



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE ROSS, PRESIDENT

AM2014/209

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/209)
Pharmacy Industry Award 2010**

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Sydney

2.03 PM, THURSDAY, 4 AUGUST 2016

PN1

JUSTICE ROSS: I'll take the appearances firstly.

PN2

MS K BIDDLESTONE: Biddlestone, initial K, for the SDA.

PN3

MS S WELLARD: Wellard, initial S, for the Pharmacy Guild.

PN4

MS J LIGHT: Light, initial J, also for the Pharmacy Guild.

PN5

MS K THOMSON: Thomson, initial K, for ABI and NSW Business Chamber.

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JUSTICE ROSS: And in Canberra?

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MR S HARRIS: Harris, S, your Honour.

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MS Z BLANDFORT: And Blandfort, Z.

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JUSTICE ROSS: Well as for matters of listing, I've made clear it's really to confirm what the substantive claims are, and then the extent of the cases, evidence in relation to them, those sorts of things, or whether some of them are matters that can be dealt with on the papers and the like. So if I go to the statement of 15 July, there have been no further substantive claims that have come in, and it's just confirming that the five matters identified in the statement are the substantive claims that are before us. So can I get an indication firstly whether that statement reflects the position of the parties?

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MS WELLARD: Yes, the only other thing was I did send an email to clarify that I had inadvertently omitted the four-hour minimum shift for full-time employees.

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JUSTICE ROSS: All right.

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MS WELLARD: But it is included in the draft determination that I included in the submission.

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JUSTICE ROSS: So your claims also would add one, being the four-hour minimum for full-time employees?

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MS WELLARD: That's correct.

PN15

JUSTICE ROSS: Yes, Ms Light?

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MS LIGHT: We've also got the close-down, the annual leave close-down that's been referred back on an award-by-award basis, so the Guild's pursuing that so that needs to be added. I don't think that had happened at the time of the statement, or maybe it had, but we hadn't - - -

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JUSTICE ROSS: It doesn't matter. Is that the only matter that you're pursuing that hasn't been referred somewhere else?

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MS LIGHT: Yes.

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JUSTICE ROSS: What's APESMA?

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MS LIGHT: Theirs is the (indistinct).

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MS J BAULCH: Hello, your Honour. It's Jacqui Baulch from APESMA. They've just opened the door.

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JUSTICE ROSS: Sorry, where are you?

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MS BAULCH: We've all just been let in.

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JUSTICE ROSS: All right.

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MS BAULCH: So we apologise, but the door was locked.

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JUSTICE ROSS: No, that's all right. So just for the record, just announce the appearances?

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MS J BAULCH: Its Baulch, J, for APESMA.

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JUSTICE ROSS: Yes.

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MS L SVENDSEN: Leigh Svendsen, for the HSU.

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JUSTICE ROSS: Okay. You just need to speak into the microphone. I'm just having a bit of trouble picking up the HSU's point.

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MS SVENDSEN: Leigh Svendsen for the HSU.

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JUSTICE ROSS: What's the HSU's interest in this matter?

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MS BAULCH: This lady's just started with the HSU and she's really here just to understand what the process is.

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JUSTICE ROSS: All right.

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MS BAULCH: The HSU have coverage of pharmacists in Western Australia who are covered by this award.

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JUSTICE ROSS: So what we've identified so far, we're just checking - we're looking at the statement of 15 July. There are two things to note about that. The first is that the SDA's clarified that it has four claims. The fourth claim, in addition to the three that are identified in the statement, is the provision of a four-hour minimum engagement for full-time employees. And the Pharmacy Guild has just indicated that there is one substantive matter that it is also pursuing, which is the insertion of an annual close-down provision in respect of annual leave in the award.

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MS BAULCH: Yes, sir. Thank you.

PN38

JUSTICE ROSS: Just in relation to the annual close-down provision for a moment, have you filed anything in relation to that?

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MS WELLARD: We haven't done anything, your Honour. We haven't even had any discussions to know the level of union opposition, or support to, or what limitations could be put around a clause in order to get it all.

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MS LIGHT: Yes, I probably just have to have a look at what you were seeking again.

PN41

MS WELLARD: Yes.

PN42

JUSTICE ROSS: Well we'll come back to that. The other substantive claims are the APESMA claims, and they are set out at (iv) and (v) of the statement. The

first is a work value claim to increase various pharmacist rates, and the second is the introduction of a provision whereby employers will provide financial assistance to pay for registration fees and the completion of CPD training to maintain registration. And you've filed draft variation determinations and brief submissions in support of those claims.

PN43

MS BAULCH: Yes, sir.

PN44

JUSTICE ROSS: In relation to the union claims - the SDA claims and the APESMA claims, what's the employer position? If you look at a scale of I'll chew off my arm before I agree to that at one end, and at the other end, well, there might be some capacity for accommodation, perhaps not on a precise claim but it would be worth having further discussion about, where would you place these claims?

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MS WELLARD: We'd place the APESMA claims in the no way.

