



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE ROSS, PRESIDENT**

**AM2014/250 - AM2014/289**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards - Group 4 Awards**

**AM2014/250 – AM2014/289**

**Sydney**

**1.04 PM, WEDNESDAY, 24 AUGUST 2016**

PN1

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

PN2

MR S MAXWELL: If the Commission pleases, my name is Maxwell, initial S. I appear on behalf of the CFMEU.

PN3

JUSTICE ROSS: Thanks, Mr Maxwell.

PN4

MR G NOBLE: Noble, initial G, for the CEPU, your Honour.

PN5

MS R BHATT: Bhatt, initial R, appearing for the Australian Industry Group.

PN6

JUSTICE ROSS: Thanks, Ms Bhatt.

PN7

MS O VALAIRE: Valaire, initial O, for Master Plumbers Association of New South Wales and the Fire Protection Association Australia.

PN8

JUSTICE ROSS: Thank you.

PN9

MS M ADLER: Adler, initial M, for the Housing Industry Association.

PN10

MR G LIGGINS: If the Commission pleases, Liggins, initial G, from the Aged and Community Services Association and also Leading Aged Services Australia.

PN11

MR D ASTLEY: Astley, initial D, for the Australian Manufacturing Workers' Union.

PN12

MR S CRAWFORD: Crawford, initial S, from the AWU, also appearing, your Honour, for United Voice.

PN13

JUSTICE ROSS: All right.

PN14

MR R BAONZA: Baonza, initial R, for the Civil Contractors Federation.

PN15

MS J ZADEL: Zadel, initial J, for the Australian Federation of Employers and Industries.

PN16

MR S FORSTER: If the Commission pleases, Forster, initial S, for News Corp, Bauer Media Group, Pacific Magazines Pty Ltd, Seven Network Operations Ltd and their related entities, Nine Network Pty Ltd and their related entities, and Network Ten and their related entities.

PN17

JUSTICE ROSS: Thank you.

PN18

MR D HAMILTON: If the Commission please, Hamilton, initial D, for the Australian Entertainment Industry Association.

PN19

JUSTICE ROSS: Yes.

PN20

MS K THOMSON: If the Commission pleases, Thomson, initial K, for Australian Business Industrial and New South Wales Business Chamber.

PN21

MR G JERVIS: Jervis, initial G, for NECA, National Electrical Contractors Association.

PN22

JUSTICE ROSS: Yes.

PN23

MR M CHESHER: Chesher, initial M, for the Media, Entertainment and Arts Alliance.

PN24

JUSTICE ROSS: All right. Can I have the appearances in Melbourne please?

PN25

MS S BURNLEY: Burnley, initial S, for the SDA.

PN26

JUSTICE ROSS: Yes.

PN27

MR P COFFEE: Coffee, initial P, for the CEPU plumbing division.

PN28

JUSTICE ROSS: Thank you.

PN29

MR M PEGG: Pegg, initial M, for Jobs Australia.

PN30

MS S GHELLER: May it please the Commission, Gheller, initial S, for APESMA.

PN31

MR A ODGERS: If your Honour pleases, Odgers, initial A, for the IEU.

PN32

JUSTICE ROSS: Thank you.

PN33

MR D COLLEY: If the Commission pleases, Colley, initial D, for the Australian Education Union.

PN34

MS R LIEBHABER: If your Honour pleases, Liebhaber, initial R, for the Health Services Union.

PN35

JUSTICE ROSS: Thank you.

PN36

MS J KNIGHT: If the Commission pleases, Knight, initial J, for the Australian Services Union.

PN37

JUSTICE ROSS: Thank you, and in Adelaide? Canberra, Brisbane? Canberra?

PN38

MS R SOSTARKO: If the Commission pleases, Sostarko, initial R, for Master Builders Australia.

PN39

JUSTICE ROSS: Thank you, and Brisbane?

PN40

MR C YOUNG: If the Commission pleases, Young, initial C, for Master Electricians Australia.

PN41

MS J MINCHINTON: If the Commission pleases, Minchinton, initial J, for the Australian Hotels Association and Accommodation Association of Australia.

PN42

JUSTICE ROSS: Thanks. Have you got the Full Bench memo, the construction -  
- -

PN43

THE ASSOCIATE: (indistinct)

PN44

JUSTICE ROSS: Can I grab one then? We'll give it back to you, Mr Maxwell. Look, I thought I might deal firstly with the various issues affecting the on-site construction award, joinery awards, mobile crane hiring, plumbing and fire sprinklers. I've received correspondence from the HIA indicating - well, foreshadowing a concern that not all of the issues may have gone to the Full

Bench. I had thought that the memo constituting the Full Bench had gone on the website with the attachment which seeks to set out what's gone and what hasn't gone. That apparently wasn't done, but now you've got copies of it and it will go on the website.

