



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2022/36**

**s.158 - Application to make a modern award**

**Application by Association of Professional Engineers, Scientists and Managers Australia (APESMA) t/a Professionals Australia & The Australian Industry Group**

**Sydney**

**9.30 AM, TUESDAY, 27 JUNE 2023**

**Continued from 16/01/2023**

PN66

JUSTICE HATCHER: Can I take the appearances, please. So, Mr Ferguson, you appear for the Australian Industry Group?

PN67

MR B FERGUSON: Yes, your Honour.

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JUSTICE HATCHER: Ms Baulch, you appear for Professionals Australia?

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MS J BAULCH: Yes, sir.

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JUSTICE HATCHER: Ms Thomson, you appear for Australian Business Industrial and the New South Wales Business Chamber?

PN71

MS K THOMSON: Yes, your Honour.

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JUSTICE HATCHER: Mr Kenchington-Evans, you appear for the Australian Education Union?

PN73

MR J KENCHINGTON-EVANS: Yes, thank you.

PN74

JUSTICE HATCHER: Mr Townsend, you appear for the CPSU?

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MR W TOWNSEND: Yes, your Honour.

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JUSTICE HATCHER: Mr Painting, you appear for the National Accreditation Authority for Translators and Interpreters?

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MR M PAINTING: Yes, your Honour.

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JUSTICE HATCHER: And, Ms Roberts, you appear for the Australian Sign Language Interpreters Association?

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MS B ROBERTS: Yes, your Honour.

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JUSTICE HATCHER: The last event, Mr Ferguson, was that I received correspondence on behalf of your organisation and Professionals Australia as to

progress and negotiations, and there was an indication that a further draft award was going to be filed by 14 June.

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MR FERGUSON: Yes, your Honour.

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JUSTICE HATCHER: Obviously that hasn't happened. What's the position?

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MR FERGUSON: I will update you, your Honour, as to the position and perhaps some potential directions. Just by way of context regrettably there was an accident involving the officer with carriage of this matter who has been handling the negotiations, who as a result has been unexpectedly off work, unable to work, and back next week. But that has caused some entirely unanticipated delay. But nonetheless in terms of the status we are in a situation where we largely have agreement over the terms of an award. The biggest issue in contest is the drafting of a classification structure. As I understand it there is a high level of in principle agreement around that, but there's quite a bit of detail to be worked through in the drafting that is not yet complete.

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JUSTICE HATCHER: When you say agreement apart from Professionals Australia who has been involved in discussions?

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MR FERGUSON: Yes, primary between Professionals Australia and Ai Group. To varying degrees other parties have been kept abreast of the development of the draft award, but the heavy lifting so to speak has been between ourselves, and that's where the detail of the agreement has been reached, your Honour. So that is the biggest issue at the moment as I understand in the draft award. It's the classification structure and there is a fair bit of engagement with industry around, as you would expect, the practicalities of that which is making a slow process.

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There is another issue of potential disagreement between Professionals Australia and Ai Group and perhaps other parties, and that relates to coverage, and the extent to which Professionals Australia might press for the award to be limited to the private sector in its application. That is still being worked through as well. But what I was going to propose if it's helpful, your Honour, is that we could forward a further window to file the proposed award as proposed by Professionals Australia and Ai Group. I think just prudently we suggest four weeks, so perhaps by 25 July or thereabouts be the date for filing that.

PN87

We were then going to suggest, subject to the views of the others, that Professionals Australia and Ai Group be given a period to file additional material in support of that award. That would likely be submissions largely explaining why we see the need for the award and the operation of various clauses within it, rather than any significant evidentiary case, because we don't anticipate the factual

propositions underpinning it will be contested, at least not by Professionals Australia and Ai Group. Then we were going to suggest a report back shortly after to see whether there was in light of all of that material any disagreement with the terms of the award that we proposed.

PN88

In terms of timeframes we thought four weeks, 20 July, filing the award, and then perhaps a further couple of months taking us to about 25 September for the filing of material in support of it. It's hoped that that would let us file joint material rather than separate submissions. And then a report back perhaps a week after that, so 2 October.

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JUSTICE HATCHER: All right.

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MR FERGUSON: But that's subject to the views of the others of course, your Honour.

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JUSTICE HATCHER: Do you confirm that position, Ms Baulch?

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MS BAULCH: Yes, sir. We have spoken extensively over the last couple of days and APESMA agrees with the proposed timetable and where we're at.

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JUSTICE HATCHER: All right. Who else wants to say anything? Ms Thomson?

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MS THOMSON: Nothing from us, thank you, your Honour.