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MS BAULCH: Could we speak up, please?

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MS WELLARD: Sorry, Jacqui. We'd put the APESMA claims in the unlikely to get further advanced by any discussion category.

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JUSTICE ROSS: Yes.

PN49

MS WELLARD: But for the SDA claims, it's one of those things where the Guild has the view that if there was a removal of some of the opposition to some of the things the Guild is seeking, it might mean that there would be removal of opposition to some of the things the SDA is seeking, because on balance we think that might make a fair and relevant set of terms that obviously the Commission would then have to consider, so we can see some room - - -

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JUSTICE ROSS: Some scope for discussion in relation to those - - -

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MS WELLARD: To some of them, yes.

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JUSTICE ROSS: I'll come back to the SDA in a moment. ABI?

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MS THOMSON: Similarly.

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JUSTICE ROSS: Then let's look at the APESMA claims for the moment because it doesn't seem that they're going to be resolved by any direct discussion or facilitation. In relation to the APESMA claims what's the scope of the case that you'll be running? By that I mean do you intend to call witness evidence, and do you have an idea of how many witnesses, and when would you be ready to put on all of your material?

PN55

MS BAULCH: Yes, sir. We got feedback - I apologise if I sound like I'm repeating myself.

PN56

JUSTICE ROSS: No, that's all right.

PN57

MS BAULCH: Yes, we would want to lead significant evidence. We would have a number of witnesses. I couldn't firm up at the moment exactly how many that would be, but it would be in excess of 10 or 12. Some of those would be expert witnesses; others would be pharmacists at the various different classifications, so we can cover the changes in work in each of those classifications. We have currently got some research being conducted by a university and they will be finished at the end of December, we have already prepared substantial parts of what would be our case, so we would be ready to go with witness evidence early next year.

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JUSTICE ROSS: So you'd be ready to file your material by the end of January?

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MS BAULCH: Yes, we would, sir.

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JUSTICE ROSS: Prior to that, would you be in a position to file a document that sets out, in perhaps broad terms, but sets out the nature of the sort of evidence that you'll be calling and the sort of expert evidence you'll be calling?

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MS BAULCH: Yes, we could, sir.

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JUSTICE ROSS: Well I'll put out draft directions after the conference, but the idea would be by the end of October you would provide that sort of outline of the evidentiary case that APESMA's proposing to put, including as much detail as you're able of the expert evidence.

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MS BAULCH: Yes, sir.

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JUSTICE ROSS: That way the Guild and the others will be in a position to have the outline of the case that's against them, in general terms, prior to you filing all

the material by the end of January, and it would also enable the Guild and ABI to start briefing their own experts if they wished to, so that we can cut down the delay between the end of January and when you'll be filing your material in reply, otherwise - I don't want the case to be going on until 2018 is the subtext of all of that.

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MS BAULCH: No, you're right, sir.

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MS WELLARD: We ran into this in penalty rates. We just need to know that, so that we know which experts we need to engage and can get a feel for their availability and how long it's going to take them to prepare what we need.

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JUSTICE ROSS: Yes, so what I'll probably do is I'll do draft directions along the lines of the penalty rate type of information, and I'll pick a date after the end of January for you to file. It'll probably be in March, but there'll be a mention point after the January material in case something goes awry we're able to deal with it.

PN68

MS BAULCH: So that's acceptable to us. We can comply with (indistinct) timeline. One thing I would like to see if I could discuss with the Guild is not things about quantum but to see if we could discuss some sort of possibility of looking at where we could count any work value changes from, and to see if there's a possibility of at least discussing what some of the changes might be, whether we reach agreement or not. I'd like to explore that with them.

PN69

JUSTICE ROSS: Yes, I certainly think that would be worthwhile. Probably after you've filed all your material at the end of January I'll get a member of the Bench that will be constituted to deal with this to have a conference with the parties to try and reach an agreement on the (indistinct) point. It's not going to be an easy exercise in the pharmacy matters, because this was largely a state-regulated area prior to the modern awards.

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MS WELLARD: It was, and I think, without putting words in the union's mouth, I think that there's largely been, you know, different levels of funding, different health initiatives over time that are done, but the Guild's perspective is well there were different things that were done at other times that are worth the same thing, so I don't know - it's always been like that, that there's been different things.

PN71

JUSTICE ROSS: The Bench will need to have some idea of the darting points you're looking at, and to the extent you can - and it might be put this way - that you can agree about initiatives that have been introduced since that time. You might disagree about whether they're incremental changes or whether they're a significant net addition to work value such as to warrant an increase. That's another debate. So there are various levels of discussion you can have, but it's probably going to be more useful for you to have that once APESMA's filed all of

its material. But I'd certainly be encouraging you to have those conferences and seek to agree on what you can agree on, because that will cut down the amount of time and money that you will spend in the hearing because you won't need to have witnesses cross-examined about particular changes et cetera if it's conceded yes, they were introduced, and yes, that accurately describes the change, but you differ about what the consequence is. Okay?

