



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

9.14 AM, WEDNESDAY, 19 NOVEMBER 2025

Continued from 07/10/2025

PN44

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

PN45

MR J McKENNA: We do, if the Commission pleases.

PN46

JUSTICE HATCHER: Ms Rafter, you appear for Australian Business Industrial, Catholic Health Australia and the Aged & Community Care Providers Association?

PN47

MS A RAFTER: Yes, your Honour.

PN48

JUSTICE HATCHER: Mr Dalton, you appear with Mr Burmeister for the Australian Private Hospitals Association?

PN49

MR R DALTON: Yes, your Honour.

PN50

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

PN51

MS F LEONCIO: Yes, I do, your Honour.

PN52

JUSTICE HATCHER: Ms Krauss, you appear for the Commonwealth?

PN53

MS S KRAUSS: Yes, your Honour.

PN54

JUSTICE HATCHER: Starting with you, Mr McKenna, I've got an appreciation of the parties' respective positions. It seems to me that the issues in dispute primarily concerned enrolled nurses and nurse practitioners; is that a fair statement?

PN55

MR McKENNA: That's a fair summary, your Honour.

PN56

JUSTICE HATCHER: Otherwise, and perhaps surprisingly, there seems to be a consensus about operative date and phasing in?

PN57

MR McKENNA: Save, I think perhaps, for whether it's 30 June or 1 July, there's broad consensus about those matters, your Honour.

PN58

JUSTICE HATCHER: Yes, all right. I have received your proposed directions. I'm just wondering why such an elongated time frame and extensive hearing is required to deal with those fairly confined issues.

PN59

MR McKENNA: Yes, your Honour. The ANMF proposes an estimate of approximately 20 witnesses at this stage. Those issues with respect to enrolled nurses and nurse practitioners will require some evidence. We are cognisant of the finding that the Expert Panel made in the aged care proceeding that the evidence at that point for nurse practitioners wasn't sufficient, so we are anticipating there will need to be a body of evidence to satisfy the Commission of the matters that are in dispute, and that there will be some time required to collate and prepare that evidence.

PN60

Then, assuming that other parties – there are at least four different sets of representatives, which would add to the hearing time, and assuming that there will be additional evidence from other parties, the proposal for 10 days has been put. It is perhaps a conservative estimate, but that is the federation's best estimate at this point.

PN61

JUSTICE HATCHER: In my experience, when evidence of that nature is put up, it always ends up that most of the witnesses aren't even cross-examined, Mr McKenna, so I'm loath to give you that many days, and I also would have thought it's preferable that, if we can do it in the first half of next year, we can then have the whole thing done to meet the operative date and the phasing in timetable that the parties appear to have a consensus about. In any event, I hear what you say about that, but I'll just see what the other parties say about what might be involved in dealing with this matter. What do you say, Ms Rafter?

PN62

MS RAFTER: Your Honour, a position of disagreement that we have with respect to the proposed directions that we think we should note at the outset is we did not consent to them on the basis that they are bringing in issues that have already been subject to final consideration by an Expert Panel, and that is the aged care issues with respect to enrolled nurses working in aged care and nurse practitioners working in aged care. So, as a starting position, we oppose the ANMF reopening aged care.

PN63

Secondly, we oppose the manner in which the ANMF have gone about seeking to reopen aged care by simply referring to aged care proposals in the mix of its position document in these proceedings, which, of course, do not include aged care nurses. So that would be our starting position there, and so there is potentially a possibility that that issue should be considered separately ahead of the balance of the proceedings.

PN64

JUSTICE HATCHER: If I can just ask you a question about that, Ms Rafter.

PN65

MS RAFTER: Yes.

PN66

JUSTICE HATCHER: From your clients' perspective, if the position with respect to aged care nurses were to be left untouched, do you have any other interest in the proceedings or matters you want to raise?

PN67

MS RAFTER: With respect to the proposed directions?

PN68

JUSTICE HATCHER: As to the substance of them, that is, assuming that aged care nurses were left untouched.

PN69

MS RAFTER: Certainly. Catholic Health Australia's primary interest, together with ABI as well, have interest in the balance of the proceedings, yes.

PN70

JUSTICE HATCHER: Yes. All right. Leaving aside aged care, in respect of your interest for the balance of proceedings, what do you think might be at stake in a hearing of the matter?

