



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

9.05 AM, MONDAY, 10 MAY 2021

PN1

VICE PRESIDENT HATCHER: I'll take appearances, starting in Sydney. Ms Saunders, you appear for the EIU?

PN2

MS SAUNDERS: Yes, your Honour.

PN3

VICE PRESIDENT HATCHER: Mr Ward, you appear for the Australian Childcare Allowance IBA, New South Wales Business Chamber?

PN4

MR WARD: I do, your Honour.

PN5

VICE PRESIDENT HATCHER: Ms Lo, you appear for the Australian Federation of Employer & Industries?

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MS LO: Yes, your Honour.

PN7

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

PN8

MR OWENS: Yes, your Honour.

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

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MR GUNN: Yes, your Honour.

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VICE PRESIDENT HATCHER: All right. And by via, Mr Irving, Mr Champion, you appear for the AEU?

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MR IRVING: Yes, we do, your Honour, and we'll need to seek permission to appear, having not previously appeared in the matter.

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VICE PRESIDENT HATCHER: All right, thank you. And Mr Rawson, you appear for the Commonwealth?

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MR RAWSON: I do, your Honour, yes.

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VICE PRESIDENT HATCHER: All right.

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Does anyone oppose permission for legal representation to be granted to the AEU? No? All right. Well, I grant that permission.

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All right. Who would like to go first? Ms Saunders?

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MS SAUNDERS: Thank you, your Honour. There have been some clearer discussions between at least some of the parties and the consensus as to how to proceed seems to be that, firstly, the matter be referred to a member assisted conference to work out what is and isn't in dispute of the various implementation issues that may arise.

PN19

And secondly, largely to avoid drift, for the matter to be programmed for a report back in, say, two months. It would be good if we could take a date for both of those things today, the conference may be more difficult to schedule, but at least we should be able to program the report back.

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VICE PRESIDENT HATCHER: All right. So what is the purpose of this member assisted conciliation?

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MS SAUNDERS: There are a range of implementation issues that have, or are likely to, arise, including translation between the existing classification structure, that has a different impact State to State.

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Our question's, as flagged, in the decision as to timing of the increased phasing in. There may be some issues of affordability. The point of the conference is to identify what the issues are, what can be agreed and what remains in dispute and needs to be resolved by the Full Bench.

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VICE PRESIDENT HATCHER: All right.

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Is there any reason why the matter can't be programmed to finality while we know that, while we undertake that task? Or at least, reserve some dates?

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MS SAUNDERS: The only reason would be knowing how long to reserve but some tentative dates could be booked in.

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VICE PRESIDENT HATCHER: Yes, fine. Mr Ward?

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MR WARD: Your Honour, we're comfortable if Ms Saunders' approach is adopted, we don't have any issue with that. My client's clearly want to put evidence and submissions on in relation to both operative date and phasing.

PN28

If we could reach an agreement with the other parties in relation to that, that would be, obviously, very useful but if we can't, we want to be heard on those matters.

PN29

We don't understand the position of the Commonwealth yet and probably will not until the Budget's handed down. And I should just indicate, for present purposes, we are having some practical issues, primarily coming out of Queensland, where there isn't registration or accreditation.

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And it might be necessary to put some submissions on in relation to those, but all of those matters could be dealt with in a member assisted conference to see if we could narrow those issues, if possible.

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So we're very happy to take the process being suggested and if you want to reserve dates, we're comfortable with that as well.

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VICE PRESIDENT HATCHER: All right. Well, to cut to the chase, does any party wish to express some different view or propose any different course?

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MR IRVING: No, your Honour. For the AEU's part we support that, but we also, picking up on Mr Ward said and what Ms Saunders referred to, there are a range of issues arising from the decision and how it will affect teachers in different jurisdiction, which we would propose to also discuss, as well as matters referred to in paragraph 665 of the Commission's decision in any such conciliation.

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VICE PRESIDENT HATCHER: Well, what are those issues?

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MR IRVING: Well, there are - I don't want to - your Honour's raised paragraph 665, or the Commission has raised 665, that there may be issues arising out of the operative date and the phasing in and the capacity of the Government to implement the decision, and that will depend partly upon how the progress is made through the various classifications, as articulated in paragraph 657 of the decision.

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Now, how that plays out in different jurisdictions, as Mr Ward raises, about the movement through and the accreditation process through different jurisdiction might need to be the subject of further consideration.

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I just want to leave it as broadly as that, at the moment, simply because it may, on further consideration, be an issue that can be easily resolved. And I don't want to limit what it is that we're going to, ultimately, articulate in further discussions with the parties.

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VICE PRESIDENT HATCHER: Is it proposed that a member of the Full Bench would conduct this conciliation?

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MS SAUNDERS: Yes, your Honour. If possible.

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VICE PRESIDENT HATCHER: I mean, obviously, if that led to some objections to somebody sitting that would be disastrous.

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MS SAUNDERS: Yes. I think it would have to be subject to everyone giving the undertaking not to make the objection, but given the nature and volume of the evidence, I think it would be preferable.

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VICE PRESIDENT HATCHER: Yes, all right.

PN43

All right. Well, we'll consider what's been put. If there's nothing further, we'll now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[9.12 AM]