



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

ACTING PRESIDENT HATCHER

AM2023/2

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

**Application by Mental Health Australia
(AM2023/2)**

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

Sydney

2.00 PM, MONDAY, 13 FEBRUARY 2023

PN1

THE ASSOCIATE: The Commission is now in session, matter AM2023/2, section 158 application by Mental Health Australia, directions hearing before Acting President Hatcher.

PN2

ACTING PRESIDENT HATCHER: I'll take the appearances. So is it Mr Ash and Ms Byrne from Mental Health Australia? Mr Ash, you'll have to turn your microphone on.

PN3

MR ASH: Yes.

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ACTING PRESIDENT HATCHER: Yes, all right. Ms Bhatt, you appear for the Australian Industry Group?

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MS BHATT: Yes, I do.

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ACTING PRESIDENT HATCHER: Ms McCarthy, you appear for the United Workers' Union?

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MS MCCARTHY: Yes. Yes, thank you, your Honour.

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ACTING PRESIDENT HATCHER: Mr Robson, you appear for the Australian Services Union?

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MR ROBSON: Yes, thank you, your Honour.

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ACTING PRESIDENT HATCHER: And Ms de Plater, you appear for the Health Services Union?

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MS DE PLATER: Yes, thanks, your Honour.

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ACTING PRESIDENT HATCHER: All right. So it's a fairly straightforward application in the sense that the issue is fairly clear. As I understand it, Mr Ash, you wish to vary I'll call it the SCHADS Award, to allow employees to substitute public holidays by agreement with the employer, is that right?

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MR ASH: That's right.

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ACTING PRESIDENT HATCHER: Well, perhaps the other parties can briefly indicate, in turn, their position, with respect to the application, starting with you, Ms Bhatt?

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MS BHATT: We're supportive of the application and the variation that's been proposed.

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ACTING PRESIDENT HATCHER: Right. Ms McCarthy?

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MS MCCARTHY: I think the union was interested in understanding the scope of the application, whether it was intended to operate in relation to all public holidays or, potentially, given the timing of the application, whether perhaps it was in relation to the Australia Day public holiday. So perhaps at this instance we want to understand the scope of the application.

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ACTING PRESIDENT HATCHER: All right, I'll come back to that.

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Ms McCarthy? Sorry, I've done you, Ms McCarthy. Mr Robson?

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MR ROBSON: Yes, thank you, your Honour. We're in the same position as the United Workers' Union. We'd like to understand more about what the applicant is seeking before stating a position on the application.

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ACTING PRESIDENT HATCHER: All right, and Ms de Plater?

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MS DE PLATER: Thank you, your Honour. Yes, same. The ACTU is in the same position as the other two unions. Not opposed, in principle, but just want to understand the scope of the application and potential implications for other entitlements in the award, just to make sure there's no unintended consequences or no employees are left worse off.

PN23

ACTING PRESIDENT HATCHER: All right. Well, Mr Ash, you've heard that. Is the application intended to apply to some particular public holidays, or all public holidays?

PN24

MR ASH: Well, maybe I'll just give you the reason why we did it, and it was associated with the Australia Day holiday and it was really we have an Indigenous employee that specifically would like to have exchanged. I then just did a little bit of research and had a look at all the other awards where a similar term was in. I basically just took the wording from one of those awards and just applied it. I didn't have any specific restrictions put on it, as I didn't think there were

restrictions in the other awards, but, again, I may be mistaken on that. I'm a little bit of a novice in industrial relations. We were really simply looking at the primary was Australia Day but, having said that, I was trying to bring it into line with what appears to be in many other awards.

PN25

ACTING PRESIDENT HATCHER: All right. So the starting point is it's meant to operate the same as some clauses in other awards, which allow any public holiday to be substituted, by agreement, is that right?

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MR ASH: That's my understanding of the way that this similar clause operates in other awards. There are, I don't know whether it's in the hundreds, but it's in the manys.

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ACTING PRESIDENT HATCHER: Yes, all right. The variation is, am I right in saying, it's intended to operate with respect to all classifications under the award?

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MR ASH: Yes, that's correct.

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ACTING PRESIDENT HATCHER: All right. Well, the union respondents have heard that. Do you wish to add anything to your responses, in the light of that, starting with you, Ms McCarthy?

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MS MCCARTHY: I think, in those circumstances, and my friends can correct me if I'm wrong, that perhaps we might be able to come to a consent position if we could have a referral for conciliation, just so we can have something more of a dialogue around the application.

PN31

ACTING PRESIDENT HATCHER: All right. Ms McCarthy, do you want to confer with the applicant directly, in the first instance, or do you want to do it via the Commission?

PN32

MS MCCARTHY: I think that if the Commission was prepared to hold a conciliation conference that would be of assistance.

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ACTING PRESIDENT HATCHER: All right. Mr Robson and Ms de Plater, do you take any different view?

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MR ROBSON: No, your Honour.

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ACTING PRESIDENT HATCHER: Are you happy to participate in that Mr Ash and Ms Bhatt?

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MS BHATT: Yes, thank you.

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ACTING PRESIDENT HATCHER: Mr Ash?

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MR ASH: Yes, I am.

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ACTING PRESIDENT HATCHER: All right. Well, how soon might that be able to be done? Is there any time constraint on you?

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MR ASH: I have no time constraint.

PN41

ACTING PRESIDENT HATCHER: Anybody else?

PN42

MR ROBSON: I think, your Honour, the ASU obviously didn't fully understand the position of the applicant, so we haven't been able to consult our members. We would like some time to consider this so that we've got a more detailed position to bring to the conference. Something in the order of four weeks might be reasonable to us. If it is about Australia Day we have nearly a year to resolve this issue, so we don't see any urgency.

PN43

ACTING PRESIDENT HATCHER: It seems to me the only urgency is that, I'm not sure about every state, but the next batch of public holidays is in Easter, so if we can have the conference before then that would seem to be useful. Mr Ash?

PN44

MR ASH: Your Honour, the only, I suppose, statement I'd make at this stage, in preparation for such a conference, is it would be my very strong preference not to put this award out of kilter with the other multitude of awards that have a similar clause. I suppose, from a personal perspective, I would suggest that I can't see any reason why this award should be treated any differently. So if there is going to be an in principle problem with that, I suppose that needs to be, I think, discussed at that conference as to why this award would be treated differently from the other awards.

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ACTING PRESIDENT HATCHER: Yes, all right. So I think we understand that's the organisation's position, Mr Ash, and we can discuss that at a conference.

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Look, I'll take on board what all the parties have said and I'll arrange a date for a conference, in the coming weeks.

PN47

Is there anything further I can deal with now? No, all right. I thank all parties for their attendance and we'll now adjourn.

ADJOURNED INDEFINITELY

[2.36 PM]