



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

VICE PRESIDENT GIBIAN

AM2023/28, AM2024/16, AM2024/30

s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

**Application by The Australian Industry Group
(AM2023/28)**

**Application by Parkerville Children and Youth Care Inc
(AM2024/16)**

**Application by Australian Municipal, Administrative, Clerical and Services Union and
Others
(AM2024/30)**

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

Sydney

11.00 AM, FRIDAY, 6 SEPTEMBER 2024

PN1

THE VICE PRESIDENT: Yes, thank you. I'll take the appearances. So, Mr Garozzo you appear for AI Group?

PN2

MR GAROZZO: I do, your Honour. Good morning.

PN3

THE VICE PRESIDENT: Or seek permission?

PN4

MR GAROZZO: I'm seeking permission.

PN5

THE VICE PRESIDENT: Permission to appear. I take it you're instructed, are you, by Ms Beasley and Ms Bhatt?

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MR GAROZZO: I am, your Honour.

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THE VICE PRESIDENT: Thank you. Ms Jobbins for the PSA?

PN8

MS JOBBINS: The CPSU New South Wales, your Honour.

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THE VICE PRESIDENT: CPSU New South Wales. Thank you. Ms de Plater for the HSU?

PN10

MS DE PLATER: Yes, thank you, your Honour.

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THE VICE PRESIDENT: Mr Robson for the ASU?

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MR ROBSON: Yes, thank you, your Honour.

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THE VICE PRESIDENT: Mr Miller, you're for the AWU?

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MR MILLER: That's correct, your Honour, thank you.

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THE VICE PRESIDENT: And Mr Johnson for the EWU?

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MR JOHNSON: May it please, your Honour.

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THE VICE PRESIDENT: All right. Thank you. I listed the matter today just hopefully to deal as quickly as we can just with the confidentiality order applications that had been made because my Chambers is having to deal with issues about what's to be put on the website in relation to – on the Commission's website in relation to these matters and that should be dealt with as quickly as possible to ensure that any interested person has the opportunity to deal with the evidence as they wish.

PN18

There's two applications. The first or the perhaps more straightforward one is that there's an application in relation to by the ASU in relation to a particular witness statement which – in relation to which a confidentiality order is sought with respect to the name and identifying – any identifying information in relation to the work of the individual concerned on the basis that the individual works within a domestic violence service, and as I understand it there are safety issues that would be attached with the public disclosure of that information. Have I understood that correctly, Mr Robson?

PN19

MR ROBSON: That's correct, your Honour.

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THE VICE PRESIDENT: Right.

PN21

MR ROBSON: That's simply the issue. It's unsafe to put it out there and we think it would assist the Commission to have this information in evidence.

PN22

THE VICE PRESIDENT: I understand. And you've proposed a process in the draft order that has been prepared for the other parties to have access to unredacted version of that witness statement, subject to a process of disclosing who the individuals who it's proposed – would have access to the unredacted version and the signing of the confidentiality undertaking.

PN23

MR ROBSON: That's correct, your Honour. I have adapted this from the orders that were granted in the Family Domestic Violence Leave proceedings, with some modifications. Obviously we're not going to seek a confidentiality undertaking from the employer that this evidence concerns as they know.

PN24

But for any of the parties of these proceedings it can be provided to someone who is directly involved in the proceedings on the provision of an undertaking and then the industrial associations. And I have noted that Business New South Wales, Australian Business Industrial and Australian Industry Group are parties to these proceedings. They can speak to their members, as long as the member in question provides the same confidentiality undertaking that they would do if it was one of the legal representatives.

PN25

THE VICE PRESIDENT: All right. I understand. Sorry, Mr Scott, I think I might have forgotten you in the role call of appearances. I apologise for that.

PN26

MR SCOTT: That's okay, your Honour. I do – it's certainly necessary I seek permission but certainly I'm not offended by that, your Honour.

PN27

THE VICE PRESIDENT: Thank you. All right. I should also deal with formally with the permission issues as well. Do I assume there's no objection to Mr Garozzo and Mr Scott, to the extent, as necessary, being granted permission to represent their respective clients today? All right. I am satisfied that it is appropriate for Mr Garozzo and Mr Scott to be granted permission to represent AI Group and ABI New South Wales Business Chamber respectively, on the basis that it would allow the confidentiality or issues to be dealt with expeditiously and officially.

PN28

All right. Mr Garozzo, in relation to that first application do I correctly understand AI Group's position is it doesn't have a difficulty with an order being made in the terms that are sought?

PN29

MR GAROZZO: That's correct, your Honour.

PN30

THE VICE PRESIDENT: All right. Mr Scott, do you have any issue to raise in that respect?

