



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT GOSTENCNIK
DEPUTY PRESIDENT BINET
DEPUTY PRESIDENT CLANCY
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT ANDERSON
DEPUTY PRESIDENT COLMAN
DEPUTY PRESIDENT MASSON
DEPUTY PRESIDENT BEAUMONT
DEPUTY PRESIDENT MILLHOUSE
DEPUTY PRESIDENT LAKE
DEPUTY PRESIDENT BOYCE
DEPUTY PRESIDENT CROSS
DEPUTY PRESIDENT EASTON
DEPUTY PRESIDENT BELL
DEPUTY PRESIDENT HAMPTON
COMMISSIONER SPENCER
COMMISSIONER MCKENNA
COMMISSIONER BISSETT
COMMISSIONER SIMPSON
COMMISSIONER RIORDAN
COMMISSIONER JOHNS
COMMISSIONER WILSON
COMMISSIONER CIRKOVIC
COMMISSIONER PLATT
COMMISSIONER HARPER-GREENWELL
COMMISSIONER HUNT
COMMISSIONER MCKINNON
COMMISSIONER YILMAZ
COMMISSIONER MIRABELLA
COMMISSIONER RYAN
COMMISSIONER MATHESON
COMMISSIONER SCHNEIDER
COMMISSIONER DURHAM**

**CEREMONIAL SITTING OF THE FAIR WORK COMMISSION
TO WELCOME JUSTICE HATCHER, PRESIDENT**

Sydney

10.30 AM, THURSDAY, 6 APRIL 2023

PN1

JUSTICE HATCHER: Welcome everybody. Before we begin I wish to acknowledge the Gadigal people of the Eora Nation, the traditional custodians of the land upon which we meet today. I pay my respects to elders past, present and emerging, and I extend that respect to Aboriginal and Torres Strait Islander people attending today.

PN2

As I think you probably know I have been honoured to received from His Excellency the Governor-General a commission appointing me as President of the Fair Work Commission. I will now invite the Minister to address the Commission first.

PN3

HON MR BURKE: Your Honour and members of the Fair Work Commission, I am pleased to be here with you on Gadigal land of the Eora Nation in a building that has always been a special one to me, the same building, 80 William Street, where a number of us from my line of upbringing used to come to meet with Gough Whitlam and Bob Hawke in their post prime ministerial offices.

PN4

Your Honour, you are the third President of the Fair Work Commission following on from the late the Honourable Geoffrey Giudice and from the extraordinary 10 year term of the Honourable Iain Ross.

PN5

Your appointment was not a difficult one to make. Your Honour, you had been Vice President for close to a decade. You came to the role with tremendous legal experience in industrial law, including your time as a senior counsel; a background in the trade union movement where you had appeared before the Commission in major pay equity cases representing casual workers; the interests of health and safety for truck drivers; dealing with industrial action in the airline industry.

PN6

You concluded your BA. LLB at Sydney University in 1986, a couple of years before I started on the same course, although not with the sort of results that you achieved. You were admitted as a solicitor to the Supreme Court of New South Wales in 1987, and were the editor of the Industrial Reports from 1998 to 2002. You've been described by colleagues as a forceful presence in the courtroom.

PN7

In this appointment the Australian Government is asking you to now lead the organisation and institutions that you have dominated throughout your working life. Since 2013 in your time on the Fair Work Commission you have served on panels for registered organisations, for government and recreational services, for manufacturing and building industries and for transport, agricultural, mining and services industry, as well as representing the Fair Work Commission internationally.

PN8

Of the many things I have done in this role your appointment is probably the least controversial thing I've done. As I consulted with all parties in advance of your appointment going to Cabinet, your Honour, there was not a single conversation where anybody said there was another candidate more worthy of this role than yourself.

PN9

The role of the Fair Work Commission while it has only been with us for a relatively short time stands on the shoulders of its predecessors. Within the Australian Parliament I am the member for Watson. John Christian Watson as Australian Prime Minister came to office and lost office over wanting to establish a Commission to be able to conciliate and arbitrate. On the Conciliation and Arbitration Bill in 1903 John Watson, or known as Chris Watson said:

PN10

They offered to submit their case to arbitration, but the employers, as is too frequently the case, refused to be conciliatory and declined to accept anything short of absolute submission of their terms. The men as they were have repeatedly offered to submit their case to arbitration.

PN11

That concept of conciliation and arbitration, that independent role of the Commission, has been an Australian dream for more than a century. When Julia Gillard in the role I now hold spoke of the establishment of Fair Work Australia on 1 July 2009. She said the following:

PN12

Fair Work Australia stands on the shoulders of the Australian Industrial Relations Commission and before it the Commonwealth Court of Conciliation and Arbitration. Fair Work Australia like its predecessors will apply the new laws fairly and impartially, and exercise its statutory functions according to that wonderful formulation, the equity, good conscience and the merits of the matter.

