s 225 application

by 5:00 pm (AEST) on Thursday, 25 May 2023.

2. The applicant, Justin Gusset, and any other party that wishes to reply to material filed pursuant to item 1 of these directions may file:
  - (a) an outline of submissions in reply; and
  - (b) any evidence in reply on which they wish to rely

by 5:00 pm (AEST) on Thursday, 8 June 2023.

3. The s 225 application will be listed for further directions at 9:30 am (AEST) on Tuesday, 13 June 2023.

By way of further explanation, I, writing directly as the Applicant's representative, am not available at all on any dates through 15 May through 12 June 2023 because I will be away from work. Further, the date for the first directions hearing at 9.30am on 13 June 2023 will be the first day I return to work, and I unfortunately will not be in a position to attend the hearing properly instructed.

We further note that Direction 1 only directs for the provision of Apple's outline of submissions and evidence, and those of the parties that oppose the application. The Directions have not provided for the views covered employees more broadly, including those who may support the application or have another view about its disposition, pursuant to the mandatory consideration in s 226(3)(a) of the *Fair Work Act 2009* (Cth). In our view, it is appropriate that any reply filed by the Applicant is able to be responsive to all the views of the affected parties, rather than a discrete set of views in opposition and Apple's position.

We have included a further proposed direction to this effect at (3) below for the provision of the views of covered employees by 8 June 2023, so that those employees can provide their views fully informed of the Applicant's case, Apple's position, and any opposing case.

Apple has granted consent to the seeking of the following amended directions that we ask that President Hatcher make in chambers:

1. Apple Pty Limited t/a Apple and any party that opposes the application in matter AG2022/5615 (s 225 application) are each to file:
  - a. an outline of submissions; and
  - b. any evidence on which they wish to rely in response to the s 225 application
  - c. by 5:00 pm (AEST) on Thursday, 25 May 2023.
2. Any party that wishes to advise the Commission of the view of an employee of Apple Pty Limited t/a Apple who is covered by the *Apple Retail Enterprise Agreement 2014*, about the application in matter AG2022/5615 do so by Thursday 8 June 2023.
3. The applicant, Justin Gusset, and any other party that wishes to reply to material filed pursuant to item 1 or 2 of these directions may file:
  - (a) an outline of submissions in reply; and
  - (b) any evidence in reply on which they wish to relyby 5:00 pm (AEST) on ~~Thursday, 8 June 2023~~ Thursday, 22 June 2023.
4. The s 225 application will be listed for further directions at ~~9.30am on Tuesday 13 June 2023~~ 9.30am on Monday 26 June 2023.

#### **Publishing statements**

On 3 April 2023, President Hatcher granted the Applicant's application to prohibit certain information contained within the statements of Wilda Fong and Justin Gusset being published. We note that Ms Wilda Fong and Mr Justin Gusset's statements have not been published on the Commission's dedicated webpage for the matter.

Noting the Orders of 3 April 2023, we ask that the statements of Ms Fong and Mr Gusset be published on the dedicated webpage in redacted form, so that parties can access the full suite of the Applicant's evidence. For sake of ease, we have **attached** copies of those documents which we have marked in red outline for redaction, and also copies with the redactions applied.

#### **Furnishing of additional statement**

We had previously advised that an additional witness statement of Mr Levi Lako in the proceedings would be forthcoming. Please be advised that we no longer intend to file a statement by Mr Lako.

Thank you for your assistance.

Kind regards

Grace Morgan-Cocks  
National Legal Officer  
**Retail and Fast Food Workers Union**  
[www.raffwu.org.au](http://www.raffwu.org.au)  
0481 106 698  
[gmorgancocks@raffwu.org.au](mailto:gmorgancocks@raffwu.org.au)  
PO Box 334, Clifton Hill, VIC 3068  
Tw: @raffwu  
Fb: <https://www.facebook.com/RAFFWU/>

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