PN31

MR SCOTT: No. No, your Honour. I think – I'm just looking at the – if I could just have a moment?

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THE VICE PRESIDENT: Of course.

PN33

MR SCOTT: I'm looking at the draft order and I don't see any issue with that but I just want to quickly have a look at a confidentiality undertaking that's being suggested.

PN34

THE VICE PRESIDENT: Yes, I don't think the terms of the undertaking are set out but the process which is proposed is, as I understand it, on the second page of the draft order in 3(d).

PN35

Mr Robson, the only question I have about the drafting was (d)(i) contemplates that an employer organisation would discuss the matter with the ASU or discuss how it intends to proceed with the ASU. I take it that's just intended to

contemplate a discussion about why it is necessary for or the statement – the unredacted version – to be provided to other persons for the purposes of instruction or preparation.

PN36

MR ROBSON: That's right, your Honour.

PN37

MR SCOTT: Your Honour, I don't take any issue with the draft order. The only comment I'd make is it's not apparent to me that the terms of any confidentiality undertaking have been circulated. And so subject to those terms being acceptable I think we'd be fine with the order being made.

PN38

THE VICE PRESIDENT: All right. Well, look I'm willing to leave that to a further process. I would be reasonably confident the parties can sort out any difficulties in that respect going forward. Obviously, if there is some issue with that process then the matter can back before the Commission. But I think that – I would hope that's unlikely. All right. Sorry, Mr Robson?

PN39

MR ROBSON: It might assist Mr Scott. I have provided a draft to the parties in these proceedings on the 29 August and I am happy to resend that to him.

PN40

MR SCOTT: Thank you, Mr Robson. I'm actually looking at that now. In light of that my caveat to our consent to the order falls away.

PN41

THE VICE PRESIDENT: That's helpful. All right. Well, look we'll publish an order to the effect of the draft order sought by the ASU in relation with that application.

PN42

The second application is, I think, made jointly by all the unions and applies – or is sought to apply to all of the witness statements which have been filed and seeks, as I apprehend it to a confidentiality order applying to the names and contact information of each of the witnesses that have filed, or in relation to whom witness statements have been filed. Mr Robson, are you speaking on behalf of this application as well?

PN43

MR ROBSON: No, Vice President, Ms Jobbins will.

PN44

MS JOBBINS: Thank you, your Honour. I should provide an update. So following the communication of AI Group's position yesterday afternoon this morning I wrote on behalf of the joint parties to confirm that the unions do not press the orders in respect of category one. So that is the redaction of names. So the non-publication of names on the Commission's website.

PN45

However, the CPSU still presses the orders in respect of categories two and three in relation to the evidence of [REDACTED]. So, the material specifically for categories two and three relates to the name of the group home which [REDACTED] works at. And also the name of a colleague, specifically her team leader, at the group home who is not a witness in these proceedings.

PN46

I haven't received a response from AI Group just to clarify whether the position is still that they would oppose the orders in those terms. So perhaps it would be most efficient to let Mr Garozzo address that initially if there is no objection obviously. That might be something that could be dealt with quite quickly.

PN47

THE VICE PRESIDENT: All right. Just so I am sure I have understood it correctly. Category one, in attachment 'A' to the application is just the names, that is, they identified paragraph, page or attachment reference is a reference to the names.

PN48

MS JOBBINS: So the names, personal address and signature. And as the personal address and signature already going to be redacted now in the usual course, category one falls away.

PN49

THE VICE PRESIDENT: Right. I understand. And category two and three relate to [REDACTED] statement. Is there also a further statement of Ms Ikin?

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MS JOBBINS: There is. But I'm not – I think I'll let Mr Robson confirm whether that is pressed in respect of Ms Ikin.

PN51

THE VICE PRESIDENT: And in respect of [REDACTED] statements each of the paragraphs at pages or attachments identified in the table in categories two and three they all relate to either the name of the group home or location and the name of another individual. Is that right?

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MS JOBBINS: Yes. Yes, so it is the same name and it is the same individual in each instance. It's not a sort of a myriad of that.

PN53

THE VICE PRESIDENT: I understand. And what's the basis upon which the name of the group home and the other worker's name should be made confidential?

PN54

MS JOBBINS: In terms of the group home [REDACTED] goes into quite some detail about the ages of the clients at the group home. The fact that the group home is a behavioural unit which identifies that, you know, it is more susceptible to injury

and sort of aggression from clients and things like that. It also goes into the diagnoses of the clients there and the care that's provided to them. So on the basis of realistically preserving the dignity of those clients and it being more likely that those clients could be identified, even though their names have not been identified, we think it's desirable for the name of the group home to be not published.