PN13

But the Commission that you now lead, your Honour, has three key differences, I guess, to the Commission that was established by Julia Gillard. It has new objectives and powers. It is planned to deal with new jurisdictions, and it now has very clear new expectations from the Australian community on new objectives, both gender equality and job security, and now for the first time objectives of the Fair Work Act on the decisions over which you will oversee.

PN14

There are powers again for arbitration, which for some time had not in the same way found their way into the ordinary day to day work of the Commission. The Parliament will shortly deal with new jurisdictions where for the first time the Commission will be asked to look beyond the employment relationship, and there are clear expectations, in particular on all workplaces, with the shining beacon being the respect at work report.

PN15

There are expectations of workplaces being safe, workplaces being respectful, and workplaces being professional, something which applies both to the workplaces you oversee through your hearings, and the workplace that you directly manage for the people at the Fair Work Commission. I can assure you, your Honour, of the full support of the Australian Government in making sure that the full professionalism that everybody expects of the Fair Work Commission that you will lead will have the full support of the Australian Government in the decisions you take. I wish you well and sincerely congratulate you.

PN16

JUSTICE HATCHER: Thank you. Ms O'Neil

PN17

MS O'NEIL: Your Honour, Minister, members of Fair Work Australia, your Honour's family and friends and all those joining us today. I want to begin by acknowledging the traditional owners of the lands we're meeting on, the Gadigal people, and pay all my respects to elders past and present. And I also do want to take this opportunity to express the ACTU's support heeding the call of First Nations People for a voice to Parliament to be enshrined in the Constitution. Having the voices of Aboriginal and Torres Strait Islander people listened to and respected in Parliament is key to improving the lives of First Nations People, and the union movement has proudly committed to supporting the Yes Campaign in the upcoming referendum.

PN18

It is my honour on behalf of the Australian Council of Trade Unions, our affiliates and working people of our nation to congratulate you, your Honour, upon your appointment as President of the Fair Work Commission. I note that your Honour has been serving as the Acting President of the Commission since the retirement of your highly respected predecessor Justice Iain Ross.

PN19

You bring a wealth of experience in and knowledge of industrial law and Australia's unique system of industrial relations to this position. Yours has been a long and prestigious career of service. It began with your attainment of a Bachelor of Law and Bachelor of Art with first class honours from the University of Sydney in 1986. And I have discovered that while you were studying for that degree your service included bar service in a literal sense working as a barman in the New South Wales Bar Association common room, which is a confusing number of different applications of the terms 'bar' and 'service'.

PN20

You were admitted as a solicitor of the Supreme Court in New South Wales in 1987, but went on to work as an electorate officer for the then President of the Senate, Senator Kerry Sibraa. In 1988 you took a position of legal officer for the New South Wales branch of the Transport Workers' Union, the beginning of a long, positive and some would say challenging association with our movement.

PN21

In a testament to your skills and the regard in which you were held just two years after taking up this position you were promoted to Chief Legal Officer. Those who knew you during that time at the union recall your skill, work ethic and dedication to working people. Whether it was gravel truck drivers, owner drivers or leading employers in the industry you were known for treating all with dignity and respect. In a volatile, often dangerous industry that was experiencing really difficult times yours were the calm and steady hand.

PN22

This was particularly important after the introduction of enterprise bargaining in 1993, and this new form of bargaining required a new approach, and you played a significant role in devising union strategy in this changed environment, and ensuring union members were constantly engaged and connected to this process.

PN23

After leaving the union in 1997 you were admitted to the Bar and appointed as a senior counsel in 2010. There are many notable accomplishments in these stages of your career, and I wanted to note in particular your role as counsel representing unions in New South Wales in the 2006 secure employment test case, which resulted in the insertion of casual conversion provisions into New South Wales State Awards, a significant and substantive development and determination which has provided security and improved many working people's lives.

PN24

Your appointment as Vice President of the Fair Work Commission followed in 2013. Since then you have led Full Benches that were critical to interpreting and applying pay equity and the modern statutory conception of work value in decisions relating to teachers and pharmacists. Those decisions paved the way for the landmark recognition of gender-based undervaluation in the aged care industry that we have recently seen.

PN25

You also led the Full Bench which reinstated casual conversion provisions into modern awards in 2017, and these provisions have been lost in many instances due to their absence from Federal Awards having been deemed non-allowable by statute. This decision demonstrated a deep appreciation of the impact of insecurity of employment on the lives of casual workers.