PN71

MS RAFTER: If we're just focusing on the balance, we would have no difficulty with the proposed directions set out by the applicant. Perhaps there may need to be an additional directions hearing once evidence is all filed to grapple with the questions and concerns your Honour has raised regarding timing, but we would have no difficulty with that, but if aged care is in the mix, we think the 10 days might potentially be short and more time would be required to deal with that in terms of evidence and submissions.

PN72

JUSTICE HATCHER: All right. Thank you. I might just go back to you, Mr McKenna. Is that right, does your position reopen any of the issues determined with respect to aged care nurses?

PN73

MR McKENNA: Your Honour, we say no. There were two findings made in the nurses decision, findings with respect to enrolled nurses and findings with respect to nurse practitioners, and with respect to those categories of employees, the Expert Panel made observations that there would need to be a wider review or further consideration of the health sector in the current proceeding. The ANMF's position is that that is what the ANMF is doing in this proceeding; it is finalising matters that were essentially reserved by the Expert Panel in aged care for enrolled nurses and nurse practitioners.

PN74

Aged care enrolled nurses and nurse practitioners do form a part of the application that the ANMF does seek to bring. If that's a different way of answering your question, your Honour.

PN75

JUSTICE HATCHER: Thank you. Mr Dalton, I might go to you next. First of all, my sort of broad characterisation of the issues in dispute, do you have any disagreement with that?

PN76

MR DALTON: No, that's broadly accurate. We've got an issue in relation to 15.2 in terms of casual and part-timers, but otherwise that's a broad accurate summary.

PN77

The issue around nurse practitioners in terms of how to most effectively deal with this from a case management perspective, just hearing my learned friend saying that, you know, they could be calling up to 20 witnesses and the nurse practitioners, you know, work value issue is going to be central to that, there is this threshold question about whether this is something that can be ventilated and opened in this proceeding having regard to what took place in the aged care proceeding, and so there is probably something that the Commission could consider to be listing separately if there is a dispute as to whether the union can agitate the issues in the way they want to in terms of the evidence and the merits as foreshadowed having regard to what occurred in the aged care proceeding.

PN78

Otherwise, we don't really have much to say. We really need to see what the union is putting together in terms of its evidentiary material, and if it's saying it needs until the end of March to do that, then we're not going to be heard to oppose that, and so we've not opposed the timeline that's been outlined.

PN79

It does look a little bit leisurely, given our impression of the scope of the issues that are in dispute, which seem to be relatively confined now, but this is not a root and branch work value based or gender undervaluation contest. I think a lot of the water's gone under the bridge on that, and we're sort of focusing more on some discrete issues that you wouldn't think would take a 10-day hearing, and probably could be dealt with in the first half of the year, subject to the detail of the union's evidentiary case.

PN80

JUSTICE HATCHER: All right. Ms Leoncio?

PN81

MS LEONCIO: Thank you, your Honour. I don't have much more to add beyond what's already been said. We are in a similar position to the APHA. I don't have any specific instructions about separate listings, but I'm really in your Honour's hands as to how you wish to deal with that aged care aspect. My client doesn't have a particular interest in the aged care aspect to the extent it arises in this proceeding.

PN82

In terms of the timetable that's been proposed, it's difficult to say at this point whether or not there would be a need for my client to lead evidence, but we do want to reserve our position, and it will have to be a matter of seeing what is filed by the applicant and determining at that point whether or not evidence would be led by my client.

PN83

JUSTICE HATCHER: Yes, all right. Ms Krauss, do you want to add anything?

PN84

MS KRAUSS: No, your Honour, there's no issues that the Commonwealth wishes to raise.

PN85

JUSTICE HATCHER: All right. Going back to you, Mr McKenna, in the event that these directions were adopted in whole or part, is there any capacity for the Full Bench to make a determination dealing with the issues that aren't in dispute that would allow the 30 June – I should indicate, it would have to be 30 June because we can't use 1 July because it interferes with the operative date of the annual wage review – there's technical reasons for that – but assuming it's 30 June, is there any way we could make a consent draft determination for those matters that aren't in dispute, or is it too intertwined with the matters that are in dispute?

PN86

MR McKENNA: Your Honour, the preference of the federation would be to deal with it as a whole and to have it heard and determined together and have a single determination finally resolving the issues.

