



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

C2023/1

s.285 - Annual wage review

Annual wage review

(C2023/1)

Sydney

9.30 AM, TUESDAY, 7 MARCH 2023

Continued from 13/12/2022

PN1

PRESIDENT HATCHER: I'll take the appearances. Ms Bhatt, you appear for the Australian Industry Group?

PN2

MS BHATT: Yes, I do. Thank you.

PN3

PRESIDENT HATCHER: Mr Izzo and Ms Lawrence, you appear for ABI New South Wales Business Chamber and Busways. Is that correct?

PN4

MR IZZO: That's correct, your Honour.

PN5

PRESIDENT HATCHER: Mr Farrow, you appear for the Australian Chamber of Commerce and Industry?

PN6

MR FARROW: Yes, your Honour.

PN7

PRESIDENT HATCHER: And, Mr Clarke, you appear for the ACTU?

PN8

MR CLARKE: Yes. Yes, your Honour.

PN9

PRESIDENT HATCHER: All right. Now, I note the parties have filed very detailed submissions and submissions in reply and Busways has filed a witness statement made by Mr Gibson – a part of which has been redacted for commercial reasons.

PN10

There is a hearing scheduled for this matter on the 17 March. My initial query is whether the parties consider that we need a hearing. That is, firstly, whether Mr Gibson needs to be cross-examined, and second whether the parties have anything they might want to say in addition to what's in their written submissions. I realise that question is without notice. But, anyway, Ms Bhatt go ahead.

PN11

MS BHATT: We don't seek to cross-examine any of the witnesses that have been called. Subject to the views of my colleagues, at this stage, we think that there might be merit in a hearing. If nothing else, I think it might allow the parties to further explore some of the issues that have been dealt with in the written submissions.

PN12

PRESIDENT HATCHER: Right. Mr Izzo, and Ms Lawrence?

PN13

MR IZZO: Your Honour, we're relatively agnostic on whether a hearing is required. I think the parties have put in their position and responses. So we're not seeking a hearing. But, obviously, should there be one we would be very keen to participate. In terms of Mr Gibson, obviously, that's a matter for the unions. Ordinarily, we're not conscious of cross-examination taking place in these annual wage reviews but you don't ordinarily have witness statements, I suppose. So I suppose we're here for the ACTU as to whether that's something they think is necessary.

PN14

PRESIDENT HATCHER: Right. Thank you. Mr Farrow?

PN15

MR FARROW: Your Honour, ACCI would not be seeking a hearing. We'd be happy for the matter to be dealt with just through the – in submissions – and we won't seek to cross-examine either.

PN16

PRESIDENT HATCHER: Right. Thank you. Mr Clarke?

PN17

MR CLARKE: Yes, thanks, your Honour. We're not seeking to cross-examine the witness. We did want to make submissions about a sentence long containing one of the matters that was in the redacted material. And whether we need to go in-camera for that sentence or whether the reality is that only some people would show up anyway and we don't need to do it. It's probably a matter for Ms Lawrence and Mr Izzo to think about when we get there.

PN18

In terms of a preference of a hearing or not having a hearing, I am not adamant one way or the other. It's ultimately what's more convenient to you, your Honour, although I would say this. You know, a hearing might be an economical way of doing it if people sort of play with the rules and only respond to what's actually in the reply submissions and that would similarly, if there was any further written material it should only really rely on matters that are raised in those reply submissions so we don't sort of just go over old ground.

PN19

PRESIDENT HATCHER: All right. How long do you think if you ring a person it would take, Mr Clarke?

PN20

MR CLARKE: Well, it's got to be done in half a day or less, surely – I would think.

PN21

PRESIDENT HATCHER: I mean you said a sentence. I assume that you weren't literal in that.

PN22

MR CLARKE: So sorry. There was a sentence that I would have said.

PN23

PRESIDENT HATCHER: Yes.

PN24

MR CLARKE: In my written submissions about – in my reply submissions – about the in chief material of the witness.

PN25

PRESIDENT HATCHER: Yes.

PN26

MR CLARKE: I didn't do that because the status of – whilst we were quite happy to agree to what Busways were seeking we didn't want to complicate the relationship between Busways and – you know – the New South Wales Government. We'll take the outer limit view of whatever they say is sensitive and we accept that. That's fine. But noting what the statement was that question was going to be dealt with today.

PN27

All I wanted to say about the witness statement was one sentence – about the redacted material in the witness statement was one sentence. But having reviewed the reply material there's a little bit more I'd like to say as well and there seems to be a little bit of a difference of opinion between some of the employers about some of these issues as well which would need to be ventilated either in the submissions or at a hearing. So, you know, my estimate is that taking all of that into account, if we only deal with what's in the reply material, apart from that one sentence, I suspect, we should be done in half a day.

PN28

PRESIDENT HATCHER: Right. Does anyone take any different view that if the hearing proceeds it will take no more than half a day? All right. Now, as you might have heard there was a series of new experts appointed or the appointments were announced yesterday. So the expert panel will now be assembled. I will need to confirm the date.

PN29

So, at this stage the matter is listed for 17 March, and the parties can assume that's the date on this unless I hear otherwise. But there may arise issues in terms of the availability of the experts selected for the panel. So if that issue arises I will advise the parties and we'll have a discussion about a different date.

PN30

The hearing will proceed by Teams. Is there any other procedural issues I need to deal with now?

PN31

MR IZZO: Your Honour, it's Mr Izzo. Just in response to what's been raised by Mr Clarke, I might take it offline with him, whatever his few sentences are about the statement, and whether they pertain to what we say is commercially sensitive information of Busways or whether it's actually the Transport for New South Wales information which we are somewhat more sensitive about and we'll

endeavour to see if there is some arrangement we can propose, so that those submissions can be made by Mr Clarke. But our confidentiality concerns are not prejudiced. Hopefully we'll come to you with a consent proposal as to how we deal with it. And we might seek to do that in advance. So with your leave I might email your Chambers once we have spoken to Mr Clarke in case you have any difficulty with what we propose.

PN32

PRESIDENT HATCHER: No. That sounds to be sensible. I mean it seems to me that if the parties can reach a consensus about perhaps a written submission which can be treated as confidential, dealing with the issue, that seems to me more straightforward than having to deal with that at an open hearing.

PN33

All right. Well, if there's nothing further I thank the parties for their attendance. We will now adjourn.

PN34

MR IZZO: Thank you.

ADJOURNED INDEFINITELY

[9.47 AM]