PN26

Throughout your time on the Commission you have shown your full and rich knowledge of the intricacies of industrial law, and you have also proven your deep appreciation of the history of the Commission and its critically important role, place and function within the industrial system and within our democracy.

PN27

Upon your appointment as Vice President you recalled the words of Justice Henry Bournes Higgins, the second President of the Commonwealth Court of Conciliation and Arbitration. Higgins was frustrated at being entrusted by legislation with setting fair and reasonable wages without a definition of what the concept entailed, and if it referred to the Arbitration Court as a new province for law and order, he believed that the industrial tribunal could function as an

effective mechanism to ensure fairness in the relationship between employers and workers.

PN28

In the famed Sunshine Harvester case of 1907 Higgins determined that a fair and reasonable wage was one that would meet the normal needs of the average employee regarded as a human being living in a civilised community. This was a new standard, a new precedent, one that underpinned and sustained the Australian social contract of fairness and egalitarianism, our fair go.

PN29

Though its names and functions have changed the industrial tribunal of this country has continued to play this absolutely fundamental role. It has been given discretion by Parliament to shape the application of industrial legislation in a manner that reflects the social and economic realities of the day. It does so in the pursuit of fairness and to ensure our workplaces are more equal and reflect the standards of our modern society, and this is a vital point. What happens at the Fair Work Commission has a direct and immediate impact on the lives of working people in different sectors and industries in small towns and big cities all over this country.

PN30

The decisions made here reverberate all through our society. This is something Justice Higgins was aware of when he made his determination in the Harvester judgment, and it's an awareness you have demonstrated consistently through your time as Vice President and now President of this Commission.

PN31

Most ordinary Australians will never walk through the doors of this institution, but the decisions made here impact many of them directly and profoundly. Decisions made here will not just shape working conditions, they shape livelihoods and the lives that depend on them. They determine opportunities and reveal so much about what we as a society value and in the world of work and in the economy.

PN32

Your appointment as President of this Commission has come at a time of great significance. New industrial laws have been introduced to rebalance our industrial system that was just not keeping up with the times; laws designed to lift wages, increase job security and take substantive steps as we have heard from the Minister to tackle gender inequality in the workplace.

PN33

These changes updated our laws for the 21st century, but drew on long standing traditions of fairness to do so. They're not quite a new province of law and order, but they are a vital opportunity to renew our social contract at a time when it's being framed as a result of growing inequality, insecurity and disempowerment of working people.

PN34

These laws have been introduced at a time when Australian workers are experiencing enormous challenges. Real wages have suffered their greatest cut in recorded history. Interest rates and rent are rising, and bills are getting bigger. For many working people it's just getting harder to get by. The actions of this Commission will be integral to ensuring that a fair go is protected and passed on, not just to those workers, but the generations that come.

PN35

Your Honour, the union movement congratulates you on your appointment as President of the Fair Work Commission. We know you are a man of integrity, of fairness, of intellect, of hard work. We know that you will execute your duties with impartiality and diligence, and with respect and consideration for the people that your decisions will affect. Your Honour, I personally wish you all the strength and patience and the very best for your new role, and the ACTU and our movement look forward greatly to working with you over the coming years as President of this tribunal. If the Commission please.

PN36

JUSTICE HATCHER: Mr Ward?

PN37

MR WARD: If the Commission pleases. I would like to begin by acknowledging the traditional custodians of the land on which we meet today, the Gadigal people. I also pay my respects to elders past, present and emerging.

PN38

I have been forewarned by President Hatcher as to what I am allowed to say and not say today having known him for well over 30 years, so bear with me. On behalf of employers I offer my sincerest congratulations to you, Justice Hatcher, on your appointment to the presidency of the Fair Work Commission.

PN39

I contemplated whether or not it was a good time or a bad time to take up the presidency, and the fact of the matter is that it's a very challenging time to take the presidency of this very important and venerated body. We are confronted by high inflation placing pressures on employees and their families that we probably haven't seen since the 1990s. The same inflation is eroding margins for many employers through increased costs of materials and logistics. Those in any energy intensive manufacturing are literally seeing their meaningful profit wiped out overnight by increases in energy prices.

PN40

Combined to that our workforce expectations have changed during COVID. Employers are grappling with hybrid work, remote working expectations, and I suspect shortly the tribunal will be grappling with those issues as well, and shortly we will see an increased emphasis on conciliation which has been long missing from this tribunal, and members of the tribunal will have to deal with young practitioners who perhaps don't even understand what conciliation and arbitration is, and they struggle with it.

