



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

12.00 PM, WEDNESDAY, 9 AUGUST 2023

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JUSTICE HATCHER: I'll take the appearances. Mr Paterson, you appear for the applicant. Correct?

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MR PATERSON: Yes.

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JUSTICE HATCHER: Mr Bailey, you appear for the IEU.

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MR BAILEY: Yes, thank you.

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

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MR KENCHINGTON-EVANS: Thank you.

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JUSTICE HATCHER: Mr Ward and Mr Lombardelli, you appear for the ABI.

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MR WARD: Thank you, your Honour, yes.

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JUSTICE HATCHER: And Ms Harrison, you appear for the UWU.

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MS HARRISON: Yes, thank you.

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JUSTICE HATCHER: Mr Paterson, you've made an application to vary the Children's Services Award. Can I just confirm that the applicant entity is an employer covered by the Fair Work Act and is covered by the award. Is that right?

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MR PATERSON: Yes, that's right.

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JUSTICE HATCHER: In respect of this application, have you had discussions with any other organisation in the industry?

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MR PATERSON: No.

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JUSTICE HATCHER: Do you want the opportunity to have discussions with other parties in the industry before we take this application any further.

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MR PATERSON: No, that's fine. I think it will be fine. Yes, let's go forward. You know, like, it's going to be whatever it's going to be, so they'll have the same problems as we would, but let's go forward and let's see where it lands.

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JUSTICE HATCHER: So the answer to my question is no.

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MR PATERSON: No.

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JUSTICE HATCHER: The usual course is that in respect of an award variation application we would establish a timetable for receiving evidence and submissions in support and against the application, assuming someone opposes it, and then we would have a hearing in relation to the matter. Did you see any reason why we would take a different course in this case?

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MR PATERSON: No, that sounds fine.

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JUSTICE HATCHER: How long might you need to advance any evidence and submissions in support of the application?

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MR PATERSON: How long would I need?

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JUSTICE HATCHER: Yes.

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MR PATERSON: To give you evidence?

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JUSTICE HATCHER: Yes. So the usual course is that parties - - -

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MR PATERSON: A day.

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JUSTICE HATCHER: A day. That's very commendable, but I'm prepared to allow you more time. The usual course is that parties would - - -

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MR PATERSON: Could be in a week, a month, yes.

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JUSTICE HATCHER: Just hear me out, Mr Paterson. The usual course is that parties would file witness statements, so they're statements of evidence that witnesses would give at a hearing, and a submission outlining the statutory merits

basis of the application. So it's a serious task. I wouldn't want you to leap to the assumption that it's something easy that can be knocked together in a day or two.

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MR PATERSON: Yes. No, you're fine. Yes.

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JUSTICE HATCHER: So you're happy with a week, are you?

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MR PATERSON: Yes, a week's fine.

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JUSTICE HATCHER: Right, okay. I'll hear from the other parties. One issue which the parties all might wish to address is whether this application needs to be heard by a Care and Community Sector Expert Panel.

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Who would like to address the matter next? Particularly, I'd like to hear first from any parties which support the application. Perhaps you, Mr Ward. What about you?

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MR WARD: Your Honour, can I indicate at this stage that we don't have a view on the application. We're talking to ABI members, we're talking to the Australian Childcare Alliance and we're talking to the National Out of School Hours Services Alliance, so at this stage we haven't formed a view on it.

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In relation to the community expert issue, we'll take that under notice and we'll file something on that. I

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In relation to programming, can I just say, if the applicant only needs a week, the circumstance is such that we couldn't deal with the matter if we only had a week, simply because we're currently heavily committed, as your Honour is aware, in the childcare supported bargaining case. So we would just need a little bit more time in reply than a week.

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At this stage we haven't formed a view, but we'll do that in the next short while.

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JUSTICE HATCHER: Ms Harrison, do you want to go next?

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MS HARRISON: Similarly, your Honour, the UWU opposes the application in its current form and so also would seek an appropriate time frame in relation to filing witness statements and submissions in relation to that position.

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In relation to the question of the expert panel, I think we probably also would like to take that on notice and potentially just file something very short in relation to that question, noting the Commission's previous comments in relation to where it sees the likely use of those expert panel members.

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JUSTICE HATCHER: How long might your organisation need to file and serve its evidence and submissions? I'm not suggesting that Mr Paterson's week would apply to anyone else, but - - -

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MS HARRISON: Your Honour, in a similar vein to Mr Ward's comments, obviously I think the majority of the parties on this call are also engaged in the ECC supported bargaining application, and just given that, we'd probably be – ordinarily I would say two weeks, but I'm just mindful of the fact that it's realistically likely to be a bit longer than that.

