



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT SAUNDERS**

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

**Application by Independent Education Union of Australia-New South Wales/Australian
Capital Territory Branch
(AM2018/9)
Educational Services (Teachers) Award 2020**

Sydney

9.10 AM, FRIDAY, 4 JUNE 2021

Continued from 24/05/2021

PN685

VICE PRESIDENT HATCHER: I'll take appearances. Mr Taylor, you appear for the IEU?

PN686

MR TAYLOR: If it please. Thank you.

PN687

VICE PRESIDENT HATCHER: Mr Ward, you appear for the Australia Childcare Alliance?

PN688

MR WARD: Thank you, your Honour.

PN689

VICE PRESIDENT HATCHER: Ms Lo, you appear for AFEI?

PN690

MS LO: Yes, your Honour.

PN691

VICE PRESIDENT HATCHER: Yes. I'm assured that Deputy President Saunders is there.

PN692

DEPUTY PRESIDENT SAUNDERS: Just hiding in the background, you'll see me soon.

PN693

VICE PRESIDENT HATCHER: All right. Mr Carter, you appear for the Association of Independent Schools New South Wales?

PN694

MR CARTER: Yes.

PN695

VICE PRESIDENT HATCHER: Mr Owen, you appear for Catholic Employment Relations?

PN696

MR OWEN: yes.

PN697

VICE PRESIDENT HATCHER: And Mr Gunn, you appear for Community Connections Solutions Australia?

PN698

MR GUNN: Yes, your Honour.

PN699

VICE PRESIDENT HATCHER: Is that all the appearances in Sydney? Yes, all right.

PN700

In Melbourne we have Mr Champion and Mr Kenchington-Evans for the AEU?

PN701

MR CHAMPION: As the Commission pleases.

PN702

VICE PRESIDENT HATCHER: And for the Commonwealth also in Melbourne we have Mr Rawson and Mr Reeves, is that right?

PN703

MR RAWSON: Yes, your Honour.

PN704

VICE PRESIDENT HATCHER: Right. Is that all the appearances?

PN705

Yes, all right. Mr Taylor, would you like to go first?

PN706

MR TAYLOR: Yes, if it please. The parties met in conference with Deputy President Dean two weeks ago and have exchanged informally amongst themselves some views as to a number of issues and they have - the parties have been circulated in amongst themselves a summary of those issues. In the last - during the course of this week the IEU has prepared a first draft for discussion purposes of a proposed variations to the Award arising out of the decision of the Full Bench and employer parties have responded to that and the AEU has also responded to that.

PN707

There are two parties who - appearing today who have not been participating or have sought to participate or appear in those proceedings so far and so we're unaware of their positional interest. They are the AIS and the Commonwealth and it might be useful during the course of today's directions hearing if they have a view that they wish to - or a position they are going to advocate and that that be identified and outlined in some manner this morning. The proposed course going forward is for the parties to have an opportunity to continue to seek to narrow issues.

PN708

There are of course a number of parties and the - amongst employer parties there's not necessarily unanimity of view as to various matters of detail but the proposed course that we have discussed with - informally with Mr Ward at least is one which would see the matter prepared for its current allocated hearing dates of 23 to 25 August along a program that would see parties filing first any proposed Award variations and for our part, we think it would be useful for there to be some short period to allow parties to consider each other's positions prior to that occurring.

PN709

So that might be - we can suggest a two-week period so that would be something to be done effective 18 June and then a timetable for filing of evidence and submissions. There are some issues for which employer parties, to the extent to which any further evidence is necessary, will take the lead and to that extent we note, for example that the CER representing the Catholic sector appear to be taking a quite different approach at this stage of the proceedings than that taken at any earlier stage, whether that reflects ultimately in the submissions in evidence they wish to put we will see but there's certainly some employer parties who are taking a lead on certain issues such as broadly, affordability and in other areas, it'll be the IEU will - to the extent any further evidence is required, will perhaps take the lead.

PN710

They would be issues, for example, going to matters of technical detail as to the structure of the award classifications reflecting requirements to obtain proficient status and lead teacher status and the like and so any timetable for evidence would seem most practical to proceed on the basis that all the parties have a initial date to put on submissions and any evidence to support those submissions and then a date later the parties to respond and it seems sensible although might not ultimately be necessary to have a third date in case issues arose only for the first time by way of evidence and submissions at the second stage for a party to respond ultimately.

PN711

And the proposed dates that I put forward on behalf of the IEU are 9 July for the first round of submissions in evidence, 30 July for the next round and 13 August for the last round. So that is five weeks from now, three weeks after that and two weeks after that, allowing about 10 days between the final filing and the commencement of the hearing.

PN712

VICE PRESIDENT HATCHER: Mr Taylor, is it likely that any evidence will be concerning what might probably be called the affordability issues (indistinct), that is, (indistinct), possible phasing, et cetera, as distinct from more technical issues like the classification structure, transitioning and the like.