PN41

This Commission sits at the apex of all those challenges, and so taking on the presidency means you sit at the apex of that. These challenges will require all your qualities of character, intellect and sound judgment. I am conscious that your character was forged in these formative years mostly in the New South Wales jurisdiction.

PN42

At a personal level I had the very real privilege of watching that character form firsthand. I recall vividly your first week on the job. Being dumped, and I think dumped is a reasonable way of describing it, being dumped into the long running 41 Tong dispute by the late and great Barry French, you showed up with calm and countenance under immense pressure, I think on your second day. It was very clear to all around that you were destined to be a leader in your field even then.

PN43

Now, I appreciate that it's customary at this point to throw in what hopes will be a humorous anecdote, and I contemplated how to do that, and I chose this. I'm very conscious of your instinctive passion for the art of advocacy. Every time you meet one of my younger staff members you normally ask one question: 'Do you aspire to be an industrial advocate? Do you think it's meaningful and important?' But you also think it has to be fun rather than just grim and gristle.

PN44

So I tried to think of a case we were involved in when we were younger that reflected those qualities, and my wife reminded me that we spent three days arguing about what a bus was, what a coach was, and whether or not a coach could be a bus. The matter was before Commissioner Connor. The decision is well worth reading, because it's the only decision in my memory that refers to a rhinoceros, an elephant, a cat and a dog, and the most interesting passage from that decision that I thought I could bring forward today was this one. Commissioner Connor said this:

PN45

All dogs have four legs. All cats have four legs. Therefore all cats are dogs. In this case Mr Hatcher's claim in its simplest form is that all buses are passenger vehicles, a coach is a passenger vehicle, therefore a coach is a bus.

PN46

I have to remind you that you lost the case, I'm sorry. They were fun days. They were very fun days. Now, returning to the more serious themes that I commenced with more recently in four yearly review of modern awards, casual employment and part-time employment, as Vice President your Bench demonstrated a genuinely balanced understanding of the need to promote permanent employment, that for some employees casual employment was desirable, and more broadly the need for employers to be able to have necessary and reasonable operational flexibility.

PN47

I suspect that approach to balance the exercise of judgment was honed in the early days of the New South Wales system, a system of conciliation and arbitration, a system that understood the business needed to thrive and with it employees

deserves their fair share. Challenging times call for people of character, and, President Hatcher, employers can be confident that you have the character that is required to chart a balanced path through the coming challenges in the coming years. On behalf of employers you have our sincerest congratulations, having risen to the pinnacle of industrial relations in Australia. If the Commission pleases.

PN48

JUSTICE HATCHER: Mr Shariff?

PN49

MR SHARIFF: May it please the Commission. I acknowledge the Gadigal people, the traditional custodians of the land and pay my respects to their elders past, present and emerging, and I extend my respect to all First Nations People in attendance.

PN50

I acknowledge the attendance today of a number of distinguished guests; the Minister of Industrial Relations, or Workplace Relations I think, Senator Sheldon; Walton J of the Supreme Court of New South Wales; Justice McClelland, Chief Commissioner Constant, former members of the Commission and its predecessors, and other distinguished guests, and of course your Honour's family.

PN51

May I first record an apology to your Honour on behalf of the President of the New South Wales Bar Association Gabrielle Bashir of Senior Counsel who is unable to attend today, but wished me to pass on her personal congratulations to you, President Hatcher, and record her personal delight that a former member of the New South Wales Bar has been appointed to the Fair Work Commission and as a judge of the Federal Court of Australia.

PN52

The president has also asked me to record on behalf of the New South Wales Bar the fundamental importance in the role of the Commission in the lives of all Australians, and that we are very proud that one of our own will lead the peak industrial tribunal in the country.

PN53

May I also take the opportunity on behalf of the New South Wales Bar to record our collective gratitude to Justice Iain Ross in his role at the helm of the Commission. His Honour's commitment as we all know to public service is long standing and unparalleled and most of us doubt that he's actually gone into retirement. Thank you, President Ross.

PN54

I speak today on behalf of the New South Wales Bar Association, but also the solicitors of this state and the legal professionals of the nation, and on their collective behalf it is a pleasure to formally welcome you, President Hatcher, both as the President of this Commission, but also as a Justice of the Federal Court of Australia.

PN55

Your Honour joins the giants, and I mean the giants, of the industrial law as President of the Commission, names such as Sir Richard Kirby and Sir John Moore, not only as New South Wales based presidents are drawn from the ranks of our own New South Wales Bar, and of course it had been fate that your Honour practiced out of Henry Bournes Higgins chambers, that great jurist having been a leader of industrial law and whose judgments remain of relevance today.