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JUSTICE HATCHER: Mr Kenchington-Evans?

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MR KENCHINGTON-EVANS: No, thank you.

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JUSTICE HATCHER: Mr Townsend?

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MR TOWNSEND: Yes, your Honour. Your Honour, we only have one interest in this matter and that is about coverage, and to the extent that that can be resolved we would not participate in any further matters relating to the award, particularly if it remains a private sector award as has been proposed by APESMA.

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JUSTICE HATCHER: All right. Mr Painting?

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MR PAINTING: Thank you, your Honour, just one comment. In my previous draft of the award there was reference in the structure to a term of NAATI equivalent. Now, the NAATI certification levels are used as a basis of remuneration structure, which we are satisfied with, but very concerned about the use of referencing an equivalent to NAATI. In Australia there is certainly no equivalent. I understand the reference is in relation to one jurisdiction that has an alternative to NAATI certification, but that is different to an equivalent, so something we would like to put on the table and keep an eye on.

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JUSTICE HATCHER: All right, Mr Painting. Can I invite you to discuss that issue directly with Australian Industry Group and Professionals Australia to attempt to reach some sort of agreed position about that?

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MR PAINTING: Yes, indeed.

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MS BAULCH: Yes, sir.

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JUSTICE HATCHER: Ms Roberts?

PN105

MS ROBERTS: Hello. There was just a few points there that currently the Sign Language Interpreters and the Spoken Language Interpreters and Translators function quite separately in terms of pay scale. So currently Sign Language Interpreters heavily rely on a model that mimics the SCHADS pay scale, and currently as this award sits it's well below what we are already receiving in every other aspect or award conditions, and therefore probably would not be wanting to continue to be a part of the award as it sits. If the conditions don't change and remain at such a low space we would probably request to be carved out and it remain Spoken Language Interpreting Award.

PN106

JUSTICE HATCHER: So you seek to carve out and, what, seek a separate award?

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MS ROBERTS: Just be carved out of this award, yes.

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JUSTICE HATCHER: And that would leave you award free?

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MS ROBERTS: Yes, in the private sector, but currently as it sits we utilise the SCHADS framed award, even though we're not technically a part of it. All of our conditions are based on that SCHADS, so we get two hours minimum. All of our employment conditions are met by that, and the conditions for employees in this current award, although it's obviously still in its draft phase, are just well below industry standard.

PN110

JUSTICE HATCHER: All right. In the first instance can I invite you to participate in discussions with Australian Industry Group and Professionals Australia to see if you can resolve that issue?

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MS ROBERTS: Sure. I did approach Professionals Australia and the response was that they did not need to I guess consult, but happy to do that.

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JUSTICE HATCHER: I will make a direction necessary. That is I will direct Australian Industry Group and Professionals Australia to consult with your organisation about the position of Sign Language Interpreters.

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MS ROBERTS: Thank you very much.

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MS BAULCH: Sir, can I speak quickly about that?

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JUSTICE HATCHER: Yes.

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MS BAULCH: We of course are happy to consult with them. I was interested in what was said and I'd like to know some more about it. So, yes, we would be more than happy to consult. I don't know what happened there.

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JUSTICE HATCHER: All right, thank you.

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MS BAULCH: So contact me.

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JUSTICE HATCHER: Yes, all right. And finally can I note that Ms Avila from the Australian Institute of Interpreters and Translators Incorporated has now appeared. Ms Avila, are you there?

PN120

MS P AVILA: Yes, your Honour, I'm here.

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JUSTICE HATCHER: Can you turn your camera on, please.

PN122

MS AVILA: Unfortunately I'm not in a very auspicious place to turn on my camera. Is that okay, your Honour, if I just remain with the camera off?

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JUSTICE HATCHER: The normal procedure is you turn on the camera. That's why we have these video facilities.

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MS AVILA: Okay. Let me just do that. One moment, please. Okay, it's done now. Can you see me now?

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JUSTICE HATCHER: Yes, that's fine. You look fine. I don't know how much of that you heard.

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MS AVILA: Yes.

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JUSTICE HATCHER: But Mr Ferguson from the Australian Industry Group with agreement of Ms Baulch from Professionals Australia have said that they're continuing to work on a draft award. They have largely reached agreement except in relation to the classification structure. They hope to file an agreed award in about four weeks and then they hope to file a further document which will explain the terms of their agreed award in a period after that.

