



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2024/11

s.158 - Application to vary or revoke a modern award

**Application by Australian Nursing and Midwifery Federation
(AM2024/11)**

Re Nurses Award 2020

Sydney

11.11 AM, TUESDAY, 7 OCTOBER 2025

Continued from 17/06/2025

PN1

JUSTICE HATCHER: Good morning. I'll take the appearances. Mr McKenna, Mr Hartley and Ms Jones, you appear for the ANMF, being the applicant?

PN2

MR J McKENNA: We do if the Commission pleases.

PN3

JUSTICE HATCHER: Yes. Mr Burmeister, you appear for the Australian Private Hospitals Association?

PN4

MR N BURMEISTER: Yes, your Honour.

PN5

JUSTICE HATCHER: Ms McCabe, you appear for Healthscope Operations Pty Ltd and Adelaide Community Healthcare Alliance Incorporated?

PN6

MS B McCABE: Yes, your Honour.

PN7

JUSTICE HATCHER: Mr Ward and Ms Rafter, you appear for Australian Business Industrial and New South Wales Business Chamber and Catholic Health Australia?

PN8

MR N WARD: Yes, your Honour.

PN9

JUSTICE HATCHER: And, Ms Krauss, you appear for the Commonwealth.

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MS S KRAUSS: Yes, your Honour.

PN11

JUSTICE HATCHER: All right. So the parties, as I understand it, have undertaken a conference process before Deputy President Slevin. I have a general understanding there's been some progress made in narrowing the issues, but beyond that I'm not across the detail. Mr McKenna, do you wish to begin by outlining what you understand to be the position?

PN12

MR McKENNA: Thank you, your Honour. Yes. We're grateful to the efforts of Deputy President Slevin and to the Commission for making those resources available. There's agreement on a substantial number of issues. There is not agreement on some issues. What is proposed by the directions that have been provided to your Honour is a process by which the matter can be efficiently listed and programmed by essentially identifying what issues the Commission requires to be satisfied of.

PN13

So what is proposed, your Honour, and I can indicate that I understand that APHA and Healthscope have indicated that they are satisfied with the proposed orders. So what is proposed is that on 24 October the ANMF would file a position document identifying the variations to the Nurses Award that it seeks.

PN14

It's anticipated that that is going to deal with precision the changes that are sought, including operative date and phasing-in, and then three weeks hence other interested parties can indicate where they agree, and where there's not agreement any ultimate proposal.

PN15

Your Honour, what's not specifically address by the proposed orders, but what the ANMF would seek at that point would be an indication from the Commission or from the Expert Panel of the matters about which it does and does not seek to be heard.

PN16

And if I may speak frankly, your Honour. What is hoped, at least by the applicant, is where there is a consent position, the Expert Panel may be satisfied that the consent position is justified by work value reasons that are necessary to achieve the modern awards objective.

PN17

And if the Expert Panel were able to provide an indication of that, it would enable the parties to come back to the Commission and seek directions for the filing of evidence and submissions that is tailored towards only what is required to be put before the Expert Panel, and of course that would hopefully allow the Expert Panel to list the matter for an appropriate period of time - - -

PN18

JUSTICE HATCHER: And again, in respect to this proposal, do I take it that your client's organisation's position is that this is likely to lead to an outcome whereby the contested issues will be relatively narrow?

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MR McKENNA: Precisely, your Honour.

PN20

JUSTICE HATCHER: Yes. All right. Mr Burmeister, do you agree with that characterisation of the position? That is if I proceed to make these directions, it is likely to lead to only a narrow range of issues needing to be remaining in contest?

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MR BURMEISTER: That's correct, your Honour.

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JUSTICE HATCHER: All right. Ms McCabe?

PN23

MS McCABE: Yes, and the position of my clients, that's correct.

PN24

JUSTICE HATCHER: All right. Mr Ward and Ms Rafter?

