



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**C2024/1506**

**s.306E - Application for a regulated labour hire arrangement order**

**Application by Mining and Energy Union  
(C2024/1506)**

**Callide Mine Union Enterprise Agreement 2021**

**Sydney**

**9.30 AM, FRIDAY, 26 APRIL 2024**

**Continued from 05/04/2024**

PN1

JUSTICE HATCHER: I will take the appearances. Mr Boncardo, you continue appearance for the MEU?

PN2

MR P BONCARDI: I do, your Honour.

PN3

JUSTICE HATCHER: Mr Williams, you continue appearance for WorkPac?

PN4

MR D WILLIAMS: That's correct, your Honour.

PN5

JUSTICE HATCHER: Mr Hall, you continue appearance for Batchfire Callide?

PN6

MR J HALL: Yes, thank you, your Honour.

PN7

JUSTICE HATCHER: Mr Clarke, you continue appearance for the ACTU - if you're there somewhere?

PN8

MR T CLARKE: Yes, thank you, your Honour, yes.

PN9

JUSTICE HATCHER: Ms Beasley, you appear for the Ai Group?

PN10

MS C BEASLEY: Yes, your Honour.

PN11

JUSTICE HATCHER: What's the position, Mr Boncardo? You have now filed all your material; is that correct?

PN12

MR BONCARDI: That's so, your Honour. That material was filed last Friday. There was a direction, or a set of consent directions, sent through to the Commission very shortly before 9.30 this morning. They may not have reached your Honour's chambers yet, but they provide, in effect, for the Australian Industry Group and the ACTU to file and serve any submissions by 8 May, with my client filing any reply submissions by 13 May, and the matter being listed for a hearing on the first available date after 4 May.

PN13

Your Honour may glean from those directions that the position of WorkPac, or the WorkPac entities, I should say, and Batchfire Callide is one of non-opposition to the application. As I understand it, the position is perhaps a little more nuanced than that. The position of the WorkPac entities and Batchfire Callide is that they are unlikely to oppose the application, but, as I understand it, they consent to the

directions, and implicit in that, your Honour, is that they do not wish to file, and will not be filing, any evidence or submissions, but I do not think I can tell your Honour this morning that there is consent to the orders, or non-opposition to the orders, by WorkPac and Batchfire. There is unlikely to be any difficulty with the orders, as I understand it, but that is a position which I understand will crystallise some time very shortly, but in my client's view, and I understand this view is not one which is opposed by WorkPac and Batchfire, there is nothing that would prevent the matter being set down for a hearing on the directions which have been provided to the Commission this morning.

PN14

JUSTICE HATCHER: On the assumption that there's no contest as to evidence, why do we need a hearing?

PN15

MR BONCARDO: I am in your Honour's hands.

PN16

JUSTICE HATCHER: Anyway, we will see what happens. All right. Mr Williams.

PN17

MR WILLIAMS: Mr Boncardo has correctly recorded my client's position, your Honour. We don't contest the evidence. We don't seek a direction which provides for submissions or evidence. Discussions have been pretty fruitful. We would like to have a discussion with Mr Boncardo's client in relation to the ultimate form of an order, but, subject to that discussion, it is unlikely that my client would be opposing an order being made.

PN18

JUSTICE HATCHER: All right. To be clear, apart from an issue about the terms of any final order, you don't seek to file any evidence or submissions in the matter?

PN19

MR WILLIAMS: That is our position, your Honour, yes.

PN20

JUSTICE HATCHER: All right. Mr Hall.

PN21

MR HALL: Batchfire is in the same position, your Honour.

PN22

JUSTICE HATCHER: All right. Mr Williams and Mr Hall, given that's the case, and I don't have any view about this, do we need to have a hearing?

PN23

MR WILLIAMS: If there was consent to an order, then there wouldn't need to be a formal hearing as between my client and the MEU. I think it would then be a matter of how the intervenors respond and what issues they might raise. We

would reserve the right to be heard in relation to whatever came out of that, but, subject to that, it may be that a hearing in person is not required.

PN24

JUSTICE HATCHER: All right. Mr Clarke.

PN25

MR CLARKE: Yes, thank you. Look, we don't have a difficulty with the chain of events set out in the directions. It might be beneficial, as was done in the supported bargaining matter involving early childhood education, to effectively deal with the question as to the intervenors being heard in relation to constructional questions in a directions, rather than sort of have large slabs of material in the submissions dealing with the basis upon which they might be heard if permission were granted. That's a matter for your discretion, so in terms of an invitation, rather than putting us on an application to be heard.

PN26

They are the only comments I would make about the directions.

PN27

JUSTICE HATCHER: All right. Mr Clarke, I think you and the Ai G can take for granted that you will have leave to make submissions, so that those submissions will be considered. That being the case, what other matters that any submissions you make in whatever form are likely to canvass?

PN28

MR CLARKE: It's just going to be around constructional questions, your Honour, and the operation of the statutory tests.

PN29

JUSTICE HATCHER: Yes. All right. Ms Beasley.

PN30

MS BEASLEY: Your Honour, we have only received the directions a short time ago, so we haven't had an opportunity to assess whether this development will change our position in terms of seeking to intervene, but, if we do still seek that opportunity, we are happy with the time frame proposed in the directions of 8 May.

PN31

Should the ACTU seek to intervene and file submissions, we would likely seek an opportunity to respond to any submissions that they make.

PN32

JUSTICE HATCHER: All right. Is it on the cards that Ai G may make submissions that, notwithstanding the position of WorkPac and Batchfire Callide that the orders sought should not be made at all, or is any submission by the Ai G confined to issues of the proper approach and construction, et cetera?

PN33

MS BEASLEY: I think that's a matter we would need to get some instructions about, your Honour.

PN34

JUSTICE HATCHER: How long do you need to do that?

PN35

MS BEASLEY: We can do that in the next couple of days and come back to the parties and the Commission in writing.

PN36

JUSTICE HATCHER: All right. Mr Boncardo, I will come back to you. I am inclined to wait to find out what the nature of any Ai G case is before I make directions, but that would seem to be productive of any undue delay.

PN37

MR BONCARDO: Your Honour, we are in your Honour's hands in that regard. If your Honour is inclined either to set the matter down for a further directions hearing some time early next week - Ms Beasley, I think, indicated she needed a couple of days - then that would seem to be a course that would enable us to know where we are going moving forward, or, alternatively, if the parties are able to liaise with your Honour's chambers about that matter, that probably would be something that could be dealt with on the papers.

PN38

JUSTICE HATCHER: Yes. All right. What I think I will do, Ms Beasley, if I give you until close of business say Thursday next week to simply send correspondence to my chambers outlining, broadly speaking, your position about the application, having regard to the comment I made, that is, do you simply wish to make submissions about construction and proper application of the provisions, or are you going further and saying that no orders should be made, I think, depending upon that answer, I will then consider what directions should be made and what arrangements, if any, for a hearing should be made. Is that a suitable approach?

PN39

MR BONCARDO: Yes, your Honour.

PN40

MS BEASLEY: Yes, your Honour.

PN41

MR WILLIAMS: Yes.

PN42

JUSTICE HATCHER: All right. Well, if there's nothing further, thank you for your attendance and we will now adjourn.

PN43

MR BONCARDO: Thank you, your Honour.

PN44

JUSTICE HATCHER: The Commission is adjourned.

PN45

MS BEASLEY: Thanks, your Honour.

**ADJOURNED INDEFINITELY**

**[9.49 AM]**