PN128

MS AVILA: Yes, your Honour. I would support Mr Mark Painting's position about we are somewhat worried that the NAATI certification levels have been somewhat merged with un-certification, and we find that trying to put apples and pears together if you excuse my metaphor. And we suggested at the beginning of the process to do the same classifications, but keep NAATI and uncertified interpreters and translators on separate columns, if you know what I mean. But I guess it went ahead that NAATI certified interpreters are being mixed with untrained, unqualified and untested people. So we are very worried about that.

PN129

And our second concern with this award, although we have been told that it's only a flaw and not a ceiling, is that a NAATI certified interpreter, for example - I will just give an example from real life - a conference interpreter would be earning no less than \$100 an hour, and that is the lower scale of that profession, and with this new award they seem to be classified as at \$30. So we are worried about the mentioned amount to be paid, because although it is a flaw but we know that businesses, they have a bottom line, and so far we are complaining about low rates. Now, when we see a document with rate even lower there is a reason for concern. That's AUSIT's position.

PN130

JUSTICE HATCHER: All right, thank you. Well, again I invite you to engage in direct discussions with the Australian Industry Group and Professionals Australia in the first instance to see if you can come to some resolution of those issues, and then we will see how we go, but obviously to make it clear if there's issues in dispute all parties will be heard in relation to those issues prior to the Commission taking any steps to make or not make the proposed award. But in the first instance if you can try and resolve those issues with Ai Group and Professionals Australia I think that's the first step.

PN131

MS AVILA: We would need perhaps a direction from you, your Honour, because we have tried to engage and we have presented exactly the same concerns, but nothing seems to move, so we're sort of - - -

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JUSTICE HATCHER: I just make it clear that engaging with them and discussing the issue with them doesn't mean you have to reach an agreement. I can't make you reach an agreement.

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MS AVILA: Sure.

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JUSTICE HATCHER: Again I will direct the parties to confer about the issues you've raised, but that doesn't compel them to reach an agreement with you, or you with them for that matter.

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MR FERGUSON: If I could just assist to clarify one thing. We're certainly welcome to have discussions with anyone productively. Just in relation to the classification structure that's in the draft document that people may have seen that was an initial draft. That doesn't necessarily reflect where discussions are at, at the moment, and we're certainly conscious of the kinds of issues that are being ventilated around the role of NAATI and so forth. So we're very happy to engage in discussions around that issue and any other issues that have been laid this morning. We don't assume that classification structure is an articulation of where the parties are at.

PN136

JUSTICE HATCHER: I am told, Ms Lancaster, you now wish to appear in the matter.

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MS A LANCASTER: Yes, just in terms of if I can - - -

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JUSTICE HATCHER: Just hold on, Ms Lancaster. So just to be clear this is a hearing before the Fair Work Commission. You can either appear in the matter as a party or observe, but you can't pop in and out at your discretion. So do you want to enter an appearance?

PN139

MS LANCASTER: Yes, please.

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JUSTICE HATCHER: Who are you appearing on behalf of?

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MS LANCASTER: Expression Australia.

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JUSTICE HATCHER: And what's that?



PN143

MS LANCASTER: Expression Australia, previously called Vic Deaf, so provide support including interpreting services for the deaf community in Victoria.

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JUSTICE HATCHER: Right. And what do you want to say?

PN145

MS LANCASTER: I'd also like to involve Jacqui and Belinda in relation to the discussions around sign interpreters. Previous advice from Fair Work Australia to Expression Australia was that interpreters were currently covered under the Miscellaneous Award, which had been provided in writing to Fair Work to Expression Australia previously, whilst I also understand there's argument to be covered under SCHADS and previously under the Health Professional Support Services Award.

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JUSTICE HATCHER: All right. Again I would invite you to engage in discussions with the moving parties, that is the Australian Industry Group and Professionals Australia.

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MS LANCASTER: Thank you.

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JUSTICE HATCHER: Mr Ferguson, I think what I will do, and, Ms Baulch, what I will do is stand the matter over generally and allow you time to file a further draft award. I don't think it's productive to try and set a strict time limit upon that. And then once that's done I will consider making further directions or bringing the matter back on. Is that an appropriate course?

PN149

MR FERGUSON: I think it is in light of the discussions today, your Honour.

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MS BAULCH: Yes.

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JUSTICE HATCHER: Yes, all right. All right, I will simply stand the matter over. The parties have heard directions I have made to confer, and I will take the matter to the next step once the parties have filed the further draft award. I thank the parties for their attendance. We will now adjourn.

PN152

MR FERGUSON: Thank you, your Honour.

PN153

MS BAULCH: Thank you, sir.

**ADJOURNED INDEFINITELY**

**[9.55 AM]**