PN55

It's been shared with the parties so they have access to it. We're just seeking that it not be published on the Commission's website. And, separately, with the colleague under category – apologies, Commissioner – the category three in respect of – sorry, category two – in respect of [REDACTED] team leader she's not a party to the proceedings. She's not a witness in the proceedings. It just identifies the circumstance in which [REDACTED] had a rejection of overtime claim for work performed on a sleepover.

PN56

So to the extent that it's not overly relevant or material to these proceedings as it is primarily in relation to rostering of breaks.

PN57

THE VICE PRESIDENT: All right. Okay. Look, I understand. I certainly understand the first matter. The second matter maybe it doesn't – not too much turns on it. I'm not sure it's terribly confidential what the name of the other worker is or the team leader. But in any event I understand. All right, Mr Garozzo, are you able to indicate? Has the AI Group had an opportunity to consider what its position is in relation to categories two and three?

PN58

MR GAROZZO: Yes, your Honour. We don't oppose.

PN59

THE VICE PRESIDENT: All right. I understand. All right, and Mr Scott is your position any different? You're on mute I think, Mr Scott.

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MR SCOTT: Sorry, your Honour. I was just saying I haven't actually seen this particular application or the proposed redactions of a term and the proposed order. But to the extent that it's limited to non-publication then my clients have no issue with that.

PN61

THE VICE PRESIDENT: All right. Well, it would be to redact the versions which are on the website and the non-publication order. I don't think that order itself proposes – or the draft order proposes a regime such as was in the first order.

PN62

MS JOBBINS: No. It does not, your Honour.

PN63

THE VICE PRESIDENT: Is that appropriate? And that is, is it necessary for AI Group or ABL to know the name of the group home and the name of the team leader?

PN64

MS JOBBINS: We don't. We do not have any concerns about them having access to that information. It's been provided already. The sole concern is that it be publicly available broadly on the website.

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THE VICE PRESIDENT: I understand. And we don't need any confidentiality undertaking arrangement in that respect.

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MS JOBBINS: No. We trust it.

PN67

THE VICE PRESIDENT: I understand.

PN68

MS JOBBINS: Yes.

PN69

THE VICE PRESIDENT: All right. I understand. Well, I am content on that basis to deal with the category two and three in the draft order. Ms Jobbins, is that adequately dealt with in the draft order that you have provided already?

PN70

MS JOBBINS: I suspect there might just need to be some tinkering to remove the remainder of the witnesses that are identified now in the draft order and just contain – you know (indistinct).

PN71

THE VICE PRESIDENT: Can I ask you to prepare a draft order and provide and circulate to the parties – provide to my Chambers – and copying the other parties, which essentially just identifies [REDACTED] witness statement and the relevant paragraphs or parts that identified in the table which is attachment 'A' to the application and sets those out in the actual order itself?

PN72

MS JOBBINS: Yes, your Honour.

PN73

THE VICE PRESIDENT: Sorry, Mr Robson, is there any issue with Ms Ikin's witness statement?

PN74

MR ROBSON: Look that refers to the name of a colleague of Ms Ikin, who is not giving evidence in these proceedings. It's broadly for the same reasons advanced by Ms Jobbins for her member. We don't want to publish on the website that this material is already been given to the other parties in these proceedings.

PN75

THE VICE PRESIDENT: Right. I mean I'm not very convinced that that's – if it's just the name of another worker I'm not very convinced - - -

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MR ROBSON: Then we don't press it, your Honour.

PN77

THE VICE PRESIDENT: - - -that that's confidential. I mean I understand the issue in relation to the behavioural unit that it is appropriate for that be confidential if the evidence is going to go into issues in relation to the diagnoses and behavioural issues that are experienced by residents. All right. I understand.

PN78

So, Ms Jobbins, I will ask you to prepare – if anyone has any difficulty with the terms of the order they can let us know by the end of the day but otherwise I will make an order broadly in those terms. Is there anything else that any other party wishes to raise? No? All right.

PN79

The only other thing I was going to mention is Ms de Plater when she was serving the material from the HSU copied in, I think, my barrister's email address for the purposes of transparency, I think I should disclose that that is what occurred. I don't think any issue arises in that respect, since it was the email serving on the parties and the Commission the evidence that was filed by the HSU.

PN80

MS DE PLATER: I apologise, your Honour. I didn't realise that it was an order fill issue. I apologise. That was an error.

PN81

THE VICE PRESIDENT: I understand. But just for the purpose of transparency. Otherwise, good morning to everyone, and the Commission is adjourned.

ADJOURNED INDEFINITELY

[11.17 AM]