PN25

MR WARD: Your Honour, can I just indicate two things: one, procedural, and one in regard to the question of narrowing of the issues. The first one is it would be I think very helpful if, when parties file their materials, they actually file a draft determination that they seek, rather than just provide some narrative explanation of what they're looking for. I think that would help tremendously if we could all have that.

PN26

JUSTICE HATCHER: Mr Ward, because phasing-in determinations have some degree of complexity, I assume that it'd be sufficient to provide a determination which sets out the final position which would apply upon implementation. I don't think I'd propose the task of doing it, as it were, a phasing-in determination which even we have trouble working out sometimes.

PN27

MR WARD: Your Honour, if it had the – I think we've used the phrase before, target rates, that would be satisfactory.

PN28

JUSTICE HATCHER: Yes.

PN29

MR WARD: And can I just say – and I'm going to say this with some care given everything before Deputy President Slevin was without prejudice. Your Honour will notice there's a schedule of parties attached to the draft directions.

PN30

JUSTICE HATCHER: Yes.

PN31

MR WARD: As to the narrowing, it might be the case that this process assists to narrow issues, but it also is likely to be the case that there will be a debate about the reopening of the aged care case in relation to some classifications, which is why I suspect the Aged & Community Care Providers Association is listed. So there may be a narrowing, but there might also be a broadening.

PN32

JUSTICE HATCHER: Yes. All right. Ms Krauss, do you want to say anything?

PN33

MS KRAUSS: No, I don't have anything to add in relation to those proposed directions. I received them relatively recently this morning. I don't have instructions to consent to or oppose them, but I'm happy to defer to the Commission on that.

PN34

JUSTICE HATCHER: All right. So just returning to you, Mr McKenna, are you in a position, as I said, to put your proposal in the nature of a determination which, as it were, sets out the end position that would apply after any phasing-in? Obviously you won't be able to know what future annual wage increases might need to be applied to that, but simply on the basis of an assumption of the existing wages framework?

PN35

MR McKENNA: Thank you, your Honour. We anticipate that the material filed by the ANMF on 24 October wouldn't involve a narrative, so there would be an explanation of what is sought. As to whether it's a draft determination, we're in the Commission's hands. It's noted that sometimes a draft determination can be quite complicated and difficult to follow. A marked-up award might be more useful, but essentially we're in the Commission's hands, your Honour.

PN36

JUSTICE HATCHER: Well, I think the key thing would be something which sets out the classification structure, obviously, and the rates of pay that would be achieved at the end of any phasing-in process. Are you able to at least do that?

PN37

MR McKENNA: Absolutely.

PN38

JUSTICE HATCHER: Yes. All right. In relation to your further proposition about an indication, obviously we confirm a position once these documents have been filed. But obviously this matter has a significant background to it, and a range of preceding decisions, including the gender undervaluation case, the aged care decisions, the teachers' decision, et cetera, et cetera.

PN39

So the parties can assume I think fairly safely that if the consent matters are consistent with the principles enunciated in those decisions, then it is unlikely that the Commission would require them to be, as it were, re-established over time. Is that a sufficient indication for present purposes? We can give that more flesh once the documents have been filed.

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MR McKENNA: It's certainly a helpful indication for present purposes. Thank you, your Honour.

PN41

JUSTICE HATCHER: All right. So if directions 1 and 2 are made, direction 3 contemplates a further directions hearing. I'd make that direction if that is a directions hearing to set the matter down for hearing, and obviously the filing of any material for that hearing. So is that where you anticipate we will be?

PN42

MR McKENNA: Yes, it is, your Honour.

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JUSTICE HATCHER: All right. Is there anything else any party wishes to raise? No. All right. Well, I can indicate that I'm prepared to make directions in the terms proposed, and those directions will include a date for the further directions hearing in direction 3. All right. Thank you for your attendance. We'll now adjourn.

ADJOURNED INDEFINITELY

[11.21 AM]