PN56

Your Honour's practice at the Bar was not your first introduction to the law. Your Honour's father, Ken Hatcher, was amongst the doyen of barristers' clerks who worked Phillip Street and its surrounds, and my former clerk Bob Baroma speaks of his quiet, wise and humble mastery of the arts of clerking.

PN57

It is thought that your Honour may be the first offspring of a barrister's clerk to be the head of a jurisdiction. That is something to be immensely proud of. We may need a historian to check that fact, but I will take the indulgence of judicial notice there, and it won't be the first time I will make that submission.

PN58

Your Honour's first job associated with the law as we have heard was as barman at the bar room operated in the common room of the New South Wales Bar Association. When I was reminded that that was your Honour's first job associated with the law it triggered in my mind your Honour's famous decision in *Bista v Glad Group trading as Glad Commercial Cleaning* which most of us will recall was a coffee theft case. Your Honour started that decision by quoting a literary work, and I remind your Honour you said this:

PN59

The contemporary philosopher Alain de Botton has written: 'Office civilisation could not be feasible without the hard take-offs and landings effected by coffee and alcohol.'

PN60

Can I just indicate that the Bar Association does not have any CCTV footage of your Honour pouring yourself some stiff drink, but you would have likely needed it given the clientele back in those days.

PN61

In seriousness though that decision is an example of your Honour's practical wisdom, but more importantly your Honour's humanity and common sense approach to dealing with the types of matters that come before the Commission.

PN62

Your Honour's appointment as President and as a Justice of the Federal Court comes after a stellar career as a legal officer of the Transport Workers' Union, a barrister, then Senior Counsel of the New South Wales Bar, and almost 10 years as Vice President of the Commission. Your Honour is impressively well read outside of legal scholarship with a reputation for ingesting many tomes of modernist and classic literature. I am told that you are one of the few people who

have actually read all seven volumes of Marcel Proust's In Search of Lost Time. I'm not sure you knew that, Minister, but too late now. And I am also informed your Honour has read the complete Greek tragedies.

PN63

Your Honour obtained a Bachelor of Law and a Bachelor of Arts with a first class honours from Sydney University with a first class honours thesis on revolts in the Roman army in Germany from AD14 to AD69. No one has read it. It's collecting dust. I am sure you will pass it on to one of your two children, but it may have given you something of an indication as to how to manage and lead the Commission in the challenging times ahead.

PN64

At the Bar your Honour was a well respected and outstanding advocate and Senior Counsel, maintaining good working relationships with representatives on all sides, as we have heard from Mr Ward, and seeking to make cases workable. You were a formidable yet civil opponent and you had a thoughtful way of presenting arguments.

PN65

When called to the Bar your Honour had been tutored by the Honourable Justice Michael Walton who is here, and mentored by the Honourable Lance Wright of King's Counsel, who would each times go on to serve as presidents of the Industrial Relations Commission of New South Wales. Not much was required of your tutor I am told. As a reader your Honour needed remarkably less assistance than most others coming to the Bar from the Transport Workers' Unions with skills and confidence.

PN66

My first introduction to your Honour was not in person, but it was a shot across the bows I received as a young solicitor. I had been sent to deal with a dispute relating to the termination of a contract carriage of a waste recycling contractor in that industry. I turned up to attend a conference in something that barely passed a conference room at the old Xerox House and bolthole of the Industrial Relations Commission of New South Wales, where I was greeted in opposition by a group of burly contract carriers, an industrial officer from the TWU, and then Assistant Secretary of the Sydney Branch of the Transport Workers' Union the late Wayne Forno who told me, 'If you run this case we'll be on the grass and Adam Hatcher will be down here to chew you up and spit you out'. There were some other choice words but they're not fit for publication. I reported this back to my then boss, Maurice Boroni, and we quickly settled that case. I wasn't chewed up or spat out, at least not on that occasion, by Your Honour. You also had a nickname at the bar, which I know you're familiar with and it was Columbo. That was passed on to me by another member of the industrial bar who has gone on to bigger things. Those who can remember the famous TV detective and have worked with Your Honour will know full well that Your Honour would often walk into court and appear unprepared, slightly dishevelled, I should say. I have tried to edit this.

PN67

But after minutes it was obvious that Your Honour had played all of us as fools. Your Honour was on top of every detail, every detail. You were incisive and you were forensically minded and you would dismantle any case that was put against you and you would build any case that you were presenting with that same forensic mind. Your Honour has been at the forefront during your career as a barrister and now as a jurist of some of the most important decisions in industrial law over the last 25 years. We've heard about the secure employment test case in New South Wales and that was, indeed, a landmark decision. But Your Honour's decisions in this Commission on every facet of the Fair Work Act remain – and I dare say will continue to remain – the go-to decisions to the point of principle.