PN713

MR TAYLOR: Yes. On the last occasion before Deputy President Dean, Mr Ward on behalf of the ACA indicated that it was more likely than not that the ACA would lead evidence as to questions of affordability which impact on operative date and phasing in and the CER at that stage indicated they expected they would lead evidence and as I've indicated there are two parties who weren't part of the process so far and we don't know whether they intend to take an active role at all and if they do, on what basis.

PN714

But certainly there did appear to be a real potential at least for some employer evidence in that regard for which we, for our part, would certainly want to address but we would only address at the second stage in response. We, for our part, to the extent to which we're leading evidence, will be looking, you'll be pleased to

hear, with some degree of detail at what's already before the Commission so we don't unnecessarily add to it but nevertheless it might be useful to put some statement on which summarises the way in which the various regulatory regimes determine accreditation and proficient status to go to the issues that we want to put forward as to the structure of the definitions of the classifications.

PN715

VICE PRESIDENT HATCHER: Has there been any change in that respect since the evidence we received about all that?

PN716

MR TAYLOR: I think there's been no change but other than, as I understand there was - we're getting closer to at least one other jurisdiction introducing an accreditation requirement for ECTs so it may be - - -

PN717

VICE PRESIDENT HATCHER: Is that Queensland?

PN718

MR TAYLOR: Queensland and the ACT are two areas where it's in the offing and we're getting closer, I'm not sure, standing here at the Bar table if I can give you details of that although Professor Irving has actually dropped in to hear these proceedings so no doubt afterwards we'll be able to ask her what the position is.

PN719

VICE PRESIDENT HATCHER: All right. Yes, go on.

PN720

MR TAYLOR: No, that was all I wanted to say at this stage. Thank you.

PN721

VICE PRESIDENT HATCHER: All right. Thank you.

PN722

Mr Ward?

PN723

MR WARD: Your Honour, I've just - three things I can - in terms of the disposal of the matter, the timetable that's been put forward's acceptable to us. We will continue to talk to the IEU to see if we can narrow our differences and the timetable gives us time to do that.

PN724

I just should say this though, it appears to us that there are a large number of matters that sort of consequentially arise from what's already been issued by the Bench but there do appear to be - and I'm happy to be corrected, there do appear to be three essentially brand new issues that have come out since the decision of the Bench and I'll quickly summarise them because we just want the Bench to be aware they appear to be brand new issues. One seems to be the obligation to provide a mentor to a teacher which is an IEU claim. There is then a claim that

- - -

PN725

VICE PRESIDENT HATCHER: Is that linked to obtaining proficient status, is it?

PN726

MR WARD: I think so, your Honour, yes. There's then a claim that teachers should be provided paid leave as part of the obtaining proficient accredited status which is an AEU claim and then lastly, there is an AEU claim that I think in practical terms seeks to change how service is calculated under the Award today for a part-timer. I just simply - - -

PN727

DEPUTY PRESIDENT DEAN: For part-time and casual I think it is.

PN728

MR WARD: For part-time and casual, yes. Thank you, your Honour. I just simply raise that because my review of the evidence of the matter suggests that those things are new and the Bench should be aware of that, make sure the Bench is comfortable whether or not they should be disposed of in the context of the time frame and the program Mr Taylor's just put up or whether or not they might need some additional or specific consideration.

PN729

VICE PRESIDENT HATCHER: I recall at least on the first issue there was some evidence from the IEU about the difficulty of obtaining mentors for - - -

PN730

MR WARD: I do remember that, your Honour, yes.

PN731

VICE PRESIDENT HATCHER: Yes.

PN732

MR WARD: I don't think there was anything on the issue of paid leave or the third issue though.

PN733

VICE PRESIDENT HATCHER: No.

PN734

MR WARD: I just simply raise that for clarity for the Bench. Other than that, we would be content with the program to be set.

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VICE PRESIDENT HATCHER: All right.

PN736

Ms Lo, do you have any different position then?

PN737

MS LO: I have nothing further to add. Thank you.

PN738

VICE PRESIDENT HATCHER: All right. Mr Carter?

PN739

MR CARTER: Thank you, your Honour. I understand that we've come late to this process but our submissions most closely align with CER and I've had the benefit of speaking to them, particularly paragraph 12(a), (b), (c) and (d) of the latest submission and particularly 12(a) which goes to whether the classification and structure they've proposed is appropriate and in a sense that having a Master's degree is an option to progress to that level and be classified initially at that level may be seen as a teacher awarding - getting those higher sort of accreditation status' experience (indistinct) so that's the main sort of controversy for us, the classification structure.

PN740

VICE PRESIDENT HATCHER: All right. Thank you. Mr Owens?

PN741

MR OWENS: Thank you, your Honour. Yes, we're fine with those dates. I might just add that there may be the prospect of we would seek to lead evidence in relation to the qualification of highly accomplished lead teacher in terms of whether it's comparable with a nine years' experience Master's degree or any other qualification that might be put forward.

PN742

VICE PRESIDENT HATCHER: All right. Thank you.

PN743

Mr Gunn?