PN72

MS BAULCH: Yes, even if we could just get some agreement on the change, not on whether it's worth something or not; that would be up to the Commission to deliver, but some of these changes at least we could work out they were a change, and maybe not how much they're worth.

PN73

JUSTICE ROSS: We went through a similar process in the ambulance case in Victoria, and through a series of conferences and direct discussion the parties came up with an agreed set of changes, particularly for paramedics. I don't know what the changes are in this area or what's going to be said are the changes, but in that area for paramedics there were some substantial changes, and for some of the changes - they sort of fell into two columns really - incremental are not worth anything, not to put too fine a point on it - but that was the - whereas the union was claiming they were all - on some of them Ambulance Victoria said well no, those aren't, we accept that these are significant changes (indistinct), and a range of other things. And then they sort of got to a band point about what they thought they were worth, and they gradually got closer in the end to agreeing. I'm not suggesting agreement's going to break out here, but it gives you an idea of how you can star certain things as being, yes, that's conceded, it's significant, those aren't; and if any are conceded as being significant then you have a debate about, well, what's the compensation.

PN74

MS WELLARD: And I think we'll have a third column which is things they used to do that had some value that they don't do any more.

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JUSTICE ROSS: Yes, what was the change as well.

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MS WELLARD: Yes, that's right.

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MS BAULCH: Yes, of course.

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JUSTICE ROSS: Well that deals with the APESMA matter.

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MS BAULCH: Thank you, sir.

PN80

JUSTICE ROSS: And as I say we'll put out some draft directions, give you a chance to comment on them and then see where we go. In relation to the SDA variations, they don't need to run on the same timetable.

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MS BIDDLESTONE: No.

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JUSTICE ROSS: So don't think that - it's just that because of the evidentiary nature of the other case that's the way it will work.

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MS BIDDLESTONE: Yes.

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JUSTICE ROSS: But the same Bench would deal with it but at a different time, so it's really then around how do you want to proceed with your claims. Do you want to have some direct discussion to see whether - you know, not to put too fine - if there's some trading capacity between you, and then come back in three or four weeks and come back with some consent direction that might reflect what you all think is going to be - particularly if you look at - well perhaps with one or two exceptions - it's mainly going to be a submission, merit-based case, I'm assuming?

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MS BIDDLESTONE: Yes.

PN86

JUSTICE ROSS: So have a discussion about if there's not going to be any evidence and it's going to be submission-based - you might be content just to file and perhaps have a short oral hearing - so file your full submissions, submissions in reply, response to that, pace out the time that you're both comfortable with, and once you shoot that in I'll have a short probably telephone mention and just lock down a date for a short oral hearing. Okay? And we'll try and - I don't think we're going to trip over any other dates; most of the major cases have been worked through - I think public holidays is popping up - but not until next year. But anyway, are you happy enough with that, so three weeks or so?

PN87

MS BIDDLESTONE: Yes, I'm actually on leave in two weeks, so I might have to work around that.

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JUSTICE ROSS: That's okay. When do you - it's just so that I can remember, put it in the calendar and my associate will ring you to find out where it's up to if we don't hear from you, so what sort of timeframe do you think?

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MS BIDDLESTONE: Yes.

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MS WELLARD: I think we can have a chat in the next two weeks before you go.

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MS BIDDLESTONE: Yes, definitely, and probably put something in before then.

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MS WELLARD: Yes.

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JUSTICE ROSS: Why don't we do that. Yes, so let me know in a fortnight or so, and just put on the note when you're away until.

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MS BIDDLESTONE: Yes.

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JUSTICE ROSS: And then we'll have a telephone mention when you get back.

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MS BIDDLESTONE: Okay, that's great, yes.

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JUSTICE ROSS: All right, anyone else? No? So is there anything else we need to deal with? With the annual close-down, I think we should roll that into that discussion.

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MS WELLARD: Yes, it's one of the things in our package of - - -

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JUSTICE ROSS: Yes, and you should work out as soon as - well probably after you've had the discussion, then put in your draft variation determination, and then you just follow whatever the consent directions are for the filing of your argument.

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MS WELLARD: I think that leaves, your Honour, APESMA's other claim.

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JUSTICE ROSS: Yes, I'd assumed they'd both be - - -

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MS WELLARD: As part of the work value?

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JUSTICE ROSS: Yes, I think so.

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MS WELLARD: Yes.

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JUSTICE ROSS: Is that right?

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MS BAULCH: Yes.

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JUSTICE ROSS: But you'll run both the thing together, won't you?

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MS BAULCH: Yes, sir.

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JUSTICE ROSS: Because you may have the same witnesses - pharmacists' witnesses giving evidence about both, and it'd probably be more efficient to run them together.

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MS WELLARD: Yes.

PN111

JUSTICE ROSS: Is there anything else? We've got on the substantive claims, no? All right, well I'll hear from you in a fortnight and we'll see how we go. Thanks very much. We'll adjourn.

ADJOURNED INDEFINITELY

[2.24 PM]