PN68

Indeed, to the point where most of us now at the bar and in practice start by asking, 'Has Hatcher said anything about this', and, 'What is it'? And that is a testament to Your Honour's intellect and mastery of not just the provisions of the Fair Work Act but in principles of statutory construction that are applicable across the fields of law. Your Honour, we are told, has got an impressive knowledge of economics and we have seen that in cases at the Commission. You've been known to astound economists on expert panels with encyclopaedic knowledge of economic concepts and I'm told that some of your colleagues call you Adam Smith Hatcher after the Scottish economist and philosopher who inspired classic liberalism but I doubt, knowing Your Honour, that Your Honour believes in the hand of the free market.

PN69

This breadth of insight across economic scholarship and issues of working people has informed Your Honour's impartiality decision making in very important aspects of the wage-setting role of this Commission. Your Honour is a clear communicator, with an ability to get to the point, and I've been on the receiving end of that and without leaving counsel to keep waffling on as I'm likely doing – and I know I'm going to get the look at the clock any minute now – but Your Honour's efficiency in dealing with matters is a matter that Your Honour has undoubtedly picked up from the former president, Justice Iain Ross.

PN70

The researchers at the Bar Association were sent on an errand to gather tales of your conduct in chambers. They spoke to former associates of yours. I'd like to say I had to edit those parts out but I didn't. All the reports we got back was that Your Honour was always a pleasure to work with and you are known for treating your associates with great respect and kindness. When working with fellow Commissioners of the Commission and writing decisions, I am told that you are very skilled in taking a draft and working your Hatcher magic on it without making the first drafter feel that their grammar has been corrected.

PN71

Such is Your Honour's collegial approach in chambers, as I understand, when there was a lunch organised for the women in the Fair Work Commission and it was being arranged they received an invitation from an Ada Hatcher. No one knew who this person was but Your Honour's cover was blown when the menu was revealed as coriander and I'm told you have that genetic variation in your taste buds where coriander tastes like soap water to you. Another random fact

about Your Honour – and I'm pretty sure very few people know about this – is that Your Honour had been a child model, evidenced by a photo you posted on the door of your chambers featuring Your Honour as a child in an ad for Band-Aids, acting as though you were sorrowfully holding up a sore finger.

PN72

We should all be warned these incidents show Your Honour has a very good sense of humour even though Your Honour is very rarely seen to smile except it has been suggested on an ever-so-faint upturning of the corners of the mouth on announcement of Your Honour's appointment as President for which Ingmar Taylor of senior counsel and I were present, when we believe he received a phone call from you, Minister, during the Sydney Trains matter. Another random fact about Your Honour is that until your appointment to the Commission in 2013, Your Honour didn't own a mobile phone. My research indicates that from a certain silk at HB Higgins' chambers that not only is this true, but that you could not be reached during the Qantas grounding, you had moved house and no one knew your landline number and the only way you could be reached was by someone going into chambers and going through the last dialled numbers on your phone and landing upon some mobile phone where they were able to get in touch with you. At your swearing in as a vice president you indicated that as you did not own a mobile phone and Vice President Catanzariti, sworn in at the same time, did not drive, you were going to come together as imperfect modern humans but together you would make one complete human.

PN73

Well, we know that Your Honour has now apparently got a mobile phone, because you received the Minister's call but Vice President Catanzariti cannot drive. May I suggest that the very outstanding appointment and elevation of Vice President Asbury – congratulations – that she is the person who completes the two of you. It is undoubtedly the case that both of you need a woman to make you both into complete human beings. Your Honour did not arrive here without the support of your whole family, your parents, your former wife, your children, Natasha and Caleb, and your partner Lisa. Your colleagues have remarked that with the arrival of Lisa Your Honour's sense of sartorial style actually began. I have seen less of the rain coats. No longer boring and dull apparently in chambers and no longer Columbo and you now have a better dress sense and a spring in your step, including some surprising dance moves that we all saw – or some of us did – at Vice President Catanzariti's wedding.

PN74

For the New South Wales bar, due only to the long and welcome service of others, it has been 25 years since a president was appointed from the New South Wales bar, where it all began, in a way, with Sir Richard Kirby as president of the Commonwealth Conciliation and Arbitration Commission from 1956 and then Sir John Moore following as president from 1973 to 1985. Ceremonies like this are a means of reinforcing confidence in the community of the personal qualities and attributes of the person as well as their professional accomplishments but ceremonies such as this are also ways of honouring the institution. In a year when we lift our eyes to the horizon of constitutional change, it is well to remember that the Fair Work Commission is the successor of an institution that was established

as an essential part of our constitutional underpinnings and the Australian settlement, established upon the four pillars of federation, protectionism, white Australia and conciliation and arbitration.

