



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2023/18**

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

**Application by The Allison and Phil Family Trust T/A my OSHC  
(AM2023/18)**

***Children's Services Award 2010***

**Sydney**

**2.30 PM, TUESDAY, 14 NOVEMBER 2023**

**Continued from 09/08/2023**

PN87

JUSTICE HATCHER: I will take the appearances. Mr Paterson, you're there on the telephone.

PN88

MR P PATERSON: Yes.

PN89

JUSTICE HATCHER: Ms Van Gent, you appear for the UWU.

PN90

MS A VAN GENT: Yes, that's correct, thank you.

PN91

JUSTICE HATCHER: Mr Kenchington-Evans, you appear for the AEU.

PN92

MR J KENCHINGTON-EVANS: Thank you, your Honour.

PN93

JUSTICE HATCHER: As I understand the position, Mr Paterson, you have filed your submissions in support of the application and the UWU, the AEU and the IEU have filed a joint submission in response to the application and in opposition; is that correct?

PN94

MR PATERSON: Correct.

PN95

MS VAN GENT: That's correct.

PN96

JUSTICE HATCHER: It seems to me that, given there's no evidence, as such, filed, this is a matter that can be determined on the papers, that is - just to explain that, Mr Paterson - that the Commission could determine the application on the basis of the submissions filed without requiring you to attend a formal hearing, but, if you take a different view, please tell me.

PN97

MR PATERSON: No, that's fine.

PN98

JUSTICE HATCHER: All right. Ms Van Gent and Mr Kenchington-Evans, do you take a different view?

PN99

MS VAN GENT: No, thank you, your Honour.

PN100

JUSTICE HATCHER: All right. Mr Paterson, do you seek the opportunity to file any submissions in reply to the unions' submissions?

PN101

MR PATERSON: No. Look, the only thing I would say, just looking at them, is they have neglected to mention anything to do with the outside school hours' care segment, so we're talking about the early childcare segment. I'm not sure how relevant those documents are.

PN102

JUSTICE HATCHER: All right. I am not actually hearing the matter now. If you do want to say anything in response to those submissions, you can do so in writing, but that's a matter for you. I am happy to give you some time to do that; it doesn't have to be done instantly.

PN103

MR PATERSON: Yes, that's fine, you can give me some time and I'll just write that back just to explain that everything's going - - -

PN104

JUSTICE HATCHER: Well, look - - -

PN105

MR PATERSON: There's no mention of the outside of school hours scheme, just all about early childhood care, so, that's - - -

PN106

JUSTICE HATCHER: But - - -

PN107

MR PATERSON: You know, like their argument is irrelevant because it's clearly a different segment of the market.

PN108

JUSTICE HATCHER: All right. Look, what I will do, just from more abundance of caution, Mr Paterson, I will give you a period of two weeks from today to file any submissions in writing in reply to the unions' submissions, and then the matter will be determined on the papers by the Commission.

PN109

Does any party have a view as to whether this application - and I'm sorry, this is a bit technical, Mr Paterson - needs to be heard by a Care and Community Expert Panel?

PN110

MS VAN GENT: Thank you, your Honour. As you would have seen, the unions' primary submission is that the application should be dismissed on the basis of the lack of evidence and submissions that have been filed by the applicant to date. On that basis, we would say that it probably would not need to be referred to a panel, that a panel would not be needed to be convened for the purpose of hearing that application.

PN111

In light of the comments that the applicant has just made, however, about filing some additional material, we think it might be appropriate that it is referred to an expert panel.

PN112

JUSTICE HATCHER: All right. Mr Kenchington-Evans, do you take any different view?

PN113

MR KENCHINGTON-EVANS: No, thank you, your Honour.

PN114

JUSTICE HATCHER: All right. Well, look, I will consider the course to be taken, but, in any event, we will make the direction about the prior submissions and then that matter will be determined by the Commission in the appropriate forum on the papers.

PN115

If there is nothing further, I will now adjourn, which means you can simply disconnect from the call.

**ADJOURNED INDEFINITELY**

**[2.40 PM]**