PN744

MR GUNN: Thank you, your Honour. We support the timetable and the approach put forward by Mr Taylor and we concur with Mr Ward regarding the admission issues. Nothing further to add.

PN745

VICE PRESIDENT HATCHER: Right, thank you.

PN746

Mr Champion?

PN747

MR CHAMPION: No difficulty with the dates, your Honour. I accept that the AEU has put on the table, as it were, this issue of how service is calculated for part-timers and casuals having regard to the new proposed classification structure. The AEU did not put on evidence directly as to those issues during previous hearings but it's certainly something that's been brought into sharp focus with the new proposed classification structure and if the Commission is able to accommodate the receipt of some evidence and submissions as to those issues in the August hearing dates.

PN748

The AEU would like the opportunity to be heard as to that, as the Commission moves away from a purely service based classification structure that's what's brought the issue into focus for the AEU and I also accept Mr Ward's characterisation that the issue of what can be referred to in shorthand as mentor leave is a new issue but it's an issue which arises directly from the fact that achieving proficient accreditation is a requirement to advance to the next increment and that is a real issue.

PN749

I'm instructed on the ground particularly in the early childhood sector about those who work in small centres having access to mentors and doing the considerable work which is involved to achieve proficient accreditation and it's on that basis that the AEU wishes to advance some evidence and submissions as to that issue but I don't cavil with the fact that that is - they're issues that arise from the decision as made rather than issues that were apparent to the AEU before that date.

PN750

VICE PRESIDENT HATCHER: All right. Thank you.

PN751

And finally, Mr Rawson for the Commonwealth?

PN752

MR RAWSON: Yes, your Honour. We don't seek to be heard on any question in respect of the timetable that's been proposed this morning. We will continue to consider whether there's any need for Commonwealth involvement and if we form the view that there is, well, we'll assess what options are available.

PN753

VICE PRESIDENT HATCHER: Mr Rawson, would the Commonwealth at least be able to assist by giving a - if it doesn't want to take any particular position, by giving any further, as it were, projected information about the current funding paradigm, particularly in the light of the last budget.

PN754

MR RAWSON: Your Honour, the Commonwealth has filed an updated version of the aide memoire that had been previously been filed in the proceeding and that document does include information about the latest budget announcements.

PN755

VICE PRESIDENT HATCHER: Yes.

PN756

MR RAWSON: But for our part, we don't presently see the need to supplement that but we'll continue to monitor and observe what falls from the other parties between now and August.

PN757

VICE PRESIDENT HATCHER: All right. I take it if it hasn't happened already, the Commonwealth would have no objection to that document being published on the website. I only ask that because the documents received in the last few weeks have been treated as associated with the conciliation process and accordingly not been published but - - -

PN758

MR RAWSON: Your Honour, we take (indistinct) - - -

PN759

VICE PRESIDENT HATCHER: Sorry, it has - I'm told it has been published so you don't need to worry.

PN760

MR RAWSON: Yes. So that was my understanding also, your Honour.

PN761

VICE PRESIDENT HATCHER: Yes, all right. All right. Thank you.

PN762

Anything in response, Mr Taylor?

PN763

MR TAYLOR: As to Mr Ward's three issues, he identified one of them as being put forward by the IEU, it does - it is something that there is a clause in the current draft Award which the IEU sees as simply facilitative to have a provision which allows a proper process within small employers, so it's the ECTs can in fact become registered as proficient. As to the other two matters, the IEU's position is that it will be - it understands the AEU is going to take the lead on those issues and it's not going to be taking a lead role in those matters.

PN764

VICE PRESIDENT HATCHER: Well, I think it's likely to be the case that if the parties want to raise those issues they'll have to demonstrate why they're truly ancillary to any variation to give effect to that decision.

PN765

MR TAYLOR: Yes. The only other thing I was going to say in respect to the AIS, I understand what Mr Carter said, that the particular interest of the classification structure and clearly all - a number of parties are going to be putting submissions as to that, we did though more broadly embrace the CER's position as set out, as I understood, in clause 12 of their submission. Clause 12 of their submission includes the issue of what increase to minimum rates of pay, if any, is appropriate.

PN766

Now, for our part, we think that no party would have - or any party would need to demonstrate to this Commission a proper basis to allow the issue of what increases should in fact be made - that need leave to reopen evidence that goes to that issue. Obviously some evidence that might be relevant to that issue might also be relevant to operative date and phasing and we accept that those issues are

live issues for which evidence might be led but we just note that for our part, and I suspect we're not the only party in this regard, we don't think that this is an opportunity for parties to reopen the question of what the increases should be. But they were the only things I wished to say at this stage and otherwise, I think we're content for the Commission to issue a timetable. Thank you.

PN767

VICE PRESIDENT HATCHER: All right. Thank you.

PN768

Well, we thank everyone for their attendance. The parties (indistinct) the Full Bench will shortly issue further directions in the matter and we'll now adjourn.

ADJOURNED INDEFINITELY

[9.31 AM]