



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

VICE PRESIDENT HATCHER

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2016/28)
Pharmacy Industry Award 2010**

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Sydney

9.04 AM, TUESDAY, 22 NOVEMBER 2016

PN1

THE VICE PRESIDENT: Yes, can I take the appearances? Ms Wellard, you appear for the Pharmacy Guild in Sydney?

PN2

MS S WELLARD: Yes, I do, your Honour, if it pleases, together with Mr Harris and Ms Blandfort from the Pharmacy Guild who are in Canberra.

PN3

THE VICE PRESIDENT: All right. In Melbourne, Ms Biddlestone, you appear for the SDA?

PN4

MS K BIDDLESTONE: Yes, your Honour, Ms Biddlestone.

PN5

THE VICE PRESIDENT: Biddlestone, sorry. Can you do me a favour and move closer to the camera? You are very distant.

PN6

MS BIDDLESTONE: I'll move across.

PN7

THE VICE PRESIDENT: Yes, thank you. Ms Tiedeman, you appear for the ABI and the New South Wales Business Chamber by telephone?

PN8

MS M TIEDEMAN: Yes, that's correct.

PN9

THE VICE PRESIDENT: I will start by identifying the issues. Ms Wellard, I am just looking at your email of 24 October. The APESMA work value claim is referred to as having programmed separately. What does that mean?

PN10

MS WELLARD: Your Honour, I think Ms Biddlestone is appearing for APESMA today as well, although I don't think she expected to have to deal with the work value claim. APESMA are seeking wage increases to at least the Pharmacist classifications and some other things. That has been programmed separately for at least the initial part of programming has been done where they were identify their claim, put a little bit more flesh on the actual claim and also to give us an indication of the experts that they were seeking to engage so that we might start to have a look at what we needed to do in response. I think they filed last month their outline and we are to do that early in the New Year, I think.

PN11

THE VICE PRESIDENT: Programmed separately before whom?

PN12

MS WELLARD: A Full Bench. That is as much as I can help with, your Honour.

PN13

THE VICE PRESIDENT: Ms Biddlestone, can you assist me with the programming of that claim?

PN14

MS BIDDLESTONE: I haven't got the dates with me, but because of the volume of work that was going to be involved with that claim, that was why it was referred to a separate Full Bench to deal specifically with that matter rather than combine it with the other substantive claims that the parties have made in relation to the Pharmacy Award.

PN15

THE VICE PRESIDENT: Is that right that we're simply left with the three issues? The SDA's claim about shift length for full time employees, the blood and bone marrow donor claim and the annual close-down claim, are they the three matters?

PN16

MS WELLARD: They are the three contentious matters, your Honour. There are four agreed substantive changes, two claims from the Guild and two from the SDA. Then there are three contentious matters, that is matters that the parties haven't been able to resolve between themselves.

PN17

THE VICE PRESIDENT: But the three are the three matters I have just identified?

PN18

MS WELLARD: Yes, yes.

PN19

THE VICE PRESIDENT: The four in your email, issues 1 and 3, are they before the part time casual bench?

PN20

MS WELLARD: Your Honour, I apologise, I don't have the email before me, but, yes, I think they were. They initially started before the part time and casual bench. We are in a slightly interesting position with this award, your Honour. Because it is the plain language pilot, it was pulled out of the group and dealt with a little bit differently to most of the other awards. We had some conferences before Bissett C and before the President to try and resolve and work through a whole range of things. There was some overlap with some of the other common matters and Full Bench matters. We endeavoured to try, whenever there was an issue that crossed over, to notify both sets of chambers and award mod, but we have never really entirely been sure where to file or how to deal with these matters.

PN21

THE VICE PRESIDENT: On my count, you are before five Full Benches, at least.

PN22

MS WELLARD: Yes.

PN23

MS BIDDLESTONE: Your Honour - - -

PN24

THE VICE PRESIDENT: Yes, Ms Biddlestone.

PN25

MS BIDDLESTONE: Sorry, your Honour, can I just clarify, I think the first issue, minimum shift for school students, and the third issue, overtime for casuals, was before the casual and part time Full Bench.

PN26

THE VICE PRESIDENT: Yes.

PN27

MS BIDDLESTONE: The fourth claim which was around annualised salary was initially referred to the annualised salary Full Bench, but because we have reached agreement around that, no submissions have really been filed in relation to that Full Bench. So that's sort of where those ones sit at the moment.

PN28

THE VICE PRESIDENT: The junior rates one, where is that sitting?

PN29

MS BIDDLESTONE: That just is within the substantive claim, so that hasn't been referred anywhere at this point, but we have reached agreement on that one also.

PN30

THE VICE PRESIDENT: Do you agree that, if you have got that email, they are the three issues this Full Bench needs to deal with?

PN31

MS BIDDLESTONE: That's correct, your Honour. I would just highlight, though, in relation to the second claim listed which is an SDA claim for blood and bone marrow donor leave, I have had a discussion with the Pharmacy Guild because the SDA has actually got an identical claim in three of the group 4 awards, the General Retail Industry Award, the Hair and Beauty Industry Award and the Fast Food Industry Award. We are proposing and I think the Guild are in agreement that we defer the claim for blood and bone marrow donor leave so it can be heard with the other awards we are seeking that claim.