PN45

I think rather than put you to the task of checking - I think most of your issues are before the Full Bench, Ms Adler, but I think what we should do is parties with an interest in those awards, if on checking the matters that have been referred or you want to correct a matter raised in Senior Deputy President Watson's report, then do so by correspondence. It will be published on the website. I'll ask Vice President Hatcher to call on those matters for mention and you can have the debate with him.

PN46

You can take it, from my perspective at least, that where there's general agreement that a matter should be referred to that Bench, then I'm content to refer it, but I don't want to be dealing endlessly with debates between you about the minutiae, about whether particular issues should be referred or not. If there's a debate it will - you know, unless there's some compelling argument, it will probably just remain with the Group 4 Bench.

PN47

I think we picked up most of the items. I note HIA's comment that the report may overstate the extent of any agreement about allowance consolidation. That can all be sorted out before the Full Bench. I'd certainly encourage you to keep having conversations about those issues. On the face of it there seems to be some merit in some consolidation of some of these allowances and it would be better if that was arrived at by consent rather than the tribunal determining it.

PN48

So, look, that's how I'd propose to deal with those. I recognise there might be others amongst you who think that an item has been mis-described, or something like that. I wouldn't get too excited about that at the moment. Have a look at the document. I'll give you seven days to let me know whether you think there needs to be any amendments or corrections. I'd encourage you to discuss that with the other parties, because your case is going to be much stronger if you've got agreement that certain matters should be referred, and as I say, Vice President Hatcher will call it on for mention as some stage to get an idea of the dimensions of the case and when the matter might be moving.

PN49

I should let you know that I don't think it will be moving at the pace that some of you were anticipating it moving, but this review is going to be completed next year even if it kills all of us, and that means that really some of these award based issues need to be sorted by the middle of next year. So that's our objective, to get the matter done as quickly as possible. It's not as if you haven't been aware of these issues for at least 12 months. They've been on your list for if not 12 months then for many, many years, and it's just a case of now putting your merit case forward and having it determined.

PN50

I doubt, although there may be scope in the allowance consolidation, if there's going to be much utility in further conciliation in relation to these issues. You've had a pretty thorough go before Senior Deputy President Watson and frankly if he can't sort it out between you I know I wouldn't be able to and I doubt if there'd be anyone else who would be able to have a go at it or necessarily have the patience to sit through the no doubt long and fascinating history of some of these provisions.

PN51

So having said that, and giving you the seven days, is there anything else anyone wants to say about that issue that you think you need to cover off at the moment? No? You're content with that? All right.

PN52

Look, in relation to the rest of the matters, this is essentially - as I indicated in the statement, the mention is really to provide interested parties to raise any issues about the programming of the review in respect of these matters. So it's not so much an opportunity - and I note that, for example, restaurant and catering have written confirming that there are a number of substantive changes that it will be seeking in the restaurant award and we will in due course be seeking to clarify - just issuing a short statement asking parties to clarify what substantive issues they want to pursue in these awards.

PN53

Many of them, as you know, are now before other Full Benches, including the suite of penalty rate matters. There are some matters dealing with annualised salaries, part-time and casual and the like, and there's the public holidays matter for next year and now the construction matters. Those substantive claims are largely being dealt with by that other Full Bench.

PN54

So if we look - and what we've done is push back the time-frame in relation to the filing of materials in respect of these matters, bearing in mind the other matters that are currently before us that many of you are also involved in. So are there any comments in relation to the programming and the proposed directions? Perhaps if we can start in Sydney. Anyone seeking any variations or has any comments in relation to those?

PN55

Just in relation - can I ask you this? Those with an interest in these particular awards, I think you've already identified what you see as substantive - or what substantive issues you have in these awards. I have found with the other groups that that can be a bit of a moving target, inasmuch as out of an abundance of caution parties will often put in early a whole suite of substantive claims, but with the passage of time, not to put too fine a point on it, they sort of melt like snow in the sunshine down to more of a core group of key concerns.

PN56

I thought it might be useful when we issue the directions following today that I put in a process for parties to simply confirm, perhaps by reference to previous

correspondence, what substantive changes they're seeking and to provide a draft variation determination so I can get an idea of what it is. Also, I'm not wanting a full submission in support. I don't envisage more than a couple of dot points, really, but something around what sort of case do you think this is? Is it going to be essentially a merit case dealt with on the basis of written submissions or is it an evidentiary case, and if so, how many witnesses will you be calling?