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JUSTICE HATCHER: Would six weeks be sufficient?

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MS HARRISON: That would be terrific.

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JUSTICE HATCHER: Mr Bailey?

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MR BAILEY: Thank you, your Honour. I think Ms Harrison's enunciated a similar position to us. We'd at this stage, I think, foreshadow that we're opposed to the application. We've got various branches that we'd have to consult on that issue in respect to the expert panel, and certainly I'm not in a position to offer a view at this time.

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Six weeks I think would be sufficient for us, even though, as has been foreshadowed, we've also got some involvement in that broader matter.

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To be honest, I'm here in the shoes of one of our federal assistant secretaries today who's on leave and who I'd also need to consult with, but I think what's been proposed by the UWU would be sufficient for our purposes.

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JUSTICE HATCHER: Mr Kenchington-Evans, do you have anything different to say?

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MR KENCHINGTON-EVANS: No, very similar, just to foreshadow that we'd also likely oppose the application, but otherwise in a similar position to United Workers and the IEU.

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JUSTICE HATCHER: All right. What I think I'll do is, unless you want to say anything further, Mr Paterson, we'll issue directions in writing and be sent to the parties along the lines that we've just indicated, and then, once the material is in, I think I'll call the matter on for a further directions hearing and then we'll determine the procedural course from there. Is that all - - -

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MR PATERSON: So just if I can, if I can just ask a question, because obviously I don't know the proceedings here, what your processes are. So there will be submissions. So if we can get to industry to say, 'Yes, we agree with that', that would help the case. Is that what you're saying.

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JUSTICE HATCHER: It may. I invited you to indicate that you wanted to have discussions with other players in the industry but I thought you said no.

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MR PATERSON: Okay. Again, if that's – so be it. If you'd like me to, if I can - - -

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JUSTICE HATCHER: No, it's a matter for you.

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MR PATERSON: - - - retract that statement.

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JUSTICE HATCHER: It's a matter for you, Mr Patterson. It's your application.

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MR PATERSON: I can do that. Yes, that's fine. I'll get some supporting people as well in regards to it. Can I ask any questions or – I don't know the process here.

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JUSTICE HATCHER: Yes, go ahead. If there's anything you need assistance with, I'll try and - - -

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MR PATERSON: I was just wondering, yes, what would be the objection to it?

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JUSTICE HATCHER: That's a matter for the other parties.

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MR PATERSON: That's for the other parties, and then they'll just submit their objections.

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JUSTICE HATCHER: The way this works is that - - -

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MR PATERSON: Yes, go - - -

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JUSTICE HATCHER: - - - by the parties filing written material in support of their case or in opposition to the application, that gives the parties the opportunity to understand their respective cases so that when any other organisations, including the ones that have appeared today, file material in opposition to your application, obviously that will be provided to you and you'll have an opportunity to read that and understand what is being put against the application and then you'll be in a position to deal with that when the matter goes to a hearing. Okay?

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MR PATERSON: All right. Yes, if that's okay, I will consult with other members in the industry and then see if they would like to lodge a submission as well then. That seems to be the case.

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JUSTICE HATCHER: All right. Do you seek any particular direction in that respect?

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MR PATERSON: What do you mean by that, sorry?

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JUSTICE HATCHER: We've got to the stage where you wanted one week to file evidence and submissions and then I've indicated the other parties would have six weeks.

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MR PATERSON: Yes. Well, I'd like six weeks as well then.

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JUSTICE HATCHER: Okay. You want six weeks as well. All right.

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MR PATERSON: Yes.

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JUSTICE HATCHER: The directions will provide for six weeks for the applicant.

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MR PATERSON: Yes.

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JUSTICE HATCHER: I'll say six weeks for any other party which supports the application and then six weeks for any party which opposes it.

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MR PATERSON: That sounds like a plan.

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JUSTICE HATCHER: Then I'll call the matter back on when all the material is on and we'll then work out what the next step is.

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MR PATERSON: (Indistinct).

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JUSTICE HATCHER: So do you understand all that, Mr Paterson?

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MR PATERSON: Yes. We'll work through it.

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JUSTICE HATCHER: Yes. All right. If there's nothing further, I will now adjourn the matter, which means, Mr Paterson, you can simply disconnect from the call.

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MR PATERSON: All right. Thanks for your time.

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JUSTICE HATCHER: Thank you.

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MR PATERSON: Thank you.

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MS HARRISON: Thank you, your Honour.

ADJOURNED INDEFINITELY

[12.24 PM]