PN32

THE VICE PRESIDENT: Did you say stage 4, was it?

PN33

MS BIDDLESTONE: Yes, that's correct.

PN34

THE VICE PRESIDENT: The work value claim, do you know who the presiding member of that Full Bench is?

PN35

MS BIDDLESTONE: No, I don't. Sharlene, do you - - -

PN36

MS WELLARD: No, we don't, your Honour. So far any mention in relation to that matter has been before the President, but it has been as part of the award review itself, so it hasn't been separately listed. The directions that arose in relation to that matter so far have come from the President as part of the review.

PN37

THE VICE PRESIDENT: I just want to be clear whether that claim is going to end up before this Full Bench or not because it obviously affects the programming.

PN38

MS WELLARD: Yes, your Honour.

PN39

THE VICE PRESIDENT: I might adjourn for five minutes and see if I can found out the answer to that.

PN40

MS WELLARD: Yes.

PN41

THE VICE PRESIDENT: Can the parties bear with me?

PN42

MS WELLARD: Your Honour, before you do, just in case what I raise prompts another question, there are the agreed substantive matters, that is, those matters that the union parties and the employers have agreed that the award should be varied. We sought to have those programmed with the plain language part of this award on 15 December because we saw it as important that to the extent that it's agreed that should all form part of whatever that award looks like moving forward. I think they were referred back to you, your Honour, but I'm not sure if you consider that to be the best course of action.

PN43

THE VICE PRESIDENT: I will make an enquiry about that as well.

PN44

MS WELLARD: Thank you, your Honour.

PN45

THE VICE PRESIDENT: I will be back as soon as I can.

SHORT ADJOURNMENT

[9.12 AM]

RESUMED

[9.25 AM]

PN46

THE VICE PRESIDENT: Firstly, can I confirm that the APESMA work value claim is before this Full Bench. Ms Biddlestone, are you able to advise about the progress of that claim, that is, where that's up to?

PN47

MS BIDDLESTONE: I am sorry, your Honour, I am not able to provide a great amount of detail. The SDA, it's not in relation to our members, so we haven't been involved in that. I do know that APESMA did recently file submissions in relation to that. I believe it was an outline of submissions. Sharlene might be able to add a little bit further.

PN48

THE VICE PRESIDENT: Ms Wellard, have you applied to that yet?

PN49

MS WELLARD: Your Honour, the directions in relation to that matter were issued on 21 September. Directions 1 and 2 are both steps that APESMA need to take. They were directed to file an outline of submissions and some other things by 31 October. They sought an extension and then did that on 3 November. There then seems to be a bit of an overlap. The next direction requires some of the same things, but were also required by the 31 October date. I am not entirely sure what APESMA is going to file on 13 February, but it's another filing date for APESMA.

PN50

It includes a list of the experts, their qualifications and an outline of the submissions and the findings they submit that should be made based on that expert evidence, but not the expert evidence or any evidence itself. Then the employer parties are to file an outline of submissions and findings they submit the Commission should make by 7 March and then on 12 April, APESMA are to reply. There is nothing in the timetable for the actual filing of the evidence, nor for hearing dates. The employer parties aren't required to do anything until 17 March and the next step is for APESMA to file something on 13 February.

PN51

THE VICE PRESIDENT: In relation to the four agreed issues, the parties can take it that they will be referred to this Full Bench, so it will deal with those issues. Leaving aside blood and bone marrow donor leave, and I still have to work out where that will go, how long do the parties think it will take to deal with the other two issues?

PN52

MS WELLARD: With respect to the annual close-down matter, your Honour, it's likely the Guild will only have two to perhaps four witnesses. Subject to what my friends might have to say in reply, I think the matter could be dealt with in two hours at most.

PN53

THE VICE PRESIDENT: Ms Biddlestone, would you intend to call any witnesses in relation to that matter?

PN54

MS BIDDLESTONE: Your Honour, we wouldn't be intending to call any witnesses. We believe the issues in relation to full time employees and the claim around that is a merits based submission, so we would just be looking at filing written submissions in relation to that.

PN55

THE VICE PRESIDENT: Could those two issues then be dealt with within a day plus the consent issues?

PN56

MS BIDDLESTONE: I believe so, your Honour.

PN57

MS WELLARD: Easily, your Honour.

PN58

THE VICE PRESIDENT: Ms Tiedeman, do you have any different view about that?

PN59

MS TIEDEMAN: No, your Honour, that's all right with me.

PN60

THE VICE PRESIDENT: Ms Wellard, how long would you need to file your evidence and submissions in support of the close-down claim?

PN61

MS WELLARD: The only impediment to putting that together, your Honour, is Christmas and a significant pharmacy conference in March next year.

PN62

THE VICE PRESIDENT: Yes.

PN63

MS WELLARD: Other than those two things, your Honour, we can put it together in a short timeframe.

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THE VICE PRESIDENT: What does that mean?

