

From: Chambers - Hatcher J [Chambers.Hatcher.J@fwc.gov.au]
Sent: Thursday, 15 June 2023 10:07 AM
To: Grace Morgan-Cocks[gmorgancocks@raffwu.org.au]
CC: Amber Sharp[asharp@mccullough.com.au]; Kerry O'Brien[kobrien@mccullough.com.au]; David Bliss[david@sdan.org.au]; Henry May[henry@sda.org.au]; Josh Cullinan[jcullinan@raffwu.org.au]; 'kanemurtagh@icloud.com'[kanemurtagh@icloud.com]
Subject: RE: AG2022/5615 - Application by Gusset [MCR-W.FID4282665]

OFFICIAL

Dear Ms Morgan-Cocks,

Justice Hatcher has considered your application and has asked me to respond as follows.

Justice Hatcher declines to grant the confidentiality order sought. The contention that employees may be worse off under the relevant agreement than the applicable award appears to be one of the key issues in dispute in the matter. Apple's submissions cannot be comprehended without disclosure of the relevant employees' rates of pay. All interested parties are entitled to understand the basis upon which Apple advances its case in response to the application.

Caroline

Caroline Beasley
Associate to Justice Hatcher, President



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.j@fwc.gov.au

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011
www.fwc.gov.au

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Gadigal Country.

From: Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>
Sent: Wednesday, June 14, 2023 3:57 PM

To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Amber Sharp <asharp@mccullough.com.au>; Kerry O'Brien <kobrien@mccullough.com.au>; David Bliss <david@sdan.org.au>; Henry May <henry@sda.org.au>; Josh Cullinan <jcullinan@raffwu.org.au>; 'kanemurtagh@icloud.com' <kanemurtagh@icloud.com>
Subject: RE: AG2022/5615 - Application by Gusset [MCR-W.FID4282665]

OFFICIAL

Dear Associate

We refer to the foregoing email sent from Chambers on 9 June 2023 regarding any opportunity to make applications about the confidentiality of any evidence and submissions disclosed in Apple's material filed on 8 June 2023.

Consequently, we seek an order by consent, that pursuant to s 594 of the *Fair Work Act 2009* (Cth), that information (which is outlined in the **attached** document) in the material filed by Apple on 8 June 2023 be prohibited from publication. The material that we ask be prohibited in the employer's outline of submissions is that regarding each Applicant witnesses' individual rates of pay at varying times. The material we seek be prohibited in the employer's witnesses' statements is also largely confined to this same information, however we also seek that information in Mr Bader's statement at [64] regarding Mr Gusset's leave balance prohibited as well.

We ask that the information be prohibited from publication on the basis that the employer's submissions can be read and understood by interested employees and other persons without the disclosure of this personal financial information, and that it is desirable to ensure that witnesses are not deterred from participating in the proceeding by having this information made public. We would further ask that should the order be granted, the employer's material be published on the Commission's dedicated page with the relevant information redacted.

We note that the employer has helpfully raised the possibility of the Applicant making such an application on filing this material with the Commission on 8 June 2023, for which we are grateful. The employer has provided their consent to the making of this application.

Thank you for your assistance.

Yours sincerely

Grace Morgan-Cocks
National Legal Officer
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From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Friday, June 9, 2023 9:53 AM
To: Kerry O'Brien <kobrien@mccullough.com.au>
Cc: Amber Sharp <asharp@mccullough.com.au>; David Bliss <david@sdan.org.au>; Henry May <henry@sda.org.au>; Josh Cullinan <jcullinan@raffwu.org.au>; Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>; 'kanemurtagh@icloud.com' <kanemurtagh@icloud.com>
Subject: RE: AG2022/5615 - Application by Gusset [MCR-W.FID4282665]

OFFICIAL

Dear parties,

I confirm receipt of the following material sent yesterday:

- From the SDA: outline of submissions and two annexures
- From Apple: outline of submissions and witness statements of B Ryan, D Mottek, G Kohler, I Adamson (plus zip of annexures), K Manis (including annexures), M Gyenge, P Larsen and R Bader.

Justice Hatcher has considered the request below to delay uploading this material to the Commission's webpage. He has decided to provide an opportunity for applications to be made about the confidentiality of any of the evidence and submissions filed yesterday until **4:00 pm on Wednesday, 14 June 2023**. Following this if no applications have been made, the material will be uploaded to the Commission's webpage for this matter.

Kind regards

Caroline
Caroline Beasley
Associate to Justice Hatcher, President



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This email was sent from Gadigal Country.

From: Kerry O'Brien <kobrien@mccullough.com.au>
Sent: Thursday, June 8, 2023 4:37 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Amber Sharp <asharp@mccullough.com.au>; David Bliss <david@sdan.org.au>; Henry May <henry@sda.org.au>; Josh Cullinan <jcullinan@raffwu.org.au>; Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>; 'kanemurtagh@icloud.com' <kanemurtagh@icloud.com>
Subject: AG2022/5615 - Application by Gusset [MCR-W.FID4282665]

Dear Associate

As you know, we act for Apple Pty Ltd in the above matter.

In accordance with the current directions, as amended on 25 May 2023, we **attach** to file the following material:

- (a) witness statement of Bernard Ryan;
- (b) witness statement of Dave Mottek;
- (c) witness statement of Reshaad Bader;
- (d) witness statement of Kyle Manis with annexures KM-1, KM-2 and KM-3;
- (e) witness statement of Paul Larsen;
- (f) witness statement of Gretchen Kohler;
- (g) witness statement of Monica Gyenge;
- (h) witness statement of Inger Adamson. The annexures are in an **attached** zip folder; and
- (i) an outline of submissions.

The Applicant's representatives and other interested parties are copied to this email by way of service. If the Commission or any party served experiences issues accessing the Adamson statement's annexures, please contact me.

We note that the witness statements of M Gyenge, R Bader, P Larsen and D Mottek and the outline of submissions refer to individual employee pay rates. Now that this material has been served on the Applicant's representatives, it is a matter for the Applicant and each witness to make any application under s 594 of the *Fair Work Act 2009* (Cth) if they consider this or other information to be confidential.

We respectfully request that the Commission afford those individuals a reasonable period of time (say, until 4 pm on 14 June 2023) to consider the evidence and submissions served today and to indicate whether they intend on making any application over pay rates of other matters before the material is published on the Commission portal.

Kind regards,

Kerry O'Brien

Senior Associate

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