PN57

That will then assist me in working out our own resources, also working out - there might be some substantive claims that can be left with the Group 4 Bench and others that might require a separate Bench. Normally where there's a coverage dispute I've referred that to a separate Bench, because nothing excites parties more than coverage and there are usually parties interested for a range of other awards and that seems to be the easiest way of doing it rather than holding everyone up on the sort of more drafting or technical issues.

PN58

So I thought I'd include that step and that will give people an opportunity to consider whether they wish to reframe. They may have additional substantive claims or they may indicate that they're no longer pursuing certain claims. Subject to that caveat, are there any other comments from Sydney about the programming of these matters?

PN59

MS BHATT: Your Honour, if I may?

PN60

JUSTICE ROSS: Yes, Ms Bhatt?

PN61

MS BHATT: Paragraph 6 of your Honour's statement identifies that the Group 4 A, B and C awards will be listed for hearing in November in respect of the technical and drafting issues. I simply wanted to identify that the ACTU's common claims in respect of family and domestic violence leave has been listed for three weeks of hearing from 14 November to 2 December before a Full Bench of the Commission, so if any hearing were listed during that time that might cause some difficulty for our organisation in attending.

PN62

JUSTICE ROSS: Yes. I wouldn't be listing them at the same time as that, and that may mean that we move that listing to December.

PN63

MS BHATT: Yes, your Honour.

PN64

JUSTICE ROSS: Rather than doing it in early - - -

PN65

MS BHATT: In November.

PN66

JUSTICE ROSS: - - - November, because then you would be preparing for the following week. All right. I'll look at a date in the first half of December for that matter.

PN67

MS BHATT: If I can raise one other matter?

PN68

JUSTICE ROSS: Yes.

PN69

MS BHATT: The Group 4 D, E and F exposure draft reply submissions, this statement proposes that they be filed on 31 January 2017.

PN70

JUSTICE ROSS: Yes.

PN71

MS BHATT: I've been instructed to seek your Honour's indulgence for a period of one to two weeks. I'm told that there might be some leave arrangements of key personnel over the Christmas period and if that could - - -

PN72

JUSTICE ROSS: Just bear with me for sec. So that really relates to paragraphs 3 and 4 of the draft directions, that paragraph?

PN73

MS BHATT: Yes, your Honour, paragraph 3.

PN74

JUSTICE ROSS: Yes, all right. That might mean that - if we slipped it in till the end of the following week what date would that be in February?

PN75

MS BHATT: I think it's 3 February.

PN76

JUSTICE ROSS: I think that's the same week, isn't it, but, I mean, if it was the following week it would be the 10th, would it?

PN77

MS BHATT: 10 February.

PN78

JUSTICE ROSS: That might mean listing those matters for hearing then in the first week in March.

PN79

MS BHATT: Of March.

PN80



JUSTICE ROSS: Look, subject to checking the calendar about the public holidays matter and when any other matter might be listed in that week, I'll certainly look at making those changes.

PN81

MS BHATT: If the Commission pleases.

PN82

JUSTICE ROSS: No one else in Sydney. In Melbourne, any comment on the programming or the directions? Do the changes that have been suggested by Ai Group cause anyone any heartburn? No? All right.

PN83

MS BURNLEY: That was one of the issues we were going to raise, so what has been discussed would be amenable to the SDA regarding that change of dates.

PN84

JUSTICE ROSS: All right. Thank you, Ms Burnley. In Brisbane? Can you hear me in Brisbane?

PN85

MS MINCHINTON: Yes. No comments from the AHA, your Honour.

PN86

JUSTICE ROSS: All right, thank you, and in Canberra?

PN87

MS SOSTARKO: No, your Honour.

PN88

JUSTICE ROSS: All right. So to be clear, what we'll do is in relation to the draft directions I'll insert a direction that the parties interested in the Group 4 awards are to confirm their substantive claims as I outlined earlier, and I'll give you a date to do that, that as to direction 1, that will be listed for hearing. I'll get you a precise date, but it's likely to be in either the first, or at worst case, the second week in December 2016. I'll adjust the direction in item 3, so that will be - I'll just confirm that's the actual date, but it will be Friday, 10 February 2017, and we'll look at the hearing in respect of those group 4, D, E and F then in the first week in March.

PN89

As I indicated, in relation to the construction suite of matters we'll make sure that the document constituting that Bench and, more importantly, the attachment, goes on the website. You'll have seven days to provide me comment on that, and as I said before, I'd encourage you to confer about it. Is there anything else? No. All right. Thanks for your attendance. I'll adjourn.

**ADJOURNED INDEFINITELY**

**[1.23 PM]**