



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2022/35**

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

**Application by Woolworths Group Limited  
(AM2022/35)**

**General Retail Industry Award 2020**

**Sydney**

**9.30 AM, TUESDAY, 21 FEBRUARY 2023**

**Continued from 16/01/2023**

PN48

PRESIDENT HATCHER: Could I have the appearances? Mr Gotting, are you appearing for the applicant, Woolworths, is that correct?

PN49

MR GOTTING: Yes.

PN50

PRESIDENT HATCHER: Ms Bhatt, you appear for the Australian Industry Group?

PN51

MS BHATT: Yes, I do.

PN52

PRESIDENT HATCHER: Ms Mamblona, Mr Izzo, you appear for ABI and the New South Wales Business Chamber?

PN53

MR IZZO: Yes, we do.

PN54

PRESIDENT HATCHER: Ms Dooley, you appear for the UWU?

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MS DOOLEY: Yes, that's correct, and with me is my colleague, Elliot Womersley.

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PRESIDENT HATCHER: And Ms Biviano, you appear for the TWU.

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MS BIVIANO: Yes, I do.

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PRESIDENT HATCHER: (Indistinct).

PN59

MS BIVIANO: Yes, I do – sorry.

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PRESIDENT HATCHER: All right, thank you. All right, well, this matter was listed for a conference next Monday 27 February for the purpose of seeking whether the application might be either agreed, settled or at least advanced and for that purpose, I had requested an inspection of one of the applicant's online fulfilment facilities so for the purpose of the conference I have an understanding of the subject matter of the application. But I understand now that the UWU opposes – I think the conduct of inspection and perhaps the conference all together. I'll start with you, Mr Gotting – what do you say is the way forward from here, noting that the matter appears to have become somewhat controversial.

PN61

MR GOTTING: Your Honour, my submission is that it's appropriate for the inspection to occur on Monday, 27 February, and following that inspection for the Commission to convene a conference with a view to exploring the positions on a without-prejudice basis.

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PRESIDENT HATCHER: All right. Do any of the other employer parties take a different view?

PN63

MR IZZO: Your Honour, it's Mr Izzo here – we don't necessarily see it as necessary for us to attend the inspection but if the conference is to be held immediately thereafter then naturally we'll attend. We have an interest in attending the conference. To the extent that they're held immediately adjacent to each other, then we'll fit in and attend the inspection if need be but our primary interest is attending the conference and subsequent involvement in the proceedings.

PN64

PRESIDENT HATCHER: All right. I should have said that it was not necessary for any party that didn't wish to attend the inspection. It's mainly so – as I said – I had an understanding of the subject matter of the application. In any event, Ms Dooley, what do you say is the appropriate course?

PN65

MS DOOLEY: Your Honour, the reason we've sought to defer the inspection is because in our position paper was to have set out our view is that there are a variety of different types of facilities that fulfil online orders and so attending a single site at the outset is not necessarily representative of the – what's actually going on within the industry and the variety of different operations. So we see value in an inspection but just not at this point in time and we would seek to have an inspection once the applicant's position is perhaps clarified and the inspection is expanded to multiple sites, not just a Woolworths site.

PN66

I think in terms of where to from here, our view is that there are a number of parties that are in support of the application but those supporting parties have raised various issues with drafting that, you know, may lead to potential unintended consequences and so I wondered whether it might be useful for those parties that are in support of the application to confer separately with a view to reaching some sort of unified position to put to the UWU and the TWU, as I understand who oppose it, and any other opposing parties to then formulate a view, whether it may change or remain the same from what it is now.

PN67

PRESIDENT HATCHER: Ms Dooley, just to make clear, the purpose of the inspection is not to conduct a hearing in the matter. We're nowhere near that stage yet and I haven't even determined whether I would participate in a hearing. It's only so that I understand the type of facility which Woolworths wants to be

covered if it's not already covered by the Retail Award. Does that make any difference to your position?

PN68

MS DOOLEY: No, I don't believe it does, Your Honour.

PN69

PRESIDENT HATCHER: Just so I understand the UWU's position, is that type of facility which Woolworths operates, that is these online fulfilment centres, should not in any circumstances be under the Retail Award? Is that the position?

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MS DOOLEY: That's our view at this stage.

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PRESIDENT HATCHER: When you say, 'this stage', is that likely to change?

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MS DOOLEY: Well, I would say that that's our view, before we've had an opportunity to receive full material from the applicant in terms of submissions.