PN75

Two of those pillars have rightly been dismantled so when Your Honours now come to determine what is a living wage, it is not for an ordinary man but for all human beings in the community of adult age and of junior age, be they man, woman, Indigenous, be they the forgotten workers of the sugar cane industry, Polynesian labour, and the camel riders of the deserts of the northern part of Australia. The two remaining pillars, federation is a concept; conciliation and arbitration is a practical means of the administration of justice in this nation and it is one which uniquely impacts all of us. The institution has been pushed and pulled by its governing statute and by politicians of both persuasions and the government of the day but the institution has weathered all the storms. It has done so because of the good people of the Commission, the good people of this country wish there to be an independent tribunal to determine their terms and conditions of employment and broker a fair deal between employers and employees.

PN76

The economic times are indeed turbulent. We have no doubt that this Commission will play its role in charting the nation and its citizens and the economy to a safe landing. People often talk about the High Court by reference to its chief justices: the black letter approach of the bar, we call it; the supposed radicalism of the Mason court, the supposed conservatism of the Gleeson court or the chapter 3 influence of the French court. If one is looking for a narrative about the Hatcher period, the Hatcher era of the Fair Work Commission, I would commend them to Your Honour's statement issued on Tuesday about mandatory pre-conciliation conferences. Your Honour is seeking commitment from parties to the process of conciliation as a necessary integer to industrial action.

PN77

In the times of artificial intelligence, the kids these days will probably look for a president by using Chat GPT, by giving it the bullet points: we want someone with a formidable mind and high intellect on matters of law and economics, an efficient leader, practical and no-nonsense, courteous, a plain and clear communicator, a person who understands working lives and the issues confronting businesses in economy and importantly, someone who can pour a beer. Undoubtedly the result would be Adam Hatcher but we don't need artificial intelligence to give us the answer. As the Minister said, it was a no-brainer. You were the obvious choice. On behalf of the New South Wales bar and legal profession, we are so delighted and happy for you, President Hatcher, on your swearing in as the President of this Commission and as a Justice of the Federal Court of Australia and we wish you and all the members of the Commission the best of luck in the Hatcher era. May it please the Commission.

PN78

JUSTICE HATCHER: I thank you, Minister, Deputy Chief Justice McClelland, Walton J, Chief Commissioner Constant and Senator Sheldon, representatives of the legal profession, unions and employers at the bar table, distinguished guests, friends and colleagues for your attendance here today. I thank each of the

speakers here this morning for their overly kind and generous remarks and may it long continue, although it's always a danger having Mr Ward here. When someone knows you for that long there's always stuff that they can dig up but thank god Mr Ward restrained himself. Now, King Louis XIV once said that every time he filled an office he created 100 malcontents and one ingrate. I hope I don't fall into that latter category.

PN79

I am intensely conscious of the honour and the responsibility that attaches to my appointment as President of the Fair Work Commission and the opportunity it gives me to lead this great and historic institution. As a number of the speakers have averted to, this Commission in one form or another has existed since 1905 and is one of the foundational institutions of our great federation. I counted them – I'm only the 15th person appointed to lead this body in its various emanations and I know and am very conscious of the fact that I walk in the footsteps of giants. Now, the first emanation of this institution was the Commonwealth Court of Conciliation Arbitration, which was established by the Conciliation Arbitration Act of 1904. Its appearance on the Australian landscape was not welcomed by all.

PN80

I came across an article published in the Quarterly Journal of Economics in 1949, written by the noted industrial relations scholar, Orwell D. Foenander, and in that article he surveyed the history of the court to date and he said this:

PN81

Many employers regard its appearance as an intrusion and an impertinence, as a direct threat to the material wellbeing. These feelings of hostility or vexation did not quickly dissipate. Entrepreneurs of that mind boycotted or avoided the court to the greatest extent practicable. If brought before the court they questioned its jurisdiction and attempted to obstruct or delay the hearing at every available opportunity.

PN82

No doubt some of my colleagues on the bench are nodding with some sense of familiarity with that. But the learned author went on to say this:

PN83

Their opposition was mitigated only when it was evident that the arbitration court meditated no dark designs on managerial rights, and that those rights would not be modified apart from considerations of justice to the worker and of the general wellbeing. A factor in the changing view, no doubt, was the realisation that the court was acting on principles, the consistency and the application of which boded promisingly for fair and equal treatment of both parties in industry.