PN87

JUSTICE HATCHER: All right. Well, there seems to be a clash between the operative date that's agreed in that objective, so have you got any proposals to resolve that?

PN88

MR McKENNA: Your Honour, it is accepted that there is a clash between the proposed operative date and the federation's timetable, and that is an inevitable consequence of our proposed timetable.

PN89

JUSTICE HATCHER: All right. So this 27 March 26 date in direction 1, is there any possibility that you might be able to do better than that?

PN90

MR McKENNA: Your Honour, that is the estimate we have provided. We haven't provided it without giving it consideration, but, of course, if the Commission were to order a slightly tighter timetable, then I'm sure that is something we would work towards.

PN91

JUSTICE HATCHER: All right. I'm wondering, if we pull a week or two off that - my initial impression would be that I would direct your client, Mr McKenna, to file its evidence and submissions by a date in March that's slightly earlier than that and then have a report back, but on the basis that we might reserve, say, two months for the various respondents to put material on in reply and perhaps reserve some hearing dates in maybe late May or early June.

PN92

MR McKENNA: Your Honour, if I can indicate, the current proposed directions don't include specific provision for opening submissions. Now if that's something that would assist the Commission, they could be provided, but that is a position that's taken in circumstances where the principles and the issues are obviously well known to the parties and the Commission, and it's anticipated that the proceedings will be the subject of detailed closing submissions, and so it's thought that the provision of detailed opening submissions might involve a duplication of work and resources.

PN93

JUSTICE HATCHER: Well, it would allow a better understanding of the issues you are raising with respect to enrolled nurses and nurse practitioners, I think, if that were done.

PN94

MR McKENNA: Indeed. Thank you, your Honour.

PN95

JUSTICE HATCHER: All right. Does anybody else want to comment upon the suggestion I have just foreshadowed?

PN96

MS RAFTER: Your Honour, we have one comment with respect to that. We would not oppose that, but going back to an issue Mr McKenna said regarding the application, we would seek that the ANMF be required to put on a fresh application with respect to the aged care issues. We dispute that its current application refers or extends to aged care nursing employees in any shape or form by its own terms, and we believe parties should have the right to see the details and the grounds on which the ANMF rely on with respect to those aged care issues because all we have are references in that position document.

PN97

JUSTICE HATCHER: Would it be sufficient if, as part of the direction concerned with filing evidence and submissions, that I also require the ANMF to file a draft determination? Presumably, the outline of submissions would address the grounds and reasons aspect of what you've just said.

PN98

MS RAFTER: That would address some of our concerns, but a broader concern we have is due to the improper way that the ANMF has gone about reagitating these issues, we have concerns that other parties outside of these proceedings, notwithstanding that the ANMF has served copies of their position document on them, may not necessarily appreciate the gravity of what the ANMF is doing in

this current proceedings. Given the proceedings are limited to nursing employees other than those in aged care, we would think it's entirely reasonable for a party to assume that the position document only concerned nursing employees other than aged care employees. So there is this mischief here that we have some concerns about that we think warrant a fresh application being filed just to ensure it gets due notice and due attention.

PN99

JUSTICE HATCHER: All right. I would note that our subscription service would mean that any documents filed by the ANMF would be brought to the attention of anybody who's got a stakeholder interest in this award.

PN100

Mr Dalton, do you want to say anything?

PN101

MR DALTON: No. I think there is an issue in relation to the aged care/non-aged care streams' integration in ensuring that parties who have an interest in the aged care stream of the award are notified of the ANMF's position that's been foreshadowed here.

PN102

Otherwise, the timetable that you have outlined, including, I think, a case management hearing after we have received the union's in-chief submissions and materials is very sensible.

PN103

JUSTICE HATCHER: All right. Ms Leoncio?

PN104

MS LEONCIO: No, your Honour, we're content with the manner in which you have proposed this progress.

PN105

JUSTICE HATCHER: Anything from you, Ms Krauss? All right. Thank you.

PN106

I will consider what's been put. Can I ask the parties to send to my chambers any indication of any unavailable dates in the second half of May and for June. Once I have received those dates, I will then take steps to issue some directions.

PN107

If there's nothing further, we will now adjourn.

ADJOURNED INDEFINITELY

[9.31 AM]