



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2023/11**

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

**Application by Secker  
(AM2023/11)**

***Social, Community, Home Care and Disability Services Industry Award 2010***

**Sydney**

**2.00 PM, TUESDAY, 14 NOVEMBER 2023**

**Continued from 10/08/2023**

PN133

JUSTICE HATCHER: I will take the appearances. Mr Secker, you appear on your own behalf by telephone?

PN134

MR SECKER: That is correct, sir.

PN135

JUSTICE HATCHER: All right. Ms Barry, you appear for the United Workers Union?

PN136

MS BARRY: Yes, thank you.

PN137

JUSTICE HATCHER: Ms Bhatt, you appear for the Australian Industry Group?

PN138

MS BHATT: Yes, your Honour.

PN139

JUSTICE HATCHER: Mr Roper, you appear for Australian Business Industrial?

PN140

MR ROPER: Yes, your Honour.

PN141

JUSTICE HATCHER: Ms Nally, you appear for Aged & Community Care Providers Association.

PN142

MS NALLY: Yes, thank you, your Honour.

PN143

JUSTICE HATCHER: Mr Secker, I understand you have filed submissions and what might be loosely described as a witness statement in support of your application; is that correct?

PN144

MR SECKER: That is correct, sir.

PN145

JUSTICE HATCHER: You were directed also to file a draft determination setting out in precise terms how the award would be varied to give effect to your application. You haven't done that?

PN146

MR SECKER: I did that previously, sir.

PN147

JUSTICE HATCHER: Have you? All right. Just give me a second. Yes, you did that on 1 August. Yes, I can see that now. All right. That's all the material you seek to rely upon in support of the application; is that correct?

PN148

MR SECKER: That is correct.

PN149

JUSTICE HATCHER: All right. The first thing is, Ms Barry, does the Uwu wish to file any material or evidence or submissions supporting the application?

PN150

MS BARRY: The United Workers Union isn't opposing the application, but, at this time, we are not in a position to prepare any evidence and, on that basis, we are not seeking to lodge submissions.

PN151

JUSTICE HATCHER: All right. Thank you. I will now turn to the employer parties. Ms Bhatt, what do you say should be done with the application now?

PN152

MS BHATT: Well, given that it appears that the application is pressed and there is material before the Commission that the applicant relies on in support of it, we seek an opportunity to respond, and we would seek a period of at least five weeks to be able to do so, which I think takes us very close to the end of the working year. I had intended to ask your Honour to allow us until at least 20 December to file that material in reply. That request is made in part because I am conscious that we will likely be appearing in proceedings related to various other matters before the Commission in December.

PN153

JUSTICE HATCHER: All right. Does any other employer party take a different view as to the approach going forward than Ms Bhatt?

PN154

MR ROPER: Your Honour, we at Australian Business Industrial would agree with Ms Bhatt's approach. We think that's quite reasonable.

PN155

JUSTICE HATCHER: All right. Ms Nally?

PN156

MS NALLY: I would agree with that approach as well, your Honour.

PN157

JUSTICE HATCHER: All right. Do you want to say anything about that, Mr Secker?

PN158

MR SECKER: Well, essentially, the parties have had time already. I acknowledge that there are other things which they are going to be involved with

with the Fair Work Commission, so five weeks would be reasonable for that. I'm disappointed that the situation hasn't already got to a proper hearing.

PN159

JUSTICE HATCHER: Yes, all right. In any event, I think, with respect, there was some delay on your part which affected the timetable.

PN160

MR SECKER: I acknowledge that.

PN161

JUSTICE HATCHER: In any event, once the employers file their material, do you seek an opportunity to file material in reply?

PN162

MR SECKER: Yes, please.

PN163

JUSTICE HATCHER: All right. So if I give the employers until 20 December, as proposed, and noting that then we have the Christmas and New Year period following, how much longer do you think you would need to put on any material in reply?

PN164

MR SECKER: Well, I would say four weeks from 20 December because I won't be shutting down operations during that time; I will still be working.

PN165

JUSTICE HATCHER: All right. So that would take us to 17 January.

PN166

MR SECKER: Yes.

PN167

JUSTICE HATCHER: All right. What I will do is I will direct the employer respondents to file any evidence and submissions in response to the applicant's material by close of business on 20 December; Mr Secker to file any material in reply to that by 17 January 2024, and then I will have a directions hearing. The parties will be advised, but it will be in the week beginning 15 January to program the matter for hearing, or determine whether a hearing is necessary or whether it can be determined on the papers. Is that a suitable course?

PN168

MS BHATT: Yes, your Honour.

PN169

MR SECKER: I think that is a suitable call.

PN170

JUSTICE HATCHER: All right. Those directions will be made and the parties can expect them to be communicated later today or tomorrow, together with a listing for the directions hearing. If there's nothing further, we will now adjourn.

**ADJOURNED INDEFINITELY**

**[2.21 PM]**