



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT CATANZARITI**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2016/25)  
Horticulture Award 2010**

**(ODN AM2008/14)  
[MA000028 Print PR986369]]**

**Sydney**

**11.35 AM, WEDNESDAY, 23 NOVEMBER 2016**

PN1

THE VICE PRESIDENT: I'll take the appearances in Sydney.

PN2

MS R BHATT: If it pleases the Commission, Bhatt initial R, appearing for the Australian Industry Group.

PN3

THE VICE PRESIDENT: Thank you, Ms Bhatt.

PN4

MS K PEARSALL: If it pleases the Commission, Pearsall initial K, appearing for the National Farmers' Federation.

PN5

THE VICE PRESIDENT: Thank you Ms Pearsall.

PN6

MR J ARNDT: If it please the Commission, Arndt initial J, appearing for ABI and the New South Wales Business Chamber.

PN7

THE VICE PRESIDENT: Thank you Mr Arndt. In Melbourne.

PN8

MR J BOURKE: If the Commission pleases I seek permission to appear on behalf of the Mitolo Group both in this matter and its section 160 application.

PN9

THE VICE PRESIDENT: Thank you Mr Bourke.

PN10

MR A PORTELLI: If the Commission pleases, Portelli initial A, on behalf of the National Union of Workers and with me is Ms Sheehan initial K.

PN11

THE VICE PRESIDENT: Thank you Mr Portelli.

PN12

MR C WINTER: If the Commission pleases, Winter C, appearing on behalf of the Australian Workers Union.

PN13

THE VICE PRESIDENT: Thank you Mr Winter. Now, I brought this matter back on as foreshadowed for further directions and report back to see how we are going. Since then I have also received the application by Mitolo. The application by Mitolo will be allowed to proceed, Mr Bourke, in the same manner.

PN14

MR BOURKE: If your Honour pleases.

PN15

THE VICE PRESIDENT: So that will make it clear so that we can move forward. Now, Ms Bhatt, on the last occasion I asked you a question towards the end of the matter when I agreed to the lengthy timetable, that I would allow the parties to put together their determinations for this report back and we now have that material. I would be asking you now in the light of that as to what is going to be the state of the evidence and the likely evidentiary case, noting that I said to you on the last occasion and you said once those determinations were put together you would have a better idea of your side of the case at least so we can start programming the matter in a more realistic way for hearing.

PN16

MS BHATT: Yes, Vice President, thank you. There have been some brief discussions between some of the employer representatives yesterday that have an interest in this matter. Whilst I am not able to provide your Honour with a precise number of the witnesses that will be called I can indicate that there is at least some degree of consensus that three days of hearing in order to deal with the evidence would, in our view, be sufficient. I say that with this caveat though - - -

PN17

THE VICE PRESIDENT: Is that for the employer side?

PN18

MS BHATT: Yes, that is precisely what I was coming to. We don't know the size or scope of the evidentiary case that will be called by the unions and I should say that the employer parties are still firming up their evidentiary case, as it were. We will of course hear from the unions who may be in a position today to give us some indication of how many witnesses they may be calling. Our view would be, and we are of course in the Commission's hands, but it may be prudent to set aside five days for the hearing of evidence. That the matter then be adjourned for a period of three weeks, in which time we anticipate that the parties would have an opportunity to consider the transcript of the proceedings and appear again before the Full Bench for, we think, one day for final closing submissions.

PN19

THE VICE PRESIDENT: Where would you see the hearing being conducted, Sydney or Melbourne or a mixture of both?

PN20

MS BHATT: I don't know that I can answer that question today definitively. Our group's preference would be that the matter be heard in Sydney because that is where our advocates are located. There may be some consideration that needs to be given to the location of the witnesses, which might be a matter that we turn our minds to in turn.

PN21

THE VICE PRESIDENT: Is there anything that Ms Pearsall or Mr Arndt want to say in relation to those matters?

PN22

MS PEARSALL: Nothing to add, your Honour, but we support what Ms Bhatt has said.

PN23

THE VICE PRESIDENT: Mr Bourke from the employer side?

PN24

MR BOURKE: Nothing to add on those matters, your Honour.

PN25

THE VICE PRESIDENT: Is there anything you want to raise specifically in relation to Mitolo, Mr Bourke?