PN84

Now, those passages point, I think, to some important features of the Commission's jurisdiction which remain true today: the space we operate in involves the reconciliation of competing economic forces and interests. It is necessarily an area involving high stakes and significant controversy. To successfully navigate this difficult territory and to maintain the confidence of the

industrial parties and the public, it is necessary now, as it was in 1905, to adhere to the following, fundamental tenets: (1) fidelity to our governing statute; (2) the establishment and consistent application of principles that guide the exercise of our powers; (3) scrupulous adherence to the rules of procedural fairness; (4) appropriate respect for all those who appear before us, regardless of their status in society, their level of power or their capacity to articulate their case; (5) transparency in our decision-making processes and (6), above all the fierce maintenance of our independence in decision making. Now, the Commission currently faces, as the old Chinese saying goes, interesting times. We are working to establish a new post-COVID normality which will necessarily involve to a significant degree a permanent incorporation of online hearings into our standard procedures and we're currently working through how we go about this.

PN85

More importantly, we are facing the most significant waves of legislative reform in the area of industrial relations that have been seen for many years and this will see us exercising expanded and in some areas entirely novel powers. It will require a substantial restructuring of the Commission's operations and in particular, a shift of resources towards the area of enterprise bargaining. This is indeed a significant challenge but I'm confident that the Commission will rise to the occasion. Now on a more personal note I want to say that I agree with the view expressed by Saint Ignatius of Loyola, George Washington and G.K Chesterton that ingratitude is the worst and the root of all sins. And on that note I wish to express my thanks to a small number of the many people who have helped me get to my current position.

PN86

First of all, thank you to all of the loved ones in my life. Mr Shariff made reference to my partner, Lisa. She is the love of my life and 1,903 days ago she took my shoes off and threw them in the lake. I assure you, Lisa, I know what's good for me, and you are. There's my beautiful and talented children Natasha and Caleb who have been with me through everything and make me proud every minute of every day. Unfortunately neither of my parents have lived to see this day but to them I owe everything: my existence, my education, my values and my ambition. I hope I've taken full advantage of all the opportunities which I was given that they never had. And my brother and sister, Simon and Julie, who are here today will undoubtedly understand the force of that sentiment.

PN87

I did let my parents down in one respect: at a very early age I adopted the South Sydney Rabbitohs as my preferred rugby league team, much to their disappointment, because they were mad Manly Sea Eagles fans. My working career has been through three phases: during my nine years working for the Transport Workers' Union two secretaries, John McLean and the late Steve Hutchins gave me their utmost support and loyalty and they were to me lived examples of what leadership and courage look like and since I left there, Tony Sheldon and later Michael Kaine have continued that great tradition. What followed was my 16-year career at the New South Wales bar and for that there are two people I would like to particularly thank: the first as averted to again by Mr Shariff is Lance Wright KC, who was later Wright J, former president of the New

South Wales Industrial Commission and he mentored me through my early years at the bar and served as an inspiration throughout my whole career, so thank you, Lance.

PN88

Secondly, although he unfortunately couldn't be here today, Conrad Staff, later Staff J, who for inexplicable reasons entrusted me with the briefs on behalf of his most important clients in my early days at the bar. I also note that Walton J in our Supreme Court is here today and I thank him for all the assistance he's given me in my career and as again Mr Shariff pointed out he was my pupil master during my leadership at the bar but I think we both agree it was a fairly nominal arrangement. Next there is my almost 10-year career at the Commission itself as Vice President prior to this appointment. During the entirety of that period the Commission was led by former Justice Iain Ross, who is a truly outstanding servant of the Australian people and through a combination of intellect and incredibly hard work completed modernised the Commission to make it the contemporary and responsive institution it is today.

PN89

I pay tribute to the leadership he provided over his decade of service and I make it entirely clear that I intend to continue down his path of ongoing reform. There are also present in the court room a number of retired members of the Commission. I won't name them. I will just say that I consider each of them to be a role model for everything that a member of the Commission should be. I will say to you, former Deputy President Bull, you have left a store of red wine in your chambers and I warn you that today is your last opportunity to retrieve it. I also wish to thank my 12 former and current associates, all of whom I think are here today and I regard as part of my extended family. So again, thank you for your attendance today.

PN90

I invite you after we finish to share some fairly spartan refreshments on level 12. It's a bit more than Arnott's Assorted, which had been my initial preference. But don't expect too much. Thank you for your attendance and we will now adjourn.

ADJOURNED INDEFINITELY

[11.27 AM]