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MS WELLARD: It's probably easier to work back from potential hearing dates, but we would be in a position to deal with that matter in February.

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THE VICE PRESIDENT: That's put on your evidence by February?

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MS WELLARD: Put on the evidence by late January and have the matter dealt with in February if that's - - -

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THE VICE PRESIDENT: Ms Biddlestone, so you just want to put on submissions so you could do that by a similar timeframe?

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MS WELLARD: Yes, that would be fine, your Honour.

PN70

THE VICE PRESIDENT: Ms Tiedeman, you can fit in a timeframe of that nature?

PN71

MS TIEDEMAN: Yes, your Honour.

PN72

THE VICE PRESIDENT: Let me just have a look. If I list the matter for hearing on 16 March. Are all the parties available on that date?

PN73

MS BIDDLESTONE: Yes, your Honour.

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MS WELLARD: Your Honour, I'm just double checking the dates of the pharmacy conference. If you can bear with me one second while I chat to my colleagues in Canberra.

PN75

THE VICE PRESIDENT: Yes. Can the Canberra representatives clarify that date?

PN76

MS BLANDFORT: Yes, I'm just having a quick look.

PN77

MR HARRIS: We are just confirming that, your Honour.

PN78

MS BLANDFORT: 9 to 12 March.

PN79

MR HARRIS: The 9th to the 12th.

PN80

THE VICE PRESIDENT: So the 16th is okay?

PN81

MR HARRIS: It would be, your Honour.

PN82

MS WELLARD: The only issue is, your Honour, if we need to call witnesses, it depends on the filing date. It's just about - I don't want to over-exaggerate this,

but a significant number of pharmacies attend this conference, so it is their main focus for a big part of March and for that attendance at the conference.

PN83

THE VICE PRESIDENT: Should I look in April?

PN84

MS WELLARD: It might be better, your Honour, just to be sure.

PN85

THE VICE PRESIDENT: All right. How about 31 March, Ms Wellard?

PN86

MS WELLARD: Yes, your Honour.

PN87

THE VICE PRESIDENT: 31 March, Ms Biddlestone and Ms Tiedeman?

PN88

MS TIEDEMAN: Yes, your Honour, that's fine.

PN89

MS BIDDLESTONE: Yes, your Honour.

PN90

THE VICE PRESIDENT: What I will do is then, working backwards, the proponents of either claim, can they file - and you might have done this already, but just to confirm it, a draft determination and outline of submissions and any evidence by 17 February.

PN91

MS WELLARD: Yes, your Honour.

PN92

THE VICE PRESIDENT: Then any evidence or submissions in reply by 10 March and then the hearing on 31 March. Is that suitable for everybody?

PN93

MS TIEDEMAN: Yes, your Honour, that's fine with me.

PN94

MS BIDDLESTONE: Yes, your Honour.

PN95

THE VICE PRESIDENT: I will have to confirm to the parties what's happening with the blood and bone marrow claim and with respect to the APESMA salaries claim, we will list the matter for directions once the current program for directions have run their course and have been complied with.

PN96

MS WELLARD: Your Honour, just having had a look at those directions now and what I think might be some lack of clarity or understanding around what's

required of them, it might actually be beneficial to list those sooner rather than later, but probably not before next year. There is a filing date, I now can't recall what it was, in I think early February or mid-February, so perhaps after that. Perhaps the best course, your Honour, is if I contact APESMA and get an understanding of what they think is due to be filed on the next occasion because I think there is an overlap between the two directions and I think there is liberty to apply in the current directions and we might come back before your Honour or seek an earlier mention.

PN97

THE VICE PRESIDENT: I will leave you to do that, Ms Wellard, and advise APESMA about that, and if you give advice about that then I will make directions or make a listing in accordance with the parties' request.

PN98

MS WELLARD: Yes, thank you, your Honour. I just think it might be easier for us to get a better understanding of when the witness evidence might be due sooner rather than later.

PN99

THE VICE PRESIDENT: Is there anything else I can deal with today?

PN100

MS BIDDLESTONE: Your Honour, I just had a query in relation to the submissions for the agreed matters.

PN101

THE VICE PRESIDENT: I didn't mean for there to be submissions about the agreed matters, just to be clear, only the contested matters.

PN102

MS BIDDLESTONE: Great, thank you.

PN103

THE VICE PRESIDENT: The parties can expect that the agreed matters will also be listed on 31 March, but they can simply address those on the day.

PN104

MS BIDDLESTONE: Thank you, your Honour.

PN105

MS WELLARD: Thank you, your Honour. I'm not sure that we have filed - I will need to check, but I'm not sure that we filed the final draft determinations of the agreed matters.

PN106

THE VICE PRESIDENT: Just draft determinations of the agreed matters be filed on the first date that I set.

PN107

MS WELLARD: Yes, thank you, your Honour.

PN108

MS BIDDLESTONE: Yes.

PN109

THE VICE PRESIDENT: Those directions will be confirmed in writing and will be sent to the parties. Thank you for your attendance and patience and I will now adjourn.

ADJOURNED INDEFINITELY

[9.35 AM]