PN26

MR BOURKE: Your Honour has our directions which effectively fall - our 160 application in line with the current directions in respect of the review.

PN27

THE VICE PRESIDENT: I propose to grant those directions.

PN28

MR BOURKE: Other than that, your Honour, we have nothing to add. I guess we do query whether one day of submissions will be enough if there's likely to be some five days of evidence. I think possibly two days of submissions might be safer.

PN29

THE VICE PRESIDENT: Given that this is a five member Bench it is unlikely that we would sit for five days straight in any event, it would probably be three days, two days and then a couple of days for submissions would be reserved, when I plan it all. But I will hear from the unions then next. Mr Portelli.

PN30

MR PORTELLI: Yes, thank you, your Honour. First if I could just briefly address the draft directions that have been provided by Mitolo. The only comment I would make about those directions is that, as currently set up, they don't include the National Union of Workers and we would seek that they be amended so that at paragraph 1 the National Union of Workers was added to the list of the parties.

PN31

THE VICE PRESIDENT: Yes. I don't think there's a problem, Mr Bourke, is there?

PN32

MR BOURKE: No, it's an omission.

PN33

MR PORTELLI: Beyond that, your Honour, turning to the rest of the applications we are not in a position today to advise as to the amount of evidence that we are seeking to call, other than to say that it is our intention to call some witnesses.

We will be in a better position to make that determination after we have had a chance to peruse the materials that the employers will be filing in late December.

PN34

THE VICE PRESIDENT: Yes, I follow that, Mr Portelli. The problem that I have is that what I don't want to do is have the timetable expire in April and then set dates and find the Full Bench can't - I can't get my Full Bench back together. What I am minded to do is setting dates in the second half of the year and perhaps over-stating rather than under-stating, at least the dates will be then in the diaries.

PN35

MR PORTELLI: Yes, your Honour, and I don't think we have a problem with that.

PN36

THE VICE PRESIDENT: What I am sort of thinking of is - I don't have those dates yet because I've got to get everybody's calendars together from the Full Bench - but something like two sets of three days for evidence on two different weeks and then, noting Ms Bhatt's comments about a gap before submissions, and then put two days for submissions after that. Now obviously as we get closer, that is once you're in a position, you've seen the evidence of the employers, you may obviously say, well, look, that timetable is not enough or - we can list the matter again and have a look at it again.

PN37

So in any event what I am going to do is bring the matter back on after the evidence is on, which as I understand it was 19 December is your evidence.

PN38

MS BHATT: Yes, your Honour.

PN39

THE VICE PRESIDENT: So I will bring it back on probably sometime before Christmas and at that stage I will have the dates for the second half of the year and you'll have had a couple of days at least to think about their material and see whether that proposal of three days, three days and two days is enough, at least as a start. At least that way we've locked away seven days, Mr Portelli.

PN40

MR PORTELLI: Yes, your Honour.

PN41

THE VICE PRESIDENT: Mr Winter, anything you would like to add?

PN42

MR WINTER: No. We are in the same position as the National Union of Workers. But I do note your proposed further directions of hearing prior to Christmas which might clarify the number of witnesses and the dates of the hearing, if the Commission pleases.

PN43

THE VICE PRESIDENT: Yes, I'll just check when we will do that. Yes, we will do that at nine o'clock on 21 December. At that time I propose to - or we may even circulate before then the proposed dates of the Full Bench in the second half of the year on the time table of three, three and two and then you can have a discussion about it amongst yourselves and it may be that you form a view that there are too many days or not enough, at least to get into the diaries by then on 21 December. Is there anything further you wish to raise, Ms Bhatt?

PN44

MS BHATT: If I can just put one further proposal, your Honour. The directions indicate that all material in reply is to be filed by 7 April. There may be merit in the matter being called on again for mention between that date - - -

PN45

THE VICE PRESIDENT: Absolutely, I'm happy to do that. Why don't we address that on 21 December so that we've got your material in and then I'll set another direction at that point. Again, I don't want the matter to drift.

PN46

MS BHATT: I understand, your Honour, thank you.

PN47

THE VICE PRESIDENT: Is there anything further from any of the parties today? If not the Commission will adjourn.

**ADJOURNED UNTIL WEDNESDAY, 21 DECEMBER 2016 [11.45 AM]**