



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2023/28**

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

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

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

**Sydney**

**9.00 AM, FRIDAY, 24 NOVEMBER 2023**

PN1

JUSTICE HATCHER: Mr Ferguson and Ms Bhatt, you appear for the Australian Industry Group?

PN2

MR B FERGUSON: Yes, your Honour.

PN3

JUSTICE HATCHER: Ms Harrison, you appear for the UWU?

PN4

MS L HARRISON: Yes, your Honour.

PN5

JUSTICE HATCHER: Mr Robson, you appear for the ASU?

PN6

MR M ROBSON: Yes, your Honour.

PN7

JUSTICE HATCHER: Ms de Plater, you appear for the HSU?

PN8

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

PN9

JUSTICE HATCHER: And, Mr Roper, you appear for Australian Business Industrial?

PN10

MR L ROPER: Yes, your Honour.

PN11

JUSTICE HATCHER: All right. Mr Ferguson or Ms Bhatt, what do you want to do with this application?

PN12

MR FERGUSON: Your Honour, I was just going to suggest briefly I provide some comments about the context without going into the interpretive controversy, and then suggest a way forward and programming that we understand is agreed, or at least not opposed by the relevant union. In terms of context the nub of the issue is what we say is an ambiguity or uncertainty in the award about whether hours can be arranged, such that there is a shift followed by a sleepover followed by a separate shift.

PN13

But for context this is an issue of significant controversy in industry. We have seen different employers adopting different approaches to this, conflicting approaches to what is being adopted by the ombudsman, and we for our part have also seen different unions adopting different views in relation to this issue, and it is appearing to have a significant impact on employers and potential employees as

well, and people with a disability. So we are keen to get some clarity in relation to this matter as quickly as possible.

PN14

But given the complexity around it we have proposed to the relevant unions that there would be merit in Commission facilitated conferencing, some sort of conciliation in short about the issue, and there is as I understand it a shared view from the unions that there is merit in that, if it can be accommodated by the Commission. We don't yet fully know their positions in relation to the application, and so we think it would be helpful to ventilate those issues, but with the Commission's assistance.

PN15

JUSTICE HATCHER: All right. There doesn't seem to be any reason why we can't do that. Does any party oppose that course being taken? All right. I'm afraid it won't be possible until the new year. Does that cause any difficulty?

PN16

MR FERGUSON: If that's all that's possible, no.

PN17

JUSTICE HATCHER: All right. And I suspect a lot of the parties here have commitments before the end of the year. All right. I think I will leave it on that basis. I will arrange for a member to conduct the conference, and that member will contact the parties and arrange for a listing and a location.

PN18

MR FERGUSON: Thank you, your Honour, that will be of assistance.

PN19

JUSTICE HATCHER: All right. Anything further? No. All right, we will now adjourn.

PN20

MR FERGUSON: Thank you, your Honour.

**ADJOURNED INDEFINITELY**

**[9.11 AM]**