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PRESIDENT HATCHER: Well, Ms Dooley, there's already been a fairly detailed application accompanied by witness statements. I would have thought it's fairly clear what Woolworths is seeking and that that's not going to – you're not going to know anything more than what you already know. I'm just trying to ascertain the extent of the disagreement. I'm not asking you to alter your position. I just want to know whether this matter will necessarily need to go to a hearing or whether there is some prospect that with the right form of words it might be resolved.

PN74

MS DOOLEY: Our view is that the online fulfilment centre would be covered the Storage Services Award and not exclusively the General Retail Industry Award.

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PRESIDENT HATCHER: Right. What is your position, Ms Biviano?

PN76

MS BIVIANO: Thank you, Your Honour. The TWU's position is that we see value in participating in the inspection and conference next week or (indistinct) and then the conference whenever it's listed and from our perspective it makes a lot of sense to physically see the facility of the kind described by Woolworths in its application, noting that (indistinct) provided quite a number of pictures and the like, providing them attached to the relevant witness statements. So from the perspective of where to next, that's the TWU's perspective – a logical first step. However, if it is the case that there are other facilities as Ms Dooley described, perhaps at the appropriate time further inspections might be necessary. However, I couldn't make that assessment at this stage. I can only go off the application that has been filed by Woolworths. In terms of the TWU's position, we oppose the application for the reasons set out in our briefing paper which were filed yesterday. We are willing and wanting to participate in

conferences and ongoing discussions about whether or not there could be some alteration to that position but at the outset, our view is that there is already another modern award which applies in these circumstances for facilities of this kind and so we would oppose the application.

PN77

PRESIDENT HATCHER: Thank you. You want to say anything in response, Mr Gotting?

PN78

MR GOTTING: Your Honour, the only observation that I would make is that the purpose of the inspection is to assist the Commission in conducting the conference next week and in my submission it's appropriate for that inspection to precede the conference for next week.

PN79

PRESIDENT HATCHER: All right, well, in the circumstances I propose to proceed with the inspection and conference next week. As I have indicated, it's not compulsory for parties to attend the inspection and I understand there is some limitation on numbers in any event. Beyond that I would expect to see the parties who have filed position papers to attend the conference on Monday. Is there anything further we need to deal with, Mr Gotting?

PN80

MR GOTTING: Your Honour, my instructing solicitor sent in a draft document dealing with the site inspection, including its location and timing and locations to meet and as I understand it, that document has not been circulated to the parties more generally. I was just going to politely inquire whether a 10 am start next week in the circumstances that are set out in that draft document is suitable to Your Honour and if so, can then make steps to circulate that document to the parties.

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PRESIDENT HATCHER: Yes, that's suitable, Mr Gotting.

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MR GOTTING: Thank you.

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MR IZZO: Your Honour, Mr - - -

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PRESIDENT HATCHER: Yes, go on.

PN85

MR IZZO: - - - Izzo here, Your Honour. Just in terms of practicalities, because we are obviously eager to attend the conference, it was a little unclear to me that the location of the conference – is it intended that the conference will be held at a conference room organised by Woolworths or is it back in the Commission? It just wasn't clear to me where the conference is going to be.

PN86

PRESIDENT HATCHER: Conference will be in the Commission, Mr Izzo.

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MR IZZO: Okay, thank you.

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MR GOTTING: If it assists, Your Honour, I can indicate that the expected length of the inspection at the site at Mascot is 30 minutes. If we are to start at about 10 am then we will obviously expect to conclude at about 10.30 am and I wonder whether we should just allow one hour for people to return to 80 Williams Street, and make any other arrangements or tender any other matters and therefore query whether it would be appropriate to have a not-before-11.30 listing for the conference?

PN89

PRESIDENT HATCHER: All right, unless anyone has a different view we'll list it on that basis. Now, Mr Pardo from the SDA has just turned up – do you want to say anything, Mr Pardo?

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MR PARDO: Firstly apologies, Your Honour – I was under the impression someone else was briefed. Obviously I come to this fairly cold but I'm in the Commission's hands if I can be of any assistance for the SDA, may it please the Commission.

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PRESIDENT HATCHER: Okay, thank you. All right, so the inspection will proceed at 10 am on Monday 27 February. Mr Gotting, your client will provide the parties with details of the inspection program, including location and arrangements for those who want to attend and the subsequent conference will proceed in the Commission Sydney premises and not before 11.30.

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MR GOTTING: Thank you, Your Honour.

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PRESIDENT HATCHER: If there's nothing further, we'll now adjourn.

**ADJOURNED UNTIL MONDAY, 27 FEBRUARY 2023**

**[9.52 AM]**