



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2023/31**

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

**Application by Australian Business Industrial (143N) & NSW Business  
Chamber Ltd  
(AM2023/31)**

**Application by The Australian Industry Group  
(AM2024/32)**

*Clerks—Private Sector Award 2020*

**Sydney**

**10.04 AM, FRIDAY, 2 AUGUST 2024**

PN1

THE PRESIDENT: Good morning. I will take the appearances. Mr Izzo, you appear for ABI, the applicant in matter 31 of 2024.

PN2

MR L IZZO: Yes. I do, your Honour.

PN3

THE PRESIDENT: Ms Bhatt, you appear for Australian Industry Group, the applicant in matter 32 of 2024.

PN4

MS R BHATT: Yes, your Honour.

PN5

THE PRESIDENT: Ms Morris, you appear for the Australian Retailers Association.

PN6

MS L MORRIS: Yes, your Honour.

PN7

THE PRESIDENT: And, Mr Nucifora, you appear for the Australian Services Union.

PN8

MR J NUCIFORA: Yes, your Honour.

PN9

THE PRESIDENT: I will start with you, Mr Izzo. How do you want to proceed with these applications?

PN10

MR IZZO: So with respect to our application, your Honour, we're in the process of commissioning some research that we intend to utilise as evidence in the proceedings. That research will not be in a position to be completed and published till towards the end of this year. So what we were thinking that we would seek is a process whereby we are given an opportunity to file evidence and submissions by the end of the year, so sometime in December.

PN11

The other thing that I would like to bring to your attention is that there is another application that we have filed, which is AM2024/31 in relation to the Banking, Finance and Insurance Award. That application is listed for directions next week, and our application in relation to that award is very much the same as the application that we're seeking in relation to the clerks award. So we would seek that they be listed together, but we will probably make that application next week in relation to Banking, Finance and Insurance Award.

PN12

But I thought I would draw that to your attention. So from our perspective, we're still in the process of compiling our evidence. We would be ready to file and serve those materials by the end of the year, and that's our position with respect to both awards. The AIG application is in relation to a very similar subject matter, so it would make sense to ask that those matters be dealt with together.

PN13

So at the very least we would be talking about the AIG application, our application for clerks, and a Banking, Finance and Insurance Award application all being heard together. I know that Ms Bhatt is going to address you about conferences. We're amenable to that. If that's what the parties want to do, we would certainly participate. But from our perspective, we would be in a position to file by the end of the year.

PN14

THE PRESIDENT: Right. Thank you. Ms Bhatt.

PN15

MS BHATT: Thank you, your Honour. We obviously agree with the proposition that the two applications should travel together. They do relate to the same subject matter; they're likely to give rise to substantially the same issues. As we foreshadowed in correspondence that we sent to your Honour's chambers with our application, we do propose that the applications initially be set down for conference, facilitated by the Commission. We think it would be useful for there to be a fulsome ventilation of the various issues that might arise from our application.

PN16

We are genuinely willing to consider and work through any specific concerns or issues that are put to us by the union, any other interested party, or indeed by the Commission. In light of that, your Honour would have seen that the proposal that we filed is not complete in at least one sense, and we have expressly foreshadowed the possibility that we might look to refine our proposal as a product of that conferencing process, depending on what comes of it.

PN17

In light of that, in our view, it would be premature at this stage to issue directions for the filing of material. That research that Mr Izzo has referred to is being jointly commissioned by our respective organisations. It is material that we will also seek to rely upon. But given that we think that there is merit in this conferencing process taking place first, we say that that should play out first, and then we revisit the issue of directions thereafter.

PN18

THE PRESIDENT: My experience of the modern award review process didn't indicate to me that there was any interest on the other side in engaging with this. Why? Perhaps I should ask Mr Nucifora first, but I'm not particularly attracted to the idea of having a further series of pointless conferences. But before I attend to Mr Nucifora, Mr Izzo has proposed the filing of evidence by the end of the year, which would allow ample time for any consultative process to occur, do you oppose that direction being made in respect of your application?

PN19

MS BHATT: I don't, but I think it's appropriate that I flag that in light of the very significant number of other matters that are being dealt with over the next few months, we would at the very least seek liberty to apply. I have some concern about the inevitable pressures that are placing on our resources. But on its face - -

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PN20

THE PRESIDENT: Sure. But no one made you make this application now, so – you know.

PN21

MS BHATT: I understand.

PN22

THE PRESIDENT: Ms Morris, do you want to add anything?

PN23

MS MORRIS: Thank you, your Honour. The ARA acknowledges the importance of the matter and will be filing material in response, but at this is still determining the position it will take in relation to the matters. I will say the ARA is not opposed to engaging in consultation or conferencing, so we are in your Honour's hands in respect of that.

PN24

THE PRESIDENT: All right. Mr Nucifora, what's the ASU's position about all this?

PN25

MR NUCIFORA: Thank you, your Honour. The ASU, as you have indicated, remains opposed to exemption rate provisions. In terms of having all the matters heard together, that makes sense, and of course we have been down that track with similar award review matters, such as the annualised wage, annualised salary applications a few years back. I might take that question on notice.

PN26

I don't think there would be a problem on that. It makes sense for all those matters to be heard together. We are dealing with different applications, and we agree there's no point in us having conferences. We are opposed in principle to exemption. But it may be that there is some commonality in the employers' position; at the moment there are different views.

PN27

THE PRESIDENT: Yes. All right.

PN28

MR NUCIFORA: Sorry, your Honour.

PN29

THE PRESIDENT: Yes.

PN30

MR NUCIFORA: I meant to say in terms of time for - Mr Izzo talked about evidentiary material and research – we would want similar amount of time in reply. Particularly research is a critical issue, and evidentiary material, in an application – or applications – like this is something that we would need some time to do. But I understand what Ms Bhatt is saying in terms of time available till the end of the year. So, your Honour, we're in your hands in terms of timetabling.

PN31

THE PRESIDENT: All right. Ms Bhatt, I think Mr Nucifora makes a good point in the sense that there's two competing proposals, and there may be a question about who and what the ASU is engaging with, given that there's no common employer position.

PN32

MS BHATT: Well, your Honour, on one view, an opportunity to engage in some discussions between the parties might assist with that too. I think the fact that there are competing employer proposals that are being advanced, of itself, might justify or warrant an opportunity to engage in some of those initial discussions. Perhaps I'm being overly optimistic, but there might be scope for, you know, (indistinct) greater consistency of approach to be found between the employer parties. I mean, we have very openly said we may look to revisit elements of our proposal, subject to those discussions.

PN33

THE PRESIDENT: All right. Well, the course I propose to take is this: I will direct the applicants in each matter to file – to the extent they haven't done so already – a draft determination, an outline of submissions, and the evidence upon which they seek to rely by 20 December this year. Noting what you have said, Ms Bhatt, there will be liberty to apply attached to that.

PN34

And I will list the matter to report back on 17 January. I will direct the parties to confer between each other in the first instance, and if there's agreement between all four parties appearing today that the Commission should conduct a conference, a joint request can be made, and I will make the arrangements to put that into place. All right. Is there anything further?

PN35

MS BHATT: As your Honour pleases.

PN36

THE PRESIDENT: All right. Thank you for your attendance. We will now adjourn.

**ADJOURNED UNTIL FRIDAY, 17 JANUARY 2025**

**[10.15 AM]**