



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE ROSS, PRESIDENT

AM2014/239

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/239) *Pastoral Award 2010***

Sydney

1.35 PM, WEDNESDAY, 24 AUGUST 2016

PN1

JUSTICE ROSS: Could I have the appearances please, firstly in Sydney?

PN2

MR J LETCHFORD: Letchford, Jason, from the Shearing Contractors Association.

PN3

JUSTICE ROSS: Thanks, Mr Letchford.

PN4

MR S CRAWFORD: Crawford, initial S, from the AWU, your Honour.

PN5

MR A JONES-VALLEDOR: Jones-Valledor, initial A, from AFEI.

PN6

MS K THOMSON: Thomson, initial K, from ABI and New South Wales Business Chamber.

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JUSTICE ROSS: Thank you, and in Canberra?

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MS K PEARSALL: Pearsall, initial K, for the National Farmers Federation, your Honour.

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JUSTICE ROSS: Thanks, Ms Pearsall. Probably best to keep your seat so that we can pick you up on the microphone, thanks.

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MS PEARSALL: Yes, your Honour.

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JUSTICE ROSS: And in South Australia? No appearance. All right. I published this statement on the 17th of this month which was intended to try and sweep up where we were sitting in relation to the range of issues, some of which have been determined and others which have not. I might leave this to the employer organisations, but this is, I think, the second occasion on which we haven't seen Business SA. Is that Business SA now?

PN12

MS VAN DER LINDEN: Yes, it is. Sorry we're late, sir.

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JUSTICE ROSS: No, that's all right.

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MS VAN DER LINDEN: We did send an email to your associate on the fly, but unfortunately we had a tram which has broken down in the middle of the city so we couldn't get here on time.

PN15

JUSTICE ROSS: No, that's fine. I just draw your attention to paragraphs 4 and 5 of the statement issued on 17 August. You're the only party that's raised an issue in relation to the draft variation determination and I just want to know by 2 September whether you're going to pursue that.

PN16

MS VAN DER LINDEN: Okay.

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JUSTICE ROSS: You put in a submission saying that the clause should be clarified. Well, speaking for myself, I don't propose to clarify it. If you've got a proposal that you think would clarify it then that would be for you to advance, okay?

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MS VAN DER LINDEN: Okay, not a problem. By 2 September?

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JUSTICE ROSS: Yes. If you just have a look at paragraphs 4 and 5 of the statement of 17 August, that's (2016) FWC 5837, and what the balance - - -

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MR KLEPPER: Sorry - - -

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JUSTICE ROSS: Sorry?

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MR KLEPPER: I was going to say - it's Klepper from Business SA. That was the learner shearers clause.

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JUSTICE ROSS: Yes.

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MR KLEPPER: Yes. We provided a submission with some alternative wording yesterday for that.

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JUSTICE ROSS: All right.

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MR KLEPPER: So it's on the Commission's website now.

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JUSTICE ROSS: Okay. Have the other parties seen that?

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MR CRAWFORD: I've got it, yes.

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JUSTICE ROSS: All right. Well, if the other parties can have a look at it and provide a response in writing by Friday, 2 September, 4 pm on that day, and then we'll wrap that up and we'll decide the matter on the papers unless any party particularly wants a hearing about it.

PN30

Then you'll see that we've got a revised exposure draft which is in the attachment and a revised summary of submissions which is attachment 2 to the statement and the revised exposure draft has been amended in the manner proposed by the NFF in their submission of 8 July.

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Now, with the best will in the world, because of the range of technical drafting issues that came up in the conference, we may not have correctly captured all of those areas where there was agreement or change, so in any sort of set of directions for the finalisation of the outstanding issues I also want to build in a step which will give you an opportunity to check the summary of submissions, the revised summary and the revised exposure draft, okay?

PN32

There are some 26 items in the revised summary which have been determined by another Full Bench or are before another Full Bench or have been withdrawn. They're identified at paragraph 10 of the statement. Now, that leaves the outstanding issues and in relation to that what I was looking at was a process that would allow you an opportunity to look at the revised exposure draft and on receipt of it for you then to confirm what are your outstanding issues in relation to the revised exposure draft. I don't think there are any substantive matters left, but there may be, and if there are you can identify those as well.

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So that's probably the first step, clarifying how many matters are left. It's then a question - and perhaps I can put this to you and we have a discussion about it now. You've got a pretty good idea from the last conference how many matters we've got left. What sort of time-frame do you want and what sort of process are you looking at? Is it the case, for example, if I gave you four weeks to comment on the revised exposure draft and confirm any further issues with the draft and any substantive claims - if that's done we can sweep together a composite document, publish that in six weeks and I can put together some draft directions around that for comment.

PN34

It would seem that most of the outstanding issues at least - you know, it's true these awards do meld one into the other after a while, but with this one it seemed like most of the outstanding issues you had on the exposure draft would be resolved by written submission and a merit argument. That being the case, it's really then just pacing out enough time for you to put that in; that might be another four or six weeks, an opportunity of a couple of weeks for anyone to reply

to anything that's in and then a short oral hearing would be what I had envisaged, and then that would wrap the process up by the end of the year.

PN35

So that's in broad what I had in mind, but the purpose of - I didn't want to launch off without giving you the opportunity to say what you want to say about all of that, whether you wanted a quicker process, a different process or how you proposed we deal with these matters.

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MR CRAWFORD: That sounds fine with us, your Honour, that approach.

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JUSTICE ROSS: All right, and the employers, you're okay?

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MR LETCHFORD: Yes, agreed. Yes.

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JUSTICE ROSS: NFF?

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MS PEARSALL: We're comfortable with that. We would just seek five weeks to make those first initial submissions, if your Honour allowed. We have a couple of other matters coming up over the next few weeks and five weeks would be better for us.

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JUSTICE ROSS: Yes, that's fine I'd still stick with my - so I'd give you five weeks from today to comment on the revised exposure draft and to identify what outstanding issues you have in relation to the exposure draft and then in six weeks' time we'll publish a consolidated version of that so everyone will know where everyone is up to.

PN42

We'll at the same time - from today I'll put out a short statement saying that, attaching some draft directions that will follow the receipt of the material on the five weeks and give you an idea of a timetable and a hearing program, okay, because you can use that five weeks also - you'll know yourselves what are the outstanding claims you have and there's no reason why you can't start working on the material in support of those in that period as well, but I would in any event give you a further period of at least four weeks in order to put in your material, okay? All right. Anyone else?

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MS PEARSALL: We're comfortable with that.

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JUSTICE ROSS: Okay. Business SA?

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MS VAN DER LINDEN: We're comfortable with that, thank you, your Honour.

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JUSTICE ROSS: All right. Well, as I say, I'll put out a statement later in the week, but you can take it you'll have five weeks from today to comment on the revised exposure draft and revised summary of submissions that were attached to the statement I issued on 17 August, okay?

PN47

MR CRAWFORD: Your Honour, sorry, can I just clarify, in terms of just the order, that we put in material in terms of who is sort of proposing a variation? I think some of these matters there's likely to be a difference in terms of how the current award works, so it might not be entirely clear who is, I guess, advocating in support of a change.

PN48

JUSTICE ROSS: Yes, who's the proponent and who's not. In relation to that, perhaps in your response in five weeks you indicate that this is a matter where parties seek clarification as to whether the revised - there's a difference of opinion between parties about whether the exposure draft, the revised exposure draft, accurately reflects the existing award provision, and your point is that you might have a view, the NFF might have a view about it, you've got different views, but who should go first? Well, in that instance, for that item, I'd say you both put in your submissions.

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MR CRAWFORD: And then reply, yes.

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JUSTICE ROSS: And then you both reply.

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MR CRAWFORD: Yes, that's fine.

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JUSTICE ROSS: So where it's a common clause and it's an issue about translation and what it should say and we've got two parties advocating different positions, then I'd say you both put in on the first round of submissions and then you get a chance to reply to each other.

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MR CRAWFORD: Yes.

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JUSTICE ROSS: All right. Any other questions?

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MS VAN DER LINDEN: Your Honour, just one from Business SA. I just note that on the summary that was put out - I think it was yesterday, on 23 August, that there's been a couple of mentions that the Commission will be preparing some documents and looking into some research and providing some short reports.

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JUSTICE ROSS: Yes.

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MS VAN DER LINDEN: Is the Commission still intending on doing that to assist the parties?

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JUSTICE ROSS: We are, but that won't be done necessarily in this five-week period. In the five-week period I just want you to look at the revised exposure draft and to see what you want to pursue. I don't think we need to do it in relation to the coverage issue anymore because I think that's been - I think we picked up the NFF's suggestion in relation to that which was discussed at the conference, but we'll certainly have a look at it and we'll publish it in due course and then see where - I think some of them were the background to certain provisions and the like.

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MS VAN DER LINDEN: Yes, that's correct.

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JUSTICE ROSS: I will check with the award review branch about their resourcing as to when we can get that done. It will certainly be out before your submissions are due.

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MS VAN DER LINDEN: Thank you.

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JUSTICE ROSS: Anything further? No? All right. Thanks for your attendance. I will adjourn.

ADJOURNED INDEFINITELY

[1.47 PM]